

**CORPSE MYSTIFICATION AND NIGERIA'S CULTURAL VALUES ON  
CADAVERIC ORGAN DONATION: REFLECTIONS ON THE SHIFTING  
PARADIGMS OF CULTURE, RELIGION, AND LAW**

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**Abstract:** *Nigeria's cadaveric donation framework is in a parlous state, and this unenviable position is a manifestation of one key factor i.e. the society's heavily saturated environment of culture and tradition, as well as the role of religion. Prior to the law, matters of the cadaveric donation was hampered by centuries-old customary practices, norms, and traditions connected to corpse mystification and ancestors' worship, most of which regarded the act as a serious taboo. The boldest attempt at regulating cadaveric donation took place with the signing into law of the National Health Act 2014. However, even though this law has come to stay, it has also been largely criticized as overly western in substance, and totally disconnected from those it was meant to govern. It is against this background, that this Paper explores the contests and conflicts between these age-long customs/traditions, religion, and the law, with a view to highlighting the underlying flashpoints. This Paper makes the argument that the current law should be celebrated as a major departure from these harsh practices and further advocates the need for it to be embraced by all and sundry. This Paper reaches the conclusion that if the potentials in the current law are properly appropriated, it offers a historic opportunity for further gains in the near future.*

**Keywords:** Paradigms of Culture, Religion, Law, Nigeria

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## 1. INTRODUCTION

Nigerians like other members of the global community carry their body with delicateness, and guards its parts with extreme jealousy. This perception is rooted in the general doctrine of the sanctity of the human body and a corresponding duty to protect same from any type of invasion. The attitude of the Nigerian therefore is one in which no part of his/her body is seen as dispensable. Even where the body's metabolism and other life functions can still go on unhindered, the ordinary Nigerian prefers to keep his/her organ such than benefit neighbour<sup>1</sup>. The matter is made worse where the organ in question is that of a deceased person. In such instances, the matter transcends the realm of the donor and becomes a complex web in which relatives and family members begin to invoke cultural, traditional, as well as religious norms, presenting the norms as a matter of life and death for all concerned. It is in this battle of wits that esoteric practices such as corpse mystification and ancestors worship come to the fore, with the result that more often than not, these cultural/religions prohibitions end up trumping existing legal norms, with the law consistently having to contend with age-long values that the people consider inalienable. This has been the Nigerian

experience so far, such that matters regarding cadaveric donations have remained a pipe dream.

## **2. CADAVERIC ORGAN DONATION: A BRIEF OVERVIEW**

The cadaveric donation comprises organ donation which involves the taking of organs such as heart, lungs, kidneys, liver, pancreas from brain dead people, as well as tissue donation, which is taking tissues like skin, corneas, tendons, a bone from brain dead, as well as heart dead people<sup>2</sup>. Cadaveric donation is regarded as part of the end of life choices which an individual may make about what happens to his/her body after death<sup>3</sup>. It can be for therapeutic purposes, which as mentioned above would involve donating non-regenerative organs like the heart, kidney, liver, etc. towards benefiting another individual who is in desperate need for transplantation, or can be for educational purposes or clinical/scientific research, where the rest of the parts/tissues are donated to medical schools or research laboratories<sup>4</sup>. These tissues are donated in collaboration with pathologists, who in most countries are responsible for the body after death. Such tissues can be harvested several hours after death, as they undergo slow degradation<sup>5</sup>.

In matters of cadaveric organ donation, the question of determination of death is an important factor. General medical practice and sound legal doctrines provide that the donor be certified dead in line with acceptable medical standards before parts are removed. Currently, the standard for determination of death is the brain stem death. Simply put, cadaveric organ donation requires that donors must have suffered irreversible damage to the brain or brain-stem<sup>6</sup>. Some Scholars appear to suggest that the brain stem death as a standard for certifying biological or somatic death, may not really be valid as the supposedly dead person may just be incipiently dying<sup>7</sup>. This is accentuated by the argument that brain-dead individuals are simply in a state of irreversible coma and may be able to survive on some form life support for years<sup>8</sup>, and so brain death should not be equated with biological or somatic death<sup>9</sup>. Despite the argument about the uncertainty in the brain death criteria, there is an understanding that in medical practice, there exists a multiplicity of procedures in definitively determining death, and for the purpose of definitive death they can all be applied with the brain stem criteria at the tail end. This way, there would be n margin for error and death of the donor will be unequivocal and absolute.

Sometimes after death is certified, organs/tissues removal may first be preceded by an autopsy where it is demanded to ascertain the cause of death<sup>10</sup>. After completing the usual diagnostic procedures within the autopsy chain, there is usually a rather large volume of leftover material comprising sections, paraffin blocks, and wet material i.e. organs and tissue samples kept in formalin<sup>11</sup>. It is common practice to keep paraffin blocks and sections for reasons of quality control, and for future diagnostic procedures requested by family members such as for hereditary diseases<sup>12</sup>.

Where no autopsy is demanded, and consent has been given for the removal of organs/tissues, the procedure can be commenced. The procedure is rather intrusive to the cadaver, except perhaps for the cornea so it is proper to have the consent of the patient given while still alive, which is a major principle of biomedical ethics<sup>13</sup>. Remarkably, the issue of

consent is usually the first line of a challenge with cadaveric donations, given that it is principally entrenched in the long-established principle of bodily autonomy<sup>14</sup>. Where express consent is given, most often evidenced by a valid document like a Will or any other legal instruments, such is respected as part of the last wishes of the donor. However, where there is no such document, the position is to ask for the consent of the next of kin, and where there is none, it can also be a decision that the family as proxy makes about a loved one or relative, as to whether his or her organs/tissues can be harvested after death<sup>15</sup>. In most instances where there is no express consent by the deceased, it is always difficult getting the consent of the next of kin or relatives, given their emotional state and the kinship/attachment to the body of the deceased. It is a different situation when cadaveric tissue sampling or organ harvesting is specifically done (outside the framework of the regular autopsy) for scientific or educational purposes<sup>16</sup>. This procedure concerns highly intrusive access to the body such as cutting the body into several pieces, which is beyond regular donations, and as such with its exceptional nature it is important that the deceased himself/herself grants such permission<sup>17</sup>.

Generally, the world over the embodiment of mortality shapes ambivalent perceptions towards the donating of body parts<sup>18</sup>. As such cadaveric donation, as a part of the organ donation framework, is largely tied to the concept of death which itself is influenced by culture and religion<sup>19</sup>. Principally, perceptions on matters like the need for the body after death, as a mark of honour and dignity, funeral rites and practices, and the notion of the connectivity between the body and the owner's spirit after passing on in a sort of spiritual transition of the whole, greatly impact upon cadaveric donation decisions<sup>20</sup>.

### **3. CULTURAL LANDSCAPE OF NIGERIA AND ITS RELATIONSHIP WITH CADAVERIC DONATION**

Culture-bound theories of the human body view the etiology of cadaveric organ donation as rooted in socio-cultural factors, historical values, norms, and the overall mystical perceptions of distinct social groups<sup>21</sup>. In the anthropological understanding of the body, less attention has been given to the philosophical as well as cultural underpinnings of post-humous use of the body and its parts, as against the kind of focus yielded to matters like class and nationality<sup>22</sup>. A striking example is the idea of 'physical capital', which represents in a way, the symbolic value of the body and how physical characteristics of the body can be improved to promote one's social status and class<sup>23</sup>. It is also based on this understanding that Scholars have argued that even posthumously, the body is a thing of intrinsic value and must be accorded the appropriate treatment given the living<sup>24</sup>.

The above notwithstanding, scholarly interest in the role of culture, tradition, and religion in relation to the body has been upped in recent times, such that today it is a medley of norms i.e. legal, socio-cultural, as well as ontological. Culture today is a major determinant particularly amongst the developing societies of sub-Sahara Africa in issues surrounding the post-humous use of the human body. In this area, the leading cultural societies that make up modern Nigeria are of great interest. But first, how is culture viewed generally and in particular as it concerns Nigeria's legal literature?

Culture is generally referred to as the sum total of attitudes, beliefs, experience, knowledge, meanings, material objects, hierarchies, religion, spatial relations, and values of a group of people, that has come to be recognized as their common bond<sup>25</sup>. It is a collection of their existence, handed down from generation to generation. Black's Law Dictionary defines custom as, "*a usage or practice of the people which by common adoption and acquiescence and by long and unvarying habit, has become compulsory and has acquired the force of a law with respect to the place or subject matter to which it relates*"<sup>26</sup>. In the Nigerian case of *Eshugbayi Eleko v. The Officer Administering the Government of Nigeria*<sup>27</sup>, the court in a bid to define Culture referred to customary law as "*unwritten customs and traditions, which have been accepted as obligatory by members of a community*". Similarly, Justice A.G. Karibi-Whyte, J.S.C., (as he then was), defined customary law as, "*a body of unwritten customs and traditions accepted as obligatory by members of the community for the regulation of the relations between its members*". In *Lewis v. Bankole*<sup>28</sup>, Osborne C.J., in his observation on culture remarked that "*one of the most striking features of West African native custom is its flexibility, as it appears to have been always subject to motives of expediency, and shows unquestionable adaptability to altered circumstances without entirely losing its character...*"<sup>29</sup>.

In Nigeria, culture enjoys a pride of place amongst the more than 250 ethnic groups that make up the modern nation-state, particularly the three leading tribes i.e. the Yorùbá of the South-West, the Igbo of the South-East, and the Hausa/Fulani of the Northern region<sup>30</sup>. The Yorùbá People of South-West Nigeria, for instance, are well renowned for their rich cultural and traditional lifestyle<sup>31</sup>. Yorùbá culture is deeply rooted in the people's rich history that has for generations been the subject of deep scholarly inquisition<sup>32</sup>. The beauty of Yorùbá culture has seen it spread as far as the lower River Niger into Nupe-land<sup>33</sup>, other African countries such as Republic of Benin, Togo, Ghana, with its influences also felt as far as Brazil in South America<sup>34</sup>. Yorùbá culture is the way of life of the Yorùbá People, consisting of their language, ideas, beliefs, customs, taboos, rituals ceremonies, and symbols that have been handed down several generations through mediums like arts, craft, festivals, folklore, myths, stories, songs proverbs and wise sayings<sup>35</sup>. The Igbos or Ibo People occupy the South-East region of Nigeria, situated between the lower part of the Niger River, extending to parts of the Niger-Delta largely Delta and River states, and moving all the way down to some parts of the coast in Cross River<sup>36</sup>. The Hausa People occupy largely Nigeria's northern region close to the Sahel desert, and some parts of the North-central around the upper Niger River. The religion of Islam is central to Hausa/Fulani culture and tradition, codified in a body of law known as Sharia law, though as a People, they are also well known for their great attachment to culture and tradition and great history<sup>37</sup>.

All of these three ethnic groups are not only deeply cultural, but a significant part of their culture also relates to issues of cadaveric donation, erecting automatic barriers on the way of accessing non-regenerative organs<sup>38</sup>. Amongst the three, there is a variety of taboos surrounding contact with dead bodies, a belief that is accentuated by the multi-layered differences in funeral rituals and superstitions about what happens after an individual dies. In most cultures, respect for the human body being intact upon the death of the owner, is based

on the presumption that the body belongs to the almighty maker of all - God and that failing to secure the body in one piece, will not only jeopardize the entry of the departed into the new world but would also cause unimaginable calamities and misfortunes to befall the community<sup>39</sup>. The belief, therefore, is that cutting open a dead body to harvest an organ, or burying same without some parts intact, is a bad omen that offends custom and diminishes the value to be accorded the deceased and his/her family<sup>40</sup>. For example, in order to gain post-mortem value, families in some part of Africa decorate the body of the deceased in order to conceal certain bodily distortions, so it is not carried into the next world, which they believe may affect the deceased's place as an ancestor<sup>41</sup>. In the end, there is a cultural belief system that the interest of the deceased, including interest in his body and the constituents, is not attenuated upon death. Scholars have also argued that by such post-humous organ/tissue removal, the deceased suffer harm with the harm in question is that of assault on the bodily interest that he/she would have wanted preserved<sup>42</sup>.

#### **4. CORPSE MYSTIFICATION, ANCESTORS WORSHIP, AND CULTURAL/TRADITIONAL ATTITUDES TOWARDS CADAVERIC DONATION IN NIGERIA**

Culturally, there is the view that when an individual dies his/her existence is not automatically extinguished<sup>43</sup>. In the socio-cultural conception of the 'being', amongst most of the ethnic groups in Nigeria, while living organ donation appears generally accepted, there is a serious objection to cadaveric donation majorly because of the underpinnings that it represents nothing but a denigration of the dead<sup>44</sup>. The above view is dominant amongst the Yorùbá and Ibo ethnic groups. For the Hausa/Fulani, their way of life is entirely a matter of religion in which the Sharia law is regarded as native law and custom, and this regulates the general way of life, as well as what is permitted and what is forbidden. The same law covers the cultural attitudes towards cadaveric donation among the Hausa/Fulani people. Sharia law enjoins the Muslim faithful to be benevolent and one of the ways of expressing such benevolence may be through sustaining the life of another through organ donation<sup>45</sup>. Thus, for the Hausa/Fulani people, there isn't so much restriction as regards cadaveric donation, leaving most of the prohibitions to the cultural practice of the Yorùbás and the Ibos.

The strict cultural prohibition of cadaveric donation amongst the Yorùbás and the Ibos, is rooted in what is known as 'Ancestor Worship' a belief system based on the jurisprudence that life's course is cyclical and not linear, such that those who are dead, though not physically seen are alive in a different world and can reincarnate<sup>46</sup>, in a circular pattern of multiple deaths and rebirths<sup>47</sup>. Thus, in a sort of immortal continuum, an individual is deemed as sent into this world by natural birth, and at the completion of his/her task, returns through death to continue as a being in the other realm<sup>48</sup>. Adherents of this cultural belief boldly claim that to be in this other world i.e. the world of the dead, is to have supernatural powers over those in the world of the living, with such powers including the ability to bless or curse, and when death occurs, divination as to reasons behind the death is sought from the ancestors with such attributed more to spiritual forces than medical factors<sup>49</sup>.

For instance, in Yorùbá traditional belief the concept of the visible world of the living and the spiritual enclave of the ancestors and spirits, represent two distinct but acceptable realms<sup>50</sup>. The Yorùbá belief in the body as a vehicle of reincarnation is symbolized most eloquently in the 'Egúngún' masquerade, a most rambunctious fellow and notable social figure, believed to be adorned with rare supernatural powers, sometimes manifested in extreme acrobatic displays and commemorated most lavishly with high celebrations<sup>51</sup>. Further to this, given the claim that harmony among the living is sustained by a relationship between the ancestors dynamically engaging in connectedness with the living as well as those who have passed, the dead body in most instances is highly venerated<sup>52</sup>. In African thought generally, the ancestors are believed to have a beneficent relationship with the living members of their erstwhile communities<sup>53</sup>. In this epistemological paradigm, the dead is posthumously regarded as now as having taken up residence with spirits in a world of collective immortality<sup>54</sup>.

An interesting demonstration of this is what happens during a typical Tiv burial ceremony in Nigeria, where the rites of passage begin with a message to the great ancestor (Takuruku), intimating him of the death and requesting his presence to come and wait and receive the person into the ancestral world<sup>55</sup>. On the day of the burial, elderly women wash the deceased in order to enable him/her to enter the spirit world neatly and well dressed in the traditional attire all within twenty-four hours<sup>56</sup>. This tradition of exaggerated ceremonies which is common in most cultures is also a phenomenon that has attracted scholarly interest<sup>57</sup>. Sharing similar understanding with the Tiv system is the Igbo traditional belief that a single person may reincarnate contemporaneously showing up in two or more physical bodies<sup>58</sup>. There is additionally the Igbo belief that a part of a deceased person may thereafter continue to exist in the discarnate realm, following which such is elevated to the status of an ancestor by those who are still living<sup>59</sup>. The cultural interpretation to this is that though life and death are physically viewed as two distinct phenomena, in cosmic ontological unity both represent one interdependent unit, existing as the two forces shaping the life and after-life of the human being<sup>60</sup>.

Another dimension to this cyclical spiritual cosmic system is to be seen in the *Abiku phenomenon*. The Abiku conception is a major cultural signpost amongst the Yorùbá and the Ibo nations both of Southern Nigeria<sup>61</sup>. The Abiku in Yorùbá culture represents a recalcitrant Child seen as having come from the spirit world, belonging to a group of discarnate, who are destined to eventually return to the same world after a short sojourn here on earth, unless certain rituals take place<sup>62</sup>. It is seen as a problem of the spirit world which must be addressed, lest the same child surfaces again<sup>63</sup>. In Igbo Jurisprudence, the Abiku also referred to as '*Ogbanje*', is regarded quite disapprovingly as a mischievous brat frequenting between the world of the living and the dead without any identifiable purpose<sup>64</sup>. Literally, the term in the Igbo language means, "*to make several trips, to and from a place*"<sup>65</sup>. By way of characterization, such naughty children are given special names at birth, apparently to conjure the idea surrounding the frustration of their parents, and also depicting their attempt at labelling the Child in terms of the circumstances of his/her cyclical journey<sup>66</sup>. Examples of

such names among the Yorùbá people include Kokumo (he will not die again) or Malomo (don't die again)<sup>67</sup>. All these names are so crafted at appealing to the child's emotion persuading him/her to abandon the traumatic back and forth, and stay put<sup>68</sup>.

Where this fails and the child succeeds in entering another cycle of death, the dead body is handed over to a traditional health practitioner who mutilates it on the belief that his/her kindred spirits would reject him due to the scarification and ugliness that would result from the mutilation, and by this rejection, the child is then forced to stay in the physical world, when next he is reborn<sup>69</sup>. A Yorùbá Scholar Oluwole trying to capture the child in this ontological framework, posits that Yorùbá cultural belief in reincarnation is strengthened by three justifications which are, family resemblance in which newly born children are said to look like their dead forebears, the ability of some children to tell true stories of their dead ancestors almost in a form of telepathy, and the abiku phenomenon earlier discussed in which, some of the incisions made on the dead child, is seen when another is born<sup>70</sup>. Though, this practice which is rife among the different cultural groups in southern Nigeria may be analyzed as myth, it is nonetheless rooted in the peoples' way of life and ultimately shape their cosmology and cultural attitudes<sup>71</sup>. It is within this jurisprudence that cadaveric organ donation and death in Nigeria's cultural landscape is intrinsically viewed as two sides of the same coin, heavily shadowed by a coterie of existential cultural, religious, and social beliefs, alongside traditional medical practices<sup>72</sup>.

Thus, when it comes to cadaveric organ donation the reasoning is that the owner of the body i.e. the deceased is not yet dead given that he has only transited to another realm. As such, it becomes a taboo to seek to dismember any part of such a being, as such scarification not only reduces the wholeness of the being but constitute theft of what belongs to the deceased. In another light, to seek to harvest an organ/tissue of the deceased is regarded as dishonour.

The above-discussed web of practices comprehensively mirrors perhaps in a very vivid manner, the mass of conservative values often permeating most cultural/traditional discourse in relation to whether organs should or should not be donated in Nigeria and the influence of the norms on the general framework of cadaveric organ donation. This is, however, custom and tradition, what does the law have to say? Is there a union between the law and custom on the same matter? Given the largely unbridled influence of these practices on the peoples' way of life, has it had the same effect on the law? Laconically, how much did these practices shape the current law, if at all it did? The next discussion sets the cadence for an unravelling of these difficult questions.

## **5. THE LAW GOVERNING CADAVERIC DONATION IN NIGERIA**

Generally, two separate criminal legislations govern cadaveric donations in the country. While in the south the Criminal Code Act<sup>73</sup> operates in the 17 predominantly Christian states, the Penal Code Act holds sway in the Northern region.

### **5.1 Prohibition of Cadaveric Donation in Southern Nigeria**

Prior to the enactment of the National Health Act, 2014<sup>74</sup> issues of cadaveric in the States making up southern Nigeria was governed by the Criminal Code Act. The Act does not specifically address issues of organ donation, rather the closest provision in the Act that appears to deal with the use of cadavers comes under the heading 'Misconduct with regards to Corpses' and in this regard Section 242<sup>75</sup> provides that:

*Any person who -*

*(1) without lawful justification or excuse, the proof of which lies on him,*

*(a) neglects to perform any duty imposed upon him by law, or undertaken by him, whether for reward or otherwise, touching the burial or other disposition of the human body or human remains; or*

*(b) improperly or indecently interferes with, or offers any indignity to, any dead human body or human remains, whether buried or not;*

*(2) eats or receives for the purpose of eating any part of a dead human body; is guilty of a misdemeanour, and is liable to imprisonment for two years.*

The above provisions show that Nigeria had never paid serious thoughts to matters of cadaveric donation. Given this lack of abiding legislation, matter of cadaveric donations remained shrouded in so much secrecy wit most concluded in an underground black-market system that did not help the development of the system.

With the enactment of the National Health Act, cadaveric donation became legalized for the first time in Nigeria. In this regard, the Act provides that;

*(1) Human organs obtained from deceased persons for the purpose of transplantation or treatment, or medical or dental training or research, shall only be used in the prescribed manner.*

*(2) Human organs obtained under subsection (1) shall be allocated as prescribed.*

*(3) The National Tertiary Health Institutions Standards Committee shall prescribe - (a) criteria for the approval of organ transplant facilities; and*

*(b) procedural measures to be applied for such approval.*

*(4) A person who contravenes a provision of this section or fails to comply therewith or who charges a fee for a human organ is guilty of an offence and shall be liable to imprisonment for a minimum of five years without option of fine<sup>76</sup>.*

The Act further provides that;

*(a) A person who is competent to make a will may –*

*(i) in the will,*

*(ii) in a document signed by him and at least two witnesses, or*

*(iii) in a written statement made in the presence of at least two competent witnesses, donate his or her body or any specified tissue thereof to*

*be used after his or her death, or give consent to the post mortem examination of his or her body, for any purpose provided for in this Act.*

*(b) A person who makes a donation as stated in paragraph (a) of this section may nominate an institution or a person as donee<sup>77</sup>*

Furthermore, contextualizing the above provision, the Act provides for the purpose of such donation of the body or other tissues as follows;

*(1) A donation under Section 55 of this Act may only be made for the purposes of –*

*(a) training of students in health sciences;*

*(b) Health research;*

*(c) Advancement of health sciences;*

*(d) therapy, including the use of tissue in any living person; or*

*(e) production of a therapeutic, diagnostic, or prophylactic substance.*

*(2) This Act does not apply to the preparation of the body of a deceased person for the purposes of embalming it, whether or not such preparation involves –*

*(a) making of incisions in the body for the withdrawal of blood and the replacement by a preservative; or*

*(b) restoration of any disfigurement or mutilation of the body before its burial<sup>78</sup>*

Lastly, the Act provides for the 'procedure for revocation of any donation' so made above. In this wise, it says;

*A Donor may, prior to the removal for transplantation of the relevant organ into the donee, revoke a donation in the same way in which it was made or, in the case of a donation by way of will or other document, also by the intentional revocation of that will or codicil or document<sup>79</sup>.*

The above provisions of the Act clearly make cadaveric donation an act permitted under Nigerian law. The twin clauses, 'in a written statement made in the presence of at least two competent witnesses, donate his or her body or any specified tissue thereof to be used after his or her death', and 'A person who makes a donation as stated in paragraph (a) of this section may nominate an institution or a person as donee', manifestly shows that it is lawful to donate cadaveric organs before the passing of the owner, and the uses to which such donated organ or tissue can be put, have been clearly outlined under the Act. Under Nigerian law a person under the age of eighteen may not have legal capacity to give valid consent with respect to cadaveric donation, while the physician establishing death is required to state in a dated and signed report the method used and the deceased donor has a legal right to object to such donation before his death and the decision may not be overridden by the relatives<sup>80</sup>.

## **5. 2. Northern Nigeria, Cadaveric Donation, and the nexus between law and religion**

In the North of Nigeria, the Penal Code Act is the principal criminal legislation. It deals with all matters of crimes and criminality and serves the same function the Criminal Code Act serves in the south of the country. The Penal Code Act, however, does not have any provision dealing with organ donation or dealings in human corpses as is the case under the Criminal Code Act. The reason for is not strange. Even though the Penal code is the principal criminal legislation in the Northern region, issues related to cadaveric donation remain largely governed by Islamic codes under the Shari'ah law. Given that both social and religious issues play dominant roles in Nigeria's multi-cultural and multi-religious north, the Shari'ah regarded as the customary law of the region is what the people look up to for direction.

The operation of the Sharia'h law amongst Northern Nigeria Muslims is not different from its well-established norms and principles amongst other Muslims globally. It is a complete code of life prescribing both the secular and spiritual standards for all Muslims<sup>81</sup>. All religious and cultural norms stipulating these standards come from the Quran and the Sunnah, and both remain the source of guidance on any matter related to the lives of Muslims, and cadaveric organ donation-related matters is not an exception. The world over the Shari'ah law as a body of religious codes is applied to deep and complex bioethical issues regarding medico-legal issues<sup>82</sup>. However, it is important to first establish that matters related to cadaveric organ donation, remains as controversial as ever amongst Islamic Scholars. Largely, the opposition to cadaveric donation amongst Muslims scholars is predicated on the controversy surrounding the determination of death. For some scholars, the cadaveric donation is un-Islamic because it violates fundamental Islamic principles which posits that the determination of death should be based on the traditional view of death which is based on the cessation of heartbeat and breathing function resulting ultimately in the coldness of the body<sup>83</sup>. Scholars who support cadaveric donation, however, do so on the ground that the currently accepted standard of death i.e. the brain stem death is valid, as it lends credence to the facts that death can only be deemed to have occurred when all of the body's biological units that are interconnected have indeed ceased functioning<sup>84</sup>.

Also, the divergence of views amongst Muslim Scholars on whether or not Islam prohibits cadaveric organ donation appears to be a sectarian matter. While scholars from the Indian subcontinent comprising largely Pakistan, Bangladesh, and the Muslim population of India hold that Islam forbids the removal of organs from dead individuals, their counterparts from the Middle East made up of most Arab Scholars hold otherwise, opining that Islam permits such organ removal as long as it is a voluntary act of charity<sup>85</sup>. Those who argue against cadaveric donation hinge their position on the sacredness of the human body and the fact the body belongs to God<sup>86</sup>. Thus, while autopsies are seen as acceptable in Islam, there remain reservations regarding matters like the postponement of burials, transferring the body from place to place before burial, and any violations of the sanctity of the human body<sup>87</sup>. It is for this reason that Muslims are instructed to conduct funeral rites immediately death occurs<sup>88</sup>. They assert that God alone can give direction on the use of the body<sup>89</sup>. However, the

majority of Muslim scholars both Sunni and Shia advocate the importance of saving human life based on injunctions of the Shari'ah<sup>90</sup>. Based on these injunctions, there is the general view that the Shari'ah does not entirely frown at organ donation.

However, where both the Quran and Sunnah offers no clear-cut position on the controversy in question, Islamic Scholars are known to delve into what is known as *Ijtihad*, which is basically the academic exercise of giving their opinion from the stand-point of Islamic Jurisprudence known in the Muslim faith as *usulal-fiqh*<sup>91</sup>. Islamic Scholars argue that the Quran does not explicitly speak on matters of cadaveric organ donation<sup>92</sup>. This, however, appears as taking a narrow and restricted view of Quranic injunctions. Why is this so? By way of inference, it appears plausible to say that the Quran deals with matters of cadaveric organ donation through some of its injunctions. What then does the Quran say in this regard?

The position of the Shari'ah as regards cadaveric donation is better viewed from how Muslim faith upholds the sanctity of human life. Under the Sharia'h it is provided that, "*if anyone killed a person – not in retaliation of murder, or (and) to spread mischief in the land – it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all mankind*"<sup>93</sup>. Additionally, it is provided that, "*And kill not anyone whom God has forbidden, except for a just cause (according to Islamic law). This he has commanded you that you may understand*"<sup>94</sup>. It is thus clear that the Sharia'h cherishes human life. Flowing from this, notwithstanding the general prohibition of organ donation in Islam, there exists an exception to the rule, and that is that Islamic codes recognize as permissible, and even worthy of reward where one person willingly go all out to save the life of another<sup>95</sup>. This position was clarified by one of the highest-ranking organizations in the Islamic faith, the Islamic Council of Saudi Arabia stating that Islam does not forbid cadaveric organ donation where it is specifically to save a life<sup>96</sup>. The same position is said to have been the consensus of several leading Muslim Scholars who approved the resolution of the Pan-Islamic Council Jurisprudence on Resuscitation Apparatus in the Jordanian capital, Amman. Therefore, in Islam, any transplantation that would sustain human life and all attached to it is permitted<sup>97</sup>.

Most of what is today agreed as the Shari'ah's position on organ donation came out of the works of Islamic scholars trying to put forward the context in which quranic codes deals with the subject<sup>98</sup>. Generally, the Shari'ah permits the transplant of organs from one person, whether dead or living to another, but subject to certain conditions<sup>99</sup>:

1. The donation must be the only possible medical means of treating or saving the life of the donee<sup>100</sup>. The closest to this is the Shari'ah injunction of the use of carcasses<sup>101</sup>. The idea is that though the Shari'ah clearly forbids the eating, consumption or receiving of dead meat, blood, and the flesh of swine, but where it is necessary as a matter of life and death such as where a sick person needs an organ transplantation because his life/her is under the threat of death, such a person will be deemed as guiltless<sup>102</sup>. The further understanding is that in allowing organ donation there is the seeking of ease for human beings, pity for the sick and sharing of pain, which is all in line with sound Shari'ah doctrines<sup>103</sup>. This position is backed up by several portions of the Shari'ah such as those which says, "*the more harmful detriment*

*is removable by the less harmful one*", "when facing two evils, choose the less harmful one", "when comparing between two ill deeds, consider which is the greater in harm and do the other"<sup>104</sup>

2. Such donation is also allowed where it is towards providing welfare<sup>105</sup>. It must be considered as solely a humanitarian act and one of mercy<sup>106</sup>. This position is based on the fact that since human nature is what the Shari'ah regulates, whenever the welfare of a man is in issue, it becomes legal and permissible in Islamic law<sup>107</sup>. It is held that Islamic law is established particularly for the welfare of humanity and thus, any action which brings about human welfare is permissible in Shari'ah<sup>108</sup>.

3. Organ removal should not endanger the donor's life<sup>109</sup>. This is predicated on the fact that Shari'ah provides that disease should not be cured through a means that will cause similar or worse harm than the disease itself<sup>110</sup>. If the donation is done at the end of life, the shari'ah prescribes that painful procedures are avoided<sup>111</sup>. For instance, where the organ donation is likely to procure or hasten the death of the deceased, it would be clearly forbidden. This is so because the Quran forbids a Muslim taking his/her life<sup>112</sup>. In this regards, it provides that, "And whoever kills a believer intentionally, his recompense is hell to abide therein, and the wrath and the curse of God are upon him, and a great punishment is prepared for him"<sup>113</sup>.

4. The donor must willingly consent to the procedure and it must not be by duress<sup>114</sup>. Consent is generally a basis for cadaveric donation in Islam, and not just consent but one predicated on full disclosure leading to a validly made decision by the deceased<sup>115</sup>. This is because any consent procured without adequate information coming to either the donor or the family acting as proxy violates elementary Islamic principles on truth-telling and honesty<sup>116</sup>. It has however been an argument that the consent rule regarding cadaveric donation should be extended to presumed consent, to the end that there would be an implied agreement and understanding remove to organs from a deceased person unless such Individual expressly declines<sup>117</sup>. Muslims have however objected to this position as one prone to abuse and may open the door to other unethical behaviours such as commercialization of such removed organs<sup>118</sup>.

4. The Principles of human dignity and self-worth must also be adhered to as provided for under Shari'h injunctions<sup>119</sup>. As a matter of fact, Islam prescribes that when a Muslim is suffering from a terminal disease and death is a certainty, such should be allowed to die in peace and not subjected to further torture<sup>120</sup>. This is given Islam's recognition of the right to dignity of the Muslim. In the same vein, cadaveric organ donation must not be such that will violate the donor's dignity.

5. Lastly, it is required that the proposed recipient must be a Muslim, particularly where the donor is a Muslim<sup>121</sup>. However, a challenge of cadaveric donation is that Muslims are enjoined by the Shari' ah to bury their dead immediately, particularly if the death occurs before 4.00pm and so the entire transplantation procedure can generally conflict with the funeral rites except if such organs are removed almost immediately<sup>122</sup>. Based on the above injunctions, there is the general view that the Shari'ah does not entirely frown at cadaveric

donation, as the above conditions are seen as widely accepted positions in Islamic Jurisprudence<sup>123</sup>.

Generally, it appears settled that cadaveric donation is permitted in Islam and this is the same rule that operates in the Northern part of Nigeria. Given the fact that Muslims in the North are deeply religious, it was not difficult for these codes to be adhered to. Thus, prior to the National Health Act, Muslims in the North were generally guided by these provisions. The only issue was about resolving issues about the desecration of the body of the Muslim given the underlying belief that that the body must be presented intact at death for the life hereafter. The enactment of the National Health Act, however, put the adherence to Islamic codes to the background and contemporary educated Muslim physicians and scholars must now make decisions based on provisions of the Act and where Islamic injunctions conflict with the Act, the Act overrides.

## **6. CONFLICT BETWEEN CULTURAL/RELIGIOUS NORMS AND THE LAW ON CADAVERIC DONATION**

In a practical sense, it has been a challenge for the law as established above to work successfully and fulfil its full potentials as envisaged by the drafters, given the overbearing influence of cultural/religious norms in this regard. This has also stifled the development of the law, due to paucity of disputes arising out of issues of cadaveric donation. Where organs/tissues from dead bodies are not donated due to taboos across different ethnic groups prohibiting same, the result can only be the only thing – stagnation in the abiding legal framework.

However, one position argument that has remained at the background of the non-workability of the law is the argument that the current law is foreign in outlook, and does not take into consideration the age-long cultural practices of the people it was to govern, so as to robustly reflect them in key provisions. The argument is that if the current Act has been a blend of extant common law principles and aspects of customary law, it would have enjoyed wider acceptability. This has been the subject of diverse views, but this Paper takes a contrary view.

To start with, one tries to imagine how it would have been workable for the Act to go around the intricacies in the cultural practices of the three leading ethnic groups, the Yoruba, Igbo and Hausa/Fulani, and create a convergence of some sort. It would have been a case of 'too many cooks spoiling the broth'. If for instance a provision in the Act appears to be hinge on Yoruba culture leaving out that of the Ibos and Hausa/Fulanis, or perhaps it betrays a suspicion that Huasa/Fulani cultural norms make more sense than that of the Yorubas and the Ibos, there is certain to be a legal conflagration, resulting in endless litigation and regional acrimony.

Again, considering another scenario, if the Act had been prepared on the basis of norms in all of the cultures, there is also likely to be a clash of will as the underlinings of the cultures are not the same. Even for the Yorubas and Ibos who both believe in Ancestors Worship, in a final analysis, their idea of the specifics is not exactly the same. Of course,

many of these clashes would undoubtedly be the extended corollaries of an outburst of anger along the familiar fault-lines. The potential for clashes becomes more frightening, when one considers the fact that most Nigerian cultural practices are regarded as antiquated, and with their endless list of taboos offering a regime of rigid and suffocating ethos, if the Act had been modelled on these practices, not only would there have been a total breakdown in terms of inapplicability, the law itself would have been too harsh to achieve anything meaningful. A close examination of the current law shows that any mistake to have hinged the Act on some of the cultural practices discussed above is primed to expose the dangerousness in Nigeria's multifaceted cultural controversies.

Also, in the evolution of Nigerian customary practices, one key condition is that every cultural must pass the 'Repugnancy and Incompatibility Test', which requires that a culture would be deemed unacceptable and unfit for application in Nigerian courts, except such is not "*repugnant to natural justice, equity and good conscience, nor incompatible either directly or by implication with any law for the time being in force*"<sup>124</sup>. Specifically, the Law provides that;

*The High Court shall observe, and enforce the observance of every, native law and custom which is not repugnant to natural justice, equity, and good conscience nor incompatible either directly or by implication with any law for the time being in force, and nothing in this law shall deprive any person of the benefit of any such native law or custom*<sup>125</sup>.

Thus, for years the application of matters of custom and tradition has always met a brick wall in the regular courts, particularly where it comes to establishing guilt or innocence, or rights and liabilities, based on the accepted standards of rules of evidence. Where such custom is deemed 'repugnant to natural justice, equity, and good conscience', or ruled to be in conflict with existing law, it loses validity and no claim can be made pursuant to it. This is also made worse by the fact that such customs are not subject to the rules of evidence, so proving a claim or right becomes impossible. For example, if a cadaveric donation matter where to go to Court and some provisions of the Act is an issue, how does a next of kin or relative prove that the deceased had given, or not given consent for his/ her organ to be harvested where there is no document to back such claim up, except to say that it is simply a part of their tradition that once an individual dies a certain kind of death, his body part is forbidden from being donated. Certainly, it was in a bid to avoid this sort of problematic situation that the drafters wisely enacted the Act outside the complicated system of culture and tradition. Unfortunately, given the heavy cultural attitudes that pervade the land, many still consider most of the rules of their custom as an abiding authority, in disregard to what the law says. It is, however, important to say that the Act and its current provisions still remains good law and quite promising.

## 7. CONCLUSION

A cadaveric donation as a form of medical procedure helps to make the most of body parts that would otherwise have been wasted, to prolong the life of others and generally make for a happier human society<sup>126</sup>. As it is said life is sacred, a reality that compels a craving in

all humans to utilize every available means to sustain a living<sup>127</sup>. Thus, generally, the problem of access to cadaveric organs in Nigeria is not one of ignorance. It is, however, important to state that there is a wide margin between knowledge of donation and the willingness to donate. As such while the people cannot be said to be unfamiliar with the altruistic side of donation, their will to accordingly act is hamstrung by an environment heavily shaped by culture and tradition.

As it has been established in this Paper, major resistance to cadaveric donation in Nigeria is that many do not want their body to be desecrated after their demise. This Paper has also established how this erroneous belief is deeply rooted in people's cultural attitude, norms, and tradition. It is thus evident that culturally inspired posthumous interest in the body is a Nigerian phenomenon, particularly through the existential philosophy of ancestor-ship, which this Paper has thoroughly examined. As such, there is a need for more robust and comprehensive education, particularly one that can demystify this current regime of cultural apprehension and controversies<sup>128</sup>. For a region like Northern Nigeria where the philosophy governing cadaveric donation is a derivative of religion which is also the native law, it has been said that to increase organ yield, it is imperative to include religious leaders i.e. the Muslim Clerics as they exert great influence on their worshippers<sup>129</sup>.

In a final analysis, it must be stated that the fact that the current law is not fashioned after the Peoples' cultural practices is the best thing to happen to Nigeria's cadaveric donation framework. The law is a major departure from the iron curtain that these cultural practices represent, and that must be generally commended. With the enactment of the law, the cultural environment is beginning to come under intense pressure to shed most of its dark practices, especially given that most of the norms suffer from problem of believability, and the fact that cultural identities are themselves products of behaviour, which is susceptible to changes where there are better alternatives, such that where cultures interact and intermix, changes occur<sup>130</sup>. This Paper submits that the current law is a better alternative and the only way to go is to embrace it, consequent upon which desired changes can be made in future to reflect the needed cultural flavour.

## REFERENCES

<sup>1</sup> This attitude for instance can be gleaned from simple altruistic acts like blood donation, it is not uncommon to find the average Nigerian expressing reservations about donating his/her blood on the ground that, the remaining blood may not be enough for proper living, even where such claim may have no medical or evidentiary proof.

<sup>2</sup> P.J. Van Diest, N.W.J. Lopes Cardoso, and J. Niesing, 'Cadaveric Tissue Donation: A Pathologist's Perspective', (2003), 29 (3), *Journal of Medical Ethics*, 135 – 136.

<sup>3</sup> C. Sharp and G. Randhawa, 'Cultural Attitudes Towards Death Practices, the Body after Death, and Life after Death in Deceased Organ Donation - A UK Polish Migrant Perspective', (2016), 6 (3), *Journal of Palliative Care & Medicine*, 3-7.

<sup>4</sup> P.A. Bhusari, D.P. Kathe, K.B. Khairnar, K. Shukla, & V.B. Chormunge, 'Whole Body Donation: An Attitude and Perception in North Maharashtra', (2012), 2 (2), *International Journal of Health Sciences*, 15-19.

<sup>5</sup> P.J. Van Diest, N.W.J. Lopes Cardoso, and J. Niesing, *supra*, n. 2.

<sup>6</sup> M. Vokovic, et al, 'Cadaveric Organ Transplantation and Religion', (2010), 63 (8), *Medicinski Pregled*, 575- 578.

<sup>7</sup> The Idea of 'Incipiently dying' in medical practice refers to those who may not be deemed to be clearly dead, but who are notwithstanding seen has destined to die as the can be no way for them to return to life. For more critical review in this respect, *see generally*, R.D. Truog, 'Brain death – Too Flawed to Endure, Too Ingrained to Abandon', (2007), 35(2), *Journal of Law Medicine & Ethics*, 273-281; K.G. Karakatsanis, 'Brain Death: Should It Be Reconsidered?' (2008), 46(6), *Spinal Cord*, 396-401; A.R. Joffe, 'The Ethics of Donation and Transplantation: Are Definitions of Death Being Distorted for Organ Transplantation?' (2007), 2(1), *Philosophy, Ethics, and Humanities in Medicine*; 1 – 7; R.M. Veatch, 'Donating Hearts After Cardiac Death – Reversing the Irreversible', (2008), 359 (2), *The New England Journal of Medicine*, 672-673; D.A. Shewmon, 'Chronic Brain Death: Meta-Analysis and Conceptual Consequences', (1998), 51 (6), *Neurology*, 1538-1545.

<sup>8</sup> N. Zamperetti, R. Bellomo, & C.A. Defanti, et al. 'Irreversible Apnoeic Coma 35 Years Later', (2004), 30 (9), *Intensive Care Medicine*, 1715-1722.

<sup>9</sup> A.M Capron, 'Brain death – Well Settled Yet Still Unresolved', (2001), 344 (16), *The New England Journal of Medicine*, 1244-1246.

<sup>10</sup> P.J. Van Diest, N.W.J. Lopes Cardoso, and J. Niesing, *supra*, n. 2.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> The Principle of Consent which is foundational in all aspects of contract, is also a major pillar in the medical procedure value chain. In this context, absence of consent or fraudulently procured consent renders legally void or morally unacceptable any use of human bodily material.

<sup>14</sup> The rule regarding consent as a foundation of any interaction with the human body was long established following the landmark decision in *Schloendorff v. Society of New York Hospital*, 105 NE, 92, 93 (1914), where Justice Benjamin Cardozo, brilliantly opined that, "Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault for which he is liable in damages. This is true except in cases of emergency where the patient is unconscious and where it is necessary to operate before consent can be obtained". The Court in this case, held that the surgery performed by the

Doctor to remove a tumour which Mrs. Mary Schloendorff did not consent to, constitutes Medical battery. Some Scholars have disagreed with the rule, stating that the consent requirement where necessary, can be displaced by compelling moral considerations. See T.L. Beauchamp and J.F. Childress, 'Respect for Autonomy', in *Principles of Biomedical Ethics*, (New York: Oxford University Press, 4<sup>th</sup> Edition, 1994), 126.

<sup>15</sup> *Ibid*; Elucidating quite brilliantly on this point, Jonsen said, "consent is ethically important because it manifests and protects the moral autonomy of persons and it is a barrier to exploitation and harm. These purposes are no longer relevant to the cadaver which has no autonomy and cannot be harmed". See A.R. Jonsen, 'Transplantation of Fetal Tissue: An Ethicist's Viewpoint', (1988), 36, *Clinical Research*, 215-219.

<sup>16</sup> *Ibid*.

<sup>17</sup> *Ibid*.

<sup>18</sup> L. Ai-Ling, J. Dermody CeRes, and S. Hanmer-Lloyd CeRes, 'Exploring Cadaveric Organ Donation: A Mortal Embodiment Perspective', (2007), 23 (5), *Journal of Marketing Management*, 559 – 585.

<sup>19</sup> C. Sharp and G. Randhawa, *supra*, n. 3.

<sup>20</sup> *Ibid*.

<sup>21</sup> K.T. Woo, 'Social and Cultural Aspects of Organ Donation in Asia', (1992), 21 (3), *Annals of the Academy of Medicine Singapore*, 421 – 427; P. Bruzzone, 'Religious Aspects of Organ Transplantation', (2008), 40 (4), *Transplantation Proceedings*, 1064 – 1067.

<sup>22</sup> Bryan S. Turner, *The Body and Society: Explorations in Social Theory*, (Oxford: Basil Blackwell, 1984). It must be noted that the above scholarly work, published in 1984 is deemed the first contemporary book to focus entirely on the body as a theme of research. See further, Bryan S. Turner, 'The Body in Western Society: Social Theory and its Perspectives', in Sarah Coakley (Ed.) *Religion and the Body*, (Cambridge: Cambridge University Press, 1997) 15-41.

<sup>23</sup> P. Bourdieu, 'Sport and Social Class', (1978), 6, *Social science information*, 819-840.

<sup>24</sup> In this regard, a South African Scholar Satyapal argues that a cadaver possesses both intrinsic and instrumental values, and as such, the treatment of the living should influence our treatment of the dead. He further posits that the instrumental value of the cadaver invokes values when it is recognized as the source of the deceased's memories and responses. See K. S. Satyapal, *The Treatment of Human Remains*, (2012), 5(1), *South African Journal of Bioethics & Law*, 55 – 60.

<sup>25</sup> G. Hofstede, *Cultures and Organizations: Software of the Mind*, (New York: McGraw Hill, 1997).

<sup>26</sup> Blacks' Law Dictionary, 2<sup>nd</sup> Edtn. See also the following English cases, *Adams v. Insurance Co.*, 95 Pa. 355. 40 Am. Rep. 602; *Hursh v. North*, 40 Pa. 241; *Lindsay v. Cusiuiano*, (C. C.), 12 Fed. 504; *Strother v. Lucas*, 12 Pet. 445, 9 L. Ed. 1137; *Panaud v. Jones*, 1 Cal. 49S.

<sup>27</sup> (1928) NILR 19, Customary Law.

<sup>28</sup> (1908), 1 Nigerian Law Report 81, 100.

<sup>29</sup> *Ibid*.

<sup>30</sup> The Fulanis or Fulbe, as a distinct ethnic group from the Hausas are generally pastoral in nature constituting about 95% of the nomadic herders in Nigeria. They are today colloquially referred to as 'Fulani Herdsmen'. Significantly, the cultural identity and distinctiveness of the Fulani nation is that of cattle ownership/rearing in a migratory pattern. History has it that the Fulani pastoralists emigrated to Northern Nigeria, from the Senegambia in the western Sudan at the beginning of the 14<sup>th</sup> century, in a generational immigration that spanned several

centuries moving in small units of compound families. They make a living from cattle herding based on unrestricted grazing and movement of their ruminant livestock searching for better conditions such as the availability of water, and grazing farmlands, while residing in tents as they migrate. As a result of their nomadic way of life, the Fulanis are today in about 31 out of the 36 states of Nigeria.

<sup>31</sup> E.D. Babatunde, *Culture, Religion and the Self: A Critical Study of Bini and Yorùbá Value Systems in Change*, (New York: Edwin Mellen Press, 1992). Though the Yorùbás dwell mostly in the South-West of Nigeria, comprising of the States of Ekiti, Ogun, Ondo, Osun, Oyo, and Lagos, they are also found in small parts of Delta, Edo, Kwara, and Kogi States.

<sup>32</sup> For a comprehensive read on the history of the Yorùbá People, *see generally*, J.A. Atanda, *A Comprehensive History of the Yorùbá People up to 1800*, G. O. Oguntomisin (Ed.) (Ibadan: John Archers, 2007); I.A. Akinjogbin, & E.A. Ayandele, 'Yorùbáland up to 1800', in O. Ikime (Ed.), *Groundwork of Nigerian History*, (Ibadan: Historical Society of Nigeria, 2000), 121-143; B. Davidson, *The Growth of African Civilization: A History of West Africa 1000-1800*, (London: Longman Publishers, 1965); C.O. Osasona, & A.D.C. Hyland, *Colonial Architecture in Ile-Ife, Nigeria*, (Ibadan: Book-builders Editions Africa, 2006); E. Isichei, *History of West Africa since 1800*, (London: Macmillan Publishers, 1999); K.H. Basso, *Wisdom Sits in Places: Landscape and Language Among the Western Apache*, (Albuquerque: University of New Mexico Press, 1996); O.I. Obateru, *The Yorùbá City in History: 11th Century to the Present*, (Ibadan: Penthouse Publishers, 2006); S. Biobaku, *Origins of the Yorùbá*, (Lagos: Federal Information Service, 1995); S. Johnson, *The History of the Yorùbás: From the Earliest Times to the Beginning of the British Protectorate*, (Cambridge: Cambridge University Press, 2010); W. Bascom, *The Yorùbá of Southwestern Nigeria*, (New York: Holt, Rinehart & Winston, 1969); W. Fagg and J. Pemberton, *Yorùbá: Sculpture of West Africa*, (London: Collins, 1982).

<sup>33</sup> N.A. Fadipe, *The Sociology of the Yorùbá*, (Ibadan: Ibadan University Press, 1970).

<sup>34</sup> J.S. Eades, *The Yorùbá Today*, (Cambridge: Cambridge University Press, 1980). Outside Nigeria, Yorùbá people are also scattered in places like Jamaica and the Caribbean Islands generally.

<sup>35</sup> J.O. Awolalu and P.A. Dopamu, *West African Traditional Religion*, (Nigeria: Macmillan Nigeria Publishers Ltd., 2005).

<sup>36</sup> The Ibo language has several dialects, given that the Ibos traditionally live in autonomous villages, and self-contained towns, organizing themselves into patri-lineages i.e. lineage groups along lines of descent and ascendancy. Each lineage has a head, who is regarded as a representative of the departed ancestors. Thus, although their customs and values were closely related, each still considered itself a distinct society usually made up of few villages.

<sup>37</sup> Records has it that a reference to Hausa kingdoms emerged with Arab geographer in the 9th century, while the first Hausa/fulani states are known to developed in the Sahel region around 500-700 AD, with seven principal city-states emerging notably Biram, Daura, Gobir, Katsina, Kano, Rano, and Zaria, largely for the purpose of trade and commerce. At this time, the initial seat of government for these seven city-states was Biram, while Gobir provided the Military force protecting the group from rival empires. In the same vein, Katsina and Daura provided access to trans-Saharan trade routes bring goods into the city-states. In terms of culture, the Hausa/Fulani were known for their beautiful indigo dye, used for art and textiles materials.

<sup>38</sup> A.K. Eziyi, et al, 'Determinants of Acceptance of Organ Donation among Medical Students Nigeria', (2014), 1(8), *International Journal of Medicine and Medical Sciences*, 116-121.

<sup>39</sup> J. S. Mbiti, *African Religions and Philosophy*, (Oxford: Heinemann Educational Books Ltd, 1990), 83.

<sup>40</sup> *Ibid.*

<sup>41</sup> R. Lee, 'Death on the Move: Funerals, Entrepreneurs, and the Rural Urban Nexus in South Africa', (2011), 81, *The Journal of the International African Institute*, 226-247.

<sup>42</sup> W. Glannon, 'Do the Sick have a Right to Cadaveric Organs?', (2003), 29, *Journal of Medical Ethics*, 153-156; C.L. Hamer and M.M. Rivlin, 'A Stronger policy of Organ Retrieval from Cadaveric Donors: Some Ethical Considerations', (2003), 29, *Journal of Medical Ethics*, 196-200. On this point, Harris however disagrees with the argument that the deceased suffers harm by reason of such removal. He said, "rights or interests would have to be extremely powerful to warrant upholding such rights or interests at the cost of the lives of others...the interests involved after death, be there any, are simply nowhere near strong enough to maintain the consent requirement for cadaveric organ recovery while potential recipients continue to die". For a deeper exposition see generally, J. Harris, 'Organ procurement: Dead Interests, Living Needs', (2003), 29, *Journal of Medical Ethics*, 130-134.

<sup>43</sup> S. McGuinness and M. Brazier, 'Respecting the Living Means Respecting the Dead Too' (2008), 28, *Oxford Journal of Legal Studies*, 297-316; M. Brazier, 'Retained Organs: Ethics and Humanity' (2002), 22, *Legal Studies*, 550-569.

<sup>44</sup> I. I. Ulasi, and C. K.Ijoma, 'The Enormity of Chronic Kidney Disease in Nigeria: The Situation in a Teaching Hospital in South-East Nigeria', (2010), 6, *Journal of Tropical Medicine*, 1 – 6.

*Ibid.* For instance in African Philosophical understanding, death which is seen as a natural transition from the visible world, to the invisible spiritual ontology is often accompanied during the funeral rites, by a series of rituals which in the belief system of those involved, helps to connect the living with the dead. There is also the fact that culture dictates what is right and what is wrong when it comes to dealing with the disposal of the remains of the dead. See O. Daramola, A. Ojo, and S. Joel, 'Environmental Sanitation Perception and Practices of the Disposal of the Dead in Ile-Ife City, Nigeria', (2016), 3(1), *International Journal of Academic Research in Environment and Geography*, 15-23.

<sup>45</sup> Z. Iliyasu, I.S. Abubakar, and U.M. Lawan, et al. 'Predictors of Public Attitude Toward Living Organ Donation in Kano, Northern Nigeria', (2014), 25, *Saudi Journal of Kidney Disease and Transplantation*, 196-205.

<sup>46</sup> F. Eyetsemitan, 'Cultural Interpretation of Dying and Death in a Non-Western Society: The Case of Nigeria', (2002), 3 (2), *Online Readings in Psychology and Culture*, 1-10.

<sup>47</sup> J. Gire, 'How Death Imitates Life: Cultural Influences on Conceptions of Death and Dying', (2014), 6 (2), *Online Readings in Psychology and Culture*, 1-22.

<sup>48</sup> R.K. Barrett and K.S. Heller, 'Death and Dying in the Black Experience', (2002), 5, *Journal of Palliative Medicine*, 793-799.

<sup>49</sup> *Ibid.*; For instance, while interpreting life empirically may result in preparing for death based on a Medical Doctor's report and other medical evidence, for those who see death from a cultural perspective consideration will be given to other factors as being responsible for death, which in this context may be linked to things like enemies deploying the use spiritual powers to cause misfortune and activities of other dark forces at work. In most cultural groups in Nigeria, the idea of acceptability of death revolves round the logic of utility and liability. Thus, while utility value makes the society categorize certain individuals as useful, the liability perspective sees others as of little important. Within this context, it is no surprising for the society to see a young successful person as viable and useful to the community, as against an old man who is likely to be regarded as having used up his time or

overstaying his welcome. Given the belief that a child having being nurtured from birth is expected after attaining a particular age, to contribute in the economic wellbeing of the family and society, and consequently live up to old age, if such a child eventually dies without fulfilling this expectation by the family members and other relations, it is seen as a great loss, both to the family and the community. In such instances, the bereavement is more of a communal thing and evokes so much pain and anguish.

To this end, an instructive rule is that which posits that when it comes to matters of death, only elders are permitted to procure this commodity, as they are assumed to have finished their assignment on earth and due to go home to their ancestors. Where it involves a younger person, it is deemed as the handiwork of evil doers. An interesting Yorùbá adage, is that which says that, “*Omo ta bi leni, to ku lola, o kanju ku ni*”, meaning, “*The child that was born today, only to die tomorrow, as only died in a hurry*”. This is based on the fact that such will still die, except that as a Child, the time is not ripe.

<sup>50</sup> J. H. Drewel, ‘The Yorùbá World’, in Simon Gikandi (Ed.), *Death and the Kings Horseman: Authoritative Text, Background, Contexts, and Criticism*, (New York: W.W. Norton & Company, 2003), 69.

<sup>51</sup> In Yorùbáland the “*Egúngún*” meaning “*a masked ancestral spirit*”, is a notable social figure. The Yorùbá Egúngún as purveyor of reincarnated disembodied soul, represents the spirit of a deceased ancestor returning from the After-life (Èhìn-Ìwà) i.e. another realm, to visit his people and in the course of the visit transfer certain things to them, such as a message, admonition, or fortune. For some cultures, the Egúngún is elevated to the status of a periodic festival in which the return of the so-called ancestor is heralded by heavy wining and dining, which is followed by a diviner’s summon, and upon the appearance of the spirit, sacrifices are offered as parts of the rites of his passage from the other realm to this realm and back. While the Egúngún job appears to be largely one of traditional religion, in some climes it is also called upon to perform quasi-judicial functions, by adjudicating over disputes and may in some instance deliver severe punishments.

<sup>52</sup> *Ibid*; See L.M. King, ‘In Discourse Towards a Pan-African Psychology: Drum Rolls for a Psychology of Emancipation’, (2013), 39, *Journal of Black Psychology*, 223 - 231.

<sup>53</sup> C. Agulanna, ‘Community and Human Wellbeing in an African Culture’, (2010), 14(3), *Trames*, 282-298; It has been noted that a major importance of such belief is that it helps serve as motivation for people to live socially responsible lives, so they can die a ‘good death’ at the end of their life. For instance, in Yorùbá-land, where an elder attain a strikingly old age and has very successful children, such funeral is only attended by a brief period of mourning, which later climaxes into loud partying and merry-making. Such is deemed as a socially acceptable way of celebrating ‘a life well spent’. Also, the belief in an after-life has both social as well as moral functions. For one, the expectation of an ‘other life’ in which people will be rewarded for virtuous living is an encouragement for good conduct and social responsibility among those who make up the community. For another, the hope of attaining the enviable status of an ancestor could inspire people with the spirit of hard work, industry, and integrity. In other words, apart from whatever spiritual values it may have, the belief in an after- life has its social significance as well. It is equally a socially remunerative system, in the sense that anyone one who is deemed to have died a good death, as established above, is buried in a class of its own, which is usually inside the house where his/her kiths and kins i.e. the living still resides. For an in-depth understanding of the deconstruction of the dead in Yorùbá Culture, see generally, A. Ojo, *Yorùbá Culture: A Geographical Analysis*, (Ile-Ife: Ife University Press, 1966), 192.

<sup>54</sup> J.S. Mbiti, *African Religions and Philosophies*, (Oxford, UK: Heinemann Educational, 1990); W.W. Nobles, *Seeking the Sakhu: Foundational Writings for an African Psychology*, (Chicago: Third World Press, 2006).

<sup>55</sup> O.F. Agbo, 'Tiv Traditional Conception of the Human Person', (2016),7(6), *Arts and Social Science Journal*, 235.

<sup>56</sup> *Ibid.*

<sup>57</sup> Such scholarly inquisition can be found in the extensive works of renowned body Scholar, Arnold Van Gennep. Van Gennep in his analysis on these ceremonies captures the theme fiercely where he said, "*The life of an individual in any society is a series of passages from one age to another and from one occupation to another. Transitions from group to group and from one social situation to the next are looked on as implicit in the very fact of existence, so that a man's life comes to be made up of a succession of stages with similar ends and beginnings: birth, social puberty, marriage, fatherhood, advancement to the higher class, occupational specialization and death. For every one of these events there are ceremonies whose essential purpose is to enable the individual to pass from one defined position to another which is equally well de-fined. Thus, we encounter a wide degree of general similarity among ceremonies of birth, childhood, social puberty, betrothal, marriage, pregnancy, fatherhood, initiation into religious societies and funerals. In this respect, man's life resembles nature, from which neither the individual nor the society stands independent*". For a more comprehensive analysis, see generally, A. Van Gennep, *The Rites of Passage*, (Chicago: University of Chicago Press, 1960), 3.

<sup>58</sup> M.E.N. Njaka, *Igbo Political Culture*, (Evanston: Northwestern University Press, 1974), 39; C.K. Meek, *Law and Authority in a Nigerian Tribe*, (New York: Barnes & Noble, 1970), 54; N.W.Thomas, *Anthropological Report on the Ibo-Speaking People of Nigeria, Part 1 – Law & Custom of the Ibo of the Awka Neighbourhood, S. Nigeria* (New York: Negro Universities Press, 1969), 31; For example, most cultures believe that the old identities of the bereaved do not die with the deceased, but are resurrected with every commemorative service of the loved one. See M. Kagawa-Singer, 'The Cultural Context of Death Rituals and Mourning Practices', (1998), 25(1)), *Oncology Nursing Forum*, 1752-1756.

<sup>59</sup> F.A. Arinze, *Sacrifice in Ibo Religion*, (Ibadan: Ibadan University Press, 1970), 17-18.

<sup>60</sup> B. Bujo, *The Ethical Dimension of Community: The African Model and the Dialogue between North and South*, (Nairobi: Pauline Publications Africa, 1998); M.B. Ramose, *African Philosophy though Ubuntu*, (Harare: Mond Books Publishers, 2002).

<sup>61</sup> W. Bascom, *The Yorùbá of Southwestern Nigeria*, (New York: Holt, Rinehart, and Winston, 1969); E.G. Parrinder, *West African Psychology*, (London: Lutterworth Press, 1051); W. Soyinka, *Ake: The Years of Childhood*, (London: Rex Collings, 1981).

<sup>62</sup> B. Okri, 'Spirit-Child: Abiku Migration and Post-modernity', (1995), 26 (1), *Research in Africa Literature*, 20-29; C. O. Ogunyemi, *African Woman Palava: The Nigerian Novel by Women*, (Chicago: University of Chicago Press, 1996).

<sup>63</sup> O. S. Okechi , 'Culture, Perception/Belief about Death and their Implication to the Awareness and Control of the Socio-Economic, Environmental and Health Factors Surrounding Lower Life Expectancy in Nigeria', (2017), 3(5), *Acta Psychopathol*, 56. Notably, some religious and cultural traditions such as Hinduism belief in a circular pattern of life and death where a person is thought to die and is reborn with a new identity, with this exit and reentry into life capable of occurring multiple times.

<sup>64</sup> See C. Achebe, *Things Fall Apart*, (London: Heinemann Books, 1958); C. Achebe, *The World of the Ogbanije*, (Enugu: Fourth Dimension, 1986); A. Quayson, *Strategic*

*Transformations in Nigeria Writing: Orality and History in the Work of Rev. Samuel Johnson, Amos Tutuola, Wole Soyinka, and Ben Okri*, (Bloomington: Indiana University Press, 1997).

<sup>65</sup> K. Williamson, *Igbo-English Dictionary*, (Benin City: Ethiope Publishing Corporation, 1972), 404.

<sup>66</sup> Y.D. Ogunyemi, *Introduction to Yorùbá Philosophy, Religion and Literature*, (New York: Athelia Henrietta Press, 1998).

<sup>67</sup> Some other similar names given in Yorùbá-land to such *Abikus* include Banjoko (*sit with me*), Durotimi or Rotimi (*stay with me*) Durojaiye (*stay and enjoy life*), Kashimawo (*let's wait and see*), Kosoko (*there is no hoe anymore*), Orukotan (*all names have been exhausted*), and Yemiitan (*stop deceiving me*). Amongst Igbo people, a name like Onwubiko (*death, I implore you*) is common, and for the Urhobo people, Akpoyoma (*the world is good*) is a familiar name.

<sup>68</sup> A. E. Asakitikpi, 'Born to Die: The Ogbanje Phenomenon and its Implication on Childhood Mortality in Southern Nigeria', (2008), 10(1), *Anthropologist*, 59 – 63.

<sup>69</sup> *Ibid*; M.O. Okonji, 'Ogbanje: An African Conception of Predestination', (1970), 1(4), *The African Scholar*, 1-2; M.M. Khaing, *Burmese Family*, (Bloomington: Indiana University Press, 1972).

<sup>70</sup> S.B. Oluwole, 'Reincarnation: An Issue in African Philosophy', in S. B. Oluwole (ed.), *Witchcraft, Reincarnation and the God-Head*, (Lagos: Excel Publishers, 1996).

<sup>71</sup> *Ibid*.

<sup>72</sup> I. I. Ulasi and C. K. Ijoma, *supra*, n. 44.

<sup>73</sup> Criminal Code Act, Cap C 38, LFN 2004.

<sup>74</sup> Act No. 8, 2014.

<sup>75</sup> Criminal Code Act, Cap C 38, LFN 2004.

<sup>76</sup> Section 54, National Health Act, 2014.

<sup>77</sup> Section 55, National Health Act, 2014.

<sup>78</sup> Section 56, National Health Act, 2014.

<sup>79</sup> Section 57, National Health Act, 2014.

<sup>80</sup> A.A. Bakari, U.A. Jimeta, M.A. Abubakar, S.U. Alhassan, and E.A. Nwankwo, 'Organ Transplantation: Legal, Ethical and Islamic Perspective in Nigeria', (2012), 18(2), *National Journal of Surgery*, 53-60.

<sup>81</sup> Y.I.M. El-Shahat, 'Islamic Viewpoint of Organ Transplantation', (1999), 31 (8), *Transplantation Proceedings*, 3271.

<sup>82</sup> H. Hathout, 'Islamic Basis for Biomedical Ethics', in Edmund D. Pellegrino, P. Mazzarella, and P. Corsi (Eds.), *Transcultural Dimensions in Medical Ethics*, (Maryland: University Publishing, 1992), 57-72.

<sup>83</sup> M. Al-Mousawi, T. Hamed, and H. Al-Matouk, 'Views of Muslim Scholars on Organ Donation and Brain Death', (1997), 29 (8), *Transplantation Proceedings*, 3217.

<sup>84</sup> A.M Hassaballah, 'Definition of Death, Organ Donation and Interruption of Treatment in Islam', (1996), 11(6), *Nephrology Dialysis Transplantation*, 964-965.

<sup>85</sup> R.H. Kuddus, 'Islamic Founding Principles on Organ Transplantation and the Evolution of Islamic Scholarly Opinions on the Subject', (2014), 46 (6), *Transplantation Proceedings*, 2033-2045.

<sup>86</sup> J. Syed, Islamic View on Organ Donation, 1998, 8(3), *Journal of Transplant Coordination*, *Journal of Transplant Coordination*, 157-160

<sup>87</sup> V. Rispler-Chaim, The Ethics of Post-mortem Examinations in Contemporary Islam, (1993), 19 (3), *Journal of Medical Ethics*, 164-168.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

<sup>91</sup> A.R. Gatrads and A. Sheikh, 'Medical Ethics and Islam: Principles and Practice, (2001), 84 (1), *Archives of Disease in Childhood*, 72-75.

<sup>92</sup> A.A. Al-Khader, F. A. Shaheen, and M.S. Al-Jondeby, 'Important Social Factors that affect Organ Transplantation in Islamic Countries, (2003), 1(2), *Experimental and Clinical Transplantation*, 96-101.

<sup>93</sup> (5:32) (Quran).

<sup>94</sup> (6:151) (Quran).

<sup>95</sup> Y.I.M. El-Shahat, *supra*, n.81.

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

<sup>98</sup> E. Uskin and M. Ozturk, 'Attitudes of Islamic Religious Officials towards Organ Transplant and Donation', (2013), 27(1), *The Journal of Clinical and Translational*, 37-41.

<sup>99</sup> A.A. Bakari, et al. *supra*, n. 80.

<sup>100</sup> *Ibid*; Blood and Organ Donation: What Does Islamic Law say? Health24, available online at <https://www.health24.com/Lifestyle/Your-Blood/Blood-and-organ-donation-What-does-Islamic-law-say-20150120>, accessed 05/03/2018.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid*; A.A. Sirajudeen, *Organ Transplant in Islamic Perspectives*, (Germany: Lamber Academic Publishing, 2011), 26.

<sup>105</sup> *Ibid.*

<sup>106</sup> S. Athar, 'A Gift of Life: An Islamic Perspective in Organ Donation and Transplantation', (2015), 5(1), *Journal of Transplantation Technologies & Research*, 1-4.

<sup>107</sup> A.A. Bakari, et. al, *supra*, n. 80.

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid*; Y.I.M. El-Shahat, *supra*, n. 81.

<sup>111</sup> R.D. Truog, 'End-of-life Decision-Making in the United States, (2008), 25, *European Journal of Anaesthesiology Supplement*, 43-50.

<sup>112</sup> The Quran forbids all forms of Euthanasia, whether voluntary, involuntary, or non-voluntary. See generally, A. Sachedina, 'End-of-life: The Islamic View, (2005), 366(9487), *The Lancet*, 774-779.

<sup>113</sup> (4:93) (Quran).

<sup>114</sup> *Ibid.*

<sup>115</sup> S. Aksoy, 'A Critical Approach to the Current Understanding of Islamic Scholars on using Cadaver Organs without Prior Permission', (2001), 15, *Bioethics*, 461-472.

<sup>116</sup> *Ibid*; V. Choo, 'UK Shari'ah Council Approves Organ Transplants', (1995), *The Lancet*, 303.

<sup>117</sup> D. Hamm and J. Tizzard, 'Presumed Consent for Organ Donation', (2008), 336 (7638), *British Medical Journal*, 230.

<sup>118</sup> F.S. AlKhawari, G.V. Stimson, & A.N. Warrens, 'Attitudes Toward Transplantation in U.K: Muslim Indo-Asians in West London, (2005), 5(6), *American Journal of Transplantation*, 1326-1331.

<sup>119</sup> *Ibid.*

<sup>120</sup> N. Sarhill, et al. 'The Terminally ill Muslim: Death and Dying from the Muslim Perspective, (2001) 18 (4), *The American Journal of Hospice & Palliative Care*, 251-255.

<sup>121</sup> *Ibid.*

<sup>122</sup> K. Hedayat, 'When the Spirit Leaves: Childhood Death, Grieving, and Bereavement in Islam', (2006), 9(6), *Journal of Palliative Medicine*, 1282-1291.

<sup>123</sup> *Ibid.*

<sup>124</sup> For an extensive review of the applicability of the Repugnancy Test and the evolution of Customary Law particularly in sub-Sahara Africa, *see generally*, M. E. Kiye, "The Repugnancy and Incompatibility Tests and Customary Law in Anglophone Cameroon", (2015), 15(2), *Africa Studies Quarterly*, 85-106; W. C. Ekow Daniels, 'The Interaction of English Law with Customary Law in West Africa', (1964), 13(2), *The International and Comparative Law Quarterly*, 574-616; W. C. Ekow Daniels, 'The Influence of Equity in West Africa', (1962), 11(1), *The International and Comparative Law Quarterly*, 31-58; O.W. Igwe and M.D. Ogolo, "Repugnancy Test and Customary Criminal Law in Nigeria: A Time for Re-assessing Content and Relevance", (2017), 3(3), *Donnish Journal of Law and Conflict Resolution*, 35-39; H. A. Amankwah, "Ghanaian Law: Its Evolution and Interaction with English Law", (1970), 4 (1), *Cornell International Law Journal*, 37-57. See also *Abi Zacharia Ajong v. Nji Micheal Ajong*, Suit No. BCA/4CC/2000: reported in CCLR 2002, Part 9, pp. 67- 72, where the Court held that a particular custom that excluded girl-children from the administration of their father's estate was not repugnant to natural justice. In the opinion of the Court, the custom in question does not permit women to engage in the business of the running of the Estate, thereby upholding a highly discriminatory custom.

<sup>125</sup> See Section 34(1), of the High Court Law of Northern Nigeria, 1963, and Section 2 of the Elese of Irese (Confirmation of Declaration) Edict, 1987 of Kwara State.

<sup>126</sup> Commenting quite illuminatingly on the legitimacy of this approach, Harris opined as follows, "If we can save or prolong the lives of living people and can only do so at the expense of the sensibilities of others, it seems clear to me that we should. For the alternative involves the equivalent of sacrificing people's lives so that others will simply feel better or not feel so bad, and this seems nothing short of outrageous". See J. Harris, 'Human Resources', in *Wonderwoman and Superman: The Ethics of Human Biotechnology*, (Oxford: Oxford University Press, 1992), 100-103.

<sup>127</sup> O.O.Olusegun, 'Challenges of Organ Transplantation in Nigeria', (2017), 8(3), *International Journal of Private Law*, 205 – 218.

<sup>128</sup> R. Oluyombo, et. Al. 'Knowledge regarding Organ Donation and Willingness to Donate Amongst Health Workers in South West Nigeria', 2016, 7(1), *International Journal of Organ Transplantation Medicine*, 19-26.

<sup>129</sup> *Ibid.*

<sup>130</sup> M. Eseyin and S.E. Udoh, 'Cultural Re-Engineering: The Way-out of Human Rights Subversion in Sub-Sahara Africa, Nigeria a Case-Study', (2015), 3(4), *Global Journal of Politics and Law Research*, 71-84.