



## Organ Transplants From Living Donors (Kidneys) - Israel 2003

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This document deals with the subject of selling organs for transplant for economic reasons. We are speaking about people in difficult, even desperate, economic circumstances who want to solve their economic problems by selling a kidney to the highest bidder.

It must be noted that removing a kidney, even from a healthy person, presents certain dangers. This is an organ that does not restore itself, unlike blood or sperm. The donor, therefore, is left with a defect. For this reason one may deduce that *selling* a kidney is an act of that reflects despair and a sense of hopelessness. It is fundamentally different from contributing a kidney in order to save the life of a family member.

### Organ Transplants; Trafficking In Organs - The Recession and Its Consequences

In Israel there is a serious shortage of organs available for transplant. Over a thousand people a year are on the waiting lists for transplants. Over 600 of these suffer from serious kidney dysfunction and without a kidney donor they may die. Fifty people a year die waiting for transplants because there are not enough kidneys available. Several scores more replace them on the waiting list for donors. <sup>1</sup>

There was an increase of 15% in transplants from deceased donors in 2002. But the number of deceased donors in Israel is especially low (one fifth that of Europe). Israel does not receive organs from overseas. <sup>2</sup>

There are few alternatives available for those on the waiting list. For a price of tens of thousands of dollars one may purchase a kidney on the black market, from an organ merchant, for transplant in Israel or overseas.

A new aspect to this phenomenon is developing in Israel. The difficult economic situation is pushing more and more Israelis - especially single mothers - into selling one of their own kidneys in order to maintain themselves and their children. <sup>3</sup>

Rolli Ben David, a single mother and a member of the Jerusalem city council, asserts that she has created an organization responsible for dealing with this problem: "We received 15 inquiries a day from women around the country. It was frightening, but we directed two of them to TV channels 1 and 2 for a short interview as a cry to the powers that be to take notice of the situation. Parallel to this we began receiving inquiries from women who *needed* a kidney transplant. One incident made me understand how necessary an organization such as ours was. A single mother approached us after falling victim to an agent who wanted to buy her kidney for 7,000 dollars, which is highway robbery."

Newspapers have reported that recently a group of 50 people, mostly women, was established for the purpose of selling their organs in order to make a living. They meet periodically for discussions as a kind of support group. <sup>4</sup>

Israel has no law that forbids the trafficking in organs. Yet the trafficking and the transplants are done secretly in an ambiance of transgression. The ones that profit most are the agents who search out potential sellers and buyers and send them overseas to complete the deal.

The price of a kidney for a person who needs a transplant is 150,000 dollars. The payment to the donor is only 25,000 dollars. The agents finance the medical care of the donors as well as the recovery period.<sup>5</sup> Since there is no Israeli law forbidding trade in organs the crimes usually attributed to agents are: forging of documents, extortion and intimidation.

#### **Trafficking in organs takes place in the following way:**

1. Advertisements attract donors, particularly in the Russian language press.
2. Individuals who answer these ads are sent to a medical examination as well as to choose which organs are to be used for transplant purposes.
3. The "donors" are flown to Turkey for an operation to remove the organs.
4. In return for the organs the "donors" receive about 25,000 dollars.
5. The organs are transplanted into the recipients in Turkey, South Africa, Europe and the United States.<sup>6</sup>

#### **Organ Transplants In Israel and The World**

Organ transplants represent a new medical technology that has developed over the past 50 years. The aim is to replace dysfunctional with functional organs. The increased sophistication of transplant technology (especially over the past decade) has been matched by an increase in the demand for organs resulting in a growing shortage of organs for transplant.<sup>7</sup>

Israel has been performing organ transplants for close to 50 years. Kidney transplants have been performed from the middle of the 50's from both deceased and living donors. Most of the living donors have been immediate family members.

The kidney is a vital organ. Its task is to maintain fundamental acid balance, electrolyte balance, maintain bodily fluids and excrete various wastes that accumulate in the body. A dysfunctional kidney endangers life and requires dialysis treatment or a kidney transplant in order to avert death in a very short time.

Dialysis treatment requires regular contact - at least three times a week - with a hospital for several hours each time. It also entails dietary and travel limitations. Dialysis patients also have problems with fertility. More significant is the shortage of dialysis equipment.

When the kidney transplant era began transplants were considered a inferior alternative to dialysis. Today the life expectancy of a patient who has received a kidney from a deceased donor is the same as a patient being treated on dialysis. While the life expectancy of a patient who has received a kidney from a live donor exceeds that of a patient on dialysis. Most important is that a successful transplant brings with it a significant improvement in the quality of life in comparison to a dialysis patient, while a successful transplant from a live donor increases even more significantly the quality of life in comparison to that of a deceased donor. Successful transplants are also much cheaper than ongoing dialysis treatment. (see footnote 7)

In Israel the supply of donors from the deceased is much lower than what is standard in the world. Only 3.5% of Israel's population, 215,000 citizens, carry organ donor cards - the "Adi Card", that gives notice that this individual gives his permission to use his organs for transplant after his death. This compares to 15-30% of the population in other western countries.<sup>8</sup> Furthermore, it is the custom in Israel to also ask the permission of the family of the organ donor card carrier and not to depend on the agreement of the donor that is inherent in his carrying the card.

Israel's medical establishment has been searching for ways to enlarge the number of donors but has constantly opposed the trade in organs. They have proposed legislation and published position papers against this.<sup>9</sup>

But the Israeli Medical Association supports greater leniency in the granting of authorization

for live donors from non-immediate family members, as well as close friends.

The sale of organs as one of the solutions for the current critical shortage has been raised many times, but has always been rejected.

#### The Sale Of Organs From Living Donors - Legal Aspects In Israel and The World

The legal problematic of live organ donors relates to the legal authority of doctors to remove an organ from one individual and put it in another.

The anatomy and pathology law (1953) affirms that a doctor is permitted to perform an autopsy in order to determine the cause of death or in order to use part of the body to treat another human being, when three certified doctors authorize, by their signatures, this procedure (para. 6A). The exception to this rule is if the individual opposed such a procedure during his lifetime or if his family opposes it.

There is no existing Israeli law regarding live donors. Paragraph 34 of the Criminal Code (1977) grants indirect immunity to a doctor who removes an organ from a live donor and transplants it into another: "An individual will not bear criminal liability for an act he has performed and that has been legally agreed to, while giving medical care or treatment the aim of which is the welfare of the patient." This paragraph speaks about criminal liability but does not grant immunity against civil liability.

Judicial support for live donors and transplants is based upon judicial interpretation and regulations. According to the Health Ministry this support is only when the donor is from the immediate family of the patient.

Judicial decisions that examined various aspects of kidney transplants from live donors presumed that in principle transplants from live donors were permissible. The deliberations concentrated on volitional agreement in cases when the donor was a minor or perceived as incompetent. Supreme Court case 161/94, Eliahu Attari vs. the State of Israel, deliberated the claim of a homeless man without income and deep in debt who wanted to sell one of his kidneys. In his suit against the Health Ministry he demanded they formulate regulations enabling the sale of organs. In his response, Chief Justice Aaron Barak said it was preferable that such an issue be dealt with by way of legislation and not by way of regulation.

Israeli law has no provisions regarding whether parts of a living human being are property, and whether one may trade (buy and sell) in them. Yet current Israeli Judicial opinion disagrees with the notion that parts of a living human being may be treated as property that may be sold. In lieu of a written law one may relate to the question of sale of organs according to moral standards and check if the sales agreement contravenes the public good (the legal principle according to which agreements or contracts that are counter to the public good - for example an agreement to commit a crime - will be thought of as illegal and invalid).

Enlightened countries like the United States, England, Australia and countries in the European Union have laws relating to organ transplants and the prohibition against selling organs for transplant purposes. American law stresses that the transplanted organ is a gift (even though without comprehensive health insurance a transplant in the United States costs between 250,000 to 800,000 dollars, depending on the type of organ).

Australian law unambiguously forbids the sale of organs with a fine of 5,000 dollars for anyone who breaks the law. English law stresses that the sale or purchase of or speculation in organs is a criminal offense. Belgian law on the other hand does not mention any such prohibition. This is also true for most of the countries of South America.

#### **The Approach Of Jewish Law in Relation To Live Kidney Donors and the Sale and Transplantation of Kidneys**

Accepted opinion amongst religious scholars in recent years, since kidney transplants began,

is that an individual has no obligation to endanger his own life in order to save that of another: "Your life takes precedence over your friend". On the other hand the prohibition against risking one's life in order to save that of another pertains only in as much as the danger appears to outweigh the chance of success. When the chance of success appears to outweigh the danger it is permissible (but not obligatory) to make the donation.

Religious scholars have become convinced that the dangers in donating a kidney are small and so it is permitted. And while it is prohibited for individuals to injure themselves the good deed inherent in donating the kidney takes precedence over the prohibition against injuring oneself. There is, however, no obligation to make the contribution.

Jewish scholars have stressed that there is neither a global permission nor a global prohibition and that each case must be dealt with on its own merits. What is certain is that there is no authorization to endanger the life of the donor according to the rule "that the life of one must not be disadvantaged in favor of the life of another". Even those scholars that view the donation of a kidney as a good deed claim that one cannot pressure someone to perform that good deed, or punish him for not performing it.

Rabbi Shaul Yisraeli (1909-1995), one of the great religious jurists of past generations, viewed the contribution of a kidney as a great act of virtue and viewed as blessed any individual who can bring himself to make it.<sup>10</sup> In his opinion the Torah obligates us to do everything we can to save a human being in danger in accordance with the biblical injunction "do not stand aside when your neighbor is in danger" (Leviticus: Chapter 19, Verse 16)

In regards to a man having ownership over himself there are those who would claim that the life of a human being is the property of God alone and only a deposit given by God (that he can take back at any time) and that therefore a man has no ownership over his own body. But according to Rabbi Yisrael Lau - the former Chief Rabbi of Israel - who supports organ donations in order to save a life, a man has ownership of his organs in the same way as he has of his material goods, otherwise he would not be able to sell what is not his. A man has ownership of his body but not of his soul.<sup>11</sup>

Regarding payment for the organ donation, the question is why shouldn't a donor receive financial remuneration for his contribution? After all, the attending doctor receives payment for the good deed he is credited with!

According to Jewish Law (*Halacha*) a doctor is obligated to save lives, yet he is permitted to charge a fee for his services. If this is the case then a kidney donor who is not obligated to make his donation also is justified in receiving a fee. This is not similar to the good deed of returning a lost article to its rightful owner. This is a good deed that must be made voluntarily with no expectation or requirement of reward. A kidney donation is not a good deed of a similar kind, and therefore the donor is entitled to financial remuneration. Another argument for payment for a kidney is made in the name of *Tikkun Olam* (literally "repairing or saving the world"). Over 1,000 human beings are waiting for transplants and a suitable remuneration will be an incentive for people to donate and thus save the lives of others.

Rabbi Yisraeli disallows payment to an agent for a transaction of this sort, as this is the kind of effort that obligates everyone. In the Rabbi's opinion this prohibition will prevent the commercial trafficking in organs.<sup>12</sup>

What about the amount of payment? Since the donor puts himself in danger he may request any amount he so desires. This should not be seen as extortive or as an immoral request, since the donor experiences physical and sometimes even mental suffering. The *Halacha* determines that one who injures another is obligated to pay five kinds of compensation, for: injury, distress, medical care, inability to work and embarrassment (as a consequence of disfigurement). It would be appropriate, therefore, if payment to the organ donor was

determined according to these criteria.

According to Rabbi Dr. Mordechai Halperin there is no *Halachic* source, not in the Torah and not in the rulings of the Sages, that forbids receiving remuneration for contributing a kidney.<sup>13</sup> Therefore, as long as there is no valid ruling about the issue, Jewish Law cannot be used to prohibit a kidney donation for remuneration in order to improve the quality of life of the recipient and to lengthen his life. However, there may be a number of reasons to limit permission to sell organs, some of which are based upon Jewish law and some of which are based upon Israeli law ("Patients Rights Law", "The People's Health Regulations" and "Contract Law-Not of Right Mind"):

- 1) Ruling to prevent the exploitation of the poor by the rich. Some claim that there may be a place for a ruling of Sages that restricts the Torah regarding the principle of preventing the exploitation of the bodies of the poor by the rich. But tradition has determined that such rulings are the prerogative of Talmudic Sages only. Because of this, today we do not have the means to make new determinations. The only authorities we have are present day religious jurists who have not yet taken it upon themselves to challenge this tradition.
- 2) Fear of making a mistake regarding the conscious agreement of the donor as to the possible consequences of the operation. Some claim that according to the national health regulations of Israeli law the patient must sign a release approving of his operation. The doctor that explained the ramifications of the operation must also sign a statement affirming that he explained these ramifications to the patient and that the patient signed his approval in his presence after everything was explained in detail and that the patient completely understood everything. This procedure is not always followed in reality, but usually in regards to operations that are for the good of the patient. Concerning the issue at hand we are speaking about a healthy person who is consenting to have a kidney removed. Therefore, it goes without saying that he must receive a detailed explanation about the dangers to himself and the chances for the recipient. We must enable, to the best of our ability, the patient to truly understand and agree of his own free will. The donation must not be stained by error, especially if we permit reimbursement according to Jewish law.
- 3) The person not being in his right mind, which is a precondition to the validity of the agreement. The issue of "right mind" is the precondition to the validity of any sales agreement. When an individual sells a kidney because of severe economic problems one may perceive this as a forced agreement and not a real agreement and thus there can be no real "right mind". Payment for the organ does not create "right mind" unless the seller receives the full price immediately. If there is not full and immediate compensation that constitutes a full replacement to the kidney then the donor is the immediate loser and his legal status is similar to one who has been coerced into giving a gift. This fear requires regulation of organ donations for money. This regulation will be supervision and selective authorization on a case-by-case basis.

### Legislation - Proposed Bills

MK Zahava Gal-On has presented a Bill to prevent trafficking in organs.<sup>14</sup> The Bill - placed on the Knesset Table on 7/7/2003 - prohibits the sale of organs, claiming that someone who sells an organ from his own body does so because of difficult economic problems and not of his own free will, since the act negates individual freedom.

On the other hand a Bill to encourage organ donations was presented in the previous Knesset by MKs Azmi Bishara and Anat Maor (along with other MKs).<sup>15</sup> The aim of this Bill is to create a governmental framework and to initiate activities to encourage organ donations for purposes of transplant. The Bill affirms that the "Adi Card" constitutes the carrier's agreement to donate his organs, and the doctor or medical institution has no need of further agreement from the deceased donor's family, as long as he has signed the "Adi Card". The carrier of an "Adi Card" will be granted special privileges such as: preferential place on the waiting list for transplants (if needed) and a 25% discount on health insurance payments for three years. The immediate family of the deceased donor will also be given preferential place on the waiting list for transplants (if needed) as well as a 50% discount on health insurance payments for a period of three years from the date of the donation.

The Bill recommends that it be the responsibility of the doctor who determined the time of death to report this to the transplant coordinator in the hospital in order to confirm if it is permitted to remove the deceased's organs (by verifying if his name appears on the national donors list or if his family agrees).

The Bill proposes the establishment of a national center for transplants that will deal with

everything having to do with organ transplants in Israel. The Bill would prohibit the donor from demanding or receiving any kind of payment for the transplant. The doctor or the hospital will not perform a transplant until they have confirmed that the donor has given his written agreement and has declared that he has given this agreement by his own free will and without any remuneration. The Bill also proposes that all the electronic media be required by law to transmit service announcements promoting the importance of organ donations after death in order to save lives and to encourage people to sign the "Adi Card".

An additional Bill has been proposed by the Health Ministry (the "Organ Transplant Bill" - 2003) and presented to the Ministerial Committee for Legislation.<sup>16</sup> The proposal allows for financial damages to the donor for expenses incurred as a consequence of his donation and determines that trafficking and brokering in organs is a crime punishable by imprisonment. The Bill encourages organ donations by assuring compensation to the donor for lost workdays, sick leave etc., as well as covering any possible expenses. Compensation will be paid by the State by way of the National Center for Organ Transplants, the status of which will be secured by this new law, and is obtainable by every kidney donor, including a donor from the immediate family.

The Bill determines a series of administrative steps against medical centers that violate the specifics of this law, and determines that the right to receive compensation is dependent on the donor being a resident of Israel. This obstructs the activities of various kinds of brokers who operate on an international level with the aim of bringing organs to Israel in an unlawful way.

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<sup>1</sup> "Shortage of Organs", Ha'aretz, June 20, 2003

<sup>2</sup> Haim Shedmi "15% Increase in Transplants from Deceased Donors", Ha'aretz

<sup>3</sup> Ruti Zoaretz "Kidneys for Sale", Yediot Ahronot, March 5, 2003

<sup>4</sup> Billi Besserglick "Sell a Kidney in Order to Feed the Children, Yediot Ahronot, August 20, 2003

<sup>5</sup> Nava Buki "The Organ Market", Yediot Ahronot, June 18, 2003

<sup>6</sup> Roni Singer "The Police Uncover Organ Transplant Trafficking Ring" Ha'Aretz , June 18, 2003

<sup>7</sup> Hava Tubenkin "Issues of Selling an Organ from a Live Donor for Purposes of Transplant According to Jewish Law and Israeli Law", Assia November. 1999 Vol.63-64

<sup>8</sup> Internet site of Health Ministry - National Center for Transplants and Adi  
[http://www.health.gov.il/transplant/about\\_adi.htm](http://www.health.gov.il/transplant/about_adi.htm)

<sup>9</sup> Tubenkin

<sup>10</sup> Rabbi Shaul Yisraeli. "Organ Donations from Living Donors: Danger to the Donor and Receipt of Payment". Questions and Answers, Assia, Vol. 15, No. 57-58, 1997

<sup>11</sup> Tubenkin

<sup>12</sup> Rabbi Shaul Yisraeli

<sup>13</sup> Mordechai Halperin. "Extracting an Organ (for Transplant) from a Live Donor - *Halachic* Aspects", Assia. Vol.12, No. 45-46, 1989

<sup>14</sup> Bill to Forbid Trafficking in Organs, 2003:  
<http://www.knesset.gov.il/privatelaw/data/16/1098.rtf>

<sup>15</sup> Bill to Encourage Organ Donations, 2000:  
[http://www.knesset.gov.il/privatelaw/plaw\\_display.asp](http://www.knesset.gov.il/privatelaw/plaw_display.asp)

<sup>16</sup> Announced by Robi Steinberg, spokesman for the Health Ministry on June 8, 2003  
[www.health.gov.il/news/news.asp?ID=113](http://www.health.gov.il/news/news.asp?ID=113)



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