

Prevention of Transnational Transplant-Related Crimes—What More Can be Done?

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Background. Many nations are able to prosecute transplant-related crimes committed in their territory, but transplant recipients, organ sellers and brokers, and transplant professionals may escape prosecution by engaging in these practices in foreign locations where they judge the risk of criminal investigation and prosecution to be remote. **Methods.** The Declaration of Istanbul Custodian Group convened an international working group to evaluate the possible role of extraterritorial jurisdiction in strengthening the enforcement of existing laws governing transplant-related crimes across national boundaries. Potential practical and ethical concerns about the use of extraterritorial jurisdiction were examined, and possible responses were explored. **Results.** Extraterritorial jurisdiction is a legitimate tool to combat transplant-related crimes. Further, development of a global registry of transnational transplant activities in conjunction with a standardized international referral system for legitimate travel for transplantation is proposed as a mechanism to support enforcement of national and international legal tools. **Conclusions.** States are encouraged to include provisions on extraterritorial jurisdiction in their laws on transplant-related crimes and to collaborate with professionals and international authorities in the development of a global registry of transnational transplant activities. These actions would assist in the identification and evaluation of illicit activities and provide information that would help in developing strategies to deter and prevent them.

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Over the past 15 years, intergovernmental organizations, such as the United Nations,¹ the World Health Organization (WHO),² and the Council of Europe,³ and medical bodies, such as the World Medical Association⁴ and the Declaration of Istanbul Custodian Group,⁵ have increased efforts to prevent harmful practices related to organ procurement and transplantation. Consequently, most countries now have laws that criminalize a range of illicit practices

related to organ procurement, use and distribution—especially the purchasing of organs—which constitute trafficking in human organs (THO),³ and many have also adopted laws against human trafficking for organ removal (HTOR), which make it a crime to coerce others, take advantage of their vulnerability, or otherwise abuse power to obtain their organs.¹ In this paper, all crimes of organ procurement or transplantation are collectively referred to as “transplant-related crimes.” Many nations are thus able to prosecute transplant-related

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crimes committed in their territory. However, nations need additional provisions to deter their citizens or residents who may escape prosecution by traveling to other countries to engage in these practices.

In this article, we address states that have domestic laws against transplant-related crimes by suggesting 2 ways in which they could combat such crimes when performed abroad: first, by giving their laws extraterritorial jurisdiction (EJ), and second, by contributing information to an international registry of transnational transplant activities. The first would allow the state to prosecute its citizens and long-term residents who participate in these crimes abroad. The second would depend on a body with international authority, such as the WHO, establishing an international registry with official procedures for countries to provide information when citizens and residents travel abroad to receive or donate organs for transplantation. By registering legitimate travel for transplantation, countries would make it feasible to identify illicit activities; this information would aid countries to prosecute violators and to collaborate on strategies to deter and prevent these crimes. Together, both measures would be powerful additions to global efforts to combat THO and HTOR.

The Challenge of Organ Trading and “Transplant Tourism”

The purchase of organs from destitute persons as well the removal of organs without valid consent has been reported since the late 1980s. Consistent with the recommendations of World Health Assembly Resolution 63.22,² nearly all countries currently performing transplantation have outlawed the purchase and sale of organs and a number have also explicitly prohibited transplant tourism. The international trend in legislation is toward a more widespread and stronger prohibition of trade in organs, as evidenced by recent legislative changes in Qatar,⁶ India,⁷ and Pakistan.⁸ Nevertheless, debate persists in some countries, notably the United States, regarding the ethical acceptability and potential impact of financial incentives on the supply of organs for transplantation.⁹ Proponents believe legal markets may increase supply and even reduce trafficking.^{10, 11} Opponents contend that legal markets will replicate many—or all—of the problems of illegal markets: exploitation, coercion, stigmatization, and impaired physical and psychosocial health of organ sellers¹²; impaired public trust and reduced participation in altruistic deceased and living related donation programs^{13, 14}; and unjust reliance on the poor as a source of organs for transplantation.¹⁵ Opponents further argue that ethically unproblematic methods of increasing organ supply (such as removing financial burdens borne by many donors) should be adopted, rather than incentive programs which have been found, over many decades, to produce lower rates of transplantation than voluntary, unpaid donation.^{9, 16}

In countries where organ trading occurs, recipients are overwhelmingly national elites and “transplant tourists.”⁵ Fully eliminating the global black market in organs is a persistent challenge so long as residents of countries where legal prohibitions are enforced can travel to other countries where such laws are loophole-riddled or poorly enforced. Even in countries with well-established systems designed to prevent organ trafficking, illicit commercial activity may undermine the integrity of donation programs when transplant tourists masquerade as legitimate recipients by falsely presenting an

organ seller from their own or a third country as a related altruistic donor.¹⁷

Longstanding doubts that prohibitory legislation can be effective in deterring transplant tourists¹⁸ have been answered by the success of laws adopted in recent years in noticeably reducing these phenomena in many countries.¹⁹ Nevertheless, national legislation that prohibits illicit transplant activities solely on a domestic basis is insufficient to prevent and combat these activities, especially given the number of countries that lack adequate enforcement mechanisms or that are particularly vulnerable to trafficking activities as a result of extreme poverty, political instability, or corruption.^{8, 20}

Eradication of transplant tourism depends upon multifaceted solutions, including domestic efforts to reduce demand for transplantation abroad by strengthening ethical programs of organ donation.^{21, 22} In addition to continued improvement of national transplant regulations, growing interest in international conventions against trafficking indicates support for novel legislative and law enforcement strategies to combat transnational transplant-related crimes.³ Among these, the addition of EJ to existing domestic laws has been identified as a promising strategy to enhance the efficacy of these laws in the face of transnational activities.^{23–26} Besides supporting the adoption of EJ, this is the first paper to elaborate a plan for an international reporting system to assist in the effective prosecution of extraterritorial transplant-related crimes, in response to the recognized difficulty of identifying and investigating suspected transnational crimes.

The Legal Basis for EJ

A basic precept governing criminal law is the territorial principle, which holds that a nation may legislate against criminal conduct that is committed within its territory or that has an impact therein.²⁷ International law recognizes 4 additional jurisdictional principles under which a country may extend the application of its criminal law to acts that do not in some way occur in, or directly affect, its territory.²⁷ These allow for prosecution when a citizen has committed the prohibited act abroad (the nationality principle); when a citizen was the victim of a prohibited act committed abroad (the passive personality principle); when the act is reasonably held to impact a nation's interests (though not its territory), for example by threatening its security (the protective principle); or when the act is comparable to other heinous crimes recognized by international law, such as genocide or torture (universal jurisdiction).²⁷

The passive personality principle could be used to support prosecutions of persons responsible for enticing or facilitating citizens to travel abroad to sell an organ. However, we focus here on the extension of jurisdiction by a country under the nationality principle to hold its citizens and long-term residents accountable for committing acts abroad that would constitute a transplant-related crime if committed within the country.

Examples of EJ Over Transplant-Related Crimes

Many countries already assert EJ specifically with regard to HTOR, after the implementation of legally binding international instruments that encourage or require the establishment of EJ over all cases of human trafficking.^{1, 28} Canada, for example, recently added EJ to its National Criminal Code provisions on human trafficking, including for organ removal.²⁹

South Africa has also recently introduced a law with EJ governing human trafficking which covers HTOR.³⁰ Nonetheless, the few reported cases of HTOR have thus far mostly been prosecuted without reliance on EJ.^{31, 32} Identifying suspected crimes and establishing proof of criminal activity, particularly the conditions required to prove human trafficking, such as evidence of coercion or abuse of the organ sellers' position of vulnerability, is especially challenging in the transnational setting.³¹ Consequently, some cases initially prosecuted under human trafficking laws have been converted to prosecution under domestic organ trading criminal laws.³¹

By contrast, most statutes criminalizing THO, such as the US National Organ Transplant Act of 1984, were adopted as a domestic legislation focused on stopping organ trading within national borders, and only a few have been extended beyond that. Examples include German and Israeli laws which apply EJ to transplant-related crimes committed by nationals, regardless of the country in which they occur or the legality of organ trading in that country (Table 1). However, the THO convention recently promulgated by the Council of Europe calls on ratifying states to consider establishing EJ over organ trafficking crimes committed by their nationals abroad.^{3, 28}

Finally, a few countries, such as Turkey, Jordan, and the Netherlands, apply EJ to all acts committed abroad that are criminalized domestically and in the jurisdiction in which they occur, so-called double criminality (Table 1). As trade

in organs is criminalized in these countries and in the majority of countries where THO occurs, countries with such a general EJ provision therefore have the capacity to prosecute transplant-related crimes committed abroad. Indeed, Jordan has successfully prosecuted a number of cases of organ trading abroad by Jordanian citizens on the basis of the extraterritorial application of Jordan's penal provisions.³²

The Case for EJ Over Transplant-Related Crimes

(i) Supporting Shared Moral Values at Home and Abroad

As noted earlier, organ trading is criminalized in most countries where transplantation occurs; hence, the principle of double criminality would apply in most cases of transplant tourism. When transplant-related activities are illegal both domestically and in the country where the acts occur, applying EJ supports the legal and moral objectives of both countries. When the destination country lacks such laws or has difficulty enforcing its prohibitions, applying EJ would aim to deter people from leaving a country with enforced prohibitions to exploit the economic and law enforcement vulnerabilities in other countries.

Use of EJ could enable more effective prosecution of organ buyers, brokers, intermediaries, and other facilitators of transplant-related crimes by reducing uncertainty regarding jurisdictional authority when foreign nationals are involved in crimes, by providing grounds for foreign law enforcement to support investigation of transnational crimes, and by supporting an expectation that professionals in the home

TABLE 1.
International examples of EJ as applied to transplant-related crimes

EJ generally applied to all crimes under the principle of "double criminality"	EJ specifically applied to laws governing THO, regardless of "double criminality"	EJ specifically applied to laws governing HTOR
Mechanism for prosecution of nationals who engage in transplant-related activities in a foreign jurisdiction		
A general criminal law provision extends extraterritoriality to all acts committed abroad which are criminalized both domestically and in the jurisdiction in which they occur.	Specific laws prohibiting organ trade or other activities involving trafficking in human organs apply to nationals irrespective of the country in which the activity occurs, and regardless of the legality of the activity if occurring within a foreign state.	Specific laws prohibiting trafficking in human beings "for the purpose of organ removal" are applied to nationals regardless of legality of the act in the country in which it occurs.
Selected examples		
NETHERLANDS Dutch Penal Code, Art. 7(1) < http://wetten.overheid.nl/BWBR0001854/volledig/geldigheidsdatum_07-02-2015 >	ISRAEL Israeli Transplant Act. 2008. < http://www.declarationofistanbul.org/index.php?option=com_content&view=article >	SOUTH AFRICA Republic of South Africa. Act No. 7 of 2013, Prevention and Combatting of Trafficking in Persons. < www.justice.gov.za/legislation/acts/2013-007.pdf >
JORDAN Jordan Penal Code. Article 10. Excerpt available at: < https://www.unodc.org/tldb/showDocument.do?documentUid=6429 >	GERMANY German Criminal Code, § 5, n° 15 < http://www.gesetze-im-internet.de/stgb/_5.html >. In conjunction with the German Transplant Law, §18. < http://www.gesetze-im-internet.de/tpg/_18.html >	BELGIUM Belgian Law on the Preliminary Title of the Code of Criminal Procedure, Article 10ter(1). < http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=1878041701&table_name=wet >
TURKEY Turkish Criminal Code, Article 11. < http://www.ceza-bb.adalet.gov.tr/mevzuat/5237.htm >		FINLAND Finnish Criminal Code, Article 7(1). < http://www.finlex.fi/sv/laki/ajantasa/1889/18890039001 >
		CANADA Canadian Criminal Code, Amendment to Section 7. < http://www.laws.justice.gc.ca/eng/AnnualStatutes/2012_15/page-1.html >

countries of transplant tourists would assist in reporting suspected involvement of patients or peers in criminal activity to appropriate authorities (see below). An increased likelihood of effective prosecution would help to deter potential transplant tourists and other participants in transplant-related crimes, regardless of their country of residence, including health professionals who perform or facilitate illicit organ procurement or transplantation.

It may be argued that the application of EJ to transplant-related crimes would jeopardize respect for international moral pluralism, a claim that has been made in the context of cross-border “reproductive tourism” where EJ has been applied by some countries to specific assisted reproductive technologies or practices, such as in vitro fertilization using donor gametes.³³ However, in contrast to various reproductive treatments, which are ethically accepted and legal in some countries but not in others, trade in organs is both legally prohibited and also socially stigmatized in the origin and destination countries affected by transplant tourism. Organ selling is notably stigmatized even in Iran, where organ selling has been legal for many years.¹² The opportunity to sell an organ is not described by sellers—in Iran or in countries where the black market persists—as an important freedom, but rather as a strategy of last resort which is usually regretted.^{12, 34, 35}

(ii) Taking Responsibility for Domestic Problems

States have well-recognized responsibilities to protect and promote the well-being of their own nationals. Failure to meet transplant needs domestically and to deter outgoing transplant tourists exposes these individuals to the serious risks that arise when an illicit transplant is sought in a foreign country.³⁶ The establishment of EJ over transplant-related crimes is thus supported by a principle particular to organ transplantation, namely, that countries should become “self-sufficient” rather than outsourcing the burdens of organ donation to foreign populations.²¹

(iii) Preventing Harm to Foreign Societies

The application of EJ to transplant-related crimes would counteract the ironic effect that a nation's prosecution of crime domestically can motivate its residents to travel abroad to victimize people in other countries. In this view, EJ rests not on nations recognizing positive moral duties toward one another but on the duty not to cause harm to other nations and their residents. Such a principle, whether framed as a Millian style Harm Principle (constrain liberty only where necessary to prevent harm to others)³⁷ or more broadly as the ethical duty of nonmaleficence (“do not harm”), is manifest in international laws and treaties governing specific actions held to constitute egregious human rights violations.

Indeed, a state's failure to criminalize or prosecute transplant-related crimes when performed by its citizens outside state borders implies a disregard for those foreign citizens who may consequently suffer coercion, exploitation, and physical and psychological injuries.^{12, 31} Failure to establish EJ suggests that ethical standards become discretionary beyond state borders, whereas neither personal nor professional involvement in transnational transplant-related crimes should be thought less ethically questionable than when such activities occur domestically.

Objections to EJ Over Transplant-Related Crimes Are Unconvincing

It may be argued that transplant tourism, which involves obtaining and providing medical treatment, does not encompass the sort of heinous activities such as child sex crimes or genocide that have been held to warrant the creation of EJ. We acknowledge that the severity and scale of crimes associated with transplant tourism cannot compare with crimes of genocide. Nevertheless, they are considered sufficiently serious to warrant substantial penalties. In several jurisdictions, penalties for HTOR (eg, Canada)³⁸ or even THO (eg, Spain)³⁹ are comparable to or may even exceed the ones applicable to child sex crimes. This criminal law approach reflects the severity of the crimes involved. Setting aside the horrific practice of organ procurement from executed prisoners in China, which was a major source of transplants for foreign patients for some years,^{40, 41} and instances of HTOR that entail coercion or exploitation, transplant tourism commonly produces substantial negative effects including grave long-term physical and psychosocial harm to organ sellers and their communities.^{12, 42-45} Further, the financial rewards of providing health care services to transplant tourists may divert resources from domestic patients, thus impairing the destination country's development of equitable organ donation and transplantation programs and increasing mortality among domestic transplant candidates.²²

The transnational nature of particular crimes is also an important consideration for the application of EJ. Where criminal activities are substantively pursued across jurisdictional borders, as is the case for transplant tourism, EJ becomes both a moral and practical concern for affected states.

Although the use of EJ for other transnational crimes such as child sex “tourism” has had limited success, leading to claims that EJ is an ineffective tool for prevention of crime,⁴⁶ its potential impact against transplant-related crimes should be greater. Transplant activities take place in health care settings, which are easier to monitor, both at the time of organ procurement and transplantation, and later when a transplant recipient seeks follow-up care. Further, although investigation of organ brokers may be as difficult as that of sex traffickers, the lynchpins of transplant-related crimes are health professionals; as such, they are more readily identified and present a critical focus for interventions to deter and prevent crimes. Importantly, the scope of EJ for transplant-related crimes can be crafted so as not to punish vulnerable parties unfairly, such as organ sellers or individuals with life-threatening illness.

The Importance of Reporting Mechanisms

Successful implementation of EJ hinges on the ability of a state's law enforcement authorities to identify suspicious transplant activities and to investigate events that have occurred outside the state. Domestic authorities will also need to exert effort to identify crimes that occur within their borders involving foreign patients, particularly when transplant activities occur in the private health care sector. Current methods of identifying suspected transnational transplant-related crimes rely heavily on ad hoc reporting by health professionals who suspect foreign patients are seeking to conceal commercial relationships or who believe that one of their own patients, returning from a transplant abroad, received

a trafficked organ. By combining reports from a number of countries, and more effectively communicating information about suspicious cases across borders, national authorities and international organizations could better identify locations of suspicious activity.

Reports from professionals working with the Declaration of Istanbul Custodian Group have exposed some centers of trafficking activity but this mechanism is neither systematic nor comprehensive. Routine and structured reporting of cases offers a more effective and consistent method for monitoring and investigating transnational transplant activities and was recently recommended by the Council of Europe.⁴⁷ By clearly defining and collating the information contained in such reports (**Box 1**), the registry could more readily identify centers of illicit activity, allowing national authorities to hold brokers and professionals engaged in crimes accountable.

Box 1. Possible content of case reports of travel for transplantation involving suspected trafficking in human organs, where details are known*

- Details concerning **transplant recipient**:
 - Country of residence, nationality
 - Organ transplanted
 - Rationale(s) for travel abroad for transplantation or (where no travel is involved) for travel by the organ donor
 - Clinical details of the transplant, including outcomes
- Details concerning **organ donor**:
 - Country of residence, nationality
 - Rationale(s) for travel abroad for donation, or (where no travel is involved) for travel by the recipient
 - Clinical details of organ procurement, including outcomes
- Details concerning the **relationship between donor and recipient**
 - Prior relationship, if any
 - Method of introduction, solicitation, use of broker or mediator
 - Commercial transaction details, eg, payment made, methods of payment
- Details concerning **transplant service providers**
 - Country, region, city and institution where organ procurement or transplantation occurred
 - Names and roles of health professionals involved, methods of communication before, during and after travel
- Details concerning **travel arrangements**
 - Name and contact details of individuals or companies involved in facilitating travel
 - Visas, travel permits, passports and/or any documentation required, and how and by whom this was arranged
 - Costs and methods of payment
- Copies of **documentation** available (eg, operative reports, post-op instructions, laboratory records, invoices, receipts)

**Although transplant tourists often return with little documentation of their treatment abroad, they should nevertheless be able to assist in the identification of physicians and health facilities involved, and of individuals involved in brokering the transplant package or organ sale.*

Proposal for an International Referral and Reporting System

Registration of unobjectionable cases of travel for transplantation would avoid expensive investigations and stigmatization of travelers lawfully seeking transplant services abroad. It would have the additional benefit of identifying, by default, nonregistered cases as presumptively illicit—for example, when a health professional reports that a patient who has not had a domestic transplant has presented for posttransplant care (Figure 1). The authorities involved may differ somewhat among jurisdictions but are likely to be those responsible for enforcing criminal laws or regulating health care facilities. Having collected domestic reports of approved and unapproved cases of transplant travel, the national registries would communicate these data to international authorities. In countries lacking an effective domestic reporting system with adequate protection of patient-identifiable information, health professionals might submit reports directly to the international body. In this preliminary proposal, we refer simply to an international registry of transplant travel (IRTT), conceived ideally as an intergovernmental institution that could, for example, be integrated with the Global Observatory on Donation and Transplantation under the authority of the WHO.

Development of a globally consistent, transparent, and accountable international referral system for donation and transplantation would additionally protect participating professionals and patients from inappropriate prosecution, promote continuity of care for donors and recipients in accordance with best practice standards,^{48, 49} and reduce burdens for physicians evaluating prospective foreign patients. In addition to maintaining a confidential registry of approved cases of transplant travel, the IRTT could provide public information about institutions that offer legitimate donation and transplantation services for foreign patients, detailing the legal and medical requirements for provision of access to such patients. Further, the IRTT would establish minimum standards and guidelines for screening, evaluation and referral of prospective travelers (**Box 2**). The IRTT would also facilitate donor and recipient traceability when posttransplantation adverse reactions occur and assist regular evaluation of transnational activities.

Box 2. Preliminary recommendations for screening and registration of legitimate transplant travel via the proposed IRTT

1. Physician caring for a prospective transplant candidate and/or organ donor intending travel abroad establishes contact through the IRTT with professional colleague(s) at the intended destination.
 - a. **rationale for travel** is explained, including consideration where relevant of possible other living related

- donors and what domestic options for transplantation have been explored
- b. **legitimacy** of service provision in the destination country in this context confirmed
 - c. availability of appropriate **follow-up care** for both donor and recipient in their countries of origin to be confirmed
2. Physician in the country(ies) of residence of the prospective donor and/or recipient perform
 - a. **medical screening** to assess fitness for donation or transplantation as per the Amsterdam and Vancouver Forum guidelines^{48,49} and international best practice standards
 - b. **psychosocial screening** in accordance with domestic *and* destination guidelines and requirements, including evaluation of
 - i. *relationship* between prospective donor and recipient;
 1. proof of familial relationship with evidence of longstanding regular contact over the last 3 years, and attestation by authorities as to identity of each individual.
 - ii. *fitness* for donation or transplantation
 1. psychological fitness assessed;
 2. financial costs and how these will be addressed.
 3. Physicians in the respective countries to confer (and compare where relevant) information provided through assessment. If agreement to proceed, case is registered with the relevant national authorities and the IRTT.
 4. After the travel of prospective donor/recipient, physicians in the destination country performing procurement and transplantation are to *repeat* medical and psychosocial *screening* as per domestic guidelines.
 5. After donation and transplantation, transplant team in the destination country to *communicate* relevant information directly to physicians responsible for follow-up care in countries of origin.
 6. Outcomes of donation and transplantation and any subsequent concerns raised by professionals in either origin or destination countries to be *reported* to the relevant national authorities and the IRTT.

The first stage of prospective screening and evaluation of donors and recipients would take place in their own countries, in accordance with local laws and guidelines, but in line with the IRTT minimum requirements. Direct communication between referring and receiving professionals and consultation with relevant state authorities would assist in flagging and addressing potential concerns—such as verification of identities and of the family relationship claimed between recipient and donor—before the patient arrives at the foreign transplant center. Where both the donor and the recipient travel from one country to another, health professionals in their country of origin should perform most screening procedures and attest to the rationale for travel (ie, why the transplant is not being done in the recipient's country of residence). In the destination country, professionals would perform further screening as required, taking responsibility for both patients, regardless of their countries of origin.

All prospective or completed transplant cases for which foreign or domestic patients cannot or will not supply details of registration in the relevant national registry or the IRTT should be notified by physicians to the IRTT and/or designated authorities in their own country where available, and to the relevant health care institutions if appropriate. The IRTT would be responsible for referring such reports to international authorities, such as Interpol or the United Nations Office on Drugs and Crime, and to relevant national authorities able to conduct investigations in accordance with the laws of the relevant jurisdiction(s). In collaboration with international stakeholders including law enforcement experts, the IRTT would analyze the collected data and publish strategic recommendations to address regulatory loopholes that enable trafficking activities and to inform the public and health care professionals.

Reporting as a Professional Duty

Physician involvement in reporting may be voluntary, mandated by law, or occur in response to an official request for information from a prosecutor or court. The manner in which information is obtained should, to the maximum extent possible, respect patients' privacy and confidentiality. The proposed IRTT may, for example, restrict collection and sharing of identifiable data with law enforcement in countries that do not protect vulnerable individuals, such as victims of human trafficking.

The support of health professionals in discouraging, and attempting to prevent, transnational transplant-related crimes is necessary and appropriate, given their obligations to prevent harm to domestic patients who are considering traveling abroad, to unknown “donors” whether domestic or foreign, and to the domestic health care system. Furthermore, the central role played by physicians in transnational trafficking (Box 3) justifies recognizing professional responsibility to address these activities. Some physicians may fear exacerbating the risks of transplant tourism if their patients, who know that physicians are supposed to report unauthorized transplants, are wary about seeking information when they are contemplating a transplant abroad or about getting care after they receive such a transplant. Physicians can reduce this problem by initiating education for transplant candidates they consider to be at risk for transplant tourism.⁵⁰

Box 3. The contribution of transplant professionals to transnational transplant-related crimes.

The following activities of transplant professionals promote, enable or sustain transplant-related crimes in various ways:

1. Providing patients with information that enables them to arrange and obtain transplantation services abroad that use illicitly procured organs, including through provision of diagnostic tests, medication prescriptions, and/or medical information;
2. Referring patients directly to such services;
3. Soliciting or knowingly facilitating the sale of organs;
4. Procuring and/or transplanting organs that they know, or would reasonably be expected to know, have been obtained or transferred illicitly;
5. Supplying prospective transplant recipients and/or living donors with documentation that falsely attests to a familial relationship between them.

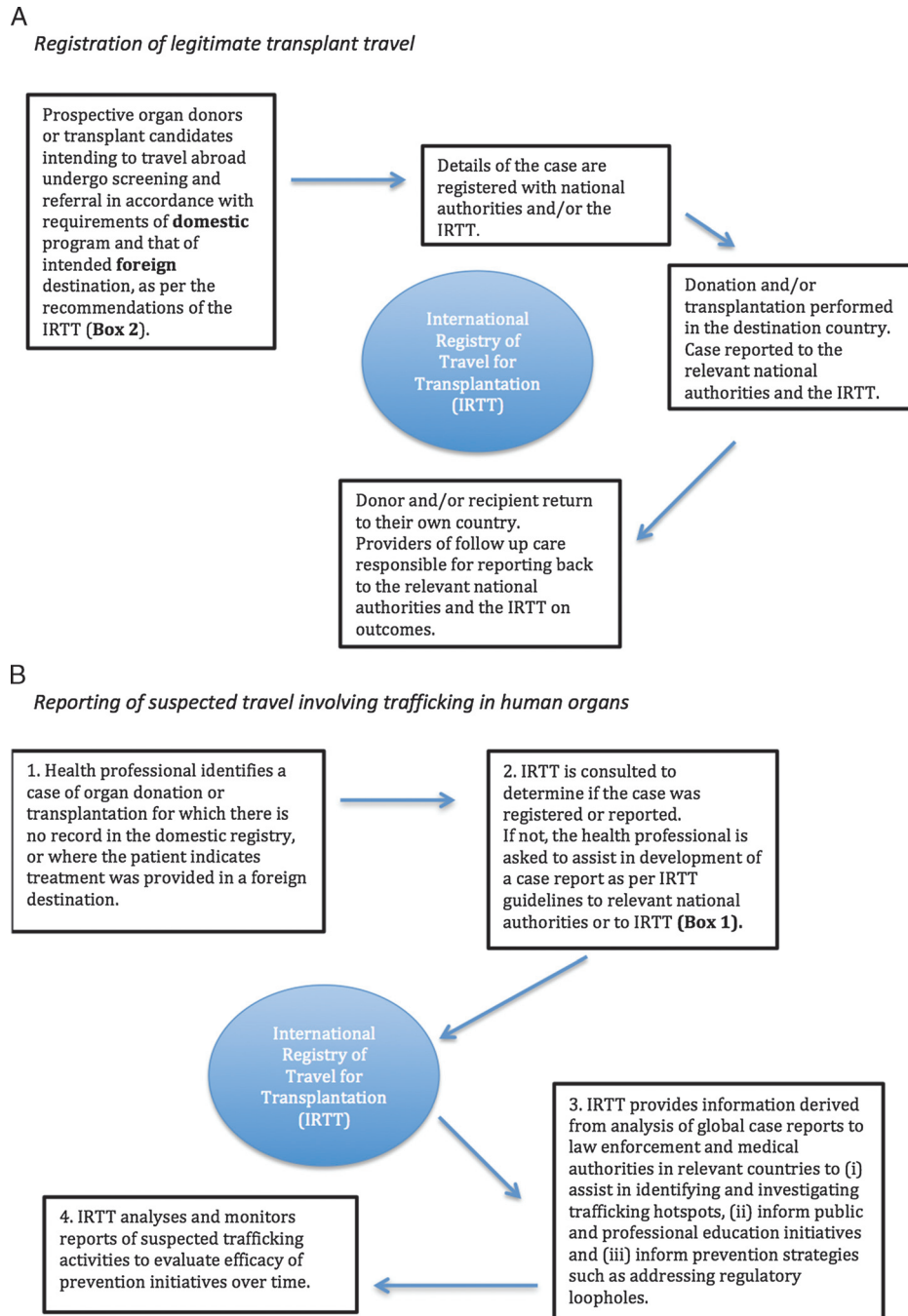


FIGURE 1. Proposal for an International Registry of Travel for Transplantation for use in registering legitimate travel and reporting travel suspected of involving criminal activity.

Professionals have well-recognized duties to discourage or prevent acts that may expose patients or the community to harm. Many ethical codes for health professionals identify an obligation to report unethical conduct by peers to professional boards, and—in some cases—criminal activity to law enforcement authorities. Many countries have legal and professional precedents with regard to reporting suspected patient or professional crimes, in cases where the obligation to prevent harm is sufficient to outweigh the duty to protect patient privacy and confidentiality.⁵¹ Failure of professionals to acknowledge these responsibilities and to address

transplant-related crimes risks undermining public trust in legitimate donation programs.

From Reporting of Crimes to Their Prevention

In countries that successfully implement a system of physicians routinely reporting legitimate transplant travel, potential crimes may be readily identified. However, obtaining detailed information about the location of an illegal transplant and about all participants therein, which will be necessary to prosecute these individuals, depends on the collaboration of professionals and authorities in the destination countries.

Here, the burden of gathering evidence will be greater than that for the initial identification of a transplant recipient who lacks proof of authorized travel. For example, even if a recipient can supply the name of the transplant hospital, records may be falsified to remove evidence of services provided to foreign patients. Efforts to assist and improve mechanisms of law enforcement in destination countries remain indispensable, and will be enhanced by the use of EJ. Extraterritorial jurisdiction provides a legal framework to support implementation of a reporting system based on review of returned transplant travelers, and requests to authorities in destination countries for collaboration in investigating these reports. Without such requests, authorities in destination countries may remain oblivious to violations of their domestic laws involving foreign patients.

Extension of jurisdiction for laws governing transplant-related crimes beyond a nation's territory demonstrates commitment to the principles underpinning these laws and recognizes that ethical responsibilities extend beyond borders. Extraterritorial jurisdiction complements rather than displaces effective enforcement of domestic laws; used in conjunction with national and international registries of legitimate cross-border transplants, and organized reporting mechanisms, EJ will support ethical travel for transplantation and assist authorities to enforce laws designed to discourage and hold to account those who benefit from transplant-related crimes.

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