

# The Importance of Informed Consent to Overcome Force, Fraud, or Coercion in the Trafficking of Persons for Organ Harvesting

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## Abstract

The trafficking in persons for organ harvesting is a severe form of human trafficking occurring worldwide. In some countries, commercial organ harvesting is unrecognized as a criminal offense, and in a few countries, the means element of force, fraud, or coercion as established under international law is absent in domestic anti-human trafficking legislation. These shortcomings present significant obstacles for holding commercial organ brokers and corrupt medical facilities accountable for human rights violations against vulnerable people who give up their organs for little (and sometimes no) financial gain and a lifetime of physical and emotional health issues. This Comment advocates for implementing best practices mechanisms at the clinical stage to counter deficiencies in law and enforcement and for establishing informed consent and determining whether an individual is an altruistic organ donor or a victim of the illicit and pernicious commercial organ trade.

## Introduction

This Comment builds on my chapter in the recently published *Palgrave Handbook on Modern Slavery* [1], where I argued that incorporating the *Means* element—defined in international law as exploitation through force, fraud, or coercion—into domestic legislation is essential for effectively prosecuting human trafficking and for affirming the agency and fundamental human rights of its victims. My specific focus was on the illicit commercial harvesting of organs to supply the global and ever-growing demand for human organs from living hosts. I now use the more accurate term “host” rather than “donor” because donation implies that the individual is altruistically providing an organ to another person. Recruiting someone to sell an organ is not an act of altruism; it violates multiple standards of medical ethics. The commercial nature of the transaction transforms the individual from a donor into a victim, reducing them to a mere vessel or “host” coerced—through various means—into participating in a transplantation process that is illegal in all countries except Iran [2].

Since writing the chapter, further questions have emerged

about how best to combat this egregious human rights violation. Additional research, including interviews with medical practitioners and clinic administrators, suggests that in the absence of legislation—which can take years to draft and enact—or where enforcement is weak due to indifference or corruption, a more practical and immediate approach is to strengthen clinical procedures. Specifically, this means ensuring that (1) the potential organ donor is participating voluntarily and not for commercial gain, and (2) the donor fully understands the process and can give informed consent [3].

## Methods

Under international law, the commercial organ trade is a form of human trafficking when it involves the extraction of an organ from a living person through coercive or deceptive means. The *means* element—central to the definition of human trafficking—undermines personal autonomy and deprives individuals of agency and control over their own bodies, and is articulated in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, widely known as the *Palermo Protocol*, which is one of three

protocols supplementing the United Nations Convention against Transnational Organized Crime (UNTOC) [4]. Article 3(a) establishes that human trafficking occurs through “the threat or use of force, coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, or the giving or receiving of payments or benefits to obtain the consent of a person having control over another person, for the purpose of exploitation” [5]. Article 3(a) also establishes that forms of exploitation shall include “the removal of organs” [6]. The process by which an individual becomes a victim of trafficking involves a deliberate exploitation of their psychological, physical, economic, and cultural vulnerabilities—an intentional assault often orchestrated by organ brokers. Poverty, homelessness, domestic violence, armed conflict, substance abuse, and powerful belief systems such as *juju* or *voodoo* significantly increase an individual’s vulnerability to exploitation and trafficking.

In the case of organ harvesting, the primary vulnerability is being poor. Organ brokers and “recruiters” scour marginalized and impoverished communities most often in the developing world looking for individuals who are destitute and desperate. Targeted individuals are offered what seems like a great deal of money that can have an immense impact on their lives and the lives of loved ones. Their participation is solely for financial gain and there is little—if any—informed consent. Many hosts submit to be transported to other countries to undergo the procedure. They travel using false documents provided by corrupt officials, including passports issued under false identities and apostilles falsely declaring a familial relationship with the organ recipient. They are unfamiliar with their surroundings and are entirely at the mercy of their “handlers”. They are told to sign documents written in a language they do not understand. They are coached on what to say and how to respond during intake interviews (if such interviews even occur). Disoriented and frightened, they often discover that they will not receive the promised payment, as deductions are taken for food, travel, housing, aftercare (if any), and various other so-called expenses. Interviews with victims indicate that most were unaware of what their lives would be like after the procedure. They are abandoned after surgery, left to cope with the physical and emotional consequences alone. Victims report complications due to lack of post-operative care such as malignancies and infections, chronic pain, fatigue, and long-term organ dysfunction—symptoms experienced by human trafficking victims generally [7]. Such post-operative complications experienced by an organ provider during flight home to Turkey revealed a notorious commercial transplant operation at the Medicus Clinic in Kosovo in 2008 [8]. The psychological impacts are often long-lasting, including depression, anxiety, post-traumatic stress disorder (PTSD), and persistent feelings of isolation and failure. These effects can further erode the victim’s quality of life, reinforcing a cycle of poverty, poor health, and social marginalization [9].

## Distinction between Organ Removal and Organ Harvesting

While the label “human trafficking for organ removal” is an accepted reference to this pernicious offense, many practitioners, policymakers, and researchers have more recently adopted the expression “trafficking in persons for organ harvesting” (TIP/OH). This may seem like a nuance of terminology, but it is an important distinction as we learn more about this global crime. The act of taking organs from living or deceased individuals via a coercive arrangement violates basic principles of human rights and robs an individual of one’s agency to consent or decline participation in the transplantation chain. Whereas organ removal refers to the physical taking of an organ from a host living or deceased, the notion of *harvesting* an organ denotes the impersonal dehumanizing acquisition of a commodity from some inconsequential source.

Think of an ear of corn pulled from a stalk in a large field and sold at market value. For instance, for decades the Chinese government extracted organs from prisoners to meet the high demand for organ transplants [10]. It was a lucrative business for corrupt government officials, and in some documented cases was a means for the communist state to eliminate prisoners of conscience, such as Falun Gong practitioners [11]. Organs were harvested post-mortem, or in the case of extracting hearts, prisoners were shot in the head while doctors continued cardiopulmonary functions long enough to extract the organ (lethal injection was not used to avoid chemical contamination). International pressure compelled the Chinese government to abolish the practice by 2015 [12]. Yet, a 2022 study published in the *American Journal of Transplantation* strongly suggests that the practice of harvesting kidneys from prisoners continues unabated, violates the dead donor rule (DDR), and ignores the universally accepted principle that physicians may not actively participate in executions. Moreover, organs in China, especially kidneys, still become available for transplantation in a matter of days when worldwide the wait extends to years [13].

## A Demonstrated Need for Better Medical Review of Transplantation

In 2022, organ traffickers targeted a young Nigerian man, “Daniel” who sold phone accessories on the streets of Lagos, offering him a “life-changing” opportunity to take a well-paying job in London on condition that he submit to a blood test [14]. He did not know that a powerful Nigerian politician, Ike Ekweremadu, was involved with a corrupt Nigerian doctor, Obinna Obeta, in finding a suitable kidney through commercial means for his ill daughter. Ekweremadu agreed to pay Dr. Obeta £2,000 to make arrangements, while Daniel would receive £6,000 for his kidney. The transplant procedure

at the Royal Free Hospital's private wing cost £80,000 [15]. In 2022, Daniel was flown to London on a fraudulently obtained temporary visa, having been told he would live and work in Dr. Obeta's home. At the hospital, he was falsely presented as Ekweremadu's nephew, willingly donating his kidney [15]. However, a reviewing doctor alerted authorities when he became concerned about Daniel's lack of understanding of the procedure and grew suspicious about the alleged familial relationship and potential financial coercion [16]. In what became a landmark case, Ekweremadu, his wife, and Obeta were prosecuted and convicted under Modern Slavery Act of an organ harvesting conspiracy in the UK. But for the suspicions of a vigilant physician, this commercial trafficking scheme may well have proceeded, and the case underscores the need for protocols that protect possible trafficking victims to be in place during intake in transplantation centers.

Between 2006 and 2009, an Israeli immigrant, Levy Izhak Rosenbaum of Brooklyn, New York, engaged in the brokering of organ transplants for dozens of kidney recipients at prestigious hospitals in the Eastern United States [17]. Rosenbaum became the first defendant to be tried under the National Organ Transplant Act, which makes it "unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable nation for use in human transplantation if the transfer affects interstate commerce" [18]. Prosecutors alleged that Rosenbaum recruited vulnerable individuals in Israel for as little as \$10,000 and was paid between \$120,000 and \$160,000 by desperate Jewish patients [19]. False documentation was used to make it look like hosts were relatives of the recipients and that they were donating a kidney freely without compensation. Rosenbaum was arrested following an undercover sting operation. However, because the United States does not recognize human trafficking for organs under its human trafficking statutes, Rosenbaum was convicted under 42 U.S.C. §274e, making "unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce" [20]. The Rosenbaum case underscores the critical need for transplant centers to implement rigorous screening procedures to prevent commercial organ harvesting and to ensure that informed consent is properly obtained.

### **Informed Consent as a Defense to Illegal Commercial Transplantation**

Prosecution and punishment of organ brokers and those involved in the related criminal acts do not seem to be an adequate deterrent for engaging in TIP/OH, because the commercial organ transplantation is continuing world-wide at a robust pace. Moreover, due to the transnational nature of the enterprise, the long arm of justice may be impeded

by distance, complexities with mutual cooperation in law enforcement and investigations, and delays in bringing cases to trial. For this reason, as complex as it may be for doctors to implement and for patients to be protected, making informed consent and inquiry protocols essential during intake may prove the most effective way to protect the integrity of organ transplantation and compensate for legal inadequacies in the Means element of TIP/OH [21,22].

### **Legislative Direction and Implementation of Protocols for Medical Clinicians**

In the last decade, several nations have established through legislation the precise procedures medical clinics, doctors, and administrators must follow to determine if informed consent, and proof that a procedure is altruistic, have been met. Layers of medical ethics reviews and interview protocols to educate a donor have come into practice so that the decision to proceed is based on willing, informed consent and clarification of familial links and/or altruistic intent.

In Colombia, transplantation is regulated under laws that have significant implications for living donors and people at risk of organ trafficking<sup>1</sup>. They effectively curb uncontrolled organ tourism and outlaw the commercialization and trafficking of anatomical components. For instance, Law 1805 of 2016 [23] mandates various means to educate and inform the population about organ donation and human trafficking (although the emphasis has been on sexual exploitation). Under Art. 10., foreigners cannot be living donors unless the recipient is a spouse or permanent partner, a relative within the fourth degree of consanguinity, a second degree of affinity, or a first degree of civil relationship with the donor<sup>2</sup>. Prospective donors must undergo immunological testing to determine compatibility.

Informed consent is a fundamental requirement. The various provisions of this requirement first put forth in Decree 2493 of 2004, Art. 16, are designed to protect potential donors from exploitation, protect their rights and well-being, and promote ethical practices in organ donation. Consent of living donors must be genuine and not a mere formality, and adhere to the following factors [24,25]:

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<sup>1</sup> Much of this information was obtained from extensive interviews in early 2025 with Ms. Angela Rojas, Lider de Donación y Trasplante de Organos y Tejidos, and Dr. Juan José Vélez, Medico Intensivista y Jefe de la UCI Adultos del Hospital General de Medellín, Colombia. Both professionals work at the forefront of implementing protocols and procedures for organ transplantation that are intended to safeguard the rights and safety of transplant donors in Medellín and nationwide.

<sup>2</sup> The National Institute of Health (INS) may authorize transplants to non-resident foreigners when it is verified that available tissue is sufficient to cover domestic demand. In all cases, nationals and resident foreigners will have priority.

1. The donor must be of legal age to give consent.
2. Consent must be free and voluntary, without any pressure or influence.
3. Consent must be explicit and Revocable. This can be done in a notarized or private document.

There is a minimum period of 24 hours between the signing of the document and the organ extraction from the donor, through a sworn statement before a notary public. The donor may revoke their consent at any time before the ablation, using the same procedure as the original declaration.

1. Prior and complete information must be provided about the donation process, risks and benefits, the consequences of their decision, as far as can be foreseen from a somatic and psychological point of view, and about the possible repercussions that the donation may have on their personal, family and professional life, as well as the benefits that the transplant expects for the recipient.
2. The surgeon must explain to the donor the impossibility of knowing with certainty all the risks that may arise during the procedure. The donor must sign the informed consent for surgery and the consent for blood component transfusion, based on the information provided during the evaluation process and the educational meeting.
3. During the evaluation process, the donor must attend the educational meeting, the purpose of which is to inform and explain all stages of the program and clarify any questions related to the procedure.
4. The Review must be completed favorably by the institutional bioethics committee or hospital ethics committee.

These measures along with internal operating policies in transplantation centers safeguard that consent cannot be obtained through threats or use of force, fraud, or coercion effected by deception, abuse of power, exploitation of vulnerability, or through the exchange of payments or benefits to influence the consent of someone with authority over another person.

Mental health practitioners need to embed in the organ transplantation process, especially in situations where there may be concern about whether a host is using his/her free will to provide an organ. The primary focus should be on determining a host's capacity to give consent. For this reason, a medical review committee and an ethics review committee should be part of the transplantation pre-surgical process. These two stages are most often missing in illegal commercial transplantations, or in some instances the members of the two

review groups have not done their work properly or are part of the illegal act. One issue with this process may arise when a foreign organ recipient brings the "donor" with him/her to the procedure and presents paperwork affirming a family or altruistic relationship? Do the two review boards still convene and go through their own procedures, or do they accept the paperwork at face value and proceed with the transplantation? In such cases, a mental health practitioner should be consulted to look for any signs that the donor may have been coerced in some manner to submit to the transplantation procedure.

## Conclusion

In conclusion, the Means by which a host is presented for organ harvesting determines whether that individual is freely consenting to the procedure or a victim of a black-market enterprise. Physicians and mental health professionals are uniquely positioned to spot red flags, and it is incumbent upon them to be cognizant of the laws under which their work is regulated and rigorously trained to follow procedures to the letter. They must uphold their ethical responsibilities and recognize that they are not merely engaging a surgical procedure in which the organ is just another component. This is key to overcoming the means factor that enables human traffickers to continue preying on vulnerable people to meet the demands of ill individuals who have the wherewithal and resources to engage in illicit medical procedures to save their own lives, often at the expense of the lives of the hosts.

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