

# Organ trafficking in Africa and the role of the African human rights system in safeguarding human dignity, life and bodily integrity

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**ABSTRACT:** Despite regional and national legal frameworks in place to prosecute cases of organ trafficking, difficult enforcement, corruption and poverty have allowed well-organised criminal networks to develop, often with the involvement of medical personnel and government officials. Victims, often from marginalised, poor communities, are coerced, deceived and subjected to violence, with abuses of their rights to dignity (article 5), life and bodily integrity (article 4) as provided by the African Charter on Human and Peoples' Rights, and freedom from exploitation and abuse. Engaging doctrinal legal research and a comparative case study design, this study focuses on Egypt, South Africa, Kenya and Nigeria. It is contended that the African human rights system should shift from the reactive legal prohibitions to a more proactive, dynamic approach, which incorporates strong legal reforms, victim-specific protection mechanisms and inter-state cooperation. It further argues that the African Commission, African Court and African Children's Committee, by using their jurisdiction to clarify state obligations under the African Charter, should affirm that these include the duty to not only criminalise and prosecute organ trafficking, but also to put in place the relevant preventive social policies, communication campaigns and reporting mechanisms for at-risk victims. The study concludes by asserting that ending organ trafficking in Africa requires a unified and proactive approach led by the African human rights system.

## TITRE ET RÉSUMÉ EN FRANÇAIS

**Le trafic d'organes en Afrique et le rôle du système africain des droits de l'homme dans la sauvegarde de la dignité humaine, de la vie et de l'intégrité corporelle**

**RÉSUMÉ:** Malgré les cadres juridiques régionaux et nationaux en place pour poursuivre les cas de trafic d'organes, les difficultés d'application, la corruption et la pauvreté ont permis le développement de réseaux criminels bien organisés, souvent avec l'implication de personnel médical et de fonctionnaires gouvernementaux. Les victimes, qui proviennent souvent de communautés marginalisées et pauvres, sont contraintes, trompées et soumises à la violence, avec des violations de leurs droits à la dignité (article 5), à la vie et à l'intégrité corporelle (article 4) tels que prévus par la Charte africaine des droits de l'homme et des peuples, ainsi qu'à la liberté contre l'exploitation et les abus. En s'appuyant sur une recherche doctrinale juridique et une conception d'étude de cas comparative, cette étude se concentrera sur l'Égypte, l'Afrique du Sud, le Kenya et le Nigeria. Je soutiens que le système africain des droits de l'homme devrait passer des interdictions légales réactives à une approche plus proactive et dynamique, qui intègre des réformes juridiques solides, des mécanismes de protection spécifiques aux victimes et une coopération inter-États. Je soutiens en outre que la Commission africaine, la Cour et l'ACERW, en utilisant leur compétence pour clarifier les obligations des États en vertu de la Charte, devraient affirmer que celles-ci incluent le devoir non seulement de criminaliser et de poursuivre le trafic d'organes, mais aussi de mettre en place les politiques sociales préventives, les campagnes de communication et les mécanismes de signalement pour

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les victimes à risque. L'étude conclut en affirmant que mettre fin au trafic d'organes en Afrique nécessite une approche unifiée et proactive menée par le système africain des droits de l'homme.

## TÍTULO E RESUMO EM PORTUGUÊS

### **Tráfico de órgãos em África e o papel do sistema africano de direitos humanos na salvaguarda da dignidade humana, da vida e da integridade corporal**

**RESUMO:** Apesar de existirem quadros legais regionais e nacionais para processar casos de tráfico de órgãos, a aplicação difícil, a corrupção e a pobreza permitiram o desenvolvimento de redes criminosas bem organizadas, muitas vezes com o envolvimento de pessoal médico e funcionários do governo. As vítimas, muitas vezes de comunidades marginalizadas e pobres, são coagidas, enganadas e sujeitas a violência, com abusos dos seus direitos à dignidade (artigo 5), à vida e à integridade corporal (artigo 4), conforme previsto na Carta Africana dos Direitos Humanos e dos Povos, e à liberdade de exploração e abuso. Envolvendo investigação jurídica doutrinária e um desenho comparativo de estudos de caso, este estudo foca-se no Egito, África do Sul, Quénia e Nigéria. Defende-se que o sistema africano de direitos humanos deveria passar das proibições legais reativas para uma abordagem mais proativa e dinâmica, que incorpore reformas jurídicas fortes, mecanismos específicos de proteção às vítimas e cooperação interestadual. Argumenta ainda que a Comissão Africana, o Tribunal Africano e o Comité Africano da Criança, ao usarem a sua jurisdição para clarificar as obrigações estatais ao abrigo da Carta Africana, deveriam afirmar que estas incluem o dever não só de criminalizar e processar o tráfico de órgãos, mas também de implementar as políticas sociais preventivas relevantes, campanhas de comunicação e mecanismos de denúncia para vítimas em risco. O estudo conclui afirmando que acabar com o tráfico de órgãos em África requer uma abordagem unificada e proativa liderada pelo sistema africano de direitos humanos.

**KEY WORDS:** organ trafficking; human rights; legal frameworks; law enforcement

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## 1 INTRODUCTION

Organ trafficking has become a critical human rights issue throughout Africa, and it oppresses some of the most vulnerable people, subverting the fundamental values of human dignity, life and the integrity of the human body.<sup>1</sup> The context of African organ trafficking is influenced by trends at the international level, but it is exacerbated by a combination of poverty, migration and weak governance. The most marginalised, often victims from poor communities, are enticed, misled or forcefully compelled to sell their organs, and their most fundamental rights are

<sup>1</sup> S B Taye and others 'Organ trafficking in Africa: pragmatist ethical reconsiderations' (2023) 20 *Contemporary Pragmatism* 169; Columb & M Moniruzzaman 'The state of the organ trade: narratives of corruption in Egypt and Bangladesh' (2024) *Trends in Organised Crime* 1.

violated.<sup>2</sup> As elsewhere, in Africa, organ trafficking flourishes in an environment of desperation. This applies in particular to migrants, refugees, internally displaced people, the poor and children. These groups are vulnerable, economically unprotected, and easy prey to criminal networks. Fragile states such as Nigeria, where organised crime and conflict, political or economic collapse, weak rule of law and systems of regulation prevail, are often precipitators of the type of environment that encourages organ trafficking.<sup>3</sup> For instance, African migrants and refugees escaping conflict-ridden regions are often tricked with offers of employment or safe passage, and end up as victims of organ harvesting.<sup>4</sup> When the human body becomes a commodity, victims are deprived of their intrinsic worth. Survivors of violence are often neglected and discriminated against in their communities, further exacerbating their pain.<sup>5</sup> Forced organ harvesting is a violation of bodily integrity as provided for in articles 4 and 5 of the African Charter on Human and People's Rights (African Charter). Furthermore, organ trafficking results in medically hazardous procedures for victims that in some cases leave them with life-threatening complications and long-term health issues. Albertsen's work on the black market in organs is a clearly defined discussion of policy alternatives to the problem. It adequately illustrates the socio-economic desperation of sellers and the moral ambivalence about the buyers' motivation, warning against overly simplistic criminalisation. Some of the strategies proposed by Albertsen, such as deterrence through information campaigns, are overly optimistic, given how desperate the actors involved in this illegal trade are known to be.<sup>6</sup>

There are profound human rights challenges associated with organ trafficking in Africa, in particular in connection with articles 4 and 5 of the African Charter. These are provisions for the right to life (article 4) and the right to dignity and freedom from exploitation (article 5). Organ donation and transplantation are necessary medical interventions that save lives when ethically practised. Conversely, in certain areas of Africa, the abuse of fundamental human rights is prevalent. In states such as Egypt, South Africa, Kenya and Nigeria, reports of organ trafficking are increasing and, driven directly or indirectly by poverty and desperation, such trade raises important

<sup>2</sup> POO Ottuh, OG Idjakpo & AA Uviekovo 'Selling, buying and trafficking of human organs in Third World countries: ethico-religious appraisal' (2023) 14 *Ethics in Health and Environment* 19-30.

<sup>3</sup> ITUC-Africa 'ITUC-Africa calls for urgent action to end organ trafficking and exploitation in MENA' (22 April 2025); T Martial 'Harvesting vulnerability: the challenges of organ trafficking in armed conflict' (2023) 105 *International Review of the Red Cross* 674.

<sup>4</sup> Martial (n 3).

<sup>5</sup> M Calderon and others 'Assessing essential service provision for prevention and management of violence against women in a remote indigenous community in Amantaní, Peru' (2023) 22 *International Journal for Equity in Health* 204.

<sup>6</sup> A Albertsen 'Ending the organ trade: an ethical assessment of regulatory possibilities' (2025) 43 *Monash Bioethics Review* 150.

ethical and legal issues.<sup>7</sup> Tietie observes that many donors are driven less by altruism than poverty, casting doubt over the sanctity of a 'consent' premised on such conditions.<sup>8</sup> This objectification of the human body degrades human dignity and is exploitation that is specifically outlawed under article 5 of the African Charter. The focus on Egypt, South Africa, Kenya and Nigeria is deliberate, as these states are hotspots for the illegal trade in human organs.<sup>9</sup>

Organ trafficking in Egypt is rooted in structural violence, entrenched corruption and the exploitation of society's most marginalised and, in particular, of the poor, migrants and refugees. Columb and Moniruzzaman argue that despite draconian legal prohibitions and criminal penalties imposed in 2010 (and further reinforced in 2017), underground organ trafficking flourishes, buoyed by corrupt officials, men of medicine and brokers.<sup>10</sup> Egypt's Transplantation of Human Organs and Tissues Act (Law 5/2010, amended 2017) prohibits the sale and purchase of organs, with penalties including up to 10 years' imprisonment for intermediaries and medical personnel engaged in commercial transplants. Illegal transplantation facilities can be fined or shut down, and life imprisonment, or the death penalty, will be applied if a donor or recipient dies as a result of the transaction. However, the laws have achieved little. The legal ambiguity and discretionary powers of the medical committees leave room for the manipulation of consent mechanisms in order to 'launder' illegal transplants into the sphere of lawful donation.<sup>11</sup>

In South Africa, there have been a number of international organ trade scandals, including cases of transplant tourism. This was a large scandal, in the early 2000s, when it emerged that hundreds of kidney transplants had taken place in private hospitals, including at St Augustine's Hospital, Durban, with organs obtained from poor Brazilian donors and patients from Israel.<sup>12</sup> Doctors and brokers were charged with creating false documents to avoid regulations defining a donor and recipient as relatives for private transplants.<sup>13</sup> The intermediaries and traffickers were the main financial beneficiaries, while many of the donors received little or none of the compensation promised, and many others were left in ill health and unrelenting financial straits.<sup>14</sup> South Africa's struggle over the organ trade mirrors

<sup>7</sup> S Columb 'Excavating the organ trade: an empirical study of organ trading networks in Cairo, Egypt' (2017) 57 *British Journal of Criminology* 1301; F Ambagtsheer 'Understanding the challenges to investigating and prosecuting organ trafficking: a comparative analysis of two cases' (2025) 28 *Trends in Organised Crime* 51-78.

<sup>8</sup> 'Illegal organ traffickers in Africa prey on world's poor' *Deutsche Welle* 19 September 2024, <https://www.dw.com/en/illegal-organ-traffickers-in-africa-prey-on-worlds-poor/a-70242247> (accessed 29 June 2025).

<sup>9</sup> Taye & others (n 1); Columb & Moniruzzaman (n 1).

<sup>10</sup> Columb & Moniruzzaman (n 1).

<sup>11</sup> As above.

<sup>12</sup> Ambagtsheer (n 7).

<sup>13</sup> As above.

<sup>14</sup> *Netcare Kwa-Zulu (Pty) Ltd v the State* Case 41/1804/2010.

global challenges, that is, a huge shortage of organs, the intractability of illegal and exploitative conduct, and long-running ethical disputes about how best to regulate the trade. However, the existence of organ trafficking and the practice of transplant tourism demonstrate that this legal framework has to be complemented by the corresponding supply means and protective measures, which are context-sensitive.<sup>15</sup> The trade in human organs is corrupt at every level. Medical committees often close their eyes to or directly participate in falsifying documents to legitimise illegal transplants. The brokers themselves pay off law enforcement and medical personnel and state authorities to keep things running smoothly and to keep prosecutors away. It is the complicity of medical personnel that is vital as, without their participation, illegal transplants could not take place. Some of the physicians involved justify their involvement by describing the dearth of other options for donors and recipients, or abide by profit motives.<sup>16</sup>

Also, in Kenya, there has been a recent explosive organ trafficking scandal involving Kenya's Mediheal Group, which has sparked horrifying violations of medical ethics and fundamental rights under articles 4 and 5 of the African Charter, which provide for the right to life and human dignity. The network, which reportedly saw vulnerable people, many of whom were either impoverished Kenyans and foreigners, become organ sellers to wealthy foreign recipients, was unearthed by Kenya's Transnational Organised Crime Unit and international media. Although Mediheal denies wrongdoing and pledges transparency, the scandal is a window into systemic regulatory shortfalls that leave poverty and poor oversight to drive the body-sales marketplace. With members of parliament challenging adherence to the Health and Human Tissue Acts, the *Sweeney* case highlights the pressing need for more robust legal protections, regional collaboration and ethical oversight in Africa's healthcare sector.<sup>17</sup>

Finally, in Nigeria, organ trafficking reflects systemic economic challenges, poor governance and insufficient legal regulation. Poverty and economic distress lead some people, in particular those from marginalised communities, to consider selling their organs as a way to raise enough money to save themselves or their family from poverty, exposing them to undue influence and exploitation with unscrupulous brokers and traffickers.<sup>18</sup> The judicial system is inadequate to prosecute these crimes; the laws that currently exist, such as the National Health Act 2014, are poorly enforced, vague, have weak sanctions, which is further compounded by the problem of corrupt law enforcement and governmental institutions. The factors of logistics and

<sup>15</sup> Taye & others (n 1).

<sup>16</sup> Columb & Moniruzzaman (n 1).

<sup>17</sup> 'Kenya: Kidney probe launched, clinic denies allegations' DW (online) 23 April 2025, <https://www.dw.com/en/kenya-kidney-probe-launched-clinic-denies-allegations/a-72317858> (accessed 29 June 2025).

<sup>18</sup> FO Adeyanju, N Nwogwugwu & EF Adewumi 'Organ trade in Nigeria: a governance challenge amidst socio-economic pressures' (2025) 17 *African Journal of Stability and Development* 183, <https://doi.org/10.53982/ajsd.2025.1701.09-j> (accessed 29 June 2025).

budget hinder the capacity of agencies mandated by law to fight organ trafficking, and the absence of rapid justice reform is one aspect of a general dearth of political will. With this state of affairs, organ trafficking continues to thrive in Nigeria, thanks to disparities in power dynamics that disadvantages the poor, loopholes in regulations that fail to protect vulnerable populations from coercion, deception, and human rights abuses.<sup>19</sup>

This article examines the role of African human rights systems in the response to the problem of organ trafficking in Africa and the need for the protection of dignity, life and bodily integrity of vulnerable people in Africa. It will elaborate on current laws and on the difficulties of enforcing these, including corruption and poverty, that allow criminal networks to operate, frequently with the participation of medical and government personnel. The victims, usually hailing from deprived and excluded communities, are compelled, deceived and subjected to violence, leading to denial of their rights.<sup>20</sup> Drawing on case studies from Egypt, South Africa, Kenya and Nigeria, the article calls for a shift away from a reactive, legal approach to a more proactive approach, in alignment with Saliternik and Agon, who argue that international law must shift from its reactive nature to a proactive one.<sup>21</sup> The proactive international law, according to the authors, represents a conceptual shift from the traditionally reactive nature of international legal frameworks. Rather than formulating norms and institutions mainly in response to past crises, disasters or incidents, proactive international law advocates a forward-looking, anticipatory approach. In practice, this can be achieved through the establishment of early warning systems within regional human rights bodies to detect emerging risks through periodic human rights impact assessments to anticipate vulnerabilities, and the adoption of preventive resolutions or advisory opinions before violations occur. The African Commission on Human and Peoples' Rights (African Commission) and African Court on Human and Peoples' Rights (African Court), for instance, can institutionalise continuous monitoring mechanisms in collaboration with civil society and national human rights institutions to identify early indicators of organ trafficking, issue precautionary measures and compel states to act before exploitation escalates. This anticipatory framework would shift the African human rights system from a posture of reaction to one of prevention, embedding foresight, data-driven responses, and proactive policy guidance at the heart of regional human rights protection. This perspective calls for actors, such as states, institutions, and international organisations to focus on identifying and resolving potential risks and opportunities before they manifest as concrete problems.<sup>22</sup> Therefore, a proactive legal approach by the

19 As above.

20 OM Lalude, OI Idowu & RA Olodude 'A promise fulfilled? African human rights system and West African state mechanisms in the protection of domestic child workers' (2024) 8 *African Human Rights Yearbook* 339-360.

21 M Saliternik & SS Agon 'Proactive international law' (2024) 75 *UC Law Journal* 661-712.

22 As above.

African human rights system would be one that would involve legal reform, the protection of victims, and regional collaboration. Such proactive measures, including social policy interventions and dedicated victim protection mechanisms, are not only preventive tools but also essential to dismantle the commodification of the human body and to restore agency, dignity and self-determination to victims who have been stripped of autonomy by exploitative systems. It will shed light on the contribution of African human rights institutions in clarifying state obligations and engaging prevention. It will demand a disruption to the commodification of people, and will address the root causes of vulnerability, and propose strategies that would ensure the adequate protection of human rights in this regard. This study employs a case study design to examine organ trafficking in selected African countries, enabling an in-depth analysis of real-world contexts and responses. Alongside this, doctrinal research is conducted to critically assess relevant legal frameworks, judicial decisions and policy documents through a thematic approach. Together, these methods provide a comprehensive understanding of both practical challenges and legal gaps in addressing organ trafficking across the region.

## 2 LEGAL AND THEORETICAL FRAMEWORKS

Legal and political frameworks, both at the regional and state levels, exist for the protection of persons from the violation of their bodily integrity and the violation of the right to life in Egypt, South Africa, Kenya and Nigeria. At the regional level, the African Charter provides for the right to human dignity and bodily integrity. For instance, article 4 provides that every human being is inviolable and deserves respect for their life and personal integrity. No one may be arbitrarily denied these fundamental rights.<sup>23</sup> Article 5 provides that every person has the right to have their inherent human dignity respected and to be recognised as a legal individual. All forms of exploitation and degradation, especially slavery, the slave trade, torture and cruel, inhuman or degrading punishment or treatment, are strictly forbidden.<sup>24</sup> Dignity is the foundation of all human rights. Organ trafficking reduces people from individuals with intrinsic worth into mere vessels of spare parts. They are denied their bodily autonomy. There is no question that this practice directly diminishes human dignity. Victims are often deceived or coerced into giving up organs, violating their autonomy and self-worth.<sup>25</sup> Survivors of organ trafficking may face social stigma, further eroding their sense of dignity and belonging.

Article 4 of the African Charter outlines the right to life and the inviolability of the body, both of which are endangered by organ trafficking. Unregulated organ removal procedures often occur in

<sup>23</sup> African Charter on Human and Peoples' Rights (1981) OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 (1982).

<sup>24</sup> As above.

<sup>25</sup> A Zimmerman 'Forced organ harvesting: expanding the dead donor rule' (2023) 9 *Voices in Bioethics* 2-9.

unsafe conditions, leading to severe health complications or the death of victims. The removal of organs without proper medical care or consent constitutes a violation of bodily integrity, as victims are left with lasting physical and psychological trauma. In this way, states have a positive obligation to safeguard people's lives and the integrity of their bodies from such threats, as international crime organisations are run by officials who are also corrupt. Northern African states such as Egypt have endorsed the Declaration of Istanbul (2008, updated 2018) through their national nephrology societies. The World Health Organisation (WHO) Guiding Principles urges member states to prohibit organ sales and develop regulatory frameworks for transplantation, endorsed by the World Health Assembly. These principles guide national legislation but are not binding.<sup>26</sup> Despite this, Egypt still has an organ trafficking problem.<sup>27</sup> The Constitution of the Arab Republic of Egypt provides that the human body is inviolable, and any act of assault, defilement or mutilation is considered a criminal offence punishable by law. The trafficking of organs is strictly prohibited, and no medical or scientific procedure may be conducted without the subject's documented, voluntary consent, in accordance with established medical standards and legal regulations.<sup>28</sup> Furthermore, it provides that the donation of tissues and organs is considered a life-saving gift. Every individual has the right to donate their organs either during their lifetime or after death, provided there is documented consent or a valid will. The state is responsible for creating a regulatory framework to govern organ donation and transplantation in accordance with the law.<sup>29</sup> Egypt's legal framework strictly prohibits the commercial trade of human organs. The Transplantation of Human Organs and Tissues Act (2010, amended 2017) makes it a criminal offence to buy or sell organs or tissues for transplantation. The legal framework is focused on certain mechanisms, which is that no one, whether living or deceased, is ever to receive compensation of any type, either past or present. Furthermore, offenders will attract large fines or terms of imprisonment ranging from several years to life, depending on the circumstances of their crimes.<sup>30</sup> It provides severe penalties for violations, including substantial fines and imprisonment, with possible life imprisonment in cases where illegal transplants result in death. It provides for brokers, medical professionals and facilities involved in illegal organ transactions to face criminal liability and closure of their operations. The Egyptian law also provides oversight mechanisms, where all transplants must be approved by a special committee to ensure compliance with ethical and legal standards, including the

<sup>26</sup> ENACT Analytical Report 'Trafficking of human beings for the purpose of organ removal in North and West Africa' (2021).

<sup>27</sup> Columb (n 7).

<sup>28</sup> Art 60 Constitution of the Arab Republic of Egypt, 2014.

<sup>29</sup> Art 61 Constitution of the Arab Republic of Egypt, 2014.

<sup>30</sup> Transplantation of Human Organs and Tissues Act (2010, amended 2017).

requirement of informed, voluntary consent.<sup>31</sup> However, this has failed to put an end to organ trafficking.

Although Egypt has a relatively comprehensive framework for the prevention of organ trafficking and regulations have been in place since 2010 to allow a legal channel for organ donation,<sup>32</sup> Metwally and others show that Egypt's legislation – including strict verification of death, prohibition of underground transactions and state-funded provisions for transplants – has attained only modest levels of public recognition and acceptance. On the other hand, the law operates within an opt-in model, heavily dependent on public trust and willingness to donate. Despite nearly 80 per cent of surveyed Egyptians expressing a willingness to donate, awareness of critical articles remains uneven, especially among more privileged socio-economic groups. This discrepancy reveals a disturbing gap between law and lived reality, one exacerbated by cultural misconceptions, religious scepticism and low institutional trust, which are factors that reduce legal donation supply and inadvertently sustain black market demand.<sup>33</sup> The Egyptian government claims to have received international recognition for its efforts to combat organ trafficking. However, investigative reports, including a BBC exposé, reveal a far more troubling reality. According to a trafficker interviewed by the BBC, criminal gangs in Egypt coordinate between 20 and 30 illegal kidney transplants each week, primarily targeting vulnerable African migrants who are desperate to reach Europe. Many victims are left without a kidney and receive no compensation for their ordeal.<sup>34</sup>

In South Africa, section 11 of its Constitution provides that every person possesses intrinsic dignity and deserves to have that dignity acknowledged and safeguarded.<sup>35</sup> Section 10 provides that individuals possess the right to life.<sup>36</sup> The Prevention and Combating of Trafficking in Persons Act, 2013 (Act) is South Africa's primary legislative instrument addressing all forms of human trafficking, including organ trafficking. The Act was enacted to fulfil South Africa's obligations under international agreements, notably the United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, and to provide a comprehensive legal response to trafficking, including the trafficking of body parts and organs.<sup>37</sup> The Act explicitly includes 'body part', which is defined to include organs, tissues, blood products and other things as such, and 'removal of body parts' as forms of

<sup>31</sup> As above.

<sup>32</sup> Columb (n 7).

<sup>33</sup> AM Metwally and others 'Level of Egyptians' awareness and acceptance of organ donation legislation: a cross-sectional study' (2025) 5 *Discover Social Science and Health* 49.

<sup>34</sup> 'Egypt's organ traffickers: "I woke up screaming"' BBC News 14 September 2020, <https://www.bbc.com/news/av/world-middle-east-54150076> (accessed 4 July 2025).

<sup>35</sup> The Constitution of the Republic of South Africa, 1996.

<sup>36</sup> As above.

<sup>37</sup> Prevention and Combating of Trafficking in Persons Act 7 of 2013.

exploitation.<sup>38</sup> Section 4 criminalises trafficking in persons for any form of exploitation, including the removal of body parts, regardless of whether the act occurs within or across South African borders. Severe penalties are prescribed, including life imprisonment or fines up to R100 million for trafficking offences.<sup>39</sup> The Act provides for the identification, protection and assistance of victims, including access to health care and compensation. Despite the robust legal framework, several challenges undermine the effective prosecution and prevention of organ trafficking.<sup>40</sup> Organ trafficking often involves clandestine operations; there are transnational networks involved both in form and scale as well as other means of helping it go undetected. Besides that, due to a lack of necessary training and means, law enforcement simply cannot effectively investigate or prosecute cases that involve the trafficking of human organs. This has been a recurrent problem with many law enforcement mechanisms elsewhere in Africa.

Ambagtsheer argues that institutional readiness and the broader environment are crucial determinants of enforcement success.<sup>41</sup> In the case of *The State v Netcare Kwa-Zulu Natal (Pty) Ltd*, where legal proceedings were initiated on the grounds that South African law had been breached in several respects, involving that certain kidney donors were under age at the time of the procedures, donors falsely claimed familial relationships with recipients, and financial compensation was provided to individuals in exchange for their kidney donations.<sup>42</sup> At the time of the *Netcare* case, South Africa had no clear policies, no specialists and no inter-agency cooperation mechanisms to relieve the predicament of organ trafficking.<sup>43</sup> Furthermore, investigations are often impeded by lack of manpower and funding, with law enforcement agencies being forced to pick out a minor part of the whole, and effective prosecution is affected by a slow international response, as the *Netcare* case demonstrated, where there were significant delays and obstacles in international cooperation.<sup>44</sup> While South Africa's Prevention and Combating of Trafficking in Persons Act, 2013, provides a comprehensive legal basis to prosecute organ trafficking, enforcement remains hampered by corruption, poverty and systemic weaknesses. Victims' rights to dignity, life and bodily integrity are routinely violated, and the involvement of medical and government personnel exacerbates the problem.<sup>45</sup>

38 Sec 1 Prevention and Combating of Trafficking in Persons Act 7 of 2013.

39 Prevention and Combating of Trafficking in Persons Act 7 of 2013.

40 Ambagtsheer (n 7).

41 As above.

42 *The State v Netcare Kwa-Zulu Natal (Pty) Ltd* (unreported) Case 41/1804/2010 of 8 November 2010.

43 Ambagtsheer (n 7).

44 As above.

45 As above.

There is some disconnect between law, on one hand, and lived reality against trafficking in organs in both Egypt and South Africa. Along with this, criminal networks operate with the involvement of not only government personnel but also (often) medical professionals.<sup>46</sup> In both contexts, the lived experience of victims stands in stark contrast to official claims of progress, highlighting the urgent need for more effective, victim-centred responses at the regional level. In Eastern Africa, Kenya has an increasing number of narratives on organ trafficking, whereas its Constitution provides that every individual has the right to life<sup>47</sup> and to be free from degrading treatment.<sup>48</sup> While Kenya's Constitution upholds the intrinsic right to life and prohibits cruel punishment without exception, the illicit organ trade continues to deprive its most susceptible citizens of their dignity and autonomy. Systemic flaws, including lax oversight, endemic poverty and uneven enforcement of existing statutes, condone a shadow system that preys on life's most precious commodity.<sup>49</sup> Organ trafficking is often situated within the workings of organised crime, and the Prevention of Organised Crime Act, 2010 (amended 2012) provides in section 3(c) that, among others, organised crime is the collaboration with others in carrying out a serious offence with the intention of securing material or financial gain, or for any other objective.<sup>50</sup>

Organ trafficking in Kenya clearly constitutes organised criminal activities based on the definition of numerous individuals collaborating to commit serious offences for monetary or economic benefit. A network of people, including local recruiters, brokers, medical professionals and international agents, work in conjunction to identify, coerce and transport vulnerable individuals, frequently from impoverished backgrounds, for the unlawful extraction and sale of organs. These networks operate with a high degree of synchronization. Persons, such as rural brokers, recruit donors, city-based agents arrange logistics and connect with clinics, and medical personnel perform the surgeries, sometimes falsifying paper work to disguise the transactions as legal donations. The harvested organs are then sold to recipients, often foreign nationals, for substantial amounts, while the original donors receive only a fraction of the profit and are left without adequate care or compensation. This multi-layered collaboration, motivated by financial gain and involving the commission of serious offences such as human trafficking, document fraud and illegal medical procedures, clearly fits within Kenya's legal definition of organised crime. Unfortunately, despite the legal framework, which should instigate the crackdown on these networks on the disturbing narrative of organ trafficking in Kenya, the crime has persisted, with most victims being vulnerable people of low socio-economic status.

46 As above.

47 Art 26(1) Constitution of Kenya, 2010.

48 Art 25(a) Constitution of Kenya, 2010.

49 DB Olawade and others 'Organ transplantation in Africa: confronting socio-economic, cultural, and infrastructural hurdles' (2025) 73 *Current Research in Translational Medicine* 103516.

50 The Prevention of Organised Crime Act, 2010 (amended 2012).

A recent *Der Spiegel* exposé brought to light an insidious international organ trafficking syndicate linking economically disadvantaged donors in Kenya and elsewhere to recipients in Germany and further afield. This disturbing phenomenon, occasionally termed ‘transplant tourism’, raises profound ethical, legal and public health concerns, and there are complex mechanisms at play, probing the moral dilemmas and broader societal implications. Brokers, clinics and fixers smoothen the passage of both contributing parties and recipient patients across borders for a fee, with buyers typically from richer nations paying up to €200 000 per kidney, while sellers, frequently young Kenyans, Azerbaijanis, Kazakhs or Pakistanis, driven to desperation by penury, receive a pittance, sometimes an amount as meagre as €2 000.<sup>51</sup> Those who sell their organs in Kenya are typically among the most impoverished, driven by desperation and the hope that a promised financial windfall might transform their lives. Unfortunately, many are left with lingering medical complications and receive little to no after care, compounding their vulnerability.<sup>52</sup> Resolving the problem of organ trafficking in Kenya is fraught with significant challenges rooted in both systemic and operational deficiencies.<sup>53</sup> While comprehensive, the statutory framework frequently fails to encapsulate the intricacy of organ trafficking, as definitions and mechanisms concentrate on sexual exploitation and forced labour, leaving organ removal under-addressed. Law enforcement endures corruption, insufficient provisions, and lack of specialised preparation, collectively weakening the identification, scrutinisation and prosecution of organ trafficking incidents. The involvement of sophisticated criminal networks, ever-adapting recruitment methods, including digital platforms, and complicity or ignorance of family and community networks further complicate law enforcement efforts.<sup>54</sup> Moreover, the absence of a centralised data compilation system and inconsistent application of penalties attenuate the deterrent impact of existing regulations. Victims, often from impoverished and marginalised backgrounds, are reluctant to cooperate with authorities owing to fear, stigma and constrained access to protective services, furthermore hampering successful prosecutions. As Katungati illustrates, these realities demonstrate that despite legislative advances, the practical difficulties in battling organ trafficking in Kenya remain profoundly problematic and necessitate urgent, dynamic reforms.<sup>55</sup>

<sup>51</sup> ‘Organ trafficking: how Germans buy new kidneys in Kenya’ *Der Spiegel* 3 July 2024, <https://www.spiegel.de/international/world/organ-trafficking-how-germans-buy-new-kidneys-in-kenya-a-a16089cf-5bb6-40d3-ac38-fac8ef3eff4d> (accessed 5 July 2025).

<sup>52</sup> As above.

<sup>53</sup> TA Adewumi & OO Ogunkorode ‘Reappraising effective regulation in preventing human organs trafficking in Africa: Kenya and Nigeria in perspective’ (2022) 10 *ABUAD Law Journal* 59-79.

<sup>54</sup> As above.

<sup>55</sup> SM Katungati ‘Analysis of the legal framework for combating human trafficking in Kenya’ (2025) 1 *Essays of Faculty of Law, University of Pécs Yearbook* 111-126.

While laws exist to manage and apprehend illegal activities relating to organ transplantation, elsewhere in Africa and, either due to a lack of visible progress or little progress made, in Nigeria, there is a totally different narrative that demands significant measures for the apprehension of the problem. The legal framework against organ trafficking in Nigeria has the Constitution as the major legal mechanism, and the National Health Act 2014 and Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 as the specific legal mechanisms that address organ trafficking in Nigeria. The Nigerian Constitution provides in section 33(1) that '[e]very person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria'.<sup>56</sup> Sections 34(1) and (a) provide that every individual has the right to be treated with dignity and respect, and that no one shall be subjected to torture, or to inhuman or degrading treatment.<sup>57</sup> These constitutional provisions address the concepts of bodily integrity, autonomy and the right to life, which are rights that are violated when victims of organ trafficking have their organs illegally harvested. Furthermore, under section 48(2)(b) of the National Health Act, it is prohibited to extract tissue, blood or any blood product from a living individual for the purpose of trade, sale or any commercial activity in Nigeria.<sup>58</sup> Section 53(1) of the National Health Act prohibits the following actions: 'Any individual who donates tissue, blood, or blood products is not permitted to accept financial compensation or any other form of reward for their donation, except when reimbursed for reasonable expenses directly related to making the donation.' The law further made arrangements under which organ transplantation can be made by stating that it is also unlawful for anyone to engage in the sale or exchange of tissue, blood or blood products, except where reasonable payments are made within a recognised health facility for the lawful acquisition of such materials.<sup>59</sup> For instances where organ trafficking is done by networks known for the trafficking of persons, the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 provides in sections 20(1) to (3) that any person who, by means of force, deception, threats, commitments of obligation, or another structure of coercion, exploits a position of authority predominance, or power emerging from explicit conditions, or takes advantage of a susceptible circumstance, or who, by offering or getting payments or advantages to secure the assent of a person specifically, or through someone controlling that individual, recruits, transports, conveys, harbours or procures another person for the reason for organ harvesting, commits a crime. Upon conviction, such a person faces a minimum imprisonment term of seven years and a charge of no less than 5 million Naira. Furthermore, notwithstanding the above, any individual who procures, offers, helps or participates by any means in the evacuation, sale or deal in human organs is

<sup>56</sup> Constitution of the Federal Republic of Nigeria, 1999.

<sup>57</sup> Sec 34(1) Constitution of the Federal Republic of Nigeria, 1999.

<sup>58</sup> National Health Act, 2014.

<sup>59</sup> As above.

additionally liable of an offence deserving of no less than seven years' confinement and a punishment of not less than 5 million Naira.<sup>60</sup>

This legal alignment with the protection of the right to life and bodily integrity of victims of organ trafficking in Nigeria is often distorted as organ trafficking has become a menace with the proliferation of criminal rings and terrorist organisations in Nigeria. Organ trafficking in Nigeria is not an isolated phenomenon. It represents a transnational organised criminal enterprise.<sup>61</sup> This illegal operation involves a complex network of actors working in concert, including those who forcibly abduct, medical professionals complicit in the process and, in certain cases, security officials neglecting their duties.<sup>62</sup> Many Nigerians have historically been inclined to dismiss stories of organ harvesting as fictional or as only occurring abroad.<sup>63</sup> However, recent evidence and survivor accounts have illuminated the prevalence of this crime, with cases emerging in both urban and rural settings across the country. This grave offence disproportionately preys on Nigeria's most vulnerable populations, especially the impoverished, unemployed, and those from low socio-economic backgrounds with few options and little power over their circumstances.<sup>64</sup> Young people are particularly at risk of being deceived by false promises or compelled by financial desperation to participate in acts they do not fully comprehend.<sup>65</sup> However, the problem of organ trafficking in Nigeria persists despite a comprehensive legal framework for combating it.<sup>66</sup>

Multiple factors contribute to organ trafficking in Nigeria. The gap between the number of patients needing transplants and the availability of legally donated organs drives the black market in Nigeria.<sup>67</sup> This demand is further intensified by failing healthcare systems and limited access to legitimate transplant services. Pervasive poverty and escalating inequality render individuals increasingly prone to exploitation.<sup>68</sup> For many, the sale of an organ emerges as a desperate solution to monetary hardships.<sup>69</sup> While Nigeria has enacted laws such as the National Health Act and the Trafficking in Persons Prohibition, Enforcement and Administration Act, implementation remains insufficient. Corruption and a lack of political will further deteriorate initiatives to combat this crime.<sup>70</sup> Organ trafficking in Nigeria

60 Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.

61 Adewumi & Ogunkorode (n 53).

62 U Igwe 'Why illicit trade in harvested organs in Nigeria may not stop soon' 26 June 2024, <https://www.premiumtimesng.com/opinion/706752-why-illicit-trade-in-harvested-organs-in-nigeria-may-not-stop-soon-by-uche-igwe.html> (accessed 6 July 2025).

63 Adewumi & Ogunkorode (n 53).

64 As above.

65 Igwe (n 62).

66 Adewumi & Ogunkorode (n 53).

67 P Obani & HO Okunrobo 'Critical reflections on combating trafficking in human organs in Nigeria' (2020/2021) *Nigerian Current Law Review* 298-317.

68 Adewumi & Ogunkorode (n 53).

69 As above.

70 As above.

represents a deeply embedded issue, driven by socio-economic inequities, defective governance and a high demand for transplants. Resolving this crisis necessitates a comprehensive approach, which incorporates legal reform that will involve proper interfacing with regional institutions such as the African human rights system, socio-economic advancement, and robust public health strategies.

Both Kenya and Nigeria grapple with formidable challenges in efforts to curb organ trafficking. Challenges are underpinned by systemic weaknesses, socio-economic inequalities and powerful transnational criminal networks. In Nigeria, a robust legal framework sees enforcement severely hampered by corruption and deficient political will. Poverty, inequity and the high demand for transplants exacerbate the crime, leaving vulnerable groups, particularly the poor and jobless, most at risk.<sup>71</sup> Similarly, Kenya wrestles with weak implementation, corruption and inadequate legal frameworks that often fail to fully address organ trafficking's nuances,<sup>72</sup> with an emphasis on sexual exploitation and forced labour. Importantly, both countries face the same structural challenge, which is the transnational nature of organ trafficking networks that exploit porous borders and divergent national priorities. This reality emphasises the urgent need to harmonise legal frameworks and promote joint law enforcement initiatives across African states. Such harmonisation would not only close jurisdictional loopholes, but also facilitate intelligence sharing, coordinated investigations and the prosecution of offenders who operate across borders with impunity. There is the risk that without integrated, cross-border efforts, national anti-trafficking measures in Kenya and Nigeria will remain fragmented and largely ineffective.

### 3 NEED FOR A PROACTIVE VICTIM-CENTRED APPROACH

Murray argues that the African human rights system has operated in a predominantly reactive rather than proactive manner.<sup>73</sup> After many years, this problem persists. A reactive legal approach refers to the practice of engaging legal issues only after they have arisen, rather than anticipating and preventing them in advance. In this framework, legal action is typically triggered by a specific event, such as when a violation occurs, or when a dispute or complaint has been made. This means that measures are taken in response to problems as they occur, rather than proactively developing strategies, policies or safeguards to minimise legal risks from the outset. When organisations employ a reactive legal approach, they often implement changes in the aftermath of scandals,

<sup>71</sup> Obani & Okunrobo (n 67).

<sup>72</sup> United States Department of State '2024 Trafficking in Persons Report: Kenya', <https://www.state.gov/reports/2024-trafficking-in-persons-report/kenya/> (accessed 6 July 2025).

<sup>73</sup> R Murray 'The African Charter on Human and Peoples' Rights 1987-2000: overview of the jurisprudence of the African Commission on Human and Peoples' Rights' (2001) 1 *African Human Rights Law Journal* 1.

accidents or failures, instead of predicting potential risks and establishing preventative regulations.<sup>74</sup> This approach is characterised by a focus on the management of crisis, where resources are allocated to resolve or mitigate legal issues after their materialisation. As a result, the response can be hurried or piecemeal, potentially leading to inconsistent application of rules or missed opportunities to prevent recurrence.<sup>75</sup>

Although a reactive approach may at times be unavoidable, especially in response to unforeseen circumstances or situations requiring immediate intervention, it is generally considered less effective for ensuring long-term stability and managing risks.<sup>76</sup> Proactive legal strategies, by contrast, seek to identify vulnerabilities in advance, strengthen compliance, and engender a culture of prevention to reduce the frequency and impact of legal problems. Nonetheless, reactive legal action remains a critical component of the legal system, providing a means to address grievances and enforce rights when issues do occur. Despite the necessity of reactive legal action, proactive legal action has been shown to be more effective.<sup>77</sup> The African human rights system has always had a problem with its reactive approach. For instance, while the African Commission's fact-finding missions to South Sudan and Burundi undoubtedly shed light on human rights crises, launching investigations only after widespread violence and abuse had taken hold represents a missed opportunity for prevention. In South Sudan, comprehensive reports of mass killings, sexual violence and torture surfaced at a time when the escalating conflict had already exacted a terrible human cost, a sobering reminder of how the African system typically intervenes reactively instead of proactively addressing early warnings of potential violations.<sup>78</sup> A more proactive approach, with monitoring and preventative actions launched earlier in volatile situations, could help to curtail crises and save lives by nipping mounting threats in the bud, before they flower into full-scale atrocities. Moving forward, strengthening early response capabilities seems crucial for an organ such as the African Commission to fulfil its mandate of protecting civilians from the scourges of war and oppression across the continent. The criticism of reactive international law is that although its approach has facilitated pragmatic solutions to specific historical events and helped confer legitimacy, Saliternik and Agon argue that it limits the imagination, scope and effectiveness of

74 J Bouwman & G Berens 'Proactive versus reactive issues management strategies and stakeholder support for a company' (2024) 27 *Corporate Reputation Review* 125.

75 As above.

76 F Ambagtsheer & W Weimar 'The Hague Recommendations: improving non-legislative responses to trafficking in human beings for the purpose of organ removal' (2016) 2 *Transplant Direct* e61.

77 Bouwman & Berens (n 74).

78 African Commission on Human and Peoples' Rights 'Addressing human rights issues in conflict situations: towards a more systematic and effective role for the African Commission on Human and Peoples' Rights' (2019) 6-9, 31-34, <https://achpr.au.int/sites/default/files/files/2021-10/achprconflictstudyeng.pdf> (accessed 24 July 2025).

international law by keeping it backward-looking and short-sighted.<sup>79</sup> This is the why the African human rights system might struggle with emerging human rights problems such as organ trafficking in Africa, since this is a problem that transcends borders in Africa.

To further deconstruct the problem of legal reactivity in the African human rights system: for instance, the African Commission acts as a last resort for victims who have not found justice within their own country's legal system. It is explicitly stated that 'international intervention is always chosen as a last resort when the local justice delivery system has failed to reinstate the victim in his or her rights', highlighting the fact that the Commission's involvement is triggered by failure at the national level, not by proactive monitoring or investigation.<sup>80</sup> Furthermore, the African Commission's role is to investigate allegations after they have been formally brought to its attention through communications. The Commission does not independently seek out violations; its mandate is activated only upon receiving such complaints.<sup>81</sup> Even the Commission's emergency procedures require explicit notification that a victim's life or safety is in imminent danger,<sup>82</sup> further reinforcing a reactive rather than preventive focus.

The African Court embodies a reactive legal approach by primarily engaging with human rights violations after they have occurred, through adjudicating complaints submitted by state parties, the African Commission or authorised individuals and organisations.<sup>83</sup> While the Court plays a crucial role in providing justice and issuing provisional measures to prevent imminent harm, its function is fundamentally responsive, that is, relying on formal complaints and existing cases brought before it rather than proactively preventing abuses.<sup>84</sup> This reactive posture shows the Court's important role in accountability and remedial justice, but also emphasises the need for complementary preventive mechanisms at national and regional levels to effectively address systemic human rights challenges. However, the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) has a proactive approach.

The African Children's Committee strives to take a vibrant role in safeguarding the rights of African children.<sup>85</sup> With a broad scope of

79 Saliternik & Agon (n 21).

80 The African Commission Human and Peoples' Rights: information sheet 2 guidelines for the submission of communications' (Organisation of African Unity, African Commission on Human and Peoples' Rights 2000).

81 As above.

82 As above.

83 GG Tufa 'The African Court on Human and Peoples' Rights: assessing its effectiveness' (2024) 8 *African Human Rights Yearbook* 206-229.

84 African Court on Human and Peoples' Rights International Justice Resource Centre, <http://www.ijrcenter.org/rights-body-one-pagers/> (accessed 24 July, 2025).

85 MK Ande & BD Mezmur 'Progress, gaps and next steps: mapping ACERWC'S work on the rights of children with disabilities (2012-2023)' (2023) 11 *African Disability Rights Yearbook* 169-182.

duties and initiatives meant to promote children's well-being on the continent, the Committee displays foresight in its work. Formulated according to the African Charter on the Rights and Welfare of the Child (African Children's Charter), the African Children's Committee employs varied initiatives to attain its objectives.<sup>86</sup> Rather than acting solely when problems emerge, the Children's Committee seeks pathways to constructively shape events from the outset. The institution does this through the adoption of a proactive, preventive and participatory approach to child rights protection across the continent.<sup>87</sup> Unlike institutions that respond primarily after violations occur, the African Children's Committee engages in early intervention, norm development and continuous monitoring to anticipate and resolve risks to children before these escalate into serious abuses.<sup>88</sup>

The essence of proactive engagement is that organ trafficking often involves situations of immediate danger, where victims face the risk of abduction, forced organ removal or death. In such cases, the African Commission or African Court could issue urgent directives requiring states to intervene, through ending ongoing trafficking operations, safeguarding potential victims, or enforcing stricter border surveillance, within the time pending a full hearing of the case. These measures thus exemplify a proactive, rights-based approach, enabling African human rights institutions to act swiftly in preventing harm, reinforcing their commitment to protect human dignity, life and bodily integrity before irreversible damage occurs.

Emergent issues such as organ trafficking in Africa present a substantial risk to human rights in the region and could assume dimensions that could threaten progress made in the area of human rights protection.<sup>89</sup> This is because of the complex nature of violations, which often are transnational.<sup>90</sup> Emergent human rights issues such as organ trafficking in Africa demands a victim-centred proactive approach between the African Commission and the African Court. For instance, the African human rights system can issue provisional or interim measures aimed at preventing imminent or irreparable harm, particularly in situations of extreme gravity and urgency. These can be invoked even before a case is fully litigated, serving as immediate safeguards to protect at-risk individuals or groups across borders.

Therefore, to effectively combat transnational organ trafficking in Africa, the African Commission and African Court can utilise their power to issue provisional or interim measures as preventive tools. In situations where credible reports or substantial evidence indicate the risk of imminent or irreparable harm to potential victims, such as the trafficking of organs across national borders, these bodies can promptly

<sup>86</sup> African Committee of Experts on the Rights and Welfare of the Child General Comment on article 6 of the African Charter on the Rights and Welfare of the Child: right to birth registration, name and nationality (2014).

<sup>87</sup> Ande & Mezmur (n 85).

<sup>88</sup> As above.

<sup>89</sup> Taye & others (n 1).

<sup>90</sup> Adewumi & Ogunkorode (n 53).

direct implicated states to take urgent protective actions. Such measures, which may include working with the affected states in halting specific transfers, facilitating the safe relocation of at-risk individuals, or mandating border monitoring and cooperation with law enforcement, can be activated prior to the conclusion of full proceedings. Through the invocation of these safeguards under their mandates of extreme gravity and urgency, the African human rights system can provide immediate legal protection to vulnerable groups and act as a regional firewall, stopping ongoing or impending violations before irreversible damage occurs, even when full litigation or fact-finding has not yet taken place. This proactive, rights-based approach exemplifies how Africa's continental institutions can address complex, cross-border human rights threats rapidly and with collective authority. While the African human rights system has historically functioned in a largely remedial capacity, responding to violations after they occur, in principle, it is both remedial and preventive. Its normative and institutional frameworks already contain preventive mechanisms, such as provisional measures, early warning procedures and advisory opinions. The challenge, therefore, is not the absence of preventive capacity, but its under-utilisation and the need for a stronger integration of these functions in practice.

#### 4 ROLE OF AFRICAN HUMAN RIGHTS INSTITUTIONS

Addressing the spread of organ trafficking requires significant work that engages the structural and systemic injustices of poverty, inequality and underdeveloped healthcare systems. Targeting the vulnerable populations spurred by poverty and inequality, organ trafficking becomes a crime that also engages with social, economic and environmental injustices. Given the African Charter's unique acknowledgment of the right to development,<sup>91</sup> African institutions have a nuanced normative framework to address the epidemic of organ trafficking. As the African Commission and African Court continue to exercise norm-setting leadership, these institutions should, in future advisory opinions or adjudications, invoke the collective rights doctrines to hold states accountable under article 22's right to development for actions or inactions that qualify as exploitation, trafficking or breach of bodily integrity. These institutions have the scope to define the collective and the individual rights as contained in the Charter in advisory opinions to member states of the AU, or in relation to contentious cases of victims of trafficked organs. This would clarify the state's obligations regarding the proactive addressing of root causes, while also fully operationalising the Charter's framework of indivisible rights. This would ensure that the socio-economic and

<sup>91</sup> African Charter on Human and Peoples' Rights (1981) Organisation of African Unity (OAU), adopted 27 June 1981, entered into force 21 October 1986, [https://au.int/sites/default/files/treaties/36390-treaty-0011\\_-\\_african\\_charter\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf) (accessed 25 October 2025) art 22.

psychosocial development of the individual and the community is harnessed to stave off the commodification of the human body and the violations that result from it.

It is important to recognise that the contribution of African human rights institutions extends beyond the creation of new legal frameworks across the continent. These institutions have also engaged with, and influenced, global legal and normative frameworks.<sup>92</sup> In particular, African human rights provisions on collective and peoples' rights have informed and interacted with international efforts to address trafficking and exploitation, helping to shape a more integrated and rights-based approach that considers both individual and structural dimensions of these issues.<sup>93</sup> Nevertheless, the African human rights system continues to face significant challenges in translating its normative leadership into concrete and effective action against organ trafficking. These challenges stem largely from weak enforcement mechanisms, political and socio-economic resistance, and limited state and regional institutional capacity.<sup>94</sup> For example, the lack of specific international African human rights standards that deal with the complexity, and the constant evolution of, the well-embedded organ trafficking system on the continent diminishes the potential range of strategic African human rights responses. While the African Charter and the rest of the implementing human rights provisions work to anchor regional normative leadership, the limited human rights perspectives on the imminently transnational and underground workings of organ trafficking, and the continued exploitation of people vulnerable to trafficking, call for a more radical shift to a stance. The complexity of the effort needed to dismantle organ trafficking requires new approaches, constant monitoring and collaborative regional and global partnerships to protect and assist the victims of organ trafficking. To gain the needed momentum, the African human rights system should implement systemic legal reforms. Doing so requires, first, expanding the current human rights legal framework to apply to the realities of organ trafficking.<sup>95</sup> This would entail developing dedicated human rights legal instruments focused on organ transplantation, establishing clear state obligations to protect citizens across borders and to regulate both state and non-state trafficking networks, including technologically advanced trafficking systems. Such harmonisation would help close definitional, punitive and procedural gaps among member states, eliminate opportunities for cross-border exploitation, and strengthen the region's role as a leader in normative innovation.

This would involve drafting specific human rights legal instruments targeted at organ transplantation and which would impose certain obligations on states for the protection of citizens across borders, the trafficking state and non-state actor networks, and the high-end

<sup>92</sup> OC Okafor & GEK Dzah 'The African human rights system as "norm leader": three case studies' (2021) 21 *African Human Rights Law Journal* 669-698.

<sup>93</sup> As above.

<sup>94</sup> As above.

<sup>95</sup> Adewumi & Ogunkorode (n 53).

sophistication of trafficking apparatus. Such legal harmonisation would close definitional, punitive and procedural gaps across the member states and effectively geopolitical exploit loopholes. This would further the region's embrace of norm leadership. In a truly dynamic response, strong, victim-centred protective measures must be tailored to reflect the realities of those most at risk. The African Charter's emphasis on the collective and the peoples' rights provides an opportunity for addressing the roots of organ trafficking, such as extreme poverty and inequality.<sup>96</sup> However, immediate protective and restorative measures to shield and assist actual and potential victims of organ trafficking are necessary. These measures could encompass witness protection and security, confidential reporting and testimony, as well as psychological and legal support, all complemented through culturally grounded and community-based reintegration programmes. Africa has the potential to lead by example in demonstrating the indivisibility and interdependence of all human rights, which potential is rooted in the African Charter's principles of dignity, integrity and social justice. Through emphasis on collective and peoples' rights,<sup>97</sup> the African Charter provides a powerful framework for tackling the structural causes of organ trafficking, such as extreme poverty and inequality, based on initiatives such as safe housing, legal advocacy, and comprehensive social and economic reintegration and protection strategies. Finally, addressing organ trafficking on a regional scale will require fundamental adjustments to an inter-state cooperative framework. The inter-state illicit trade of human organs may be aggravated by porous borders, conflicting national interests, and inefficient enforcement around the policing of Egypt, South Africa, Kenya and Nigeria. Hence, it is of utmost priority for regional arrangements to be proactive and united in their response to the human organs trade. The dismantling of networks for transnational crimes will require inter-state collaborative frameworks for information exchanges, joint borderless criminal investigations, and extrajurisdictional criminal charges and deportation. The widespread exploitation involved in the illicit trade of human tissues and organs can be curtailed through the establishment of transnational, binding agreements on exploitation, supported by strong oversight mechanisms and compliance monitoring systems that specifically track and regulate the movement of human tissues and organs. With grounds for legitimacy, the African Commission, the African Court and the African Children's Committee are encouraged to spearhead regional interventions for the building of investigative frameworks and grassroots sensitisation campaigns on the risk of organ harvesters. With such cooperative efforts, accountability can be attained, justice delivered, and the illicit trade in organs be dismantled from its roots. Furthermore, the African human rights system, particularly as established by the African Charter and implemented by the African Commission, the African Court and the African Children's Committee, encounters unique challenges in addressing serious human rights

96 Arts 19-24 African Charter.

97 As above.

violations such as trafficking in organs. Historically, Africa has been seen as a passive player in the creation and development of human rights concepts internationally. However, in 'norm life cycles', regional entities are described as potential 'norm entrepreneurs'<sup>98</sup> and, as such, can be catalysts for extraordinary change. In this regard, Africa's human rights system has been instrumental in the articulation of vital concepts in human rights, their legal codification and their globalisation, such as the right to development and environmental rights,<sup>99</sup> which are instrumental in addressing organ trafficking.

The African human rights system consists of three constituent parts that function interconnectively, namely, the African Commission, the African Court and the African Children's Committee.<sup>100</sup> Each of these parts can offer tailored responses to the problem of organ trafficking. The African Commission, as a quasi-judicial body, can receive and investigate both inter-state and individual communications, conduct fact-finding missions under articles 45 and 46 of the African Charter, and issue urgent appeals and provisional measures where there are situations of grave or irreparable harm. The African Court is a judicial body and can issue binding decisions, including provisional measures to prevent ongoing violations. This power is provided for in article 27(2) of the African Court Protocol, which states that '[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary',<sup>101</sup> thus enforcing the states' positive obligations under articles 4 and 5.

Although the focus of the African Children's Committee is on children, it offers a vital preventive and monitoring mechanism against the trafficking and exploitation of children for organ harvesting. The African system can thus deviate from normative leadership to genuine institutional involvement in addressing the human rights issue of trafficking in organs.

Each mechanism within the African human rights system can operationalise its mandate to address organ trafficking in practical terms. The African Commission could adopt a thematic resolution declaring organ trafficking a gross human rights violation and conduct fact-finding missions in affected states such as Egypt, Kenya and Nigeria to assess compliance with African Charter obligations. The African Commission can also integrate anti-trafficking questions into its periodic review processes and issue General Comments clarifying the preventive duties of states under articles 4 and 5. The African Court

98 Okafor & Dzah (n 92).

99 As above.

100 African Committee of Experts on the Rights and Welfare of the Child 'Study on implementation of decisions of the African Committee of Experts on the Rights and Welfare of the Child' April 2025, <https://www.acerwc.africa/sites/default/files/2025-04/Study%20on%20Implementation%20of%20Decisions.pdf> (accessed 25 October 2025).

101 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol).

can interpret the African Charter to affirm that states have a positive obligation not only to punish organ trafficking, but also to establish preventive systems of regulation and victim rehabilitation. The African Court's power to issue provisional measures can also serve as an emergency protection mechanism for victims or witnesses at risk of harm. Similarly, the African Children's Committee can investigate reports of organ harvesting involving children in conflict zones or internally displaced persons' camps and recommend regional action plans in partnership with the AU and affected states.

The mechanisms of the African human rights system can draw upon existing jurisprudence and institutional practice to strengthen their engagement with organ trafficking. For instance, in *SERAC*<sup>102</sup> the African Commission recognised that state obligations extend beyond mere prohibition to encompass protection and prevention against abuses by private actors. This principle can be expanded to the context of organ trafficking to require states to regulate and monitor medical and transplant systems proactively. Likewise, the African Commission's fact-finding missions, such as those to South Sudan and Burundi, demonstrate the feasibility of early monitoring of human rights crises before they escalate. The African Court's use of provisional measures, as in *African Commission v Libya*, further illustrates how these institutions can act swiftly to prevent irreparable harm. Drawing lessons from such precedents, the African human rights system can legitimise its interventions and establish a preventive framework against organ trafficking rooted in existing legal authority.

A coordinated continental response could involve cooperation from the African Commission and African Court with the AU organs such as the African Union Mechanism for Police Cooperation (AFRIPOL) and the African Union Commission on International Law (AUCIL). Such bodies could assist in harmonising domestic legislation on organ trafficking, facilitating criminal investigations, and establishing a regional data collaboration system concerning cross-border trafficking. The African Commission could suggest that states consider the integration of anti-trafficking goals from their reports under the African Peer Review Mechanism (APRM), and the African Court could draft an advisory opinion calling on the AU to formulate a binding protocol on organ trafficking prevention. Such cooperation would harmonise the AU's human rights components with the system of enforcement and public order, providing a coherent approach to the problem of transnational trafficking of organs.

The African human rights system can include the organ trafficking response within the framework of the right to development and the collective rights embedded in the African Charter. It could be argued that the integration of human dignity and bodily integrity with rights to socio-economic justice frames organ trafficking as not only a criminal offence, but a violation of the structural rights of individuals and communities. The African Commission and African Court can include

<sup>102</sup> *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001).

the duty of responding to economic and social inequalities that make people vulnerable to exploitation in states' obligations, in accordance with article 22 on the right to development, and the social justice principles of the African Charter. This framework encourages a shift from individual protection to collective empowerment, illustrating the developmental and more integrated response the African human rights system could adopt towards the continent's crisis of trafficking in organs.

## 5 CLARIFICATION OF STATE DUTIES AND INTERVENTIONS

The African Commission and the African Court have the potential to deepen the understanding of state obligations under the African Charter, particularly in relation to the issue of organ trafficking. These entities should go beyond the view that a state obligation is satisfied by the mere passing of legislation or the prosecution of offenders. Under the African Charter, state obligations involve negative and positive duties. A state must respect, not violate, protect, in the sense of preventing, third parties from abusing, and fulfil, which specifically is to take action so that rights can be claimed. In the case of organ trafficking, this imposes obligations that require states to actively seek to prevent trafficking and exploitative networks, aid affected persons by ensuring access to justice, and provide rehabilitation and compensation to trafficking survivors. To fulfil the duty to respect, states must ensure that they do not engage in, or allow, acts or omissions that directly or indirectly lead to organ trafficking, such as turning a blind eye to the corruption of health officials or oversight of medical establishments. To fulfil the duty to protect, states must control and supervise private hospitals, medical trafficking syndicates and individuals whose actions may result in organ trafficking. This includes the establishment of independent oversight mechanisms, operational accountability of ethics review committees, transplant registries, and the protection of whistle-blowing mechanisms. The duty to fulfil, and the socio-economic conditions that organ traffickers exploit, require states to actively engage in, for example, public education, social policy and international collaboration, as well as the socio-economic conditions that organ traffickers exploit. Collectively, these strands of obligations provide a clear and coherent state duty to prevent, as opposed to a duty to merely respond to, the trafficking of organs and to punish it.

As for the African human rights system, the African Commission and the African Court apply the interpretative and adjudicative powers conferred upon them and apply them to these principles. The African Commission may determine, with the aid of its communications, resolutions and reporting on states, that the breach of the right to life, dignity or bodily integrity (articles 4 and 5) of the African Charter occurs when states fail to protect persons from organ trafficking. For example, the African Commission can find ignorance of the positive obligations of the state to protect documents from being silenced or to

regulate hospitals that remove organs as a breach, when states protect victims from retribution. Duties can also be enacted from the African Court through binding judgments and provisional measures. The Court can issue orders that require states to regulate organ transplants, rehabilitate victims, and establish victim and state cooperation on trans-border organ trafficking to convert normative commitments into substantive obligations. The situations in Egypt, South Africa, Kenya and Nigeria indicate that the presence of laws does not always equate to their adequate enforcement. The ongoing existence of organ trafficking indicates that punitive or reactive approaches cannot, on their own, fulfil the protective obligations set by the African Charter. The African human rights system, therefore, functions as the interpretive and enforcement mechanism under which states may be held accountable for their breach of the duty to anticipate, prevent and comprehensively respond to transnational exploitation. Through the African Charter's framework of indivisible rights, the African Commission, the African Court and the African Children's Committee can address organ trafficking and approach it as a serious violation of human rights, requiring a response that is social, economic and institutional in nature, and that is unified in approach. The layered nature of these duties, to respect, protect and fulfil, is what allows the African human rights system to offer a coherent normative perspective that could compel states to progress from legal symbolism to tangible protective measures. This clarifies that the response to organ trafficking must be integrated with the broader agenda of human rights in the region, which is to protect the dignity, life, and bodily integrity of individuals.

## 6 CONCLUSION

Dealing with organ trafficking in Africa, especially in Egypt, South Africa, Kenya and Nigeria, is an imperative task that must be conducted jointly, and in partnership with the African human rights system, so as to meet the regional's legal and ethical obligations to human dignity, life and personal integrity. Despite the existence of national laws and a credible international human rights framework, systemic issues – such as poverty and weak enforcement – compounded by corruption, legislative gaps and shortcomings at the regional level, mean that a purely reactive approach allows exploitation to persist. The people exploited are almost always impoverished. The African Commission and the African Court must decisively utilise their jurisdiction to clarify and enforce state obligations under the African Charter, extending beyond a reactive approach that prioritises mere criminalisation and prosecution of organ trafficking to prompt the implementation of comprehensive preventive social policies, targeted communication campaigns, and effective reporting mechanisms for vulnerable populations. Through the emphasis of the inseparability of human dignity, life and bodily integrity, the African human rights system can fundamentally challenge the commodification of human bodies, engage the socio-economic and structural factors that fuel vulnerability, and restore agency to those most imperilled by exploitation. This article asserts that only through a bold, rights-centred approach from Africa's

regional human rights institutions can the persistent cycle of organ trafficking be disrupted, ensuring that the continent's legal and ethical commitments to human dignity are not only recognised, but realised in practice.