TOWARDS ATTAINING SELF-SUFFICIENCY IN ORGAN TRANSPLANTATION: A COMPARATIVE STUDY OF THE UGANDAN AND NIGERIAN LEGAL FRAMEWORK

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ABSTRACT

The WHO, the Declaration of Istanbul, the Council of Europe and now the AU has made several calls in previous years for nations to achieve self-sufficiency in the provision of viable organs for organ transplantation in healthcare. To this end, Nigeria enacted the National Health Act to regulate organ transplantation in 2014 and subsequently, on the 30th of May 2023, Uganda passed the Human Organ and Transplant Bill into an Act. This commendable act illustrates Africa's willingness to attain self-sufficiency in healthcare. Self-sufficiency is attainable both at the national and regional levels. For both countries, self-sufficiency curbs the problems of organ trafficking, transplant tourism and organ trade. This research work highlights the steps Africa is taking to provide viable organs for organ transplantation by comparing the Ugandan Act (East Africa) and the Nigerian Act (West Africa). To achieve its objective of determining self–sufficiency in Africa, the research employs a doctrinal approach. As part of its findings, the research discovers that despite the duplicity of sections in Ugandan Act, Uganda is on track in achieving self-sufficiency in organ transplantation, while Nigeria is not. It recommends that Uganda expand its organ supply by incorporating the opt-out donor system while Nigeria incorporates the opt-in donor system to avoid abuses.

KEYWORDS: Human, Nigeria, Organ Donation, Organ Transplantation, Uganda

1.0 INTRODUCTION

Organ transplantation was set up to give people diagnosed with end-stage organ failure a new lease of life. This solution brought along the attendant problem of shortage of viable organs for organ transplantation for both first time patients and returning patients on the waiting list.[1] Some

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[1] Alejandrol Diez 'Do Transplanted Organs Last a Lifetime?' (The Ohio State University: Health and Discovery, 2024) <health.osu.edu/health/general-health/transplants-organs> 8/12/24; Mark A. Schnitzler and others, 'The Life-Years Saved by a Deceased Organ Donor' *American Journal of Transplantation* (2005) 5 (9) 2289-2296 <https://doi.org/10.1111/j.1600-6143.2005.01021.x> accessed 8/12/2024

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contributory factors to this problem of organ shortage include immunology -as the body is designed to combat any anti-body including non-self organs- and the low shelf life of these organs.[2] Although the problem of immunology has been solved by encouraging organ donation from family members or at the very least the administration of immunosuppressant (by conducting a histocompatibility test), yet the needs of both returning and new patients in need of organs must be met. Another contributing factor to the problem of organ shortage is the cultural perspective to death and organ donation. It is widely accepted that man has a soul, most cultures believe that the mutilation of the body will affect the afterlife of the soul. This belief system makes citizens reluctant to donate organs to enable supply in organ transplantation. Therefore, while one may applaud the courageous in donating their organs at death; it was not enough to satisfy the problem of organ donation for organ transplant as the next question became the determination and definition of death. Traditionally, death has been defined to mean circulatory death. Progressively, the term death has now been expanded to include the brain stem death, compelling medical professionals to favour organ retrieval from a brain stem patient than from a patient who had died from loss of cardiac functions due to its many advantages.[3] Flowing from this preference brought about the subtle institutional abuse to hastily categorize persons in coma as being brain dead in order to swiftly effect organ retrieval for organ transplant.[4] At this, states stepped in to protect the vulnerable groups by regulating the practice of organ donation and transplant. These regulations exacerbated the challenge of organ supply which degenerated to the commercialization of body parts and the red market.[5] The WHO and other regional agencies including the AU have mandated the governments of its party members to strive to provide organs for organ transplantation in order to prevent and consequently, end the abuses inherent in organ supply. In response to these calls, countries like Uganda (East Africa) and Nigeria (West Africa) has made some positive strides to regulate organ transplantation and promote donor systems focusing primarily on altruistic

[2] Ifeoma Chsiomaga Korie, *A Medico-Jurisprudential Analysis of Organ Trafficking and Trafficking in Persons in Nigeria* (A Thesis in the Faculty of Law Submitted to the School of Postgraduate Studies, University of Jos, in Partial Fulfillment of the Requirement for the Award of Master of Laws (LLM) of the University of Jos) 2020, 3
[3] Robert D. Troug, 'Defining Death: Getting it Wrong for All The Right Reasons' *Petrie-Flom Center* <https://petrieflom.law.harvard.edu?assets/publications/Troug.pdf&ved+> accessed 6/12/24; Michelle J. Clarke, Kathleen N. Fenton, and Robert M. Sade, 'Does Declaration of Brain Death Serve The Best Interest of Organ Donors Rather Than Merely Facilitating Organ Transplantation?' (2016) *Ann Thorac Surg* 2053-2058 <http://dx.doi.org/10.1016/j.athoracsur.2016.01.100> accessed 8/12/24
[4] Ibid
[5] Korie *Op.cit. 3*

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donation. While the Nigerian government enacted the National Health Act in 2014, the Ugandan government led by Yoweri Museveni has passed the Human Organ Donation and Transplant Act and its provisions is yet to be fully effected;[6] still the extant provisions of the Act is an indicator of African's willingness to achieve self-sufficiency.

Healthcare is a function of the government of every nation world over. That is to say, the government of every state must strive to provide and meet its basic healthcare needs to avoid losing its citizens to medical tourism which will invariably affect the scarce medical resources of other states. Bear in mind however, that the ethics of medical practice is only understood from the four ethical principles of; autonomy, beneficence, non-malfeasance, and justice. As a practical solution, it is imperative that there should an equitable and just distribution of scarce viable organs at minimal risks for organ transplantation in every state. This is the crux of self-sufficiency in organ donation.

2.0 HISTORY OF ORGAN DONATION IN AFRICA

Organ transplantation is an innovative gift from medical practice in developed climes. African's contribution to the historical account of organ transplantation was the first recorded kidney transplant undertaken by Thomas Starzl and Bert Myburgh in South Africa in 1966 and in the following year i.e.1967, Christiaan Barnard will undertake to perform the first successful heart transplant.[7] Currently, Africa struggles with self-sufficiency partly because of the dearth of medical facilities and professionals, and partly because of ignorance of the benefits of organ donation. The individual accounts of organ transplantation in both countries are highlighted as follows;

[6] Aljazeera, 'Uganda Passes New Law Against Stealing of Human Organs' (Aljazeera, 2023) <Aljazeera.com/news/2023/5/30/Uganda-passes-new-law-to-stop-stealing-of-human-organs> accessed 6/12/24; Mackleen Grace Nyangoma, 'The Legal Framework Regulating Illicit Human Organ Transplant and Donation in Uganda' (2024) *Uganda Christian University* <https://scholar.ucu.ac.ug/items/77844319-91d5-4eb1-9a3a-5caaa33a7ec3> accessed 8/12/24

[7] Al-Bar, M.A and Hassan Chamsi-Pasha. 'Contempoary Bioethics: Islamic Perspective' *Springer Open* 210-211 www.springer.comn accessed 23/11/ 19; Ebunoluwa Ladipo Bamgboye 'Kidney Transplantation in Sub-Saharan Africa: History and Current Status' (2023) *Kidney360* 4 1772-1775 https://doi.org/10.34067/KID.0000000000000293 accessed 24/11/24; Kristen D. Nordham and Scott Ninokawa. 'The History of Organ Transplantation' (2022) *Bayl Univ Med Cent* 35(1) 124-128 <htpps://doi.org/10.1080/089988280.2021.1985889> accessed 24/11/24

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A. UGANDA

Uganda runs a decentralized political system which divides its territory into regions, sub regions, districts, cities, constituencies, sub-counties and villages in that order.[8] In Uganda, the distribution of health services is decentralized with healthcare costs shared primarily between the public and the private sector.[9] Asides from the Referral and the General hospitals, primary healthcare is dispensed to the populace via the Health Centre HC IV, III and II. This administrative division enables the suitable provision of health facilities for a teeming population estimated at 42.88 million.[10] Remarkably, the division of health services is limited to certain population ranges in Uganda. For instance, the Referral Hospital at the national level caters to a population range of 31,000,000 (*see Fig1 below*) while the Regional Referral Hospital caters to a population range of 2,000,000.[11] The population range criteria are also applied to private hospitals. It is worthy to note that both private and public hospitals provide the same health services so long as these medical services supplies the needs of persons in a locale within the stipulated population range. Because the Ugandan Act[12] did not define blood transfusions as a form of organ transplantation thus for transplant references it is unclear whether the HC IV center catering for a population range of 100,000 is permitted by its administrative position to provide basic pre and post operative transplantation functions. Uganda celebrated her first kidney transplant in 2023 following the commissioning of the Mulago National Referral Hospital as a designated transplant centre.[13]

[8] Turyamureba Medard Bruno L. Yawe and Oryema John Bosco, 'Health Care Delivery System in Uganda: A Review' *Tanzania Journal of Health Research* (24)(2) 57 and 58<https://dx.doi.org/10.4314.thrb.v24/2.5> accessed 25/11/2024
[9] Ibid
[10] Ibid
[11] Susan C. Welburn 'Structure of the Health System in Uganda' *ResearchGate* <https://www.researchgate.net/figure/Structure-of-the-health-system-in-Uganda_fig1_303423939> accessed 24/11/24
[12] Uganda Human Organ Donation and Transplant Act , Act 9 2023
[13] PPU, 'Mulago Hospital Performs First Ever Kidney Transplant, Surgeons Meet President' *Statehouse* (Kampala, 24 December 2023) https://statehouse.go.ug//mulago-hospital-performs-first-ever-kidney-transpalnt-surgeons-meet-president/ accessed 24/11/24

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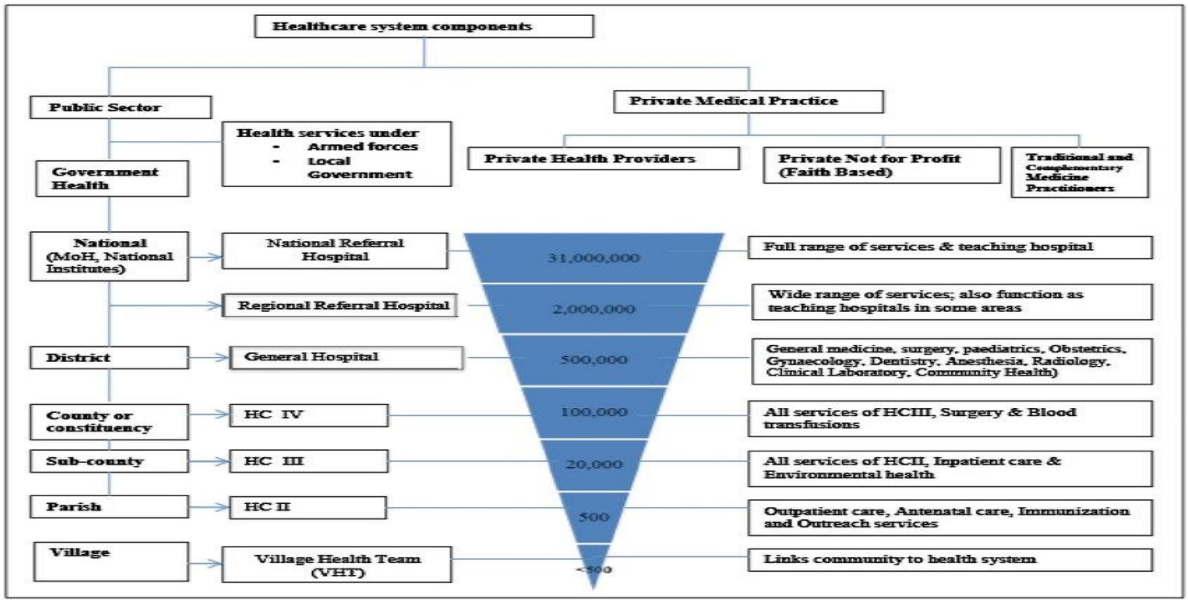

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B. NIGERIA

Nigeria runs a democratic presidential system where the head of the government is the president- who doubles also as the head of the executive- and governmental powers are shared between the three tiers of government of the federal, the state and the local government.[14] This governmental system reflects in the provision and the distribution of medical services across health establishments in Nigeria. The Nigerian Code of Conduct however,[15] delineates health establishments according to the capacity and type of medical services such health establishments provides, thus;[16] The Primary Health Care provides the functions of maternal and child care, public health, record keeping and essential drug supply.[17] Right next after this is the Comprehensive Health Care Centre (Medical Centre) which is characterized by the absence of departments and the dispensation of general medical practice.[18] There is the Secondary Healthcare Centre (General Hospital) marked by the presence of departments to provide curative care.[19] After this, one can

[14] Raphael Anayo Onyeji, 'Nigeria and the Nature of its Political System in a Civilized World' (2023) *World Journal of Advanced Research and Reviews* (19)(2) 834-839 <https://doi.org/1030574/wjarr.2023.19.2.1621> accessed 25/11/2024
[15] Rules of Professional Conduct of Medical and Dental Practitioners in Nigeria <https://www.mdcnigeria.org> accessed 25/11/24
[16] Code 12
[17] Ibid
[18] Ibid
[19] Ibid

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find the dispensing of one or more needed specialized medical skills in major departments of the Tertiary Health Care Centre (Specialist Centre).[20] The last of this is the Teaching Hospital instituted and accredited to teach medical students. Organ transplantation began in Nigeria, in the 2000s in St Nicholas Hospital, a private health facility.[21] There have been over 770 transplants undertaken between 2000 and 2019.[22] It has on record undertaken 609 transplants within the past three years.[23] Unlike the Ugandan healthcare system, organ transplantation is carried out in both public and private transplant facilities across the country.

3.0 DEFINITONS OF TERMS IN ORGAN TRANSPLANTATION

A discourse in organ transplantation implicates common terms and concepts like organ donation including their types and forms, organ transplantation, ethics involved in organ transplantation, self-sufficiency etc. These concepts are analyzed below;

A. ORGAN DONATION

To begin, an organ is defined as 'a part of the body composed of more than one tissue that forms a structural unit responsible for a particular function'.[24] The Ugandan Act defines an organ as '...a differentiated and vital part of the human body, formed by different tissues, that maintains its structure, vascularisation and capacity to develop physiological functions with an important level of autonomy'.[25] This definition encapsulates both the regenerative and non-regenerative organs. In the Nigerian National Health Act[26] by its Interpretation Section 64 an organ is defined as '…any part of the human body adapted by its structure to perform any particular vital function, including the eye and its accessories, but does not include skin and appendages, flesh, bone marrow, body fluid, blood or a gamete'. This definition is narrow and only recognizes the non-regenerative class of organs. Fundamentally, this shows that in organ donation, an organ may be regenerative or non-

[20] Ibid
[21] Ifeoma Ulasi, and others 'Organ Donation and Transplantation in Sub-Saharan Africa: Opportunities and Challenges' <https://dx.doi.org/10.5772/intechopen.94986> accessed 24/11/2024; Fatiu A Arogundade, and others 'Nephrology in Nigeria' in Jose A. Moura- Neto, Divino-Filho, Claudio Ronco (eds)in *Nephrology Worldwide* (ResearchGate 2021) <doi.:10.1007/978-3-030-56890-0_5> accessed 24/11/24
[22] Ulasi Ibid
[23] Ebunoluwa *op.cit* 1773
[24] E. A Martins, *Oxford Concise Medical Dictionary* 6th Ed. (Oxford University Press) 491
[25] Section 4 *Op.cit.* 14
[26] National Health Act No.8 2014

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regenerative.[27] It is a settled law that living donors cannot donate non-regenerative organs for organ transplantation; doing otherwise goes against the ethical criteria that organ donation and transplantation must benefit both the organ donor and the organ recipient.[28] Organ donation maybe defined as 'the act of giving one or more organs (or part thereof) without compensation, for transplantation into someone else'[29]

i. Types of Organ Donation

There are basically two types of organ donation system and they are the Cadaveric or deceased donation which is further divided into the beating heart donation (donation after brain death (DBD)) and Non-beating heart donation (donation after circulatory death (DCD)).[30] In the deceased organ donation, the deceased donor must be certified dead according to the brain stem definition of death or the traditional cardiac definition of death; this must be satisfied following the extant ethical regulations within the state.[31] There is the living organ donation which enhances organ donation from living persons.[32] Donation from living donors must be for regenerative, replaceable or double organs. Organs that can be donated by living donors are; kidneys, bone marrow, liver, lung (the right and left lobe must be taken from different compatible donors) [33]

B. ORGAN TRANSPLANTATION

An organ transplant may involve the transplantation of a single organ or multiple organs.[34] The transplantation of multiple organs is commonly known as the 'Domino' transplant which is simply 'a surgical procedure used to procure viable organs from a recipient to be transplanted into another

[27] Korie *Op.cit.* 26
[28] Ibid; Australian Government National Health and Medical Research Council, *Organ and Tissue Donation by Living Donors: Guidelines for Ethical Practice for Health Professional* 2007 (Australian Government) 6 <https://www.nhmrc.gov.au> accessed 25/11/24
[29] Ayinde Jaminu Kunle Organ Donation in an African Culture Bangladesh *Journal of Bioethics* 2018 10(1): 21-25 <https://www.researchgate.net344856043_organ_Donation_in_an_African_Culture.> accessed 25/11/24
[30] D. Garchner, and others 'The Rise of Organ Donation after Circulatory Death: a Narrative Review' *Anaesthesia* (75)(9) 1215 -1222 <https://doi.org/10.1111/anae.15100> accessed 25/11/24
[31] Harriet Rosanne Etheredge 'Assessing Global Organ Donation Policies: Opt-in vs Opt-out' (2021) *Risk Management and Healthcare Policy* (14)(3) 1985-1998 <doi:10.2147/RMHP.S270234> accessed 25/11/24
[32] Ibid
[33] Australian Government *Op.cit* 7
[34] Ibid

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recipient.[35] An example of the domino transplant is the heart-lung transplant, heart-kidney transplant etc The term 'Transplant' is simply the 'surgery to take an organ from one person's body and put it in another person's body'.[36] Organ transplantation may be defined as a surgical procedure to implant organs from the donor (deceased or living) into a recipient'.[37] By the Ugandan Act, an organ transplant is '…the procedure for transplantation of organs including solid organ transplants…'[38]

i. Types of Organ Transplantation

Organ transplantation may amount to the transplant of single organ or the transplant of multiple organs-especially in domino transplants- at the same time.[39] There is the auto graft transplantation which is the graft of self organs or it may mean 'tissue…transplanted within the same person'.[40] Allo graft transplantation remains the most common type of transplantation and it is responsible for the high demand of transplantable organs. Allo graft transplantation is organ transplant between genetically non-identical members of the human species.[41] An organ transplant between identical twins or persons with the same biological material is an iso graft and lastly, the xeno graft is a type of organ transplant between different species for instance between a pig (donor) and a human (recipient).[42]

C. ETHICS IN ORGAN DONATION AND TRANSPLANTATION

The ethical principles of autonomy, justice, non-feasance and beneficence have a direct impact in organ transplantation. Regardless of the class or category of donor especially for living donors, the

[35] Elizabeth J. Maynes and others, 'Domino Heart Transplant Following Heart-Lung Transplantation: A Systematic Review and Meta-Analysis' (2020) *Ann Cardiothorac Surg* (9)(1) 20-22 <doi:10.21037/acs.2019.12.02> accessed 24/11/2024
[36] United Network for Organ Sharing (UNOS),'Talking About Transplantation Living Donation: Information You Need to Know' <unos.org> accessed 25/11/24
[37] Harriet *Op.cit*
[38] Ugandan Act *Op.cit* 15
[39] Australian Government *Op.cit* 7
[40] Ugandan Act *Op.cit* 20
[41] Korie *Op.cit.* 51
[42] Ibid

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donor must give a free and voluntary consent.[43] The obligation of consent is built upon autonomy which is the donor's right to own his body and to make informed decisions thereon. Therefore in order to achieve a degree of self-sufficiency in organ transplantation, most countries either institute the opt-in or the opt-out system. While the former is an open system inviting free and altruistic donations the latter option is a closed system that presupposes that everyone is a donor except where it is shown otherwise.[44] For the deceased donation, the consent of the surviving kin or attorney must be sought and had. Justice in organ transplantation implicates an equitable, open and transparent access and distribution of organs to recipients on the waiting list. In this light, the domino transplant is widely recognized and invoked to permit recipients to donate to other recipients' extra and unneeded viable organs. Non-feasance mandates that donors irrespective of their class or status should not be harmed or killed for their organs.[45] It is reasonably expected that in organ donation, donors should be monitored and medically supervised to treat any consequent medical complication. Beneficence determines that all transplants should be beneficial to both the recipient and the donor.[46] Transplant medical teams are therefore duty bound to conduct organ transplant within the local ethical standards and regulations in order to prevent and/or mitigate loss of life and limb or avoid any form of commercialism in organ transplantation.

D. SELF-SUFFICENCY

Following the more recent 63rd WHA Resolutions (Madrid Resolutions) of 2010,[47] it is obligatory that nations strive to achieve self-sufficiency in organ transplantation.[48] Thus the objective is encapsulated accordingly 'Jurisdictions, countries, and regions should strive to achieve self-sufficiency in organ donation by providing a sufficient number of organs for residents in need from within the country or through regional cooperation…At societal scale, self-sufficiency promotes community values such as solidarity and reciprocity.'[49] When a nation fulfills its organ

[43] Australian Government *Op.cit*
[44] Korie *Op.cit*; Amy Lewis and others, 'Organ Donation in the US and Europe: The Supply vs Demand Imbalance' (2021) *Transplantation Reviews* (35) <https://doi.org/10.1016/j.trre.2020.100585> accessed 26/11/24
[45] Ibid
[46] Ibid
[47] Henriette Roscam Abbing, 'Editorial: Human Organs for Transplantation: Self-Sufficiency, a European Perspective' (2019) *European journal Health Law* (26)(2) 1-10 <doi:10.1163/15718093-12262006> accessed 27/11/24
[48] Francis L. Delmonico and others, 'A Call for Government Accountability to Achieve National Self-Sufficiency in Organ Donation and Transplantation' (2011) *Organ Transplantation 1* <htpps://rpsg.org.uk> accessed 27/11/24
[49] Henriette *Op.cit* 88-96

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transplantation needs i.e obtaining organs locally, the availability of donor registries and transplant centres, the institution and maintenance of organ and tissues banks; without the inherent abuses then that nation is deemed to have achieved self-sufficiency in organ transplantation.[50] This ambit of self sufficiency is at the national level and it is paramount in order to prevent transplant tourism or illegal trade of organs across borders. Self-sufficiency can also be achieved at the regional level. This dimension of self-sufficiency implicates cooperation among nations in a region. Asides from mandating nations to achieve self-sufficiency, it is necessary to achieve regional self–sufficiency to combat illegal trade in organs or at the very least, end transplant tourism. It will also assist nations to curb the spread of deadly diseases and preserve the public health of its society. Therefore, a robust donor system incorporating deceased donations, the presence of a comprehensive legal framework, implementation of ethical standards and requirements in accordance with the WHO principles on organ transplantation, and a continual awareness to prevent the prevalence of non-communicable diseases by a change of lifestyle are the indices that assists nations achieve self-sufficiency in organ transplantation. To reiterate the core of self-sufficiency according to WHO is;

> …however, is simple: that poor countries should not allow organs from living donors to be sold to foreigners rather than provided to their own citizens and that wealthy countries should develop adequate transplant programs, including the use of deceased donation to the maximum extent possible, rather than allowing their wealthy or well-insured citizens to purchase a kidney transplant in a country where organs are sold.[51]

Both Uganda and Nigeria has enacted a legal framework regulating organ transplantation to the end that both nations will become self-sufficient.

4.0 THE LEGAL FRAMEWORK REGULATING ORGAN DONATION AND TRANSPLANTATION

For the purposes of organ transplantation both the Ugandan Act and the Nigerian Act enshrines basic provisions to assist both nations attain some measure of self-sufficiency. Analyzing these provisions should expose inherent institutional gaps traceable to the lapses in the extant legislation.

A. UGANDA

[50] Francis *Op.cit*
[51] Ibid

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The first step towards self-sufficiency is to create an ethics committee to oversee the activities surrounding organ donation and a subsequent organ transplant. The Ugandan Human Organ Donation and Transplant Council was established to regulate, organize, supervise all national human organ, tissues and cell donation and transplant activities.[52] This function is executed through the Council's committees instituted in accordance with the Act.[53] Notwithstanding the above, the Council is mandated by the Act to involve the services of a consultant to enhance the performance of the functions of the Council.[54] Section 27 reads that both the Minister and the Council has the powers to designate hospitals as transplant centres, Sections 28, outlines the modalities of this application to become a transplant centre upon recommendation to the Minister:[55] However, the transplant facility must be accredited annually. Of particular interest is Section 29 which lists the requirements that an hospital must fulfill in order to be designated as a transplant centre.[56] These qualifications include, an ICU dedicated for the operative care of both parties for a transplant procedure, two theatres in order to undertake the simultaneous organ retrieval and a subsequent transplant surgeries successfully, a standard 24 hour lab to carry out necessary test including a histocompatibility test, an organ bank to enhance organ donation and supply, the employment of qualified medical staff to satisfy these medical functions, and an operative licence from the appropriate authority.[57] In Section 32 being read together with Section 35,[58] outlines regulations and ethical standards; but special attention is given to subsections (2) and (4) of Section 32, to the effect that organ donations should be made from living donors while governmental approval must be sought from the Minister before cadaveric donations are effected. The intent behind this is to avoid abuse of the deceased donor system. The caveat remains that executing any form of transplantation depends on the country's, intuitional and transplant centre readiness.[59] This means that the government must take pro-active steps in enhancing organ transplant services in Uganda. Section 33 speaks about the establishment and approval of organ banks while Section 34 enhances the policies regulating designated organ banks.[60] There is a

[52] Section 13 *Op.cit* 25-27
[53] Section 15, *Op.cit* 27
[54] Section 16, Ibid 28
[55] Section 30 Ibid at 34
[56] Ibid at 33-34
[57] Ibid at 36
[58] Ibid
[59] Section 32(3)
[60] Ibid 38

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mandatory provision for documentation of institutional records surrounding organ transplantation activities in a transplant centre; also this section mandates transplant centres to educate transplant parties and the general public on the benefits of organ donation and transplantation.[61] On the issue of expanded supply of organs, the Act provides that asides then deceased and living donor systems, organs may be imported in furtherance of organ transplant.[62] Expressed in Section 39 is the availability of donor and recipient lists. The subsequent section enhances duplicate provisions but it is worrisome that the Ugandan Act makes provision for the recall (Section 41) and the return of organs (Section 49) already transplanted without considering the cost implications of the returning party. Again this provision gives a wide margin for errors in transplantation which may lead to the death of the party involved. Already provided in Sections 44, 47, 57, 58 and 59 health professionals are mandated to obtain the medical records of the donor, ensure testing and sampling of the organs before labeling, preservation and storage. The strict compliance to these provisions removes the possibility of errors in organ transplantation. From the provisions of Section 92(2) it is vague and unclear on what conditions an organ may be returned. The look back procedures of Section 42 is an alarm system ingrained in this process to alert other bank registries of the presence of unhealthy donated organ materials. This section helps to prevent a contamination of stored organs thereby preserving lives. There is a national waiting list, a database of donors and recipients,[63] and the subsequent section that deals on a transparent, fair and equitable distribution of organs.[64] Sections 62, 66 and Section 67 provides expressly for the living and dead donor systems while Section 71 prohibits living child donations except for exceptional cases. However, deceased donations from children are permitted from the provisions of the subsequent section.[65]

B. NIGERIA

By virtue of section 47 of the NHA[66] the National Blood Transfusion is established across the Federation. Also, the Act recognizes both the living donor and the deceased donor systems under Sections 49, 51 and 54. The National Tertiary Health Institutions Standards Committee is established to prescribe the criteria for the approval of transplant facilities and its procedural

[61] Section 36 and Section 80
[62] Section 37 (3), 41
[63] Section 78
[64] Section 51 and 52 at 47
[65] Section 72
[66] National Health Act 2014

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measures. The Act does not provide for organ banks across the nation, neither does it seek to regulate organ and tissue transplant. It is also silent on the importation and supposed exportation of organs. The Act inarguably, fixes transplant services as an affair of private health facilities.

5.0 CHALLENGES OF ORGAN TRANSPLANTATION IN UGANDA AND NIGERIA

Undevelopment and underdevelopment remains the bane of Africa as both nations grapple under the weight of the dearth of needed resources for organ transplantation. Again the effect of underdevelopment is perceived in the drafting of the legislations in both nations; both legislations were drafted without proper understudy of the local circumstances. This can be gleaned in the duplicity of the provisions of the Ugandan Act. The economic cost of transplant-from the pre to the post operative stages- are expensive with requisite transplant drugs largely unavailable. Nothing in the system guarantees continuity in providing transplant services in both countries due to the dearth of qualified medical professionals and the unavailability of necessary infrastructure. Transplant tourism remains a social issue in both Uganda and Nigeria. Another challenge is the economic hardship which results to the high incidence of crimes in both nations thereby enhancing the illegal organ trade. The government of both nations shies away from playing an active part in educating and sensitizing the populace on organ transplant, therefore organ donors are restricted to family members on the one hand and on the other hand the poor is exploited for his organs as voluntary donations are scarce and insufficient. The challenge of ignorance and the high costs of organ transplants impacts deceased donation. The families of the deceased will prefer to avoid the cost of sustaining a brain dead member of the family on life support; neither will such a member permit the organ retrieval of the deceased organs due to cultural and religious beliefs in the sacredness of the human body. There is the lack of the needed medical technologies to sustain the lives of brain dead patients which ordinarily should help expand the donor pool. While Uganda recognizes the import of organs, Nigeria is silent on that ambit. The scarce provisions in the Nigerian Act, is an indication that organ donation and transplant is a private law which must be executed under extant ethical standards. This truncates the attainment of self-sufficiency in the Nigerian health system because of the subtle concession of the Nigerian government to the sale of organs for organ transplant. Lastly, the unenforceability of international treaties and in this regards the WHO principles on organ transplant hinders the diligence of nations to attain self-sufficiency.

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RECOMMENDATIONS AND CONCLUSIONS

Since the administration of healthcare in Uganda has made it practical to organize health centres (both national and private) as designated transplant centres, the government should strive to situate transplant centres and organ banks within the reach of its citizens. Again, in the Ugandan Act the powers of the Minister should be limited to governmental functions and politics. A separate board should be established from which appeals lie from the board to the judiciary. Thirdly, in as much as the importation of organs must be undertaken with the requisite approval from the Minister, the policy should be adjusted to accommodate public health challenges and also avoid organ trafficking and transplant tourism in any form. The conditions for a recall and return of organs under the Ugandan Act should be clearly stated to enable subscribers understand the limits and the right invocation of a recall. In addition to the mandatory requirement on designated transplant centres for documentation, the government should provide incentives to encourage voluntary living and deceased donor pools. For the donor pools it is recommended that an opt-out system be implemented subject to an express refusal. This system of organ donation comes highly recommended to Uganda, because of the presence of safeguards and guidelines that prevents abuse on one hand and enhance organ donation on the other hand. Tools like a database of donors and recipients, registries and documentation, respect for the religious and cultural beliefs of the donors, approvals from the councils, designated transplant centres and organ banks.

Nigeria, must first undo the gross corruption in the health sector. This corruption is responsible for the mass exodus of medical professionals out of the country and the poor health services in health centres across the nation. It is also contributory to the high incidence of transplant tourism and illegal organ trade in Nigeria. Also, the Act should be amended to expand the donor pool and lay down basic regulations to guide organ transplantation. The National Insurance Scheme should be amended also to accommodate the costs of transplantation. Finally due to the inherent abuses in the Nigerian health system, it is safe to recommend the opt-in system until institutional safeguards and standards are created.

All the above mentioned will assist both nations achieve self-sufficiency in the coming years. There is in place an appropriate legislation, a donor system that is solely reliant on living donations by family members, the institution of ethics committee amongst others. Despite the prevailing

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circumstances, self-sufficiency in organ transplantation has more long term benefits. It becomes easy to combat transnational crime of illegal organ trade when a nation is self-sufficient. Also, self-sufficiency promotes the public health of nations. It helps harness the available resources and minimize costs. It helps promotes medical tourism; generating revenue for the government. It will ensure that Africa achieves self-sufficiency in other areas of medical practice; severing it from its dependence on the Western medical practice. Self-sufficiency indeed is a step towards achieving freedom from the bonds of neo-colonialism.

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