



THE CHURCH IN MALTA

POSITION PAPER ON THE GOVERNMENT'S CONSULTATION DOCUMENT ON THE PROPOSAL FOR LEGISLATION ON ORGAN AND TISSUE DONATION

EXECUTIVE SUMMARY

This position paper, which has been prepared at the request of the Maltese Episcopal Conference by a group that includes experts in the field of clinical medicine, psychology, philosophy and theology, is a response to the Government's call to all stakeholders in society to participate in the development and formulation of a healthcare policy on organ and tissue donation. The paper contains the following five sections:

1. The Current Policy: The current practice of organ and tissue procurement compares very well with that of other EU Member States. According to a recent study, Malta places second in the EU for organ donation. Moreover, statistical information shows that the present system is functioning well and, accordingly, provides a sound basis for further development. Therefore, a new legislative framework should improve rather than overhaul the current system.

2. Organ Donation as an Act of Giving: A person's decision to donate his/her organs should always be an expression of uncompelled generosity and altruism since it is an act of giving. One cannot receive a gift from the other if the other has not freely consented to the giving. Without that free consent, the practice becomes taking and getting rather than giving and receiving organs.

Since the first successful transplant procedure in the early fifties, the Catholic Church has explicitly supported both living organ donation and the procurement of organs from the dead. Organ donation is justified by the principles of charity and solidarity.

The system that safeguards the dimension of gift in the act of organ donation is the opt-in system. On the contrary, the opt-out system precludes the person from expressing freely his/her decision to donate his/her tissues and organs, thus undermining the dimension of gift that requires the explicit and free informed consent of the human person. In an opt-out system there is the risk that what should be considered as a "donation" loses its significance as an act of giving and can also be interpreted as lacking in the respect (*pietas*) that the living ought to give to the deceased.

3. Ethical Issues: The paper raises the following five ethical issues:

- i) The paradigm of ownership used in both the opt-in system and the opt-out system is inadequate since the body is neither the property of the individual nor that of the State. The body is rather the mode in which we are present to each other and communicate with each other.



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- ii) Tissue and organ donations from living persons may be justified solely for therapeutic reasons, taking into account various clinical factors as specified by the Oviedo Convention, such as urgency, the probability of successful transplant surgery given the patient's condition, the prospect that the organ will thrive and the order of priority of the request.
- iii) The commercialization of the human body is against the human dignity and integrity of the human person. Financial remuneration should therefore be prohibited.
- vi) The ethical principles framed by the Live Organ Transplant Advisory Committee (LOTAC) – to which the White Paper refers – should form part of the criteria of live organ transplants.
- v) The allocation of organs should be based on distributive justice. Clear guidelines should be drawn up with regard to eligibility and relative need of patients on renal replacement therapy.

4. **Concerns:** The following five concerns are raised:

- i) An opt-out system distorts the nature of organ donation as a gift and may create fear in peoples' mind on perceiving that the State is taking ownership rights over their bodies.
- ii) The criteria to ascertain the death of a human person must be clear. . The brain death principle, to be understood as the death of the whole brain (brain and brain stem), is by far (according to medical and scientific knowledge to date), the most adequate to determine the death of a human person since the complete and irreversible loss of all the functions of the brain and brain stem mark the end of the person's life as a living organism.
- iii) The practice of retrieving organs from non-hearth beating bodies raises the ethical issue of when to withdraw artificial respiratory support.
- iv) The issue of the age threshold of consent to register as organ donors requires more thought. The proposal that twelve-year-olds should be considered legally competent to become an organ or tissue donor is not in line with psychological findings and does not reflect legal provisions in Malta on matter related to minors.
- v) The harvesting of organs from anencephalic newborns raises a serious ethical issue concerning the applicability of brain-death criteria.

5. **Recommendations:** The concept of organ donation, being a voluntary gift, must be retained and protected. Thus, the new legislation should strengthen the opt-in system. The document offers the following set of recommendations that spell out the measures that need to be taken:

- i) to promote the opt-in system
- ii) to manage it more effectively
- iii) to ensure an on-going review.