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**TRAFFICKING IN PERSONS FOR THE PURPOSE OF ORGAN REMOVAL: LEGAL
AND PRACTICAL SHORTCOMINGS IN VICTIM IDENTIFICATION AND
PROTECTION**

Master's Thesis

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INTRODUCTION

Trafficking in persons for the purpose of organ removal (hereinafter: TIP for OR) is one of the forms of trafficking in human beings (hereinafter: THB), where victims are deceived or coerced into donating their organs, most commonly kidneys and parts of livers¹, in exchange for financial gain. The root cause for the crime is the combination of high demand for and limited availability of organs.² Compared to other forms of trafficking, organ removal presents a more complex crime, where the identification of victims as well as perpetrators is challenging. This is evident based on the United Nations Office on Drugs and Crime (hereinafter: UNODC) Global Report on Trafficking in Persons 2024 (hereinafter: GLOTIP), which provides that in 2022 less than one percent of detected victims were victims of organ removal. Challenges also exist in identifying and prosecuting the perpetrators. As illustrated by the GLOTIP, between 2017 and 2023 approximately 152 convictions in ten countries were reported.³ The UNODC Case Law Database further highlights the issue, since out of 1590 human trafficking cases⁴ only 15 concerned conviction for the removal of organs.⁵ Such statistics do not necessarily suggest that the crime is rare, but rather point to its underdetection and -reporting, since it is believed that the number of victims, and consequently perpetrators, is higher.⁶

1 UNODC, 'Explainer: Understanding Human Trafficking for Organ Removal'
<[www.unodc.org/unodc/en/frontpage/2024/June/explainer_
removal.html](https://www.unodc.org/unodc/en/frontpage/2024/June/explainer_-_understanding-human-trafficking-for-organ-removal.html)> accessed 13 April 2026.

² UNGA ‘Note by the Secretary-General: Trafficking in persons, especially women and children’ (2 August 2013) UN Doc A/68/256 para 19.

³ UNODC, ‘Global Report on Trafficking in Persons 2024’ (United Nations publication 2024) <www.unodc.org/documents/data-and-analysis/glotip/2024/GLOTIP2024_BOOK.pdf> accessed April 13 2026 54, 14 fig 7.

4 UNODC, 'SHERLOC Case Law Database: Trafficking in Persons',
 <www.unodc.org/cld/v3/sherloc/cldb/search.html?lng=en#?c=%7B%22filters%22:%5B%7B%22fieldName%22:%22en%23__el.caseLaw.crimeTypes_s%22,%22value%22:%22Trafficking%20in%20persons%22%7D%5D,%22sortings%22:%22%22%7D> accessed 13 April 2026.

5 UNODC, 'SHERLOC Case Law Database: Trafficking in Persons and Removal of Organs', www.unodc.org/cld/v3/sherloc/cldb/search.html?lng=en#?c=%7B%22filters%22:%5B%7B%22fieldName%22:%22en%23__el.caseLaw.crimeTypes_s%22,%22value%22:%22Trafficking%20in%20persons%22%7D,%7B%22fieldName%22:%22en%23tag_s%22,%22value%22:%22Removal%20of%20organs%22%7D%5D,%22sortings%22:%22%22%7D accessed 13 April 2026.

⁶ The Inter-Agency Coordination Group against Trafficking in Persons, ‘Trafficking in Persons for the Purpose of Organ Removal’ (Issue Brief 2021) <https://icat.un.org/sites/g/files/tmzbd1461/files/publications/icat_brief_tip_for_or_final.pdf> accessed 13 April 2026

The complexity as well as underdetection of TIP for OR is attributable to several factors. Most notably to the victims' apparent consent, which is often shaped by their structural vulnerability. Therefore, such consent is not truly free or informed, making it legally invalid.⁷ The transnational nature of TIP for OR – involving donors, recipients and perpetrators from various jurisdictions – further complicates detection and requires international cooperation.⁸ Moreover, as organ removal is a medical procedure, TIP for OR intersects with both criminal and transplantation law, contributing to the fragmented regulation. Additionally, the involvement of medical professionals can disguise TIP for OR as a legitimate transplantation process, undermining identification of victims.

This leads to the central research problem of this thesis – the insufficient identification and protection of victims of TIP for OR. Accordingly, the objective of the paper is to analyse and identify the specific legal and practical shortcomings contributing to this problem. The paper adopts a problem-centred approach, with particular attention to three main gaps. Firstly, the inconsistent understanding of TIP for OR, which is attributable to three interrelated factors: the lack of clear legal definition, inconsistent scope of the legal frameworks, and the weak domestic implementation of international instruments. Consequently, TIP for OR is neither coherently understood nor consistently criminalised. Secondly, the dichotomy between criminalising organ selling and safeguarding the rights of victims of trafficking reflects a broader tension between criminal justice and rights-based approach to TIP for OR. While the former one prioritises prosecution and punishment, the latter one requires that the human rights of the victims be of central importance.⁹ The widespread criminalisation of human organ selling under domestic laws¹⁰ creates a structural risk that victims of TIP for OR are treated as offenders rather than recognised as victims, thereby hindering the effective application of rights-based approach. Lastly, migrants, refugees and asylum seekers are often not properly identified as victims of THB, which undermines their access to trafficking-specific protections and increases their risk of re-trafficking.

⁷ UNGA 'Trafficking in persons, especially women and children' (n 2) paras 24 and 25.

⁸ UNODC, 'Global Report on Trafficking in Persons' (n 3) 54.

⁹ Saba Demeke, 'A human rights-based approach for effective criminal justice response to human trafficking' (2024) 9(4) *Journal of International Humanitarian Action* 2, 3 <<https://doi.org/10.1186/s41018-023-00143-4>> accessed 13 April 2026.

¹⁰ Jean-Philippe Duguay and others, 'Trafficking in Human Organs: an Overview' (Library of Parliament publication 2020) <<https://bdp.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/HillStudies/PDF/2020-83-E.pdf>> accessed 13 April 2026 11, notes that Iran is the only country where organ selling is legal.

Based on the identified problems, the thesis seeks to answer the following research questions:

1. How do inconsistencies in definition, scope and domestic implementation of international instruments undermine the identification of victims of trafficking in persons for the purpose of organ removal?
2. How does criminalising organ selling hinder effective victim identification and protection in trafficking in persons for the purpose of organ removal cases, and how should states reconcile criminal justice and rights-based approaches?
3. What legal and practical shortcomings hinder effective identification and assistance of migrants, refugees and asylum seekers as victims of trafficking in persons for the purpose of organ removal?

This thesis puts forward a hypothesis that the inadequate identification and protection of victims of trafficking in persons for the purpose of organ removal results primarily from inconsistent domestic interpretation and implementation of anti-trafficking frameworks, rather than from the absence of sufficient international norms.

In order to answer the research questions and to assess the hypothesis, a comparative analysis of international and regional anti-trafficking frameworks is conducted, including hard and soft law instruments (e.g. the UN resolutions). However, the research goes beyond a mere comparison of regional legal instruments by also examining domestic implementation and practical enforcement. On an international level, TIP for OR is criminalised under the broader legal framework of human trafficking, particularly through the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children¹¹ (hereinafter: Palermo Protocol). The Protocol reflects an international standard on human trafficking and serves as a foundation for regional and national legislations. However, its implementation varies across regions, particularly in Europe and Africa, which this thesis compares. The two regions are connected through

¹¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319.

migration flows and cooperate to combat human trafficking¹², yet their legal frameworks differ drastically.

In the European region, the Council of Europe (hereinafter: the CoE) has established a comprehensive framework through the Convention on Action against Trafficking in Human Beings¹³ (hereinafter: the ECAT). Its domestic implementation is supported by Group of Experts on Action against Trafficking in Human Beings (hereinafter: GRETA), a monitoring body for ECAT.¹⁴ By contrast, the African Union (hereinafter: the AU), as the central organisation within the region, has neither adopted a legally binding instrument regulating THB nor TIP for OR, despite the crime being of high concern in the region. Instead, the regulation is done through soft law instruments, such as the Ouagadougou Action Plan to Combat Trafficking in Human Beings Especially Women and Children¹⁵ (hereinafter: the Ouagadougou Action Plan) and the Policy on the Prevention of Trafficking in Persons in Africa¹⁶ (hereinafter: the AU Anti-Trafficking Policy), both of which urge the Member States to adopt and implement the Palermo Protocol. While Africa's reliance on the Palermo Protocol is not inherently problematic, the absence of a binding regional framework and monitoring mechanism may undermine the consistency of domestic legislation.

The novelty of this research is twofold. Firstly, it contributes to the limited research on TIP for OR. According to a study published eight years ago, merely 6,8 per cent of more than 2000 human trafficking related research concerned organ trafficking.¹⁷ Additionally, another, more recent

¹² See e.g. International Organization for Migration, 'EU-Horn of Africa Migration Route Initiative (Khartoum Process)' <www.iom.int/eu-horn-africa-migration-route-initiative-khartoum-process> accessed 13 April 2026; UNODC, 'Prosecutors from Africa and Europe agree closer cooperation against human trafficking and migrant smuggling' <www.unodc.org/unodc/en/human-trafficking/glo-act/prosecutors-from-africa-and-europe-agree-closer-cooperation-against-human-trafficking-and-migrant-smuggling.html> accessed 13 April 2026.

¹³ Council of Europe Convention on Action against Trafficking in Human Beings (ECAT).

¹⁴ Council of Europe: Action Against Trafficking in Human Beings, 'GRETA - Group of Experts on Action against Trafficking in Human Beings' <www.coe.int/en/web/anti-human-trafficking/greta> accessed 13 April 2026.

¹⁵ African Union, Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children As adopted by the Ministerial Conference on Migration and Development (2006) <https://au.int/sites/default/files/pages/32899-file-3._ouagadougou_action_plan_to_combat_trafficking_en_1.pdf> accessed 13 April 2026.

¹⁶ African Union, AU Policy On the Prevention of Trafficking In Persons [TIP] in Africa (2021) <<https://au.int/en/documents/20240716/au-policy-prevention-trafficking-persons-afica>> accessed 13 April 2026.

¹⁷ Waleed M. Sweileh, 'Research trends on human trafficking: a bibliometric analysis using Scopus database' (2018) 14(106) *Globalization and Health* 1 <<https://doi.org/10.1186/s12992-018-0427-9>> accessed 13 April 2026.

study, concluded that the majority of literature originated from medical sciences, highlighting the limited contribution of the social sciences and humanities.¹⁸ During this research, it was observed that the situation has remained relatively unchanged. Although various international and regional organisations have published reports on organ removal, they are predominantly descriptive in nature and do not offer a comparative legal analysis of the shortcomings affecting victim identification and protection. Moreover, while conducting this research, it was noted that most reports address human trafficking more broadly, with TIP for OR receiving only brief attention. Secondly, this paper offers an original perspective through its distinct analytical lens and comparative scope. In addition to the comparative regional analysis of Europe and Africa, this research takes a problem-centred approach. In particular it analyses the challenges that hinder effective victim identification and protection, and not merely the issues with prosecution. Moreover, it evaluates the interconnection between migration and TIP for OR, a link that remains underexplored in existing scholarship.¹⁹ Ultimately, this research contributes to the field of international law by identifying the key practical and legal shortcomings undermining victim identification and protection specifically in the context of TIP for OR.

To that end, the research adopts a doctrinal legal research methodology, analysing primary legal sources, including international treaties and soft-law instruments. Particular reliance is placed on official reports and interpretative materials to examine how legal standards are applied in practice. The use of case-law is limited due to the scarcity of international and domestic jurisprudence; however, real-life examples are used to illustrate victims' vulnerabilities and legislative gaps. A comparative method is employed to assess how the European and African frameworks address TIP for OR, with a focus on identifying divergences in definition, scope and implementation.

The thesis is divided into four chapters: Chapter I outlines the conceptual and legal framework; Chapter II analyses challenges undermining the identification of victims; Chapter III examines the balance between criminalisation and victim protection; and Chapter IV explores TIP for OR in the context of mixed migration.

¹⁸ Juan Gonzalez, Ignacio Garijo and Alfonso Sanchez, 'Organ Trafficking and Migration: A Bibliometric Analysis of an Untold Story' (2020) 17(9) *International Journal of Environmental Research and Public Health* 4 <<https://pmc.ncbi.nlm.nih.gov/articles/PMC7246946/>> accessed 13 April 2026.

¹⁹ *ibid.*

CHAPTER I: CONCEPTUAL AND LEGAL FRAMEWORKS

1.1. Conceptual framework of trafficking in persons for the purpose of organ removal and related organ trafficking

Human trafficking has been an issue for decades and numerous treaties criminalising the act have been adopted, however these instruments focused solely on either sexual exploitation or forced labour and did not define the offence.²⁰ In 2000, the UN adopted the Palermo Protocol as a supplementary document to the Convention against Transnational Organized Crime.²¹ The Palermo Protocol was a turning point for international human trafficking legislation, as it was the first instrument to codify and define the act. The universally accepted definition can be found in Article 3, which consists of three elements, necessary to be present for an act to be considered human trafficking and to bear criminal liability. Firstly, there needs to be an act, in particular ‘the recruitment, transportation, transfer, harbouring or receipt of persons’.²² Secondly, the act must be carried out by using at least one of the means, such as force, coercion, abduction, abuse of power or vulnerability. Lastly, the purpose of the act must be exploitation, which includes various forms, such as prostitution, forced labour or the removal of organs.²³ However, none of these forms are defined in the Protocol. More broadly, the purpose of the document is to prevent and combat human trafficking with a particular focus on women and children, provide protection and assistance to victims as well as to strengthen cooperation between states.²⁴ To achieve that, the Palermo Protocol requires States to criminalise THB, provides guidelines on victim protection and international cooperation.²⁵ As of 2026, the Protocol has been ratified by 185 states²⁶, making it one of the most widely adopted international treaties in the world.

²⁰ See e.g. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (adopted 2 December 1949, entered into force 25 July 1951) 96 UNTS 271; International Agreement for the Suppression of the White Slave Traffic (signed on 18 May 1904, amended by the Protocol signed on 4 May 1949, entered into force 21 June 1951) 92 UNTS 19.

²¹ United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209.

²² Palermo Protocol (n 11) art 3.

²³ *ibid.*

²⁴ *ibid* art 2.

²⁵ *ibid* arts 5-13.

²⁶ United Nations Treaty Collection, ‘Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children’ <https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18> accessed 13 April 2026.

It is important to discuss a separate, albeit sometimes connected, offence – trafficking in human organs, tissues and cells (hereinafter: THOTC). The two terms are often used interchangeably, which consequently hinders effective prevention and suppression of the crimes as well as proper victim identification and assistance. Therefore, it is crucial to differentiate between the two. THOTC is defined as the removal of organs, tissues or cells ‘[...] from living or deceased donors without valid consent or authorisation, or in exchange for financial gain or other advantages for the donor or a third party [...]’.²⁷ This definition highlights the main distinction between the two crimes, namely the trafficked object. For TIP for OR the object is the person, who is trafficked for the purpose of removing their organs. In contrast, for the THOTC the object is the organs, tissues or cells, which have been illicitly removed from a person. Another crucial aspect to note is that the human trafficking framework only covers living persons and organs, thus not extending to deceased persons nor the removal of tissues or cells. Furthermore, the three foundational elements of human trafficking – act, means and exploitation – are not required to be present for THOTC.²⁸ Therefore, THOTC constitutes an independent crime, which is not criminalised under the THB legal framework. However, the two crimes can overlap, particularly where the organs are removed from living donors. In practice TIP for OR may lead to illicit trafficking in organs, since the goal of the traffickers is usually to gain financial profit, which is done through selling the removed organs.²⁹ Therefore, TIP for OR not only exploits vulnerable individuals, but also contributes to THOTC, highlighting the interconnected nature of these crimes.

Although less common than other forms of exploitation, TIP for OR alone or together with THOTC is recognised as a major international issue. This is reflected in UN General Assembly (hereinafter: the UNGA) resolutions, which represent a global consensus on various issues and serve as guiding principles, influencing the behaviour of states. In Resolution 71/322³⁰, the UNGA for the first time addressed TIP for OR and distinguished it from THO. It recognised that both crimes violate human rights and fundamental freedoms and, despite their differences, stem from the same cause –

²⁷ Council of Europe: Countering the trafficking in human organs, ‘Trafficking in human organs - Frequently asked questions’ <www.coe.int/en/web/trafficking-human-organs/frequently-asked-questions> accessed 13 April 2026.

²⁸ Council of Europe and United Nations, ‘Trafficking in organs, tissues and cells and trafficking in human beings for the purpose of the removal of organs’ (Joint Study 2009) <<https://rm.coe.int/16805ad1bb>> accessed 13 April 2026 93.

²⁹ UNODC, ‘Explainer: Understanding Human Trafficking for Organ Removal’ (n 1).

³⁰ UNGA Res 71/322 (25 September 2017) UN Doc A/RES/71/322.

scarcity of organs.³¹ In its latest resolution, 79/189, the UNGA further encouraged States to explicitly criminalise TIP for OR and to prosecute all involved actors, including medical personnel and legal persons.³²

1.1.1. Victims of trafficking in persons for the purpose of organ removal

TIP for OR is particularly complex due to the multiplicity of involved actors – perpetrators, suppliers and recipients –, who typically originate from different parts of the world.³³ Its complexity is further intensified by the participation of various perpetrators with distinct roles, such as the recruiters, brokers and medical professionals.³⁴ As a result the crime becomes a transnational issue rather than solely a domestic matter, making international cooperation of crucial importance. Given that the victims of TIP for OR are in the centre of this thesis, this chapter addresses their specific characteristics and vulnerabilities.

The suppliers or donors of organs are the victims of TIP for OR. The majority of them are adult men³⁵, with an average age of 30 years³⁶, who were predominantly identified in North Africa and the Middle East.³⁷ They are often uneducated, unemployed and economically disadvantaged with migrants, asylum-seekers and refugees representing the most vulnerable groups. This is due to their precarious socio-economic conditions and limited access to protection, issues which will be examined further in Chapter 4. The suppliers undergo operations either in their home countries or abroad, the latter one being the most common. The main incentive for selling an organ is financial gain, since they often originate from poor developing countries and live in severe poverty.³⁸

³¹ *ibid* 2, paras 2, 3(a) and 3(d).

³² UNGA Res 79/189 (18 December 2024) UN Doc A/RES/79/189 4.

³³ UNODC, ‘Global Report on Trafficking in Persons’ (n 3) 54.

³⁴ UNODC, ‘Assessment Toolkit: Trafficking in Persons for the Purpose of Organ Removal’ (Study 2015) <www.unodc.org/documents/human-trafficking/2015/UNODC_Assessment_Toolkit_TIP_for_the_Purpose_of_Organ_Removal.pdf> accessed 13 April 2026 26, 27.

³⁵ UNODC, ‘Global Report on Trafficking in Persons’ (n 3) 54.

³⁶ UNODC, ‘Assessment Toolkit’ (n 34) 41.

³⁷ UNODC, ‘Global Report on Trafficking in Persons’ (n 3) 54.

³⁸ Assya Pascalev and others, ‘Trafficking in Human Beings for the Purpose of Organ Removal: A Comprehensive Literature Review’ (HOTT Project 2013) <www.organtraffickingresearch.org/wp-content/uploads/2022/07/1st-Report-HOTT-Project-Trafficking-in-Human-Beings-for-the-Purpose-of-Organ-Removal-A-Comprehensive-Literature-Review.pdf> accessed 13 April 2026 34, 35, 37.

Traffickers usually promise to pay the suppliers large sums of money, however in reality they either receive far less or nothing at all. Therefore, organ selling is not as financially beneficial as might seem at the first glance, instead it may worsen the victims' economic situation. Due to the fact that they do not receive adequate post-operative care, donors often experience severe pain and suffer additional health issues, consequently preventing them from finding work in the future. Yet, before the operation is done, the victims are not aware of the consequences, since the traffickers use deception, coercion and abuse victims' position of vulnerability to obtain consent.³⁹ There are also instances, where the victims are not aware that they will be used as organ donors. For example, their organs are stolen 'under a pretense of providing medical treatment'.⁴⁰

Although the consent of the suppliers may appear to be present, it is legally irrelevant, where it has been obtained through abuse of a position of vulnerability, deception and coercion. It is therefore crucial for the law enforcement agents to critically evaluate each individual situation, in order to properly identify the victims and to provide them adequate assistance, as required under the international and regional THB framework.

1.2. Legal frameworks

1.2.1. International legal framework

On an international level, Palermo Protocol remains the only universally binding instrument specifically regulating THB, including TIP for OR. Nevertheless, it is also necessary to consider soft law instruments addressing THOTC, because the established principles and guidelines are relevant to TIP for OR and contribute to shaping the international standards.

One such instrument is the World Health Organisation Guiding Principles on Human Cell, Tissue and Organ Transplantation⁴¹ (hereinafter: the WHO Guiding Principles). According to the UNGA

³⁹ UNODC, 'Assessment Toolkit' (n 34) 41, 42, 44, 45.

⁴⁰ UNODC, 'Key Indicators of Trafficking in Persons for the Purpose of Organ Removal' <www.unodc.org/roseap/uploads/documents/Publications/2025/TIP/TIP_for_OR_EN_FINAL.pdf> accessed 13 April 2026 2.

⁴¹ WHO 'Guiding Principles on Human Cell, Tissue and Organ Transplantation' (endorsed 21 May 2010 in Resolution WHA63.22) WHO/HTP/EHT/CPR/2010.01.

Secretary-General, these principles ‘provide key international standards’⁴² for safe and legitimate organ removal and transplantation. The core principle of transplantation is consent as stated in the Guiding Principle 3: ‘Live donations are acceptable when the donor’s informed and voluntary consent is obtained, [...] they should be acting willingly, free of any undue influence or coercion’.⁴³ Additionally, purchasing or selling organs, tissue or cells for transplantation should be prohibited as provided in the Guiding Principle 5. However, it excludes any legitimate payments, such as the compensation for expenses. The purpose of the principle is to protect poor and otherwise vulnerable individuals from exploitation as such payment could take unfair advantage of them. It further notes that the prospect of gaining financial benefits through organ donation facilitates human trafficking, making the prevention of THB an implicit aim.⁴⁴ The two guidelines are directly linked, since the promise of money could be considered as influencing or coercing a person to donate their organs. Although the WHO Guiding Principles is not a legally binding instrument, it has significantly influenced legal frameworks and medical practices. This is evident in the UNGA resolutions, which urge Member States to adopt necessary measures regarding organ transplantation in accordance with the WHO Guiding Principles.⁴⁵ Furthermore, the European Court of Human Rights has referenced the Guiding Principles, when dealing with cases involving an unauthorised removal of organs, tissues or cells from a deceased person.⁴⁶

Another international non-binding instrument setting forth principles to combat organ trafficking is the Declaration of Istanbul on Organ Trafficking and Transplant Tourism⁴⁷ (hereinafter: the Declaration of Istanbul). The Declaration differentiates between TIP for OR and THOTC, gives a clear recommendation to criminalise both crimes and explicitly states that ‘[o]rgan donation should be a financially neutral act’.⁴⁸ Although, being non-binding, the Istanbul Declaration ‘[provides] ethical guidance and support for medical professionals, policymakers [...] and inter-governmental

⁴² UNGA ‘Report of the Secretary-General: Strengthening and promoting effective measures and international cooperation on organ donation and transplantation to prevent and combat trafficking in persons for the purpose of organ removal and trafficking in human organs’ (18 June 2020) UN Doc A/75/115 para 7.

⁴³ WHO ‘Guiding Principles’ (n 41) Guiding Principle 3.

⁴⁴ *ibid* 5.

⁴⁵ See e.g. UNGA Res 71/322 (n 30) 3; UNGA Res 79/189 (n 32) 4.

⁴⁶ See e.g. *Elberte v Latvia* App no 61243/08 (ECHR, 13 April 2015); *Sablina and others v Russia* App no 4460/16 (ECHR, lodged 28 December 2015).

⁴⁷ The Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2018 Edition) <www.declarationofistanbul.org/images/documents/doi_2018_English.pdf> accessed 16 April 2026.

⁴⁸ *ibid* 3.

organizations’.⁴⁹ This is reflected in the CoE’s explanation of the drafting process of the Convention against Trafficking in Human Organs⁵⁰, which provides that the Committee of Experts on Trafficking in Human Organs, Tissues and Cells was required to take into account, inter alia, the Declaration of Istanbul.⁵¹ Additionally, more than 100 international organisations have endorsed the document, thus upholding and implementing its principles through intra-organisational activities.⁵²

1.2.2. European legal framework

In 2005 the CoE adopted the ECAT, which has been ratified by all 46 Member States of CoE as well as by two non-members, Belarus and Israel.⁵³ The Convention has incorporated a definition of human trafficking identical to the one established in the Palermo Protocol, however its purpose is broader. In addition to the prevention and suppression of human trafficking and promotion of international cooperation, the ECAT also aims to protect the human rights of the victims, while ensuring gender equality. Moreover, it explicitly states that THB is a violation of human rights as well as dignity and integrity of the victims, an aspect which is missing from the Palermo Protocol.⁵⁴ Therefore, ECAT adopts the rights-based approach, whereas the Palermo Protocol focuses primarily on criminal justice. To ensure a consistent implementation of the ECAT across Member States, the CoE has established a monitoring body known as GRETA. Through country evaluations and reports, GRETA assesses how effectively States comply with their obligations under the Convention.⁵⁵

⁴⁹ The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, ‘Our Goals’ <www.declarationofistanbul.org/> accessed 16 April 2026.

⁵⁰ Council of Europe Convention against Trafficking in Human Organs (Santiago de Compostela).

⁵¹ Council of Europe: European Committee on Crime Problems, ‘Committee of Experts on Trafficking in Human Organs, Tissues and Cells (PC-TO)’ <www.coe.int/en/web/cdpc/activities/trafficking-human-organs-tissues-cells> accessed 16 April 2026.

⁵² The Declaration of Istanbul on Organ Trafficking and Transplant Tourism, ‘Endorsements’ <www.declarationofistanbul.org/endorsements> accessed 16 April 2026.

⁵³ Council of Europe: Treaty Office, ‘Chart of signatures and ratifications of Treaty 197’ <www.coe.int/en/web/conventions/full%E2%80%93list?module=signatures-by-treaty&treatynum=197> accessed 16 April 2026.

⁵⁴ ECAT (n 13) Preamble, art 1.

⁵⁵ Council of Europe: Action Against Trafficking in Human Beings, ‘Monitoring procedure’ <www.coe.int/en/web/anti-human-trafficking/monitoring-procedure> accessed 16 April 2026.

It is also necessary to discuss the CoE Convention against Trafficking in Human Organs⁵⁶ (hereinafter: the Santiago de Compostela Convention), because to this date it is the only international treaty criminalising trafficking in human organs. The Santiago de Compostela Convention offers a crucial improvement to the field of organ trafficking as it provides a list of criminal acts that amount to trafficking in human organs (hereinafter: THO) and which can be consequently referred to when defining the crime. Accordingly, trafficking in human organs includes: (i) illicit removal of organs from living or deceased persons, (ii) using illicitly removed organs for implantation or other purposes, (iii) recruitment or solicitation of a donor or a recipient for financial gain, (iv) handling, transporting or trading the illicitly removed organs, and (v) aiding and abetting or attempting to commit any of the aforementioned acts. Notably, all of the acts must be committed intentionally to bear criminal liability. Moreover, the Convention reinforces already discussed crucial principles, such as the prohibition of financial gain and the requirement of free and informed consent.⁵⁷ Through specifying the elements of the crime, the Santiago de Compostela Convention not only serves as a criminal law instrument, but also as a legal distinction between TIP for OR and THO. This purpose is reflected in the Preamble, which states that the Convention introduces new offences that supplement the international instruments regulating TIP for OR.⁵⁸ Although it is of crucial importance due to its dual role, the Convention is only ratified by 15 states – 14 CoE Member States and Costa Rica – highlighting its limited scope and application.⁵⁹

Although the primary focus is on the CoE framework, it is notable that the European Union has also adopted anti-trafficking legislation, in particular Directive 2011/36/EU.⁶⁰ It provides a definition of THB similar to that contained in ECAT and Palermo Protocol and sets a maximum penalty for the offence.⁶¹ Given that the Directive requires Member States to transpose its provisions into their national legislation, it establishes a harmonised minimum level of criminalisation, a more consistent application of the definition of the crime and recognition of all

⁵⁶ Santiago de Compostela (n 50).

⁵⁷ *ibid* 4, 5-9.

⁵⁸ *ibid* Preamble.

⁵⁹ Council of Europe: Countering the trafficking in human organs, ‘Santiago de Compostela Convention’ <www.coe.int/en/web/trafficking-human-organs/the-convention> accessed 16 April 2026.

⁶⁰ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [2011] OJ L101/1.

⁶¹ *ibid* arts 2, 4(1), (2).

forms of exploitation across the EU. The adoption of the Directive highlights a common recognition across Europe that THB constitutes a serious crime requiring effective legal response.

1.2.3. African legal framework

Organ trafficking has been recognised as a critical issue in Africa, which violates fundamental human rights and affects the most vulnerable groups in the society, including refugees and migrants.⁶² Despite that, the African Union has not adopted a legally binding regional instrument regulating human nor organ trafficking. Instead, it has affirmed its commitment to combating and preventing the crime through soft law instruments. In 2006 the AU, in collaboration with the EU, adopted the Ouagadougou Action Plan with the intention of strengthening international cooperation as this would be beneficial for suppressing THB. In the Action Plan, the AU affirmed its commitment to the Palermo Protocol and urged the Member States to ratify and implement its provisions as well as to adopt national laws that would impose strict punishments on the offenders.⁶³ In a 2019 report, regarding the implementation of the Ouagadougou Action Plan, the AU concluded that prominent gaps still remain. For instance, the awareness of the Action Plan was low among States and direct implementation was not apparent.⁶⁴ Due to these gaps, in 2021 the AU adopted its Anti-Trafficking Policy with the goal to harmonise policies regarding the prevention of trafficking in human beings throughout the African countries. It provides a strategic framework for States to combat and prevent trafficking as well as sets forth steps to ensure effective implementation and reporting.⁶⁵

Despite not having a specific treaty covering THB, the offence is referred to in other regional instruments. For instance, in the African Charter on Human and Peoples' Rights, which prohibits "all forms of exploitation"⁶⁶, yet it fails to define the term. The Commentary on the Charter seeks

⁶² African Regional Organisation of the International Trade Union Confederation, 'ITUC-Africa Calls for Urgent Action to end Organ Trafficking and Exploitation in MENA' <www.ituc-africa.org/ITUC-Africa-Calls-for-Urgent-Action-to-End-Organ-Trafficking-and-Exploitation.html> accessed 16 April 2026.

⁶³ African Union, Ouagadougou Action Plan (n 15).

⁶⁴ African Union, Draft Report of The Evaluation of The Implementation Status of The African Union's Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially Women and Children (2006) in Africa (2019) <https://au.int/sites/default/files/newsevents/reports/36175-rp-final_draft_report-english.pdf> accessed 16 April 2026 34.

⁶⁵ African Union, AU Policy (n 16) 5.

⁶⁶ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter) art 5.

to address this gap by clarifying that ““exploitation” [...] takes the definition as set out in the [Palermo Protocol]’⁶⁷, thereby suggesting that TIP for OR, as a form of exploitation, falls within the scope of the Charter. It should also be noted that in 2014 the AU adopted the Protocol on the Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, which includes the definition of THB and extends the Court’s jurisdiction to hear such cases.⁶⁸ In doing so human trafficking is recognised as a prosecutable offence under the AU framework, however, given that merely eight Member States have ratified the Protocol, it has not entered into force.⁶⁹ Additionally, two Regional Economic Communities of Africa have adopted a legally binding instrument addressing THB. In particular, the Southern African Development Community Protocol on Gender and Development⁷⁰ and the Economic Community of West African States Regulation C/REG.28/12/07.⁷¹ Although both instruments require their respective Member States to adopt domestic anti-trafficking laws, neither of them explicitly criminalise the act.⁷² While these developments demonstrate a degree of subregional recognition of THB, they also highlight the fragmented nature of the African framework and the absence of a comprehensive, legally binding AU-wide instrument.

1.2.4. Protection and assistance of human trafficking victims

Human trafficking frameworks provide victims specific protection and assistance, yet the scope and strength of these measures vary across instruments. Although the Palermo Protocol aims to protect the victims, the specific provisions are limited and largely suggestive rather than obligatory for the State Parties, thereby granting them considerable discretion regarding victim protection

⁶⁷ Rachel Murray, *The African Charter on Human and Peoples' Rights: A Commentary* (Oxford University Press 2019) 396.

⁶⁸ Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (adopted 27 June 2014, not yet in force) arts 28A, 28J.

⁶⁹ African Union, ‘Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights: Status List’ <<https://au.int/en/treaties/protocol-amendments-protocol-statute-african-court-justice-and-human-rights>> accessed 16 April 2026; Protocol on Amendments (n 68) art 11(a) requires the ratification from 15 states for the Protocol to enter into force.

⁷⁰ Southern African Development Community Protocol on Gender and Development (signed 17 August 2008, entered into 22 February 2013).

⁷¹ Economic Community of West African States Regulation C/REG.28/12/07 Relating to the Extension of The ECOWAS Plan of Action on the Fight Against Trafficking in Persons (adopted 15 December 2007).

⁷² Southern African Development Community Protocol (n 70) art 20(5); Economic Community of West African States Regulation (n 71) art 2.

measures.⁷³ For instance, Article 6 requires states to *consider* [emphasis added] adopting measures to support the victims' physical, psychological and social recovery and they must safeguard the identity and privacy of victims '[i]n appropriate cases and to the extent possible under its domestic law'.⁷⁴ Furthermore, states must *consider* [emphasis added] allowing the victims to reside in their territory, either temporarily or permanently.⁷⁵ As explained by the Legislative Guide to the Palermo Protocol, such wording was adopted to accommodate States' differing levels of socio-economic development and resource availability.⁷⁶ Although this approach is understandable, it reduces the effectiveness of the Palermo Protocol in protecting and assisting victims as well as contributes to the inconsistent application in domestic practice. Moreover, despite the Protocol's purpose of particularly protecting women and children, it does not provide specific protective measures relevant for these groups and therefore fails to fully meet its stated objective.

The European framework builds upon the Palermo Protocol's protective measures as the ECAT explicitly states that THB is a violation of human rights 'and that greater protection is therefore needed for all of its victims'.⁷⁷ The Convention requires states to ensure that persons dealing with THB cases are properly trained and qualified to adequately identify and assist the victims as well as lists specific measures to be taken to support child victims, such as appointing a representative.⁷⁸ Furthermore the ECAT provides that protection of victims must be unconditional, regardless whether they act as witnesses or assist in the investigation.⁷⁹ Yet the most important addition in the European framework is the non-punishment provision, which requires states to ensure that victims may not be punished for unlawful acts they were compelled to commit.⁸⁰ Such provision

⁷³ Henna Shah, 'The Palermo Protocol: An Ineffective Treaty for Holding Human Traffickers Criminally Accountable and Protecting Victims of Human Trafficking' (2025) 41(3) Arizona Journal of International and Comparative Law 456

<https://repository.arizona.edu/bitstream/handle/10150/677065/AJICL_41%283%29_The_Palermo_Protocol_2025.pdf?sequence=1&isAllowed=y> accessed 16 April 2026.

⁷⁴ Palermo Protocol (n 11) art 6(1).

⁷⁵ *ibid* art 7.

⁷⁶ UNODC, 'Legislative Guide for the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime' (United Nations publication 2020)

<www.unodc.org/documents/treaties/Review_Mechanism/Review_Mechanism_2020/Website/Legislative_Guide_on_TiP/TiP_LegislativeGuide_Final.pdf> accessed 16 April 2026 para 216.

⁷⁷ Council of Europe, Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings (16 May 2005).

⁷⁸ ECAT (n 13) art 10(4).

⁷⁹ *ibid* art 12(6).

⁸⁰ *ibid* art 26.

however is absent in the Palermo Protocol, highlighting a significant gap in its victim protection framework and contributing to situations where law enforcement officials treat victims as offenders.

While the African framework is largely dependent on the Palermo Protocol, its soft law instruments reflect more the European rights-based approach to victim protection. The Ouagadougou Action Plan encourages states to base their victim protection measures on human rights instruments and to consider the specific needs and vulnerabilities of victims.⁸¹ The Anti-Trafficking Policy recommends states to adopt measures necessary for the protection of child victims, such as establishing rescue centres. Moreover, it provides that victims should receive assistance irrespective of their cooperation with the law enforcement.⁸² As for the most crucial aspect, both soft law instruments recommend states to avoid criminalising the victims.⁸³ However, given their non-binding nature, the implementation of these measures depends largely on the willingness of the Member States, which may result in inconsistencies in victim protection measures.

The effectiveness of these protective measures depends largely on the proper identification of victims, however in TIP for OR cases victims are often misidentified or not recognised at all. The following chapters therefore examine the legal and practical challenges of victim identification and protection.

⁸¹ African Union, Ouagadougou Action Plan (n 15) p 4.

⁸² African Union, AU Policy (n 16) 23,24.

⁸³ African Union, Ouagadougou Action Plan (n 15) p 4; African Union, AU Policy (n 16) 24.

CHAPTER II: LEGAL AND PRACTICAL CHALLENGES IN VICTIM IDENTIFICATION

The identification of victims constitutes a crucial stage in the THB cases, as only once identified are they entitled to trafficking-specific protection and assistance. According to a recent study by the Organization for Security and Co-operation in Europe (hereinafter: OSCE), the number of identified and presumed victims of trafficking in the region has been increasing. TIP for OR, however, has remained the least reported form. Such statistics do not necessarily indicate the non-existence of the crime, but rather reflect the limitations in detection, reporting and implementation.⁸⁴ This chapter analyses the legal and practical challenges hindering victim identification. In particular, focus is on three interrelated factors: the lack of clear legal definition, inconsistent scope of the legal frameworks, and the weak implementation of international instruments. All three aspects contribute to the inconsistent understanding of TIP for OR and are analysed separately to highlight the impact of each of them.

2.1. The lack of clear legal definition of trafficking in persons for the purpose of organ removal

Although the term ‘removal of organs’ is included in the definition of THB as a form of exploitation, the concept of the act is not clearly established or defined. Failure to do so creates ‘definitional problems and confusion [that] contribute to poor reporting and analysis’.⁸⁵ When looking at the *travaux préparatoires* of the Palermo Protocol, it is evident that the addition of ‘removal of organs’ was an afterthought, since it was only included in the list of forms of exploitation during the final drafting stage.⁸⁶ Moreover, it is noticeable that the overall definition of THB was drafted to address sexual exploitation and forced labour, as their prosecution and prevention was the preliminary purpose of the Protocol.⁸⁷ Therefore, the special characteristics and

⁸⁴ Organization for Security and Co-operation in Europe, ‘Survey Report 2026: Tracking Implementation of the OSCE Commitments and Recommended Actions to Combat Trafficking in Human Beings’ (Report 2026) <https://cthb.osce.org/sites/default/files/documents/publications/2026/03/SurveyReport_2026_Screen_260318.good_.pdf> accessed 16 April 2026 6, 8, 10, 46, 51, 61.

⁸⁵ UNGA ‘Note by the Secretary-General’ (2013) (n 2) para 22.

⁸⁶ UNODC, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols* (2006) <www.unodc.org/documents/treaties/UNTOC/Publications/Travaux%20Preparatoire/04-60074_ebook-e.pdf> accessed 16 April 2026 pt 2.

⁸⁷ *ibid* 335.

challenges associated with TIP for OR, such as the involvement of medical professionals and the apparent consent of the victims, were not fully considered or even understood.⁸⁸ The lack of coherent understanding of the crime is evident in a 2006 report published by the UN Economic and Social Council's Secretary-General, which applies inconsistent terminology when addressing TIP for OR.⁸⁹ The report states that 'trafficking in organs' is included in the Palermo Protocol, yet simultaneously clarifies that the Protocol does not fully consider 'trafficking in human organs' as solely transferring organs for profit is not covered. Although, given the wording of the report, the two terms 'trafficking in organs' and 'trafficking in human organs' refer to separate crimes – respectively TIP for OR and THO – the inconsistent terminology obscures this distinction and reinforces conceptual confusion. It further explains that 'trafficking in organs only occurs if an individual is transported for the purpose of organ removal'⁹⁰, which does not fully align with the definition of THB. Transportation of a person is listed as one of the acts required for the establishment of human trafficking, however other acts, such as the recruitment or harbouring, are as relevant.⁹¹ Therefore, stating that TIP for OR *only* [emphasis added] occurs through transportation of a person is misleading and undermines proper classification of the crime.

Two years prior, the CoE Committee of Ministers adopted the Recommendation Rec(2004)7⁹² regarding organ trafficking. The referred instruments suggest that the crime in question is THO, as there is no mention of anti-trafficking legislation. However, the explanation given to the term 'organ and tissue trafficking' conflates TIP for OR with THO. It states that the term applies to 'the transportation of a person to a place for the removal of organs or tissues without his or her valid consent'⁹³ as well as to 'the transplantation of removed organs and tissues'.⁹⁴ The first point is of high importance since as the object of the crime is a person, the statement clearly concerns TIP for

⁸⁸ Sean Columb, 'Beneath the organ trade: a critical analysis of the organ trafficking discourse' (2014) 63 Crime Law Soc Change 33 <<https://doi.org/10.1007/s10611-014-9548-0>> accessed 16 April 2026.

⁸⁹ ECOSOC 'Report of the Secretary-General: Preventing, combating and punishing trafficking in human organs' (2006) UN Doc E/CN.15/2006/10.

⁹⁰ *ibid* para 6.

⁹¹ UNODC, 'Model Legislative Provisions Against Trafficking in Persons' (United Nations publication 2020) <www.unodc.org/documents/human-trafficking/2020/TiP_ModelLegislativeProvisions_Final.pdf> accessed 16 April 2026 36.

⁹² Council of Europe Committee of Ministers, Recommendation Rec(2004)7 of the Committee of Ministers to member states on organ trafficking (19 May 2004).

⁹³ *ibid* art 2(4).

⁹⁴ *ibid*.

OR and not THO. Furthermore, in the Secretary-General's report, the same explanation was given for TIP for OR. These two documents illustrate that, even after the adoption of the Palermo Protocol, international understanding of TIP for OR was not coherent as the crime was often undifferentiated with THO, highlighting significant legal ambiguity. Although there have been numerous improvements⁹⁵ made to legally distinguish the two crimes, challenges still persist. The terms "TIP for OR" and "THO" continue to be used interchangeably in the public debate and by the media,⁹⁶ contributing to ongoing conceptual confusion and potentially hindering accurate reporting and victim identification.

The Legislative Guide for the Palermo Protocol further reinforces the legal ambiguity as it states that '[t]he removal of organs may be lawful or unlawful depending on the purpose and circumstances of that removal'.⁹⁷ The same idea has been previously conveyed in the UN Working Group on Trafficking in Persons'⁹⁸ Note (hereinafter: the Working Group), which provides that the removal of organs may not be 'inherently exploitative'.⁹⁹ The issue derives from the fact that neither of these documents clarify in which circumstances removal of organs is unlawful and constitutes trafficking. As established in a previous chapter, illicit organ removal may also amount to the crime of trafficking in human organs, which is not covered by the human trafficking framework. The absence of clear distinction leaves states to determine whether the removal of organs constitutes THB. This, however, raises another issue as states often address the removal of organs within the broader medical legislation or as a distinct criminal offence under their penal code.¹⁰⁰ As a result, illicit removal of organs may not be classified as trafficking in persons, leading

⁹⁵ See e.g. CoE and UN, 'Trafficking in organs' (n 28); Santiago de Compostela (n 50); UNGA Res 71/322 (n 30).

⁹⁶ The Inter-Agency Coordination Group against Trafficking in Persons (n 6) 3.

⁹⁷ UNODC, 'Legislative Guide' (n 76) para 139.

⁹⁸ UNODC, 'Conference of the Parties to the United Nations Convention against Transnational Organized Crime' <www.unodc.org/unodc/en/organized-crime/intro/conference-of-the-parties.html> accessed 16 April 2026. The Working Group on Trafficking in Persons is a subsidiary body of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime. The Conference of the Parties was established to review the implementation of UNTOC and its Protocols.

⁹⁹ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, 'Note by the Secretariat: Key concepts of the Trafficking in Persons Protocol, with a focus on the United Nations Office on Drugs and Crime issue papers on abuse of a position of vulnerability, consent and exploitation' (25 August 2015) UN Doc CTOC/COP/WG.4/2015/4 para 28.

¹⁰⁰ UNODC, 'Issue Paper: The Concept of 'Exploitation' in the Trafficking in Persons Protocol' (United Nations publication 2015) <www.unodc.org/documents/congress/background-information/Human_Trafficking/UNODC_2015_Issue_Paper_Exploitation.pdf> accessed 16 April 2026 10.

to the misidentification of victims and undermining adequate protection afforded to them under the anti-trafficking framework.

The European legal framework provides some clarification for the issue. The Santiago de Compostela Convention elaborates when organ removal becomes unlawful, namely if the organ is obtained without the free, informed and specific consent of the donor or in exchange for financial gain.¹⁰¹ Additionally, CoE Committee of Ministers Rec(2004)7 complements this by defining the term ‘removal’ as procuring an organ or tissue from the body for transplantation, whether surgically or otherwise.¹⁰² While the provisions provide some guidance on determining the lawfulness of organ removal, they do not fully resolve the legal ambiguity surrounding TIP for OR as both of these instruments address THO. Instead, they highlight the fragmented nature of the legal framework since the relevant definitions are dispersed across various instruments.

The most explicit definition of TIP for OR originates from the African region, albeit not from a governmental organisation but rather from a civil society actor. In 2024 at the UN’s third Constructive Dialogue on Trafficking in Persons, Mutuku Nguli, a CEO of Counter Human Trafficking Trust East Africa¹⁰³, presented that TIP for OR is ‘the illegal practice of surgically removing a victim's organs against their will for the purpose of transplant or rituals’.¹⁰⁴ His interpretation goes beyond transplant-related organ trafficking, as it also includes ‘crude amputation of limbs, the head, or other body parts without a surgical procedure’.¹⁰⁵ At its core, this definition aligns with the European understanding, namely the act includes non-consensual removal of organs, but it also highlights a context-specific aspect of the crime significant in Africa – removal of organs or body parts for ritualistic purposes. These crimes are highly prevalent in the

¹⁰¹ Santiago de Compostela (n 50) art 4(1)(a), (b).

¹⁰² Council of Europe Committee of Ministers, Recommendation (n 92) art 2(5).

¹⁰³ ‘Counter Human Trafficking Trust East Africa’ <<https://chtrust-eastafrica.org/>> accessed 16 April 2026. Counter Human Trafficking Trust East Africa is an NGO in Kenya, which works closely with governments and intergovernmental organisations, including the African Union.

¹⁰⁴ Constructive Dialogue following the conclusion of the 14th UNTOC meeting of the Working Group on Trafficking in Persons, ‘Trafficking in persons for the removal of organs and related conduct: Presented by Mutuki Nguli’ (2024) <www.unodc.org/documents/organized-crime/constructive-dialogues/TiP_2024/Presentations/4_Nguli.pdf> accessed 16 April 2026.

¹⁰⁵ *ibid.*

region, mostly affecting women, children and people with albinism.¹⁰⁶ Despite not being legally acknowledged, Nguli's interpretation contributes to a wider regional discourse on TIP for OR. It illustrates the context-dependent perception of the crime, resulting in a broader yet less uniform understanding of the offence, consequently complicating transnational cooperation and consistent victim identification standards.

2.2. Inconsistent material scope of anti-trafficking instruments

The abovementioned interpretation highlights yet another definitional gap, in particular what constitutes an organ under the human trafficking definition. The UN Human Rights Council has acknowledged that the term 'organ' is not defined under any international instrument.¹⁰⁷ Nevertheless, it is defined in the Santiago de Compostela Convention as a distinct part of the body made up of different tissues. An organ has its own structure, blood supply and ability to perform specific physiological functions 'with a significant level of autonomy.'¹⁰⁸ By that definition tissues, cells and other body parts, such as limbs, do not qualify as organs. This conclusion has been supported by the Working Group as they have explicitly stated that tissues and cells are not covered by the Palermo Protocol.¹⁰⁹ During the drafting process of the Palermo Protocol, some delegations suggested the inclusion of 'removal of other body parts or tissues', however these were rejected. As a compromise, the phrase 'at a minimum' was added to ensure that unnamed and new forms of exploitation could also be included.¹¹⁰ However, the Working Group's definite classification underscores the limitations of the Protocol, notwithstanding its formally non-exhaustive list of forms of exploitation and consequently highlighting the THB frameworks' narrow material scope.

Under the ECAT, tissues, cells and other body parts are also not covered. While it was debated whether to include the removal of these parts of the human body in the Convention, it was

¹⁰⁶ Obed Byamugisha, 'Testimony before the United States Congress House of Foreign Affairs Committee' (Testimony 2023) <<https://docs.house.gov/meetings/FA/FA06/20230919/116365/HHRG-118-FA06-Wstate-ByamugishaO-20230919.pdf>> accessed 16 April 2026 4.

¹⁰⁷ UNGA 'Note by the Secretariat: Report of the Independent Expert on the enjoyment of human rights by persons with albinism' (10 January 2017) UN Doc A/HRC/34/59 para 81.

¹⁰⁸ Santiago de Compostela (n 50) art 2.

¹⁰⁹ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, 'Background paper prepared by the Secretariat: Trafficking in persons for the purpose of removal of organs' (29 July 2011) UN Doc CTOC/COP/WG.4/2011/2 para 9.

¹¹⁰ UNODC, Travaux Préparatoires (n 86) 345 footnote 30.

ultimately decided to leave the regulation to a separate instrument, namely to the Santiago de Compostela Convention.¹¹¹ However, the Convention is limited to tissues and organs. Nevertheless, this decision highlights a structural fragmentation of the crime, for two reasons. Firstly, the Santiago de Compostela Convention regulates the trafficking in organs and tissues, which is a separate offence to TIP for OR, thus shifting the regulation of tissue removal to the THO paradigm. Given that the Convention is not a human trafficking instrument, it does not provide the same trafficking-specific victim identification and protection safeguards as the ECAT. Secondly, cells and other body parts are not clearly encompassed by the Convention, leaving certain forms of exploitative removal outside of the THB as well as THO frameworks.

Although, most commonly human organs, in particular kidneys, are the subject of removal, there have been instances where people are trafficked for the purposes of removing their tissues or other body parts. One such example can be brought from Egypt, where multiple people were recruited and coerced into donating their blood in exchange for financial gain. The Criminal Court of Cairo interpreted ‘blood’ within the term ‘tissues’ and given that Egypt’s Law No. (64) of 2010 lists the ‘removal of organs, tissues or a part thereof’¹¹² as forms of exploitation, the perpetrators were charged with THB. Moreover, the Criminal Court reiterated that the list of exploitative forms is non-exhaustive, thereby allowing the inclusion of new forms. However, the Court of Cassation did not agree with that assessment and concluded that the decision lacked legal basis.¹¹³ This case illustrates how the absence of a clear and uniform conceptualisation of the terms ‘organ’ and ‘tissue’ undermines the adequate application of the trafficking framework. Despite all the other requirements of human trafficking being present, the mere fact that blood did not constitute an organ nor a tissue, resulted in the crime not being classified as THB. Consequently, the victims in this case were not properly identified as victims of trafficking and therefore did not receive trafficking-specific assistance nor protection.

¹¹¹ Julia Planitzer and Helmut Sax (eds), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings* (Edward Elgar Publishing 2020) 65.

¹¹² Law No. (64) of 2010 regarding Combating Human Trafficking (Egypt) art 2.

¹¹³ *Case 14764/83* (Court of Cassation, Egypt 2014), cited in UNODC SHERLOC Database <www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/egy/2014/case_1476483.html?lng=en&tmpl=htms?lng=en&tmpl=htms> accessed 16 April 2026.

Another example is the removal of other body parts for ritualistic purposes. In the African countries people with albinism are widely targeted for their body parts, including for their limbs, genitals or teeth, as it is believed that these have magical powers. Some of these cases may fall under TIP for OR as victims are sometimes abducted and transported, while using violence and deception, for the purpose of removing their body parts.¹¹⁴ However, the qualification of such conduct under the trafficking framework remains legally uncertain, in particular it is unclear whether removal of body parts falls under TIP for OR or a broader THB legislation. In its 2017 report, the Human Rights Council stated that it is uncertain whether body parts, which have been removed for ritualistic purposes, would fall under the definition of ‘organ’ in international or domestic trafficking legislation.¹¹⁵ Yet, a recent Working Group report acknowledges that in some instances the crimes against people with albinism may amount to TIP for OR, but it largely depends on domestic law. In particular, how THB and the term ‘organ’ are defined by the states. The Working Group also elaborates that while tissues and cells are not included in the human trafficking definition, the list of forms of exploitation is non-exhaustive, thus states are able to broaden the definition in their national legislation.¹¹⁶ The report highlights the evolving understanding of the Palermo Protocol, shifting from a strict exclusion of tissues and cells to a more flexible implementation-based approach. This evaluation illustrates that the scope of THB as well as TIP for OR remains uncertain and is largely dependent on domestic implementation and conceptualisation, thereby undermining a consistent identification and protection of trafficking victims.

The African Court on Human and Peoples’ Rights provides a more definite assessment of the issue. In a recent judgement, the Court examined violence against people with albinism also in the context of human trafficking and, having regard to the established THB definition, stated that ‘all kidnappings and abductions of children with albinism for the purposes of sale of their person, extraction of their body parts or sale of their body parts constitutes human trafficking’.¹¹⁷ This

¹¹⁴ Conference of the Parties to the United Nations Convention against Transnational Organized Crime, ‘Background paper prepared by the Secretariat: Trafficking in persons for the removal of organs and related conduct’ (19 April 2024) UN Doc CTOC/COP/WG.4/2024/2 paras 48, 49.

¹¹⁵ UNGA ‘Report of the Independent Expert on the enjoyment of human rights by persons with albinism’ (n 107) para 81.

¹¹⁶ Conference of the Parties, ‘Trafficking in persons for the removal of organs and related conduct’ (n 114) para 49.

¹¹⁷ *Centre for Human Rights and others v United Republic of Tanzania* App No 019/2018 (African Court of Human and Peoples’ Rights, 5 February 2025) [269].

assessment is of particular importance since, unlike the UN bodies, the African Court reduces the regional legal ambiguity surrounding the qualification of removal of other body parts by clearly incorporating it within the material scope of THB. Nevertheless, it does not clarify whether such conduct should be specifically classified as TIP for OR nor does it eliminate discrepancies in domestic implementation.

The limited material scope does not only concern the concept of ‘organ’, but also the purpose for which the organ is removed, an aspect which is not specified by any of the human trafficking instruments. On an international and European level, TIP for OR is commonly addressed in the context of transplantation, as can be seen from various instruments. Several reports issued by different UN bodies examine TIP for OR with a transplantation-focus. The reports provide that the underlying reason for TIP for OR and THO is the scarcity of organs available for transplantation and urge states to take measures to increase the availability of transplantable organs.¹¹⁸ The UNODC has published a Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal with an aim to assist the law enforcement officials in identifying TIP for OR cases. While it does acknowledge that removal of organs could also occur for ritualistic purposes¹¹⁹, the paper largely provides guidelines on how to handle the crime in the context of transplantation. Moreover, in an Interpol’s report the definition for TIP for OR lists transplantation as the purpose of the exploitation.¹²⁰ In a manner similar, GRETA has acknowledged that for the prevention of TIP for OR states ought to strengthen their domestic legislation regulating removal and transplantation of organs.¹²¹ Transplantation-focus is also evident in the abovementioned definition for the term ‘removal’ as it provides that the purpose for removing an organ is transplantation. All these sources highlight a transplantation-centred understanding of TIP for OR, despite not legally required by trafficking instruments. By doing that, the organisations contribute

¹¹⁸ See e.g. UNGA Res 79/189 (n 32); Conference of the Parties, ‘Trafficking in persons for the removal of organs and related conduct’ (n 114); UNGA ‘Trafficking in persons, especially women and children’ (n 2).

¹¹⁹ UNODC, ‘Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal: Tool 2’ (GLOACT Project 2022) <www.unodc.org/res/human-trafficking/glo-act2/tip-for-or-toolkit/Tool_2.pdf> accessed 16 April 2026 4, 5.

¹²⁰ INTERPOL, ‘Trafficking of Human Beings for the purpose of Organ Removal in North and West Africa’ (Analytical Report 2021) <www.interpol.int/en/News-and-Events/News/2021/North-and-West-Africa-INTERPOL-report-highlights-human-trafficking-for-organ-removal> accessed 16 April 2026 8.

¹²¹ Planitzer and Sax (n 111) 99.

to a functional narrowing of the crime, which could potentially lead to exclusion of cases where organs are removed for non-transplantation purposes.

2.3. Weak domestic implementation of anti-trafficking instruments

The absence of clear conceptualisation of TIP for OR and the ambiguities surrounding its material scope lead to inconsistent domestic implementation of human trafficking laws. Consequently, the victims of trafficking are not uniformly identified and protected across jurisdictions. Three main implementation disparities can be identified: (1) list of forms of exploitation varies, (2) the ‘means’ element is not required and (3) the victim must be transported for the act to constitute THB.

Both, the ECAT and the Palermo Protocol, provide a flexible list of forms of exploitation, thus allowing states to broaden the scope in their national legislation. Nonetheless, the Legislative Guide to the Protocol as well as the Explanatory Report to the ECAT stipulate that, at the minimum, states are required to include the types specified in the definition.¹²² The same view is also expressed by the AU, which recommends states to adopt national laws which ‘cover all aspects of trafficking in human beings in line with the [Palermo Protocol]’¹²³ as well as to clearly define THB and criminalise ‘all practices covered in the definition’.¹²⁴ Despite these requirements, discrepancies in national implementation persist as illustrated by examples in both Africa and Europe. From Europe, Estonia has criminalised THB under the Penal Code, particularly as an offence against liberty, however, the definition of the crime is not in conformity with the ECAT.¹²⁵ Regarding specifically exploitation, GRETA has underlined that exploitation is not referred to as the purpose of THB and several forms are omitted, one of which is removal of organs.¹²⁶ Organ removal, however, is treated as a separate crime, covered by two Articles – forcing person to

¹²² UNODC, ‘Legislative Guide’ (n 76) para 115; CoE, Explanatory Report (n 77) para 85.

¹²³ African Union, Ouagadougou Action Plan (n 15) 5.

¹²⁴ *ibid.*

¹²⁵ Penal Code (Estonia) §133.

¹²⁶ GRETA, ‘Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Estonia: First Evaluation Round’ (Country Report 2018) <<https://rm.coe.int/greta-2018-6-fgr-est-en/16808b292c>> accessed 16 April 2026 para 43; GRETA, ‘Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Estonia: Second Evaluation Round’ (Country Report 2023) <<https://rm.coe.int/greta-evaluation-report-on-estonia-3rd-evaluation-round-greta-2023-07-/1680ab81c1>> accessed 16 April 2026 para 153, highlighting that Estonia has not yet changed the Penal Code to reflect GRETA recommendations.

donate organs or tissue and illicit removal of organs or tissue.¹²⁷ In the context of Africa, Senegal also has not included removal of organs in the list of exploitative forms, instead it is recognised as an aggravating circumstance.¹²⁸ By detaching removal of organs from THB, these examples demonstrate how certain domestic legislations narrow the material scope of trafficking and consequently undermine full alignment with regional as well as international trafficking frameworks.

Certain countries have omitted the ‘means’ element from their definition of THB, and have instead included it as an aggravating factor, posing higher penalties. This approach is often justified by prosecutorial consideration, given that the ‘means’ element may be difficult to prove.¹²⁹ While these countries could still fulfil their minimum obligations under the Palermo Protocol, excluding the ‘means’ from the definition may hinder effective international cooperation and coherent victim assistance.¹³⁰ In Europe, Switzerland has completely excluded the ‘means’ element as a requirement for THB,¹³¹ which, according to GRETA, is not in conformity with the ECAT.¹³² Moreover, few Member States, such as Luxembourg and Slovenia, have listed ‘means’ as an aggravating circumstance. In their country reports, GRETA has acknowledged that such classification could confuse THB with other criminal acts,¹³³ thereby resulting in improper victim identification and lower penalties for perpetrators. In TIP for OR cases the ‘means’ element is especially relevant, since victims usually consent to the removal of their organs. However, the consent is typically obtained through the abuse of a position of vulnerability, thus rendering the agreement invalid. If the ‘means’ are not a required element of THB, law enforcement officials

¹²⁷ Penal Code (n 125) §138, §139.

¹²⁸ ACT No. 2005-06 of May 10, 2005 on the fight against human trafficking and similar practices and the protection of victims (Senegal) s 1.

¹²⁹ Soumya Silver, ‘Twenty Years After the Passage of the Palermo Protocol: Identifying Common Flaws in Defining Trafficking through the First Global Study of Domestic Anti-Trafficking Laws’ (2021) 40(1) Yale Law & Policy Review 349 <www.jstor.org/stable/45406742> accessed 16 April 2026.

¹³⁰ UNODC, ‘Model Legislative Provisions’ (n 91) 36.

¹³¹ Criminal Code (Switzerland) art 182.

¹³² GRETA, ‘Access to justice and effective remedies for victims of trafficking in human beings: Switzerland Third Evaluation Round’ (Country Report 2024) <<https://rm.coe.int/greta-evaluation-report-on-switzerland-third-evaluation-round-focus-ac/1680b079a5>> accessed 16 April 2026 5.

¹³³ GRETA, ‘Access to justice and effective remedies for victims of trafficking in human beings: Luxembourg Third Evaluation Round’ (Country Report 2022) <<https://rm.coe.int/greta-evaluation-report-on-luxembourg-third-evaluation-round-/1680a85a61>> accessed 16 April 2026 75; GRETA, ‘Access to justice and effective remedies for victims of trafficking in human beings: Slovenia Third Evaluation Round’ (Country Report 2023) <<https://rm.coe.int/greta-evaluation-report-on-slovenia-3rd-evaluation-round-greta-2023-05/1680ab958b>> accessed 16 April 2026 82.

may find it difficult to vitiate consent, resulting in such cases being misclassified as voluntary organ selling and consequently undermining the recognition of victims. Similar discrepancies are also evident in certain African jurisdictions, however, as these definitions raise additional and more fundamental inconsistencies, they will be addressed in a subsequent section regarding the requirement of transportation.

Transportation of a person is listed as one of the acts in the THB definition under the Palermo Protocol and ECAT. However, it is not a constitutive element, as any of the listed acts, such as recruitment, is sufficient to establish trafficking.¹³⁴ Nevertheless, some countries from Europe and Africa require transportation of the victim as an essential element of THB. For example, the United Kingdom and Zimbabwe¹³⁵ establish transportation as a constitutive element of the offence, thereby limiting the scope of the definition and misidentifying certain THB cases as other criminal offences. The members of the UK Parliament have raised concerns regarding the travel-focused interpretation of THB by stating that the UK's Modern Slavery Act 2015¹³⁶ 'does not deal with trafficking'¹³⁷ and is 'incompatible with international definitions used'.¹³⁸ However, GRETA has not recommended the government to amend the Act. Regarding TIP for OR, such a transport-focused approach does not necessarily undermine victim identification, since oftentimes victims are transported, whether within the country or across borders, for the transplantation surgery. Nevertheless, significant concerns arise when a domestic law makes the transnational element of the crime obligatory. Under the Penal Code of South Sudan, THB concerns an offence where a person has been transported out of the country.¹³⁹ This approach is not in line with the international understanding of human trafficking as it could also occur domestically.¹⁴⁰ It should be noted that South Sudan's Child Act defines THB consistently with international standards, however the law regulates trafficking in children, and therefore does not resolve the inadequate protection of adult victims.¹⁴¹ Such differences highlight inconsistencies within the national legislation. Although the Palermo Protocol applies only for transnational crimes involving an organised group, the

¹³⁴ UNODC, 'Model Legislative Provisions' (n 91) 36.

¹³⁵ Trafficking in Persons Act 2014 (Zimbabwe) art 3.

¹³⁶ Modern Slavery Act 2015 (United Kingdom) s 2.

¹³⁷ Modern Slavery Bill Deb 4 September 2014 125.

¹³⁸ *ibid* 135.

¹³⁹ Penal Code Act 2008 (South Sudan) §282.

¹⁴⁰ CoE, Explanatory Report (n 77) para 7.

¹⁴¹ The Child Act 2008 (South Sudan) art 5 "Trafficking".

Legislative Guide¹⁴² as well as the Interpretative Note on Article 34 of Protocol¹⁴³ have clarified that these elements are not necessary for establishing a criminal offence under domestic law and states ought to criminalise all types of THB. In addition to departing from the international framework, a cross-border movement requirement excludes domestic THB cases from the scope of national trafficking legislation, which causes such cases to go unrecognised or misclassified, consequently hindering proper victim identification and protection.

A consistent and coherent understanding of TIP for OR is crucial for accurate identification of victims as well as effective detection of the crime. In the absence of conceptual clarity, states cannot provide sufficient training for law enforcement officials or medical personnel, consequently hindering their ability to recognise the indicators of the offence and the victims. Given the transnational nature of TIP for OR, it is important that all states criminalise removal of organs as a form of exploitation under their domestic human trafficking provisions. Harmonised criminalisation strengthens effective international cooperation, particularly considering the principle of dual criminality which underpins extradition and mutual legal assistance,¹⁴⁴ as well as ensures victims access to consistent protective measures.

¹⁴² UNODC, 'Legislative Guide' (n 76) paras 80, 81.

¹⁴³ UNODC, Travaux Préparatoires (n 86) 285.

¹⁴⁴ CoE, Explanatory Report (n 77) paras 216, 340.

CHAPTER III: BALANCING CRIMINALISATION AND VICTIM PROTECTION

Besides victim identification, shortcomings also persist with regard to victim protection and assistance. For instance, a number of states make support conditional on cooperation with law enforcement and may even terminate victim status in the absence of such cooperation.¹⁴⁵ TIP for OR raises further legal challenges, particularly in distinguishing between criminal conduct and apparently consensual organ transactions. Given that almost every country has criminalised organ selling, victims of TIP for OR may be treated as offenders rather than victims and are therefore not afforded trafficking-specific protections and assistance.

In organ removal cases, consent of the donor is of crucial importance, as it helps determine whether the act is human trafficking, a separate criminal offence or a legal organ donation. According to the Interpretative Note of the Palermo Protocol, '[t]he removal of organs from children with the consent of a parent or guardian for legitimate medical or therapeutic reasons should not be considered exploitation'.¹⁴⁶ The Working Group has elaborated that the same rule also applies to adults, who have given their consent.¹⁴⁷ However, in practice the existence of consent is rarely straightforward. As provided by the WHO Guiding Principles and the Santiago de Compostela Convention, a person's consent is valid if it is given voluntarily and based on full, informed understanding of the nature and risks of the medical procedure.¹⁴⁸ Additionally, the donor must be able to withdraw their consent at any time before the transplantation procedure has reached to a point where stopping it would endanger the recipient's life.¹⁴⁹ In the context of THB, the relevant instruments state that the victim's consent is irrelevant if any of the means listed in the definition have been used.¹⁵⁰ Although legally there is no distinction made between the means listed in the THB definition, in practice law enforcement officials consider some methods more severe, such as use of force or abduction, where the argument of consent is immediately irrelevant. Other means, namely abuse of a position of vulnerability and minor deception, are seen as indirect and

¹⁴⁵ Organization for Security and Co-operation in Europe, 'Survey Report 2026' (n 84) 6, 8, 10, 46, 51, 61.

¹⁴⁶ UNODC, *Travaux Préparatoires* (n 86) 347.

¹⁴⁷ Conference of the Parties, 'Key concepts of the Trafficking in Persons Protocol' (n 199) para 28.

¹⁴⁸ WHO 'Guiding Principles' (n 41) Guiding Principle 3; Santiago de Compostela (n 50) art 4(1)(a).

¹⁴⁹ WHO 'Guiding Principles' (n 41) 4.

¹⁵⁰ ECAT (n 13) art 4(b); Palermo Protocol (n 11) art 3(b).

subtle, which are harder to detect and where the question of consent is of particular importance, especially if other, more severe means, have not been employed.¹⁵¹

3.1. Abuse of a position of vulnerability

In TIP for OR cases the issue of consent is particularly significant, given that victims often agree to donating their organs. However, in reality their consent is legally irrelevant since typically it has been obtained through abuse of a position of vulnerability (hereinafter: the APOV).¹⁵² TIP for OR victims most often experience situational and circumstantial vulnerability, which derive from their economic hardship or irregular status.¹⁵³ The traffickers abuse victims' desperate need for money by offering relatively large sums for their organs, however, they often receive less than promised or nothing at all.¹⁵⁴ Victims are also misled about the transplantation procedure. For instance they are led to believe that the operation would be easy and simple and that they would recover quickly, or they are falsely assured that they do not need two kidneys.¹⁵⁵ Moreover, in some cases the victims may even sign consent forms¹⁵⁶, however these may be written in language the victims do not understand.¹⁵⁷ The traffickers may also turn to more severe forms of coercion, such as confiscating the victims' passports, holding them captive and threatening them with or

¹⁵¹ UNODC, 'Issue Paper: The Role of 'Consent' in the Trafficking in Persons Protocol' (United Nations publication 2014) <www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf> accessed 16 April 2026 82.

¹⁵² Conference of the Parties, 'Trafficking in persons for the removal of organs and related conduct' (n 114) paras 34, 36.

¹⁵³ UNODC, 'Guidance Note on 'abuse of a position of vulnerability' as a means of trafficking in persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime' (Guidance Note 2012) <www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Guidance_Note_-_Abuse_of_a_Position_of_Vulnerability_E.pdf> accessed 16 April 2026 para 2.3.

¹⁵⁴ See e.g. *State of Israel v. Muhammed (John) Ben Taha Jeeth (Alen)* (Haifa Court, Israel 2007), cited in UNODC SHERLOC Database <www.unodc.org/cld//case-law-doc/traffickingpersonscrimetype/isr/2007/state_of_israel_v._muhammed_john_ben_taha_jeeth_alen.html?lng=en&tmpl=sherloc> accessed 16 April 2026; *L. and Others* PKR no 11/2017 (Medicus Case) (Basic Court of Pristina, 24 May 2018) 2-6; *State v. Netcare Kwa-Zulu Limited* (South Africa 2010), cited in UNODC SHERLOC Database <www.unodc.org/cld//case-law-doc/traffickingpersonscrimetype/zaf/2010/state_v._netcare_kwa-zulu_limited.html?lng=en&tmpl=sherloc> accessed 16 April 2026.

¹⁵⁵ See e.g. *State of Israel v. Muhammed (John) Ben Taha Jeeth (Alen)* (n 154); Ana Manzano, 'Trafficking in Persons for the Purpose of Organ Removal' in Rochelle L. Dalla and Donna Sabella (eds), *Routledge International Handbook of Human Trafficking: A Multi-Disciplinary and Applied Approach* (Routledge 2019) 431; UNODC, 'Assessment Toolkit' (n 34) 44.

¹⁵⁶ Jessica de Jong, 'Human trafficking for the purpose of organ removal' (PhD Thesis, Utrecht University 2017) <www.organtraffickingresearch.org/wp-content/uploads/2022/07/PhD-Thesis-Jessica-2017-Human-Trafficking-for-the-purpose-of-Organ-Removal.pdf> accessed 16 April 2026 100.

¹⁵⁷ *L.D. and others* P nos 309/10 and 340/10 (Medicus Case) (Basic Court of Pristina, 29 April 2013) 82.

using physical violence, particularly when victims change their mind about going through with the procedure.¹⁵⁸

Although overt coercion may occur, the preliminary consent of the victims is usually obtained by employing the APOV, which, compared to other means, is less visible and therefore more difficult to prove.¹⁵⁹ As a result, consent appears voluntary and victims are not recognised as trafficked persons. This issue is further exacerbated by law enforcement officials, who may be reluctant to recognise offences as THB where victims have given their apparent consent and visible force has not been used.¹⁶⁰ However, as the examples demonstrate, the victims' consent does not reflect a voluntary and informed choice, given that they were not aware of the risks of the procedure nor of the possible post-operation health complications and acted based on economic desperation. It is therefore crucial for proper identification of victims that the abuse of a position of vulnerability is recognised as the means through which consent has been obtained.¹⁶¹

The failure to effectively detect APOV is further compounded by the lack of clear definition. Although the Interpretive Note on Palermo Protocol Article 3 has stated that the term refers to 'any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved'¹⁶², it remains legally ambiguous. In particular the notion of 'real and acceptable alternative' is not fully understood nor is it clear how it applies in practice.¹⁶³ Similar ambiguity exists in European instruments, particularly in the ECAT's Explanatory Report¹⁶⁴ and the EU Directive.¹⁶⁵ The UNODC Model Law against Trafficking in Persons¹⁶⁶ offers an alternative

¹⁵⁸ Manzano (n 155) 431.

¹⁵⁹ Conference of the Parties, 'Trafficking in persons for the removal of organs and related conduct' (n 114) para 36.

¹⁶⁰ Frederike Ambagtsheer, 'Understanding the challenges to investigating and prosecuting organ trafficking: a comparative analysis of two cases' (2021) 28 Trends in Organized Crime 61, 68 <<https://doi.org/10.1007/s12117-021-09421-2>> accessed 17 April 2026.

¹⁶¹ Conference of the Parties, 'Trafficking in persons for the removal of organs and related conduct' (n 114) para 36.

¹⁶² UNODC, Travaux Préparatoires (n 85) 347.

¹⁶³ UNODC, 'Issue Paper: Abuse of a position of vulnerability and other "means" within the definition of trafficking in persons' (United Nations publication 2013) <www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf> accessed 17 April 2026 3.

¹⁶⁴ CoE, Explanatory Report (n 77) para 83.

¹⁶⁵ Directive 2011/36/EU (n 60) art 2(2).

¹⁶⁶ UNODC, 'Model Law against Trafficking in Persons' (United Nations publication 2009) <<https://digitallibrary.un.org/record/674096?v=pdf>> accessed 17 April 2026, the Model Law is a supplementary material for states to assist them implement the provisions of the Palermo Protocol into their domestic law.

definition, namely APOV ‘shall mean taking advantage of the vulnerable position a person is placed in as a result of’¹⁶⁷, for instance being in a country illegally or offering payments to a third party who controls the victim. The latter factor however is listed in the THB definition as a separate ‘means’, thus its inclusion under the APOV definition conflates the two means. Furthermore, the UNODC’s Guidance Note elaborates that the mere existence of vulnerability is not sufficient, it must be proven that the vulnerability had been abused.¹⁶⁸ However, the evidentiary burden for abuse is not specified nor is it clear whether the perpetrator ought to have known of the victim’s vulnerability, therefore the establishment of causal link between vulnerability and the victim’s compliance is left for domestic interpretation.

In the *Medicus Clinic* case the Appeal Panel and the Basic Court found that the traffickers had abused the victims’ vulnerable position but they did not elaborate on the ‘real and acceptable alternative’ element nor did they examine the aspect of abuse.¹⁶⁹ Similarly, in the United Kingdom the Central Criminal Court recognised the victim’s young age, poverty and isolation from family as factors of his vulnerability, however, it did not assess whether he had a real and acceptable alternative to the exploitation. Nevertheless, the Central Criminal Court did acknowledge that the perpetrators were aware of the victim’s vulnerable situation and intentionally targeted him, factors which were taken as aggravating circumstances.¹⁷⁰ These cases illustrate that the courts do not explicitly engage with the ‘real and acceptable alternative’ aspect of the APOV definition, instead they rely on the victims’ contextual situation. Courts often treat the vulnerability alone, such as poverty and isolation from family, as sufficient evidence of exploitation and of the invalidity of apparent consent, without a detailed evaluation of whether the victim had a real and acceptable alternative.

¹⁶⁷ *ibid* 9.

¹⁶⁸ UNODC, ‘Guidance Note’ (n 153) paras. 2.2.-2.5.

¹⁶⁹ *Dervish and others* P nos 309/10 and 340/10 (*Medicus Case*) (EULEX Appeal Panel, 27 April 2011); *L. and Others* PKR (n 154); *L.D. and others* (n 157).

¹⁷⁰ *R v Obeta and others* (Central Criminal Court, 5 May 2023) sentencing remarks of Johnson J [8.1], [9.1].

3.2. The non-punishment principle

Given that organ selling is widely criminalised, victims of TIP for OR are often treated as offenders rather than recognised as victims.¹⁷¹ To prevent such misidentification, States ought to apply the non-punishment principle, which exempts victims from liability for offences they were compelled to commit or that arose as a direct consequence of trafficking.¹⁷² The principle should apply to ‘all forms of trafficking [...], any unlawful activity, [and] criminal, civil, administrative and immigration offences [...]’.¹⁷³ While the ECAT obligates its Member States to ensure that victims are not prosecuted¹⁷⁴, the Palermo Protocol has omitted such a protection. Nevertheless, several UN bodies urge States to implement the non-punishment principle in order to protect the rights of the victims.¹⁷⁵ In addition, the AU soft law instruments recommend Member States to adopt the principle.¹⁷⁶ Although the non-punishment principle has been internationally and regionally recognised, its application on a domestic level remains inconsistent.

As of 2023, there were 12 CoE Members that had not yet adopted a trafficking specific non-punishment provision. GRETA noted that the absence of such a provision undermines proper victim protection, because the exemptions granted under general criminal law ‘are often narrower in scope than the non-punishment principle’¹⁷⁷, therefore these do not provide a reliable basis for exempting trafficking victims. Moreover, in these situations the burden of proof is placed on the victim and oftentimes they are subjected to prosecution and pre-trial detention, since it is left for the courts to decide whether the victim can be penalised.¹⁷⁸ Similar situation can be observed in African jurisdictions¹⁷⁹, with Senegal’s anti-trafficking law being of particular importance. It explicitly states that victims ‘may be subject to prosecution and conviction’¹⁸⁰, thereby departing

¹⁷¹ Conference of the Parties, ‘Trafficking in persons for the removal of organs and related conduct’ (n 114) para 39.

¹⁷² UNGA Res 79/189 (n 32) para 16(a).

¹⁷³ UNGA ‘Report of the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally: Implementation of the non-punishment principle’ (17 May 2021) UN Doc A/HRC/47/34 para 57.

¹⁷⁴ ECAT (n 13) art 26.

¹⁷⁵ See e.g. UNGA Res 79/189 (n 32) para 16(a); UNGA ‘Implementation of the non-punishment principle’ (n 173) paras 53, 54.

¹⁷⁶ African Union, Ouagadougou Action Plan (n 15) 4; African Union, AU Policy (n 16) 24.

¹⁷⁷ GRETA, ‘13th General Report’ (Report 2023) <<https://rm.coe.int/13th-general-report-on-greta-activities-covering-the-period-from-1-jan/1680af7268>> accessed 17 April 2026 63.

¹⁷⁸ *ibid.*

¹⁷⁹ See e.g. UNGA ‘Report of the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally: Visit to South Sudan’ (16 May 2023) UN Doc A/HRC/53/28/Add.2 para 71; Human Trafficking Act 2005, as amended by the Human Trafficking Act 2009 (Ghana).

¹⁸⁰ ACT No. 2005-06 (n 128) art 12.

from the protective rationale envisaged by the non-punishment principle. Penalising trafficking victims breaches their rights under the human trafficking framework as well as undermines victim identification, since the possibility of punishment prevents them from reporting the crime.¹⁸¹ Moreover, the African Commission on Human and Peoples' Rights has acknowledged that subjecting victims of trafficking to detention is incompatible with the victim-centred approach and unjustifiable under human rights law, as it treats them as perpetrators rather than victims.¹⁸²

Besides the absence of a non-punishment provision, GRETA has recognised that challenges also arise if the scope of the provision is limited.¹⁸³ For example in Slovakia victims of THB are only exempt from criminal offences they were compelled to commit, while still could be held accountable for administrative and immigration-related offences.¹⁸⁴ Given that in THB cases involving cross-border transportation, such as TIP for OR, victims are often provided with fraudulent travel documents, their entry into a country is illegal.¹⁸⁵ Therefore, such limitation does not exempt victims from being penalised for violating immigration laws as a direct consequence of their exploitation. Similar limitations also exist in African jurisdictions. For instance Seychelles only exempts victims from liability regarding their illegal entry into the country¹⁸⁶ and Zimbabwe limits the scope of immunity from prosecution only to certain offences, such as prostitution or violations of immigration or labour laws.¹⁸⁷ Consequently, these country examples illustrate that the implementation of the non-punishment provision is not only inconsistent but also narrower than the international standard, thereby weakening the protective purpose of the principle.

¹⁸¹ UNGA 'Implementation of the non-punishment principle' (n 173) para 18.

¹⁸² *J (Represented by the Initiative for Strategic Litigation in Africa (ISLA) & Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN)) v Namibia* Communication No 734/19 (African Commission on Human and Peoples' Rights, 6 August 2025) [169-173].

¹⁸³ GRETA, '13th General Report' (n 177) paras 130, 131.

¹⁸⁴ GRETA, 'Measures to prevent and detect vulnerabilities to human trafficking: Slovak Republic Fourth Evaluation Round' (Country Report 2025) <<https://rm.coe.int/greta-evaluation-report-on-the-implementation-of-the-council-of-europe/1680b4fa70>> accessed 17 April 2026 para 193.

¹⁸⁵ UNODC, 'Legislative Guide' (n 76) para 332.

¹⁸⁶ Prohibition of Trafficking in Persons Act 2014, as amended by Act 49 2021 (Seychelles) art 17.

¹⁸⁷ Trafficking in Persons Act 2014 (n 135) art 3(4).

Under some domestic legislations, the victims' right of not being punished is conditional. For example, prior to legislative amendments, Moldova¹⁸⁸ and Romania¹⁸⁹ required victims' cooperation during the criminal investigation in order to apply the non-punishment principle. Under the current Greek legislation, however, the victims are granted definite protection if they are identified as victims and the traffickers' conviction is final.¹⁹⁰ In TIP for OR cases the latter condition is particularly problematic, considering that TIP for OR is often a transnational crime involving actors from various countries, making the conviction of traffickers challenging. Therefore, conditioning the non-punishment of victims on successful conviction may significantly weaken the protection granted by the principle and leave victims exposed to criminal liability despite their exploitation. The Greek law also provides that temporary suspension from prosecution is conditional on the victim's self-identification.¹⁹¹ GRETA has acknowledged that requiring victims to report the offence is not in line with the ECAT's non-punishment provision as it 'places an undue burden on the victim'.¹⁹² Instead, law enforcement has an obligation to recognise indicators of THB and give effect to the non-punishment principle unconditionally.¹⁹³ This position is also emphasised by the Special Rapporteur on trafficking in persons as it recommends states to apply the principle regardless of whether the victim has been formally identified, the traffickers have been prosecuted and the victim has cooperated during the investigation.¹⁹⁴

Even if a country has a comprehensive non-punishment provision, in practice its implementation may be ineffective due to authorities' lack of knowledge. The Special Rapporteur on trafficking in

¹⁸⁸ Mohamed Y. Mattar, 'Incorporating the Five Basic Elements of a Model Antitrafficking in Persons Legislation in Domestic Laws: From the United Nations Protocol to the European Convention' (2006) 14(2) *Tulane Journal of International and Comparative Law* 382 <<https://journals.tulane.edu/jicl/article/view/3398>> accessed 17 April 2026, refers to Moldovan law before it was amended.

¹⁸⁹ Law 678/2001 on Preventing and Combating Trafficking in Human Beings (Romania) art 20, law before the amendments.

¹⁹⁰ GRETA, 'Reply from Greece to the questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Third Evaluation Round' (Country Reply 2025) <<https://rm.coe.int/reply-from-greece-to-the-questionnaire-for-the-evaluation-of-the-imple/48802a9de9>> accessed 17 April 2026 para 7.

¹⁹¹ *ibid.*

¹⁹² GRETA, 'Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Greece: Second Evaluation Round' (Country Report 2023) <<https://rm.coe.int/greta-evaluation-report-on-greece-2nd-evaluation-round/1680aaa70a>> accessed 17 April 2026 para 224.

¹⁹³ *ibid.*

¹⁹⁴ UNGA 'Implementation of the non-punishment principle' (n 173) para 58.

persons noted in its report concerning Liberia that although the provision exists under national law, additional training for law enforcement officials is necessary to ensure its effective implementation.¹⁹⁵ A similar recommendation has also been made by GRETA to various Member States.¹⁹⁶ The inclusion of a specific non-punishment provision as well as its effective implementation in practice are crucial for ensuring proper victim identification and human rights protection. As stated by the UNGA, '[t]rafficking in persons for the removal of organs is, first and foremost, a violation of human rights'.¹⁹⁷ Removing a person's organs for financial gain violates the victim's dignity and bodily integrity as well as subjects them to health complications, consequently posing a risk to their health and life.¹⁹⁸ States' obligation to combat the crime and protect the victims therefore does not only arise from the human trafficking framework, but also from the international human rights law.¹⁹⁹ Therefore, during the investigation law enforcement ought to apply a victim-centred approach, through which the victims' needs and concerns take on central importance.²⁰⁰ It falls under a broader rights-based approach, which is founded in the supremacy of human rights and requires that anti-trafficking measures respect the rights of the victims as well as of the traffickers.²⁰¹ By subjecting victims to detention and prosecution, such an approach is not effectively enforced, hindering not only the victims' rights and access to support but also effective criminal justice response.²⁰²

¹⁹⁵ UNGA 'Report of the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally: Visit to Liberia' (28 April 2025) UN Doc A/HRC/59/56/Add.2 para 9.

¹⁹⁶ See e.g. GRETA, 'Access to justice and effective remedies for victims of trafficking in human beings: Moldova Third Evaluation Round' (Country Report 2020) <<https://rm.coe.int/greta-2020-11-fgr-md-en/1680a09538>> accessed 17 April 2026 para 114; GRETA, 'Access to justice and effective remedies for victims of trafficking in human beings: Belgium Third Evaluation Round' (Country Report 2022) <<https://rm.coe.int/3rd-greta-evaluation-report-on-belgium/1680a8940b>> accessed 17 April 2026 para 122; GRETA, 'Access to justice and effective remedies for victims of trafficking in human beings: North Macedonia Third Evaluation Round' (Country Report 2023) <<https://rm.coe.int/greta-evaluation-report-on-north-macedonia-third-evaluation-round/1680aaa573>> accessed 17 April 2026 para 109.

¹⁹⁷ UNGA 'Trafficking in persons, especially women and children' (n 2) para 61.

¹⁹⁸ Debra Budiani-Saberi and Sean Columb, 'A human rights approach to Human Trafficking for Organ Removal' (2013) 16 *Medicine, Health Care and Philosophy* 910 <<https://doi.org/10.1007/s11019-013-9488-y>> accessed 17 April 2026.

¹⁹⁹ UNGA 'Trafficking in persons, especially women and children' (n 2) para 61.

²⁰⁰ Conference of the Parties, 'Trafficking in persons for the removal of organs and related conduct' (n 114) paras 38-42.

²⁰¹ Demeke (n 9) 3.

²⁰² Conference of the Parties, 'Trafficking in persons for the removal of organs and related conduct' (n 115) para 41.

3.3. The importance of rights-based and victim-centred approaches

Given that the Palermo Protocol was adopted within the broader organised crime framework, THB has traditionally been addressed through the criminal justice approach, which focuses primarily on the investigation and prosecution of offenders. In that regard, victims are used to secure convictions, disregarding their special needs and vulnerabilities. As a result, the human rights of the victims tend to be overlooked, which undermines their adequate protection.²⁰³ Nevertheless, international organisations have been advocating for the rights-based approach. The most prominent is the CoE through the adoption of the ECAT, which is ‘framed as a [...] victim-centred instrument’²⁰⁴ and requires states to promote rights-based approach.²⁰⁵ Despite the Palermo Protocol’s criminal justice focus, the UN bodies, such as the GA and the Special Rapporteur to Human Rights Council, have emphasised the importance of rights-based and victim-centred approach.²⁰⁶ Moreover, the Recommended Principles and Guidelines on Human Rights and Human Trafficking has stressed that the human rights of the victims are at the core of the preventive and protective measures as such measures shall not harm victims’ rights and dignity.²⁰⁷ Although not explicitly stated by the AU, its soft-law instruments regarding human trafficking also indicate a rights-based approach to victim protection. For instance, the Ouagadougou Action Plan provides that victim support measures should be based on international human rights law and consider their special needs and vulnerabilities. Consequently, the anti-trafficking measures should not undermine the victim’s rights.²⁰⁸

In the absence of a rights-based and victim-centred approach to THB, law enforcement officials have limited capacity to recognise the vulnerabilities of trafficked persons and to ensure the protection of their human rights. To illustrate, two country examples are given, namely South Sudan and Greece. South Sudan has not adopted an anti-trafficking legislation, instead THB is addressed under different domestic laws, which are inconsistent with each other.²⁰⁹ Moreover,

²⁰³ Demeke (n 9) 2, 4.

²⁰⁴ Planitzer and Sax (n 111) 68.

²⁰⁵ ECAT (n 13) Preamble, art 5(3).

²⁰⁶ UNGA ‘Trafficking in persons, especially women and children’ (n 2) para 51.

²⁰⁷ ECOSOC ‘Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council: Recommended Principles and Guidelines on Human Rights and Human Trafficking’ (20 May 2002) UN Doc E/2002/68/Add.1 paras 1, 3.

²⁰⁸ African Union, Ouagadougou Action Plan (n 15) 2, 4.

²⁰⁹ See Penal Code Act 2008 (n 139) §282; The Child Act 2008 (n 141) art 5 “Trafficking”.

there is a lack of victim protection provisions. Most notably neither of the instruments include the non-punishment principle and law enforcement officials have insufficient knowledge regarding the scope and content of the principle. The Special Rapporteur on trafficking in persons also noted that support and assistance to victims is limited and the authorities lack awareness regarding the trafficking victims' specific needs.²¹⁰ According to the U.S. Department of State's report, for the last six years no trafficking victims have been identified. This situation appears to stem from two interrelated factors: the victims are not reporting the crime out of the fear of being prosecuted, while the government fails to take any proactive measures to identify them.²¹¹ Even where victims have come forward, law enforcement officials are reportedly not opening investigations, the victims are arrested and detained or, in regard to foreign victims, deported.²¹² South Sudan illustrates that fragmented regulation of THB and limited institutional awareness of the crime hinders not only effective victim identification and protection, but ultimately also investigation and prosecution.

On the contrary, Greece has adopted an anti-trafficking provision under its Penal Code²¹³ as well as a National Action Plan, one objective of which is to ensure a victim-centred approach to combating THB.²¹⁴ While in theory appropriate measures for victim protection exist, in practice significant gaps remain. One such challenge is victim identification, which is largely dependent on victims' self-identification and their cooperation with the law enforcement. This practice was criticised by GRETA as these conditions undermine effective and timely identification.²¹⁵ GRETA also noted shortcomings in identification and protection of foreign victims. For instance, possible victims were denied victim status, because their exploitation occurred outside of Greece and the prosecutors considered their reports to be unconvincing and unsupported. Under the ECAT²¹⁶ as

²¹⁰ UNGA 'Visit to South Sudan' (n 179) paras 70, 71, 81.

²¹¹ U.S. Department of State, '2025 Trafficking in Persons Report: South Sudan' (Country Report 2025) <www.state.gov/reports/2025-trafficking-in-persons-report/south-sudan/> accessed 17 April 2026 pt "Protection".

²¹² International Organisation for Migration, 'Trafficking in persons in South Sudan: Prevalence, Challenges and Responses' (Action Research 2020) <<https://docs.southsudanngoforum.org/sites/default/files/2020-09/20200724%20TiP%20full%20report%20low%20resolution.pdf>> accessed 17 April 2026 46.

²¹³ GRETA, 'Reply from Greece to the Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties: Second Evaluation Round' (Country Reply 2021) <<https://rm.coe.int/reply-from-greece-to-the-questionnaire-for-the-evaluation-of-the-imple/1680a59b5a>> accessed 17 April 2026 4, restatement of the Penal Code.

²¹⁴ GRETA, 'Greece: Second Evaluation Round' (n 192) para 27.

²¹⁵ *ibid* paras 147, 158.

²¹⁶ ECAT (n 13) art 13.

well as Greek domestic law foreign trafficking victims are entitled to a reflection and recovery period to support their recovery. However, GRETA notes with concern that since 2017 no reflection periods have been granted, despite the detection of a relatively high number of presumed foreign victims in recent years. This is largely due to the prosecutors' lack of understanding of the protection measure, since in practice it is afforded to formally recognised victims and the victims' willingness to cooperate with law enforcement is treated as a deciding factor. GRETA recognises that such interpretation is contrary to the ECAT and the Greek law, and emphasises that, in line with victim-centred approach, reflection and recovery period should be provided also to presumed victims regardless of their cooperation with the authorities.²¹⁷ Previously addressed non-punishment provision, which is conditioned upon victim identification and the final conviction of traffickers, highlights yet another deviation from rights-based approach. The Greek example highlights that although victim protection measures are formally provided, in practice their implementation remains insufficient and largely depends on prosecutorial discretion. Conditioning victims' protection on cooperation with authorities or effective prosecution undermines their inherent right to assistance and support as well as disregards their vulnerabilities, thereby limiting the effective application of a comprehensive rights-based approach to THB.

3.4. Interim summary

TIP for OR further demonstrates the need to balance criminalisation and victim protection in a careful manner. Due to the fact that victims appear to have consented to the removal of their organs and may have violated domestic laws, they are at risk of being treated as offenders rather than recognised as victims of trafficking. This does not only violate their human rights but also weakens the broader anti-trafficking efforts. Victims who have received proper assistance and protection are more inclined to cooperate with law enforcement and facilitate the prosecution of the offenders.²¹⁸ By contrast, the victims, who fear that they may be prosecuted for the crimes they were compelled to commit, are more reluctant to report the offence. Therefore, potential trafficking cases may go unnoticed and the offenders are not held accountable.

²¹⁷ GRETA, 'Greece: Second Evaluation Round' (n 192) 148, 155, 187, 189, 190, 191.

²¹⁸ UNODC, 'Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking' (United Nations publication 2010) <www.unodc.org/documents/human-trafficking/Needs_Assessment_Toolkit_ebook_09-87518_June_2010.pdf> accessed 17 April 2026 40.

Given that, in TIP for OR, the victims' consent is obtained through subtle means, such as abuse of a position of vulnerability, it is crucial to apply a rights-based and victim-centred approach. Such an approach allows the specific vulnerabilities of victims to be properly recognised and considered, thereby strengthening accurate identification and adequate protection. At the same time, an effective criminal justice approach is necessary to ensure proper prosecution and sufficient penalties for the offenders. This reflects the seriousness of TIP for OR and strengthens deterrence as a preventive measure. In the light of that, the rights-based and victim-centred approach should not be viewed as conflicting with the criminal justice approach, but rather as complementary and mutually reinforcing.²¹⁹ An effective response to TIP for OR therefore requires coordinated application of rights-based, victim-centred and criminal justice approaches.

²¹⁹ Anne Gallagher and Paul Holmes, 'Developing an Effective Criminal Justice Response to Human Trafficking: Lessons From the Front Line' (2008) 18(3) International Criminal Justice Review 321 <<https://doi.org/10.1177/1057567708320746>> accessed 17 April 2026.

CHAPTER IV: TRAFFICKING IN PERSONS FOR THE PURPOSE OF ORGAN REMOVAL IN THE CONTEXT OF MIXED MIGRATION

As discussed in previous chapters, migrants, refugees and asylum seekers are at heightened risk of becoming victims of TIP for OR due to their circumstantial and situational vulnerabilities. However, both their identification as victims and subsequent protection remain challenging. It is important to mention, that while persons in mixed migration may also derive protection from other areas of international law, including refugee and international human rights law²²⁰, these frameworks do not provide trafficking-specific protection. For that reason, this chapter focuses exclusively on the protection and assistance afforded to persons in mixed migration under anti-trafficking frameworks. Accordingly, the aim of this chapter is twofold: firstly, to identify the shortcomings hindering proper victim identification; and secondly to assess the effectiveness of anti-trafficking frameworks in protecting persons in mixed migration as victims of TIP for OR.

4.1. Obstacles to the identification of victims in mixed migration flows

Before turning to the challenges with identification, it is necessary to highlight the specific vulnerabilities of these groups. Migrants, refugees and asylum seekers have left their home countries and crossed international borders to find safety, protection or better living conditions. Although they have different legal statuses and reasons for moving, they often use similar routes and methods for travelling. As a result, they are exposed to comparable risks and vulnerabilities arising from the same causes or perpetrators. Based on these factors, the term ‘persons in mixed migration’ is used throughout this paper to refer to these groups collectively.²²¹

Despite similar vulnerable characteristics, these groups are not identical and are distinguished by important legal and contextual differences. Migrants leave their home countries primarily to improve their socio-economic conditions, which have been affected by poverty, violence or natural

²²⁰ See e.g. Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13; Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137.

²²¹ Mixed Migration Center, ‘MMC’s understanding and use of the term mixed migration’ (2019) <https://mixedmigration.org/wp-content/uploads/2026/02/MMC-understanding-of-mixed-migration-and-smuggling_2025.pdf> accessed 17 April 2026 1.

disasters.²²² A significant number of migrants may reside in destination countries illegally and without proper documentation.²²³ Being undocumented limits their access to lawful and stable employment, increasing their vulnerability to exploitation.²²⁴ Refugees and asylum seekers, however, have been forced to leave their homes as they may face human rights violations or persecution. Hence, they are seeking protection in another country. While refugees are formally recognised and legally protected, asylum seekers are still awaiting a determination of their status.²²⁵

Persons in mixed migration are at risk of becoming victims during their journey and after arriving in the destination country. The first situation arises due to the destination countries' strict migration policies, which push these individuals to use irregular migration routes and the assistance of smugglers to cross state borders.²²⁶ However it is possible that smugglers are either cooperating with or operating as traffickers²²⁷, thereby increasing the risk of exploitation. For instance, TIP for OR may initially be disguised as migrant smuggling by promising the vulnerable person employment abroad, after which they are coerced or deceived into donating their organ.²²⁸ Upon arriving in their destination country, persons in mixed migration are usually in a precarious financial situation and finding a well-paying job is a significant challenge. This is particularly evident in relation to undocumented migrants, because they are socially, politically and economically marginalised and lack formal legal protections. Nevertheless, refugees may also face barriers, as their perceived temporary residence may limit their access to education and employment. As a result, persons in mixed migration are pushed to seek informal work, which does not pay much, lacks labour protections and exposes them to exploitation.²²⁹ In such

²²² Amnesty International, 'Refugees, Asylum Seekers and Migrants' <www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/> accessed 17 April 2026.

²²³ Our World in Data, 'How do countries measure immigration, and how accurate is this data?' <<https://ourworldindata.org/countries-measure-immigration-accurate-data>> accessed 17 April 2026.

²²⁴ Fiona David, Katharine Bryant and Jacqueline Joudo Larsen, 'Migrants and their vulnerability to human trafficking, modern slavery and forced labour' (International Organisation for Migration publication 2019) <https://publications.iom.int/system/files/pdf/migrants_and_their_vulnerability.pdf> accessed 17 April 2026 10, 38.

²²⁵ Amnesty International, 'Refugees, Asylum Seekers and Migrants' (n 222).

²²⁶ David, Bryant and Larsen (n 224) 57.

²²⁷ UNODC, 'Global Report on Trafficking in Persons 2024' (n 3) 72.

²²⁸ Sean Columb, 'Organ trafficking in Egypt: "They locked me in and took my kidney"' *The Guardian* (London, 9 February 2019) <www.theguardian.com/global-development/2019/feb/09/trafficking-people-smugglers-organs-egypt-mediterranean-refugees-migrants> accessed 17 April 2026.

²²⁹ Sean Columb, 'Disqualified Bodies: A Sociolegal Analysis of the Organ Trade in Cairo, Egypt' (2017) 51 *Law and Society Review* <<https://doi.org/10.1111/lasr.12269>> accessed 17 April 2026 289-292, 297, 303.

circumstances, selling an organ is not a question of opportunity but ‘a matter of survival’.²³⁰ Although they chose to sell their organ, they are victims of TIP for OR, given their extremely vulnerable situation and a lack of acceptable alternative.

A primary obstacle to identifying specifically irregular migrants as victims of trafficking is the prioritisation of immigration control over victim identification in practice. Even where individuals display indicators of trafficking or directly report their exploitation, their irregular status often becomes the dominant factor guiding the response of the authorities. This could be attributable to the false dichotomy that victimhood and voluntary migration cannot coexist. While a person qualifies as a victim if they have been exploited, their prior voluntary decision to migrate may undermine the recognition of their victim status.²³¹ By choosing to employ the assistance of smugglers, those migrants are perceived as the ‘imperfect victims’, who are partially responsible for their subsequent exploitation. This illustrates the interrelation between TIP for OR and smuggling of migrants particularly through the notion of consent. In organ removal cases the apparent consent may create an impression of voluntariness, while in the context of smuggling, the consent indicates that the person was aware and implicitly responsible for the possible exploitation.²³² However, such an understanding is flawed as it fails to consider the structural vulnerabilities and circumstances that drive individuals to undertake such extreme measures.

It is important to note the interconnection between smuggling of migrants and THB, particularly in two circumstances: where the smuggling forms part of or arises as a direct consequence of trafficking and where it occurs prior to exploitation. The latter situation is relevant to this chapter, as the persons in mixed migration often become victims of TIP for OR in the destination country. Although under international law, smuggled migrants should not be criminalised for having been

²³⁰ UNODC, ‘Toolkit on the Investigation and Prosecution of Trafficking in Persons for Organ Removal: Module 3’ (GLOACT Project 2022) <www.unodc.org/res/human-trafficking/glo-act2/tip-for-or-toolkit/Module_3.pdf> accessed 17 April 2026 5.

²³¹ Dina Francesca Haynes, ‘Exploitation Nation: The Thin and Grey Legal Lines between Trafficked Persons and Abused Migrant Laborers’ (2012) 23(1) Notre Dame Journal of Law, Ethics and Public Policy 7, 70 <<https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=1087&context=ndjlepp>> accessed 17 April 2026.

²³² Marika McAdam, ‘What’s in a Name? Victim Naming and Blaming in Rights Based Distinctions between Human Trafficking and Migrant Smuggling’ (2015) 4 International Human Rights Law Review 2, 18 <<https://heinonline.org/HOL/P?h=hein.journals/inthurlr4&i=1>> accessed 17 April 2026.

the object of smuggling-related conduct²³³, illegal entry and stay are still widely penalised under domestic laws.²³⁴ As a result, irregular migrants may be subjected to detention or deportation. The issue arises when they subsequently become victims of organ removal, as they then possess a dual status: victim of TIP for OR and an immigration offender. It is necessary to refer back to the non-punishment principle discussed in the previous chapter. The principle requires that victims be exempted from penalties for criminal, administrative or immigration offences they were compelled to commit, or which arose as a direct consequence of trafficking. However, such protection does not extend to the person whose irregular status was acquired prior to their exploitation since that immigration offence cannot be regarded as a direct result of being trafficked. Therefore, irregular migrants cannot invoke protection under the non-punishment principle in respect to that prior immigration offence. In light of this, a complex question arises as to which status prevails in practice: that of a victim of trafficking or that of an immigration offender. Existing anti-trafficking frameworks do not clearly resolve this issue, thereby leaving room for immigration control to be prioritised over anti-trafficking efforts and victim protection.²³⁵

Against this background, it is necessary to examine the broader structural issues that hinder the identification of irregular migrants, refugees and asylum seekers as victims of TIP for OR. A key underlying problem is society's, including that of law enforcement, negative view of these groups. To illustrate, in Egypt Sudanese migrants 'are considered more expendable than other sections of the population'²³⁶ and economically disadvantaged nationals often blame them for their financial difficulties.²³⁷ This pattern however is not unique to Egypt. Across countries there is a widespread scepticism towards refugees and asylum seekers. Nationals believe that these groups do not make a positive contribution nor can they successfully integrate into the societies. Moreover, many of them assume that refugees migrate to another country merely for economic reasons and support

²³³ Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 28 January 2004) 2241 UNTS 507 art 5.

²³⁴ World Population Review, 'Punishment for Illegally Entering Countries 2026' <<https://worldpopulationreview.com/country-rankings/punishment-for-illegally-entering-countries>> accessed 17 April 2026.

²³⁵ See e.g. African Union, AU Policy (n 16) 14, the AU has recognised such a situation in the African region, where migration is framed from a security perspective.

²³⁶ Columb, 'Disqualified bodies' (n 229) 298.

²³⁷ *ibid.*

closing the borders.²³⁸ According to the study from the European Commission Joint Research Center such negative perception may be attributable to the narratives presented by media and political discourse. For instance, immigration has often been portrayed as a threat to individual and national security, which has led to more restrictive migration policies and a focus on the illegality of migration.²³⁹ Such perceptions influence the willingness of law enforcement to investigate cases where persons in mixed migration have been exploited. Their claims may be dismissed, or they are threatened with arrest or deportation, which not only affects irregular migrants but also refugees and asylum seekers, given the wide criminalisation of organ selling.²⁴⁰ Therefore, they are primarily treated as offenders, with little consideration given to their possible exploitation and victim status.

Taken together, these factors lead persons in mixed migration to develop deep distrust of authorities and genuine fear of the consequences, thereby preventing self-identification. Such concerns have been reported by OSCE²⁴¹ and, in the case of Egypt²⁴² and Morocco²⁴³, by the U.S. Department of State. The OSCE report shows that in the last five years, the number of identified victims by law enforcement agents has decreased, while self-identifications have increased. This trend, combined with the perspective of numerous non-governmental organisations that the authorities are not proactively detecting the victims, highlights the reliance on victims to identify themselves.²⁴⁴ This assessment is also supported by the U.S. Department of State's reports. In

²³⁸ Ipsos, 'World Refugee Day: Global Attitudes Towards Refugees' (Global Survey 2025) <www.ipsos.com/sites/default/files/ct/news/documents/2025-06/ipsos-global-attitudes-towards-refugees-2025.pdf> accessed 17 April 2026 11.

²³⁹ Fiona Seiger and others, 'Navigating migration narratives: Research insights and strategies for effective communication' (Publications Office of the European Union 2025) <<https://publications.jrc.ec.europa.eu/repository/handle/JRC142039>> accessed 17 April 2026 4.

²⁴⁰ See e.g. Columb, 'Disqualified bodies' (n 229) 298; Columb, 'Organ trafficking in Egypt' (n 228); Sean Columb, "'For me, there was no other choice': inside the global illegal organ trade' *The Guardian* (London, 10 September 2024) <www.theguardian.com/news/article/2024/sep/10/for-me-there-was-no-other-choice-inside-the-global-organ-trade> accessed 17 April 2026. These sources highlight the experiences of the persons in mixed migration with law enforcement.

²⁴¹ Organization for Security and Co-operation in Europe, 'Survey Report 2026' (n 84) 52, 54.

²⁴² U.S. Department of State, '2025 Trafficking in Persons Report: Egypt' (Country Report 2025) <www.state.gov/reports/2025-trafficking-in-persons-report/egypt/> accessed 17 April 2026.

²⁴³ U.S. Department of State, '2025 Trafficking in Persons Report: Morocco' (Country Report 2025) <www.state.gov/reports/2025-trafficking-in-persons-report/morocco/> accessed 17 April 2026 pt "Protection".

²⁴⁴ Organization for Security and Co-operation in Europe, 'Survey Report 2026' (n 84) 52-54.

particular, it was reported that Egypt²⁴⁵ and Algeria²⁴⁶ relied on victims to report the crimes. Moreover, the U.S. Department of State has made recommendations to several countries, including Hungary²⁴⁷, Italy²⁴⁸ and Sudan²⁴⁹, to increase their proactive identification efforts. In the context of persons in mixed migration, such practice highlights a paradoxical situation: states expect the victims to self-identify, yet when they do, their reports are either dismissed, or they are threatened with punitive or administrative measures. All these factors highlight the prevalence of a criminal justice approach as the persons in mixed migration are treated primarily through the lens of immigration control and criminalisation, failing to adequately consider their vulnerabilities and human rights. Consequently, they remain under-identified as victims, leaving them vulnerable to further exploitation.

Even when these groups are identified as victims, their access to protection and assistance is inadequate. In the light of this, the next section examines the relevant international instruments and identifies the shortcomings that leave persons in mixed migration marginalised and inadequately protected as victims of TIP for OR.

4.2. Shortcomings in protection of identified victims

Both the Palermo Protocol and ECAT have specific provisions relating to the protection and assistance of victims. However, as noted in Chapter 1, the Palermo Protocol's provisions are more limited and vague, therefore granting the States a broad discretion. The Ouagadougou Action Plan also recommends states to provide protection and assistance services to the victims of trafficking²⁵⁰, yet given that it is not a binding instrument, the legal obligation to provide those

²⁴⁵ U.S. Department of State, 'Egypt' (n 253) pt "Protection".

²⁴⁶ U.S. Department of State, '2025 Trafficking in Persons Report: Algeria' (Country Report 2025) <www.state.gov/reports/2025-trafficking-in-persons-report/algeria/> accessed 17 April 2026 pt "Protection".

²⁴⁷ U.S. Department of State, '2025 Trafficking in Persons Report: Hungary' (Country Report 2025) <www.state.gov/reports/2025-trafficking-in-persons-report/hungary/> accessed 17 April 2026 pt "Prioritized recommendations".

²⁴⁸ U.S. Department of State, '2025 Trafficking in Persons Report: Italy' (Country Report 2025) <www.state.gov/reports/2025-trafficking-in-persons-report/italy/> accessed 17 April 2026 pt "Prioritized recommendations".

²⁴⁹ U.S. Department of State, '2025 Trafficking in Persons Report: Sudan' (Country Report 2025) <www.state.gov/reports/2025-trafficking-in-persons-report/sudan/> accessed 17 April 2026 pt "Prioritized recommendations".

²⁵⁰ African Union, Ouagadougou Action Plan (n 15) 4.

services derives primarily from the Palermo Protocol.²⁵¹ However, for several countries²⁵² the obligation also raises from subregional instruments, namely from the Southern African Development Community Protocol on Gender and Development²⁵³ and the Economic Community of West African States Regulation C/REG.28/12/07.²⁵⁴ Yet these instruments do not provide a list of specific measures, therefore the analysis conducted in this chapter focuses on the Palermo Protocol and the ECAT.

With particular focus on persons in mixed migration, the non-discrimination clauses are especially significant.²⁵⁵ Although the ECAT's provision is more explicit, as it lists the specific grounds for discrimination, including national origin or other status, both instruments require that the relevant protective measures are applied without discrimination. The aim of that provision is to ensure that all victims, including non-nationals, have adequate access to assistance and protection once they have been identified as victims of THB. However as can be seen from the following analysis, the principle of non-discrimination is not consistently upheld. Referring back to the OSCE report, it is evident that foreign victims, including persons in mixed migration, have comparatively lower access to victim support services. In particular, medical assistance which is crucial in TIP for OR cases. This highlights that the victims' legal status, rather than their actual needs, is often the determining factor for their access to protection and recovery.²⁵⁶ Moreover, the report brought out that civil redress 'was practically inaccessible for foreign victims, who were often deported before they could seek a remedy'.²⁵⁷ Limited access to assistance and protection has also been reported in several African states by the U.S. Department of State.²⁵⁸

²⁵¹ United Nations Treaty Collection (n 26), all AU Member States, except Republic of the Congo and Sahrawi Republic, have ratified the Palermo Protocol.

²⁵² ECOWAS, 'Member States' <www.ecowas.int/member-states/> accessed 17 April 2026, 16 Member States; Southern African Development Community, 'Member States' <www.sadc.int/member-states> accessed 17 April 2026, 12 Member States.

²⁵³ Southern African Development Community Protocol on Gender and Development (n 70) art 20(5)(a).

²⁵⁴ Economic Community of West African States Regulation C/REG.28/12/07 (n 71) art 4.

²⁵⁵ ECAT (n 13) art 3; Palermo Protocol (n 11) art 14(2).

²⁵⁶ Organization for Security and Co-operation in Europe, 'Survey Report 2026' (n 84) 55, 56.

²⁵⁷ *ibid* 58.

²⁵⁸ See e.g. U.S. Department of State, 'Egypt' (n 253) pt "Protection"; U.S. Department of State, '2025 Trafficking in Persons Report: South Africa' (Country Report 2025) <www.state.gov/reports/2025-trafficking-in-persons-report/south-africa/> accessed 17 April 2026 pt "Protection".

In TIP for OR cases one of the most important support measures is medical care. Both ECAT and Palermo Protocol²⁵⁹ require states to provide such assistance, however ECAT poses an additional clause. It provides that emergency medical care is available to all, whereas access to full medical assistance is limited to lawful residents lacking sufficient resources.²⁶⁰ This limitation highlights a significant gap in relation to undocumented migrants, as they can receive the minimum lifesaving treatment but are not entitled to long-term care. In the context of TIP for OR, such protection is crucial since the victims usually experience lasting health complications rather than requiring merely immediate emergency treatment.²⁶¹ Furthermore, the commentary for ECAT brings out that such differentiation is contrary to international human rights law.²⁶² Right to health is a fundamental human right enshrined in, but not limited to, the International Covenant on Economic, Social and Cultural Rights.²⁶³ The Committee on Economic, Social and Cultural Rights has clarified that the right applies to everyone ‘regardless of [their] legal status and documentation’.²⁶⁴ In the light of this, GRETA has stressed that all victims of THB, irrespective of residency status, should have access to public health care.²⁶⁵ Based on numerous country reports published by the U.S. Department of State and GRETA, foreign victims’ access to medical care was not brought out as a major issue. Nevertheless, few country reports did note that access to medical services was particularly challenging for undocumented migrants, either because their fear of law enforcement prevented them from acquiring it²⁶⁶ or because such services were difficult to obtain without a residence permit.²⁶⁷

A key strength of ECAT is the inclusion of reflection and recovery period under Article 13, providing early stage protection to victims of THB.²⁶⁸ According to the Explanatory Report, this

²⁵⁹ Palermo Protocol (n 11) art 6(3)(c).

²⁶⁰ ECAT (n 13) arts 12(1)(b), 12(3).

²⁶¹ Conference of the Parties ‘Trafficking in persons for the removal of organs and related conduct’ (n 114) para 43.

²⁶² Planitzer and Sax (n 111) 182.

²⁶³ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 art 12.

²⁶⁴ UN Committee on Economic, Social and Cultural Rights, ‘General Comment No 20, Non-discrimination in economic, social and cultural rights (art. 2, para. 2 of the International Covenant on Economic, Social and Cultural Rights)’ (2 July 2009) UN Doc E/C.12/GC/20 para 30.

²⁶⁵ Planitzer and Sax (n 111) 173.

²⁶⁶ See e.g. U.S. Department of State, ‘Algeria’ (n 247) pt “Protection”; U.S. Department of State, ‘2025 Trafficking in Persons Report: Germany’ (Country Report 2025) <www.state.gov/reports/2025-trafficking-in-persons-report/germany/> accessed 17 April 2026 pt “Protection”.

²⁶⁷ U.S. Department of State, ‘2025 Trafficking in Persons Report: Portugal’ (Country Report 2025) <www.state.gov/reports/2025-trafficking-in-persons-report/portugal/> accessed 17 April 2026 pt “Protection”.

²⁶⁸ ECAT (n 13) art 13.

protection ‘is intended to apply to victims [...] who are illegally present in a Party’s territory or who are legally resident with a short-term residence permit’.²⁶⁹ States are required to issue at least a 30 day reflection and recovery period to a person if there are reasonable grounds to believe that they are a victim, indicating that this measure is not only limited to formally recognised victims. During that period the individual concerned cannot be expelled from the country and they are entitled to receive necessary support services, including accommodation, emergency medical care and material assistance.²⁷⁰ The purpose of granting such a period is to facilitate the recovery of the victim and to give them time to decide whether or not they want to cooperate with law enforcement.²⁷¹ It is important to note that cooperation is not a precondition for affording such protection nor is it required that the victim has made a formal complaint.²⁷² However GRETA reports highlight that affording recovery and reflection periods is not consistent across the region nor always in line with ECAT.²⁷³ For instance, GRETA has noted that in Germany the protection measure is applied differently across regions, yet a common issue arises in all of them, namely that the authority granting the period requires confirmation from the police or the prosecutor that there are signs of trafficking. Such practice undermines the low threshold envisaged by Article 13 as it makes access to the protection dependent on prior law enforcement involvement or confirmation. Moreover, it was noted that the authorities lack comprehensive understanding of the measure, therefore it is not consistently afforded to all victims of THB.²⁷⁴

The Palermo Protocol does not explicitly require states to grant a recovery and reflection period to victims of trafficking, however it does encourage States to allow the victims to remain in their territory temporarily or permanently under Article 7.²⁷⁵ It serves a partially similar purpose as the ECAT’s provision, as the Legislative Guide indicates that Article 7 is intended to protect

²⁶⁹ CoE, Explanatory Report (n 77) para 172.

²⁷⁰ ECAT (n 13) art 13(1), (2).

²⁷¹ CoE, Explanatory Report (n 77) paras 173-175.

²⁷² GRETA, ‘Guidance Note on the recovery and reflection period’ (Guidance Note 2024) <<https://rm.coe.int/guidance-note-on-recovery-and-reflection-period-group-of-experts-on-ac/1680b1a3ca>> accessed 17 April 2026 paras 7, 11.

²⁷³ See e.g. GRETA, ‘Estonia: Second Evaluation Round’ (n 126) paras 123-127; GRETA, ‘Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Czech Republic: Second Evaluation Round’ (Country Report 2024) <<https://rm.coe.int/greta-report-on-the-implementation-of-the-council-of-europe-convention/1680b1ea58>> accessed 17 April 2026 paras 171-178.

²⁷⁴ GRETA, ‘Access to justice and effective remedies for victims of trafficking in human beings: Germany Third Evaluation Round’ (Country Report 2024) <<https://rm.coe.int/greta-evaluation-report-on-germany-third-evaluation-round-focus-access/1680b04977>> accessed 17 April 2026 paras 213-217.

²⁷⁵ Palermo Protocol (n 11) art 7.

undocumented victims and States should consider providing them time for recovery and reflection.²⁷⁶ Nevertheless, the protection afforded by the Palermo Protocol remains narrower and more vague. Article 7 itself does not clarify whether the residence is conditional, yet the Legislative Guide as well as the Recommended Principles and Guidelines on Human Rights and Human Trafficking suggest that the provision should be afforded to ‘victims who voluntarily agree to cooperate with law enforcement authorities’.²⁷⁷ In practice, this makes the protection not only conditioned on cooperation but also dependent on official identification of a person as a victim. Moreover, it is not specified whether this protection extends to presumed victims or is limited to formally identified victims. Unlike ECAT’s Article 13, Article 7 of Palermo Protocol does not impose a strict obligation on States to permit the victim to reside in their territory. Instead, it provides that States ‘shall consider’ adopting such measures ‘in appropriate cases’.²⁷⁸ Taken together, these factors create legal ambiguity, resulting in inconsistent application across States. This is reflected in African practice, where the U.S. Department of State reported that numerous countries lack a legal policy preventing the deportation of foreign victims.²⁷⁹

Persons in mixed migration may not always speak the language of their destination country, therefore it is necessary that when they become victims of trafficking, they are informed of their rights and available support measures in a language they understand. Such a support measure exists under both, the ECAT²⁸⁰ and the Palermo Protocol.²⁸¹ However, as noted regarding Article 7, the Palermo Protocol does not obligate States to implement that measure, rather they are required to *consider* [emphasis added] the implementation. The ECAT also included an additional clause requiring the States to appoint ‘translation and interpretation services, when appropriate’.²⁸² Although, the extent to which this provision is implemented is at the discretion of the States, GRETA considers the use of qualified interpreters a crucial aspect of ensuring that victims are

²⁷⁶ UNODC, ‘Legislative Guide’ (n 76) para 238.

²⁷⁷ *ibid* para 238(d); ECOSOC ‘Recommended Principles and Guidelines’ (n 207) Guideline 7 para 7.

²⁷⁸ Palermo Protocol (n 11) art 7(1).

²⁷⁹ See e.g. U.S. Department of State, ‘Sudan’ (n 261) pt “Protection”; U.S. Department of State, ‘2025 Trafficking in Persons Report: Chad’ (Country Report 2025) <www.state.gov/reports/2025-trafficking-in-persons-report/chad/> accessed 17 April 2026 pt “Protection”; U.S. Department of State, ‘2025 Trafficking in Persons Report: Cote d’Ivoire’ (Country Report 2025) <www.state.gov/reports/2025-trafficking-in-persons-report/cote-divoire/> accessed 17 April 2026 pt “Protection”.

²⁸⁰ ECAT (n 13) art 12(1)(d).

²⁸¹ Palermo Protocol (n 11) art 6(3)(b).

²⁸² ECAT (n 13) art 12(1)(c).

effectively informed of their rights.²⁸³ However in practice victims are not always afforded such assistance, largely due to the lack of qualified interpreters.²⁸⁴ To illustrate, Italy had a scarcity of qualified interpreters, specifically in certain African languages and dialects, and those available were often not sensitised to the situation of trafficking victims.²⁸⁵ The limited availability of translation services was also reported in South Africa; in addition, concerns were raised about the lack of confidentiality, which discouraged victims from using those services.²⁸⁶ Informing victims of their rights in a language they understand is fundamental to effective victim protection. As illustrated above, States do not always fulfil their obligations under the anti-trafficking framework. It is therefore crucial that victims are aware of their rights, so that they can request the support and protection to which they are entitled; otherwise, failures to provide adequate assistance may remain unchallenged in practice.

Failure to identify persons in mixed migration as trafficking victims and to provide adequate protection and assistance, in particular long-term support, increases the risk of re-trafficking. One of the most pressing issues is their limited access to employment.²⁸⁷ As illustrated by several country examples, even when they are recognised as victims and provided with a recovery and reflection period, they are not always allowed to work. This is the situation, for example, in the Netherlands²⁸⁸ and Algeria²⁸⁹, where victims may reside temporarily but are not permitted to work during that period. As a result, foreign victims remain in a precarious financial situation, which contributes to their further exploitation. Although, in the context of TIP for OR, it is unlikely that victims would undergo organ removal again, they could be exploited for other purposes or could

²⁸³ GRETA, ‘Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Denmark: First Evaluation Round’ (Country Report 2011) <<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680631bd4>> accessed 17 April 2026 para 148.

²⁸⁴ GRETA, ‘13th General Report’ (n 177) para 80.

²⁸⁵ GRETA, ‘Access to justice and effective remedies for victims of trafficking in human beings: Italy Third Evaluation Round’ (Country Report 2024) <<https://rm.coe.int/greta-2024-03-fgr-ita-en-2750-4314-7273-1/1680ae9f81>> accessed 17 April 2026 para 46.

²⁸⁶ U.S. Department of State, ‘South Africa’ (n 259) pt “Protection”.

²⁸⁷ University of Nottingham Rights Lab, ‘Re-trafficking: The current state of play’ (Report 2021) <www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2021/november/re-traffickingthe-current-state-of-play.pdf> accessed 17 April 2026 19.

²⁸⁸ U.S. Department of State, ‘2025 Trafficking in Persons Report: Netherlands’ (Country Report 2025) <www.state.gov/reports/2025-trafficking-in-persons-report/netherlands/> accessed 17 April 2026 pt “Protection”.

²⁸⁹ U.S. Department of State, ‘Algeria’ (n 247) pt “Protection”.

become involved with organ brokering. For instance, previous victims of organ removal have become recruiters within the trafficking ring, who target potential victims.²⁹⁰

This analysis demonstrates that while anti-trafficking frameworks establish important protection standards, their effectiveness in the context of mixed migration remains limited. Many victims remain unidentified largely due to the prioritisation of immigration control and governments' reliance on self-identification. The latter aspect is further undermined by the victims' reluctance to come forward out of fear of retaliation. Even when identification occurs, the access to protection and support measures is often inconsistent, conditional and influenced by migration status. Although anti-trafficking instruments have introduced important safeguards, including the ECAT's recovery and reflection period, their implementation in practice remains insufficient. The Palermo Protocol's discretionary approach further weakens protection. This highlights a persistent gap between the formal guarantees of anti-trafficking framework and their practical accessibility. As a result, migrants, refugees and asylum seekers remain without adequate protection, which in the long term, increases their risk of re-trafficking.

²⁹⁰ UNODC, 'Assessment Toolkit' (n 34) 28, 53.

CONCLUSION

TIP for OR remains one of the most complex and underreported forms of human trafficking, characterised by significant challenges in victim identification and protection. This thesis has explored these challenges through a problem-centred and comparative analysis of international and regional legal frameworks. Particular focus was on the inconsistencies in definition, the tension between criminalisation and victim protection, and the vulnerabilities of persons in mixed migration. By examining both legal standards and their practical implementation, this research has identified the key shortcomings undermining effective responses to TIP for OR and addressed the research questions presented in the introduction.

Regarding the first question, inconsistencies in definition, scope and domestic implementation of international instruments collectively hinder the identification of victims of TIP for OR. The lack of clear and uniform definition of ‘removal of organs’ creates legal and practical ambiguity as to the nature of the offence. This is particularly evident in the conflation of TIP for OR with trafficking in human organs, which shifts the focus from exploitation of the individual to the illicit trade in human organs as commodities. As a result, organ removal may be perceived as a legitimate medical procedure or misclassified by law enforcement as illegal organ selling. In both cases, the victims are not properly identified, and, in the latter case, may instead be treated as offenders. Inconsistent understanding further facilitates the emergence of context-dependent perceptions of the crime, as illustrated by the African region where organs are not solely removed for transplantation but also for ritualistic purposes. Given that, at the international and European levels, TIP for OR is largely addressed in the context of transplantation, organ removal for other purposes may fall outside the material scope of the offence. Consequently, similar factual situations may be classified differently across jurisdictions, undermining the uniform recognition of victims.

These issues are further exacerbated by the uneven and weak implementation of international norms on a domestic level. As illustrated by the country examples, States frequently transpose the trafficking definition differently. While some of them omit the removal of organs as a form of exploitation, others include the ‘means’ element only as an aggravating factor or introduce additional conditions, such as cross-border transportation. These inconsistencies change the legal

threshold for identifying TIP for OR and may create a situation where an act, which qualifies as trafficking under international law, is treated as lawful or as a lesser offence under domestic law. Such conduct directly impacts victim identification procedures, since victim status is tied to the legal classification of the offence. Taken together, all these shortcomings contribute to the failure to identify victims and consequently undermine effective protection and assistance, as access to these measures depends on persons being recognised as victims.

As for the second research question, criminalising organ selling hinders effective victim identification and protection by creating a structural tension between criminal justice objectives and a rights-based approach to trafficking. While the prohibition of organ trade aims to prevent exploitation and protect human dignity, in practice it often results in victims of TIP for OR being treated as offenders rather than victims. In accordance with the non-punishment principle, the victims of trafficking are to be exempt from punishment for acts they were compelled to commit, or which occurred as a direct consequence of being trafficked. However, country examples illustrate that the application of the principle is uneven and often narrower than the international standard. Therefore, victims may lack the legal guarantee that they will not be punished.

The victims' apparent consent significantly affects their victim status, since law enforcement may take its presence as evidence of voluntariness. However, in reality the consent has been obtained primarily through the abuse of the victims' position of vulnerability, such as their precarious financial situation or irregular status. Therefore, such consent is neither genuinely free nor informed. Given that the abuse of a position of vulnerability is more subtle and indirect, compared to, for example, use of force, law enforcement officials may find it difficult to detect or are otherwise reluctant to recognise it. As a result, a person's victim status is overlooked, and instead they may be penalised for selling their organ. Such practice however has further implications for victim identification, as other potential victims are hesitant to come forward out of fear of being penalised. In this light, criminalising organ selling implicitly hinders self-identification and cooperation with the authorities, further undermining the efforts to combat TIP for OR.

To address these shortcomings, States must balance criminal justice and rights-based approaches, as they are mutually reinforcing and help to effectively combat TIP for OR. While maintaining the

prohibition on organ selling, authorities need to ensure that individuals involved in these transactions are properly screened for indicators of trafficking. A rights-based approach requires that victims' human rights and specific needs and vulnerabilities are at the centre of enforcement efforts. This entails clear guidelines, specialised training for authorities and effective application of the non-punishment principle. In addition, it is crucial that the abuse of a position of vulnerability is recognised as vitiating consent. Ultimately, the issue is not the existence of criminalisation itself, but rather its prioritisation over victim identification and protection.

Concerning the third research question, effective identification and assistance of persons in mixed migration in the context of TIP for OR is undermined by a combination of legal and practical shortcomings. At the practical level, identification failures are particularly evident in regard to irregular migrants, whose dual status – immigration offender and trafficking victim – shapes their treatment by authorities. Given that they have entered and resided in a country without proper documentation, they are firstly seen as immigration offenders, who can be subjected to penalisation and deportation. Because of those risks, irregular migrants are reluctant to self-identify themselves as victims, fearing legal consequences.

Although refugees and asylum seekers have a recognised legal status, their exploitation is also often overlooked. In practice, such failure could be attributable to persistent societal perceptions that persons in mixed migration are less deserving of protection. This is further exacerbated by a flawed understanding that by consenting to smuggling, these individuals are implicitly responsible for their possible exploitation and therefore are viewed as 'imperfect victims'. These perceptions, combined with criminalisation of organ selling, further reinforce the fear of penalisation and discourage persons in mixed migration from seeking assistance. In this context, two key practical shortcomings emerge: firstly, States' reliance on self-identification and secondly, the prioritisation of immigration control over anti-trafficking efforts, both of which significantly hinder the proactive identification of victims.

These practical barriers are complemented by legal shortcomings within the existing frameworks, further limiting effective assistance. While both the ECAT and the Palermo Protocol require States to adopt measures aimed to support the victims' recovery without discrimination, their

effectiveness is limited by uneven and weak obligations. In particular, the Palermo Protocol adopts a largely non-obligatory approach, merely requiring States to consider the implementation of victim assistance measures. Although the ECAT provides a more advanced framework by imposing binding obligations, certain forms of assistance remain conditional on the victim's legal status. For instance, while emergency medical care is available to all, long-term care is limited only to lawful residents. Despite the requirement of non-discrimination, country examples illustrate that foreign victims' access to support and protection is often more limited, either due to the absence of necessary legal provisions or the lack of resources. Ultimately, the failure to provide effective assistance and protection to persons in mixed migration leaves them in precarious conditions and increases their risk of re-trafficking.

The findings of this research demonstrate that although the international and regional anti-trafficking frameworks have their shortcomings, they do create a meaningful foundation for victim protection and assistance. Considering the numerous reports from UN bodies and the adoption of the ECAT, rights-based and victim-centred approaches have become increasingly important in human trafficking, including TIP for OR, cases. Nevertheless, this research reveals that not all domestic anti-trafficking laws from Europe and Africa are fully in line with international standards. As illustrated, some countries deviate from the recognised definition of human trafficking, for instance by excluding removal of organs as a form of exploitation, while other countries limit the applicability of the non-punishment principle only for certain offences, such as those related to immigration laws. Taken together, this research supports the hypothesis that victim identification and protection in TIP for OR cases are not undermined by the insufficient international frameworks, but rather by their inconsistent implementation and interpretation at domestic level. Without a more consistent and victim-centred implementation, the existing legal frameworks will continue to fall short of their protective purpose.

Accordingly, a recommendation arising from this research is the establishment of an international monitoring body tasked with assessing States' implementation of anti-trafficking laws. The establishment of GRETA demonstrates the value of a monitoring mechanism as its country evaluations help to identify the gaps in domestic legislation and practice and promote closer alignment with regional standards. By contrast, the African region lacks a binding human

trafficking instrument and a monitoring body, which contributes to the fragmented implementation and weaker oversight. An international monitoring body would therefore help promote greater consistency across regions, especially where regional supervision remains limited.

DECLARATION OF THE USE OF AI

I declare that I have use AI tools in the preparation of this thesis. The AI tools were solely used to support the writing process, including improving language, structure and clarity of expression.

The substantive content of the thesis, including the analysis, arguments and conclusion, are entirely my own. The use of AI has not replaced my intellectual work but has served as a supplementary tool in refining the research.

LIST OF ABBREVIATIONS

APOV - Abuse of a position of vulnerability

ECAT - Council of Europe Convention on Action against Trafficking in Human Beings

GRETA - Group of Experts on Action against Trafficking in Human Beings

TIP for OR - Trafficking in persons for the purpose of organ removal

THB - Trafficking in human beings

THO - Trafficking in human organs

THOTC - Trafficking in human organs, tissues and cells

INIMKAUBANDUS ELUNDITE EEMALDAMISE EESMÄRGIL: ÕIGUSLIKUD JA PRAKTILISED PUUDUJÄÄGID OHVRITE TUVASTAMISEL JA KAITSEL

Resümee

Käesolev magistritöö käsitleb inimkaubandust elundite eemaldamise eesmärgil (*trafficking in persons for the purpose of organ removal*, edaspidi TIP for OR) kui üht kõige keerukamat ja samas alaraporteeritud inimkaubanduse vormi. Töö keskendub eeskätt ohvrite ebapiisava tuvastamise ja kaitse probleemile ning analüüsib selle aluseks olevaid õiguslikke ja praktilisi puudujääke. TIP for OR eristub teistest inimkaubanduse vormidest mitmel viisil. Esiteks on tegemist kuriteoga, mis toimub sageli meditsiinilise protseduuri varjus, muutes selle tuvastamise keeruliseks. Teiseks on ohvrite näiline nõusolek tihti mõjutatud nende majanduslikust ja sotsiaalsest haavatavusest, mistõttu ei saa nõusolekut käsitleda vabatahtliku ja teadlikuna. Kolmandaks on kuritegu oma olemuselt rahvusvaheline, hõlmates sageli erinevates riikides asuvaid ohvreid, vahendajaid ja elundite saajaid.

Töö keskne uurimisprobleem seisneb selles, et hoolimata olemasolevatest rahvusvahelistest õigusraamistikest ei suudeta TIP for OR ohvreid piisavalt tõhusalt tuvastada ega kaitsta. Sellest tulenevalt on töö eesmärgiks analüüsida peamisi õiguslikke ja praktilisi tegureid, mis seda probleemi põhjustavad. Autor püstitab hüpoteesi, et probleem ei tulene mitte rahvusvaheliste normide puudumisest, vaid nende ebajärjekindlast tõlgendamisest ja rakendamisest riiklikul tasandil. Töö vastab kolmele uurimisküsimusele: (1) kuidas definitsioonilised ja rakenduslikud vastuolud mõjutavad ohvrite tuvastamist; (2) kuidas organite müügi kriminaliseerimine võib takistada ohvrite kaitset; ning (3) millised probleemid tekivad migrantide, pagulaste ja varjupaigataotlejate tuvastamisel TIP for OR ohvritena.

Uurimisküsimusele vastamiseks kasutab töö võrdlevat lähenemist, analüüsides rahvusvahelisi ning regionaalseid õigusraamistikke, keskendudes eelkõige Euroopa ja Aafrika käsitlusele. Need regioonid valiti kuna Euroopas on loodud siduv ja institutsionaalselt toetatud inimkaubanduse vastane raamistik, kuid Aafrikas tugineb inimkaubanduse regulatsioon suurel määral

rahvusvahelistel standarditel ja pehme õiguse instrumentidel. Selline lähenemine võimaldab hinnata, kuidas erinev institutsionaalne ja normatiivne raamistik mõjutab TIP for OR käsitlemist, eelkõige ohvrite tuvastamise ja kaitse seisukohalt.

Metoodiliselt tugineb töö doktrinaalsele õigusuuringule, analüüsides rahvusvahelisi ja regionaalseid õigusakte, pehme õiguse instrumente ning rahvusvaheliste organisatsioonide aruandeid. Võrdlev analüüs ei piirdu üksnes normide tekstiliste võrdlustega, vaid hõlmab ka nende praktilist rakendamist riiklikul tasandil. See võimaldab hinnata, mil määral kehtivad õigusraamistikud tegelikult tagavad ohvrite tõhusa tuvastamise ja kaitse.

Töö esimene peatükk tutvustab TIP for OR kontseptsiooni ning seda käsitlevat õiguslikku raamistikku. Rahvusvahelisel tasandil on inimkaubandus, sealhulgas elundite eemaldamine, kriminaliseeritud ÜRO Palermo protokolli alusel, mis on loonud inimkaubanduse definitsiooni, mille põhjal on elundite eemaldamine üks inimkaubanduse eksploateerimise vorme, ning on aluseks piirkondlikele ja riiklikele õigusaktidele. Euroopas on inimkaubandus kriminaliseeritud läbi Euroopa Nõukogu inimkaubanduse vastase konventsiooni (edaspidi ECAT), mis rõhutab inimõiguste kaitset ja sisaldab olulisi mehhanisme, nagu näiteks mittekaristamise põhimõtet (*non-punishment principle*). Konventsiooni korralikku rakendamist riiklikul tasandil jälgib ja toetab inimkaubanduse vastase tegevuse ekspertgrupp GRETA, mis on ECAT-i järelvalveorgan. Nagu mainitud, siis Aafrikas taoline regulatsioon puudub. Selle asemel tugineb regioon Palermo protokollile ning pehme õiguse instrumentidele, mis võib aga viia suurema varieeruvuseni riikide praktikas ja nõrgendada ohvrite kaitset.

Teine peatükk analüüsib ohvrite tuvastamise takistusi. Üheks peamiseks probleemiks on selge ja ühtse definitsiooni puudumine TIP for OR-i kohta. Kuna rahvusvahelised instrumendid ei täpsusta millal elundite eemaldamine muutub inimkaubanduseks, jääb see sageli riikide enda tõlgendada. Lisaks on probleemiks õigusraamistike ebajärjekindel materiaalne ulatus. Näiteks ei hõlma inimkaubanduse definitsioon kudede või rakkude eemaldamist, mis jätab sellise eksploateerimise regulatsiooni alt välja. Samuti keskenduvad paljud rahvusvahelised käsitlused peamiselt elundite eemaldamisele siirdamise eesmärgil, jättes kõrvale muud kontekstid nagu näiteks rituaalsed praktikad. Kolmandaks takistuseks on rahvusvaheliste normide ebaühtlane rakendamine riiklikul

tasandil. Näiteks ei pruugi kõik riigid käsitleda elundite eemaldamist inimkaubanduse vormina, vaid reguleerivad seda eraldi kuriteona. Selline lähenemine võib viia olukorrani, kus ohvreid ei tunnistata inimkaubanduse ohvritena ning neile ei kohaldata vastavaid kaitsemeetmeid.

Kolmas peatükk käsitleb pinget kriminaliseerimise ja ohvrite kaitse vahel. Organi müügi laialdane kriminaliseerimine võib viia selleni, et ohvreid käsitletakse kurjategijatena, mitte kaitset vajavate isikutena. Seda süvendab näilise nõusoleku probleem, kuna ohvrid võivad näida vabatahtlikult nõustuvat, kuigi nende otsus on kujunenud haavatava olukorra ärakasutamise tulemusena (*abuse of a position of vulnerability*). Kuna sellist ärakasutamist on keerulisem tuvastada kui otsest sundi, võib see jääda õiguskaitseorganitel märkamata. Sellest tulenevalt rõhutab töö inimõigustel põhineva lähenemise olulisust. See lähenemine eeldab, et inimkaubandust käsitletakse eeskätt inimõiguste rikkumisena, mitte üksnes kuriteona millele tuleb reageerida karistusõiguslike meetmetega. Inimõigustel põhinev lähenemine seab keskmesse ohvri ja tema õigused, sealhulgas õiguse tõhusale tuvastamisele ning kaitsele ja abile. Sellise lähenemise keskseks elemendiks on mittekaristamise põhimõte, mille kohaselt ei tohiks ohvreid karistada tegude eest, milleks nad olid inimkaubanduse raames sunnitud. Kuigi see põhimõte on rahvusvaheliste organisatsioonide poolt laialdaselt aktsepteeritud ning selgelt sätestatud ECAT-is, puudub see Palermo protokollis, luues seeläbi olulise lõnga ohvrite kaitstes. Samuti ei tohi ohvrite kaitse sõltuda nende koostööst õiguskaitseorganitega, aspekt mida praktikas sageli rikutakse.

Neljas peatükk keskendub TIP for OR-le rändekontekstis, kus risk ohvriks sattuda on eriti suur. Migrandid, pagulased ja varjupaigataotlejad on sageli haavatavad oma ebakindla õigusliku staatuse ja majandusliku olukorra tõttu. Üheks peamiseks probleemiks on ohvrite tuvastamine just ebaseaduslike immigrantide seas, kuna olles samaaegselt nii inimkaubanduse ohver kui ka immigratsiooniseaduse rikkuja, on neil n.ö kaks staatust. Probleem tekib peamiselt praktikas, kus õiguskaitseorganid näevad ebaseaduslikke immigrante esmalt kui kurjategijaid, jättes tahaplaanile nende võimaliku ohvrirolli. Selline lähenemine võib viia kinnipidamise või väljasaatmiseni, mistõttu jääb võimalik inimkaubanduse ohver tuvastamata ja ilma talle ettenähtud kaitse- ja abimeetmetest. Lisaks mõjutavad ohvrite tuvastamist ja kaitset negatiivsed narratiivid migratsiooni kohta, sealhulgas käsitus migratsioonist kui julgeolekuohust, mis võivad kallutada nii õiguskaitseorganite kui ka laiema avalikkuse hoiakuid. Selline suhtumine soodustab olukorda,

kus migrantide väiteid ohvriks langemise kohta ei võeta tõsiselt ning need jäetakse uurimata. Lisaks sellele võidakse neid ähvardada kinnipidamise või väljasaatmisega. See ei puuduta üksnes ebaseaduslike immigrante, vaid ka pagulasi ja varjupaigataotlejaid, arvestades organite müügi laialdast kriminaliseerimist. Lisaks probleemidele ohvrite tuvastamisel, esinevad märkimisväärsed puudujäägid ka ohvritele pakutavas abis, mis hõlmavad peamiselt piiratud juurdepääsu pikaajalisele meditsiinilisele abile, ebapiisavat tõlketeenuste kättesaadavust ning varjupaiga ja pikaajalise toe puudumist. Kõik need tegurid vähendavad ohvrite valmisolekut ennast tuvastada ning süvendavad nende haavatavust.

Kokkuvõttes näitab töö, et TIP for OR ohvrite ebapiisav tuvastamine ja kaitse ei tulene üksikutest puudustest, vaid mitme omavahel seotud struktuurse probleemi koosmõjust. Vastates esimesele uurimisküsimusele, ohvrite tuvastamist takistavad definitsiooniline ebaselgus, piiratud materiaalne ulatus ning ebaühtlane inimkaubanduse regulatsioonide rakendamine. Nende tegurite koosmõjul ei ole TIP for OR ühtselt mõistetud ja reguleeritud, mis viib kuriteo erineva kvalifitseerimiseni ning olukorrani, kus sarnaseid juhtumeid hinnatakse eri jurisdiktsioonides erinevalt. Selle tulemusena sõltub ohvrite tuvastamine riigiti erinevast praktikast ega ole järjepidev. Seoses teise küsimusega, kriminaliseerimine takistab ohvrite tuvastamist ja kaitset, sest see nihutab fookuse kuriteole, mitte ekspluateerimisele, mistõttu käsitletakse ohvreid sageli õigusrikkujatena. Riigid peaksid tasakaalustama inimõigustel põhinevat lähenemist ja kriminaalõiguslike eesmärgi, kuna need täiendavad üksteist ning aitavad tõhusalt võidelda TIP for OR vastu. Elundite müügi keelu kõrval tuleb tagada, et isikuid hinnatakse inimkaubanduse tunnuste alusel ning rakendatakse järjepidevalt inimõigustel põhinevat lähenemist, mis hõlmab mittekarakteristamise põhimõtet ja haavatava olukorra arvestamist kui nõusolekut välistavat tegurit.

Kolmanda küsimuse raames, isikute tuvastamist ja abistamist rändekontekstis takistavad nii praktilised kui õiguslikud puudujäägid. Praktikas käsitletakse ebaseaduslikke immigrante esmalt immigratsioonirikkujatena, mis koos hirmuga kinnipidamise või väljasaatmise ees vähendab nende valmisolekut ennast ohvrina tuvastada. Negatiivsed hoiakud nii ebaseaduslike immigrantide kui ka pagulaste ja varjupaigataotlejate suhtes viivad selleni, et nende väiteid ekspluateerimise kohta ei võeta tõsiselt või jäetakse uurimata, mistõttu võimalikud ohvrid jäävad tuvastamata. Õiguslikult süvendab probleemi see, et abi ei ole alati tagatud ega ühtlaselt kättesaadav ning võib

sõltuda isiku staatusest, piirates seeläbi ohvrite kaitset ja suurendades korduva eksploateerimise riski. Lähtuvalt eeltoodust kinnitab töö autori hüpoteesi, et TIP for OR ohvrite ebapiisav tuvastamine ja kaitse ei tulene rahvusvaheliste normide puudumisest, vaid nende ebaühtlasest tõlgendamisest ja rakendamisest riiklikul tasandil. Kuigi olemasolevad raamistikud loovad toimiva aluse, ei täida need oma kaitse-eesmärki ilma järjepideva ja ohvrikeskse rakendusega.

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