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Commerce in human organs: the international response

The author outlines legal and other moves against the commercialization of human organs and tissues, culminating in WHO's "Guiding Principles on human organ transplantation".

Over the past 30 years, organ transplantation has saved many lives and improved the quality of life of large numbers of people. Improvements in medical technology have led to an expansion of the practice and an increase in the demand for organs. The supply has never been adequate, and it is arguable that this has caused the rise in the commercial traffic in human organs, particularly ones obtained from living donors who are unrelated to the recipients. This trade is not without serious health risks.

An Italian law of 1967 was evidently the first to address the issue of commerce in organs for transplantation; it prohibited any form of award or compensation for living kidney donors. The present situation with respect to national legislation is summarized in the table.

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In 1970, the Transplantation Society, an international body, affirmed that the sale of organs by donors, living or dead, was indefensible under any circumstances (1); in 1985 the Society proposed guidelines for the distribution and use of organs from cadavers and from donors who were not related to the recipients (2).

Also in 1985, the Thirty-seventh World Medical Assembly (convened by the World Medical Association) noted that a trade involving considerable financial gain had developed in live kidneys from developing countries for transplantation in Europe and the USA, condemned the purchase and sale of human organs for transplantation, and called on the governments of all countries to take steps to prevent the commercial use of human organs. At the Thirty-ninth World Medical Assembly in 1987, a Declaration on Human Organ Transplantation was adopted, in which the purchase and sale of human organs for transplantation were condemned.

Jurisdictions known to have legislation on commerce in human organs
(Member States according to WHO region)

The Americas	Argentina Bolivia Brazil Canada (all Provinces and Territories) Chile Colombia Costa Rica Cuba	Dominican Republic Ecuador Guatemala Honduras Mexico Panama USA (Federal and all States and District of Columbia) Venezuela
Europe	Austria Belgium Denmark Finland France Germany (five <i>Länder</i>) Greece Hungary	Italy Luxembourg Romania Spain Switzerland (eight Cantons) Turkey United Kingdom Yugoslavia
Eastern Mediterranean	Cyprus Iraq Kuwait	Lebanon Syrian Arab Republic Tunisia
Africa	Algeria Malawi South Africa Zimbabwe	
Western Pacific	Australia (all States and Territories) Singapore	
South-East Asia	Indonesia Sri Lanka	

A Unified Arab Draft Law on Human Organ Transplants was adopted by the Council of Arab Ministers of Health in 1987. Article 7 of this text lays down that the sale, purchase or remunerated donation of organs is prohibited, and that no specialist, knowing an organ to have been acquired by such means, may use it in a transplant operation.

In 1978 the Committee of Ministers of the Council of Europe adopted a resolution on the harmonization of the legislation of Member States relating to the removal, grafting and transplantation of human substances. Article 9 of the resolution stated that no substance may be offered for profit; however, loss of earnings and any expenses caused by the removal or preceding examination may be refunded.

In 1987 a conference of European health ministers issued a text on the non-commercialization of human organs (3), which included the following paragraphs.

- A human organ must not be offered for profit by any organ exchange organization, organ banking centre or by any other organization or individual whatsoever. However, this does not prevent the compensation of living donors for loss of earnings and any expenses caused by the removal or preceding examination.
- Neither organizations nor individuals should advertise outside their national territory either for donation or transplantation.

Guiding Principles on Human Organ Transplantation

Organs and tissues (referred to in this text as "organs") may be removed from the bodies of deceased and living persons for the purpose of transplantation only in accordance with the following Guiding Principles.

- Organs may be removed from the bodies of deceased persons for the purpose of transplantation if:
 - (a) any consents required by law are obtained; and
 - (b) there is no reason to believe that the deceased person objected to such removal, in the absence of any formal consent given during the person's lifetime.
- Physicians determining that the death of a potential donor has occurred should not be directly involved in organ removal from the donor and subsequent transplantation procedures, or be responsible for the care of potential recipients of such organs.
- Organs for transplantation should be removed preferably from the bodies of deceased persons. However, adult living persons may donate organs, but in general such donors should be genetically related to the recipients. Exceptions may be made in the case of transplantation of bone marrow and other acceptable regenerative tissues.

An organ may be removed from the body of an adult living donor for the purpose of transplantation if the donor gives free consent. The donor should be free of any undue influence and pressure and sufficiently informed to be able to understand and weigh the risks, benefits and consequences of consent.
- No organ should be removed from the body of a living minor for the purpose of transplantation. Exceptions may be made under national law in the case of regenerative tissues.
- The human body and its parts cannot be the subject of commercial transactions. Accordingly, giving or receiving payment (including any other compensation or reward) for organs should be prohibited.
- Advertising the need for or availability of organs, with a view to offering or seeking payment, should be prohibited.
- It should be prohibited for physicians and other health professionals to engage in organ transplantation procedures if they have reason to believe that the organs concerned have been the subject of commercial transactions.
- It should be prohibited for any person or facility involved in organ transplantation procedures to receive any payment that exceeds a justifiable fee for the services rendered.
- In the light of the principles of distributive justice and equity, donated organs should be made available to patients on the basis of medical need and not on the basis of financial or other considerations.

In 1986, the European Dialysis and Transplant Association/European Renal Association formulated safeguards for live kidney donors.

In 1989, the Fourteenth International Congress on Penal Law called for the prevention of the commercialization of human organs and tissues, if necessary by

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penal sanctions, and for national and international measures to prevent the utilization of organs and tissues obtained through the exploitation of the economic needs of donors or their relatives.

Following extensive consultations, WHO developed a set of Guiding Principles on human organ transplantation (see box). In 1991 the Forty-fourth World Health Assembly endorsed these Principles and recommended Member States to take them into account when formulating policies in this area. The Guiding Principles are intended to provide an orderly, ethical and acceptable framework for regulating the acquisition and transplantation of human organs for therapeutic purposes. The term

“human organs” is used here to cover organs and tissues with the exception of reproductive tissues, namely ova, spermatozoa, ovaries, testicles and embryos, and of blood and blood constituents for transfusion purposes. The Guiding Principles prohibit giving and receiving money, as well as any other commercial dealings in this field, but do not affect payment of expenses incurred in organ recovery, preservation and supply. Of particular concern to WHO is the protection of minors and other vulnerable persons from coercion and improper inducement to donate organs.

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This is one of the few areas in which WHO has become involved in issues with legal, ethical and human rights dimensions. However, grave concern has been expressed throughout the world about the emergence of commercialism in human organ transplantation, and Member States considered that WHO should provide an ethical framework for work in this field. In cooperation with other bodies, notably the Council for International Organizations of Medical Sciences and the United Nations Centre for Human Rights, WHO is continuing to monitor relevant developments in organ donation and transplantation. □

References

1. *Annals of internal medicine*, **75**: 631–633 (1971); reproduced in *Bulletin of the World Health Organization*, **47**: 131-133 (1972).
2. *Lancet*, **2**: 715–716 (1985).
3. *International digest of health legislation*, **39**: 274-278 (1988).