

Submission of the NIHRC to the Human Organs Inquiry August 2001

1 Introduction

The NIHRC welcomes the opportunity to contribute to the Human Organs Inquiry. Our submission is brief as there are few international human rights standards touching upon the area of the retention of human organs and tissue. The work of the international community has focused rather on the development of standards governing organ transplantation and safeguards in research and experimentation. Given the obvious parallels around issues such as consent we have brought some of these standards to your attention where the language appears to be helpful.

In our view, this is to a large extent an area of medical ethics and good practice rather than one of fundamental human rights.

2 Human Rights Standards

2.1 (a) General Human Rights Act (ECHR)

It is possible that rights to property may arise under Article 1 of Protocol 1 of the ECHR and similarly religious rights under Article 9 of the ECHR.

2.1 (b) Safeguards in Research/Experimentation

We were particularly struck by the language found in the preamble to the Council of Europe Convention on Human Rights and Biomedicine (1996) (copy attached) which appears to provide a useful guiding principle. This refers to the 'need to respect the human being both as an individual and as a member of the human species and recognising the importance of ensuring the dignity of the human being'.

2.2 Soft Law Organ Transplantation

Attached is a copy of the Council of Europe document of 1978 on Removal, Grafting and Transplantation of Human Substances.

Chapter III deals with removals, graftings and transplantations of substances removed from deceased persons. Article 10 deals with the issue of consent/objection to removal:

Article 10

- 1 No removal must take place when there is an open or presumed objection on the part of the deceased, in particular, taking into account his religious and philosophical convictions.
- 2 In the absence of the explicit or implicit wish of the deceased the removal may be effected. However, a state may decide that the removal must not be effected if, after such reasonable inquiry as may be practicable has been made into the views of the family of the deceased and in the case of a surviving legally incapacitated person those of his legal representative, an objection is apparent; when the deceased was a legally incapacitated person the consent of his legal representative may also be required.

Enclosures:

Removal, Grafting & Transplantation of Human Substances (Council of Europe 1978)
Council of Europe Convention on Human Rights and Biomedicine (1996)