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# Foreword

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When, in the early 1990's I began a multisided medical anthropological field research project in the transplant units, blood clinics, dialysis centers, prisons, kidney motels, safe houses, and refugee centers where underground transplants were negotiated and cobbled together by brokers for patients willing to travel to parts unknown for a back door transplant from invisible living suppliers in the global South, there was only one scientific article on the topic. That article was concerned only with the risks for the foreign recipients of South Asian kidneys. There were no concepts, categories, legal or philosophical language to identify what was going on. Consequently, the existence of human trafficking for the purpose of organ removal for illicit transplants was denied. Even as late as 2009, the joint United Nations/Council of Europe on 'Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs' never once referred in the text of the document to human trafficking but rather to 'organ trafficking', thus unintentionally erasing the trafficked kidney sellers from any consideration or discussion. The problem was solid organs, not people, that were being trafficked and in a sense, sold.

While this sematic problem still exists, as it did in the Rosenbaum case discussed in this book, the dedicated and collaborative work of the EU-funded HOTT project will make it much more difficult for medical professionals, police, prosecutors and judges to ignore the vast scholarly and scientific literature on the topic, and the hard evidence produced in the first prosecutions of international organized crime syndicates pretending to be merely facilitating medical tourism rather than the illicit networks of human trafficking for human kidney sellers that they are.

The extensive bibliography, original reports on the extent and consequences of human trafficking to procure organs and the case study reports and summaries, required considerable archival and field research to identify the networks, the investigations, indictments, and prosecutions of surgeons, nephrologists, transplant brokers, kidney hunters, mobile patients/kidney recipients, and trafficked kidney providers. The complexity of these international illicit networks explains their resilience. The obstacles include differences in legal jurisdictions, incompatible laws, and the immunity of complicit transplant surgeons. The first, and most successful of the prosecutions of an international human trafficking syndicate for the procurement of paid organ sellers was in Brazil in 2004, a key link in the Netcare case in South Africa described here. The Brazilian police sting, Operation Bisturi (scalpel) led to the indictment of twenty five participants, eleven of whom were eventually tried and found guilty of human trafficking of recruited kidney sellers from the slums of Recife. They were convicted for the recruitment, handling, medical pre-screening and transport of the men to private Netcare clinics in Durban and Johannesburg where their kidneys were removed and transplanted into the bodies of international patients, mostly from Israel. The case was handled efficiently by the Brazilian court's precise application of the 2000 Palermo Convention. The chief of the syndicate, Gedalya (Gaddy) Tauber, of Israel, and his Brazilian partner, Ivan Bonifácio da Silva, both retired military police officers, were given stiff sentences along with several other intermediaries that included a distinguished, middle aged woman lawyer, who hid the money in her private bank safe at the Recife branch of City Bank. One of the convicted was a kidney seller who joined the scheme

and became a ruthless and dangerous kidney hunter, and the alleged head of a local death squad. Only the Brazilian doctor who conducted the blood tests escaped conviction. However, the presence of the suspects – perpetrators, intermediaries, and victims – in court room caught the attention of the ferocious Brazilian media. It was a major scandal in which Brazil was the victim and the nation was outraged that their citizens had been preyed upon and used by international transplant trafficking networks. This prosecution led to other investigations and prosecutions of domestic trafficking in humans for organs.

More difficult to adjudicate are the cases where the buyers, sellers, brokers, and surgeons are from the same nation although branching out to other diasporic sites. In these instances we enter the ethical gray zone described by Primo Levi where perpetrators and victims, government officials and ordinary by-standers are partially complicit but feel helpless to extract themselves from a traffic in ‘goods’ (a healthy organ) rather than a traffic in ‘bads’ (illicit drugs and guns). The criminals could operate freely within the international legal lacuna that protected them. Moreover, human trafficking for organ procurement is often seen even by police, prosecutors, federal agents and judges as essentially a victimless crime. The judge in the Rosenbaum Sentencing based on a plea bargain, that it was a ‘sorry story’, but one in which, she said, ‘buyers and sellers both got something out of the deal’. What had been revealed in this first US prosecution of what the court described as three cases of illicit brokering and payment for an organ was not even the tip of the iceberg. The language of THBOR was not available to the federal prosecutors nor did US laws on human trafficking include those that are trafficked to provide ‘spare’ kidneys. The new term, THBOR though awkward, has given long overdue recognition of the real crime that is at stake here. Because most of the damages take place elsewhere and out of sight of the police and the courts that handle these cases, THBOR remained invisible. The complexity and the tragedy is that this form of human trafficking can save or enhance some lives at the expense of other disposable lives, sub-citizens in the global world.

There are many excellent recommendations in this book, but the political will to apply them cannot be assumed. Trafficking in human beings for the purpose of organ removal is unlike other forms of human trafficking, even though the same international traffickers may also be involved in drug, small arms, and sex trafficking. Human trafficking in fresh organs is small, complicated, expensive and highly lucrative. But unlike other forms of human trafficking the good news is that it can be eradicated. The traffic is dependent on hospitals, nurses, doctors and surgeons. Without their complicity, knowingly or not, the traffic in humans for their fresh organs cannot exist. This report is the first to highlight the role and responsibilities of the medical transplant surgeons. We are dealing with a medical-surgical crime and it should be treated as such.

Among the recommendations are that all persons who forfeit an organ (usually a kidney) for money within an organized international crime network are ipso facto victims, even if the person agreed to it. Another is that surgeons should be held responsible for removing and/or implanting a kidney from a trafficked person. We ask that surgeons and doctors cooperate with law enforcement and not to hide behind doctor-patient confidentiality when crimes may have been committed. Surgeons and nephrologists should inform their patients who are planning to travel abroad for an illicit transplant of the medical, ethical, and legal consequences. We ask that customs officials be required to ask those coming and leaving a country to declare whether they are traveling for the purpose of a transplant, which may or may not be legal.

Prosecutions make a difference. They establish a precedent. They reveal the hidden scars and harms to the buyers and sellers of transplant organs; they educate medical professionals as well as the broader public to the risks and dangers of transplant trafficking. Successful prosecutions that shut down illegal operations in one country, tax the ingenuity and resources of the illicit interna-

tional brokers. In some instances the traffickers 'retire' from the 'organs trade' altogether, paving the way for new human trafficking schemes that are even more mobile and brutal.

Beyond criminalization there are other solutions. One is to educate patients about the limitations of transplant surgery, which like dialysis, is an imperfect solution. Battle cries around 'organs scarcity' have promoted human trafficking in poor people as a reserve of 'spare' kidneys. Of course, we need more and better science and biotechnology, stem cell research, and 3-D print kidneys, but we also need a better understanding of environmental degradation and global warming on environmental diseases like type 2 diabetes that is linked to food deserts, droughts, and water pollution. Only recently have there been scientific studies linking rural agricultural laborers with higher than expected rates of kidney disease.

Finally, the beautiful art and practice of organ transplantation should be protected from any association with illegal border crossings, nasty broker-enforcers, squalid kidney motels, and human trafficking. While there is a dignity in making risky choices to save or improve a life, there are other options that have not been fully utilized in sharing organs, none of which are 'spare', but can be shared within a new vision of a 'body commons', based on friendship, solidarity and conviviality. It is my hope that the HOTT project will inspire much needed research in stem cells, in environmental medicine and in reinvigorating a social medicine that understands medical transplantation as the most social and the most fragile of all forms of medical rescue and life-saving.

September 2, 2015

A handwritten signature in black ink, appearing to read 'Nancy Scheper-Hughes', with a stylized flourish at the end.

Nancy Scheper-Hughes is Chancellor's Professor of Anthropology, Chair of the Doctoral Program in Medical Anthropology, and Director, Organs Watch, at the University of California, Berkeley.



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# Introduction

*Frederike Ambagtsheer & Willem Weimar*

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In 2010 we participated in an expert meeting, organized by the United Nations Office on Drugs and Crime (UNODC), about the incidence of trafficking in human beings for organ removal (THBOR). At this meeting, three issues became evident:

First, researchers that study THBOR have strong knowledge and information about the crime, but this information is hardly shared amongst them. Doctors also do not share information about THBOR. Second, there are no partnerships between researchers, transplant doctors and law enforcement. Third, there is no awareness of the crime amongst law enforcement. THBOR is not on the 'enforcement agenda' of these authorities. The lack of multinational partnerships hampers an effective, non-legislative response to THBOR.

To us, it was clear that an international research project that would bridge the gap between the medical- and law enforcement realms was needed to address these issues. When in 2011 the Directorate General 'Home Affairs' of the European Commission called for proposals to address new forms of human trafficking, including organ removal, we immediately responded with a project proposal that had three key objectives: to increase knowledge and information about THBOR, to raise awareness among target groups and to improve the non-legislative response.

Fifteen organizations participated in the application to help fulfil these objectives. These included the co-beneficiaries: Lund University, the Bulgarian Center for Bioethics, The Academic Society for the Research of Religions and a large number of associated partners: Eurotransplant, Europol, UNODC, the Dutch National Police Services, University of St. Cyril and Methodius, Organs Watch and the European Society for Organ Transplantation.

Our proposal was accepted and one year later, in November 2012, it became the first EU-funded project to address this form of crime.

Since then, we have conducted evidence-based research from approx. ten countries, the results of which are presented in this book. The book starts with a comprehensive literature review of THBOR (Chapter I). This chapter is followed by an empirical interview study on patients who purchased kidney transplants abroad (chapter II), a study of prosecuted criminal cases (Chapter III), recommendations to improve non-legislative responses to the crime (Chapter IV) and finally, indicators for law enforcement, transplant professionals and victim support workers to identify the crime (Chapter V).

This work would not have been possible without the dedication and enthusiasm of our project partners, whom we thank for their contributions. We also thank the Prevention of and Fight against Crime Programme of the European Commission – Directorate General Home Affairs for financially supporting this project.

With this book we hope to have laid a groundwork that enables the continuing of much-needed research on the crime, as well as foundation for target groups to start collaborating more closely and effectively.

All persons involved in the research of THBOR, as well as its combat, should read it.

September 4, 2015



Frederike Ambagtsheer



Willem Weimar

Coordinators of the HOTT Project

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# I

## Trafficking in Human Beings for the Purpose of Organ Removal: A Comprehensive Literature Review

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# 1 Introduction

*Frederike Ambagtsheer, Willem Weimar, Assya Pascalev, Susanne Lundin,  
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## 1.1 Background

Trafficking in human beings for the purpose of organ removal (THBOR) is prohibited worldwide, yet a growing number of reports indicate its increase across the globe. Many countries in and outside the European Union (EU) have implemented proper legislation against THBOR. However, information regarding the incidence of THBOR and the non-legislative response to it is practically non-existent and unavailable to judicial and law enforcement authorities in the EU member states. Transplant professionals, human rights NGOs and international organizations also have little knowledge and awareness of the crime [1]. This knowledge gap hampers the development of a structured and effective action to this repugnant form of human trafficking, which brings physical and psychological harms to vulnerable individuals.

## 1.2 Objectives

The HOTT project has four objectives aimed at addressing the knowledge gaps and improving the non-legislative response to THBOR. These objectives are:

- to increase knowledge about THBOR,
- to raise awareness among target groups,
- to organize an expert meeting where organ trafficking experts and competent authorities can express their views on project results,
- to provide recommendations to improve the non-legislative response.

This report contributes to the first objective: to gather information and increase knowledge about THBOR. It does so by describing the state-of-the-art of literature on the ethical aspects, causes and the actors involved in THBOR.

## 1.3 Research questions

This review follows the structure of our research questions.

### **Research questions**

#### *Question 1:*

What are the ethical aspects and causes of trafficking in human beings for the purpose of organ removal?

#### *Question 2:*

- a) What is the existing information on the incidence and nature of trafficking in human beings for the purpose of organ removal?
- b) What knowledge do we have from existing research regarding the role and modus operandi of the actors involved; i.e., recipients, suppliers, brokers, transplant professionals and other facilitators?



**Question 3:**

What are the knowledge gaps which should be filled by future research?

## 1.4 Methodology

The authors performed thematic literature searches on the subject of their respective chapters.

The searches were carried out in databases that contain literature on the trafficking of human beings for organ removal from a wide range of disciplines. The following data bases were searched: EbscoHost, Library of Congress Catalog, OAlster, PubMed, Scopus, EthxWeb, GoogleScholar, Web of Science, Medline OvidSP and Cochrane.

The searches were based on key words provided by the project partners. The key words were: ‘commercial transplants’, ‘buying organs’, ‘kidney sales’, ‘organ trade’, ‘organ trafficking’, ‘organ tourism’, ‘organ brokers’, ‘organ trafficking chain’, ‘organ sales’, ‘selling organs’, ‘trafficking in persons for the purpose of organ removal’, ‘transplant tourism’, ‘recruitment’, ‘organ market’, ‘organ vending’.

Records were assessed based on eligibility criteria. The following records were excluded: off-topic records including tissue, blood, gamete, cell, bone marrow and all other articles not related to organ donation and transplantation; non-English titles; and all records published before 1 January 2000.

Appendix 1 presents the detailed search strategy.

Priority was given to scientific works that present data based on qualitative and/or quantitative study methods. Studies that lacked (a clear description of) methodologies were carefully scrutinized and used only if they could be backed up by secondary, scientific sources. Care was also taken with the use of media sources, such as website contents and newspaper articles. We only used these sources if they could be confirmed by scientific studies.

## 1.5 Scope and use of terms

### 1.5.1 Introduction

The HOTT project is a response to the call by the European Commission Directorate General Home Affairs for project proposals against *trafficking in human beings*. This call prioritized research into new forms of human trafficking, including human trafficking for the purpose of organ removal [2].

The primary scope of this project is *trafficking in human beings for the purpose of organ removal*. Consequently, this crime is the main focus of this report. We do not focus on other definitions and forms of the organ trade.

THBOR is defined and prohibited in Article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings [3] and the Directive 2011/36/EU of the European Parliament and of the Council [4]. THBOR is also criminalized in Article 3 of the United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereafter Palermo Protocol) [5] which supplements the UN Convention against Transnational Organized Crime (UNTOC) [6]. THBOR is further prohibited by the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography [7].

### **Trafficking in Human Beings for the Purpose of Organ Removal**

The definition used in this report, and according to Article 3 of the Palermo Protocol is as follows:

### **Article 3 Palermo Protocol**

For the purposes of this Protocol:

- (a) 'Trafficking in persons' shall mean 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;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used [...]. [5]

From discussions during the development of the Palermo Protocol and, more recently, in the Working Group on Trafficking in Persons, it is clear that organs envisaged by the Palermo Protocol include *kidney, liver, heart, lung, and pancreas*. The removal of human cells and tissues is not covered by the Protocol [8].

The definition of THBOR includes three key elements:

- an **action** being recruitment, transportation, transfer, harboring or receipt of persons;
- a **means** by which that action is achieved: threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or abuse of a position of vulnerability, and the giving or receiving of payments or benefits to achieve consent of a person having control over another person;
- a **purpose** of the intended action or means: exploitation [5].

Under international law, all three elements must be present to constitute 'trafficking in persons'. The only exception is when the victim is a child; in such cases it is not necessary to prove that one of the acts was accomplished through the use of any of the listed 'means' [9].

Furthermore, article 3(b) of the Palermo Protocol emphasizes that the consent of the victim to the intended exploitation shall be *irrelevant* where any of the means set forth in subparagraph (a) have been used [5]. In other words, it is legally impossible to consent to being exploited for the purpose of organ removal, when the consent has been obtained through threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits. Trafficking can take place within as well as between countries, and for a range of exploitative purposes including organ removal [10].

### **1.5.2 Commentary on the definition**

We acknowledge the ambiguity of the definition of THBOR, including its elements. The parameters around what constitutes 'trafficking' are not firmly established in the literature [9]. Various definitions are given of 'coercion', 'abuse of a position of vulnerability', 'exploitation' and other relevant terms [8]. These definitions are broad and vague, adding to the complexity rather than clarifying the terms.

The trade in human organs takes on a wide variety of forms. Consequently, the literature on organ trade varies widely. It often consists of vague, broad and loaded terms, such as 'donors', 'buyers', 'sellers', 'trade', 'transplant tourism' and 'trafficking'. These terms are used interchangeably, which causes confusion rather than clarifying situations and actions.

As a result of the complexity of these terms and definitions, in the literature, it is not always clear whether a certain situation constitutes THBOR. For instance, we encountered articles about

persons receiving money after ‘selling’ an organ, yet these articles often lack information about the circumstances under which the ‘organ sale’ took place. There are often no indications whether any of the listed means, such as threat or deception, have been used. Besides the complexity of terms, we recognize that we are not in a position to establish – *legally* – whether an action or situation presented in the literature involves THBOR.

For these reasons, in those instances where the definition of THBOR and its elements fail to clarify concepts or situations, the authors of this report adopt ‘a working definition by description’, describing actions, persons and situations by using as ‘neutral’ terms as possible. In the consecutive chapters these actions and situations are described and analyzed in order to establish whether specific cases constitute THBOR.

Below we present the definitions and terms we use throughout this report. Where possible, definitions are derived from the existing literature, including the Palermo Protocol, the UNTOC, their *travaux préparatoires*<sup>1</sup>, and other national and international instruments. In some cases, examples are given from existing national laws. Others are presented as ‘working definitions’.

### 1.5.3 Definitions

**Trafficked person**

Victim of trafficking; any natural person who has been subject to trafficking in persons.

**Organ supplier**

A person who supplies an organ.

**Organ recipient**

A person who receives an organ transplant, also known as patient.

**Organ donor**

A person who donates one or several organs, whether the donation occurs during lifetime or after death [11].

**Organ seller**

A person who benefits financially and/or materially when an organ is removed from that person’s body.

**Black market of organs**

An illegal market for organs, which market coexists with the legal systems for organ retrieval.

**Transplant commercialism**

A policy or practice, in which an organ is treated as a commodity by being bought or sold or used for material gain [12].

**Travel for transplantation**

The movement of organs, donors, recipients or transplant professionals across jurisdictional borders for transplantation purposes [12].

**Organ advertising**

Advertising the need for, or availability of, organs or tissues, with a view to offering or seeking financial gain or comparable advantage [13].

**Organ**

A differentiated part of the human body, formed by different tissues, that maintains its structure, vascularization and capacity to develop physiological functions with a significant level of autonomy. A part of an organ is also considered to be an organ if its function is to be used for the same purpose as the entire organ in the human body, maintaining the requirements of structure and vascularization [11].

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<sup>1</sup> The *travaux préparatoires* (‘preparatory works’) are the official records of a negotiation. They are often useful in clarifying the intentions of a treaty or other instrument.

## **Organ transplantation**

A process intended to restore certain functions of the human body by transferring an organ from a donor to a recipient [11].

## **Abuse of a position of vulnerability**

Abuse of a position of vulnerability (APOV) is an additional means through which individuals can be recruited, transported, received, etc. into situations of exploitation. No precise definition is provided in the Palermo Protocol. The *travaux préparatoires* confirms that its exact meaning was disputed during the drafting of the Protocol [9]. For the purpose of our study, we use the following definition, taken from the UN Model Law against Trafficking in Persons [14]:

APOV shall mean either, *'any situation in which the person involved believes he or she has no real and acceptable alternative but to submit'*, or: *'taking advantage of the vulnerable position, in which a person is placed in virtue of: having entered the country illegally or without proper documentation; pregnancy or a physical or mental disease or disability of the person, including addiction to the use of any substance; reduced capacity to form judgments by virtue of being a child, or having an illness, infirmity; physical or mental disability; promises or giving sums of money or other advantages to those having authority over a person; being in a precarious situation from the standpoint of social survival; other relevant factors'* [14].

The commentary attached to these definitions confirms *'the open-ended nature of the list of vulnerability factors, noting that other elements, such as abuse of the economic situation of the victim could also be included'* [14].

These definitions are relevant for our subject matter, for it answers the question whether the scenario where an organ donor consents to sale of his or her organ but does so out of a *position of vulnerability*, constitutes trafficking. Country surveys confirm that 'recruitment' is the act most frequently cited in connection with APOV. The key component is *knowledge* of the offender of the position of vulnerability of the victim, and henceforth *abusing* that position to recruit the vulnerable person for removal of his or her organs [9]. Likewise, coercion, abduction, fraud, deception, and the giving or receiving of payments or benefits to achieve the consent of a person having control over another person also constitute cases of THBOR. These terms are further defined below.

## **Coercion**

Coercion is an umbrella term, used in the trafficking context to refer to a range of behaviors including violence and threats, as well as APOV [10]. Many definitions of it exist [14]. For the purpose of our study, we use the following definition: 'Coercion' shall mean the use of force or threat thereof, and some forms of non-violent manipulation or threat thereof, for the purpose of (including but not limited to) organ removal [8].

## **Deception**

'Deception' shall mean any conduct that is intended to misrepresent information or to give false information to a person [8].

## **Exploitation**

Whereas the UN Model Law defines different instances of exploitation, including 'forced labor', 'slavery', and 'practices similar to slavery and servitude', it lacks a definition of 'removal of organs' in the context of exploitation [14]. 'Exploitation of prostitution of others', for instance, is defined as 'the unlawful obtaining of financial or other material benefit from the prostitution of another person' [14]. For the purpose of this study and in the context of 'exploitation', 'organ removal' is defined as follows: *'Exploitation of a person for the purpose of organ removal shall mean the unlawful gain of financial or other material benefit as a result of the removal of an organ from another person.'*

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## 2 Trafficking in Human Beings for the Purpose of Organ Removal as a Violation of Ethics and Bioethics

*Assya Pascalev & Jordan Yankov*

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### 2.1 Introduction

The practice of trafficking in human beings for the purpose of organ removal is not only a serious legal, policy and social issue. THBOR is also recognized as a major violation of the fundamental principles of secular humanist ethics in general and biomedical ethics in particular. The practice of THBOR has far-reaching implications for the welfare of the trafficked person and the recipient, and for the integrity of the medical profession and the field of transplantation. The ethical challenges posed by THBOR are multifaceted as the issue itself and have been discussed by scholars from a variety of fields such as philosophy [15-28], jurisprudence [27, 29-31], anthropology and medicine [24, 26, 32-38], all of whom condemn the practice. While scholars agree that THBOR as ethically abhorrent, they differ in their accounts of what makes THBOR unethical and what constitutes an ethically appropriate response to it.

In this chapter, we present an overview of the major ethical violations involved in THBOR, the ethical debates surrounding this activity, and the various ethical responses to THBOR proposed in the literature.

### 2.2 Method

The purpose of ethics is to determine whether a practice is right or wrong using the methods of logic, philosophical analysis and rational justification. The criteria for what is ethically right or wrong are defined in ethical theories, which offer comprehensive accounts of what makes actions good or bad, moral or immoral from a secular point of view. The classical ethical theories are deontology (or duty-based theory), consequentialism and virtue ethics, which were supplemented by feminist ethics and rights-based ethics in the 20<sup>th</sup> century. Biomedical ethics is a sub-field of ethics, which uses ethical theories to evaluate the ethical permissibility of various medical practices. Biomedical ethics rests on four fundamental principles, on which the different theories converge and which principles are believed to express the nature of medicine. These are: the principle of beneficence giving rise to the obligation to do good, the principle of respect for personal autonomy and self-determination, the principle of non-maleficence prohibiting physicians from harming patients intentionally, and the principle of justice requiring equitable distribution of benefits and burdens in health care [39]. The principles of biomedical ethics are codified in various national and international laws, policies, regulations and professional standards such as the Convention on Human Rights and Biomedicine [40], the Additional Protocol to the Convention on Human Rights and Biomedicine [13], the World Health Assembly's Guiding Principles on Human Organ Transplantation [39], the Declaration of Istanbul on Organ Trafficking and Transplant Tourism [12], EU Directives [4] and the World Medical Association's Code of Medical Ethics [41].

In the literature, THBOR is condemned both on general ethical grounds and on bioethical grounds. Authors who focus on the general ethical aspects of THBOR denounce the practice by appealing (explicitly or implicitly) to one or more of the dominant ethical theories [17, 26, 27, 33-35,

42, 43), while those who criticize THBOR on bioethics grounds decry the practice as a violation of the principles of bioethics, the ensuing requirements of informed consent [15, 16], and the integrity and ethos of medicine [15-17].

## 2.3 General ethical arguments against THBOR

In the ethics literature, the arguments against THBOR which appeal to general ethical theories can be grouped into several categories listed here in no particular order:

- a) THBOR is morally wrong because it violates the ethical principles of equity, justice and respect for human dignity [26-28].
- b) THBOR objectifies and dehumanizes the trafficked individual and reduces him/her to a source of organs [27, 44].
- c) THBOR commoditizes organ procurement and transplantation [30]. Commodification is 'the production of a good or service for money' (Dennis Soron & Gordon Laxer 2006 as cited in Panjabi) [43]. Commodification provides incentives to perpetuate human trafficking [28].
- d) THBOR is a form of exploitation of those who are already socially disadvantaged [27, 30, 44].
- e) THBOR violates the autonomy of the trafficked individual by coercing vulnerable persons into giving up an organ and deceiving them by not paying [35].
- f) THBOR has harmful consequences to:
  - (a) the trafficked person [35, 37, 38];
  - (b) the medical profession, and
  - (c) to the organ recipient, who may receive a suboptimal or damaged organ.

## 2.4 THBOR as a violation of biomedical ethics

Those who analyze THBOR from the perspective of biomedical ethics, stress that the practice violates a number of bioethical principles and values, namely:

- a) THBOR violates the bioethical principle of non-maleficence [16, 27].
- b) THBOR violates the bioethical principle of autonomy [15, 27].
- c) THBOR violates the requirement for voluntary, free informed consent [15, 33]. Many authors argue that those who agree to sell an organ, do so on the basis of bound rationality due to dependency and vulnerability [15].
- d) THBOR violates the principles of justice by placing the burden exclusively on the trafficked person without a benefit to that person and at a great cost to him or her [15, 33].
- e) THBOR damages the integrity of the medical profession [27].
- f) THBOR undermines the public trust in organ transplantation [45].

## 2.5 Ethical responses to THBOR

While there is a wide consensus that THBOR is morally reprehensible, certain elements of it such as one's liberty to sell one's organs, compensation for living donors and the creation of regulated markets for organs have been debated and viewed less negatively by certain authors. These differences are reflected in the range of proposed responses to the morally repugnant practice of THBOR. The responses can be grouped as follows:

- 1) **Strengthening the legal regulations and enforcement actions.** Bagheri and Delmonico argue that although there already exists an internationally legally binding agreement against THBOR, a wider legislative response should be adopted against organ trafficking. They write *'that an in-*

ternational legally binding agreement in criminalizing organ trafficking would be a step forward to bring a change in the global picture of organ trafficking and transplant tourism' [32]. Delmonico calls for full implementation of the Istanbul Declaration on organ trafficking and transplant tourism by developing 'a legal and professional framework in each country to govern organ donation and transplantation activities. It calls for a transparent regulatory oversight system that ensures donor and recipient safety and enforces the prohibitions of unethical practices. Governments should ensure the provision of care and follow-up of living donors be no less than the care and attention provided for transplant recipients' [25]. Banning organ sales and harmonizing the national and international legislation on THBOR are viewed as necessary steps of the proper response [33].

- 2) **Increasing deceased donation and building national self-sufficiency in the sphere of organ transplantation** are emphasized by Budiani-Saberi and Delmonico [33] in addition to the legislative responses outlined in 1) above.
- 3) **Prioritizing the care and protection of the trafficked persons (victims)** over law enforcement measures and concerns for the state interests is the focus of recent feminist and human rights approaches [31, 157].
- 4) **Reducing THBOR by reducing scarcity.** This point is the most contentious one and several radically different approaches are proposed. It includes the measures proposed in 2 above (increasing deceased donation and national self-sufficiency) but go well beyond capacity building measures. Thus, some authors argue for reducing scarcity by imposing stricter eligibility criteria which excludes infants, those over 70 years of age and patients with a history of organ rejections [32]. Others argue for creating a regulated market of organs [12, 38, 46]. There is also a growing number of works, which debate the morality of organ sales and commercialism with proponents and opponents on both sides of the issue. A novel and still underexplored proposal is to eliminate THBOR by developing alternative sources of transplantable organs using advanced biotechnology i.e., xenotransplantation, organ cloning and stem cell therapy [25, 47].

## 2.6 Conclusion

In the ethics literature on THBOR, there is a consensus that THBOR is morally repugnant. The debates concern the different accounts of what makes it so with some authors focusing on the negative consequences of THBOR, and others emphasizing the intrinsic immorality of THBOR because of the violations of ethical principles, values, human rights and professional virtues involved in THBOR.