

# THE ETHICAL AND LEGAL DIMENSIONS OF MISSING ORGANS: PROSECUTING MEDICAL PRACTITIONERS IN ILLEGAL TRANSPLANT CASES.

*Ojo Oluwadunsin Hecares<sup>1</sup>*

## ABSTRACT

*Organ transplantation is one of the life-changing and life-saving medical advancements in the world today. However, as a result of the imbalance in the demand and supply of organs for transplant, there is an emergence of illegal transplants. This study underpins the ethical principles guiding organ transplants, beneficence, non-maleficence, and autonomy. It also examines the different cases where such illegal transplants have taken place and explores doctors' activities, aiding the continuity of the crime. This work underscores the various legal frameworks important in combating illegal transplants and prosecuting the medical practitioners involved. Using a strictly doctrinal approach, it explores a variety of case law, online journals, articles, and newspapers, as well as various legal frameworks, both local and international, for combating illegal transplants and prosecuting medical practitioners engaged in these cases. This study reveals challenges to prosecuting medical practitioners in illegal transplant cases. There is a need for an amendment of the Nigerian Laws to address the contemporary realities of society and sensitisation of patients and donors on the concept of consent, and their obligation to report any suspicious activity observed while receiving treatment. This work finally emphasises the role of the government, medical practitioners, and patients in addressing this problem and the need for cooperation amongst them to combat it*

---

<sup>1</sup> Department of Law, College of Law, Afe Babalola University Ado-Ekiti, Ekiti State, Nigeria  
hecares2003@gmail.com

## 1. INTRODUCTION

The growing scarcity of human organs, combined with the increased demand for organs, has led to rapid growth in the illegal organ market. This is also because of the slow pace associated with using government-approved systems put in place for organ transplantation.<sup>2</sup> Presently, there are only estimations of the scope of illegal organ transplants. This illicit organ trade is ranked as one of world's top five most lucrative international crimes, with an estimated annual profit of \$840 million to \$1.7 billion<sup>3</sup> and about 12,000 illegal transplants. While unlawful organ transplants have been reported to take place in countries across the globe, there is scarce knowledge of their operational features.<sup>4</sup> It is less common than other illegal trades because of the high medical knowledge, expertise, and coordination necessary for the crime to occur.<sup>5</sup>

So far, only 16 convictions of organ trade have been reported to the United Nations Office on Drugs and Crime.<sup>6</sup> This is less than the global estimates of the problem. Most cases of organ transplants involve kidney transplants; in recent times, illegal transplant features human eggs, embryos, etc.<sup>7</sup> However, a closer look at these cases reveals that successful convictions of hospitals and medical staff are virtually absent.<sup>8</sup> This crime often occurs within legalised medical settings by legally certified medical practitioners, making it challenging to track and estimate the depth of the crime.

The world's first and only case of the conviction of a hospital on this crime is the *Netcare case*<sup>9</sup> in 2003 in which over 100 illegal transplants were uncovered. It involved Netcare KwaZulu (Pty) Limited and St Augustine's

---

2 Ambagtsheer, F. 'Understanding the challenges to investigating and prosecuting organ trafficking: a comparative analysis of two cases.' *Trends in organ Crime* (2021) <<https://doi.org/10.1007/s12117-021-09421-2>> accessed 3 December 2023.

3 May C, 'Transnational Crime in the Developing World' (Global Financial Integrity, 2017) <[https://gointegrity.org/wp-content/uploads/2017/03/Transnational\\_Crime-final.pdf](https://gointegrity.org/wp-content/uploads/2017/03/Transnational_Crime-final.pdf)> accessed 1 December 2023.

4 Pascalev A. and others. 'Trafficking in human beings for the purpose of organ removal: A comprehensive literature review' (2013).

5 F. Ambagtsheer & W. Weimar (eds.), 'Trafficking in Human Beings for the Purpose of Organ Removal: Results and Recommendations' (Pabst, 2016) 15-68.

6 UNODC (2022). Case Law Database. United Nations Office on Drugs and Crime accessed 3 December 2023.

7 Susan Maginn, 'Organ Trafficking Facts' (The Exodus Road, 16 January 2023) <https://theexodusroad.com/organ-trafficking-facts/> accessed 6 December, 2023.

8 F. Ambagtsheer, 'Combating Human Trafficking for the Purpose of Organ Removal: Lessons Learned from Prosecuting Criminal Cases' in J.A. Winterdyk & J. Jones (eds.), *The Palgrave International Handbook of Human Trafficking* (Palgrave Macmillan) 733-1749.

9 State v. Netcare Kwa-Zulu Limited (UNODC Case Law Database)< [https://sherloc.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/zaf/2010/state\\_v\\_netcare\\_kwa-zulu\\_limited.html?](https://sherloc.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/zaf/2010/state_v_netcare_kwa-zulu_limited.html?)> accessed 6 December 2023.

Hospital, which used their facilities for unauthorised transplantation. The 2008 *Medicus case* reported the conviction of a group of medical doctors for illegal transplantation.

In China, several doctors have been jailed for illegally harvesting organs from victims of accidents. The family members of the deceased were made to sign fake consent forms, and then the deceased were moved into a van where their organs were taken out. This was uncovered upon the report of the son of a victim to the police.<sup>10</sup>

Another illegal transplant case is the case of *R v Obeta* involving three Nigerians accused of a conspiracy to bring a donor to the United Kingdom to exploit him and harvest his kidney.<sup>11</sup> The doctor (Obeta), in this case, acted as the middleman and recruited a vulnerable donor with the promise of getting him a visa into the UK. The donor reported to the police, and upon prosecution, the doctor was sentenced to a ten-year prison term, while his co-conspirators were also sentenced.<sup>12</sup>

A case presently under investigation is a Nigerian case involving a medical practitioner by the name of Dr. Noah Kekere, who was accused of removing his patient's kidney without her consent whilst she underwent surgery for appendicitis.<sup>13</sup> This was uncovered when her sickness persisted after the surgery. Seven other patients who had at one time had surgical procedures in his clinic also came forward with the allegation of missing organs.<sup>14</sup> The Nigeria Medical Association also said Dr. Noah Kekere is not a medical doctor. This shows that there might be no checks to verify the certification of doctors and health centres. As such, persons may be operating health centres without being licensed.<sup>15</sup>

Although illegal transplant is not a new occurrence, it is underreported

---

10 'Chinese Doctors Jailed for Illegal Organ Harvesting' (BBC News, 27 November 2020) <<https://www.bbc.com/news/world-asia-china-55097424>> accessed 7 December 2023.

11 *R v Obeta* and Others Sentencing Remarks (2023) <<https://www.judiciary.uk/wp-content/uploads/2023/05/R-v-Obeta-and-others-sentencing-remarks.pdf>> accessed 5 December 2023.

12 'UK Court Jails Nigerian Senator Ekweremadu, Wife Over Organ Harvesting Plot' (Sahara Reporters, 5 May 2023) <<https://saharareporters.com/2023/05/05/breaking-uk-court-jails-nigerian-senator-ekweremadu-wife-over-organ-harvesting-plot>> accessed 4 December 2023.

13 James Abraham, 'Plateau NMA investigates medical doctor over alleged organ harvesting' (The Punch) <<https://punchng.com/plateau-nma-investigates-medical-doctor-over-alleged-organ-harvesting/>> accessed 2 December 2023.

14 Isaac Shobayo, 'Plateau Organ Theft: Seven Other Ex-Patients Found with Missing Kidneys' (Tribune Online) <[https://tribuneonlineng.com/plateau-organ-theft-seven-other-ex-patients-found-with-missing-kidneys/#google\\_vignette](https://tribuneonlineng.com/plateau-organ-theft-seven-other-ex-patients-found-with-missing-kidneys/#google_vignette)> accessed 3 December 2023.

15 *Ibid.*

because of its secretive nature and the limited awareness of law enforcement agencies on how and where to identify and disrupt illegal transplant activities.<sup>16</sup> Vulnerable populations are usually victims of this crime because of their ignorance of the existence of the crime and its different dynamics. In a country like Nigeria, it does not help that when a person is found dead with their organs missing, they are linked to ritual killings rather than organ harvesting and transplant because of their unfamiliarity with the crime.<sup>17</sup>

The activities of doctors in illegal transplants and the absence of reported cases on their prosecution calls for an examination of the prosecution of doctors involved so far and to offer recommendations to the challenges hindering the prosecution. The different trends in illegal organ transplants call for a new approach to be taken to ensure the persons perpetuating such crimes are brought to justice. This study aims to highlight the involvement of medical practitioners in illegal transplants, examine the difficulties law enforcement authorities face in investigating and prosecuting this crime, and proffer recommendations for the criminal justice system to address these challenges. This is in a bid to curb illegal organ transplants in society.

## 2. ORGAN TRANSPLANT AND THE ETHICAL PRINCIPLES GOVERNING IT

Organ transplant involves removing a person's organ to transplant it into another individual. The organ is removed from one person (donor) and implanted into another (recipient) during the transplant surgery. The donor may be a deceased or a living donor; in the case of a living donor, only an organ or part of an organ is donated. In contrast, in the case of a deceased donor, such a person must have consented to their organs being donated before their death.<sup>18</sup> In the UK and some other jurisdictions, consent for organ donation by a deceased donor may be presumed, even

---

16 F. Ambagtsheer and W Weimar (eds), *Trafficking in Human Brings for the Purpose of Organ Removal: Results and Recommendations* (Pabst Science Publishers 2016).

17 Abubakar Musa, 'Ritual Killing: Another Corpse Recovered in Plateau Village, Vital Organs Missing (Daily Trust) <<https://dailytrust.com/ritual-killing-another-corpse-recovered-in-plateau-village-vital-organs-missing/>> accessed 7 December 2023.

18 Lara Adejoro, 'Consent Central to Organ Donation - Abugu, President, Medical Law Association' (The Punch, 5 July 2022) <<https://punchng.com/consent-central-to-organ-donation-abugu-president-medical-law-association/>> accessed 3 December 2023.

though the donor may not have actively provided consent.<sup>19</sup>

Organ transplants are based on the medical ethics principles of beneficence, non-maleficence, autonomy, and justice. The Principle of Beneficence requires a medical practitioner to act in the patient's best interest and remove any condition that will harm the patient.<sup>20</sup> The Principle of Nonmaleficence explains a medical practitioner's duty not to cause harm or pain to their patient and deprive them of the goods of life. The medical practitioner must always weigh the benefits against the burdens and try to choose the best course of action for a patient. The Principle of Autonomy is based on the principle that humans have the power to make decisions and choices concerning what happens to them.

The principle of autonomy, as stated in the case of *Schloendorff v Society of the New York Hospital*,<sup>21</sup> explains that every human being of adult years and sound mind has a right to determine what happens to their body. As such, patients have the right and power to decide whatever treatment option they want, whether or not the doctor considers it beneficial or harmful to the patient. The principle of autonomy is derived from informed consent and is in reaction to the paternalism of medical practitioners.

The Principle of Justice entails what is fair and equitable in treating people. Distributive justice particularly relates to organ transplantation as it refers to the equitable and fair distribution of healthcare resources like medications, equipment, and available organs irrespective of their different ideologies and social or economic status.<sup>22</sup>

Consent is a fundamental discourse in medical practice, though it depends on the medical situation, the nature of the treatment, and the circumstances. New circumstances raise new issues in obtaining consent. Valid consent must be given voluntarily by a person with capacity without any form of coercion, undue influence, force, or duress. At the time of giving consent, the donor must be of sound mind and be able to understand the necessary information and provide a clear decision on it. The person giving consent must be above 18 years except the person is deemed to have Gillick competence.<sup>23</sup> Here, a person who is less than eighteen years

---

19 Ibid.

20 Medical Protection Society, 'The Four Pillars of Medical Ethics' (26 June 2023) <[The four principles of medical ethics \(medicalprotection.org\)](https://www.medicalprotection.org/uk/medical-ethics)> accessed 6 December 2023.

21 (1914) 105 N.E 92, 211 N.Y 125.

22 Basil Varkey, 'Principles of Clinical Ethics and Their Application to Practice' (2021) 30Med Princ Pract 17 <<https://doi.org/10.1159/000509119>> accessed 7 December 2023.

23 *Gillick v West Norfolk and Wisbech AHA* (1985) UKHL 7.

old but above sixteen years old has the mental capacity to make medical decisions concerning himself.

Medical practitioners also have a duty to disclose all the necessary information relating to the treatment to ensure the patient gives valid informed consent. This includes the risks and side effects associated with the treatment, which should be brought to the patient's attention.<sup>24</sup>

Consent to undergo organ transplantation is more complex than consent to undergo other surgical operations because of the need to balance the risks. Organ transplant requires informed consent. The donor must give informed consent before an organ transplantation can take place. In the UK and other jurisdictions, consent for organ donation by a deceased donor may be presumed or deemed, even though the donor has not actively provided consent. Persons are usually given the option of opting out of the law.<sup>25</sup>

Consent in organ transplantation can be withdrawn at any time. If at any time a patient withdraws their consent, the transplant can no longer occur and any transplantation that takes place after such withdrawal will constitute an illegal transplant. It is not always illegal to remove an organ. An organ transplant becomes unlawful when it is done without medical reasons and patient consent.

### **3. ILLEGAL TRANSPLANT, THE DIFFERENT TRENDS AND THE ACTIVITIES OF MEDICAL PRACTITIONERS.**

Organ donation would be morally acceptable if the consent of the donor is obtained and the donor is not at risk. However, because the donor can withdraw his consent at any time, people who are desperate for an organ transplant often resort to other means of getting a transplant. This is what is called an illegal transplant. Illegal transplants are a result of the inability of the supply of organs to cater to the growing demand for organs.

Medical practitioners are always at the frontline of illegal transplant activities because the successful commission of this crime requires the technicalities, knowledge, and expertise that only medical practitioners possess. It may be as their sole business, where the medical practitioner

---

24 Raza F, Neuberger J, 'Consent in Organ Transplantation: Putting Legal Obligations and Guidelines into Practice,' (2022) 23 BMC Medical Ethics 69 <<https://doi.org/10.1186/s12910-022-00791-y>> accessed 3 December 2023.

25 Lara Adejoro, 'Consent Central to Organ Donation - Abugu, President, Medical Law Association' (The Punch, 5 July 2022) <<https://punchng.com/consent-central-to-organ-donation-abugu-president-medical-law-association/>> accessed 3 December 2023.

is both the trafficker who makes the victim surrender their organs at no cost and the person who carries out the harvesting and transplantation. It may also be an organised crime where the doctor acts as the intermediary who convinces gullible victims to surrender their organs with the promise of giving them financial assistance. This was as in the case of *R v Obeta*<sup>26</sup> where the doctor procured the victim for organ transplantation. Even in such situations, the operation is still always carried out by a medical practitioner.

There are doctors who would treat patients for non-existent ailments and, by extension, remove organs without the victim's knowledge and consent. There are also doctors who remove organs from a patient's body while they are carrying out surgery on the patient.<sup>27</sup> When consent is obtained for treatment or the removal of an organ in a surgical procedure, the doctor is bound to remove only the organ the patient or his next of kin has consented to remove except when necessary for medical reasons. Any removal not consented to by the patient may constitute an offence.<sup>28</sup>

Often, this crime is committed in an approved hospital space by licenced medical practitioner(s). They use authorised places to carry out this crime to prevent people and authorities from noticing. This makes it more challenging to uncover them in such cases.<sup>29</sup>

## 6. ETHICAL CONSIDERATIONS AND IMPLICATIONS OF SUCH OCCURRENCE PATIENTS IN HEALTH-CARE SYSTEMS.

The illegal transplant goes against the pillars of medical ethics, which are autonomy, beneficence, non-maleficence, and justice.<sup>30</sup> They do not respect patients' autonomy in deciding whether they want to donate an organ or not; instead, they take organs without their patient's consent and knowledge. This, more often than not, brings harm to patients. This goes against their duty to not cause harm to patients and to protect them from harm instead, they put them in harm's way. Most patients are

---

26 *R v Obeta and Others Sentencing Remarks* (2023) <<https://www.judiciary.uk/wp-content/uploads/2023/05/R-v-Obeta-and-others-sentencing-remarks.pdf>> accessed 5 December 2023.

27 Karen R. V, 'Current Challenges and Advances in Organ Donation and Transplantation: The Nauseous Nexus between the Organ Industry and the Risks of Illegal Organ Harvesting' (2022). <<https://www.intechopen.com/chapters/83637>> accessed 2 December 2023.

28 Code of Medical Ethics 2008 Rule 19

29 Pascalev A. and others. 'Trafficking in human beings for the purpose of organ removal: A comprehensive literature review' (2013).

30 Medical Protection Society, 'The Four Pillars of Medical Ethics' (26 June 2023) <[The four principles of medical ethics \(medicalprotection.org\)](https://www.medicalprotection.org/uk/what-we-do/our-roles-and-responsibilities/the-four-pillars-of-medical-ethics)> accessed 6 December 2023.

unaware of this evil perpetrated by some medical doctors. This is because of the fiduciary relationship they have with their doctors and based on paternalism. Patients trust their doctors not to do anything to cause harm to them, so it is straightforward for doctors to take advantage of this and perpetrate these vile acts.

After an illegal transplant is executed, the patient or the donor is usually at risk. The person in need of the transplant is typically tested to ensure he is matching with the donors before the transplant occurs. When organs are taken without a patient's consent, the patient is at more risk as most of them don't realise the absence of organs in their body or the effects of such operations until they begin to have complications from it later. Often, there is little or no provision of post-care for the donor in situations like this as it may raise suspicion. There is, therefore, a need to protect patients from this.

The implication of a doctor's involvement in this crime is the loss of faith and confidence in the ability of the doctor to provide optimal care for patients and the loss of respect of good standing members of society for the medical profession. Doctors in this situation are more concerned with taking advantage of their access to patients' information to commit crimes. This would gradually cause the patients to lose faith and confidence in doctors and the healthcare system itself.

## **7. THE LEGAL FRAMEWORK FOR THE PROSECUTION OF MEDICAL PRACTITIONERS IN ILLEGAL TRANSPLANTS IN NIGERIA.**

### **7.1 NATIONAL HEALTH ACT, 2014**

The National Health Act is a regulatory law that governs organ harvesting and donation in Nigeria. This Act was enacted in 2014. The Act contains several sections and provisions to guide organ and tissue transplants in Nigeria. Section 48 of the Act provides that a person shall not remove the tissue, blood, or organ from another living person for any purpose without the informed consent of the person except in cases of emergency and medical investigation.<sup>31</sup> It also stipulates the minimum age of 18 years for a person to be a donor and that donation should not be done for commercial purposes. Subsection 3 of this section provides a fine of 100,000 Naira or imprisonment of not less than two years for the removal of a tissue and imprisonment of not more than a year, 100,000 Naira or

---

31 National Health Act 2014 Section 48.



both for the removal of blood or blood products.

Section 51 states that before an organ transplant can be conducted, the hospital must be authorized to carry out the transplant, and the medical practitioner in charge of or authorized by the hospital must give written authority.<sup>32</sup> The hospital is also to make provision for an independent tissue transplantation committee that engages in the transplantation. Section 52(1) states that only a registered medical practitioner has the authority to remove and transplant an organ into a living person.<sup>33</sup> Section 53 prohibits the receipt of any financial reward for donation except for reasonable purposes and makes the offence punishable by one-year imprisonment and a fine of 100,000 Naira or both.<sup>34</sup>

## 7.2 CRIMINAL CODE CAP C. 38 LAWS OF FEDERATION OF NIGERIA 2004

The Criminal Code is an act enacted in 1964 containing the criminal law of Nigeria, offences, and the penalties or punishment imposed for the commission of the offence. Although there are no laws criminalising illegal transplants, there are provisions that can be inferred to relate to this offence. Section 252 of the Criminal Code defines assault as 'striking, touching, movement or the application of force to a person without his consent or if the consent is obtained through fraud.' In relation to this, any medical practitioner who touches a patient without his consent or carries out an operation that was not consented to by the patient commits the offence of assault.<sup>35</sup> Section 351 of the Criminal Code provides that assault is a misdemeanour and the punishment for it is imprisonment for one year.<sup>36</sup>

Section 313 of the Criminal Code provides that a person can be said to have killed someone if the death is a result of medical treatment. This means that if a patient dies as a result of the removal of an organ without his consent during medical treatment, the doctor would be held liable.

There is a need for the amendment of the Criminal Code to accommodate the new trends in crime in society. There is also the need for laws that expressly criminalise illegal transplants. This will be in the interest of the victim because of the risks associated with this act. This is also because most laws do not focus on/encapsulate the different dimensions of the

---

32 National Health Act 2014 Section 51.

33 National Health Act 2014 Section 52(1).

34 National Health Act 2014 Section 53.

35 Criminal Code 1964 Section 252.

36 Criminal Code 1964 Section 313.

perpetuation of this crime.

### **7.3 MEDICAL AND DENTAL PRACTITIONERS ACT 2004 CAP M8 LAWS OF FEDERATION OF NIGERIA 2004**

This Act establishes the Medical and Dental Council of Nigeria and the Medical Practitioners Disciplinary Tribunal. The Medical and Dental Council also known as “The Council” is responsible for the registration of medical practitioners and reviewing the code of conduct for the practitioners from time to time while the Medical Practitioners Disciplinary Tribunal is responsible for determining cases brought to it by the Panel and giving punishment as prescribed by the Act if the medical practitioner is found guilty of the offence.<sup>37</sup> The investigative panel is also established in this Act; it is responsible for conducting an investigation where the medical practitioner is alleged to have committed an offence.<sup>38</sup>

### **7.4 CODE OF MEDICAL ETHICS 2008**

This code of conduct guides medical practitioners in carrying out their duties. Rule 3 provides that they have a duty to expose any corrupt, dishonest, unprofessional, criminal act or omission of their fellow practitioners for the greater good of the profession.<sup>39</sup>

Rule 19 states that appropriate consent should be obtained from the patient, his relative or any appropriate authority before carrying out any surgical procedure.<sup>40</sup> Doctors have a duty to explain to persons whom they are obtaining consent from the necessary information pertaining to the surgery in simple and concise terms and in a language they understand. This includes the risks and consequences of the procedure. In making decisions on irreversible surgical procedures like the removal of organs, the patient is to undertake counselling sessions and be given ample time to make a decision.

### **7.5 DECLARATION OF ISTANBUL.**

This declaration was formed by the International Society of Nephrology (ISN) and the Transplantation Society (TTS) at a Summit in April 2008 to

---

37 Medical and Dental Practitioners Act 2004 Section 1.

38 Medical and Dental Practitioners Act 2004 Section 15.

39 Code of Medical Ethics 2008 Rule 3.

40 Code of Medical Ethics 2008 Rule 19.

address the growing problems concerning these unethical activities.<sup>41</sup> It aims to provide ethical guidance for professionals to promote the equitable distribution of organs for those in need and discourage unethical and exploitative practices that have harmed people in vulnerable populations. Some of their principles are:

1. Governments should develop and implement ethically and clinically sound programs for preventing and treating organ failure, consistent with meeting the overall healthcare needs of their populations.
2. The optimal care of organ donors and transplant recipients should be a primary goal of transplant policies and programs.
3. Organ donation should be a financially neutral act.
4. 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.
5. All residents of a country should have equitable access to donation and transplant services and organs procured from deceased donors.

#### **8. PROSECUTION OF MEDICAL PRACTITIONERS IN ILLEGAL TRANSPLANT CASES.**

Prosecution is an asset to the criminal justice system in a country. The court is the institution saddled with the responsibility of prosecuting offenders and giving punishment as provided by law. Primarily, proceedings for the prosecution of the medical practitioners who have been alleged to perpetuate these acts may be instituted at the Medical and Dental Practitioners Tribunal through a complaint of the doctor's actions to the tribunal. The tribunal will then conduct an investigation through the investigative panel where the alleged registered person has misbehaved in his capacity as a medical practitioner.<sup>42</sup>

Upon determination of the matter, they may or may not give sanctions. The Medical and Dental Practitioners Tribunal is a court of first instance in matters of medical malpractice. An action may also be instituted on the allegation of the commission of the crime at the court. These criminal proceedings will be initiated and undertaken by the office of the Attorney-General during civil proceedings.<sup>43</sup> The court also enlists the help of the

---

41 The Declaration of Istanbul on Organ Trafficking and Transplant Tourism. <<https://www.declarationofistanbul.org/the-declaration>> accessed 30 November 2023.

42 Medical and Dental Practitioners Act Section 15(2).

43 Section 174 Constitution of the Federal Republic of Nigeria 1999 as amended.

police and other law enforcement agencies in investigating the allegations.

The prosecution would involve investigating the alleged case of illegal organ transplantation and gathering evidence and witnesses to testify. After evidence is collected, criminal proceedings will be initiated. The prosecution of medical practitioners is significant in illegal transplant cases because of the crucial role they play in the commission of the crime. This will help medical practitioners be accountable for violating the code of conduct and medical ethics in these crimes and serve as a deterrent to other medical personnel. It would help in upholding medical standards and promote the principles of medical ethics. It would also help bring justice to patients and persons who have been victims of this act and the community as a whole. However, research shows that there have been only a few successful investigations and prosecutions of medical practitioners involved in these cases.<sup>44</sup> This is because of the challenges faced in prosecuting medical practitioners involved in these cases.

### **9. CHALLENGES TO THE PROSECUTION OF MEDICAL PRACTITIONERS.**

Firstly, most of the criminal laws providing for the punishment and prosecution of persons who commit this offence are inadequate and also do not include measures of accountability and specify agencies responsible for fostering the implementation of the laws. This causes legal changes to be perceived by enforcement officials as a political mandate, having little or nothing to do with control and prevention of crime and maintenance of order in the society. There is also no proper definition of the offence in the law. Illegal transplant offenders can take advantage of a corrupt and weak legal system to continue perpetuating crime. There is a need to eliminate corruption and enact more vital legislation.<sup>45</sup> Illegal transplant schemes require less preparation and documentation than legal transplants. The legal transplant requires more technicalities, more extensive personnel, rigid informed consent systems, and approval from authorities before the transplant can take place. At the same time, an illegal transplant involves little or no regularities. It uses smaller personnel who can perform diverse roles, making it easier to conceal the crime and change locations.

---

44 F. Ambagtsheer and R. Bugter, 'The organization of the human organ trade: a comparative crime script analysis,' (2023) 80 *Crime, Law Social Change*1 <<https://doi.org/10.1007/s10611-022-10068-5>> accessed 2 December 2023.

45 F. Ambagtsheer, 'Understanding the challenges to investigating and prosecuting organ trafficking: a comparative analysis of two cases.' *Trends in Organ Crime* (2021) <<https://doi.org/10.1007/s12117-021-09421-2>> accessed 3 December 2023.

One of the challenges faced in the prosecution of medical practitioners in illegal transplants is that the activities of illicit transplants are often not reported. So far, only 16 convictions of organ trade have been reported to the United Nations Office on Drugs and Crime.<sup>46</sup> One of the primary reasons for this is that this operation thrives in secrecy and in most cases of illegal transplants, harvesting is usually done once, which makes it almost impossible to trace any subsequent illegal transplant to the doctor.

Furthermore, patients, most especially members of the vulnerable population, lack awareness of what constitutes illegal transplants. Often in Nigeria, when a body is found dead on the road with organs missing, it is always associated with ritual killings. Patients also lack awareness of their rights and obligations as patients. The justifiable belief that doctors do not have any intention of harming patients and that whatever they do is in their best interest often makes patients unconsciously susceptible as victims of the crime. This is because, most times, they do not ask questions, and the doctor can remove an organ during an operation without their consent and knowledge. Although the primary duty of a doctor is to give the utmost care to the patient, some doctors have the intention of harming their patients. Many patients are also unaware of what goes on in their body during surgery.

More so, the attention on illegal transplants is always on the person procuring the organ transplant. Bruckmuller claims that although the first case of illegal organ trafficking and sale was officially investigated in 1993 in Bombay, India, the doctor involved wasn't apprehended until 2008. Similarly, an illegal organ transplant ring leader in the United States was ultimately brought to justice after ten years of operation. According to the World Health Organization, in 2021, the Indian government dismantled a medical practice of physicians, nurses, and paramedics that involved 500 illicit organ transplants to wealthy Indians and foreigners.<sup>47</sup> The reality is that an illicit transplant cannot proceed without the participation of medical practitioners in the procedure. There is always going to be a demand for organs illegally especially by people who have the means. It is up to the medical practitioners to uphold what the profession stands for.

## 10. RECOMMENDATIONS AND CONCLUSION.

1. The government should set up bodies and agencies to monitor

---

46 UNODC (2022). Case Law Database. United Nations Office on Drugs and Crime. accessed 3 December 2023.

47 Karen R. V, 'Current Challenges and Advances in Organ Donation and Transplantation: The Nauseous Nexus between the Organ Industry and the Risks of Illegal Organ Harvesting' (2022) <https://www.intechopen.com/chapters/83637> accessed 2 December 2023

hospitals. There should be proper documentation of surgeries in hospitals to ensure that due process is followed. These agencies and bodies should send out persons to hospitals to interview patients for treatment feedback. The government should also be severe in carrying out routine checks to ensure that all hospitals and doctors are certified. In the ongoing investigation of Dr Noah Kekere, it was discovered the doctor was not certified and in the list of medical practitioners in Jos.<sup>48</sup> However, this was only discovered during the investigation. Due diligence checks could have prevented this. It is not every occasion that illegal organ transplant is an organized crime. Sometimes they happen in legalized systems. These checks will ensure that hospitals and doctors are upholding medical ethics as illegal transplant is a crime that thrives on silence and concealment thus putting this system in place will help expose the crime.

2. Amendment of the existing criminal law and introductions of provisions that expressly make it an offence for a doctor to carry out such illegal transplant. The present criminal law provisions are insufficient in covering the different dynamics of these activities. The penalties for the commission of the offence should be stringent. As illegal transplants always take place in fragile or corrupt settings and a weak system allows for ease in the commission of the crime, more legal provisions should be made on what constitutes an illegal transplant and transplant tourism and organ trafficking. Law enforcement agents should employ disruptive techniques to uncover illegal transplant activities by examining the differences between unlawful transplant and legal transplant schemes. This would help in recognising illegal transplant activities.
3. Creation of awareness for patients especially people who are of vulnerable populations.<sup>49</sup> This would be through virtual and physical awareness programs educating them on their right to access their medical files, their right to know the medical practitioner's certification, ways of identifying the scheme, and how to report any irregularities noticed to the appropriate authorities. This will encourage them to speak up if they notice

---

48 James Abraham, 'Plateau NMA investigates medical doctor over alleged organ harvesting' (The Punch)

<<https://punchng.com/plateau-nma-investigates-medical-doctor-over-alleged-organ-harvesting/>> accessed 2 December 2023

49 Susan Maginn, 'Organ Trafficking Facts' (The Exodus Road, 16 January 2023) <<https://theexodusroad.com/organ-trafficking-facts/>> accessed 6 December 2023.

any suspicious activities among the doctors attending to them at the hospital and leave the hospital if necessary.

4. Medical Practitioners should report the evil activities of their colleagues to the appropriate authorities. Since they have access to patient information, they are in a position to obtain critical information from patients who are recipients of illegally transplanted organs.<sup>50</sup> Doctors who are doing follow-ups for any person who has undergone an organ transplant should do checks to ensure such persons got the organ through legal and approved means. Measures should be implemented for the anonymity and protection of medical practitioners who breach their patient's confidentiality to make any report. This will help in investigating and tracking down the medical practitioners who performed the illegal transplant.
5. The use of whistle-blowing techniques in medical facilities will also encourage medical practitioners to report irregularities. They must report anyone who commits any ethical and professional misconduct.<sup>51</sup>

For a successful prosecution of medical practitioners in illegal transplant cases in subsequent years, every stakeholder in the healthcare sector and law enforcement agency has an essential role to play. Prosecuting medical personnel will serve as a deterrent to other medical personnel, and this will eventually lead to a reduction of illegal organ transplants in Nigeria and the world at large.

---

50 Timothy Caulfield and others, 'Trafficking in Human Beings for the Purpose of Organ Removal and the Ethical and Legal Obligations of Healthcare Providers' (2016) 2(2) *Transplant Direct* e60, published online 4 January 2016, <[10.1097/TXD.0000000000000566](https://doi.org/10.1097/TXD.0000000000000566)> accessed 5 December 2023.

51 Code of Medical Ethics 2008 Rule 3.