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## ***Renal Data from Asia-Africa***

### **Ethical and Legal Issues in Renal Transplantation in Nigeria**

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**ABSTRACT.** With the increasing number of patients being offered kidney transplantation by many centers in the developing world, it is not unexpected that there would be attendant ethical and legal issues even when the selection process for transplantation seems medically justified. Because of the inadequate infrastructure for hemodialysis and peritoneal dialysis, coupled with the challenges of logistics for maintenance dialysis, transplantation would seem to be the best option for patients with end-stage renal failure, even in developed economies where these can easily be tackled. The main issues here revolve around incentives for donors, organ trade and trafficking and the economics of eliminating the waiting list and the criminal activities of organ transplantation. In the developing world, with the current level of corruption and poverty, there is a need to redouble efforts to monitor transplant activities. Professional bodies should take the lead in this regard. Furthermore, there is a need for governments to engage in public consultation and community awareness concerning organ donation in living and deceased persons.

#### **Introduction**

With the increasing number of patients being offered kidney transplantation by many centers in the developing world, it is not unexpected that there would be attendant ethical and legal issues, even when the selection process for transplantation seems medically justified. In the advanced world, where organ transplantation has been practiced for decades, even when these issues have been codified and written

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into laws, there are still many issues to grapple with. Increasingly, the controversies have gone beyond pure medical issues to the economics of demand and supply of organs; the demand for organs far outstrips the supply.

In the past, issues revolved mainly around consent regarding organ harvesting for cadaveric organ transplantation, especially in the developed countries. Probably due to this reason, living donor transplantation is preferred because of the fewer logistics and technical issues involved. Kidney transplantation is special because one can donate a kidney and still live a normal life; therefore, medically, it would seem a simple matter. This is the point from where all the complexities arise: from altruistic donation to criminal harvesting of organs from living people, and

from selling of one's organs to kidnapping, murder and harvesting of organs.

Kidney transplantation offers the best form of treatment for patients with end-stage kidney disease. However, because of a lack of incentives for organ donation, the waiting list is long in many parts of the world.<sup>1</sup> If there is a form of compensation, particularly monetary, it is thought that many more transplants will be carried out as it is done in Iran where this is well regulated. This was commenced in 1988, and by 1999 the transplant waiting list was completely eliminated.<sup>2</sup> In Nigeria, transplant centers only accept living relative donors, and this seems to have imposed some restrictions on the availability of organs. It is for the same reason, ironically, that we do not have a waiting list.

### **Ethical Issues**

The main issues here revolve around incentives for donors, organ trade and trafficking, the economics of eliminating the waiting list and the criminal activities of organ transplantation. Many have blamed the existing guidelines for the swelling waiting list and even criminal organ trade. They believe that the tighter the protocols, people are more likely to try to circumvent them. Even where the waiting list seems to have been successfully managed, such as in Iran, the real dynamics regarding those who make the list is not known.<sup>3</sup> Again, in nearby Pakistan, exploitation of the poor is widespread and it is not uncommon in some societies to see a line-up of people who have been so exploited posing with nephrectomy scars.<sup>3,4</sup>

### **Religious Views**

Most countries in the developing world, including Nigeria, are deeply religious and therefore religion may play a major role in decision making concerning organ donation, especially when most religions emphasize care for the neighbor. It is therefore not surprising that most potential recipients and donors seek religious counseling and guidance. In Nigeria,

for example, religious leaders frown and disapprove of commercial donation.

### **The Nigerian Situation**

In 2000, a private hospital in Lagos, the St. Nicholas Hospital, performed the first kidney transplant in Nigeria. Since then, more Nigerian hospitals have transplanted kidneys. Apart from the challenges of cost and infrastructure, there are lingering issues of donors. Curiously, most patients do not want to use their relations, sons or daughters as donors but will rather prefer someone else who is not a member of their family. Some recipients would rather die than do this. This appears to be what one may call "reverse altruism," a situation where the patient wants to spare loved ones from burden of care and sacrifice. Indeed, in one transplant center in Nigeria, the procedure was abandoned while the recipient was already in the operation room because the brother developed cold feet and walked away. He too probably preferred that someone else would donate for his brother.

There is currently no transplant law in Nigeria and both the doctors and the patients are not protected. Each hospital has been using its own internal checks. For example, commercial donors posing as relatives have been brought by recipients. Most Nigerian hospitals, including our center, therefore insist on relatives as donors in order to protect the transplant team and the hospital from litigations. In most cases, we insist on an affidavit from a court of law before transplantation is carried out. The result of this is transplant tourism outside Nigeria, even when this is costly. The patient can afford the expenses but can only get a commercial donor.

Studies have been performed to investigate the knowledge and attitude of Nigerians toward kidney transplantation. In one study, only 47.3% of a cohort of hospital workers was willing to donate their kidneys, and 4% of them wanted some financial reward for this.<sup>5</sup> A study on the attitude of medical doctors in a major city in Nigeria found that of the 74.5% who were willing to donate, 56.1% were

willing to donate to only family members and of the 88.9% who were willing to accept if there was a need, 64% would accept from only family members.<sup>6</sup>

A National Health Bill is before the Nigerian legislature.<sup>7</sup> A section of the bill deals with control of use of blood, blood products, tissue and gametes in humans. A key point in this bill includes prohibition of therapeutic cloning of humans and the illegality of harvesting tissues or organs from a person who cannot give consent or take tissues from someone aged <18 years.

The bill stipulates that transplantation must be carried out in an authorized hospital with full written authorization of the head of the hospital. But, a person found guilty is liable on conviction to a fine of only US\$ 600 or to imprisonment for a period not exceeding one year, or to both fine and imprisonment! The seller therefore has more than enough to pay the fine. It also deals with the use of organs obtained from deceased individuals and the distribution of such organs.

Reading through the national health bill, it will appear as if we have a legal framework on which the practice of organ donation and transplantation will be based even though a few deficiencies still exist in it. However, for implementation, the National Tertiary Health Institutions Standards Committee will oversee distribution of organs and the waiting list. A standard immunology laboratory will be required to ensure proper HLA typing and tissue cross-match in designated hospitals. Currently, no laboratory in Nigeria can do this confidently. Most samples for this test are usually sent abroad. The tertiary hospitals and other hospitals that may be harvesting organs from deceased donors will require a strong ethical review board to provide ethical guidelines in such situations. With the current rate of poverty and corruption in Nigeria, we will probably need much more than ethics review boards to discourage the illegal sales of organs and organ trafficking.

Nigerians allegedly export their donors to the countries where the transplant operation will be performed, but in the current bill there are

no laws against exporting kidneys or any other organs or tissue and there are no laws that target the recipient. These are real challenges to organ trafficking in Nigeria, and indeed in many developing nations.

But, developing nations, including Nigeria, will still face the challenge of enthusiasm and pressure to harvest organs from patients under resuscitation. This seems far-fetched, but in the current world of transplantation, a slippery slope always beckons. Broadly, medical professions and associations must take the lead in ensuring that regulations are in place to safeguard the rules and guidelines of transplantation.

An attempt to tackle the challenge of organ scarcity, such as xenotransplantation, also faces its own ethical issues, such as in the case of Baby Fae who was transplanted with a baboon heart.<sup>8</sup> These will remain difficult issues to resolve, but stakeholders have to tackle them.

An International Summit on Organ Transplantation Tourism and Trafficking was convened in Istanbul, Turkey from April 30 through May 2, 2008. The outcome was the Declaration of Istanbul, which essentially seeks to protect the ethics, dignity and practice of organ transplantation. It restates that organ trafficking and transplantation tourism violate the principles of equity, justice and respect for human dignity. The Declaration deals with the mechanism, ethics, appropriateness, penalties and proposals on organ transplantation.<sup>9</sup> In Nigeria, where recipients are genetically related to the donors, steps are taken, including legal and review by the ethics boards of the institutions to prevent commercialization of organ transplantation.<sup>10</sup> In our institution, the University College Hospital, Ibadan, the management also defrays certain costs in order to reduce the burden of finance on the patients. In a way, this may indirectly reduce the tendency to commercialization as the overall cost of transplantation is reduced. This is also an attempt to increase the transplant activities in order to use and justify the huge capital outlay of infrastructure and the human capacity development.

### Conclusion

There are serious ethical, legal and social issues relating to organ transplantation that need to be addressed. Many countries of the world have put in place transplant laws and regulations as the case may be, but commercial organ sale and transplant tourism remain a booming business in various parts of the world, even in first-world countries. In the developing world, with the current level of corruption and poverty, there is a need to re-double efforts to monitor transplant activities. Professional bodies should take the lead in this regard. Furthermore, there is a need for governments to engage in public consultation and community awareness concerning organ donation in living and deceased persons.

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