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Legislation

No. 11

**Law of Human Organ Transplantation Operations
and Preventing Their Trafficking**

No. (11) of 2016

قانون عمليات زرع الأعضاء البشرية ومنع الإتجار بها

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Laws

In The Name Of People

Presidency of Republic

RESOLUTION NO. (11)

Based on what had been approved by the parliament, in accordance with the provisions of Item (First) of Article (61) and Item (Third) of Article (73) of the Constitution, the President of Republic decided on April 24, 2016 issuing the following:

NO (11) OF 2016

**LAW OF HUMAN ORGAN
TRANSPLANTATION OPERATIONS
AND PREVENTING THEIR
TRAFFICKING**



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SECTION ONE

DEFINITIONS AND OBJECTIVES

ARTICLE 1

For the purposes of this law, the following terms shall have the definition indicated next to them:

First: Donation: The process of transferring or transplanting a human organ or tissue from a living donor with his/ her consent or a dead donor with the consent of his/ her family to the recipient in accordance with Sharia (Islamic jurisprudence Provisions. Translator) criteria.

Second: Donor: A living person who gives up one of his/ her organs to another person without return.

Third: Donation Recipient: The person who is in urgent need of a human organ or tissue to be transplanted into his/ her body.

Fourth: Organ transplantation: The surgical therapeutic use of human organs, which involves a surgical operation through which the recipient receives a human organ or tissue from the donor, whether alive or dead.

Fifth: Human organ: Every part of the body of a living or dead human.

Sixth: Human tissue: A part of any human organ removed from a living or dead person.



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Seventh: Excision: The process of removing a human organ or tissue from the body of a living or dead person.

Eighth: Death: The complete loss of life with certainty in accordance with the medical standards.

Ninth: Consent: The clear expression of a person's will to give up his/ her organs or tissues, provided that the conditions stipulated by law are met, and on condition that it is not tainted by any of the defects of the will.

Tenth: Full qualified person: Anyone who has completed eighteen years of age and in full right mind.

Eleventh: Will: Disposal of one or more body parts as a donation, in addition to what is required after death, which requires putting in possession without return.

Twelfth: Transfer: Taking an organ or part of an organ from the body of a living or dead person and transferring it to the body of another living person for therapeutic use.

Thirteenth: The testator: The person who during his/ her life recommends, in accordance with the law, the donation of one or more of his/ her organs after his/ her death.

ARTICLE 2

This law aims to regulate the process of transferring and transplanting human organs to achieve a preponderant therapeutic interest for patients, obtaining human organs through donation and preventing their trafficking.



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SECTION TWO COMMITTEES FOR REGULATING HUMAN ORGAN TRANSPLANTATION

ARTICLE 3

First: A committee shall be formed in the Ministry of Health by decision of the Minister, called (the Supreme Committee for Regulating Human Organ Transplantation), headed by the Technical Undersecretary of the Ministry of Health and membership of:

- a. Director General of the Technical Affairs Department at the Ministry of Health
- b. Director General of the Administrative, Financial and Legal Department at the Ministry of Health.
- c. Directors of Government Centres for Kidney Transplantation in Baghdad.
- d. Director of the Digestive System and Liver Centre.
- e. A representative of the Ministry of Health in the Kurdistan Region, appointed by the Region's Minister of Public Health.
- f. Director of the Bone Marrow Transplant Centre.
- g. A representative of the advisory committee for eye diseases.



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Second: The committee shall undertake the following tasks:

- a. Preparing plans to develop and expand human organ transplantation operations.
- b. Organizing human organ and tissue transplantation operations.
- c. Supervision and control of hospitals and medical centres licensed to perform organ transplant operations.
- d. Forming specialized medical committees of (3) three or more doctors, including a doctor specializing in the nervous system to prove the case of brain death in hospitals and medical centres licensed to perform organ transplant operations.



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SECTION THREE TRANSPLANTING ORGANS FROM LIVING PEOPLE

ARTICLE 4

Every person with full eligibility shall have the right to donate a human organ or tissue from his/ her body parts for transplantation into the body of another person.

ARTICLE 5

First: It shall not be permissible to transfer a human organ or tissue from the body of another living person except for necessity required to preserve the life of the recipient or treat him/ her for a serious disease, and provided that the transfer does not result in a threat to the life of the donor.

Second: It shall not be permissible to remove any human organ or tissue from the body of a living person, even with his/ her consent, if this leads to his/ her death, serious harm to him/ her, or disruption of any of his/ her senses or any of his/ her body's functions.

Third: It shall not be permissible to transfer human organs or tissues from a living human body to another that would lead to mixing of lineages.



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Fourth: It shall be prohibited to remove, transfer, or transplant human organs or tissues except for therapeutic or scientific purposes.

Fifth: It shall not be permissible to remove a human organ or tissue except after the prior approval of the donor. The approval shall be in writing in the presence of a first-degree relative.

Sixth: It is not permissible to transfer organs, part thereof or tissues from without or limited eligibility persons, and the consent of the person from whom the transfer is made or the approval of his/ her legal representative shall not be taken into consideration.

Seventh: It shall be prohibited to remove the eye from a living person for the purpose of using it for corneal transplantation.

ARTICLE 6

No member of the committees stipulated in Paragraph (d) of Item (Second) of Article (3) of this law may participate as a member of the medical team licensed to perform the operation.

ARTICLE 7

The donor shall have the right to withdraw his/ her donation at any time before the removal operation is performed, without a restriction or a condition.

ARTICLE 8

Donating and making the will for a human organ or tissue shall be free of charge.



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ARTICLE 9

It shall be prohibited to sell, purchase or trade in human organs or tissue by any means, and it shall be prohibited for a doctor to perform the process of removing or transplanting an organ when he/ she learns of this.

ARTICLE 10

The medical team licensed to perform the operation shall ensure that the operation to remove a human organ or tissue shall not endanger the life of the donor, and they shall inform the donor of the risks and confirmed and potential medical consequences of the operation.

ARTICLE 11

Organ removal and transplantation operations may only be performed in hospitals and medical centres approved by the Minister of Health, based on the recommendation of the Supreme Committee in accordance with the conditions specified in instructions issued by the Minister.



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SECTION FOUR REMOVING AND TRANSFERRING ORGANS FROM DEAD BODIES TO LIVING ONES

ARTICLE 12

First: whoever with full legal eligibility may recommend in writing, in accordance with the law, the removal of one or more human organs or tissue from his/ her corpse in order to transplant it into the body of another living person in accordance with the provisions of Sharia (Body of religious rules. Translator).

Second: Whoever leaves a will to donate one of his/ her organs may revoke his/ her will.



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ARTICLE 13

First: It shall not be permissible to excise any organ from the body of the deceased except with the permission of the competent investigating judge if the death is the subject of a criminal investigation.

Second: Human dignity shall be taken into account when transferring organs.

Third: The body disposed of under this law shall be returned to a dignified condition before its burial.

ARTICLE 14

It is not permissible to transplant a human organ or tissue into the body of the recipient without his/ her express and written consent or the consent of his/ her family.

ARTICLE 15

The doctor shall make the recipient aware of the risks and possible medical consequences of the transplant.

ARTICLE 16

It is not permissible to remove genital from the body of a deceased person and transplant them into the body of a living person.



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CHAPTER FIVE PENALTIES

ARTICLE 17

First: Whoever removes or transplants a human organ or tissue in violation of the provisions of Articles (5), (9) and (11) of this law shall be punished by imprisonment for a period of not less than (7) seven years and a fine of not less than (5000,000) five million dinars and not exceeding (10,000,000) ten million dinars.

Second: The provisions of Item (First) of this article shall be applied to the donor.

ARTICLE 18

Anyone removes an organ, part thereof or tissue from a living or dead person, transplants, participates, mediate, makes advertising, circumvention or coercion with the intention of transplanting it into another body in violation of the provisions of this law and the Anti-Human Trafficking Law No. (28) Of 2012 shall be punished by imprisonment for a period of not less than (10) ten years and fine not less than (10,000,000) ten million Iraqi dinar and not exceeding than (20,000,000) twenty million Iraqi dinar.



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ARTICLE 19

The penalty shall be life imprisonment and a fine of not less than (20,000,000) twenty million and not more than (40,000,000) forty million Iraqi dinars if the commission of one of the acts stipulated in Articles (17) and (18) of this law results in the death of the donor.

ARTICLE 20

Whoever removes an organ, part thereof or tissue from a dead person without a will from him/ her or the consent of his/ her heirs, contrary to the Sharia measures, shall be punished by imprisonment for a period not exceeding (3) three years and a fine of not less than (2,000,000) two million dinars and not more than (5,000,000) five million dinars.

ARTICLE 21

Whoever violates the provisions of this law shall be punished by imprisonment for a period not exceeding (1) one year a fine of not less than (1,000,000) million Iraqi dinars and not more than (3000000) three million Iraqi dinars, or one of these two penalties.

ARTICLE 22

The court may, in addition to the penalties provided for in this law, rule on one of the following measures:

First: Depriving from practicing the profession for a period of not less than (5) five years.



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Second: Closing the private hospital or the private Center in which the crime was committed for a period of not less than (3) three years and not more than (5) five years.

Third: Withdrawing license in case of repeated violation by the private hospital or medical centre.

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CHAPTER SIX FINAL PROVISIONS

ARTICLE 23

First: The Priority shall be given to transferring the organs from living Iraqi people to Iraqis, and organs may be transferred to non-Iraqis if it is a relative of the donor.

Second: The Minister of Health shall issue Instructions to regulate organ transplants from foreign donors.

ARTICLE 24

First: The Minister of Health may establish banks for human organs and tissues in any hospital or medical centre to collect, preserve and equip transplant tissues for the cornea and other tissues for transplantation purposes, provided that such hospitals or medical centres have all the necessary technical capabilities.

Second: The bank stipulated item (First) of this article may accept, gift or exchange organs or tissues with institutions inside or outside Iraq free of charge within the legal scales and standards.

Third: Removed tissue may be used immediately for transplantation purposes or kept in the organ bank for future use.



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Fourth: The Minister shall issue instructions to determine the methods of collecting and preserving organs or tissues in the institutions stipulated in the Item (First) of this Article.

Fifth: Cerebral death cases shall be determined by instructions issued by the Minister of Health.

ARTICLE 25

Hospitals or medical centers shall be obligated to make the necessary clinical and laboratory tests on the donor or testator before his/ her death for the organs or tissues to be donated or made a will related to them after their removal from his/ her body to ensure that they are free of disease.

ARTICLE 26

If human-organs-specialized international banks exchange in accordance with Sharia standards, all legal and health procedures in such cases shall be taken to prove the soundness of the human organ from any disease.

ARTICLE 27

First: The law of eye banks No.(113) of 1970 shall be repealed.

Second: The Human Organ Transplantation Operation Law NO. (85) of 1986 shall be repealed and the regulations issued thereunder shall remain in force until the issuance of what replaces or repeals them.



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ARTICLE 28

- First: Regulations may be issued to facilitate the implementation of the provisions of this law.
- Second: The Minister of Health may issue instructions to facilitate the implementation of the provisions of this Law.

ARTICLE 29

This law shall be implemented as of the date of its publication in the Official Gazette.

Fu'ad Maasoum

The President



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