



United Nations



# **Executive summary**

**of the**

## **Joint Council of Europe/United Nations Study**

**on**

### **trafficking in organs, tissues and cells and**

### **trafficking in human beings for the purpose of the removal of organs**

In 2008, the Council of Europe and the United Nations agreed to prepare a *Joint Study on trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs*. This Joint Study was prepared in the framework of the co-operation between the two international intergovernmental organisations, in particular in keeping with the United Nations General Assembly *Resolution on Co-operation between the United Nations and the Council of Europe (A/RES/63/14)*, which specifically states:

*"[The General Assembly] Takes note with appreciation of the entry into force on 1 February 2008 of the Council of Europe Convention on Action against Trafficking in Human Beings, to which any non-member State of the Council of Europe may accede after having obtained unanimous consent of the parties to the Convention, commends the enhanced co-operation between the United Nations and the Council of Europe in this regard, and expresses its appreciation for the preparation of a joint study on trafficking in organs, tissues and cells and trafficking in persons for the purpose of the removal of organs".*

The Study notes, first of all, that trafficking in human beings for the purpose of organ removal is a small part of the bigger problem of trafficking in organs, tissues and cells ("OTC"). Secondly, it highlights the existence of widespread confusion in the legal and scientific community between "trafficking in OTC" and "trafficking in human beings for the purpose of the removal of organs". Thirdly, the Joint Study underlines that solutions for preventing the two types of trafficking had to be different because the "trafficked objects" are different: in one case the "organs, tissues and cells" and in the other case the "person him/herself" who is trafficked for the specific purpose of removing his/her organs. One of the major aims of the Joint Study is therefore to distinguish between trafficking in OTC and trafficking in human beings for the purpose of organ removal.

The Joint Study only covers trafficking in OTC for the purpose of transplantation. Other purposes of trafficking in OTC are outside the scope of the Joint Study. The starting point of the Joint Study is the prohibition of making financial gains with the human body or its parts. This principle was established for the first time in a legally binding instrument in Article 21 of the 1997 *Council of Europe Convention on Human Rights and Biomedicine [CETS No. 164]*: "The human body and its parts shall not, as such, give rise to financial gain". The principle was then reaffirmed in the 2002 *Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin [CETS No. 186]*. Article 22 of the Protocol states: "Organ and tissue trafficking shall be prohibited". The principle of the prohibition of making financial gains with the human body is also very important in order not to jeopardise the donation

system based on altruism, both from living and from deceased donors, which must be the basis of the organ transplantation system. Given that trafficking in organs mainly exists because of the lack of available organs, it is also essential to take the organisational measures needed to increase the availability of organs for transplantation.

Taking into account the above-mentioned considerations, the main conclusions and recommendations of the Joint Study can be summarised as follows:

- The need to distinguish clearly between “Trafficking in OTC” and “Trafficking in human beings for the purpose of the removal of organs”. The two are frequently confused in public debate and in the legal and scientific community. This leads to general confusion and consequently hinders effective efforts to combat them and also to provide comprehensive victim protection and assistance.
- 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.
- The need to promote organ donation and establish organisational measures to increase organ availability. Preference should be given to deceased organ donation, which should be developed to its maximum therapeutic potential. In addition, there is a need to extend worldwide the organisational and technical capacity for the transplantation of organs.
- The need to collect reliable data on trafficking in OTC and on trafficking in human beings for the purpose of organ removal. There is limited knowledge of the two issues since little information is available from official sources. The information about the number of victims and trafficked OTC therefore remains rather fragmentary. This hinders both the quantification of the two and also their qualitative description. The data should be disaggregated by sex in order to assess whether and to what extent the processes disproportionately affect women and girls. States should make efforts in terms of data collection in relation to both problems.
- The need for an internationally agreed definition of “Trafficking in organs, tissues and cells”. This Joint Study did not aim to provide a definition of “Trafficking in OTC”. Such a definition should be agreed upon at international level with the involvement of all the relevant players. While underlining that all national systems should be based on the principle of the prohibition of making financial gains with the human body or its parts, the starting point for such a definition should be the idea that any organ transaction outside the national systems for organ transplantation should be considered organ trafficking. It is therefore recommended that an international legal instrument be prepared, setting out a definition of “Trafficking in OTC” and the measures to prevent such trafficking and protect the victims, as well as the criminal-law measures to punish the crime.
- “Trafficking in human beings for the purpose of the removal of organs” is included in the definition of trafficking in human beings in the *Council of Europe Convention on Action against Trafficking in Human Beings* [CETS No. 197] and in the United Nations *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime*. Indeed, the definition of trafficking in human beings set out in both legal instruments explicitly states that exploitation also includes the removal of organs. The principles and measures applicable to other forms of exploitation of trafficking in human beings must also be applied to combat this type of trafficking for organ removal. There is no need for the further development of a legally binding international instrument at universal or regional level. All relevant aspects for preventing and combating trafficking in human beings for organ removal are set out in the above-mentioned legally binding international instruments.