

Debunking Religious and Cultural Misconceptions of Organ Donation and Transplantation

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Abstract

Organ transplantation is a life-saving procedure that is arguably the most viable treatment option for individuals who are faced with end-stage organ failure. Owing to a shortage of organs for transplantation, however, patients suffering from chronic organ failure often succumb to their illness while on a waiting list. Research has shown that the underlying reason for a lack of motivation to donate stems from *inter alia* religious and cultural views and practices that are believed to go against organ donation and/or transplantation. This article offers an analysis of specific religious and cultural beliefs which are native to South Africa and discusses the convictions that are both for and against donation. The article further explores the possibility of gaining clarity with regard to these misapprehensions and suggests possible solutions to bringing awareness to the public through the use of a modified version of the Traditional Health Practitioners Act 22 of 2007, as a suggestion. It also advocates education for medical personnel about the different religious and cultural traditions and rituals which accompany death, leading to an atmosphere of respect for the deceased and the deceased's loved-ones.

Keywords: organ transplantation; organ donation; religion; culture; bodily integrity; medical law

Introduction

South Africa, like most of the world, is faced with a shortage of organs for transplantation. This life-saving procedure is the most viable option for individuals who are faced with end-stage organ failure, but they often succumb to their illnesses while on the organ donor waiting lists owing to this shortage. The shortage of organs for transplantation is the result of a lack of organ donors. It is important to understand the reasons for the lack of organ donors in order to suggest possible solutions to the predicament to increase the donor pool. One of the major reasons for the reluctance of people to be organ donors stems *inter alia* from their religious and cultural views and practices, which are believed to go against organ donation and/or transplantation. This is understandable, because when individuals are faced with a dilemma or situation in which a difficult decision needs to be made, people tend to revert to their religious and/or cultural belief systems for guidance. In this respect, religion and culture, therefore, remain of great importance in society.

Secular nations respect this importance by providing a right to the religious beliefs of individuals (sometimes including a right to cultural belief) in their legislation. South Africa, for example, provides for the right to freedom of religion in section 15 of the Constitution, 1996. This right is further protected by the equality clause of section 9, in which it is stated that every person is equal before the law and may not be unfairly discriminated against, either directly or indirectly, on various grounds, including a person's religion and culture.¹ The importance attached to these rights is further enhanced in section 31 of the Constitution, which provides for the right of individuals to enjoy and practise their religion and culture.

The importance of religion and culture in society may also be seen in nations in which a specific religion is recognised as being that nation's 'official' religion. Malaysia, for instance, recognises Islam as the religion of the Federation, but it allows for the peaceful and harmonious practice of other religions.² Some nations, such as Nigeria, strictly forbid a single state religion, making allowance for freedom of religion instead.³ The Constitution of the Republic of Singapore also provides for freedom of religion and the right not to be discriminated against on this ground.⁴ Zurani and others state that in a

¹ Sections 9(1) and 9(4) of the Constitution of the Republic of South Africa, 1996. The grounds include one's 'race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.'

² Section 3(1) of the Federal Constitution of Malaysia, 1 November 2010.

³ Section 10 of the Constitution of the Federal Republic of Nigeria, 1999 prohibits the adoption of state religion. Section 38 further allows for freedom of conscience and religion, among other grounds.

⁴ Section 15 of the Constitution of the Republic of Singapore, 9 August 1965.

multicultural, multi-ethnic and multi-religious community such as Malaysia, religious and social issues relating to organ donation play an important role.⁵

Culture, too, plays a large role in a person's decision regarding organ transplantation. Daar and others state that culture contributes greatly to the 'perception of illness, response to treatment, and the organisation of medical care.'⁶ With regard to transplantation, they indicate that cultural considerations will arise in the acceptance or rejection of this type of treatment, consent to donation, how the transplant programme is organised, the particular surgery to be performed and the possible outcome.⁷

Religion and culture are factors which need to be considered when devising a new procurement system for donation. The majority of religions appear to support the notion of organ donation: despite this, however, there is still a significant shortage of organs available for transplantation worldwide.⁸ This shortage is partly the result of a lack of clarity about what exactly the religious and cultural stance on organ donation is. Transplantation, involving organ donation, is a fairly recent mode of treatment, whereas religious scriptures and cultural beliefs date back much further; it is, therefore, understandable that there are conflicting interpretations in this regard which shed light on the possible religious and cultural attitudes towards organ donation.

This article offers an analysis of specific religious and cultural beliefs that are either supportive or dismissive of organ donation and/or transplantation. It also explores the possibility of obtaining clarity on the attitudes of religion and culture towards organ donation and suggests, as a possible solution, a modification of the Traditional Health Practitioners Act 22 of 2007.

Religious Beliefs and Organ Donation—Can they be Reconciled?

Religious beliefs greatly influence the decision-making of many individuals, including the decision about whether or not to become an organ donor. It is important to consider and respond to the misconceptions and different interpretations given by the different religions and possibly to attempt to reconcile the different viewpoints in order to provide some clarity about the different religious perspectives. This article focuses on two of the main religions in South Africa: Christianity and Islam.

⁵ Noor Zurani, Azad Hassan and Norman Dublin, 'Review Paper: Organ Transplants: Ethical, Social, and Religious Issues in a Multicultural Society' (2010) 22(3) Asia Pacific Journal of Public Health, 271.

⁶ Abdullah Daar and Patricia Marshall, 'Culture and Psychology in Organ Transplantation' (1998) World Health Forum 131.

⁷ Daar and Marshall (n 6).

⁸ Magda Slabbert, Freddy Mnyongani and Nazeem Goolam, 'Law, Religion and Organ Transplants' (2011) 76 Koers 261.

Christianity and Organ Donation

The origins of Christianity date back as far as the first century CE.⁹ The Christian religious scriptures were written many hundreds of years ago, long before there was any consideration of organ donation.¹⁰ Accordingly, the religious position on organ donation is subject to scholarly interpretation of the particular religious scriptures and ‘the values espoused by the faith’.¹¹ Faith leaders, also, help with such interpretation. Of the different denominations of Christianity, the Roman Catholic Church, headed by the Pope, has an international reach.¹² Catholics view death as a step towards the fulfilment of life and, along with members of the Anglican Church, they believe they will share in Christ’s resurrection.¹³ These beliefs are shared by members of other denominations, such as Baptists, Methodists, Presbyterians and Seventh Day Adventists, to name but a few.¹⁴

Murty is of the opinion that organ donation is considered to be an act of charity, irrespective of the branch of Christianity being considered.¹⁵ Slabbert states that most religions support the promotion and saving of lives and, as such, would be inclined to accept the altruistic donation of organs.¹⁶ Veatch is also of the opinion, with regard to the Protestant and Catholic denominations of Christianity, that there appears to be no serious hindrance towards the removal of organs from cadavers, provided that respect is shown for the deceased and that the required permission is obtained.¹⁷ Randhawa goes so far as to assert that families who cite religion as a hindrance to donation may, in fact, not have ‘an informed view of their faith’s position regarding organ donation based upon extensive debate and thought with their faith mentor’, and they may be expressing a personal interpretation gathered from their own intuition or perspective.¹⁸ This response applies to both living and deceased donations.

The objection to organ donation appears to be based rather on the belief in the resurrection upon the Rapture.¹⁹ Veatch describes the belief in bodily resurrection by

⁹ A Rudra and OP Murty, ‘Attitude to Organ Donation and Autopsy in Different Religious Denominations’ (2014) *J of Forensic Medicine & Toxicology* 55.

¹⁰ Gurch Randhawa, ‘Death and Organ Donation: Meeting the Needs of Multi-Ethnic and Multi-Faith Populations’ (2012) 108 *British J of Anaesthesia* i88-i91.

¹¹ Randhawa (n 10) i89.

¹² Rudra (n 9) 55.

¹³ *ibid.*

¹⁴ *ibid.*

¹⁵ *ibid.*

¹⁶ Slabbert (n 8) 263.

¹⁷ Robert Veatch, *Transplantation Ethics* (Georgetown University Press 2000) 6.

¹⁸ Randhawa (n 10) i89.

¹⁹ The term ‘Rapture’ does not appear in the Bible, but is often used to refer to the Second Coming of Jesus. This term will be used in the article to relay this same concept.

certain fundamentalist Protestant groups which creates a reluctance to donate.²⁰ This belief is derived from the ‘second coming’ of Jesus Christ, an event described in different books in the Bible. Essex, in his discussion of the Rapture and the book of Revelation, points to the belief that the coming of Christ will include ‘the bodily resurrection of the dead in Christ and the bodily transformation of those Christians still living’ as referred to by the apostle Paul.²¹ He further makes reference to the book of 1 Thessalonians 4: 13–18 and the book of 1 Corinthians 15: 35–58.²² The relevant verse from the book of 1 Thessalonians reads as follows:

For this we declare to you by a word from the Lord, that we who are alive, who are left until the coming of the Lord, will not precede those who have fallen asleep. For the Lord himself will descend from heaven with a cry of command, with the voice of an archangel, and with the sound of the trumpet of God. And the dead in Christ will rise first. Then we who are alive, who are left, will be caught up together with them in the clouds to meet the Lord in the air, and so we will always be with the Lord.²³

Literally interpreted, one can perceive how it could be believed, when the Rapture is upon us and that the living as well as the dead are taken from the earth, that one would want one’s body, as well as the bodies of one’s deceased loved-ones, to be intact (not missing any organs). Essex defines the verses mentioned in 1 Corinthians to be a confirmation of the resurrection of the body from that which is perishable to one that is imperishable.²⁴

Brindle also speaks about the Rapture and evidence of its imminence.²⁵ In his discussion of Jesus’ second coming, he refers to the book of John, Chapter 14. The relevant verses read as follows:

Let not your hearts be troubled. Believe in God; believe also in me. In my Father’s house there are many rooms. If it were not so, would I have told you that I go to prepare a place for you? And if I go and prepare a place for you, I will come again and will take you to myself, that where I am you may be also.²⁶

This verse is seen as an affirmation of the return of Christ and how He will take His believers away with Him.²⁷ An interpretation of this passage supports the belief that Jesus will return (bodily) to earth to gather His people and then literally take them back

²⁰ Veatch (n 17) 7.

²¹ Keith Essex, ‘The Rapture and the Book of Revelation’ (2002) *The Master’s Seminary J* 219.

²² Essex (n 21).

²³ Thessalonians 4: 15–18. *The Holy Bible, English Standard Version (ESV)* (2007).

²⁴ Essex (n 21) 219.

²⁵ Wayne Brindle, ‘Biblical Evidence for the Imminence of the Rapture’ (2001) 158 *Bibliotheca Sacra* 138.

²⁶ John 14: 1–4 *The Holy Bible ESV*.

²⁷ Brindle (n 25) 140.

to heaven with Him at the time of the Rapture.²⁸ This literal interpretation of the Bible can be construed to denote an actual bodily ascension to heaven of His people upon the Rapture. The fear which may be associated with organ donation—that of the thought of being risen with part of the body missing—is understandable; for instance, if a deceased person’s cornea was transplanted to another person, one may fear that the deceased loved-one could be blind in the afterlife.

A reluctance to donate organs based on a Christian belief is contradictory to the altruistic nature of Christianity. Despite the fact that there are many different ideas among the different denominations of Christianity, the underlying message of salvation remains the same: ‘God loved the world so much that He sent his only son, Jesus Christ, that whoever believes in Him should not perish but have life (John 3: 16).’²⁹ His sacrifice is seen as the ultimate act of altruism; it can be stated that the Christian faith is based on altruism, which, surely, supports organ donation.

In order to understand the fear associated with organ donation from a Christian perspective a little more, it is important to review the religious principles relating to the physical violation of a cadaver and to burial practices.

Desecration and Burial of the Corpse

Over the centuries there have been many religious objections raised by the church toward medical advancements, particularly when dealing with the treatment of cadavers.³⁰ According to the Edict of Tours, AD 1163, the shedding of blood was prohibited and viewed as being in conflict with the doctrine of the resurrection of Christ; dissection and surgery were forbidden.³¹ Over time, the church recognised the self-determination of man, as well as medical progress, and religious objections towards vaccination, surgery, dissection, and other medical procedures and approaches were dropped.³² Sanders and others reiterate a statement by Lynch as follows:

It would seem to be theologically beyond doubt that the principle of charity – i.e. love-toward one’s fellow man does legitimize a certain degree of bodily self-sacrifice for altruistic motives. For example, not only are blood transfusions, skin grafts, and the like unanimously admitted by theologians to be permissible, but the donors in these instances have been singled out for explicit commendation in papal documents.³³

²⁸ *ibid.*

²⁹ Slabbert (n 8) 274.

³⁰ David Sanders and Jesse Dubeminier, ‘Medical Advance and Legal Lag: Hemodialysis and Kidney Transplantation’ (1968) University of California Los Angeles LR 405.

³¹ *ibid.*

³² *ibid.*

³³ *ibid* 405.

Sanders and others go on to state that, if the removal of an organ from a live person is permissible, so should be the removal of an organ from the deceased.³⁴ In 1956, Pope Pius XII made a declaration at an international meeting of ophthalmologists, in which he stated that there was no religious or moral objection to removal of the cornea from a cadaver for grafting purposes.³⁵ Similarly, with regard to cremation, Church law required burial at the beginning of the 20th century and cremation was prohibited until the end of the twentieth century.³⁶ Now the Catholic Church allows cremation and the dissection of the corpse to benefit the living, provided that the body is treated with the respect due ‘the one-time abode of a spiritual and immortal soul’.³⁷

This raises questions in relation to the rejection of cadaveric organ transplantation on religious grounds. Veatch is of the opinion that the view which regards the resurrection as a hindrance to donation is held by ‘theologically unsophisticated Fundamentalist(s)’.³⁸ He relates the concerns of this group to medical fears of diseased and damaged bodies: ‘deaths have always occurred with painful debilitating disease.’ Deaths which occurred owing to fire or in an accident which crushed the body would be very worrying for those who believe in bodily resurrection.³⁹ Veatch describes a more ‘sophisticated understanding’ of religious teaching as being the acquisition of a ‘new’ or ‘perfect’ body upon the time of the resurrection.⁴⁰ In this light, the saved would reclaim their earthly bodily form but in a more perfect state, without any damage or disease,⁴¹ a belief held by contemporary fundamentalist Christians.⁴²

As mentioned above, religious leaders and scholars have a duty to interpret scripture when dealing with concepts unheard of when scripture was written, such as organ donation. Most Catholic and Anglican scholars endorse organ transplantation and view it as an act of selflessness.⁴³ In addition, Pope Benedict XVI announced that he walks around with a donor card at all times; a previous Pope, John Paul II, was also supportive of organ donation. The Church of England declared organ donation a Christian duty in 2007.⁴⁴ Thus, it is difficult to use Christianity as a reason for objecting to organ donation; in fact, it is in favour of transplantation.

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ James Provost, ‘Canonical Aspects of the Treatment of the Dead’ (1999) 59 *The Jurist* 203.

³⁷ *ibid.* Also see Sanders and Dubeminier (n 30) 405.

³⁸ Veatch (n 17) 7.

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ Michael Oliver, Alexander Woywodt, Aimun Ahmed and Imran Saif, ‘Organ Donation, Transplantation and Religion’ (2011) 26(2) *Nephrology Dialysis Transplantation* 438. <https://doi.org/10.1093/ndt/gfq628>

⁴⁴ *ibid.*

Attitudes towards Organ Donation in the Islamic Faith

In Islam, it is believed that any violation of the human body, whether living or dead, is forbidden.⁴⁵ The reason for this belief is that the human body is viewed as sacred and, on earth, it is entrusted to man's care.⁴⁶ Muslims of different descent tend to feel differently regarding organ donation. Muslims of Arabic descent tend to be more amenable to organ procurement; however, those of Indian descent, in most instances, are not.⁴⁷ Muslim jurists from Pakistan maintain that organ donation is unacceptable and, although the general population is in favour of donation, the guidelines set in this regard are very limiting.⁴⁸ They include the proviso that it may be permitted only when there is no other available treatment and there is a high probability of success, that death has been pronounced correctly and consent has been obtained from either the donor or the donor's next of kin for the procedure.⁴⁹

Despite the reluctance to consider organ donation in Muslim societies, because of their religious belief in the sacredness of one's body, an important principle in Islam is altruism.⁵⁰ Oliver reiterates this important principle in Islam as being the saving of a life, which has a high standing in the Quran.⁵¹ Chapter 5: 32 reads: 'Whosoever saves the life of one person it would be as if he saved the life of all mankind.'⁵² The confusion in relation to organ donation may lie in the clash of the principles: the sacredness of the body, and the saving of a life. It has been suggested that a further principle which can resolve the situation is known as '*al-darurat tubih al-mahzurat*',⁵³ which translates as meaning that 'necessity overrides prohibition'; it has been used previously to commend the use of porcine bone grafts⁵⁴ and pork insulin.⁵⁵ A further principle worth noting is known as 'the choice of the lesser of two evils', which has been cited as being in favour of organ procurement.⁵⁶

There have also been various Islamic religious rulings made in favour of organ donation. In 1996, the United Kingdom Muslim Law Council released an *Ijtihad* (a religious ruling) which proclaimed that the donation of organs, or organ transplantation, is in

⁴⁵ Oliver and others (n 43) 438.

⁴⁶ Veatch (n 17) 9.

⁴⁷ *ibid.*

⁴⁸ *ibid.*

⁴⁹ *ibid.*

⁵⁰ Oliver and others (n 43) 438.

⁵¹ *ibid.*

⁵² *ibid.*

⁵³ *ibid.*

⁵⁴ Porcine grafts are grafts procured from pig skin; they are used as temporary treatment of severe burns on human beings. See <<http://medical-dictionary.thefreedictionary.com/porcine+graft>> accessed 12 March 2016.

⁵⁵ Oliver and others (n 43) 438.

⁵⁶ Veatch (n 17) 10.

keeping with Islam.⁵⁷ Consistent with this ruling, Muslims in the United Kingdom are permitted to become organ donors and living organ donation is also seen as ‘an act of merit’.⁵⁸ As early as 1988, the Islamic Jurisprudence Assembly Council in Saudi Arabia made a ruling in favour of living and deceased organ donation.⁵⁹ Formal rulings such as these are also found in other nations such as Egypt, Iran and Pakistan.⁶⁰ In addition, the Islamic Code of Medical Ethics stipulates the following regarding organ donation:

The individual patient is the collective responsibility of Society that has to ensure his health needs by any means inflicting no harm on others. This comprises the donation of body fluids or organs such as blood transfusion to the bleeding or a kidney transplant to the patient with bilateral irreparable renal damage. This is another *Fardh Kifaya*, a duty that donors fulfil on behalf of society.⁶¹

These rulings and declarations are proof that organ procurement in the Islamic faith is permitted and is even seen as being morally and ethically sound. To describe organ donation as a ‘duty’ is to emphasise further the importance that the procedure holds in the faith. Ideally, it would therefore be expected to find high rates of donation among Muslims; however, this is not the case. Regardless of the support in favour of donation by both Islamic scholars and religious rulings, many Muslims are still reluctant, particularly with regard to deceased organ donation.⁶² In this regard, the practices surrounding death in Muslim communities are relevant.

Muslim Customs Surrounding Death

Most Muslim customs derive from the *sunna* (sayings and practices of the Prophet Muhammed) and Islamic law, as opposed to the Quran.⁶³ It is believed that a person who is ill is to be visited as a form of mercy and worship, and a person of the Islamic faith who is in hospital will often have many visitors.⁶⁴ When a person is close to death, he or she is given holy water to drink and verses of the Quran are read out loud.⁶⁵ The sick person is also prompted to read and recite the Quran, and re-declare his or her faith.⁶⁶ Measures to prolong a person’s life, such as being placed on a life-support

⁵⁷ Oliver and others (n 43) 438.

⁵⁸ *ibid.*

⁵⁹ *ibid.*

⁶⁰ *ibid.*

⁶¹ Veatch (n 17) 9–10.

⁶² Oliver and others (n 43) 438.

⁶³ AR Gatrad, ‘Muslims Customs Surrounding Death, Bereavement, Postmortem Examinations and Organ Transplants’ (1994) 309 *British Medical J* 521.

⁶⁴ *ibid.*

⁶⁵ *ibid.*

⁶⁶ *ibid.*

machine, are strongly discouraged unless there is evidence that they may result in a reasonable quality of life.⁶⁷

Once a Muslim dies in a hospital, a lot of anxiety may follow due to ‘medical attendants being unfamiliar with Muslim rites’.⁶⁸ These rites include turning the body towards Mecca or wondering if it is sufficient to turn the body towards the right if the person has died in a hospital.⁶⁹ In addition, the legs and arms of the deceased need to be straightened and his or her eyes must be closed.⁷⁰ The body has further to be covered with a sheet once all clothing has been removed by a person of the same sex.⁷¹ It is a religious requirement that once a Muslim patient has died ‘the corpse [is to] be ritually bathed before burial’.⁷² The bathing and covering of the body with a sheet is a process which may take up to an hour to complete.⁷³

There are four important religious requirements that must be followed on the death of a Muslim, some of which may be seen as a hindrance to organ donation. First, the body needs to be buried as quickly as possible.⁷⁴ It is traditional for Muslims to be buried no later than twenty-four hours after death; a lengthy procedure involving the retrieval of organs may therefore be frowned upon⁷⁵ and could dissuade the family from allowing organ donation as it is time-consuming. However, these time frames are similar to the regulations provided for organ and/or tissue removal—a donee has a twenty-four-hour period, from the time of the death of the donor, to ‘remove or cause to be removed the tissue so donated.’⁷⁶ Second, embalmment of the body of a Muslim is forbidden.⁷⁷ This requirement supports the first; it is necessary to bury the deceased as soon as possible before the body starts to decay. Third, Muslim communities tend to be very close-knit and many people visit the home of the deceased after the death;⁷⁸ the sooner the burial of the deceased, the better as it will reduce the burden on and the distress to the family.⁷⁹ Finally, immediate relatives may not eat until after the funeral.⁸⁰ These rituals all pose a potential hindrance to organ donation.

⁶⁷ *ibid.*

⁶⁸ *ibid.*

⁶⁹ *ibid.*

⁷⁰ *ibid.*

⁷¹ *ibid.*

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ *ibid.*

⁷⁵ Oliver and others (n 43) 438.

⁷⁶ Clause 8(1) of the National Health Act: Regulations regarding the general control of human bodies, tissue, blood, blood products and gametes, No 35099 of 2012.

⁷⁷ Gatrad (n 63) 521.

⁷⁸ *ibid.*

⁷⁹ *ibid.*

⁸⁰ *ibid.*

Despite the possible hindrances set out above, generally speaking, as discussed earlier in this paper, organ procurement is permitted in Islam. Gatrad highlights the numerous conditions which need to be followed in order for transplantation from a Muslim person to occur: the consent of the next of kin, a high probability of transplant success, no other treatment being available, and the proper pronouncement of death.⁸¹ He states further that the following needs to be complied with:

... [the] death of the donor has been fully established by a Muslim doctor of repute, or there is no imminent danger to the life of a living donor; and the recipient has been informed of the operation and its implications. Donation to a Muslim should only be to save his or her life; and organs are accepted from a non-Muslim only if not available from a Muslim.⁸²

It is important for these requirements to be understood by both the transplant team and medical personnel so that they are taken into account when devising legislation and regulations surrounding organ procurement from or for members of the Islamic faith.

African Cultural Beliefs: The Concept of Ubuntu, Traditional Healing, Western Medicine and Organ Donation

Concept of Ubuntu

‘Ubuntu’ is a term which scholars have found difficult to define. Mnyongani states that this is because ubuntu cannot be categorised and, instead, can only be described, not defined.⁸³ In describing the term, scholars refer to the Nguni maxim, ‘*umuntu ngumuntu ngabantu*’, which translates as ‘a person is a person through other people’,⁸⁴ a description of ‘a state of being’.⁸⁵ The concept of ubuntu is of great importance in African communities and for African people. It has been described as having philosophical, religious and cultural significance, as well as being the ‘fundamental ontological and epistemological category in African thought of the Bantu-speaking people’.⁸⁶ Ubuntu has been used in case law and has assisted judges in making their decisions. It was first invoked in the case of *S v Makwanyane*: the Constitutional Court used it in the declaration of the death penalty as being unconstitutional.⁸⁷ Subsequent to this decision, ubuntu has been referred to in other court decisions.⁸⁸ These examples

⁸¹ ibid 21.

⁸² ibid.

⁸³ Freddy Mnyongani, ‘De-linking Ubuntu: Towards a Unique South African Jurisprudence’ (2010) 31 *Obiter* 135.

⁸⁴ ibid.

⁸⁵ ibid.

⁸⁶ ibid 136.

⁸⁷ ibid; *S v Makwanyane & Another* 1995 (3) SA 391 (CC), 1995 (6) BCLR 665 (CC).

⁸⁸ See *AZAPO v President of the Republic of South Africa* 1996 (4) SA 671 (CC); *Hoffmann v South African Airways* 2001 (1) SA 1 (CC); *Port Elizabeth Municipality v Various Occupiers* 2005 (1) SA

illustrate the importance of the concept in South African communities and how it should be considered when dealing with sensitive topics such as organ donation and/or transplantation.

Botha states that two ethical principles underlying ‘African life’ can be identified.⁸⁹ One of these principles is ubuntu: a person exists as a ‘real’ person only through his or her relationship with others.⁹⁰ This principle denotes an ideal; it is the community which makes the person and a person cannot exist alone. The other principle identified refers to the recognition of a ‘vital force’, the acquisition of which is sought.⁹¹ Possession of the greatest ‘vital force’ would lead an individual to attain ‘supreme happiness’, whereas the diminution of this force would lead an individual to suffering, illness, depression and ‘other social or physical evils’.⁹² The two principles together reveal that a person is seen as a link in a chain of vital forces, and a person’s ‘self’ is ‘essentially a social person in relation to others’.⁹³

In traditional African societies, therefore, the healing process of a patient involves not only the healing of the individual *per se* but is all-inclusive, and the person’s social environment is also taken into account.⁹⁴ Bogopa discusses different belief systems in different African cultures.⁹⁵ He mentions that the Xhosa-speaking people believe that a mental or physical dysfunction needs not only the ‘co-operation and active treatment of the patient, but also that of other members of the family.’⁹⁶ This sense of communal utilitarianism may be seen as a positive platform for organ donation, for what can be said to be more in line with the concept of ubuntu than giving one’s organs to save another. It can therefore be argued that ubuntu is aligned with the ethical principle of beneficence, to act for the benefit of others.

African societies, however, deal with and understand illness differently from the Western outlook, and these views may hinder organ donation. As such, it is necessary to gain an understanding of traditional healing and other views in this regard.

217 (CC); *Dikoko v Mokhatla* 2007 (1) BCLR 1 (CC); *Bhe & Others v Khayelitsha Magistrate & Others* 2005 (1) BCLR 1 (CC).

⁸⁹ Catherine Botha, ‘The Sangoma and the MD: The Clash of Western Medical Science and Traditional Medicine in South Africa’ (2004) 5 *Phronimon* 42.

⁹⁰ *ibid.*

⁹¹ *ibid.*

⁹² *ibid.*

⁹³ *ibid.*

⁹⁴ *ibid.*

⁹⁵ David Bogopa, ‘Health and Ancestors: The Case of South Africa and Beyond’ (2010) 10 *Indo-Pacific J of Phenomenology* 1.

⁹⁶ *ibid.* 2.

Traditional Healing and Ancestral Worship versus Western Medicine

African traditional medicine has been defined as follows:

... [the] total body of knowledge, techniques for the preparation and use of substances, measures and practices in use, whether explicable or not, that are based on ... personal experience and observations handed down from generation to generation, either verbally or in writing, and are used for the diagnosis, prevention or elimination of imbalances in physical, mental or social well-being.⁹⁷

Traditional medicine focuses not only on the physical and/or mental illness, as Western medicine does, but also on the social well-being of the patient. In addition, Bogopa stresses the importance of certain ritual ceremonies which are to be performed, some of which cannot be undergone without the relatives of the patient.⁹⁸ The healing process in an African cultural context, therefore, is a process which involves the treatment of the patient for mental, physical and social dysfunctions through certain ritual ceremonies and the use of traditional medicine, with the involvement of the community and the relatives of the patient.

Ross states that, in the African setting, disorders and diseases are seen to be the result of psychological, natural or social disturbances, which create an imbalance revealed in a mental or a physical problem.⁹⁹ The role of traditional healing, therefore, is to restore equilibrium and harmony by 'alleviating physical symptoms ... reintegrating people with their community, the earth and the spiritual world.'¹⁰⁰ Western medicine views disease differently and sees it as biological malfunctioning, with the illness revealing itself through physiological, chemical or anatomical changes.¹⁰¹ Healing entails a scientific approach, normally requiring 'medical, surgical and chemical interventions'.¹⁰² It is clear that there is a need for all medical personnel to be cognisant of these differences in the approach taken by African traditional medicine.

In addition, there is a relationship between traditional healers (known in South Africa as *sangomas*), ancestral worship and the healing process. Ancestors are 'deceased senior males of the clan, and comprise the descendants of a common great grandfather.'¹⁰³ They are said to have the ability to influence the lives of those who are still alive and can bless or curse the living.¹⁰⁴ Bogopa determines that their worship is motivated by

⁹⁷ Botha (n 89) 41–42.

⁹⁸ Bogopa (n 95) 2.

⁹⁹ Eleanor Ross, 'The Intersection of Cultural Practices and Ethics in a Rights-based Society' (2008) 51(3) *International Social Work* 385.

¹⁰⁰ Ross (n 99).

¹⁰¹ *ibid.*

¹⁰² *ibid.*

¹⁰³ Bogopa (n 95) 2.

¹⁰⁴ *ibid.* 1.

fear and respect.¹⁰⁵ Different cultural groups in South Africa use different terms to refer to the ancestors. The Sesotho refer to them as *badimo*, in isiXhosa they are known as *izinyanya*, whereas in the isiZulu language they are referred to as *amadlozi*.¹⁰⁶

Traditional healers are known to have the ability to communicate with the ancestors and they are able to discover the root of a person's social or health problems by 'throwing bones to interpret the will of the ancestors.'¹⁰⁷ There are estimated to be between 250 000 and 400 000 traditional healers in South Africa alone, in comparison to 23 000 medical doctors.¹⁰⁸ Eight out of ten black South Africans depend on traditional medicine, either on its own or in conjunction with Western medicine;¹⁰⁹ one is not more valued than the other. Western medicine aids in the alleviation of illnesses, but benefit has been documented from the use of traditional medicine, including reduced anxiety, psychological relief from sickness and 'a sense of comfort'.¹¹⁰

In order to understand the reluctance of African people to donate their organs one must understand the functioning of the cultural setting and the role of traditional healers. Traditional healers abide by strong ethical principles and believe that alleviating suffering and developing life in all forms is their duty,¹¹¹ which is, in a sense, a similar goal to that of Western medicine. There are contradictory beliefs, however, among the healers themselves and not all of them favour surgery, let alone organ donation. Ross gives the example of a study in which a group of traditional healers were interviewed to determine their views on cleft lips and palates.¹¹² Several of the healers believed that the facial condition signified that the person was called upon by the ancestors to become a traditional healer and that these conditions should not be tampered with as that would be an interference with the ancestor's wishes.¹¹³ Others felt it necessary to refer them to Western doctors for reconstructive surgery in order to prevent them from being labelled as witches.¹¹⁴ In addition, many disorders, diseases and disabilities are viewed as punishment for wrongdoing.¹¹⁵

Ancestral worship and cultural taboos affect a person's willingness to become an organ donor.¹¹⁶ Many black South Africans are of the opinion that organ donation would anger

¹⁰⁵ *ibid.*

¹⁰⁶ *ibid* 1–2.

¹⁰⁷ *ibid* 1.

¹⁰⁸ Ross (n 99) 385.

¹⁰⁹ *ibid.*

¹¹⁰ *ibid.*

¹¹¹ *ibid* 386.

¹¹² *ibid.*

¹¹³ *ibid.*

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*

¹¹⁶ *ibid* 389.

their ancestors; it is believed that they should be buried with all of their organs in place.¹¹⁷ Others maintain the view that, without the permission of the deceased before he or she died, they cannot agree to donate the organs of the person.¹¹⁸ Despite these hindrances and a reluctant acceptance of Western medicine and surgical interventions for the various reasons stated above, the ultimate goal and aim of both treatments is the alleviation of illness. As has already been stated, many South African black people make use of both Western and traditional medicine and this supports the potential for an integration of the two or, at the very least, the idea that they may work side-by-side to enhance each other's potential and goals.

Botha postulates various reasons why an integration of the two would not be possible. She states that they are based on different sets of concepts and she mentions a bias among Western-trained medical professionals, who label traditional healers as 'quacks'.¹¹⁹ She further mentions how political instability, limited economic resources and practical problems, such as selecting suitable traditional practitioners, may be a hindrance.¹²⁰ She suggests the introduction of a working dialogue between the two systems as opposed to integration.¹²¹ Traditional medicine places reliance on past resources and in order to remain valuable it is necessary for it to be open to 'the future and in dialogue with the total culture of which it forms a part.'¹²² In line with the Traditional Health Practitioners Bill of 2003,¹²³ Botha claims that a regulatory framework

that ensures the efficacy, safety and quality of traditional health care services can provide a means to allow the *Sangoma* and the (medical doctor) to work together as partners, without suspicion.¹²⁴

This, in turn, may allow for a more positive outlook to develop towards organ donation and/or transplantation in an African cultural setting.

The Traditional Health Practitioners Act

The Traditional Health Practitioners Act (THP Act)¹²⁵ was formulated with the purpose of regulating traditional health services in South Africa.¹²⁶ Such regulation involves the introduction of a regulatory framework which provides for the 'safety and quality of

¹¹⁷ *ibid.*

¹¹⁸ *ibid.*

¹¹⁹ Botha (n 89) 44–45.

¹²⁰ *ibid* 45.

¹²¹ *ibid* 46.

¹²² *ibid.*

¹²³ Government Gazette No 24751 (14 April 2003).

¹²⁴ Botha (n 89) 46.

¹²⁵ Act 22 of 2007.

¹²⁶ Preamble, THP Act.

traditional health services'.¹²⁷ The Act also requires the registration of traditional health practitioners as well as students and particular categories of practitioner within the profession.¹²⁸ By implementing this Act, the government attempts to regulate and formalise these practices.¹²⁹

Traditional health practice is defined in the Act as follows:

traditional health practice means the performance of a function, activity, process or service based on a traditional philosophy that includes the utilisation of traditional medicine or traditional practice and which has as its object—

- (a) The maintenance or restoration of physical or mental health or function; or
- (b) The diagnosis, treatment or prevention of a physical or mental illness; or
- (c) The rehabilitation of a person to enable that person to resume normal functioning within the family or community; or
- (d) The physical or mental preparation of an individual for puberty, adulthood, pregnancy, childbirth and death.¹³⁰

This definition reveals the nature of traditional health practice because it not only incorporates the health of the patient, but also takes cognisance of the social and familial connotations which have been mentioned above as being of great importance. Thornton is of the opinion that the Act fails to include certain factors that are pertinent to traditional healing and *sangomas*, such as 'religion or cult, initiation, spirits, mediums, possession or trance states', and states that they are depicted as 'lesser forms of medical practitioners'.¹³¹ The Act, however, is a recognition of their importance in African communities and may be a start towards a greater appreciation of the practice in the long run, provided that it is regulated, as is the medical profession in general.

It is also of importance to note that the regulation of these practices is necessary, considering the vast number of '*muti* murders' countrywide. *Muti* is a broad term which refers to 'drugs and medicine in central and southern Africa'.¹³² At times, it is composed of human tissue and used by *sangomas* for people who are looking for success in their businesses.¹³³ White states that it is believed, when used properly, that the strength from a brain, heart or even fingers, for example, can be used to bestow good fortune on

¹²⁷ *ibid.*

¹²⁸ *ibid.*

¹²⁹ Robert Thornton, 'The Transmission of Knowledge in South African Traditional Healing' (2009) 79(1) Africa 21.

¹³⁰ Section 1.

¹³¹ Thornton (n 128) 21. Thornton discusses the 2004 Act, which is still pertinent in this discussion as it is quite similar in many respects to the 2007 Act.

¹³² Luise White, 'The Traffic in Heads: Bodies, Borders and the Articulation of Regional Histories' (1997) 23 J of Southern African Studies 328.

¹³³ *ibid.*

another.¹³⁴ It is said, however, that spirits can take their revenge for the loss of a heart or a kidney; a person must be murdered for that specific purpose.¹³⁵ Criminal cases regularly go to court involving *sangomas* who have been accused of *muti* murders and mutilation for the purpose of ‘harvesting ingredients for medicine’.¹³⁶ Regulation, therefore, is pertinent. This is, however, not to say that all *sangomas* engage in this type of criminal activity, but rather to point out that there are some who do practise these activities and therefore that being able to regulate the practice, as Western medicine is also regulated, is important in order to avoid practices that are immoral and/or criminal. The idea of an integrative regulatory system of healthcare is not unheard-of, even on an international platform. The World Health Organization issued a strategy which was designed to help with the ‘appropriate integration, regulation and supervision’ of traditional and contemporary medicine.¹³⁷ These goals are to be reached by three strategic objectives, namely:

- 1) building the knowledge base and formulating national policies;
- 2) strengthening safety, quality and effectiveness through regulation; and
- 3) promoting universal health coverage by integrating (traditional and contemporary medicine) services and self-health care national health systems.¹³⁸

The THP Act can be seen as a stepping stone towards these goals and, also, as the integration of traditional healers into medical practice as a possibility. There is no reason why traditional healers may not be educated about organ transplantations and/or donation, which may facilitate an increase in donations should this knowledge be shared with their patients. Educating medical personnel about certain traditional and cultural beliefs and practices may also help to alleviate the bias and create rapport between the two systems.

Conclusion

The above investigation has shown that nothing in religion and/or culture goes against organ donation in general, be it living or deceased donations. The religious attitude towards organ donation is a positive one, with it often being viewed as a charitable act through the saving of lives. It is possible, and has been stated, therefore, that objections

¹³⁴ *ibid* 329.

¹³⁵ *ibid*.

¹³⁶ Patrick Bannister, ‘Regulating “Tradition” – South African *iZangoma* and the Traditional Health Practitioners Act 2004’ (2007/2008) 27(1) *Cambridge J of Anthropology* 30.

¹³⁷ World Health Organization Traditional Medicine Strategy 2014–2023 7.

¹³⁸ *ibid* 8.

raised based on religion (or culture) are ill-informed and express a personal interpretation based on one's own perspective or intuition. Organ donation can be seen to reflect ubuntu, as ubuntu depicts the notion that a person cannot survive without other people.

What is pertinent is the acknowledgment and appreciation by medical personnel of the different religious and cultural traditions and rituals which follow a person's death, ultimately, to respect the deceased and family members. Culturally, integrating traditional healers into the medical profession may be a stepping stone towards the acceptance of organ procurement for both living and deceased donations, and this may be accomplished with the aid of the THP Act and its Regulations.

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