

**HUMAN ORGANS
ARE
NOT FOR SALE
NOR ARE
HUMANS TO BE
SOLD
FOR THEIR
ORGANS!**



Article 3 of Palermo Protocol:

a-“Trafficking in persons” shall mean the recruitment, transportation, transfer, harboring 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

Introduction

As the conflict in Syria continues now after entering its fifth year, reports have been received from civil society actors about increased child abductions and human trafficking for organ removal. This phenomenon which affects the most vulnerable has thus attracted the attention of the Protection Sector and its partners.

Although human trafficking, as defined in the “Protocol to Prevent, Suppress and Punish Trafficking in Persons”, includes exploitation for the removal of organs, there is little knowledge of what this phenomenon entails.¹ During crises and war times, trafficking in human organs increase² for several reasons such as, but not limited to, financial needs, absence of rule of law, lack of awareness in the culture of organs’ donation and the need of a person to implant an organ.

Transplanting organs could be performed either from a dead body to a living human which is morally and legally accepted under certain conditions in Syria such as ensuring that the transplant is not affecting the dignity of the corps or distorting the body and that the death report is issued by a committee of three doctors different from the doctors working on transplanting of the organ, as well as ensuring the validity of a written testament from the dead person or a written approval of the first degree family members.

Transplanting organs could be also performed from a living person to another which should be governed by the law in Syria under very specific conditions such as ensuring that the organ is not essential for life and that the written testament is valid. The committee of three doctors must guarantee that this operation is necessary for the recipient and that it will not affect the life of the donor who must be an adult presenting a full consent. As for minor siblings, it is limited to twins with the written approval of parents. In addition, the transplant must be with full consent of the recipient with no financial exchange³.



Trafficking in persons for the purpose of organ removal is usually carried out through:

1. Collaborating internationally with hospitals and posting announcements.
2. Stealing human organs after abducting people or after abducting and killing people.
3. Stealing corps directly after death.

Trafficking in human organs could be done separately from trafficking in persons when the crime of selling and buying human organs is committed separately from the crime of trafficking in persons. Yet after issuing the Decree N. 3 for the year 2010 in Syria, most cases of trafficking in organs have been convicted due to the fact that trafficking in persons is considered as collective crimes with several aspects, and the highest penalty is therefore charged.

As criminal courts’ judges have a margin for personal interpretation of the law, they usually impose a higher penalty, which is mostly laid in the counter trafficking law due to the fact that they issue their judgment based on several crimes within their jurisdiction. The punishment is usually based on the severest crime, therefore, it is up to the criminal judge to decide on more than one crime and opt for the highest punishment by the law.

The international legal framework

Trafficking of human organs are internationally condemned as:

- The Universal Declaration of Human Rights states the right to life (A3).
- The International Covenant on Economic, Social and Cultural Rights states the right to health.
- The United Nations Convention against Transnational Organized Crime represents a major step forward in the fight against transnational organized crime. States that ratify this instrument commit themselves to taking a series of measures against transnational organized crime, including the creation of domestic criminal offences; the adoption of new and sweeping frameworks for extradition, mutual legal assistance and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities⁴.

1. Global Eye on Human Trafficking, A bulletin of news, information and analysis on trafficking in persons published by IOM.
2. Information captured through several unofficial meetings with judges and forensic doctors during the workshops.
3. Law 31, for the year 1972, Article 2 (B).
4. <http://www.unodc.org/unodc/treaties/CTOC/>

The Syrian context

The Syrian legislations punish acts leading to the abuse of the human body, including any abusive acts against human organs. A variation of laws and decrees punishes these acts and controls the criminality of this matter:

- The Criminal Code for the year 1949 in Article 543 punishes the abusive act that leads to permanent disability.
- Article 535 convicts the murder as a prelude to a felony. For instance if the criminal kills the victim for the purpose of organ trafficking, this article applies.
- Law N. 30 for the year 2003 on implementing and transferring organs, in particular Article 7-b that implies directly.
- The Legislative Decree No.3 for the year 2010 aims to combat the crimes of Trafficking in Persons and protect their victims through using a human rights approach in the field of combating trafficking.
- Legislative Decree N. 20 for the year 2013 on abduction, in particular Article 2 punishes abduction when leading to abusive act against the victim.



Article 535 states the aggravating circumstances of murder crime, one of them when the crime is committed in preparation to another crime. Law 30 of 2003 states the criminal punishment in the case of organ trafficking. Therefore, if a person was killed for the purpose of organs removal/ trafficking, meaning that if the person was lured and killed in order to sell his/her organs, this crime will become a prelude to organ removal crime and then the death penalty should be executed.

The Protection Sector Response

In 2014 and 2015, the Sector conducted 20 capacity building training on counter trafficking, including trafficking in persons for organs removal. The capacity building training addressed 1,261 professionals and aid workers, including law enforcement personnel, judges, NGOs, religious leaders, media journalists and forensic doctors.

The Protection Sector has conducted several workshops and training sessions for governmental agencies and NGOs as capacity building on the definition of trafficking in human organs crimes according to the legislative N. 30 of 2003 and how to link these crimes with trafficking in persons according to Decree No. 3 of 2010, as well as when this crime is considered among the crimes of trafficking in persons. In addition, practical examples and case studies have been provided on the reality of this crime, knowing that the degree No. 30 of 2003 has systematized the process of human organ donation.

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