



Appendix D — Overseas legislative approaches to prohibit transplant tourism

Jurisdictional approaches

- 1.1 A number of specific overseas jurisdictions have passed laws which prohibit citizens from engaging in transplant tourism. The following is a summary of the legislative approaches in notable organ-importing jurisdictions overseas.

Canada

- 1.2 The primary coverage of organ trafficking provided by Canadian law is the offence of causing a person, by means of deception or the use or threat of force or of any other form of coercion, to have an organ or tissue removed, as provided for by the Canadian Criminal Code.¹
- 1.3 In December 2013, then-Member of Parliament Mr Irwin Cotler MP introduced a private member's bill, Bill C-561. The bill would have created penal sanctions for persons who are knowingly involved, within or outside of Canada, in the medical transplant of human organs or other body parts obtained or acquired as a consequence of a direct or indirect financial transaction, or without the donor's consent.² The bill was not carried passed into law.

1 *Criminal Code (Canada)*, s. 279.04(3).

2 *An Act to amend the Criminal Code and the Immigration and Refugee Protection Act (trafficking and transplanting human organs and other body parts)*, Bill C-561, 41st Parliament of Canada.

Israel

- 1.4 Prior to 2008, Israel was a notable organ importing state.³ Health insurers were enabled to directly reimburse patients for commercial transplantations performed abroad.⁴ Mr David Shoebridge MP of the New South Wales Greens observed:

The private health insurance industry in Israel looked at the figures and realised it was cheaper to fly the patient to China to obtain an unethically-traded organ, bring them back and deal with medical treatment following the transplantation rather than keep them on dialysis. There was a large number of Israeli residents going and doing that.⁵

- 1.5 In March 2008, the Israeli Knesset passed the *Organ Transplant Act 2008* (the Act). The Act provided for a range of measures to incentivise living organ donation, as well as criminalising participation in organ commercialism, both within and outside of Israel. The legislation prohibits: the purchase or sale of a human organ outside of a defined costs-reimbursement structure; brokering the purchase or sale of a human organ; the trafficking of a human organ across an Israeli border; and the subsidisation of a commercial transplantation by an insurer.⁶ The proscribed conduct applies on an extraterritorial basis; that is, to transplants occurring within Israel or outside of it.⁷

Taiwan

- 1.6 Amendments made in 2015 to Taiwan's *Human Organ Transplantation Act 1987* stipulate that patients who received a transplant overseas are required to provide details as to the hospital at which the transplant occurred and who was involved.⁸ Patients who are unable to demonstrate that the transplant occurred on a legal, consensual basis may not receive publicly-funded post-operative care upon their return to Taiwan.⁹ Patients

3 A Efrat, 'The rise and decline of Israel's participation in the global organ trade', *Crime, Law and Social Change*, vol. 60, no. 1, 2013.

4 Dr Lucy Zhao, President, Falun Dafa Association of Australia, *Committee Hansard*, Canberra, 8 June 2018, p. 15.

5 Mr David Shoebridge MP, Greens NSW, *Committee Hansard*, 8 June 2018, Canberra, p. 25.

6 Declaration of Istanbul, 'Organ Transplant Act 2008 (Israel)' (in translation), available: www.declarationofistanbul.org/index.php?option=com_content&view=article&id=267

7 J Lavee and A Stroler, 'Reciprocal altruism: the impact of resurrecting an older moral imperative on the national organ donation rate in Israel', *Law and Contemporary Problems*, vol. 77, no. 3, 2014, p. 326.

8 A Hsiao, 'Organ transplant laws tightened', *Taipei Times*, 13 June 2015.

9 Doctors Against Forced Organ Harvesting, 'Taiwan legislation sets a new standard in the combat against rogue organ harvesting practices,' 2015, available: <https://dafoh.org/taiwan->

proven to have received an illicit organ transplant overseas have committed an offence and may be subject to a maximum of five years imprisonment.¹⁰

United Kingdom

- 1.7 The legislative provisions relating to organ commercialism are provided for by the *Human Tissue Act 2004*. Although the Act criminalises trafficking in human tissue for the purposes of transplantation,¹¹ the Act contains no specific provision for its application on an extraterritorial basis. The United Kingdom has signed but not yet ratified the Council of Europe Convention against Trafficking in Human Organs.

United States

- 1.8 While the *National Organ Transplant Act 1984* creates a federal offence for the commercial trade in organs, the Act does not provide for extraterritorial application.¹² The United States has however taken particular action with regard to alleged organ trafficking in China.

- 1.9 United States immigration law has since 2002 prohibited the provisions of visas to persons who have engaged in coerced organ or bodily tissue transplantation. Per section 232 of the *Foreign Relations Authorization Act*, the Secretary of State is required to “direct consular officials not to issue a visa to any person whom the Secretary finds, based on credible and specific information, to have been directly involved with the coercive transplantation of human organs or bodily tissue...”¹³ This requirement is apparent in the question on visa applications for temporary travel to the United States:

“Have you ever been directly involved in the coercive transplantation of human organs or bodily tissue?”¹⁴

- 1.10 In June 2016, the House of Representatives of the United States Congress passed by unanimous consent House Resolution 343. The resolution

[legislation-sets-a-new-standard-in-the-combat-against-rogue-organ-harvesting-practices/](#) (accessed 16 July 2018).

10 DF Tsai et al., ‘The outcomes and controversies of transplant tourism – Lessons of an 11-year retrospective cohort study from Taiwan’, *PLoS One*, vol. 12, no. 6, 2017, p. 12.

11 *Human Tissue Act 2004 (UK)*, s. 32(1).

12 IG Cohen, ‘Can the Government ban organ sale? Recent court challenges and the future of US law on selling human organs and other tissue’, *American Journal of Transplantation*, vol. 12, 2012, p. 1984.

13 8 USC s. 1182f - Denial of entry into United States of Chinese and other nationals engaged in coerced organ or bodily tissue transplantation.

14 International Coalition to End Transplant Abuse in China, *Submission 7 - Supplementary Submission*, p. 3.

condemned the practice of “state-sanctioned forced organ harvesting in China” and called on China to “end the practice of organ harvesting from prisoners of conscience.”¹⁵ The resolution also called upon the United States Department of State to report annually to Congress on implementation of the visa ban noted above in relation to persons who are directly involved with the coercive transplantation of human organs or bodily tissue.

15 United States Congress, ‘H.Res.343 - Expressing concern regarding persistent and credible reports of systematic, state-sanctioned organ harvesting from non-consenting prisoners of conscience in the People’s Republic of China, including from large numbers of Falun Gong practitioners and members of other religious and ethnic minority groups’, *114th Congress of the United States*.