

# Organ Donation: A Case for a "Presumed Consent" Law in Malaysia?

## Organ Donation: A case for a "presumed consent" law in Malaysia?

Dear Sir, - I was surprised the results of the survey published in the June 1998 issue of your journal<sup>1</sup> on attitudes of the Malaysian public towards kidney donation showed so few people were willing to donate their organs at death. It is disheartening to read that opinion leaders, doctors and politicians were so apathetic that too few replied to their survey for it to be meaningful. I write this letter to say we cannot take this silently. When doctors in intensive care wards managing brain dead patients have only a 1 in 5 chance of getting a positive response when they ask about organ donation they are likely not to keep on asking. It is part of our Asian culture that we do not want to offend people this way. As a result so few organ donors are discovered the wheels of the system to harvest the organs seldom get to move and become very rusty. Our cadaveric transplant program will never take off this way.

It is therefore pertinent to ask, as the survey did, how many people would accept a cadaveric kidney donation if they were in need of one. If only just as many would like to receive such organ donations the matter can rest there. We must then accept that our society has beliefs and prejudices against exchange of human organs and no desire for them despite the assurances of our own religious scholars of different religions that such practices do not contravene any of our religions in Malaysia. But 40% of those surveyed were ready to receive a cadaveric kidney and I think the 39% who are uncertain are likely to become favourably disposed when placed in need of one. Since more people are willing to receive than to give we need to think more about the law and ethics of organ donation.

Who owns the organs of the deceased anyway? I was taken recently by an essay that argued that under English Law a dead body is not a property of any person<sup>2</sup>. Currently, in Malaysia, the Human Tissue Act 1974 makes consent of the next of kin necessary. Do we still feel that relatives have inviolable rights over the deceased or shall we change our laws?

Is there a place for such legislation? The best argument for such laws are that, as mentioned by Lim et al<sup>1</sup>, since the implementation of the "opting-out" law organ donation has increased in countries like Belgium, Spain, and Austria. Legislation has not, as some might fear, triggered a backlash of protests and objections. The public know when "big brother" is looking after their best interest. The law should however, always be applied with a gentle hand. In Belgium, despite the existence of such laws, doctors are encouraged to approach the relatives in all cases and may decide against removing the organs if in their opinion this would cause undue distress or for any other valid reason. But no country ever passed "presumed consent" laws by popular demand<sup>3</sup>. Spain has the highest rates of organ donation in the world today<sup>4</sup>. More than 18,500 Spanish people living today have had organ transplants. In the first 5 months of this year there have been 837 renal, 382 liver, 57 lung, 17 pancreas plus renal and 125 heart transplants. Spain has "presumed consent" legislation but Spain's world-beating position is reached in a large part due to the popular image of the national transplantation organisation coordinating committee, whose fairness and effectiveness have won the people's hearts. Even the Spanish airports make special efforts to ensure rapid intercity transport of organs. I think the verdict on the "presumed consent" system is already clear. It works.

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## LETTERS TO EDITOR

1. Lim TO, Tan CC, Ghazali A et al. Attitudes of parents of school going children in Federal Territory of Kuala Lumpur to kidney donation. *Med J Malaysia* 1998; 53: 137-143.
2. Brahams D. My kidney as property. *Lancet* 1998; 352: 116.
3. Kennedy I, Sells RA, Daar AS et al. For the International Forum for Transplant Ethics. The case for 'presumed consent' in organ donation. *Lancet* 1998; 351: 1650-2.
4. Bosch X. Spain celebrates leading the world in organ donation. *Lancet* 1998; 351: 1868.

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### Author's Reply

The survey did show that too few people in this country were willing to donate their organs. However, that survey was carried out in 1992. Cadaver transplantation

has noticeably increased in recent years. There were 9 donors last year, the largest number we ever had. This is no doubt due to the intensive publicity on organ donation issues as well as the efforts of many committed individuals in the transplant community in the country. Many believe that public and professional education to encourage organ donation is a better approach. We are however sympathetic to the view of advocate for "presumed consent law".

Lim Teck Onn

On behalf of all authors.

1. Lim TO, Tan CC, Ghazali A et al. Attitudes of parents of schoolgoing children in Federal Territory of Kuala Lumpur to kidney donation. *Med J Malaysia* 1998; 53: 137-43.