

## LEGAL AND ETHICAL ISSUES IN THE REGULATION OF ORGAN DONATION AND TRANSPLANTATION IN NIGERIA

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### Abstract

*Scientific knowledge, by allowing us to develop new technologies has greatly impacted on the medical field and profession, thereby improving quality of life. Over the years, organ or tissue transplantation has offered relief to patients with End Stage Renal Diseases (ESRD). Kidney transplantation is currently the best treatment for patients with ESRD as compared to treatment via haemodialysis. This procedure has become more popular as awareness activities for it are on the rise. Many ESRD patients now live longer, with a high quality of life, as a result of organs and or tissues donated by either living or dead persons before their death. People have been known to instruct their relatives/family members to donate their organs upon their demise. The issue in Nigeria unlike other climes is the lack of regulatory or legal framework for organ donations and or transplantation. Using the doctrinal method of research, the challenges of organ donation, transplantation, trade, and trafficking amongst others were examined. Nigeria is yet to establish any legal, ethical, and infrastructural facility to regulate the practice of organ donation and transplantation. This study recommends amongst others that a massive campaign on organ donation and transplantation and its attendant benefits should be embarked upon by the government and other organised bodies, especially the medical profession. Regulatory machinery in terms of legislation and infrastructure should be put in place to reduce medical tourism.*

**Keywords: Medical Law, Medical Tourism, Organ Donation, Organ Transplant, Organ Trade, Organ Trafficking**

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## Introduction

Transplantation of organs is not a recent phenomenon as it has historical precedence in medical cannibalism. This was prevalent in Europe in the Middle Ages where body parts of young people that die violently were used in therapeutic preparations known as *mumia*.<sup>3</sup> Many generations have attempted tissue and organ transplantation and successes and failures have been recorded. Researchers commenced experimenting with organ transplantation on animals and humans in the 18<sup>th</sup> century, and by mid-20<sup>th</sup> century they were performing successful organ transplants. There were breakthroughs in areas such as tissue typing and manufacturing of immunosuppressant drugs like cyclosporine, which was approved for commercial use in 1983. This allowed for more organ transplants and a longer survival rate for recipients.<sup>4</sup> These medical successes led to increased demand for organ transportation. The demand for organ donation and transplantation is on the rise because more people require organ transplants, and they rely on others for donation.<sup>5</sup> The rise in demand for organ transplantation is not without its challenges. Matters have gone beyond strictly medical to economic, as demand for organs far outweighs supply.<sup>6</sup> Hence, complexities arise because altruistic donations have given way to harvesting of organs from living people, selling of human organs, kidnapping, and murder.<sup>7</sup>

As the demand for organ donation and transplantation far exceeds supply viz-a-viz, donation and availability, there are legal and ethical issues to be considered in any transplantation situation. This work aims to consider the dynamics of organ donation and transplantation in Nigeria. The work commenced with introduction, concepts and definitions, legal and ethical issues surrounding organ donations in Nigeria. It goes further to analyse decision making and consent, safety and quality system, challenges and achievements for organ donation and transplantation. It also looks at criminal activities surrounding organ donation and transplantation. At the end, the authors recommend that regulatory and ethical guides should be put in place for the practice of organ donation and transplantation in Nigeria. It is hoped that the benefit of this exposition will go a long way in the development of medical practice in Nigeria and other developing countries yet to establish structures and rules for organ donation

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<sup>3</sup>Galton, F. *Inquiries into Human Faculty and its Development*. London: MacMillan; 1883 at 17 and see <https://www.lawexplores.com>, Accessed 7<sup>th</sup> December 2021.

<sup>4</sup><https://optn.transplant.hrsa.gov>. Accessed on 7<sup>th</sup>December, 2021.

<sup>5</sup><https://www.medicalnewstoday.com>, Accessed on 7<sup>th</sup> December, 2021.

<sup>6</sup>Johnathan Herring, *Medical Law and Ethics* (4<sup>th</sup> Edn.) Oxford University Press, 2012. p.445; <https://www.sjkd.org>, Accessed on 21<sup>st</sup>December, 2021.

<sup>7</sup> Ibid.

and transplantations. The doctrinal research methodology was deployed with the use of primary and secondary materials as were available.

### **Concepts, History and Definitions**

The concept of organ transplantation was first conceived in Nigeria in 1980. However, due to the deterioration of the public healthcare system, the first renal transplant was done in St. Nicholas hospital in the 2000s.<sup>8</sup> Since then, the number of centres engaged in transplantation have increased from one private hospital facility to about 14 centres in the country<sup>9</sup> and about 80 established haemodialysis centres.<sup>10</sup> Organ donation and transplantation is on the increase. An organ is a group of tissues with similar or specific functions cooperating in an activity in an organism which could be animal, human, or plant.<sup>11</sup> These are self-contained groups of tissues that perform specific functions in the body. The heart, liver, kidney, and stomach are examples of organs in man. The English Human Organ Transplant Act 1989 defines organ to mean “any part of the human body consisting of a structured arrangement of tissues which if wholly removed cannot be replaced by the body.”<sup>12</sup> From the above definition, any tissue that can regenerate if removed from the body is excluded from being referred to as an organ.

Transplantation is the act of transferring an organ, tissue or cells from one person, a donor to another person, a recipient.<sup>13</sup> Scientific discovery and advancement has made it possible for organs and tissues to be transplanted from one person to the other or within the same person. There are three kinds of transplants namely: Auto-Transplants, which involves the transfer of tissues or organs from one part of an individual to another part of the same individual (grafting), Allotransplants, which involves transfer of tissues or organs from one individual to a different individual of the same species,<sup>14</sup> and Xenotransplants which involves transfer of organ across species.<sup>15</sup> End Stage Renal Disease (ESRD) is described as a condition whereby an organ has reached its peak of damage and is no longer able to support life. Patients with this condition have a low chance of survival. Brain death is the complete stoppage of all brain activities or

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<sup>8</sup><http://www.nigerianjsurg.com> Accessed 17<sup>th</sup> December, 2021.

<sup>9</sup><http://researchgate.net> Accessed 17<sup>th</sup> December, 2020.

<sup>10</sup><http://www.sciencedirect.com> (accessed 17<sup>th</sup> December, 2021).

<sup>11</sup> See <https://biologydictionary.net> and <https://www.merriam-webster.com> Accessed on 21<sup>st</sup> December, 2021.

<sup>12</sup>Human Organ Transplant Act, 1989.

<sup>13</sup><https://www.ncbi.nlm.nih.gov>. Accessed on 22<sup>nd</sup>December, 2021.

<sup>14</sup> This is the most common scenario for solid organ transplants in practice today.

<sup>15</sup> This is transplant of organs, tissues or cells between two different species.

functions that cannot be reversed. This is the legal definition of death. This means the body's blood supply to the brain is blocked and the brain ceases to function or dies.<sup>16</sup> A potential donor could be one who is brain dead or one with catastrophic brain injury, whose family and physician have agreed to withdraw life support as he cannot live independently. This process has implications for organ donation with the potential for saving lives.<sup>17</sup> Living people can donate any of their organs.

Thus, organ donation refers to a legal offer of one's organ (donor) to another (recipient) who is in need of same.<sup>18</sup> It is the process of surgically removing an organ or tissue from one person (donor) and placing or planting same in another (recipient) with consent while he is alive or dead with the consent of the next of kin.<sup>19</sup> When a person dies, he is evaluated for donor suitability based on medical records and age.<sup>20</sup> Organ transplant is a medical procedure where an organ is removed from one body (donor) and planted in another (recipient) to replace a damaged or missing organ. This could be done within an individual (autografts). Organ transplantation is recognized as the best remedy for ESRD or organ failure. This represents the best clinical and most effective care when compared with alternatives available treatments for ESRD.

Ethics is a rule of conduct normally established by associations, interest groups, and professionals. Generally, most professions have some enforceable codes for their professional conduct and practice. Ethics assists in the study of values, knowing what is right and wrong, justice, and responsibility. This includes values in practice that can give confidence to the public that a particular profession can be trusted. While ethics do not have state sanctions like fines, imprisonment, or other forms of punishment, failure to comply with ethical procedures can lead to suspension or expulsion from the particular profession that the violator belongs. In medicine, the *Hippocratic Oath* or what is called the *Physician Oath* is normally administered to graduating doctors before they are licenced to practice. Ethics do not have the status of a law as it is not a creation of the legislation. It is however recognised by the law as their *quasi-trial* procedures as they are sanctionable. Sanctions are meted out to defaulting members of the

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<sup>16</sup><https://www.kidney.org>. Accessed on 21<sup>st</sup>December, 2021.

<sup>17</sup> Ibid.

<sup>18</sup><https://www.en.m.wikipedia.org>. Accessed on 21<sup>st</sup>December, 2021.

<sup>19</sup><https://www.my.clevelandclinic.org>. Accessed on 21<sup>st</sup> December,2021

<sup>20</sup> Ibid.

profession. For example, if a medical practitioner is not able to help his client/patient, he has the ethical responsibility of referring the same to another medical practitioner, who may be in a better position to help the situation.<sup>21</sup> Ethics help to provide some measure of internal cohesion amongst its adherents and this guarantees compliance and fulfilment of ethical values. Although weak because it lacks state or statutory sanctions, in some instances, ethics can be transformed into law as can be seen in the National Health Act (NHA)<sup>22</sup> where communication between doctor and patient and disclosure of confidential information are amendments made into the medical jurisdiction.

Law provides a stabilising effect on society especially in the medical practice, as such there are statutes regulating medical practice in all jurisdictions. In Nigeria, these laws include: Medical and Dental Practitioners Act;<sup>23</sup> Nursing and Midwifery Act;<sup>24</sup> Pharmacy Council of Nigeria Act;<sup>25</sup> Radiographers Registration Act;<sup>26</sup> University Teaching Hospital Act;<sup>27</sup> Medical Science Laboratory Council of Nigeria Act<sup>28</sup> to mention a few. Each jurisdiction has a set of standardised criteria relating to the practice of medicine, protection of persons, physical, and integrity of patient and healthcare. All this existed before the advent of fixed regime for medical practice.

### **Legal Issues Surrounding Organ Donation in Nigeria**

Organ transplantation has achieved a formidable reputation as a life-line for people with End Stage Organ Disease (ESOD). With it comes the attendant problems of supply, distribution, and redistribution. Organ transplantation has become a critically important treatment for the increased ESRD population in Nigeria. It is useful to note that most transplant activities in Nigeria are limited to kidney transplantation.<sup>29</sup> In Nigeria, End Stage Renal Disease (ESRD) patients are usually managed by haemodialysis. The chances of haemodialysis improving the quality of life of a patient with ESRD is slim, but successful organ transplantation affords the

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<sup>21</sup>See National Health Act, 2014.

<sup>22</sup>Ibid.

<sup>23</sup>Cap M8 LFN, 2004.

<sup>24</sup>Cap n143 LFN, 2004.

<sup>25</sup>Cap P17 LFN, 2004.

<sup>26</sup>Cap R1 LFN, 2004.

<sup>27</sup>Cap U463 LFN, 2004.

<sup>28</sup>Cap M 25 LFN, 2004

<sup>29</sup> Ibid.

patient a better quality of life, and is cost effective when compared with haemodialysis. The transplantation of other solid organs is yet to take off on a sustainable scale in Nigeria.

Organ and tissues transplantation is considered a medical intervention that touches on the fundamental rights of the donor or the recipient. Where there is an unlawful infringement of the right of such persons in a way it may be regarded as against the provisions of section 34 of the Nigerian Constitution,<sup>30</sup> which provides for the right to dignity of human person. Globally, researchers and government bodies have agreed that informed consent for organ/tissues donation for a recipient should be obtained without coercion before embarking on surgical operation. Considering the gravity of consent, it is imperative that consent must be received from both the donor and recipients. Consent in form only is insufficient.<sup>31</sup> Although the procedure of organ transplantation has become widely accepted, there are still a number of ethical issues surrounding it. These issues centre on illegal, forced, or compensated transplantation like organ theft or organ trade, fair organ distribution, and religious prohibitions.<sup>32</sup> Corruption, poverty, illiteracy, and general exploitation of the poor is widespread in Nigeria. It is therefore not uncommon that many people are still being exploited and lured into donating organs without adequate orientation.

Most developing countries, Nigeria inclusive, are religious. Religion, therefore, influences the decision making of people regarding organ transportation. It is not surprising that most potential recipients and donors seek religious counselling and guidance before taking a stand. In Nigeria for instance, religious leaders frown at, and disapprove of commercial donation. Apart from the issue of cost and infrastructures when it comes to transplantation in Nigeria, there are lingering issues of donors. Curiously, most patients do not want their relations or children to donate their organs for them. They would rather use non-members of their families. This appears to be what one may call “reverse altruism,” a situation where the patient wants to spare loved ones the burden of care and sacrifice. Before 2014, there were no transplantation laws in Nigeria so doctors and patients were not protected. Each hospital used its own internal control systems. For example, commercial donors posing as relatives have been brought by recipients. Most Nigerian hospitals therefore insist on relatives as donors in order to protect the transplant team and the hospital from litigation. In most cases, hospitals insist on affidavit from

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<sup>30</sup>Constitution of the Federal Republic of Nigeria, 1999 as amended.

<sup>31</sup>See National Health Act, 2014

<sup>32</sup>Ibid.

court of law before transplantation is carried out. The result of this is costly transplant tourism for commercial donors.

Currently, Nigeria lacks a well-established functioning national registry for organ donation or transplantation. An efficient working national donor register (deceased donor register) is paramount to a successful donor program.<sup>33</sup> A National Health Bill providing a framework for transplantation in Nigeria was signed into law in 2014.<sup>34</sup> The National Health Act (NHA) as enacted provides for organ procurement and allocation in addition to providing an appropriate legal framework, not only for living but also for deceased donors in Nigeria. The National Health Act provides for both living and deceased donation in part VI.<sup>35</sup> A section of the bill deals with control of blood, blood products, tissues, and gametes in humans. A key point in this bill includes the prohibition of therapeutic cloning of humans and the illegality of harvesting tissues or organs from persons who cannot give consent or take tissues from persons below 18 years.<sup>36</sup> The National Health Act<sup>37</sup> provides that: “Subject to the provisions of section 53, a person shall not remove tissue, blood, or blood product from the body of another living person for any purpose except:

- 1)
  - a) When the informed consent of the person from whom the tissue or blood product is removed is granted in prescribed manner;
  - b) That consent clause is waived for medical investigations and treatment in emergency cases; and
  - c) In accordance with prescribed protocols by the appropriate authorities.
- 2) A person shall not remove tissue which is not replaceable by natural processes from a person younger than 18 years;
- 3) A tissue, blood, or blood product shall not be removed from the body of another living person for the purpose of merchandise, sale, or commercial purposes;
- 4) A person who contravenes the provision of this section or fails to comply therewith is guilty of an offence and liable on conviction as follows:

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<sup>33</sup> <https://www.sjkdt.com> Accessed 21<sup>st</sup> December, 2021.

<sup>34</sup> National Health Act, 2014.

<sup>35</sup> *Ibid*, Ss. Sections 52-56.

<sup>36</sup> <https://www.nassnig.org/nass/legislation.php> Accessed 21<sup>st</sup> December, 2021.

<sup>37</sup> See Section 48(1) NHA 2014.

- a) In the case of tissue, a fine of one million naira only or imprisonment for a term not exceeding one year or both.

Section 51 (1) of the National Health Act<sup>38</sup> provides thus: “A person shall not remove tissue from a living person for transplantation into another living person or carry out the transplantation of such tissue except: -

- i. A hospital authorized for that purpose; and
- ii. On written authority of:
  - The medical practitioner in charge of clinic services in that hospital or any other medical practitioner authorized by him or her; or
  - In the case where there is no medical practitioner in charge of the clinical services at that hospital, a medical practitioner authorized thereto by the person in charge of the hospital;
- b) The medical practitioner stated in subsection 1 (b) shall not be the lead participant in a transplant for which he has granted authorization under the subsection; and
- c) For the purpose of transplantation, there shall be an independent tissue transplantation committee within any health establishment that engages in the act and practice of transplantation as prescribed.

The Act also stipulates that transplantation must be carried out in an authorized hospital with full written authorization of the head of the hospital. A person found guilty is liable on conviction of fine of ten million naira only or to imprisonment for a period not exceeding one year. It also deals with the use of organs obtained from deceased individuals and the distribution of such organs. In addition, the National Health Act indicates that a few deficiencies still exist. The researchers are of the opinion that certain provisions as contained in The Transplantation of Human Organs Act (THOA) 2011 (as amended), should be adopted in the NHA like:

- I. The number of witnesses a donor may give his consent in their presence;
- II. Provisions on unclaimed bodies in the hospitals;
- III. The guidelines and authorizations for the removal of organs;<sup>39</sup>
- IV. Registration of hospitals engaged in removal, storage or transplantation of human organs and consequence of violation of any condition like cancellation of registration (or heavy fine for first time violators), punishment for any person or

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<sup>38</sup>Ibid.

<sup>39</sup> The THOA 2011, states that it should be a close relative or a recipient on the approval of the committee.



- V. hospital associated in the removal of any main organ without authority should be increased to serve as deterrent;
- VI. Additional punishment for a registered medical practitioner convicted, (his name may be removed from the medical register for a period of year(s) for the first offence and permanently for subsequent offence).

Femi Falana, a renowned legal practitioner in Nigeria raised an alarm over the National Health Act. He declared sections 48 and 51 of the Act as “immoral and illegal;” calling on the National Assembly to repeal them without delay as same was an apparent legalization of human parts sale.<sup>40</sup> It is Falana’s argument that since all hospitals and other medical establishments have been mandated to admit and treat all person in emergency situations, the National Assembly has licensed medical personnel to engage in unauthorized surgical operations for the purpose of removing vital organs of living persons.<sup>41</sup> Even though there are stringent penalties for commercialization of organs removed from any person, what should be done with the consent of the donor should be ascertained. It is clear to see, based on Falana’s argument, that the provisions of section 41 (b) and the whole of section 51 can encourage illegal harvesting and trade of organs removed. However, this can be avoided or checkmated by specifying what “emergencies” are in section 41(b) and the need for informed consent of either the donor or at least his family members with regards to section 51 of the NHA. It should be noted that the NHA does not provide for a Tertiary Institution Standards Committee (TISC), the implementation of which oversees distribution of organs and organisation of the list. The high rate of poverty and corruption in Nigeria makes it imperative that other interventions, apart from the activities of the Ethics Review Boards would be required to discourage the illegal sale of organ and organ trafficking in Nigeria and other developing countries. The law also does not provide for deceased donor register nor does it define brain death.<sup>42</sup>

Brain death occurs when severe brain injury causes irreversible loss of the capacity for consciousness combined with the irreversible loss of the capacity for breathing. In most

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<sup>40</sup>Femi Falana, *Nigerian Law on Socioeconomic Rights*, Lagos: Legal text Publishing Company Limited, 2017.

<sup>41</sup> Ibid.

<sup>42</sup> NHA 2014.

countries, it is accepted that the condition of brain death equates medical, legal, and religious terms with death of the patient.

The Transplant Association of Nigeria (TAN) has expressed concern over the poor attitude of Nigerians towards donating human organs to save the lives of those in need of such organs. Dr. Egun, Bamgboye, the president of TAN noted that the demand for organs is on the rise, with only 413 kidney donors out of the 200 million Nigerians.<sup>43</sup> In Nigeria and most African countries, death and organ donation is viewed from cultural, religious, and social perspectives. It is under these circumstances that some traditional religions object to deceased organ donation because the procurement process may be viewed as a denigration of the dead.<sup>44</sup>

### **Ethical Issues Surrounding Organ Donation in Nigeria**

Ethical issues faced in organ transplantation in Nigeria revolve around religious beliefs, incentives for donors, trade and commercialization of organs, organ trafficking and coercive donation, organ theft, and illegal transplantation. The issue of coercive donation comes from the concept of communism in Nigeria which puts pressure on individuals to show ‘aggravated empathy and sympathy’ for relatives. So, where a relative is unwilling to donate an organ, the family/community may influence decision making, thereby making it likely that consent may have been vitiated. This erodes the autonomy of donor in its entirety.<sup>45</sup> The issues of incentives, trade, and commercialization of organs and organ trafficking stems from the existing guidelines which restricts sale and compensation in donation of organs. Under the National Health Act 2014,<sup>46</sup> it is an offence for a person who has donated tissue or blood to receive financial reward, except for reimbursement of reasonable costs incurred by the donor. Likewise, it is an offence to sell or trade in tissue blood.<sup>47</sup> This law is why commercial donors pose as relatives. It is believed that financial incentives for organ donation will help bridge the wide gap between the demand for organs and its supply. However, this may prove to be negative as this can in turn foster perception that human organs are a commodity. The call for compensation has been strengthened by the experience in countries that have legalized donor compensation, for example Iran has a system of legalized and regulated donor compensation and has reported the elimination of the waiting list.<sup>48</sup>

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<sup>43</sup><https://www.allafrica.com> Accessed 22<sup>nd</sup> December, 2021.

<sup>44</sup><https://www.journals.iwww.com> Accessed 3<sup>rd</sup> January, 2022.

<sup>45</sup><https://www.academia.edu> Accessed 3<sup>rd</sup> January, 2022.

<sup>46</sup>S. 53 of NHA, 2014.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid

Studies have shown that religious beliefs may be the cause of the negative attitude towards organ donation and transplantation. Religious and traditional beliefs cause donating and receiving organs to be seen as an abomination. Dr. Bangboye, at the World Organ Donation day submitted that cultural beliefs have led to low voluntary donation of organs in Nigeria.<sup>49</sup> She stated that most people who are willing to donate organs demand for money. This, according to the National Health Act is illegal.<sup>50</sup> Different religious hold their own interpretation of organ donation and transplantation. For instance, it is usual to find Muslim patients insisting on Halal organs – those which come from a Muslim. They may also insist that the donor has provided a written consent in advance. Jehovah Witnesses, due to their aversion to blood transfusion, based on their interpretation of the Holy Bible, insist that organs be drained of blood before being transferred to another person.<sup>51</sup> Religious beliefs have also posed a challenge to organ transplantation as patients' relatives refuse to consent to the procedure in the hope that the faith they hold in their religion can cause a medical miracle to occur on the patient. Brain death is lawfully, and in some cases, medically sufficient for organ harvesting to take place. However, the conscience of those who regard brain dead patients to still be alive, and reckon harvesting organs from them as illegal, should be considered. Evidence still suggests that some physicians in all good conscience still do not accept the technical criteria for brain death.<sup>52</sup> This situation serves as a huge problem as some doctors refuse to do any harvesting until their patients have shown flat electrocardiogram.

#### *Decision Making and Consent for Organ Donation and Transplant*

Informed consent constitutes a challenge for health professionals. In Nigeria, many have assumed the concept as a tool for health professionals to get patients to accept their ideas for what is best for the patient rather than as a mechanism for facilitating a patient making an informed decision. Factors such as illiteracy, poverty, cultural and social dynamics, an existing culture of submission to medical authority in medical decision making without the patient fully grasping the implication of the decision.<sup>53</sup> A person has a legal right to object to organ donation before and after his death. Even though section 49 of the National Health Act 2014 provides

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<sup>49</sup>See n42 Op. Cit.

<sup>50</sup> Ibid.

<sup>51</sup>Ibid.

<sup>52</sup>Ibid.

<sup>53</sup>Ibid.

that a donor's consent is required and must be in writing. This is a challenge as Nigeria has a significant number of illiterate people who cannot be excluded from the living organ donation programme.

#### *Safety and Quality Systems for Organ Donation and Transplant*

Although safety and quality systems in transplantation have been recommended over the years, standards in this regard are unstable in Nigerian Medical Centres as the health facilities fall short of recommended best practice guidelines.<sup>54</sup> A comprehensive approach to safety and quality in organ donation and transplantation is expected to extend from when the donor is identified through to the follow-up of recipients. It covers all clinical, logistical, and decision making aspects of the donation and transplantation process. Failure to provide adequate safety and quality systems has led to lack of courage in the health sector in Nigerian medical centres.

#### **Achievements and Challenges of Organ Donation and Transplant**

Since transplant activities commenced in 2000, many centres have initiated renal transplant programs. Two centres have initiated transplant programmes and have started Human Leucocyte Antigens (HLA) typing services and provide services for drug trough level measurements. Despite this achievements, transplant programs in Nigeria still face some challenges<sup>55</sup> which includes but is not limited to the following:

- i. Support for health care: The National Health Insurance Scheme in Nigeria does not cover transportation services. Haemodialysis is covered for up to 3 months and there is no coverage for advanced EKD/ESRD or transplantation. The health bill stipulates that 1% of the national revenue should be dedicated to health services. The bill ensures funding for health services in general and for transplant programmes in particular.
- ii. Deceased donors: At present, no transplant facility in Nigeria undertakes a deceased donor program. While a deceased programme will certainly accelerate transplant activities, it will be necessary to surmount socio-cultural barriers including myths that discourage the permission for organ donation by the next-of-kin.
- iii. Inadequate laboratory support: Laboratory support in the country is inadequate. Most services including HLA-typing are obtained through laboratories in South Africa or the United Kingdom, an approach that obviously adds to cost and compromises patient care. A standard

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<sup>54</sup>Ibid

<sup>55</sup> <https://www.academia.edu>. Accessed 3<sup>rd</sup>January, 2022.

immunology laboratory will require ensuring proper ABO blood group antigens (MHC) typing and tissue match in designated hospitals. It is vitally important for all types of organ allografts to ensure that the recipient's ABO blood group is compatible with the donor.<sup>56</sup> Currently, it is uncertain if any laboratory in Nigeria can do this confidently. Samples for the test are usually sent abroad for analysis.

- iv. Medical tourism: Many Nigerians travel abroad for organ transportation and other medical treatment. Inadequate medical equipment/personnel and overall loss of confidence in the local health care system are main drivers of this development. Other challenges that hinder the efficient process of organ transplantation include: shortage of donor organ supply, lack of public awareness, and high cost of transplantation amongst others.

### **Criminal Activities Surrounding Organ Transplants in Nigeria**

Scientific advancement has made transplantation of body organs possible. Unfortunately, this scientific advancement is used for criminal and illegal activities. Sadly, the illicit selling of human parts and organs is becoming more popular in many countries of the world. This act of depravity has birthed what is popularly known as “Organ Trafficking, Organ Harvesting, and Organ Trade.” Organ trafficking is described as the illicit trade of human organs for money.<sup>57</sup> Some countries such as Angola, Brazil and China have been identified to have the highest number of persons trafficking organs. Other countries involved in the practice of organ trafficking are Ecuador, Canada, Haiti, Columbia, Costa-Rica, Peru, Israel, Mexico, Pakistan, and Georgia. Organ trade is the trade of human organs, tissues, or other body products, usually for transplantation.<sup>58</sup> According to the World Health Organization (WHO), organs trade is transplantation of organs for profit or that which occurs without any medical intention.<sup>59</sup> It is the buying and selling of organs with or without the donor's consent. In countries like Iran, organ trade is considered legal and non-punishable by law. This is due to their lack of medical infrastructures for performing efficient organ transplantation. However, these organs must be traded only among Iranian citizens. Singapore and Australia have also legalized the selling of organs.<sup>60</sup> Kidney and lungs are the most commonly trafficked and traded organs.

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<sup>56</sup><https://www.nigerianjsurj.com> Accessed 4<sup>th</sup> January 2022.

<sup>57</sup>Ibid.

<sup>58</sup>Ibid.

<sup>59</sup>Ibid.

<sup>60</sup>Ibid.

Organ harvesting refers to illegal removal of organs without the donor's approval.<sup>61</sup> As a result of the controversy and ethical problems trailing the buying and selling of human parts, WHO completed a resolution in 1989, which was supported by more than 151 members to take appropriate action against purchase and sale of human organs for transplantation.<sup>62</sup> WHO declared organ trade to be illegal and against the Universal Declaration of Human Rights on the ground that the poorest and weakest people are most vulnerable, thus the law that emphasizes fair and equal treatment to all.

Commercialization of organs is an age long practice. The 1997 Owerri riot in Nigeria, popularly known as the *Otokoto* episode, have man's grave crimes of murder allegedly committed because it was lucrative to sell whole body parts.<sup>63</sup> This ugly incidence is seen in the North-East Nigeria today due to the terrorist attacks being carried out there by the Islamist militant group, Boko Haram. Many bodies were found without vital organs. Some of these organs are sold in the black market for transplantation. Regrettably, Nigeria in recent times has been involved in organ trafficking. Despite the existing health bill and action regulatory bodies in Nigeria, this unfortunate situation has been on the increase. In Africa, the five major black markets for human organ agents and harvesters are Egypt, Libya, South Africa, and Mozambique. Nigeria and Chad jointly hold the 5<sup>th</sup> position.<sup>64</sup> Nigerians allegedly move their donors to the countries where the transplant operation will be performed. The current bill has no provision or law that target the recipient. These are real challenges to organ trafficking in Nigeria and indeed in many developing nations.<sup>65</sup> Poverty has also contributed to why some Nigerians get involved in organ trade and harvesting. Traffickers acquire human organs in Nigeria by illicit harvesting of organs from unsuspecting persons. A report has estimated that approximately, an average of 7,000 kidneys are illegally harvested every year by traffickers and sold for a handsome amount of money, depending on the country where it is being sold.<sup>66</sup>

Trafficked organs are sometimes obtained from murdered kidnapped persons. Also, in rare cases, some traffickers liaise with certified doctors who illegally remove a patient's organ without their knowledge or notice. In other cases, greedy physicians in charge of health

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<sup>61</sup>Ibid.

<sup>62</sup><https://www.ncbi.nlm.gov> (accessed 3<sup>rd</sup> February, 2020)

<sup>63</sup>Ibid.

<sup>64</sup><https://www.pulse.ng> Accessed 3<sup>rd</sup> January, 2022.

<sup>65</sup>Ibid.

<sup>66</sup><https://www.fairplanet.org> Accessed 5<sup>th</sup> January, 2022.

institutes harvest organs and sell them in the black markets (black markets are New York, Los Angeles and Philadelphia). Nigerians who visit foreign countries for medical treatment are the most susceptible to these schemes. Caution must therefore be taken when embarking on medical tourism.

Over the years, a good number of Nigerians have been arrested for being in possession of human parts in a bid to make quick money. Thus, it is not uncommon to find Nigerians resort to kidnapping for rituals or selling human organs. They extract their victims' organs and export them abroad. Disturbingly, there are some citizens who travel to health tourist destinations willingly to sell one of their kidneys or other body parts. This is known as transplant tourism.<sup>67</sup> The United Network for Organs Sharing defines transplant tourism as "the purchase of a transplant organ abroad that includes access to an organ while bypassing laws, rules or processes of any or all countries involved."<sup>68</sup> Transplant tourism describes how commercialization drives illegal organ trade. However, not all medical tourisms for organs are illegal. Although commercialization is illegal and unacceptable, it is less frightening than the unethical practice of secretly harvesting organs from ignorant and unsuspecting patients. This unfortunate phenomenon has come to the attention of the relevant establishments in Nigeria. Nigeria's Federal Ministry of Health has stepped in to curb this crisis by issuing a warning to Nigerians travelling abroad for medical treatment to be "very careful due to the rising cases of such illegal harvesting by some hospitals." The arraignment in Egypt of 41 Egyptians charged to court for illegally harvesting organs from unsuspecting victims is one of the instances of such happenings.<sup>69</sup> It has come to the attention of relevant bodies that many of the victims of this heinous crime are Nigerians seeking for greener pastures abroad. Most of them end up being trafficked, sold as slaves, and forced into prostitution and forced/exploitive labour. They may be murdered and their organs are harvested. The UN has warned Nigerians to be wary of agencies who offer jobs abroad. The Chairman, Ocean Marine Solutions, Charles Okunbor at the International Action on Illegal Migration and Trafficking of Persons conference stated that "the problem has become embarking." Insisting it is saddening that Nigerians embark on deadly voyages to "fairy tale" destinations without minding the huge risks involved.<sup>70</sup>

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<sup>67</sup> E. Ibu Otor, *Synopsis of Medical Law*, Jos: An dex Publishers, 2022.

<sup>68</sup>Ibid.

<sup>69</sup><https://www.m.guardian.ng> Accessed 2<sup>ND</sup>January, 2022.

<sup>70</sup>Ibid.

Regrettably, the North-East is now a source of heavy activities of human trafficking and worst forms of exploitation. Other places in Nigeria include the South-East and South-South. Pioneering the fight against organ trafficking in Nigeria is the National Agency for Prohibition of Trafficking in Persons (NAPTIP) through its Act.<sup>71</sup> Even though the agency's functions centre on enforcing its 2015 Act, preventing, suppressing and punishing trafficking/traffickers of persons, its essential functions also includes but is not limited to investigating all cases of trafficking in persons including forced labour, child labour, forced prostitution, exploitative labour and other forms of exploitation - slavery and slavery-like activities, bonded labour, removal of organs, illegal smuggling of immigrants, sales, and purchase of persons.<sup>72</sup> NAPTIP has over the years prosecuted a number of offenders and although the functions of NAPTIP includes investigating removal of organs, the Director-General of NAPTIP Julie Okah-Donli, in 2017 raised the alarm that human traffickers are now on the prowl as the scourge of human trafficking has assumed a dangerous dimension. She explained that many people have fallen victim to criminal gangs due to ignorance and carelessness while their relatives are unaware of their state.<sup>73</sup> Okah-Donli stated that this crime has far-reaching socio-economic effects on Nigeria and explained that human traffickers now murder their victims on a daily basis in the process of extracting their vital organs and body parts for sale as this vicious act now gives trafficking gangs better and quicker profits than sexual and labour exploitation. On January 21, 2020, the Benin Zonal Commander of the agency, Nduka Nwanwenne reiterated the rise of organ harvesting in Nigeria.<sup>74</sup> Although the organization has made efforts to sensitize Nigerians of this vicious act perpetrated through trafficking, more has to be done by the agency to ensure that the perpetrators of these acts are caught and brought to book as the number of persons who have been prosecuted are minimal compared to the high number of people perpetrating this crime. The harvesting and commercialization of body parts is condemnable and despite the various ordinances against organ sales, the practice persists. The government of Nigeria must be intentional in their bid to ensure that this nefarious act is, if not completely stopped, reduced to the minimum.

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<sup>71</sup>The Trafficking In Persons (Prohibition), Enforcement and Administration Act, 2015.

<sup>72</sup><https://www.naptip.gov.ng> Accessed 2<sup>ND</sup> January, 2022.

<sup>73</sup>Ibid

<sup>74</sup><https://www.dailytrust.com.ng> Accessed 2<sup>nd</sup> January, 2022.



## **Conclusion and Recommendations**

Although the government of Nigeria has gone a long way in regulating the organ donation and transplantation industry, there is still room for improvement. While it is encouraging that the country has a legal framework that regulates both living and deceased donor transplantation, more can still be done in order to improve patient care. It would be helpful to include policies that would restrict the freedom of recipients of illegal organ transplant and the institutions carrying out the transplants, in a bid to curb the menace.

This work recommends amongst others that the effort to monitor organ donation in Nigeria must be doubled. A campaign on the importance of organ donation should be embarked upon to eradicate the problems of patients waiting for long, for much needed organs. Nigerians should consistently and continuously be educated on the dangers of illegal harvesting of organs.

Financial incentives for donors should be encouraged in other to help bridge the wide gap between the demand for organs and its supply, as is the case in nations like Iran. Government, organised labour and private sectors should venture into financial support for the health care units in the nation. For example, the National Health Insurance Scheme to help reduce mortality in Nigeria due to limited or lack of funds to undertake organ transplants. Medical tourism must be discouraged by providing adequate medical care facilities (e.g. a standard immunology laboratory to ensure proper HLA typing and tissue match). Government should make transformation of the health care sector a priority through rehabilitation of hospitals, especially the teaching ones. High professional standards and expert delivery of medical skills and services should be encouraging through capacity building and provision of relevant training.

Funding for stakeholders such as NAPTIP, Ministry of Health etc. should be increased to enable them carry out the mandate of preventing human trafficking as insufficient budgetary allocation has been highlighted as one of the major complaints of this agency. Surviving victims of organ harvesting should be encouraged to speak out in order to aid appropriate bodies to deliver justice. The Nigerian government must also play the role of improving the livelihood of its citizens both at the federal, state, and local government levels as a means of fighting and preventing organ harvesting. The Nigerian Medical Association should also step in to fight against organ trafficking by cautioning and sensitizing its members to desist from and be watchful of illegal harvesting of human organs. The law authorizing organ harvesting in the Health Act must be further clarified and made more stringent in order to avoid abuse by medical doctors. For instance, family members or donors must give their consent and ensure that doctors adhere to the provisions of the Act while harvesting.