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The Sum of a Human's Parts: Global Organ Trafficking in the Twenty-First Century

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ARTICLE**The Sum of A Human's Parts:* Global Organ Trafficking in the Twenty-First Century****DR. RANEE KHOOSHIE LAL PANJABI******INTRODUCTION**

The ancient Indians believed that the gift of life is so great that even the Gods cannot give it back. That truism prevailed until modern technology upstaged ancient wisdom and provided mankind simultaneously with the possibility of a renewed life and the challenge of globalized crime that exploited the gift of life itself. The scientists and surgeons researched and experimented and learned to transplant an array of human organs that brought renewed life and hope to thousands of desperately ill patients

* Although I came up with this title independently, I later saw a variation in a theater review. Accordingly, acknowledging the earlier use in a review titled *The Sum of Their Parts*, I use my title with apologies to Ginia Bellafante. See Ginia Bellafante, *The Sum of Their Parts*, N.Y. TIMES, Nov. 23, 2007, http://theater.nytimes.com/2007/11/23/theater/reviews/23rag.html?ref=ginia_bellafante.

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I dedicate this article to my wonderful mother, Lata K. Panjabi, poetess, musician, journalist, diplomat, and to the memory of my father, Khooshie Lal Panjabi, journalist, author, diplomat. They have been the best gifts that life has given to me. I thank Davey for suggesting this subject and Lenny and Jeffy for urging me to write about it. Their loving friendship is a rare gift. This is also for '34,' my constant source of joy, delight, laughter and inspiration.

2 *PACE ENVIRONMENTAL LAW REVIEW* [Vol. 28]

across the globe. The criminals turned this altruistic scientific endeavor into a global criminal enterprise that today prevails in almost every country, providing enormous profits and resulting in egregious human rights violations and suffering for numerous men, women and children.

The issue of organ transplantation is riddled with contradictions and paradoxes. Almost everyone on this planet applauds the scientific advance that would give a renewed life to desperately ill patients. However, a majority of people on this planet would be leery of participating in the process by donating an organ, unless a loved-one needed it. A majority of people on this planet have cultural, societal and religious traditions that find it repugnant to desecrate the bodies of their dead relatives for organ harvesting. Additionally, even those who applaud the science abhor the merchandizing of organs because it reduces the gift of life to a mere purchase of life.¹

In centuries past, given the inequities that existed in most societies, it appeared that the poor existed to serve the rich and be exploited by them. Such exploitation reached a nadir in the twentieth century when the bodies of the poor became commodities to provide renewed life for those who could afford it, through the acquisition of new organs.

This article highlights both the irony and the tragedy of an issue that should be at the forefront of international concern. It has appropriately been stated that “[n]o other field of medicine has raised so many ethical, moral, legal and social issues as has organ transplantation.”² On the one hand, the altruism and idealism of providing new life to ill patients through voluntary organ donation exemplifies the very best of human nature. But there is a shortage of available organs – only 10 percent of the demand for organs was fulfilled in 2005³ – and this gap has been

1. See Steve P. Calandrillo, *Cash for Kidneys? Utilizing Incentives to End America's Organ Shortage*, 13 GEO. MASON L. REV. 69, 69, 134 (2004).

2. Nupur Nadir, *Law and Medicine: An Analysis of the Organ Transplantation Law in India*, LEGAL SERVICE INDIA (June 7, 2008), <http://www.legalserviceindia.com/article1224-Organ-Transplantation-Law-In-India.html>.

3. IRIN, *Indonesia: Illegal Kidney Trade Alarming*, ASIAN DEVELOPMENT BANK INSTITUTE E-NEWSLINE, <http://www.adbi.org/e-newsline/poverty.php> (last visited Sept. 13, 2010).

2010]

THE SUM OF A HUMAN'S PARTS

3

filled by a rogue's gallery of miscreants who, for a profit, will dupe the poor to provide organs for the rich. The dark side – namely organ trafficking – is truly horrifying and reveals a murky world of traffickers, duped donors, wily 'body-parts brokers,' corrupt politicians, police and lawyers along with complicit surgeons and hospitals and ill but relatively wealthy organ recipients, so desperate to renew their own gift of life, that they enable the corruption and overlook the suffering caused to others.

While this century and the one recently passed have brought the world unprecedented wonders in terms of technology, these eras may later be remembered more for the exacerbation of human misery, the egregious violations of human rights, and economic inequity that brought so much wealth to a few and bare subsistence to so many. The era will also be recalled as one in which progress and regress twinned through a political and social series of crises, wars, revolutions, and recessions.

For those chosen by Fate to enjoy a life of comfort, the twentieth and twenty-first centuries provide more possibilities and choices than humans have ever known. Unfortunately, the very industrial and technological wonders that have brought us so many cheap consumer goods and filled our homes with so much 'stuff,' have also, in their production, wreaked havoc on the environment. For the billions whose lot was cast for a life of poverty, this era has brought hunger, famine, disease, air and water pollution, soil depletion, and an inability to exercise many choices to break out of the vicious cycle. Although there is a decline in absolute poverty, there is also an apparent increase in economic inequity, the gap between rich and poor, the chasm that gives endless choice to some and limited options to others.

Essentially, the decision to sell a body organ like a kidney is made from a position where there are no alternatives or options. It is a manifestation of dire economic necessity, sometimes a means for an entire family briefly to eat and survive or pay off a debt to an assertive moneylender. Over nine million people die annually because of hunger and malnutrition.⁴ The nexus

4. Anup Shah, *Causes of Hunger Are Related to Poverty*, GLOBAL ISSUES (July 8, 2008), <http://www.globalissues.org/article/7/causes-of-hunger-are-related-to-poverty>.

between environmental degradation and poverty is well established. The exploration in this article is to see one consequences of that nexus – the type of human despair that drives people to violate their own bodies and sell what may well be their last remaining asset, a kidney.

While acknowledging that there are some improvements socially, politically, economically and even environmentally in this complex era, it is imperative that we examine the conditions endured by those whom Fate has cast at the bottom rung of the economic ladder. They may be the most unfortunate of the world's population, but numerically they are very significant. Should we through lethargy or ignorance or indifference fail to alleviate their lot, then we risk our own relatively comfortable perch in life.

This article will explore the sale of body organs as a manifestation of poverty that is grounded – no pun intended – in a degraded environment. This subject is replete with intersecting and overlapping elements and is at once a medical and legal issue, an environmental matter, a human rights concern and an ethical conundrum. The analysis aims to explore the manner in which the great medical and scientific miracle of transplantation has been sullied by pecuniary, profit-oriented interests whose personal greed has propelled thousands of people – primarily the poor and the vulnerable – into a situation where they are coerced, oppressed, duped, at times enslaved and even killed for the harvesting of their organs, that then are transplanted into relatively wealthier patients, who, for a hefty price, gain a second lease on life.

Globalization has given this subject a vast canvas and has exacerbated the unfortunate scope and consequences of the crimes that are involved. For any scholar traversing the intricate maze of this area of study, the complexities continue to proliferate as one follows the many tantalizing trails of the research. Ultimately, the length constraints of the published article determined the scope of this particular study. Although the problems inherent in this issue are global in nature, in this article, two countries have been examined in some detail.

India and China provide compelling examples of the scope and tragedy of this issue because both countries experience

frenetic industrial growth, ensuing environmental degradation, crippling poverty, particularly for rural populations, and a thriving organ trafficking system. India was selected because the many facets of organ trafficking in that country are present in almost all other societies where similar problems occur. With some local variations, the Indian experience whereby the very poor are exploited can be found in South America, the Middle East, South-East Asia and even in North America and Europe. Despite a plethora of laws and regulations, the trafficking of human organs persists and prevails worldwide and indeed, the laws may have only succeeded in driving the entire enterprise underground. India, being democratic in its governmental system and blessed with an articulate and vocal public opinion, also provides ample material for such research.

China was selected for somewhat different reasons. Despite certain commonalities with the organ trafficking situation in other countries, the communist dictatorship that governs China brought an unusual feature to this issue. While in the chaos and corruption of India, private interests chose to ignore the laws and engage in this egregious form of trafficking, in China by contrast, the system of organ procurement was, according to the allegations of Chinese dissidents and human rights activists, state sanctioned and state supported. The harvesting of the organs and tissue and body parts of executed prisoners from a country that routinely executes more people than the rest of the world merits considerable notice and attention. The utilization in many instances of military hospitals for the transplantation procedures made the entire process appear even more state-sanctioned. The collusion of medical, legal, police, prison and judicial authorities in this gory enterprise and the sharing between them of vast sums paid by recipients of the organs, make China an imperative area to study.

However, unlike the Indian research where the material was open and ample, the Chinese information was largely made up of allegations that were strenuously denied and denounced by the Chinese Government. The critical factor that influenced the selection of China as a state worthy of study for this article arose from an awareness of the historical reluctance of the Chinese population to engage in donation of the organs of their deceased

family members. That long-held repugnance when matched against the extensive numbers of transplant operations performed in China annually for many years, was more than puzzling. Human rights investigators from a number of countries, Chinese dissidents, and members of the United States Congress – who held hearings on the Chinese practices – along with other sources, created a chorus of similar complaints that pointed to the likely commission of serious crimes against Chinese prisoners by members of the medical, legal, police and judicial professions. Accordingly, the prevalence of organ trafficking was examined in some detail in two contrasting countries, one the world’s most populous democracy, and the other the world’s most populous totalitarian dictatorship.

In a 2009 Joint Study on the issue of organ trafficking, the Council of Europe and the United Nations emphasized the paucity of available information and noted that details about the numbers involved were fragmentary. The study concluded that there was possibly “a high number of unreported cases,” and attributed this to the “huge profits and rather low risks for the perpetrators.” A combination of shame, fear and guilt keep donors and recipients silent, and thus the crimes are hard to investigate and prosecute.⁵ The United Nations and the Council of Europe expressed a need for more research in this area and deemed it a major issue.⁶

The research for this article, while elucidating the major parameters of the subject, seeks to explore the nexus between environmental degradation, impoverishment of populations and their consequent exploitation by criminals who seek to traffic their organs for sale to desperately ill people who are in a position to afford to buy themselves a new life, often without engaging in the conscience-challenging questions about the source or process by which they acquire a new lease on life. Ultimately, this research demonstrates massive exploitation of the poor,

5. CAPLAN ET AL., *TRAFFICKING IN ORGANS, TISSUES AND CELLS AND TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF THE REMOVAL OF ORGANS* 95 (2009), available at http://www.coe.int/t/dghl/monitoring/trafficking/docs/news/OrganTrafficking_study.pdf (study prepared for Joint Council of Europe/United Nations).

6. *Id.* at 98.

oppression that is global in nature and international in scope. The destruction of natural sustainable environments through a variety of human actions has therefore encouraged the growth and proliferation of a vast criminal enterprise that now spans the globe. The prevalence and persistence of organ trafficking, despite legal prohibitions in many countries, demonstrates the extent of desperation that fuels and funds this illicit enterprise. In a very real sense, national law cannot succeed in eradicating a multi-national criminal enterprise. Thus far, international prohibitions have not succeeded either and as the population of the developed world ages and the will to prolong life becomes more imperative, the crime of organ trafficking is likely to increase, and the suffering it already causes is also bound to escalate.

Whether we blame climate change or desertification, constant flooding, soil erosion or natural disasters like tsunamis and earthquakes, an environment of egregious poverty affecting millions afflicts a huge proportion of people on this planet. They constitute the one billion or more who are estimated to be forced to live on less than a dollar a day.⁷ In a world where the poorest 40 percent of the population shares a meager 5 percent of global income,⁸ the consequence of such economic disparity is obvious. The escalating environmental degradation of our planet – our only home – is likely to exacerbate, not decrease the desperate measures poor people are driven to in order to avert hunger, pay off debts, and provide for their families.

This subject provides a classic example of the way that environmental matters underlie all concerns on this planet. This is an issue of health, human rights, international law and economic disparity. But as such, it is about an environment that cannot sustain a decent life. It has appropriately been said that

7. Anup Shah, *Poverty and the Environment*, GLOBAL ISSUES (Feb. 12, 2005), <http://www.globalissues.org/article/425/poverty-and-the-environment>. In 2008, the World Bank revised its poverty figures, changing the baseline figure to \$1.25 per day and explaining that with inflation, this figure would have risen to \$1.45 per day for 2005 price levels. Anup Shah, *Poverty Around the World*, GLOBAL ISSUES (Mar. 1, 2010), <http://www.globalissues.org/article/4/poverty-around-the-world>.

8. Anup Shah, *Poverty Facts and Stats*, GLOBAL ISSUES, (Mar. 28, 2010), <http://www.globalissues.org/article/26/poverty-the-facts-and-stats>.

“[a]ccess to health care is a human right but often not a reality.”⁹ The United Nations has estimated that 80 percent of the world’s population is subject to worsening differentials in income;¹⁰ in other words, some aspects of economic disparity are apparently increasing. This is a world of contrasts where approximately a billion or more people cope with perennial hunger and undernourishment while about the same number suffer from obesity.¹¹

The heart of this entire issue – no pun intended – lies in the reflection of two sides of human despair: The seriously ill and their interest against the egregiously poor and their needs. The irony lies in the fact that the most altruistic of endeavors, the regifting of life by generous donors and skilled surgeons can simultaneously be perverted into the most hideous form of crime where the poor are inveigled into parting with organs, usually kidneys, that are then sold at huge profits to those who can afford to buy themselves a new life. Worst of all is the alleged kidnapping and execution of people, who are then utilized for the harvesting of their organs.

Globalization has facilitated both the altruistic aspects of organ transplantation and the criminal dark side of this endeavor. In this new world, the miracle of transplantation can now be performed in numerous countries, as knowledge literally knows no boundaries. This important method of prolonging human life is now available to most of the world. Unfortunately, this major development of science has fallen prey to a prevailing feature of globalization, a tendency to commodify and find commercial value in everything. What should be primarily a medical process is “increasingly permeated with the commercial language of supply and demand, contracts, exchange, and compensation.”¹²

9. *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, 3 CLINICAL J. AM. SOC’Y. NEPHROLOGY 1227, 1228 (2008), available at <http://www.asn-online.org/press/pdf/2008-Media/Declaration%20of%20Istanbul%20Study.pdf>.

10. Shah, *Poverty Facts and Stats*, *supra* note 8.

11. Shah, *Poverty and the Environment*, *supra* note 8.

12. LORI ANDREWS & DOROTHY NELKIN, *BODY BAZAAR: THE MARKET FOR HUMAN TISSUE IN THE BIOTECHNOLOGY AGE* 5 (2001).

And from this commercialization, implicit in the extraction of organs and the treatment of the donor as a resource, come the profiteering and the illicit exploitation that has tainted this great scientific process. Additionally, the twenty-first century provides ease of transport across national boundaries, assistive technology such as computers and cell phones, all of which expedite and provide opportunities for criminals to practice their 'trade' without much risk, making the business of organ trafficking highly lucrative and as infamous as international slavery,¹³ drug trafficking and exploitative child labor.¹⁴ Preying on the anxieties and desperation of both the sick and the poor, organ traffickers can take advantage of both elements and profit hugely in the process. As the United Nations admitted in its Millennium Declaration: "[W]hile globalization offers great opportunities, at present its benefits are very unevenly shared, while its costs are unevenly distributed."¹⁵

This article will also explore some suggestions that have been articulated to deal with the dark side of what should be primarily an issue of health. The proposals, as we shall see, are varied and range from national measures to a demand for a global Convention on organ trafficking. Whether an international convention can resolve some of the problems caused by the criminalization of transplantation remains to be seen. An exploration of existing international law will reveal the flaws that exist, particularly as national law cannot function all that effectively against globalized criminals. It is important to note that organ trafficking is deplored almost everywhere but conversely, it also prevails worldwide.

Most people would probably agree with the ancient Indians who deemed life a precious gift, so valued that the gods could not give it back. How tragic a commentary it is on this present new

13. See Ranee Khooshie Lal Panjabi, *Born Free, Yet Everywhere in Chains: Global Slavery in the Twenty-First Century*, 37 DENV. J. INT'L L. & POL'Y 1, 17 (2008).

14. See Ranee Khooshie Lal Panjabi, *Sacrificial Lambs of Globalization: Child Labor in the Twenty-First Century*, 37 DENV. J. INT'L L. & POL'Y 421, 421 (2009).

15. United Nations Millennium Declaration, G.A. Res. 55/2, U.N. DOC. A/RES/55/2 (Sept. 8, 2000), available at <http://www.un.org/millennium/declaration/ares552e.htm>.

millennium that we have cynically to conclude that what the ancient gods could not achieve, today criminal traffickers definitely can.

ORGAN TRANSPLANTATION AND TRAFFICKING: A DOUBLE-EDGED SWORD¹⁶

It is somewhat unusual in any research on human rights violations to find the subject as two-faced and multi-faceted as is this one. The issue of organ transplantation is one of the most lauded and respected areas of medical science and it commands universal approval for so dramatically saving lives and giving patients near death a second chance at living. Surgical transplants from living and deceased donors became an established medical procedure after the Second World War.¹⁷ Kidney transplants, documented since the 1950's,¹⁸ and heart transplants performed since the late 1960's,¹⁹ have given a new lease on life to thousands. Some of the most qualified physicians in the world perform organ transplants and command global respect and admiration for their dedication and their skill. As Yosuke Shimazono of Oxford University has commented: "Organ transplantation is an effective therapy for end-stage organ failure and is widely practiced around the world."²⁰ The demand for this procedure is noticeably high in developed and middle-income countries.²¹ The surgical procedure involves the removal of an

16. With apologies to Charlotte Kuchinsky, *Human Organ Trafficking on the Rise*, ASSOCIATED CONTENT (Apr. 13, 2007), http://www.associatedcontent.com/article/201546/human_organ_trafficking_on_the_rise.html.

17. *Draft Guiding Principles on Human Organ Transplantation*, WORLD HEALTH ORGANIZATION (WHO), http://www.who.int/ethics/topics/transplantation_guiding_principles/en/print.html.

18. Dr. Budiani-Saberi & K.A. Karim, *The Social Determinants of Organ Trafficking: A Reflection of Social Inequality*, 4 SOCIAL MED. 48, 48 (2009).

19. *FactBox: The Who, What, Where and Why of Organ Trafficking*, REUTERS, Aug. 5, 2007, <http://www.reuters.com/article/idUSL01729419>.

20. Yosuke Shimazono, *The State of the International Organ Trade: A Provisional Picture Based on Integration of Available Information*, 85 BULL. OF THE WHO 955, 955 (2007).

21. World Health Organization (WHO) Secretariat, *Human Organ and Tissue Transplantation: Report by the Secretariat*, 2, WHO DOC. EB113/14 (Nov. 27, 2003).

2010]

THE SUM OF A HUMAN'S PARTS

11

organ (such as a kidney) from a living donor or its extraction from a corpse and soon after, transplantation into the body of the recipient.

The World Health Organization has found that the percentage of living to deceased kidney donors is relatively low in some areas.²² The medical community has encouraged the use of deceased donors as a source for organs because there are no risks as exist in operations on live donors. Deceased donors also provide a vast number of materials for transplantation.

The widespread use of drugs like cyclosporine (approved by the Federal Drug Administration in 1983)²³ assisted recipient retention of the transplanted organs and enabled greater proliferation of transplant procedures.²⁴ The ambit of scientific research on this subject continues to expand and this results in various organs being amenable to transplantation including kidneys, hearts, liver, corneas, as well as human bone, ligaments, cartilage, skin and tissues and bone marrow. Those who lament and bemoan the commercialization of the human body are somewhat late in their protests. Such utilization of the human body for profit forms a considerable portion of the growing biotechnology industry that extracts and transforms tissue, skin, blood, eggs, sperm, umbilical cords, embryos, placenta and other materials sourced from human beings.²⁵ There are now "brain tissue banks, breast tissue banks, blood banks, umbilical cord banks, sperm banks, and tissue repositories for studying AIDS, Alzheimer's mental illnesses and aging."²⁶

A limited number of organs, most prominently kidneys, can be donated by the living. The preferred principle for procurement has been that of altruistic donation to prevent exploitation of

22. Debra A. Budiani-Saberi, *Organ Trafficking and Transplant Tourism*, in THE PENN CENTER GUIDE TO BIOETHICS 700, 700 (Vardit Ravitsky et al. eds., 2009).

23. Trevor W. Harrison, *Frontiers of the Market: Commodifying Human Body Parts*, in NOT FOR SALE, DECOMMODIFYING PUBLIC LIFE 111, 117 (Gordon Laxer & Dennis Soron eds., 2006).

24. Trade Environmental Database (TED) Case Studies, *India Kidney Trade*, TED, <http://www1.american.edu/ted/kidney.htm>.

25. ANDREWS & NELKIN, *supra* note 12, at 2-3.

26. *Id.* at 4.

potential donors.²⁷ Ethically, live donation poses some perplexing dilemmas. In medicine, it is unique for a person to voluntarily risk harm from an invasive procedure in order to provide a second chance at life for the recipient of his organ.²⁸ Ideally, this great personal sacrifice is performed for a family member, or as part of a chain of kidney donations whereby a group of donors provides a second life to a group of recipients.

The medical community has stressed the importance of deceased donation and has long urged that the public overcome any repugnance about ‘desecrating’ the bodies of departed family members. Following brain death, nearly forty different organs and tissues can be donated.²⁹ It has been estimated that each deceased donor “provides roughly 30 extra life-years to the pool of patients on transplant waiting lists.”³⁰ Various regimens have cropped up across the world to deal legally and appropriately with the acquisition of organs from dead people. The so-called dead donor rule is the underlying principle whereby the person must be pronounced dead before organs can be removed. Additionally, those “diagnosing death must have no interest or stake in whether organs can be procured or not from the deceased’s body. In this way, the public can be assured that no one is killed in order to obtain organs.”³¹

Many developed countries rely on an ‘opting-in’ system whereby “the person in lawful possession of the body may authorize the removal of organs and tissues.”³² On occasion

27. Arthur L. Caplan, *Organ Transplantation: The Challenge of Scarcity*, in THE PENN CENTER GUIDE TO BIOETHICS 680, 680 (Vardit Ravitsky et al. eds., 2009).

28. Peter P. Reese, et al., *Protecting Live Kidney and Liver Donors*, in THE PENN CENTER GUIDE TO BIOETHICS 721, 721, 724 (Vardit Ravitsky et al. eds., 2009).

29. Sunil Shroff, *Kidney Transplant in Tamil Nadu India*, ORGAN TRANSPLANTATION IN INDIA (June 29, 2007), <http://www.india-transplant.com/2007/06/kidney-transplant-in-tamil-nadu-india.html>.

30. Scott D. Halpern, *Ethical Dilemmas in the Management of the Potential Organ Donor After Circulatory Determination of Death*, in THE PENN CENTER GUIDE TO BIOETHICS 709, 709-10 (Vardit Ravitsky et al. eds., 2009).

31. Caplan, *supra* note 27, at 680-81.

32. *Organ Transplantation Law in India*, LEGAL SERVICE INDIA, <http://www.legalserviceindia.com/article/l224-Organ-Transplantation-Law-In-India.html> (last visited Sept. 13, 2010).

written consent is solicited in key documents such as drivers' licenses. Unfortunately "[e]xclusive reliance on altruism in organ procurement is a losing battle."³³ The limited supply cannot keep pace with the growing demand.

A more assertive system includes the notion of 'presumed consent,' unless specified otherwise by the individual opting out prior to death.³⁴ Some form of presumed consent has been implemented in Italy, Spain, Austria and Belgium and rates of donation have been higher.³⁵ This system "preserves the value of organ transplant as a social good in which no one is included or excluded based on the ability to pay."³⁶ This system of presumed consent has resulted in 31.5 donors per million people in Spain.³⁷

When performed within medically ethical and legal parameters, transplantation is one of the most useful and amazing forms of health improvement and care. Patients, who in earlier days would have been sadly deemed terminal, have now gained the possibility of a second lease on life. Their joy and adulation of the transplant surgeons has made this group of physicians into celebrity heroes of this new era and the procedure has spread to a number of countries. By 1990, 11,836 transplants were recorded in Europe and 14,978 in the United States.³⁸ The World Health Organization estimated that in 2005, approximately 66,000 kidney transplants, 21,000 liver transplants and 6000 heart transplants were performed across the globe. Kidney transplants appear to be the most prolific, and can be performed in over ninety countries.³⁹ By 2005, over 16,000 such kidney procedures were performed in the United States, a figure representing a forty-five per cent increase in a

33. MICHELE GOODWIN, BLACK MARKETS: THE SUPPLY AND DEMAND OF BODY PARTS 20 (2006).

34. *Organ Transplantation Law in India*, *supra* note 32.

35. Caplan, *supra* note 27, at 682-83.

36. Nancy Scheper-Hughes, *Rotten Trade: Millennial Capitalism, Human Values and Global Justice in Organs Trafficking*, in HUMAN RIGHTS: AN ANTHROPOLOGICAL READER 167, 192 (Mark Goodale ed., Wiley-Blackwell 2009).

37. ALEXIS A. ARONOWITZ, HUMAN TRAFFICKING, HUMAN MISERY: THE GLOBAL TRADE IN HUMAN BEINGS 121 (Praeger 2009).

38. Harrison, *supra* note 23, at 112.

39. Shimazono, *supra* note 20, at 955.

decade.⁴⁰ Transplantation of tissues has also increased dramatically. By 1999, approximately 750,000 people in the United States “received human tissue, twice as many as in 1990.”⁴¹

The popularity of this medical procedure and the reliance on it placed by thousands of desperately ill persons can be gauged by the statistics from the situation prevailing in the United States. These American figures are illuminating, as the country is relatively a wealthy one, unlike many developing world nations. There is better health care – for those who are able to afford it. Hospital facilities are among the best in the world. Between 1993 and 2002, while the number of transplants performed in the United States increased 41 percent, the number of persons awaiting a transplant rose 150 percent.⁴² While over 80 percent of Americans surveyed were favorable to organ donation in principle, only about 25 percent opted to become donors.⁴³ The figures are illustrative of the paradox, the amount and extent of human suffering and desperate hope and the reservations most people have about personal involvement, that are inherent in this entire situation. In a Presidential Proclamation, United States President Barack Obama declared April 2010 National Donate Life Month and urged Americans to “boost the number of organ, tissue, blood and stem cell donors throughout our Nation.”⁴⁴

As the waning of the twentieth century and the commencement of the new millennium brought the world more into the orbit of what has popularly become known as globalization, it was perhaps inevitable that the desperate need for organs would prompt increasing numbers of people to scour the developing world for the life-saving miracle that would grant

40. Stephen J. Dubner & Steven D. Levitt, *Flesh Trade*, N.Y. TIMES, July 9, 2006, http://www.nytimes.com/2006/07/09/magazine/09wwin_freak.html?n=Top/Features?Magaine.Colu.

41. WHO Secretariat, *Human Organ and Tissue Transplantation: Report by the Secretariat*, 1, WHO DOC. EB112/5 (May 2, 2003).

42. Harrison, *supra* note 23, at 112.

43. Steve P. Calandrillo, *Cash for Kidneys? Utilizing Incentives to End America's Organ Shortage*, 13 GEO. MASON L. REV. 69, 114 (2004).

44. Proclamation No. 8491, 75 Fed. Reg. 17,843 (Apr. 1, 2010), available at <http://www.whitehouse.gov/the-press-office/presidential-proclamation-national-donate-life-month>.

them a second lease on life. However, the organ shortage prevailed across the world. The one advantage that patients from the developed world had was their relative wealth, which enabled them to pay handsomely for that second chance at life.

"A gap between supply and demand can be diminished either by increasing supply or decreasing demand."⁴⁵ The stage was set. Where there was so much money to be made and where there were apparent shortages of the vital resource, into the breach stepped the facilitators and brokers who eased the process for the recipient patient but did so often by brutalizing the donors. One way to deal with the process of duping, deceiving and often stealing a body part from a living donor was simply by following the market-orientation of this increasingly globalized world and perceiving body parts as so many commodities. Commodification has been defined as the "production of a good or service for a profit."⁴⁶

According to Alison Brysk, the "globalization of science and medicine has introduced new challenges for human rights as new technologies create new boundaries for the body and governance strives to define corresponding boundaries of the person."⁴⁷ Organ transplantation has now spread to most of the world and while the scientific miracle has been a positive force in saving lives, the criminal taint that attaches to this procedure has also spread to most parts of the globe and its consequences threaten lives.

While all human rights issues are complex, this one is particularly fraught with ambivalence and more moral and ethical dilemmas than any other. With two forms of human desperation competing – illness against poverty – the ambiguities and uncertainties are almost endless and difficult to resolve. Further complicating an already tangled skein is the unfortunate

45. INST OF MED. OF THE NAT'L ACADS., ORGAN DONATION: OPPORTUNITIES FOR ACTION, REPORT BRIEF 1 (May 2006).

46. DENNIS SORON & GORDON LAXER, THEMATIC INTRODUCTION: DECOMMODIFICATION, DEMOCRACY, AND THE BATTLE FOR THE COMMONS IN NOT FOR SALE: DECOMMODIFYING PUBLIC LIFE 17 (Dennis Soron & Gordon Laxer eds., Broadview Press 2006).

47. ALISON BRYSK, HUMAN RIGHTS AND PRIVATE WRONGS, CONSTRUCTING GLOBAL CIVIL SOCIETY 89 (Routledge 2005).

reality that profiteering and human greed have taken advantage of the ethical conundrums and legal loopholes to reap lucrative benefits from the two forms of misery that are at the foundation of this issue.

Organ trafficking has been comprehensively, if wordily defined as:

[T]he recruitment, transport, transfer, harboring or receipt of living or deceased persons or their organs by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of organs for transplantation.⁴⁸

Scholars have been careful to make distinctions between various categories involved in this complex process. D.A. Budiani-Saberi and K.A. Karim define organ trafficking as referring “to the unjust practice of using a vulnerable segment of a country or population (defined by social status, ethnicity, gender or age) as a source of organs.”⁴⁹ It is important to note the difference between an illegal organ sale, wherein the organs are purchased from living donors or extracted from corpses and then transported, frequently to different countries for sale and the more gruesome practice of human trafficking for the purpose of organ removal, that can involve transport of the entire person followed by violent removal and even death of the “donor.”⁵⁰ Further categorization involves the process of procurement from live donors. Traffickers may force or deceive a victim into giving up an organ or a victim may agree to sell an organ and then be cheated by being paid less or nothing at all after the procedure. Most horrifying is the situation where a sick patient, admitted

48. *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, 3 *CLINICAL J. AM. SOC'Y. NEPHROLOGY* 1227, 1227-31 (2008), available at <http://www.asn-online.org/press/pdf/2008-Media/Declaration%20of%20Istanbul%20Study.pdf>.

49. Budiani-Saberi & Karim, *supra* note 18, at 48.

50. The Vatican, *Trafficking in Human Organs*, FIDES NEWS SERVICE (Aug. 2008).

into a hospital, may find that an organ was removed without either his consent or knowledge.⁵¹

Another related and expanding enterprise involves the illicit transfer from funeral homes of all types of body parts including fingernails, heart valves, skulls and bones, which are used for research and surgical procedures. Such transfers have allegedly been made without family consent or on occasion with forged forms.⁵² Even more horrifying is the alleged involvement of some medical examiners who, according to the Chicago Tribune, were paid for each body they provided for tissue harvesting.⁵³ Clearly, in this rapidly globalized world, people are now becoming commodities, no longer the masters of the planet but just a sum of body parts potentially to be harvested as and when required.

The miraculous benefits of transplantation have generated an underworld involving organ trafficking and as Miran Epstein comments, “transplant ethics has been on a slippery slope almost since transplants began. The strategy of getting more organs has pushed, and continues to push, the ethical line to places that had previously been deemed immoral.”⁵⁴

In an effort to address the issue by articulating and defining it clearly, the World Health Organization in November 2009 published a very significant glossary on terms and meanings of donation and transplantation. The definition of trafficking (cells, tissues or organs) is of relevance for this article and is unfortunately as wordy as some of the other definitions:

51. *Trafficking for Organ Trade*, UN GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING, <http://www.ungift.org/ungift/en/humantrafficking/organtrade.html> (last visited Oct. 4, 2010).

52. For truly horrifying accounts of such occurrences, see generally ANNIE CHENEY, *BODY BROKERS: INSIDE AMERICA'S UNDERGROUND TRADE IN HUMAN REMAINS* (Broadway Books 2006); see also Steven DiJoseph, *Illegal Harvesting and Sale of Body Parts, Tissues and Organs - Dr. Frankenstein Would Have Been Proud*, NEWSINFERNO (Apr. 8, 2006), <http://www.newsinferno.com/archives/1064>.

53. Todd Zwilich, *For-Profit Tissue Banks Outside Government Control*, REUTERS HEALTH, May 25, 2001, http://www.vachss.com/help_text/archive/tissue_banks.html.

54. Miran Epstein, *The Organ Crisis*, PROJECT SYNDICATE (Mar. 26, 2010), <http://www.project-syndicate.org/commentary/mepstein1/English>.

The recruitment, transport, transfer, harboring or receipt of living or deceased persons or their cells, tissues or organs, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of cells, tissues, and organs for transplantation.⁵⁵

It has appropriately been stated that organ transplantation is both “life-saving and death-ridden.”⁵⁶ The legitimate and legal face of this transplantation process does provide hope to thousands of sick people across the world. The Global Observatory on Donation and Transplantation estimated that about 100,000 solid organ (not including corneas, heart valves and tissues) transplantation procedures are performed annually around the world. The vast majority, about 65,000 are kidney transplants.⁵⁷ According to Michael Bos of the Netherlands Health Council, about 25,000 transplants are performed annually in the United States and approximately 16,000 in Europe.⁵⁸ Unfortunately, there are many more people waiting to receive transplants of various types than there are willing donors or even cadavers to provide the required organs. As of 2003, in Europe there were an estimated 40,000 people waiting for a kidney.⁵⁹ In 2005, only 10 percent of the demand for kidneys was fulfilled.⁶⁰ As of 2008, there were over 60,000 Europeans waiting for

55. WHO, GLOBAL GLOSSARY OF TERMS AND DEFINITIONS ON DONATION AND TRANSPLANTATION 14 (2009), <http://www.who.int/transplantation/activities/GlobalGlossaryonDonationTransplantation.pdf>.

56. Scheper-Hughes, *supra* note 36, at 180.

57. Thalif Deen, *Health: Study Faults Unregulated Trade in Human Organs*, ALLBUSINESS (Oct. 13, 2009), <http://www.allbusiness.com/medicine-health/medical-treatments-procedures-surgery/13252107-1.html>.

58. Ana Lita, *Organ Trafficking Poses Global Challenges*, AMERICAN HUMANIST ASSOCIATION (Sept. 12, 2007), <http://americanhumanist.org/hnn/archives/index.php?id=314&article=5>.

59. Clare Nullis-Kapp, *Organ Trafficking and Transplantation Pose New Challenges*, 82 BULL. OF THE WHO 715, 715 (2004), available at <http://www.who.int/bulletin/volumes/82/9/feature0904/en/print.html>.

60. Ami Cholia, *Illegal Organ Trafficking Poses a Global Problem*, HUFFINGTON POST (Aug. 24, 2009), http://www.huffingtonpost.com/2009/07/24/illegal-organ-trafficking_n_244686.html (citing WHO estimates).

transplants and ten of them died daily because of organ shortages.⁶¹ The waiting time for Europeans hoping for an organ transplant is expected to climb to ten years in 2010.⁶² In the United Kingdom, nearly 6500 patients were waiting for a kidney transplant in 2007.⁶³ The daily death rate in the United States from this cause was estimated to be 19 as of 2006.⁶⁴ Ana Lita, Director of the IHEU-Appignani Center for Bioethics, in an article published in 2008, found that about 98,000 were on the organ waiting list in the United States while only 30,000 organs were made available.⁶⁵ The scale of the problem can be assessed by noting that in the United States, between 1990 and 2003, kidney donations increased by 33 percent but the number of patients hoping for a transplant increased by 236 percent.⁶⁶ By one estimate between 1992 and 2003, over 57,000 patients died in the United States while waiting for an organ transplant.⁶⁷ The waiting period for receipt of a kidney from a deceased donor can range from two or three years in Britain and the United States to six to eight years in Singapore. The wait is even longer in the Gulf States and in Asia,⁶⁸ which ironically, on the black market, is also regarded as one of the world's most prolific sources of organs. Alexis Aronowitz explained the shortage as due, "in part, to religious beliefs that the body should be buried intact and in part to a fear of hospitals intentionally allowing patients to die to harvest their organs for paying patients."⁶⁹

61. *Trafficking in Human Organs*, *supra* note 50.

62. Ana Lita, *Intersecting Human Rights Crises: Organ Transplantation and Organ Trafficking*, INT'L HUMANIST & ETHICAL UNION (Feb. 1, 2008), <http://www.iheu.org/node/2865>.

63. Neelam Raj, *The Global Kidney Bazaar*, TIMES OF INDIA, Feb. 3, 2008, <http://timesofindia.indiatimes.com/articleshow/2751820.cms>.

64. Aaron Spital & James S. Taylor, *Routine Recovery of Cadaveric Organs for Transplantation: Consistent, Fair and Life-Saving*, 2 CLINICAL J. AMER. SOC'Y NEPHROLOGY 300, 300 (2007).

65. Ana Lita, *supra* note 62.

66. Nancy Scheper-Hugues, *Illegal Organ Trade: Global Justice and the Traffic in Human Organs*, in LIVING DONOR ORGAN TRANSPLANTATION 106, 108 (Rainer W.G. Gruessner & Enrico Benedetti eds., 2008).

67. MARK J. CHERRY, KIDNEY FOR SALE BY OWNER: HUMAN ORGANS, TRANSPLANTATION, AND THE MARKET ix (2005).

68. ARONOWITZ, *supra* note 37, at 110.

69. *Id.*

This disconnect between supply and demand has opened the door to a vast number of criminals who see the buying and selling of organs as a quick and relatively simple way to make tremendous profits with very little effort. As Neelam Raaj, writing for The Times of India reported, “[w]ith such a yawning gap between demand and supply, it’s not surprising that the black market has been booming.”⁷⁰

The traffickers, not bound by either legal or moral imperatives, search for the cheapest sources of organs and sell in the richest of markets, making vast profits and using force and violence and duplicity without much fear of being caught. At the turn of the century, nearly half of all transplanted kidneys came from living donors, and – this is significant – that figure increased to over 80 percent in low and medium-income countries.⁷¹ The World Health Organization reported in 2004 that absent reliable data, it was widely believed that brokers charged between \$100,000 to \$200,000 to organize a transplant procedure. The donor could receive between \$1000 and \$5000 for a kidney.⁷² The same Agency did admit that the “lack of documentation makes it difficult to estimate the extent of ethically unacceptable practices or the relative efficacy and safety of transplantation for the treatment of various conditions and in various settings.”⁷³

The term transplant commercialism came into modern parlance as the illicit activity proliferated. It was defined as “a policy or practice in which an organ is treated as a commodity, including by being bought or sold or used for material gain.”⁷⁴ As medical science has provided the means to prolong life, the demand for transplants has grown⁷⁵ by approximately 33 percent each year. However, the availability of donors has only risen by

70. Raj, *supra* note 63.

71. WHO Secretariat, *supra* note 41, at 3.

72. Nullis-Kapp, *supra* note 59, at 715.

73. WHO Secretariat, *Human Organ and Tissue Transplantation: Report by the Secretariat*, 1-2, WHO Doc. EB113/14 (Nov. 27, 2003).

74. *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, *supra* note 48, at 1227-28.

75. *Trafficking in Human Organs*, *supra* note 50.

about 2 percent. This gap opens the door for illicit activity to meet the demand and make lucrative profits.

There are similarities in the methods and systems utilized by criminal elements whether they deal in drugs, prostitution, human trafficking or organ selling. Economic globalization has been a real boon for traffickers as they have been able to expand local criminal networks into transnational and even global syndicates, taking full advantage of “increasing speed and significant drop in costs of communication and transportation, combined with a drastic reduction of barriers to trade and financial flows.”⁷⁶ Organ trafficking, legally prohibited in most countries of the world, nevertheless continues and may well be increasing to form a vital part of the “illicit global economy.”⁷⁷ The extensive research for this article emphasizes the truism that “[c]rime thrives in institutional vacuums, flourishing where justice is weak and lawlessness and instability prevail.”⁷⁸

Although globalization facilitates and contributes to development, prosperity and cultural interaction, it also makes people more vulnerable in ways that are new and extremely dangerous.⁷⁹ “For organized crime, the whole world is one marketplace.”⁸⁰ Criminal elements have made use of the tools of globalization, the internet, cell phones, computers and instant money transfers to carry out their nefarious trade. Their modus operandi – whether the crimes are drug trading or terrorism or human trafficking – feeds on poverty and instability, generates violence and gains help with corruption and bribery.⁸¹ According to the United Nations Office on Drugs and Crime, “[t]ransnational organized crime syndicates are able to integrate their activities along the entire trafficking supply chain, from source to final destination, coordinating logistics, financing and distribution. . . Their networks are highly coordinated, efficient

76. CHRISTINE JOJARTH, CRIME, WAR AND GLOBAL TRAFFICKING: DESIGNING INTERNATIONAL COOPERATION 7 (2009).

77. *Id.*

78. U.N. OFFICE ON DRUGS AND CRIME, PROMOTING HEALTH, SECURITY AND JUSTICE 17 (2010).

79. *See id.*

80. *Id.*

81. *See generally id.*

and resilient, posing an ever-growing threat to security and development worldwide.”⁸² So great are the profits that they have been able to hire physicians and even hospitals in some countries who perform the operations and look the other way regarding the legitimacy of the entire transaction. Because this illicit but very big business operates without any regulations or supervision by any legitimate authorities, there is also a danger that the recipient patients can be infected with various diseases, “endemic to different regions of the world,”⁸³ acquired from such organs. On occasion the organs have not been adequately examined or pre-screened before transplantation. Donation of kidneys by poverty-stricken HIV positive patients has also raised alarm.⁸⁴ Such illicit procedures can potentially victimize the recipients and may even result in more severe illness and death.

Given the secrecy and duplicity implicit in these illegal procedures, it is almost impossible to estimate the scale of the problem or to assess the extent of its range and reach across the globe. Much of the evidence is anecdotal and while this provides impressionistic images that are clearly alarming, the actual size of the underground business is very hard to gauge. The World Health Organization estimated that approximately ten per cent of kidney transplants performed in 2007 were illegal.⁸⁵ Absent firm statistics in a black market underground activity, estimates of the scale of the problem are just that, guesstimates.

Corruption, mainly in the developing world, fuels and feeds on the whole nefarious activity of organ trafficking. The United Nations has concluded that “corruption is an integral element in organ trafficking and transplantation.”⁸⁶ Where well-respected highly qualified medical professionals are involved, these so-called ‘pillars of the community’ could only be persuaded to offer their essential services to this crime provided the right incentives

82. *Id.* at 13.

83. Jagbir Gill et al., *Transplant Tourism in the United States: A Single-Center Experience*, 3 CLINICAL J. AM. SOC’Y. NEPHROLOGY 1820, 1826 (2008).

84. Trade Environmental Database (TED) Case Studies, *India Kidney Trade*, TED, <http://www1.american.edu/ted/kidney.htm>.

85. *Trafficking in Human Organs*, *supra* note 50.

86. ALEXIS A. ARONOWITZ, *HUMAN TRAFFICKING, HUMAN MISERY: THE GLOBAL TRADE IN HUMAN BEINGS* 115 (Praeger 2009).

and inducements were offered. Their motivation is greed. For the donors, on the other hand, the motivation is poverty. In the developing world and indeed in any part of the world, middle class or comfortably-off people are unlikely to part with a kidney unless there is a personal connection to the recipient. So most unrelated living 'donations' do come from extremely poor people. Acute desperation and the will to live at any cost motivate the potential recipients. Throw in the numerous facilitators and brokers who are corrupt simply because it is easy and profitable, and the significance of corruption to the entire scheme is clearly demonstrated. Although international law now provides for a legally-binding United Nations Convention Against Corruption, (adopted 31 October 2003, came into force 14 December 2005),⁸⁷ applicable to both the public and private sectors of ratifying states, its implementation depends on the existence of an environment of individual accountability and personal responsibility.⁸⁸

The legalities of dealing decisively with these criminal enterprises are bedeviled by the global scope of the illicit business involving organs. The legal complexity, involving both national and international law can be gauged by the fact that one has to consider various scenarios, namely, "organs that are bought, sold and transplanted in the donor's native country; organs transplanted in the native country of the recipient; and organs transplanted in a third country which is determined due to its open legislation or the presence of cooperative medical doctors."⁸⁹

The complicity of some members of the medical profession raises even more ethical issues. Arthur L. Caplan, Director of the Center for Bioethics at the University of Pennsylvania has highlighted the "moral cost to medicine of engaging in organ brokering."⁹⁰ Clearly, any physician participating in the

87. *United Nations Convention Against Corruption*, U.N. OFFICE ON DRUGS & CRIME, <http://www.unodc.org/unodc/en/treaties/CAC/index.html> (last visited Oct. 11, 2010).

88. See U.N. OFFICE ON DRUGS & CRIME, *supra* note 78, at 35.

89. *Trafficking in Human Organs*, *supra* note 50.

90. Arthur L. Caplan, *Do No Harm: The Case Against Organ Sales from Living Persons*, in *LIVING DONOR TRANSPLANTATION* 431, 433 (Henkie P. Tan, Amadeo Marcos & Ron Shapiro eds., 2007).

acquisition or transplantation of an illicitly acquired organ violates the universal ethical principles that should be dominant in that profession. The removal of an organ from a healthy donor could raise some questions about the attending physician's commitment to the medical principle to "do no harm."⁹¹

Further bedeviling attempts to curtail the illicit trade are the self-justificatory rationalizations propounded by those who profiteer by it, that is on the rare occasions when they do come forward and explain their position. These apologists can be quite articulate. Amir Masood Nasir, Chief Executive of Masood Hospital in Lahore, Pakistan, explained: "It is not buying or selling. One family is dying of hunger. The other family is on dialysis three or four times a week. If they decide to cooperate they can help save each other."⁹² An American organ broker provided an even more vivid depiction of his role: "Don't think of me as an outlaw. Think of me as a new version of the old-fashioned marriage broker. I locate and match up people in need."⁹³

It is also important to note that this particular form of criminal activity, by its very nature, has to involve the participation and services of a large number of people, some of them highly-educated professionals whom one would not normally expect would indulge in such nefarious schemes. The Vienna Forum of 2008 on human trafficking for the removal of organs compiled a list of professionals involved in any transplant transaction and raised a question about the role of corruption with respect to organ-related trafficking. The list included but was not limited to the following:

[M]edical directors of transplant units, hospital and medical staff, technicians in blood and tissue laboratories, dual surgical teams working in tandem, nephrologists, postoperative nurses, travel agents and tour operators to organize travel, passports and visas, medical insurance agents, kidney hunters to recruit donors

91. See S.M. Rothman & D.J. Rothman, *The Hidden Cost of Organ Sale*, 6 AM. J. TRANSPLANTATION 1524, 1527 (2006).

92. Samuel D. Uretsky, *Organ Trafficking*, MEDHUNTERS, <http://www.medhunters.com/articles/organTrafficking.html> (last visited Oct. 17, 2010).

93. *Id.*

locally or internationally from among vulnerable and marginalized populations, religious organizations and charitable trusts which sometimes call upon organ brokers, and patient advocacy organizations which sometimes call upon organ brokers.⁹⁴

Ironically, the most important element in this nefarious business, the donor/seller is the one given short shrift by this coterie of professionals when the enterprise is illicit. Criminal facilitators find their “donors,” mainly from the poor from developing countries and nations in turmoil who are persuaded or duped into selling their organs. Poverty, particularly extreme poverty, now afflicting millions of people on this planet, enables the criminals to take advantage of the desperation of the poor and make a profit by catering to the equal desperation of the rich patients who need transplants to survive. Although it may be a scientific miracle, the business of organ transplantation has “allowed global society to be divided into two decidedly unequal populations – organ givers and organ receivers. The former are an invisible and discredited collection of anonymous suppliers of spare parts; the latter are cherished patients, treated as moral subjects and as suffering individuals.”⁹⁵ On many levels, legally this entire business should be deemed a “real crime against humanity and as such be open to prosecution in any country in the world.”⁹⁶

Thus, while there is a legitimate face to the transplant issue, the dark side has expanded and increased and now threatens to become one more form of global crime that needs to be addressed before thousands more become victims. This is a crime and a violation of rights that takes from the poor to give to the rich. In that sense, its brutality goes beyond the removal of body parts from impoverished people. It amounts to a “body tax

94. Vienna Forum to Fight Human Trafficking, Vienna, Austria, Feb. 13-15, 2010, *Human Trafficking for the Removal of Organs and Body Parts*, U.N. DOC. GIFT B.P.: 011 (Feb. 13, 2008).

95. Nancy Scheper-Hughes, *Bodies For Sale-Whole or in Parts*, in *COMMODIFYING BODIES* 1, 4 (Nancy Scheper-Hughes & Loic Wacquant eds., 2002).

96. *Trafficking in Human Organs*, *supra* note 50.

on the poor.”⁹⁷ This crime highlights the persistence of economic deprivation and economic inequity in our twenty-first century world.

POVERTY AND THE ENVIRONMENT

The World Health Organization very decisively stated that organ donors “always come from the poorest and most vulnerable parts of the population.”⁹⁸ The nexus between an environment of poverty and the selling of an organ such as a kidney is clear and obvious. The numerical data “show a strong correlation between national income levels and the greater willingness of individuals within poor countries to make living donations.”⁹⁹ Women who sold kidneys explained their reason as a need to feed their families. This was the most common justification provided worldwide.¹⁰⁰ As Professor David Pearce of University College, London University, explained: “The poor are poor because they begin with a low asset base.”¹⁰¹ The United Nations Development Programme estimated that in the mid 1990’s, “the poorest 10% of the world’s people had only 1.6% of the income of the richest 10%.”¹⁰² About three billion persons on this planet have to live on less than \$2.50 per day.¹⁰³

One scholar has suggested that the “international organ trade should be regarded as a global public health issue.”¹⁰⁴ Of

97. Jane’s Information Group, *Organ trafficking: A Fast-Expanding Black Market*, JANE’S PUBLIC SAFETY NEWS, (March 5, 2008), http://www.janes.com/news/publicsafety/jid/jid080305_1_n.shtml.

98. WHO Secretariat, *supra* note 73, at 2.

99. Trevor W. Harrison, *Frontiers of the Market: Commodifying Human Body Parts*, in NOT FOR SALE, DECOMMODIFYING PUBLIC LIFE 111, 118-19 (Gordon Laxer & Dennis Soron eds., 2006).

100. Scheper-Hughes, *Bodies For Sale-Whole or in Parts*, *supra* note 95, at 1.

101. David Pearce, *Managing Environmental Wealth for Poverty Reduction*, in THE ROLE OF THE ENV’T IN POVERTY ALLEVIATION 30, 33 (Paolo Galizzi & Alena Herklotz eds., 2008).

102. Selim Jehan & Alvaro Umana, The Environment-Poverty Nexus, DEV. POL. J., March 2003, at 53, 55.

103. Anup Shah, *Poverty Facts and Stats*, GLOBAL ISSUES, (Mar. 28, 2010), <http://www.globalissues.org/article/26/poverty-the-facts-and-stats>.

104. Yosuke Shimazono, *The State of the International Organ Trade: A Provisional Picture Based on Integration of Available Information*, 85 BULL. OF THE WHO 955, 959 (2007).

equal importance, this should also be considered as an environmental issue insofar as the devastation of the environment, whether by climate change or loss of biodiversity, whether by soil depletion or flooding has resulted in increased levels of desperation, particularly among the very poor and consequent exploitation that pressures them to sell an organ just so that they and their families can survive. Most tragic of all is that scientific research has now found that the poor are not responsible for the major devastation of the environment. However, they are its primary and most vulnerable victims. They are compelled to live in the most degraded of environments and they lack the means to improve their surroundings. To cite only one example, in South-East Asia, 100 percent of those subsisting on less than \$1 per day are exposed to indoor air pollution.¹⁰⁵ Kirk R. Smith, Carlos F. Corvalan and Tord Kjellstrom have concluded that “[o]ne quarter to one-third of all ill health in the world today seems to be attributable to environmental factors.” They have also found the nexus between environmental quality and both the infectious diseases that afflict the poorest population groups and the chronic diseases that affect richer groups.¹⁰⁶

The United Nations estimated as of 2009 that environmental factors account for nearly one quarter of all deaths and of the world’s burden of diseases. Such diseases are linked to polluted air and water and poor sanitation. Each year, about 5 to 6 million people in developing countries die from water-borne diseases and air pollution.¹⁰⁷ Nearly two million children die annually from diarrhea.¹⁰⁸ Malaria, which annually kills over a million children under five, may be exacerbated by poor water management, loss

105. UNDP-UNEP POVERTY-ENVIRONMENT INITIATIVE, MAINSTREAMING POVERTY-ENVIRONMENT LINKAGES INTO DEVELOPMENT PLANNING: A HANDBOOK FOR PRACTITIONERS 7 (2009).

106. Kirk R. Smith et al., *How Much Global Ill Health is Attributable to Environmental Factors?*, 10 EPIDEMIOLOGY 573, 583 (1999).

107. Kristalina Georgieva, *Disproportionate Effects*, OUR PLANET, <http://www.unep.org/ourplanet/imgversn/111/kristin.html> (last visited Nov. 4, 2010).

108. Shah, *Poverty Facts and Stats*, *supra* note 103.

of biodiversity and deforestation. An ameliorated environment could save 13 million lives annually.¹⁰⁹

There are few internationally relevant issues that raise as much debate, ire, argument and even rage as does the entire gamut of planetary ills falling under the rubric of 'environment.' The reality is that, North and South, rich and poor, we live in a dangerously degraded environment that is daily manifesting signs all over the world. We are deluged with acid rain, our homes are washed away by floods, our crops die because of drought, our children and our elderly languish with respiratory diseases brought on by polluted air, our animals, birds, insects and fish die in alarming numbers because of polluted water. It is as if the very foundations of life are being steadily eroded and destroyed. And while this happens, those who should be doing the most to alleviate these problems, the governmental leaders, content themselves with passing lip-service legislation at home and bickering at international forums about whose fault it is that we all live in such an environmentally degraded planet. Their debate focuses on blame, accountability, financial compensation, and a host of other factors that only serve further to delay amelioration and alleviation. It has rightly been said that "[s]ome identify environmental problems with poverty and unprecedented population growth in the South, while others identify them with wealth and unprecedented expenditure patterns in the North."¹¹⁰

Our instant concern relates to the havoc caused by environmental decline on those who, ironically, are most dependent on the environment, the poorest people on this planet. Their tragic fate is not merely to suffer the constricted lives of poverty, but to bear the primary burden that all of us have created by not paying attention to the needs of the environment.

World Vision has commented that the "21st century has seen continued major environmental damage around the

109. UNDP-UNEP POVERTY-ENVIRONMENT INITIATIVE, *supra* note 105, at 8.

110. PARTHA DASGUPTA ET AL., THE ECOLOGICAL AND ENVIRONMENTAL ECONOMICS OF POOR COUNTRIES: PART I: BACKGROUND 9 (2002), *available at* <http://users.ictp.it/~eee/files/Background.pdf>.

world.”¹¹¹ The extensive research conducted for this article establishes an almost universal acknowledgment of the nexus between environmental degradation and poverty. In the 1990's the panacea for all such global problems fell under the rubric “sustainable development.”¹¹² At the United Nations and elsewhere, this phrase was repeated to the point of becoming the environmental mantra of the past century. It was as though the mere repetition of the phrase would bring about an improved environment. Well-intentioned international Conventions on climate change and biodiversity were negotiated after endless debate and deliberation,¹¹³ but still the environment suffered. To cite only one example, between 1991 and 2007, global CO₂ emissions rose almost 50 per cent.¹¹⁴

It has rightly been suggested that “[p]oor people also appear to be most likely to suffer, and disproportionately so, from the effects of global climate change.”¹¹⁵ Significant numbers of the population in the less developed and least developed countries make their living from agrarian and pastoral work as well as fishing, involving direct and intimate contact with the land and the oceans. Their entire ways of life are environment based and dependent on soil, rainfall, fish, grazing land, and forests for fuel. Aside from their important contribution in providing food for the rest of us, rural and fisher communities are the front line of people facing the challenges of environmental degradation. They are the first to suffer the wrath of Mother Nature. Those of us who have urbanized our lives to the point at which “nature” means a potted plant on a windowsill, need to understand that the daily struggle of the rural poor in the face of environmental

111. Barbara Ruck, *Poverty and the Environment*, WORLD VISION (2006), http://www.worldvision.org.nz/PDF/resources/Poverty_and_the_Environment.pdf.

112. *See generally*, DR. RANEE KHOOSHIE LAL PANJABI, THE EARTH SUMMIT AT RIO: POLITICS, ECONOMICS AND THE ENVIRONMENT (1997).

113. *See id.* at 329, 355 (giving a detailed discussion of the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity).

114. Press Release, The Millennium Development Goals Report 2010; Mixed 2010 Report Card on Anti-Poverty Goals Highlights Challenges Ahead for September Summit, U.N. Press Release DPI/2558A (June 23, 2010) (the figures recorded are from 21.9 to 29.6 billion metric tons).

115. Pearce, *supra* note 101, at 30.

problems could someday in the near future become everyone's disaster.

Over the course of this present century, global warming with consequent flooding, erosion of coastal areas and climatic disruption, is likely to force millions of the most vulnerable populations to move to safer ground. Such vast population displacements will inevitably create social and political problems throughout societies subjected to these 'environmental refugees.' Given the pathetic performance of the world in terms of its obligations per the United Nations Convention on Climate Change,¹¹⁶ all nations can expect to face very serious problems in the near future.

In 2000, the United Nations General Assembly membership grandly committed the world community to remove the "abject and dehumanizing conditions of extreme poverty," which then afflicted over a billion people.¹¹⁷ In 2008, the World Bank, reassessed its estimates of global poverty, and declared not \$1 but \$1.25 as its baseline for computation. Using that poverty line, the Bank concluded that 1.4 billion people live at or below this line and suggested that the "incidence of poverty in the world is higher than past estimates have suggested."¹¹⁸

Abject poverty and a degrading environment still cripple countless human lives and economic inequity leads to the kind of despair that compels people to sell their only assets, body parts, so that their families may survive. The 2008 Vienna Forum to fight Human Trafficking explained that "victims of trafficking for the purpose of organ removal are often recruited from vulnerable groups (for instance, those who live in extreme poverty)."¹¹⁹

Now, a few years later, it is clear that there are aspects of extremely dangerous degradation afflicting our ailing planet. Each year we witness the consequences in increased drought and

116. PANJABI, *supra* note 112, at 329.

117. United Nations Millennium Declaration, G.A. Res. 55/2, U.N. Doc A/RES/55/2 (Sept. 8, 2000), available at <http://www.un.org/millennium/declaration/ares552e.htm>.

118. Anup Shah, *Poverty Around the World*, GLOBAL ISSUES (Mar. 1, 2010), <http://www.globalissues.org/article/4/poverty-around-the-world>.

119. *Fighting Human Trafficking: The Forced Labour Dimensions*, THE VIENNA FORUM ON HUMAN TRAFFICKING (Jan. 28, 2008), http://www.ilo.org/sapfl/Events/ILOevents/lang-en/WCMS_090236/index.htm

floods, enlarging desert regions, impoverishment of formerly fertile soil, disappearance of forests (amounting to 13 million hectares annually in the twenty-first century),¹²⁰ and consequent lessening of rainfall, disappearing species, plant, insect and animal, and near-extinction of food sources like fish that were taken for granted throughout history. The fundamental requirements to sustain human life are already becoming problematic. We are currently facing not just environmental degradation, as a continuing process of diminution of the gifts that Earth can provide for us, but also economic destruction, caused by floods, hurricanes and other natural disasters that leave entire parts of the world in chaos for years. During the 1990's weather-related disasters killed about 600,000 people, 95 percent in poor countries.¹²¹ According to Oxfam, between 1990 and 1998, 94 percent of the worst natural disasters affected the developing world.¹²² Even in the richest of countries like the United States of America, the state of Louisiana has not yet recovered from hurricane Katrina and must now cope with the consequences of the BP oil spill of 2010.

The United Nations has defined basic human needs as including "access to safe water, sanitation, food, and appropriate health care."¹²³ In this century, one could very reasonably add electricity as a vital commodity. Unfortunately, early in this new millennium, about 2 billion people in the developing world had no access to electricity.¹²⁴ The World Resources Institute estimated at the turn of the century that nearly 800 million people in the developing world were undernourished.¹²⁵ Subsistence farmers who grow fruits and vegetables for family use often suffer cyclical hunger prior to harvest seasons. At those times they are unable

120. U.N. Press Release, *supra* note 114.

121. UNDP-UNEP POVERTY-ENVIRONMENT INITIATIVE, *supra* note 105, at 53.

122. Iain Davey, *Environmentalism of the Poor and Sustainable Development: An Appraisal*, 4 J. ADMIN. & GOVERNANCE 1, 4 (2009).

123. *Poverty, POLLUTION ISSUES*, <http://www.pollutionissues.com/Pl-Re/Poverty.html> (last visited Sept. 17, 2010).

124. Jehan & Umana, *supra* note 102, at 56.

125. STANLEY WOOD ET AL., *AGROECOSYSTEMS: A PILOT ANALYSIS OF GLOBAL ECOSYSTEMS* 31 (2000), available at http://pdf.wri.org/page_agroecosystems.pdf.

to meet basic nutritional needs.¹²⁶ “Food insecurity is directly related to poverty at the global, regional, national, and local levels.”¹²⁷ Food prices have risen dramatically since the economic crisis of 2008 and this has inevitably affected the poorest of every society.¹²⁸ Acid rain generated by industrial pollution has endangered food supplies.¹²⁹ Abundant food resources such as ocean fish in the waters off Somalia have been devastated by the dumping of toxic waste, including nuclear waste into the ocean.¹³⁰ Such actions were allegedly committed by European disposal firms.

The United Nations has estimated that over a billion people in poor countries depend on forests for their livelihoods.¹³¹ Their entire way of life has been endangered by forest destruction on an unprecedented scale. As Kristalina Georgieva of the World Bank commented, “environmental factors are seriously undermining the ability of the poor to wrest a living from natural resources.”¹³² Pollution, forest destruction and expanding population have also had a drastic impact on the availability of drinking water. Unequal usage has also contributed. With 12 percent of the world’s population being in a position to enjoy and consume 85 percent of its water,¹³³ there can be little left for the needs of the poor in the developing world whose degraded environment includes depletion of fresh water sources. World Vision has

126. *Causes of Poverty: A GDRC Compilation of Articles on the Causes of Poverty and Related Issues*, GLOBAL DEVELOPMENT RESOURCE CENTER, <http://www.gdrc.org/icm/poverty-causes.htm> (last visited Oct. 17, 2010).

127. SISAY ASEFA & TESFAYE ZEGEYE, RURAL POVERTY, FOOD INSECURITY AND ENVIRONMENTAL DEGRADATION IN ETHIOPIA: A CASE STUDY FROM SOUTH CENTRAL ETHIOPIA 3 (Apr. 2003), http://homepages.wmich.edu/~asefa/Conference%20and%20Seminar/Papers/2003%20papers/Asefa,%20Sisay_%20Zegeye,%20Tefaye.pdf (presented at 2nd EAF/IDR International Symposium on Contemporary Development Issues in Ethiopia, Addis Ababa, Eth., July 11-13, 2003).

128. U.N. Press Release, *supra* note 114.

129. Ruck, *supra* note 111.

130. Raneer Khooshie Lal Panjabi, *The Pirates of Somalia: Opportunistic Predators or Environmental Prey*, 34 WM. & MARY ENVTL. L. & POL’Y REV. 377, 382 (2010).

131. UNDP-UNEP POVERTY-ENVIRONMENT INITIATIVE, *supra* note 105, at 53.

132. Georgieva, *supra* note 107.

133. Maude Barlow, *Water as Commodity – The Wrong Prescription*, 7 BACKGROUNDER 3 (2001), <http://www.foodfirst.org/en/node/57>.

estimated by if present trends continue, by 2025, two-thirds of the global population will live in areas deemed to be “water stressed.”¹³⁴

An absence of basic sanitation endangers the health and lives of over 2.6 billion people in the world,¹³⁵ and this factor also contributes to increased pollution and the threat of widespread outbreaks of disease, especially in crowded cities. In the developing world, such health threats caused by sanitation and water problems affect about half the population.¹³⁶ The United Nations estimates that only half of developing world people has access to adequate sanitation such as toilets.¹³⁷ Although the United Nations has recorded some improvements in health care, particularly for women, the World Organization has also noted that “[h]undreds of thousands of women – 99 per cent of them in the developing world – die annually as a result of pregnancy or childbirth.”¹³⁸ According to Sha Zukang, United Nations Under-Secretary for Economic and Social Affairs, “[m]aternal health is one of the areas in which the gap between rich and poor is most conspicuous.”¹³⁹ Diseases like malaria, AIDS, and tuberculosis still pose a serious threat, particularly among the poor.¹⁴⁰ Water-related diseases kill an estimated three million people in developing countries, the majority are children under five years. Indoor pollution kills over two million people per year, mostly women and girls.¹⁴¹

The Bellagio Task Force on organ transplantation expressed its concern about such issues in 1997 when it concluded that “existing social and political inequities are such that

134. Ruck, *supra* note 111.

135. Shah, *Poverty Facts and Stats*, *supra* note 103.

136. *Id.*

137. U.N. Press Release, *supra* note 114.

138. Press Release, The Millennium Development Goals Report 2010, New Campaigns on Maternal and Child Mortality Buoyed by Progress Reported on Millennium Development Goals, U.N. Press Release DPI/2558B (June 23, 2010), available at <http://www.unis.unvienna.org/unis/pressrels/2010/unisinf373.html>.

139. UNITED NATIONS, THE MILLENNIUM DEVELOPMENT GOALS REPORT 5 (2010), available at <http://www.un.org/millenniumgoals/pdf/MDG%20Report%202010%20En%20r15%20-low%20res%2020100615%20-.pdf>.

140. U.N. Press Release, *supra* note 138.

141. Jehan & Umana, *supra* note 102, at 53.

commercialization [of organs] would put powerless and deprived people at still graver risk. The physical well being of disadvantaged populations, especially in developing countries, is already placed in jeopardy by a variety of causes, including the hazards of inadequate nutrition, substandard housing, unclean water, and parasitic infection. In these circumstances adding organ sale to this roster would be to subject an already vulnerable group to yet another threat to its physical health and bodily integrity.”¹⁴²

Some scholars blame the colonial past that affected most of Asia, Africa and the Middle East for the political and economic chaos that now afflicts so many developing world countries, particularly those now classified as Least Developed Countries (L.D.C's). The economic assessments of colonialism are varied, but many experts fault colonial powers that were driven by the need for sources of raw materials and markets for industrial manufactured goods. The European powers that engaged in colonialism exploited their colonies to cater to those two primary economic imperatives of the so-called Mother Country. In the colonies, these external priorities destroyed traditional self-sustaining economies that had subsisted for centuries. The two economic requirements of colonial powers resulted in the forcible conversion of diverse agricultural systems that produced a variety of crops, particularly food, to the economic cash-crop system that forced peasants to become participants in a global cash economy and consequently prey to the highs and lows of world pricing for their produce. No longer self-sufficient, the rural population had to do whatever was necessary to acquire cash. Sadly, hard work and extra production did not often help. In agriculture, excess product results in lower prices. A significant amount of agrarian land was devoted to growing not

142. D.J. Rothman et al., *The Bellagio Task Force Report on Transplantation, Bodily Integrity, and the International Traffic in Organs*, INT. COMMITTEE OF THE RED CROSS (Jan. 1, 1997), <http://www.icrc.org/Web/eng/siteeng0.nsf/iwpList302/87DC95FCA3C3D63EC1256B66005B3F6C>.

useful food crops but marketable commodities such as tobacco, sisal, cocoa and cotton.¹⁴³

Individual peasants in Africa and Asia were no match for the commodities traders who gambled on and determined the prices for their produce half a world away. One alternative was to flee the destitution of rural life and migrate to urban areas. The resulting environmental degradation has affected cities around the world. U.N. Habitat has estimated the world's urban slum population at approximately one billion, one of every six humans on this planet.¹⁴⁴ By one estimate, in Mumbai, India, well over half the population are slum-dwellers.¹⁴⁵

Colonialism became an early manifestation of the worst aspects of globalization without the benefits that certainly accrued to some former colonies once they became free of their colonial masters and controlled their own economies. The economic priorities of colonial powers hinged on their own economies and colonies were exploited, often ruthlessly to provide every resource possible to enrich the 'mother country.' However, although politically, colonialism has ended, economically, the legacy of colonial priorities continues to impoverish rural populations in the developing world and these guardians of the land have suffered and continue to suffer as they now constitute the poorest constituency on this planet.

Economic disparities continue to plague this planet, with significant differences between urban and rural, between landlords and sharecroppers, between North and South, between developing and developed nations. Ultimately, the poverty of a significant proportion of the world's people makes them easy prey for exploitation. Their desperate need for cash and the absence of any marketable assets induces some of them to commodify and sell their own organs in return for cash. As Sonja Eggerickx, President of the International Humanist and Ethical Union has aptly stated, "[i]f I am poor, my children are starving and there

143. Anup Shah, *Poverty Facts and Stats*, GLOBAL ISSUES, (Mar. 28, 2010), <http://www.globalissues.org/article/26/poverty-the-facts-and-stats>.

144. Shah, *Poverty Around the World*, *supra* note 118.

145. Ben Piven, *India: Countrywide Slum Mapping Campaign*, WORLDFOCUS (Feb. 25, 2010), <http://worldfocus.org/blog/2010/02/25/india-launches-countrywide-slum-mapping-campaign/9849/>.

are no prospects of getting a better life, [selling a kidney]. . . is rather an act of despair, not an autonomous decision.”¹⁴⁶ The poor face moral dilemmas that would test the ethics of any human being. Orley de Santana a young laborer from Brazil commented that “[i]n order not to have to steal or kill, I thought it better to sell my kidney.”¹⁴⁷ Arthur Caplan, Director of the Centre for Bioethics at the University of Pennsylvania concluded that the “shortage of human organs and [the prevalence of] poverty meet to create markets.”¹⁴⁸ Dr. M.K. Mani, an Indian specialist and pioneer in kidney transplantation, deemed the situation exploitative and “reprehensible for anyone, most of all medical practitioners, to take part in it.”¹⁴⁹

Economic inequity on a global scale may have manifested itself dramatically during the colonial era but such basic difference in the enjoyment of the gifts of the earth has continued to this day. Anup Shah explained that 20 percent of the world’s wealthiest people accounted for 76.6 percent of consumption while the poorest fifth of population used only 1.5 percent.¹⁵⁰ As of 2005, there were approximately 1.4 billion people living lives of extreme poverty.¹⁵¹ The picture is not entirely bleak. There have been improvements in areas such as disease control, education, and the provision of clean water. However, as the United Nations admits, progress has been uneven.¹⁵² This research demonstrates very clearly that there is a compelling need for the entire world to unite on the premise “that poverty reduction and

146. Sonja Eggerickx, *But the Logic is Not Always Rights*, INTERNATIONAL HUMANIST AND ETHICAL UNION (June 21, 2006, 1:26 PM), <http://www.iheu.org/nofe/2279>.

147. Larry Rohter, *The Organ Trade: A Global Black Market; Tracking the Sale of a Kidney On a Path of Poverty and Hope*, N.Y. TIMES, May 23, 2004, <http://www.nytimes.com/2004/05/23/world/organ-trade-global-black-market-tracking-sale>.

148. Thalif Deen, *Study Shines Light on ‘Transplant Tourism’ and the Trafficking of Human Organs*, NEW JERSEY NEWS ROOM (Oct. 12, 2009, 8:06 PM), <http://www.newjerseynewsroom.com/healthquest/study-shines-light-on-transplant-tourism-and-the-trafficking-of-human-organs>.

149. Parvathi Menon et al., *Kidneys Still For Sale*, FRONTLINE, Dec. 13-26, 1997, available at <http://www.frontlineonnet.com/fl1425/14250640.htm>.

150. Shah, *Poverty Facts and Stats*, *supra* note 143.

151. UNITED NATIONS, *supra* note 139, at 6.

152. *Id.*

environmental conservation are not opposing goals and that they are, in fact, totally dependent on each other.”¹⁵³ It is also apparent that in poor countries, environmental wealth forms an important part of total wealth.¹⁵⁴ Environmental assets and resources used in a profligate and wasteful manner depreciate and disappear and such exploitation of natural wealth places the poor at greater risk of falling into destitution. One has only to look at the way fisheries have declined across the world to appreciate this argument.

While colonialism may have operated to link disparate peoples and cultures into some form of political community, albeit artificially, the new nationalism that emerged during the post-1945 era of decolonization in some countries brought with it freedom but also civil war, dictatorship, corrupt governments and social turmoil. The ‘us against them’ mindset separated communities, neighborhoods, villages and districts. The colonial powers had utilized the concept of divide and rule to ensure their own supremacy in the colonies. However, the awareness they imparted to separate the various categories of people persisted after independence and resulted in unimaginable brutality, even bestiality. This history of the twentieth century is riddled with the wars generated by the demise of colonialism and the incessant struggles for power between peoples who identified themselves by ethnicity, religion and tribe. The Congo, Algeria, Ethiopia, Somalia, Vietnam, Cambodia, Laos, Palestine, Guatemala, the list goes on, each country by its very name evoking a violent past that has brought misery and death to thousands of its citizens. So for millions of Africans and Asians and Latin Americans, the new nationalism often came with internecine conflict, conflict that destroyed ancient economic structures and increased poverty and destitution. In the process, unstable governments, tin-pot dictatorships and military junta

153. Elspeth Halverson & Charles I. McNeill, *Advancing a New Paradigm: Institutional and Policy Breakthroughs Toward Poverty Reduction and Sound Environmental Management*, in *THE ROLE OF THE ENV'T IN POVERTY ALLEVIATION* 3, 3 (Paolo Galizzi & Alena Herklotz eds., 2008).

154. David Pearce, *Managing Environmental Wealth for Poverty Reduction*, in *THE ROLE OF THE ENV'T IN POVERTY ALLEVIATION* 30, 34 (Paolo Galizzi & Alena Herklotz eds., 2008).

rulers were hardly likely to pay attention to a deteriorating environment. While corruption brought huge wealth to a few at the top – especially in African countries like Uganda under Idi Amin – it resulted in the impoverishment of the majority of the population.

The degradation of the environment has been both a cause and a consequence of political upheaval manifested in well over a hundred wars, both civil and international, fought since 1945, along with a significant number of revolts, revolutions, coups and terrorist attacks. An unwillingness to tolerate gross economic injustice, a seething rage against corrupt governments, venal legal structures, oppressive police and law enforcement have induced young men and women in a number of countries to join groups that operate to terrorize the power structures of many states in the developing world. The resulting military encounters generate huge refugee flows as civilians, specifically targeted in the wars now prevailing, flee to any safety they can find. The United Nations has estimated that as of 2009 over 42 million people have been uprooted from their homes because of conflict or persecution.¹⁵⁵ Four-fifths of these displaced persons were from developing countries.¹⁵⁶

Military operations inevitably degrade the environment, peasants, forced out of their land and their homes, face even greater poverty and misery. The land, now neglected cannot provide a living and people, repressed both by their governments and by revolutionary organizations and terrorist groups, have few alternatives but to sink further into abject poverty and destitution. As Leif Ohlsson has commented, “the common denominator for many, if not most, of the internal wars and conflict plaguing Africa, South Asia and Latin America. . . is poverty as a result of loss of livelihoods. . . often caused or exacerbated by environmental degradation.”¹⁵⁷

155. UNITED NATIONS, *supra* note 139, at 4.

156. *Id.*

157. LEIF OHLSSON, SWEDISH INTERNATIONAL DEVELOPMENT AGENCY (SIDA), LIVELIHOOD CONFLICTS: LINKING POVERTY AND ENVIRONMENT AS CAUSES OF CONFLICT 1 (2000), *available at* http://waterwiki.net/images/6/68/Livelihood_conflicts_linking_poverty_and_environment_as_causes_of_conflict.pdf.

It would be simplistic to suggest that the poor cause massive amounts of environmental degradation. The United Nations has articulated this issue succinctly: "The most severe impact of climate change is being felt by vulnerable populations who have contributed least to the problem."¹⁵⁸ In mining, logging, fishing and biodiversity,¹⁵⁹ the poor are often preyed upon by wealthier corporate interests whose agendas are short term, namely profit for the stockholders more so than long-term plans of environmental sustainability. While one should not generalize, and there are corporate 'good citizens,' the environmentally damaged areas caused by large business ventures, litter the landscape of this planet and exist in every continent.

Kenneth Chomitz in an insightful article has stated that his research demonstrates "that the poor do not initially or indirectly degrade the environment."¹⁶⁰ The poorest of the world's people are to be found in rural areas and the source of their livelihood is ironically, also the factor that increases their vulnerability. Jeffrey Sachs explained this eloquently:

Most are farmers, and most collect their own drinking water, fuel wood and building materials for sustenance and survival. If their environment fails – through drought, land degradation, over-exploitation of forests and fisheries, poisoning of streams and water supplies, destruction of biodiversity, or the spread of diseases like malaria- hunger and illness are direct consequences. Sustainable environmental practices, therefore, are vital for sustainable livelihoods, physical well-being and even survival.¹⁶¹

It has to be remembered as well that in many developing countries, the poor are consigned to living on the worst land, near

158. UNITED NATIONS, *supra* note 139, at 4.

159. See generally Jeffrey Sachs, *Does Conservation Matter to the Poor?*, NATURE CONSERVANCY MAG., Summer 2006, available at <http://www.nature.org/magazine/summer2006/features/art17768.html>.

160. KENNETH M. CHOMITZ, ENVIRONMENT-POVERTY CONNECTIONS IN TROPICAL DEFORESTATION 3 (1999), available at <http://siteresources.worldbank.org/INTPOVERTY/Resources/WDR/stiglitz/Chomitz.pdf> (prepared for the World Bank Development Research Group Workshop, July 7, 1999).

161. Sachs, *supra* note 159.

the most polluted waterways, often in mud huts or fragile shelters that collapse when storms or hurricanes or typhoons occur. Because they have little or no asset capital, and are rarely perceived as valuable clients by banks, they cannot often move to better more fertile land and plan long-term for financial betterment. Their one escape is to go to cities and populate ever-expanding slums where their lives are equally lived on the periphery. To be poor is to consider life a challenge for daily survival, a struggle to acquire enough food and some water to feed oneself and the family. The World Bank, studying the characteristics of poverty in this era, explained the fragility of limited resources, poorly defined property rights, limited access to credit sources, the struggle at “the edge of subsistence” and the preoccupation with “day to day survival.”¹⁶²

Although there can be little doubt that poverty and environmental destruction are economically linked, there has been extensive academic debate¹⁶³ about the root causes of both these phenomena that generate so much havoc both within nations and globally as well. For many developing nations, there is a constant threat of a “downward spiral in which environmental degradation worsens poverty and in which deepening poverty accelerates environmental degradation.”¹⁶⁴ While this subject is of compelling interest, given the length constraints of this article, it cannot be addressed in detail. Suffice it to say that much research on the nexus and on the myriad consequences of this matter will need to be undertaken to provide further insight into possible solutions. I tend to agree with the conclusion of David Rogers of Oxford University, Thomas Emwanu of the Uganda Bureau of Statistics and Tim Robinson of the Food and Agriculture Organization to the effect that the “environmental approach is more likely to identify the

162. SOHAIL JEHangIR MALIK, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, RURAL POVERTY AND LAND DEGRADATION: A REALITY CHECK FOR THE CGIAR n. 50 (Aug. 1998), <http://www.fao.org/wairdocs/tac/x5784e/x5784e0g.htm#2.%20poverty%20and%20land%20degradation>.

163. See CHOMITZ, *supra* note 160, at 2.

164. Sachs, *supra* note 159.

causes of poverty,” and facilitate “[a]ppropriate targeted intervention.”¹⁶⁵

The process known as environment mainstreaming “aims to integrate the linkages between the environment and poverty reduction into government processes and institutions, thereby changing the very nature of its decision-making culture and practices.”¹⁶⁶ The agenda is to collect country-specific evidence, as for instance on the impact of climate change; exert influence on public policy, engage stakeholders and utilize their expertise; develop specific policies which are geared to poverty-environment linkages and strengthen relevant institutions through capacity-building, training and research initiatives. Monitoring progress in implementation is also important.¹⁶⁷

In an article of this length, it has only been possible to highlight some of the more egregious aspects of the problem of poverty, sketch the environmental connection, hopefully to explain a cause/consequence scenario and emphasize that the problem afflicts a very large proportion of the world’s population. Despite some progress in poverty reduction in earlier years, because of the economic downturn of 2008, the World Bank has estimated that the ongoing crisis left about 50 million more people in extreme poverty in 2009 and a projected 64 million in 2010.¹⁶⁸ There can be little doubt about the gravity of this crisis and about its environmental impact. Organ trafficking is one manifestation of exploitation of human beings, particularly when humans are enslaved for the removal of their organs. The victims of such exploitation are invariably those who are condemned to a harsh living environment, “mostly characterized by poverty.”¹⁶⁹

165. DAVID ROGERS ET AL., POVERTY MAPPING IN UGANDA USING SOCIO-ECONOMIC ENVIRONMENTAL AND SATELLITE DATA 1 (2006), www.fao.org/ag/pplpi.html.

166. UNDP-UNEP POVERTY-ENVIRONMENT INITIATIVE, MAINSTREAMING POVERTY-ENVIRONMENT LINKAGES INTO DEVELOPMENT PLANNING: A HANDBOOK FOR PRACTITIONERS ix (2009).

167. *Id.* at 2.

168. UNITED NATIONS, THE MILLENNIUM DEVELOPMENT GOALS REPORT 7 (2010), available at <http://www.un.org/millenniumgoals/pdf/MDG%20Report%202010%20En%20r15%20-low%20res%2020100615%20-.pdf>.

169. ELAINE PEARSON, COERCION IN THE KIDNEY TRADE?: A BACKGROUND STUDY ON TRAFFICKING IN HUMAN ORGANS WORLDWIDE 3 (2004), available at <http://www.gtz.de/de/dokumente/en-svbf-organ-trafficking-e.pdf>.

As hunger and despair increase, it is more than likely that the exploitation of the poor and the scope of the crime of body parts trafficking will escalate. It has been suggested that dealing with this problem of organ trafficking in its many manifestations will require addressing the root cause, namely poverty,¹⁷⁰ and one could add that alleviation of the environment is one way that poverty can be reduced.

While there is some debate as to whether or not it is legitimate for the poor to sell their organs for the benefit of the rich – those in favor arguing that it is an exercise in free enterprise of the most basic type – the argument articulated in this article is that it is an egregious violation of human rights for the poor to have no alternatives but to sell their organs. As Dr. Lawrence Cohen of the University of California, Berkeley, concluded, such sales of body parts are “the wages of poverty.”¹⁷¹ The vulnerability of such groups in resource-poor countries was underscored by Dr. Francis Delmonico, Professor of Surgery at Harvard Medical School, who commented that “the poor who sell their organs are being exploited, whether by richer people within their own countries or by transplant tourists from abroad.”¹⁷²

The nexus between poverty and environment demonstrates clearly that the sale of an organ is an act of desperation, one to which a person is only driven in dire circumstances. As Arthur Caplan suggests, “[w]atching your child go hungry while you lack a job and a wealthy person waves a wad of bills in your face is not exactly a scenario that inspires confidence in the fairness of a market for body parts. Talk of individual rights and autonomy is

170. Ana Lita, *Intersecting Human Rights Crises: Organ Transplantation and Organ Trafficking*, INT’L HUMANIST & ETHICAL UNION (Feb. 1, 2008), <http://www.iheu.org/node/2865>.

171. Press Release, University of California Berkeley, An ‘Organs Watch’ to Track Global Traffic in Human Organs (Nov. 3, 1999) *available at* <http://berkeley.edu/news/media/releases/99legacy/11-03-1999b.html>.

172. *Declaration Opposes Transplant Commercialism, Transplant Tourism and Organ Trafficking*, SCIENCE DAILY (Aug 15, 2008), <http://www.sciencedaily.com/releases/2008/08/080813183552.htm>.

hollow if those with no options must choose to sell their organs to purchase life's necessities."¹⁷³

Absent some dramatic solution that will increase the availability of human organs or provide effective substitutes, The Lancet suggested "there will always be desperate people willing to do anything to receive a kidney or other body parts, and those living in abject poverty who are desperate enough to risk being donors."¹⁷⁴ It is now increasingly being recognized that the poor who are forced to participate in such sales are the victims of serious abuses of their human rights. Dr. M.K. Mani of India explained: "The very idea dehumanizes the donor, and turns him into a biological machine."¹⁷⁵ Dr. Sunil Shroff of the Multi Organ Harvesting Aid Network in India commented on the prolific trafficking in kidneys, stating that the "problem in the kidney trade is poverty."¹⁷⁶ With a nod to the world's past, the crime of organ trafficking that robs the poor to help the rich has been referred to as a form of "biological colonialism."¹⁷⁷ The inequity involved in the exploitation of the poor for the benefit of the wealth has also been termed a form of "medical apartheid."¹⁷⁸ It is grounded in "suffocating poverty" that makes the poor an "easy prey: and "vulnerable to all kinds of exploitation."¹⁷⁹

The nexus between environmental destruction and poverty that impelled desperate measures became apparent shortly after the terrible Tsunami of 2004 that devastated so much of Asia and

173. Arthur L. Caplan, *Organ Transplantation: The Challenge of Scarcity*, in THE PENN CENTER GUIDE TO BIOETHICS 680, 680 (Vardit Ravitsky et al. eds., 2009).

174. *Dramatic Increase in Legal Supply of Organs Needed To Stop Trafficking*, MEDICALNEWSTODAY (June 8, 2007, 1:00 PM), <http://www.medicalnewstoday.com/articles/73474.php>.

175. Menon et al., *supra* note 149.

176. Sonya Fatah, *Dire Poverty Fuels India's Lucrative Trade in Kidneys*, THE STAR (Feb. 25, 2008), <http://www.thestar.com/printarticle/306576>.

177. Alanna Shaikh, *Organ Trafficking is Big Business*, UN DISPATCH: GLOBAL NEWS & VIEWS (Sept. 2, 2009), <http://www.undispatch.com/node/8839>.

178. Ana Lita, *Organ Trafficking Poses Global Challenges*, AMERICAN HUMANIST ASSOCIATION (Sept. 12, 2007), <http://americanhumanist.org/hnn/archives/index.php?id=314&article=5>.

179. Jason Overdorf, *Stolen Kidneys*, NEWSWEEK, Feb. 1, 2008, <http://www.newsweek.com/2008/01/31/stolen-kidneys.html>.

killed over 273,000 people.¹⁸⁰ The victims of this natural disaster in India were preyed upon by kidney brokers who persuaded them to sell a kidney and acquire enough cash to survive the havoc they had just endured. Because public relief programs were slow to arrive, the poor had no choice but to sell their only remaining asset, an organ. Organ facilitators specifically targeted their activities at camps set up for survivors, as in the camp named Tsunami Nagar. The donors were mainly young women and the recipients often older, wealthier men.¹⁸¹ “[T]he commodified kidney has become the poor man’s and woman’s ultimate collateral against debt and penury in many parts of the world.”¹⁸²

A related facet of this sordid abuse of the poor concerns their own health and access to health care. The poor are the least likely to be able to utilize medical facilities nor can they afford medicines or expensive surgical procedures. Hence, their health is precarious at best in most countries of the world that do not have the benefit of good universal health care. The pillaging of the organs of the poor therefore seriously imperils their lives. In India, many of those who sold their kidneys experienced serious health consequences because of a lack of post-operative care. Hospitals that quickly removed their organs were often callous about their recovery and shunted them out as fast as possible once they had served their purpose. On occasion, the donor became so ill that he/she could no longer work and instead of overcoming poverty, the act of donation actually plunged the entire family further into poverty.

Physicians have also wondered about the state and condition of organs donated by poor people who have spent lives deprived of adequate food and nourishment and have been

180. *Death Toll in Asian Tsunami Disaster at 273,000*, CHINADAILY (Mar. 5, 2005, 3:34 PM), http://www.chinadaily.com.cn/english/doc/200503/05/content_422102.htm.

181. Thomas Schmitt, *A Pound of Flesh: Organ Trade Thrives in Indian Slums*, SPIEGEL ONLINE INTERNATIONAL (June 14, 2007), <http://www.spiegel.de/international/world/0,1518,488281,00.html>.

182. Nancy Scheper-Hughes, *Rotten Trade: Millennial Capitalism, Human Values and Global Justice in Organs Trafficking*, in HUMAN RIGHTS: AN ANTHROPOLOGICAL READER 167, 169 (Mark Goodale ed., Wiley-Blackwell 2009).

exposed to diseases that could imperil the lives of recipients whose already weakened condition leaves them with no defenses.

It is imperative that the world move towards recognition of the fact that poverty, especially egregious extreme poverty, is an environmental catastrophe and a public health crisis. Poverty needs to be perceived not just as a cause or a consequence of environmental and health issues but as the main foundation of much of what ails our world. If mankind can provide the poor of the world with the necessities of life, food, clean water, clean air, dignified work, a home and opportunities to educate their children, they would be in a position to contribute meaningfully to society. Each day that the poor wallow in misery and starvation, the world loses, because their potential is unfulfilled and we all impoverished as a result. Organ trafficking, slavery, child labor, these are all manifestations of serious exploitation of human beings by other human beings. Though we may not directly be the exploiters, until we strive to eradicate these injustices and rights violations, we must also share in the responsibility.

THE SCOPE OF ORGAN TRAFFICKING

"The buying and selling of human organs for transplantation purposes is a criminal offence in nearly all countries."¹⁸³ One exception is Iran, where the Government through the Ministry of Health, regulates and controls a system of what is termed "compensated giving."¹⁸⁴ In Iran, much of the facilitation work is undertaken by government-regulated non-governmental organizations such as the Charity Association for Support of Kidney Patients. It has been alleged that the system of regulation favors the recipient at the expense of the seller, and is therefore no different from unregulated systems in other nations.¹⁸⁵ However, proponents of the sale of kidneys point to the fact that by instituting a form of payment, Iran eliminated its

183. STEPHEN WILKINSON, *BODIES FOR SALE: ETHICS AND EXPLOITATION IN THE HUMAN BODY TRADE* 104 (Routledge 2003).

184. Scheper-Hughes, *supra* note 182, at 190.

185. PEARSON, *supra* note 169, at 18.

waiting list for kidneys.¹⁸⁶ The Iranian regulated system has not fared well from the donor's perspective. Kidney sellers from Iran – as from all other countries that have been studied – experienced not just health problems but economic hardship, unemployment and a poorer standard of living.¹⁸⁷ A significant number suffered from post-operative depression, social alienation and a higher than normal divorce rate.¹⁸⁸ Post-operative studies of Iranian donors were conducted in 2001 by Dr. J. Zargooshi, who found that 76 percent of donors/sellers would ban kidney sales, and if given another opportunity, would rather beg or borrow money than go through that process. Zargooshi concluded that the crux of the issue was due to the root cause – poverty. He favored an altruistic donation system but proposed that if a commercialized system had to exist, it ought to be conducted by an impartial international organization with organs given on the basis of need.¹⁸⁹ As the only country that regulates live donor sales, Iran might have provided some guidelines for those who advocate regulation rather than prohibition. However, the Iranian system has been accused of lacking transparency and medical accountability. There is no medical registry of paid donors and no documented record of post-operative care for donors. Most important, there is no mandatory recording procedure for mishaps, so it has been suggested that in Iran, illegal trafficking, far from being eradicated, has simply become official government policy.¹⁹⁰

In most countries, because it is an outlawed clandestine criminal activity, it is difficult to assess the scope and extent of

186. James Stacey Taylor, *Why Markets in Non-Vital Human Transplant Organs Should be Legalized*, INT'L HUMANIST & ETHICAL UNION (June 2, 2006, 1:29 PM), <http://www.iheu.org/node/2280>.

187. See ALEXIS A. ARONOWITZ, *HUMAN TRAFFICKING, HUMAN MISERY: THE GLOBAL TRADE IN HUMAN BEINGS* 119 (Praeger 2009).

188. Dr. Debra Budiani-Saberi & Deborah M. Golden, *Advancing Organ Donation Without Commercialization: Maintaining the Integrity of the National Organ Transplant Act*, AMER. CONST. SOC'Y FOR L. & POL'Y, June 2009, at 11.

189. Javaad Zargooshi, *Quality of Life of Iranian Kidney 'Donors'*, J. UROLOGY, Nov. 2001, at 1790.

190. ARONOWITZ, *supra* note 187, at 121.

organ trafficking.¹⁹¹ In 2006, the United Nations found that it was impossible to estimate the scope of organ trafficking, as the subject had not been closely scrutinized by Member States.¹⁹²

Tsuyoshi Awaya, a Japanese sociologist has called transplant surgery a type of “neo-cannibalism.”¹⁹³ Dr. Nancy Scheper-Hughes, Professor of Anthropology at the University of California, Berkeley, has been at the forefront of research and expose of various nefarious practices associated with organ trafficking. As one of the founders and most prominent members of Organs Watch – an organization that brings modern tools of investigation and documentation to this subject – Scheper-Hughes has identified the global nature of the market involved, and the degree of abuse of innocent victims. She has drawn global attention to the fact that “trading in human organs has developed along class, gender and racial lines, with organs flowing from the poor to the rich, from women to men and from brown – and black-skinned to white-skinned peoples.”¹⁹⁴ She has also revealed the “exploitation of prisoners, the mentally ill and the homeless.”¹⁹⁵

There can be little doubt that organ trafficking, like human trafficking, the narcotics trade and other criminal enterprises flourishes in a globalized economic system where notions of national sovereignty appear outdated and are belied by the fast pace and transport of goods, services and money from one country to the next. The big business of organ trafficking exploits “two very different sets of needs – for money and for life itself – at opposite ends of a tangled chain thousands of miles long.”¹⁹⁶ It

191. See Debra A. Budiani-Saberi, *Organ Trafficking and Transplant Tourism*, in THE PENN CENTER GUIDE TO BIOETHICS 700, 701 (Vardit Ravitsky et al. eds., 2009).

192. ARONOWITZ, *supra* note 187, at 110.

193. Nancy Scheper-Hughes, *Min(d)ing the Body: On the Trail of Organ-Stealing Rumors*, in EXOTIC NO MORE: ANTHROPOLOGY ON THE FRONT LINES 49, 49 (Jeremy MacClancy, ed., 2002).

194. Press Release, University of California Berkeley, *supra* note 171.

195. Lita, *Organ Trafficking Poses Global Challenges*, *supra* note 178.

196. Larry Rohter, *The Organ Trade: A Global Black Market; Tracking the Sale of a Kidney On a Path of Poverty and Hope*, N.Y. TIMES, May 23, 2004, <http://www.nytimes.com/2004/05/23/world/organ-trade-global-black-market-tracking-sale>.

has been suggested that both donor and recipient are victims: “the buyer is a victim of morbidity and declining social solidarity, while the seller is a victim of poverty and other forms of financial distress.”¹⁹⁷ Dr. Francis Delmonico, Professor of Surgery at Harvard Medical School, commented that the increasing use of the internet and the willingness of patients to travel have made organ trafficking and transplant tourism into global problems.¹⁹⁸

It is important to note that organ trafficking “is all about money, not patients.”¹⁹⁹ This grim reality underscores the priorities of the criminals involved and explains precisely why the business has gone global. Like many international operations, organ trafficking has continuously to keep ahead of the imperatives of supply and demand. The search for supply from the cheapest source and sale to markets in the wealthiest areas dominates the tactics, range and scope of this trade. It has also to be remembered that while accurate data are still not available on a universal basis, it is possible to discern a fairly clear picture across the globe about the operation and extent of this trade.

Ambivalence exists and persists on many levels throughout the subject of organ transplantation. The extensive research for this article has demonstrated not merely the diversity of opinion but the divergence in viewpoint about the foundational principles of life and death on this planet. The traffickers, by jumping in to fill a gap between supply and demand have forced us to re-examine the basic moral values that govern most societies on this planet. While there is no disagreement about the illegality and the criminality of the actions of the traffickers, the ambivalence and the huge moral grey area arise when we consider the needs and priorities and responsibilities of all those who are not professional criminals, the poor donors, the sick recipients, and the doctors and nurses, struggling between their imperative to cure a patient without endangering another innocent life. Ultimately, as Clair Andre and Manuel Velasquez have suggested: “We will have to choose between two sets of moral

197. Miran Epstein, *The Organ Crisis*, PROJECT SYNDICATE (Mar. 26, 2010), <http://www.project-syndicate.org/commentary/mepstein1/English>.

198. *Declaration Opposes Transplant Commercialism, Transplant Tourism and Organ Trafficking*, *supra* note 172.

199. MICHAEL A. BOS, AN UPDATE ON GLOBAL ORGAN TRAFFICKING 6 (2008).

values: the value we place on preventing death and alleviating suffering, and the value we place on respect for human dignity and our commitment to meeting human needs in a fair and equitable manner.”²⁰⁰

Scholars have also demonstrated quite clearly that unrelated donors, including poverty-stricken donors, suffer from serious medical and psychological consequences throughout their lives. It is interesting to note that in Iran, where the process is somewhat regulated, paid donors displayed “seething hatred for the doctors and the recipients of their organs,” along with feelings of social isolation, stigma and resentment.²⁰¹ This Iranian reaction is evident across the world. This proves that the human cost is very high in terms of ruined lives.

With a caveat that there are no firm statistics on what is after all a clandestine transnational criminal activity, there is still enough information – much of it anecdotal – dramatically to demonstrate both the widespread prevalence of this operation and the international scope of those who profit by it. Because of the illicit nature of organ trafficking, information about this enterprise is sketchy, often unclear and not easily quantifiable. Where the media is free as in a democracy like India, there are numerous articles and news reports detailing individual scandals, perpetrators and often the names of the hapless donors. Where there is no effective freedom of the press, as in China, the situation becomes much more murky and complex. It is quite difficult to glean objective truth from the welter of hearsay, gossip and rumor that abound in any descriptions of this matter. Analysis of China was for years founded on two competing perspectives, the complaints of dissidents and human rights activists and the angry defensive denials of the Chinese Government.

On the basis of available information, we do know that for years India and China were regarded as prime organ exporting countries because at a relatively inexpensive price, they provided good quality medical care for recipients and most important of all,

200. Clair Andre & Manuel Velasquez, *Kidneys For Sale*, ISSUES IN ETHICS (Santa Clara Univ. Center for Applied Ethics, Santa Clara, CA), Winter 1988., <http://www.scu.edu/ethics/publications/ie/v1n2/kidneys.html>.

201. Scheper-Hughes, *supra* note 182, at 190.

quick access to “fresh” organs. Patients from outside who could afford to pay could be assured of limited wait times and generally well qualified medical teams in both countries. The ultimate impact of prohibitory legislation in India and China has yet to be assessed. The prevalence in both nations of an active underground black market in organs precludes any firm conclusions at this early stage.

Surgeons in the Gulf States are thought to have been among the first to publicize the prevalence of organ trafficking in Asia. Their concerns arose during the later 1980’s as a consequence of seeing their patients, recipients of organs – particularly kidneys from indigent sellers in India. Soon after, the kidney trade spread to South-East Asia and Turkey, while China and Taiwan exploited their unique advantage, the availability of an almost limitless resource of fresh organs from executed prisoners. Taiwan, bowing to international repugnance, abandoned the practice. China did not.

As the Soviet Union and its satellite states imploded, economic deprivation turned that entire region into a source for organs. Organized crime in those transitional states soon acquired a vested interest in the organ trade and added it to a list of lucrative crimes that included prostitution, human trafficking, child slavery, drugs, arms and international adoption.²⁰² Trevor Harrison noted the proliferation in the early 1990’s of organized corporate ventures, “extraction companies. . .formed in Turkey, the former Yugoslavia, Russia, and several parts of the developing world for the export of organs to such places as Germany, Italy, France, and Cuba.” Continuing, Harrison stated that “[i]n 1990 alone. . .a Moscow ‘company’. . .exported to two German partners 18,718 thymus glands, 1,172 eyeballs, 3,187 testicles, and over 700 hearts, kidneys, and lungs.”²⁰³

Yosuke Shimazono, writing for the World Health Organization, assessed the international scope of organ

202. Nancy Scheper-Hughes, *Bodies For Sale-Whole or in Parts*, in *COMMODIFYING BODIES* 1, 44 (Nancy Scheper-Hughes & Loic Wacquant eds., 2002).

203. Trevor W. Harrison, *Frontiers of the Market: Commodifying Human Body Parts*, in *NOT FOR SALE, DECOMMODIFYING PUBLIC LIFE* 111, 121 (Gordon Laxer & Dennis Soron eds., 2006).

trafficking and included mention of India, China, Pakistan, the Philippines, Bolivia, Brazil, Colombia, Iraq, Israel, the Republic of Moldova, South Africa, Peru and Turkey as engaging in this lurid commerce. Countries that generated organ recipients and/or transplant tourists included the United States, United Kingdom, Australia, Canada, Israel, Japan, Oman, and Saudi Arabia.²⁰⁴ In a comprehensive chart relating to kidney trading, Alexis Aronowitz listed the sellers' countries as Bolivia, Brazil, China, Colombia, Egypt, India, Iran, Iraq, Israel, Moldova, Nigeria, Pakistan, Peru Philippines, Romania and Turkey. Buyers of kidneys originated from Australia, Canada, Hong Kong, Israel, Italy, Japan, Malaysia, Oman, Saudi Arabia, South Korea, Taiwan, and the United States of America.²⁰⁵ It is clear from the lists of countries that the donor/sellers inhabit the poor countries while the recipients come from the rich nations. So prevalent is the business that in some parts of rural India, most members of a village have only one kidney. Business was so lucrative that 'one-kidney' shantytowns sprang up in the Philippines and Thailand to cater to potential recipients from North America, Saudi Arabia and Japan.²⁰⁶ It is important to note that exploitation of living donors constitutes just one facet of this criminal enterprise. There have also been gruesome allegations made about the disrespectful treatment of corpses.²⁰⁷ There is a considerable body of literature that exposes the wholesale expropriation of the bodies of deceased persons without the consent of family members. These acts of disrespect for the dead demonstrate the extent of greed and corruption that prevails in this criminal enterprise.

It has rightly been said that the "marketplace for transplant organs is one that spans continents. . .as well as social

204. See Yosuke Shimazono, *The State of the International Organ Trade: A Provisional Picture Based on Integration of Available Information*, 85 BULL. OF THE WHO 955, 957 (2007).

205. ARONOWITZ, *supra* note 187, at 111.

206. Scheper-Hughes, *supra* note 182, at 169.

207. See ANNIE CHENEY, *BODY BROKERS: INSIDE AMERICA'S UNDERGROUND TRADE IN HUMAN REMAINS* 1 (Broadway Books 2006).

classes.”²⁰⁸ It is important to emphasize that organ trafficking is a crime that takes advantage of the most lucrative markets, the most cheaply obtained resources and the most corrupt medical enterprises. As such, the locales vary and the methods utilized are flexible enough to adjust to various situations. The tendency for traffickers to adapt to various methods and locations makes curtailment of the crime difficult for national legal systems and problematic when barriers of national sovereignty and ensuing bureaucratic process become involved. National sovereignty has long been regarded as a major hindrance to the eradication of transnational crime. That is one reason why, as we shall see later in this article, there have been suggestions put forward for the creation of a United Nations Convention against Organ Trafficking.

TRANSPLANT TOURISM

One of the major complaints frequently articulated against organ trafficking highlights the inequity of the process whereby well-off people, mainly from the developed world, including Israel, are financially able to bypass long waiting lists at home and travel to hospitals and clinics in the developing world, specifically countries like India and China, take advantage at relatively inexpensive rates of local medical facilities, and acquire a transplanted local organ, gain a new lease on life, and not enquire too deeply into the source of their new organ, or the extent of human suffering that might have taken place prior to the medical procedure. While the recipient receives the best of follow-up care and medication, there is plenty of anecdotal evidence that the donors, especially those who have been forced to sell their organs, are rarely cared for and usually wind up with serious illness consequent to the surgery, and sometimes death.

The modus operandi of this clandestine trafficking varies. On occasion the recipient travels to the country where the donor lives for the operation. Alternatively, donors are flown, sometimes, as victims of human trafficking rings, and taken to

208. Becca Milfield, *Doctor: No Organs in the Marketplace*, MEDILL REPORTS (Feb. 26, 2008), <http://news.medill.northwestern.edu/chicago/news.aspx?id=79435&print=1>.

third countries where there are surgeons willing to extract and implant organs for a lucrative fee. There are also cases where national legislation prohibiting such practices makes the wily and cautious traffickers move their activities to a more hospitable third country and that location becomes the venue for both the donor and the recipient to undergo their operations.

It is important to distinguish between the phrases 'travel for transplantation,' which is now allowable in certain situations, and 'transplant tourism' which refers to travel either for the potential donor or recipient, when organ trafficking is involved. The phrase usually refers to trans-national travelers whose greater wealth and ability to acquire organs abroad enables them to bypass lengthy wait lists in their own countries and undermine the host nation's ability to provide transplantation services and organs for their own populations.²⁰⁹ Nancy Scheper-Hughes wrote in trenchant prose: "The ideal conditions of an 'open' market economy have . . . put into circulation mortally sick bodies traveling in one direction and 'healthy' organs (encased in their human packages) in another direction, creating a bizarre 'kula ring' of international body trade."²¹⁰ Turkey has often been cited as the hub for transplant tourism, a venue for traffickers, recipients and donors to conduct their business. Organized crime controls a significant portion of this illicit venture.²¹¹ In recent years, South Africa has emerged as one more hub in organ trafficking and transplant tourism.²¹² Such transplant tourism and transplant commercialism are two facets of the same illicit activity. "The commodified kidney," is, as Scheper-Hughes asserts, the "primary currency in transplant tourism; it represents the gold standard of organ sales worldwide."²¹³

The 2008 Vienna Forum to Fight Human Trafficking concluded that:

209. *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, 3 CLINICAL J. AM. SOC'Y. NEPHROLOGY 1227, 1228 (2008), available at <http://www.asn-online.org/press/pdf/2008-Media/Declaration%20of%20Istanbul%20Study.pdf>.

210. Scheper-Hughes, *supra* note 182, at 167-68.

211. ARONOWITZ, *supra* note 187, at 113.

212. *Id.* at 114.

213. Scheper-Hughes, *supra* note 182, at 168.

Transplant tourism depends on four populations: desperate patients willing to travel great distances and face considerable insecurity to obtain the transplants they need; equally desperate and mobile organ sellers; outlaw surgeons willing to break the law or ignore regulations and longstanding medical norms; and organ brokers and other intermediaries with established connections to the key players in the shadowy underworld of transplant tourism.²¹⁴

A significant number of people are involved in making a living and/or profitable sideline from transplant tourism. Others perform introductions between broker and buyer in order to help a friend. These facilitating third parties include: "individual brokers, agencies, hospitals or transplant centres, patients' networks, doctors, embassies or transplant tourism websites on the internet."²¹⁵

Despite the clandestine nature of much of this criminal enterprise and the determined efforts of colluding physicians and hospitals to cover-up their role, media reports of numerous individual cases across the world display a similarly grim consequence. All too often, while the health and well being of the recipient are enhanced, the opposite seems to be occurring with the donor. By one estimate, about 86 percent of Indian kidney donors were in poor medical health as a result of the procedure.²¹⁶

The economic crisis that has affected the developed world over the past few years has resulted in the diminution and loss of health insurance benefits for many. In the current economic climate, many Americans simply cannot afford any form of health care and the international option is the only affordable

214. Vienna Forum to Fight Human Trafficking, Feb. 13-15, 2010, *Human Trafficking for the Removal of Organs and Body Parts*, U.N. Doc. GIFT B.P.: 011 (Feb. 13, 2008).

215. Yosuke Shimazono, *Global Situation: Mapping Transplant Tourism*, in SECOND GLOBAL CONSULTATION ON CRITICAL ISSUES IN HUMAN TRANSPLANTATION: TOWARDS A COMMON ATTITUDE TO TRANSPLANTATION 10, 11 (World Health Organization, Mar. 3, 2007), available at http://www.who.int/transplantation/publications/ReportGlobalTxConsultation_March_2007.pdf.

216. Madhav Goyal et al., *Economic and Health Consequences of Selling a Kidney in India*, 288 J. AM. MED. ASS'N., no. 2, 2002 at 1589.

alternative. An estimated 750,000 Americans traveled outside their country to receive medical treatment in 2007.²¹⁷

The globalized nature of this enterprise has spawned its own vocabulary. One phrase in particular, 'transplant tourism' evokes a host of largely negative, predatory images. The World Health Organization has accepted the following definition of transplant tourism: "Travel for transplantation when it involves organ trafficking and/or transplant commercialism or if the resources (organs, professionals and transplant centers) devoted to providing transplant to patients from outside a country undermine the country's ability to provide transplant services for its own population."²¹⁸ The implication of exploitation is clear from the wording of this universally accepted definition. The conclusion is that the arrival of numbers of transplant tourists deprives the local population of affordable transplant procedures and indeed of available organs. The numbers are quite staggering. An estimated fifteen million American transplant tourists could be traveling by 2017 in search of cosmetic and dental procedures, organ transplants, knee replacements and heart surgery to developing countries where high-quality health care with relatively lower costs²¹⁹ can provide an affordable and safe option. Whether or not American legislation to extend health care benefits more widely, will diminish this external alternative remains to be seen.

The divergent treatment accorded to donors and recipients has been noted by many journalists, scholars and other professionals interested in controlling, if not curbing these transactions. Organs Watch has noted that clinics in these developing nations "can resemble four-star hotels."²²⁰ All too often, the procedure includes both the hospital stay and a

217. Christina L. Madden, *Medical Tourism Causes Complications*, CARNEGIE COUNCIL: POLICY INNOVATIONS FOR A FAIRER GLOBALIZATION (Oct. 27, 2008), http://www.policyinnovations.org/ideas/briefings/data/000083/:pf_printable?.

218. WHO, GLOBAL GLOSSARY OF TERMS AND DEFINITIONS ON DONATION AND TRANSPLANTATION 14 (2009), <http://www.who.int/transplantation/activities/GlobalGlossaryonDonationTransplantation.pdf>.

219. Madden, *supra* note 217.

220. Samuel D. Uretsky, *Organ Trafficking*, MEDHUNTERS, <http://www.medhunters.com/articles/organTrafficking.html> (last visited Oct. 17, 2010).

convalescent vacation package, adding to the bizarre nature of this questionable practice.

Most authorities conclude that “[t]ransplant tourism seems to be increasing over time.”²²¹ Globalization and its facilitating of world interaction has clearly assisted the traffickers. Bruce Reed, Asian Representative of the International Organization for Migration, commented that “[d]ue to globalization, improved communications, more accessible travel and high technology, people are traveling like never before, substantially increasing the numbers of persons exposed to the influence of traffickers and criminal networks.”²²² The practice has been decried and condemned by healthcare organizations around the world. “These organizations cite serious concerns about clandestine international brokers, surreptitious payment, coercion of organ donors (and/or donor families) and substandard medical and surgical practices that may lead to lower success rates and higher risk for transmission of infectious disease.”²²³

It is important to note that as governments become aware of the prevalence of organ trafficking within their borders and pass legislation to curtail this crime, the whole business of transplant tourism shifts to another more lax, less legislated location. Desperate potential recipients are very adaptable and flexible and have the money to travel anywhere. Donors can literally be transported from one country to the next for the organ removal procedure. As Miran Epstein has stated: “The death of global transplant commercialism is far too early to pronounce.”²²⁴ Only complete universal coverage with strong legal prohibitions in every jurisdiction will curtail the commission of this crime that preys in so cruel a manner on human desperation. Until then,

221. Jagbir Gill et al., *Transplant Tourism in the United States: A Single-Center Experience*, 3 CLINICAL J. AM. SOC’Y. NEPHROLOGY 1820, 1827 (2008).

222. ‘Alarming’ Trade in Human Organ Trafficking, NEWSMAX WIRES (June 7, 2007), <http://archive.newsmax.com/archives/articles/2007/6/7/112524.shtml>.

223. *Majority of Doctors Skeptical of Organ Transplantation Practices in China*, SCIENCEDAILY (Apr. 23, 2009), <http://www.sciencedaily.com/releases/2009/04/090422132849.htm>.

224. Miran Epstein, *Sociological and Ethical Issues in Transplant Commercialism*, 14 CURRENT OPINION ON ORGAN TRANSPLANTATION 134, 135 (2009).

2010]

THE SUM OF A HUMAN'S PARTS

57

available data indicate that the “black market for commercial transplants is expanding.”²²⁵

ASIA

The most highly populated continent in the world with countries at varied stages of economic development, Asia has long been a mecca for desperate Westerners looking for a quick and relatively reasonable organ transplant. Asia has for some time enjoyed the dubious distinction of being the easiest place to secure any organ. That reality, has of course, precluded Asians who simply could not compete in their own countries for an organ when foreign patients were prepared to pay so much more for the transplant. The situation of inequity and trafficking caused a great deal of anxiety in many parts of the world. It was appropriately stated that Asia has “come to corner a large share of this flourishing black market.”²²⁶ The International Organization for Migration expressed alarm in 2007 about the “rising cases of trade in human organs in Asia.” Its Representative, Bruce Reed stated that trafficking for organs was increasing in China and impoverished countries like Cambodia, Indonesia, Laos, Myanmar, the Philippines and Vietnam.²²⁷

The Hindustan Times reported in 2008 that about 90 percent of donors in Asia “come from below the poverty line and 90 percent of these donors agree to donate only to ease their financial troubles.”²²⁸ Asia provided the promise of “quick, easy and cheap procurement of life-saving organs to foreigners who see it as their last hope.”²²⁹ The region “witnesses billions of dollars changing hands every month among iniquitous brokers, desperate patients, poverty-stricken donors and dishonest doctors.”²³⁰ The countries most notorious for being involved in

225. Debra A. Budiani-Saberi, *Organ Trafficking and Transplant Tourism*, in THE PENN CENTER GUIDE TO BIOETHICS 700, 703 (Vardit Ravitsky et al. eds., 2009).

226. *Asia: World's Warehouse of Organs*, HINDUSTAN TIMES, Jan. 26, 2008, <http://www.hindustantimes.com/StoryPage/Print/271898.aspx>.

227. ‘Alarming’ Trade in Human Organ Trafficking, *supra* note 222.

228. *Asia: World's Warehouse of Organs*, *supra* note 226.

229. *Id.*

230. *Id.*

the illicit sale of organs included India, China, Bangladesh, Nepal and Pakistan.²³¹ Over a number of years, there were credible reports of such clandestine transplant activity emanating from South-east Asian countries as well. By 2010, because of the passage of prohibitory national legislation in some countries, the worst offenders list changed somewhat to include, China, Philippines, Pakistan, Egypt and Colombia.²³²

After the Chinese Government took measures in 2007 to curb organ trafficking, transplant tourists transferred their search for organs to the Philippines, where Cebu province was said to be encouraging such visitors.²³³ By 2007, approximately half the transplant operations in the Philippines were performed on foreign patients.²³⁴ The Philippine National Bureau of Investigation revealed that Filipino parents were selling their children for the harvesting of organs that were transplanted into patients from the Middle East.²³⁵

By 2006, foreigners received two-thirds of the 2000 kidney transplants annually performed in Pakistan.²³⁶ In 2006, on average thirty people per month sold their kidneys in Pakistan under the facade of making a donation.²³⁷ Dr. Syed Adibul Hasan Rizvi, founder of a urology and transplant institute in Pakistan commented that his country had become “a factory for regional transplant tourism.”²³⁸ Responding to national and international concern over the exploitation of the poor, the Government of Pakistan in 2007, proclaimed an ordinance on Transplantation of human organs and tissue. This legislation

231. *Id.*

232. ‘*Transplant Tourism*’ Causing Concern, TIMES OF INDIA, Apr. 12, 2010, <http://timesofindia.indiatimes.com/life-style/health-fitness/health/Transplant-tourism-causing-concern/articleshow/5722415.cms>.

233. Budiani-Saberi, *supra* note 225, at 702.

234. ALEXIS A. ARONOWITZ, HUMAN TRAFFICKING, HUMAN MISERY: THE GLOBAL TRADE IN HUMAN BEINGS 112 (Praeger 2009).

235. *Id.* at 113.

236. *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, *supra* note 209, at 1227.

237. Ruth De Las Casas, *Organ Trafficking*, STUDENT BMJ ARCHIVE (Sept. 2008), <http://archive.student.bml.com/issues/08/09/news/296.php>.

238. Paul Garwood, *Dilemma over Live-donor Transplantation*, 84 BULL. OF THE WHO 3, 6 (2007), available at <http://www.who.int/bulletin/volumes/85/1/07-020107/en/print.html>.

permitted donations from the deceased, prohibited commercial organ donations, excluded foreigners from receiving transplants from unrelated donors in Pakistan and created a monitoring authority to ensure transparent implementation.²³⁹

Ironically, the passage of prohibitory legislation only pushes both donors and recipients farther afield to areas where law and implementation are less precise and where bribery and corruption more prevalent. Nancy Scheper-Hughes commented that the imposition of sanctions in one country could increase trafficking in a neighboring state.²⁴⁰ This is definitely a developed world-developing world issue and one that has to be studied as dispassionately as possible so that alleviative solutions can be found. Because globalization has facilitated the entire transplant situation, particularly its criminal aspects, there is a compelling need to find remedies quickly. In October 2008, the American Society of Nephrology pointed out that the need for organ transplants was increasing and "[i]ndividuals are willing to donate their kidneys for financial incentive, particularly in developing countries where the poverty rate is high, resulting in numerous reports of human trafficking as a source of organs."²⁴¹ It was alleged that the Indian city of Amritsar in northern India had become a major center for organ trafficking with health authorities, local government officials and traffickers colluding for profit.²⁴²

For years, taboos grounded in religion, cultural tradition and historical experience vitiated against either living donor or deceased donor organ donation. Hence, it was only the desperately poor who overcame their cultural and religious scruples and sold an organ to acquire money, either to pay off a debt or marry off a child or feed and clothe their families. These

239. Luc Noel & Dominique Martin, *Progress Towards National Self-Sufficiency in Organ Transplants*, 87 BULL. OF THE WHO 647, 647 (2009), available at <http://www.who.int/bulletin/volumes/87/9/09-068817/en/>.

240. Mario Osava, *Poor Sell Organs to Trans-Atlantic Trafficking Ring*, IPS NEWS, Feb. 23, 2004, <http://ipsnews.net/interna.asp?idnews=22524>.

241. *Transplant Experts Convene at ASN Renal Week 2008 To Discuss Organ Trafficking*, EUREKALERT (Nov. 8, 2008), http://www.eurekalert.org/pub_releases/2008-11/ason-tec103008.php.

242. STEPHEN WILKINSON, *BODIES FOR SALE: ETHICS AND EXPLOITATION IN THE HUMAN BODY TRADE* 105 (Routledge 2003).

cultural inhibitions still operate to minimize the number of deceased donations by surviving family members.

The instant research has focused on India and China as pertinent and relevant examples of two countries with different political systems where organ trafficking has prevailed and flourished for some time. While, on the surface, democratic India is a study in contrasts from communist and totalitarian China, there are some similarities between the two selected countries. Both India and China have suffered in the recent past from colonial economic exploitation and ensuing crippling poverty and under-development. Both nations have engaged in a frantic attempt to eradicate poverty, experimenting with a variety of economic models and systems ranging from public ownership and socialistic systems to open markets, private initiative and encouragement to individuals to grow the economy. Both India and China have been pressured by the surge of huge populations. China and India are the two most populous countries in the world. China has been more successful at curbing population growth, possibly because its totalitarian structure enabled it to enact and implement a one child law. India, with its parliamentary system and commitment to human rights, has not succeeded as well at curbing population. China has also fared far better in terms of poverty reduction than India.

Both India and China have achieved economic growth but have paid a terrible price in environmental destruction and degradation. Both countries are afflicted with air, water and land pollution that affects the poor whose lives are more tied to environmental resources. Both India and China still have significant numbers of rural populations and it is their lot that is the most pitiful. In both countries, economic advances have increased the gap between rich and poor and economic inequity, paired with extensive corruption has eroded the quality of life and corroded the moral fabric of society. Organ trafficking in both countries demonstrates the worst aspects of these two societies, so different politically, yet equally plagued with this type of criminal activity.

2010]

THE SUM OF A HUMAN'S PARTS

61

INDIA

As the world's most populous democracy, India is a useful example for understanding the nature of the problem of organ trafficking. Occupying a mere 2 percent of the planet's land area, India hosts over 16 percent of the world's population, a figure expected to exceed one and one half billion people by the middle of the twenty-first century.²⁴³ India is one of the oldest societies on earth; its people number among the richest and the poorest on the planet. It boasts a colorful tapestry of diverse cultural traditions manifested in a dizzying array of languages, spiritual systems, religions, art, literature, music, dance, drama and every conceivable demonstration of human ingenuity and talent. Emerging from centuries of economically-crippling British rule in 1947, India's major priority had to be to bring its economy back to the wealthy and prosperous status it had enjoyed from ancient times until the British, lured by the enormous wealth of the country, forcibly took it over and made it the "jewel in the British crown."

By 1947, when India, after a ninety year struggle gained freedom, the country economically was in near dire straits, because under Western power, the "Indian economy was purposely and severely de-industrialized (especially in the areas of textiles and metal-working) through colonial privatizations, regulations, tariffs on manufactured or refined Indian goods, taxes, and direct seizures."²⁴⁴ Rapid economic growth was perceived by the independent Indian democracy as not merely important but a critical priority. In some ways, the results have been impressive. The nation's Tenth Five Year Plan (2002-2007) saw an average economic growth of approximately 7 percent.²⁴⁵ The United Nations Development Programme reported that the Indian economy enjoyed growth rates exceeding 8 per cent per

243. ETHAN GOFFMAN, *INDIA AND THE PATH TO ENVIRONMENTAL SUSTAINABILITY* 4 (2008), <http://www.csa.com/discoveryguides/india/review.php>.

244. Poverty in India, http://www.worldlingo.com/ma/enwiki/en/Poverty_in_India (last visited Oct. 13, 2010).

245. EUROPEAN EXTERNAL ACTION SERVICE, *INDIA: COUNTRY STRATEGY PAPER, 2007-2013* 2, 7, www.eeas.europa.eu/india/csp/07_13_en.pdf.

year between 2004 and 2007.²⁴⁶ This success enabled about 200 million Indians to be classified as ‘middle class,’ a figure expected to rise to 600 million by 2025, by when, India could again become one of the world’s largest economies,²⁴⁷ a position it enjoyed in ancient times.

Unfortunately, while the gains are impressive, the wealth is very unevenly distributed. “India is occupying two worlds simultaneously. In the first, rapid economic growth and social changes occur. In the other, a percentage of the population appears to be left behind due to lack of good social services, low employment opportunities and few prospects. Bridging this gap will be a major challenge.”²⁴⁸ While a vast number of Indians have climbed into the burgeoning middle class, about 75 percent of the people still subsist on less than \$2 per day.²⁴⁹ The UNDP Reported that two-thirds of Indians are dependent on rural employment, while over ninety percent of the work force functions in low-paying employment. Economist Suresh Tendulkar estimated that more than 41 per cent of rural India is poor.²⁵⁰ Over 60 percent of women were found to be among the chronically poor and nearly 300 million people in India were illiterate as of 2007. The UNDP also found that 233 million people were undernourished.²⁵¹ One third of the world’s poor people live in India.²⁵²

Although India now makes every product from pins to planes and is a nuclear power, with one of the largest military forces in the world, there has been a significant price for its race

246. U.N. DEVELOPMENT PROGRAMME, COUNTRY PROGRAMME FOR INDIA (2008-2012) 2 (2007), www.undp.org/asia/country_programme/.../CP_IND_2008-2012.pdf.

247. Mathieu von Rohr, *Tomorrow’s World Power Turns 60*, SPIEGEL ONLINE INTERNATIONAL, Aug. 9, 2007, <http://www.spiegel.de/international/world/0,1518,499166,00.html>.

248. EUROPEAN EXTERNAL ACTION SERVICE, *supra* note 245, at 1, 5.

249. Bret Stephens, *Global Warming and the Poor*, WALL ST. J., Aug. 4, 2009, <http://online.wsj.com/article/SB10001424052970204313604574327992553917308.html>.

250. Sachin Jain, *Reading Between Poverty Lines*, DOWN TO EARTH: SCIENCE AND ENVIRONMENT ONLINE (May 31, 2010), <http://www.downtoearth.org.in/node/361>.

251. U.N. DEVELOPMENT PROGRAMME, *supra* note 246.

252. EUROPEAN EXTERNAL ACTION SERVICE, *supra* note 245, at 1, 5.

toward economic progress. As with other developing countries, India's economic growth has come at terrible cost in terms of environmental degradation. "Deforestation, biodiversity loss, land/soil degradation, air pollution, poor management of waste, growing water scarcity, falling groundwater tables and water pollution are some of the key environmental challenges India faces."²⁵³ The human price has been paid by the poor, mainly those still in rural areas, who are still subject to avaricious money-lenders, rapacious landlords, and worse, environmental degradation caused by over-use of the land, destruction of forests, cycles of drought and flood, overuse of fertilizers and pesticides and chemicals that have contaminated the land, the rivers and the air.

India, now ranked the world's fifth biggest polluter,²⁵⁴ suffers from a host of environmental problems, forms of pollution that impact heavily on its most vulnerable and marginalized populations. "Like China, India tends to suffer the ills of over- and underdevelopment."²⁵⁵ Tribal communities, destitute rural and urban groups suffer from egregious economic inequity and this has resulted in political unrest and social revolt.

"Environmental destruction. . . threatens the current economic gains."²⁵⁶ The range of environmental problems is almost beyond comprehension. In the Punjab, India's breadbasket and a leading food producing province, uranium waste, a byproduct of coal fired power stations, has been linked to severe birth defects in children. Health workers believe that uranium is poisoning the children of that province. As the region, home to about 24 million people, grows two thirds of India's wheat and 40 percent of its rice, the implications of this environmental problem are extremely serious. Uranium has already been found in the water supply.²⁵⁷ Coal supplies over

253. *Id.* at 4-5.

254. *Environmental Pollution in India*, GITS4U, <http://www.gits4u.com/envo/envo4.htm> (last visited Sept. 20, 2010).

255. Jason Overdorf, *Putrid Rivers of Sludge*, NEWSWEEK, June 28, 2008, <http://www.newsweek.com/2008/06/28/putrid-rivers-of-sludge.print.html>.

256. GOFFMAN, *supra* note 243, at 3.

257. Gethin Chamberlain, *India's Generation of Children Crippled by Uranium Waste*, GUARDIAN, Aug. 30, 2009, <http://www.guardian.co.uk/world/2009/aug/30/india-punjab-children-uranium-pollution>.

half of India's total energy requirements and as one of the world's dirtiest resources, coal pollutes the air, releasing nitrogen and sulfur and exposing the population to significant health risks. Continued reliance on coal could lead to an annual consumption of 1400 million tones by the middle of this century.²⁵⁸

About 70 percent of the air pollution in India is caused by vehicles. Diesel engines clog the air with sulfur and diesel emissions have been linked to cancer and asthma.²⁵⁹ That along with industrial-based air pollution has seriously damaged air quality in a number of Indian cities. The deadly haze results in serious respiratory diseases, particularly in children. Air pollution and an accompanying stench that caused serious discomfort to people living near Mumbai's notorious landfills, impelled the Mumbai authorities to purchase and spray 42,000 liters of perfume on these waste dumps, one of which at Deonar, is eight stories high.²⁶⁰

Mining in India has been the subject of extensive concern in a nation gifted with a very vocal and articulate public opinion, determined to place environmental problems on the national agenda. Because of freedom of the press and freedom of speech, the environmental problems that befall India are widely discussed and solutions sought. The prevalence of child labor in mining has also been publicized and critiqued. Mines form a large economic sector and some ventures wreak environmental havoc on a large scale. India has long been known for its vast mineral wealth that includes iron, bauxite, zinc, manganese, copper, lead and gold. Unfortunately much of this mineral wealth is found in areas inhabited by India's tribal communities and indigenous peoples.²⁶¹ These marginalized groups are subjected to egregious exploitation and economic oppression. Miners suffer from high rates of silicosis. The health consequences of mining

258. GOFFMAN, *supra* note 243, at 12.

259. Oliver Wakefield, *Environmental Issues in India*, ALL ABOUT INDIA, <http://www.all-about-india.com/Environmental-issues-in-India.html> (last visited Oct. 20, 2010); *Environmental Pollution in India*, *supra* note 254.

260. *Environmental Pollution in India*, *supra* note 254.

261. Kimberley Mok, *India's Mining Boom: Tribal Groups, Poor & Environment Sing Out*, TREEHUGGER (Sept. 13, 2008), <http://www.treehugger.com/files/2008/09/india-mining-boom.php>.

are well known. The many environmental problems caused by mining are likely to persist and will undoubtedly cause considerable political upheaval in that country.

In India, as in other developing countries, it is apparent that women and the poor endure the most dangerous working conditions because they are compelled to take the unhealthiest jobs in order to survive. Women work in matchbox and firework industries; in the brick industry; in construction as laborers; in agriculture, where they are exposed to pesticides; in the jute and coir industries; as sweepers and scavengers exposed to all forms of pollution, and in other equally dangerous occupations.²⁶²

The great rivers of India are inextricably linked with the soul of the country and form part of the historical and cultural heritage of this ancient civilization that was in its early stages, a riverine culture. The Ganges River is so important to the psyche of Indians that many Hindus deem it sacred. This holiest of rivers, is polluted with a toxic combination of "human waste, garbage, industrial output, and human remains."²⁶³ The Yamuna River is also much revered, and identified as an important historical locale. Now, 3.6 billion liters of raw sewage spill into the Yamuna River every day. At Delhi, the river looks like a "putrid ribbon of black sludge."²⁶⁴ Over half of Delhi's waste winds up in this river.²⁶⁵

The loss of rivers is critical because about 80 percent of India's fresh water is used for agriculture, often wastefully so. By one estimate about 70 percent of India's available water supply is already polluted.²⁶⁶ Environmentally, India can be considered water-stressed. As population increases and economic development accelerates, the depletion of the water table is going to threaten the very source of life in that ancient land. One of India's most outspoken environmentalists, Vandana Shiva has

262. David Taylor, *The Anguish of India*, 104 ENVTL. HEALTH PERSPECTIVES 266 (1996), <http://ehp.niehs.nih.gov/docs/1996/104-3/focusindia.html>.

263. GOFFMAN, *supra* note 243, at 8.

264. Overdorf, *supra* note 255.

265. *Environmental Pollution in India*, *supra* note 254.

266. GOFFMAN, *supra* note 243, at 8.

emphasized the over-use of water by foreign corporations to the detriment of Indian farmers.²⁶⁷

Environmentally, India does not lack for a legal and legislative framework nor for the Government departments to implement the will of Parliament. The forty-second Amendment to India's Constitution provides specifically for environmental protection.²⁶⁸ A Government Ministry is geared to tackling environment and forest issues. India boasts one of the most assertive and active grassroots green movements in Asia. Unfortunately, corruption at the local level cripples the well-intentioned programs of environmental alleviation. A bureaucratic mindset that perceives economic development as more of a priority lessens the focus on ensuring that the environment is actually protected. The enactment of federal protective legislation leaves implementation to the states that often view environment as a luxury to be addressed after poverty has been eradicated. This short-sighted approach fails to note that environmental conscientiousness can itself generate prosperity and that some forms of environmental destruction can never be reversed.

India provides a compelling study in contradictions and paradoxes of every sort imaginable. Any type of generalization is prone to be met with a contradictory position that has equal validity. However, despite the complexity of assessing so vast and ancient a land, there is little doubt that it faces twin problems of grinding poverty and environmental devastation, both on a very large scale. The poor, who suffer the most from environmental degradation, are likely to fall even deeper into destitution when the land – the source of their livelihood – can no longer provide them any kind of subsistence. It is at those moments that their desperation impels them to search anywhere and everywhere for some means of obtaining funds to feed their families or for other perceived necessities.

While the statistics may vary, depending on the source, there can be little doubt, from the perspective of this research that India has the main ingredients to enable it to be a significant

267. *Id.* at 14.

268. EUROPEAN EXTERNAL ACTION SERVICE, *supra* note 245, at 6.

center in the organ trafficking business. Huge disparities of wealth and poverty inevitably fuel human aspirations for economic betterment by any means possible. This generates both the desperation of the abject poor who see the sale of an organ as a means to pay off a debt; pay for a daughter's wedding; provide for aging parents or whatever financial priority prevails at the time. Rural sellers are primarily men, while, in cities, women are the primary sellers of their organs.²⁶⁹ The Voluntary Health Association of India has estimated that every year about 2000 Indians sell a kidney.²⁷⁰

In India the palpable evidence of an advancing economy can be found in the existence of well-trained professionals, particularly in the medical field, and excellent medical facilities, for those who can afford them. These provide a huge incentive to encourage transplant tourists to travel to India and undergo the transplant procedures. Some scholarly research has demonstrated a marked preference (by Westerners) for undergoing the procedures either in Asia or the Middle East.²⁷¹ India, blessed with a highly-qualified and dedicated medical community enjoys an international reputation for its excellent health care, provided of course that one can pay the price. During the 1980's clinics performing corneal, renal and skin transplantation proliferated in southern and western India. The following decade, cardiac, liver, lung, pancreas and other forms of transplantation were also performed in centers in Northern India.²⁷² There can be no doubt that India has benefited financially from transplant tourism. The Confederation of Indian Industry predicted that by 2012, medical tourism could be worth about \$2.3 billion annually to the country's economy.²⁷³

269. Lawrence Cohen, *The Other Kidney: Biopolitics Beyond Recognition*, in *COMMODIFYING BODIES* 20, 20 (Nancy Scheper-Hughes & Loic Wacquant eds., 2002).

270. ALEXIS A. ARONOWITZ, *HUMAN TRAFFICKING, HUMAN MISERY: THE GLOBAL TRADE IN HUMAN BEINGS* 113 (Praeger 2009).

271. Jagbir Gill et al., *Transplant Tourism in the United States: A Single-Center Experience*, 3 *CLINICAL J. AM. SOC'Y. NEPHROLOGY* 1820, 1825 (2008).

272. Cohen, *supra* note 269, at 17.

273. Christina L. Madden, *Medical Tourism Causes Complications*, *CARNEGIE COUNCIL: POLICY INNOVATIONS FOR A FAIRER GLOBALIZATION* (Oct. 27, 2008), http://www.policyinnovations.org/ideas/briefings/data/000083/pf_printable?.

The combination of excellent medical facilities and a ready supply of indigent people desperate for ready cash, and one has only to add the final ingredient, the broker who takes the organs of the poor for a pittance and sells them to the rich for a significant profit. Police authorities in India estimated that one such network, closed by them, yielded about 31.4 million dollars for middlemen and doctors between 1997 and 2002. The donors paid between \$104,600 and \$209,200 for the procedure while the poor migrant laborer donors from Uttar Pradesh and Bihar provinces, received only between \$525 and \$1050.²⁷⁴ Legally, one manifestation of criminality occurs in the exploitation of the poor who are all too frequently duped, deprived of the promised payment or paid much less than was promised, and invariably left without follow-up health care and forced to endure a life of physical disability and sometimes death. A staggering eight-six percent of kidney donors interviewed in India reported of serious medical consequences including chronic pain, weakness and ill health.²⁷⁵ This phenomenon has been noted worldwide wherever this crime of organ trafficking prevails. In one documented case, the police in Punjab recorded that not only were donor/sellers not given postoperative care, they were ejected from the hospital soon after the surgery and were threatened with imprisonment for having participated in an illicit organ sale.²⁷⁶ That is really to add insult to injury.

A combination of relatively inexpensive procedures and easy availability of kidneys earned India the dubious distinction of being a “warehouse for kidneys” and the country has also been termed a “great organ bazaar.”²⁷⁷ Most kidney donors/sellers come from the Punjab, Andhra Pradesh, Karnataka and Tamil Nadu.²⁷⁸ It is important to note that the majority of the Indian medical community does not condone this exploitation of the poor and has indeed condemned it continuously and vociferously. Many physicians and surgeons, concerned about their personal

274. ARONOWITZ, *supra* note 270, at 115.

275. *Id.* at 119.

276. *Id.* at 120.

277. Trade Environmental Database (TED) Case Studies, *India Kidney Trade*, TED, <http://www1.american.edu/ted/kidney.htm>.

278. ARONOWITZ, *supra* note 270, at 113.

reputations, refuse to participate in operations where illicit procurement has occurred. The lively Indian media keeps a watchful eye on this issue and does not hesitate to report the names of participants in these illegal activities.

Because any financial benefits of transplant tourism do not necessarily percolate through the economy, it appears that this bizarre business can indirectly generate a two-tier health care system in developing countries, like India, with some of the highly-skilled physicians and facilities performing for the benefit of foreign patients and the remainder doing their best for the local population that cannot afford what foreigners pay. In a very real sense, "medical tourism threatens to exacerbate unequal access to quality health care in developing countries."²⁷⁹ This has led to demands in India for a tax on private hospitals to compel them to participate in public health procedures. Indian politician Naresh Dayal proposed that private hospitals treat the poor without charge.²⁸⁰ The National Human Rights Commission of India asked its government to amend the law and mandate post-operative health care for donors. A.S. Anand, Chairman of the Human Rights Commission emphasized the need for the Government of India to plug the loopholes in the law that made it easy to exploit the poor.²⁸¹ Although over 150,000 Indians suffer end stage kidney disease annually, the Delhi Nephrology Society reported an alarming drop in kidney transplants from approximately 3600 in 2002 to 2000 in 2004.²⁸² In 2008, Indian lawyer Rakesh Prabhakar petitioned the Delhi High Court and pointed out that India had 80,000 people suffering severe renal failure. Prabhakar concluded that in such circumstances, it was not surprising that people were resorting to "illegal and unethical

279. Madden, *supra* note 273.

280. *Id.*

281. *Human Rights Commission in India Asks Government to Tighten Organ Transplant Laws*, THE FREE LIBRARY (Feb. 16, 2004), <http://www.thefreelibrary.com/Human+rights+commission+in+India+asks+government+to+tighten+organ...-a0129565080>.

282. Ganapati Mudur, *Indian Doctors Debate Incentives for Organ Donors*, 329 BRIT. MED. J. 938 (Oct. 24, 2004), <http://www.bmj.com/content/329/7472/938.5.extract>.

means to procure [a] kidney.”²⁸³ The situation for other patients in need of transplants was equally dire and this situation continues. The World Health Organization estimated in 2009 that about 200,000 Indians needed liver transplants and 80,000 required heart transplants.²⁸⁴

There has long been an acknowledgment in India that this entire process of organ transplantation is open to serious abuse, significant corruption and consequent physical harm, particularly to donors. In 1993, the United Nations Human Rights Commission reported that India sold more kidneys to foreigners than any other country in the world.²⁸⁵ The country became notorious for its organ sales, particularly involving kidney transplants, achieved after purchase of the organ of poor people. In South India, a section of Chennai was dubbed Kidneyvakkam because of the large number of inhabitants who had sold a kidney.²⁸⁶

The Transplantation of Human Organs Act of 1994 attempted to address some concerns by prohibiting the sale or purchase of human organs.²⁸⁷ The Act was an attempt to regulate the removal, storage and transplantation of human organs and to prevent commercial dealings in human organs.²⁸⁸ This Indian legislation aimed to curtail illicit kidney sales, legally define brain death, and encourage cadaveric organ transplants.²⁸⁹ Organs could henceforth only be removed for therapeutic reasons

283. Harish V. Nair, *Petition on Organ Donation Law Sparks Debate*, HINDUSTAN TIMES, Mar. 13, 2008, <http://www.hindustantimes.com/Petition-on-organ-donation-law-sparks-debate/Article1-281802.aspx>.

284. Message from Dr. Samlee Pilanbangchang, Regional Director WHO South-East Asia Region, Regional Meeting on WHO Guiding Principles on Organ, Tissue and Cells Transplantation, Jaipur India, Feb. 2-5, 2009.

285. TED Case Studies, *supra* note 277.

286. Sanjay Kumar, *Despite Ban, Organs Still Sold in India*, REUTERS HEALTH, Mar. 9, 2001, http://www.vachss.com/help_text/archive/despite_ban.html.

287. Sreeraman, *Amendment in Human Organ Transplantation Act*, ORGAN DONATION NEWS (Mar. 12, 2008), <http://www.medindia.net/news/Amerdment-in-Human-Organ-Transplantation-Act-34061-1.htm>.

288. R.K. Nayak, *Development of Health Legislation in Some Countries of the WHO South-East Asia Region*, 7 REGIONAL HEALTH FORUM WHO SOUTH-EAST ASIA REGION 20, 25 (2003), available at http://www.searo.who.int/EN/Section1243/SEction1310/SEction1343/SEction1344/SEction1672_7144.htm.

289. Shroff, *supra* note 29.

and received only if donated by specified categories of relatives. There were fears that the inclusion of spouses in this category might precipitate “kidney marriages,” to fulfill the needs of the traffickers.²⁹⁰ Commercial dealing in organs could result in imprisonment and fines.²⁹¹ The 1994 legislation provided for registration after fulfilling specific requirements, of hospitals that performed organ transplantation.²⁹² However, consigning implementation to the Indian provinces²⁹³ more or less guaranteed inconsistent application and a lack of effective curtailment of organ trafficking.

The criminals continued their trade mainly because the legislation included a helpful loophole that enabled donations by non-relatives when made for altruistic reasons.²⁹⁴ The clause provided for donation for reasons of “affection or attachment towards the recipient,” provided an Authorization Committee approved.²⁹⁵ In an article interestingly titled, “The Law is an Ass,” Dr. M.K. Mani, a pioneer in kidney transplantation in India wrote: “The law, which was meant to prohibit commercial dealings in human organs, now provides protection for those very commercial dealings.”²⁹⁶ After an initial lull because of the legislation, the trafficking business resumed and there appears to have been prolific utilization of the “affection loophole,” to cloak “hundreds of illegal cash-for-kidney deals.”²⁹⁷ Dr. Mani wryly commented that “[d]ozens of slum dwellers from Chennai have this great and transcending love for millionaires from Kanpur and Calcutta, whom they could not have met more than a few weeks earlier. Truly this is love at first sight.”²⁹⁸

290. TED Case Studies, *supra* note 277.

291. Nayak, *supra* note 288, at 25-26.

292. Parvathi Menon et al., *Kidneys Still For Sale*, FRONTLINE, Dec. 13-26, 1997, available at <http://www.frontlineonnet.com/fl1425/14250640.htm>.

293. TED Case Studies, *supra* note 277.

294. Ashwini R. Sehgal, *Sellers and Losers*, FRONTLINE (Oct. 26-Nov. 8, 2002), available at <http://www.hinduonnet.com/fline/fl1922/stories/20021108004008100.htm>.

295. Menon et al., *supra* note 292.

296. *Id.*

297. *Id.*

298. *Id.*

In 2007, subsequent to national consultations and the report of a 2004 Committee initiated by the High Court of Delhi, proposals were drafted to increase transparency in the transplant procedure, facilitate cases that were genuine, control the authorization process more tightly to prevent abuse, increase the punishment for illegal activity and enable swap operation procedures between “related donor and recipients who do not match themselves but match with other similar donors/recipients.”²⁹⁹ The Indian Health Ministry drafted legislation in 2008 in an attempt to stop the illegal organ trade.³⁰⁰ Towards the end of the following year, India’s Minister of Health and Family Welfare, Shri Ghulam Nabi Azad informed Parliament about the numerous contemplated changes to the original law. The amendments clearly responded to the very vocal public opinion that had emerged on this issue. They included a provision for stiffer penalties for infractions and tighter control of the authorization committees that had elicited so much public disapproval along with enhanced powers for the authorities concerning summonses, production of documents and the issue of search warrants. Additionally, relatives would be requested to donate the organs of brain dead patients; swap donation of organs would be allowed; transplantation procedures for foreign nationals would be regulated; steps would be taken to prevent the exploitation of minors; a National Organ Retrieval Banking and Transplantation Network would be established as well as a national registry of organ transplant recipients. The Minister also proposed the creation of a Transplant Coordinator in all hospitals that were registered for this procedure and the registration of non-governmental organizations active in this field.³⁰¹ It was clear that the Indian Government was reacting to the media exposures of rackets and worse involving trafficking.

299. Sreeraman, *supra* note 287.

300. Sara Sidner & Tess Eastment, *Police Hunt for Doctor in Kidney-Snatching Ring*, CNN (Jan. 29, 2008), http://articles.cnn.com/2008-01-29/world/india.transplant_1_sale-of-human-organs-transplants-organ-trafficking?_s=PM:WORLD.

301. *Questions Asked by Mr. Asaduddin Owaisi During Lok Sabha Session November – December 2009*, TWO CIRCLES (Dec. 25, 2009, 3:44 PM), http://www.twocircles.net/2009dec25/questions_asked_mr_asaduddin_owaisi_during_lok_sabha_session_november_december_2009.html.

Ambika Soni, India's Information and Broadcasting Minister commented on the "spate of reports in the media about a thriving human organ trade in India and the consequential exploitation of economically weaker sections of the society." Minister Soni continued: "There has, therefore been an increasing perception in civil society that while the Act has not been effective in curbing commercial transactions in organ transplant, it has thwarted genuine cases due to the complicated and long drawn process involving organ donation."³⁰² Clearly, the Government of India was finally acknowledging that the well-intentioned law of 1994 was "observed more in the breach."³⁰³

Interestingly, the plight of the duped poor organ sellers raised awareness in India to a point where its very vibrant public opinion also perceived the need both for stronger legal protection and for an end to social and traditional reservations that prevented relatives from donating the organs of their dead family members. Public awareness programs included media reports, statements by reputable physicians encouraging cadaver donation, and even the organization of "Donorthan 2010" a march in the capital city New Delhi where participants carried banners stating: "organ donation is the biggest donation."³⁰⁴ Blaming the trafficking problems in India partly on the prevalence of "large scale poverty," K.C. Prakash of the Department of Nephrology at Chennai's Apollo Hospital proposed enhanced public education; needed amendments to the law, promotion of deceased organ donation and measures to deter transplant facilitators and brokers. Prakash also proposed punitive measures against all participants in illegal transplant sales, including the donors and recipients.³⁰⁵

302. *India To Amend Organ Transplantation Act*, IGOVERNMENT (Sept. 18, 2009), <http://igovernment.in/site/India-to-amend-organ-transplantation-Act?>.

303. *Organ Transplantation Law in India*, LEGAL SERVICE INDIA, <http://www.legalserviceindia.com/article/l224-Organ-Transplantation-Law-In-India.html> (last visited Sept. 13, 2010).

304. ANI, *Creating Public Awareness on Organ Donation*, HEALTH NEWS (Apr. 3, 2010), <http://blog.taragana.com/health/2010/04/03/creating-public-awareness-on-organ-donation-21305/>.

305. K.C. Prakash, *Organ Transplantation in India: Problems and Solutions*, 21 NAT'L MED. J. INDIA, 59, 59-61 (2008).

The fact that India is a democracy is crucial for the public exposure of both the crime of organ trafficking and the consequent exploitation of the poor. India enjoys a vibrant and active media, replete with investigative reporters, who are inquiring and inquisitive enough to unearth illicit activity, secure in the knowledge that their findings will be publicized in newspapers, magazines, on the radio and television and on the internet. Prosperity and technology have brought a communications revolution to India and this enables widespread almost immediate knowledge about such matters to spread to most parts of the country.

The Indian and world media played a vital role in exposing the illicit practices and in demanding improvements to the law. Although the range of this terrible practice of organ selling is still extensive in India, because the country allows free speech and enjoys a free media, its population is well-informed and debate about such contentious issues is heated and lively. Indian public opinion precipitates, demands and often becomes a springboard, as we have seen, for amendment and reform by the Government. This bottom-up form of securing necessary change both in the Government and in society can be contrasted quite vividly with the entirely different system prevailing in China. Ultimately, if this terrible crime of organ trafficking is to be eradicated entirely from India, it will happen because of the bold and courageous effort undertaken by thousands of men and women who have worked tirelessly to push their Government onward. That after all, is the ultimate blessing of a democracy.

There are clear signs that the authorities are attempting to curtail the worst evils of this terrible form of trafficking. In 1995, Indian police broke up an extensive ring in Bangalore that had lured about one thousand donors on the pretext of seeking blood donations and instead removed their kidneys. The physicians who had participated argued that non-consensual removal of a kidney was not possible.³⁰⁶ In a possible attempt to evade the Indian authorities, some brokers apparently organized “kidney tours” which enabled the potential donor to travel overseas for removal of the organ. Indian customs officials exposed one such

306. TED Case Studies, *supra* note 277.

operation in 1995.³⁰⁷ The children of the poor are easy targets for these criminals. In May 2001, in the southern province of Andhra Pradesh, a blind orphan girl was rescued from an adoption center after reports surfaced that her corneas had allegedly been surgically removed. The case was termed “the tip of the iceberg.”³⁰⁸

In 2003, police in South India arrested thirteen people, allegedly members of a gang involved in illicit kidney sales, who had claimed that the donors and recipients were blood relatives, a category allowed by the law.³⁰⁹ That same year, another ring operating in the North Indian city of Amritsar, Punjab province was exposed, revealing the involvement of politicians and physicians among other “influential people.”³¹⁰ The tsunami that devastated so much of Asia in 2004 and the consequent economic havoc for thousands of people brought out the kidney brokers who made the most of the environmental disaster to prey on and take advantage of the victims and pressure them to sell their kidneys.³¹¹ Miloon Kotharo of the United Nations Human Rights Council commented that in Ernavur, a refugee village for tsunami survivors, kidney sellers stated that they were facing dire poverty as their only alternative.³¹²

The Washington Post reported a particularly gruesome story originating from Gurgaon, Haryana province, in 2008, involving the apparent kidnapping of Indian men and the forcible removal of their kidneys, procured specifically for Greek and American patients/tourists who were located by police in a bungalow

307. TED Case Studies, *supra* note 277.

308. *Adoption Body Suspects Organ Sale Racket in Andhra Pradesh*, INDIA ABROAD NEWS SERVICE (May 1, 2001), http://www.vachss.com/help_text/archive/adoption_body.html.

309. *India Kidney Donors Arrests*, BBC NEWS (June 20, 2003, 8:16 PM), http://news.bbc.co.uk/2/hi/south_asia/3005994.stm.

310. Munish Nagar, *Illegal Human Organ Trade Thrives in Asia*, MERINEWS (May 12, 2007), <http://www.merineews.com/shareArticle.do?detail=Print&articleID=125016>.

311. Scott Carney, *Black-Market Scandal Shakes India's Ban on Organ Sales*, WIRED (May 8, 2007), http://www.wired.com/medtech/health/news/2007/05/india_transplants_main.

312. *Indian Tsunami Victims Sold Their Kidneys to Survive*, BUZZLE (Jan. 17, 2007), <http://www.buzzle.com/articles/123702.html>.

nearby.³¹³ The police in Gurgaon arrested a physician and other accomplices who ran the transplant “racket. . .with most of their victims being from poor families of western Uttar Pradesh,”³¹⁴ a province of India. The Gurgaon operation was extensive, allegedly involving an elusive physician who may not have been qualified, four other doctors, five nurses, twenty paramedics, three private hospitals, ten pathology clinics and five diagnostic centers, to service an international group of patients coming from Canada, Greece and the United States.³¹⁵ By 2008, the procurers of organs were using new methods to locate donors. The Indian Government arrested several physicians who had allegedly used Facebook to procure kidneys online.³¹⁶

There can be no doubt that in India, “[o]rgan sale or donation is a manifestation of poverty and desperation.”³¹⁷ Clearly, “it is the culture of poverty that perpetuates the kidney trade in India.”³¹⁸ Dr. Madhav Goel and his colleagues conducted research in 2001 of 305 persons in Chennai, India, who had sold their kidneys about six years prior to the survey. The results are enlightening: The average age of the seller was 35 years and about three quarters of them were women. Seventy percent worked as laborers or street vendors.³¹⁹ Ninety-six percent of participants sold the kidney to pay off debts and received an average of \$1070, much of which was spent on debts, food and clothing. It is significant to note that donor family income declined after the procedure, possibly because eighty-six percent of donors suffered deteriorated health, thereby driving some

313. Rama Lakshmi, *India Uncovers Kidney Racket*, WASH. POST, Jan. 30, 2008, http://www.washingtonpost.com/wp-dyn/content/article/2008/01/29/AR200801290281_pf.html.

314. *Kidney Racket Busted in Gurgaon*, TIMES OF INDIA, Jan. 25, 2008, <http://timesofindia.indiatimes.com/articleshow/2729795.cms?prtpage=1>.

315. Jason Overdorf, *Stolen Kidneys*, NEWSWEEK, Feb. 1, 2008, <http://www.newsweek.com/2008/01/31/stolen-kidneys.html>.

316. Marketing Week, *Facebook and Orkut Face Organ Trafficking Allegations in India*, SOCIAL NETWORKING WATCH (Feb. 18, 2008), <http://www.socialnetworkingwatch.com/2008/02/facebook-and-or.html>.

317. Shroff, *supra* note 29.

318. Trade Environmental Database (TED) Case Studies, *India Kidney Trade*, TED, <http://www1.american.edu/ted/kidney.htm>.

319. Sehgal, *supra* note 294.

participants further into poverty.³²⁰ Ironically and tragically, most of them remained debtors after enduring the ordeal.³²¹ The most telling conclusion of this interesting research was that prior to the kidney sale, fifty-four percent of the sellers were below the poverty line. That figure had risen to seventy-one percent by the time they were surveyed.³²² An environment of poverty and destitution forces many of India's poorest into "finding quick financial solutions. . . happy to sacrifice a piece of themselves to resolve their financial crises. But as many have discovered, the money goes quickly. Later, there's nothing left to sell."³²³ There were no financial panaceas in the sale, only increased misery. The entire process was dehumanizing and as Dr. Jeffrey Kahn, Director of the Center for Bioethics at the University of Minnesota has commented: "dehumanizing any one of us dehumanizes us all."³²⁴

The extensive research for this article demonstrates that while India continues to have a serious problem, grounded in economic inequity, the democratic open framework of the society permits extensive debate, argument and vibrant discussion about the crime and about a search for possible solutions. The Times of India referred to Punjab, Chennai and Gurgaon as "Kidneygate's Indian landmarks. . . linked by a global trafficking ring which exploits two different sets of needs – for money and for life itself."³²⁵ Hence the reformist impulse is strong in India and while the criminals may be active, they have to contend with the possibility of public exposure and social disgrace. 'Naming and shaming' has become a useful tool for Indian journalists and social activists. While criminals and some complicit medical authorities may continue to take advantage of destitute people

320. Shroff, *supra* note 29.

321. Sonya Fatah, *Dire Poverty Fuels India's Lucrative Trade in Kidneys*, THE STAR (Feb. 25, 2008), <http://www.thestar.com/printarticle/306576>.

322. Sehgal, *supra* note 319.

323. Fatah, *supra* note 321.

324. Jeffrey P. Kahn, *Studying Organ Sales: Short Term Profits, Long Term Suffering*, CNN (Oct. 1, 2002), http://articles.cnn.com/2002-10-01/health/ethics.matters.selling.organs_1_kidney-donors-organ-sales-organ-donors?_s=PM:HEALTH.

325. Neelam Raj, *The Global Kidney Bazaar*, TIMES OF INDIA, Feb. 3, 2008, <http://timesofindia.indiatimes.com/articleshow/2751820.cms>.

and legal loopholes, there is a strenuous counter-force that publicly draws attention to the criminality, the human rights violations, the financial inequity and the sheer injustice involved in organ trafficking in India.

CHINA

While the situation of organ trafficking in India provides evidence of an environment of acute deprivation and poverty, the situation in China can only be described as one of ghoulish exploitation of the most vulnerable element of society, its thousands of prisoners slated for execution. At least in India, the donor/seller makes a choice and therefore exercises some control, albeit in a limited sense, over the procedure. In China, (where 1.5 million to 2 million people need transplants annually),³²⁶ the paucity of available organs has resulted in a years-long and highly profitable practice that has aroused repugnance around the world.

China, along with India, for years shared the dubious distinction of providing the organs of the poor for the benefit of the rich. However, unlike India, with respect to China the paucity of available information and the limited public participation in this important debate emphasize the huge difference that exists between a parliamentary democracy like India and a totalitarian communist system as prevails in China.

Unlike India, where exposing, naming and shaming participants in this criminal activity is a frequent occurrence – which innumerable non-governmental organizations and media outlets tackle with zeal – gleaning the truth about China's involvement in this grim business of organ trafficking is much more difficult. The communist government of China does not allow for free expression of the media nor for public debate on this sort of contentious issues. Even the universal and ubiquitous internet is strictly controlled. In 2001, Reuters reported about the dismissal of senior Chinese reporter, Yao Xiaochong, who

326. Kang Juan, *Organ Trafficking Stirs Concern*, GLOBAL TIMES, Aug. 24, 2009, <http://china.globaltimes.cn/society/2009-08/460386.html>; *China Bans Transplant Organ Sales*, BBC NEWS (Mar. 28, 2006, 12:46 PM), <http://news.bbc.co.uk/go/fr/-/2/hi/asia-pacific/4853188.stm>.

wrote exposing a plot by a local court to sell the kidneys of an executed prisoner.³²⁷ Criminal activity, particularly when civil servants appear to be profiteering, is concealed and covered up with a degree of thoroughness and brutality that is quite terrifying. Only occasionally does the Chinese Government admit to the existence of a problem and when it does, it acts in rapid fashion to deal with it.

Consequent to the communist take-over of China on October 1, 1949, the government has emphasized an assertive form of nationalism that manifests itself in various ways ranging from the brutal take-over of outlying regions like Tibet; the murder by tank attack of unknown numbers of university students and young people demonstrating for democracy in the notorious Tiananmen Square massacre of 1989; a defensive reaction when any allegations surface in the Western media about significant corruption in the Chinese Government, including its all-powerful governing class and military; punitive measures against any sign of dissent against the political system or the armed forces; and judicial conviction and capital punishment on a scale not practiced in most civilized and modernized societies. In short, China is one of the most effective and one of the strongest dictatorships in the world today. While subscribing rigorously to its own version of Marxism (or more appropriately Maoism) politically, China exudes aggressive pursuit of national interests, militarization, elimination of dissent and provides no democratic option. However, economically, the situation is entirely different. China has in recent decades converted an ailing socialist economy into a global economic powerhouse that manufactures a significant portion of the world's consumables and has become one of the leading economies in this new century.

This economic turn-around commenced in 1978 and has given China a very favorable status in world trade, largely at the expense of economies like that of the United States of America. Between 1978 and 2008, China's economy grew tenfold.³²⁸ Some

327. *China Paper Sacks Organ Trade Reporter*, REUTERS, Aug. 2, 2001, http://www.vachss.com/help_text/archive/china_organs3.html.

328. Carin Zissis & Jayshree Bajoria, *China's Environmental Crisis*, COUNCIL ON FOREIGN RELATIONS (Aug. 4, 2008), http://www.cfr.org/publication/12608/chinas_environmental_crisis.html.

decades ago, it would have been inconceivable to imagine a country adopting assertive communism politically and aggressive capitalism economically. To walk left and right at the same time would have appeared an impossible feat. Chinese ingenuity managed this feat. The economic policy was very successful. While prior to the economic reforms, China's economic growth could be six percent a year (though not every year), in the aftermath of the economic changes, China has averaged a spectacular average annual growth rate of nine percent a figure that in some fortunate years reached thirteen percent.³²⁹

Within a country where the governing mantra involves the importance of making money, the commodification of every item would appear to be inevitable. On the positive side, China has emerged as one of the leading economies of the world, with a 2007 GDP of 13 percent, overtaking Germany, to become the world's third largest economy.³³⁰ A very hard-working labor force, huge demand in the West for cheap consumer items, government initiatives that encouraged rather than controlled private ventures, all these factors have made China a very significant economic superpower. China enjoys a huge trade surplus with the world's most powerful economy, the United States. As of 2009 estimates, the United States' exports to China were worth 69.6 billion dollars, but its imports from China were worth a staggering 296.4 billion dollars.³³¹ There are signs that the Chinese economy will overtake Japan and occupy the number two spot by 2025.³³² If one broadly and conservatively estimates an average growth rate of 8 percent for China since 1978, the United

329. Zulu Hu & Mohsin S. Khan, *Why Is China Growing So Fast?*, INTERNATIONAL MONETARY FUND (June 15, 1997), <http://www.imf.org/EXTERNAL/PUBS/FT/ISSUES8/INDEX.HTM>.

330. *China Revises Figures, 'Becomes World's Number Three Economy'*, CHANNEL NEWS ASIA (Jan. 14, 2009, 11:21 PM), http://www.channelnewsasia.com/stories/afp_asiapacific_business/view/402364/1.html.

331. *US-China Trade Statistics and China's World Trade Statistics*, U.S.-CHINA BUSINESS COUNCIL, <http://www.uschina.org/statistics/tradetable.html> (last visited Oct. 4, 2010).

332. *China's Urban Challenge*, ASIA ONE NEWS (Dec. 18, 2008), <http://news.asiaone.com/News/Latest%2BNews/Asia/Story?A1Story20081218-108758.html>.

Kingdom in the same time frame grew at an average rate of 2.5 percent.³³³

However, there is another more grim side to the positive growth of the Chinese economy. According to U.S. Congressional Research Reports, China faces significant challenges that “could undermine its future economic growth and stability. These include pervasive government corruption, an inefficient banking system, over-dependence on exports and fixed investment for growth, the lack of rule of law, severe pollution, and widening income disparities.”³³⁴ The US National Intelligence Council emphasized China’s growing gap between the rich and poor, the fraying social safety net, corruption and environmental damage.³³⁵ China has paid a significant price for its economic development and although the economic reforms have lifted millions of its people out of poverty, the costs are manifesting themselves daily across the country.

The benefits of this rapid progress have not percolated to the sixty-one million Chinese believed in 2006-2007 to be below the national poverty line. The World Bank estimated that 219 million Chinese lived on less than \$1 per day,³³⁶ a category of extreme poverty and one that certainly facilitates the same acts of desperation that drive the poor in India to sell their kidneys. However, the World Bank also pointed out that there were over 400 million fewer people living in a state of extreme poverty in 2001 than twenty years previously, figures which impelled the Bank to conclude that “China’s success against poverty since the reforms that began in 1978 is undeniable.”³³⁷ About 47 percent of China’s population lives on less than \$2 per day and while China

333. *Problems of Chinese Economic Growth?*, ECONOMICSHelp, <http://www.economicshelp.org/essays/problems-chinese-economic-growth.html> (last visited Oct. 4, 2010).

334. WAYNE M. MORRISON, CONG. RESEARCH SERV., RL 33534, CHINA’S ECONOMIC CONDITIONS 1 (2009), available at http://assets.opencrs.com/rpts/RL33534_20091211.pdf.

335. *China’s Urban Challenge*, *supra* note 332.

336. *Country Profiles: China Poverty Statistics*, BUSINESS FOR MILLENNIUM DEVELOPMENT, <http://b4md.com.au/country.asp> (last visited Oct. 4, 2010).

337. *Fighting Poverty: Findings and Lessons From China’s Success*, THE WORLD BANK, <http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/0,,contentMDK:20634060~pagePK:64165401~piPK:64165026~theSitePK:469382,00.html> (last visited Oct. 4, 2010).

may be the world's third largest economy, it is also ironically the country with the second highest level of economic inequality in Asia, ranking behind Nepal.³³⁸ Egregious poverty persists in China despite the much-publicized Development Orientated Poverty Alleviation Program in Rural China (2001-2010) that was aimed at improving the lot of the rural poor.³³⁹ About eighty percent of Chinese people qualified in the early 1980's as rural.³⁴⁰ The economic reforms diminished that figure dramatically. The International Monetary Fund estimated that while prior to 1978, four of five Chinese worked in agriculture, by 1994, only one in two did so.³⁴¹ However, rapid urbanization was not the panacea for this most populous country in the world.

The urban population, which was 430 million in 2001, is expected to reach 850 million by 2015.³⁴² The economic reforms have benefited the South and East of China more so than other regions. This has resulted in significant economic disparity between the agrarian North and the urbanized South.³⁴³ It is significant to note that while the urban population has soared to 607 million by 2008, the impact on income has not been remedial. Urban/rural income ratios that averaged 2.79 in 2000 had risen to 5 by 2008, a figure that illustrates that while urban centers were pulling in people eager for better financial benefits, the lesser numbers of farmers left in the rural areas did not fare very well.³⁴⁴ As with India, the issue of rural poverty is a pressing challenge for China. While poverty may have diminished in China, marked economic inequality has risen. The World Bank

338. *Country Profiles: China Poverty Statistics*, *supra* note 336.

339. RURAL SURVEY ORGANIZATION OF NATIONAL BUREAU OF STATISTICS, CHINA, POVERTY STATISTICS IN CHINA 3 (2004), available at http://www.nscb.gov.ph/poverty/conference/papers/4_poverty%20statistics%20in%20china.pdf.

340. *China's Urban Population Exceeds 600 million; Yawning Gap With Rural Income*, XINHUA NEWS AGENCY (June 15, 2009, 11:48 PM), http://news.xinhuanet.com/english/2009-06/15/content_11547831.htm.

341. Hu & Khan, *supra* note 329, at 5.

342. *China Environment*, THE WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/EXTEAPREGTOPENVIRONMENT/0,,contentMDK:20266322~menuPK:537827~pagePK:34004173~piPK:34003707~theSitePK:502886,00.html> (last visited Oct. 18, 2010).

343. *Problems of Chinese Economic Growth?*, *supra* note 333.

344. *China's Urban Population Exceeds 600 Million*, *supra* note 340.

estimated that such inequality was higher in China's rural regions though prevalent as well in its urban centers, and drew a vital lesson from its research of the Chinese economy, namely that "promoting agricultural and rural development is crucial to pro-poor growth in most low-income developing countries."³⁴⁵

Organ trafficking in China is one manifestation of the pervasive societal divisions, chasms of deprivation and destitution that motivate people to desperate measures to survive. The activities of traffickers demonstrate a continuing problem of corruption and disregard for the rights of people and of the law. Despite the strict controls over freedom of expression, occasionally a story surfaces that highlights the type of desperation that prompts, even a member of the middle class to engage in organ trafficking. BBC News reported in 2000 the case of a Chinese coal mine operator who was trying to sell his kidney in Singapore to pay legal compensation claims to three miners following an industrial accident. He had sold his company and his assets and was in dire straits but the reporter from the Straits Times refused to advertise the man's kidney because what he was contemplating was illegal.³⁴⁶

On the minus side, as refugee Chinese dissidents often point out to the world, the people of China have paid a terrible price for their country's economic progress and they continue to be exploited in every way imaginable. It should therefore come as no great surprise that China would enter with enthusiasm into the business of providing medical facilities and human organs for foreign transplant tourists who deemed the price acceptable and did not enquire about the source of their new organs. Transplant procedures were first performed in China during the 1960's, with operations soaring until 2004.³⁴⁷ In 2005, Chinese physicians performed an estimated 12,000 kidney and liver transplants.³⁴⁸

345. *Fighting Poverty: Findings and Lessons From China's Success*, *supra* note 337.

346. *China Mine Boss Touts Kidney*, BBC NEWS (Dec. 14, 2000, 4:23 PM), <http://news.bbc.co.uk/2/hi/asia-pacific/1070684.stm>.

347. Jiefu Huang et al., *Government Policy and Organ Transplantation in China*, 372 THE LANCET 1937, 1937 (2008).

348. Yosuke Shimazono, *The State of the International Organ Trade: A Provisional Picture Based on Integration of Available Information*, 85 BULL. OF THE WHO 955, 957 (2007).

Until 2006, China was the leading “host country for transplants,”³⁴⁹ ranking second in the world and performing 11,000 procedures.³⁵⁰ By 2006, there were an estimated five hundred hospitals performing liver transplants in China. The comparable figure for this operation in the United States was one hundred.³⁵¹ According to the New York Times, approximately one third of the 10,000 organ transplants performed in China in 2009 involved living donors.³⁵²

Any research on this issue regarding China has perforce to deal with the crucial issue of the source of these massive numbers of organs that were transplanted into foreigners and wealthy Chinese patients on a scale that exceeded such activities in most of the world. However, prior to considering that important subject, it is also vital in terms of the thesis of this article to explore another facet of the high price China has paid for its economic miracle, namely the despoliation of its environment on a scale that is almost unimaginable.

Like India, China still has a large rural poor population and the befouling of the air, water, and land because of unregulated and frenetic commercialization has made agricultural life much more of a challenge. The Chinese people have paid a terrible environmental price for the zealous pursuit of economic progress by their Government. According to PlanetArk, “China’s late 1970s transition from a planned to market economy saw it open its doors to industry under an officially endorsed ‘development first, environment later’ policy.”³⁵³ Western expressions of apprehension about the environmental cost for the world of such expedited Chinese development were met with assertions by the

349. Gopalan, *India to Liberalize Organ Transplant Act and Launch Nationwide Awareness Campaign*, MED INDIA (Jan. 27, 2008, 1:40 PM), <http://www.medindia.net/news/India-to-Liberalize-Organ-Transplant-Act-and-Launch-Nationwide-Awareness-Campaign-32309-1.htm>.

350. Huang, et al., *supra* note 347.

351. Zhang Feng, *New Rule to Regulate Organ Transplants*, CHINA DAILY (May 5, 2005), http://www.chinadaily.com.cn/china/2006-05/05/content_582847.htm.

352. Edward Wong, *China: 4 Face Trial on Organ Trafficking Charges*, N.Y. TIMES, Mar. 19, 2010, <http://www.nytimes.com/2010/03/20/world/asia/20briefs-Chinabrf.html>.

353. *FactBox: A Short History of China’s Fragile Environment*, REUTERS, July 17, 2007, <http://www.reuters.com/article/idUSSP33007>.

Chinese that it was hypocritical of the West, that has befouled the entire global environment in order to achieve a much-envied lifestyle, to blame the Chinese for following the same route. It is only in recent years that the Chinese are acknowledging that a sustainable environment is critical if their economic miracle is to continue.

The environmental toll is extremely serious as are the consequences for the economic well-being and health of the majority of the population. According to the World Bank, twenty of the world's thirty most polluted cities are in China. And the annual Chinese death toll from illness related to pollution is over 400,000.³⁵⁴ The country is severely affected by acid rain.³⁵⁵ China is now the largest global emitter of greenhouse gases by volume, mainly because of the nation's heavy reliance on coal.³⁵⁶ Millions of cars on the roads of China have contributed further to both the traffic jams but also to the air pollution that sets a haze over so many cities. Desertification also contributes to China's air pollution problems.³⁵⁷

China suffers from a number of environmental problems and given the size of the country and its population, these affect not just China but the entire world. By 2009, China with a population of 1.33 billion, had become the world's largest consumer of energy.³⁵⁸ As China is the world's "most populous country and the fourth largest in area,"³⁵⁹ its environment is bound to affect the entire globe. Besides the fouling of the air, "[w]ater pollution and water scarcity are burdening the economy."³⁶⁰ Like India, China suffers from the twin problems of

354. Rogerio Wassermann, *Can China Be Green by 2020?*, BBC NEWS (Apr. 2, 2009, 10:33 PM), <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/business/7972125.stm?ad=1>.

355. Jianguo Liu & Jared Diamond, *China's Environment in a Globalizing World*, 435 NATURE, 1179, 1181 (2005).

356. Zissis & Bajoria, *supra* note 328.

357. *Id.*

358. Eliot Sefton, *China Overtakes US as Number One Energy User*, FIRSTPOST (July 20, 2010, 10:32 AM), <http://www.thefirstpost.co.uk/66094/business/china-overtakes-usa-united-states-as-number-one-energy-user?print=print>.

359. Liu & Diamond, *supra* note 355, at 1179.

360. Elizabeth C. Economy, *The Great Leap Backward?* FOREIGN AFFAIRS, Sept.-Oct. 2007, <http://www.foreignaffairs.com/print/62827>.

water shortage and water pollution. Its vast population has access to only around a quarter of the world's average per capita water supply.³⁶¹

Many lakes and streams have been polluted by chemical run-off from industrial complexes. Sewage has poured into China's lakes for years. It was estimated in 2005 that as many as 75 percent of Chinese lakes were polluted. Consequently, China now suffers from serious and growing water shortages, its population, as we have seen, confined to merely one quarter of the world's average per capita supply.³⁶² That figure can only lessen as the problem of water shortages escalates.

The Chinese coastline is swamped by red tides, (averaging ninety per year³⁶³) a product of untreated sewage that is dumped into oceans, killing marine life and affecting the entire food chain.³⁶⁴ In a compelling article in *NATURE*, Jianguo Liu and Jared Diamond explained the scale of the environmental problems afflicting China, problems that are causing economic losses and social conflicts. "The list of problems ranges from air pollution, biodiversity losses, cropland losses, depleted fisheries, desertification, disappearing wetlands, grassland degradation, and increasing frequency and scale of human-induced natural disasters, to invasive species, overgrazing, interrupted river flow, salinization, soil erosion, trash accumulation and water pollution and shortages."³⁶⁵

The nexus between a degraded environment and the prevalence of acute poverty has been studied and analyzed for many developing world countries, including China. In 2006, Han Jun, Director-General, Research Department of Rural Economy in the Development Research Centre of the State Council recognized "that the most poverty-stricken areas in China are located in regions with the most degraded ecological

361. Zissis & Bajoria, *supra* note 328.

362. Liu & Diamond, *supra* note 355, at 1182.

363. *Id.*

364. Ellen Wilson, *10 Environmental Issues in China You Didn't Know About*, MATADOR NETWORK (July 9, 2008), <http://matadorchange.com/10-environmental-atrocities-in-china-that-you-didnt-know-about>.

365. Liu & Diamond, *supra* note 355, at 1179.

conditions.³⁶⁶ While there is an integral linkage between environmental destruction and economic loss, the sheer massive scale of the problem in China makes amelioration a major undertaking. However, the Chinese Government is attempting belatedly, to deal with the negative consequences of its economic miracle. The establishment in 1998 of the State Environmental Protection Administration produced a spate of law and regulation aimed at improvement of the environment but enforcement continues to be a challenge, particularly when environmental awareness in the general population is very low. In 2005, Pan Yue, Vice Minister of this Agency, warned that the economic miracle would soon end “because the environment can no longer keep pace.”³⁶⁷

The problem now is that the demands of the great economy are insatiable, and as every developed Western nation found out earlier in history, catering to the constant need for raw materials, energy supplies and markets, severely strains and degrades the environment and that in turn adversely affects the population, which ironically, should be benefiting from the proceeds of the economic miracle, not being victimized by it.

The Chinese experience provides a compelling lesson concerning how not to go about becoming a leading economic power. However, while it is easy to denounce the terrible environmental price paid by the people, their country and indeed the entire world for China's economic progress, it is also important to pay heed to the dynamic of the past that provoked this zealous and frenetic rush to development.

Pre-industrial China suffered from serious economic inequities between regions, crippling poverty particularly in rural areas, and considerable loss of life when natural disasters brought either flood or drought. In the province of Henan, famine between 1943 and 1944 was so severe that peasants were

366. HAN JUN, EFFECTS OF INTEGRATED ECOSYSTEM MANAGEMENT ON LAND DEGRADATION CONTROL AND POVERTY REDUCTION 5 (2006) (prepared for Workshop on Environment, Resources and Agricultural Policies in China, June 19-21, 2006, Beijing, China).

367. Economy, *supra* note 360.

compelled to eat the bark off trees.³⁶⁸ The lengthy civil war between the Kuomintang Nationalist Forces and the Chinese Communist Party resulted in terrible suffering for Chinese civilians. Andrew Jacobs has recounted the horror of the situation in the Manchurian city of Changchun where a lengthy siege forced people to eat grass, leaves, insects, leather belts and even the bodies that lay on the streets.³⁶⁹

Such terrible situations formed part of the memory base of those who led China into its frantic escape from poverty. Along the way, as part of the establishment representing a very strong and unrelenting dictatorship, the leadership of China literally leaped from one economic experiment to the next in an effort to find the golden formula to turn one of the world's poorest nations into a rich and developed country. When socialism failed, they turned to capitalism. The priority was to provide economic betterment while ensuring the survival of the political system that enabled them to remain at the helm. Few of them considered the long-term cost. As with many politicians in most countries, short-term solutions were more convenient. The long-term cost was mentally shelved.

The trouble was that the environmental price could not be delayed. It manifested itself in innumerable ways and again reduced vast areas to misery and poverty. The Government eventually had to attend to environmental matters. In 2006, the Government committed to reducing energy intensity in 2010 by 20 percent from 2005 levels.³⁷⁰ However, as we have seen, it is now the world's most extensive user of energy.³⁷¹ Environmental groups such as Friends of Nature (founded 1994) and the World Wide Fund for Nature have been working to increase awareness

368. Theodore H. White & Annalee Jacoby, *The Henan Famine*, in THUNDER OUT OF CHINA 169, 169 (1946).

369. Andrew Jacobs, *China Is Wordless on Traumas of Communists' Rise*, N.Y. TIMES, Oct. 2, 2009, http://www.nytimes.com/2009/10/02/world/asia/02anniversary.html?_1&pagewanted=print.

370. *Economy: China*, THE CIA WORLD FACTBOOK (Sept. 29, 2010), <https://www.cia.gov/library/publications/the-world-factbook/geos/ch.html>.

371. Frank James, *China Overtakes U.S. in Energy Use*, THE TWO-WAY: NPR'S NEWS BLOG (July 20, 2010), <http://www.npr.org/blogs/thetwo-way/2010/07/20/128644881/china-overtakes-u-s--in-energy-use>.

of environmental problems.³⁷² However, given the Chinese Government's dedication to top-down thinking, there are only limited possibilities for non-governmental organizations. At the local level, district leaders tend to be more aware of the need to increase employment opportunities, encourage manufacturing ventures, and curb poverty, than address environmental concerns.

The Chinese Government remains committed to the establishment of vast projects such as the controversial Three Gorges Dam. Widespread consultation and the right to protest are not as common in China as they are in India. Stakeholders in China rarely have much say in what projects affect their environment. This point was rather bravely and tellingly made by a senior Chinese official who stated that "[w]ithin the decision-making process, there is no broad participation of stakeholders, especially those stakeholders directly affected." This same official went on to distinguish between the will of governments and the actual needs of farmers.³⁷³ The absence of public participation and the discouragement to any forms of protest stifle dissent and deny the leadership an adequate understanding and appreciation of the negative consequences of its policies. As with any form of dictatorship, the political establishment becomes insulated from the people and isolated. The result is that economic and environmental problems persist or become more severe and the toll in human misery increases.

Exploitation of the poor, who cannot make a viable living out of their degraded environment, is one reason for organ trafficking in China. "Organ traffickers also find a ready supply among the destitute who do not think twice about selling a kidney to provide for themselves. In the toilets of the Chaoyang Hospital in Peking [Beijing], several advertisements for kidneys are pasted on the walls."³⁷⁴ While poverty does drive some of these transactions, with much the same consequences for donor/sellers as occurs in India and other countries, in China, the demand for organs is so vast that enterprising elements have turned to the most

372. *Factbox: A Short History of China's Fragile Environment*, *supra* note 353.

373. Jun, *supra* note 366, at 70.

374. *China: Organ Trafficking Hub*, GENETHIQUE (Apr. 25, 2006), http://www.genethique.org/en/press/press/2006/april/24_28.htm.

vulnerable of people, prisoners on death row, awaiting execution. Because the situation concerning the sale of organs by the very poor and the causes that impel that drastic action are fairly similar between India and China, in this article, I will instead explore a particular and rather distinctive feature of China's organ trafficking that really needs to be better known in the Western world. It is imperative that this facet of organ trafficking in China be examined and analyzed by many academics from the free world. If organ trafficking is basically all about exploitation of the most vulnerable elements of society, then China has added a very unique twist to what is already a global tragedy. This singular feature of Chinese organ trafficking relates to the source that supplies and has for years supplied the overwhelming majority of organs that are sold for transplantation.

The sinister and gruesome sourcing of organs, according to allegations made by various Chinese dissidents involves the non-consensual harvesting of prisoner organs for transplantation into the bodies of rich Chinese and foreign recipients. The practice has also been referred to as "organ conscription."³⁷⁵ This is the major scandal of the Chinese organ trade and one that has generated much publicity and concern from physicians and human rights activists outside China. From a public relations perspective, this issue has been a huge embarrassment for the Chinese Government. In terms of human rights violations, it has raised a chorus of repugnance and horror around the world.

It is important to note that the extensive research on the Chinese situation produced more questions than answers. Absent clear, verifiable information about the number of prisoners executed each year, their names and particulars about their lives and their alleged crimes, one has perforce to rely on anecdotal information that may or may not be exaggerated. For a researcher, struggling to be fair and objective, it is virtually impossible to gauge either the accuracy of the horrors recounted or whether the stories are self-serving. The problem lies with the Chinese Government and its emphasis on secrecy and

375. Debra A. Budiani-Saberi, *Organ Trafficking and Transplant Tourism*, in *THE PENN CENTER GUIDE TO BIOETHICS* 700, 700 (Vardit Ravitsky et al. eds., 2009).

2010]

THE SUM OF A HUMAN'S PARTS

91

defensiveness in the face of international condemnation. The Chinese Government failed to realize that there was far more stigma and loss of face in unconvincing denials than there would have been in honest admission accompanied by determined efforts to curtail the crimes.

The number of accounts of organ trafficking carried out by state administrators, medical authorities, legal and judicial officials and others does point to a widespread prevalence of the practice. The alleged involvement of public officials on so vast a scale is very disturbing. As regards the prisoner donors, if China decides to 'come clean' on this scandal some day in the future, and reveal detailed particulars about these executed persons whose organs now provide life to patients from many countries, the world may then learn just who these hapless donors were whose lives were brutally terminated for the profits to be made from organ harvesting.

As regards the circumstances of the prisoner/donors, it is highly unlikely that they came from the elite or wealthy of China. It is widely known that corruption greases the wheels of all systems in that country, a fact that would tend to preclude those who can avoid the draconian legal and judicial system in all its manifestations simply because they have the financial means to do so. If the accounts of Chinese dissidents, and international journalists, academics and human rights activists are to be believed, those most likely to be pulled into the harvesting net would be those with the least political influence, social advantage or economic ability to bribe their way out of the capital punishment nightmare. Logically, these prisoners who were allegedly killed for their organs, must have been poor and disadvantaged. The police who scooped them up from their lives, the judges who condemned them to a quick death, the medical authorities, including surgeons who waited eagerly for their organs, felt no apprehension about being held accountable for any of these executions. That points to the conclusion that many of these prisoners were ordinary people, many from economic backgrounds where family members could easily be coerced into silent acquiescence. Until the Chinese Government decides to redeem its own reputation internationally and admit with full particulars to this terrible human rights violation, committed

over such a long period, this research only results in more questions.

Harry Wu, one of China's most prominent dissidents has revealed in testimony before the U.S. Congress that "China's problems with organ transplants have resulted in the harvesting of organs from bodies of executed prisoners, and a flourishing illicit trade in 'donations' among the general population." As regards the perceptions in China about such practices, Wu commented: "People just think, well, they're already dead. Once they've been executed, they have no more consciousness, so why not use this waste product?"³⁷⁶ Wu stated that in China "the harvesting of organs from executed prisoners proceeds as an entirely government owned and controlled operation."³⁷⁷ By 2005, China boasted the largest deceased donor renal and liver transplant program in the world.³⁷⁸

The gruesome nature of this trade was also explained to an American Congressional Committee on Human Rights in 2001 by Dr. Wang Guoqi, who confirmed that men and women are "executed. . .so that their organs can be transplanted into wealthy recipients from the West and Far East."³⁷⁹ According to Dr. Wang, shortly after execution the corpse was stripped of all saleable parts, and cash payments were made to all involved including court officials, generals, and prison staff.³⁸⁰ The Chinese Government termed Dr. Wang's testimony "vicious slander," and accused him of lying in order to stay on in the United States.³⁸¹ Such extreme defensiveness reveals a serious fault line that prevails in most modern dictatorships. Despite the

376. Radio Free Asia, *China Should Heed WHO Warnings on Transplant Organs*, EPOCH TIMES, Jan. 21, 2004, <http://www.theepochtimes.com/news/4-1-21/18741.html>.

377. Kurt Samson, *Prisoners' Organs Sold in China*, UNITED PRESS INT'L, June 27, 2001, available at http://www.vachss.com/help_text/archive/organs_sold.html.

378. World Health Organization, Consultation Meeting on Transplantation with National Health Authorities in the Western Pacific Region, Nov.7-9 2005.

379. James Langton & Damien McElroy, *Killed To Order: How China Harvests Body Parts on Death Row*, TELEGRAPH, July 1, 2001, <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/1332543/Killed-to-order-how-China-harvests-body-parts-on-Death-Row.html>.

380. *Id.*

381. *Id.*

growing evidence about the prevalence of this practice in China, the Government continued to deny allegations that convicts were executed to provide “organs to order.”³⁸² Dictatorships survive not by the consent and will of the people but through the exercise of terror and the denial of reality.

Given the intensely secretive and defensive nature of the Chinese Government, the acquisition of reliable data is far more complex than for any open society. However, there have been numerous reports from varied sources about the Chinese practice of harvesting prisoner organs. The Chinese official reaction was predictably defensive, denial of the allegations as “complete fabrication,” and some acknowledgment that only consensually-donated prisoner organs were transplanted in “a very few cases.”³⁸³ There has also been considerable controversy about the existence or otherwise of a 1984 Chinese law that, according to the Christian Science Monitor, enabled organ removal from executed prisoners if family members did not claim the body right away.³⁸⁴ The Chinese Government has denied the existence of this precept, allegedly titled “Rules Concerning the Utilization of Corpses or Organs from the Corpses of Executed Prisoners.”³⁸⁵ This Chinese law appeared soon after the use of cyclosporine simplified transplant successes. The law dictated that absolute secrecy was to be maintained in order to avoid negative repercussions. Guards would be required when the organs were being removed and the corpses of minorities were excluded from these practices.³⁸⁶

382. Duncan Hewitt, *Shanghai Balks at Organ Donation*, BBC NEWS (Nov. 20, 2000, 5:20 PM), <http://news.bbc.co.uk/2/hi/asia-pacific/1032537.stm>.

383. *China Bans Transplant Organ Sales*, BBC NEWS (Mar. 28, 200, 12:46 PM), <http://news.bbc.co.uk/go/pr/fr/-/2/hi/asia-pacific/4853188.stm>.

384. Sheera Frenkel, *Organ-Trafficking Laws in Key Countries*, CHRISTIAN SCIENCE MONITOR (June 9, 2004), <http://www.csmonitor.com/2004/0609/p12s02-wogi.html>.

385. *Illegal Human Organ Trade from Executed Prisoners in China*, TED Case Study (2001), <http://www1.american.edu/TED/prisonorgans.htm> (last visited Nov. 7, 2010).

386. D.J. Rothman et al., *The Bellagio Task Force Report on Transplantation, Bodily Integrity, and the International Traffic in Organs*, INTERNATIONAL COMMITTEE OF THE RED CROSS (Jan. 1, 1997), <http://www.icrc.org/Web/eng/siteeng0.nsf/iwpList302/87DC95FCA3C3D63EC1256B66005B3F6C>.

In 1996, the United States Department of State raised the issue of coerced transplants with China. Two years later, the Federal Bureau of Investigation arrested two citizens of the People's Republic of China for organ trafficking in the United States. That case was not pursued because a key witness disappeared.³⁸⁷

After years of denying that any serious abuse of vulnerable prisoners even existed, by 2006, the Chinese Government itself acknowledged the problem. In an unusual admission, a senior Chinese official did admit in an article in the prestigious medical journal *The Lancet*, that over 90 percent of transplant organs were obtained from executed prisoners.³⁸⁸ Huang Jie-Fu, Chinese Deputy Minister of Health and a surgeon specializing in kidney transplants, may have signaled a new openness in China's official position when he stated that 95 percent of transplanted organs in China came from executed prisoners.³⁸⁹

The precise number of executions is "guarded as a state secret."³⁹⁰ Amnesty International estimated in 2001 that China's average execution rate was forty citizens per week. Amnesty estimated that between 1990 and 1999, China imposed 27,599 death sentences and executed more than 18,194 persons.³⁹¹ The Amnesty estimate for executions in 2008 was 1718 prisoners, the highest number for any nation.³⁹² China has defended what it considers to be its very limited use of the death penalty.³⁹³

As regards the removal of organs from the hapless death row inmates, the official Chinese explanation included casting blame

387. ALISON BRYSK, *HUMAN RIGHTS AND PRIVATE WRONGS, CONSTRUCTING GLOBAL CIVIL SOCIETY* 105-06 (Routledge 2005).

388. Jiefu Huang et al., *Government Policy and Organ Transplantation in China*, 372 *THE LANCET* 1937, 1937 (2008).

389. *China: Organ Trafficking Hub*, *supra* note 374.

390. *The Public Eye Swiss Award*, PUBLIC EYE (2010), http://www.publiceye.ch/media/medialibrary/2010/01/Roche_en.pdf.

391. *China 'Tops Execution Tables'*, BBC NEWS, (Mar. 21, 2001, 4:25 PM), <http://news.bbc.co.uk/2/hi/asia-pacific/1234000.stm>.

392. Michael Wines, *China Announces a System for Voluntary Organ Donors*, N.Y. TIMES, Aug. 27, 2009, <http://www.nytimes.com/2009/08/27/world/asia/27china.html?sq=organ%20trafficking&st=>.

393. Colin Blane, *World: Asia-Pacific Mass Execution in China*, BBC NEWS (Aug. 27, 1998, 2:45 PM), <http://news.bbc.co.uk/2/hi/asia-pacific/159667.stm>.

on “rogue surgeons,” who in turn refuted the allegations.³⁹⁴ Dr. Wang Guoqi, a former military physician, who had participated in numerous organ removals from prisoners, told the U.S. Congress that the “sale of organs netted huge profits for the People’s Liberation Army.” The Chinese Government accused him of lying.³⁹⁵ The United States Subcommittee on International Operations and Human Rights of the Committee on International Relations of the House of Representatives held hearings in 2001 on the organ trafficking practices in China. It was revealed at those hearings that the Chinese People’s Liberation Army ran the majority of the hospitals undertaking the sale of organs and that the military had a close relationship with the prisons and justice system.³⁹⁶

The World Medical Association opposed the usage of prisoner organs on ethical grounds.³⁹⁷ BBC News reported in 2006 that China’s “organ transplant industry has become big business,” and that same year British transplant surgeons condemned the removal of prisoner organs as a breach of human rights.³⁹⁸ International human rights organizations also accused “China of harvesting organs from executed prisoners for transplant without the consent of the prisoner or his or her family.”³⁹⁹ Arguably, the concept of a prisoner on death row, particularly a political dissident, exercising free will and providing consent for the harvesting of his/her organs would raise a number of legal concerns and apprehensions. The Japanese Society for

394. *China Officially Admits Executed Prisoners Are the Basis of Organ Trafficking*, ASIA NEWS (Nov.16, 2006; 3:05 PM), <http://www.asianews.it/index.php?1=en&art=7771>.

395. *China Fury at Organ Snatching ‘Lies’*, BBC NEWS (June 28, 2001, 11:56 PM), <http://news.bbc.co.uk/2/hi/americas/1411389.stm>.

396. *Organs for Sale: China’s Growing Trade and Ultimate Violation of Prisoners’ Rights: Hearing Before the Subcomm. on Int’l Operations and Hum. Rts. of the House Comm. on Int’l Rel.*, 107th Cong. 107-29 (2001), available at <http://www.house.gov/international-relations>.

397. *The Public Eye Swiss Award*, *supra* note 390.

398. *Organ Sales ‘Thriving’ in China*, BBC NEWS (Sept. 27, 2006; 7:06 PM), <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/asia-pacific/5386720.stm>.

399. *China to Ban Human Organ Trafficking from May 1*, CHANNEL NEWS ASIA (Apr. 7, 2007, 1:53 PM), http://www.channelnewsasia.com/stories/afp_asiapacific/view/269026/1/.html.

Transplantation has disallowed transplant tourism to China in view of this use of prisoner organs, and the Japanese Ministry of Health has warned hospitals not to assist organ trafficking.⁴⁰⁰ The Japanese were wise to be so cautious. Despite the denials of any such practices by the Chinese Government, there is evidence that Japanese patients were specifically targeted for transplant advertising on Chinese registered websites that had Chinese contact phone numbers.⁴⁰¹ Some of them registered in Chinese hospitals and were allotted Chinese names.⁴⁰²

For some years, the business of harvesting executed prisoner organs was allegedly run in China with a precision that is almost terrifying to contemplate. Websites offered transplant opportunities to British patients in need and boldly made it clear that executed Chinese prisoners were the source. In an apparent effort to placate any qualms, there was an assurance that the prisoners had given consent and that their families would receive compensation. The China International Transplant Network Assistance Center in Shenyang (North-East China) acted as one facilitator between donors and middlemen. Its web site explained that the optimum time to seek an organ would be December and January “as the number of executions is traditionally higher before the Chinese New Year.”⁴⁰³ According to dissident Harry Wu, “rapid turnover of death sentence appeals,” by judges and court officials, “ensure[s] that a prisoner will be executed at the optimal time to harvest an organ for the waiting patient.” Wu added that “[c]ourt officials often inform doctors when they pass down death sentences, alerting them to contact the prison to make a match for transplant patients.”⁴⁰⁴

400. Wen Mingming, *Japanese Government Warns Hospitals Against Transplant Tourism to China*, EPOCH TIMES, Feb. 21, 2010, [http://www.theepochtimes.com/n2/index2.php?option=com_content&task=view&id=30085&pop=1&page=\)&Itemid=1](http://www.theepochtimes.com/n2/index2.php?option=com_content&task=view&id=30085&pop=1&page=)&Itemid=1).

401. Gao Ling & Wu Ming, *Japanese Organ Transplant Agency: Chinese Organ Supplies Will Not Decrease*, EPOCH TIMES, Apr. 27, 2006, http://prisonplanet.com/articles/april2006/280406_b_Organ.htm.

402. Mark McDonald, *Report of Organ Tourism Stirs new Japan-China Controversy*, N.Y. TIMES, Feb. 17, 2009, <http://www.nytimes.com/2009/02/17/world/asia/17iht-organs.1.20242560.html>.

403. *China: Organ Trafficking Hub*, *supra* note 374.

404. Samson, *supra* note 377.

Recipients, by many accounts, try not to ask any uncomfortable questions about the source of their second lease on life. According to Thomas Fuller of the New York Times, patients who acquired transplanted organs in China were “too desperate at the time to consider the ethical consequences.”⁴⁰⁵ A Malaysian recipient responded to a question about the moral part – whether the prisoner/donor was innocent – by saying “I can’t question it too much. I have to live.”⁴⁰⁶ He did admit to praying for the donor in the hope that his afterlife was better. Clearly ethics considerations are “only a game for those people who are not sick.”⁴⁰⁷

To put to rest any medical qualms, potential recipients were assured that the donors were screened prior to execution with the taking of blood samples “to ensure that they [would] be the perfect match for their Western beneficiaries.” Apparently from a scheduling perspective, for such facilitators, using prisoner organs was an advantage because forthcoming execution dates “allows us to know at least two weeks ahead of time when the kidney will be ready.”⁴⁰⁸ Indeed, scheduling had to be very precise. Trevor Harrison noted that in some cases, kidneys were extracted the night before the prisoner was executed.⁴⁰⁹ Living donor kidneys are more effective medically than those from a deceased donor. On occasion prisoners were apparently medically prepped for effective extraction prior to their executions. Malaysian recipients, waiting for a transplant in China, stated that the “day before convicts are executed – usually in batches – a group of patients in the hospital are told to expect the operation the next day.”⁴¹⁰

405. Thomas Fuller, *China Supplies Convicts’ Organs to Malaysians: An Execution for a Kidney*, N.Y. TIMES, June 15, 2000, <http://www.nytimes.com/2000/06/15/news/15iht-organ.2.t.html?scp=1&sq=China%20Supplies%20Convicts%E2%80%99%20Organs%20to%20Malaysians:%20An%20Execution%20for%20a%20Kidney&st=cse>.

406. *Id.*

407. *Id.*

408. Jo Revill, *UK Kidney Patients Head for China*, GUARDIAN, Dec. 11, 2005, <http://www.guardian.co.uk/society/2005/dec/11/health.china/print>.

409. Trevor W. Harrison, *Frontiers of the Market: Commodifying Human Body Parts*, in NOT FOR SALE, DECOMMODIFYING PUBLIC LIFE 111, 123 (Gordon Laxer & Dennis Soron eds., 2006).

410. Fuller, *supra* note 405.

Deeming the body of evidence “incontrovertible,” Professor Stephen Wigmore, Chair of the British Transplantation Society told BBC News that in China, the “speed of matching donors and patients, sometimes as little as a week, implied prisoners were being selected before execution.” The Chinese Government denied the allegations concerning such sales.⁴¹¹ The United States Congress was also made aware in 2001 that the actual procedure of execution was carried out so as not to damage potentially saleable organs.⁴¹² This new world environment of globalized health care for the wealthy that deprived the most vulnerable of the very right to life is almost too appalling to contemplate. Dr. Nadey Hakim, Head of Transplantation Surgery at Imperial College, London commented: “It is so disgusting it is hard to know how any doctor can take part in this trade.”⁴¹³ Most terrifying of all was the allegation that as brain death was not officially recognized in China, prisoners’ organs were removed while they were technically alive, without concern for the pain this would cause.⁴¹⁴

Organ procurement in China raised serious concerns in 2009 among the international community of transplant surgeons, particularly with respect to the reliance on executed prisoner ‘donations.’⁴¹⁵ The United States Department of State, as well as various medical and non-governmental organizations have concluded that prisoners in China are harvested after execution. The figure for procurement of organs from prisoners is, as we have seen, as high as 95 per cent.⁴¹⁶

China has one of the highest execution rates in the world. During the 1990’s China is thought to have executed more

411. Jill McGivering, *China ‘Selling Prisoners’ Organs,’* BBC NEWS (Apr. 19, 2004, 12:03 AM), <http://news.bbc.co.uk/go/pr/fr/-/2/hi/asia-pacific/4921116.stm>.

412. Langton & McElroy, *supra* note 379.

413. Revill, *supra* note 408.

414. STEPHEN WILKINSON, *BODIES FOR SALE: ETHICS AND EXPLOITATION IN THE HUMAN BODY TRADE* 241 (Routledge 2003).

415. *Majority of Doctors Skeptical of Organ Transplantation Practices in China*, SCIENCE DAILY (Apr. 23, 2009), <http://www.sciencedaily.com/releases/2009/04/090422132849.htm>.

416. *Id.*

prisoners than the entire rest of the world.⁴¹⁷ By one estimate, at the turn of this century, about three thousand people were executed annually.⁴¹⁸ Amnesty International condemned the alleged execution of 1200 persons in 1999, commenting that China was “performing executions to expand the organ trade from executed prisoners.”⁴¹⁹ The uncertain nature of statistical assessments because of the intransigent denials of the Chinese Government bedeviled efforts at accurate enumeration. Amnesty International suggested that the figure of those executed annually could be as high as 4500 persons.⁴²⁰ As Jill McGivering of BBC News complained, “[s]ecrecy surrounding executions in China has always made it difficult to gather facts.”⁴²¹ Absent any openly available information, in 1994 Human Rights Watch concluded that annually, about 2000 to 3000 organs were harvested from Chinese prisoners for use in transplants.⁴²²

Capital punishment is imposed in China for nearly seventy offences.⁴²³ These include human trafficking as well as “rape, drug dealing, tax evasion and serious fraud.”⁴²⁴ Offences such as theft and pig stealing that would be deemed minor in most civilized societies resulted in death sentences in China.⁴²⁵

As we in the Western world take religious and spiritual freedoms so much for granted, it is hard to understand the draconian reaction of the Chinese Government to the adherents of a spiritual group called Falun Gong. Founded in 1992 by Li Hongzhi, Falun Gong, to Western perspectives appeared to be just like many other spiritual groups that exist all over the free

417. *Illegal Human Organ Trade From Executed Prisoners in China*, *supra* note 384.

418. Langon & McElroy, *supra* note 379.

419. *Illegal Human Organ Trade From Executed Prisoners in China*, *supra* note 384.

420. *Id.*

421. McGivering, *supra* note 411.

422. Greg B. Smith & Bill Hutchinson, *Duo Tried Body Part Sale: Feds Hawked the Organs of Chinese Inmates*, DAILY NEWS, Feb. 24, 1998, http://www.nydailynews.com/archives/news/1998/02/24/1998-02-24_duo_tried_body_part_sale_fe.html.

423. *Public Eye Swiss Award*, *supra* note 390.

424. Langon & McElroy, *supra* note 379.

425. *Illegal Human Organ Trade from Executed Prisoners in China*, *supra* note 384.

world. The believers practiced deep breathing, meditation, exercise and, according to Human Rights Watch, engaged in peaceful confrontation with Chinese authorities.⁴²⁶

While the reaction to this group in any democratic society might have been fairly benign and mild, by contrast, in China, Falun Gong was politically and officially identified as “anti-scientific, anti-human, anti-social, anti-government. . .with all the characteristics of an evil religion.”⁴²⁷ The resulting crackdown on this group involved the detention and arrest of tens of thousands of its members. The alleged crime of the untold numbers convicted and executed was their belief in Falun Gong and their activities connected with that faith. The relevance of this particular situation to the instant research on organ trafficking relates to the allegations that have surfaced concerning the harvesting by China of the organs of executed Falun Gong adherents. Prominent human rights activists David Kilgour (former member of parliament) and David Matas released reports in 2006 and 2007 alleging that thousands of Falun Gong believers had been harvested for their organs, which were then sold, sometimes to transplant tourists.⁴²⁸ In January 2010, David Kilgour informed the Swiss chapter of the International Society of Human Rights that up to 2005, about 41,500 transplanted organs originated in the bodies of Falun Gong prisoners and asked his audience to consider “how much blood money the party-state and its agents, including medical professionals, are making from organ sales and forced labour provided by Falun Gong practitioners.”⁴²⁹

Dr. Torsten Trey, Chief Executive Director of Doctors Against Forced Organ Harvesting, explained that “[o]rgan harvesting is only the most brutal result of the marginalization and

426. *Dangerous Meditation: China's Campaign Against Falungong*, HUMAN RIGHTS WATCH (2002), <http://www.hrw.org/reports/2002/china/China0102.htm>.

427. *Id.* (quoting The Chinese Ministry of Foreign Affairs, Aug. 1999).

428. Press Release, Organ Harvest Investigation, Matas/Kilgour Release New Evidence on Organ Harvesting in China (Aug. 22, 2008), <http://organharvestinvestigation.net/release/pr-2008-08-22.htm>.

429. Hon. David Kilgour, J.D., Remarks at the Swiss Section of the International Society of Human Rights: Ending Organ Trafficking by Party-State in China (Jan. 15, 2010), available at http://www.david-kilgour.com/2010/Jan_17_2010_01.php.

dehumanization visited on Falun Gong practitioners.”⁴³⁰ The Chinese Government adopted a very defensive, even aggressive stance with foreign governments and organizations over the issue of its treatment of Falun Gong. Given the paucity of verifiable and reliable information, competing accounts formulated from totally divergent perspectives, make it almost impossible to ascertain the truth. One online source, The Epoch Times, allegedly affiliated with Falun Gong, reported on the terrible ordeal inflicted against these people. Epoch Times alleged that adherents were detained without appropriate warrants, and because organs “harvested from live bodies are worth far more than organs taken from dead bodies,” some prisoners were harvested while alive, and then hurled into crematoriums. The same online Journal published a confession by someone who allegedly worked in a hospital in China and recounted that physicians were involved in such practices from about 2001 and commented: “The profit from selling organs is simply too great.”⁴³¹

As the Chinese Government does not report any data on numbers of people executed, it is difficult academically and dispassionately to assess these claims. A more open system and transparency regarding such allegations of its apparently overzealous resort to capital punishment might actually assist the reputation of the Chinese Government. As the Chinese Government has inevitably denied and downplayed the scale of the problem, it ought to be in a position to provide incontrovertible evidence to support its position. Absent such transparency, and given the extent of defensive reaction by the Government and its minimal admissions riddled with inconsistencies, even the most impartial analyst cannot but conclude that at the very least China appears to have something significant to hide.

430. Trey Torsten, *The Olympics, Dehumanization, and Organ Harvesting*, INTERNATIONAL FEDERATION FOR JUSTICE IN CHINA (July 5, 2008), <http://ifjc.org/content/view/673/50/land.en/>.

431. Ji Da, *New Witness Confirms Existence of Chinese Concentration Camp, Says Organs Removed from Live Victims*, EPOCH TIMES, Mar. 17, 2006, <http://en.epochtimes.com/tools/printer.asp?id=39405>.

In 2006, by one estimate, approximately 4000 prisoners were executed and “donated” about 8000 kidneys and 3000 livers mainly to foreign purchasing patients.⁴³² In 2008, Asma Jahangir, United Nations Special Rapporteur on Freedom of Religion, and Manfred Nowak, United Nations Special Rapporteur on Torture demanded “that China explain the dramatic increase in organs used for transplantation from 2000 to 2005, and the mismatch between the high number of transplants and the relatively few known donor sources.” It was inferred that brutal persecution of Falun Gong prisoners coincided with a “surge in organ transplantation in China” during that time frame.⁴³³ The Chinese Government allegedly claimed that it had no transplant statistics for the period in question.⁴³⁴

Although the Chinese Government denied the allegations, denounced those who made them and insisted that nothing untoward was occurring, the issue of its practices was brought up in the United Nations Committee Against Torture as early as 1993 and in the United Nations Human Rights Commission in 1997.⁴³⁵

While the world has roundly condemned the Chinese authorities for participating in and profiting from the exploitation of its prison population, there is another facet to the issue that must at least be mentioned. In a very real sense, economic progress in China has been accompanied by social regress in imperatives of life such as healthcare. The conversion to a privately-owned capitalist style economic structure has led to serious inequities in the distribution of wealth generated by the new system. Driven by private ownership and a profit oriented economy, the Government reduced spending on necessities like

432. Francis L. Delmonico, *The Implications of Istanbul Declaration on Organ Trafficking and Transplant Tourism*, 14 CURRENT OPINION IN ORGAN TRANSPLANTATION 116, 117 (2009), http://journals.lww.com/co-transplantation/Fulltext/2009/04000/The_implications_of_Istanbul_Declaration_on_organ.3.aspx.

433. Shi Yu, *China Denies Having Organ Transplantation Statistics Between 2000 and 2005*, INTERNATIONAL FEDERATION FOR JUSTICE IN CHINA (Sept. 7, 2008), <http://ifjc.org/content/view/980/50/lang,en/>.

434. *Id.*

435. ALISON BRYSK, HUMAN RIGHTS AND PRIVATE WRONGS, CONSTRUCTING GLOBAL CIVIL SOCIETY 105 (Routledge 2005).

healthcare, which decreased from 36 percent in 1980 to just 17 percent by 2006.⁴³⁶ The consequence has been that transplant tourism became an important cash cow and a vital element for the survival of health care facilities in a steadily privatizing economy.⁴³⁷

The decline of public spending on health care forced hospitals and physicians to make up the shortfall in their incomes by chasing profitable enterprises such as transplant tourism, accepting bribes, ordering unnecessary tests and prescribing medications because each prescription netted the physician a fee. David Matas and David Kilgour, Canadian human rights activists who have widely publicized their concerns about the organ harvesting of Falun Gong prisoners, concluded that given the involvement of the military, and the corrupt environment, '[t]here is huge money to be made from transplants and the lack of effective controls over corruption.'⁴³⁸ A brave whistleblower, Dr. Hu Weimin revealed to BBC News that hospitals had no choice but to chase profit in order to survive and admitted that he had been beaten for exposing the abuses and had moved his family for their own safety. Patients are compelled to pay high fees and often either do without health care or spend the required sums and impoverish their families. The World Bank concluded that twenty percent of China's poor "blamed healthcare costs for their financial straits."⁴³⁹ The Government admitted that as of 2006, eighty percent of Chinese citizens had no medical insurance.⁴⁴⁰ In January 2009, the Chinese Government announced the future establishment in 2011 of a universal health

436. Louisa Lim, *The High Price of Illness in China*, BBC NEWS (Mar. 2, 2006, 6:27 AM), <http://news.bbc.co.uk/2/hi/asia-pacific/4763312.stm>.

437. Nancy Scheper-Hugues, *Illegal Organ Trade: Global Justice and the Traffic in Human Organs*, in LIVING DONOR ORGAN TRANSPLANTATION 106, 109 (Rainer W.G. Gruessner & Enrico Benedetti eds., 2008).

438. David Matas & David Kilgour, *The Ongoing Catastrophe of Organ Pillaging in China*, INTERNATIONAL FEDERATION FOR JUSTICE IN CHINA, <http://ifjc.org/content/view/104/50/lang,cn/>.

439. Lim, *supra* note 436.

440. Zhang Feng, *New Rule to Regulate Organ Transplants*, CHINA DAILY (May 5, 2005), http://www.chinadaily.com.cn/china/2006-05/05/content_582847.htm.

care system, allocating \$123 billion for its population of 1.3 billion. Critics believe the plan is underfunded for its aims.⁴⁴¹

Given such circumstances it is hardly surprising that the most vulnerable of China's population suffers. The poor, living in an environment that denies them adequate health care are victims of the new Chinese economics. Poverty drives them to sell all their assets including whatever body parts they can, to survive. Additionally and horribly, in China, the vulnerable prison population has been utilized for years as a resource for profit that encouraged foreigners to come to China as transplant tourists, secure in the knowledge that fresh body parts were available for a price – a price that provided profits to a host of complicit individuals and ensured survival and even financial success for hospitals and medical facilities. The crime resulted in economic success but it dehumanized everyone involved.

Expressions of outrage, concern and repugnance around the world about China's apparent involvement in organ trafficking eventually had an impact on the Government of that country. In 2006 the Chinese Government made it mandatory for all organ transplant operations to be approved by an ethics committee. The various committees would be tasked to ensure that the organs used were voluntarily donated and not sold or removed randomly.⁴⁴² Medical standards were established for organ transplants and hospitals had to establish competence with appropriate equipment, adequate management, qualified physicians and a medical ethics committee.⁴⁴³ Henceforward, organ trafficking was banned in China and organs would have to be allocated according to need.⁴⁴⁴

The State Council or Cabinet of the Chinese Government announced a ban from May 1, 2007 on the trade in human organs. The Regulation on Human Organ Transplantation

441. Edward Wong, *China's Export Economy Begins Turning Inward*, N.Y. TIMES, June 24, 2010, http://www.nytimes.com/2010/06/25/world/asia/25china.html?_r=1&pagewanted=print.

442. Feng, *supra* note 440.

443. *Id.*

444. Jiye Zhu, *Country Progress, Legislative Framework: China*, in SECOND GLOBAL CONSULTATION ON CRITICAL ISSUES IN HUMAN TRANSPLANTATION: TOWARDS A COMMON ATTITUDE TO TRANSPLANTATION 12, 12 (WHO, Geneva, Mar. 28-30, 2007).

banned all forms of trafficking and limited donations to defined familial and blood relatives.⁴⁴⁵ The ban did not apply to tissue transplants, corneas or bone marrow.⁴⁴⁶ Additionally, children under 18 could not donate organs.⁴⁴⁷ Transplant tourism for foreigners was also banned, effective May 1, 2007.⁴⁴⁸ Physicians involved in organ trading would suffer revocation of their medical licenses and officials convicted of this trade would be dismissed.⁴⁴⁹ Organ traffickers were arrested for violations of the transplant tourism provisions and hospitals had their licenses revoked for involvement in foreign transplants.⁴⁵⁰ Transplants could only occur at specified locations and a limited number of hospitals were licensed for the procedure.⁴⁵¹ The number of institutions performing transplants was accordingly markedly reduced.⁴⁵²

It appears that liver transplant operations appear to have drastically reduced since the passage of the legislation.⁴⁵³ The World Health Organization praised the new measures and China's efforts to ensure that altruism and not financial compensation became the "driving principle" for organ donors.⁴⁵⁴

445. Kang Juan, *Organ Trafficking Stirs Concern*, GLOBAL TIMES, Aug. 24, 2009, <http://china.globaltimes.cn/society/2009-08/460386.html>

446. *China To Ban Human Organ Trafficking from May 1*, *supra* note 399.

447. Gillian Wong, *China Issues Human Organ Transplant Rules in Attempt to Clean up Industry*, AP FEATURES (Apr. 7, 2007), available at <http://www.thefreelibrary.com/China+issues+human+organ+transplant+rules+in+attempt+to+clean+up...-a01611350860>.

448. Mark McDonald, *Report of Organ Tourism Stirs new Japan-China Controversy*, N.Y. TIMES, Feb. 17, 2009, <http://www.nytimes.com/2009/02/17/world/asia/17iht-organs.1.20242560.html>.

449. *China to Ban Human Organ Trafficking from May 1*, CHANNEL NEWS ASIA (Apr. 7, 2007, 1:53 PM), http://www.channelnewsasia.com/stories/afp_asiapacific/view/269026/1/.html.

450. *'Transplant Tourism' Causing Concern*, TIMES OF INDIA, Apr. 12, 2010, <http://timesofindia.indiatimes.com/life-style/health-fitness/health/Transplant-tourism-causing-concern/articleshow/5722415.cms>.

451. Wong, *supra* note 447.

452. Delmonico, *supra* note 432, at 117.

453. Debra A. Budiani-Saberi, *Organ Trafficking and Transplant Tourism*, in THE PENN CENTER GUIDE TO BIOETHICS 700, 702 (Vardit Ravitsky et al. eds., 2009).

454. *China Hopes Organ Donor System Stops Trafficking*, CNN (Aug. 26, 2009), <http://edition.cnn.com/2009/WORLD/asiapcf/08/26/china.organ.donation>.

The Transplantation Society also praised the new regulations.⁴⁵⁵ Additionally, in 2007, the Supreme People's Court in China began reviewing some death penalty cases.⁴⁵⁶

The problem was that while the legislation led to a two or three fold decrease in cadaveric organ transplants – a significant indication of the increasing separation between transplantation and the prison system⁴⁵⁷ – the facilitators and brokers soon found ways of getting around the law. Chen Zhonghua, Deputy Director for Transplantation of the Chinese Medical Association, explained that with the crackdown against prisoner donations, organ brokers “have procured organs from the poor and jobless by making them ‘relatives’ of organ recipients by forging documents with the help of lawyers and medical workers.”⁴⁵⁸ This fake relative phenomenon had sharply increased the percentage of transplants from living donors, a figure that was 15 percent before the legislation had reached 50 percent or more soon after the law was passed.⁴⁵⁹

By 2009, the problem of prisoner harvesting apparently still persisted. Dr. Huang Jiefu, Vice-Minister for Health told the newspaper China Daily that two thirds of organs used for transplantation were taken from executed prisoners. Disapproving the practice, he added, “that some people just ignore legal procedures regarding organ donations from executed prisoners and make a fat profit.”⁴⁶⁰ The public remarks of this Dr. Huang Jiefu seem to signal a new approach by the Chinese Government, a more mature acknowledgment that augurs well for future eradication of the crime of organ trafficking, at least where the prison population is concerned.

455. Jiefu Huang et al., *Government Policy and Organ Transplantation in China*, 372 THE LANCET 1937, 1937 (2008).

456. Juan, *supra* note 445.

457. *See* Jiefu Huang et al., *supra* note 455.

458. Juan, *supra* note 445.

459. *Id.*

460. Thomas Hubert, *China Acknowledges Death Row Organ Trafficking*, WORLD COALITION AGAINST THE DEATH PENALTY (Aug. 28, 2009), <http://www.worldcoalition.org/modules/smartsection/makepdf.php?itemid=361>.

It is apparent that China has heeded the criticism about its organ procurement system being both “opaque and unethical,”⁴⁶¹ and is now seeking to rehabilitate its international reputation in this regard by displaying a more open acknowledgment of the problem, the crime and of its need to reform. This is a very positive sign and an indication of national maturity. Dr. Huang Jiefu, told a conference in Madrid about his country’s efforts: “The trading of human organs emerged in China in an under-regulated environment, forming a tremendous profit chain that is against the principles of equality and the goal of building harmonious society in China.”⁴⁶² In 2009 the Chinese Government decided to create a registry for organ donors and recipients,⁴⁶³ a vital step in gaining some level of regulatory control over the illicit practices that have so denigrated the international reputation of that country.

While these measures may curtail or at least curb some of the abuses that prevail in the Chinese transplantation system, the country does not yet have an open and transparent process. Nicholas Bequelin of Human Rights Watch commented that there were still areas covered in secrecy, particularly the “crucial issue of the provenance of the organs.” According to Bequelin, the new procedure of seeking consent from prisoners was “virtually meaningless.”⁴⁶⁴ Whether or not the Chinese laws will make a difference in the crime of organ trafficking remains to be seen. Some initial diminution is likely until the criminals figure out how to bribe and terrorize their way through the new system.

It may be cynical, but until an open and accountable system prevails, whether or not there is improvement in China, the paucity of reliable information will render all Chinese sources suspect as being self-serving and other sources questionable because they lack authentic verification. It may well be that the Chinese Government is aware now that butchering prisoners and harvesting their organs is so universally condemned, that the

461. Edith M. Lederer, *Study Seeks Ban on Organ Trafficking*, CENTER FOR GENETICS AND SOCIETY (Oct. 13, 2009), <http://www.geneticsandsociety.org/article.php?id=4961>.

462. *“Transplant Tourism” Causing Concern*, *supra* note 450.

463. McDonald, *supra* note 448.

464. Wong, *supra* note 447.

denigration of China's reputation overseas is not worth the continuation of this dreadful practice. If the Chinese leadership can be persuaded that a more open approach and less defensiveness might yield even greater respect from other countries, then that might ameliorate the lot of the thousands on China's assembly line death row. From ancient times, the Chinese have emphasized the importance of saving face. In the twenty-first century saving face and gaining a reputation for human rights implementation, go hand in hand. While the prisoners' lives and organs hang in the balance, the entire country's reputation is also at stake.

INTERNATIONAL LAW

Although the instant article concerns issues of medical process, bioethics, human rights, transnational crime, economic inequity, poverty and environmental degradation, all these facets unite under the one rubric of law. As with all civilized societies and now, hopefully, with the global community, the law provides mankind with an impartial and clear standard of rules and requirements that must prevail in order for complex activities like transplantation to occur.

In a very real sense, there is an inherent violation of medical ethics in the very performance of such a procedure, clearly evident where living donation is involved. Physicians are pledged to do no harm. But the very act of removing someone's kidney violates that commitment. "When live organ donation takes place, transplant staff act on the principle of beneficence toward the recipient but defy the standard of nonmaleficence toward the donor."⁴⁶⁵

If national law and international disapproval were sufficient, the crime of organ trafficking could be easily eliminated. Essentially, its persistence is testimony to the tenacity of criminals who will persist in spite of universal condemnation of this activity. There is no dearth of national and international instruments, declarations, recommendations and provisions that

465. Peter P. Reese, et al., *Protecting Live Kidney and Liver Donors*, in THE PENN CENTER GUIDE TO BIOETHICS 721, 721, 724 (Vardit Ravitsky et al. eds., 2009).

seek to curtail, curb, eradicate and punish those who profit from the crime of organ trafficking. The subject has elicited significant stakeholder attention from surgeons, general practitioners, nurses, hospital and health care administrators, media, lawyers, judicial authorities, court officials, police forces and politicians of all ideologies across the world. One would think that with this much rhetoric and ink devoted to the subject, its terrible consequences would have been dealt with effectively. However that is not the case.

Given the length constraints of this article, it would be impossible to elucidate every national and international document that touches on the subject in detail. Instead, the focus is on a few multinational and international documents that from a pragmatic viewpoint lead the movement forward in the direction of eradication of organ trafficking, following principled and practical routes.

The extensive research for this article demonstrates that the crime of organ trafficking exists and persists in environments where the law is either lax or where it contains loopholes that can be utilized to skirt and evade its prohibitions. As we have seen, national law both in India and China was very quickly honored more in the breach, with traffickers paying a cursory nod to the legislative requirements but carrying on business as usual. For both countries, time alone will indicate whether the Governments have been able to implement their recent commitments to deal resolutely and decisively with this issue. The implementation of these national laws lies at the local level and is in the hands of numerous civil servants, police authorities, judicial officials, physicians and hospital administrators and the sheer numbers of such persons renders monitoring against corruption extremely difficult.

Both India and China have faced significant problems of corruption and bribery and hence the disconnect between law and practice amounts at times to a chasm across which there are few bridges. The law in China may ironically, have a better chance at being implemented simply because the Government, unrestricted by democratic systems and principles, can resort to draconian punitive measures. In India, by contrast, as in any democratic

state, judicial processes and a commitment to ensure the human rights of the accused, can lead to a very slow form of justice.

On a more positive note, many countries, including China, appear to be more receptive to admitting that they have a problem that requires a solution. This research has demonstrated a shift in the official Chinese stance on organ trafficking from total denial to limited but public acknowledgment. While there is a need for more transparency, the statements and actions of the Chinese Government are promising. There is a realization that no nation eager to be a player in a globalized world can keep itself isolated and secretive without paying a terrible price both in terms of its economic progress and its international relations and reputation. It is simply not viable for most nations to be classified as rogue states. North Korea comes to mind as an example of a dictatorship that has insisted on isolation and secretiveness but at terrible cost to its hapless, victimized population.

One of the interesting questions posed by this entire issue concerns whether international law can and ought to step in the breach between national legislation and national non-observance and provide a universally-acknowledged series of prohibitions to put an end to all facets of this terrible crime of organ harvesting. As we have seen, the concern and anxiety among professionals and even in the general public about the prevalence of this crime is fairly high. Professionals, especially those in medicine, cannot but be concerned about the taint on their field of work by the rogue surgeons who perform such operations without concern about the sources of the organs they are transplanting. The growing field of international criminal law might provide a possible legal solution whereby national sovereignty considerations may be amenable in view of the fact that the criminal networks are now truly transnational.

The international community has been vocal and articulate in condemning all manifestations of the crime of organ trafficking. In May 2000, the World Health Organization condemned the sale of human body parts, prohibited advertising and “established the principle of equality in terms of human

organ donations.”⁴⁶⁶ That same year, the World Medical Association sought the banning of payment for organs or tissues.⁴⁶⁷ The near universal call for eradication of organ trafficking makes one wonder why the practice still prevails and in some areas is escalating. In January 2005, the Pan American Health Organization of the World Health Organization emphasized the importance of legal prohibitions against organ trafficking. It also recommended that physicians ought not to perform transplants using commercially-procured organs.⁴⁶⁸

As this article has concentrated on Asia, it is imperative that we explore a region-specific attempt to address the problem of organ trafficking. An Asian Task Force on Organ Trafficking, composed mainly of medical experts, convened in Taipei, Taiwan in July 2007 and January 2008, to articulate the parameters of the problem with specific reference to their continent and to make some very useful recommendations for amelioration. The Taipei Recommendations of January 2008, could, if implemented by all Asian Governments, effectively curtail the most egregious consequences of organ trafficking in Asia. The Taipei Recommendations made early and specific reference to exploitation of the poor and vulnerable individuals citing them as the “primary sources of transplantable organs in some countries.”⁴⁶⁹ The Task Force also noted the exploitative use of prisoners for organ retrieval; the use of monetary inducements, coercion and the involvement of unscrupulous agents in organ transactions along with the “intentional or unintentional involvement of health care professionals in transplantation practices which raise questions concerning possible conflict of

466. Mario Osava, *Poor Sell Organs to Trans-Atlantic Trafficking Ring*, IPS NEWS, Feb. 23 2004, <http://ipsnews.net/interna.asp?idnews=22524>.

467. *Id.*

468. Pan American Health Organization (PAHO) & WHO, Provisional Adenda Item of the 39th Session of the Subcommittee on Planning and Programming of the Executive Committee, *Strengthening of National Programs For Organ Donation and Transplants*, DOC. APP39/6 (Jan. 28, 2005).

469. Asian Center for WTO & International Health Law and Policy, Asian Task Force on Organ Trafficking, *Recommendations on the Prohibition, Prevention and Elimination of Organ Trafficking in Asia* (Taipei Recommendations) (Jan. 2008), available at http://www.law.ntu.edu.tw/center/wto/04research.asp?b_index=403.

interests.”⁴⁷⁰ The extensive recommendations of the Taipei group are interesting in that they envisage a very active role both for nations and for the international community. The proposals included a call for an international treaty elucidating universal norms as well as national legislation specifically delineating prohibitions against organ trafficking. Very specific agendas were elucidated for national governments to address. These included recommendations that ensured that Nations were tasked to increase use of deceased donation; address the needs of the poor; create a viable monitoring infrastructure; aim at national self-sufficiency in terms of organ recipients; establish registries of recipients and donors; encourage research and information exchanges; discourage transplant tourism; limit transplantation to those having the same nationality as the donors, and observe accountability and transparency in their regulations and practices.⁴⁷¹

The Transplantation Society and the International Society of Nephrology convened an international summit in Istanbul, Turkey, between April 30 2008 and May 1, 2008 to address the unethical practices associated with transplantation. It was obvious to most practitioners that these illicit features threatened, “to undermine the practice of transplantation worldwide.”⁴⁷² The practices of concern included “organ trafficking (the illicit sale of human organs), transplant commercialism (when an organ is treated as a commodity), and transplant tourism (when organs given to patients from outside a country undermine the country’s ability to provide organs for its own population).”⁴⁷³

The universal expressions of concern from over 150 members of the scientific and medical community (representing 78

470. *Id.*

471. *See generally id.*

472. Steering Committee of the Istanbul Summit, *Organ Trafficking and Transplant Tourism and Commercialism: The Declaration of Istanbul*, 372 THE LANCET 5, 5 (2008).

473. *Transplant Experts Convene at ASN Renal Week 2008 To Discuss Organ Trafficking*, EUREKALERT (Nov. 8, 2008), http://www.eurekalert.org/pub_releases/2008-11/ason-tec103008.php.

countries),⁴⁷⁴ resulted in the creation of the Declaration of Istanbul, a significant attempt to help countries to eliminate organ trafficking.⁴⁷⁵ A multi-national group of experts prepared the text of the Declaration which was inspired by a 2004 Resolution of the World Health Assembly urging member states “to take measures to protect the poorest and vulnerable groups from transplant tourism and the sale of tissues and organs, including attention to the wider problem of international trafficking in human tissues and organs.”⁴⁷⁶ This important Resolution WHA57.18 pointed the way for greater elaboration and delineation both of the parameters of the problem and of the legal and ethical boundaries that should govern this important medical procedure that has saved so many lives.

The Istanbul Declaration explained the unethical practices involved in transplantation, particularly the exploitation of the poor who sell their organs,⁴⁷⁷ and Summit participants universally acknowledged that transplant commercialism resulted in egregious violations of “equity, justice and respect for human dignity.”⁴⁷⁸ The Declaration provided clear definitions of the various facets of the exploitative activities involved in organ trafficking, transplant tourism and transplant commercialism and delineated appropriate principles of practice based on those definitions.⁴⁷⁹ Organ trafficking and transplant commercialism were to be prohibited. Participants acknowledged that “[b]ecause transplant commercialism targets impoverished and otherwise

474. Francis L. Delmonico, *The Development of the Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, 23 NEPHROLOGY DIALYSIS TRANSPLANT 3381, 3381 (2008), available at <http://ndt.oxfordjournals.org/content/23/11/3381.full.pdf+html>.

475. *Transplant Experts Convene at ASN Renal Week 2008 To Discuss Organ Trafficking*, *supra* note 473.

476. Delmonico, *supra* note 474, at 3381.

477. *Declaration Opposes Transplant Commercialism, Transplant Tourism and Organ Trafficking*, SCIENCEDAILY (Aug 15, 2008), <http://www.sciencedaily.com/releases/2008/08/080813183552.htm>; *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, 3 CLINICAL J. AM. SOC'Y. NEPHROLOGY 1227, 1227 (2008), available at <http://www.asn-online.org/press/pdf/2008-Media/Declaration%20of%20Istanbul%20Study.pdf>.

478. Delmonico, *supra* note 474, at 3382.

479. *Id.* at 3381.

vulnerable donors, it leads inexorably to inequity and injustice and should be prohibited.”⁴⁸⁰

Travel for the purposes of acquiring a transplant was distinguished from the more notorious transplant tourism. Such travel could be deemed acceptable provided that the potential recipient had dual citizenship and had a live family member donor resident in the destination country.⁴⁸¹ Another acceptable practice would enable genetically related parties to give and receive organs in a third country.⁴⁸²

Although the Istanbul Summit drew an international membership, the Declaration bowed to the inevitable importance of state sovereignty in calling for each country to implement programs to deal with the associated problems.⁴⁸³ The Declaration explained the necessity for a “legal and professional framework to govern organ donation and transplantation activities, as well as a transparent regulatory oversight system that ensures donor and recipient safety and the enforcement of standards and prohibitions on unethical practices.”⁴⁸⁴ States with well-established deceased donor programs were encouraged to share expertise with states that had yet to create an appropriate transplantation infrastructure.⁴⁸⁵ Measures would have to be adopted to prohibit all electronic and print soliciting and all brokering activities that resulted in transplant commercialism. Additionally, the Steering Committee of the Istanbul Summit suggested measures recommending termination of formal professional membership for individuals violating the principles of the Declaration. Pharmaceutical companies and

480. *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, *supra* note 477, at 1227.

481. *Declaration Opposes Transplant Commercialism, Transplant Tourism and Organ Trafficking*, *supra* note 478; *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, *supra* note 477, at 1227.

482. Delmonico, *supra* note 474, at 3381.

483. *Declaration Opposes Transplant Commercialism, Transplant Tourism and Organ Trafficking*, *supra* note 477.

484. *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, *supra* note 477, at 1227.

485. Rosemary Frei, *Nephrologists Take on Organ Trafficking*, RENAL AND UROLOGY NEWS (Nov. 1, 2008), <http://www.renalandurologynews.com/nephrologists-take-on-organ-trafficking/printarticle/121265>.

funding agencies could also be asked to affirm their commitment to the Declaration.⁴⁸⁶

The Istanbul Declaration sought to encourage and maximize deceased organ donation,⁴⁸⁷ and thereby decrease the burden assumed by exploited living donors.⁴⁸⁸ Participants encouraged the practice of providing care for living donors,⁴⁸⁹ a lacuna that had globally resulted in serious health consequences for those who donated or sold their organs. The transplantation of deceased donor organs to foreign recipients was possible provided "official regulated bilateral or multilateral organ-sharing programs exist between or among jurisdictions that are based on reciprocated organ-sharing programs among the jurisdictions."⁴⁹⁰ However, now the governing principle in the entire field would be that "[f]inancial considerations or material gain of any party must not influence the application of relevant allocation rules."⁴⁹¹

Appreciating the social and cultural norms that made the people of countries like India and China averse to organ donation, either from living persons or from deceased family members, the Istanbul Declaration encouraged the development of educational programs to address some of these traditional inhibitions and deal with the misconceptions and mistrust that marked this medical field. Advancement of clinical and scientific research was also recommended.⁴⁹²

486. Steering Committee of the Istanbul Summit, *supra* note 472; see Francis L. Delmonico, *The Implications of Istanbul Declaration on Organ Trafficking and Transplant Tourism*, 14 CURRENT OPINION IN ORGAN TRANSPLANTATION 116, 117 (2009), http://journals.lww.com/co-transplantation/Fulltext/2009/04000/The_implications_of_Istanbul_Declaration_on_organ.3.aspx.

487. *Transplant Experts Convene at ASN Renal Week 2008 To Discuss Organ Trafficking*, *supra* note 473.

488. *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, *supra* note 477, at 1227.

489. Delmonico, *supra* note 474, at 3382.

490. Delmonico, *supra* note 486, at 117.

491. *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*, *supra* note 477, at 1228.

492. *Id.*

The critical importance of the Istanbul Declaration – adopted on May 2, 2008⁴⁹³ – cannot be over-emphasized. It demonstrated that stakeholders, brought together to discuss a global problem with implications for health, environment, economic inequity, human rights and medical ethics as well as the exploitation of vulnerable communities like the impoverished and prisoners, could produce a significant set of proposals for adoption and implementation by the governments of the world. The Declaration was adopted by consensus.⁴⁹⁴ Essentially, if universally implemented some day, these international principles will preserve “the goodness of the act of organ donation without victimizing the poor of the world to be the targeted source of organs for the rich.”⁴⁹⁵

International Organizations, particularly those associated with the United Nations have also made many attempts to delineate and deal with the issue and consequences of organ trafficking. While the instant article, because of length constraints, cannot aspire to providing a comprehensive analysis of the numerous international proposals, it is useful briefly to examine a few of the proposals. They are indicative first of the extent of international concern about organ trafficking and second about the implicit exploitation of the poor, which had to be exposed and condemned. Third, these proposals could be deemed to foreshadow a future where there could be universal and uniform application of the norms concerning organ transplantation.

In 1991, the World Health Organization, prompted by ethical concerns about organ transplantation,⁴⁹⁶ prepared a series of Guiding Principles on Human Cell, Tissue and Organ Transplantation which proposed that the “allocation of organs,

493. *Istanbul Declaration Sees Organ Transplantation Worldwide Threatened by Organ Trafficking and Transplant Tourism and Commercialism*, THE TRANSPLANTATION SOCIETY, http://www.tts.org/index.php?option=com_content&view=article&id=649:istanbul-declaration-sees-organ-transplantation-worldwide-thr... (last visited Oct. 18, 2010).

494. Steering Committee of the Istanbul Summit, *supra* note 472.

495. Delmonico, *supra* note 474, at 3382.

496. WHO Western Pacific Region, Rep. of the Consultation Meeting on Transplantation with National Health Authorities, Manila, Phil. Nov. 7-9, 2005, WHO Doc. (WP)HSD/ICP/HRF/6.4/001 (Sept. 2006).

cells and tissues should be guided by clinical criteria and ethical norms, not financial or other considerations.”⁴⁹⁷ Although these principles are not legally binding, over the years, they have been included in numerous professional codes of practice and are now regarded as “standard- setting.”⁴⁹⁸ After extensive international debate and discussion, the World Health Organization revised the principles to reflect developments in this matter. The revised Principles seek the “prohibition of the giving or receiving of money in exchange for cells, tissues or organs for transplantation, as well as any other commercial dealings in this field.”⁴⁹⁹ The new version of the Principles strengthens commitment to the “safety, quality and efficacy of both donation and transplantation procedures as well as of the human material used.” Of considerable importance for all stakeholders, especially donors and recipients is the new provision seeking “transparency in the organization and performance of donation and transplantation activities in order to facilitate appropriate technical oversight and foster public trust.”⁵⁰⁰

A team of experts and professionals concerned about the illicit activities in organ trafficking launched in 1999, an independent documentation center named Organs Watch. Nancy Scheper-Hughes is one of the founding members.

In 2000, the United Nations formally included organ removal as a form of exploitation in its definition of trafficking in persons.⁵⁰¹ The problem of trafficking in persons for the purpose of organ removal was included in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, attached to the UN Convention Against

497. WHO Secretariat, *Human Organ and Tissue Transplantation: Report by the Secretariat*, WHO Doc. EB123/5 (Apr. 18, 2008).

498. Thalif Deen, *Health: Study Faults Unregulated Trade in Human Organs*, ALLBUSINESS (Oct. 13, 2009), <http://www.allbusiness.com/medicine-health/medical-treatments-procedures-surgery/13252107-1.html>.

499. WHO Secretariat, *Human Organ and Tissue Transplantation: Report by the Secretariat*, WHO Doc. A62/15 (Mar. 26, 2009).

500. *Id.*

501. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, G.A. Res. 25/55, art. 3(a), U.N. Doc. A/45/49 (2001) (supplementing the United Nations Convention Against Transnational Organized Crime).

Transnational Organised Crime (2000).⁵⁰² That same year, the United Nations adopted the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, and tasked states to ensure that their penal codes covered the issue of “[t]ransfer of organs of the child for profit.”⁵⁰³ The European Community, enjoying one of the most progressive human rights systems in the world, articulated its principled approach when in 2002 a Protocol provided that the “human body and its parts shall not, as such, give rise to financial gain or comparable advantage,” and firmly declared that “[o]rgan and tissue trafficking shall be prohibited.”⁵⁰⁴

Brief mention has already been made of Resolution 57.18 of May 22, 2004 of the World Health Assembly, which is the supreme decision-making body for the World Health Organization. The members of the Assembly had noted for years the growing concerns and apprehensions articulated around the world about organ trafficking. At its forty-second session in 1989, the Assembly had formalized this concern in Resolution 42.5, which called on Member States to take measures to prevent the purchase and sale of human organs for transplantation and to pass legislation prohibiting organ trafficking.⁵⁰⁵

The important agreement in 2004 sought to “provide support for Member States in their endeavors to prevent organ trafficking, including drawing up guidelines to protect the poorest and most vulnerable groups from being victims of organ trafficking.”⁵⁰⁶ The World Health Organization expressed concern that year about the increasing trade in human organs

502. ELAINE PEARSON, COERCION IN THE KIDNEY TRADE?: A BACKGROUND STUDY ON TRAFFICKING IN HUMAN ORGANS WORLDWIDE 3 (2004), *available at* <http://www.gtz.de/de/dokumente/en-svbf-organ-trafficking-e.pdf>.

503. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, G.A. Res. 54/263, art. 3, U.N. Doc. A/RES/54/263 (May 25, 2000).

504. Eur. Consult. Ass., *Additional Protocol to the Convention on Human Rights and Biomedicine, on Transplantation of Organs and Tissues of Human Origin*, Doc. No. 186, Art. 21 & 22 (2002).

505. World Health Assembly, *Preventing the Purchase and Sale of Human Organs*, Res. WHA 42.5 (May 1989).

506. World Health Assembly, *Human Organ and Tissue Transplantation*, Res. WHA 57.18, §I.2(4) (May 2004).

and the need to protect vulnerable people.⁵⁰⁷ World Health Assembly Resolution 45.18 of 2004 urged member states to take “a number of measures on oversight, transparency and accountability in the procurement, processing and transplantation of human cells, tissues and organs, and to improve the safety, quality and efficacy of human material and transplantation procedures.”⁵⁰⁸

The United Nations General Assembly adopted Resolution 59/156 on 20th December 2004. The Resolution placed the issue of organ trafficking within the context of transnational organized crime and urged Member States to prevent, combat and punish the illicit removal of and trafficking in human organs.⁵⁰⁹

The following year, 2005, U.N.E.S.C.O. promulgated a Universal Declaration on Bioethics and Human Rights that articulated the serious concern of the world community about the abuse of scientific progress. Article 8 stated: “In applying and advancing scientific knowledge, medical practice and associated technologies, human vulnerability should be taken into account. Individuals and groups of special vulnerability should be protected and the personal integrity of such individuals respected.”⁵¹⁰

By 2006, the United Nations Secretary-General was able to present a Report to the Commission on Crime Prevention and Criminal Justice concerning the issue of organ trafficking. This Report explored the involvement of organized criminal networks in this enterprise and drew clear differences between the sale of organs (a more prevalent feature) and the trafficking of persons for organ removal (a less common feature). The Report

507. Clare Nullis-Kapp, *Organ Trafficking and Transplantation Pose New Challenges*, 82 BULL. OF THE WHO 715, 715 (2004), available at <http://www.who.int/bulletin/volumes/82/9/feature0904/en/print.html>.

508. Howard Zucker, Assistant Director-General, World Health Organization, *Welcome and Opening Remarks at the Second Global Consultation on Critical Issues in Human Transplantation: Towards a Common Attitude to Transplantation* (Mar. 28, 2007) (transcript available in WHO Report).

509. G.A. Res. 59/156, ¶1-2, U.N. Doc. A/RES/59/156 (Dec. 20, 2004), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/485/62/PDF/N0448562.pdf?OpenElement>.

510. UNESCO, Universal Declaration on Bioethics and Human Rights, Art. 8 (Oct. 19, 2005), available at http://portal.unesco.org/en/ev.php-URL_ID=31058&URL_DO=DO_TOPIC&URL_SECTION=201.html.

emphasized the linkage between poverty and vulnerability to such crimes.⁵¹¹

For those who have made the study of international organizations their life's work, it can at times be really frustrating to see the chasm that looms between intention and implementation, the gap between the fine words and phrases and the lack of action. Where criminal activity such as organ trafficking is daily occurring in so many parts of the world and where the consequences are so shattering for hundreds of victimized men, women and children, words promising amelioration are inadequate. The various international organizations have really feasted on their rhetoric for too long. Decisive action, preferably at the international level is vital. Organ donation, when it is perverted to serve the profiteering agendas of corrupt and criminal elements, becomes more of a life-threatening abuse than the life-saving system initially contemplated.

In a very real sense, it is the transplant surgeons and their teams who are caught in the centre of this ethical and moral issue that has ramifications both for the law and with respect to human rights. After deliberating in Amsterdam in 2005 and Vancouver in 2006, the Ethics Committee of the Transplantation Society delineated the responsibilities of transplant teams involved in live donation operations and called for independent oversight and transparency.⁵¹² Medical practitioners in most countries take solemn oaths against causing harm and most do exercise their profession within ethically accepted standards. However, the issues involved in organ trafficking raise so many dilemmas that the World Medical Association felt impelled to prepare a Statement on Human Organ Donation and Transplantation in 2000 and revised and updated this statement in 2006. The Association had in 1985, 1987 and 1994 already

511. U.N. Secretary-General, *Report to the Commission on Crime Prevention and Criminal Justice on Preventing, Combating and Punishing Trafficking in Human Organs*, U.N. Doc. E/CN.15/2006/10 (Feb. 21, 2006), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/V06/513/17/PDF/V0651317.pdf?OpenElement>.

512. Debra A. Budiani-Saberi, *Organ Trafficking and Transplant Tourism*, in *THE PENN CENTER GUIDE TO BIOETHICS* 700, 705 (Vardit Ravitsky et al. eds., 2009).

condemned the purchase and sale of human organs for transplantation.⁵¹³ The 2006 document provides a very significant blueprint for appropriate conduct and practice by physicians. The Statement reminds physicians about their responsibilities to society; asks transplant surgeons to refrain from transplanting organs acquired through illicit methods or via commercial transactions; provides guidelines and directions for organ procurement; and emphasizes the importance of consent as a requirement. The Statement prohibits payment for donation because a “financial incentive compromises the voluntariness of the choice and the altruistic basis for organ donation.” The Statement also prohibits donation by prisoners except to their own relatives because “prisoners and other individuals in custody are not in a position to give consent freely and can be subject to coercion.”⁵¹⁴

In May 2008, the Executive Board of the World Health Organization presented its Updated Guiding Principles on Human Cell, Tissue, and Organ Transplantation. As we have seen (above) these updated Principles were based on extensive stakeholder consultations and attempted to “provide an ethical framework for transplantation in response to transplant commercialism.”⁵¹⁵

The World Health Assembly in 2009 placed on its agenda a detailed resolution on organ transplantation, which expressed opposition to financial gain in transactions involving human body parts and urged healthcare professionals to report on such activities.⁵¹⁶ In a letter to the New York Times, Luc Noel, Coordinator of the Clinical Procedures Department of Essential

513. D.J. Rothman et al., *The Bellagio Task Force Report on Transplantation, Bodily Integrity, and the International Traffic in Organs*, INTERNATIONAL COMMITTEE OF THE RED CROSS (Jan. 1, 1997), <http://www.icrc.org/Web/eng/siteeng0.nsf/iwpList302/87DC95FCA3C3D63EC1256B66005B3F6C>.

514. *World Medical Association Statement on Human Organ Donation and Transplantation*, THE HANDBOOK OF WMA POLICY (Oct. 14, 2006), <http://www.wma.net/en/30publications/10policies/t7/index.html>.

515. Dr. Debra Budiani-Saberi & Deborah M. Golden, *Advancing Organ Donation Without Commercialization: Maintaining the Integrity of the National Organ Transplant Act*, AMER. CONST. SOC'Y FOR L. & POL'Y, June 2009, at 12.

516. WHO Secretariat, *Human Organ and Tissue Transplantation: Report by the Secretariat*, WHO DOC. EB124.R13 (Jan. 26, 2009).

Health Technologies for the World Health Organization, emphasized his Agency's years-long commitment to the view that trade in human organs was inconsistent with human values, the Universal Declaration of Human Rights and the spirit of the Constitution of the World Health Organization.⁵¹⁷

Although many facets of this subject are replete with controversy and divergent opinion, there appears to be now a growing international consensus that would seek the eradication of the criminal aspects of organ transplantation and furtherance of protective measures for both donors and recipients, so that organ donation can revert to the scientific breakthrough and life enhancing measure it was intended to be, not the sordid and tainted scandal-ridden practice it has on occasion become.

In 2008 the Council of Europe and the United Nations cooperated on a Joint Study on trafficking in organs, tissues and cells and in human beings for the purpose of removing organs. This study distinguished between trafficking in human beings for the purpose of organ removal and the bigger issue of trafficking in organs, tissues and cells. The Study recommended that the "principle of the prohibition of making financial gains with the human body or its parts should be the paramount consideration in relation to organ transplantation. All national legislation concerning organ transplantation should conform to this principle."⁵¹⁸

From the plethora of suggestions and recommendations and codes of practice adopted in various parts of the world and from the body of principles already promulgated internationally at the United Nations and in other transnational fora, it might seem that there is a sufficiency of ideas and plans and agendas to address both organ trafficking and its associated problems. However, the proponents of international action have proposed

517. Luc Noel, *LETTER; W.H.O. on Organ Trade*, N.Y. TIMES, Aug. 10, 2009, <http://query.nytimes.com/gst/fullpage.html?res=9902E1D71531F933A2575BC0A96F9C8B63&pagewanted=print>.

518. CAPLAN ET AL., *TRAFFICKING IN ORGANS, TISSUES AND CELLS AND TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF THE REMOVAL OF ORGANS 7* (2009), available at http://www.coe.int/t/dghl/monitoring/trafficking/docs/news/OrganTrafficking_study.pdf (study prepared for Joint Council of Europe/United Nations).

that a Convention is the logical next step flowing from all the preparatory work of the last few decades.

In 2009, a joint report emanating from the United Nations and the Council of Europe recommended that a new international convention was required to prevent organ trafficking. The framers of this Report felt there was a need for clear definition of trafficking and delineation of various categories of criminal activity. The authors of the Report believed that there were “great differences in preventing trafficking in humans to remove their organs and preventing trafficking in body parts themselves. Both phenomena required different solutions.” Human trafficking for organ removal was already deemed both a human rights violation and a crime and international law against it was already comprehensive. Although numerous global instruments dealt with trafficking in organs and tissues, there was a need for “internationally agreed-upon definitions within an international convention.”⁵¹⁹ Luc Noel, Coordinator of the World Health Organization’s Clinical Procedures Team explained that “[t]here is an international convention that stands in opposition to trafficking of humans. . .but there is not one devoted to combating the trafficking of the organ itself, like when they are taken from deceased people.”⁵²⁰ According to Marja Ruotanen, Director of Cooperation for the Council of Europe, there is “legislation and definitions covering the trafficking in human beings for the purposes of organ removal, but the study points out that there is a legal vacuum for the traffic in organs, tissues and cells.”⁵²¹

Additionally, proponents argued that the convention should include “measures to prevent the crime, to protect and assist donors, and to prosecute the traffickers.” Carmen Prior, Public Prosecutor of Austria and co-author of this report expressed particular concern about the need to prosecute not just traffickers

519. United Nations, Department of Public Information, Press Conference on Joint United Nations-Council of Europe Report on Trafficking in Organs, Tissues and Cells (Oct. 13, 2009).

520. Amy Lieberman, *Organ and Human Trafficking Intersect*, CARNEGIE COUNCIL: POLICY INNOVATIONS FOR A FAIRER GLOBALIZATION (Mar. 30, 2010), http://www.policyinnovations.org/ideas/briefings/data/000165/pf_printable?

521. Amelia Mathias, *International Convention Needed to Combat Organ Trafficking: Report*, JURIST (Oct. 14, 2009), <http://jurist.law.pitt.edu/paperchase/2009/10/international-convention-needed-to.php>.

but “intermediaries and brokers and doctors and medical staff involved in such activities.”⁵²² Her priorities were “[p]revention, protection and prosecution.”⁵²³ For co-author of the study, Arthur Caplan (Chair of the University of Pennsylvania’s Department of Medical Ethics) “voluntary altruism” should be the basis for procurement of organs and financial gain should not be involved.⁵²⁴

Rachel Mayanja, the U.N.’s Special Advisor on Gender Issues and Advancement of Women, expressed her hope that the General Assembly would create a binding convention.⁵²⁵ At time of writing this article, Ms. Mayanja’s office at the United Nations confirmed that the Convention had not yet been drafted and was still in the stages of being a proposal.

The authors of the 2009 Joint Study praised the comprehensiveness of the European community’s instruments on this issue,⁵²⁶ and that system could well serve as a legal wellspring for an international binding convention. While the arguments in favor of more legal instruments, particularly, an over-arching Convention, are persuasive, it has to be emphasized that the mere existence of international law does not ameliorate any situation, particularly when immense profits flow to criminals who are not generally prone to observing any laws and are more inclined to finding ways of ignoring them. It is the implementation, the daily commitment to honest observance of the law by thousands of persons involved in transplantation that alone will diminish and eradicate the criminal aspects. Absent implementation, international law, even when incorporated into national legislation, remains just a bunch of inspiring words on paper.

522. Edith M. Lederer, *Study Seeks Ban on Organ Trafficking*, CENTER FOR GENETICS AND SOCIETY (Oct. 13, 2009), <http://www.geneticsandsociety.org/article.php?id=4961>.

523. *International Pact Needed to Prevent Organ Trafficking, UN-Backed Study Says*, UN NEWS SERVICE (Oct. 13, 2009), <http://www.un.org/apps/news/printnewsAr.asp?nid=32521>.

524. Lederer, *supra* note 522.

525. *International Pact Needed to Prevent Organ Trafficking, UN-Backed Study Says*, *supra* note 523.

526. CAPLAN ET AL., *supra* note 518, at 7.

RELEVANT PERSPECTIVES

In this article, an attempt has been made to elucidate practical and pragmatic solutions to the problem of organ trafficking. It has been obvious throughout this research that the United Nations, its member agencies, the community of international lawyers and medical experts are struggling to keep pace with the illicit activities and methods practiced by a host of brokers, traffickers, facilitators and others who have taken undue advantage of the shortage of available organs and the desperation that motivates both the recipient and the donor. International law and even national legislation have not kept up with the violators. Where so many human lives are involved, it is no longer acceptable for governments and for the U.N. simply to be playing 'catch-up' with the crooks. There is too much at stake.

A major disadvantage that bedevils any attempt to come to grips with the crime concerns the paucity of reliable information, information that covers the entire world. In 2003, the World Health Organization suggested that it should create a global evidence base on this procedure "in order to help to identify obstacles to be overcome, evaluate practice and validate potential model transplantation programmes."⁵²⁷ The establishment in 2006 of the Global Knowledge base on Transplantation, emphasizing activities and practices, the legal framework, and threats and responses,⁵²⁸ is the type of institutional framework that could someday provide for a uniform and universally-applicable and binding series of guidelines on transplantation. The intent is to collect in one database information on organ, tissue and cell donation and transplantation from all over the world.⁵²⁹

While a number of countries have passed laws on organ transplantation, there are numerous parts of the world where

527. WHO Secretariat, *Human Organ and Tissue Transplantation: Report by the Secretariat*, 4, WHO DOC. EB113/14 (Nov. 27, 2003).

528. WHO Coordinator Clinical Procedures, Geneva, Switz., Mar. 28-30, 2007, *Second Global Consultation on Critical Issues in Human Transplantation: Towards a Common Attitude to Transplantation*, 5 (Mar. 28, 2007) available at <http://infocooperation.org/hss/documents/s15437e/s15437e.pdf>.

529. *Global Knowledge Base on Transplantation*, WORLD HEALTH ORGANIZATION, <http://www.who.int/transplantation/knowledgebase/en/>.

legislation has not yet been formulated or accepted. These unregulated areas provide new opportunities for traffickers and until that avenue is sealed and similar prohibitory laws are passed in all nations, the problem will simply move from one location to the next. Howard Zucker, Assistant Director-General of the World Health Organization commented about the fact that “[n]on-existent or lax laws on donation and transplantation in some countries have opened the way to exploitation of the human being through coercion to donate organs or payment without proper medical follow up of the donor. Likewise, the vulnerability of the recipient is often exploited.”⁵³⁰

Legislation must not merely be passed, it must also be implemented. Absent effective implementation, the law provides no deterrent to criminal activity. Police and judicial authorities require intensive training to equip them with the skills to monitor observance of the law, discern violations and punish the violators without causing undue grief to the donors. Where governments find themselves having to cope with transnational criminals involved in organ trafficking, they should be encouraged to call on the resources of all member states of the United Nations to assist them in eradicating this terrible form of exploitation and abuse.

The public in every society could be encouraged to phone in and report instances of abuse. It has been demonstrated time and again that police authorities are better enabled to function in a society where people are willing to report offenders to the police. The eradication of organ trafficking will ultimately depend on active participation by members of the medical community as well, for they are on the front line, and ought to be encouraged not to participate in any procedures which appear to be murky. There are growing signs that this awareness amongst medical professionals is increasing in a number of countries and surgeons are unwilling to become accomplices in criminal activity. As we have seen with India and more so with China, the conspiracy of silence has allowed the crime to prevail and even proliferate. Once the perpetrators are publicly exposed, there is a greater possibility of curtailment, at least in that particular

530. Zucker, *supra* note 508.

location. If the community (especially the media) names and shames, the police arrests, the legal and judicial system prosecutes and convicts, eradicating organ trafficking will become a societal achievement.

In some societies it has been felt that the purchase of organs from living donors should be sanctioned in a controlled, strictly legal environment, with donors being compensated, at least for the costs they have incurred and being assured of good post-operative care so that their own health does not become a casualty of the donation process. Proponents of this idea of regulated compensation argue that "altruism has been shown to be inefficient and insufficient."⁵³¹ A complete prohibition on payment to a donor has been deemed paternalistic by critics of the exclusively altruistic approach.⁵³² It has also been suggested that the donor could be provided with the incentive of full medical insurance coverage along with other benefits in kind but not cash.⁵³³ Amy Friedman, transplant surgeon at Yale University School of Medicine, argued that payment to donors, leading to greater availability of organs would cut the trafficking.⁵³⁴

A related proposal favors a strictly regulated market in which the sole purchaser of the organ would be the government. Rates of compensation would be established and various conditions, including post-operative health care for donors, would prevail.⁵³⁵ Proponents of this argument believe that the merchandizing of the organs is not the inherent problem; rather

531. Luc Noel & Dominique Martin, *Progress Towards National Self-Sufficiency in Organ Transplants*, 87 BULL. OF THE WHO 647, 647 (2009), <http://www.who.int/bulletin/volumes/87/9/09-068817/en/>.

532. World Health Organization, Second Global Consultation on Regulatory Requirements for Human Cells and Tissues for Transplantation, Geneva, Switz., June 7-9, 2006, *Towards Global Harmonization Through Graduated Standards*, 28 (June 7, 2006).

533. Paul Garwood, *Dilemma over Live-donor Transplantation*, 84 BULL. OF THE WHO 3, 6 (2007), available at <http://www.who.int/bulletin/volumes/85/1/07-020107/en/print.html>.

534. Celia Hall, *Pay Donors for Transplant Organs, Urges Surgeon*, TELEGRAPH, Oct. 6, 2006, <http://www.telegraph.co.uk/news/1530701/Pay-donors-for-transplant-organs-urges-suregon.html>.

535. See Arthur L. Caplan, *Organ Transplantation: The Challenge of Scarcity*, in THE PENN CENTER GUIDE TO BIOETHICS 680, 680 (Vardit Ravitsky et al. eds., 2009).

it is the lack of control that has allowed for all the problems associated with 'trafficking.' Regulation would provide the organs where they were needed and alleviate the suffering and injustice caused to the donors. Nadey Hakim a surgeon in London argued that a regulated market of organ donors would cut transplant tourism.⁵³⁶

Along with every other suggestion, this idea of a controlled market has been criticized as being impractical, bureaucratic, cumbersome and prone to as much abuse, particularly when the already venal civil servants of various developing countries are factored into the implementation process. Another variation on this proposal suggests that in order to avoid exploitation and medical harm to the donor/seller, it is preferable not to criminalize the practice as that drives it underground into the black market. Acceptance and regulation are stressed as practical alternatives.⁵³⁷ Prohibition is deemed as self-defeating for all concerned. Arthur J. Matas posed the ethical dilemma: "Those who are opposed to a regulated system of sales imply that they are taking the moral high ground by protecting the potential paid donor. . .or by protecting society. . .The end result, however, is that they are sentencing many of our transplant candidates to death."⁵³⁸ A study conducted for the German Federal Ministry for Economic Cooperation and Development concluded that it was unlikely "that a regulated trade could prevent organ trafficking, unless and until issues of corruption are successfully dealt with."⁵³⁹

Scheper-Hughes has criticized the proposal that regulation may be the answer, arguing that it does not consider the social and medical situation prevailing in many parts of the world. "The medical institutions created to 'monitor' organ harvesting and distribution are often dysfunctional, corrupt or compromised

536. *Call to Legalise Live Organ Trade*, BBC NEWS (May 19, 2003, 11:00 PM), <http://news.bbc.co.uk/2/hi/health/3041363.stm>.

537. STEPHEN WILKINSON, *BODIES FOR SALE: ETHICS AND EXPLOITATION IN THE HUMAN BODY TRADE* 108 (Routledge 2003).

538. Arthur J. Matas, *Why We Should Develop a Regulated System of Kidney Sales: A Call for Action!*, 1 *CLINICAL J. AM. SOC'Y NEPHROLOGY* 1129, 1131 (2006).

539. ELAINE PEARSON, *COERCION IN THE KIDNEY TRADE?: A BACKGROUND STUDY ON TRAFFICKING IN HUMAN ORGANS WORLDWIDE* 5 (2004), *available at* <http://www.gtz.de/de/dokumente/en-svbf-organ-trafficking-e.pdf>.

by the power of organ markets and the impunity of the organ brokers and of outlaw surgeons willing to violate the first premise of classical medical bioethics: Above all, do no harm.”⁵⁴⁰ Scheper-Hughes bluntly critiqued the entire notion stating that “[d]octors should not be involved in transactions that pit one social class against another—organ getters versus organ givers. Doctors should be protectors of the body, and perhaps we should look for better ways of helping the destitute than dismantling them.”⁵⁴¹

This entire issue raises more ethical questions than answers. Is it anything but unethical to expect the poor to sacrifice their health for the benefit of the wealthy? Is it ethical to consign the poor to environmental conditions that provide them with no alternatives but to sell a body part to survive? Are the environmental choices we make contributing to depreciated living conditions for those on the periphery of society and, when they are destitute, do we then accord them the ultimate insult of extracting their body organs to provide a second life to the fortunately well-off persons in society? While domestic and international law rush to keep pace with the ethical, legal and moral problems that this scientific miracle has created, in the interim all such issues have to be widely disseminated and explored, not least because criminal elements have seen the ambiguities and have leaped in to profit handsomely from them.

Some scholars have taken exception to the notion that a global consensus that views organ selling as anathema, even exists or represents any kind of universal principle. As we have seen, noted medical organizations have articulated a position in favor of altruistic donation rather than sale. However, contrary arguments have appeared that suggest that the serious organ shortages faced globally would disappear if an appropriate compensatory system were to be established. The foundation of this type of opinion lies in the idea that “[a]ll systems of organ procurement and allocation objectify and commodify human body

540. Nancy Scheper-Hughes, *Rotten Trade: Millennial Capitalism, Human Values and Global Justice in Organs Trafficking*, in HUMAN RIGHTS: AN ANTHROPOLOGICAL READER 167, 190 (Mark Goodale ed., Wiley-Blackwell 2009).

541. Trevor W. Harrison, *Frontiers of the Market: Commodifying Human Body Parts*, in NOT FOR SALE, DECOMMODIFYING PUBLIC LIFE 111, 122 (Gordon Laxer & Dennis Soron eds., 2006).

parts, even donation.”⁵⁴² According to Mark J. Cherry, “[i]ncentives and policies to increase organ availability, whether through donation or sale, evoke an industry designed to procure, allocate, and transplant human organs. This industry, whether for-profit or nonprofit, recasts organs as a scarce medical resource and ‘product’ of exchange.”⁵⁴³ Cherry believes that “maximizing health care benefits, promoting equality, liberty, altruism, and social solidarity, protecting persons from exploitation, and preserving regard for human dignity are more successfully supported through permitting a market rather than through its prohibition.”⁵⁴⁴ While this view has its adherents, the problem as we have seen in this article arises because those who have the organs are far too often exploited in favor of those who want the organs. As Professor Steve Calandrillo has commented, “it is unlikely that human organ sales will ever achieve societal acceptance due to legitimate fears of abuse and exploitation.”⁵⁴⁵

The very base of this issue lies in economic inequity generated by an environment that is geared to plundering the last possible resource out of the poor, the organs from their bodies. It is unrealistic to assume that a publicly-regulated system would provide a real choice for it would still be the very poor and the desperate who would ‘volunteer’ to sell their organs. The argument that the donor would receive a fair price is specious. Who can possibly decide, in a situation that goes to the root of ethics, morality and the core of what it is to be human, what constitutes a ‘fair price’ for a kidney or a piece of liver? Arguably, the State in any society has no business commodifying and pricing a human’s body parts and governments should not be engaging in any activities that parallel the activities of traffickers.

While altruistic donation may not yield the large number of organs required by the sick, a market economic system of any type, with any amount of regulation, can deteriorate very quickly

542. MARK J. CHERRY, KIDNEY FOR SALE BY OWNER: HUMAN ORGANS, TRANSPLANTATION, AND THE MARKET 151 (2005).

543. *Id.*

544. *Id.* at xiii.

545. Steve P. Calandrillo, *Cash for Kidneys? Utilizing Incentives to End America’s Organ Shortage*, 13 GEO. MASON L. REV. 69, 132 (2004).

into the situation where the most vulnerable are duped, coerced and even killed to satiate the greed of brokers, traffickers and facilitators. William Harmon and Francis Delmonico concluded that there was a “fundamental unethical construct” inherent in even a regulated market because a “poor person is coerced to make this donation decision, as there are no other means available to obtain money for what becomes temporary personal or family support.”⁵⁴⁶

Another concern was articulated by Debra A. Budiani-Saberi who explained that “it is not possible to regulate a market in organs when, as with other commodities, global prices would vary. Prices would be adjusted by a donor’s health and social status such as age, gender and ethnicity/race. Patients in need would go where prices were affordable.”⁵⁴⁷

As history so clearly demonstrates, market economics tend to favor the most assertive and the most aggressive. The crucial question to be asked is whether providing a second life to thousands of sick patients is worth the exploitation or worse that ensues for countless others. There are no easy answers. As Alison Brysk commented:

Transplant trafficking embodies a multiple dilemma, partially dependent on the genre of practices: state sponsored or private, living donors or dead. The combinations of claims to self-determination and freedom from economic coercion echo debates over bonded labor, and state-sponsored organ trafficking raises familiar questions of government violation of bodily integrity. At a minimum, organ transplantation involves the rights of donors to be free of state coercion, the right to full informed consent for living donors, the right to full and fair compensation if donation is permitted, the right to protection of bodily integrity from commodification if donation is prohibited, the health rights of recipients to access life-sustaining technologies and resources, and the rights of families to decision making for their dead.

546. William Harmon & Francis Delmonico, *Payment for Kidneys: A Government-Regulated System is Not Ethically Achievable*, 1 CLINICAL J. AM. SOC’Y NEPHROLOGY 1146, 1146 (2006).

547. Debra A. Budiani-Saberi, *Organ Trafficking and Transplant Tourism*, in THE PENN CENTER GUIDE TO BIOETHICS 700, 704 (Vardit Ravitsky et al. eds., 2009).

These rights are controlled by states, markets, doctors, and brokers.⁵⁴⁸

Keen awareness of the slippery slope inherent in commercializing this venture, has convinced most practitioners and their associations to reject the idea and focus on altruism rather than commercialism. The idea of a for-profit brokerage system for organ donation has been rejected by the Transplantation Society, the World Medical Association, the World Health Organization, the United Network for Organ Sharing and the American Society of Transplant Surgeons, to name just a few.⁵⁴⁹

Altruistic donation, particularly where the donor and recipient are not related, can be extremely “controversial and emotionally charged.”⁵⁵⁰ The entire situation raises concerns about inducements, threats or pressures being placed upon the donor. While the potential recipient and his surgeon may view the situation with the one patient in mind, the larger picture has to be examined as well. Admitting that “public support for organ donation is somewhat fragile,” Arthur Caplan believes that there is no “quick fix for the supply problem. Scarcity cannot be eliminated any time in the near future.”⁵⁵¹ This leads to the unfortunate conclusion that altruism is not going to provide a sufficient number of organs for all the people who need a transplant. In a very interesting discussion of this particular facet, Stephen Wilkinson has suggested:

Where we have a choice between an altruistic system and a commercial system, then the altruistic system will normally be preferable. But where an altruistic system is not a practical possibility and the real choice is between a commercial system and (virtually) no system at all, it makes little sense to opt for not

548. ALISON BRYSK, *HUMAN RIGHTS AND PRIVATE WRONGS, CONSTRUCTING GLOBAL CIVIL SOCIETY* 90 (Routledge 2005).

549. See CHERRY, *supra* note 542, at ix.

550. Bernard S. Kaplan et al., *Ethical Challenges in Pediatric Dialysis and Kidney Transplantation*, in *THE PENN CENTER GUIDE TO BIOETHICS* 505, 505 (Vardit Ravitsky et al. eds., 2009).

551. Caplan, *supra* note 535, at 680.

having a system at all just because an altruistic system, if possible, would have been better than a commercial one.⁵⁵²

The extensive research for this article leads to a conclusion that agrees with the cautious opinion of the World Health Organization which stated: "Further work is needed to understand the ramifications of programmes that include a payment and to clarify the boundary between removing disincentives and sanctioning the purchase of organs."⁵⁵³ Until some fair and just system can be conceived and enacted globally, the altruistic donation position would appear to be the safest solution to adopt.

Although scientific developments and procedural improvements bring rapid change to this area of expertise – for instance, physicians have now been able to transplant a human face – a universally accepted and implemented code of minimum standards would be a practical method to ensure patient safety wherever the transplantation occurs. The incorporation of such international minimum standards into the medical codes of practice in every country that performs this procedure would provide at least a global standard of care. Needless to say, the minimum standards would cover and protect both the donor and the recipient. Legally, there might be a benefit for the surgeon and medical teams as well. The World Health Organization has called for the acceptance of international minimum standards.⁵⁵⁴ There are positive indications of acceptance and adherence and once this becomes universal, some of the abuses that accompany transplantation may diminish.

Professor R.K. Nayak, writing for the World Health Organization supported the creation of a global health law that would perceive health as a fundamental human right and encourage equity and ethics in health policy.⁵⁵⁵ With the world presently suffering one of the worst recessions of recent decades,

552. WILKINSON, *supra* note 582, at 133.

553. WHO Secretariat, *supra* note 527, at.4.

554. *Id.*

555. R.K. Nayak, *Development of Health Legislation in Some Countries of the WHO South-East Asia Region*, 7 REGIONAL HEALTH FORUM WHO SOUTH-EAST ASIA REGION 20, 30 (2003), available at http://www.searo.who.int/EN/Section1243/SEction1310/SEction1343/SEction1344/SEction1672_7144.htm.

ideas of universal health care as a fundamental human right, while very appealing, are probably not going to be accepted by governments whose concerns are geared to financial recovery and economic stabilization. For the developing world, such notions of a right to health would appear to be aspirational but hardly practical given the extent of poverty reduction and environmental alleviation that would be inextricably tied to improving the health of various populations in Asia, Africa, the Middle East and South America. It is environmental destruction that has contributed enormously to poor health conditions for millions of the most vulnerable people on this planet. Environmental alleviation is therefore a primary issue and it should be at the forefront of concern for all governments in the world.

The Council of Europe and the United Nations have, as we have seen, commented about the insufficiency of research in the area of organ trafficking.⁵⁵⁶ It is not easy to deal with a clandestine criminal enterprise that is at once so vast and yet so disparate. The perpetrators may range from small time operators to significant transnational networks. Like a kaleidoscope of horrors, the criminal enterprise morphs into an almost endless series of patterns and methods, adjusting pragmatically to the availability of resources and recipients; the laxity or otherwise of the law; the corruptibility or otherwise of public authorities; and the amenability or lack thereof of transplant surgeons. While governments and international organizations struggle to get a grip on the problem, each day, thousands of men, women and children are pulled into the ambit of the criminal aspects of this issue. Ironically, transplantation that should be regarded as the bright light of modern medical science has itself been tainted by the dark side that has victimized untold numbers and reaped vast profits for globalized networks of criminals.

However, while it is legitimate to complain about the injustices heaped upon the innocent and the ambivalence of governments in dealing with the crimes involved, one has to remember that this entire field of endeavor, both its light and dark sides, have only existed since the middle of the twentieth

556. Sukhpreet Manchanda, *Organ Trafficking at Issue in New UN, Council of Europe Effort*, TOPNEWS (Oct. 13, 2009), <http://www.topnews.in/organ-trafficking-issue-new-un-council-europe-effort-2224117>.

century. As any lawyer knows, in almost every realm of human endeavor, the law is invariably slow to catch up with reality. Additionally, as the World Health Organization noted, “[o]rgan transplantation constitutes a rapidly changing area for medico-legal thinkers and law makers.”⁵⁵⁷

It has correctly been stated that globalization can be a force for liberation and also a force for enslavement.⁵⁵⁸ The fact that organ transplantation can now be performed in so many countries brings this life-saving procedure to much of the world. However, the criminals and black market facilitators have also acquired an international canvas for their lurid business. As we have seen, it is not easy for national, sovereignty-focused governments to implement laws against multinational, transnational criminal elements. To consider any form of organ trafficking a crime against humanity would certainly increase the ambit of international criminal law and perhaps some day deprive the traffickers of any safe venue and haven.

The research for this article has demonstrated a dichotomy that has to be addressed on an international level. On the one hand, organ trafficking, in its varied manifestations – both trafficking in persons for the removal of their organs and sale and purchase of organs – persists and prevails in many parts of the world and may even be increasing in some areas. On the other hand, the community of international lawyers, United Nations officials, employees of non-governmental organizations, civil servants of many nations and the vast community of medical and academic experts appear quite united in condemning the crime and in bemoaning its prevalence and its serious consequences, particularly for the poor and vulnerable elements of society. “There is a remarkable consensus that trafficking in organs and tissues is heinous, unethical and illicit.”⁵⁵⁹ Unfortunately there

557. Nayak, *supra* note 555, at 24.

558. Richard Gunde, *The Dark Side of Globalization: Trafficking & Transborder Crime To, Through, and From Eastern Europe*, UCLA INTERNATIONAL INSTITUTE (May 26, 2004) <http://www.international.ucla.edu/article.asp?parentid=11513>.

559. CAPLAN ET AL., TRAFFICKING IN ORGANS, TISSUES AND CELLS AND TRAFFICKING IN HUMAN BEINGS FOR THE PURPOSE OF THE REMOVAL OF ORGANS 96 (2009), available at <http://www.coe.int/t/dghl/monitoring/trafficking/docs/>

is a serious disconnect between good intentions and lack of implementation and it is in that chasm that the perpetrators operate without too much fear of being held accountable.

The chasm persists because governments and medical authorities are still unwilling in some countries to acknowledge the problem and its consequences. The research for this article establishes that until the concept of full disclosure becomes prevalent across the world, the brokers and facilitators will be able to continue their illicit practice and reap huge profits. While the creation of national registries is an important first step, computerized tracking of every organ from origin with a donor – living or deceased – to its destination with a recipient should be a normal part of transplantation procedures in every country. This information should include particulars on the follow-up care accorded to both donor and recipient and provide particulars of screening procedures and other relevant medical tests performed on both patients. While privacy concerns could limit the number of persons entitled to see such information, anonymous data based on numerical statistics gleaned from such comprehensive records should be released regularly by every state to the World Health Organization. The World Health Organization has correctly stated that “[t]ransparency in transplantation activities at national and global levels is essential to accountability and traceability, and to the prevention of trafficking.”⁵⁶⁰

Alison Brysk has carried the registering proposal a step farther, suggesting the establishment of an international organ certification program including an organ registry, coordinated standards for consent and compensation as well as guarantees of medical treatment for donors.⁵⁶¹

Any researcher in this field cannot but be dismayed by the extent to which corruption prevails, persists, hampers and hinders attempts at reform and amelioration of the lot of the victims of organ trafficking. We have seen that well-intentioned

news/OrganTrafficking_study.pdf (study prepared for Joint Council of Europe/United Nations).

560. World Health Organization, Consultation Meeting on Transplantation With National Health Authorities in the Western Pacific Region Nov. 7-9, 2009, 2 (Nov. 7, 2009).

561. BRYSK, *supra* note 548, at 123.

laws in India and China have been undercut by a combination of legal loopholes and lax implementation that enable enterprising purveyors of this illicit trade to continue their predatory activities. Srgjan Kerim, General Assembly President in 2008 commented, "there remains a vast gulf between the letter of the law and the situation on the ground."⁵⁶² Those remarks made with respect to human trafficking, are relevant and on point for organ trafficking as well. Absent the ingredient of corruption, the eradication of organ trafficking, in all its terrible manifestations, would be so much simpler. It would be naïve to assume that corruption prevails only in the countries considered for this article. The United Nations Office on Drugs and Crime has appropriately deemed "corruption. . . a global phenomenon," and a "key obstacle to economic and social development," one that "harms poor people disproportionately."⁵⁶³ The United Nations found that corruption "distorts markets, stifles economic growth and diverts funds from public services, hurting the most vulnerable." It also undermines obedience to the rule of law and this leads to a loss of faith in the government.⁵⁶⁴ With respect to human trafficking – interlinked with organ procurement – corruption is a vital factor in the continued violations of legal prohibitions. The Council of Europe has suggested that corruption is one of the most significant costs for traffickers.⁵⁶⁵ The prevalence of corruption, particularly among civil servants, enables criminals to thumb their noses at legal prohibitions, secure in the knowledge that those they bribe will inevitably protect them in order to keep the fount of illicit gains coming. So in a very real sense, "corruption. . . undermines the rule of law."⁵⁶⁶

As regards organ trafficking, Interpol warned in 2009 that the combination of an ageing population in developed countries along with increased cases of diabetes and requirement for organ

⁵⁶². *Words Must Be Put Into Action to Fight Human Trafficking – Assembly President*, UN NEWS SERVICE (June 3, 2008), <http://www.un.org/apps/news/printnewsAr.asp?nid=26900>.

⁵⁶³. U.N. OFFICE ON DRUGS AND CRIME, PROMOTING HEALTH, SECURITY AND JUSTICE 35 (2010).

⁵⁶⁴. *Id.*

⁵⁶⁵. ALEXIS A. ARONOWITZ, HUMAN TRAFFICKING, HUMAN MISERY: THE GLOBAL TRADE IN HUMAN BEINGS 62 (Praeger 2009).

⁵⁶⁶. U.N. OFFICE ON DRUGS AND CRIME, *supra* note 563, at 35.

transplants is likely to make the crime of organ trafficking even more lucrative.⁵⁶⁷ Part of the concern that results from extensive research in this subject stems from the fact that it is apparent that organ trafficking like other crimes prevalent today, has outstripped the boundaries of national sovereignty. The crime is so prevalent and dangerous because even the United Nations has to leave remedial action to its Member States and they are attempting to use national methods to fight transnational crime. As Amy Lieberman commented in Policy Innovations, “[c]urrently, countries police within their own borders what has become a transnational market.”⁵⁶⁸

This is a subject riddled with ambivalence and ambiguity, all of it encompassing grey areas involving legal, moral and ethical uncertainties and problems of interpretation and assessment. Essentially, the extensive research establishes that until individual human beings return to an ethically strong place in their own hearts and minds, the criminal elements will continue their terrible exploitation. Should some of those highly-regarded professionals decide – as many have – not to participate in illicit activities, even if such involve saving the life of a patient, that might start the ball rolling back toward a more humane and humanitarian world for transplantation. Should hospital administrators decide to deny operative services unless organs are registered, traceable and the donor identifiable that might also be a step forward. Should the global community at the United Nations devote itself to measures to alleviate environmental degradation and the havoc and poverty and misery caused by pollution, deforestation, soil erosion and the like, there may not be a need for desperately poor and starving people to sell the parts of their bodies to feed their families. Should poverty reduction be seriously addressed – as it is in a plethora of international fora – but more importantly, should economic inequity be deemed unconscionable, that might provide

567. Interpol, *Trafficking in Human Beings*, INTERPOL FACT SHEET COM/FS/2009-12/THB-02, <http://www.interpol.int/Public/ICPO/FactSheets/THB02.pdf>.

568. Amy Lieberman, *Organ and Human Trafficking Intersect*, CARNEGIE COUNCIL: POLICY INNOVATIONS FOR A FAIRER GLOBALIZATION (Mar. 30, 2010), http://www.policyinnovations.org/ideas/briefings/data/000165/:pf_printable?.

better opportunities for the world's poor to have at least what the United Nations has promised, adequate food, clean water, a home, education for their children and work with dignity.

Organ selling is essentially a manifestation of poverty, extreme destitution because as all experts agree, no one who has adequate economic choices and alternatives willingly sells an organ. It is essentially an act of desperation, and that is proven by the very negative reaction (as we have seen) of donor/sellers in India and Iran who indicated very clearly that they had made the wrong decision. Whether rich or poor, all human beings have a distinct sense of their personhood and of the importance of the survival of the being encased in flesh and bone that represents their identity to the world. Most human beings work hard to preserve intact the body that God or nature granted to them.

CONCLUSION

Walt Whitman wrote: "If anything is sacred the human being is sacred."⁵⁶⁹ A modern manifestation of that commitment to 'personhood' has prompted the amazing series of ideals that are articulated in the United Nations Conventions on Human Rights and summarized in the Universal Declaration of Human Rights. Today, it is understood globally, if not always implemented, that simply because we are human, we have rights of all kinds and these are inalienable. The proliferation and 'universalization' of human rights can be called the religion of the new millennium. However, we live in a world where other factors, political and economic systems, controlled by exclusivist groups, seek to perpetuate their own privilege at the expense of the majority. From the push/pull of these competing, sometimes warring interests, the concept of human rights becomes more carefully delineated, even as its principles are regrettably daily violated. The instant research suggests that we must move beyond the restricted perspective of the second half of the twentieth century, a view that saw States and governments as the major violators of human rights.

569. Trevor W. Harrison, *Frontiers of the Market: Commodifying Human Body Parts*, in NOT FOR SALE, DECOMMODIFYING PUBLIC LIFE 111, 111 (Gordon Laxer & Dennis Soron eds., 2006) (quoting Walt Whitman, *I Sing the Body Electric*).

We need now to see and expose and hopefully punish violations that occur because of the greed of non-state actors, Alison Brysk found that “[h]ealth rights. . .lack leverage over private actors.”⁵⁷⁰ This issue of organ trafficking highlights the need for a new thinking that will focus on the inherent violations of human rights committed by individuals. Of course the governments are responsible for not implementing their own laws as in India, or more seriously, for profiting from organ selling as in China. However, the numerous players in this crime, the surgeons, the hospital administrators, the organ brokers, and the procurers are all essentially violating human rights as well. By taking advantage of the naïveté of impoverished organ donors, by disregarding the latter’s need for information, counseling and post-operative care, the players for profit violate their rights just as surely as does the state that fails to punish such actions and curtail the trafficking. Until the world collectively insists that individuals cannot violate the human rights of others without facing serious consequences, fairly and impartially determined by appropriate judicial systems, the lacuna between law and international agreements on the one hand and lax implementation on the other will enable all types of criminal practices to continue and the roster of victims will continue to grow.

It is also important to take note of the fact that this entire issue demonstrates the limitations of national sovereignty in a globalized world, where economic priorities outrank political and governmental reach. This was clearly demonstrated by the fact that when legislation against organ trafficking was passed in India and China, the business simply moved to the Philippines and other more hospitable locations. States no longer control the economic sector as they used to a mere century ago. What is therefore needed is a more international approach that would apply universal and uniform standards on the medical procedures; ensure that surgeons abide by their oath to do no harm; remove the profit motive that lures traffickers by implementing the prohibitions against trade in organs; and provide equivalent medical care to both the recipient and the

570. BRYSK, *supra* note 548, at 94.

donor. Unfortunately, whenever human beings are involved in any venture, there is the possibility that the best of intentions can be perverted. Coercion, greed and pressure cannot be eradicated but at the very least, informed consent, appropriate knowledge imparted to donors and recipients, and adequate measures could be taken to protect both parties. The threat of severe penalties to any physicians and intermediaries who might seek to profit from this venture might, if universally applicable and applied, be a strong curb. In this day of instantaneous information via the internet, were the World Health Organization to publish the names of all physicians and health professionals convicted of involvement in illicit practices related to transplantation, that act of naming and shaming might also be beneficial.

It is time now for the medical community to take more assertive measures and acknowledge that a global crime committed across the world, involving a number of practitioners, requires an international and universally-applicable response that involves serious sanctions and loss of reputation for those who play fast and loose with the principles that govern this all-important and very noble profession. Once the physicians unite to refuse their services, the entire crime ceases. Fortunately, organ removal and transplantation require a complex array of techniques and talents, facilities and entire teams of qualified personnel, and absent the surgeons, traffickers cannot simply butcher the body parts out of their victims, not if they hope to gain a lucrative return.

As with other issues of human rights violations, greater awareness through education and dissemination of knowledge, particularly through the ubiquitous internet, but also through newspapers, television and radio, could go a long way to ensuring that people are not duped or deceived into parting with their organs and suffering the health consequences thereafter. The material on this subject is replete with stories of the shame felt by donors, of their stigmatization by their communities; of the denial of religious services to them; of the impossibility of marriage and family life because they are not perceived as whole human beings. While this is egregiously unfair, it is increased by their physical debilitation, mainly due to medical neglect, of their

inability to work and earn a decent living and of their unhappiness and even rage with the reality with which they have to live to the end of their lives. The fact that most of them undertook this venture as a personal sacrifice for their families or to get out of crippling debt cannot sustain them for long. In an ideal world, the terrible environment of destitution that motivates such actions would not exist.

Although Jesus Christ, himself an advocate and a prophet for the dispossessed and poor, admitted that the poor would always be among us,⁵⁷¹ in this new millennium, we need to appreciate that as human beings, the poor have all the rights that the rest of us enjoy and deserve the opportunity to live lives that explore their intellect and facilitate their contribution to society. The world loses the benefits of their intelligence and their resourcefulness when it truncates their lives and restricts their choices. While alleviation may not come immediately, greater commitment by the public of all countries to environmental alleviation would benefit the poor whose lives are most closely bound to the environment and whose suffering is most severe when Mother Earth reacts against all the abuse of contamination and pollution and garbage that we heap upon her. It is a truism that poor people “rely disproportionately on natural resources and the environment” and are therefore most vulnerable when natural disasters occur.⁵⁷²

A fundamental universal acknowledgment that the poor are not a source of spare parts⁵⁷³ for the well-off of this world would go a long way to increasing awareness about the need for each citizen in every country actively to ensure that his human rights and those of his neighbors are protected and upheld. This is no

571. Nancy Scheper-Hughes, *The Last Commodity: Post Human Ethics and the Global Traffic in “Fresh” Organs*, in *GLOBAL ASSEMBLAGES: TECHNO LOGY, POLITICS, AND ETHICS AS ANTHROPOLOGICAL PROBLEMS* 153, 153 (Aihwa Ong & Stephen J. Collier eds., 2005).

572. UNDP-UNEP POVERTY-ENVIRONMENT INITIATIVE, *MAINSTREAMING POVERTY-ENVIRONMENT LINKAGES INTO DEVELOPMENT PLANNING: A HANDBOOK FOR PRACTITIONERS* 1 (2009).

573. With apologies to Dr. Howard Zucker of the World Health Organization who said that, “[h]uman organs are not spare parts.” Press Release, World Health Organization, WHO Proposes Global Agenda on Transplantation (Mar. 30, 2007), <http://www.who.int/mediacentre/news/releases/2007/pr12/en/>.

simple task, especially in countries that are totalitarian by inclination and dictatorial in policy. However, this terrible crime of organ trafficking, if it is not soon curtailed, will forever taint the entire reputation of one of the most important medical procedures. Given the extent of criminality, profiteering, corruption and bribery involved in this issue, there is a danger that the dark side may, if left uncontrolled, overwhelm the positive aspects of this great scientific achievement. It has rightly been said that the “vital enterprise of organ donation relies on public trust in the sound ethical foundation of transplantation. . . Without public trust, organ donation might decrease – with devastating consequences for recipients.”⁵⁷⁴

The alleviation of environmental degradation lies at the heart of poverty alleviation. The two problems are inextricably intertwined and it is obvious from the daily toll of human suffering occasioned by floods, drought, hurricanes and earthquakes that the poor bear the brunt of such misery. As we have seen in this article, environment mainstreaming is vital if the world is to improve living conditions for the poor. In a rapidly globalizing economy, where profit often trumps social concerns, this may be more and more of a challenge. In a world where the greed of a few has brought on a worldwide financial crisis of epic proportions, the likelihood of poverty becoming a problem of the past is rapidly fading. There is, however, an imperative that needs to be reiterated. Environmental improvement benefits every member of the community, rich and poor, while environmental destruction diminishes the lifestyle of all of us, including the well-off. Although the poor may suffer the most and may fall victim the earliest, unless we can clean up the environment, everyone will pay the price in depreciated life style and worse. The United Nations has drawn global attention to the need to integrate environmental alleviation into economic plans aimed at poverty reduction. A safer, cleaner environment automatically contributes to an improved standard of living for

574. Peter P. Reese, et al., *Protecting Live Kidney and Liver Donors*, in THE PENN CENTER GUIDE TO BIOETHICS 721, 721, 725 (Vardit Ravitsky et al. eds., 2009).

those at the lowest rungs of the economic ladder, particularly women and marginalized populations.⁵⁷⁵

Regrettably, in a world where climate change and other environmental forms of degradation and destruction are daily rendering our planet – our only home – increasingly unlivable, the sad reality is that a Darwinian race for survival may be in store for all of us. And the human species that for a few thousand years, has dominated life on this planet but destroyed countless species and ecosystems in the process, may well turn on its weakest elements and use them with the same reckless abandon that humanity has brought to the consumption and extinction of so many species. Despite all the laws, and all the fine-sounding phrases articulated in that continuous rhetoric-fest at the United Nations and all its agencies, the reality may well be more injustice, and more human rights violations. Ultimately as the need for human organs increases and the legitimate sources diminish, the weakest and most vulnerable may find themselves worth no more than the sum of their parts.

575. See UNDP-UNEP POVERTY-ENVIRONMENT INITIATIVE, *supra* note 572, at 6.