

**COMMENTS FROM THE BELGIAN DELEGATION
ON THE QUESTIONNAIRE TO BE PREPARED AND THE POSSIBLE EVALUATION
THEMES, WITH A VIEW TO THE DISCUSSION IN OCTOBER**

1. Questionnaire for general description of the situation for Member States that become Parties:

Provide the explanatory statement for the law of assent.

Reservations to the Convention formulated?

Give a description:

- on substantive criminal law (provide the legal texts and a translation in FR or EN) for each article of Chapter II and for art. 21 §3 if it is incriminated, + attempt
- criminal procedure (and inform who are the participants, e.g. federal police, federal prosecutor's office), extraterritorial jurisdiction and limitation periods
- and prevention at the national level (information on the internal transplantation system and equitable access of art.21? training seminars, public awareness? brochures for practitioners or for candidate recipients?)

Cases encountered? (open investigations or judgments). If yes, description of the facts (possibly also press clippings). If there is case law (including possibly on the basis of other qualifications for facts covered by the convention), provide anonymized decisions if possible.

Existing studies or doctrine in the country on the subject? (to be provided or informed if possible)

Reform project or new measures in preparation?

Specific points of attention that the country has identified and that it would like to report (e.g. risky situations encountered)?

Existing good national practices that could be useful to other States?

2. Evaluation themes:

2.1. Theme 1: Prevention (training, awareness and detection)

An evaluation cycle on the theme of prevention has, in our opinion, the greatest chance of having a positive impact on the ground in the medium term to improve the fight against THO.

This would also allow our Committee to better familiarize itself with the various existing national systems/practices.

In addition, feedback from the field during this evaluation cycle would probably allow us to better evaluate the theme of offenses, investigations and prosecutions subsequently. Then, we could perhaps pay more attention to the gaps or obstacles identified during the first cycle, to ensure more effective repression.

- Disadvantage: the obligations of the convention in preventive matters are contained in a single article (art. 21) and they are much less precise than the part of substantive law or criminal procedure, which risks making the evaluation exercise more superficial.
- Advantage: Throughout the cycle, the States Parties will be able to draw inspiration from the practices, training, brochures, guarantees, etc. of the other States Parties evaluated to improve their prevention measures.

Alongside the first cycle, we would develop the CoP-THO public website with information from other international organisations (OSCE, UN, etc.) or other partners, with useful studies (the various HOTT studies, etc.), with information of each member country that so wishes (in particular its legislation) to usefully and easily document countries that would consider joining the Convention and to help promote the Convention.

To be addressed in particular:

a) THO from living donors (often overlaps with THB/OR)

TRAINING for practitioners, psychologists and front-line hospital staff (social workers sometimes detect cases of THB), particularly on indicators, e.g. those of HOTT or ONU). Who to contact in case of doubt, who to refer a potential victim to?

SCREENING:

guarantees of consent, absence of pressure (e.g. from family), known indicators?
guarantees for the incapable if withdrawal is authorized by law?

warning candidates about the dangers and illegality of using THO (e.g. brochure, interview)?

Examination of donor-recipient compatibility by a doctor (matching): it is important to be vigilant beyond the medical (altruism, no profit, no pressure, etc.) and responsibility of the doctor who will collect

COMPENSATION in the event of withdrawal: what rules are provided for?, guarantees against remuneration? financial or material incentives accepted (e.g. life insurance or hospitalization insurance)?

FOLLOW UP

What follow-up is planned? What if the recipient or donor comes from abroad?

Is professional secrecy a barrier to contacting associations specializing in THB or the police or law enforcement authorities in the event of doubt or serious suspicion?

Existing measures to avoid hiring “black sheep” who worked elsewhere in BE or abroad (Member States of CoE) sentenced to a ban or disciplinary sanctions on a temporary basis (during the duration of the ban) or definitively?

Identify good practices

b) THO with organs of deceased people

Current consent rules

Accessibility, obligation to consult and respect for recorded consent or refusal (sanction?)

Fair, centralized and transparent allocation?

Protection at morgue level (access?)

Who should I report irregularities to?

Identify good practices

2.2. Theme 2: Repression of THO

Prior to the opening of this cycle, it would be useful to hear during a session, magistrates and police officers involved in investigations and prosecutions, to better understand the specificities and difficulties of this type of case, particularly in level of international cooperation¹.

To be addressed in particular:

- Training of magistrates and police officers in TO and criminal qualifications
- What services and its investigative capabilities (in particular detection capacity on the internet and social networks)?

¹ A summary of media affairs was produced as part of the HOTT program: Ambagtsheer F, Gunnarson M, De Jong J, Lundin S, van Balen L, Orr Z, Byström I, Weimar W, *Trafficking in human beings for the purpose of organ removal: a case study report* (November 2014). There is also the OSCE summary. There are also recommendations for investigation and prosecution in another HOTT report, see <https://www.organtraffickingresearch.org/research-projects/the-hott-project/>. Interesting presentations were given during the study day devoted to the work carried out within the framework of the HOTT program. Since then, new cases have arisen.

- CONSTITUENT ELEMENTS OF EACH OFFENSE OF THE CONVENTION (including that of art. 21 §3 if it is incriminated)
- **! Limited reserves based on the Convention**
- **! The profit (like the purpose) is not an admissible constituent element for the offense of an illegal removal.**
- Scope of the exception on lawful compensation?
- Scope of the exception for incapable persons, if it exists
- *Incriminations beyond the convention? (e.g. that of the receiver)*
- Is a non-sanction clause for victims of THB provided for in the legislation? possible for the paid donor whose vulnerability has been abused? Is it known in the field and is it effective? (link with GRETA)

PENALTIES (nature, threshold)

- Criminal prohibitions planned? effective (at the time of a hiring procedure)?
- Surveys (statistics)?
- Convictions (statistics)? summary description of the facts and anonymized case law to be provided

PENAL PROCEDURE

- Special investigation methods possible? witness protection?
- Is professional secrecy a barrier to contacting the police or law enforcement authorities in the event of doubt or serious suspicion?
- Prescription
- Extraterritorial jurisdiction (useful to know if national legislation goes further than the Convention)

VICTIMS ASSISTANCE

- Especially the orientation of victims of THB towards structures specialized in THB.

JUDICIAL COOPERATION:

- specific brakes?

- Identify good practices (e.g. in terms of detection or collection/saving of evidence or their use in J)