



LEGISLATIVE FRAMEWORKS FOR COMBATING ORGAN TRAFFICKING: A COMPARATIVE STUDY OF NIGERIA AND GLOBAL PERSPECTIVES

ONWARD-ANWURI, Leah*

ABSTRACT

Organ harvesting is one of the most vital advances in modern medicine globally. It is a surgical procedure that enhances the quality of health and longevity of human life. Over the years, there has been an increasing need for organ transplantation across the globe. Organ harvesting requires a donor who consents to harvest or remove a specific organ.

This article, therefore, seeks to embark on a comparative study of the legal framework for trafficking in persons for organ removal in Nigeria and the United Kingdom. The aim is to ascertain the adequacy of Nigerian law to curb the scourge of trafficking in persons for the purpose of Nigeria.

The research adopts a qualitative research methodology using a doctrinal method of legal research. The research finds that the legal framework for trafficking in persons for organ removal in Nigeria and the UK are similar for all intents and purposes. It recommends the appropriate measures the Nigerian government may explore in combating the menace of human trafficking in the country.

Keywords: Organ Removal, Organ Transplantation, Organ Harvesting, Trafficking, Organ Donor.

INTRODUCTION

Organ harvesting and transplantation are ancient practices in medicine that have now gained prominence in the 21st Century. The procedure has been employed in modern medicine to improve the quality of patient health and the longevity of human life. It is one of the improved developments in medicine.



Organ transplantation was considered a very risky procedure until the 1980s. Today, it is a practice carried out in more than 100 countries across the globe. However, the disparity between the demand and supply of organs has been observed to be responsible for the loss of many lives. It is observed that while there may be high demand for organ donors, there are often low organ donors available, thereby leading to a high queue of patients in need of an organ.

Donor trafficking victims are mostly from poor and helpless populations. In most cases, these victims are recruited by organ brokers who would connect them with the family of the organ recipients. Oftentimes, organ recruiters are extended family members, relatives, or community members of the victims, who would lie to their victims that they are being helped to find greener pastures in another country. Sometimes, they are told that the organ sought to be removed will grow back, that having two kidneys is unnatural, or that they have a large and a small kidney, and removal of the small kidney is harmless.

On the whole, there is a clear indication that coercion of living donors is more common.¹

Today, it has been observed that Nigerians are increasingly victims of forced organ removal due to the alarming rate of the nation's poor economy. One of the most prioritized destinations of trafficking in persons for organ removal is the United Kingdom, due to the technological advancement and the improved technical know-how of the country to carry out the procedure.

¹“Nigeria Trafficking in Human Beings” Country of Origin Information Report, 2021, pp 11-65. https://euaa.europa.eu/sites/default/files/publications/2021_04_EASO_Nigeria_Trafficking_in_Human_Beings.pdf accessed 29th September 2022]; Future for Advanced Research and Studies [2016] *Why rates of human trafficking are on the rise in the Middle East*. <<https://futureuae.com/m/Mainpage/Item/2309/why-rates-of-human-organ-trafficking-are-on-the-rise-in-the-middle-east>> accessed 25th August 2022.



Interestingly, both the United Kingdom and Nigeria have domestic legislation regulating organ donation, removal, or transplantation, yet the crime of trafficking persons for organ removal continues between these two countries. The most recent of this phenomenon is the case of a senator of the Federal Republic of Nigeria, Ike Ekweremadu, Beatrice Ekweremadu (his wife), and a medical doctor found guilty of trafficking in persons for organ removal under the Modern Slavery Act. The convicts were convicted for facilitating the travel of a 21-year-old Lagos trader to London for the harvesting of his kidney for the treatment of Sonia Ekweremadu, the daughter of Ike Ekweremadu, who had been on a sickbed for kidney failure.

This paper, therefore, is a comparative study of the legal framework for the trafficking of persons for organ removal under both Nigerian and United Kingdom legislations. The justification for undertaking this research is to identify the areas of weaknesses in Nigerian law on trafficking in persons for organ removal and see how the law may be improved upon using the United Kingdom's legislative experience.

CONCEPTUAL FRAMEWORK

Organ trafficking is perhaps the least profiled and understood form of human trafficking. It often involves the intersection of donor, recipient, medical experts, and organized criminal groups facilitating the trade. While the United Nations Office on Drugs and Crime and the Council of Europe also refer to the trafficking in organs or tissues (often from cadaver donors), the topic was not a priority nor had it received close scrutiny in Member States. Most cases included in the report involved the illegal removal and trafficking of organs or tissue from deceased persons.



Organ Removal

A broader term that encompasses both organ donation and transplantation. It refers to the surgical act of taking organs from a donor, whether living or deceased, for various purposes, including transplantation, research, or therapeutic procedures. The term acknowledges the diverse contexts in which organ removal occurs.²The unlawful trafficking of human organs for transplantation, known as organ harvesting, is an increasing global concern. Nigeria, like many other countries, is not immune to this bleak reality.

Organ Donation

Typically refers to the voluntary act of giving one's organs, during life (living organ donation) or after death (deceased organ donation), for transplantation or medical research. The emphasis in organ donation is on the selfless act of providing organs for the purpose of saving or enhancing the lives of others.³ Organ donation is the process of donating a vital organ to a recipient whose own organ has failed or is failing.

Transplantation

Specifically refers to the surgical procedure of implanting donated organs into a recipient's body. It involves the intricate process of removing organs from a donor and implanting them into the recipient, with the aim of restoring or enhancing the recipient's organ function. Thus,

²A. S Daar, & G.Khushf., *Transplantation ethics. In Organ Transplantation* [2009] (21-28).

³A M Capron, 'Organ Transplantation: Defining the Ethical and Policy issues' *The Journal of Medicine and Philosophy*, [1999] 24(3), 260-281.



transplantation is an act of transferring an organ, tissue or cells from one person (donor) to another (recipient)⁴.

CRIMINALISATION OF TRAFFICKING IN PERSONS FOR REMOVAL OF ORGANS UNDER INTERNATIONAL INSTRUMENTS

Trafficking in persons for the removal of an organ has been defined under several local, regional, and international laws/treaties. It is interesting to start by saying that the *Trafficking in Persons Protocol* (herein referred to as “the Protocol”) is the first international legal instrument that defines trafficking for organ removal.

According to Article 3(a) of the Protocol, the offence of trafficking in persons may be said to have been committed where there is the recruitment, transportation, transfer, or harbouring of a person through force, coercion, fraud, or deception of another person for exploitation. This paper also recognises that trafficking in persons sometimes occurs through the abuse of power or use of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for exploitation. Interestingly, the Protocol defines exploitation to include the removal of organs.

Going by the definition offered under this Protocol, three ingredients must be established before the crime of trafficking in persons for organ removal may be proved:

⁴. A Garwood-Gowers, 'Time to Address the Problem of Post-Mortem Procurement of Organs for Transplantation Occurring without Proper Pre-mortem Consent' [2013] (20) (4) *European Journal of Health Law* 383, 386.



1. It must be proved that there is recruitment, transportation, transfer, harbouring, or receipt of the person(s);
2. The recruitment, transportation, transfer, harbouring, or receipt of a person(s) must be through threat or use of force, coercion, abduction, fraud, deception, abuse of power, a position of vulnerability, or giving or receiving of payments or benefits to achieve the consent of a person in control of the victim; and
3. The act must be for exploitation, including the removal of organs.

Article 5 of the Protocol requires state parties to criminalise trafficking in persons for organ removal as defined in Article 3, including the attempt to commit the offence or being an accomplice to the commission of the offence. The offence of trafficking in persons for organ removal has also been recognised by some other international instruments.

Further to the above, in 2015, the first international treaty that deals solely with trafficking in human organs was introduced by the Council of Europe. The treaty is directed toward curbing trafficking in human organs and protecting both the rights and the victims of illicit organ removal. By the extant provision of Article 2(2) of the Convention, trafficking in human organs means any unlawful activity carried out regarding human organs as prescribed in Article 4(1) and Articles 5, 7, 8, and 9 of the Convention.

To prevent the inappropriate tampering with human organs, Article 4(1) imposes the obligation on state parties to the Convention to criminalise the intentional removal of human organs, whether from living or dead donors, where either consent was not obtained or removal was not



done within the purview of the domestic law. It should be noted also that Article 4(1) criminalises the removal of human organs for financial gain. To regulate the use of any organ removed from the human body, Article 5 mandates the state party to take domestic measures to criminalise the use of unlawfully removed organs, as described in Article 4(1), for purposes of implantation or other purposes than implantation.

Accordingly, Article 7(1) imposes an obligation on state parties to take appropriate domestic measures in criminalising the intentional solicitation and recruitment of organ donors which will accrue a financial gain to the recruiter. The article condemns the act of taking financial advantage of recipients of organ donation. Furthermore, Article 7(2) obligates state parties to clamp down on any person who either directly or indirectly intentionally gives healthcare professionals undue advantage to remove or perform the implantation of a human organ where such removal or implantation takes place under the circumstances described in Article 4(1) or Article 5, and where appropriate, Article 4(4) or Article 6.

In the same vein, Article 7(3) of the Protocol imposes an obligation on states that are parties to the Protocol to take necessary legislative measures in their domestic laws to criminalise the act of medical professionals, public officials, or private actors who intentionally receive improper benefits to perform or facilitate the removal or implantation of a human organ when such removal or implantation occurs under the conditions outlined in Article 4(1) or Article 5, and where appropriate, Article 4(4) or Article 6.



The Protocol is very robust as it takes care of every possible incident of trafficking for organ removal. If the provisions of the Protocol are duly adhered to by state parties regarding the obligations imposed on them to take legislative measures in criminalising acts that are inimical to medical practice, violate the basic fundamental human rights of people (donors), or unduly enrich individuals through organ removal and donation, there will be a drastic reduction in trafficking in persons for organ removal globally.

The provision of Article 8 of the Protocol is one of the most sacrosanct provisions. Article 8 criminalises the improper dealing with unlawfully removed human organs described in Article 4(1), and where appropriate, Article 4(4). The Protocol makes it a criminal offence and charges state parties to take necessary legislative measures to make it an offence in their domestic laws for anyone to store, collect, import, export, transport, preserve, or prepare any unlawfully removed human organs. However, the Protocol emphasises that for any person to be liable under it, it must be proven that these offences were committed intentionally. Finally, by Articles 8(1) and (2), there is an obligation on state parties to criminalise the intentional act of aiding, abetting, or otherwise encouraging the perpetration of any of the offences under this Protocol, while also criminalising the intentional attempt to commit any act adjudged by the Protocol to be a crime.

In 2008, more than 150 representatives of scientific and medical bodies around the world organised a summit held in Istanbul, Turkey, on the need to regulate organ trafficking. The summit formulated a *Declaration* as a follow-up on existing international human rights treaties. The Declaration defines organ trafficking as the recruitment, transportation, transfer, harbouring, or receipt of living or deceased people or their organs through the threat or use of force, or other



forms of coercion, kidnapping, fraud, deception, abuse of power, or a position of vulnerability, or through 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 exploitation by the removal of organs for transplantation.

EXAMINATION OF THE LEGAL FRAMEWORKS ON TRAFFICKING IN PERSONS FOR REMOVAL OF ORGAN

Nigerian Legislation

(a). The Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015

Nigeria is one of the signatories to the Protocol to Prevent, Suppress and Punish Persons Especially Women and Children. As a response to the legislative obligations imposed on it by the Protocol, the Nigerian government enacted the Trafficking in Persons (Prohibition) Enforcement and Administration Act to combat the cases of human trafficking in the country. This is a conscious demonstration of the commitment of the Nigerian government to fight human trafficking whether or not for the removal of human organs.

In Nigeria, the practice of trafficking in persons, whether for organ removal or not, is prohibited. Section 13 of the law criminalizing trafficking in persons in Nigeria provides that every act of human trafficking is prohibited in Nigeria while Section 2 imposes a fine of not less than Two Hundred and Fifty Thousand Naira (#250,000) and imprisonment of not less than 2 years on anyone who recruits, transports, transfers, harbours or receives another person through the use of force, fraud, abduction, abuse of power, the position of vulnerability to transport, transfer, recruit



or receives another for the sole purpose of exploitation of such person. It is deducible from the above that the position of the Nigerian law on trafficking in persons is similar to the other international conventions earlier considered both in meaning and context. A crystal observation of the Nigeria law is that there is no specific mention of “organ removal” as in the case of the international instruments referred to above, however, its emphasis is on the exploitation of a person. Careful digestion of the purport of the Nigerian law on trafficking in persons suggests that the non-usage of the term “organ removal” does not mean that the law does not prohibit organ removal.

In the interpretation of a statute, there are three major canons of interpretation which are the literal rule, the golden rule and the mischief rule. Adopting both the literal and golden rules of interpretations to Section 2 on “exploitation” may defeat the essence of the law. I, therefore, posit that there is a need to adopt the mischief rule of interpretation on Section 2 of the Act. The mischief rule of interpretation tries to look at the malady or defect that a particular law seeks to curb which in this case is to curb any form of exploitation against persons.

It is unarguable that recruiting, transporting, transferring, or harbouring any person without their consent to facilitate the removal of the organ of such person is exploitation against such person. Furthermore, Article 3 of the Protocol also interpreted “exploitation” to include the removal of an organ. Therefore, in interpreting Section 2 of the Act, a court of law in Nigeria may be persuaded by the provision of Article 3 of the Protocol in arriving at a just interpretation.



Furthermore, while Sections 14–17 of the Act borders entirely on sexual exploitation, Section 20 criminalises the aiding and abetting or actual commission of the offence of organ removal or payment for same with imprisonment of not less than 7 years and a fine of not less than #5,000,000 (Five million naira) upon conviction. In a bid to fight the menace of trafficking in the country, the Act also created The National Agency for the Prohibition of Trafficking in Persons (NAPTIP). The agency amongst other things has the power to arrest, detain and prosecute on behalf of the federal government of Nigeria any person who commits any offence under the Act.

(b). The Constitution

The Constitution of Nigeria also has a salient provision which though may not have specifically referred to “organ removal” prohibits the subjection of any person to inhuman and degrading treatments. The provision of Section 34(1) guarantees respect for the dignity of all persons while it prohibits anyone from subjecting a person to torture, slavery or inhuman treatment. It is crystal clear from the above provisions that there is no express mention of “trafficking a person for organ removal”, however, the trafficking of any person for organ removal is an inhuman and degrading treatment which is a disregard for the dignity of such person. In the same manner, trafficking in itself is a violation of the right to personal liberty of the person so trafficked. It is imperative to emphasise that the Constitution is the grundnorm from which other laws derive their validity. Hence, the provision of Section 1 sub-section 3 of the Constitution.

(c). The National Health Act, 2014



The Act is the major legal framework that provides for the regulation, development, and management of the National Health System as well as sets the best standard for the rendering of health services in the country. Unfortunately, a careful perusal of the legislation suggests that the law is a product of a hasty legislative deliberation without the depth of profoundness. There is no single section of the law that addresses trafficking in person for the removal of an organ. There is no provision of the Act that robustly addresses organ donation.

Section 48 sub-section 1(a) of the Act provides that no tissue, blood, or blood product may be removed from the body of a living person without the informed consent of such person. Section 48 sub-section 2 of the Act goes on to criminalise the commercialisation or sale of such tissue, blood, or blood product. Also, the tissue of a person below the age of 18 years shall not be removed. Section 48 sub-section 39(a) punishes the contravention of the provisions of this section with a fine of #1,000,000 (One Million naira) or imprisonment for not less than 2 years or with both. Under Section 64, the interpretation section of the Act, ‘tissue’ means human tissue, and includes flesh, bone, a gland, an organ, skin, bone marrow, or body fluid but excludes blood or gamete. These are the salient provisions of the Act that narrowly address the subject of organ removal. The Act does not contain any provision that (expressly or impliedly) contemplates the trafficking of a person for removal of organ. This is an inadequacy of the only law regulating the country’s health system.

TRAFFICKING PERSON FOR ORGAN REMOVAL UNDER THE UNITED KINGDOM LEGISLATION



The United Kingdom is one of the many countries with a robust regulatory system on organ harvesting and trafficking. Two important laws on organ removal and trafficking shall be duly considered herein.

(a)The Modern Slavery Act 2015

The Modern Slavery Act, 2015, which received royal assent on the 26th of March 2015, is the extant law in the United Kingdom that criminalises general human trafficking, including the trafficking of persons for the removal of an organ. The Act has been described by many as a ‘landmark’ and ‘historic’ piece of legislation. The implementation of the law has also been described as the fulfillment of the United Kingdom’s anti-trafficking obligation under the UN Trafficking Protocol. The Act is laudable for criminalizing offenders as well as protecting the victims of the offenses.

Section 2 sub-section 1 of the Act describes the offense of human trafficking to mean where a person commits an offense if the person arranges or facilitates the travel of another person for such person being exploited. However, Section 3 sub-section 4 defines ‘exploitation’ to mean the commission of an offense under Section 32 or 33 of the Human Tissue Act, 2004 which bothers on the removal of an organ. Interestingly, Section 2 sub-section (2) provides that it is immaterial whether the person whose travel was facilitated for exploitation is an adult or not, or consents to the travel. Furthermore, by the provision of Section 5, the offense of trafficking a person for removal of an organ attracts imprisonment for life or, on summary conviction, to imprisonment for a term not exceeding 12 months or a fine or both.



In a bid to demonstrate the robustness of the UK Modern Slavery Act, Sections 8, 9, and 10 of the Act make provision for the court to make a reparation order against the offender notwithstanding the conviction and order for payment of fine, while Sections 11, 12 and 13 of the Act permit the court to make an order confiscating every property used by the offender(s) to facilitate the commission of the offense. The law under Sections 14, 15, 16, 17, and 18 permits the court to make a prevention order which restrains the offender from doing a particular thing stated in the order, which includes traveling outside the UK for 5 years. The motive for the prevention order is to protect persons generally, especially where the court is satisfied that the offender will still engage in the offense of trafficking. Also, Sections 45–47 make provisions for the victims of trafficking.

On the whole, it is clear beyond peradventure that the United Kingdom’s law on trafficking for removal of organs is similar to the Trafficking in Persons (Prohibition) Enforcement and Administration Act, of 2015. The law criminalizes the offenses yet makes provision for the welfare of the victims of the offense. It is most enviable that the law gives the court the power to bar such offenders from traveling outside the UK for a certain period in a bid to protect humanity.

(a) Human Tissue Act

The Human Tissue Act of 2004 is one of the regulatory legal frameworks on the removal, storage or general dealings of human organs. The Human Tissue Act is a similar legislation to the National Health Act in Nigeria with all intents and purposes. A careful perusal of the Act



revealed that there is no express provision in the Act on trafficking in person for organ removal. The Act merely prohibits the commercialisation of “controlled materials” as seen copiously in Section 32 of the Act.

Section 32(8) defined controlled materials to mean “any material which— (a) consists of or includes human cells, (b) is, or is intended to be removed, from a human body, (c) is intended to be used for transplantation, and (d) is not of a kind excepted under subsection (9)”. Provision of Section 32(8) paragraph (b) and (c) suggest that human organ is a controlled material whose commercialisation is prohibited. This opinion is easy considering that the section says ‘any material which is, or intended to be removed, from the human body and the one intended to be used for transplantation. Usually, the organ is removed from the human body and the same is usually for transplantation within the focus of this work. The Human Tissue Act does not define trafficking in person for organ removal just like the National Health Act which makes both legislations similar in nature.

CONCLUSION

Trafficking in persons for organ removal is an offense that is increasing globally due to the increased rate of poverty in most countries of the world. Observably, the victims of this offense are mostly the poor from the low-income economy. Interestingly, both the Nigerian and the UK have quite a robust legal framework on Trafficking in persons for organ removal. However, it is observed that both the Nigerian National Health Act nor the Human Tissue Act of the United



Kingdom do not adequately deal with trafficking in person for organ removal. These two laws are merely concerned with the clinical usage of human organs than how the organs are secured or obtained. The reason may be that there are already existing laws on trafficking in person whether or not for organ removal.

The rise in the trafficking of persons for organ removal in Nigeria is not the lack of legislation criminalising the act but rather the vulnerability of the victims has been the weapon mostly used by the traffickers. More so, it is observed that there are either low or unrecorded cases of conviction of any person in contravention of these laws.

RECOMMENDATIONS

This paper recommends the pro-activeness of the law enforcement agency in Nigeria in the enforcement of the law. Impartial enforcement of Nigerian domestic laws on trafficking will go a long way in reducing the menace of this evil in society. While Nigerian legislators are eager to make laws that proliferate the country, the lack of proper enforcement of these laws has been the country's greatest challenge.

Furthermore, there is equally the need for the government and non-governmental agencies to inform Nigerians on the offense of trafficking in person for organ removal, especially the vulnerable class, in order not to fall victim to these traffickers who may have promised their victims a land filled with milk and honey only to become a victim of exploitation.



The fight against human trafficking is an enormous task that requires a lot of funding. While the Nigerian government has fulfilled and is fulfilling its legislative obligations under international law to fight human trafficking, it is recommended that the Nigerian government should increase its budget allocation for the fight against trafficking. The perpetrators of these offenses have improved their mode of operation through the use of advanced technology. There is a need to adequately equip the agency responsible for combating human trafficking in Nigeria to enable them to perform their functions impressively and fulfill their obligations under the Act.

The Nigerian government needs to look into the administration of the justice system of the country. It is regrettable to state that there is usually an undue delay in the prosecution and sentencing of offenders in Nigerian courts. Unless a case is of public interest, the average lifespan of a criminal case in Nigeria is 3 years. This undue delay is a major clog in the wheel of tackling or combating human trafficking in Nigeria. If there is a speedy dispensation of justice in the courts, it will go a long way in reducing drastically the incidents of human trafficking in Nigeria.