
Organ Trafficking in Nigeria and South Africa: Pertinence of Urgent Regulation.

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Abstract

Organ trafficking is the dark side of human transplant that started as a life-saving-and-extending innovation in medical science. Globally and nationally, laws have been made to regulate human transplant to ensure all the parties involved are protected and regulated. Despite the existence of these laws, organ trafficking has become a cancerous menace stripping the poor of their sensitive body organs and empowering evil cartels that act as middlemen for those that buy and sell human organs for transplant purposes. The present paper x-rays the legal regulation of organ trafficking globally, with particular focus on Nigeria and South Africa. The flaws of the legal frameworks in Nigeria and South Africa are also examined. The paper is concluded with recommendations that include setting up a 'taskforce' to tackle organ trafficking globally, and in Nigeria and South Africa, in particular.

1.0. Introduction

Human organ transplant is one of the not too recent miracles of medical science that extend the life of recipients that get good matches for the body organs needed from voluntary donors. Several legal and ethical issues come up before, during and after human transplants, and laws have been made to regulate the procedures and the parties involved. Such legal and ethical issues include organ trafficking, confidentiality, and informed consent. The focus of the present research is organ trafficking, the legal regulation of same globally, with a thrust on Nigeria and South Africa.

2.0. Conceptual Clarification

2.1. Organ

'Organ' is a collection of tissues that structurally form a functional unit specialized to perform a particular function.^[liv] Also, 'organ' is a differentiated structure - such as the heart or kidney, consisting of cells and tissues; performing some specific function in an organism, bodily parts performing a function or cooperating in an activity.^[liv] Examples of organs include the eyes, ears, heart, lungs, and liver.^[liv]

2.2. Tissue

Scientifically, '**tissue**' means a level of organization in multi-cellular organisms; it consists of a group of structurally and functionally similar cells and their intercellular material.^[liv] 'Tissue' has also been defined to include flesh, bone, a gland, an organ, skin, bone marrow or body fluid, but excludes blood or a gamete.^[liv]

2.3. Transplant

'**Transplant**' is a medical procedure whereby a section of tissue or a complete organ is removed from its original natural site and transferred to a new position in the same person or in a separate individual.^[liv] Transplant basically involves transferring an organ, tissue or cells from one person (donor) to another (recipient).^[liv] Transplant could be from a dead person^[liv] or from a living person.^[liv]

2.4. Donor

A donor is a person who gives blood, cells, tissue, or an organ for use in another person, such as in a blood transfusion or an organ transplant.^[liv] Again, an organ

donor is a person who gives permission for a part of his/her body to be taken, while they are alive or after they are dead, to be put into someone else's body to replace an organ that is not working correctly.^[liv]

2.5. Recipient

A recipient is a person who receives blood, cells, tissue, or an organ from another person, such as in a blood transfusion or an organ transplant.^[liv] Additionally, a recipient, for transplant purposes, is someone who is given something, such as a blood transfusion or an organ transplant, that is derived from another person (the donor).^[liv] In essence, one can safely assert that a recipient, in the context of a transplant, is one who receives organ(s)/tissue(s) from another (a donor) for transplant purpose.

2.6. Organ Donation, Tissue Donation

Organ donation is the donation of biological tissue or any organ of the human body, by a living or dead person to a living recipient in need of a transplantation. Transplantable organs and tissues are removed in a surgical procedure following a determination, based on the donor's medical and social history, of which are suitable for transplantation.^[liv]

Organ donation has been further defined as a life-saving and life-transforming medical process where organs are removed from a donor and transplanted into someone who is very ill or dying from organ failure. It can involve the kidneys, lungs, heart, liver, and pancreas.^[liv]

Tissue donation is a medical process where a tissue, such as heart valves, bone tissue, skin, ligaments, parts of the eye and pancreas tissue, is removed from a donor and transplanted into another person.^[liv] Furthermore, tissue donation happens when a tissue from a donor's body is removed and transplanted into the recipient.

2.7. Organ Harvesting

Organ harvesting has been medically defined as the procedure of removing tissues, organs, or specimens from donors for reuse, such as transplantation.^[liv]

Organ harvesting has been described as 'killing on demand', which is the selling and transplanting of the organs of victims.^[liv] This definition, respectfully, seems extreme. Forced organ harvesting is the illegal practice of surgically removing a victim's organs against their will.^[liv] This is done through any of the following ways –^[liv]

- a. Victims are kidnapped and have an organ forcefully removed.
- b. Victims are tricked into believing they require an operation and whilst under anesthetics have an organ removed, without knowledge or consent.
- c. Human traffickers are known to offer safe passage in return for an organ.
- d. Many victims of forced organ harvesting have previously been exploited through human trafficking and other forms of slavery.
- e. Other victims are murdered on demand and have their organs removed to fulfil an order.

2.8. Organ Trafficking

Organ trafficking is the recruitment, transport, transfer, harboring or receipt of a living or deceased person's organs by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of organs for transplantation.^[liv]

Again, organ trafficking is seen as the practice of stealing or buying organs through exploitation to be sold on a black market for profit, and transplant tourism is travelling to another country for the purpose of buying, selling, or receiving organs.^[liv] Lucidly, organ trafficking is the practice of using exploitation, coercion, or fraud to steal or illegally purchase or sell organs.^[liv] Internationally, organ trafficking has been exposed as one of the most covert forms of human trafficking.^[liv]

3.0. The Statutory Basis for the Regulation of Organ Trafficking in Nigeria

In Nigeria, the specific laws regulating organ trafficking are the National Health Act and the Trafficking in Persons (Prohibition and Enforcement) Act.

3.1. National Health Act, 2014

Chapter 8 of the National Health Act^[liv] is the Chapter focused on human transplants in Nigeria. By the provisions of Section 48 of the NHA, the removal of tissue, blood or blood product from the body of another living person for any purpose is prohibited except in compliance with the following conditions:^[liv]

1. The informed consent of the person from whom the tissue, blood or blood product is removed granted in the prescribed manner; or consent is waived for medical investigations and treatment in emergency case; and
2. In accordance with prescribed protocols by the appropriate authority.

The NHA prohibits the removal of tissues that are non-replaceable by natural process from persons below 18 years of age in Nigeria.^[liv]

Contravention of the provisions of Section 48 of the NHA attracts the following punishment:

- a. Where tissue is involved, a fine of #1,000,000 or imprisonment of not less than two years or both fine and imprisonment.
- b. Where blood or blood products are involved, a fine of #100,000 or imprisonment for a term not exceeding one year or both fine and imprisonment.

To successfully and legally remove any tissue from any person for transplant purposes, the following conditions must be complied with –^[liv]

1. such removal must be carried out in a hospital authorised for that purpose; and clinical services in that hospital or any other medical practitioner authorised by him or her; or

- b. a medical practitioner authorised thereto by the person in charge of the hospital – where there is no medical practitioner in charge of the clinical services at that hospital.^[liv]

Aptly, the NHA specifies that it is a registered medical practitioner or dentist who may remove any tissue from a living person, use tissue so removed for any of the purposes stated in the NHA or transplant tissue so removed into another living person.^[liv] Furthermore, only a registered medical practitioner or dentist, or a person acting under the supervision or on the instructions of a medical practitioner or dentist, may administer blood or a blood product to, or prescribe blood or a blood product for, a living person.^[liv]

Of particular relevance to organ trafficking is Section 53 (1) and (2) of the NHA which prohibits financial or other reward for organ donation. It provides as follows:

It is an offence for a person:

- (a) who has donated tissue, blood or a blood product to receive any form of financial or other reward for such donation, except for the reimbursement of reasonable costs incurred by him or her to provide such donation; and
 - (b) to sell or trade in tissue, blood, blood products except for reasonable payments made in appropriate health establishment for the procurement of tissues, blood or blood products.
- (2) A person who contravenes under subsection (1) of this section commits an offence and is liable on conviction to a fine of N100,000 or to imprisonment for a period not exceeding one year or to both.

From the foregoing, organ trafficking is a criminal offence punishable with the payment of fine of #100,000.00, imprisonment not exceeding one year or both. An escape is provided for likely defaulters where an exception is made for the reimbursement of reasonable costs incurred by a donor to make such donation.

A handsomely compensated donor could claim that whatever is being paid represents reasonable costs to cover recovery. Again, given the current economic situation and how worthless the Naira is against US dollars, British pounds and the Euro, even two million Naira being paid to a donor may not sufficiently cover a donor's 'reasonable costs' for recovery from such organ donation.

3.2. Trafficking in Persons (Prohibition and Enforcement) Act, 2015

The Trafficking in Persons (Prohibition) Enforcement and Administration Act^[liv] establishes National Agency for the Prohibition of Trafficking in persons and vests several functions on it which include :^[liv]

1. Enforcement and administration of the provisions of TIPPEA.
2. Investigate all cases of trafficking in persons, including forced labour, child labour, forced prostitution, exploitative labour and other forms of exploitation, slavery and slavery activities, bonded labour, removal of organs, illegal smuggling of migrants, sale and purchase of persons.
3. Create public enlightenment and awareness through seminars, workshops, publications, radio and television programmes and other means aimed at educating the public on the dangers of trafficking in persons.
4. Strengthen cooperation and conduct joint operations with relevant law enforcement and security agencies, international authorities and other relevant partners in the eradication of trafficking persons.

Of particular relevance to the present research is Section 5 (e) which empowers NAPTIP to investigate all cases of trafficking in persons including removal of organs.

Section 6 of TIPPEA empowers NAPTIP to do the following :

1. investigate whether any person, body or entity has committed an offence under the TIPPEA or the offence of trafficking under any other law;
2. enter into any premises, property or conveyance for the purpose of conducting searches in furtherance of its functions under the TIPPEA or under any other law ;
3. arrest, detain and prosecute offenders under this Act or any other law on trafficking in persons in Nigeria; trace, seize, detain or retain the custody, for the purpose of investigation and prosecution, of a property which NAPTIP reasonably believes to have been involved in or used in the commission of offences under the TIPPEA or any other law;
4. seal up premises upon reasonable suspicion of such premises being involved with or used in connect with offences under the TIPPEA;
5. seek and receive information from any person, authority, corporation or company without hindrance respect of the enforcement of any of the provisions of the TIPPEA.

Apparently, by the foregoing, NAPTIP is empowered to carry out investigation on, arrest and prosecution of, any person involved and suspected to be involved in human trafficking for the purpose of the removal of human organs.

Section 20 (1) and (2) of the TIPPEA clearly prohibits the procurement or recruitment of persons for the purposes of organ harvesting. It provides as follows:

1. Any person who:

(a) through force, deception, threat, debt bondage or any form of coercion—

(i) abuses a position of power or situation of dominance or authority arising from a given circumstance; or

- (ii) abuses a vulnerable situation; or
 - (b) through the giving or receiving of payments or benefits in order to induce or obtain the consent of a person directly or through another person who has control over him; enlists, transport delivers, accommodates or takes in another person for the purpose of removing the person organs, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and a fine of not less than N5, 000,000.00
- (2) Without prejudice to the provisions of subsection (1) of this Section, a person who procures or offers a person, assists or is involved in any way:
 - (a) in the removal of human organs; or
 - (b) buying and selling of human organs, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and to a fine of not less than N 5,000,000.
- (3) Any person who enlists, transports, delivers, accommodates or takes in another person under the age of 18 years for the purpose of removing the person's organs, commits an offence and is liable to conviction to imprisonment for a term of not less than 7 years and a fine of not less than 5,000,000.00.

Sadly, health personnel in Nigeria have observed that organ trafficking is a thriving business in Nigeria without strict regulation by the government.^[liv] Brazenly, individuals, voluntarily go to hospitals, offering their vital organs for sale in expectation of financial gratification.^[liv] About two years ago, a former Nigerian lawmaker, Senator Ike Ekwereamadu, was convicted with his wife and their personal doctor for taking a young man from Nigeria to the UK for the

purpose of organ harvesting.^[liv] Shockingly, the said lawmaker was part of the enactment of the TIPPEA that prohibits organ trafficking in Nigeria, yet he travelled to UK to be convicted for the same offence under the relevant UK laws.

By the provisions of 36 of the TIPPEA, NAPTIP can prosecute violators of the TIPPEA at the High Court.

In the last quarter of 2017, the Director-General of NAPTIP, Julie Okah-Donli, announced the readiness of NAPTIP to meaningfully investigate increasing and widespread allegations of organ harvesting throughout the country.^[liv]

In September, 2023, one Noah Kekere and several others were arrested and charged to court on grounds of organ harvesting by the said Noah Kekere who held himself out as a medical doctor in Jos.^[liv] Impressively, NAPTIP got involved and did independent investigation to get to the root of the matter.^[liv] NAPTIP's inquiry showed that Noah Kekere was unlawfully practising as a physician as he was disowned by the Nigerian Medical Association in Plateau State as an impersonator.

4.0. Global Legal Regulation of Organ Trafficking

For decades, several international instruments have been in existence streamlining national laws regulating the legal and ethical aspects of human transplants. These instruments majorly consist of resolutions and guidelines. Some of the major international instruments with provisions on organ trafficking are listed below.

4.1. World Health Organization Guiding Principles on Human Cell, Tissue and Organ Transplantation

With the advancement and success stories trailing human transplants, the World Health Organization got concerned about the proper legal regulation of transplant processes globally – to address the legal and ethical issues arising therein.

The extant World Health Organization Guiding Principles on Human Cell, Tissue and Organ Transplantation^[liv] was endorsed by the sixty-third World Health Assembly in May 2010, in Resolution WHA63.22. The provisions on

organ trafficking are found in Guideline 5 which provides as follows –

Cells, tissues and organs should only be donated freely, without any monetary payment or other reward of monetary value. Purchasing, or offering to purchase, cells, tissues or organs for transplantation, or their sale by living persons or by the next of kin for deceased persons, should be banned. The prohibition on sale or purchase of cells, tissues and organs does not preclude reimbursing reasonable and verifiable expenses incurred by the donor, including loss of income, or paying the costs of recovering, processing, preserving and supplying human cells, tissues or organs for transplantation.

The above provisions of Guideline 5 are clear on the prohibition monetary payment or other reward of monetary value for an organ donor. Also, purchasing or offering to purchase human cells, organs or tissues have been recommended to be banned.

4.2. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime

The rationale for this Protocol is seen in Article 2 (a)–(c) of the Protocol which provides as follows :

- a. To prevent and combat trafficking in persons, paying particular attention to women and children;
- b. To protect and assist the victims of such trafficking, with full respect for their human rights; and
- c. To promote cooperation among States Parties in order to meet those objectives.

In Article 3 of the Protocol, the word 'trafficking' is defined to incorporate organ trafficking.

Vide the UN resolution titled, “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,” Member States of the UN are obligated to prevent and combat organ trafficking, in line with their obligations under international and national law, and to uphold accountability. Also, Member States have a duty of strengthening legislative frameworks, adopt laws necessary to guarantee that the donation of organs was guided by clinical criteria and ethical norms and ensure equitable access to human organ transplantation based on non-discrimination. Sadly, as at 2020, there were several countries that were not parties to this UN Protocol. They include the following – Bhutan, Comoros, Congo, Iran, North Korea, Marshall Islands, Pakistan, Papua New Guinea, Solomon Islands, Somalia, South Sudan, Uganda, Vanuatu and Yemen.^[liv]

Surprisingly, Nigeria is not a signatory to this protocol.^[liv] Yet, the Trafficking in Persons (Prohibition and Enforcement) Act, 2015, to some extent, legislatively captures Nigeria's obligation to prevent and combat organ trafficking in Nigeria, especially in Section 20 (1) and (2). Realistically, the major work lies with enforcement and not multiplicity of legislations.

4.3. Declaration of Istanbul, 2008

Between April 30 and May 2, 2008, over 150 representatives of scientific and medical bodies from different parts of the world converged for a World Summit at Istanbul, Turkey, to brainstorm and seek solutions to various issues pertaining to organ transplants.^[liv] The discussions at the Summit revolved around the pertinent and increasing challenges of organ trafficking and transplant tourism as they affected shortage of organs internationally. Before then, a Steering Committee was set up by the Transplantation Society and the International Society of Nephrology and the Steering Committee met in Dubai in December 2007. The said Committee were able to come up with a draft Declaration which was generally looked at during the World Summit at Istanbul in 2008.

The Declaration of Istanbul is divided into various parts that include

definitions, principles, proposals and participants at the Istanbul Summit. The 2008 version of the Istanbul Declaration defined organ trafficking as the recruitment, transport, transfer, harboring or receipt of living or deceased persons or their organs by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving to, or the receiving by, a third party of payments or benefits to achieve the transfer of control over the potential donor, for the purpose of exploitation by the removal of organs for transplantation.

The 2018 version of the Istanbul Declaration redefined organ trafficking to consist of any of the following activities –

- i. removing organs from living or deceased donors without valid consent or authorisation or in exchange for financial gain or comparable advantage to the donor and/or a third person;
- ii. any transportation, manipulation, transplantation or other use of such organs;
- iii. offering any undue advantage to, or requesting the same by, a healthcare professional, public official, or employee of a private sector entity to facilitate or perform such removal or use;
- iv. soliciting or recruiting donors or recipients, where carried out for financial gain or comparable advantage; or
- v. attempting to commit, or aiding or abetting the commission of, any of these acts.

Presently, the Declaration of Istanbul has 11 principles and the additions to the 2008 Principles include the following –

1. Trafficking in human organs and trafficking in persons for the purpose of organ removal should be prohibited and criminalized.
2. Organ donation should be a financially neutral act.

3. Designated authorities in each jurisdiction should oversee and be accountable for organ donation, allocation and transplantation practices to ensure standardization, traceability, transparency, quality, safety, fairness and public trust.
4. Health professionals and healthcare institutions should assist in preventing and addressing organ trafficking, trafficking in persons for the purpose of organ removal, and transplant tourism.
5. Governments and health professionals should implement strategies to discourage and prevent the residents of their country from engaging in transplant tourism.

Interestingly, the Declaration of Istanbul has gone a long way in shaping international and domestic instruments regulating organ and tissue transplants. It has been rightly noted that the Declaration of Istanbul has contributed to national and intergovernmental efforts that have reduced the frequency of organ trafficking.^[liv]

6.0. Legal Framework Regulating Organ Trafficking in South Africa

Presently in South Africa, the statutory framework regulating organ trafficking consists of the South African National Health Act, 2003^[liv] and the Rules made pursuant to the Act. The South African NHA did not define organ trafficking. Rather, activities that come under globally acceptable definitions of organ trafficking are offences under the South African NHA. These are outlined in section 60 (4) (b) and (5) of the South African NHA as seen below –

- (4) It is an offence for a person to sell or trade in tissue, gametes, blood or blood products, except as provided
- (5) Any person convicted of an offence in terms of subsection (4) is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

From the foregoing, selling or trading in human organ/tissues which are

activities that come under the definition of organ trafficking, is illegal in South Africa. Unfortunately, the position of the law in South African is such that ingenious and crafty organ traffickers can bypass to indulge in trafficking in persons for the purpose of organ harvesting.

Surprisingly, South African Prevention and Combating of Trafficking in Persons Act, 2013 has no provisions penalizing trafficking in persons for the purpose of organ trafficking or organ harvesting. Several countries that have laws penalizing trafficking in persons also have provisions penalizing trafficking in persons for the purpose of organ harvesting. Nigeria is a clear example as the Trafficking in Persons (Prohibition and Enforcement) Act penalizes trafficking in persons for the purpose of organ harvesting.

7.0 Conclusion and Recommendations

Having looked at international instruments and the national laws of Nigeria and South Africa touching on organ trafficking, organ trafficking is prohibited in both countries. In the national laws, organ trafficking is treated as a crime with penal provisions for contravening the laws. These lucid legal instruments are focused on eliminating or possibly reducing organ trafficking to the barest minimum. The general challenge appears to be enforcement at national levels. Globally, reasonable steps have been taken by major international organizations like the United Nations and the World Health Organization which have strongly encouraged Member States to domesticate and enforce the laws on organ trafficking. In South Africa, the challenge is inadequate legal and administrative framework for regulating organ trafficking. The South African NHA did not comprehensively define and prohibit organ trafficking in the country. This is also the case with the South African Prevention and Combating of Trafficking in Persons Act, 2013 made to address human trafficking without envisaging the possibility of human trafficking for the purpose of organ harvesting and made no provision for its prevention. In Nigeria, the NHA and the TIPPEA provide statutory frameworks to fight organ trafficking while NAPTIP is administratively on ground. The major challenge for Nigeria is the fact that NAPTIP only has 16 commands in the 36 states of the Federation. The 16 commands include Jigawa, Cross River, Anambra, Ogun

and Plateau States.^[liv] It is common knowledge that human trafficking is a crime that has various subtle dimensions which NATIP is strenuously battling with to control. Human trafficking for the purpose of organ harvesting and organ trafficking is beyond NAPTIP's control. It was under the 'eagle' eyes of NAPTIP that a former lawmaker travelled with his wife and doctor to harvest one of the kidneys of a young man from Nigeria for onward transplant to the former lawmaker's daughter. This is a clear indication that NAPTIP is overwhelmed and understaffed to effectively enforce the extant laws on organ trafficking.

In view of the foregoing, it is humbly submitted that the effective control of organ trafficking globally and in Nigeria is not predicated on multiplicity of statutes. Rather, the way forward is the effective enforcement of existing laws regulating organ trafficking. Additionally, several other suggestions are recommended in dealing with organ trafficking that is ravaging the world and depriving the hungry and poor that sell their vital organs for peanuts and to their detriment –

1. Efforts should be increased on creating awareness, which reaches the grassroots, on what forced organ harvesting and organ trafficking are and their destructive implications. When people truly understand the implications of organ trafficking and how they voluntarily compromise their health/life, they would find it difficult to indulge in it. The awareness creation can be achieved through government-sponsored documentaries and campaigns on television, radio and social media by NAPTIP, which is the major body presently tasked with enforcing the provisions of TIPPEA that criminalize human trafficking for the purpose of organ harvesting.
2. Setting up special bodies/taskforce solely tasked with the enforcement of laws penalizing organ trafficking. In Nigeria, for instance, a special unit within NAPTIP needs to be created specifically for the enforcement of section 20 of the TIPPEA which penalizes trafficking in persons for organ harvesting. When set up, the special unit needs to collaborate with the police and all the foreign embassies in Nigeria to grill those travelling, especially on health grounds or accompanying persons travelling for health issue to ensure they are not parties

to organ trafficking.

3. Poverty needs to be attacked globally and domestically to prevent the poor from trading their vital organs for financial gratification that leaves donors worse off health wise. Most donors involved in organ trafficking do so to raise funds to meet pressing needs or debts. The economy as it is presently is so harsh and tempting to just victims' selling of their organs. The governments of various countries, particularly developing countries, need to put in measures to reduce the level of poverty among their citizens. With the government giving out palliatives in cash and kind, it is believed that desperate donors will be discouraged from selling their organs/tissues for peanuts incapable of taking care of the side effects of organ removal.

End Notes

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