



THE CRIME OF HUMAN ORGAN TRAFFICKING

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Abstract:

This research examines human organ trafficking, one of the most dangerous forms of transnational organized crime, which has expanded with the advancement of medical science and the increasing demand for organ transplantation. Organ trafficking is defined as the illegal sale or purchase of human organs, often through exploiting vulnerable populations such as the poor, migrants, kidnapping victims, or by removing organs from deceased individuals without proper consent.

The study discusses the concept of human organs from legal and medical perspectives and outlines the legal requirements for organ transfer and transplantation from both living and deceased donors, with a particular focus on Jordanian and Algerian legislation, which prohibits organ sales and requires non-commercial, voluntary donation.

Keywords: surgery is performed illegally, kidnapping, receiving victims, recruitment.

Introduction:

Human organ trafficking refers to *any procedure carried out for the purpose of selling or purchasing human tissues or one or more human organs*. It is a relatively modern form of trade compared to human trafficking. **Voluntary and unpaid donation**, however, is not considered an act of commerce in human tissues or organs. (Al-Talabani, 2016, p. 1285)

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Thus, organ transplantation is not merely a medical interest or a scientific desire for surgical innovation; rather, it is a matter directly linked to *saving human life* and granting the patient an opportunity to participate in life like others, instead of remaining dependent on medical devices awaiting death. Therefore, the subject is a vital legal issue that concerns workers in the health sector, those interested in health, humanitarian, and social services, and society at large.(Naoumi, Abdel Karim, 2015)

1- The Concept of Human Organ Trafficking

The widespread occurrence of organ trafficking, especially following the significant progress achieved in medical sciences, stems from rapid and tremendous scientific developments that have turned the human body into a commodity for commercial transactions. This has shaken the humanitarian principles that protect human dignity and bodily integrity, due to the transfer of organs from one person to another or from one country to another by illicit means.

Organ trafficking is considered a criminal activity carried out by transnational organized crime groups. These groups exploit displaced or smuggled individuals from their home countries by extracting their organs and trafficking them, then transplanting them into other individuals for illegal commercial purposes.(Ben Mishri, Abdel Halim &Cherroun, Hassina Abdelha, 2016, p. 182)

Human organ trade refers to buying and selling human organs such as tissues, skin, blood, and kidneys. In 2003, the European Council classified organ trafficking as a form of human trafficking, as it represents a clear and explicit violation of human rights.(Ben Daas, Lamiya, 2016, p. 324)

The human body is one of the most essential elements of human existence. According to fundamental principles, the body is intrinsic to the human person and is highly sacred. It must never be the subject of any agreement or violation under any circumstances, as God Almighty honored humans both in life and after death.(Diat, Samira Aed , 2004, p. 06)

Jordan's *Human Organ Transplantation Act No. 23 of 1977* outlines the conditions that must be met for organ transplantation. Article (3/A) stipulates the following:

- A. Compliance with the fatwas issued by the Jordanian Fatwa Council on this matter, particularly regarding brain death.
- B. Transplantation must take place in a hospital that meets the technical requirements necessary for organ transplantation by a team of qualified doctors and technicians.

Additionally, all necessary medical tests must be conducted to examine both the donor and the recipient to ensure the donor's health condition allows the donation and that the recipient is in need of the transplant.

2- Definition of Human Organ Trafficking

2.1- Definition of Human Organs

Jordanian law defines a human organ as *any organ of the human body or any part thereof*. (Human Organ Transplantation Law No. (23) of 1977, as amended by Law No. 23 of 2000, p. 182)

A human organ is also defined as a part of the human body such as the hand or foot. Some scholars argue that organs include tissues, blood, and cells, whether still attached to the body or separated from it. Blood is considered by some as a human organ, although others oppose this definition, arguing that blood lacks a definite shape unlike organs such as ears, livers, and hearts. (Al-Sheikhli, Abdul-Qader & Al-Marzouq, Khaled bin M, 2005, p. 30)

From a medical point of view, a human organ consists of groups of tissues that work together to perform a specific function such as the liver, kidneys, brain, and reproductive organs. Tissues in turn consist of groups of cells—the smallest unit of living matter. (BouSiag, Mohamed Al-Madani, 2005, p. 250)

The English Act of 1989 defines an organ as *any part of the body composed of a harmonious and complex set of tissues that the body cannot naturally regenerate if removed completely*. (Abdullah, Idris, 2009, pp. 40-41)

Another legal definition states that a human organ consists of tissues, cells, or blood, whether attached or detached. With modern scientific developments, organs are no longer limited to the heart, kidney, or liver but also include blood, corneas, and even genes and hormones. (Zaal, Husni Odeh, 2001, p. 50)



2.2- The Juristic Definition of Organ Trafficking

Some scholars define human organ trafficking as the act of an individual or an organized criminal group gathering persons *without their consent*, through deception or coercion, and then removing their organs and selling them as commodities for financial profit.

The term “trafficking” refers to **the act of buying and selling**, motivated primarily by monetary gain, which reflects the nature of commercial activity practiced professionally by traders. Thus, the linguistic meaning of “trade” is limited to exchanging goods for the purpose of profit. (TalebKhaira , 2018, p. 329)

2.3- The Legal Definition of Organ Trafficking

The Jordanian legislator considers the removal of human organs a form of exploitation within the crime of human trafficking. Article (3/b) of the Jordanian Anti-Human Trafficking Law classifies organ removal as one of several forms of exploitation:

“For the purposes of paragraph (A) of this article, the word ‘exploitation’ means the exploitation of persons in forced labor, servitude, slavery, exploitation of prostitution, organized begging, **organ removal**, or any form of sexual exploitation.” (Anti-Human Trafficking Law, 2009)

Article (3/a) defines human trafficking as:

The recruitment, transport, harboring, or receipt of persons for the purpose of exploitation through threat, use of force, coercion, abduction, fraud, deceit, abuse of power, abuse of vulnerability, or giving or receiving payments or benefits to obtain the consent of a person who has control over another...(Anti-Human Trafficking Law, 2009)

Recruitment, transport, harboring, or receipt of persons under 18 years for the purpose of exploitation shall constitute trafficking even if not accompanied by force or coercion.

3- Conditions for Organ Transplantation

Legal scholars define organ transplantation in various ways. Some describe it as:

“The transfer of a healthy organ or group of tissues from a donor to a recipient to replace a damaged organ or tissue.”(Masa’rawa, Haitham Hamed, 2003, p. 23)

Another academic view distinguishes between “organ transfer” and “organ transplantation”:

Transfer does not always involve transplanting the organ immediately. Sometimes organs are removed from corpses only to be stored in specialized banks. The “place” of transfer differs from that of transplantation:

- In **transfer**, the subject is the healthy donor.
- In **transplantation**, the subject is the ill person whose organ is malfunctioning. (Bouchi, Youssef, p. 169)

3.1- Conditions for Organ Transfer Between Living Persons

Jordanian law stipulates that **organ donation must be free of any material compensation**, as payment would convert the act into illegal organ trafficking. The purpose of this prohibition is to prevent the transformation of organ donation from a necessary humanitarian act into a commercial activity pursued for profit by donors, physicians, or hospitals.

Article (4/a) of the Human Organ Transplantation Act (No. 23 of 1977) states:

“Specialist physicians in hospitals approved by the Minister may transfer an organ from a living human to another in need of it according to the following conditions:”

1. The transfer must not involve an organ essential for life if its removal would endanger the donor’s life, even with their consent.
2. A committee of three specialist physicians must examine the donor and certify that organ removal does not endanger their life.
3. The donor must give written consent, freely and with full legal capacity, before the operation.

If the forensic physician decides to autopsy a corpse for legal reasons, they may remove the cornea under the following conditions:

- A. The removal must not affect the determination of the cause of death.
- B. Written consent must be obtained from the deceased’s next of kin without coercion.
- C. Donation must not be made in exchange for monetary compensation or for profit.



3.2- Conditions for Removing Organs from Deceased Persons

Confirming death is the essential starting point for allowing organ removal from a corpse. Death must be established with absolute certainty. Before death, the person remains protected by law and medical ethics, and removing an organ constitutes a punishable act. The legal and medical importance of determining the exact moment of death is significant:

- **Before** this moment, organ removal constitutes a criminal act even if the patient is near death.
- **After** this moment, organ removal becomes permissible if legal conditions are met. (Fahmy, Dina Abdulaziz, 2016, pp. 567-575)

Article (6) of the Jordanian Human Organ Transplantation Act requires that:

- Removal must not cause visible disfigurement of the corpse that would violate its dignity.
- Death must be verified by a medical report, and the physician who confirms death must not be the one performing the transplant.

The Jordanian Law on the Use of Eyes of the Dead for Medical Purposes (No. 43 of 1956) allows the person lawfully in possession of a corpse to authorize the removal of its corneas within three hours after death, provided there is no reason to believe the deceased would object and none of the relatives object.

Legal scholars define death as:

“The final cessation of all manifestations of life and the body’s essential functions for the medically required duration.” (Fahmy, Dina Abdulaziz, 2016, pp. 567- 575)

Two Criteria for Determining Death

1. **Traditional / Clinical Death:** The complete and irreversible cessation of cardiac and respiratory functions. (Al-Shdaifat, Safwan Muhammad, 2011, pp. 311–312)
2. **Brain Death:** Permanent and irreversible cessation of all brain functions, including the brainstem. (Hussein, Alaa Nasser, 2019, p. 485)

4-Forms and Methods of Human Organ Trafficking

The information and communication revolutions have transformed the world into a small global village, enabling individuals to move in all directions with few obstacles. This ease of movement has contributed to the emergence of various crimes whose impact transcends borders and geography. Among the most serious of these crimes are those that violate human sanctity and dignity—qualities that God Almighty has bestowed upon humans, as emphasized in the Holy Qur'an:

“And We have certainly honored the children of Adam, and carried them on the land and sea, and provided for them of the good things, and preferred them over much of what We have created.” (Qur'an 17:70)

Organ trafficking does not exist in a single form; rather, it appears in **three main forms**:

1. **Human trafficking for the purpose of organ removal**, which is considered a type of human trafficking under the Palermo Protocol (2000).
2. **Transplant tourism**, where a recipient—usually from a developed country—travels to a developing country to undergo an organ transplant using an illegally purchased organ.
3. **Organ trafficking in the narrow sense**, meaning the illicit transfer of human organs themselves across borders. (Makieh, Vladimir, 2015, p. 49)

4.1-Forms of Human Organ Trafficking

Organ trafficking can take several forms, including:

Voluntary Sale of Organs

A person may sell their organ voluntarily to obtain money, without coercion or fraud.

While this is considered **organ trade**, Jordanian law does **not** classify it as human trafficking. Instead, it is considered the crime of illegal organ donation under Article (4/c) of the Human Organ Transplantation Act.

Removal of Organs from Corpses for Sale

In some cases, organs may be removed from a deceased person for commercial purposes.



Although this constitutes organ trafficking, it is **not** considered human trafficking under Jordanian and international protocols, because the protection applies to the *living*, not the dead. Instead, it falls under the crime of violating the sanctity of the dead according to Article (277/1) of the Jordanian Penal Code. (Decision of the Salt Court of First Instance, 2009)

4.1.1- Forms of Organ Trafficking (in detail)

a. Recruitment

The Palermo Protocol uses the term “recruitment,” which means inducing or persuading persons. This includes persuading individuals to give up their organs for sale or profit, either inside or outside the country. Recruitment is therefore a broad concept under which many practices fall. (Jordanian Penal Code No. 16 of 1960)

b. Transportation

Transportation is a criminal aspect of human trafficking. It involves moving the victim from one place to another using any means of transportation, whether within the country or across borders—legally or illegally—for the purpose of exploitation. (Majed, Adel, 2010)

c. Reception

Reception involves receiving the victim at the arrival point. It may be followed by transporting them to a residence or providing shelter. (Majed, Adel, 2010)

In organ trafficking, this means receiving victims, providing initial care, and preparing them for the illegal procedures of organ removal in exchange for money. (Abdelhamid, Imad Al-Din Mohamed Kamel, 2021)

d. Harboring

Jordanian law, consistent with the Palermo Protocol, considers harboring a trafficking offense.

Harboring involves providing shelter to victims of organ trafficking—often in apartments or facilities used by brokers and intermediaries—prior to conducting organ removal surgeries. (Nabih, Nasreen Abdelhamid, 2008, p. 186)

4.1.2-Methods of Organ Trafficking

-Deception and Fraud

Fraud involves using lies supported by external indicators to deceive the victim into believing the trafficker.

Deception may be:

- **Complete deception:** Offering fake promises of help or employment to lure vulnerable individuals, then exploiting them for organ removal.
- **Partial deception:** Hiring victims under false pretenses while concealing the real intention of exploiting them for their organs. (Abdelhamid, Imad Al-Din Mohamed Kamel, 2021, p. 505)

Coercion

Coercion is defined in Jordanian civil law as forcing a person unlawfully to perform an action without their consent, either physically or psychologically. (Al-Talabani; DuhaNash'at, 2016, pp. 1288-1290)

This matches the description in the Anti-Human Trafficking Law, which refers to:

“Threat or use of force, or any form of coercion.”

Coercion eliminates the victim's ability to resist, making consent invalid.

-Kidnapping

Jordanian courts define kidnapping as the deliberate removal of a victim from their location to sever their connection with their family and detain them. (Hassanein, Imam, 2009, pp. 69-70)

Kidnapping is frequently used in organ trafficking, where victims may be abducted, transported, and subjected to organ removal against their will.

-Exploiting Vulnerability and Poverty

The Palermo Protocol offers an open list of exploitation forms but does not define "exploitation of organs" explicitly.

However, organ trafficking commonly targets:

- The poor
- The unemployed
- migrants
- individuals in debt



- persons lacking family or legal protection

Vulnerability makes victims easy targets for organ traffickers.

4.1.3-Means of Committing Organ Trafficking

-Surgical Operations

Organ trafficking often occurs in private hospitals or clandestine clinics where donors and recipients are brought together.

If surgery is performed illegally, both the physician and the hospital bear criminal responsibility. (Nassar, Thaer Yasser, 2018, p. 144)

In some cases, illegal organ removal may lead to permanent disability or even death.

-Organ Theft

In more extreme cases, a person may be kidnapped, sedated, and wake up to find one of their organs removed.

In such situations, criminal liability falls on the basis of:

- organremoval
- causing permanent disability
- andpossibly kidnapping

The most severe applicable penalty is imposed.

4.2-Purposes and Characteristics of Human Organ Trafficking

Regardless of the purpose of organ trafficking, it can never justify the illegality of the means used. The complexity and sophistication of this crime, often committed by individuals or organized groups, is driven by various interests and needs.

These interests cannot be left unregulated, which is why laws are put in place to organize voluntary organ donation, outline medical and technical requirements, and impose strict penalties on those who exploit human needs by commercializing human organs and violating human dignity.

Thus, the main purposes behind organ trafficking include:

First: The Desire to Achieve Medical Recovery

Many patients suffering from severe medical conditions seek hope for a better life by replacing a damaged organ with a healthy one.

Examplesinclude:

- kidney transplantation
- liver transplantation
- artery or corneal transplantation

Patients may pay large sums of money to obtain such organs.

Criminal methods of obtaining organs may include:

- stealing organs from living individuals after kidnapping them
- removing organs from corpses, especially executed prisoners without relatives to claim the body
- luring poor individuals to sell their organs
- forcing victims to donate organs to repay travel debts
- deceiving victims with false promises of work abroad (Nabih, Nasreen Abdelhamid, 2008, p. 181)

Often, victims receive very small sums—or nothing at all.

Second: Conducting Medical Experiments

Medical schools, universities, pharmaceutical companies, and scientific research institutions may require human organs or tissues for scientific experiments. Sometimes, living human organs are needed to test new drugs or develop new medical procedures. This demand can drive traffickers to illegally obtain organs to supply these institutions. (United Nations Economic and Social Council, 2006, p. 18)

Third: Economic Motivations and the Desire for Profit

Widespread poverty and economic hardship drive many individuals to sell organs such as kidneys in attempts to:

- repay debts
- improve their financial conditions
- support their families

Despite the severe health risks, the immediate financial return—though usually minimal compared to the value of the organ—pushes many individuals to agree.

At the same time, brokers, intermediaries, and organized criminal networks seek to maximize illegal profits by:

- recruiting poor donors
- arranging illegal surgeries
- selling organs to wealthy recipients
- operating across borders

4.3- Characteristics of Human Organ Trafficking

Human organ trafficking has several important characteristics:

It Is a Form of Organized and Modern Crime

Organ trafficking is not a single act committed by one individual. Rather, it is a multi-stage criminal enterprise involving:



- brokers
- recruiters
- transporters
- corrupt medical staff
- private clinics
- buyers

This crime is carried out by well-organized groups seeking to maximize illegal profits. And falls within the scope of *transnational organized crime*. (Nabih, Nasreen Abdelhamid, 2008, p. 169)

It Has Hidden Dimensions and a Transnational Nature

Organ trafficking operates in secrecy, making detection difficult. Due to underreporting, reliable statistics on organ trafficking are scarce. (Al-Qadi, Rami, 2011, pp. 29-32)

This crime typically involves multiple associated crimes such as:

- fraud
- kidnapping
- extortion
- forgery
- smuggling
- corruption
- forced labor

The transnational nature of organ trafficking makes it especially difficult for law enforcement agencies

Conclusion

Although scientific and technological advancements—especially in transplantation—were originally developed to serve humanity, criminals have misused these technologies to facilitate illegal organ trafficking.

Consequences include:

- destruction of social and family relationships
- spread of mistrust within communities
- exploitation of vulnerable populations
- increased social tension and conflict
- deterioration of ethical standards in medicine
- worsening economic and social problems in developing countries (Hamed, Sayed Mohamed, 2010, p. 44)

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