



Inquiry into Human Organ Trafficking and Organ Transplant Tourism

ECHO PROJECT'S SUBMISSION TO THE PARLIAMENTARY JOINT COMMITTEE
ON LAW ENFORCEMENT

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1 Introduction

Echo Project welcomes the opportunity to provide a submission to the Parliamentary Joint Committee on Law Enforcement in response to the Inquiry into Human Organ Trafficking and Organ Transplant Tourism (**the Inquiry**).

Echo Project is a not for profit group which raises awareness about human trafficking issues through the voice of powerful leaders who have front line experience with both victims and perpetrators.

Echo Project works closely with and has a strong association with Christine Dolan who is a highly informed and respected investigator of international human trafficking. Christine has conducted over thousands of interviews across the world with human trafficking victims, human traffickers, local and national police, Interpol agents, non-government organisations, members of the European Parliament, and experts on paedophilia, pornography, sex tourism, human trafficking and immigration, and those falsely accused of human trafficking. She has investigated NGOs who claim to reduce trafficking, but whose evidence contradicts their stated missions.

Christine is an expert on human trafficking and her work has been endorsed by numerous Heads of States, members of the European Parliament, the United States Congress, the Organization for Security and Co-operation in Austria, Interpol, the Australian Federal Police and other international law enforcement agencies.

Christine has addressed the United Nations in Geneva and New York on the issue, as well as the European Union, the Organisation of African Unity in Ethiopia, the Organization for Security and Co-operation in Austria and the French National Assembly at the invitation of President Jacques Chirac.

In 2016, Christine was invited to Australia to address both commercial and not for profit organisations on the state of human trafficking in Australia.

2 Summary of Echo Project

Echo Project's submission addresses both of the Inquiry's terms of reference.

Despite the introduction of legislation criminalising organ trafficking in 2013, the fact that this law does not capture organ trafficking that occurs outside Australia's borders limits its efficacy. Echo Project submits that the most significant contribution to counter global organ trafficking would be the extension of the operation of Australia's existing laws to capture Australians procuring trafficked organs overseas.

3 Background

In Australia, demand for donors outpaces supply. This means that if you are on the organ donor waiting list, there is a chance that you will die before you receive a

transplant. It is perhaps of little surprise that some Australians buy organs abroad to sustain life.¹ The incentive to procure abroad is increased by legislation criminalising organ trafficking in Australia.

The World Health Organisation estimates that 10% of transplant procedures worldwide involve organs that have been bought on the black market.² The typical donor has an average annual income of \$480 while the typical recipient has an average annual income of \$53,000.³ This reflects the assessment of Nancy Scheper-Hughes that the flow of organs is "from North to South, from poor to rich, from young to old."⁴

The World Health Organisation (WHO) Guiding Principles on Human Organ Transplantation 1991 outlines a framework for living and deceased organ donation to increase organ supplies while prohibiting any monies gained in exchange for an organ. The Principles recognise the fundamental reality that to eradicate this crime an increase in organ donations is required, as well as broad scale criminalisation of the offence of organ trafficking.

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in persons seeks to prevent and suppress trafficking for the purpose of organ removal. Article 3(a) of the Protocol sets out the definition of trafficking in persons. The definition is the only reference to organ trafficking in the Protocol. It lists the removal of organs as one form of exploitation.

Recommendations

Echo project makes the following main recommendations.

- Recommendation 1: Parliament legislate to give extra-territorial application to the offence of Organ Trafficking under division 271 of the Criminal Code;
- Recommendation 2: Parliament create a public body charged with gathering information on organ trafficking, particularly concerning Australians who purchase organs abroad.
- Recommendation 3: Parliament legislate a mandatory reporting requirement for Australian doctors who reasonably believe that a patient has received a trafficked organ.
- Recommendation 4: Parliament collaborate with COAG and the states with a view towards implementing an opt-out organ donor system.

¹ See, for example, Sue Dunlevy, 'Blood money: How our low rate of organ donations is driving people to risk their lives on the black market' *Daily Telegraph* (8 August 2016)

<<http://www.dailytelegraph.com.au/rendezview/blood-money-how-our-low-rate-of-organ-donations-is-driving-people-to-risk-their-lives-on-the-black-market/news-story/c55c1575f1b211f201d078a885808b60>>.

² Emily Bourke, 'Australians lured overseas for illegal kidney transplants' *The World Today*, ABC Radio (29 May 2012) <<http://www.abc.net.au/worldtoday/content/2012/s3513372.htm>>.

³ European Union Directorate-General for External Policies, *Trafficking in human organs* (2015)

<[http://www.europarl.europa.eu/RegData/etudes/STUD/2015/549055/EXPO_STU\(2015\)549055_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2015/549055/EXPO_STU(2015)549055_EN.pdf)> p 19.

⁴ Nancy Scheper-Hughes, (2002) 'Neo-cannibalism: the global trade in human organs', 381 *The Hedgehog Review* p 16.

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- Recommendation 5: Australia accede to the 2014 Council of Europe Convention against Trafficking in Human Organs.
- Recommendation 6: Australia establish an investigative team to study and report on the criminal enterprises that facilitate, create, and execute the international organ trafficking market.

4 Term of reference #1: whether the offence of Organ Trafficking should have extraterritorial application

- 4.1 Australia introduced its current laws criminalising organ trafficking in 2012.⁵ The legislative regime punishes organ trafficking in Australia, into Australia and out of Australia, but not outside Australia. This means an Australian who goes abroad and buys an organ can return home without penalty.

The criminal code effectively contains three categories of offences related to organ trafficking in Subdivision BA of Division 271 of the *Criminal Code*. They are as follows:

- (a) Organ trafficking in or out of Australia, carrying a maximum sentence of 12 years imprisonment,
- (b) Organ trafficking within Australia;
- (c) Aggravated versions of these offences, where either:
 - (i) The perpetrator commits the offence with the intention that the victim's organ will be removed - maximum 20 years imprisonment;
 - (ii) The perpetrator subjects the victim to cruel inhuman or degrading treatment in committing the offence - maximum 20 years imprisonment; or
 - (i) The victim is underage - maximum 25 years imprisonment.

The regime defines trafficking by reference to the transportation of the victim, rather than the procurement of the organ itself.⁶ However, the investigation of an elderly Sydney woman in 2011-12 would seem to indicate that the law is intended to render liable the purchaser.⁷

The Echo Project notes that the Australian government has made reference in the name of this inquiry to organ "trafficking" and "tourism." The Policy Department of the European Directorate-General for External Policies differentiates 'organ tourism' or 'transplant tourism' from organ trafficking.⁸ Tourism refers to the buyer of organs while trafficking focuses on the vendor. There is a legitimate moral debate to be had as to whether the culpability of the buyer in this context is as significant as the

⁵ Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013.

⁶ Criminal Code Schedule 1 Section 271 Subdivision 2A ss 1(a) and 2(a).

⁷ Natalie O'Brien, 'Organ trafficker's death closes case' *Sydney Morning Herald* (25 March 2012) <<http://www.smh.com.au/national/organ-traffickers-death-closes-case-20120324-1vqvn.html>>.

⁸ European Union Directorate-General for External Policies, above n 3, p 17.

vendor. This moral question is even more complex if the buyer purchases the organ through a third party and is effectively not aware of the condition of the donor.

However, if Australia is committed to reducing international organ trafficking, liability for the purchaser outside Australia is required. Echo Project submits that the criminal regime and penalties should be amended to reflect the different levels of culpability between trafficking and tourism. Buying should be distinguished from selling.

Recommendation 1: The parliament should legislate to give extra-territorial application to the offence of Organ Trafficking under division 271 of the Criminal Code.

4.2 In 2015, the Directorate-General for External Policies wrote that:

"In contrast to the suppliers of organs (victims of THBOR), there has been surprisingly little academic study or media attention for the recipients who travel abroad in search of an illegal transplant. They are not systematically reported to the health care system in their home country, although their treating nephrologist/hospital will know the circumstances. The confidentiality rules in medicine, as well as the fact that most recipients of bought organs are aware of the fact that they have committed an illegal act (although they avoid the term 'crime'), makes it difficult to trace and interview these recipients."⁹

Echo Project endorses this view. Most of the publicly available evidence about Australian organ trafficking practices is anecdotal. More information is needed to determine the scope and extent of the problem in Australia.

Recommendation 2: The parliament should create a public body charged with gathering information on organ trafficking, particularly concerning Australians who go abroad to purchase an organ.

4.3 Organ transplants cannot take place without doctors. Doctors should have a role in preventing organ trafficking. Echo Project is of the view that doctors should report patients to government if they believe those patients have received a trafficked organ. As Sheri Glaser argues: "Trafficking in organs is a crime, and a doctor who fails to report a suspected instance of organ trafficking furthers that crime."¹⁰

Recommendation 3: The parliament should legislate a mandatory reporting requirement for Australian doctors who reasonably believe that a patient has received a trafficked organ.

4.4 The best way to end demand for organ trafficking is to bolster the supply of organ donors. Echo Project considers that Australia should move towards an opt-out system for organ donation, rather than the opt-in system that is presently in operation. This is a matter for state governments, however, the Federal government is in a position to exert influence and advocate for this change.

⁹ European Union Directorate-General for External Policies, above n 3, p 22.

¹⁰ Sheri Glaser, 'Formula to Stop the Illegal Organ Trade: Presumed Consent Laws and Mandatory Reporting Requirements for Doctors.' (2005)12 *Human Rights Brief* 2.

Recommendation 4: The parliament should work with COAG and the states with a view to implementing an opt-out organ donor system.

5 Term of reference #2: whether Australia should accede to the 2014 Council of Europe Convention against Trafficking in Human Organs

5.1 This section will proceed in two parts. First, it will consider whether Australian domestic law would be compliant with the Convention, were Australia to ratify the convention. Then, the benefits of ratification will be considered.

(a) Is Australia's law compliant?

The Council of Europe Convention requires State parties to criminalise:

a) Illicit removal of organs from living or deceased donors:

i) where the removal is performed without the free, informed and specific consent of the living or deceased donor, or, in the case of the deceased donor, without the removal being authorised under its domestic law;

ii) where, in exchange for the removal of organs, the living donor, or a third party, has been offered or has received a financial gain or comparable advantage; or

iii) where, in exchange for the removal of organs from a deceased donor, a third party has been offered or has received a financial gain or comparable advantage.¹¹

b) Use of illicitly removed organs;¹²

c) Implantation of organs outside the domestic transplantation system or in breach of the essential principles of national transplantation law;¹³

d) illicit solicitation, recruitment, offering and requesting of undue advantages;¹⁴

e) Preparation, preservation, storage, transportations, transfer, receipt, import and export of illicitly removed human organs;¹⁵ and

f) Attempting, aiding or abetting any of the above offences.¹⁶

In the Echo Project's view, Australia's domestic law is concordant with these requirements. The only other issue of note is that as a non-member State, Australia would need to be invited to sign the convention.¹⁷

(b) Advantages/Benefits of ratification

The crime of organ trafficking by its very nature thrives on an international scale and can therefore only be tackled by coalition-building. The more countries that

¹¹ Council of Europe Convention against Trafficking in Human Organs art 4(1) .

¹² Council of Europe Convention against Trafficking in Human Organs art 5.

¹³ Council of Europe Convention against Trafficking in Human Organs art 6.

¹⁴ Council of Europe Convention against Trafficking in Human Organs art 7.

¹⁵ Council of Europe Convention against Trafficking in Human Organs art 8.

¹⁶ Council of Europe Convention against Trafficking in Human Organs art 9.

¹⁷ Council of Europe Convention against Trafficking in Human Organs art 28(1).

criminalise organ trafficking either within their jurisdiction or extra-territorially, the less scope there is for traffickers to operate. A collaborative approach would work towards isolating and marginalising countries that do not address organ trafficking. This approach would begin to confine the areas of focus to pinpoint unresponsive countries. Ratification of the treaty would contribute to Australia's reputation as an ethically-driven global citizenship. Australia's domestic law is already compliant with the provisions. Therefore there is not significant cost or effort required for ratification.

Recommendation 5: Australia should accede to the 2014 Council of Europe Convention against Trafficking in Human Organs

- 5.2 Australia already leads in the anti-trafficking arena by having dived deep into the institutional response to the abuse of children. What is missing from the organ trafficking research is the international investigation of the international markets for organ trafficking. The data surrounding organ trafficking has grown in the last years, but there has never been an expansive study on the institutionalization of organ trafficking worldwide. Understanding how these criminal enterprises operate is essential to creating laws based upon ongoing empirical evidence that mirror the crimes. There are transplant surgeons, brokers, lawyers, kidney hunters, insurance and travel agents, safe house operators, and “baby sitters” to mind sick and anxious international “transplant tourists.” The criminal system exists. Documenting it with qualified investigators is what is missing. It would serve the Commonwealth well if Australia took the lead on organ trafficking as it is not only a domestic crime but in the 21st Century, it is a borderless criminal international market and growing. Echo Project is uniquely positioned and would be fully willing to collaborate with the Commonwealth for this organ trafficking endeavour.

Recommendation 6: Australia establish an investigative team to study and report on the criminal enterprises that facilitate, create, and execute the international organ trafficking market.

6 Conclusion

Australia is in a strong position to be an international leader in tackling the crime of organ trafficking. It is a morally and geographically complex issue that requires an internationally-minded, multi-faceted approach. The Echo Project commends the Committee and the Australian Government for giving due consideration to the issue.