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Euthanasia and Physician-Assisted Suicide in Some Countries: A Comparative Study

Nguyen Thi Bao Anh [1], Nguyen Thu Huong [2]

[1,2] Can Tho Unversity, Vietnam.
Email: [1] ntbanh@ctu.edu.vn, [2] thuhuong@ctu.edu.vn

Abstract

The topic of euthanasia and physician-assisted suicide is an emotive issue worldwide. The focus of this study is to explore the state of euthanasia and physician-assisted suicide legislation in select African countries while comparing them to some states where euthanasia is legal. This study will raise a new body of knowledge on the state of euthanasia and physician-assisted suicide legislation in the studied countries. The study employed a literature review approach where existing publications were studied in the course of the research. The study found that, although there is no evident legislation prohibiting euthanasia and physician-assisted suicide in the selected countries, the same is illegal. The research established that there is a need for the three selected countries (Kenya, Nigeria, and South Africa) to review their legislation regarding euthanasia. Also, these findings could prove instrumental to legislators in reviewing individual nation's laws concerning euthanasia and physician-assisted suicide.
Keywords: Euthanasia, Physician-assisted suicide, euthanasia in Kenya, Euthanasia in South Africa, Euthanasia in Nigeria

I. INTRODUCTION

Emanuel *et al.* (2016), as cited in Kouwenhoven et al. (2019, p.44), note that the concept of legislating and subsequently legalizing physician-assisted dying (euthanasia) is a topic that has always sparked debate worldwide. Wekesa and Awori (2020, p.1) write that "the general position of the law on euthanasia worldwide is that all states recognize their duty to preserve life. Courts in various jurisdictions have refused to interpret the 'right to life' or the 'righdignitynity' to also include the 'right to die.' Instead, they have held that the state has a duty to protect life."

Chambaere et al. (2010), as cited in Jacobs (2018), write that the debate regarding the 3legalization of euthanasia and PAS has been ongoing for a number of decades, both in SA and internationally. As a result, many countries (Belgium, the Netherlands, and a few states within the USA) have since moved to legalize or decriminalize euthanasia and/or PAS.

In its broadest sense, euthanasia refers to the mercy killing of a person to end their suffering. Fontalis *et al.* (2018) say that assisted dying is a highly controversial moral issue incorporating both physician-assisted dying (PAD) and voluntary active euthanasia. End-of-life practices are debated in many countries, with assisted dying receiving different considerations across various jurisdictions (p. 407)

Euthanasia is commonly known as mercy killing or assisted suicide because the involved procedures are designed in such a way that, the patient's dignity is not degraded or compromised (Kimuyu, 2018, p.3). Scherer and Simon (1999) say that *euthanasia* was derived from the Greek *eu,* meaning well, and *Thanatos, meaning death.* Illness was seen as a bother, and one could seek the state's approval to commit suicide. If approval was granted, the person was assisted by the magistrates, who supplied the poison (p.1-2). Notably, both Plato and Aristotle recommended infanticide for deformed infants to ensure that only the best individuals inhabited the state.

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Moreover, they supported euthanasia in cases of terminal or incurable illness but rejected the notion of suicide (Scherer & Simon, 1999, p.2).

Pereira (2011), as cited in Fontalis *et al.* (2018), writes that a*ssisted dying* is a general term that incorporates both *physician-assisted dying* and *voluntary active euthanasia*. *Voluntary active euthanasia* includes a physician (or third person) intentionally ending a person's life normally through the administration of drugs at that person's voluntary and competent request. The debate on whether or not to legalize euthanasia has been ongoing worldwide. Radbruch *et al.* (2016), as cited in Fontalis *et al.*(2018), note that lack of consensus and ongoing debate are features of modern life, while the law generally sustains a broader, pluralist outlook. Advances in both life-prolonging treatments and palliative care in recent years are inextricably intertwined with this complex topic, resulting in the continuing demand for amendments to current legislation (p. 407)

Natasha (1996), as cited in the Australian Human Right Commission (2016), notes that' Euthanasia' is often incorrectly characterized as representing one particular kind of practice. However, it is more accurately understood as an umbrella term that covers a vast array of practices that can be described as different forms of euthanasia. These include:

- Passive voluntary euthanasia – when medical treatment is withdrawn or withheld from a patient, at the patient's request, to end the patient's life;
- Active voluntary euthanasia – when medical intervention takes place, at the patient's request, to end the patient's life;
- Passive involuntary euthanasia – when medical treatment is withdrawn or withheld from a patient, not at the request of the patient, to end the patient's life;
- Active involuntary euthanasia – when medical intervention takes place, not at the patient's request, to end the patient's life (p.3)

II. METHOD

This article is based on library research. The article is based on a literature review of existing literature in the field. This study involves analyzing existing literature, whether it's in journal articles, books, or reports. The literature review from the research provides the relevant data tackled in each area of the paper.

The library-based study will guide the author in defining euthanasia, discuss the issue of euthanasia, and review existing literature concerning euthanasia in various jurisdictions worldwide. Zed (2008), as cited in Hetami & Aransyah (2021), says that Literature study can provide answers and relevant theoretical foundations to obtain answers, and theoretical foundations on the problems raised will be studied (p.22)

III. DISCUSSION

3.1 Euthanasia in the context of International Human Rights Law

Euthanasia is legal in Switzerland, Belgium, Netherlands, Luxembourg, Canada, Australia, Colombia, and some states in the United States. Euthanasia is illegal in France, but patients can request to be heavily sedated until they die. (World Population Review)

The table below Shows euthanasia and physician-assisted suicide requirements in various jurisdictions (Tsai & Menkes 2020)

	Physician assisted (self-admin)	Voluntary euthanasia (other-admin)	Eligible age	Medical prerequisite	Can be requested via advance directive
New Zealand	Yes	Yes	18+	Terminal (6 months)	No
Netherlands	Yes	Yes	12–15 with parental consent, under 1 with parental consent, otherwise 16+	Unbearable suffering with no prospect of improvement	Yes
Belgium	Yes	Yes	Up to 17 with 'a capacity of discernment' and parental consent, otherwise 18+	Terminal illness for children, otherwise 'medically futile condition'	Yes
Canada	Yes	Yes	18+	Grievous and irremediable medical condition	No

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Oregon, US	Yes	No	18+	Terminal (6 months)	No
Luxembourg	Yes	Yes	16+ with parental consent, otherwise 18+	Grave and incurable condition	Yes
Colombia	No	Yes	6-13 with parental consent, otherwise 14+	Terminal phase of disease	Yes if in audio or video recording
Western Australia	Yes	Yes	18+	Terminal (6 months, 12 months for neurodegenerative)	No
Victoria, Australia	Yes	Yes, only if unable to self-admin	18+	Terminal (6 month)	No
Switzerland	Yes	No	No limit	No limit	No

Euthanasia is one of the most complex issues facing human rights, especially given its ethical, legal, medical, and religious dimensions. These include modern medical technology and the availability of medical measures to prolong life (Shala & Gusha, 2016, p.73). Shala and Gusha (2016) add that, although euthanasia is generally unlawful, there is an increasing movement towards legalization, particularly in western jurisdictions (p.73).

Euthanasia has elicited debate in many quarters. Shala and Gusha (2016) aver that a strong argument in support of euthanasia is that a decision to end life is fundamental to human dignity, personal autonomy, and safety, concepts that are protected by various international instruments of human rights (p.79)

According to Reingold and Mora (2019), experts have debated whether the right to life could be interpreted as including a "right to end life." However, the European Court of Human Rights (ECHR) – the only human rights court to have adjudicated this issue – held that the European Convention on Human Rights' right to life "…cannot, without a distortion of language, be interpreted as conferring the diametrically opposite right, namely a right to die." Nor does the right to life, according to the ECHR, "create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life."

The 38th World Medical Assembly adopted the World Medical Association(WMA) Declaration on Euthanasia, Madrid, Spain, October 1987 and reaffirmed by the 170th WMA Council Session, Divonne-les-Bains, France, May 2005 states:

"Euthanasia, that is the act of deliberately ending the life of a patient, even at the patient's request or at the request of close relatives, is unethical. This does not prevent the physician from respecting the desire of a patient to allow the natural process of death to follow its course in the terminal phase of sickness."

Also, The WMA Statement on Physician-Assisted Suicide, adopted by the 44th World Medical Assembly, Marbella, Spain, September 1992 and editorially revised by the 170th WMA Council Session, Divonne-les-Bains, France, May 2005, likewise states:

"Physicians-assisted suicide, like euthanasia, is unethical and must be condemned by the medical profession. The physician acts unethically when the physician's assistance is intentionally and deliberately directed at enabling an individual to end their own life. However, the right to decline medical treatment is a basic right of the patient, and the physician does not act unethically even if respecting such a wish results in the death of the patient."

The World medical associated proceeded to resolve that: The World Medical Association strongly encourages all National Medical Associations and physicians to refrain from participating in euthanasia, even if national law allows it or decriminalizes it under certain conditions. (World Medical Association, 2019)

There also are proponents of euthanasia based on disability or old age. Experts are against this position on euthanasia that is pegged on 'ableism.' According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), citing UN special rapporteurs Quinn *et al.* (2021) …UN human rights experts today expressed alarm at a growing trend to enact legislation enabling access to medically assisted dying based largely on having a disability or disabling conditions, including in old age.

"We all accept that it could never be a well-reasoned decision for a person belonging to any other protected group – be it a racial minority, gender or sexual minorities - to end their lives

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because they experience suffering because of their status," the experts said.

"Disability should never be a ground or justification to end someone's life directly or indirectly."

Such legislative provisions would institutionalize and legally authorize ableism and directly violate Article 10 of the UN Convention on the Rights of Persons with Disabilities, which requires States to ensure that persons with disabilities can effectively enjoy their inherent right to life on an *equal* basis with others.

3.2 Euthanasia and Physician-assisted Suicide (PAS) in Switzerland

According to Gaignard and Hurst (2019), in Switzerland, people can be granted access to assisted suicide (AS) on the condition that the person whose wish is to die performs the fatal act, that he has his decisional capacity and that the assisting person's conduct is not selfishly motivated. No restrictions relating to the ground of suffering are mentioned in the act (p.1)

Emanuel *et al.* (2016), as cited in Bartsch *et al.* (2019), note that assisted suicide has been anchored in the penal code in Switzerland since 1942 (article 115 of the Swiss Criminal Code) and is legal in certain circumstances—similar to the Benelux countries and some US states (Oregon, Washington, Montana, New Mexico, Vermont, and California)

Therefore, it is clear that euthanasia is illegal in Switzerland but assisted suicide is legal. ProCon.Org (2022) Euthanasia is illegal in Switzerland by article 114 of the Penal Code of Switzerland: "Any person who for commendable motives, and in particular out of compassion for the victim, causes the death of a person at that person's own genuine and insistent request is liable to a custodial sentence not exceeding three years or to a monetary penalty." Further, Swiss law prohibits assisted suicide for "selfish motives" (article 115) and anyone breaking this law is subject to up to five years in prison or a fine. Assisted suicide is allowable if the person aiding the suicide has good intentions and does not commit the act that leads to death (such as injecting medication).

3.2 Euthanasia and Physician-assisted Suicide (PAS) in the Netherlands

According to Heide *et al.* (2005), as cited in Groenewoud *et al.* (2021), "The Netherlands was the first country in the world to legalize euthanasia and physician-assisted suicide (henceforth 'euthanasia'), with an officially tolerated euthanasia practice since 1985, leading to a makeshift law in 1994 and a fully-fledged euthanasia law in 2002." Also, Kouwenhoven *et al.* (2019, p.44) note that "In 2015, euthanasia accounted for 4.5% of deaths in the Netherlands, of which 93% were performed by a GP. Historically, a conflict of physician's duties—to alleviate unbearable suffering and at the same time preserve the patient's life—is central to the justification of euthanasia practice in the Netherlands."

Kouwenhoven et al. (2019, p.44) note that in the Netherlands, physician-assisted dying is carried out mainly by general practitioners (GPs). In 2015, 93% of the euthanasia cases reported were performed by general practitioners. Although euthanasia is legal in the Netherlands, it is forbidden and punishable under the Dutch criminal law unless the physician undertaking it makes sure the case meets the requirements set out in the euthanasia law of the Netherlands. Also, the physician must report the procedure. Moreover, according to Kouwenhoven et al. (2019, p.45), the Termination of Life on Request and Assisted Suicide (Review Procedures) Act (2002) stipulates that:

The criteria of due care in euthanasia require that the physician

(1) is convinced that there is a voluntary and well-considered request from the patient, and
(2) is convinced that the patient is suffering unbearably without the prospect of improvement, and
(3) has informed the patient about his current situation and prospects, and
(4) has concluded—together with the patient—that no reasonable alternative solution to alleviate the patient's suffering exists, and

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(5) has consulted at least one independent physician, who visited the patient personally and has given a written assessment of the criteria of due care, and
(6) has performed euthanasia or PAS with due medical care and attention.

3.3 Euthanasia and Physician-assisted Suicide (PAS) in Belgium

Belgium joined the few countries in the world that had legalized euthanasia when it passed its Euthanasia law in 2002 (Kasper, Vanderhaegen & Sterckx,2021). According to Weber (2001), as cited in Cohen-Almagor (2009, p.437), "On 20th January 2001, the euthanasia commission of Belgium's upper house voted in favour of proposed euthanasia legislation that would make euthanasia no longer punishable by law, provided certain requirements were met."

"On 25th October 2001, Belgium's senate approved the proposed law by a significant majority: 44 for, 23 against, 2 abstentions, and 2 senators who failed to register a vote. In society at large, an opinion survey showed that three-quarters of those asked were broadly in favour of legalising euthanasia. On 16th May 2002, after two days of heated debate, the Belgian lower house of parliament endorsed the bill by 86 votes in favour and 51 against, with 10 abstentions." Cohen-Almagor (2009, p.437)

As per Nys (2017, p.7), "this legislation then came into force on 23rd September 2002 and has since been amended twice: by a law of 10th November 2005 (aiming at offering legal Security to the pharmacist who delivers so-called *uthanatica* to be used by a physician who practices euthanasia) and by a law of 24th February 2014 to make euthanasia possible on so-called non-emancipated, capable minors."

The law is very specific about the guidelines a doctor must follow before undertaking euthanasia or assisted suicide for patients who have no prospects for recovery or those undergoing unbearable suffering. To be granted the right, the prospective euthanasia or assisted candidate must be a resident of Belgium. Also, they must be above 18 years old and have repeatedly requested, without coercion or coaxing, clearly requested for their lives to be terminated. "Section 3 of the law speaks of patients who are adults or emancipated minors, capable and conscious at the time of their request. Emancipated minors are meant to refer to an autonomous person capable of making decisions (personal communication) (Cohen-Almagor 2009, p.437)

Euthanasia in Belgium is regulated by the "Belgian Euthanasia law" that has clearly stipulated criteria that has to be met for euthanasia to be undertaken within legal confines. The criteria spell out issues like Individual patients' needs that make them eligible for euthanasia (e.g., unbearable suffering, conscious request). The procedure to be followed in evaluating whether the patient has met the laid down guidelines for euthanasia. (e.g., having sought the opinion of various practitioners. It also deals with the mandatory reporting of euthanasia cases to FCECE.In summary, the following criteria must be met for legal euthanasia:

1. The patient has to be an adult, an emancipated minor, or a minor with a capacity for discernment.
2 The patient has to make a voluntary, well-considered, repeated request that is not the result of external pressure.
3. The patient has to be in a medical condition without prospect of improvement.
4. The patient has to (a) experience constant and unbearable physical or psychological suffering and (b) that cannot be alleviated.
5. The patient's suffering should result from (a) a serious and incurable disorder or (b) caused by illness or accident. (Kasper, Vanderhaegen & Sterckx ,2021, p.83)

3.4 Euthanasia and Physician-assisted Suicide (PAS) in Luxembourg

Luxembourg was the third country in Europe to legalize both euthanasia and physician-assisted suicide. This, however, was not without challenges. The country's monarch, Grand Duke Henri, had vetoed the euthanasia bill even though he was required to assent to it by Luxembourg law. Consequently, the proponents

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of the bill in parliament passed a constitutional amendment that reduced the Grand duke's powers by eliminating the legal requirement for him to assent to the bill before it became law. Subsequently, the law came into force on 1st April 2009. The law "grants doctors legal immunity from "penal sanctions" and civil lawsuits if they directly kill or assist the suicide of a patient with a "grave and incurable condition," who has repeatedly asked to die. The doctor must first consult another physician to verify the patient's condition." (Patient Rights Council)

According to an article by Nicole (2008), the law on the Right to Die with Dignity, which the Luxembourg Chamber of Deputies adopted in February 2008, tackles both Euthanasia and physician-assisted suicide. The legislation stipulates that a physician who helps a patient procure euthanasia or assisted suicide must make sure that:

1. the patient is legally competent at the time of his request;
2. the patient has the authorization of his parents or legal guardian if he is between the ages of 16 and 18;
3. the request is voluntary, thought through, and repeated and does not result from external pressure;
4. the patient suffers from an incurable condition and is constantly in unbearable physical or mental pain; and
5. the patient respects all the conditions and procedures prescribed by the Law.

Moreover, the legislation also requires the doctor to give the patient information concerning his state of health, life expectancy, therapeutic possibilities, and possible ramifications. The health practitioner is also required to inform and discuss with the patient the avenues available for palliative care where possible. Before taking the final step of providing euthanasia or assisted suicide, the health practitioner must have explored all possible options and concluded that there is another viable option. Also, the physician must have had several consultations with the patient and got convinced that the physical and/or psychological suffering is persistent, with the patient making repeated voluntary requests for euthanasia or assisted suicide. Also, the physician is required to seek a second opinion from another qualified physician to confirm that the condition is incurable. Finally, the request to die must be made in writing in a living will.

Finally, "the Law establishes a National Commission of Control and Evaluation to assess the implementation of the Law. A physician who performs euthanasia must, within four days, remit an official declaration to the Commission. Finally, the Law provides that no physician is obliged to perform euthanasia or assist in a suicide. According to the parliamentary rules of procedure, a second reading of the Law is necessary before it can take effect. (Chambre des Députés, Proposition de loi No. 4909 sur le droit de mourir en dignité.)" (Nicole, 2008)

3.5 Euthanasia and Physician-assisted Suicide (PAS) in Canada

In June 2016, euthanasia and assisted suicide was legalized in Canada through the "Medical assistance in Dying" (MAiD) legislation. According to the Canadian Federal government statistics released on 24th February 2020, 13,000 people had procured euthanasia since it got legalized four years earlier. The statistics represent 2% of the total deaths in Canada. According to the government data, 5,444 and 4,438 euthanasia and assisted suicide deaths were recorded in 2019 and 2018, respectively. (Herx, Cottle & Scott 2021, p.28)

"Under Canadian law, MAiD is permissible for:

i. competent adults who have a serious and incurable illness, disease, or disability;
ii. who are in an advanced state of irreversible decline in capability;
iii. whose illness, disease or disability, or state of decline causes them enduring physical or psychologic suffering that is intolerable to them, and that cannot be relieved under conditions that they consider acceptable; and
iv. whose natural death has become reasonably foreseeable, considering all of their medical circumstances, without a prognosis

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necessarily having been made as to the specific length of time that they have remaining.

Medical assistance in dying may be self-administered or clinician-administered and may be provided by a medical or nurse practitioner" (Downar et al. 2020, p.173)

IV. FINDINGS

4.1 Euthanasia in Kenyan Law

Wekesa and Awori (2020, p.1-2) Argue that 'euthanasia" is a broad term that comprises three main aspects.

i) Voluntary or passive euthanasia- in this case, the patient or a relative requests or consent to end life. (The main purpose is to save the patient from pain, indignity, and emotional and economic burdens)

ii) Non- Voluntary euthanasia- This type of ending life occurs with neither the request nor the consent of the patient; in this case, the decision to end life is made either by a doctor or a relative.

iii) Involuntary euthanasia- occurs contrary to the wishes of the affected person. Another person deems it necessary. For example, for economic or hygiene reasons, as was witnessed during the Nazi atrocities against Jews in Germany.

Wekesa and Awori (2020) state that the Penal Code categorically criminalizes acts of assisted suicide under the headings of manslaughter and murder. Both active assisted suicide (giving of medicine) to cause the death of a patient as well as passive assisted-suicide (withdrawal of treatment, including artificial feeding and hydration) are prohibited under Kenyan law. Further, the law does not recognize agreements between individuals that may lead to death. This is covered under section 209 of the Penal Code (p.14).

The Constitution of Kenya, 2010, has certain elaborate provisions under Chapter four. These include:

26. The Right to Life

1. Every person has the right to life.

2. The life of a person starts at conception.

3. A person shall not be deprived of life intentionally, except to the extent authorized by this Constitution or other written law.

4. Abortion is not permitted unless, in the opinion of a trained health professional, there is a need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law

28. Human dignity Every person has inherent dignity and the right to have that dignity respected and protected.

31. Privacy Every person has the right to privacy, which includes the right not to have –

a. their person, home, or property searched;

b. their possessions seized

c. information relating to their family or private affairs unnecessarily required or revealed; or

d. the privacy of their communications infringed.

43. Economic and social rights

1 Every person has the right –

a. to the highest attainable standard of health, which includes the right to health care services, including reproductive health care. (Wekesa & Awori 2020, p13)

Nyamosy and Sang (2015), as cited in Barrack (2020), aver that "The question of whether one's health can deteriorate to the point that self-destruction is justifiable with the assistance of medical practitioner is not yet acceptable in Kenyan society." Also, Mburu (2009), as cited in Barrack (2020), notes that "this thus results into a professional and ethical dilemma for Kenyan medical practitioners whenever a situation that may call for euthanasia manifests itself. Professional and ethical dilemma in this context is understood as the gap between professional obligations and responsibilities of healthcare professionals and the efficacy of the healthcare system. The Kenya Medical Practitioners and Dentists Board (*referred to as "KMPD" hereinafter*), a body charged with governing and regulating the conduct of medical practitioners in Kenya, has in the past held that euthanasia is a criminal offense and has no space in the Kenyan Medical practice."

4.2 Euthanasia in Nigeria Law

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Obi (2014, p.80) Notes that euthanasia and assisted suicide are illegal in Nigeria. Even though there is no special legislation that deals with euthanasia and assisted suicide, the existing laws do not deal with euthanasia and assisted suicide. Moreover, under the Penal Code and Criminal code used in Northern and Southern Nigeria, respectively, the argument that a dead person consented to life-ending actions is not a defence. Although the term 'euthanasia" is not used in Nigerian Laws, the taking of a person's life by another is termed as a crime. It is viewed as a homicide equated to murder or manslaughter based on the intention with which the killing is done.

Okonkwo (1994), as cited in Obi (2014, p.81), avers that "In respect of assisted dying/suicide, the position of the law is clear. Section 326(3) of Criminal Code Act56 provides that 'any person who aids another in killing himself is guilty of a felony, and is liable to imprisonment for life.' The syllogism here is that consent by a person to the causing of his own death does not affect the criminal responsibility of any person by whom such death is caused."

Obi (2014, p.82) further points out that, "however, in Nigeria, there is no such qualification as regards aiding another in killing himself. The community reading of sections 220 and 221 of the Penal Code shows that any form of killing (except one exempted under the Nigeria Law, which fortunately and unfortunately does not include euthanasia) attracts the death penalty under Nigerian Law. Thus, section 220 of the Penal Code61provides that Whosoever causes death –

(a) By doing an act with the intention of causing death or such bodily injury as is likely to cause death; or
(b) By doing an act with the knowledge that he is likely by such act to cause death; or
(c) By doing a rash or negligent act, commits the offence of culpable homicide."

Oniha (2016, p. 11-12) avers that according to section 306 of the criminal code, " except as set forth, any person who causes the death of another directly or indirectly, by any means whatsoever is deemed to have killed that other person. In all of these instances, an offender may be found guilty of murder or manslaughter, depending on the circumstances of the case. In the case of the former, the prescribed punishment is a mandatory death sentence. Whilst in the latter, it is life imprisonment. Under the Code, the offence of murder is defined as comprising the following:"...... A person who unlawfully kills another under any of the following circumstances, that is to say-

(1) If the offender intends to cause the death of the person killed or that of some other person;
(2) If the offender intends to do to the person killed or to some other person some grievous harm;
(3) If death is caused by means of an act done in the prosecution of an unlawful purpose, which act is of such a nature as to be likely to endanger human life;
(4) If the offender intends to do grievous harm to some person for the purpose of facilitating the commission of an offence that is such that the offender may be arrested without a warrant or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence;
(5) If death is caused by administering any stupefying or overpowering things for either of the purposes aforesaid;
(6) If death is caused by willfully stopping the breath of any person for either of such purposes. Under this section, it is immaterial that the official did not intend to hurt the particular person who was killed. Other than the above instances, a person who unlawfully kills another in such circumstances as not to constitute murder is guilty of manslaughter."

4.3 Euthanasia in South African Law

Abraham & Gross (2018, Oct. 9) "In South African law, assisted suicide or euthanasia is illegal and is likely to be deemed murder in a court of law. According to the South African Constitution, everyone has the right to life. However, there is no such right to die, and thus

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one is not legally entitled to use assisted suicide even though it may be an autonomous decision."In the *Minister of Justice and Correctional Services v Estate Stransham-Ford* (531/2015) 2016 ZASCA 197*,* heard in 2015 in the North Gauteng High Court, Judge Fabricius found that a doctor's assistance in helping a patient die was not unlawful. The Judge stated: "*The applicant is entitled to be assisted by a medical practitioner either by the administration of a lethal agent or by providing the applicant with the necessary lethal agent to administer himself*." This ruling essentially meant that euthanasia and physician-assisted suicide had become legal. However, this was short-lived, for it was overturned by the Supreme Court of Appeal (SCA) in 2016. The SCA found that Judge Fabricius' judgment went beyond the mandate of the courts as it was tantamount to legislating, a role reserved for parliament.

Swemmer (2020, p.8-9) writes that The South African law commission released its report on the right to die in November 1998. The Law Reform Commission report (1998, p. X) 'Euthanasia and the Artificial Preservation of life' as cited in Swemmer (2020) held that "Worldwide increased importance is furthermore being attached to patient autonomy. The need has therefore arisen to consider the protection of a mentally competent patient's right to refuse medical treatment or to receive assistance, should they so require, in ending their unbearable suffering by the administration or supplying of a lethal substance to the patient. The position of the incompetent patient, as well as the patient who is clinically dead, has to be clarified as well."

Concerning living wills and passive ending of life by withdrawing life-prolonging interventions, The Law Reform Commission report (1998, p. x-xi), as cited in Swemmer (2020, p.9) the commission recommended the enactment of legislation to address the following possibilities:

i) stipulate the circumstances under which a medical practitioner can withdraw or authorize the withdrawal of treatment to a patient who has no spontaneous raspatory and circulatory functions or where the patient's brainstem does not register any impulse.
ii) That a physician could effect the instructions of a living will to stop a certain type of treatment, or palliative care, provided the patient was of sound mind when he made the advance directives.
iii) The commission also recommended that legislation should be made to the effect that a person of sound mind/ competent- person to the extent of the stipulations of law can decide to terminate life-sustaining treatment even when such an action would lead to the death of the patient.
iv) It was also recommended that physicians should be empowered through legislation to terminate the treatment of a terminally-ill patient who could not communicate, provided it was the wish of the family or in line with a court order.
v) A doctor should be legally authorized to administer sufficient drugs to alleviate the suffering of a terminally-ill patient even if doing so would hasten the death of the patient

Swemmer (2020, p.9) further writes that the commission did not make clear suggestions concerning physician-assisted deaths. However, the commission raised came up with three options that could be considered by the legislature:

i) To uphold the legislation as it was. (it stipulated that euthanasia was unlawful)
ii) Allow a medical practitioner leeway to decide whether administer life-ending intervention (euthanasia) albeit within clear guidelines
iii) Euthanasia requests to be evaluated by multi-disciplinary teams.

The commission suggested that whether the legislature adopted its suggestions or not, it was imperative that it came up with clear legislation concerning euthanasia.

While euthanasia and assisted suicide are illegal in South Africa, the irony of the situation is captured by Forest (2021) "While It is legal in South Africa to withdraw or withhold life

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support where the patient has given an advance directive, or further treatment is futile. "Palliative sedation," through increasing doses of pain-killing drugs that may hasten death, is also allowed. So is "terminal sedation," where a pain-stricken patient is knocked out and, if life support is withdrawn, may starve to death."

V. CONCLUSION

This research established that a few countries in the world (Switzerland, Belgium, Netherlands, Luxembourg, Canada, Australia, Colombia, and some states in the United States) had legalized euthanasia within certain clearly defined parameters.

Euthanasia and physician-assisted suicide remain emotive issues the world over. It is noted that the European court of justice (the only international court of justice to have adjudicated on euthanasia and physician-assisted suicide) ruled against the right to die (euthanasia or physician-assisted suicide.)

It is noteworthy that most jurisdictions in the world legislate for the need to preserve human life. However, there is the never-ending argument of patient autonomy and the right to die with dignity.

The research found the need for the three African countries, Kenya, South Africa, and Nigeria, to reconsider their legal positions on euthanasia. As much as the countries would strive to preserve human life, there is a concern about a dignified end of life, particularly when:

i) A qualified physician establishes that a patient is suffering from a terminal illness.
ii) The patient is undergoing unbearable pain without prospects of improvement
iii) Patients who have been in a vegetative state for a considerable time without prospects of recovery.

Countries that have legalized euthanasia and physician-assisted suicide have taken into consideration the need to die in dignity. These countries recognise the agony of patients who are suffering from terminal illnesses. They also recognise that some patients are in a state of unbearable pain with no prospects of getting better. Also, they recognise cases of patients who are in extended vegetative states. Such patients normally are unlikely to regain consciousness in addition to the emotional and financial strain their families might have to endure. This research finds that Kenya, Nigeria, and South Africa should take this into consideration and pass legislation that would address these challenges.

REFERENCES

1. Abrahams & Gross. (2018 oct. 9th). Euthanasia: Legal Ambivalence. https://www.abgross.co.za/euthanasia-legal-ambivalence/ accessed 13/06/2022
2. Australian Human Rights Commission. (2016). Euthanasia, human rights and the law. www.humanrights.gov.au
3. Barrack, A (2020). A dignified exit: A critical look at the position of euthanasia under Kenyan law https://niccolaw.co.ke/a-dignified-exit-a-critical-look-at-the-position-of-euthanasia-under-kenyan-law/ Accessed 12/06/2022
4. Bartsch, C., Landolt, K., Ristic, A., Reisch, T., & Ajdacic-Gross, V. (2019). Assisted Suicide in Switzerland: An Analysis of Death Records From Swiss Institutes of Forensic Medicine. Deutsches Arzteblatt international, 116(33-34), 545–552. https://doi.org/10.3238/arztebl.2019.0545
5. Cohen-Almagor, Raphael. (2009). Belgian euthanasia law: A critical analysis. Journal of medical ethics. 35. 436-9. 10.1136/jme.2008.026799
6. Downar, J., Fowler, R. A., Halko, R., Huyer, L. D., Hill, A. D., & Gibson, J. L. (2020). Early experience with medical assistance in dying in Ontario, Canada: a cohort study. CMAJ : Canadian Medical Association journal = journal de l'Association medicale canadienne, 192(8), E173–E181. https://doi.org/10.1503/cmaj.200016
7. Fontalis, A., Prousali, E., & Kulkarni, K. (2018). Euthanasia and assisted dying: what is the current position and what are the key arguments informing the debate? Journal of the Royal Society of Medicine,

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111(11), 407–413. https://doi.org/10.1177/0141076818803452

8. Forrest, D. (2021 July, 27). The state continues to deny South Africans their "last right"- euthanasia. Mail & Guardian Africa's best read. https://mg.co.za/opinion/2021-07-27-the-state-continues-to-deny-south-africans-their-last-right-euthanasia/ accesssed 24/06/2022
9. Gaignard, ME., & Hurst, S.(2019). A qualitative study on existential suffering and assisted suicide in Switzerland. BMC Med Ethics 20(34) . https://doi.org/10.1186/s12910-019-0367-9
10. Groenewoud AS, Atsma F, Arvin M, et al Euthanasia in the Netherlands: a claims data cross-sectional study of geographical variation BMJ Supportive & Palliative Care Published Online First: 14 January 2021. doi: 10.1136/ bmjspcare-2020-002573
11. Herx, H., Cottle, M. & Scott,J. (2021). The "Normalization" of Euthanasia in Canada: the Cautionary Tale Continues. World medical Journal. https://procathedral.ca/wp-content/uploads/2020/05/World-Medical-Journal-Article.pdf
12. Hetami A. A., Aransyah M. F. (2021) Development of synergistic between digitalization MSMEs HCMCOUJS-Economics and Business Administration, 11(2)
13. https://www.patientsrightscouncil.org/site/luxembourg/ accessed 12/06/2022
14. Jacobs, Ryan Kurt. (2018). Legalising physician-assisted suicide in South Africa: Should it even be considered? South African Journal of Bioethics and Law. 11. 66. 10.7196/SAJBL.2018.v11i2.00635.
15. Kasper Raus, Bert Vanderhaegen, Sigrid Sterckx, (2021) . Euthanasia in Belgium: Shortcomings of the Law and Its Application and of the Monitoring of Practice, The Journal of Medicine and Philosophy: A Forum for Bioethics and Philosophy of Medicine,(46)1, 80–107. https://doi.org/10.1093/jmp/jhaa031
16. Kimuyu, P. (2018). The Age-old Practice of Euthanasia. GRIN Verlag.
17. Kouwenhoven, P., van Thiel, G., van der Heide, A., Rietjens, J., & van Delden, J. (2019). Developments in euthanasia practice in the Netherlands: Balancing professional responsibility and the patient's autonomy. The European journal of general practice, 25(1), 44–48. https://doi.org/10.1080/13814788.2018.1517154
18. Nicole, A. (March 2, 2008) Luxembourg: Right to Die with Dignity. Library of Congress. https://www.loc.gov/item/global-legal-monitor/2008-03-02/luxembourg-right-to-die-with-dignity/ Accessed 12/06/2022
19. Nys, H. (2017). A Discussion of the Legal Rules on Euthanasia in Belgium Briefly Compared with the Rules in Luxembourg and the Netherlands. In D. Jones, C. Gastmans, & C. MacKellar (Eds.), Euthanasia and Assisted Suicide: Lessons from Belgium (Cambridge Bioethics and Law, pp. 5-6). Cambridge: Cambridge University Press. doi:10.1017/9781108182799.002
20. Obi, M.C. (2014). A critical appraisal of euthanasia under Nigerian laws. Nnamdi Azikiwe University Journal if International Law and Jurisprudence. 5. 75-88
21. Oniha, B. E. (2016) Legality of euthanasia and the right to die in Nigeria. https://edojudiciary.gov.ng/wp-content/uploads/2017/07/LEGALITY-OF-EUTHANASIA-AND-THE-RIGHT-TO-DIE-IN-NIGERIA-BY-BRIGHT-E.-ONIHA-CORRECTED.pdf
22. Patient Rights Council. Adddressing euthanassia, assisted suicide, advance directives, disability rights, pain control and more.
23. ProCon.Org. (2022 January, 10th). Euthanasia & Physician-Assisted Suicide (PAS) around the World. https://

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euthanasia.procon.org/euthanasia-physician-assisted-suicide-pas-around-the-world/ acc 21/04/2022

24. Quinn, G., De Schutter, O., & Mahler, C. (2021 January, 25th) Disability is not a reason to sanction medically assisted dying – UN experts. Office of the High Commissioner for Human Rights. https://www.ohchr.org/en/press-releases/2021/01/disability-not-reason-sanction-medically-assisted-dying-un-experts acc 21/04/2022
25. Reingold, R. & Mora, L. (2019) An International Right to Die With Dignity?. O'Neill Institute for National & Global Health law. https://oneill.law.georgetown.edu/an-international-human-right-to-die-with-dignity/ acc 20/04/2022
26. Scherer, M. & Simon, R.J. (1999). Euthanasia and the right to die: A comparative view. Lanham: Rowman & Littlefield Publishers, Inc.
27. Shala, I. & Gusha, K. (2016). The Debate Over Euthanasia and Human Rights. European Scientific Journal, 12(8), 73-81. doi: 10.19044/esj.2016.v12n8p73
28. Swemmer, Sheena. (2020). THE RIGHT TO DIE IN SOUTH AFRICA. https://www.researchgate.net/publication/338336158_THE_RIGHT_TO_DIE_IN_SOUTH_AFRICA
29. Tsai, B. & Menkes, D.B.(2020).New Zealand doctors and euthanasia—legal and practical considerations of the End of Life Choice Act. The New zealand Medical Journal. 133(1522), 149-160.
30. Wekesa, M. & Awori, M. (2020). The State of the Law on Euthanasia in Kenya. Journal of Medical Law and Ethics, 8, 1-14
31. World Medica Association (WMA). (2019 November 5th). WMA Resolution on Euthanasia. https://www.wma.net/policies-post/wma-resolution-on-euthanasia/ acc 21/04/2022
32. World Population Review (ND)Where is Euthanasia Legal 2022. https://worldpopulationreview.com/country-rankings/where-is-euthanasia-egmalacc20/04/2022

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