

**PROLIFERATION OF LEGAL INSTRUMENTS REGULATING ORGAN TRAFFICKING IN NIGERIA:
ANY EFFECT? LESSONS FROM INDIA AND SOUTH AFRICA***

Abstract

Organ and tissue transplant is a life extending medical procedure that has gained international recognition and acceptance for centuries. Over the years, several medico-legal issues have been identified as emanating from transplant procedures. Such issues include informed consent of the parties involved, compensation of donors for donated organs/tissues, forced organ harvesting and organ trafficking. Globally, regionally and national levels, several legal instruments have been made to legally regulate organ trafficking particularly. The aim of this paper is to ascertain the effect so far of the existing legal framework for the regulation of organ trafficking in Nigeria, India and South Africa. Looking through the laws of India, South Africa and Nigeria, it is obvious that there are actually laws regulating transplants generally and organ trafficking in particular. There are also regulatory bodies established to see to the actualization and enforcement of the existing transplant laws in the countries reviewed. This paper concludes by recommending that the existing regulatory bodies in the country need to step up to their respective statutory powers and functions. Alternatively, specialized regulation bodies urgently need to be created to effectively give life to the extant laws regulating transplants and also enforce the provisions of the relevant laws.

Keywords: Legal Instruments Regulating Organ Trafficking, Proliferation, India, South Africa, Nigeria, Any Effect?

1.0. Introduction

One of the tremendous advancements of medical science in improving the healthcare of mankind is organ and tissue transplant – extending the life of the recipient. Due to issues incompatibility and unrefined techniques, the first transplant to be performed internationally, was unsuccessful.¹ The story is different today with several recent improvements achieved in the transplant procedures. The first allograft² was carried out by a Swiss Surgeon, Jacques Louis Reverdin in 1868.³ In 1869 the first skin transplant was performed.⁴ By 1905, the first successful transplant of a cornea was carried out.⁵ On the 23rd of December, 1954, the first successful kidney transplant was done from a healthy identical twin to his twin who had renal failure at Peter Bent Brigham Hospital in Boston.⁶ Subsequently, the first successful bone marrow transplant was conducted in 1956 wherein bone marrow was taken from a health twin to the other that had leukemia.⁷ In 1959, the first successful kidney transplant was performed between fraternal twins.⁸ The following year, 1960, the first successful kidney transplant was conducted between siblings who were not twins.⁹ Between 1962 and 1963, the first kidney, lung and liver transplants were recovered from deceased donors.¹⁰ Three years later, 1966, the first successful pancreas transplant was performed.¹¹ On the 3rd of December, 1967, the first heart transplant was carried out from a dead donor to a living recipient in South Africa.¹² Unfortunately, the recipient lived for only 18 days.¹³ Between 1983 and 1984, the first successful lung and heart/liver combined transplant was performed.¹⁴ Three years later, the first intestinal transplant was conducted.¹⁵ In 1988, the first split-liver transplant was carried out. This helps two recipients each receive

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¹ CJE Watson and JH Dark, 'Organ Transplantation: Historical Perspectives and Current Practice.' (2013) *British Journal of Anaesthesia*, 30.

² Transplant from one individual to another.

³ CJE Watson *op. cit.*

⁴ Organdonor.gov, 'Timeline of Historical Events and Significant Milestones.' <https://organdonor.gov/about/facts-terms/history.html> retrieved on December 22, 2023.

⁵ Restoresight, History of Corneal Transplantation, Eye banking and the EBAA.' <https://restoresight.org> retrieved on December 22, 2023.

⁶ PJ Morris, 'Transplantation — A Medical Miracle of the 20th Century.' (2004) *New English Journal of Medicine*, 2678.

⁷ Home.Cancer Research, '1956: The First Successful Bone Marrow Transplantation.' <https://home.cancerresearch/1956-the-first-successful-bone-marrow-transplantation/> retrieved on December 22, 2023.

⁸ Organdonor.gov, *op. cit.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² J G Brink and J Hassoulas, 'The First Human Heart Transplant and Further Advances in Cardiac Transplantation at Groote Schuur Hospital and University of Cape Town.' (2009) 20 *Cardiovascular Journal of Africa*, 31.

¹³ *Ibid.*

¹⁴ Organdonor.gov, *ibid.*

¹⁵ UNOS, 'Transplantation History.' www.unos.org retrieved on December 22, 2023.

a portion of one donated liver.¹⁶ In 1998, the first successful hand transplant was done in France.¹⁷ For the first time in history, the total of living organ donors surpassed the number of deceased organ donors – 6,528 as against 6,081.¹⁸ By 2005, the first successful partial face transplant was performed in France.¹⁹ Five years later, 2010, the first successful full-face transplant was conducted at Vall d’Hebron Hospital in Spain.²⁰ Various legal and ethical issues arise for consideration before, during, and after transplant procedures. They include as informed consent, confidentiality, determination of brain death for organ harvesting, organ trafficking and medical negligence. The focus of the present paper is organ trafficking and the various laws regulation same in Nigeria in contradistinction with India and South Africa.

2. Conceptual Review

Organ

The word ‘organ’ is coined from the Latin word – *organum* which means an instrument or tool.²¹ Biologically, an organ can be defined as a collection of tissues that structurally form a functional unit specialized to perform a particular function.²² ‘Organ has also been defined as a differentiated structure – such as the heart or kidney, consisting of cells and tissues and performing some specific function in an organism bodily parts performing a function or cooperating in an activity.’²³ Furthermore, it is a relatively independent part of the body that carries out one or more special functions. Examples of organs include the eyes, ears, heart, lungs, and liver.²⁴

Tissue

Physiologically speaking, ‘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.²⁵ Tissue, as defined by the National Health Act²⁶ means human tissue, and includes flesh, bone, a gland, an organ, skin, bone marrow or body fluid, but excludes blood or a gamete.

Transplant/Transplantation

Transplant, also called graft or organ transplant, in medicine, is a 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.²⁷ The term, like the synonym *graft*, was borrowed from horticulture. Both words imply that success will result in a healthy and flourishing graft or transplant, which will gain its nourishment from its new environment.²⁸ Transplantation basically involves transferring an organ, tissue or cells from one person (donor) to another (recipient).²⁹ Transplant could be from a dead person³⁰ or from a living person.³¹

Donor

Medically speaking, 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.³² Furthermore, Cambridge Dictionary defines an organ donor as a person who gives permission for a part of their body to be taken, while they are alive or after they are dead, and put into someone else’s body to replace an organ that is not working correctly.³³ It can be deduced from the various definitions that a donor – dead or alive, for transplant purposes, is one who gives to another person organ(s) or tissue(s) to be transplanted to the recipient’s body.

¹⁶ Organdonor.gov, *op. cit.*

¹⁷ *Ibid.*

¹⁸ UNOS, *op. cit.*

¹⁹ Organdonor.gov, *op. cit.*

²⁰ *Ibid.*

²¹ National Human Genome Research Institute, ‘Organ.’ [https://www.genome.gov/genetics-glossary/Organ#:~:text=In%20biology%2C%20an%20organ%20\(from,lungs%20are%20examples%20of%20organs.](https://www.genome.gov/genetics-glossary/Organ#:~:text=In%20biology%2C%20an%20organ%20(from,lungs%20are%20examples%20of%20organs.) retrieved on December 22, 2023.

²² *Ibid.*

²³ Merriam-Webster, ‘Definition of Organ.’ <https://www.merriam-webster.com/dictionary/organ> retrieved on December 22, 2023.

²⁴ Medicine.net, ‘Definition of Organ.’ <https://www.medicinenet.com/script/main/art/asp?articlekey=21288> retrieved on December 22, 2023.

²⁵ Encyclopedia Britannica, ‘Tissue.’ <https://www.britannica.com/science/tissue> retrieved on December 22, 2023.

²⁶ National Health Act of 2014, s. 64.

²⁷ R Y Calne, ‘Transplant.’ <https://www.britannica.com/science/transplant-surgery> retrieved on December 22, 2023.

²⁸ *Ibid.*

²⁹ J Lokulo-Sodipe, ‘Organ Transplantation Tourism: Upholding the Donee’s Right to Qualitative Health Care.’ (2022) *Open Access Library Journal*, 1.

³⁰ This is for major organs like the heart and liver.

³¹ This is for other organs like the kidney and tissues which the recipient is not depending on to live.

³² National Cancer Institute, ‘Donor.’ <https://www.cancer.gov/publications/dictionaries/cancer-terms/def/donor> retrieved on December 22, 2023.

³³ Cambridge Dictionary, ‘Organ Donor.’ <https://dictionary.cambridge.org/dictionary/english/organ-donor> retrieved on June 26, 2023.

Recipient

Medically speaking, 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.³⁴ Jay Marks defined a recipient, for transplant purposes, as someone who is given something, such as a blood transfusion or an organ transplant, that is derived from another person (the donor).³⁵ It can safely be said that a recipient, in the context of a transplant, is one who receives organ(s)/tissue(s) from another (a donor) for transplant purpose.

Organ Donation and 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.³⁶ 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.³⁷ Tissue donation is a medical process where 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.³⁸ Furthermore, tissue donation happens when tissue from a donor's body is removed and transplanted into the recipient.

Organ Harvesting

According to the International Society for Human Rights, organ harvesting is essentially 'killing on demand', which is the selling and transplanting of the organs of victims.³⁹ This definition, in the researcher's humble opinion, appears to be extreme. Organ harvesting has been medically defined as the procedure of removing tissues, organs, or specimens from donors for reuse, such as transplantation.⁴⁰ Forced organ harvesting is the illegal practice of surgically removing a victim's organs against their will.⁴¹ This is done through any of the following ways –⁴²

- 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.

Organ Trafficking

Organ trafficking has been described as 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.⁴³ Furthermore, organ trafficking has been defined as the practice of stealing or buying organs through exploitation to be sold on a black market for profit, and transplant tourism is traveling to another country for the purpose of buying, selling, or receiving organs.⁴⁴ Simply put, organ trafficking is the practice of using exploitation,

³⁴National Cancer Institute, 'Recipient.' <https://www.cancer.gov/publications/dictionaries/cancer-terms/def/recipient> retrieved on December 22, 2023.

³⁵J W Marks, 'Definition of Recipient.' <https://www.rxlist.com/recipient/definition.htm> retrieved on December 22, 2023

³⁶J Lokulo-Sodipe, *op. cit.*, p.3.

³⁷Healthdirect, 'Organ and Tissue Donation.' <https://www.healthdirect.gov.au/organ-and-tissue-donation> retrieved on December 22, 2023.

³⁸*Ibid.*

³⁹International Society for Human Rights, 'Organ Harvesting.' <https://ishr.org/organ-harvesting/> retrieved on December 22, 2023.

⁴⁰Harvard Catalyst, 'Tissue and Organ Harvesting.' <https://connects.catalyst.harvard.edu/Profiles/display/Concept/Tissue%20and%20Organ%20Harvesting> retrieved on December 22, 2023.

⁴¹Wales Safer Communities, 'Organ Harvesting.' <https://safercommunities.wales/modern-slavery-exploitation/organ-harvesting/#:~:text=Forced%20organ%20harvesting%20is%20the,They%20are%20forcefully%20removed.> Retrieved on December 22, 2023.

⁴²*Ibid.*

⁴³V Theodosiou and P Stefanidou, 'World Health Organisation: Tackling Organ Trafficking and Illegal Transplantations Study Guide.' (2018) <http://aristoteliocollegemun.weebly.com/uploads/1/6/4/1/16419972/who-study-guide-arcmun2018-revised.pdf> retrieved on December 22, 2023.

⁴⁴B Broumand, and R Saidi, 'New Definition of Transplant Tourism.' (2017) 8 *International Journal of Organ Transplant Medicine*, p. 49.

coercion, or fraud to steal or illegally purchase or sell organs.⁴⁵ Organ has been revealed to be one of the most covert forms of human trafficking globally.⁴⁶

3. Legal Framework for the Regulation of Organ Trafficking in Nigeria

Presently in Nigeria there are three major laws regulating organ and tissue transplant generally and they are the Corneal Grafting Act, the National Health Act, the Trafficking in Persons (Prohibition and Enforcement) Act, and the National Blood Service Commission Act. Specifically, it is the National Health Act and the Trafficking in Persons (Prohibition and Enforcement) Act that shall be discussed hereunder.

National Health Act 2014

In Nigeria, The National Health Act⁴⁷ was enacted in 2014 to provide a framework for the regulation, development and management of a national health system and set standards for rendering health services in the federation, and other matters connected therewith.⁴⁸ Chapter 8 of the NHA is dedicated to the legal regulation of transplants in Nigeria. Section 48 of the NHA prohibits the removal of tissue, blood or blood product from the body of another living person for any purpose except in compliance with the following conditions –⁴⁹

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.

Interestingly, removal of tissues that are non-replaceable by natural process from persons below 18 years of age is prohibited in Nigeria.⁵⁰ 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 –⁵¹

1. such removal must be carried out in a hospital authorised for that purpose; and
2. the removal must be done on the written authority of:
 - a. the medical practitioner in charge of 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.⁵²

The NHA notably provides that it is a registered medical practitioner or dentist 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.⁵³ Additionally, it is 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.⁵⁴

Trafficking in Persons (Prohibition and Enforcement) Act 2015

The Trafficking in Persons (Prohibition) Enforcement and Administration Act⁵⁵ was enacted with objectives that include providing an effective and comprehensive legal and institutional framework for the prohibition, prevention, detection, prosecution and punishment of human trafficking and related offences Nigeria; and the protection of victims of human trafficking.⁵⁶ Section 2 establishes the National Agency for the Prohibition of Trafficking in Persons⁵⁷ and makes it a corporate personality with succession powers. The functions of NAPTIP include the following:⁵⁸

⁴⁵ JCA Meshelemiah and RE Lynch, *The Cause and Consequence of Human Trafficking: Human Rights Violations* (Ohio, Ohio State University Press, 2019.) p. 226.

⁴⁶ *Ibid.*

⁴⁷ Hereinafter referred to as the NHA.

⁴⁸ See the long title to the NHA.

⁴⁹ This is subject to the provisions of section 53 of the NHA.

⁵⁰ Section 48 (3) of the NHA.

⁵¹ Section 51 (1) of the NHA.

⁵² The above provisions are subject to the provisions of section 51 (2) of the NHA.

⁵³ Section 52 (1) of the NHA.

⁵⁴ Section 52 (2) *ibid.*

⁵⁵ Hereinafter referred to as TIPPEA.

⁵⁶ Section 1 of TIPPEA.

⁵⁷ Hereinafter referred to as NAPTIP.

⁵⁸ Section 5 of TIPPEA.

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 persons.
3. Enhance the effectiveness of Law Enforcement agents and other partners in the suppression trafficking in persons.
4. 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.
5. Implement all bilateral and multilateral treaties and conventions on trafficking in persons adopted by Nigeria;
6. 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 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 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.

From the foregoing provisions, NAPTIP is vested with powers 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. Specifically, the said section states that –

Any person who—

- (1) (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 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 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 conviction to imprisonment for a term of not less than 7 years and a fine of not less than 5,000,000.00.

The above provisions can be said to have been enacted in line with the Istanbul Declaration on Organ Trafficking and Transplant Tourism of 2008 targeted at eradicating organ trafficking and preserving the sanctity of organ donation.⁵⁹ It has been asserted by health personnel in Nigeria that organ trafficking is a thriving business in Nigeria without strict regulation by the government.⁶⁰ In fact, persons stroll into health institutions, without much ado, offering their vital organs for sale in expectation of financial gratification.⁶¹ Sometime this year, a former lawmaker, Senator Ike Ekweremadu was convicted with his wife and personal physician for taking a young man from Nigeria to the UK for the

⁵⁹National Institute of Health, 'The Declaration of Istanbul on Organ Trafficking and Transplant Tourism.' <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4571160/> retrieved on August 28, 2023.

⁶⁰ L Adejoro, 'Illegal organ harvesting, thriving business in Nigeria – Nephrologist.' <https://punchng.com/illegal-organ-harvesting-thriving-business-in-nigeria-nephrologist/> retrieved on August 28, 2023.

⁶¹ *Ibid.*

purpose of organ harvesting.⁶² It is laughable and shameful that the said lawmaker was part of the enactment of the TIPPEA in Nigeria that prohibits organ trafficking yet 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 of allegations of organ harvesting throughout the country.⁶³ Sometime in September, 2023, one Noah Kekere and his accomplices were arrested and charged to court over allegations of organ harvesting by Kekere who held himself out as a medical doctor in Jos.⁶⁴ NAPTIP swung into action by conducting their own separate investigation to get to the root of the matter.⁶⁵ Investigation revealed that the said Kekere had been illegally running a hospital as a medical doctor but was disowned by the Nigerian Medical Association in Plateau State as being a quack and impostor. NAPTIP pledged their commitment to get to the root of the matter and get justice for the victim whose kidney was harvested during a surgery conducted by Kekere.

4. International Legal Framework for the Regulation of Organ Trafficking

Globally, there are several international instruments that have been made to specifically address the legal and ethical issues surrounding organ and tissue transplants. These instruments majorly consist of resolutions and guidelines. Discussed below are major international instruments that specifically have provisions affecting organ trafficking.

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. This reflected in Resolutions WHA40.13 and WHA42.5 wherein the World Health Assembly, for the first time, expressed concern over commercial trade in organs and the need for global standards for transplantation.⁶⁶ Pursuant to consultations engaged in by the WHO Secretariat, the World Health Assembly then endorsed the WHO Guiding Principles on Human Organ Transplantation in resolution WHA44.25. So far, the Guiding Principles have hugely impacted on laws, professional codes and practices internationally. Taking into cognizance the evolving practices and attitudes regarding organ and tissue transplantation, the Fifty-seventh World Health Assembly in resolution WHA57.18 requested the Director-General, *inter alia*, “to continue examining and collecting global data on the practices, safety, quality, efficacy and epidemiology of allogeneic transplantation and on ethical issues, including living donation, in order to update the Guiding Principles on Human Organ Transplantation.”⁶⁷ The extant World Health Organization Guiding Principles on Human Cell, Tissue and Organ Transplantation⁶⁸ was endorsed by the sixty-third World Health Assembly in May 2010, in Resolution WHA63.22.

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. Aslo, 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 are 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,

⁶²M Weaver, ‘Nigerian Politician Jailed for Nine Years in UK over Organ Trafficking Plot.’ (2023) <https://www.theguardian.com/uk-news/2023/may/05/nigerian-politician-jailed-in-uk-over-organ-trafficking-plot-ekweremadu> retrieved on August 28, 2023.

⁶³Premium Times, ‘NAPTIP Investigates Organ Harvesting, Ritual Killing.’ (2017) <https://www.premiumtimesng.com/news/top-news/247609-naptip-investigates-organ-harvesting-ritual-killing.html?tzc=1> retrieved on November 22, 2023.

⁶⁴ Punch.ng, ‘Two more Doctors Nabbed in Plateau over Organ Harvesting.’ <https://punchng.com/two-more-doctors-nabbed-in-plateau-over-organ-harvesting/> retrieved on November 24, 2023.

⁶⁵The Guardian, ‘Illegal Human Organ Harvesting: NAPTIP Promises Justice for Victim in Plateau.’ <https://guardian.ng/news/illegal-human-organ-harvesting-naptip-promises-justice-for-victim-in-plateau/> retrieved on November 24, 2023.

⁶⁶ Paragraph 3 of the Preamble to the World Health Organization Guiding Principles on Human Cell, Tissue and Organ Transplantation of 2008 adopted in 2010.

⁶⁷ *Ibid.*

⁶⁸ Hereinafter referred to as the WHO Guiding Principles on Transplant.

Somalia, South Sudan, Uganda, Vanuatu and Yemen.⁶⁹ Surprisingly, Nigeria is not a signatory to this protocol.⁷⁰ 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). It is common knowledge where the major work lies is with enforcement and not multiplicity of legislations. A former lawmaker in Nigeria took a younger man to the UK with the motive of harvesting one of the young man's kidneys for transplant to the law maker's daughter. The law maker left Nigeria freely but was arrested and convicted by the UK authorities with his wife and physician.⁷¹

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.⁷² 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 with 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. In 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.⁷³

⁶⁹ US Department of State, 'Countries in the 2020 TIP Report that are not Party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.' <https://www.state.gov/reports/2020-trafficking-in-persons-report/countries-not-parties-to-protocol/> retrieved on December 29, 2023.

⁷⁰ E H Emmanuel and I F Nabena, 'Legal and Ethical Developments in the Regulation of Organ Donation and Transplantation in Nigeria' (2020) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 133.

⁷¹ M Weaver, 'Nigerian Politician Jailed for Nine Years in UK over Organ Trafficking Plot.' <https://www.theguardian.com/uk-news/2023/may/05/nigerian-politician-jailed-in-uk-over-organ-trafficking-plot-ekweremadu> retrieved on December 29, 2023.

⁷² See the preamble to the Declaration of Istanbul of 2008.

⁷³ D E Martin, K V Assche, B Domínguez-Gil, M López-Fraga R G Gallont, E Muller, E Rondeau, and A M Capron, 'A New Edition of the Declaration of Istanbul: Updated Guidance to Combat Organ Trafficking and Transplant Tourism Worldwide.' [https://www.kidney-international.org/article/S0085-2538\(19\)30033-X/fulltext#%20](https://www.kidney-international.org/article/S0085-2538(19)30033-X/fulltext#%20) retrieved on December 29, 2023.

5.0. Legal Framework Regulating Organ Trafficking in India

Presently in India, the statutory framework regulating organ donation, transplants and handling comprise the Transplantation of Human Tissues Act of 1995⁷⁴ and the Rules made pursuant to the THOTA. Unfortunately, *organ trafficking* was not defined in THOTA or the Rules pursuant to same. Instead, THOTA penalized certain acts that can come under the globally acceptable definitions of organ trafficking. This is seen in section 19 of the THOTA as follows

Whoever –

- (a) makes or received any payment for the supply of, or for an offer to supply, any human organ;
- (b) seeks to find person willing to supply for payment any human organ;
- (c) offers to supply any human organ for payment;
- (d) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, any human organ;
- (e) takes part in the management or control of a body of persons, whether a society, firm or company, whose activities consist of or include the initiation or negotiation of any arrangement referred to in clause (d); or
- (f) publishes or distributes or causes to be published or distributed any advertisement-
 - (a) inviting persons to supply for payment of any human organ;
 - (b) offering to supply any human organ for payment; or
 - (c) indicating that the advertiser is willing to initiate or negotiate any arrangement referred to in clause
 - (d) shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and shall be liable to fine which shall not be less than twenty lakh rupees but may extend to one crore rupees: Provided that the court may, for any adequate and special reason to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than two years and a fine less than ten thousand rupees.
- (g) abets in the preparation or submission of false documents including giving false affidavits to establish that the donor is making the donation of the human organs, as a near relative or by reason of affection or attachment towards the recipient.

Section 19 B also outlines acts that can come under the definition of organ trafficking but specifically for human tissues as follows –

Whoever-

- (a) makes or receives any payment for the supply of, or for an offer to supply, any human tissue; or
- (b) seeks to find person willing to supply for payment and human tissue; or
- (c) offers to supply any human tissue for payment; or
- (d) initiates or negotiates any arrangement involving the making of any payment for the supply of, or for an offer to supply, any human tissue; or
- (e) takes part in the management or control of a body of persons, whether a society, firm or company, whose activities consist of or include the initiation or negotiation of any arrangement referred to in clause (d); or
- (f) publishes or distributes or causes to be published or distributed any advertisement-
 - (i) inviting persons to supply for payment of any human tissue; or
 - (ii) offering to supply any human tissue for payment; or
 - (iii) indicating that the advertiser is willing to initiate or negotiate any arrangement referred to in clause (d);or
- (g) abets in the preparation or submission of false documents including giving false affidavits to establish that the donor is making the donation of the human tissues as a near relative or by reason of affection or attachment towards the recipient, shall be punishable with imprisonment for a term which shall be liable to fine which shall not be less than five lakh rupees but which may extend to three years and shall be liable to fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.

Section 370 (a) of the Indian Penal Code of 1860 criminalizes trafficking in person for the purpose of removal of organs. Any person found guilty of human trafficking for the removal of organs shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine. Sadly, despite the extant legal framework for the legal regulation of organ trafficking in India, organ trade in India has been described as an ‘open secret’ which makes India a popular destination for organ transplantation wherein organs can be bought and sold. In other words, in India, organs and tissues are treated and dealt with as commodities instead of vital human body parts needed for human existence and survival.⁷⁵ It can safely be submitted that although the Indian THOTA frowns at acts that can be described as organ trafficking, serious enforcement of the law is needed to truly fight organ trafficking in India.

⁷⁴ Amended in 2011. Hereinafter referred to as THOTA.

⁷⁵ *Ibid.* p.42.

6. 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, 2003⁷⁶ and the Rules made pursuant to the Act. The South African NHA did not define organ trafficking. Instead, 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-
 - (b) 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.

By the provisions above, 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. Conclusion and Recommendations

Internationally and in many countries in the world that include India, South Africa and Nigeria, there exist legal instruments targeted at reducing organ trafficking to the barest minimum. The general challenge appears to be enforcement. At the international scene, huge steps have been taken by international organizations which have urged Member States to domesticate and enforce the laws on organ trafficking. India for instance has THOTA and the Rules made pursuant to THOTA on ground. There is also the Appropriate Authority, in India, statutorily tasked with the enforcement of the THOTA and Rules made pursuant therein. With the high level of organ trafficking India has become notorious for, the laws appear not to be the problem. Hence, even if more are made, organ trafficking may keep increasing. In a report that emanated in the last quarter of 2023, a popular hospital in New Delhi was implicated to be involved in enticing individuals in Myanmar to offer up their kidneys for financial gratifications.⁷⁷ In South Africa, the challenge is inadequate legal and administrative framework for regulating organ trafficking. The South African NHA did not elaborately spell out and prohibit organ trafficking in South Africa. This is also the case with the South African Prevention and Combating of Trafficking in Persons Act, 2013 enacted to deal with human trafficking but did not recognize 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 have provided a legal framework to combat 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 Anambra, Cross River, Plateau, Ogun, and Jigawa States.⁷⁸ It is common knowledge that human trafficking is a crime that has various subtle dimensions which NATIP is struggling to control without much success. Human trafficking for the purpose of organ harvesting and organ trafficking is beyond NAPTIP's control. It was under the 'watchful eyes of NAPTIP that a former lawmaker facilitated the travel of a young man to harvest one of the latter's kidneys for transplant to the former lawmaker's daughter. This is a clear indication that NAPTIP is too busy or 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 proliferation of legislation. Rather, the major solution lies with effective enforcement of existing laws regulating organ trafficking. Furthermore, the following suggestions are recommended in dealing with the hydra-headed monster called organ trafficking. More attention should be focused on creating awareness on what forced organ harvesting and organ trafficking are and how evil they – down to the grassroots. This 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. Globally and nationally, special bodies should be set up and dedicated to the enforcement of laws penalizing organ trafficking. In Nigeria, for instance, a special unit needs to be dedicated to 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 traveling, especially on health grounds or accompanying persons traveling for medical intervention to ensure they are not parties to organ trafficking. If this were in place the evil intention of the lawmaker who was convicted for organ trafficking would have been nipped in the bud and saved the country the national embarrassment occasioned by the lawmaker's actions. Poverty needs to be attacked globally and domestically to prevent the poor from trading their vital organs for financial gratification that leaves them in a worse state medically. Most victims of organ trafficking sell their organs get funds to meet pressing needs or debts. The economy as it is presently is so harsh and tempting for victims to sell their organs. The governments of various countries, particularly developing countries need to put in measures to alleviate the poverty level among their citizens. For example, palliatives in cash and kind would go a long way and discourage victims from selling their organs/tissues for peanuts that cannot even handle the side effects of the removal.

⁷⁶ Hereinafter referred to as South African NHA.

⁷⁷ O Gupta, 'Major India Hospital Accused of Organ Trafficking.' <https://www.jurist.org/news/2023/12/major-india-hospital-accused-of-organ-trafficking/> retrieved on January 11, 2024.

⁷⁸NAPTIP, 'Organizational Structure.' <https://naptip.gov.ng/organizational-structure/#:~:text=At%20present%20there%20are%209,also%20has%2016%20State%20Commands>. Retrieved on January 12, 2024.