



POLICY BRIEF

June, 2026

Rectifying the Statutory Ambiguities in the National Health Act (2014) Regarding Non-Consensual Human Organ Harvesting in Nigeria

*Authored by: Ejalonibu Ganiyu, PhD.
Department of Democracy & Governance (NILDS).*

Executive Summary

The rapid evolution of medical technology has expanded organ transplantation capabilities in Nigeria, but it has simultaneously exposed severe gaps within the country's primary healthcare legislation. The **National Health Act (NHA) of 2014** (often colloquially referenced alongside its subsequent operational rollouts in 2015) was enacted to provide a comprehensive legal framework for the regulation, development, and management of Nigeria's national health system.¹ However, specific provisions within Sections 48 through 55—originally designed to govern tissue transplantation and cadaveric donations—contain profound statutory ambiguities (Igwe, 2025).

By failing to explicitly define the boundaries of "informed consent" and introducing problematic loopholes regarding "presumed clinical discretion" in emergency scenarios, the Act inadvertently leaves a back door open for the unlawful procurement of human organs without explicit patient or next-of-kin authorization. This policy brief analyzes these legislative vulnerabilities, evaluates their severe human rights implications under Section 34 of the 1999 Constitution, and presents actionable legislative remedies for the National Assembly to fortify bodily integrity and curb organized organ trafficking syndicates as follows:

A) Strategic Policy Pathways

To address these regulatory gaps, this brief analyzes three distinct policy directions for the federal government:

- **Option 1: Status Quo with Sub-Statutory Guidelines:** Retaining the current text of the NHA 2014 and relying on administrative circulars from the Federal Ministry of Health. *This path is rejected as legally insufficient to override substantive statutory loopholes.*
- **Option 2: Transition to a Presumed Consent ("Opt-Out") System:** Amending the law to automatically presume donation upon brain death unless a citizen explicitly objected while alive. *This path is rejected as culturally non-viable and highly destructive to public trust.*
- **Option 3: Comprehensive Statutory Amendment (Recommended):** Introducing a targeted Omnibus Health Act Amendment Bill to directly close emergency loopholes, tighten definition thresholds, and establish independent structural oversight.

B) Actionable Policy Directives

To operationalize **Option 3**, the National Assembly should immediately prioritize the following legislative interventions:

¹ Mashor, M. I., Akinyemi, O. O., Ijoma, S. I., & Longwap, A. S. (2024). Perception of health professionals on the National Health Act, 2014, in University College Hospital, Ibadan. *Nigerian Journal of Medicine*, 33(1), 39–47. https://doi.org/10.4103/njm.njm_34_24



- **Codify an Explicit Definition of Consent:** Amend the interpretation sections to mandate that valid organ donation consent must be written, witnessed by two non-interested parties, and immune to third-party or guardian authorization for living donors.
- **Abolish the Emergency Procurement Waiver:** Repeal clauses allowing clinical discretion to bypass family tracking during emergency or comatose states, ensuring that no organ retrieval can legally occur without verifiable prior "opt-in" or next-of-kin approval.
- **Establish the National Organ Transplant Regulatory Authority (NOTRA):** Create an autonomous, specialized body to enforce mandatory facility licensing, manage a secure National Donor and Recipient Registry, and deploy independent Hospital Ethics Committees to verify consent pre-surgery.
- **Upgrade Institutional Criminal Penalties:** Impose strict liability clauses ensuring that any licensed medical facility serving as a front for unauthorized procurement faces permanent license revocation, asset forfeiture, and a minimum 15-year prison sentence for complicit executives and surgeons.

I. Introduction

Prior to 2014, Nigeria lacked a unified statutory framework to regulate clinical transplant services, creating a regulatory vacuum that vulnerable populations fell victim to amid rising global demands for illicit organ tourism.² The NHA 2014 was introduced as the premier legislative instrument to establish national standards for healthcare delivery.

While the Act took a commendable step by explicitly criminalizing commercial organ trading and trafficking—imposing penalties of up to seven years imprisonment and hefty fines—its regulatory machinery for *altruistic and cadaveric donations* remains deeply flawed.³ Despite the Federal Ministry of Health releasing supplementary operational guidelines to help steady the sector, the foundational legislation requires urgent

surgical amendment by the National Assembly to protect patient autonomy.

II. Three (3) Critical Legislative Loopholes in the NHA 2014

i) *The Ambiguity of "Informed Consent"*: The principal flaw within the NHA 2014 is the complete absence of a precise, standard statutory definition for "consent" within its interpretation sections.⁴ For medical interventions involving structural bodily changes, consent must be explicitly *informed, free from economic or psychological coercion, and documented via rigorous verification protocols*. Because the text lacks these exact parameters, the threshold for what constitutes a valid "opt-in" donation remains dangerously low and legally defensible by bad actors.⁵

² Bakari, A. A., Abbo Jimeta, U. S., Abubakar, M. A., Alhassan, S. A., & Nwankwo, E. A. (2012). Organ transplantation: Legal, ethical and Islamic perspective in Nigeria. *Nigerian Journal of Surgery*, 18(2), 53–62. <https://doi.org/10.4103/1117-6806.103103>

³ Olayanju, O. (2026). From principles to practice: Assessing Nigeria's organ transplant regulatory regime. *International Journal of Technology, Health and Sustainability*, 3(1), 18–34.

⁴ Abonyi, A. U. (2024). Organ harvesting: A critical review of Nigerian law and lessons from international instruments. *Ibadan Journal of Conflict, Law and Peace Studies*, 6(1), 112–129.

⁵ Igwe, C. N. (2025). Organ transplant and donation in Nigeria: A review of the National Health Act, 2014. *Chukwuemeka Odumegwu Ojukwu University Journal of Commercial and Property Law*, 8(2), 45–61.



ii) *The Emergency Paradox: Section 51 and 55 Vulnerabilities:* The most volatile vulnerability rests within the clauses governing organ retrieval from deceased individuals or patients in comatose states. The Act establishes an "opt-in" structure where explicit authorization is required while an individual is alive. However, provisions governing emergency or terminal care permit designated medical practitioners to authorize tissue or organ removal if:

1. The patient is certified brain-dead.
2. The "reasonable efforts" to locate the immediate next-of-kin within a restricted timeframe fail.

This creates a high-risk window for "laundering" non-consensual organ harvesting under the guise of clinical urgency.⁶ Without strict institutional checks, corrupt medical personnel can artificially expedite the declaration of a patient's terminal status or downplay efforts to contact family members to quickly clear organs for illicit procurement.

iii) *Vulnerability of Disadvantaged and Coerced Donors:* Organ procurement networks routinely exploit marginalized groups by utilizing deceptive recruitment strategies, debt-bondage, and financial coercion.⁷ When the law fails to mandate independent, third-party ethical reviews before an organ is retrieved, coercive "consent" extracted from a desperate or uneducated living donor becomes easily weaponized.

III. Socio-Ethical and Constitutional Implications

⁶ Abonyi, A. U. (2024). Op Cit.

⁷ Lalude, O. M. (2025). Organ trafficking in Africa and the role of the African human rights system in safeguarding human dignity, life and bodily integrity. *African Human Rights Law Journal*, 25(1), 134–158.

⁸ Abonyi, A. U. (2024). Op Cit.

- *Constitutional Infringement:* Harvesting any organ or tissue without ironclad, verifiable consent directly violates Section 34(1)(a) of the 1999 Constitution of the Federal Republic of Nigeria, which guarantees that "no person shall be subjected to torture or to inhuman or degrading treatment." Non-consensual bodily mutilation is an absolute breach of the right to human dignity.⁸
- *Erosion of Public Trust:* Widespread awareness of these legal gray areas fuels deep-seated public anxieties regarding hospital-based organ theft. This systemic distrust stifles the growth of a legitimate, transparent altruistic donation ecosystem in Nigeria, as citizens fear that checking into emergency care could mark them as potential targets.⁹
- *Transnational Crime and Security Exploitation:* Weak domestic enforcement and ambiguous statutory provisions make Nigeria an attractive operational hub for organized, transnational organ harvesting syndicates.¹⁰ These groups leverage systemic poverty and weak regulatory frameworks to traffic local victims or clear illicitly harvested organs for international transplant tourists.

IV. Strategic Policy Options

To comprehensively protect the bodily integrity of Nigerian citizens while sustaining a morally sound clinical framework for valid

⁹ Oluyombo, R., Awobusuyi, J. O., & Patrick-Ferife, G. (2016). Knowledge regarding organ donation and willingness to donate among health workers in South-West Nigeria. *Journal of Clinical Sciences*, 13(2), 74–82.

¹⁰ Ibid



transplant surgeries, the National Assembly should weigh three potential legislative pathways¹¹:

Option 1: Maintain the Status Quo with Supplementary Guidelines

- **Description:** Retain the current legislative text of the NHA 2014 and rely exclusively on administrative guidelines periodically issued by the Federal Ministry of Health and the Medical and Dental Council of Nigeria (MDCN) to manage consent issues.
- **Pros:** Requires no additional parliamentary time or legislative resources.
- **Cons:** Highly ineffective. Administrative guidelines cannot override the text of substantive legislation in a court of law. The underlying statutory gaps would remain legally exploitable by criminal syndicates.

Option 2: Transition to a Presumed Consent ("Opt-Out") System

- **Description:** Amend the law to state that all citizens are automatically presumed to be organ donors upon brain death unless they formally registered a refusal while alive.
- **Pros:** Drastically increases the volume and availability of legal cadaveric organs for patients suffering from end-stage organ failure.
- **Cons:** Culturally and socially non-viable in Nigeria. Given prevailing religious, traditional, and social beliefs regarding bodily wholeness at death,

an automated "opt-out" system would trigger massive public backlash and decimate remaining trust in the public healthcare architecture.¹²

Option 3: Comprehensive Amendment of the NHA 2014 (The Recommended Path)

- **Description:** Introduce an Omnibus Health Act Amendment Bill specifically targeted at clarifying consent protocols, narrowing emergency loopholes, and setting up centralized regulatory bodies.

V. Areas for Legislative Consideration

To fully secure patient rights and eliminate the risk of non-consensual organ harvesting, the National Assembly should prioritize the implementation of **Option 3** through the following specific legislative directives¹³:

1. Codify an Explicit Statutory Definition of "Informed Consent"

Amend the interpretation clause of the Act to establish that "Informed Consent" for organ donation must be:

- Given in writing by a competent adult who has been thoroughly counseled on all long-term physical, psychological, and clinical risks.
- Executed in the presence of at least two independent witnesses who hold no financial or professional stakes in the transplant facility or outcome.
- Strictly prohibited from being granted by third-party agents or

¹¹ Olayanju, O. (2026).

¹² Bakari et al., 2012; Oluyombo et al., 2016. OP Cit.

¹³ Abonyi, 2024; Olayanju, 2026, Op Cit.



legal guardians for living donors, ensuring complete personal autonomy.

2. Abolish the Emergency Procurement Waiver

Repeal any clauses that permit clinical discretion to substitute for family authorization during emergency or comatose scenarios. The law must stipulate that if a deceased or dying patient's explicit "opt-in" registration or immediate next-of-kin cannot be verified through documented, multi-layered tracking protocols within a legally defined window, no organ retrieval can lawfully occur. The default legal position must always protect bodily preservation.

3. Establish an Independent National Organ Transplant Regulatory Authority (NOTRA)

Create a centralized, autonomous regulatory board separate from the Federal Ministry of Health to manage the transplant sector. NOTRA would be legally mandated to:

- Maintain a secure, real-time National Donor and Recipient

Registry to track the chain of custody for every legally harvested organ from source to recipient.

- Enforce mandatory licensing and annual audits of hospitals authorized to perform transplant operations.
- Deploy independent, facility-level Transplant Ethics Committees that must review and certify the legal validity of donor consent forms *before* surgical teams enter any operating room.

4. Upgrade Criminal Penalties for Institutional Complicity

Amend the penal clauses to declare that any hospital, diagnostic laboratory, or health center found acting as a front for unauthorized organ procurement will face an immediate, permanent revocation of its operational license, asset forfeiture, and a minimum criminal sentence of 15 years without the option of a fine for all participating medical executives and surgeons.

Contact

National Institute for Legislative and
Democratic Studies
National Assembly
14/18 Danube Street
Off IBB Way
Maitama
Abuja, Nigeria
E-mail: info@nils.gov.ng
Website: <http://nils.gov.ng>

NILDS Liaison Office
Suite 214 Senate Wing
National Assembly Complex
Mobile: +234 807 364 4822