

**THE LEGAL FRAMEWORK REGULATING ILLICIT HUMAN ORGAN TRANSPLANT AND
DONATION IN UGANDA**

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CS20B11/1024

**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW, IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE AWARD OF A DEGREE OF BACHELOR OF LAWS OF
UGANDA CHRISTIAN UNIVERSITY**

June, 2024



**UGANDA CHRISTIAN
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ABSTRACT

The study aimed at assessing the existing legal framework regulating illicit human organ transplant and donation in Uganda. The study objectives were: to ascertain the rationale behind the illicit human organ trafficking/ harvesting and transplant donation, to assess the impact of Illicit human organ harvesting/ trafficking on victims and their relatives, to discover the impact of the national legislations Uganda Human Organ Donation and Transplant Act in minimising illicit human organ harvesting and transplant, and to identify the gaps in the existing legal framework regulating human organ transplant and donation. The study employed a descriptive research design with majorly qualitative aspect. The study was majorly desktop research. Data was analysed qualitatively. The study findings revealed that adequate legislation, ethical frameworks, regulatory oversight and governance are essential for the legal and ethical practice of tissue and organ procurement for transplants in order to meet the needs of recipients, protect donors and ensuring the dignity of everyone involved in the process. Uganda has legal framework regulating illicit human organ transplant and donations, mainly the Uganda Human Organ and Transplant Act, 2022; and the Declaration of Istanbul on Organ Trafficking and Transplant Tourism, 2008. It is revealed that the existing legal framework has helped to minimize on the human organ trafficking and regulating the transplant tourism. It also regulates the conduct of donation and transplant activities, with the establishment of the Uganda Organ and Transplant Council to oversee organ and cell donation as well as transplantation of organs. In Uganda, having designated Mulago National Referral Hospital as transplant centre, the national programs donation and transplantation of organs, cells and tissues is not consolidated. Indeed, these programs had generally inadequate infrastructures, lack of technical expertise, including competent human resources, insufficient institutional support, and technology. Furthermore, the lack of public education, awareness and motivation for organ donation in Uganda especially barriers of cultural, religious and social traditions create barriers limiting access to donation and transplantation services. The study recommended that organ trafficking and transplant tourism violate the principles of equity, justice and respect for human dignity, and should be prohibited; and areas of further research were suggested.

DECLARATION

I, Nyangoma Mackleen Grace, hereby solemnly declare that this dissertation is my original work and has never been submitted to this or any other institution for any award of Bachelor of Laws.

Signed : -----

NYANGOMA MACKLEEN GRACE

Date : -----

APPROVAL

This research report has been submitted to the Faculty of Law with my approval as supervisor.

Signed : -----

SUPERVISOR

Date : -----

DEDICATION

This report work is dedicated to my beloved parents for their moral and financial support since my childhood. Thank you very much for your financial support and sacrifice towards payment of my school fees.

ACKNOWLEDGEMENT

I thank God for inspiration, strength and vision to complete the course, wisdom and understanding. I am forever grateful to Him. I am very grateful to my beloved parents who deserve special thanks for their love towards my education with dedication their financial assistance towards this research report can never be underrated.

I would like to express my gratitude to my supervisor for the patience, guidance and the precious time committed to make this report a success. Your guidance and advice were paramount important in having this work accomplished as requested by the University Examination Board. May God bless you. I also register my special thanks to my sisters and brothers for their advice, love and moral guidance that have contributed greatly towards the success of this report and other academic work. Thank you very much.

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ACROYNMS/ABBREVIATIONS

MoH	Ministry of Health
NGOs	Non-Governmental Organisations
NHP	National Health Policy
OPTN	Organ Procurement and Transplantation Network
TTS	The Transplantation Society
UNOS	United Network for Organ Sharing
WMDA	World Marrow Donor Association
WHO	World Health Organisation

CHAPTER ONE: INTRODUCTION

1.0 Introduction

Many Ugandans who travel abroad in search of better pastures find themselves as victims of human organ trafficking.¹ Subjected to medical procedures without their consent whilst seeking medical assistance, the victims return home with organs missing. This illicit human organ harvesting found its way due to the absence of a legal framework curtailing the vice. However, the country has since enacted legislation aimed at protecting Ugandans from the dangers of illegal human trafficking for the purpose of organ trade and organ transplant.² Especially those that move abroad in the guise of looking for better working conditions, huge payments and wages.

The research aims at assessing the impact of the newly enacted legislation on human organ transplant in Uganda and possible recommendations on how to combat the human organ trafficking. This chapter presents the background to the study, the problem statement, objectives of study, the research questions and scope of the study. It further highlights the research justification, significance of the study, literature review, methodology and outline of the research.

1.1 Background to the Study

The history of the organ donation is stretched and seen in 1954 when a kidney transplant was first successful. In 1954, the kidney was the first human organ to be transplanted successfully.³ Liver, heart and pancreas transplants were successfully performed by the late 1960s, while lung and intestinal organ transplant procedures were begun in the 1980.⁴ The united network for organ donation basically covers that in the United States of America. 1984, United Network for Organ Sharing (UNOS) separates from SEOPF and is incorporated as a non-profit member

¹Busiku, E.S. 2022). Making sense of the Human Organ Donation and Transplant Law. The Uganda Human Organ Donation and Transplant Bill, 2021. Kampala. Parliament Watch.

²ibid

³Rodgers, S.B. & Nurs, C.N.A. (2019). Legal Framework for Organ Donation and Transplant. National Library of Medicine. National Centre for Biotechnology Information.

⁴Uganda Human Organ Donation and Transplant Bill, 2021

organization.⁵

Subsequently, in 1986, UNOS receives the initial federal contract to operate the Organ Procurement and Transplantation Network (OPTN) and Scientific Registry of Transplant Recipient the types of human donation known world by surgeons are basically: living donation, deceased donation, tissue donation and paediatric donation. Organs and tissues transplanted. Transplants can be for: organs – heart, kidney, liver, lung, pancreas, stomach and intestine. Tissue – cornea, bone, tendon, skin, pancreas islets, heart valves, nerves and veins.⁶ Cells – bone marrow and stem cell. We must also keep in mind that the number of people in need of these organs increases day by day, but the number of the donors is very less and continues to reduce because of reasons we shall highlight as well living the black market very profitable since they can access organs other people cannot.

It is interesting to note that despite the Uganda Human Organ Donation and Transplant Bill, 2021,⁷ there is rising public outcry in Uganda over the trade in organs and tissues derived from unwilling donors. Ugandan doctors have been exposed for being involved in human organ trafficking ring. There are allegations of medical doctors illegally extracting body organs from patients and sell them to the local collaborators who also in turn sell them on the global black market. There is also an allegation of medical doctors making referrals to patients in hospitals abroad but only to harvest their organs. Some of the Ugandan medics have carried out dozens of illegal transplants in some hospitals and clinics.⁸ It's clearly indicated that most Ugandan victims are trafficked abroad with better health care and good job promises, but only to have their organs extracted by coercion. Consequently, it was against this background that the researcher analysed the legal framework regulating illicit human organ transplant and donation in Uganda.

1.2 Statement of the Problem

⁵Rodgers, S.B. & Nur's, C.N.A. (2019). Legal Framework for Organ Donation and Transplant. National Library of Medicine. National Centre for Biotechnology Information.

⁶IBID

⁷Uganda Human Organ Donation and Transplant Bill, 2021

⁸Nyirenda, M.J. (2016). On-communicable diseases in Sub-Saharan Africa: Understanding the drivers of the epidemic to inform intervention strategies. *The International Health*. Vol. 8(3), pp. 157-8.

Illicit human organ transplant remains a critical issue here in Uganda and that is why Uganda went ahead to enact a law to try and curb the vice.⁹ Organ trade constitutes the sale and purchase of organs for financial or material gain. The World Health Organisation (WHO) first prohibited payments for organs in 1987. Many countries subsequently codified the prohibition into their national laws. Although reliable figures are lacking, the WHO estimated in 2008 that 5% of all transplants performed worldwide were illegal. Living donor kidneys is the most commonly reported form of organ trade.¹⁰ Many Ugandans are not knowledgeable of the above legislation and as such fall prey to human organ trafficking. Despite the existence of legislation and other efforts to curb the vice, implementation therefore is challenging. Many individuals in Uganda continue to face this challenge.¹¹ Therefore, this study addressed this gap by assessing the effectiveness and impact of the existing legal framework in regulating human donation and transplant act in achieving its intended goals and contributing to legal donation and transplant procedures.

1.3 Objectives of the Study

1.3.1 General Objective

The main objective of this study was to assess the existing legal framework regulating illicit human organ transplant and donation in Uganda, with a view to recommending the way forward.

1.3.2 Specific Objectives

Specific objectives were:

- a) To ascertain the rationale behind the illicit human organ trafficking/ harvesting and transplant donation in Uganda.
- b) To assess the impact of Illicit Human organ harvesting/ trafficking on victims and their relatives.
- c) To discover the impact of the national legislations Uganda Human Organ Donation and Transplant Act in minimising illicit human organ harvesting and transplant.

⁹Busiku, E.S. (2022). Making sense of the Human Organ Donation and Transplant Law. The Uganda Human Organ Donation and Transplant Bill, 2021. Kampala. Parliament Watch.

¹⁰Nyirenda, M.J. (2016). On-communicable diseases in Sub-Saharan Africa: Understanding the drivers of the epidemic to inform intervention strategies. *The International Health*. Vol. 8(3), pp. 157-8.

¹¹Uganda Human Organ Donation and Transplant Bill, 2021

- d) To identify the gaps in the existing legal framework regulating human organ transplant and donation in Uganda.
- e) To compose or formulate intervention measures through which perpetrators can be brought to justice.

1.4 Research Questions

The study was guided by the following research questions: -

- a) What is the rationale behind the illicit human organ trafficking/ harvesting and transplant donation in Uganda?
- b) What is the impact of Illicit Human organ harvesting/ trafficking on victims and their relatives?
- c) What is the impact of the national legislations Uganda Human Organ Donation and Transplant Act in minimising illicit human organ harvesting and transplant?
- d) What are the gaps in the existing legal framework regulating human organ transplant and donation in Uganda?
- e) What measures has the country (Uganda) established to eliminate illicit human organ harvesting/ trafficking?

1.5 Scope of the Study

The study was conducted within Uganda. The study concentrated on the legal framework regulating illicit human organ transplant and donation in Uganda. Specifically, the study put much emphasis on ascertaining the rationale behind the illicit human organ trafficking/ harvesting and transplant donation, assessing the impact of Illicit Human organ harvesting/ trafficking on victims and their relatives, discovering the impact of the national legislations Uganda Human Organ Donation and Transplant Act in minimising illicit human organ harvesting and transplant, identifying the gaps in the existing legal framework regulating human organ transplant and donation, and composing or formulating intervention measures through which perpetrators can be brought to justice. The subject of the study was based on such objectives in discussing and presenting the study findings of the entire report.

More so, the study used secondary information and review documents for the period of fourteen years since 2021 to 2024 when Ugandan Parliament adopted Uganda Human Organ Donation and Transplant Bill. This period has been selected to enable the researcher to produce coherent and updated information that was based on to make recommendations and conclusions for this study. Secondly, the study was conducted over a four-month period.

1.6 Justification

A good number of studies on the legal framework regulating illicit human organ transplant and donation have been carried out (Rodgers & Nur's, 2019). These were carried out in different geographical settings and not in Uganda. Yet, the illicit human organ transplant and donation still worries a lot. Uganda is gradually witnessing an increase in illegal human organ harvesting or trafficking despite the presence of national legislation to curb the vice.¹² Therefore, the study would provide adequate and necessary body of knowledge on the related field.

1.7 Significance of the Study

The significance of this study or research is to criticize illicit human organ donation and transplant but also the benefits of realizing the transplant process in Uganda. The finding of the study is expected to be of excellent value to: -

Policy Makers: The study finding is expected to give more recommendations that could help to guide the legislators in Uganda on the concerns related to the legal framework regulating illicit human organ transplant and donation in Uganda, thus, to be effectively implemented. It may therefore be upon this study that more forward health policies could be designed and formulated.

Health professions: The study is expected to create awareness of the national legislation on the effectiveness of the law on human organ donation and transplant in Uganda and if really it shall curb the illicit organ transplant. This would be achieved by using the study's conclusions and recommendations as a case of reference necessary in identifying the potential gaps.

¹²Rodgers, S.B. & Nur's, C.N.A. (2019). Legal Framework for Organ Donation and Transplant. National Library of Medicine. National Centre for Biotechnology Information.

This research is expected to help a number of Ugandans to understand the true nature of the procedure of the transplant process and its benefits together with its challenges and also dangers. It is also aimed at evaluating the impact of illicit human organ donation and transplant in Uganda and evaluates the law on organ donation and transplant.

As a Bachelor of Laws student, the research study is significant to the researcher since it would serve as a requirement in partial fulfilment for the award of a Degree of Bachelor of Laws of Uganda Christian University.

1.8 LITERATURE REVIEW

1.8.1 Human Organ Transplant and Donation

Transplantation of human organs, tissues and cells has become a worldwide practice, which has extended and enhanced the quality of hundreds of thousands of lives in patients affected by terminal organ failures. In 1954, the kidney was the first human organ to be transplanted successfully from one identical twin to another and then between siblings who were not twins.¹³ In 1967, the first successful liver and human-to-human heart transplant was carried out. In 1968, several vital developments took place including the first successful pancreas transplant. In 1977, the first computer-assisted organ matching system was successfully done.¹⁴

In 1991 at the World Health Assembly in Geneva, Switzerland, the World Health Organization (WHO) through Resolution WHA adopted guiding principles for human organ transplants which have had a profound influence on professional codes and legislations. The principles emphasized voluntary donation, non-commercialization and preference for deceased donors over living donors and for genetically related donors over non-related donors.¹⁵ In 2004, the WHO's 57th World Health Assembly adopted another Resolution WHA 57.1a concerning human organ and tissue transplantation, recommending the use of living donors in addition to deceased donors and to take measures to protect the poorest and vulnerable groups from transplant tourism and the sale of tissues and organs, including attention to the wider problem

¹³Busiku, E.S. (2022). Making sense of the Human Organ Donation and Transplant Law. The Uganda Human Organ Donation and Transplant Bill, 2021. Kampala. Parliament Watch.

¹⁴Rodgers, S.B. & Nur's, C.N.A. (2019). Legal Framework for Organ Donation and Transplant. National Library of Medicine. National Centre for Biotechnology Information.

¹⁵ibid

of international trafficking in human tissues and organs.

Interesting, data on the unmet need of organ donation in Uganda and the African region is scanty. In 2016, a total number of 643 organ transplants were performed in Africa and this was lower compared to other WHO regions. In the United States of America, approximately 120,000 people (including children) need an organ transplant to live. In 2019, they were able to conduct more than 38,000 transplants.¹⁶ The mismatch between the growing demand for organ transplants and the strict limit on available supply is the root cause of many of the legal, ethical, and human rights issues that arise around organ transplantation.

In Uganda, medical tourism is equally a growing trend, with many patients regardless of social status considering treatment abroad as the only life-saving alternative. Medical tourism, especially to India, Türkiye, South Africa, and the United States of America is fast becoming a mainstay for Ugandans seeking organ, tissue, and cell transplantation. The Uganda Medical Board under the Ministry of Health convenes at least once a month to approve 2 to 4 people to travel abroad for treatment. These medical procedures cost about \$25,000 inclusive of travel and hotel fees abroad. However, it has been reported that a number of other facilities in India and Türkiye both in urban and rural areas conduct these procedures for about \$18,000. Travel for transplantation becomes transplant tourism and therefore unethical if it involves trafficking in persons for purposes of organ harvesting or trafficking in human organs or tissues.¹⁷ However, Uganda didn't have a law regulating organ, tissue and cell donation and transplantation, yet it is increasingly becoming an area of health care that requires urgent and constant attention.

Uganda is not a member of the World Marrow Donor Association (WMDA) which is a collective database of hematopoietic cell donor registries from 55 countries. About 37.9 million potential donors and over 802,600 cord blood units were available as of April 2021. When an individual joins a bone marrow donation registry, they are agreeing to donate using whichever method the healthcare professional deems appropriate.¹⁸ The Uganda Human

¹⁶Omaheke, S.A. (2013). Chronic non-communicable disease as a new epidemic in Africa. Focus on the Gambia. *Pan AFRI Med J.* Vol. 5, pp. 14-87.

¹⁷Omeleke, S.A. (2013). Chronic non-communicable disease as a new epidemic in Africa. Focus on the Gambia. *Pan Afri Med J.* Vol. 5, pp. 14-87.

¹⁸Nyirenda, M.J. (2016). On-communicable diseases in Sub-Saharan Africa: Understanding the drivers of the epidemic to inform intervention strategies. *The International Health.* Vol. 8(3), pp. 157-8.

Rights Commission 2021 Annual report cites unlawful organ donation and transplantation in the country. The most affected are the poor and most vulnerable groups. This therefore creates the need for a law regulating and governing the transplanting and donating of organs in Uganda to prevent the above-mentioned challenges as well as promote healthcare in the country.

1.8.2 Justification for the Bill/Act

Worldwide, there is a sharp rise in trafficking of human organs with the poor and other vulnerable groups in society facing an elevated risk. Organs are unlawfully donated, transplanted and even stolen courtesy of a complex network of buyers, sellers, and brokers at the international level.¹⁹ The forceful donations start with inhumane and illegal activities like human trafficking, kidnap, and murder. Uganda did not have a legal framework to regulate organ, tissue and cell donation and transplantation, yet it is increasingly becoming an area of health care used to cure infectious, genetic, and non-communicable diseases,

There is need to protect the dignity and identity of every person and guarantee, without discrimination, respect for his or her integrity and other rights and fundamental freedoms about donation and transplantation of organs, tissues, and cells of human organ. Annually, Ugandans spend a lot of money on medical tourism to countries like India, Türkiye, UK, and the USA through out-of-pocket expenditure. This upsets the country's balance of payments. Those who cannot afford have an **inferior quality** of life which may result into death.²⁰

METHODOLOGY

The study employed a descriptive survey research design with majorly qualitative aspect. Qualitative technique was applied while analysing the data gathered. It also involved intensive documentary and literature review to provide theoretical and practical insights into the legal framework regulating illicit human organ transplant and donation in Uganda. It was a desktop study which involved desk review of statutes, international and regional instruments, websites, reports, journal articles, weblogs, newspapers, textbooks etc., on the subject under investigation. Written data sources were also reviewed that include published and unpublished documents,

¹⁹ibid

²⁰Nyirenda, M.J. (2016). On-communicable diseases in Sub-Saharan Africa: Understanding the drivers of the epidemic to inform intervention strategies. *The International Health*. Vol. 8(3), pp. 157-8.

online content, journals, newspaper articles and archival research in desktop research.²¹ Thematic content analysis was used. The research was qualitative, and the results of the study were presented in narrative form where the research identified various emerging issues.

1.10 Chapter Synopsis

This study was organized in four chapters. Chapter one, the chapter gave the general introduction, background of the study, the problem statement, objectives of the study, research questions, the justification of the study, significance of the study, the review of the literature and methodology part.

Chapter two, this chapter contains non-legal aspects on the legal framework regulating illicit human organ transplant and donation in Uganda.

Chapter three, this chapter comprises of legal regime governing the legal framework regulating illicit human organ transplant and donation in Uganda; which was handled from international, regional and domestic perspectives.

Chapter four, this chapter contains the summery of findings, conclusions and recommendations, and areas for further study were suggested.

CHAPTER TWO

THE ILLICIT HUMAN ORGAN TRANSPLANT AND DONATION IN UGANDA

²¹Creswell, J.W. (2014). *Research Design*. Qualitative, Quantitative and Mixed Methods Approaches. 3rd edition. Los Angeles, Sage

2.0 Introduction

This chapter contains non-legal aspects on the illicit human organ transplant and donation in Uganda as explained hereunder:

2.1 The Human Organ Donation and Transplant Law in Uganda

With the consolidation of organ and tissue transplants across the globe, there was a need to develop legislation that would guarantee their allocation to the respective recipients in a way that respected the rights of the recipient, donor, and their families. Each country has its own legislation regarding the tissue and organ harvesting system and adopts diverse types of rules and consents. The laws pertaining to tissue and organ donation and transplantation are new, innovative, and rapidly evolving.

In the wake of healthcare advancement that has seen the rise of human organ donation and transplantation to cure non-communicable diseases (NCDs), Uganda has joined the list of the nations across the global with comprehensive legislation governing the complex trade.²² Donation of human organ and transplant is currently seen as the light to address the health challenge especially how the healthcare is continuously evolving. It is viewed as a means of enhancing the quality of life for those in dire need. Transplant is a life changing experience. Organ donation transforms lives.

Uganda still relying on developed countries such as the United Kingdom, India, and Russia for organ transplant procedures, and this have costed the country and individual families a lot of financial resources in terms of medical tourism. It is vital to put in place a legal framework for tissue and organ transplant in Uganda towards regulating the practice and trade of organs as well as tissue for the safety and security of Ugandans. The law shall protect Ugandans from being potential victims of cell, organ, and tissue trafficking. To regulate and oversee organ donation and transplant, the law shall enable the country to set up the Uganda Organ and Transplant Council. The law also designates Mulago National Referral Hospital as a pioneering transplant centre, with exclusive rights to conduct the medical procedures in the country.

²²Busiku, E.S. (2022). Making sense of the Human Organ Donation and Transplant Law. The Uganda Human Organ Donation and Transplant Bill, 2021. Kampala. Parliament Watch.

2.2 Impact of Illicit Human Organ Harvesting/Trafficking

Until recently, Uganda had no law regulating human organ donation and transplant. The increase to address non communicable diseases necessitated the enactment of the organ transplant and donation act. Due to the vacuum in the existing laws, there has been concern about the increasing trafficking and illicit trade of human cells, organs and tissue. Due to the underlying events, in 2021 the Ugandan parliament legalised Uganda Human Organ Donation and Transplant Bill and established a legal framework for the regulation of tissue, cell and organ donation, and other transplant in Uganda. The existing legal framework allows Mulago National Referral Hospital to be the designated pioneer transplant centre in Uganda. The organ, cell and tissue banks have been approved to operate in Uganda, in respect of the World Bank policies and guidelines.²³ The Bill also established the Uganda organ donation and transplant council, a body corporate to oversee and regulate organ cell and tissue donation and transplantation in Uganda.

2.3 Limitations and Gaps in the Existing Legal Framework Regulating Human Organ Transplant and Donation

The weak regulatory framework in Uganda and other developing countries are often insufficient to ensure the effective regulatory oversight needed for the implementation of quality standards for organ transplantation. The transplantation activities in Uganda and other African countries are in infancy and solid legal and regulatory frameworks require to be effectively established. The development and implementation of such frameworks can contribute to mitigate the major concern of the commercial transaction involved in most lives unrelated donors for renal transplants in Uganda.

In Uganda, having designated Mulago National Referral Hospital as transplant centre, the national programs donation and transplantation of organs, cells and tissues is not consolidated. Indeed, these programs had generally inadequate infrastructures, lack of technical expertise, including competent human resources, insufficient institutional support, and technology. Furthermore, the lack of public education, awareness and motivation for organ donation in

²³The Parliament of Uganda, 2022. Report of The Committee on Health on the Uganda Human Organ Donation and Transplant Bill, 2021. Kampala. Office of the Clerk to Parliament.

Uganda especially barriers of cultural, religious and social traditions create barriers limiting access to donation and transplantation services.

Uganda has weak legal systems governing organ transplant. There is lack of specific or comprehensive legislation covering donation and transplantation of human organs and tissues, resulting in limited data on organ donation and transplantation. Another challenge affecting the establishment of transplantation programs in Uganda is the limited data to monitor organs, cells and tissue transplants for better policy making decision. Indeed, Uganda has not included performance indicators related to organ and tissue donation and transplantation in her national health information systems. Limited surveys have been conducted in Uganda on gather adequate data and information concerning donations and transplantations, leading to a lack of accurate, reliable and real-time information in the country.

2.4 Prohibition of children as potential donors

Section 72 explicitly prohibits any donation from a living child. Children are vulnerable and are never in position to consent to such procedures. This is important in protecting children from exploitation and abuse.²⁴ However, this provision only applies to living children.

2.5 Protection of poor and vulnerable persons

The risk of exploitation of vulnerable and poor persons is high. Guiding principle 5 of WHOM Guiding Principles on Human Cells, Tissue, and Organ Transplantation states that, "The human body and its parts cannot be the subject of commercial transactions." To protect persons from exploitation, the bill under Clause 86 prohibits commercial dealings in human material for transplantation.²⁵ This means that monetary or any other form of compensation for organs, tissues, or cells other than reimbursement of donation related expenses is prohibited. The sale of one pair of organs such as eyes or kidney by a living donor for financial or other form of compensation is also prohibited. The success of transplantation as a lifesaving treatment should

²⁴Nyirenda, M.J. (2016). On-communicable diseases in Sub-Saharan Africa: Understanding the drivers of the epidemic to inform intervention strategies. *The International Health*. Vol. 8(3), pp. 157-8.

²⁵Busiku, E.S. (2022). Making sense of the Human Organ Donation and Transplant Law. The Uganda Human Organ Donation and Transplant Bill, 2021. Kampala. Parliament Watch.

not require nor justify victimizing of the poor or vulnerable people as the source of organs for the rich.

2.6 Requirement for registered practitioners to obtain authority and consent before harvesting any organ, tissue, or cell!

Organ commercialization targets vulnerable populations especially illiterate and impoverished individuals, undocumented immigrants, prisoners, political or economic refugees in resource poor countries, have been condemned by international bodies mostly World Health Organizations for several decades. Recent years, with internet and social networking, organ trafficking and transplant tourism have mushroomed into a global challenge. section 61 and 67 require all registered medical practitioners in transplant centers to obtain consent before harvesting of any tissue, cell, or organ from a donor. Section 71 also provides for authority for removal of human organs, tissue, and cells.²⁶ The process of obtaining the consent shall be written or spoken in a language that is understandable to the donor or the recipient next of kin under subsection 61(6). Obtaining consent from any donor before harvesting is necessary to ensure that the right to health is respected and protected.

2.7 Gender and Equity

2.7.1 Fair and Equitable System

Section 53 describes organ, tissue and cell donation and transplant as a fair and equitable system. Subsection (5) stipulates that access to organs, cells and tissues shall be provided without regard to recipient sex, age, religion, race, color, or financial standing. In other words, access to transplant of organs, cells or tissues is based on the principle of non-discrimination.²⁷

ⁱThis is further galvanized by section 52 which provides for a national waiting list for potential recipients that promotes equity and national solidarity.

2.7.2 Informed Consent

Consent to obtain organs can be done in two ways: Opt-in or Opt-out. The Opt-in system, also commonly known as “explicit”, considers that the person must express their desire to be an organ

²⁶ibid

²⁷Nyirenda, M.J. (2016). On-communicable diseases in Sub-Saharan Africa: Understanding the drivers of the epidemic to inform intervention strategies. *The International Health*. Vol. 8(3), pp. 157-8.

and tissue donor before death by means of communication to family members or signing the organ donor register, or by appointing an individual or by testamentary letter, and in accordance with the legislation in force at the location. In contrast, the Opt-out system, also commonly known as “presumed consent,” understands that all individuals are presumed donors of organs and tissues and the person who does not have this desire must declare to be excluded from the donor pool before their death.

Any intervention in the health field can only be conducted after the person concerned has given free and informed consent to the procedure. Section 67 (a) (b) and (c) includes the responsibility of the Council to inform the donor of the long-term benefits and risks related to the procedure. This will enable donors to make informed decisions about the donation.²⁸ In accordance with the WHO guiding principles on human cell, tissue and organ transplantation, there needs to be an adequate balance of interests of recipients and donors. Benefits to both parties should outweigh the risks associated with the donation transplantation.

CHAPTER THREE

LEGAL FRAMEWORK REGULATING ILLICIT HUMAN ORGAN TRANSPLANT AND DONATION IN UGANDA

3.0 Introduction

The laws pertaining to organ donation and transplantation are new, innovative, and rapidly evolving. This chapter comprises of legal regime regulating illicit human organ transplant and donation in Uganda; which was handled from international, regional and domestic perspectives.

3.1 International legal Framework

Organ and tissue donation and transplant (OTDT) legislation and policies vary around the world, and this variability contributes to discrepancies in system performance.²⁹ The goal of the International Donation and Transplantation Legislative and Policy Forum is to provide cohesive, evidence-informed guidance for those aspiring to implement the best legislative and policy aspects for their organ, cells and tissue donation and transplantation system.

²⁸Busiku, E.S. (2022). Making sense of the Human Organ Donation and Transplant Law. The Uganda Human Organ Donation and Transplant Bill, 2021. Kampala. Parliament Watch.

²⁹Nyirenda, M.J. (2016). On-communicable diseases in Sub-Saharan Africa: Understanding the drivers of the epidemic to inform intervention strategies. *The International Health*. Vol. 8(3), pp. 157-8.

3.1.1 The Declaration of Istanbul on Organ Trafficking and Transplant Tourism

The Istanbul Declaration proclaims that the poor who sell their organs are being exploited, whether by richer individual within their own nations or by transplant tourists from abroad. Moreover, transplant tourists risk physical harm by unregulated and illegal transplantation.³⁰ The declaration of Istanbul aims at combating these activities and to preserve the nobility of organ donation. The declaration also reinforces the resolve of governments and international organisations to develop laws and guidelines to bring an end to wrongful practices.

The Declaration builds on the principles of the Universal Declaration of Human Rights. The broad representation at the Istanbul Summit reflects the importance of international collaboration and global consensus towards improving donation and transplantation practices. Therefore, the Declaration resolved that all countries, Uganda inclusive need a legal and professional framework to govern organ donation and transplantation activities as well as a transparent regulatory oversight system that ensures donor and recipient safety and the enforcement of standards and prohibitions on unethical practices.

3.1.2 United Nations Charter

The United Nations General Assembly adopted the resolution towards strengthening and promoting effective measures and international cooperation on organ donation and transplantation to prevent and combat trafficking in persons for the purpose of organ removal and trafficking in human organs. These resolutions and guiding principles urge member states to take provisions for the availability and safety of organ and tissue donations as well as transplantations.³¹ The UN assembly also recommended that all states need a legal and professional framework to regulate and govern organ donation and transplantation activities, as well as a transparent regulatory oversight system that could ensure donor and recipient safety.

3.1.3 The UN Convention against Transnational Organised Crime

³⁰Busiku, E.S. (2022). Making sense of the Human Organ Donation and Transplant Law. The Uganda Human Organ Donation and Transplant Bill, 2021. Kampala. Parliament Watch.

³¹World Health Organization (WHO), Preventing the Purchase and Sale of Human Organs, WHA42.5, 15 May 1989; WHO Guiding Principles on Human Organ Transplantation, WHA44.25, 13 May 1991; WHO Guiding Principles on Human Cell, Tissue, and Organ Transplantation, WHA63.22, 21 March 2024.

The UN Transnational Organized Crime Convention provides a legal framework for Member States to address transnational organized crime. Crimes that are relevant to trafficking in persons for organ removal include participation in an organized criminal group, money laundering, corruption, obstruction of justice, and serious crimes (crimes that carry a maximum penalty of at least four years in prison). In the case that organ removal from a trafficked person is disguised as an altruistic donation, some of the illicit acts might be connected to and considered as ‘organ laundering’ – whereby “the illegal removal and purchase of organs take on the appearance of a legal transaction.” Organ laundering encompasses financial offences and the abuse of domestic health services. In addition, a number of offences related to the facilitation of trafficking in persons may exist under domestic law and may be prosecuted separately.

3.1.4 International Transplant Framework and Regulatory Safeguards

Countries that offer transplant care and services must introduce legislation to cover organ removal and transplantation. At the core of the existing legal framework on transplantation, uniformly accepted around the global, are the principles of respect for autonomy (which aims at protecting the dignity and other interests of the individuals involved), and the principles of justice as well as altruism (intended towards safeguarding the integrity of the transplant system).³² These forms of principles regarding organ donation and transplantation are enshrined in international, regional and national legal frameworks or instruments and guidelines.

More so, there are two sources of organs for transplantation: living donors and deceased donors. While removal of organs from living donors and deceased donors are guided by the same principles, namely valid authorization or consent and absence of financial gain or comparable advantage, each category carries its own set of additional rules and safeguards.

At the international level, efforts to ensure ethical living organ donation, and to address unethical organ removal, are coordinated by several development agencies, inter-governmental organizations and professional associations, including The Transplantation Society (TTS), the World Medical Association, the World Health Organization (WHO), and the Council of

³²Busiku, E.S. (2022). Making sense of the Human Organ Donation and Transplant Law. The Uganda Human Organ Donation and Transplant Bill, 2021. Kampala. Parliament Watch.

Europe. International transplant guidelines and ethical codes have been developed that lay down minimum standards.³³ These instruments, including the WHO Guiding Principles, World Medical Association statements, the Council of Europe Convention on Human Rights and Biomedicine and its Additional Protocol concerning Transplantation, encouraged countries to introduce two sets of provisions into their transplant regulation two sets of provisions.

The first concerns the establishment of conditions for organ donation, including valid consent from living donors, and the prohibition of organ removal in breach of these conditions. The second focuses on the prohibition of organ trade, banning commercial dealings. The first legally binding instruments that grounded these two minimum standards were introduced in European instruments, namely the Council of Europe Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, the Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin and the Directive 2010/45/EU of the European Parliament and of the Council on Standards of Quality and Safety of Human Organs Intended for Transplantation.³⁴

Additionally, both sets of provisions, as established by the international instruments, namely valid conditions for living organ donation, and the prohibition of organ trade are discussed in detail below as they are relevant in the assessment of the legitimacy of organ removal. Their precise formulation and application might vary among states, subject to domestic legislation. A violation of the valid consent provisions may not be sufficient on its own to establish trafficking in persons, but it is essential to proving trafficking in persons for organ removal.³⁵

3.1.5. Prohibition of Organ Trade

The prohibition on using financial inducements in the context of organ donation is introduced in domestic transplant law or in penal law. The prohibition on organ trade is the result of growing concerns about prosperous patients travelling to developing countries to buy a kidney

³³Lewis, A., Kreiger-Benson, E., Kumpfbeck, A., Liebman, J., Bakker, A., & Shemie, S.D. (2020). Determination of death by neurologic criteria in Latin America and African Countries. *J. Clean, Prod.* Pp. 197.

³⁴Nyirenda, M.J. (2016). On-communicable diseases in Sub-Saharan Africa: Understanding the drivers of the epidemic to inform intervention strategies. *The International Health*. Vol. 8(3), pp. 157-8.

³⁵Busiku, E.S. (2022). Making sense of the Human Organ Donation and Transplant Law. The Uganda Human Organ Donation and Transplant Bill, 2021. Kampala. Parliament Watch.

from desperately poor donors. According to the commentary to WHO Guiding Principle 5, payment for organs.

“Is likely to take unfair advantage of the poorest and most vulnerable groups, undermines altruistic donation, and leads to profiteering and human trafficking. Such payment conveys the idea that some persons lack dignity, that they are mere objects to be used by others.”³⁶

Consequently, the WHO Guiding Principle 5 declares that:

“The sale of [...] organs for transplantation by living persons, or by next of kin, should be banned. National laws should therefore ensure that any gifts or rewards do not become a disguised form of payment for donation”³⁷

Mirroring the concern regarding exploitation of vulnerable persons, the preamble to the Additional Protocol to the Convention on Human Rights and Biomedicine acknowledges the risks posed to vulnerable persons by the shortage of legal donations. It states that there is a need to protect individual fundamental rights and freedoms and to prevent the commercialization of parts of the human body in the context of organ removal, exchange and allocation.

Consequently, payment for organs is prohibited by **Article 21** of the Convention on Human Rights and Biomedicine which reads that ‘the human body and its parts shall not, as such, give rise to financial gain’, and in **Article 21** of the Additional Protocol which states that ‘the human body and its parts shall not, as such, give rise to financial gain or comparable advantage’. The Additional Protocol further stipulates that advertising the need for, or availability of, organs, with a view to offering or seeking financial gain or comparable advantage, shall be prohibited (Article 21(2)).

At the level of the European Union, the prohibition on making the human body and its parts a source of financial gain features in the Charter of Fundamental Rights of the European Union.

³⁶Lewis, A., Kreiger-Benson, E., Kumpfbeck, A., Liebman, J., Bakker, A., & Shemie, S.D. (2020). Determination of death by neurologic criteria in Latin America and African Countries. *J. Clean, Prod.* Pp. 197.

³⁷ibid

Similarly, Article 13 of Directive 2010/53/EU establishes a prohibition of organ trade, stating:

“Member States shall ensure that donations of organs from deceased and living donors are voluntary and unpaid. The principle of non-payment shall not prevent living donors from receiving compensation, provided it is strictly limited to making good the expenses and loss of income related to the donation”.³⁸

Additionally, the directive prohibits “advertising the need for, or availability of, organs where such advertising is to offer or seek financial gain or comparable advantage”.

The ban on paying for organs applies to all individuals, including transplant recipients who attempt to circumvent domestic regulations by travelling to states where prohibitions on commercialization are not fully or properly enforced.³⁹ In 2008, an international summit on transplant tourism and organ trafficking was convened by the Transplantation Society and the International Society of Nephrology in Istanbul. Over 150 scientists, ethicists, members of scientific and medical bodies and government officials from around the world adopted The Declaration of Istanbul on Organ Trafficking and Transplant Tourism. This landmark document urges states;

“..to take measures to protect the poorest and vulnerable groups from ‘transplant tourism’ and the sale of tissues and organs, including attention to the wider problem of international trafficking in human tissues and organs.”⁴⁰

To aid in this task it sets out a number of principles, including on equitable allocation of organs, reimbursement of costs, and measures to ensure the welfare of the donor, including exploited organ donors.

The Istanbul Declaration also formulated and defined three concepts with regards to unethical organ donation and transplantation: organ trafficking, transplant tourism and transplant commercialism. The last two are directly relevant to trafficking in persons. In 2018, at the

³⁸Rodgers, S.B. & Nurs, C.N.A. (2019). Legal Framework for Organ Donation and Transplant. National Library of Medicine. National Center for Biotechnology Information.

³⁹Nyirenda, M.J. (2016). On-communicable diseases in Sub-Saharan Africa: Understanding the drivers of the epidemic to inform intervention strategies. *The International Health*. Vol. 8(3), pp. 157-8.

⁴⁰Rodgers, S.B. & Nurs, C.N.A. (2019). Legal Framework for Organ Donation and Transplant. National Library of Medicine. National Center for Biotechnology Information.

International Congress of The Transplantation Society in Madrid, an updated version of the Istanbul Declaration was presented, which contains a more clearly structured set of principles for policymakers and health professionals working in organ donation and transplantation. It also provides updated definitions of the key terms.

3.1.6 Trafficking in Persons for Organ Removal as Defined by the UN Trafficking Protocol

Because of a growing number of cases involving removal of organs from vulnerable persons through use of deception and force, illicit organ removal was recognized as a form of exploitation and criminalized in the Protocol to Prevent, Suppress and Punish Trafficking in Persons supplementing the United Nations Convention against Transnational Organized Crime (Organized Crime Convention).⁴¹ Article 3(a) of the UN Trafficking Protocol spells out three elements required to establish the offence:

1. the act - that is, the recruitment, transportation, transfer, harboring, or receipt of persons.
2. the means - that is, the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability, or of the giving or receiving of payments, or benefits to achieve the consent of a person having control over another person;
3. the purpose of exploitation, including organ removal.

The UN TIP Protocol is one of the most vital international tools that requires Parties to establish as criminal offences specific activities that involve the exploitation of vulnerable persons. It is also one of the most widely ratified criminal law instruments.⁴² Currently, 180 States Parties have ratified the UN TIP Protocol. In many countries, organ removal is included as a possible form of exploitation in the definition of trafficking in persons, in a few countries, such as the United States, this is not yet the case. In other countries, such as Hungary, organ removal is

⁴¹Parliament of Uganda, 2022. Report of The Committee on Health on the Uganda Human Organ Donation and Transplant Bill, 2021. Kampala. Office of the Clerk to Parliament.

⁴²The Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2018 edition)

included in the criminal law provisions on trafficking in persons, but as an aggravating circumstance that attracts higher penalties.

Accordingly, recipients of a trafficked organ could be held liable by States Parties to this Convention. However, the decision to prosecute organ recipients, who often also find themselves in a desperate position, is a difficult one. Currently, there is no consensus among criminal justice practitioners as to whether to criminalize organ recipients in TIP for OR cases.⁴³ This may change based on the specific context of each case. For example, if the organ recipient is directly involved in the recruitment of the donor or controls that person through illicit means, the recipient can be considered a trafficker.

It is worth noting that states have a certain flexibility in transposing the UN Trafficking Protocol into their domestic legislation, resulting in some variations in the composition of the definition of trafficking in persons. For example, some of the means listed in the international legal instruments on human trafficking may have been omitted from the national definition. For instance, in Belarus and India, the means of abuse of a position of vulnerability has not been included. Additionally, many States have expanded their legislation beyond removal of organs to include tissues, cells, and other body parts, including fluids.

In general, to prove trafficking in persons for organ removal all three elements of the definition must be established: the act (donors were recruited, harboured and/or received, often also transported and transferred); the means (the acts were secured through fraud (relating to payment, medical risks, consequences, follow-up care, etc.), sometimes also through force and coercion, often through deceit and abuse of a position of vulnerability); and the purpose (the acts were undertaken for purposes of exploitation by removal of an organ).⁴⁴ There is no requirement that the envisaged exploitation (organ removal) had in fact occurred. The crime of trafficking is established once the relevant elements of act and purpose (or, in the case of children, act only) are made out along with an intention to exploitation.

3.2 Regional Legal Framework

⁴³Busiku, E.S. (2022). Making sense of the Human Organ Donation and Transplant Law. The Uganda Human Organ Donation and Transplant Bill, 2021. Kampala. Parliament Watch.

⁴⁴*United Nations Convention against Transnational Organized Crime (Organized Crime Convention). Article 3(a) of the UN Trafficking Protocol*

This analyses the existing regional legal framework regulating illicit human organ transplant and donation in Uganda.

3.2.1 World Health Organisation- African Region

The WHO in collaboration with the Organisation National de Transplants of Spain set up the Global Observatory on Donation and Transplantation with the mandate to document the distribute of organ transplantation programs in the states that report their data to the observatory and to evaluate the access of transplantation activities globally. The WHO African region have a long way to go in meeting the goals set in the WHO guiding principles on human cell, tissue and organ transplantation.⁴⁵ The Abuja Declaration gives recommendations regarding preventive activities and transplantation for end-stage renal diseases in Africa. Organ transplantation has been done in the African region since 1967, when the first heart transplant was performed in South Africa. Since then, other countries established functional organ transplant programs.

3.3 National Legal Framework

3.3.1 1995 Uganda Constitution

The Constitution of the Republic of Uganda's amended in 2005 recognizes the importance of human rights to health and requires the state to ensure that rights of human beings are respected and protected at all times. **Article 20(1)** states that “fundamental rights and freedoms of individuals are inherent and not granted by the State”. This therefore means that by the mere fact that one exists as a human being, one is entitled to the enjoyment of fundamental rights to health and freedoms.⁴⁶ **Article 21(1)** further states that “all persons are equal before and under the law in all spheres of political, health, social and cultural life and in every other respect and shall enjoy equal protection of the law”. The State is therefore under an obligation to ensure

⁴⁵World Health Organization (WHO), Preventing the Purchase and Sale of Human Organs, WHA42.5, 15 May 1989; WHO Guiding Principles on Human Organ Transplantation, WHA44.25, 13 May 1991; WHO Guiding Principles on Human Cell, Tissue, and Organ Transplantation, WHA63.22, 21 March 2024.

⁴⁶The 1995 Constitution of the Republic of Uganda (as amended)

that all persons under its jurisdiction enjoy the right to health and protection from illicit human organ trade by human traffickers.⁴⁷

3.3.2 Human Organ Donation and Transplant Act, 2022

Uganda Human Organ Donation and Transplant Bill, 2021 was read for the First Time on 05th July, 2022 and referred to the Committee on Health in accordance with Rule 129(1) of the Rules of Procedure of Parliament.⁴⁸ Later, Uganda has enacted the Human Organ Donation and Transplant Act, 2022, to regulate the donation and transplant of human organs, cells and tissue in Uganda. This comes after several reports of illicit organ harvesting from Ugandans working in the Middle East and organ trafficking within the country. The law aims at protecting Ugandans from exploitation by unscrupulous individuals or organisations and ensuring that organ donation and transplantation are carried out safely and ethically.

In addition, the Human Organ Donation and Transplant Law establish the Uganda Organ Transplant Council as the regulator and designates Mulago National Referral Hospital as the pioneer transplant centre, with exclusive rights to conduct organ transplants in the country.⁴⁹ Mulago hospital is also responsible for managing a waiting list for potential cells, organs, and donors as well as recipients. Section 7(5) states that, "The Council shall be independent but shall work in collaboration with the Uganda Medical and Dental Practitioners Council, especially in relation to disciplinary cases against registered medical practitioners certified by the Council under this Act to undertake organ, tissue and cell donation and transplant activities." Section 33(4) states that, "The Council shall, in a manner prescribed by regulations, approve Local and expatriate transplant surgeons before they can undertake transplantation activities under this Act." Section 33(5) states that, "A transplant surgeon shall not be approved under subsection (4) unless he or she is registered by the respective professional Councils."

The Law also provides for the regulation of the removal, storage and transplantation of human organs, tissues and cells for therapeutic purposes, providing for the accreditation and

⁴⁷UNICEF/OLS (2012b). They Government They Deserve: the role of the elite in Uganda's political evolution, London: Kegan Paul International

⁴⁸The Uganda Human Organ Donation and Transplant Bill, 2021

⁴⁹ The Human Organ Donation and Transplant Act, 2022

designation of hospitals as transplant centres; providing for cell banks; providing for appropriate consent for purposes of human organ; tissue and cells donations, and transplantation; and prohibiting commercial dealing in human organs, cells and tissues. Section 37(4) states that, "every designated transplant center shall produce or have available literature and media items that provide education and awareness creation for donation of organs, tissues or cells." Section 54 {1) states that, "The retrieval and preservation of human organs, tissues and cells for transplantation shall only be performed by a registered health professionals approved by the Council and in accordance with this Act, regulations made under this Act, any other applicable law and standards issued by the Minister."⁵⁰

The Law further protect the dignity and identity of every individual and guarantee, without discrimination, respect for his/her integrity and other rights as well as fundamental freedoms with regard to donations and transplantation of human organs, cells and tissues of human origin carried out for therapeutic purposes; provide for a system towards ensuring equitable access to transplantation services to patients; providing for traceability of organs, cells and tissues, and recall procedures; and provide for offences and punitive penalties for illegal dealings in human organs, cells and tissues as well as for related matters.⁵¹ According to section 92, "a person contravenes a provision of this Act or any regulations made under this Act, or any condition of the designation granted under this Act for which no punishment is separately provided in this Act is liable, on conviction, to a fine not exceeding ten thousand currency points or imprisonment not exceeding three years or both."

Although, despite the existence of this law, Uganda currently does not perform organ transplants. The law does not expressly state whether the surgical procedures affect harvesting, and the consequent transplant will be free as well.

Section 86 provides for the prevention of organ, tissue, or cell trafficking. However, cases of vulnerable persons who have been exported abroad for labor are awash with allegations that their organs are harvested without their consent.⁵² There have been media reports of persons

⁵⁰Busiku, E.S. (2022). Making sense of the Human Organ Donation and Transplant Law. The Uganda Human Organ Donation and Transplant Bill, 2021. Kampala. Parliament Watch.

⁵¹The Human Organ Donation and Transplant Act, 2022

⁵²Busiku, E.S. (2022). Making sense of the Human Organ Donation and Transplant Law. The Uganda Human Organ Donation and Transplant Bill, 2021. Kampala. Parliament Watch.

who are mentally incapacitated and street children being taken abroad for illegal harvesting of their organs under the disguise of medical treatment and adoption, respectively. Provisions under this cause do not cater for illegal organ harvesting that is done on vulnerable Ugandan citizens and investigations being medical in nature out of reach of the affected victims. Lastly the Act does not provide for the cost/affordability of surgical procedures.

3.4 Conclusion

The promulgation of the Uganda Organ Donation and Transplant Act has provided shelter in an area of medicine. The government of Uganda enactment of the Organ Donation and Transplant Law cover a specialized part of medical care in the country which has hitherto been unregulated. The Law presents an opportunity to streamline and strengthen the regulatory framework of medical practice in Uganda in matters of ethics and discipline in these sensitive and vital areas of medical practice.

CHAPTER FOUR

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

4.0 Introduction

This chapter contains the summary of findings, conclusions and recommendations, and areas for further study were suggested.

4.1 Summary of Findings

Despite advances that allow hundreds of thousands of people a year worldwide to receive solid organ or tissue transplants, the World Health Organisation (WHO) estimates that less-than 10% of the global transplant needs are met annually. Besides, limiting access to life-saving transplantation, a lack of access to donation prevents bereaved families from experiencing the sense of meaning this altruistic act can provide after the loss of a loved one. In addition to the limited global access, transplantation and donation activity varies substantially between states, even across countries with similar socio-economic and health frameworks. The Organ Donation and Transplant Law in Uganda are liberalizing organ donation and transplant programs to include private hospitals. In the face of internationally recognized challenges of organ trafficking and transplant tourism as pronounced in the Istanbul Declaration, 2008; Uganda should not only rely on restraining provisions in this legal framework but have systems and mechanisms that compel compliance and avert the above challenges. Therefore, all harvesting programs should be done by Government through the Council, and the harvested organs be distributed to designated hospitals whether public or private, in accordance with the waiting list provided and guided by the laws of the land, for the purpose of transplanting and donations.

4.2 Conclusion

It is concluded that adequate legislation, ethical frameworks, regulatory oversight and governance are essential for the legal and ethical practice of tissue and organ procurement for transplants in order to meet the needs of recipients, protect donors and ensuring the dignity of everyone involved in the process. Uganda has legal framework regulating illicit human organ transplant and donations, mainly the Uganda Human Organ and Transplant Act, 2022; and the Declaration of Istanbul on Organ Trafficking and Transplant Tourism, 2008. The existing legal

framework has helped to minimize on the human organ trafficking and regulating the transplant tourism. It also regulates the conduct of donation and transplant activities, with the establishment of the Uganda Organ and Transplant Council to oversee organ and cell donation as well as transplantation of organs. In Uganda, having designated Mulago National Referral Hospital as transplant centre, the national programs donation and transplantation of organs, cells and tissues is not consolidated. Indeed, these programs had generally inadequate infrastructures, lack of technical expertise, including competent human resources, insufficient institutional support, and technology. Furthermore, the lack of public education, awareness and motivation for organ donation in Uganda especially barriers of cultural, religious and social traditions create barriers limiting access to donation and transplantation services. Therefore, the ban on paying for organs apply to all individuals, including transplant recipients who attempt to circumvent domestic regulations by travelling to states where prohibitions on commercialization are not fully or properly enforced.

4.3 Recommendations

Basing on the findings in this study, the following recommendations have been suggested:-

It is recommended that unethical practices are, in part, an undesirable consequence of the global shortage of organs for transplantation. Thus, each nation should strive both to ensure that programs towards preventing organ failure are implemented and provides organs to meet the transplant needs of its residents from donors within its own population or through regional cooperation.

The study also recommended that organ trafficking and transplant tourism violate the principles of equity, justice and respect for human dignity, and should be prohibited. Because transplant commercialization targets impoverished and otherwise vulnerable donors, it leads inexorably to inequality and injustice and should be prohibited.

It is further recommended that government of Uganda, in collaboration with development agencies, healthcare institutions, professionals and non-governmental organisations should take appropriate actions to increase decreased organ donation. Thus, obstacles should be taken to remove obstacles and disincentives to decreased organ donation.

Publicity and educational programs are vital and useful in addressing the barriers, misconceptions, and mistrust that currently impede the development of sufficient deceased donor transplantation; a successful transplant programs also depend on the existence of the relevant health system infrastructure.

The study recommends that national governments, working in collaboration with international and non-governmental organisations, should develop and implement comprehensive programs for the screening, prevention and treatment of organ failure. There is need for advancement of clinical science.

4.3 Areas of Further Research

The researcher carried this study in order to examine the legal framework regulating illicit human organ transplant and donation in Uganda as a case study, but the study was not exhaustive owing to constraints in terms of scope, time and finance. Further research is therefore needed in areas such as:- the legal framework governing rights to health in Uganda; the legal gaps in the Uganda Human Organ and Transplant Act, 2022; and social-cultural beliefs undermining human organ transplant and donation in Uganda.

In conclusion, more research should be done about the legal framework regulating illicit human organ transplant and donation in Africa, so as to compare with results from Uganda so as to draw a ground for recommendations.

BIBLIOGRAPHY

NATIONAL LEGISLATION

The 1995 Constitution of the Republic of Uganda as amended.

The Uganda Organ Donation and Transplant Act 2023

INTERNATIONAL AND REGIONAL INSTRUMENT

UN General Assembly, United Nations Convention against Transnational Organized Crime: resolution/adopted by the General. A/RES/55/25, 8 January 2001, <https://www.refworld.org/legal/resolution/unga/2001/en/39663>

Statute of the Human Organ and Tissue Donation and Transplantation in the WHO African Region.

The Declaration of Istanbul on Organ Trafficking and Transplant Tourism (2018) edition

United Nations Convention against Transnational Organized Crime (Organized Crime Convention). Article3(a) of the UN Trafficking Protocol

TEXTBOOKS

Creswell, J.W. (2014). *Research Design*. Qualitative, Quantitative and Mixed Methods Approaches. 3rd edition. Los Angeles, Sage.

JOURNAL ARTICLES

Busiku, E.S. (2022). Making sense of the Human Organ Donation and Transplant Law. *The Uganda Human Organ Donation and Transplant Bill, 2021*. Kampala. Parliament Watch.

Lewis, A., Kreiger-Benson, E., Kumpfbeck, A., Liebman, J., Bakker, A., & Shemie, S.D. (2020). Determination of death by neurologic criteria in Latin America and African Countries. *J. Clean, Prod.* Pp. 197.

Nyirenda, M.J. (2016). On-communicable diseases in Sub-Saharan Africa: Understanding the drivers of the epidemic to inform intervention strategies. *The International Health*. Vol. 8(3), pp. 157-8.

Omeleke, S.A. (2013). Chronic non-communicable disease as a new epidemic in Africa. *Focus on the Africa*. Pan Afri Med J. Vol. 5, pp. 14-87.

Rodgers, S.B. & Nurs, C.N.A. (2019). Legal Framework for Organ Donation and Transplant. National Library of Medicine. National Center for Biotechnology Information.

Reports by Commissions

REPORTS

Parliament of Uganda, 2022 Report of The Committee on Health on the Uganda Human Organ Donation and Transplant Bill 2021. Kampala. Office of the Clerk to Parliament.

UNICEF/OLS (2012b). They Government They Deserve: the role of the elite in Uganda's political evolution, London: Kegan Paul International
