

**LEGAL REGULATION OF TRAFFICKING IN HUMAN BEINGS
FOR ORGAN REMOVAL IN AFRICA: A COMPARATIVE
APPROACH**

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Abstract

Human trafficking for organ removal is a global concern and Africa is fast becoming an endangered continent due to the activities of syndicates of this obnoxious crime. The continent is vulnerable because of its growing poverty, unemployment, conflict, terrorism, bad governance, corruption, quest for migration and an alarming demand for organ transplantation in the medical sector. This paper x-rays the legal framework for combating human trafficking for organ removal in three major African countries drawn from the east, west and south of Africa, vis-a-vis Kenya, Nigeria and South Africa. It observed that all the three countries have comprehensive anti-trafficking legislations and have recognised organ transplantation in their national health laws but did not give much thought to who the donors could be. The paper employs both the doctrinal and

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comparative approach and concludes that African governments do not regard human trafficking and the wellbeing of their citizens as a priority hence not much is being achieved to curb the crime. It recommends, amongst other things, that collaboration, total adoption of the United Nations Resolution on human trafficking and organ transplantation, and strict implementation of laws, can assist in winning the war against human trafficking and organ trade in Africa.

Keywords: Human trafficking, Organ harvesting; Transplant tourism; Istanbul Declaration, Organ trade

1. Introduction

Trafficking in human beings for the purpose of organ removal and organ transplantation is relatively new in Africa. Organ transplantation is a comparatively new medical science, which emerged in late twentieth century.¹ There have been great breakthroughs in medical technologies in the production of drugs, mechanical ventilations, cardiac innovators, etc. Medical technologies have necessitated the transplants of soft organs of the body.² There are new technologies springing forth daily such as tissue banking and organ freezing schemes, and immune transplantations.³ These breakthroughs in technology involves solid organ transplantations from either living or dead donors to help save the lives of victims of terminal

¹ Mor Eytan and Hagai Boas, 'Organ Trafficking in Africa: Pragmatist Ethical Reconsiderations,' [2023] 20 *Contemporary Pragmatism* 169-95.

² Ibid.

³ Irving, Louise and John Harris, 'Bio banking,' in Bonnie Steinbock (eds), *the Oxford Handbook of Bioethics* (New York, US: Oxford University Press) p 240-258.

organ failures.⁴ This has raised some legal, ethical, and technical concerns, such as, high organ demand, distribution of organs, donor independence and consent, dead-donor rule, recovering organs from dead donors and various other worries.⁵ These encouraged illegalities such as human trafficking and organ trade. Human trafficking affects the psychology, health and safety of victims. It also affects the economy, peace and security of the country and region at large. It heightens the animal nature in man. Human trafficking for the purpose of organ removal is encouraged by the poverty presently ravaging Africa.⁶ The quest for survival has made many Africans gullible and vulnerable to fraudsters, human traffickers and organ harvesters who promise them better living in foreign lands.⁷

Africa lacks appropriate legislations to govern the emerging technologies, high organ request, how to get these organs and how to distribute available organs, independence of the donor to grant consent, recovering organs from dead donors, and other related issues.⁸ All these are very cogent issues in bioethics.⁹ Illegal organ trade is now rated the fourth among transnational crimes with a probable value of between \$840 million to \$1.7 billion per

⁴ Ibid.

⁵ Ibid.

⁶ United Nations Office on Drugs and Crime, *An Introduction to Human Trafficking: Vulnerability, Impact and Action* https://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_Background_Paper.pdf accessed 12 January 2024.

⁷ Tayewo Adewumi and Oluwayemi Ogunkorode, 'Reappraising Effective Regulation in Preventing Human Organs Trafficking in Africa: Kenya and Nigeria in Perspective,' [2023] 11 *ABUAD Law Journal*, 119.

⁸ Belayneh Taye Gedifew, *et al* (n 1).

⁹ Yea, Sallie, 'Trafficking in part (s): The commercial kidney market in a Manila Slum, Philippines,' [2010] 10 *Global Social Policy* 358-76; Gonzalez, Juan, Ignacio Garijo, and Alfonso Sanchez, 'Organ trafficking and migration: a bibliometric analysis of an untold story,' [2020] 17 *International Journal of environmental research and public health* 3204.

annum.¹⁰ Research have shown that over 100,000 patients go through organ transplantation yearly.¹¹ A global report recorded 146, 840 transplants in 2018.¹² Despite this huge number, the demand continues to grow resulting in unequal distribution and availability of organs in various regions of the world.¹³ Many African countries are yet to develop enhanced systems of transplantation. Between 2016 and 2018, most African countries including Nigeria, South Africa, Kenya, Ghana, Egypt, Algeria, Ethiopia, Sudan, Cameroun, Cote' d'Ivoire, Namibia, and Uganda had no functional transplantation programs for living donors.¹⁴ A 2016 assessment showed that South Africa of 1.29 per million population had 72 deceased donors.¹⁵ This is at a time when developed nations like Spain, United States of America, Croatia and Portugal had 48.9, 36.88, 34.63, and 33.63 per million population respectively.¹⁶ And a 2019 global assessment of deceased organ donations show that only South Africa had a deceased donors' organ

¹⁰ Kar, Dev and Joseph Spanjers, 'Transnational crime and the developing world,' [2017] *Global Financial Integrity* 53-9.

¹¹ Delmonico, Francis L., Beatriz Dominguez-Gil, Rafael Matesaz, and Luc Noel, 'A call for government accountability to achieve national self-sufficiency in organ donation and transplantation,' [2011] 378 *The Lancet* 1414-18.

¹² Global Observatory on Donation and Transplantation (GODT), *Global activity in organ transplantation estimation*, 2020, <<http://www.transplant.observatory.org/global-report-2018/8>, accessed on 12 January 2024.

¹³ Grinyo, Josep M., 'Why is organ transplantation clinically important?' [2013] 3 *Cold Spring Harbor perspectives in medicine* 0149, 85.

¹⁴ Loua, Andre, Margot Feroletto, Alssatou Sougou, Ossy Muganga Julius Kasilo, Jean Baptiste Nikiema, Walter Fuller, Stanislav Kniazkov, and Prosper Tumusilime, 'A review of policies and programmes for human organ and tissue donations and transplantations, WHO African Region,' [2020] 98 *Bulletin of the World Health Organisation* 420-25.

¹⁵ Gomez, M. P., Blanca Perez, and M. Manyalich, 'International registry in organ donation and transplantation- 2013,' In *Transplantation proceedings* (Elsevier 2014).

¹⁶ Ibid.

transplantation.¹⁷ Other African countries had no existing data for deceased donors' transplantations, no legislation, no infrastructure, no personnel, and no management aptitude.¹⁸ Egypt battled with cultural and religious debates on the issue of deceased donors and organ transplantation.¹⁹ Recently, Christianity and Islam, both of which previously prohibited organ donation after death in Egypt, have allowed both live and dead donations just for end-stage patients.²⁰

Many advanced countries have a growing demand for transplantation. This has encouraged a life-threatening scarcity of organs.²¹ For example, a renal statistics assessment of United States of America in 2020 shows an inequity in the increased organ demand and average waiting period of patients in need of organ transplant.²² In 2017, total supply of kidneys in the country was 20 000, which was just enough to settle about 25 per cent of the patients awaiting transplant for the year. Meanwhile, about 39 712 transplants were done that year.²³ This was less than 50 per cent of patients in desperate need of transplantation. Also, in Europe, there is short supply of organs compared to the increased number of patients.²⁴ The increase demand and

¹⁷ Muller, Elmi, 'Transplantation in Africa – an overview,' [2016] *Clinical Nephrology* 86.

¹⁸ Ibid.

¹⁹ Hamdy, Sherine, 'The organ transplant debate in Egypt: a social anthropological analysis' [2010] *Droit et cultures. Revue internationale interdisciplinaire* 59.

²⁰ Gamil, Marina, 'International Organ Transplantation center to be established in Egypt' (2018) *Egypt Today*, <<https://www.egypttoday.com/Article/1/42528/international-Organ-transplantation-center-to-be-established-in-Egypt>, accessed 12 January 2024.

²¹ Belayneh Taye Gedifew, *et al* (n 8).

²² 'UNOS Data and Transplant Statistics on Organ Donation Data' unos.org accessed 21 August 2024.

²³ Ibid

²⁴ Roels, Leo and Axel Rahmel, 'The European experience,' [2011] *Transplant International* 24.

the short supply of organs has powered the growth of unlawful organ trafficking and trading. Patients are desperate to get organs even through illegal means. An approximated 10 per cent of organ transplantations are got through illegal means.²⁵ The quest for organ has opened doors to illegal organ tourism, which see patients from developed countries travelling to undeveloped countries for illegal transactions for organs.²⁶ According to Cohen, most organ tourists are from Israel, United States of America, Europe, Canada, Republic of Korea, Malaysia, Japan, and the Middle East.²⁷ Thus, making the poor in the society and migrants susceptible. They are exposed to health hazards, and social, economic and psychological vulnerabilities.²⁸ The growing demand for organs has given birth to criminal organ trade sponsored by organ trafficking, and these illegal traffickers have their syndicates in many parts of the world, especially, in the hunger and crime ridden Africa. An estimated 10 000 kidneys are sold on the black market globally. About 10 per cent of transplants are got illegally through human trafficking and illegal human trades.²⁹ This is despite global and regional efforts to curb the menace through resolutions, policies and administrative documents on legal transplantations and anti-

²⁵ Bastani, Bahar, 'the present and future of transplant organ shortage: some potential remedies' [2020] *Journal of nephrology* 33.

²⁶ Cohen, Cynthia B, 'Selling bits and pieces of humans to make babies: The gift of the mag revisited' [1999] *The Journal of medicine and philosophy* 24.

²⁷ Ibid.

²⁸ Cohen, I. Glenn, 'Transplant tourism: the ethics and regulation of international markets for organs' [2013] *Journal of Law, Medicine and Ethics* 41; Efrat, Asif, 'Combating the kidney commerce: civil society against organ trafficking in Pakistan and Israel' [2013] *British Journal of Criminology* 53; Efrat, Asif, 'Global efforts against human trafficking: The misguided conflation of sex, labour, and organ trafficking' [2016] *International Studies Perspectives* 17.

²⁹ Shimazono, Yosuke, 'The state of the international organ trade: a provisional picture based on integration of available information' [2017] *Bulletin of the World Health Organisation* 85.

trafficking. This study tries to appraise these various resolutions and policies and their ethical undertones in Africa through three major African countries - Kenya, Nigeria, South Africa. To accomplish this feat, this paper is divided into Part 1 - 6, thus; part 1 is the introduction; part 2 is the conceptual background; part 3 is the historical back ground of human organ removal and transplantation; part 4 is human trafficking for organ removal on the African continent; part 5 is the legal structure for fighting trafficking and organ trade in the three African countries drawn from the east, west and south of Africa; and part 6 is the conclusion and recommendation.

2. Conceptual Clarifications

2.1 Human Trafficking

Human trafficking is an offence, which involves the transportation, recruitment, or transfer of a human being by way of intimidation, use of force, kidnapping, scamming, fraud, abuse of power, giving some payments to gain the approval of another through control over the victim; for the purpose of manipulation including sexual abuse, slavery, enforced labour, servitude, or the extraction of vital organs.³⁰ It is far becoming a profitable form of global crime and a new form of slavery. The victims are the poor, illegal travelers and asylum seekers.³¹ Their vulnerability is exploited, they are tricked, coerced and trafficked between countries and regions.

³⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), supplementing the United Nations Convention against Transnational Organized Crime, art 3.

³¹ Interpol, 'Trafficking of Human Beings for the purpose of Organ Removal in North and West Africa' (2021) Analytical Report enacting Africa's response to transnational organized crime, funded by the European Union; Information retrieved from INTERPOL website, <https://www.interpol.int/Crimes/Human-trafficking/Types-of-human-trafficking>, accessed 6 June 2024.

2.2 Organ Trafficking

Organ trafficking is the purchasing and marketing of human tissues by extracting organs from living or deceased donors devoid of a legal consent, in exchange for some financial advancement to the benefactor or a middle man. It is the transplantation of organs or the offering of undue advantage to a medical professional, a public officer, or an employee of a private entity to enable the removal or use, for lobbying or engaging donors or beneficiaries for financial advantage; in other to attempt or aid or abet the commission of any of the above acts.³² The fundamental aspect of organ trafficking is commercial transaction of human organs as commodities for financial advantage.³³ There is hardly any part of the globe where the trade on human organs is allowed and especially, not in Africa. Although, some countries legally permit the donation of organs by a living donor.³⁴

2.3 Trafficking in Persons for the Purpose of Organ Removal

According to the Palermo Protocol, Trafficking in Persons for the Purpose of Organ Removal is the employment, conveyance, relocation, concealment or treatment of persons, by means of intimidation, force, bullying, fraud, trickery, abduction, or abuse of power toward a vulnerable person, by giving or acceptance of payments or other assistances to secure consent for

³² The Declaration of Istanbul on Organ Trafficking and Transplant Tourism 2018, https://www.declarationofistanbul.org/images/documents/doi_2018_English.pdf accessed 5 March 2024.

³³ Budiani-Saberi, D.A. and Delmonico, F.L., 'Organ Trafficking and Transplant Tourism: A Commentary on the Global Realities' [2008] *American Journal of Transplantation* 8.

³⁴ 'A review of policies and programmes for human organ and tissue donations and transplantations, WHO African Region' (2020) *Bulletin of the World Health Organisation* 98, <http://dx.doi.org/10.2471/BLT.19.236992> accessed 6 March 2024.

the purpose of exploitation through the extraction of organs, cells or tissues for transplantations.³⁵

3. Organ Trafficking in Africa

As earlier mentioned, transplantation is alien to African medicine and diseases of the soft organs like kidney disease, heart failure, liver disease, etc. were generally unknown to Africa. Africans had very clean and natural habitat, natural foods, vegetables, clean water from natural sources, etc. until modernization was introduced and the environment and water habitats became polluted. Most foods and drinks are now polluted with harmful and dangerous substances, giving rise to various diseases and health challenges. As a result of the continents under development, such treatments are not easily accessible to the people. Treatment centres are few in Africa,³⁶ and patients have to go to advanced countries for treatment and transplantation.

Africa is currently deep in the global transplant tourism and organ trafficking, with north and south Africa serving as access routes for organ trafficking. The north combines both kidnapping for ransom and killing of their victims for organ trafficking. Egypt, Libya and Sudan are the foremost organ traffickers in Africa.³⁷ In fact, Egypt was once said to be the major

³⁵ 'A review of policies and programmes for human organ and tissue donations and transplantations, WHO African Region' (2020) *Bulletin of the World Health Organisation*, 98, <http://dx.doi.org/10.2471.BLT.19.236992> accessed 20 February 2024.

³⁶ Lou, Andre, Margot Feroletto, Aissatou Sougou, Ossy Muganga, Julius Kasilo, Jean Baptiste Nikiema, Walter Fuller, Staislav, and Prosper Tumusiime, 'A review of policies and programmes for human organ and tissue donations and transplantations, WHO African Region' (2020) *Bulletin of the World Health Organisation* 98.

³⁷ Shimazono Yosuke (n 46).

exporter of organs in the world.³⁸ Their targets are mainly illegal immigrants from east and west African countries like Eretria, Sudan, Saudi Arabia, Ethiopia, Nigeria, Oman, Qatar, Somalia, and Sudan.³⁹ While, patients from Behrain, Europe, Iran, Iraq, Jordan, Kuwait, Libya, Israel, United Arab Emirates, and the United States, are the end users of the illegal organ trade in Egypt.⁴⁰ As the United Nations Office on Drugs and Crime rightly detected, high incidents of organ trafficking was recorded in the Middle-East and North Africa in 2018.⁴¹ Reports indicate an estimated 700 incidents aside the undocumented and unreported ones, which are done through secret and organized gangs made up of government agents, health workers, political bodies and hoodlums.⁴² Victims are either kidnapped or trapped in various ways and their organs stolen from them. Organs are stolen from unsuspecting patients,⁴³ some are coerced with money and sweet promises, physical force, kidnapping, and outright killings. Hundreds of teenagers across the continent are being lured to sell their kidneys for as low as a \$65.90 United States Dollar.⁴⁴ While some are trafficked out of the country with a promise of better life only for their organs to be harvested

³⁸ Ibid.

³⁹ Columb Sean, 'Excavating the organ trade: An empirical study of organ trading networks in Cairo, Egypt' (2017) 57 *British Journal of Criminology* 57 <<https://doi.org/10.1093/bjc/azwo68> accessed 18 June 2024.

⁴⁰ Columb Sean, note 67.

⁴¹ UNODC, Our stories from the Middle-East and North Africa <https://www.unodc.org/middleeastandnorthafrica/en/frontpage/index.html>.

⁴² Ibid.

⁴³ Ebnoluwa Olafusi, 'Two doctors arrested for "organ harvesting" in Plateau'- The Cable (1 September 2023), www.thecable.ng accessed 21 August 2024; NAN, 'Organ harvest: Police arrest 2 more doctors in Plateau' BusinessDay NG (20 Septemer 2023) <https://business.ng>, accessed on 19 February 2024.

⁴⁴ Youtube.TructTV News, 'Organ Harvesting: Jos woman explains how doctor discovered her kidney was removed' (10 September 2023).

and sold out.⁴⁵ Perpetrators employ violence, torture, use of force, demand for ransom, and killing of migrants. Victims who could not pay the ransom, pay with their organs.⁴⁶ Agents from Egypt and Sudan, induce their victims to willingly exchange their organs for money. Their target is mainly the poor, rural migrants, and asylum seekers,⁴⁷ who get far less the amount for their organ while the agents make more money from them.⁴⁸ In 2006, there was a report of nine Somalian migrants who had their tissues extracted and their remains discarded in the ocean close to Alexandria, Egypt.⁴⁹ Also, in 2015, the Egyptian police discovered fifteen bodies of Sudanese migrants, who were killed and their organs harvested in northern Sinai Peninsula.⁵⁰ In 2020, there were bodies found without organs in Nigeria and Lake Chad.⁵¹ In 2011, 57 Sudanese refugees were trafficked from Darfur to Egypt where their organs were harvested.⁵² Forceful removal of organs

⁴⁵ Ibid.

⁴⁶ Van Reisen M, and Rijken C., 'Sinai trafficking: Origin and definition of a new form of human trafficking' (2015) *Soc Incl* 3.

⁴⁷ Columb, Sean. 'Excavating the organ trade: An empirical study of organ trading networks in Cairo, Egypt' (2017) 57 *British Journal of Criminology* <<https://doi.org/10.1093/bjc/azw068>, accessed 18 June 2024.

⁴⁸ Cohen, I Glenn, 'Transplant tourism: The ethics and regulation of International markets for organs' (2013) *Journal of Law, Medicine & Ethics* 41.

⁴⁹ Human Trafficking Safety Tips, 'Nine Somalis dumped in Egyptian sea after kidnapped and organs removed by traffickers in Egypt' Small voice human trafficking (5 August 2016), <<https://www.humantrafficking.co.za/index.php/news/1041-nine-somalis-dumped-in-egyptian-sea-after-kidnapped-and-organs-removed-bytraffickers-in-egypt-6-april-2016-note-not-for-sensitive-viewers>, accessed on 31 January 2024.

⁵⁰ Reuters, 'Bodies of 15 migrants found in Egypt's Sinai Peninsula,' BBC News (15 November 2015) <<https://www.bbc.com/news/world-middle-east-34826469>, accessed on 31 January 2024.

⁵¹ Fair Planet, 'Illegal organ trafficking in Africa', <<https://www.fairplanet.org/story/a-penny-for-a-kidney-illegal-organ-trafficking-in-africa/39>, accessed on 31 January 2024.

⁵² Budiana-Saberi, Debra, Kabir Karim, and Donald I. Zimmerman, 'Sudanese victims of organ trafficking in Egypt: a preliminary evidence-based, victim-centred report,' (2011),

cause, not just a decline in health of victims, but also has some socio-economic and psychological complications and at times death.⁵³ Reports from the activities of ISIS,⁵⁴ a terrorist group operating around the Middle-East, shows that they harvest the organs of their victims for onward trade.⁵⁵ Libya is also not left out in this illicit organ trade. Their victims are migrants from East and West Africa.⁵⁶

Besides these illicit activities in the northern part of the continent, there is also organ trafficking, organ trading, and transplantation going on in a large scale in South Africa.⁵⁷ South Africa is leading in organ trafficking, organ trade, and unlawful transplantation.⁵⁸ Both government agents, legal personnel and the private sector are all part of the commercialism and

<<https://cofs.org/home/wp-content/uploads/2012/06/REPORT-Sud-Victims-of-OT-in-Egypt-NEW-COVER-16-jan-20124.pdf>, accessed on 31 January 2024.

⁵³ Budiana-Saberi, Debra, Kabir Karim, and Donald I. Zimmerman, note 80.

⁵⁴ The Islamic State of Iraq and Syria (ISIS).

⁵⁵ Scheper-Hughes, Nancy, 'The body of the terrorist: Blood libels, bio-piracy, and the spoils of war at the Israeli Forensic Institute' (2011) 78 *Social Research: An International Quarterly* 849-86.

⁵⁶ Ingvild E Rygg, 'Slavery and organ harvesting of African migrants in Libya: International community needs to become more concerned with the crimes committed against the migrants than migration itself'- Grey Dynamics <<https://greydynamics.com> accessed 1/3/2024; LibyaHerald, 'Approximately 610,000 illegal migrants smuggled into Libya, human organs traded,' <https://libyaherald.com>, accessed on 1/3/2024; and The ICIR, "African Migrants caged, vital organs harvested in Libya-NAPTIP available at <https://www.icirnigeria.org>, accessed on 1 March 2024.

⁵⁷ Moosa, MR, 'The state of kidney transplantation in South Africa [2019] 109 *South African Medical Journal* 235-40

⁵⁸ Ambagtsheer, Frederike, Martin Gunnarson, Jessica De Jong, Susanne Lundin, Linde van Balen, Zvika Orr, and W. Weimar, 'Trafficking in human beings for the purpose of organ removal: a case study report' [2014] 91 *The Hott Project*.

trafficking in the region and from outside the continent.⁵⁹ It requires a combination of ethical, legal, and technical solutions within the region to stop this crime.

3.1 Ethical issues in organ trafficking in Africa

Ethically, organ transplantation raises the issue of humanity as the basis for organ transplantation to help patients in need.⁶⁰ However, this ethical consideration should depend on some moral principles, which could be both utilitarian and deontological in its ethical orientation.⁶¹ Modern medicine believes that the transplantation and trading of organs should be based on individuality, compassion, charity and decency.⁶² It is true that organ transplanting is a medical milestone to save lives but science should come up with genuine ways to get these organs while discouraging the various illegalities associated with it. In any case, human trafficking is an outright act of inhumanity, wickedness and barbarism. Nothing is enough to justify this extreme act of cruelty on victims, and humanity will be most unsafe if this continues. The ethical debate is not on organ transplantation but on trafficking, illegal trading and associated crimes. Medical ethics recommend altruistic organ donations from genetic donors. But the increasing demand far outweighs the availability of organs. This, coupled

⁵⁹ Ibid.

⁶⁰ Mor, Eytan and Haggai Boas, 'Organ trafficking scope and ethical dilemma [2005] 5 *Current diabetes reports* 294-99.

⁶¹ Ibid.

⁶² Ibid.

with the easy money traffickers are making has encouraged trafficking and illegal transplantations of organs.

Human and organ trafficking is against human right, public policy, and social justice. It turns the poor and vulnerable to a mere commodity to be disembodied and sold to save the rich. While deontologists argue for altruistic donations, and legal regulation of organ trade as an answer to organ trafficking, the utilitarian thinkers suggest compensation, organ donation or organ selling.⁶³ The utilitarian believes that the seller has right to sell and the sick has right to buy an body parts in an open market structure; and that there is nothing wrong as far as it favours both the seller and the buyer.⁶⁴ The utilitarian focuses only on organ shortage and the insufficiency of altruism and is not bothered about illegal procurements of organ to meet demand as far as it benefits both the seller and the buyer. They believe that the only solution to the availability of organs lies in making flexible laws for the procurement of organs. The utilitarian therefore, encourage compensation, an indirect paid donation of organs and a regulated organ trade as possibilities towards increasing organ supply and control of organ trafficking.⁶⁵ They more or less advocate for a genuine free trade of organs, with price controlled by law and that legitimizing the trade

⁶³ Ibid.

⁶⁴ Taylor, James S, 'Autonomy, Constraining Options, and Organ Sales' in Leonard Territo and Rande Matteson, *International Trafficking of Human Organs* by (London: CRC Press 2012); Clay, Megan and Walter Block, 'A Free Market for Human Organs, in Leonard Territo and Rande Matteson, *International Trafficking of Human Organs* (London: CRC Press, 2012).

⁶⁵ De Castro, ID, 'Commodification and exploitation: arguments in favour of compensated organ donation [2003] 29 *Journal of medical ethics* 142-46; Omar, Faisal, Gunnar Tufveson, and Stellan Welin, 'Compensated living kidney donation: a plea for pragmatism [2010] 18 *Health care analysis* 85-101; and Friedlaender, Michael M 'The right to sell or buy kidney: are we failing our patients?' (2002) 359 *The Lancet* 971-73.

of organs will discourage organ theft and trafficking.⁶⁶ The owner will be well paid as selling his or her estate and the needs of the receiver would be met.⁶⁷ Friedlaender submits that a regulated organ trade is morally justified for the good of patients, for the continuity of this medical breakthrough of transplantation and as a check on illegal organ trade.⁶⁸ Rationally, the above suggestions are not sufficient to settle the increasing demand for organs and the illegal trading and trafficking of human organs. For instance, Africans are mostly poor. The health care system in the region is far below standard. Legalising organ trade and opening doors for compensated donations will indirectly encourage organ trafficking rather than checking the menace. This takes us back to the altruistic donation of organs under strict legal control based on independence, compassion, charity and decency; and transplantations from deceased donors. Any kind of force, coercion, or deceit is an outright abuse of human rights of victims, and against public policy and moral ethics.

Current report shows that Africa has 35 kidney transplant centres, which takes donations from living donors in the region. Uganda and Namibia have one heart transplant centres each, Kenya has five cornea transplant centres while Algeria has twelve with three liver transplant centres and five bone marrow centres.⁶⁹ Removal of tissues from cadaver is only operated in

⁶⁶ Clay Megan and Walter Block, 'A Free Market for Human Organs' in Leonard Territo and Rande Matteson, international trafficking of human organs by Matteson (*London: CRC Press* 2012).

⁶⁷ Ibid.

⁶⁸ Mor, Eytan and Haggai Boas, 'Organ trafficking scope and ethical dilemma [2005] 5 *Current diabetes reports* 294-99.

⁶⁹ AFR/RC70/12, 'Status of human organ and tissue donation and transplantation,' <https://www.afro.who.int/pdf>.

South Africa.⁷⁰ These are far inadequate for a continent of an estimated population of 1, 483, 958, and 455 as at Wednesday 5th of March, 2024, which accounts for about 17.89% of the total world population.⁷¹ Only few African countries have placed some legal guide to govern organ transplantation and donation. These include Nigeria, Algeria, South Africa, Cote d'Ivoire, Burkina Faso, Kenya, Rwanda, Uganda, Namibia, Senegal, and Zimbabwe. And only nine out of them have particular provisions to control illegal organ trade or organ trafficking. These are Nigeria, Cote d'Ivoire, Algeria, Namibia, Mali, Rwanda, Burkina Faso, Senegal and Comoros. Although, trading in human organs is going on in Africa, many African countries choose to remain silent on the issue. Report shows that only three countries have legally prohibited the importation or exportation of human organs;⁷² and only three countries⁷³ have legally permitted the importation and exportation of human organs.⁷⁴

3.2 Challenges in Winning the War against Organ Trafficking in Africa

⁷⁰ Thomson, D and labuschaigne, M, 'Organ donation after circulatory death- legal in South Africa and in alignment with Chapter 8 of the National Health Act and Regulations relating to organ and tissue donation' (2024) 17 *South Africa Journal of Bioethics and Law*, https://hdl.handle.net/10520/ejc-m_sajbl_v17_nl_a10.

⁷¹ Population of Africa (2024) - Worldometer, <<https://www.worldometers.info>.

⁷² These are Algeria, Burkina Faso, and Seychelles.

⁷³ These are Ghana, Namibia, and Rwanda.

⁷⁴ Loua, Andre, Margot Feroletto, Aissatou Sougou, Ossy Muganga Julius Kasilo, Jean Baptiste Nikiema, Walter Fuller, Stanislav Kniazkov, and Prosper Tumusiime, 'A review of policies and programmes for human organ and tissue donations and transplantations, WHO African Region [2020] 98 Bulletin of the World Health Organisation 420-25.

The first attempt to fight tissue trading and transplant tourism at the international scene was the establishment of the Declaration of Istanbul on organ trafficking and transplant tourism (the Declaration). The Declaration outlines and proscribes transplant trade and tissue trafficking. It was intended to uphold principled practices in organ donation and replacement round the globe.⁷⁵ It prohibits transplant trade and transplant tourism. It follows the provisions already laid down in the Universal Charter;⁷⁶ and formed task forces to implement and monitor its objectives. Though, none binding, it has been very effective and has been endorsed by several countries. Various countries of the world were urged to domesticate this in their municipal laws. However, all efforts to outlaw organ trade so far, have not been effective.⁷⁷ While some countries like Israel, China, Pakistan and the Philippines in putting to effect the Declaration, had to amend their existing laws or made new ones, they continued trafficking and commercializing human organs.⁷⁸ While the Declaration aims at health professionals and organizations, World Health Organisation in its Guiding Principles targets governments through legislation, although, both complement the other to achieve success against human trafficking and organ trading. However, the focus was on prohibition rather than enforcement, which could not deter criminals.

⁷⁵ The International Summit on Transplant Tourism and Organ Trafficking was organized by the Transplantation Society and International Society of Nephrology. The Declaration of Istanbul on organ trafficking and Transplant Tourism, *Transplant* 2008 88:1013-1018.

⁷⁶ Resolution 57 (18), Universal Declaration of Human Rights 1948 and World Health Assembly Resolution.

⁷⁷ Ambagtsheer F and Weimar, W, 'A Criminological Perspective: Why Prohibition of Organ Trade is Not Effective and How the Declaration of Istanbul can move Forward [2012] 12 *American Journal of Transplantation* 571 – 75.

⁷⁸ Ambagtsheer F and Weimar, W, note 105.

At the moment, the organ trade is booming with many countries, organisations and individuals profiting greatly from it.⁷⁹ And there are many national and international syndicates aiding the crime.⁸⁰ The networks further thrive on globalisation, transportation machineries and modern communication networks. These make the trade malleable and adaptable;⁸¹ and easy to integrate even into legal institutions.⁸² In some cases, it blows up to a global network of organ trafficking and organ trade operating from different countries, connecting beneficiaries, donors and health personnel. As the demand for organ transplantation has increased more than ever in the history of the world, prohibition alone is not enough. According to MacCoun and Reuter, demand-driven crimes are not easy to control nor can legislation alone curb them.⁸³ That is why some activities such as gambling, alcoholism, prostitution, use of certain drugs, etc. are resilient despite government's efforts to eradicate them from the society.⁸⁴ Prohibiting organ trade will heighten illegality.⁸⁵ Research has shown that there is no proof of any illegality in countries like the United Kingdom,

⁷⁹ A report by Global Financial Integrity evaluates the profit from illegal organ to be between \$600 million and \$1.2 billion yearly and it's believe to be the tenth of the illegal activities studied in terms of the illegal profit made.

⁸⁰ Haken J, *Transnational crime in the developing world*, (Washington: Global Financial Integrity, 2011).

⁸¹ Castelis M, *The global criminal economy End of millennium* (Oxford: Blackwell, 1998).

⁸² Naylor R, *Wages of crime, Black markets, illegal finance and the underworld economy* (thaca: Cornell University Press, 2002).

⁸³ MacCoun RJ, Reuter P, *Drug War Heresies* (Cambridge: Cambridge University Press, 2001).

⁸⁴ Ambagtsheer F and Weimer W, 'A Criminological Perspective: Why Prohibition of Organ Trade is not Effective and How the Declaration of Istanbul can move forward' [2012] 12 *American Journal of Transplantation*.

⁸⁵ Haken J, *Transnational crime in the developing world* (Washington: Global Financial Integrity 2011); Radcliffe-Ritchards J, Daar AS, Guttman RD, et al, The case for allowing kidney sales [1998] 351 *The Lancet* 1998.

Netherlands and Norway, where there is a well-established living donation. Instead of organ prohibition, focus should be on how to boost up organ supply by encouraging government to device the deceased donation plan and the expansion of living donation, which is the joint expectations of World Health Organisation, European Union and the Custodian Group.⁸⁶

4. Legal Framework against Human Trafficking and Organ Removal in Africa

4.1 International instruments against human trafficking

All universal norms and treaties relate to Africa once ratified by state parties.⁸⁷

(a) *The United Nations Universal Declaration of Human Rights*.⁸⁸ It recognizes in its preamble the fact that the inherent dignity, equality and inalienable rights of every human being is built upon freedom, justice and peace. The United Nations Universal Declaration of Human Rights prohibits all forms of slave trade or slavery-like practices.⁸⁹

⁸⁶ The European Directorate for the Quality of Medicines and Health Care. Launch of a 3 year programme on the development of donation and transplantation activities in the Black Sea area. Strasbourg, France. Council of Europe 2011, <http://www.edqm.eu>, accessed 18 June 2024; The Transplantation Society, 'Baikan Initiative in Deceased Donation Meeting' *Macedonia Tribune* (Skopje 2011).

⁸⁷ Kigbu, S.K. and Hassan, Y.B., 'Legal Framework for Combating Human Trafficking in Nigeria' [2015] 38 *Journal of Law, Policy and Globalisation*.

⁸⁸ Universal Declaration of Human Rights (adopted on 10 December, 1948) UNGA Res. 217 A (III) (UDHR). Adopted by the United Nations General Assembly on the 1st of December, 1948.

⁸⁹ Art. 4, UDHR.

(b) *The United Nations Convention against Transnational Organised Crime*.⁹⁰ This was the first international instrument, which gave an all-inclusive and legally binding characterisation of trafficking in human beings. It captures all acts before and during any act under the meaning of human trade. It includes in its definition the term use of force, coercion or fraud over another for the purpose of trafficking or exploitation. It is against forced prostitution, forced labour, extraction of organs, etc.⁹¹ The approval of the victim is not a defense and cannot avail the culprit from punishment.⁹² State parties are enjoined to take steps to criminalise the offense.⁹³ State parties are often updated as well as monitored through Conferences. Such conferences are not binding on State parties but helps in international collaborations.

(c) *The Convention on the Elimination of All Forms of Discrimination against Women, 1981*.⁹⁴

It directs member states to take steps to quash all forms of trading in women and prostitution. It sets up a local strategy to eradicate all practices of

⁹⁰ And its Supplementary Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially, Women and children and Supplementing the United Nations Convention against Transnational Organised Crime dated 15 November 2000 (BGBI 2005 11, S. 995), which became effective on 25 December, 2003.

⁹¹ Art. 3a, United Nations Convention against Transnational Organised Crime.

⁹² Ibid. Art. 3c

⁹³ Ibid. Art. 5(2)

⁹⁴ The Convention on the Elimination of All Forms of Discrimination against Women was adopted in 18 December, 1981 and entered into force 3 September, 1981. As at 15 December, 2007, 185 States including some African States, had ratified it.

discrimination against women. It forbids trafficking in women;⁹⁵ and all sorts of abuse against women.⁹⁶

(d) Convention on the Rights of the Child - This Declaration specifically, discourages any sort of neglect, cruelty, exploitation and subjection of a child to trafficking.⁹⁷ This Convention prohibits illegal transfer of children out of the country or any form of exploitation or trafficking. It panned the age of a child at 18 years.⁹⁸ Member states are duty bound to prevent the exploitation of a child. Others include the United Nations Protocol against Smuggling of Migrants Supplementing the United Nations Convention against Transnational Organised Crime, 2006; United Nations Resolution on Eliminating Demand for Trafficking Women and Girls for all Forms of Exploitation, 2005; United Nations Slavery Conventions; and the ILO Forced Labour Conventions; and International agreement for the Suppression of White Slave Traffic, 1904.

(e) United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime (the Palermo Protocol)- which came in force in 2003, includes the abstraction of organs in its description of trafficking in persons.⁹⁹ It criminalises trafficking in person for organ harvesting.

(f) World Health Organisation Guiding Principles on Human Cell, Tissue, and Organ Transplant- This was an endorsement by World Health

⁹⁵ Convention on the Elimination of All Forms of Discrimination against Women, art 6.

⁹⁶ Scarpa, S, *Trafficking in Human Beings: Modern Slavery* (New York: Oxford University Press Inc. 2008) 94.

⁹⁷ Art. 9, Convention on the Right of the Child (CRC).

⁹⁸ Ibid. Art. 1.

⁹⁹ Art. 3, Palermo Protocol.

Organisation to offer a systematic and ethical structure for the procurement and removal of human cells and tissues for homoeopathic commitments.¹⁰⁰ It provides that live donations must be with donor's approval and that he should be given a certified medical care.¹⁰¹ It prohibits sale of cells, tissues and organs but endorses donation and compensation of donors.¹⁰² It forbids health professionals from providing insurance coverage for transplantations involving exploitation, coercion, payment to donor.¹⁰³ It urges member states to take steps to safeguard the poor and defenseless.¹⁰⁴

(g) *The Declaration of Istanbul on Organ Trafficking and Transplantation Tourism (Istanbul Declaration)* - This is a decision of the International Summit on Transplant Tourism and Organ Trafficking organized by the Transplantation Society and International Society of Nephrology in 2008. The conference wanted to address the developing glitches of transplant travels, marketing of donors, and sales of human tissues. The Istanbul Declaration proposes a legal and ethical framework against organ trafficking and commercialization of human organs.¹⁰⁵

4.2 Regional instruments against human trafficking

a. African Charter on Human and People's Rights

¹⁰⁰ WHO, WHA Guiding Principles on Human Cell, Tissue, and Organ Transplantation, 2010 by its decision-making body WHA.

¹⁰¹ Ibid. Guiding Principle 3.

¹⁰² Ibid. Guiding Principle 5.

¹⁰³ Ibid. Guiding Principle 7.

¹⁰⁴ WHA, *Human Organ and Tissue Transplantation*, WHA57, 18, May 22 2004.

¹⁰⁵ Participants in the International Summit on Transplant Tourism and Organ Trafficking, 'The Declaration of Istanbul on Organ Trafficking and Transplant Tourism' [2008] 3 *Clinical Journal of the American Society of Nephrology*.

The African Charter on Human and People's Rights forbids all forms of exploitation and abuse of any human being. It particularly prohibits servitude, slave trade, and torture, inhuman or degrading treatment.¹⁰⁶ It respects the right of every human to his dignity.

b. ECOWAS Declaration and Plan of Action against Trafficking in Persons (2001)

This regional instrument requires state parties to be committed in the fight against human trafficking, and to protect, support and rehabilitate victims. They should stimulate some consciousness through activities and border collaborations, data sharing amongst all Economic Community of West African States. There is an Action Plan by the joint efforts of state members of the Economic Community of West Africa State against human trafficking, which by extension includes organ trafficking.¹⁰⁷ This Declaration and Action Plan against Trafficking in Persons was approved by the Economic Community of West Africa States' Summit in 2001. The focus was to criminalise and set up modalities of handling matters of trafficking in person.

c. The African Union's Policy Framework for Africa (2018-2030)

It provides an all-inclusive outline for migration, which include that migration should be overseen by an inclusive human rights and gender-responsive national policies.¹⁰⁸ State parties should integrate migration guidelines into their education, labour and health sectors, as well as,

¹⁰⁶ Art. 5, African Charter on Human and Peoples' Rights.

¹⁰⁷ Gbadamosi, O, 'International Perspectives and Nigerian Laws on Human Trafficking' [2006] *Benin City: All Nations Press*, 80.

¹⁰⁸ Shaka Yesufu, 'Human Trafficking: A South African Perspective' [2020] 17 *Journal of Social Sciences and Humanities* 103 -20.

engaging all relevant ministries to make their own migration policies. It covers irregular migration, human trafficking, brain drain, migrant smuggling, refugees and asylum seekers, crisis management, internally displaced persons, conflict resolution, stateless persons, etc.¹⁰⁹ These international and regional instruments have formed the bedrock for municipal provisions to curbing human trafficking and organ trade among African states, three of which are discussed below;

4.2 Local Legislations against human trafficking and Organ Removal

a. Kenya

Kenya is not spared in the delinquency of human trafficking and organ trade. In 2022, the country's Foreign Minister announced the rescue of twenty-four trafficked Africans, many of whom were Kenyans.¹¹⁰ They were deceived about getting some employment opportunities in Asia with flight ticket guaranteed.¹¹¹ They were able to raise a distress call, which led to their rescue in Laos. Their rescue was through a collaborative effort of the International Organisation for Migration and Kenyan government.¹¹² Before this time, a group of thirteen and other groups had also been rescued by the Thai military.¹¹³ Between August and November, 2022, seventy-five victims of trafficking were rescued and brought back home.¹¹⁴ The Kenyan government has resolved to mount close watch on its airports for those travelling out of the country for fake online jobs. Notwithstanding this

¹⁰⁹ Ibid.

¹¹⁰ These include 22- Kenyans, 1- Ugandan and 1-Burundian.

¹¹¹ Andrew Wasike, 'Kenyan rescues her citizens from suspected organ traffickers' (2014) <https://www.aa.com.tr/en/africa/kenya-rescues-citizens-from-suspected-organ-traffickers-/2693337>, accessed on 1 July 2024.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ They include 10- Ugandans and 1- Burundian.

surveillance measure, Kenyan has good legal and regulatory framework to curb human trafficking. The country is bound by all the universal and regional permissible norms against human trafficking and organ trade. It also has good domestic laws.

The major legal framework against trafficking in persons is the Counter-Trafficking Act, 2010.¹¹⁵ This Act is made up of six fragments and twenty-eight segments. Part I and II specifically deal with trafficking in persons and related offences.¹¹⁶ Part III deals with hearing of delinquents and reparations for victims.¹¹⁷ Part IV establishes the Counter-Trafficking in Persons Advisory Committee.¹¹⁸ Part V establishes the National Assistance Trust Fund for victims;¹¹⁹ and Part VI is the miscellaneous provision.¹²⁰ The Act establishes the offence of trafficking in persons, which is committed when a person recruits, transports, harbours or receives another for purposes of abuse by the use of intimidation, force, coercion, abduction, deception, abuse of power, giving payments, or profits to get approval, etc., although, the consent of a victim of trafficking in person is immaterial where exploitation is established.¹²¹ The offence may be committed within or outside the borders of Kenya.¹²² The criminal offender is answerable to incarceration of at least thirty years or to a fine of a minimum of thirty million shillings or both; and successive conviction, to a life imprisonment.¹²³ Anyone who funds, assists or encourages the commission

¹¹⁵ Law of Kenya 2010, enforced 1st October 2012.

¹¹⁶ Ss. 3-10, Counter-Trafficking Act.

¹¹⁷ Ibid. ss. 11-18

¹¹⁸ Ibid. ss. 19-21

¹¹⁹ Ibid. ss. 22-24

¹²⁰ Ibid. ss. 25-28

¹²¹ Ibid. ss. 1-3

¹²² Ibid. s. 4

¹²³ Ibid. s. 5

of the crime is answerable to an imprisonment of at least thirty years or a fine of at least thirty million shillings or both, and subsequent conviction to a life imprisonment.¹²⁴ The Act did not provide for trafficking in human organ. But, this was provided under the Health Act, 2017.¹²⁵ The Health Act provides for organ donation, harvesting and transplantation.¹²⁶ It forbids the removal of tissues from a human being for the purpose of transplanting into another person; except by a duly accredited facility meant for that purpose, with the inscribed permission of the medical officer in charge of medical services in that health facility or any other medical specialist approved by him, or by the written permission of the donor.¹²⁷ Such a medical specialist must not be the main partaker in the transplant for which he had granted permission.¹²⁸ The Act went ahead to provide a regulatory authority to recommend the standards for the approval of organ transplant facilities and procedures to be followed for such approval.¹²⁹ The violation of this section upon sentence, will attract an imprisonment for a duration of not more than ten years, or a fine of not more than ten million shillings or both.¹³⁰ It is an offence to charge a fee for a human organ.¹³¹ A competent person by law, may decide to Will his organ after his death. Such a bequest must be to an organization or designated beneficiary. Such a donation is unacceptable where there is no recipient;¹³² but valid if made for the purpose of training students; for the purpose of research; for the

¹²⁴ *Ibid.* s 6

¹²⁵ Health Act No. 21 of 2017 Laws of Kenyan.

¹²⁶ Ss. 80-83, The Health Act No. 21 of 2017 Laws of Kenyan.

¹²⁷ *Ibid.* s. 80(1)

¹²⁸ *Ibid.* s. 80(2)

¹²⁹ *Ibid.* s. 80(3)

¹³⁰ *Ibid.* s. 80(4)

¹³¹ *Ibid.* s. 162

¹³² *Ibid.* s. 81

advancement of health sciences; or therapeutic purposes, like donating to a living person.¹³³ The law allows such a donor to revoke the donation in line with the laid down procedure.¹³⁴

b. Nigeria

Initially, there was nothing like human trafficking for organ removal in Nigeria but lately, it has become a problem in the country attributable to challenges of good governance. Initially, it was the trafficking of girls and women to Italy for the purpose of sexual exploitation. This was particularly rampant in Edo State of Nigeria.¹³⁵ The attention of the government was first drawn to this development in 1997 by the then Ambassador of Nigeria to Italy Judith Attah who informed the 63rd Interpol General Assembly.¹³⁶ Through the activities of some Non-Governmental Organisations and human rights protestors, government was forced to look into the trafficking of young women in 2003. Before this time, there was no anti-trafficking statute except some provisions in the Constitution, Criminal Code and Penal Code. But, by 2003, many laws were enacted to protect the rights of children and to prohibit trafficking in persons. Presently, Nigeria has several legislations upon which to fight human trafficking and organ trade. The country being a member state to the United Nations, is under obligation to respect and promote all United Nations instruments, which promote human rights and prohibits trafficking in human beings for organ trade. It

¹³³ Ibid. s. 82

¹³⁴ Ibid. s. 83

¹³⁵ ‘Human trafficking in Edo State- Wikipedia’ <en.wikipedia.org>, accessed on 21 August 2024.

¹³⁶ Kigbu, S.K. and Hassan, Y.B (n 125).

is also bound by all regional instruments on the matter as well as its local laws.¹³⁷

The Constitution prohibits servitude and forced labour, sexual and material exploitation of teenagers, young adults and the aged;¹³⁸ protects the sanctity of life;¹³⁹ protects human dignity and the liberty of the human beings;¹⁴⁰ prohibits any form of discrimination;¹⁴¹ and gives victims the right to redress.¹⁴² The National Industrial Court has exclusive jurisdiction over child labour, child abuse, trafficking in human person and related matters.¹⁴³ Besides the Constitution, there are other laws like the Criminal Code¹⁴⁴ and the Penal Code.¹⁴⁵ The Criminal Code prohibits any form of slavery.¹⁴⁶ It prohibits unlawful confinement or detention;¹⁴⁷ by intimidation, surveillance or extortion, these are punishable by one to five years imprisonment.¹⁴⁸ It is an offence to buy, sell, transfer, aid or facilitate trafficking and organ trade. This is punishable by fourteen years in imprisonment. The Penal Code on the other hand, prohibits any form of inducement, force, or seduction.¹⁴⁹ It provides that buying, selling, hiring, possessing or dispossessing of a child under 18 years for unlawful purposes

¹³⁷ Constitution of the Federal Republic of Nigeria, 1999 (CFRN).

¹³⁸ *Ibid.* 17

¹³⁹ *Ibid.* s. 33

¹⁴⁰ *Ibid.* s. 34

¹⁴¹ *Ibid.* s. 42

¹⁴² *Ibid.* s. 46. This section states that any person who alleges that his fundamental human rights has been or is being or is about to be infringed may apply to a High Court for redress.

¹⁴³ *Ibid.* s. 254C (1)

¹⁴⁴ The Criminal Code operates in the South of Nigeria.

¹⁴⁵ The Penal Code operates in the North of Nigeria.

¹⁴⁶ S. 223, Criminal Code.

¹⁴⁷ *Ibid.* s. 365

¹⁴⁸ *Ibid.* 366

¹⁴⁹ S. 275, Penal Code.

is guilty and liable to ten years in addition to a fine.¹⁵⁰ It prohibits slave dealing and makes it an offence punishable by fourteen years imprisonment in addition to a fine.¹⁵¹ It prescribes punishment for forced labour.¹⁵² Besides these, is the Child Rights Act, 2003.¹⁵³ The Act is a domestication of the Child Rights Convention through the National Assembly.¹⁵⁴ So, Nigeria is bound to observe the provisions of the Child Rights Act, which prohibits the use of children in criminal activities.¹⁵⁵ The abduction, removal or transfer of a child from lawful custody is likewise prohibited with ten to twenty years imprisonment depending on the severity of the offence.¹⁵⁶ It prohibits force labour and any kind of exploitation.¹⁵⁷ It forbids the procurement, marketing, contracting, or dealing in children for the purpose of vending, alms begging, prostitution, or similar practices,¹⁵⁸ and prescribes ten years imprisonment as punishment. Also, the Labour Act, 2004 is against any form of abuse of a child or young person.¹⁵⁹

Nigeria also has two federal Acts, which specifically deal with trafficking in human persons and organ removal, the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003 (Trafficking Act),¹⁶⁰ and the National Health Act, respectively.¹⁶¹ The Trafficking Act

¹⁵⁰ Ibid. s. 278

¹⁵¹ Ibid. s. 279

¹⁵² Ibid. s. 280

¹⁵³ Child's Rights Act 2003, Cap. L1, Laws of the Federation of Nigeria 2004 (CRA).

¹⁵⁴ S. 12, CFRN provides that for a foreign law to become part of the Nigerian law, it must pass through the National Assembly.

¹⁵⁵ S. 26, CRA n152.

¹⁵⁶ Ibid. s. 27

¹⁵⁷ Ibid. s. 28

¹⁵⁸ Ibid. s. 30

¹⁵⁹ Ss. 59-62, Labour Act, Cap. L1 Laws of the Federation of Nigeria 2004.

¹⁶⁰ Trafficking Act 2003.

¹⁶¹ National Health Act 2014.

establishes an agency, the National Agency for the Prohibition of Trafficking in Persons to oversee its provisions. The National Agency for the Prohibition of Trafficking in Persons was assigned the responsibilities of enforcing the laws against human trafficking and organ harvesting, charging offenders, rehabilitating and counselling victims; and other related matters.¹⁶² The Act defines “trafficking” as the recruitment, transportation within or across Nigeria, buying, selling, transferring, receiving, or harbouring, use of trick, coercion, or debt repression to hold a person in bondage, forced labour or slavery. This definition shorts fall of the definition given by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially, Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime, 2000 (Trafficking Protocol), both, of which Nigeria is under obligation to observe as a state party. The Act did not consider fraud; the abuse of power or the victim’s susceptibility like poverty, arms conflict, achieving consent by fraud, etc.¹⁶³ The Act forbids trafficking for the purpose of organ abstraction.¹⁶⁴

The *National Health Act* is the main legal framework for the National Health System in Nigeria. It did not quite address trafficking in person for the removal of an organ. However, it prohibits the removal of a soft tissue, blood or blood products from the body of a living human.¹⁶⁵ It criminalises

¹⁶² It was later amended to the Trafficking in Persons (Prohibition) Law Enforcement and Administration (Amendment) Act 2005 with fifty-five sections and two schedules.

¹⁶³ Kigbu, S.K. and Hassan, Y.B, supra, note 168, 206; Igwe, L, ‘Ritual Killing and Pseudoscience in Nigeria’ <<http://www.sicop.org/sb/2004-06/nigeria.html>>, accessed 30 May 2004.

¹⁶⁴ S. 10, Trafficking in Persons (Prohibition) Law Enforcement and Administration (Amendment) Act.

¹⁶⁵ S. 48 (1), National Health Act (NHA).

the sale of tissues, blood, or blood related products.¹⁶⁶ It defines the word “tissue to include human flesh, skin, bone, bone marrow, an organ, a gland, body fluid with the exclusion of blood. It forbids the removal of the tissue of a child below 18 years and punishes the contravention of such provision with a fine of one million Naira (N 1,000,000.00) or at least 2 years imprisonment, or both.¹⁶⁷

c. South Africa

South Africa is not left out in the lucrative global crime of human trafficking for the purpose of organ removal.¹⁶⁸ Victims are trafficked both within and outside the country with a vain promise of a better life.¹⁶⁹ Children and young persons are the most victims as they are trafficked by some bunch of criminals from the countryside to the city areas like Cape Town, Johannesburg, Bloemfontein, and Durban; or outside the country to China, Nigeria, Italy, Thailand and Russia to work as sex workers or for organ harvesting.¹⁷⁰ South Africa is a country of source, transit, and destination to victims of forced labour, sex trafficking, or organ trafficking. Victims are controlled by the use of force, intimidation and threats, sorcery, debt bondage, use of drugs and alcohol, and seizing of their passports.¹⁷¹ Reports show that South Africa is also country of destination for trafficked girls from other African countries like Mozambique, the Republic of Congo, Lesotho, Zimbabwe, etc. and outside Africa including China, India,

¹⁶⁶ Ibid. s. 48 (2)

¹⁶⁷ Ibid. ss. 38-39

¹⁶⁸ Shaka Yesufu, ‘human Trafficking: A South African Perspective’ [2020] 17 *Journal of Social Sciences and Humanities*.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Report of US Department of State 2008.

Cambodia, Russia, Ukraine, etc.¹⁷² Some are taken to Europe mainly for prostitution or possible organ harvesting. Not too long ago, South Africa was accused of the prohibited sale and removal of human organs, which cut across three continents. It was said that they get these organs from poor Brazilians and sell at a higher amount to Israelis. It involves mostly their medical personnel who connive with syndicates to perpetrate this illegal trade.¹⁷³ As Sydney rightly observed, the intermediaries include those who organise the transplants, match the donors and recipients and see to other logistics; they make the most profit.¹⁷⁴

The South African law prohibits organ trade and insists on mutual relationships and arrangements between the donor and recipient. As a state party, it is bound by international and regional laws against trafficking and organ trade. It also has national laws against human trafficking and organ transplant. South Africa is a member of the Southern African Development Community, which comprise of 15 Southern states in Africa. This makes it a party to the Convention and the Protocol. It is committed to the international efforts to fight human trafficking and organ trade. South Africa has numerous laws to combat the danger inside and outside the boundaries of South Africa.¹⁷⁵

¹⁷² Ibid.

¹⁷³ Pat Sydney, 'South Africa doctors charged with involvement in organ trade' National Library of Medicine, <https://doi.10.1136/bmj.329.7459.190-a>, accessed on 10 August 2024.

¹⁷⁴ Ibid.

¹⁷⁵ There is the Drug and Drug Trafficking Act 140 of 1992; the Constitution of the Republic of South Africa, 1996;¹⁷⁵ the International Co-operation in Criminal Matters Act 75 of 1996; the Prevention of Organised Crime Act 121 of 1998; the Immigration Act 13 of 2002; the National Health Act 61 of 2003; the Prevention and Combating of Corrupt Activities Act 12 of 2004; the Children's Act 38 of 2005; the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007; and the Prevention and

(i) The *Prevention and Combating of Trafficking in Persons Act, 2013* is very comprehensive. In its opening, it identifies the vulnerability of humans to trafficking in the quest for an improved living condition.¹⁷⁶ The Act is a domestication of the country's international agreements against human trafficking; it seeks to inhibit trafficking, safeguard and assist victims; it provides appropriate penalties for offenders; and provides a draft state plan to fight the trading in human beings. The Act describes trafficking in person as the recruitment, conveying, transmitting, concealing, selling, swapping, hiring or receiving of another person inside or across the boundaries of South Africa, by intimidation, coercion, abuse, fraud, trickery, abduction, kidnapping, abuse of power, payments, benefits, etc.¹⁷⁷ It makes anyone who knows or who sensibly ought to have known that a person is being kidnapped, guilty of an offence.¹⁷⁸ A carrier who reasonably suspects that any of his commuters is a victim of kidnap must instantaneously notify the police for investigation,¹⁷⁹ failure of which makes him guilty of an offence.¹⁸⁰ Such a carrier, if found guilty, will be liable to pay for the victims care, accommodation, transportation and repatriation back to his or her home country or where he or she was taken from.¹⁸¹

Combating of Trafficking in Persons Act of 2013. This research shall look briefly into two of these Laws- the Prevention and Combating of Trafficking in Persons Act of 2013 and the National Health Act of South Africa.

¹⁷⁶ Preamble, Prevention and Combating of trafficking in |Persons Act 2013.

¹⁷⁷ Ibid. s. 4 (1)

¹⁷⁸ Ibid. s. 9 (1)

¹⁷⁹ Ibid. s. 9 (2)

¹⁸⁰ Ibid. s. 9 (3)

¹⁸¹ Ibid. s. 9(4)

(ii) The *National Health Act 61 of 2003*¹⁸² provides a draft regulation on the control of human bodies, tissue and organs for transplantation.¹⁸³ A human tissue may be donated only to a registered hospital; a university; authorized institutions; or any person who needs a therapy wherein a tissue is needed for therapeutic purposes.¹⁸⁴ It provides that a transplant division should be headed by a transplant professional, a physician or a pediatrician with at least 2 years' practice in transplant treatment; a transplant division must have the capacity to assume an uninterrupted lifetime care of both donors and recipients; it must have multidisciplinary expertise to provide optimum care and follow up on donors and beneficiaries, which includes the services of social workers and psychologists; it must be subject to annual inspection to ensure full compliance with the provisions of the Act; and it must provide full clinical sustenance services to guarantee the fitness and wellbeing of both donors and recipients.¹⁸⁵ The Act offers modalities for the removal of tissues and organs of a living donor.¹⁸⁶ Both donor and recipient must have full disclosure of each of the treatment options; the consent of both donor and recipient must be obtained in accordance with the Act;¹⁸⁷ both must fill and sign a consent form (Annexure A) in the presence of the health care provider who must be part of the transplant team; both donor and recipient must comply with the clinical and psychological requirements as provided in Annexure B; it must be established by the clinic or accredited institution that the intention of the donor is not for financial benefit as already affirmed by both donor and recipient in writing; the recipient must be informed of a lifelong follow-up procedure; and the donor

¹⁸² National Health Act, Act 61 of 2003 (n 199).

¹⁸³ Ibid. preamble

¹⁸⁴ Ibid. s. 2 (a)-(d)

¹⁸⁵ Ibid. s. 5 (a) - (e)

¹⁸⁶ Ibid. s. 7

¹⁸⁷ Ibid. ss. (6)-(8)

must be informed of a possible withdrawal of the donation at any time.¹⁸⁸ A transplantation from a living person to another must be with the Minister's written authorization, unless both donor and recipient are genetically related.¹⁸⁹ The Minister may grant approval for transplant on receipt of a written application and documentation as provided in Annexure C.¹⁹⁰ Non-South African donors or recipients may not undergo a transplant operation in a South African health agency except they satisfy further requirements as provided under regulation of the Act.¹⁹¹ It provides for the removal of the tissue and organ of a deceased person that died of natural causes;¹⁹² and the allocation of such a tissue or organ from a deceased person, keeping records, registers and returns, etc.¹⁹³

5.0 Summary of Findings

All the National Health laws of the countries observed above are more concern with the therapeutic use of human tissues and organs and not much on how such tissues and organs are to be obtained or legal ways to obtain tissues and organs to satisfy the growing demand without harm to humanity; or ways to lower demand for tissues and organs, which must start with identifying the cause of increased organ failure and soft tissue diseases and arresting them. More so, it is observed that the focus of many Africans is on the economic benefits of migration than possible risks or dangers involved, which may cost them their lives or wellbeing.

¹⁸⁸ Ibid. s. 7(1) (a)-(f)

¹⁸⁹ Ibid. s. 7(2)

¹⁹⁰ Ibid. s. 8

¹⁹¹ Ibid. s. 10

¹⁹² Ibid. ss. 11-13

¹⁹³ Ibid. ss. 14-17

6.0 Conclusion/Recommendations

Africa is greatly endangered in the global crime of human trafficking and organ trade. The continent is particularly vulnerable due to its increasing poverty rate as a result of bad leadership and corruption of the political elites, unemployment, conflict situation, gender inequalities, and terrorism. Many, in the quest for better living, migrant illegally, only to fall into the hands of syndicates. Human trafficking and organ trade are forbidden all over the world and many African countries have made comprehensive anti-trafficking legislations to curb the menace, yet not much success is guaranteed rather the crime seems to be booming. Perhaps, as Yesufu rightly observed in the case of South Africa and which undoubtedly applies to other African countries, there should be more implementation through effective policing to enforce the laws and more efforts towards effective border control.¹⁹⁴ Many African countries have weak policing and porous borders. Many African governments do not see human trafficking and the illicit organ trade as a priority nor is the welfare of their citizen a concern to them.¹⁹⁵ The three African countries appraised, all lack an inclusive migration data. This makes it impossible to effectively follow up with other countries.

This paper recommends thus:

- (i) rigorous awareness campaign to potential dangers of migration;
- (ii) (African countries must collaborate through international and regional bodies to effectively combat the booming trade of

¹⁹⁴ Shaka Yesufu (n 201).

¹⁹⁵ Ibid (n 227).

human trafficking and organ trade. Africans fought and won their independence on the wings of the Organisation of African Unity and through cooperation. The African Union must step up further to solving the pressing needs of the continent, which encourage trafficking and other vices on the continent, especially, that of bad leadership;

- (iii) they should consider ways to fight bad leadership and corruption in order to reduce poverty and insecurity, thus making the continent habitable and safe for Africans;
- (iv) there should be a collective adoption of the Palermo Protocol. In line with the provisions of the World Health Organisation and the Declaration of Istanbul, Africa should collectively and deliberately seek ways to bridge the gap between therapeutic demands and the sanity of the criminal justice; and
- (v) to win the war against human trafficking for organ trade on the continent, emphasis must be made on the cultural, moral and social values of the people and which makes them Africans.