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International Organ Trafficking: In Brief

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Introduction

The term *organ trafficking* is commonly used to refer to a range of criminal activities, including illegal organ harvesting from a living or dead individual and the illegal sale and transplantation of human organs. While some experts include forms of enslavement or coercion to obtain an organ donation in the definition, U.S. government sources typically describe such crimes as trafficking in persons for the purpose of organ removal. Reflecting concerns over organ trafficking as a human rights abuse, a profitable transnational crime, and an activity in which U.S. citizens or businesses may be directly or indirectly complicit, many in Congress have sought to better understand and address the practice. Through proposed legislation, funding decisions, and oversight hearings, Congress has identified potential policy tools to address organ trafficking and has endeavored to identify and change the behavior of actors that may play a role in facilitating the illegal trade. Congress has also sought to understand organ trafficking's relationship with political repression in countries with poor human rights records (see the "Congressional Interest in Organ Harvesting in China" textbox) and other crimes such as human trafficking.

Organ trafficking may be considered part of a broader market that includes tissues, cells, or other human body parts or products, referred to by some as the "red market." Prominent international legal frameworks, and many national frameworks, including in the United States, prohibit any sale of human organs (with exceptions for compensation for expenses incurred by organ donors).¹ The wide-scale prohibition of organ sales makes organ trafficking unique among other transnational crimes, because with rare exceptions, there is not a parallel, legal trade in the commodity.² Demand for organ transplants that is not met by legal organ donations contributes to organ trafficking, which may be facilitated by criminal organizations or actors.

Characteristics

As with many clandestine activities, estimating the financial scale of international organ trafficking is complicated by a lack of information.³ The nongovernmental organization (NGO) Global Financial Integrity (GFI) estimates that the annual value of organ trafficking globally ranges from \$840 million to upwards of \$1.7 billion.⁴ Transplants may cost a purchaser tens to hundreds of thousands of dollars, depending on the organ involved, and associated medical care and travel.⁵ Estimates of the number of illegal transplants performed and prices offered for organs

¹ The National Organ and Transplant Act of 1984 (P.L. 98-507) defines *human organ* as "the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin or any subpart thereof and any other human organ (or any subpart thereof, including that derived from a fetus) specified by the Secretary of Health and Human Services by regulation," 42 U.S.C. §274e.

² Iran is reportedly unique in its legal organ sale program, though sales are subject to certain restrictions, and there is state oversight of the nongovernmental organizations (NGOs) that coordinate sales. Some stakeholders contend that this program has led to drastic reductions in waitlists for organ transplants in the country, while others argue that the system preys on the poor, who make up the majority of vendors. See, for example, Saeed Kamali Dehghan, "Kidneys for Sale: Poor Iranians Compete to Sell Their Organs," *The Guardian*, May 27, 2012, and Samuel Howard, "How Iran Solved Its Kidney Shortage, And We Can Too," Niskanen Center, September 12, 2018.

³ According to INTERPOL, "The clandestine nature of the crime, combined with a lack of awareness on [trafficking in human beings for the purpose of organ removal, (THBOR)] by law enforcement agencies and the deficiency of information sharing channels between the medical and police sectors, have led THBOR to be among the least reported forms of trafficking worldwide." INTERPOL, ENACT, *Trafficking of Human Beings for the Purpose of Organ Removal in North and West Africa*, July 2021, p. 5.

⁴ Channing May, *Transnational Crime and the Developing World*, GFI, March 2017, p. xi.

⁵ ACAMS Today, "Organ Trafficking: The Unseen Form of Human Trafficking" June 26, 2018; Yosuke Shimazono,

vary. GFI estimates that approximately 12,000 illegal transplants occur each year, around 8,000 of which are for kidneys, followed by liver, heart, lung, and pancreas.⁶ GFI estimates that prices paid to individuals for their organs vary significantly: for kidneys, payments reportedly range from hundreds of dollars to individuals from less developed countries, to up to \$20,000-\$30,000 in more developed countries. Some individuals may not receive any payment for an organ or may receive less than originally agreed. Reports also describe individuals who provide organs and subsequently incur significant medical costs or experience a loss of livelihood due to botched surgeries or unanticipated residual effects.⁷ According to GFI analysis, markups for the recipients are often 500%-1,900%, with organs costing the recipient between \$100,000 and \$237,000.⁸

Individuals who sell or otherwise provide organs for the illegal trade may be

- deceased persons who did not consent to the use of their organs, or individuals who are killed for their organs;
- living persons who do not consent to the use or harvesting of their organs or are coerced, including by threat of force or offers for payment that take advantage of economic duress; or
- living persons who consent to sell an organ (in some cases, such individuals may be misled about the nature of the medical procedure and recovery).⁹

Considerations of victimhood and culpability are complex, in part because even when individuals consent to selling an organ, the sale is typically considered illegal pursuant to national laws.¹⁰ Some observers have acknowledged that although sellers frequently make the decision to sell an organ under duress, they contribute to the existence of the black market, and are usually involved in criminal activity.¹¹ Organ trafficking may be facilitated by corrupt officials or criminal groups and may include brokers or other middlemen who connect individuals providing the organ with prospective recipients, negotiate the price, and identify medical facilities where the transplant can occur. Organ recipients, along with the medical professionals involved in their procedure and aftercare, may or may not be aware of the circumstances surrounding an organ transplant.

Although media and public attention has at times focused on allegations of forced organ harvesting of certain repressed minority groups, such as those in China (see the “Congressional

“The State of the International Organ Trade: A Provisional Picture Based on Integration of Available Information,” *Bulletin of the World Health Organization*, vol. 85, no. 12 (December 2007), pp. 955-962; Steve Farrer, “Why Illegal Trafficking in Organs is Growing Fast ... But Few are Talking About It,” *Financial Crime News*, June 16, 2020.

⁶ According to GFI, “It is estimated that up to 10 percent of all transplants rely on organs that have been illicitly acquired. “The GFI report relied on organ donation and transplantation statistics for 2014 from the Global Observatory on Donation and Transplantation. See explanation in Channing May, *Transnational Crime and the Developing World*, Global Financial Integrity (GFI), March 2017, p. 29.

⁷ INTERPOL, ENACT, *Trafficking of Human Beings for the purpose of Organ Removal in North and West Africa*, July 2021, p. 14.

⁸ Channing May, *Transnational Crime and the Developing World*, Global Financial Integrity (GFI), March 2017, p. 30.

⁹ U.N. Office on Drugs and Crime (UNODC), *Trafficking in Persons for the Purpose of Organ Removal*, Assessment Toolkit, 2015, p. 16.

¹⁰ See discussion of the term “victim-donor” in INTERPOL, ENACT, *Trafficking of Human Beings for the purpose of Organ Removal in North and West Africa*, July 2021, p. 14.

¹¹ In a statement about the U.S. vote on a U.N. General Assembly resolution on organ trafficking, the U.S. Mission to the U.N. stated, “Although individuals who sell their organs can be desperate, they contribute to a black market industry that jeopardizes the health of organ sellers and recipients. In most circumstances, people trafficking in organs are engaged in a crime. As such, States do not have an international law obligation to protect them.” U.S. Mission to the United Nations, “Explanation of Vote on a Resolution on Organ Trafficking,” November 17, 2020.

Interest in Organ Harvesting in China” textbox below) experts suggest that many cases stem from economic motivations. Some research indicates that cases frequently involve young men from developing countries who are financially motivated to sell an organ, while organ purchasers appear to be primarily from more developed countries.¹² Poverty and imperfect access to information are commonly cited as key vulnerabilities for individuals who decide to sell an organ. Some research suggests that migrants are particularly vulnerable, as they may have little money, may not be familiar with regulations, and may be easily manipulated by smugglers or traffickers.¹³ Transplant procedures appear to typically occur in the country of the vendor or in a third country, to which the vendor and purchaser both travel, and appear to frequently be performed at medical facilities that also perform legal transplants. Those involved in organ trafficking may take advantage of weak rule of law in such locations.

Organ trafficking may also occur within conflict settings or among displaced populations. For example, several investigatory bodies have found that ethnic minorities were killed for their organs on a limited scale, as authorized by officials in the Kosovo Liberation Army, during the 1998-1999 Kosovo War.¹⁴ Also, in 2017, the U.S. government’s Joint Counterterrorism Assessment Team referenced evidence that the Islamic State appeared to have sold the organs of its captives through regional criminal networks.¹⁵ Some scholars have identified likely cases of organ trafficking or trafficking in persons for organ removal among Syrian refugees in Lebanon and Sub-Saharan African refugees in North Africa, among other contexts.¹⁶

Key Terms

Organ Trafficking: According to definitions adopted by the U.S. Organ Procurement and Transplantation Network (OPTN) and the United Network for Organ Sharing (UNOS), organ trafficking is “the recruitment, transport, transfer, harboring or receipt of living or deceased persons or their organs by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of organs for transplantation.”¹⁷ These definitions are informed by those adopted at the 2018 Istanbul Conference (see “The Declaration of Istanbul on Organ Trafficking and Transplant Tourism” section).

¹² A 2007 WHO Bulletin article cited reports that Australia, Canada, Israel, Japan, Oman, Saudi Arabia, and the United States were major “organ-importing countries” (defined as countries of origin of the patients going overseas to purchase organs for transplantation). The article cited reports that China, India, Pakistan, Bolivia, Brazil, Iraq, Israel, the Republic of Moldova, Peru, and Turkey were major “organ-exporting countries” (defined as countries where organs from local donors are regularly transplanted to foreigners through sale and purchase). Yosuke Shimazono, “The State of the International Organ Trade: a Provisional Picture Based on Integration of Available Information,” *Bulletin of the World Health Organization*, vol. 85, no. 12 (December 2007), pp. 955-962.

¹³ Juan Gonzalez, Ignacio Garijo, and Alfonso Sanchez, “Organ Trafficking and Migration: A Bibliometric Analysis of an Untold Story,” *International Journal of Environmental Research and Public Health*, vol. 17, no. 9, May 5 2020.

¹⁴ Julia Fioretti, “Inquiry Finds ‘Indications’ of Organ Harvesting in Kosovo Conflict,” *Reuters*, July 29, 2014; Dick Marty, *Inhuman Treatment of People and Illicit Trafficking in Human Organs in Kosovo*, E.U. Parliamentary Assembly, Committee on Legal Affairs and Human Rights, Doc. 12462, January 7, 2011.

¹⁵ Joint Counterterrorism Assessment Team, *International Partnerships Among Public Health, Private Sector, and Law Enforcement Necessary To Mitigate ISIS’s Organ Harvesting for Terrorist Funding*, May 11, 2017.

¹⁶ UNODC, *Global Report on Trafficking in Persons 2020*, February 2, 2021, p. 36; INTERPOL, ENACT, *Trafficking of Human Beings for the purpose of Organ Removal in North and West Africa*, July 2021, p. 26.

¹⁷ OPTN is a public-private partnership that links various actors involved in the U.S. organ donation and transplantation system. UNOS, a nongovernmental organization (NGO), was first awarded the OPTN contract under the U.S. Department of Health and Human Services (HHS) in 1986 and continues to administer the OPTN. OPTN, “Board Addresses International Definitions of Transplant Tourism,” March 3, 2009, at <https://optn.transplant.hrsa.gov/news/board-addresses-international-definitions-of-transplant-tourism/>; UNOS, “United Network for Organ Sharing FAQs,”

Organ Harvesting: Organ harvesting, or organ procurement, refers to the surgical procedure that removes an organ from an individual, typically for transplantation. In some cases, the procedure may be forced or coerced.

Trafficking in Persons for the Purpose of Organ Removal: According to U.N. and U.S. government sources, trafficking in persons for the purpose of organ removal is distinct from the broader crime of organ trafficking in its focus on crimes perpetrated against the trafficking victim, rather than the illegal sale and transplantation. In comments made in a hearing before the House Foreign Affairs Committee in 2010, Luis CdeBaca, then-Ambassador-at-Large to Monitor and Combat Trafficking in Persons, stated that situations in which “somebody was being held in servitude to have parts harvested ... would be a trafficking case.... The freedom being denied them for the harvesting, that is at the heart of the distinction that we make. It is the difference between slavery and illicit transport of a piece of contraband.”¹⁸ U.N. sources have articulated similar findings.¹⁹ Organ removal is not explicitly included in the Trafficking Victims Protection Act (TVPA, P.L. 106-386) definition of severe forms of trafficking in persons, which includes forced labor and forced sexual exploitation. Annual State Department Trafficking in Persons Reports (TIP reports) have cited instances of “trafficking [in persons] for the purposes of organ removal,” while stating that organ trafficking is not a form of trafficking in persons. The *2017 TIP Report* stated that strong anti-trafficking laws include “a clear definition of human trafficking that describes the acts, means, and ends, as distinct from related crimes—such as migrant smuggling, prostitution, kidnapping, organ trafficking, or illegal adoption.”²⁰

Transplant Commercialism, Travel for Transplantation, and Transplant Tourism: According to the OPTN/UNOS Board of Directors, transplant commercialism “is a policy or practice in which an organ is treated as a commodity, including by being bought or sold or used for material gain. Travel for transplantation is the movement of organs, donors, recipients or transplant professionals across jurisdictional borders for transplantation purposes. Travel for transplantation becomes transplant tourism if it involves organ trafficking and/or transplant commercialism or if the resources (organs, professionals and transplant centers) devoted to providing transplants to patients from outside a country undermine the country’s ability to provide transplant services for its own population.”²¹

International Frameworks

Several international frameworks provide definitions and descriptions of organ trafficking or related activities, guidelines for ethical and legal organ transplants, and law enforcement priorities for combating the illegal trade.

U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

The U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the U.N. Convention against Transnational Organized Crime (U.N. TIP Protocol, also known as the Palermo Protocol), entered into force on September 29, 2003.

at <https://unos.org/about/faqs/>.

¹⁸ U.S. Congress, House Foreign Affairs Committee, *Out of the Shadows: The Global Fight Against Human Trafficking*, 111th Cong., 2nd sess., September 30, 2010.

¹⁹ “In the case of trafficking in organs, the object of the crime is the organ, whereas in the case of human trafficking for organ removal, the object of the crime is the person. Trafficking in organs may have its origin in cases of human trafficking for organ removal, but organ trafficking will also frequently occur with no link to a case of human trafficking.” UNODC, *Trafficking in Persons for the Purpose of Organ Removal*, Assessment Toolkit, 2015, p. 17; Council of Europe and U.N., *Trafficking in Organs, Tissues, and Cells and Trafficking in Human Beings for the Purpose of the Removal of Organs*, 2009, pp. 11, 93.

²⁰ Department of State, Office to Monitor and Combat Trafficking in Persons, *2017 TIP Report*, June 2017, p. 2.

²¹ OPTN, “Board Addresses International Definitions of Transplant Tourism,” March 3, 2009, at <https://optn.transplant.hrsa.gov/news/board-addresses-international-definitions-of-transplant-tourism/>.

The protocol includes “the removal of organs” as a type of exploitation in its definition of trafficking in persons.²²

In providing advice and consent to the U.N. TIP Protocol in 2005, the U.S. Senate included a reservation stating that U.S. federal criminal law was “broadly effective” for addressing activities listed in the protocol and a declaration that U.S. law satisfied the obligations of the protocol and that the United States did not intend to enact new legislation to fulfill protocol obligations.²³ In 2010, then-TIP Ambassador CdeBaca explained the U.S. interpretation of the organ-related provisions: “The United States has interpreted the organ trafficking portion of the Palermo Protocol to criminalize those who would traffic a person in order to harvest their organ. Some countries are looking at it more expansively and looking at the trafficking in the organ itself.”²⁴

World Health Organization (WHO) Guiding Principles on Human Cell, Tissue, and Organ Transplantation

First endorsed by the WHO’s decision-making body, the World Health Assembly (WHA), in 1991, and updated in 2010, the WHO Guiding Principles on Human Cell, Tissue, and Organ Transplantation (WHO Guiding Principles) “are intended to provide an orderly, ethical and acceptable framework for the acquisition and transplantation of human cells, tissues and organs for therapeutic purposes.”²⁵ The preamble references the growth of “commercial traffic in human organs” and “the related traffic in human beings.” Several guiding principles relate to organ trafficking, including provisions stating that

- live donations should occur with the donor’s informed and voluntary consent and that donors should be provided professional medical care (Guiding Principle 3),
- cells, tissues, and organs should be donated, not sold, and that sales should be prohibited, though compensation for donations is permitted (Guiding Principle 5), and
- health professionals should not engage in, or provide insurance coverage for, transplantations that involved “exploitation or coercion of, or payment to, the donor or the next of kin of a deceased donor” (Guiding Principle 7).

Furthermore, a 2004 WHA resolution urges member states to “take measures to protect the poorest and vulnerable groups from ‘transplant tourism’ and the sale of tissues and organs.”²⁶

²² “The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” U.N. Office of the High Commissioner for Human Rights, *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, Article 3 Use of Terms.

²³ Ex. Rept. 109-4 U.N. Convention Against Transnational Organized Crime (Treaty Doc. 108-16).

²⁴ According to Ambassador CdeBaca, “It is the difference between slavery and illicit transport of a piece of contraband.” U.S. Congress, House Foreign Affairs Committee, *Out of the Shadows: The Global Fight Against Human Trafficking*, hearings, 111th Congress, 2nd sess., September 30, 2010.

²⁵ WHO, *WHO Guiding Principles on Human Cell, Tissue, and Organ Transplantation*, 2010.

²⁶ WHA, *Human Organ and Tissue Transplantation*, WHA57.18, May, 22, 2004.

The Declaration of Istanbul on Organ Trafficking and Transplant Tourism

The Declaration of Istanbul on Organ Trafficking and Transplant Tourism (Istanbul Declaration) arose from the International Summit on Transplant Tourism and Organ Trafficking convened by the Transplantation Society and International Society of Nephrology from April 30 to May 2, 2008. The summit sought to address “the urgent and growing problems of organ sales, transplant tourism and trafficking in organ donors,” and the resulting Istanbul Declaration included principles and proposals relating to strengthening legal and ethical organ transplants and preventing organ trafficking, transplant commercialism, and transplant tourism.²⁷ Provisions included calls for countries to maximize the number of organs available for transplantation and prohibit advertising for organ trafficking. The declaration was updated in 2018.²⁸

Regional Approaches

Some regional organizations have established frameworks relating to organ trafficking. For example, the Council of Europe’s Convention against Trafficking in Human Organs, which entered into force in March 2018, sought to “prevent and combat the trafficking in human organs,” protect victims, and facilitate national and international cooperation.²⁹ The convention is open to non-European Union (EU) member states. The Pan American Health Organization (PAHO) and WHO Regional Office for the Americas’ Strategy and Plan of Action on Donation and Equitable Access to Organ, Tissue, and Cell Transplants 2019-2030 includes indicators relating to national standards to address organ trafficking and transplant tourism. The strategy asserts that “a high poverty index, and low educational levels predispose the Region to the risk of organ trafficking.”³⁰

Selected U.S. Government Responses

Combating International Organ Trafficking

The U.S. government employs various tools to counter the illegal, international trade in organs and associated crimes.

Reporting

The State Department’s annual *Trafficking in Persons* reports (TIP Reports) and *Country Reports on Human Rights* (Human Rights Reports) have discussed organ trafficking in specific countries.³¹ The 2019 TIP Report, for instance, stated that in Mozambique, persons with albinism

²⁷ Participants in the International Summit on Transplant Tourism and Organ Trafficking, “The Declaration of Istanbul on Organ Trafficking and Transplant Tourism,” *Clinical Journal of the American Society of Nephrology*, vol. 3, no. 5, (2008), pp. 1227-1231.

²⁸ The updated version added a definition of trafficking in persons for the purpose of organ removal, in addition to other changes. The Transplantation Society and the International Society of Nephrology, *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism 2018 Edition*, 2018.

²⁹ Council of Europe, *Convention Against Trafficking in Human Organs*, Treaty Series no. 216, March 25, 2015.

³⁰ PAHO and WHO Regional Office for the Americas, *Strategy and Plan of Action on Donation and Equitable Access to Organ, Tissue, and Cell Transplants 2019-2030*, CD57/11, August 19, 2019.

³¹ Both reports are statutory requirements. For more information on these reports, see CRS Report R44953, *The State*

are vulnerable to trafficking for the purpose of organ removal, and the 2018 TIP Report stated that in Vietnam, “Adults are also reportedly subjected to trafficking for the purpose of organ removal.” The 2020 Human Rights Report on China cited accusations of involuntary organ harvesting in China.³²

Sanctions

In at least one case, the Department of the Treasury’s Office of Foreign Assets Control (OFAC) has sanctioned an individual for organ trafficking activities. According to a December 2017 press release, OFAC sanctioned Mukhtar Hamid Shah, “a Pakistani surgeon specializing in kidney transplants who Pakistani police believe to be involved in kidnapping, wrongful confinement, and the removal of and trafficking in human organs.”³³ OFAC sanctioned Shah through the Global Magnitsky sanctions program, which targets human rights abusers and corrupt actors.³⁴

Investigations and Prosecutions

Law enforcement agencies and the U.S. Department of Justice (DOJ) may in some cases pursue charges against individuals for crimes relating to international organ trafficking. On July 11, 2012, Isaac Rosenbaum, an Israeli citizen, was convicted on three counts for acquiring, receiving, and otherwise transferring human organs for valuable consideration for use in human transplantation, and on one count of conspiracy.³⁵ According to DOJ press releases, Rosenbaum typically facilitated sales of organs from Israeli nationals who would travel to the United States for transplantation of their organs to American recipients. Rosenbaum reportedly admitted to fabricating cover stories to mislead U.S. medical practitioners about the agreements, making them believe the organs had been genuinely donated.³⁶ The Rosenbaum case was the first federal conviction for illegal kidney transplants under the National Organ Transplant Act.³⁷

Foreign Assistance

Some U.S. foreign assistance efforts address organ trafficking and related crimes. In some cases, such assistance has included activities within projects focused on human trafficking. For example, according to the U.S. Agency for International Development (USAID), a Combating Trafficking

Department’s Trafficking in Persons Report: Scope, Aid Restrictions, and Methodology, by Michael A. Weber, Katarina C. O’Regan, and Liana W. Rosen, and CRS In Focus IF10795, *Global Human Rights: The Department of State’s Country Reports on Human Rights Practices*, by Michael A. Weber.

³² U.S. Department of State, *Country Reports on Human Rights Practices: China (Includes Hong Kong, Macau, and Tibet)*, March 30, 2021.

³³ U.S. Department of the Treasury, “United States Sanctions Human Rights Abusers and Corrupt Actors Across the Globe,” press release, December 21, 2017.

³⁴ Congress authorized Global Magnitsky sanctions under the Global Magnitsky Human Rights Accountability Act (Title XII, Subtitle F of P.L. 114-328). See CRS Report R46981, *The Global Magnitsky Human Rights Accountability Act: Scope, Implementation, and Considerations for Congress*, by Michael A. Weber.

³⁵ Per the U.S. District Court indictment, Rosenbaum was charged pursuant to 18 U.S.C. §371, conspiracy to defraud the United States, and 42 U.S.C. §274e, prohibition of organ purchases and was subject to criminal forfeiture under 18 U.S.C. §982. *United States of America v. Levy Lzhak Rosenbaum*, Crim. No. 11, U.S. District Court, District of New Jersey (2011).

³⁶ DOJ, “First Federal Defendant Convicted For Profiting From Illegal Kidney Transplants Sentenced To Prison,” press release, July 11, 2012; DOJ, “Brooklyn Man Pleads Guilty In First Ever Federal Conviction For Brokering Illegal Kidney Transplants For Profit,” press release, October 27, 2011.

³⁷ According to DOJ, there are no DOJ records of other cases being filed pursuant to the statute. CRS correspondence with DOJ, October 18, 2021. Individuals have also been charged for other offenses relating to organ trafficking.

in Persons project in Nepal “helped support 59 convictions made against TIP perpetrators, including landmark convictions for organ trafficking.”³⁸ Other foreign assistance efforts may address contexts that facilitate organ trafficking indirectly, such as by supporting economic growth and livelihoods, strengthening health systems, or improving law enforcement capabilities.

Congressional Oversight and Selected Relevant Legislation

Congress has held hearings on the topic of organ trafficking, often in relation to alleged abuses in China, and has introduced legislation related to the crime.³⁹ In the 117th Congress, the Stop Predatory Organ Trafficking Act (H.R. 1434) and the Stop Forced Organ Trafficking Act (H.R. 1592 and S. 602) would, in different forms, authorize various visa and passport restrictions on individuals identified as being involved in organ trafficking, and require reporting by the State Department on organ trafficking, in addition to other provisions. A discussion draft before the House Committee on Financial Services, the Organ Trafficking and SARs Form Act, would direct Treasury’s Financial Crimes Enforcement Network to inform financial institutions that organ trafficking is considered a type of human trafficking for the purpose of filing a Suspicious Activity Report (SAR).⁴⁰ Legislation introduced in previous Congresses has also sought to address organ trafficking, such as the STOP Organ Trafficking Act (H.R. 2121) in the 116th Congress, which included passport restrictions and would have amended the TVPA to include “trafficking in persons for purposes of the removal of organs” to the definition of severe forms of trafficking in persons, as well as other provisions.

Congressional Interest in Alleged Organ Harvesting in China

Considerable congressional interest in international organ trafficking has focused on allegations of state-sponsored forced organ harvesting in the People’s Republic of China (PRC), including of incarcerated persons and members of certain persecuted groups. Several hearings have specifically focused on China, as have certain resolutions, such as H.Res. 343 in the 114th Congress and S.Res. 274 in the 116th, which referenced allegations of nonconsenting organ harvesting from Falun Gong practitioners in China.

The extent of organ trafficking-related activities in China is unknown, and characterizations of official policy and practices differ substantially. In 2015, the PRC government announced it would end the policy of harvesting organs from executed prisoners in favor of a voluntary transplant program. China’s first Civil Code, which took effect on January 1, 2021, contained provisions relating to the prohibition of human organ sales and donations spurred by force or coercion.⁴¹ Many human rights advocates maintain that such activities continue, however, and that, in some cases, individuals from marginalized groups have had organs harvested.⁴² PRC officials have typically denied

³⁸ USAID, *Democracy and Governance Program Combating Trafficking in Persons*, Fact Sheet, July 2015.

³⁹ Hearings have included those before the Tom Lantos Human Rights Commission (January 2012), the Subcommittee on Oversight and Investigations and the Subcommittee on Africa, Global Health, and Human Rights of the House Committee on Foreign Affairs (September 2012), and the Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations and the Subcommittee on Europe, Eurasia, and Emerging Threats of the House Committee on Foreign Affairs (June 2016).

⁴⁰ For more information on SARs, see CRS In Focus IF11061, *Targeting Illicit Finance: The Financial Crimes Enforcement Network’s “Financial Institution Advisory Program,”* by Liana W. Rosen and Rena S. Miller. See The Organ Trafficking and SARs Form Act, at https://financialservices.house.gov/uploadedfiles/3.25_-_bills-117pih-organtraffickingandsarsformact.pdf.

⁴¹ *Civil Code of the People’s Republic of China*, adopted May 28, 2020, Articles 1006 and 1007, at <http://www.npc.gov.cn/englishnpc/c23934/202012/f627aa3a4651475db936899d69419d1e/files/47c16489e186437eab3244495cb47d66.pdf>.

⁴² See, for example, U.N. Office of the High Commissioner for Human Rights, “China: U.N. Human Rights Experts Alarmed by ‘Organ Harvesting,’ allegations,” June 14, 2021, at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27167>, which referenced “reports of alleged ‘organ harvesting’ targeting minorities, including Falun Gong practitioners, Uyghurs, Tibetans, Muslims and Christians, in detention in China,” and “The

such claims, arguing that they are fabrications pushed by members of the Falun Gong, a spiritual exercise movement subject to repression by Chinese authorities.⁴³ The 2020 State Department Human Rights Report on China stated that there was no direct evidence of state-sponsored forced organ harvesting, but referenced accusations that the Chinese government was “forcibly harvesting organs from prisoners of conscience, including religious and spiritual adherents such as Falun Gong practitioners and Muslim detainees in Xinjiang.”⁴⁴

Addressing U.S. Citizen Participation in International Organ Trafficking

The U.S. government seeks to improve domestic organ transplant donations and to make citizens aware of organ trafficking risks. OPTN, operated under contract with the Department of Health and Human Services, seeks to increase the number of legal organ transplants in the United States, in part by improving the electronic matching system and increasing education about donor safety.⁴⁵ The OPTN/UNOS Board of Directors resolved in 2006 that it was “strongly opposed to practices in which patients in need of transplantation travel abroad to purchase an organ in exploitive situations.”⁴⁶ The Centers for Disease Control and Prevention (CDC) 2020 *Yellow Book: Health Information for International Travel* references the WHA Resolution 57.18, the Istanbul Declaration, and the WHO Guiding Principles and cautions that transplant tourists may receive fewer immunosuppressive drugs, among other medical issues.⁴⁷

Issues for Congress

Definitions

Numerous U.S., intergovernmental, and civil society sources acknowledge that the terms and definitions pertaining to organ trafficking and related crimes are frequently confused or mischaracterized.⁴⁸ Unlike the clarifications made between organ trafficking and trafficking in persons in State Department TIP reports, some U.S. government documents do not consistently differentiate between the two.⁴⁹ Additionally, different international conceptions as to whether

Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China, *Judgement*, March 1, 2020. The Independent Tribunal was initiated by the Australia-based NGO International Coalition to End Transplant Abuse in China.

⁴³ See Matthew Pennington, “House Panel Calls on China to End Organ Harvesting,” Associated Press, July 30, 2014 and Willa Wi and Honey Tsang, “Organ Harvesting Rumors Slammed,” *China Daily*, August 19, 2016. For more information on the Falun Gong and other human rights issues in China, see CRS Report R46750, *Human Rights in China and U.S. Policy: Issues for the 117th Congress*, by Thomas Lum and Michael A. Weber.

⁴⁴ U.S. Department of State, *Country Reports on Human Rights Practices: China (Includes Hong Kong, Macau, and Tibet)*, March 30, 2021.

⁴⁵ OPTN, “Goal 1 Increase the Number of Transplants,” at <https://optn.transplant.hrsa.gov/about/strategic-plan/goal-1/>.

⁴⁶ OPTN, “Board Opposes Transplant Tourism,” June 30, 2006, at <https://optn.transplant.hrsa.gov/news/board-opposes-transplant-tourism/>.

⁴⁷ Isaac Benowitz and Joanna Gaines, *Yellow Book Health Information for International Travel*, CDC, “Chapter 9 Travel for Work & Other Reasons: Medical Tourism,” 2020.

⁴⁸ According to the UNODC, referencing the joint Council of Europe and U.N. study from 2009: “Trafficking in organs and trafficking in persons for organ removal are different crimes, though frequently confused in public debate and among the legal and scientific communities.” UNODC *Trafficking in Persons for the Purpose of Organ Removal*, Assessment Toolkit, 2015, p. 17.

⁴⁹ A USAID factsheet, for example, lists “organ trafficking” as an emerging trend of human trafficking in Nepal.

organ trafficking is a form of human trafficking may complicate U.S. efforts to counter organ trafficking-related crimes internationally. According to former TIP Ambassador CdeBaca, definitional questions have arisen during State Department evaluations of countries' efforts to combat human trafficking.⁵⁰

Some observers have suggested that unclear terms and definitions have impeded robust international efforts to counter organ trafficking. The 2009 Council of Europe and U.N. study found that consensus on definitions was important to effectively enforce relevant prohibitions, and emphasized that "it is important to achieve international agreement on precisely why particular types of conduct and practices are unacceptable."⁵¹ Other researchers have called for a more sophisticated understanding of how transplant commercialism relates to trafficking in persons for organ removal, arguing that the nuances of vulnerability and coercion are lost when individuals who provide organs are seen as victims only if they have been trafficked.⁵² Questions also exist about the grouping of organs, tissues, and cells in frameworks to address the illegal trade. For example, human tissues that do not require continuous blood circulation can be preserved for longer periods, so the nature of illegal harvesting and transplantation and the demand for illegal transplants may differ from that of vital organs.⁵³ Some observers have called for the development of a new intergovernmental agreement on organ trafficking, which could clarify definitions and improve global coordination to address the practice.⁵⁴

As mentioned above, recently introduced legislation would amend the U.S. definition of trafficking in persons to explicitly include organ trafficking-related crimes, or would clarify that organ trafficking should be included as human trafficking for certain reporting purposes. Through these provisions or others, Congress may seek to refine definitions related to organ trafficking or advocate for increased international consensus on how to address it.

Information Gaps

The lack of information on global organ trafficking is a key challenge. Gathering information on specific cases is difficult because of the covert nature of the crime and, in some cases, because of doctor-patient confidentiality, which may prevent clinicians from reporting patients who disclose their intentions to travel internationally for an organ transplant or who seek follow-up care upon their return.⁵⁵ Many activists and experts advocate for increased information gathering or

USAID, *Democracy and Governance Program Combating Trafficking in Persons*, Fact Sheet, July 2015.

⁵⁰ "We have tried to explain to other countries, when they proffer their organ trafficking policy as something that meets our minimum standards from the TVPA or the Palermo Protocol, the difference between that thing, the liver or the kidney, what have you, and the person whose freedom is being denied them for the harvesting, that that is at the heart of the distinction that we make." U.S. Congress, House Foreign Affairs Committee, *Out of the Shadows: The Global Fight Against Human Trafficking*, hearings, 111th Congress, 2nd sess., September 30, 2010.

⁵¹ Council of Europe and U.N., *Trafficking in Organs, Tissues, and Cells and Trafficking in Human Beings for the Purpose of the Removal of Organs*, 2009, p. 96.

⁵² See Seán Columb et al., "Re-Conceptualizing the Organ Trade: Separating 'Trafficking' from 'Trade' and the Implications for Law and Policy," *Transplant International*, vol. 20, no. 2, February 2017, pp. 209-213.

⁵³ See discussion of corneas in U.S. Congress, *Organ Harvesting: an Examination of a Brutal Practice*, June 23, 2016.

⁵⁴ Vladimir Makei, "Trafficking for Human Organs," *Forced Migration Review*, May 2015, pp. 91-92.

⁵⁵ For discussions of doctor-patient confidentiality and its relevance to the illegal trade in organs, see Frederike Ambagtsheer et al., "Personal Viewpoint: Reporting Organ Trafficking Networks: A Survey-Based Plea to Breach the Secrecy Oath," *American Journal of Transplantation*, vol. 15, 2015, pp. 1759-1767; Timothy Caulfield et al., "Trafficking in Human Beings for the Purpose of Organ Removal and the Ethical and Legal Obligations of Healthcare Providers," *Transplantation Direct*, vol. 2, no. 2, February 2016.

reporting on organ trafficking and related crimes.⁵⁶ Some proposed legislation, such as the Stop Forced Organ Trafficking Act (H.R. 1592 and S. 602), would require reports on global trafficking in organs. Congress may consider the value of such reporting requirements and the capacity of State Department offices and other government entities to measure or monitor organ trafficking.

Reducing U.S. Demand for Trafficked Organs

Given policymakers' concerns over Americans pursuing illegally sold organs abroad, Congress may consider approaches to reducing U.S. demand. By many accounts, the United States ranks as one of the top countries for organ donation; however, approximately 107,000 people are reportedly on the waiting list for a lifesaving organ transplant.⁵⁷ Certain efforts have sought to strengthen the U.S. domestic organ transplant donation system. For example, in July 2019, Executive Order (E.O.) 13879 called for "a regulation to remove financial barriers to living organ donation."⁵⁸ A final rule was subsequently issued by the Health Resources and Services Administration (HRSA) in September 2020, which added lost wages and child-care and elder-care expenses as reimbursable expenses for living organ donors.⁵⁹ Other proposals to increase U.S. organ donation include improving technology used by hospitals, and adopting opt-out frameworks rather than opt-in, where registration as an organ donor is automatic.⁶⁰ Some stakeholders have proposed addressing health conditions—such as tobacco use and obesity—that may limit the number of viable donors, increase the need for donations, and complicate recovery after a transplant.⁶¹ When considering ways to diminish U.S. participation in international organ trafficking, Congress may seek to understand the potential costs and benefits of such proposals. Congress may also seek to increase awareness of the risks of transplant tourism.

Restrictions on U.S.-Funded Medical Training and Sales of Medical Equipment

Some proposals to address international organ trafficking have focused on restricting the international sale of medical equipment that could be used for organ transplantation and U.S. training of foreign medical personnel who might use such skills to engage in organ trafficking. The Stop Forced Organ Trafficking Act (H.R. 1592 and S. 602) would require a report on U.S. medical and educational institutions where organ transplant surgeons from Tier 3 countries (the worst performing countries for organ trafficking as defined by the act) are trained. As proposed, the bill would prohibit the export from the United States of "a device that is intended for use in organ transplant surgery" to entities identified in the required report as being "responsible for

⁵⁶ See request for organ-related crime coverage in annual State Department TIP reports in U.S. Congress, *Organ Harvesting: an Examination of a Brutal Practice*, June 23, 2016.

⁵⁷ U.S. Health Resources & Services Administration, "Organ Donation Statistics," October 2021, at <https://www.organdonor.gov/learn/organ-donation-statistics>.

⁵⁸ E.O. 13879, "Advancing American Kidney Health," 84 *Federal Register* 33817, July 15, 2019.

⁵⁹ HRSA, Health and Human Services Department, "Removing Financial Disincentives to Living Organ Donation," 85 *Federal Register* 59438, September 22, 2020.

⁶⁰ See UNOS, *5 Ways to Improve the U.S. Organ Donation and Transplant System*, December 5, 2020; Nicole Moore, "How Opt-Out Donation Could Affect U.S. Waiting Lists," University of Michigan Health Lab, October 25, 2019.

⁶¹ See, for example, National Kidney Foundation, "Obesity Reduces Organ Donor Pool," May 10, 2012, at <https://www.kidney.org/news/newsroom/nr/Obesity-Reduces-Organ-Donor-Pool> and Jonathan Heldt et al., "Donor Smoking Negatively Affects Donor and Recipient Renal Function following Living Donor Nephrectomy," *Advances in Urology*, vol. 11, September 6, 2011.

forced organ harvesting or trafficking in persons for purposes of the removal of organs.”⁶² Many human rights advocates have heralded the proposals, though some observers have cautioned that such restrictions will only be effective if other countries enact similar export prohibitions.⁶³ Congress may consider the impact of such restrictions on U.S. educational institutions and companies, the potential or likely effects on foreign medical institutions, and the likelihood of other countries enacting similar restrictions (potentially as a result of U.S. advocacy).

Role of Professional Organizations

Given the role of medical professionals in international organ trafficking, some observers have suggested that professional organizations can play a role in countering the illicit trade. Such advocates say that rejecting clinicians from conferences or publications if they are involved in organ transplant procedures or research in countries known to facilitate organ trafficking could send a powerful signal that such activities are unacceptable.⁶⁴ According to testimony by a human rights lawyer for a 2016 hearing before the House Foreign Affairs Committee, the Transplantation Society, a Canada-based NGO focused on transplant-related research and education, rejected 35 papers from China for its 2014 international conference and declined an invitation to attend a conference in China, in protest of organ harvesting practices there.⁶⁵ Others, however, contend that participation in research and international conferences facilitate collaboration and may provide opportunities to educate medical practitioners about organ trafficking risks. For example, in 2017, Vatican officials reportedly defended inviting the head of China’s National Organ Transplant Committee to participate in a conference on organ trafficking, saying they hoped that the event would encourage change if organ trafficking was still occurring.⁶⁶ Congress may consider bringing public attention and oversight to the decisions of U.S.-based professional organizations regarding work with entities associated with organ trafficking.

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⁶² These prohibitions would be carried out in coordination with the Secretary of Commerce and notwithstanding any other provision of the introduced legislation.

⁶³ See, for example, statements by Ethan Gutmann in LiCAS News, “U.S. Lawmakers to ‘Hold Beijing Accountable’ Over Forced Organ Harvesting,” December 18, 2020.

⁶⁴ See, for example, A.L. Caplan et al., “Time For a Boycott of Chinese Science and Medicine Pertaining to Organ Transplantation,” *The Lancet*, vol. 378, no. 9798, October 1, 2011; Wesley Smith, “Fifteen Science Papers Retracted Over China Illegal Organ Harvesting,” *National Review*, August 18, 2019.

⁶⁵ The lawyer, David Matas, stated that these actions “had an impact in China” and that “peer pressure is useful as leverage and it has worked in the past.” U.S. Congress, *Organ Harvesting: an Examination of a Brutal Practice*, hearings, June 23, 2016.

⁶⁶ B.B.C., “Vatican Defends China Invite to Organ Trafficking Summit,” February 7, 2017; Didi Kirsten Tatlow, “Debate Flares Over China’s Inclusion at Vatican Organ Trafficking Meeting,” *New York Times*, February 7, 2017. The 2016 hearing included discussion of the individual, Dr. Huang Jiefu, including perspectives by a witness, Dr. Francis Delmonico, that Jiefu was a genuine reformer and questions by some Members of Congress about his reliability and complicity in human rights abuses as an official in the Chinese government. U.S. Congress, *Organ Harvesting: an Examination of a Brutal Practice*, hearings, June 23, 2016.

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