

THE DONATION AND SALE OF HUMAN ORGAN IN RELATION TO HUMAN DIGNITY: A PHILOSOPHICAL EVALUATION

By

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Abstract

Human Organ(s) for Sale is a topical issue in the contemporary society and particularly for bioethics and bioethicists owing to the increase on how human organs are procured and supplied either for medical purposes or ritual reasons. Bioethicists are concerned with the ethical questions that arise in the relationships among life sciences, biotechnology, medicine, politics, law, philosophy, and theology. Organs for Sale posits that deciding together on the limits of markets, and on what is and ought to be for sale, sheds light on the moral fabric of human dignity, our society and what it needs to thrive. Human dignity is characteristic respect for persons and their inalienable rights by recognizable foundational reason that they are human beings and have capacity to assert claims. This study aims to investigate and evaluate public moral deliberation and the relationship between economic worth and the value systems of a society in relation to donation and organ sale. Utilizing the analytic method coupled with interpretation, the study focuses on the normative dimensions of the strategies needed on procurement and sale of organs considering the sanctity of human dignity. While society has shown serious concern over debates surrounding organ donation, and sales, the study presents a better understanding of the rhetoric of advocates and philosophical underpinnings of the debate needed to improve our public moral deliberation in general and organ policy more specifically. The research concludes with the notion that considering the sacredness of human dignity and financial compensation for human organs, it is not morally permissible to put up for sale human organs but donations without monetary attachments should be considered for the purpose of saving lives.

Keywords: Human Dignity, Organ Sale, Bioethics, Organ Donation, Ritual Killing

Introduction

Bioethics is the philosophical study of the ethical controversies introduced by advances in biology and medicine. The positive and negative effects of techno-medical advancement are felt in almost every human society. The discovery of stem cell technology with its great potentials and organ transplant brought about possible treatments of several ailments that initially defy every medical approach. "Stem cells are the body's cellular repair mechanism. They are a specialized class of undifferentiated, or partly differentiated, cells, whose role is to replenish the population of mature differentiated cells."¹ With the technology of embryonic stem cell, cells can develop into any of the many types of human cells and this unique ability gives them significant therapeutic potential. A stem cell, however, "is a human or animal cell that can produce specialized tissues and organs as well as replicate itself."² So many people now engage in human organ harvesting due to scarcity and high demand because of its economic gains for medical purposes and ritual purposes. In recent years, a troubling wave of killings across the Nigerian State has been dismissed by authorities, communities and scholars especially bioethicists as mere ritual killings, a suitable label that often obscures a far more sinister enterprise: organ harvesting. From barrage cases of missing persons whose mutilated bodies are later discovered without vital organs to mutilated corpses found in rivers and

riverbanks, point to the growing, lucrative black market that thrives on human parts especially among teenagers who are desperate for unmerited and inordinate wealth and systemic failure. Organ procurement, donation and transplantation exist at the intersection of life and death within the context of an explicitly rationed resource and thus create a field ripe with ethical issues. While the specific issues change over time as the technology of procurement, donation and transplantation evolves, fundamentally the primary ethical considerations are concentrated on two core areas: the permissibility of methods designed to obtain organs and increase organ donation, and the appropriate framework to allocate the transplant benefit.

More specifically, the discussion has revolved around the donation and sale of human organ in the light of human dignity. There are numerous cases of organ failures among the youths especially the kidney and social media influencers and philanthropists are encouraging the masses to donate financially to support organ transplant in hospitals. But the major challenge facing these persuasions is where to get the needed organ for the transplant. This becomes a challenge because internal organs of human beings are involved and there is no open market for it. The society is faced with the dilemma of whether to kill a life in order to save another life. In this instance, the society is faced with the upsurge of kidnappings and killings related to organ harvesting owing to the purported financial gains attached to it. The increase in organ failures and the seeming gains in organ sale compelled the researcher to consider whether it is morally permissible to sell human parts thereby reducing man as a means to an end but not an end in itself. human dignity The urgency to increase the availability of organs together with clinical innovations results in the current ethical issues which is the focus of this paper.

1. CONCEPTUALIZING HUMAN ORGAN DONATION AND SALES

The phrase ‘organ sale’ covers a wide spectrum of diverse practices. People most readily relate it to the case in which a person (who needs or wants money) sells their kidney to another (who needs a kidney). But there are other possibilities too. One (in countries where the prior consent of the deceased is required for cadaveric organ donation) is to pay people living now for rights over their body after death. Another (in countries where the consent of relatives is required for cadaveric organ donation) is to pay relatives for transplant rights over their recently deceased loved ones’ bodies. Furthermore;

‘Organ sale’ as the term is used here does not include the sale of body products (a category which includes blood, eggs, hair, and sperm) since this is different in some important respects. For example, the risk of permanent harm is generally much less in the case of blood and hair donation; while, the donation of eggs and sperm raises additional issues relating to the creation and parenting of additional future people. That said, many of the fundamental issues are similar and the very same concerns about (for example) exploitation and consent arise in both cases.³

So many people are dying in their homes and hospitals on daily basis due to lack of organs for transplant, and the challenges are on how to increase the supply of human organ. Shortage of human organ is a major practical biomedical problem facing the entire world especially the African States and many advanced nations—but it is also, perhaps even more, an extended appraisal of what a society values and how it engages in the process of valuing. One prominent solution to the shortage is to pay people for organs, placing, say, kidneys for sale. An overarching idea in this paper is that deciding the legality of questions that concern markets and their limits in the buying and selling of human organs is the same as deciding what kind of society we are or what kind of society we want to be – in short, deciding what we value, how we value it, and why we value it. Additionally;

The changing support for the idea of buying and selling organs—once anathema to all but the most economically liberal—indicates the prevalence of economic value not as one way of valuing among several, but as the dominant system by which value is established. That the market has become the organ that filters value in the body politic is of unprecedented historical implication. The (at)traction of buying and selling human organs is a symptom of the body politic being sick.⁴

Many strategies exist for increasing organ supply to meet the growing demand. While there are solutions such as vouchers and tax incentives, strategies tend to focus on alleviating one side of the equation.⁵ For example, demand-side fixes aspire to extinguish the need for new organs in the first place with such strategies as health campaigns aimed at preventing disease and promoting healthy lifestyle and well-being choices. If we can head off significant causes of organ failure further upstream—obesity, diabetes, and alcohol immoderation, to name a few—then the demand for organs should decrease.

Atul Gawande gives a forceful articulation of the idea of incrementalism as a solution to any number of problems that plague current health systems—distrust, rising costs, inefficiency, and health outcomes.⁶ So, incrementalism, public health, and preventive medicine represent tools which may assist in fixing the organ shortage problem, but these are partial solutions at best.

There are also two prevalent solutions aimed at the supply side: presumed consent (opt-out structuring) and artificial organs. The opt-out model shifts the status quo of organ donation from a system in which each citizen must make a decision to opt in and somehow record that and make it known to one in which citizens are assumed to be donors unless they speak out and/or register otherwise. Some of the countries with the highest donor rates—Austria, Spain—have the opt-out policy. A recent study suggests that a switch to an opt-out policy in the United States, for example, would modestly reduce the shortage.⁷ While the default position fundamentally changes, the core principle of choice—to opt in/out—remains intact. Artificial organs represent probably the significant potential solution to the supply-side problem. The potential to bypass human or animal organs altogether is rapidly increasing, with researchers able to harvest, grow, or even outright manufacture organs in the lab, using biomedical engineering (including bio-printing, the ability to print organs on demand), scaffold-tissue engineering, and so forth, and eventually print them out on 3D printers.⁸ Though ethically underdetermined, the manufacturing of organs in this way seems promising, and potentially a more permanent and robust solution to the shortage in a way that opt-out, incrementalism, and preventive medicine likely never can be.⁹ The concern of the paper is not about the practical question of how to increase organ supply – at least not directly. But the core philosophical concern is on what ought to be for sale and why and who gets to decide; tensions of morality and legality; challenges of the categorical under conditions of ethical.

2. HUMAN DIGNITY AND ITS SACREDNESS

The study of man generally called philosophical anthropology appears to be the most difficult aspect of every study. It is complex on one side because man is the subject and the object of study; thereby raising some epistemological questions like: can man study himself as himself objectively? What standard or criteria will he apply in the study of himself or should the study of man re-echo the mantra of Protagoras-*homo mensura*? On another side still, the study of man has placed man at “the center and the point of departure for every philosophizing”¹⁰

The word “dignity” comes from the Latin word “dignitas,” meaning “worthiness” or “merit”, which itself derives from the Latin root “dignus,” meaning “worthy”. The English word was

adopted in the 13th century from Old French, and its meaning has evolved to encompass qualities like honor, excellence, prestige, self-respect, and a sense of inherent value in human beings. And while most Romans used *dignitas* only in its merit sense, a few, and Cicero in particular, had a proleptic understanding of *dignitas* that anticipated today's moral-political sense.¹¹ In moral and legal contexts, it is typically used in the couplet "human dignity" to denote a kind of basic worth or status that purportedly belongs to all persons equally, and which grounds fundamental moral or political duties or rights. However, the concept of dignity has long been associated with many more meanings, some of which cut in distinctly different directions: rank, station, honor, uniqueness, beauty, poise, gravitas, integrity, self-respect, self-esteem, a sacred place in the order of things, supreme worth, and even the apex of astrological significance. Some of these connotations have faded with time. But most have enduring influence.¹²

The issue of human dignity was given a new impetus at the end of World War II as a reaction to the horrors of the Jewish holocaust and other Nazi atrocities. The immediate consequence was its recognition in such international documents as the Charter of the United Nations (1945) and the Universal Declaration of Human Rights. Several new national constitutions likewise gave it recognition. The topic of human dignity has received a fair fragment of attention among the circle of scholars. The Vatican declaration *Dignitas Personae* and other constituted councils like 'Human Dignity and Bioethics' have highlighted the idea of human dignity in the public eye while they have also raised important and difficult ethical and legal questions. "What precisely is "dignity"? What is "human dignity"? Do human beings have dignity innately, or only conditionally? Should human dignity matter at all to us?"

The notion of dignity has not been developed into either a clearly defined literary form or an internally consistent set of ideas because dignity is a heuristic concept. For example, Glenn Hughes suggests that an "intrinsically heuristic concept means that [the concept] refers to an intelligible reality of which we have some understanding, but whose full or complete content remains, and will always remain to some degree, unknown to us."¹³ Dignity may now mean "the value something has proper to its place in the great chain of being; for example, plants have more dignity than rocks; angels more dignity than human beings."¹⁴ Dignity, thus, like human person, defines the subject in its individuality, while its rational nature determines its universal 'quidity or whatness.' Dignity, in other words, is essential to the existence of the individual human being: it is what the human being is before anything else, it is what identifies it. The possession of human dignity must therefore to some extent depend on remaining free and rational, being subsistence or 'existing for oneself'. Intrinsically, dignity does not rely on the choices of anyone but is something that remains whether or not someone is recognized to have it.

A number of recent works have tried to analyze the concept of human dignity. Depending upon scholar's or one understands of what constitutes human dignity, some significant attempt can be made at defining the nature and extent of human rights and obligations. For the Christian ethicists;

Human dignity derives (its substance) from God's creative love. Genesis records that at each stage of creation God saw what He had created and found it to be good. In the case of mankind He bestowed a special gift— participation in His own life cycle. He made humanity in His image, that is to say, human beings became part of His perception of Himself, a perception so intense that it is personified in the Word or Logos. Because human beings are the object of God's love they have a special dignity

which demands universal respect. Even when a person turns from God in favour of self, God's love for that person never wanes nor is that dignity lost.¹⁵

The humanists on the contrary “see the source of human dignity in humanity’s intellect and free will—that unique capacity to reason and to make moral choices.”¹⁶ Whatever be the most important reason for the existence of human dignity as a foundational characteristic possessed by human beings by virtue of their humanity alone, its centrality and significance in our world is now being increasingly recognized, and scholars from a multitude of disciplines are seeking to analyze its nature and to determine its consequences for human existence, and application to, their fields of endeavor.

The most polemical contribution in the area of human dignity was the article “The Stupidity of Dignity” by Steven Pinker, who argues against the usefulness of dignity as a central principle in bioethics.¹⁷ In addition to criticizing the ambiguity of the term “dignity,” Pinker sees three problems with making use of dignity as a principle of bioethics, namely its relativity, its fungibility, and its potential for harm. He therefore rejects the concept of “human dignity” in arguments about bioethics and proposes to rely solely on the notion of “autonomy.”

Pinker first illustrates the problematic relativity of the concept of dignity, thus:

1. *Dignity is relative.* One doesn't have to be a scientific or moral relativist to notice that ascriptions of dignity vary radically with the time, place, and beholder. In olden days, a glimpse of stocking was looked on as something shocking. We chuckle at the photographs of Victorians in starched collars and wool suits hiking in the woods on a sweltering day, or at the Brahmins and patriarchs of countless societies who consider it beneath their dignity to pick up a dish or play with a child.¹⁸

Steven Pinker fails, however, to note that the concept of autonomy is also relative. The importance of autonomy in contemporary discourse can be traced historically to the philosophy of Immanuel Kant, who described it as the self-given law of practical reason shared universally by all rational beings. If dignity cannot work as a central principle in bioethics because it is relative historically, autonomy cannot work as a central principle in bioethics for the same reason.

Pinker offers the fungibility of dignity as his second rationale for dropping dignity from the vocabulary of bioethics. He writes:

2. *Dignity is fungible.* The [President's] Council and [the] Vatican treat dignity as a sacred value, never to be compromised. In fact, every one of us voluntarily and repeatedly relinquishes dignity for other goods in life. Getting out of a small car is undignified. Having sex is undignified. Doffing your belt and spread-eagling to allow a security guard to slide a wand up your crotch is undignified. Most pointedly, modern medicine is a gantlet of indignities. Most readers of this article have undergone a pelvic or rectal examination, and many have had the pleasure of a colonoscopy as well. We repeatedly vote with our feet (and other body parts) that dignity is a trivial value, well worth trading off for life, health, and safety.¹⁹

Here again, Pinker fails to notice that autonomy is also fungible. Soldiers give up some autonomy when they enlist for military service. Employees like soldiers, lawyer and even psychologists give up autonomy when they sign contracts agreeing to perform certain services and to refrain from activities that constitute conflicts of interest. Patients give up all their autonomy—at least temporarily—when agreeing to lose consciousness during surgery. Obviously, these considerations do not justify the conclusion that autonomy is a term that is

not suitable for use in bioethical debates, so neither should similar considerations lead to the exclusion of the term dignity.

Pinker offers yet his third rationale for ditching dignity as an ethical value:

3. *Dignity can be harmful.* In her comments on the *Dignity* volume, Jean Bethke Elshtain rhetorically asked, “Has anything good ever come from denying or constricting human dignity?” The answer is an emphatic “yes.” Every sashed[sic] and be-medaled despot reviewing his troops from a lofty platform seeks to command respect through ostentatious displays of dignity. Political and religious repressions are often rationalized as a defense of the dignity of a state, leader, or creed: Just think of the Salman Rushdie fatwa, the Danish cartoon riots, or the British schoolteacher in Sudan who faced flogging and a lynch mob because her class named a teddy bear Mohammed. Indeed, totalitarianism is often the imposition of a leader’s conception of dignity on a population, such as the identical uniforms in Maoist China or the burqas of the Taliban.²⁰

Pinker fails here, as well, to note that autonomy, too, can be harmful to society and to individuals. Desmond Hatchett exercised his sexual autonomy by fathering twenty-one children with eleven different women before the age of thirty.²¹ Similarly, Nadya Suleman, unemployed and unmarried, used in vitro fertilization to add eight more babies to her other six young children at home.²² Drug abusers exercise their autonomy to harm themselves physically and mentally. Politicians regularly exercise their autonomy to implement unreasonable taxes, unfair laws, and unjust wars for their own political gain. Indeed, misuse of autonomy arguably causes much more harm than misuse of dignity.

Immanuel Kant played an important role historically in connecting dignity with the idea of all human beings having unconditional, intrinsic value, and it is by reference to Kant (particularly his famous statement that human beings should always be treated as ends and never as means only) that attempts have been made to turn the principle of respect for dignity into practical moral and legal decisions, so there is no way round him if we want to understand the history of the term, its conceptual structure, and its application.

In his *Fundamental Principles of the Metaphysics of Morals*, Kant wrote that “man and generally any rational being *exists* as an end in himself, *not merely as a means* to be arbitrarily used by this or that will, but in all his actions, whether they concern himself or other rational beings, must be always regarded at the same time as an end”.²³ Kant’s “practical imperative will be as follows: So act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as means only”.²⁴ For Kant, human dignity means that the human being has intrinsic worth that no one can put a price on because it is not tied to the relative utility or benefit of that person to others: “everything has either Value or Dignity. Whatever has a value can be replaced by something else which is *equivalent*; whatever, on the other hand, is above all value, and therefore admits of no equivalent, has a dignity . . . , an intrinsic worth”.²⁵ Man’s dignity also means rising above “all laws of physical nature, and obeying those only which he himself gives, and by which his maxims can belong to a system of universal law, to which at the same time he submits himself . . . *Autonomy* then is the basis of the dignity of the human.”²⁶ Furthermore, Simone Weil who was by inspired Iglesias was writing in the shadow of World War II, said that “there is something sacred in every man, but it is not his person. Nor yet is it the human personality. It is this man; no more nor less. . . . The whole of him. The arms, the eyes, the thoughts, everything. Not without infinite scruple would I touch anything of this.”²⁷ Any proper account of dignity must select out a unique value belonging to humans. This is not equivalent to demanding a value that belongs distinctively to humans.

3. ETHICAL AND LEGAL CONSIDERATIONS FOR AVAILABILITY OF ORGANS: DONATION, SALES AND HUMAN DIGNITY

Organ donation is not a new concept, the vision of switching a diseased organ with a healthy version is ancient.²⁸ It was in 1954 that the first successful human-to-human kidney transplant was performed.²⁹ Since then, transplantation has become an economically viable and preferred treatment modality for those living with life-limiting organ damage. In 2021, over 144,000 organ transplants occurred worldwide.³⁰ Yet despite improvements in transplantation and the prevention of organ injury, no country has reached self-sufficiency in the supply of organs for transplant and the number of people living with irreparable organ damage and in need of a transplant continues to climb.³¹

Organ donation and transplantation encompass a broad spectrum of social, religious, ethical, medical and legal issues.³² Across and within jurisdictions, there is a plurality of opinion in how best to address organ shortage and to prevent exploitation of vulnerable individuals. In this section of the paper we explore key ethical and legal issues as they relate to organ procurement, sales and human dignity.

Kidney transplants in India first started in the 1970s and since that time, India has been a leading country in this field on the Asian sub-continent. The evolutionary history of transplants in the last four decades has witnessed a different facet of transplant emerging in each decade. The first 10 years were spent mastering the surgical techniques and immune-suppression. Its success resulted in a phenomenal rise in the numbers of transplants in the next 10 years and unrelated kidney donation from economically weaker sections started taking place with commerce in organ donation becoming an acceptable integral part of the program. After this was accepted, the ethics of transplants in India has always been on a slippery slope and all kinds of nefarious activities were accepted as normal practice. The general dictum was “when you can buy one why donate?” The next 10 years saw an outcry from the physicians of the western world at the growing numbers of these exploitative transplants being done in India. There were also protests from many sections in India. The pressure on the Government saw the passing of the *Transplantation of Human Organ Act* (THO) legislation that made unrelated transplants illegal and deceased donation a legal option with the acceptance of brain death.³³ Overcoming organ shortage by tapping into the pool of brain-dead patients was expected to curb the unrelated transplant activity. The last decade has seen the struggle of the deceased donation program evolve in India. Simultaneously, it has witnessed the living donation program being marred with constant kidney scandals. In most instances, the donor accused the recipient or the middle man of having not compensated them with the promised sum. It also saw liver, heart, and pancreas transplants from deceased donors. Although the history of cadaver transplants in India is recent, the first attempts to use a cadaver donor's kidney were undertaken in 1965 in Mumbai. The author describes the medical and social problems they faced. The medical problems included technical difficulties in engrafting, immunological problems, and infection. However, it was the hostile reaction from some members of the medical profession and the general public that was a more daunting task to tackle. The whole process was described by some as neo-cannibalism. This was a setback for the cadaver program for not only Mumbai but also rest of the country.³⁴

The presence of a growing middle class, the lack of a national health insurance scheme, the growing disparity between the rich and poor, and to some extent the presence of technology in some countries make the process of commodification of organs a simple, quick, and attractive business proposition for some and a solution for others. In many affordable middle class or upper class families, even when there are relatives in good health who can donate, the general

argument that is often presented is “why donate and take any risks when you can buy a kidney?” Organ trade in Nigeria like other problems such as child labor, prostitution, kidnapping for ransom and ritual killings have some societal issues attached to it. It relates to the exploitation of the poverty-stricken people by alluring them with financial gains that at times can be large and can meet their immediate short-term financial needs. Unlike other similar exploitative social situations, organ donation requires an invasive surgical procedure that has both physical and psychological implications.

The illegal trade in organ trafficking considers the human body and its parts as commodities which is devoid of dignity. Giving in to market forces and making organs a commodity is fraught with dangers and erodes social, moral, and ethical values and is not an alternative that can be acceptable to overcome the problem of organ shortage in a civilized society. In her article on ‘The End of the Body: The Global Traffic in Organs for Transplant Surgery’, Nancy Scheper-Hughes, an anthropologist from Berkeley, states that by their very nature markets are indiscriminate, promiscuous, and inclined to reduce everything, including human beings, their labor and even their reproductive capacity to the status of commodities, to things that can be bought, sold, traded, and sometimes even stolen. Mr. Soros, the self made billionaire and a great believer of market forces, is deeply concerned with the erosion of social values and the dominance of anti-social market forces in the field of health sciences. He is of the opinion that a market economy is generally a good thing but opines that we cannot live by markets alone. Open and democratic societies require strong social institutions to serve such goals as social justice, political freedom, bodily integrity, and other human rights. The real dilemma, as Mr. Soros sees it, is one of uneven development. The evolution of the global market has outstripped the development of a mediating global society.³⁵

Another report on *The Global Traffic In Human Organs: a report presented to the House Subcommittee on International Operations and Human Rights, United States Congress on June 27, 2001* states that: “The growth of medical tourism for transplant surgery and other advanced procedures has exacerbated older divisions between the North and South and between the haves and have-nots. In general, the flow of organs, tissues, and body parts follows the modern routes of capital: from South to North, from third to first world, from poor to rich, from black and brown to white, and from female to male bodies. In the very worst instance, this market has resulted in theft and coercion, as in the case of China, to a self-serving belief in rights of the rich to the “spare parts” of the poor, as in the case of the many transplant junkets arranged to carry affluent patients from Saudi Arabia, Israel, and North America to Turkey, India, Romania, and the Philippines where kidney sellers are recruited from prisons, unemployment offices, and urban shantytowns.”³⁶

One of the arguments against making the buying and selling of organs legal is that it would likely lead to a society where only the rich would be able to access life saving organ transplants and the poor would be the main contributors of those organs. Currently, the US system wards against this inequality by not paying or charging people for organs and only granting people organ transplants by putting them on a first come first served waiting list. This means that regardless of whether someone is rich or poor, an individual will have the same chance of receiving an organ transplant as the next person. When there is an organ market, it creates an exploitative dynamic between the rich and poor where the poor sell their organs and are often not compensated fairly.³⁷

A recent international case of human trafficking for the purpose of obtaining organs has once again triggered a heated debate on organ trafficking in the international academic world. What

is particularly special about this case is that it not only covers transnational human trafficking, organ trafficking, and illegal organ transplant interest chains, but also involves the participation of national political officials and complex social and human factors. On May 5, 2023, Ike Ekweremadu, a Nigerian senator and former deputy president of the Nigerian Senate³⁸, was sentenced to more than 9 years in a United Kingdom (UK) prison for his part in a conspiracy to trade on the “poverty, misery and despair” of vulnerable people, which is considered as a slavery and human trafficking offense under the 2015 UK Modern Slavery Act.³⁹ His wife and Dr. Obinna Obeta, who brokered the organ sale, were also convicted. The Ekweremadu case is the first in the UK to result in an organ trafficking conviction. As defined by the United Nations⁴⁰, organ trafficking refers to the control of potential donors through the threat or use of force or other forms of coercion, kidnapping, fraud, deception, abuse of power or position of weakness, or the giving or receiving of money or benefits for the purpose of obtaining organs, tissues, or cells for transplantation.⁴¹ Although not all medical tourism that requires cross-border travel by organ transplant recipients or donors is organ trafficking, organ transplant tourism has connotations of organ trafficking.⁴² The trafficked victim in this international case was a 21-year-old man who sold telephone parts for a living in Lagos, Nigeria.⁴³ The intended recipient of the organ was Ekweremadu's daughter, Sonia Ekweremadu, who had severe and worsening renal disease.

Sadly for the majority of donors, selling a kidney does not result in the significant economic benefit of which they dreamed. Often it is associated with a decline in general health. Many fall back into debt, often compounded by the inability to work following donation due to ill health.⁴⁴ Supporters of paid donation argue that a person should have the basic right to choose the fate of his or her organs. In the setting of paid donation, informed consent is often of dubious quality, with the risks of surgery often not being properly explained or understood. Furthermore, many individuals are pressured to donate by family members, with the outcome of any ‘balanced discussions’ about wishing to proceed with organ donation predetermined.⁴⁵

Furthermore, those in favor of legalization argue that “people have control over their bodies, and it respects people’s dignity by giving them the choice to make their own decisions. It is on this level of examination where the balance between well-being and free will in the ethical debate comes into play.”⁴⁶ However, well-being must be balanced with free will. If someone chooses to sell their organ for money, as people do with blood or tissues, why limit their freedom and personal agency? Unfortunately, if the organ trade business is made legal, there would be a largely disproportionate number of impoverished people donating their organs for the monetary benefits, leading to whole populations with overall decreased health. “However, since illegal organ brokers already target impoverished individuals, proponents believe the legal organ business would better protect vulnerable communities”.⁴⁷ Legalization would involve proper medical screening, knowledge of the procedure, proper aftercare, and other resources for both the donor and recipient. As it currently lies, communities hurt by the illegal organ business receive low payment for their organs and leave the surgery table with more problems than they arrived with.

Organ trafficking is an illegal trade that is thriving not only in Nigeria but around the world. Human organs such as the liver and kidney among others are harvested from the body of a person without that person’s consent and those organs are then trafficked to willing buyers mostly in black markets. In addition;

A Global Financial Integrity Report estimates that 10% of all organ transplants are done using trafficked organs. The former Director-General of NAPTIP, Julie Okah-Donli, who is also the Chairperson of the United

Nations Voluntary Trust Fund for Victims of Trafficking in Persons (UNVTF) said in a recent interview that most cases of organ harvesting in Nigeria are treated as ritual murder by law enforcement agencies. The classification of organ harvesting cases as ritual killings masks the magnitude of the business of organ harvesting and trafficking in Nigeria.⁴⁸

Nigerian law allows the donation of organs for humanitarian purposes but prohibits the financial consideration for the “donation” of organs. Section 48 (1) of the *National Health Act 2015* permits the removal of tissue, blood or blood product from the body of another living person provided that the informed consent of the donor has been granted in the prescribed manner. By this provision, a person may donate a human organ to a recipient who needs it. *The National Health Act 2014* and the *Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015* prohibit the sale and purchase of human organs. This prohibition extends to instances where the donor consented to the removal of the organ.

Section 48 (2) (b) of the *National Health Act* provides that “A tissue, blood or a blood product shall not be removed from the body of another living person for purpose of merchandise, sale, or commercial purposes.”

Section 53 (1) of the *National Health Act* makes it an offence for a person:

(a) who has donated tissue, blood or a blood product to receive any form of financial or other reward for such donation, except for the reimbursement of reasonable costs incurred by him or her to provide such donation; and (b) to sell or trade in tissue, blood, blood products except for reasonable payments made in appropriate health establishment for the procurement of tissues, blood or blood products.”

“Tissue” is defined in Section 64 of the *National Health Act* to mean “human tissue, and includes flesh, bone, a gland, an organ, skin, bone marrow or body fluid, but excludes blood or a gamete”.

The *Trafficking in Persons (Prohibition) Enforcement and Administration Act* prohibits organ harvesting and trafficking and provides in section 20 as follows–

“(1) Any person who:

(a) through force, deception, threat, debt bondage or any form of coercion-

(i.) abuses a position of power or situation of dominance or authority arising from a given circumstance; or (ii) abuses a vulnerable situation; or (b) through the giving or receiving of payments or benefits in order to induce or obtain the consent of a person directly or through another person who has control over him; enlists, transports, delivers, accommodates or takes in another person for the purpose of removing the person's organs, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and a fine of not less than N5,000,000.00.

(2) Without prejudice to the provisions of subsection (1) of this section, a person who procures or offers any person, assists or is involved in anyway -

(a) in the removal of human organs; or (b) buying and selling of human organs, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and to a fine of not less than N5,000,000.00.

(3) Any person who enlists, transports, delivers, accommodates or takes in another person under the age of 18 years for the purpose of removing the person's organs, commits an offence

and is liable on conviction to imprisonment for a term of not less than 7 years and a fine of not less than N5,000,000.00.”⁴⁹

From these provisions of the Law, the trafficking of human organs is prohibited in Nigeria. But what may be considered interesting is the prohibition of the sale of a human organ even when the donor has consented to the removal and donation of his organ. The *National Health Act* quoted above makes it an offence for the donor to “receive any form of financial or other reward for such donation”. This position in Nigerian law on the prohibition of the sale of organs is in line with the position of the law in most countries of the world. An exception to this global trend that prohibits the consensual removal and sale of organs is Iran, whose government has legalized and regulated the sale of organs from willing donors to those in need of an organ transplant.⁵⁰

4. CONCLUSION

In the final analysis, regardless of the behavior or method of providing or giving economic incentives or paying money for organ transplantation, organ trafficking violates respect for human beings in addition to basic ethical values. Thus, trafficking for the purpose of obtaining human organs leads to wider exploitation of vulnerable groups and global social problems. The rationale is that organ donation should be completely altruistic and should not contain any element of coercion or inducement to the donor. The donor should have no reward other than the satisfaction that he had helped another human life. Another argument for this principle is the belief that the rich who need organs will have an unfair advantage in preserving their lives over others on the organ waiting list. From the perspective of the not too rich donor, it has been argued that the poor who are already disadvantaged are likely to be exploited to give up their organs in exchange for money. Nevertheless, as long as the need for organ donation far exceeds the availability of donors willing to give their organs at no charge, the organ black market will likely continue to thrive. Law enforcement agencies therefore must be vigilant and proactive in curbing the emerging nuances in this illegal enterprise. A new approach must be adopted to crimes that have the appearances of ritual killings. A thorough investigation of such murders will help in trailing and identifying the criminals who make up the organ trafficking rings for prosecution and conviction under Nigerian law. The Nigeria Medical Association (NMA) and the public should be sensitized on the provisions of the law and mobilized to become reporters and whistle blowers on the crime of organ trafficking in Nigeria by Bioethicists and Judicial System.

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