

ORGAN DONATION AND TRANSPLANTATION IN NIGERIA: A CRITICAL ANALYSIS OF THE LEGAL REGIME

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ABSTRACT

Organ donation and transplantation is one of those topical issues that are on the front burner in modern medicine due to the increasing need to save lives resulting from organ damage. It is a medical procedure that predates modern medicine but has attracted sufficient attention largely because of the exacerbating health deteriorations of people which has increasingly birthed human trafficking and organ harvesting. There seems to be more need for human organs than the availability of organs and the procedures undertaken in securing the organs to save human lives have generated a lot of legal and ethical concerns. This article provides the historical springboard of organ donation, the advent in Nigeria and critically analyzes the legal framework on organ donation and transplantation in Nigeria. The researcher has adopted the doctrinal method of research in this article and has proffered some recommendations considered German and plausible in handling the various nagging issues on the subject matter in Nigeria.

KEYWORDS: *Organ donation, Brain death, Organ Transplantation, Organ harvesting and trafficking.*

INTRODUCTION

The functionality of the organs of humans are medical yardsticks or parameters in measuring the health status of individuals. The organs are very delicate and most important in human bodies as their failure often indicates imminent death. Central to every man's effort in life is the strive to survive and this survival instinct drives man to adopt steps and measures towards achieving the same. It is medically settled that failed organs which includes kidney, heart, lung, and liver, can only be managed over a short period of time, save for transplantation which is the only best option for the extension of a person's life for a good number of years, at least¹. This need to extend people's lives through organ donation and transplantation has become more serious especially because of the spate of organ failure in recent times generally occasioned by lifestyle, heredity, and some diseases like diabetes and blood pressure which often result in organ failure due to poor management.

The commonest organ failure recorded in recent medical history is kidney failure. Kidney failure is better managed through dialysis. This medical process is preferred safer and better for management of kidney failure but cost intensive. However, no matter how convenient dialysis may appear, it cannot take the place of kidney transplantation as it is nothing short of exchanging

¹. T Aderigbe and A Adebayo, "Contemporary Issues on Organ Donation and Transplantation In Nigeria: A Discission", (*Journal of Legal Ethics and Research*, Vol 8, Issue 4, Law Bridge Publishing Group) p. 71

a person's dead or failed kidney with another functional kidney.²

HISTORICAL BACKGROUND

Many generations had tried tissue or organ transplantation over the course of centuries, and numerous amazing accounts of these transplants have been documented.³ According to legend, the Christian Arab saints Cosmas and Damian successfully replaced a diseased limb of a patient some days earlier with the leg of a deceased person about 300 BC.⁴ The development of safer and more potent immunosuppressive drugs, together with Carrel's description of a more dependable vascular anastomosis technique, made clinical organ transplantation more realistic for surgeons in the early 1900s. Roy Calne created the immunosuppressive drug azathioprine in 1962 and the cyclosporine immunosuppressant in 1978.

Ben Cosimi and colleagues reported the first use of a therapeutic monoclonal antibody (OKT3) in transplantation in 1981, whereas Tom Starzl and colleagues employed anti-lymphocyte globulin in 1966. Throughout the past forty years, organ transplantation has grown to be a significant and quickly growing surgical specialty. In order to effectively practice this specialty, doctors, surgeons, anesthetists, and immunologists must collaborate closely. For end-stage renal, hepatic, cardiac, and pulmonary diseases, solid organ transplantation has emerged as the preferred course of treatment.⁵

CONCEPTUAL CLARIFICATION

For a better grasp of this discourse, it is considered imperative to briefly discuss certain concepts that are germane to this topic. They include Organ donation, Organ Transplantation, Organ harvesting, human trafficking, Brain death.

ORGAN DONATION

A healthy organ is donated to a recipient whose own organ has failed or is failing; this process is known as organ donation. It involves harvesting a tissue or organ through surgery from one individual (the organ donor) and transplanting it into another (the receiver). Living donors or deceased/cadaveric donors are the two sources of donated organs. When a deceased or cadaveric donor is considered, he or she must be brain dead, which means that the area of the brain responsible for controlling the donor's respiration and heartbeat has to have been damaged physiologically or traumatically. The cessation of brain function is known as brain death, and in order to verify this, certain indicators must be found.

BRAIN DEATH

Brain death is simply the total, irreversible, and permanent loss of brain function which may include the involuntary activity required to maintain life.⁶ It is not the same as a persistent

². Human Organ and Tissue Transplantation Report by the Director-General at Seventh-Fifty World Health Assembly Provision Agenda Item 27.2, A75/41, 2022, page 2.

³ Bradly JA. *Bailey and Love's Short Practice of Surgery*. 24th ed. Vol. 183. London: Arnold Publishers; 2004. Transplantation; p. 206.

⁴ Bakari AA, Nwankwo EA, Yahaya SJ, Mubi BM, Tahir BM. Initial five years of arterio-venous fistula creation for haemodialysis vascular access in Maiduguri, Nigeria. *The Internet Journal of Cardiovascular Research*. 2007;4:2.

⁵ Kashi H. Organ transplantation. In: Michael M., Henry N., Jeremy N., Thompson, editors. *Clinical Surgery*. (1st ed. London: W.B. Saunders ;an imprint of Harcourt Publishers Ltd; 2001). pp. 193–204

⁶ Goila, A.; Pawar, M. (2009). "The diagnosis of brain death". *Indian Journal of Critical Care Medicine*. **13** (1): 7–11.

vegetative state, when the individual retains some autonomic functions and is still alive. It differs from comas in that it preserves some degree of brain and body function. It is also not synonymous with locked-in syndrome. Medically speaking, a differential diagnosis can differentiate between these many illnesses.

Brain death is used as an indicator of legal death in many jurisdictions,⁷ but it is defined inconsistently and often confused by the public.⁸ Various parts of the brain may keep functioning when others do not anymore, and the term "brain death" has been used to refer to various combinations. For example, although one major medical dictionary considers "brain death" to be synonymous with "cerebral death" (death of the cerebrum),⁹ The US National Library of Medicine Medical Subject Headings (MeSH) system defines brain death as including the brainstem.

A person who is brain dead has no clinical signs of brain activity when examined physically. This includes having no cranial nerve reflexes and no reaction to pain. Pupillary response (fixed pupils), oculocephalic reflex, corneal reflex, lack of reaction to caloric reflex test, and absence of spontaneous respirations are examples of reflexes.

ORGAN TRANSPLANTATION

An organ is a completely distinct anatomical and functional element that is specialized for a single purpose in a person or animal. The act of transplanting involves moving an organ, tissue, or cell from one individual (donor) to another (receiver). Organ transplantation can be broadly categorized according to how similar the recipient and donor are, as well as how comparable the transplant site is.¹⁰ The process of moving tissue or organs from one area of a person to another area of the same person is known as autotransplantation. Allotransplants, which are the most typical scenario for the majority of solid organ transplants performed today, entail the transfer of an individual from one to another individual of the same species. In xenotransplantation, boundaries between species are crossed. Currently, xenotransplants are largely relegated to the laboratory, given the complex, potent immunologic barriers to success. In allotransplant, both the donor and the recipient are subjected to screening to establish compatibility between them and there are three categories used to do this. In order of significance, they include: ABO blood group antigens, minor histocompatibility antigens (mHC), and human *leucocyte* antigens (HLA). For all kinds of organ transplants, it is critical to make sure the recipient and donor have compatible ABO blood types. The compatibility of Rhesus antigens with organ transplants does not need to be considered. In blood group compatible grafts, allograft rejection is primarily directed against a class of highly polymorphic cell surface molecules known as HLA. The process of immunological identification is greatly aided by HLA.¹¹ It is uncommon for two

⁷ [https://www.nhs.uk/conditions/brain-death/#:~:text=Brain%20death%20\(also%20known%20as,is%20legally%20confirmed%20as%20dead](https://www.nhs.uk/conditions/brain-death/#:~:text=Brain%20death%20(also%20known%20as,is%20legally%20confirmed%20as%20dead). Access last on 02/02/24

⁸ Jones AH, Dizon ZB, October TW. "Investigation of Public Perception of Brain Death Using the Internet". August, 2018, *Chest*. **154** (2): 286–292

⁹ Elsevier, *Dorland's Illustrated Medical Dictionary*, Elsevier, archived from the original on 11 January 2014, retrieved 24/01/2024.

¹⁰ Sollinger HW, D'Alessandro AM, Deierhoi MH, Kalayoglu M, Kirk AD, Knechtle SJ, et al. *Schwartz Principles of Surgery*. 7th ed. McGraw Hill companies and printed in USA; 9. Transplantation; pp. 361–439

¹¹ *Ibid*

unrelated people to have the exact same collection of HLA molecules. The majority of transplantable organs come from cadaveric donors who are brainstem dead and heartbeat alive.¹² Many organs are obtained. It is important to carefully evaluate the potential organ donor's general appropriateness. It is important to evaluate the donor carefully in order to rule out cancer and transmissible infectious pathogens. While the heart is still beating and the donor is receiving ventilatory support and other care, organs are extracted.

The quantity of cadaveric organs available is much less than the quantity needed to meet transplantation needs. As a result, the organ-specific selection criteria have gradually become less strict. As a result, the physiological function of the organs being considered for transplantation takes precedence over the donor's age. Additionally, there is a trend towards more transplants using living donors.

ORGAN HARVESTING AND TRAFFICKING

An individual's organs are surgically removed for sale on the black market in a practice known as forced organ harvesting, which is a type of modern slavery. Organ transplants are happening more and more frequently. Several advancements are to blame for this: improved seatbelts, which reduce the number of young people killed in traffic accidents; safer transplant operations; and improved post-transplant care. Nonetheless, there is not a commensurate increase in supply to keep up with the rising demand. As a result, a plethora of sick people are becoming desperate and turning to the illicit market in order to obtain organs, creating a breeding ground for criminal activities. Organ harvesting under duress is a risky and forbidden activity.

Organ harvesting is a global procedure that is also carried out in the United Kingdom. It is, nevertheless, very common in China. China has always harvested the organs of condemned prisoners in order to meet its demand for organ transplantation. A large number of those impacted were prisoners of conscience, or people who adhered to political or religious beliefs that are not acceptable in China (such as Falun Gong, a spiritual practice based on Buddhism). Despite claims that it was outlawed in 2014, numerous investigations have shown that this practice is still in use.¹³

Owing to the previously described circumstances, forced organ harvesting is becoming more commonplace globally. According to estimates from the World Health Organisation (WHO), more than one illicit organ transaction occurs every hour on a global scale. Kidney transplant demand is rising, partly as a result of the global rise in diabetes cases. As a result, it is believed that the illicit organ trade accounts for 5–10% of kidney transplants performed globally. Raising awareness of modern slavery and staying alert to its manifestations, such organ harvesting, contributes to the outlawing of these cruel activities. Regular contemporary slavery training classes are one approach to get this recognition.¹⁴

LEGAL PERSPECTIVE ON ORGAN DONATION AND TRANSPLANTATION IN NIGERIA

In the realm of medical research, Nigeria's organ donation and transplantation procedures are still

¹² Bradley JA. *Bailey and Love's Short Practice of Surgery*. 24th ed. Vol. 183. London: Arnold Publishers; 2004. Transplantation; p. 206.

¹³ Vinciworks Group, Organ Harvesting, <https://vinciworks.com/blog/what-is-organ-harvesting/>. Accessed last on 03/02/2024

¹⁴ *Ibid*

in their infancy when compared to other highly developed nations. Unfortunately, there aren't enough organs available to meet patient needs because of the rising demand for essential organs in Nigeria. *The National Health Act, 2014 (NHA)* is generally the main piece of legislation governing organ donation and transplantation in Nigeria.¹⁵ In terms of the restrictions and prohibitions surrounding the procurement and transplantation of organs, the Act significantly contributes to concerns pertaining to organ donation.

By the provisions of the National Health Act, Human organs may be removed from living people and corpses, but only under the supervision of a licensed and authorized medical professional who is in charge of the clinical matter.¹⁶ The National Tertiary Hospital Commission was established and given the authority to approve the process in order to facilitate organ transplantation and to ensure appropriate steps in this regard.¹⁷ Understanding the concerns raised by the NHA's rules regarding organ donations and transplantation can be made easier with a review of the relevant sections on the subject.

Sections 49 through 53 of Part VI of the NHA deal with the management and application of human blood, blood products, tissue, and gametes.¹⁸ The tissues comprise bone, organ, flesh, and bone marrow, among others.¹⁹ The National Blood Transfusion Service for the Federation was established by the Health Minister using authority granted by *Section 47 of the NHA*. Its primary goals are to prevent the commercialization of human blood and to monitor blood transfusion services and related issues nationwide.²⁰ The National Blood Transfusion Service is not, however, widely available throughout the federation since many public hospitals are unable to prevent the difficulties associated with commercializing human blood donation since they do not have enough blood in their blood banks.

It is expedient to note that the NHA also supports, with caution, the removal of tissues and blood products from a living individual. *Section 48 of the Act*, therefore, deals with the removal of tissue, blood, or blood products with the donor's permission. According to the Section, it is strictly forbidden to take tissue, blood, or blood products out of the body of another living person without the donor's informed agreement.²¹

The provision in *Section 48 of the Act* that opposes the consent requirement also attracts notice. The provision states that 'the consent clause may be waived for medical investigations and treatment in emergency cases and in accordance with prescribed protocols by the appropriate authority'.²² Even while this provision seems beneficial, it can be egregiously misused. The rights, ownership, and consent to use human tissue are other concerns it brings up. When a criminal investigation is still underway and the defendant's guilt has not been proven, treating a patient without their consent for investigative purposes may constitute a flagrant violation of their fundamental rights.

¹⁵ *National Health Act, Cap 8 Laws of the Federation of Nigeria, 2014.*

¹⁶ *Section 52 of the National Health Act*

¹⁷ *Section 54(3) of the National Health Act*

¹⁸ *Section 48 (3) Ibid.*

¹⁹ *Section 49 (1) Ibid.*

²⁰ *Section 47 (1) –(3) ibid*

²¹ *Section 48 (1) (a) of the National Health Act, 2014*

²² *Section 48 (1b and c) ibid*

Furthermore, it is imperative to establish that the NHA forbids the selling of organs for profit. It states that "tissue, blood or a blood product shall not be removed from the body of another living person for the purpose of merchandise or commercial purposes"²³. The fact that this provision permits a donor to be compensated for a reasonable expense they have incurred in connection with organ donation presents some difficulties as well.²⁴

The first query is: What constitutes a "reasonable cost"? Second, does this clause actually and completely forbid the sale of human organs? Without the authority and medical staff knowing, the donor and recipient may enter into other private agreements with one another. Furthermore, this clause solely forbids the selling of living donors' tissues, blood, and blood products. Does this imply that organs removed from deceased donors can be sold as goods as they are not covered by the clause? There are still a lot of unsolved questions about the Act, which means it needs to be reviewed again. *Section 48 of the Act* has a noteworthy provision that restricts the acquisition of an irreplaceable tissue through natural means from an individual who is less than 18 years of age²⁵ and anyone who violates section 48's rules will face the appropriate penalties.²⁶ Although this is admirable, the Act did not clarify whether or to what extent a tissue that is incapable of regeneration through natural processes can be removed from an adult above the age of eighteen, or in what capacity.

Furthermore, *the NHA 2014* stipulated that any tissue, blood, or blood products that are retrieved or collected must be used appropriately. According to the clause, "a person shall use tissue removed or blood or a blood product withdrawn from a living person only for such medical or dental purposes as may be prescribed, subject to the provisions of section 52 of this Act."²⁷ In the event that this clause is broken, additional consequences are outlined in this section.²⁸

Furthermore, only hospitals, doctors, or dentists with written permission from the hospital's clinical services coordinator or another medical professional he designates may remove and transplant human tissue from living or deceased patients. The clinician conducting the transplant cannot also be the primary participant in a transplant for which he has given permission.²⁹

The National Tertiary Health Institution Standards Committee³⁰ must regulate the criteria and procedures for using the deceased donors' organs for transplantation, treatment, or training. The Act also stipulates that these donors' organs must be used in a prescribed manner, and anyone found in violation faces a five-year prison sentence without the possibility of fines.³¹

A deceased person's body may be donated through a Will they made before they passed away, which must be witnessed by two witnesses at the very least. Alternatively, if there is no valid Will, the deceased person may donate their body through a written statement they made in front of capable witnesses, which must specify the specific organ or organs to be used for

²³ *Section 48 (2) (b) Ibid*

²⁴ *Section 53 of Ibid*

²⁵ *Section 48 (2) (a) Ibid*

²⁶ *Section 48 (3) Ibid*

²⁷ *Section 49 (1) Ibid*

²⁸ *Section 49 (2) Ibid*

²⁹ *Section 51 Ibid*

³⁰ *Section 54 Ibid.*

³¹ *Section 54 (4) Ibid*

transplantation or postmortem examination.³²

As previously mentioned, the donation's goals may include student training, health, research, advancement in the field of medicine, therapy, and therapeutic goals.³³ It is crucial to mention that a donor has the right to withdraw the offer before their organ is removed for transplantation. A codicil or other later arrangements established after the Will to make the donor's intentions known after death can rescind the bequest made through the Will.³⁴ While *Section 57 of the NHA* focuses on deceased donors, it is reasonable to assume that a living donor has the right to revoke their consent prior to the procedure starting, as an individual cannot be coerced or forced to donate an organ. A timely review of Nigeria's current laws pertaining to organ donation and transplantation is necessary because many pertinent areas are overlooked, and some of the topics covered in relation to organ donation are speculative and unrealistic due to numerous gaps in the way the laws are actually put into practice.

ISSUES BEDEVILING ORGAN DONATION AND TRANSPLANTATION IN NIGERIA

1. Dearth of Organs

One of the main problems with human organ donation and transplantation in Nigeria is the lack of available organs for donation. The reason for this scarcity is because there is a higher demand for organs than there are available. The lack of transplantable organs may not always be related to the procedures used to get organs, but rather to the availability of donors. In Nigeria, statistics regarding organ donation and transplantation are not easily obtainable.³⁵ There is a global shortage of organs available for donation, not just in Nigeria. For example, in 2004 the United States had 86,173 persons on its organ transplant waiting list; every day, 115 new patients were added to the list, and every day, 17 patients passed away while awaiting a transplant.³⁶ End-stage renal disease (ESRD) is a major cause of hospital admissions in Nigeria and is a growing burden. According to the record, the number of ESRD patients receiving dialysis in Nigeria increased from 780 to 1500 between 2004 and 2014.³⁷ Furthermore, a recent study carried out in 2020 at the University of Ilorin Teaching Hospital's Intensive Care Unit in Kwara State, Nigeria, found that 590 patients were admitted for renal diseases, of which 20.3% died during the study period, and that 104 deaths in the ICU were attributable to organ problems.³⁸

³² *Section 55 Ibid*

³³ *Section 56 Ibid*

³⁴ *Section 57 Ibid*

³⁵ Ifeoma Ulasi and Chunwubi Ijoma, 'Organ Transplantation in Nigeria', Research gate, https://www.researchgate.net/publication/299115459_Organ_Transplantation_in_Nigeria. Accessed 03/02/2024.

³⁶ IG.M.Abouna, 'Organ Shortage Crisis: Problems and Possible Solutions' *Journal of Transplantation Proceedings* Vol. 40, 2008, Pages 34-35. See also Raymond Vanholder et al. , 'Organ donation and transplantation: a multi-stakeholder call to action', *Nature Reviews Nephrology* vol. 17, 2021. Available online at <https://www.nature.com/articles/s41581-021-00425-3>. Accessed 03/02/2024

³⁷ Ademola Alabi Popoola et al., 'Expanding renal transplantation organ donor pool in Nigeria', *Saudi Journal of Kidney Diseases and Transplantation* , Vol 29, 2018, pages 1182-1183. Available online at <https://www.sjkdt.org/article.asp?issn=13192442;year=2018;volume=29;issue=5;spage=1181;epage=1187;au last=Popoola> Accessed on 03/02/2024

³⁸ Popoola A. A., et al., 'Deceased Donor Organ Transplantation Potential: A peep into an Untapped Gold mine'. *Saudi Journal of Kidney Diseases and Transplantation* , Vol. 31, 2020, 247-248. Available online at

There are numerous reasons why there aren't enough human organs available for donation in Nigeria. Due to lack of knowledge and awareness about organ donation, fear of the results, illiteracy, cultural prejudices, religious inhibitions, and inhibitions, many Nigerians find it difficult to donate. Many Nigerians are unaware that even if they only have one paired organ in their body system, they can still survive.

2. Insufficient Personnel and paucity of sophisticated equipments for Organ Donation and transplant.

One area in Nigeria where the government ought to provide adequate funding is the health sector, but sadly, the opposite is true. The federal, state, and municipal government public hospitals lack the necessary infrastructure to support the provision of quality healthcare services. The fact that certain privately owned hospitals are equipped with greater technology than those operated by the government presents a problem. This implies that while a greater proportion of Nigerians live below the poverty line, wealthy members of the public can access superior care at private hospitals at a higher expense.

Wealthy individuals may choose to have organ transplants outside of Nigeria out of concern about disappointment and complications brought on by subpar facilities and care in Nigeria. Because of this, receiving quality healthcare at a reasonable cost for organ donation and transplantation is difficult and out of reach for the majority of Nigerians. Patients with organ disorders may also die sooner as a result of inadequate ICU bed capacity, poor transfer of fatal accident victims to the hospital, and cardiac arrest. According to reports, a few of the variables that lead to the high death rate of ESRD patients include: a lack of dialysis centers, inequity in the number of centers, high costs of care, inadequate funding, and a shortage of personnel.³⁹

3. Lack of formidable Legal Framework

The *National Health Act (NHA)* in Nigeria addresses the regulation of human gametes, tissue, and blood products under Part VI. Nonetheless, there is a perception that these provisions are inadequate and insufficient regarding organ donation, which exacerbates problems that impact organ transplantation in Nigeria.⁴⁰ The NHA, Nigeria's primary organ donation law, has certain shortcomings that require immediate adjustment. The NHA defined death as "brain death," yet the interpretation section did not specify what was meant by "brain death." This ambiguity may lead to problems like when it is appropriate to remove organs from a person who has been declared brain dead.

Additionally, because the Act classified organs under tissues, it did not specifically

<https://www.sjkdt.org/article.asp?issn=1319-2442>; year=2020;volume=31; issue=1;spage=245; epage=253; aulast=Popoola. Accessed on 03/02/2024

³⁹ Ademola Alabi Popoola et al., 'Expanding renal transplantation organ donor pool in Nigeria', *Saudi Journal of Kidney Diseases and Transplantation* , Vol 29, 2018, pages 1182-1183. Available online at <https://www.sjkdt.org/article.asp?issn=13192442;year=2018;volume=29;issue=5;spage=1181;epage=1187;aulast=Popoola>> Accessed 03/02/2024

⁴⁰ Samuel Ajayi, Yemi Raheem Raji and Babatunde Salako' Ethical and legal issues in renal transplantation in Nigeria', *Saudi Journal of Kidney Diseases and Transplantation*, Vol 26, 2016, page 3

address the term "organ."⁴¹ On the other hand, an organ is a structure composed of several tissues that cooperate to carry out a particular role in biology. In this instance, tissue ought to have been classified as an organ; doing so would have made numerous Act-related questions about organs clear. The Act's Section 55 allowed for the donation of a deceased person's human body and tissues through a written will or other legal document. Those who were willing to give their organs but passed away intestate and whose family members could not be contacted were not included in this part, though. *Section 48 of the NHA* lays out the requirements for removing tissue, blood, or blood products from living individuals; however, in contrast to other jurisdictions, the Act did not specifically allow for the donation of tissues or blood products by anyone under the age of 18, which could present a problem in situations where a minor is involved in the donation process.⁴²

Moreover, the Act's shortcoming is also evident in the documentation of organ donation. Provisions for registration, transplantation, procurement, and donor details—particularly for cadaveric donors—such as residence, nationality, gender, and other details necessary for appropriate documentation are lacking. This is especially true in cases when the deceased donor's family cannot be located. With a population of over 175 million people, the World Health Organisation (WHO) estimated in 2013 that road accidents in Nigeria claimed 20.5/100,000 lives, or roughly 35,000 deaths. At the time, Nigeria was ranked ninth globally for road accident deaths.⁴³ Since then, the numbers and percentage are expected to have increased due to Nigeria's population growth, which is expected to reach over 200 million by 2022.⁴⁴ Even in cases where victims passed away due to the severity and irreversibility of their injuries, there were traffic accidents that claimed lives but were not reported. The tragic accident victims may have been potential donors and provided essential organs to aid those on the organ transplant waiting list if Nigeria's laws were insufficient

With the exception of the broad and general provision of section 48, which was previously examined, the Act did not specifically provide for the non-disclosure of information about the donor and recipient nor did it provide sufficient guidelines regarding the standards for choosing a donor for transplantation. The few private, highly developed hospitals that have organ banking are unregulated since Nigerian legislation is equally deficient in the domain of organ banking in an emergency or for

⁴¹ See the *Interpretation of Section 64 of the National Health Act, Cap 8 LFN, 2014*.

⁴² For instance, Gillick competency test is applicable in other jurisdictions. This test required that a child could consent if they fully understood the medical treatment that is proposed without their Parents intervention. This was the position of the House of Lords in the case of *Gillick v West Norfolk and Wisbech Area Health Authority* [1985] UKHL 7, see also Titilayo O. Aderibigbe and Amarachi C. Okonkoh, 'Parental Refusal of Treatment and Children's Rights in Nigeria', March 2021. *Journal of Law and Medicine* 28(2):449-461.

⁴³ Popoola A. A., et al., 'Deceased Donor Organ Transplantation Potential: A peep into an Untapped Goldmine'. *Saudi Journal of Kidney Diseases and Transplantation*, Vol 31, 2020, 247-248. Available online at <https://www.sjkdt.org/article.asp?issn=13192442;year=2020;volume=31;issue=1;page=245;epage=253;aulast=Popoola>. Accessed on 03/02/2024.

⁴⁴ Nigeria Population Growth Rate 1950-2022, available online at <https://www.macrotrends.net/countries/NGA/nigeria/population-growth-rate>. Accessed on 12/7

storage purposes.⁴⁵ A jurisdiction's legal system has a significant influence on how certain legal acts are recognised and carried out. The dearth of laws and their gaps, together with the inadequate enforcement of those that do exist, will cause Nigerians' attitudes towards organ donation and transplantation to continue to deteriorate.

4. Commercialization of Organs

According to Nigerian legislation, organ donations for transplants should typically be made voluntarily and without expectation of payment to the donor.⁴⁶ Regardless of any arguments based on culture or religion about the selling of organs for donation, this stance has dispelled all doubt. In actuality, though, a lot of people are afraid to donate their organs unless they receive payment, which actually encourages the covert sale of organs. Sadly, some intermediaries and contributors have viewed it more as a way to profit than as the charitable purpose the law intended.⁴⁷

There is no doubt that some medical professionals who put their personal financial interests ahead of their professional oath promote and engage in this illegal activity. Organ sales can devolve into an organ market where the highest bidder wins. This can even happen when relatives of the deceased donor sell their cadaveric organs. In cases when the departed donor did not indicate their desire to donate through their Will or other testamentary documents, it becomes a matter of legal authority for the families and medical staff to consent to the donation.

There may occasionally be arguments among the family over who should be the rightful consenting party. This is the case because the majority of the departed relatives are more concerned with the donation's financial benefits. As to the NHA, the decision to contribute or not to donate, free of charge, rests with the departed donor or their family members.

Even though the sale of organs is illegal, some contend that in order to encourage people to volunteer as potential donors and lessen the shortage of organs for transplantation, the government should compensate donors monetarily or in other ways.⁴⁸ Furthermore, some recipients feel that they owe their givers something since they view the donation as a unique gift that demands gratitude from the giver as well. An ingrained cultural norm of expressing gratitude for a donation can lead to

⁴⁵ Lara Adejoro, Consent central to organ donation – Abugu, President, Medical law association. Available online at <https://punchng.com/consent-central-to-organ-donation-abugu-president-medical-law-association/?amp> Accessed on 04/02/2024.

⁴⁶ Section 53 of the National Health Act, Cap 8 Laws of the Federation of Nigeria, 2014

⁴⁷ Anya Adair and Stephen J Wigmore, 'Paid organ donation: the case against' *Journal of Annals of The Royal College of Surgeons of England*, available online at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3291132/>, 2011, pages 191-192; see also Grappling with emerging cases of organs trafficking in Africa reported by Chijioke Iremeka in The Guardian News Paper on 7th May 2022 at 3:00 am . Available online at <https://guardian.ng/saturday-magazine/grappling-with-emerging-cases-of-organs-trafficking-in-africa/>. Accessed on 04/02/2024

⁴⁸ Paying cash to family of deceased for organs is a terrible idea, it paves the way to monetising body parts. Reported by Rema Nagarajan, in The Times of India on Jul 06, 2022 at 22:07 PM IST Available online at <https://timesofindia.indiatimes.com/blogs/staying-alive/paying-cash-to-family-of-deceased-for-organs-is-a-terrible-idea-it-paves-the-way-to-monetising-body-parts/?source=app&frmapp=yes>. Accessed on 04/02/2024

psychological and moral burdens for recipients who fail to return their contributors in some form. Even while this reasoning makes sense, there are certain drawbacks.

RECOMMENDATIONS

- i. The Minister of Health of Nigeria should form committees in each state to examine the establishment of regional transplant programmes, donor banking, and deceased donor registry facilities in Nigeria.
- ii. For the benefit of Nigerians, the legislatures in that country ought to study the laws of other nations, particularly those in Europe, and adopt pertinent provisions of their legislation pertaining to organ donation and transplantation.
- iii. The Nigerian government should set up suitable systems for paying willing donors in each of the federation's states, linked to medical facilities that have been given the all-clear to carry out the procedure. This will promote organ donation and lessen the possibility that someone will become a victim of organ trafficking middlemen and black marketers.
- iv. In order to prevent legal problems when a patient passes away, government legislation should require both government and private institutions to update patient cards on a regular basis to reflect voluntary and potential donors who sign the card during their lifetime.

CONCLUSIONS

Organ transplantation raises important moral, legal, and social concerns that must be addressed. Even in first-world nations, commercial organ sales and transplant tourism continue to be huge industries in many regions of the world despite the fact that many nations have implemented transplant legislation and regulations. Given the current state of poverty and corruption in the developing countries, it is imperative that attempts to supervise transplant activities be increased. In this case, professional associations ought to take the initiative. Governments must also hold public consultations and raise community knowledge about organ donation for both living and deceased individuals.