

Perspectives on Organ Donation and Transplantation

Practical steps to moving forward in light of the latest legal opinion

BY ZAYD AHMED AND AASIM I. PADELA

THE ISSUE OF ORGAN DONATION AND transplantation raises many ethical and religious concerns for Muslims, whether it's signing up for a deceased donor registry or transplanting a kidney to one in need. Such things are relatively new, especially since this necessary medical technology didn't exist during the Prophet's (*salla Allahu 'alayhi wa sallam*) time.

Thus, given the absence of a direct related statement in the earliest *fiqh* books, we must consult the *usul al-fiqh* (principles of Islamic jurisprudence) and/or the *maqasid al-shari'a* (the shari'a's objectives). To discover an Islamically permissible path forward one can turn to the *qawa'id al-fiqhiyya* (legal maxims) and consider the existing fatwas.

Before delving into such matters, however, we must understand organ donation's significance and relevance in today's medical landscape. According to the U.S. Department of Health and Human Services, over 113,000 people are currently wait-listed for transplants, including almost

2,000 children under 18 and almost 70,000 ethnic minorities. Due to organ shortages, the number of transplantations actually performed is far less (Organ Procurement and Transplantation Network, 2019).

The oft-quoted "Whoever saves one life, it is as if he has saved all of humanity" (5:32) signifies the emphasis on saving lives, which may be realized through living or deceased organ donations. But how can this and other divine statements be applied toward relevant modern ethical issues in medicine? The best approach is to turn to those qualified to derive moral values from the Quran and Sunnah and who possess the practical skills necessary for applying *usul al-fiqh* methodologies to contemporary issues, namely, qualified muftis.

Thus we must first examine their rulings, as they can use their solid knowledge of the shari'a, as well as of Islam's textual or theoretical sources and established principles, and of the individual's circumstances to clarify a ruling and offer guidance. After

completing their deliberations, they can issue a fatwa, more specifically defined as a nonbinding opinion on which to base one's action, based upon two essential aspects: 1) It is created upon the shari'a's principles and juridical sources and 2) considers the context in which the question was asked (Padela, 2007. *Islamic Medical Ethics: A Primer*. *Bioethics* 21:169-78).

The challenge here is that the biomedical science and societal contexts framing the question may be unfamiliar to or beyond a single mufti's expertise. Thus, contemporary fatwa committees commonly convene a meeting of Islamic scholars, along with medical and social scientists, to offer a collective fatwa or position statement.

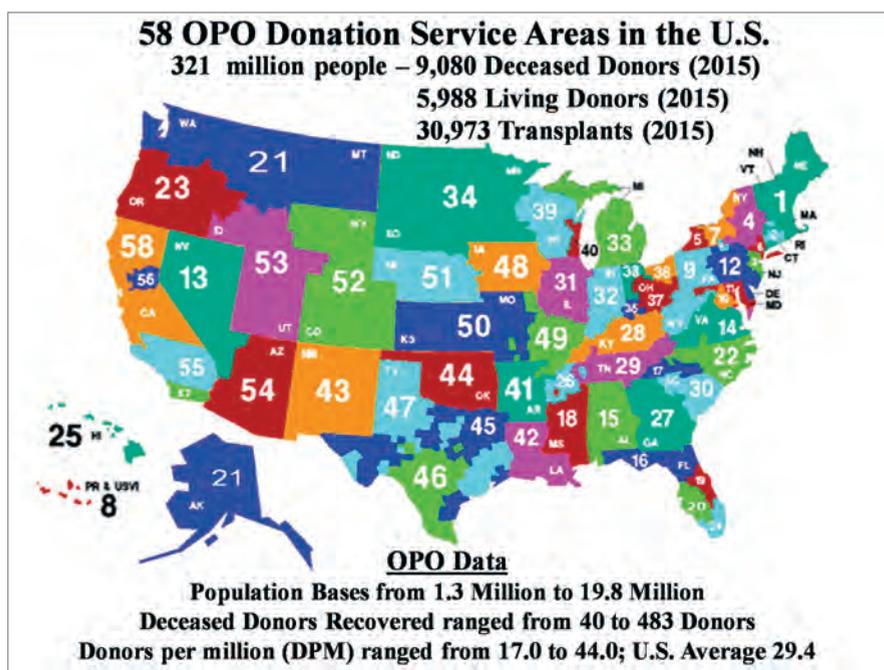
Over the past several decades, many fatwa committees abroad have discussed organ donation and transplantation. But no leading American *fiqh* council ever addressed this issue until a few months ago. In December 2018, the Fiqh Council of North America (FCNA; <http://fiqh-council.org>) issued its own fatwa: "On Organ Donation and Transplantation." Written in consultation with medical practitioners and councils that deem these medical procedures Islamically permissible in principle. If performed with good intentions, they can be regarded as charitable acts.

However, FCNA subjected its general allowance to several conditions:

1) One cannot sell or receive any other material gifts or benefits in exchange for his/her organs, because the human body is an *amana* (trust) from God as opposed to individual property. The Quran prohibits Muslims from harming or killing themselves, and the Prophet reported that one cannot sell that which he/she doesn't own ("Jami' at-Tirmidhi," book 14, hadith no. 1232).

2) Organ donation is forbidden if the relevant procedure(s) will inflict considerable harm upon the donor or recipient, based on multiple statements from the Quran and Sunnah that prohibit all such inflictions or call for their removal. If necessary, the patients, physicians, families and jurists should conduct a risk/benefit analysis and determine the threshold of harm that can and should be tolerated. Following the principle of "no harm," a living person cannot donate a vital organ -- one that would become a proximate cause of his/her death.

3) The donor needs to be informed and



▲ Overview of the U.S. Donation System

give prior consent. Explicit authorization is required in cases of living donation. In cases of deceased donation, documentation of the potential donor's wishes must be considered alongside consultation with his/her family's understanding of those wishes.

4) There is no agreed-upon Islamic scholarly consensus of the validity of brain death. Is death a legal state or one that meets neurological criteria, a state of dying but not having yet met the standards of certain death? Based on the principle of *ihtiyat* (caution), the council excludes all neurological criteria from

FCNA opposes donations after "brain death" but before "cardiac" death. This view has significant implications for Muslims because of the great push to increase post-"brain death" donations and because the biomedical community terms "deceased donation" as a post-"brain death" donation. Moreover, waiting for cardiopulmonary collapse renders certain types of organs unsuitable for donation. FCNA recognized this, but was uncomfortable with equating a "brain dead" state with the Islamic understanding of death.

THOSE WHO REMAIN HESITANT ABOUT DONATING ORGANS CAN STILL DONATE BLOOD OR JOIN A BONE MARROW REGISTRY.

their definition of death and thus prohibits all such donations. The cardiac definition of death, after confirmation of cardiopulmonary cessation, is to be used as the basis for deceased donation.

5) Based on other juridical views and the shari'a's higher objective of protecting one's lineage, one cannot donate reproductive organs (e.g., the ova, sperm, and uterus).

6) If a high risk of disability or mortality is determined to exist, then organ donation is forbidden. In general, the living donation of a non-vital second (e.g., kidney) or partial (e.g., partial liver) organ is allowed and can be considered unless it creates major harm. Post-death donations of bones, corneas or tissues are allowed. Potential donors are urged to contact professionals to understand their options and risks.

Upon closer consideration, one may wonder how this fatwa applies to them. Individual circumstances may require a living donation to a loved one, a reality of which this ruling approves. A living person may even choose to donate an organ to an unknown person by contacting local transplantation centers at hospitals and undergoing the requisite testing and counseling.

Deceased donations remain far more controversial. "Deceased donation" can refer to two people donating organs in two different states: after the neurological criteria for death are met (commonly but erroneously termed "brain death") and after one's cardiopulmonary criteria are met (one's heart and breathing stop).

Those who remain hesitant about donating organs can still donate blood or join a bone marrow registry. Many minority patients dealing with diseases like leukemia (i.e., a cancer of blood-forming tissues) face the harsh reality that ethnic background influences the likelihood of a bone-marrow donation's match. Furthermore, donations of skin and other tissues can be harvested after cardiac death to help those who need skin grafts. Although FCNA's ruling does not specifically mention such donations, other juridical councils seem to permit them because they raise fewer Islamic concerns.

We urge all people to talk with family members, medical practitioners and Islamic jurists about such issues while they are still able to do so. Technological advancements are making face, hand and uterus transplantations a reality, and Muslims need to think about such donations in addition to the more traditional ones mentioned above. In the absence of pre-death discussions and decisions, loved ones find it hard to make an educated decision on behalf of the dying or already dead person while taking into consideration their own interests. Additionally, the process of becoming an organ donor differs from state to state, and some states don't allow a family to overturn a registered donor's directive.

As a fatwa is nonbinding, individuals can seek other opinions and determine their own moral stances. Indeed, FCNA's ruling is just the latest of many modern and different perspectives. For example, in 1966 the late Grand Mufti of Pakistan

Muhammad Shafi'i wrote that both living and deceased donations violated human sanctity and thus were prohibited. The Islamic Fiqh Academy of India ruled in 1989 that it was forbidden unless certain conditions were met, one of them being "dire need." Conversely, Egypt's Dar al-Ifta' al-Misriyya stated in 1979 that both living and deceased donations were generally permitted following certain conditions due to the principle of public interest (Padela AI, Duivenbode R. The ethics of organ donation, donation after circulatory determination of death, and xenotransplantation from an Islamic perspective. *Xenotransplantation*. 2018 May; 25(3):1-12). 

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