

## The human organ trade – the South African tragedy

Medical Law Seminar, June 2009

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University of KwaZulu-Natal Vice-Chancellor Professor William Makgoba was quoted in a newspaper article<sup>1</sup> as saying: 'Trading in human organs is one of the most serious allegations that can be made in the medical profession.'

In KwaZulu-Natal, criminal charges were instituted against three medical practitioners on allegations of human organ trafficking. Investigations are still being conducted in Brazil, Israel and several other jurisdictions.

According to the allegations in the charge sheet:

1. The medical practitioners played an active role in an international kidney trade syndicate that recruited financially disadvantaged individuals as donors, mainly Brazilians, and Israeli citizens as recipients. The donors were reportedly paid amounts up to US\$20 000 to fly to South Africa and donate one of their kidneys. The recipients paid as much as US\$120 000 for these organs.
2. The kidney transplants were allegedly conducted at hospitals in Johannesburg, Cape Town and Durban. Over 109 transplants are reported to have taken place in Durban during the period 2001 - 2003. Only 3 recipients were South Africans, the others all being Israeli citizens.
3. This process was managed by 'facilitators' (mainly based in Israel) and 'local co-ordinators' who would attend to the accommodation and logistical requirements of the donors and recipients on their arrival in the country. They would also receive a commission for their role in the syndicate.
4. The medical practitioners have been charged with up to 109 contraventions of the Human Tissue Act 65 of 1983, which outlaws the sale of human organs. They have also been charged with assault with intent to do grievous bodily harm and fraud. If convicted on all these charges, they could individually face maximum fines of up to R300 000 or 15 years' imprisonment.

The donors and recipients made false statements on hospital forms, claiming to be blood relatives, even though they originated from different continents and had never met each other prior to the organ transplant, and stating that no money had changed hands.

In an affidavit the investigating officer, Louis Helberg, stated that 'it was one of the Durban co-ordinators involved who inadvertently tipped off the police about the syndicate after he had laid theft charges against a potential kidney donor who changed his mind on the hospital bed and fled.' He had already been paid US\$18 000 for his kidney. The donor and his wife were arrested at Oliver Tambo International Airport just before they fled with the money – and with both his kidneys still in place.

Captain Helberg was also alerted to the fact that an Israeli citizen had just received a kidney and was still in hospital. The recipient was arrested soon thereafter. He pleaded guilty to charges under the Human Tissue Act, admitting that he had paid US\$45 000 for the kidney donated by a Brazilian citizen, who was paid US\$6 000 for it.

The investigators travelled to Brazil and Israel to note statements from donors and recipients. Some of those involved stood trial in their own countries and received prison sentences.

In Brazil, most of the donors were acquitted after the court found that they had been victims of the syndicate and had not been told that what they were doing was illegal.

Several donors told the court that they had experienced health problems that no one had warned them about. Among these was Jose Carlos de Conceicao da Silva, a 24-year-old farm labourer. He testified that he experienced complications almost immediately after the kidney removal, is not able to lift heavy weights any more and gets tired easily.

State Prosecutor Hans Cheetan Lal revealed that 'the Durban Regional Court may have to sit "on commission" in Brazil, Israel and Romania to hear the evidence of donors and recipients'.<sup>2</sup>

A co-ordinator arrested for his involvement in the syndicate stated in his written plea that he had lost his photographic business 5 years before his involvement in the kidney transplant syndicate and was in dire financial straits. He further pleaded guilty to his role in 38 illegal kidney transplant transplants over a 2-year period.

One of the co-ordinators who was arrested pleaded guilty to 56 illegal kidney transplants in South Africa and confessed to receiving more than R1.4 million for his involvement in the international syndicate. He was sentenced to 6 years' imprisonment, suspended for 5 years, as well as a fine of R250 000, in terms of a plea bargain with the State.

### The relevant provisions in the Human Tissue Act

Section 19 stipulates that 'any tissue ... removed or withdrawn from the body of a living person shall, subject to the regulations, only be used for medical or dental purposes'.

Section 28 provides that 'only a person or institution authorised in terms of the Act, and for the purposes stipulated in the Act, may receive payment in respect of the acquisition or supply of any human tissue for or to another person. The Section further stated that any unlawful payment received would be refundable to the person who made it.'

In this kidney trade syndicate, the human tissue, mainly kidneys, was removed from the donors purely for financial gain on the

part of the donors and mainly for health purposes on the recipient's part.

It is reported that large sums of money changed hands in this international trade syndicate and that a portion of these funds was received by the medical practitioners who performed the kidney transplants.

## Offences and penalties under the Human Tissue Act

Section 34(a) provides that 'any person who breaches a provision in the Act shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000,00 or to imprisonment for a period not exceeding one (1) year, or to both that fine and that imprisonment'.

## Why is South Africa a targeted country for organ sales?

1. Owing to the inappropriate application of legislation in South Africa, such as the Prevention of Organised Crime Act<sup>3</sup> and the Prevention and Combating of Corrupt Activities Act,<sup>4</sup> hardly anyone is ever arrested for such criminal activities.
2. The exchange rate between the South African rand and the American dollar provides recipients with true value for their money when it comes to buying body organs for transplantation. South Africa also has no shortage of well-qualified doctors and surgeons willing to perform transplants at a price that makes South Africa a common destination. As such South Africa has 'First-World medicine at Third-World prices'.

## The Human Tissue Act v. the National Health Act

At this stage, only certain provisions of the National Health Act have come into force, and the Human Tissue Act is therefore still applicable where the provisions of the National Health Act have not been proclaimed.

Some of the provisions of the National Health Act that are not yet in force provide for the following:

- Restrictions regarding payment in connection with the importation, acquisition or supply of tissue
- Penalties for donors of tissue who receive financial or other rewards except for reimbursement for reasonable costs incurred to provide the donation
- Penalties for recipients of tissue who pay financial or other rewards to donors, except for the reasonable costs associated with the donation
- A prohibition against the transplantation of organs into persons who are not South African citizens or permanent residents of the Republic without the Minister's authorisation in writing.<sup>5</sup>

## Conclusion

On 1 August 2006 the charges against the medical practitioners were withdrawn in order for the National Prosecuting Authority

(NPA) to investigate the matter further. The reasons given by the NPA for withdrawing the charges were that they are considering the possibility of extraditing two further suspects in the organ trade syndicate from Russia as well as arresting other suspects in South Africa.

Furthermore, numerous witness statements obtained from Israeli nationals must be translated before being presented as evidence in court. Once the investigation is complete, the NPA intends to reinstate the charges against the accused.

It is clear from the criminal charges pending against South African medical practitioners that the illegal trade in human organs is rampant world-wide. This is not only a medical problem but a socio-economic one, as donors are not well informed of the possible dangers of living with one kidney after the transplant.

The vast majority of organ donors are financially desperate and do not have many other options to make ends meet. When foreign donors return to their own countries, the health care systems there are sometimes inadequate to deal with the after-effects of the organ transplant.

If people are going to sell one of their kidneys anyway, why should they not profit financially from it under a regulated system? An open, transparent system that is carefully monitored in order to prevent deception and coercion will remove the middlemen and ensure that the donor receives a high standard of medical care. The poor postoperative care that currently results from illegal organ transplants would be reduced if a carefully monitored and well-regulated system were to be introduced. Under such a system, an NGO would provide information and counsel the donor before the transplant to ensure that informed consent was given, and a high standard of postoperative care supplied.

Clear guidelines must be set and followed for such a system to work, and it should be a national system in line with the country's cultural values, not simply enabling rich recipients from abroad to 'prey' on the financially needy from Third-World countries and for the participants to profit therefrom.

To its credit, the South African legislature has responded by implementing statutory measures within the national health care system to ensure that these socio-economic injustices of the past are not repeated in future. The application of this legislation, however, will be the key to combating these criminal activities.

University of California Professor of Medical Anthropology Nancy Scheepers-Hughes commented: 'The division of the world into organ buyers and organ sellers is a medical, social, and moral tragedy of immense and not yet fully recognised proportions.'<sup>6</sup>

## References

1. Jasson da Costa W. Doctors in court over transplants. *Business Day* 17 August 2005.
2. Broughton T. Kidney trade changes set out. *The Mercury* 19 September 2005.
3. Prevention of Organised Crime Act, Act 121 of 1998. Prevention of Organised Crime, Act 121 of 1998.
4. Prevention and Combating of Corrupt Activities, Act 12 of 2004.
5. s61(3) of the National Health Act, which is yet to come into force.
6. Kockott F. Experts argue over human organs. *Sunday Tribune* 14 August 2005, p. 12.