

“Gratuities” for donated organs: ethically indefensible



With the encouragement of more than 90 medical bodies (the Declaration of Istanbul)¹ and WHO—which in May, 2010, endorsed revised Guiding Principles that confirm the ban on payment for organs from living or deceased donors²—several of the countries that have been the most notorious organ bazaars,³ including Egypt, Pakistan, China, and the Philippines, have recently outlawed organ sales and taken steps to prevent trafficking of organs to transplant tourists.⁴ Yet the risk to people who are poor remains, as proponents of markets for organs seek to circumvent or reverse the prohibitions.

For example, at the end of June, the Minister of Health in the new Philippine Government expressed his opposition to the ban imposed there 2 years ago on foreigners receiving transplants from Filipinos, and his intention to allow organ donors to be compensated by a “gratuity package” as large as US\$3200.⁵ The Minister has joined several US advocates of regulated organ markets to sponsor an international forum on rewarded organ donation, in November in Manila.

Yet the ethical arguments raised by those who favour financial incentives for organ donation⁶ have been repeatedly—and rightly—rejected by WHO because they are unpersuasive and would worsen the plight of patients awaiting transplants.^{7,8}

Drawing on the principle of beneficence, proponents of organ markets claim that sales will increase the availability of desperately needed organs and serve the good of all involved. Yet studies consistently show that vendors are not likely to benefit sustainably,^{9–11} and that any increase in purchased organs will be matched by a crowding-out of altruistic donations, resulting in a net reduction in transplants and in greater risks for recipients because sellers are more likely to withhold adverse information about their health history.^{12,13}

Next, market proponents contend that allowing organ vending would respect the autonomy of individuals who are poor, augmenting (or at least not curtailing) the already limited options available to them. Invoking free choice might merely seem like armchair philosophy were it not for the documented poverty of organ vendors, which renders this embrace of autonomy more a cruel hoax. When people are choosing between selling their children and their kidneys to meet essential family needs

or to temporarily escape crushing debt, coercion and exploitation—not autonomy—are the more apposite terms. Moreover, it seems that few among those who can exercise genuine choice would opt to sell, rather than to donate, an organ.¹⁴

Finally, market proponents invoke the principle of justice, arguing that if everyone else involved in transplantation is paid, it is only fair that organ donors get their share. Yet what would be a fair share for providing the “gift of life”? Would this be fixed by the value of life to the recipient? That is not how other participants, such as physicians and nurses, are paid; rather, they are compensated for their services. Or would the amount result from differential pricing in a global market, implicitly placing a low price on those organ vendors who are most desperate to get some payment? The claim that a market in organs (even a regulated one) would be fair is no more plausible than the assumption that such a market could be contained within regional limits. Rather, justice requires preventing a practice that is bound to be exploitative and which inherently violates Kant’s injunction to “act always in a way that expresses respect for the value of humanity”.¹⁵

Although the three fundamental principles of bioethics—beneficence, respect for autonomy, justice—do not support organ sales, proponents still argue that a regulated market should be established because organ trading is going to happen anyway. Yet this proves too much, for it would lead us always to embrace rather than combat morally objectionable practices, such as slavery and human trafficking, whenever some

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Panel: Principle 5 of WHO’s guiding principles on human cell, tissue, and organ transplantation, endorsed by the 63rd World Health Assembly in May, 2010²

Cells, tissues, and organs should only be donated freely, without any monetary payment or other reward of monetary value. Purchasing, or offering to purchase, cells, tissues, or organs for transplantation, or their sale by living persons or by the next of kin for deceased persons, should be banned.

The prohibition on sale or purchase of cells, tissues, and organs does not preclude reimbursing reasonable and verifiable expenses incurred by the donor, including loss of income, or paying the costs of recovering, processing, preserving, and supplying human cells, tissues, or organs for transplantation.

criminals engage in them. Moreover, if a ban cannot be made to work, why should we expect regulation to be implemented successfully?

Thus there is no justification for retreating from the World Health Assembly's recent affirmation that "voluntary, non-remunerated donation of organs... helps to ensure a vital community resource",² one that depends on countries developing robust systems for deceased donation, and enacting and enforcing organ-vending prohibitions that encompass gratuities, which are simply "disguised forms of payment" as stated by the commentary to WHO's Guiding Principle 5 (panel).² How ironic but also sad that proponents of organ markets should choose Manila—where thousands of people who are poor bear the scar of having sold a kidney—as the locale for their attempt to undermine the global consensus on how to promote ethical organ transplantation and to put an end to the human-rights violations that inhere in trafficking in human organs and in the vulnerable people from whom they are extracted.¹⁶

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