The Global Organ Trade

A Case in Point

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The Problem

The phenomenon of organ transplantation is common in many countries, yet its nature varies from one location to another. In recent years, under the growing influence of globalization, the permanent shortage of organ donations has driven citizens of First World countries to Third World countries in search of organs.[1] The world of transplants has consequently undergone a major transformation, bringing with it new dilemmas and new problems. The emergence of the international market for organ trade has challenged the authority of state laws, led to the questioning of the social conduct of transplantation and society's attitude toward the phenomenon, and sparked public debate on this issue. It has likewise exposed socioeconomic disparities, because the considerable expense of transplants performed abroad has created a parallel black market of semilegal trade conducted for those who cannot afford the legal version.[2] The phenomenon of international organ transplantation demonstrates how medical know-how, economic interests, and individual needs are interwoven to create a new social reality.

The numerous and far-reaching consequences of this development, however, have not received sufficient attention. Scholarship has indeed taken note of the existence and plight of the victims of this international trade. Scholars have extensively demonstrated the exploitation of these disadvantaged vendors and the grim consequences for their lives following the sale of their organs.[3] Others have focused on the debates regarding the legal and moral status of the organ trade, raising a range of ethical questions concerning deprivation and inequality.[4] Western countries prohibit their citizens from selling and purchasing organs in their area of jurisdiction yet fail to address the issue of their citizens who purchase organs in other countries. Most scholars, such as Scheper-Hughes,[5] who is very vocal on this issue, support this prohibition, whereas others have suggested that the organ trade should be legalized and placed under state supervision to minimize exploitation and the medical dangers attendant on illegal transplants.[6] Robertson[7] adds a further dimension to the general discussion on the right to health. Referring to the prohibition against organ trading in the United States, he questions whether government has the right to intervene in the search for a cure undertaken by the doctor and the patient. Focusing on such moral questions, researchers have, however, tended to overlook several key issues related to this topic, such as the perspective of the transplantees who purchase organs, or the various authorities' official

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and semiofficial policies toward the international organ trade, as well as the consequences of the implementation of the laws forbidding organ trading. This article focuses on some of these consequences.

The debate over the legitimacy of the trade in organs continues, although it would appear that the opponents of trade have already prevailed. One of the manifestations of this victory is the Istanbul declaration of May 2008.[8] Organ trading has been outlawed in most countries, and in Israel, too, legislation along these lines was passed in 2008, forcing patients to adopt new strategies in their search for organs. Prior to this date many Israelis traveled to Third World countries, where they purchased organs from local people. In this article I describe the implications of the new law: how institutions have modified their policy, and how Israeli patients have changed their mode of operation and now generally purchase organs from fellow Israelis who travel with them abroad. I then go on to discuss some ethical issues arising out of the consequences of the recent legislation.

Although the globalization of organ trading—citizens of First World countries purchasing organs from citizens of Third World countries—encompasses many nations of the world, the Israeli case exhibits certain singular characteristics and thus constitutes a further example of Burawoy's assertion regarding the unique ethnography to be found in various countries that could be expected to exhibit uniform patterns of behavior induced by the unifying forces of globalization.[9] One aspect of this uniqueness is the disparity between Israelis' unwillingness to donate organs after death (see the following discussion) and their eagerness to invest considerable resources into procuring organs abroad. Nevertheless, many of the questions that arise from the presentation of the Israeli case are relevant to other countries. Among these is the ethical question regarding the advantages enjoyed by affluent people in purchasing organs.

General Background

Prior to 2008, the regulations of Israel's health ministry regarding transplants referred to the donation of organs and to the prohibition on commercial transactions. Donations by live persons were permitted only among close relatives. A special committee, the National Committee for Transplant Coordination, evaluated applications for altruistic donations to prevent commercial transactions. The Ministry of Health prohibited Israeli physicians from conducting commercial transplants, and this practice was discontinued within the country.

A comprehensive transplant law[10] was passed in Israel in 2008, making organ trading a criminal offence that carries a sentence of three years in prison for the agent and the physician, but not for the recipient or the donor, even though their actions are also defined as a criminal offence.

Health insurance is mandatory in Israel and is administered through four public providers of health services that also insure their members. Transplants within the country are controlled and coordinated by a national transplant center, to which all relevant information regarding donations and those awaiting transplants is channeled. Transplants are performed in six centers within public hospitals.

The cost of transplants outside the country is covered by the health insurance organizations in cases in which the patient has taken out additional complementary insurance and a nephrologist authorizes the procedure as a life-saving operation, on condition that the organ is obtained from a deceased person. This provision was included to prevent the

trading of organs from live vendors in the country in which the operation is performed. The public health insurance organization itself collaborates with a private insurance company, which takes care of all the logistical aspects of the transplant. Israelis began to perform commercial transplants abroad in 1994, initially in Turkey. Subsequently they found additional venues including China, the Philippines, Ecuador, Latvia, Egypt, Iraq, South Africa, Columbia, Moldova, and Azerbaijan.

In Israel the willingness to donate the organs of deceased people is low in comparison to Western countries. (Take, for example, the number of organ donations from deceased persons per million population [PMP] in several Western countries, as compared to Israel: Spain, 33; France, 28; Belgium, 19; England, 17; and Israel, 9).[11] Only 10 percent of the adult population carries a donor card, and the proportion of families agreeing to the use of the organs of a deceased member of family stands at around 40 percent. The average waiting period for transplants within the country is 4.3 years for a kidney, 2.2 years for a liver, and 7 months for a heart. In 2009, 910 people on average were waiting for transplants of all kinds. In the same year 282 transplants were carried out in the country, of which 152 were kidney transplants. During this year some 150 Israelis underwent officially approved transplants abroad at an average cost of approximately US$200,000.[12] As mentioned, part of the cost of these transplants was covered by the public health insurance companies. Since 2008 there has been a marked increase in the number of people awaiting a kidney transplant: 490 in 2006, 514 in 2007, 540 in 2008, 598 in 2009, and 690 in 2010. On the other hand, the number of kidney transplants involving live donors performed in Israel rose slightly between 2007 and 2010: 68 in 2007, 56 in 2008, 69 in 2009, and 78 in 2010.[13] The significant extension of the waiting list may well be at least partly attributable to the decrease in the number of Israelis who perform transplants abroad. This development is discussed in the following.

The Research

My research follows the changing official policy in Israel concerning organ trade and its implications for the strategies adopted by those seeking organs—mainly kidneys—for replacement. The data collected refers mainly to the largest of the four public health insurance organizations operating in the country, which serves 50 percent of the population. It is based on interviews with the following people:

- Ten patients who underwent illegal transplants abroad, eight of whom are insured by the same large health insurance company
- The director of a voluntary nonprofit association that arranges transplants abroad
- The director of the nephrology department in a large public hospital, which includes a dialysis unit and a transplant department
- A lawyer who deals in claims against the public health insurance companies
- The chairman of the Kidney Transplantees Association
- A journalist who writes on medical issues for a leading Israeli daily paper

An administrator in the health insurance organization responsible for handling issues involving transplants abroad declined to give me an interview.

Interviews were conducted over a two-year period (2010–2011) in the north of Israel. I met the functionaries in their offices or in a café. I interviewed the transplantees in their homes, asking

about the chronological development of their ailment and the circumstances of the transplant. The transplantees interviewed belong to different social sectors with regard to ethnic origin, education, and age. Nine of the ten were men. It was particularly difficult to get people to agree to be interviewed. I contacted these people through mutual friends who vouched for my sincerity and discretion, but in most cases even this assurance did not suffice. I am unable to tell whether people refused to speak to me out of a sense of shame or because they were apprehensive. Those who did agree to meet me spoke frankly and sincerely of their experience.

I furthermore utilized statistical data published by the Ministry of Health, as presented in the previous section, as well as information reported in the general press and that appearing in scientific publications. The picture that emerges in the following section is based entirely on all the aforementioned sources, albeit mainly on the interviews. Because some of the relevant data is classified, I have relied on occasion on reliable second-hand sources.

Recent Developments Impacting Transplants Performed Abroad

Because a number of countries, such as Egypt and the Philippines, have recently taken measures to prevent their citizens from partaking in organ trade, Israelis are now in greater need of organs obtained from their fellow citizens to have transplants performed abroad. Such vendors are generally found in the weaker sections of society—Israeli Arabs, Arabs living in the Palestinian territories, and recent immigrants from the former Soviet Union. The head of the nephrology department at the only public hospital in the north that performs transplants told me that these vendors are reluctant to undergo medical examination and treatment on their return to the country for fear of being charged under the new transplant law.

No precise records relating to transplants performed abroad are kept, because many of these are undertaken independently. We must therefore make do with estimates. The same head of department reported that around one-third of the 391 posttransplant patients currently treated in the department's transplant section underwent an operation abroad, almost all of them having purchased an organ from a live vendor. In previous years two-thirds of those treated in the section had gone abroad for their transplant. I was informed that the said health insurance company had changed its policy of authorizing and financing transplants abroad following the new legislation. Whereas approximately one hundred authorizations were issued per year up to 2008, the number has now dropped to only a few per year.

In the recent past, prior to 2008, when transplants were partially funded, the authorities did not strictly enforce the condition stipulating that organs be obtained only from deceased persons. Since 2008, when "commercial" transplants were outlawed through legislation, informal practice still tends to turn a blind eye wherever possible.

This informal practice is manifested as follows:

- In the preoperative stage all medical tests are performed by the health insurance organization, even when it is well known that the patient is planning to undergo a transplant on his or her own accord abroad.
- In some cases, when the transplant is to be performed abroad, the range of preparatory tests performed is limited, because the requirements abroad are generally more lax.
- On returning from abroad (and in some cases directly from the airport),

patients receive postoperative treatment in the same hospital in which they were previously treated in the dialysis unit. This treatment is given irrespective of the circumstances of the transplant operation, which are known to the physicians.

- Although there is ample information on Israeli physicians who perform organ transplants abroad (formerly in Turkey and South Africa and nowadays in Latvia), and although the identity of the Israeli agents who mediate in these activities is well known, none of them has been indicted. (No precise data regarding this phenomenon are available). The only cases in which a complaint has been registered with the police involve Israeli vendors who claimed that they did not receive the payment promised them. The agents continue their activity, albeit with greater discretion. (The agents I approached refused to be interviewed, and one of them admitted that this was due to the illegal nature of his activity.)
- There are lawyers who specialize in claims against the public health insurance organizations and the private insurance companies with which they collaborate, demanding that they cover the costs of "commercial" transplants performed abroad. Some of these claims are successful. Each case is assessed on its merits, and no binding precedents or rules have been established. Some have surmised that the health insurance organizations have an economic motive in financing operations abroad, which are less costly than dialysis treatment administered over a period of years. A similar situation pertaining in India, where the authorities have no interest in applying the law prohibiting the sale of organs, is described by Muraleedharan and his associates.[14]

Official policy became stricter with the passing of the transplant law in 2008, and it is now far more difficult to obtain financial support for transplants performed abroad. The principal change introduced by the transplant law in Israel is the abolition of financial support provided by institutions for transplants conducted abroad. As a result, only affluent people are now able to undertake such commercial transplants abroad, and this is manifested in the growing queue for kidneys. Another relevant fact is that the National Committee for Transplant Coordination became more stringent in approving transplants following the passing of the law. Whereas it previously approved 80 percent of the applications for an altruistic transplant, it now rejects 80 percent.[15]

In my conversations with functionaries and other individuals for whom this issue is relevant, they express dissatisfaction with the law, which discriminates between rich and poor in their quest to extend their lives.

Disadvantaged Jews, generally immigrants from the former Soviet Union, have greater difficulty in convincing the committee that they are related to wealthy seekers of organs and long-time residents in the country. Therefore, Soviet immigrants constitute an organ pool for affluent Israelis who travel abroad and bring the donor along with them. In this context it is easier to persuade officials that the "donor" and recipient are related.

A number of social and demographic factors affect the individual's choice of location in which to undertake the transplant, as I now demonstrate. One of the very few areas in which Israeli Arabs enjoy an advantage over Jewish citizens is that of transplants. First of all, Arabs find it easier to convince the National Committee for Transplant Coordination

that a vendor living in the Palestinian territories is related to them. (Again, because these Palestinians are a disadvantaged sector, they are more likely to wish to sell an organ.)

Egypt constitutes a geographically convenient location for the performance of transplants. Ongoing contact is maintained with a certain hospital in Cairo to which Arab citizens from the Galilee are directed, who bring with them a donor from the Palestinian territories. This hospital does not accept Jews. I have only rather vague information about transplants performed in additional neighboring Arab countries, such as Iraq and Syria. (Friedlander tells of Israeli Arabs who underwent transplants in Iraq and were hospitalized on their return for further treatment.[16] A press report in 2010 mentioned Druze from the Galilee who underwent transplants in Syria.)

Ethical Issues

I wish to present some ethical issues and standpoints that arise out of the complex situation portrayed previously:

- It is problematic to pass a law that people cannot live with and is therefore difficult to implement. A public opinion survey conducted in 2006 found that 87 percent of the respondents would partake in organ trade if they had no other choice. It would appear that the will to live generally overrides compunctions about exploiting the poor. This may have something to do with the concept of *pikuah nefesh* in Judaism, according to which one is permitted to transgress laws and regulations to save a life.
- One of the outcomes of the recent legislation is that vendors do not receive adequate medical attention, because they are apprehensive of going to the hospital. Thus the weak are weakened even further. In other words, although we are motivated by concern for the well-being of the vendors, we are in fact unintentionally harming them. On the other hand, it should be noted that, following the passing of the law, fewer people now sell their organs, and thus fewer people are harmed.
- Regarding the issue of inequality, although there are associations that collect money for those without means, this takes time. The rich enjoy an advantage. They do not require financial assistance from the health insurance organization. Whereas in the past people without means were assisted by the health organizations, nowadays they wait in an ever-extending line for a transplant. Is it acceptable that people with initiative and means succeed in extending their lives whereas others do not? It should be noted here that the state-run medical system makes no distinction between those who have undergone a legal transplant and those who have partaken in organ trade. It invests considerable resources in their treatment, both prior to and after the operation.
- The legislators have sought to apply the law to Israeli citizens wherever they operate, which is unusual in Israeli law. Yet in practice the law is applied only to transplants performed within the country, although the identity of those who have undergone a commercial transplant abroad is known to functionaries within the system. Thus, although it is difficult to apply a state's legislation abroad, it is ethically problematic to differentiate between a commercial transplant performed within Israel and one that is performed abroad. Indeed, questions have recently been raised about

this subject in the international context. A recent article by Francis and Francis,[17] which addresses this topic for the first time, is of particular interest here.

Conclusion

Legislation prohibiting the sale of organs is intended to protect disadvantaged sections of the population. But does it achieve this goal? As they wage their battle for life, those in search for an organ will readily circumvent the law, seeking more roundabout ways to obtain what they need, and as a result the going market rates continue to climb, with most of the profit made by middlemen. Somewhat paradoxically, the playing field has become even less even, because it is only the very rich who can nowadays afford to purchase organs.

Perhaps Israel constitutes a special case, but it raises several fundamental questions. Although recent legislation has ostensibly ''solved'' the problem of exploitation of poor people in other countries, it is now the disadvantaged citizens of Israel and the Palestinian territories who suffer this plight. It is difficult to contend that this form of exploitation is morally more acceptable than its previous version.

And on the subject of exploitation itself, would it perhaps be desirable and preferable to create an official mechanism that would control and supervise transplants and look after the interests of the vendors? Such models exist, and one has actually been applied in Iran, albeit in a far from perfect manner. Shivvers has outlined the optimal conditions for legalization,[18] and in the Israeli context Yelinek has drawn up a proposal along these lines.[19]

More detailed and reliable information on what is actually happening in the sphere of international transplants should generate an open-minded rethinking of the right policies to be adopted at the national and international levels.

Notes

1. Farmer P, Gastineau-Campos N. New malaise: Bioethics and human rights in the global era. *Journal of Law, Medicine and Ethics* 2004;32: 243–51; Scheper-Hughes N. Organs without borders. *Foreign Policy* 2005;146:26–7.
2. Francis LP, Francis JG. Stateless crimes, legitimacy, and international criminal law: The case of organ trafficking. *Criminal Law and Philosophy* 2010;4(3):283–95; Harrison T. Globalization and the trade in human body parts. *Canadian Review of Social Anthropology I* 1999;36(1):21–35.
3. Cohen L. Where it hurts: Indian material for an ethics of organ transplantation. *Zygon* 2003;38(3):663–88; Shimazono Y. The state of the international organ trade: A provisional picture based on integration of available information. *Bulletin of the World Health Organization* 2007;85(12):955–62.
4. Berlinguer G. Bioethics, health and inequality. *The Lancet* 2004;364:1086–91; Budliani-Saberi DA, Karim KA. The social determinants of organ trafficking: A reflection of social inequity. *Social Medicine* 2009;4(1):48–51; Budliani-Saberi DA, Delmonico FL. Organ trafficking and transplant tourism: A commentary on the global realities. *American Journal of Transplantation* 2008;8:925–9; Strassberg BA. Organ transplantation—A challenge for global ethics. *Zygon* 2003;38(3):643–62.
5. Scheper-Hughes N. Keeping an eye on the global traffic in human organs. *The Lancet* 2003;361:1645–8.
6. De Castro LD. Commodification and exploitation: An argument in favor of compensated organ donation. *Journal of Law, Medicine and Ethics* 2003;29(3):142–6; Friedlaender M. The right to sell or buy a kidney: Are we failing our patients? *The Lancet* 2002;359:971–3; Khalili M. Organ trading in Jordan: Bad news, good news. *Politics and the Life Sciences* 2007;26(1):12–14.
7. Robertson JA. Controversial medical treatment and the right to health care. *Hastings Center Report* 2006;36(6):15–20.
8. The Declaration of Istanbul on Organ Trafficking and Transplant Tourism; available at http://multivu.prnewswire.com/mnr/transplantationsociety/33914/docs/33914-Declaration_of_Istanbul-Lancet.pdf (last accessed 10 Oct 2010).
9. Burawoy M. Manufacturing the global. *Ethnography* 2001;2(2):147–59.
10. The full text of the transplant law is available at http://www.justice.gov.il/NR/rdonlyres/

F8E6E7B8-D67A-475A-B64A-F9B86797F282/9952/2144.pdf (Hebrew, last accessed 15 Aug 2011).
11. http://www.transplant-observatory.org/Data%20Reports/Basic%20slides%202010.pdf (last accessed 1 Feb 2012).
12. Apart from the cost of transplants, these data appeared in an article by Dan Even in *Ha'aretz*, 9 Apr 2010 (Hebrew), in which he reported on data obtained from the National Transplant Center and the health insurance organizations.
13. National Transplant Center. *Press Release: Summary of Activity in 2010 and Programs for 2011*; 11 Jan 2011 Hebrew; available at http://www.briut.gov.il/transplant/news 2 (last accessed 20 Nov 2011).
14. Muraleedharan VR, Jan S, Prasad SR. The trade in human organs in Tamil Nadu: The anatomy of regulatory failure. *Health Economics, Policy and Law* 2006;1:41–57.
15. Dan Even cites a senior functionary in the National Transplant Center. I received the same statistic from an additional well-informed source. See also Even D. The affair of the Swedish paper—Israel doesn't use the organs of non-Israelis for transplants. *Ha'aretz* 28 Aug 2009 (Hebrew).
16. See note 6, Friedlaender 2002.
17. See note 2, Francis and Francis 2010.
18. Shivvers E. The international trade in human organs: Combating the demand for life; available at www.anselm.edu/NR/rdonlyres/4D9D0E9D-1C5E/Shivvers.pdf (last accessed 15 Apr 2009).
19. Yelinek S. *Payment for Organ Donations: The Future Market of Organ Trade*. Tel-Aviv: Perlstein-Genosar; 2004 (Hebrew).