Comparative Study of The Legal Framework for Decedent Organ Donation in Nigeria and The United States of America (US)

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ABSTRACT

In the past half-century, solid-organ transplantation has become standard treatment for a variety of diseases in children and adults[1] and this treatment offers a viable cure to organ failure, damage or malfunction aside from hemodialysis. Organ donation from living and deceased/decedent donors was device as a means through which solid organs can be outsource to carter for numerous persons in need of transplantation. In spite of this effort, there remained acute shortage of organ globally. In Nigeria and the United States of America (US), to address shortage of organs legal frameworks are put in place to stimulate altruistic organ donation. Notably, the legal scheme in the US has recorded tremendous success in the area of decedent donation whereas in Nigeria, decedent donation has been hampered by insufficient legal framework, cultural, religious and ethical factors. This work examined the legal framework for decedent donation in Nigeria and compared same with the legal framework in the US. The work recommended that the existing legal framework need to be amended to recognize the activities of Organ Procurement Organization, create donor register and expand the scope of persons that can donate organ. The authors used the comparative as well as analytical research to achieve the aim of the work.

INTRODUCTION

Organ donation is a medical procedure that involves the retrieval and transplantation of organ donated by either a healthy living or decedent/deceased donor. The procedure has emerged as a vital medical intervention providing life-saving opportunity for persons or individuals suffering from one form of organ failure, damage or malfunction.[2] The donated organs are often used for transplantation, research, therapy or educational purposes. Transplantation in this regard is the process that enables the removal and replacement of failed, damaged or malfunctioned organ. This medical procedure is significant because its improves the quality of life for recipients and notably enhances their long-term survival rates compare to persons who do not undergo the procedure i.e dialysis. Transplantable organs include, the eye, lungs, kidney, liver and many more and globally, Kidney isconsidered as the most sought after organ.

Globally, there is acute shortage of transplantable organs. To address the perennial shortage of organs, advanced countries like US, Spain, France and many others, put in place legal structures that enable organ retrieval from living and deceased persons otherwise called decedent donors; making it possible to outsourced for organ from living or decedent donors.

Over the years, the World Health Assembly (WHA) through the World Health Organization (WHO) has encourage nations states to entrench legislative framework, policy and strategy that will stimulate both living and deceased donation with the view to attain self-sufficiency in organ donation. This is in view of the acute shortage of organ. In response to this noble mandate, the National Health Act (NHA)[3] was enacted in Nigeria

[1]LAINIE FRIEDMAN ROSS, AND. RICHARD THISTLETHWAITE, JR, ,' MINORS AS LIVING SOLID-ORGAN DONORS'*THE AMERICAN ACADEMY OF PEDIATRICS*[2008](122), (2): 454–461.

[2] David B. Olawole,;Organ Transplantation in Africa: Confronting Socioeconomic, Cultural, and Infrastructural Hurdles'*Current Research in Transplantation Medicine[*2025](73)1-15.

[3]National Health Act, 2014.

whereas in the US, the Uniform Anatomical Gift Act (UAGA)[4]was put in place as model legislation applicable in all the 50 states of the country to regulate this aspect.

Observably, while NHA in Nigeria regulate both living and decedent donation, UAGA in the US is limited to decedent donation. Furthermore, UAGA gives credence to Opt-in Model of decedent donation andsanctioned the individual approach to donation against the societal interest whereas NHA is silent about this approach.UAGA also regulates activities of Organ Procurement Organizations (OPO) in terms of search and notification, organ allocation, preservation and transportation which is absent under NHA.

In spite of the robust existing legal frameworks for decedent organ donation in Nigeria and US, there is acute shortage of organ to meet the heightened transplantation need. This problem has led to resort to decedent donation which is considered one of the major pool through which organ for transplantation could be outsourced, In 2024 in the US for instance, it was documented that 45, 217 organs were retrieved from decedent donorswhich save the lives of 39, 505 people suffering from one form of organ failure to another.[5]It was further revealed that 40% of the decedent donors are age 50 or older whereas 9% are age 65 or older and that more than 170 million people are registered organ donors in the country.[6] This achievement was made possible as a result of the robust legal framework in the country.

In Nigeria, statistic has shown that due to insufficient provision in the legal framework for decedent donation, many organs that would have helped in addressing the dire need of persons suffering from organ failure are lost. This has continued to erode the system, leading to preventable death. More so, the legal framework in Nigeria is said to be one sided and does not give credence to decedent donation as obtainable under UAGA. This is further compounded by cultural practices in the country accentuated by belief in reincarnation. Many traditions in Nigeria considered dead bodies as sacred; thus, tempering with the body of a deceased person is considered a taboo. Religiously, Islam and Christianity are not against deceased organ donation but there is general skepticism toward organ donation from adherent of the religions as a result of lack of awareness. There is also low level of awareness amongst Nigerian toward the impact and essence of organ donation which has over the years served as serious impediments toward aggressive organ donation in the country. This would have addressed the perennial shortage of organ to meet the heightened transplantation need of people suffering from this menace.

It is against this nuance that this work seeks to unearth the reason for the success of decedent organ donation in the US and why same cannot be replicated in Nigeria. The work will examine the legal framework for decedent donation in the US under UAGA, it successes and the practice of deceased donation in Nigeria and the factors that impede the success of deceased organ donation in Nigeria and proffered recommendations on how vest the legal framework can be model.

Decedent/Deceased Donation

Deceased or decedent donors are persons that agree during their life time to donate any part of their body or organ for purposes of transplantation, therapy, research or educational purposes and this donation takes effect after the demise of the donor either as a result of irreversible brain death, accident or cardiac arrest.**Decedent donation** is also defined as the process where individuals can donate their organs after death to help save the lives of people suffering from end-stage organ disease and this process begins with a decision to donate, which can be made by the individual or their family.[7]

The NHA in Nigeria did not define decedent donation, but defined death to mean “brain death” while organ is defined as” any part of the human body adapted by its structure to perform any vital function, including the eye and its accessories, but does not include the skin and appendages, flesh, bone, bone marrow, body fluid, blood or gamete.[8]In the US however, Anatomical Gift is made central to the legislation and the choice of the word

[4] Uniform Anatomical Gift Aft, (Revised Version), 2006.
[5] Richmond VA, ‘U.S Surpassed 48,000 Organ Transplants in 2024’<unos.org>Accessed 1st May 2025.
[6] Donate Life America,’National
[7]UNOS’Deceased Donation’<Deceased Organ Donation Process | UNOS Donation Processes>Accessed 20th June 2025.
[8]NHA(n).s64.

"gift" is deliberate as anatomical gift is anchored on the principle of equity and fairness having regard to the fact that sale of human part is prohibited in the country. The Act defined "Anatomical Gift' as a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research or education.[9]Decedent or deceased individual on the other hand is defined as "an individual whose body or part is or may be the source of an anatomical gift. This includes a stillborn infant and subject to restrictions imposed by law other than UAGA, or foetus.[10]In a similar fashion, the Act construed donor to mean an individual whose body or part is the subject of an anatomical gift.[11]

Decedent donation therefore can be also be define as a donation made by a deceased person otherwise called decedent donor during or after his or her life time that takes effect after the demise of the donor. The legal framework operational in a given jurisdiction often determine the requirements for the organ retrieval and allocation. Significantly, advanced countries like the US, United Kingdom, Spain, Germany and many others devised a model of either opt-in or opt-out system to stimulate decedent donation.

Prevalence of Organ Failure in Nigeria

kidney failure and other organ related damages or malfunctions are prevailing in Nigeria and over the years many preventable death have been recorded in this aspect as a result of shortage of organs to address the menace. Studies conducted in this regard have confirmed this assertion. Ayetoto-Oladehinde for instance observed that kidney failure is on the rise in Nigeria.[12] This assertion is justified through the investigation conducted by BusinessDay Newspaper in Lagos State University Teaching Hospital(LASUTH) in 2022 where it was found that the new dialysis unit opened in the hospital was oversubscribed as a result many cases of kidney problems.[13] This finding was corroborated by similar study conducted at the Federal Medical Center, Ebute-Meta, Lagos State which showed many cases of people with kidney problems.[14]George corroborated this finding when he noted that indeed thousands of Nigerians are suffering from end-stage organ failure.[15]It was also argued by the author citing thefiqure alluded by the Nigerian Association of Nephrology that over 25 million Nigerians suffer from kidney diseases with many requiring dialysis.[16]He also observed surprisingly that an abysmal number of Nigerians over the two decades, fewer than 500 had benefited from kidney transfers and most of the donors were living donors.

Regardless of this challenge, many renowned scholars, nephrologists and institutions have advocated for deceased/decedent donation in Nigeria as a pathway to address the challenge of organ shortage. Ayetoto-Oladehinde for instance argued that many hospitals in the country are already advocating for the use of decease organ to address transplantation in the country.[17]Awobusuyi, being the President of National Association of Nephrologist (NAN) as well as the Transplantation Society of Nigeria (TSN) believes that decedent donation is one aspect of organ donation that if properly entrenched and utilize will address the problem of organ shortage in the country; thus, many people will benefit from the procedure.[18]

It is interesting to also underscore the point that there is difference between awareness or knowledge regarding decedent donation and the willingness to be a decedent donor or make decedent donation. As rightly observed somewhere in this work, many studies have been conducted previously that revealed the attitudes of Nigerians towards living and decedent donation. For instance, in a study conducted by George using 96 individuals to gauge public awareness regarding decedent donation, the result was negative as it revealed that approximately,

[9]Ibid. s. 1(3).
[10]Ibid. s. 1(4).
[11] Ibid. s.1(7).
[12]TemitayoAyetoto-Oladehinde'Nigerian Hospitals Explore Deceased Donor Kidney Transplant'(Businessday news of 8th July, 2023).
[13] Ibid.
[14] Ibid.
[15] Godfrey George,'Would you Love to Donate Your Organ After Death(Punch, 1st June, 2025).
[16] Ibid.
[17]TemitayoAyetoto-Oladehinde'(n13).
[18] Ibid.

95.8 percent of the Respondents indicating unwillingness to donate their organ after death.[19] In a related development, a survey conducted by Agwu to determine the level of awareness of the public to decedent donation in Sokoto State of Nigeria, the result showed mixed result as it revealed that in terms of awareness, there is high level of awareness regarding the knowledge of organ failure and donation in the country.[20] In terms of willingness to donate organ after the death however, many of the Respondents were skeptical expressing fear and distrust in the system. For instance, 51.9 percent of the Respondent indicated willingness to accept decedent kidney donation, whereas 43.4 percent of the Respondents express willingness to consent for decedent donation, similarly, 26 percent of the Respondents indicated desire to carry donor's card.[21]

The above revealed that there is no conclusive evidence as to the overwhelming dispositionof Nigerians to either accept, refuse or reject decedent donation. Professionals in the field of medicine have in the past voiced out the impact of decedent donation in increasing the rate of organ availability. Oduntola in this respect argued that decedent organ transplant is the way to go if Nigeria as a country must make progress in addressing the transplantation need of persons suffering from end-stage renal failure.[22]Bakar and Others corroborated this assertion when the authors noted that no religion in the world forbids organ transplantation.[23]The authors further contended that prominent Islamic countries like Saudi Arabi, being the cradle of Islam sanctioned organ donation, whether decedent or living for purposes of transplantation. Referenced was also made to other countries like Syria and Malysia where this practice is pre-eminent.[24]

We are in consonance with Oduntola and other authors that argued in support of dededent donation in Nigeria. This is in view of the fact that having regard to the number of persons that died annually in the country as a result of accident which is estimated at 40,000 by the Federal Road Service Corps (FRSC).[25]A further revelation by Salua showed that in 2025 Nigeria record's world's highest road accident as claimed by the Red Cross.[26]The report showed that 10 percent of the two million people in the country, totaling 200,000 died as a result of road accident. The President of the Nigerian Red Cross Society stated this at the launch of the Safe Steps Road Safety Campaign, aimed at ensuring road safety across Nigeria and relied on the WHO Global Report 2023 which claimed that Nigeria accounted for nearly 10 percent of all road traffic fatalities globally.[27] It was further shown that this fiqure accounts for just reported road accidents as estimated claim road accident are often underreported in Nigeria exceeding 500 percent of the reported numbers.[28]

In another reported development it was shown that the number of death rate in Nigeria is either increasing or declining on a yearly basis. For instance, a 2025 report showed that the rate of death in the country is at 10.67%, a 1.49% decline from 2024, whereas the death rate for 2023 was 10.83% and a 7.73% decline from 2022 which recorded at 11.74 a 1.78 decline from 2021 which had 11.95% death.[29] It was further revealed that the main cause of death in the country are neonatal disorder, malaria, lower respiratory infections, diarrheal diseases, HIV.AIDS, road injuries, malnutrition, insecurities as a result of crisis or attacks and many more.

From the above facts and figures, it shows that will proper legal framework. Amy organs from decedent donors would have been harvested, store and use for transplantation for many persons suffering from one form of organ failure to another. In Spain for instance, where the Opt-out system is operational, all persons are presumed organ donors at death unless during their life time they register a decision to opt-out of the donation process. Applying

[19] Ibid.
[20]Ngwobra Peter Agwu and Others'Awareness and Attitude to Deceased Kidney Donation Among Health-Care Workers in Sokoto, Nigeria,*'Annal of African Medicine*[2018](2);75-81.
[21] Ibid.
[22] Sade Oguntola,'Why Deceased Donor Programmes are not Common Place in Nigeria(Nigerian Tribune, July, 21, 2022).
[23]Abubakar A. Bakar and Others'Organ Transplantation: Legal, Ethical and Islamic Perspective in *Nigeria' Niger J. Surgery*[2012](2)53-60.
[24] Ibid
[2525] Agency Report,'Over 40,000 People Die Annually in Road Accidents in Nigeria-FRSC((Premuim Times, May 16, 2023).
[26]GbengaSalau,'Nigeria Records World's Highest Road Accidents, Say Red Cross'(TheGuardianFebraury 7, 2025.
[27] Ibid.
[28] Ibid.
[29]Macrotrends,'Nigeria Death Rate(1950-2025)<macrotrents.net>Accessed 10th July 2025.

the system of opt-in decedent donation in Nigeria will go a long way in addressing the issue of organ shortage; this is in view population of the country which is estimated at 237,527,781,[30]applying the opt-out system would suffice having this total number of persons or close to same as decedent donors which indeed will no doubt go a long way in addressing the cultural and religious barrier to the issue of organ donation in the country as one of the way to experience cultural change is through legislative enactment as achieved in the US, Spain and many advanced democracies in this regard.

It is therefore our position that despite the fact that decedent donation remained a major pathway toward stimulating organ donation, the problem of organ shortage in Nigeria will persist and organs that would have been harvested from decedent donors who died in a harvestable conditions continue to be wasted unless the legislature take proactive steps to incorporate either the opt-out or opt-in model of donation which will cause cultural and religious revolution in the way these two factors have influenced and shaped the attitudes of Nigerians toward decedent organ donation.

Legal Framework for Decedent Organ Donation in Nigeria

Having confirmed the prevalence of organ failure in Nigeria, government has over the years struggled to entrench a legal framework that will address this menace. In 2014 however there was breakthrough which witnessed the enactment of the National Health Act.[31]Though unlike UAGA which regulates exclusively decedent donation in the US, NHA regulate other aspect of healthcare in the country; thus, not exclusively dedicated to organ donation. This notwithstanding, NHA is the primary legal framework that regulate decedent donation in the country. From the express provision of the Act, the legislation sanctioned the primacyof living over decedent donation. Abysmally, only four sections of the Act, i.e section 54, 55, 56 and 57 are dedicated to address decedent donation.

Scope of NHA

The NHA is made up of seven parts divided into various sections.[32] Each part contains fundamental provisions which if effectively and efficiently implemented will have a tremendous impact on health-care access and universal health coverage, health-care cost, quality and standards, practice by health-care providers, as well as patient care and health outcomes.[33] The seven parts of the NHA are Responsibility for health and eligibility for health services and establishment of National Health System, Health Establishments and Technologies, Rights and Obligations of Users and Healthcare Personnel, National Health Research and Information System, Human Resources for Health, Control of Use of Blood, Blood Products, Tissue and Gametes in Humans, and Regulations and Miscellaneous Provisions.[34]

Thus, the scope of NHA is not limited to organ donation as obtainable in US under UAGA which regulate exclusively decedent donation and made expansive requirements for the legal retrieval of organ from decedent donors in that respect. As seen from section 54 to 58 of NHA, these sections are dedicated to address decedent donation.

Process of Donation

Notably, section 55 of the Act enable decedent donation through the following documents;

a. a "will"[35]

[30] Population Pyramide,'Population Pyramids of the World from 1950 to 2100'<Population of Nigeria 2025 - PopulationPyramid.net<Accessed 10 July 2025.
[31]NHA(n3).
[32] Ibid.
[33]OsahonEnabulele and Joan EmienEnabulele,' Nigeria's National Health Act: An assessment of health professionals' knowledge and perception'*Niger Med J*[2016] (57)(5):260–265.
[34] Ibid.
[35]Ibid.s55(a)(i).

b. other document endorsed by the decedent and at least two competent witnesses;[36] or
c. Written statement made in the presence of two competent witnesses.[37]

Significantly, NHA empowers all eligible donors to donate directly during their life time to the beneficiaries or nominate any institution or any person for the purpose of the donation.[38]NHA unlike UAGA does not recognize donor register, driver license or valid means of identification. Observably however, the word "document" is used which to our mind is an umbrella terms that can accommodate any other type of document including register, driver license and means of identification. Furthermore, Unlike UAGA, the scope of the surrogate under the NHA is not clearly defined. It is however arguable that there is no restriction to the categories of persons that can donate under the NHA when compared with UAGA. The usage of the word a "person" or "institution" is expansive and can accommodate all persons listed under section 9 of UAGA and even more.It then suffices that under UAGA, institutions cannot authorize decedent donation as obtainable under NHA.

Interestingly, NHA allow the decedent to amend or revoke the donation through the same way it was made i.e the aforementioned documents. [39] NHA however unlike UAGA does not state the implication of the revocation or invalidation of a will. UAGA for instance sustained the validity of a will regardless of its invalidation or revocation and further invested in the decedent the power to amend the document of gift. UAGA also barred the surrogate or family members of a decedent from overridden the donation made by a decedent except in cases where the decedent is an un-emancipated minor.

Notably however, unlike UAGA which allowed minors otherwise referred to as emancipated and un-emancipated minors to donate any part of their bodies through driver's license or donor register or any other means of identification, under the NHA, minors are disqualified from decedent donation. The only exception to minors donation under NHA is in living donation where only organ that can regenerate through natural process is allowed to be donated.

It is cardinal to emphasize that NHA created the National Tertiary Health Institution Standard Committee[40] and empowered the Committee with the competence to set standard that will determine the licensing of organ procurement centers and procedure in the country, the Act however, fall short of outlining the rights and function of this Committee. Under UAGA however, the legislation designated the function and activities of Organ Procurement Organization (OPO) and empower these organizations with the power to coordinate with hospitals and procurement centers to ensure smooth retrieval of decedent organs. Furthermore, OPOs are imbued with extensive rights and duties which includes search and notification in instances where the Organization believe that a decedent donor is death or near death; in this respect, the organization may initiate search for document of death and this power is not limited to OPO but extends to law enforcement officer, fire fighter, paramedics or other emergency rescuer searching for the individual as well as hospital as soon as the person is confirmed death.[41] Thus, hospital are duty bound to notify OPO of the availability of any potential donor in their center. This provision is however lacking under NHA as the Act does not legislate over the activities of organ procurement centers but left such determination to the Committee.

Legal Framework for Decedent Organ Donation in the Us

We have established that in the US, UAGA[42] was promulgated as the principal legislation that regulates decedent donation in the country. The legislation is considered model legislation designed to have uniform application in all states of the US. Thus, the legislation established the legal structure upon which individuals are allowed to donate their bodies or specific parts for transplantation, therapy, research or education. The framework enable

[36] Ibid. s. 55(a)(ii).
[37] Ibid. s. 55(a)(iii).
[38]Ibid.s.55(b).
[39]Ibid. s.57.
[40]Ibid.
[41]UAGA(n4)s.13(a)(1).
[42]UAGA(n4).

the process for making of such donations, including who can authorize them and how those decisions can be documented.

Scope of UAGA

The scope of UAGA is limited to donations from decedent persons as a result of gift made before or after the death of the donor. By implication, UAGA does not regulate living donation as the scope of the Act is limited to decedent donation. The Revised Edition of the Act replaced the word "deceased" with "decedent" and expanded the scope of persons that can donate to include stillborn and infant and further allow states to determine age of emancipated or un-emancipated children as regard the capacity to make decedent donation. In the case of Werling v Sandy,[43]the Court allowed for the legal harvesting of organ from a stillborn foetus and considered it a decedent. In the same vein, section 9 of UAGA expanded the scope of persons that are eligible to make anatomical gift to include the following; authorized surrogate of the deceased, spouse, adult children, parents, adults siblings, adult grandchildren, grandparents and adult who exhibited special care and concern for the decedent and many more.[44]

Added to the list of persons that can make anatomical gift are emancipated and un-emancipated minors. UAGA however did not define emancipated and un-emancipated minor. This is left to the states to determine and this determination varies according to the transplantation need of a given state. In the state of Texas for instance, emancipated minors are authorized to make anatomical gift whereas un-emancipated minors will need the written consent of their parents or legal guardians to validate the donation.[45] The donation age for Minor in this regard is capped at 16 years. In the state of California, the California Health and Safety Code contained similar provision.[46]As regard un-emancipated minor, the age of decedent donation is lowered to 15 years in the state whereas in the State of New York, due to long list of persons awaiting transplantation, organ donation age for decedent was lowered to 16 years.[47]In Florida, the proposedOrgan Donation and Tissue Law[48]does not different between emancipated and un-emancipated minors, but capped the donation age for minor at 18 years with the caveat 'with the informed parental consent.[49]

It then suffices that in the US, adult and minors are qualifiedto make decedent donation. In decedent donation by minors however, the age determination is based on state legislation as demonstrated above and there is no unanimity in this regard. In Nigeria, the NHA allow retrieval of organ from living and not decedent minors. Thus, decedent organ cannot be retrieve from children below the ages of 18 for transplantation, research, therapy or educational purposes. The question therefore is what becomes the fate of children suffering from renal failure that do not have a living donor that marches their organ type? The silence of NHA in this regard will no doubt signal death sentence to this class of minors in the absence of living donors to address their need for organ.

It is important to note that UAGA secure the autonomy of adult donor once the donative intent is registered with the Donor Register or imprint on any valid means of identification or in a "will". In this sense, the surrogate or family members or authorized agents of the donor cannot override the donation. This position was validated by the Court in the case of McClean and O'Connor v New England Donor Services and Boston Medical Center, USDC MA Civil Action[50]where it was found that a decedent family or a surrogate cannot override the legally binding donation made by a decedent during his or her life time.

Notably, while UAGA respect the designate autonomy in terms of protection of his or her property right to the body, the law also invested in the decedent the right to amend, cancelled or revoke the donation. Section 6 of

[43] 17 Ohio St.3d 4 S[1985].
[44]Ibid. s. 9.
[45]Texas Health and Safety Code. Title 8 Death and Deposition of the Body-Chapter 692A Revised Anatomical Gift Act, s. 692A.
[46]California Health and Safety Code, ss7150-7156.5.
[47]AlizaChasan,'Organ Donation Age Lowered to 16 Years in New York, A Lagged Behind Other States<Organ donation age lowered to 16 in New York, a laggard behind other states | PIX11>Accessed 20th June 2025.
[48]ORGAN AND TISSUE DONATIONFL S0970 | 2025.
[49] Ibid.s. 765.512(1) qwqq
[50] No:22 CV-11003NMG.

UAGA enables the decedent to amend, revoke or cancel the donation during his or her life time or act through an appointed surrogate or representative.[51] The surrogate or family members of the decedent are however restricted from amending, revoking or cancelling the donation after the demise of the donor without the decedent authorization as affirmed by the Court in McClean case earlier cited in the preceding paragraph. Furthermore, where the donation is made in a "will", the fact that the will is revoke or invalidated does not affect the validity of the donation.

The Process of Anatomical Donation

Unlike living donation where consent of the donor is a mandatory requirement for organ retrieval and donation, under decedent donation, the organ retrieval and donation process takes effect after the demise of the donor, thus, obviating the need for informed consent. It is in view of this development that UAGA adopted the word "authorization" in place of consent because, only living being can consent to a process. Significantly, the donor's right to make decedent donation is sacrosanct and can only be override where the donor prior to his or her demise fails to make a decedent donation. Section 5 of UAGA for instance regulates the process of the donation and this can be made through authorizing a statement or symbol indicating that the donor has made the gift or to imprint it on the document i.e driver's license, means of identification or in a "will".[52]

Rights and Duties of Organ Procurement Organizations as Relates Decedent Donation

Organ Procurement Organizations (OPOs) in the US are non-profit entities saddled with the task of coordinating and facilitating organ donation and transplantation. These organizations perform numerous functions prominent amongst which includes the recovery of organs from deceased donors and ensure they are allocated to patients in need of transplants. This process no doubt involves a complex procedure of identifying potential donors, managing the donor's medical care, obtaining consent for donation, recovering the organs, and coordinating their transportation to transplant centers. Furthermore the Organization also determine amongst other things suitability of decedent donors referred to the organization by hospitals, coordinate with Intensive Care Unit of hospitals or organ procurement centers for purposes of decedent organ retrieval as well as coordinate with other law enforcement officers, paramedics, fire fighters and other individuals towards searching for document of gift for persons that are death or near death and the Organization believes the prospective donor makes a decedent gift.[53]In this regard the Organization Identify and evaluating potential donors, obtaining consent for donation where donative intent is not register by prospective donor prior to death or un-emancipated minors; manage the donor's medical care,recovered and preserve organs; matching donors with recipients through coordination with the United Network for Organ Sharing (UNOS) to match donated organs with suitable recipients on the national transplant waiting list, supporting families and educating the public as well as improving the rate of donation.

Successes of Decedent Donation in the US

In the US, considerable successes have been recorded since the enactment of UAGA in the aspect of decedent donation. This success is attributed to the effort and work of the OPO in coordinating of this sector. Dolph[54]noted that UAGA and its periodic revisions provide a template for the creation and amendment of legislation to adjust public policy and align it with developments in medical practice. He further argued that the legislation is a model for statutory response to societal change as well as changes in regulatory and judicial precedents; though he observed that there islimits in the legislation to achieve certain social goals.[55] Glazier and More[56]in the same veinnoted that as a result of the robust provision of UAGA, in the past 5 years, the United States has experienced

[51]UAGA(n4). s6(a)(1).
[52] Ibid. s. s(a)(1)
[53]Ibid. s.14.
[54]Dolph Chianchiano,' The Uniform Anatomical Gift Act and Organ Donation in the United States'*Advances in Chronic Kidney Disease* [2006] (13), (2);189-191.
[55] Ibid.
[56]ALEXANDRA GLAZIER, JD, AND MPH[1]THOMAS MONE,' SUCCESS OF OPT-IN ORGAN DONATION POLICY IN THE UNITED STATES' *TENTH INTERNATIONAL CONGRESS ON PER REVIEW AND SCIENTIFIC PUBLICATION'* [2019];322;(8):719-720.

a 30% increase in deceased organ donors, from 8269 in 2013 to 10 722 in 2018. Similarly, Sadler and others[57] observed that the enactment of UAGA was meant to foster organ donation by creating a nationwide pool of tissue typing and organ matching system in the states of the US and that by 1971 all states and District of Columbia enacted the legislation.[58] It was further argued by the author that the Act allowed all individuals older that 18 to donate their organs and tissues which has helped significantly in increasing donor rate in the country.[59]

In another lane, Zawitski and DeVita[60] contended that since the enactment of the UAGA, the progress in the medical technologies increased the number of patients that benefit from the organ donations and this development has dramatically increased the demand for organ.Usov[61]in the same vein analyzed 39 states using difference in difference models and synthetic control group methods. The results suggest that there is no statistical evidence that UAGA increased the number of deceased donor but from the practical reality seen from general results, it is obvious that UAGA has tremendously increased the rate of deceased organ donation in the country.Israni and others[62] in their work revealed that in 2022, there were 14,905 deceased donors, a 7.5% increase from 13,863 in 2021, and this number has been increasing since 2010.[63] The author further revealed that the number of deceased donor organs used for transplant increased to 37,334 in 2022, a 4.6% increase from 35,687 in 2021; and that this number has been increasing since 2012.[64]Data from 2024 further confirms the impact of UAGA on addressing shortage of decedent organ and transplantation. For instance it was revealed in 2024 a total of 41,119 transplants were made possible through deceased organ donation.[65] It demonstrated for the first time the threshold of 40,000 deceased donor transplants which was surpassed, which represents an increase of 3.6 percent over 2023; thus, the deceased donor transplants have set new annual records each of the past 12 years.[66]

As seen from the expansive provision of UAGA, the US today is seen as global leader in deceased donation followed by Spain. This milestone is achieved as a result of the opt-in model of donation adopted by UAGA which has today significantly increase the rate of organ transplantation in the country, thus reducing the long list and number of patients on the transplantation waiting list as well as saving countless lives that would have perished due to lack of sufficient organ to address dire transplantation list of persons in need of the procedure.

IMPEDIMENTS TO DECEDENT ORGAN DONATION IN NIGERIA

There are many impediments to decedent organ donation in Nigeria and these ranges from insufficient legal framework, cultural and religious practices, lack of awareness and inadequate public support by government. We shall briefly explore these challenges with the view to proffer the best way to overwhelm them.

Insufficient Legal Framework

We have noted somewhere in this work the fact that the legal framework for decedent donation in Nigeria when compared with UAGA will reveal obvious deficiency. For instance, unlike UAGA which regulate decedent donation and make provision for donor register, OPO, search and notification as well as expansive list of surrogate that can consummate donation in the absence of the donor, the NHA in Nigeria failed to addressthese

[57]Sadler ,A. 'A Community of Givers, *Not Takers, The Hastings Center Report*, [1984](14}(5) Autonomy, Paternalism, and Community.pp. 6-9.
[58] Ibid.
[59] Ibid.
[60]Zawistowski C. A., DeVita M. A. 'Non-heartbeating Organ Donation:A review. *J Intensive Care Med*.[2003](18):189-197.
[61]ArturUsovm, Project on organ donations Studying the effects of UAGA 1987'MA-thesis-Artur Usov-357945.pdf.Accessed 20th June 2025.
[62] AJAY R ISRANI AND OTHERS,' OPTN/SRTR 2022 ANNUAL DATA REPORT: DECEASED ORGAN DONATION'OPTN/SRTR 2022 ANNUAL DATA REPORT: DECEASED ORGAN DONATION - AMERICAN JOURNAL OF TRANSPLANTATION. ACCESSED 10TH JUNE 2025.
[63] Ibid.
[64] Ibid.
[65] SCIENCE IN DONATION AND TRANSPLANTATION,'EVERY DAY THE OPO SYSTEM SAVES LIVES. THE SYSTEM ISN'T BROKEN.'DONATION BY THE NUMBERS — SCIENCE IN DONATION AND TRANSPLANT>ACCESSED 10TH JUNE 2025.
[66] Ibid.

important areas. It is also noted that under UAGA, organ can be harvested from persons that suffered from accident and other medical conditions i.e cardiac arrest, the NHA in Nigeria recognize decedent donation under one pool, brain death. Furthermore, while NHA allow for decedent donation through a will and other documents, the Act does not make provision as to the validity of a donation made in a will that has been revoked or invalidated whereas UAGA sustained the validity of a will under these circumstances.

It is pertinent to also underscore the fact that UAGA has secured the autonomy of the decedent to authorize a donation and this donation cannot be overridden by a surrogate or any family member in the absence of the deceased, unless in instances where prior to the demise of the decedent, he or she failed to make a donation or register their intention to so do. Under this circumstance, a surrogate or family member can make decedent donation. It is doubtful whether NHA allow donation under this instance. Added to this, UAGA allow decedent donation by minors otherwise referred to as either emancipated or un-emancipated donors, while the NHA is silent about this; thus, allowed minors whose organ can regenerate through natural process to make living and not decedent donation.

In terms of coordination with organ procurement centers, it is discovered that OPO are according sweeping powers in the US to coordinate with organ procurement centers and hospitals for purposes of organ retrieval correspondingly, hospitals are duty bound to report persons that are died in the circumstances to which their organ could be harvested or potential donors that registered donative intent to OPO which is clearly lacking under NHA.

Aderibigbe and Adebayo[67]observed that while NHA regulate decedent donation in the country and contained notable provisions that will enhance organ availability in the country, the legislation however needed a timely review as practical areas are left out and some aspects covered on organ donation are unrealistic and uncertain as there are lot of loopholes in the mood of actual implementation of the legislation.[68] We are in agreement with these authors as rightly demonstrated above. A comparative analysis with the provision of UAGA and NHA will reveal the obvious loopholes as outline above.

Cultural beliefs

Culture means the way of doing things in the society. Cultural norms are central to the social interaction and behavior of people in a giving setting or society. It shape behavioral patterns and how people response to social changes or emerging challenges in the society. In Nigeria, culture enjoys pride of place amongst more than 250 ethnic groups that are in the state, particularly among the three dominant major tribes i.eigbo, Yoruba and Hausa. Ezizi and Others argued that a significant part of the culture of all ethnic groups in Nigeria relates to issues of decedent donation, erecting automatic barriers on the way of accessing non-generative organs.[69]

Notably, amongst the three dominant ethnic group in Nigeria, there is variety of taboos surrounding contact with dead bodies, a belief said to be accentuated by the multi-layered differences in funeral rituals and superstition about what happens after the demise of a person. For instance, it is noted that in some part of Africa, it is belief that for the body to gain post-mortem value, families in some part of Africa decorate the deceased body in order to conceal certain bodily distortions that should be carried into the next world which they belief may affect the deceased's place as an ancestor.[70]

Aside from the cultural beliefs embedded in culture, some scholars have also argued that by post-humous organ removal, the deceased suffers harm, and that the harm in question being that of assault on the bodily interest that

[67]Titilayo O Aderibigbe and Adesoji K. Adebayo,'Contemporary Issues On Organ and Transplantation in Nigeria: A Discussion'*An Open Access Journal from the Law Brigade(Publication) Group'*[2022](8)(4)71-92.
[68] Ibid.
[69] AK Ezizi and Others,'Determinants of Accepting of Organ Donation Among Medical Students Nigeria'*International Journal of Medicine and Medical Sciences*[2014](8)116-121.
[70] R.Lee,'Death on the Move:Funerals, Enterprenuers, and the Rural Urban Nexus in South Africa'*The Journal of the International African Institute*[2011](81);226-247.

he/she would have wanted preserved.[71]This belief to our mind support the notion that when an individual dies, his or her existence is not automatically extinguished; thus, favour the ancient practice of re-incarnation.

The decision to make decedent donation is not an easy one, though it supposed to be easy unlike living donation which could evoke emotions and complication during the life time of the donor. This decision however is often predispose by cultural orientation of the prospective donor, given that culture influences and shape the way of life of many Nigerians; thus, cannot be jettison when making such decision.Thus, for an Igbo, Yoruba or Hausa person to make up his or her mind towards organ donation, the person must be guided by cultural practices embedded in the culture to which the person subscribed to.This suffices that cultural practices play critical role in shaping Nigerians beliefs as relates to decisions to make decedent donation.

Noteworthy is the fact that in many Nigerian ethnic groups, the body is considered sacred, even in death. Among the Yoruba, Igbo, and Benin peoples, death rituals and the concept of ancestral veneration require that the body remain whole and undisturbed, thus, mutilating the body is believed to cause misfortune or hinder the spirit's journey to the ancestral realm.In a 2019 qualitative study published in the African Journal of Medical and Health Sciences, 73 per cent of respondents in Enugu State expressed strong opposition to cadaveric organ donation, citing cultural taboos and fear of "spiritual repercussions."Similarly, research by Iguisi at the University of Benin revealed that in Edo and Delta states, many believe posthumous organ donation could result in birth defects in subsequent generations, an idea rooted in traditional cosmology rather than medical science.[72]Adegbite corroborated this assertion when he observed that Nigerians carry their body with delicateness and guard its part with extreme jealousy and that this perception is anchored on the doctrine of sanctity of the human body and a corresponding duty to protect it from any invasion.[73]Petru[74]in this instance believe that shortage of decedent organ in Nigeria is orchestrated by the deeply held belief of reincarnation which influences negatively the act of donation.[75] Cedar[76] was also in consonance with this fact as the author observed that cultural beliefs play a significant role in organ donation and convincing people to accept organ transplantation.

Deducible from above, it is beyond argument that culture has been a major roadblock to organ donation in Nigeria. To address this issue with the view to mitigate the corrosive impact of culture in this aspect, the legal framework will need to be clear in addressing these loopholes. Some countries like the US, Spain and UK have taken the bold step in entrenching legal framework that adopt either the opt-out or opt-in system of donation which has gone a long way in addressing cultural impediments to organ donation while enhancing the pool of donation in the country.

Sanctity vs sacrifice

Nigeria is a deeply religious country, with over 90 per cent of the population identifying as either Christian or Muslim.While both religions, in doctrine, support the idea of saving lives, even through organ donation, the interpretation on the ground is far more complex.Islam, for instance, permits organ donation under specific circumstances, provided it is done altruistically and does not desecrate the body. It is however observed that some Islamic scholars in Nigeria remain divided, arguing that bodily mutilation, even for a noble cause, might violate the sanctity of creation. On the Christian side, some Pentecostal denominations have preached against any form of posthumous body tampering, linking it to fears of a "disrupted resurrection."

Notably however, in spite of the mixed feeling regarding organ donation by the adherent of both religion, both Islamic and Christian scholars have issued fatwas and encyclicals in other countries supporting cadaveric donation and organ donation is a reality in countries dominated predominantly by Christians and Muslims i.e, Suadi Arabia, Malysia, India, US, France, Germany. UK and many others.

[71] W. Glannon'Do the Sick have a Right to Cadaveric Organs?*Journal of Medical Ethics*[2003](29).
[72] Ibid.
[73]OlusolaBabatundeAdegbite,'Cultural-Religious Traditions and Practices and the Law Goverining Cadaveric Organ Donations in Nigeria'*UniversityofBotswana Law Journal*[2019].
[74]PetruC'Ethical, Social-Cultural and Religious Issues in Organ Donation'*Maedica(Bucur)[*2019](14)(1);12-14.
[75] Ibid.
[76] Cedars S,'Cultural Challenges of Organ Donation(2020).

Public Mistrust

Public mistrust in Nigeria's healthcare system is a long-standing issue. Accusations of organ theft, often unverified, frequently make headlines and stoke paranoia. In the absence of clear guidelines and transparency, ethical concerns flourish.Who is considered "dead enough" to donate organs? What protocols exist for brain death in Nigeria? Who oversees the consent process?A study published in The Pan African Medical Journal (2022) highlighted how fear of body harvesting and corruption in death certification are key deterrents to public support for cadaveric donation. The findings indicate that before the government can even broach the idea of policy reform, it must win back public confidence.

CONCLUSION

As rightly noted in the work, organ failure is a prevailing phenomenon both in developed and developing countries and over the years, it has caused many preventable deaths as a result of acute shortage of transplantable organs. While Nigeria and US entrenched legal frameworks aimed at addressing this menace, it is observed that the challenge of non-availability of transplantable organ persist. Decedent donation is however discovered to be one of the surest ways through which organ for transplantation can be outsourced. The legal framework operation in a given country will however determine the effectiveness of the organ retrieval system. Significantly, UAGA has been instrumental to the success story of decedent donation in the US making the country a global leader in decedent donation, while the NHA in Nigeria has remained largely an impediment to decedent donation in the country couple with other impediments like cultural practices, ethical and religious factor.

It is in view of this reality that the work compared the legal frameworks for decedent donation in Nigeria and US with the view to unearth factors that led to the success story in the US and how Nigeria can learn from the US experiences.

RECOMMENDATIONS

The following recommendations are proffered:

a. The National Health Act need to be review to provide for Organ Procurement Organization and the role of hospitals in organ procurement process.
b. NHA need address the issue of donor register that will allow for the retrieval and storage of decedent organ retrieved from decedent donors.
c. NHA needs to incorporate provisions that will regulate cultural and religious practices that affect decedent donation i.e adopt either the opt-in or opt-out model of donation.
d. NHA need to be amended to allow for decedent donation from emancipated and un-emancipated donors.
e. The NHA needs to be amended to allow for search and notification as well as expand the criteria for decedent donation to include accident victim as well as other death or near death situation that is considered suitable for donation.
f. It is recommended that the either the Opt-in or the Opt-out model of decedent organ donation be adopted to increase the rate of organ donation and evoke cultural and religious change in Nigerians attitude towards decedent donation.
g. It is advocated that aggressive media campaign be encourage toward educating Nigerian on the essence and value of decedent organ donation in saving the lives of persons in dire need of organ for transplantation.

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