



# KENYA RENAL ASSOCIATION

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## **PUBLIC EDUCATION STATEMENT ON ETHICAL KIDNEY TRANSPLANTATION**

### **Introduction**

Human health is a key goal of the United Nations Sustainable Development Goals, with the third goal focusing on ensuring healthy lives and in promoting wellbeing for all at all ages. The Constitution of Kenya in Article 43(1)(a) states that every person has the right to the highest attainable standard of health. Healthy kidneys are essential to overall healthy wellbeing. The Kenya Renal Association and the Kenya Association of Urological Surgeons are umbrella bodies for kidney physicians and kidney surgeons, respectively. As such, we have been at the forefront of performing numerous ethical and successful kidney transplants in Kenya.

### **The current events**

We are therefore saddened by the increasing reports of unethical kidney transplants in Kenya. At the outset, we would like to clarify that these unethical transplants have been performed by a transplant team comprising foreigners of Indian citizenship and have been undertaken at a single centre in Eldoret. In a previous joint statement in May 2024, we had categorically called for the suspension of the license of Mediheal Hospital, Eldoret, and that investigation and action be taken against the perpetrators of this stain on our country at large and our profession in particular. Furthermore, our members participated in the fact-finding task force set up by the Ministry of Health to investigate this issue. Unfortunately, the official report has not been produced and the unofficial report currently circulating has recommendations which our members felt fell far short of the evidence obtained.

### **The problem**

A key question is what is wrong with unethical kidney transplants. Transplantation involves transferring an organ (or cells) from a person (called a donor) to another person (the recipient, who is the patient). When this donor is a living human being, this donor is usually healthy. Therefore, the healthy donor will suffer some harm, in terms of the surgical procedure as well as the loss of an organ, in order to help another human being who needs it. Bearing this in mind, it becomes paramount

that both the physical and psychological health of the donor is protected as much as possible. As a result, transplantation involves the highest level of ethics, balancing the right of the donor to determine their choice to donate an organ (autonomy) versus the benefit that this donation has (improved physical health for the recipient and psychological fulfilment for the donor).

In addition, as minimal harm as possible should be incurred to both parties (malfeasance) and there has to be a fair determination and distribution of the transplant service (justice), since organs for transplant are very scarce. To ensure ethical transplantation occurs, individual hospitals that perform transplantation set up ethical bodies (often independent from the transplant team) to oversee and approve an ethical transplantation process. Transplantation becomes unethical when any of these ingredients are lacking. These exposes the whole system to abuse and creates victims, usually the donor, but often also the recipient and even the transplant team.

### **Types of unethical transplantation**

Unethical transplantation takes many forms. The simplest is where a donor and a recipient agree on a compensation to be given to the donor as a result of the act of donation. Current international practices recognize the need to compensate an organ donor for the expenses during and after the transplant (including investigations, medication, transportation, and loss of income). Any compensation beyond this (whether monetary or in kind) is unethical and this kind is called organ commercialization. At its extreme, a price is set for the organ and paid for directly by the recipient. This is what is prohibited by law in the Health Act of 2017 and is therefore a criminal offense, attracting a prison sentence, a fine, or both.

Another type of unethical transplantation is where individuals travel from a country where it is difficult to conduct unethical transplantation to one whose jurisdiction is loose enough to allow for unethical transplantation. If this involves transporting donors, then it is called organ trafficking. It takes the same form and has often the same structure as human trafficking or sex trafficking, and therefore should be treated with the same seriousness. If this traveling is of the organ recipients, with or without their donors, then this is termed transplant tourism. All three forms are defined and prohibited by a document produced by international body of transplant specialists, called The Declaration of Istanbul on Organ Trafficking and Transplant Tourism. In addition, there is an active push to legalize these definitions by requesting the World Health Organization through the United Nations to compel its member states to adopt them in their legislation.

### **Consequences of unethical transplantation**

Unethical transplantation is therefore not just a matter of willing buyer and willing seller. As mentioned before, victims are created by an unethical transplantation

process. The first victim is the donor. Often being a young man, he is poorly evaluated medically to confirm his suitability as a kidney donor. The surgical procedure may be done hurriedly or secretly, and may therefore be substandard. The post-donation follow-up is inadequate at best and absent at worst. The sums paid for donation are often paltry, whether in relation to the donor's expectations, or to the amount of money paid by the recipient, or to the value of life. The psychological consequences of such donation are well documented in different studies, and are dominated by feelings of depression.

Finally, contrary to what most donors assume, their financial situation and quality of life is not changed by this compensation and often deteriorates. The second victim is the recipient. While he or she may seem like a perpetrator, these patients are simply seeking to become healthier, and any other sick human being will be willing to pay whatever is affordable to attain good health again. Thus, the organ recipients also face the risks of substandard pre-transplant evaluation, surgical procedure, and post-transplant care. Several studies have documented that such patients have a higher chance of their organs eventually failing. The healthcare system is a silent third victim of this unethical practice. Since secrecy is a key ingredient of unethical transplants, registering and auditing such procedures becomes impossible.

Organ commercialization means it is the wealthier segment of patients who will have access to transplantation, going against the principal of equity. The public lose trust of the whole process. This is especially detrimental to setting up a deceased organ transplant program, in which organs are donated by a person who has suffered brain death (usually in an intensive care unit) but whose heart is still beating. This deceased organ program is one of the answers to the great shortage of organs that causes a high demand for transplant organs, which in turn creates the environment for unethical transplants. With its occurrence around the emotional strain of death, a deceased organ transplant program requires the utmost level of trust, transparency and fairness. Unethical transplantation practices will definitely erode our ability as a country to commence such a program.

## **The solution**

How can we ensure ethical transplantations in our country? Documentation, transparency and professionalism is key. While legislation provides an important anchor, this alone will not suffice. The professional bodies should be willing to self-regulate to ensure the highest levels of professional ethical standards are maintained. Wayward members should be called out and compelled to adhere to regulations, failure of which they should be ostracized. Transplantation is done as a team effort and therefore this should be possible to implement. We should work closely with the Ministry of Health to affect the provisions of the Health Act that require the Cabinet Secretary to enact regulations concerning transplantation. We intend to create a national transplantation committee to

adjudicate on ethically complex decisions on transplantation, including altruistic non-related kidney transplantation, paired kidney exchanges, and eventually deceased-donor transplantation. In addition, setting up a registry of all transplant activities in the country will enable a transparent audit process that enables identification of gaps and errors in care. Ultimately transplantation involves donors and recipients who are members of the public. We intend to work closely with public bodies as well as patient groups to enable transplantation to be a professional and ethical service that is available and accessible to all Kenyans at an affordable cost.

## **Conclusion**

The current exposition of unethical transplant practices in Kenya, while distressing, has a silver lining. It offers us an opportunity to evaluate and recalibrate what the life-saving practice of transplantation means to patients individual and to the Kenyan healthcare system in general. Ultimately if we handle it right, we will be one step closer to achieving good kidney health for all and in realizing the dreams of the framers of our Constitution.



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