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SCIENTIFIC CONTRIBUTION

The declaration of Istanbul in the Philippines: success with foreigners but a continuing challenge for local transplant tourism

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Abstract The Philippine government officially responded to the Declaration of Istanbul on Organ Trafficking and the related WHO Guidelines on organ transplantation by prohibiting all transplants to foreigners using Filipino organs. However, local tourists have escaped the regulatory radar, leaving a very wide gap in efforts against human trafficking and transplant tourism. Authorities need to deal with the situation seriously, at a minimum, by issuing clear procedures for verifying declarations of kinship or emotional bonds between donors and recipients. Foreigners who come to the country for transplants with same-nationality donors constitute a problem that is replicated in many transplant centers around the world. Also, emotionally related living donors continue to pose challenges for ethics committees, especially because of the realities associated with the existence of extended families. Those who find themselves facing these issues need to be armed with clear protocols for going through the process of verifying documents and individual declarations assiduously. There is also a need for international referral mechanisms at least to ensure that governments are aware when their citizens travel for transplant so they can take steps they consider suitable to address the vulnerabilities of exploited persons.

Keywords Istanbul declaration · Organ transplant · Transplantation · Philippines · Transplantation Philippines · Compensation for organ donors · Organ trafficking · Human trafficking · Trafficking · WHO transplant guidelines · Transplantation ethics · Organ transplant ethics

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The official response of the Philippine government to the Declaration of Istanbul and the WHO Guidelines has been clear, unambiguous, and documented. Issued in 2009, Section 53 of "The Rules and Regulations Implementing the Anti-Trafficking in Persons Act of 2003" (IRR 9208) expressly states that it is an act of trafficking in persons punishable by imprisonment of 20 years and a fine of not less than one million pesos (P1,000,000.00) but not more than two million pesos (P2,000,000.00) "to recruit, hire, adopt, transport or abduct a person", by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person. Thus, the Implementing Rules and Regulations provided teeth to the prohibition contained in Administrative Order 2008-0004-A (AO 2008-0004-A) by the Secretary of Health unequivocally declaring: "foreigners are not eligible to receive organs from Filipino living non-related donors." The Order also expressly states among its General Policy Statements that "3. Payment as precondition for kidney donation and sale or purchase of kidneys by kidney donors/commercial vendors are strictly prohibited." In addition, the Order clearly says: "7. Directed [Living Non-Related Donations] … are permitted only when it (sic) is voluntary and truly altruistic, without any kind of compensation or gratuity package attached to it."

Dated 29 May 2008, the order came after the attention of the President of the Philippines and the country's Secretary of Health were drawn to the content of the Declaration of Istanbul and the Guidelines of the World Health Organization pertaining to transplant tourism.

Exemptions and packaged deals

Notwithstanding the very clear language of AO 2008-0004-A, it was obvious that lobby groups were putting pressure on the Department of Health to ease the ban. Shortly after the ban took effect, the Department of Health issued exemptions for some foreign patients to undergo kidney transplants in the Philippines for reportedly "humanitarian reasons" (Anon 2008a). These exemptions were significant in that there were applications supported by endorsements from foreign diplomatic officers. Some requests also bore certifications from diplomatic officials that the recipients and donors were related (Anon 2010a). It was quite obvious that some diplomatic officials were being co-opted in the effort to bring patients to the Philippines for transplant (Turner 2009, 193). During the period leading to the ban on transplants to foreigners, a local transplant surgeon was known to have formally communicated with foreign diplomatic officials about developments and advised them to inform "patients who are scheduled to come to Manila about the situation." Such a letter could be understood in the context of observations about packaged deals (Turner 2009, 192). Under such arrangements physicians received payment for the whole package and were themselves responsible for paying the hospital as well as any related costs. As many patients were coming to the Philippines unaccompanied by organ donors and were mostly unacquainted with possible donors before arriving in the country, the physicians assumed responsibility for finding matching organ donors.

This arrangement was ethically questionable because physicians were not in a position to find organ donors who were truly related to the recipients. Moreover, they faced a conflict of interest in that the possibility of their earning professional fees for the transplant would have depended on their ability successfully to recruit organ donors. The motivation to recruit possible organ donors could have interfered with their judgment in getting the informed consent of donors. A study of 311 compensated organ donors in the Philippines in 2007 reported that 24 % of the respondents received the monetary compensation directly from the doctors themselves (Awaya et al. 2009). The existence of packaged arrangements also signified a lack of respect for the prospective organ donors as they were regarded as tools ready to be picked for service when needed.

Pre-Istanbul transplants to foreigners

Before the 2008 ban, there was an effort to control the influx of transplant tourists by setting a 10-percent limit on foreigners receiving Filipino kidneys. Efforts by the National Transplant Ethics Committee to enforce the regulation were successful at the National Kidney and Transplant Institute but the limit was grossly violated in several hospitals (Anon 2010b). In a few hospitals the patients receiving transplanted kidneys from Filipinos were mostly foreigners.

In 2007, the Philippine Renal Registry listed a total of 1,046 kidney transplants conducted in the Philippines, compared to 690 in 2006. More than 50 % of the recipients in 2007 were foreigners and more than 80 % of the donors were not related to the recipients (Anon 2008a). From 2002 to 2007, the number of living non-related donations increased from 157 to 844 whereas the number of donations from living relatives increased only slightly from 138 to 173. Cadaveric donations increased only from 10 to 29. Remarkably, transplants to foreigners during the same period increased from 40 to 528, whereas the number of transplants to Filipinos increased only from 256 to 510. A study of 131 kidney vendors between 1999 and 2007 found that "85.2–93.2 % of vendors were unrelated in any way to the recipients. Furthermore, between 56.3 and 64.3 % of the surveyed vendors indicated that their kidney buyers were of foreign descent" (Mendoza 2010). It was obvious that the country had become a transplant tourism destination and foreign patients were coming to the country to be matched with living non-related donors.

Impact of the declaration of Istanbul

One sees in these statistics the magnitude of the problem that the country was able to address successfully by imposing the ban on transplants to foreigners. There is reason to believe that the ban has been effective (Quiros 2011). A clear indication of the success is the folding up of one of the local foundations that used to recruit living unrelated transplant donors. Called Life for Life, the foundation ensured that donors had proper pre- and post-transplant care as well as stable economic support until they were able to sustain their livelihood programs. Life for Life was highly successful in its objectives. However, the beneficiaries of its assistance program were organ donors for foreigners. Now that the ban on transplants to foreigners has been implemented, the foundation has lost its reason for being and closed shop. Living unrelated transplants to foreigners fell to 3 in 2009, 2 in 2010 and 2 in 2011 (Philippine Renal Disease Registry 2009, 2010, 2011).

It is also an indication of the impact of the program that the public has been vocal in opposing calls for its review. When it was known that the Philippine Board for Organ Donation and Transplantation had exempted some foreigners from the ban at the start of the period of implementation, the Philippine society of Nephrology issued a

warning that the exemption was setting a bad precedent. Moreover, Social Welfare Secretary Esperanza Cabral, herself a physician, chided health officials for "allowing the foreigners to again prey on poor Filipinos" (Anon 2008b).

Local transplant tourism

Of the 510 Filipino patients who were transplanted in 2007, 170 got their kidneys from living related donors, 27 from deceased donors and 313 from living non-related donors. The numbers indicate that the burden of undertaking risks in organ donation lies more with non-relatives than with relatives. The situation has not improved since then. While foreigners have been stopped from coming to the Philippines, Filipinos have kept coming to Manila for transplants—some to be transplant recipients but many also to be transplant donors. The latter group continues to provide problems relating to human trafficking and exploitation. Accounts of misrepresentation, monetary compensation, coercion and illegal detention have not diminished (Chan 2008; Bagayaua 2009; Mendoza 2010, 262; Padilla 2009, 123).

While authorities appear to have tightened up enough on foreign patients, local tourists appear to have escaped the regulatory radar. This has left a very wide gap in efforts against human trafficking and transplant tourism. Authorities need to address the problem since the harm resulting from transplant tourism within national boundaries can be even more harmful and exploitative than international transplant tourism.

Lingering issues and recommendations

Foreigners who come to the country for transplants with same-nationality donors constitute a problem that is replicated in many transplant centers around the world. As these centers make their services available and attractive to patients coming from different places, they face difficulties, for example in verifying claims that recipients and donors are truly related. This would appear to be merely a matter of documentary verification but in light of the experience with foreign donors who were able to present fraudulent certifications that escaped the critical eyes of diplomatic officials, this path no longer inspires confidence (Anon 2010a). Verification takes time and if authorities are keen on proper screening of documents, it seems that it is necessary to have clear protocols and timetables for going through the process assiduously. The alternatives are to reject the patient outright, or to accept documents presented without benefit of thorough verification, neither of which will be acceptable to all.

Another problem with foreign recipient-donor pairs lies in ensuring the quality of post transplant care, particularly for the donor. Paid organ donors have been treated shabbily for various reasons in their own countries after transplant (Awaya et al. 2009; Budiani 2006; Goyal et al. 2002; Zargooshi 2001a, b). Care can be expected to get even worse when they have the donor nephrectomy in another country. They would be out of the view of the health care system when they go back to their respective countries. Perhaps there need to be international referral mechanisms at least to ensure that their own governments are aware of the situation and would be in a position to take steps they consider suitable.

Expatriate Filipinos coming back to the Philippines have also presented some issues. Having acquired citizenship in another country, they find a need to come back to the Philippines for organ transplants with the expectation that they will be treated like ordinary Filipinos, especially in the matter of access to local organ donors. Although some of them do have close relatives whom they could count on, others only have distant relatives with whom they may not have been in touch for many years. When the relationships are close, documentary evidence should not be difficult to verify. When the ties are not too close or when the appeal is to emotional relationships, verification becomes a major problem.

In general, emotionally related living donors have posed challenges for ethics committees. One reason is that families in the Philippines are very often extended. Moreover, extended families often live together in the same house or cluster of houses in the same compound. People recognize family helpers, distant relatives and close friends as part of the family that they should feel responsible for or that they could count on for various kinds of assistance. This interdependence extends to their socio-economic ties. It is not surprising that many people see themselves as being closely related for various types of reasons that go beyond their genetic origins. In this kind of setting, Filipinos will even be surprised if they will not be permitted to donate kidneys to people within their extended family.

While these bonds need to be respected, there must be a serious effort to confirm that the poor and vulnerable among the recipient-donor pairs are not being wrongly exploited. It is important that national authorities provide guidance to transplant ethics committees by way of specific and clear protocols for verification and decision-making in addition to the ethics guidelines promulgated by the National Transplant Ethics Committee. Otherwise, syndicates can continue to invoke false relationships in order to perpetrate human trafficking for transplant purposes.

Philippine authorities have taken the step of requiring all hospitals to have institutional transplant ethics committees if they are to perform organ transplants. These committees receive guidance from the National Transplant Ethics Committee but they need to be more adequately equipped to deal

with the nuances of non-related organ transplants. In the first place, they should be so structured as to be able to make decisions autonomously and not be subjected to coercion by hospital authorities in case the latter are driven primarily by the prospect of commercial gain. The autonomy needs to be enhanced by ensuring that cases are referred early enough so that members can have sufficient time for discussion rather than be rushed into making haphazard decisions. It is also suggested that clear and standard protocols for the verification of relationships between donors and prospective recipients be formulated by authorities with the help of legal and social science experts. Transplant ethics committees face hurdles in implementing their mandate strictly and consistently because of the failure of donors or recipients to produce documents, because of disagreements among committee members regarding the documents and procedures that need to be required, or because of confusion regarding the verification of documents presented. There are also uncertainties regarding the verification or interpretation of assertions made by witnesses. Without a clear guidance regarding the significance of specific documents or of other evidence presented, and not having been trained in legal nuances, many members of transplant ethics committees can easily fall prey to manipulators intent on making commercial gain out of organ transplants.

The asymmetry in emotional interdependencies between donors and recipients has been another major problem. The asymmetry is associated with injustices in that the less fortunate among the relatives find themselves having to donate organs and the more economically fortunate emerge as organ recipients. It is not easy to offer solutions to this asymmetry, which is to be found in society more broadly and affects other transactions or areas of interdependence. In this regard, specific guidance should be provided regarding the nature and elements of relationships that render donations exploitative and unacceptable. Such guidance is important in order to minimize room for discretion that can be utilized to promote commercial ends rather than the protection of vulnerable donors. Meanwhile, a general effort to make organ transplantation available to the economically deprived should be a good step and it is heartwarming to note the recent announcement that the Philippine Health Insurance System has approved the grant of substantial subsidies for organ transplantation (Santos 2012). This is an important step that helps to boost the Filipino people's confidence in the ethical thrust of their health care system.

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