

Submission to the Parliament of Australia

Joint Standing Committee on Foreign Affairs, Defence and Trade

Inquiry into Human Organ Trafficking and Organ Transplant Tourism

August 2017

Terms of Reference

The Committee will have regard to the offence of Organ Trafficking under division 271 of the Criminal Code and whether it would be practicable or desirable for:

- this offence to have extraterritorial application; and
- Australia to accede to the 2014 Council of Europe Convention against Trafficking in Human Organs.

Background information

Australian Criminal Code criminalises:

- The removal of organs for trade or sale
- Where there is no consent for the removal of the organ
- Movement of people into and from Australia for unlawful removal of organs
- Trafficking of persons domestically for organ trade within Australia

The global landscape of organ trafficking is changing and I do agree that international and national legal systems need to be revisited to keep pace with the changing situation. The Australian Criminal Code could not criminalise organ trafficking perpetrators if there is a movement outside of Australia and had the organ donation and transplant surgery abroad.

Stakeholders involved in organ trade

1. Patient needing organ transplant
2. Organ donor
3. Medical/transplant specialists
4. Hospital transplant ethicists and administrators
5. Recruiters/middlemen/brokers
6. Medical insurers

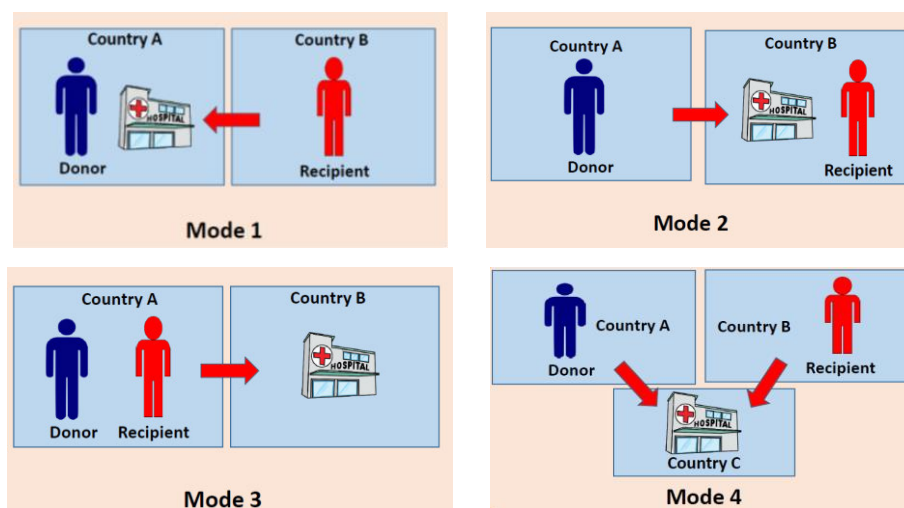
Comments

From the stakeholders involved in organ trade, Australians are more likely the organ recipients and hardly the commercial organ donors. Australian medical/transplant specialists within Australia and Australian hospital ethicists and administrators could hardly be involved in organ trade. I have not seen any literature stating the existence of Australian medical/transplant specialists practising organ trade abroad, neither Australian medical insurers reimbursing transplant surgery done abroad, neither Australian organ recruiters/brokers/middlemen within or outside Australia. But there is a likely unanswered question regarding this matter: **Could the Australian regulatory radar monitor, prosecute and criminalise Australian organ trafficking perpetrators abroad?**

Putting an extraterritorial provision in the Australian Criminal Code could be beneficial to adapt to the changing landscape of organ trafficking and its perpetrators. Organ donors, recipients, recruiters and transplant hospitals may come from different countries and international network and multi-disciplinary cooperation is needed if extraterritorial provision will be included in Australian Criminal Code.

Shimazono in 2007 developed a model of the different modes of organ trade and organ trafficking. (Please see Figure 1)

Figure 1. Shimazono's Mode of Organ Trafficking



Shimazono (2007)¹

- Mode 1: a recipient travelling from Country B to Country A where the donor and transplant centre are located
- Mode 2: a donor from Country A travelling to Country B where the recipient and transplant centre are located
- Mode 3: a donor and recipient from Country A travelling to Country B where the transplant centre is located
- Mode 4: a donor from Country A and a recipient from Country B travelling to Country C where the transplant centre is located

Australia is one of the developed countries importing organs where Australians are the organ recipients from the global market and unlikely to have Australians selling their organs in the global market. In Shimazono's model, Australians more likely will go for Modes 1, 2 and 4,

with the following probable reasons:

1. Organ supply in Australia is inadequate compared to the increasing organ demand within Australia.
2. It is a matter of life and death for Australian patients and they could be desperate to wait for an organ donor from the Australian organ donation and transplant system.
3. Australian patients could afford the expenses abroad for transplant surgery and compensation for the foreign organ donor.
4. Organ recruiters/brokers from abroad could likely attract through social media the desperate Australian patients.
5. It is illegal in Australia to have commercial organ donation and transplant within Australia.

Australian organ recipients as perpetrators or victims?

In the organ trade, could we consider an Australian organ recipient, who traveled abroad for commercial organ transplant, a perpetrator or a victim? Australians who decide to buy an organ abroad may be so desperate for a transplant and could no longer bear the waiting time on a dialysis. Australian patients returning from transplantation abroad may suffer from post-operative complications and their survival may be compromised.

However, I would disagree in treating Australian organ recipients who travelled abroad as perpetrators with criminal sanctions once they return to Australia. They may have been knowingly or unknowingly involved as recipients of organs that come from trafficked organ donor victims, the Australian organ recipients are also victims of the system that probably fell short in giving their need to live with dignity and satisfaction of an organ transplant within Australia. Non-criminalisation of victims, including Australian organ recipients who travelled abroad for organ transplant, is necessary to encourage them to approach authorities and report trafficking incidences.

2014 Council of Europe Convention - Organ trafficking versus trafficking in persons for the purpose of organ removal

Trafficking in organs and trafficking in persons for organ removal are different crimes and I would agree that these incidences will be clarified in the Australian Criminal Code. In trafficking in organs, the object of the crime is the organ, wherein in human trafficking for organ removal, the object of the crime is the person. The confusion of these two incidences could hinder Australian efforts to tackle both incidences.

Non-legislative measures

Legislative measures are important to tackle organ trafficking but it is not sufficient to solve everything. Non-legislative measures are also essential like prevention of organ trafficking by increasing the organ supply within Australia and decreasing the demand for organ transplant through healthy lifestyle advocacies. Victim protection and assistance is also another non-legislative measure that will help trafficked victims.

References

¹Shimazono, "The State of the International Organ Trade: A Provisional Picture Based on Integration of Available Information", *Bulletin of the World Health Organization* 2007;85:955–962.