



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON END OF LIFE CHOICES IN THE ACT

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Submission Cover Sheet

End of Life Choices in the ACT

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From: Rita Joseph
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The Secretary,

Select Committee on End of Life Choices in the ACT,
Legislative Assembly for the ACT,
CANBERRA ACT 2601.

Please accept my attached submission. It is a public submission and may be published or quoted as the Committee wishes.

I am available to answer any questions the Committee may wish to ask me concerning the Covenant requirements of international human rights law in regard to arbitrary deprivation of life.

I wish the Committee well in tackling a very serious difficult issue.

Sincere regards.

Rita Joseph


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End of life care and legal protection—a duty not a “choice”

Public Submission to the Select Committee on End of Life Choices in the ACT

Rita Joseph

2nd February , 2018

Executive Summary

ACT authorities need to be very careful in defining the phrase “end of life choices”.

Any laws introduced to expand “end of life choices” to include complicity in another’s suicide, for example, will contravene international human rights commitments protecting “every human being” from arbitrary deprivation of life.

Introduction of laws facilitating the aiding, abetting, counselling or procuring the suicide of another person as “choices” are incompatible with the human rights language of the International Covenants we have ratified.

All Australian laws (including ACT laws) must comply with universal obligations in the *International Covenant on Civil and Political Rights* to guarantee for everyone legal protection from arbitrary deprivation of life. (Article 6). Right to life protections “extend to all parts of federal States without any limitations or exceptions” (Article 50).

If a State or Territory introduces laws that permit facilitation of intentional deprivation of life as an “end of life choice”, the Federal Parliament has the authority and the duty pursuant to its external affairs power to enact general overriding laws based on the Article 6 obligations.

Every human being at risk of arbitrary deprivation of life has a right to be protected by law from instigation to self-harm.

Laws facilitating the crime of aiding, abetting, counselling or procuring the suicide of another person contravenes the universal human rights principle of inalienability. Human beings cannot be deprived of the substance of their rights, not in any circumstances, not even at their own request.

There is a genuine need to enact positive laws respecting key human rights principles:

- The inherent right to life of the terminally ill and the suicidal is inalienable;
- The terminally ill and the suicidal have the right to recognition of their inherent dignity;
- The terminally ill and the suicidal have the right to security of person;
- The autonomy of “end of life choices” is limited by the duty to secure the rights of all;
- Human solidarity with the terminally ill and the suicidal must not be jeopardized.

Recommendations

- (1) Advocacy materials promoting suicide must be more strictly controlled so that positive programs for assisting persons at risk of suicide can achieve their full potential.
- (2) Education programmes emphasize the human person as the true source of human dignity and teach the inalienability of the inherent right to life.
- (3) Funding for genuine palliative care and research programmes should be increased so that best practice end of life care becomes available not as a “choice” but as a duty for all of us to provide and as a right for everyone who is in need to receive.

Introduction

I shall address Terms of Reference numbers (4) and (5) and recommend careful consideration of the requirement that any legislative change to our current laws (which have always prohibited the involvement of the medical profession or family or friends or even strangers in the direct killing of the suicidal) must be compatible with our Territory, State and Federal international human rights obligations under the *International Covenant on Civil and Political Rights (ICCPR)*.

The ACT legislature does not have the authority to legislate on any “end of life choices” that involve the facilitation of professional medicalized killing of the suicidal.

Federal Parliament retains the authority and the duty to enact general overriding laws where international human rights treaty obligations to protect every human being from arbitrary deprivation of life are jeopardized by domestic State or Territory law.

Committee members here in the ACT would do well to understand that it can be only a matter of time before the faulty new Victorian legislation, like the Northern territory legislation before it, must be challenged and discredited.

1. “End of Life Choices” intimating promotion of suicide as a “choice” incompatible with solemnly agreed human rights language of our International Human Rights Covenants

Regrettably, novel language which describes professional medicalized killing of the suicidal as “end of life choices” is inconsistent with the consensus language of international human rights law. Introduction of this new language needs to be examined for compatibility with original principles and concepts of the agreed language of major international human rights instruments which Australia has negotiated and ratified.

The title phrase “End of Life Choices” has a disturbing potential to contradict certain agreed foundational principles of modern international human rights law. It is misleading language in that it implies intentionally lethal medical interventions may be introduced as legitimate “choices”.

Unlike palliative care, such lethal ‘services’ are not genuine medical services to the living but rather the illicit means of facilitating arbitrary deprivation of the life of a living patient in order to transform that living patient into a corpse. **Facilitating lethal ‘services’ to clients or patients is not within the established competency of either law or medicine.**

The professional medicalized killing involved in “voluntary assisted suicide” should not be misrepresented in the title language as a legitimate ‘choice’ of medical treatments as it is **not a medical treatment of the person — it is a killing of the person using medication.**

Any “treatment” that is lethal is not limited to the relief of pain, suffering, distress and indignity, but actually goes way beyond those limits to *killing* a living human being. We end up with a corpse, a dead human being. Such a human being has been killed by the intentional

administration of lethal medicine, not with the object of allowing the person to die a comfortable death but with the object of **producing a human corpse from which not only has discomfort been removed but also life itself.**

The intention of the ACT legislature—to examine the introduction of Territory laws to legalize intentional killing of the suicidal under the euphemism of “end of life choices”—is fraught with imprecision and confusion. The term “end of life choices” is a misrepresentation of what actually happens when a government encourages and facilitates the professional medicalized killing of suicidal persons approaching the “end of life” is presented as a legal “choice”. The real object of the ACT legislature’s duty to persons in “end of life” distress is to enable them to die a natural death with positive care to minimize suffering. This object is rightly assigned to the area of palliative care and is existentially a fundamentally different concept to facilitating professional medicalized suicide.

2. A right to be protected by law from instigation to self-harm

One important aspect here that needs the urgent attention of the Committee is the ready availability of an exponentially expanding volume of

1. instructional material on how to commit suicide; and
2. pro-suicide propaganda misrepresenting suicide/’assisted’ suicide as a human right.

On the internet and in the mainstream media through advocacy groups such as Exit International and individuals such as Dr. Philip Nitschke, this material is made available with seeming legal impunity to the self-harm that it encourages in the most vulnerable victims, persons at risk of suicide.

Certainly, there is a great need for positive educational material to counteract the harmful effects of material that encourages and promotes suicide/’assisted’ suicide.

But in addition to public awareness programmes, the right to life of persons at risk of suicide/’assisted suicide’ must be protected by law, and all actions aimed at encouraging or promoting suicide and/or the aiding, abetting, counselling or procuring the suicide of another person as “choices” must be restricted for the common good.

3. Any legislative change must be compatible with international human rights obligations

Any Territory legislation proposing to introduce the aiding, abetting, counselling or procuring the suicide of another person as a legitimate “end of life choice” recklessly contravenes national and international human rights duties to protect every human being from arbitrary deprivation of life. The Federal Government retains primary responsibility for ensuring that all domestic legislation (including State and Territory law) is compatible with Australia’s international human rights commitments.

All Australian laws (including State and Territory laws) must comply with universal obligations in the *International Covenant on Civil and Political Rights* to guarantee for everyone legal protection from arbitrary deprivation of life (Article 6).

Article 50 of the *ICCPR* states that “the provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions”.

This means that no limitation on, or exception to, the inalienable right to life of any person at risk of “choosing” suicide can be enacted without contravening the Covenant (Article 6).

If a State or Territory introduces laws that permit facilitation of intentional deprivation of life as an “end of life choice”, the Federal Parliament has the authority and the duty pursuant to its external affairs power to enact general overriding laws based on Article 6.

The UN Human Rights Committee asserts:

*The obligations of the Covenant in general and article 2 in particular are binding on every State Party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party. **The executive branch that usually represents the State Party internationally... may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State Party from responsibility for the action and consequent incompatibility.** This understanding flows directly from the principle contained in article 27 of the Vienna Convention on the Law of Treaties, according to which a State Party 'may not invoke the provisions of its internal law as justification for its failure to perform a treaty'. Although article 2, paragraph 2, allows States Parties to give effect to Covenant rights in accordance with domestic constitutional processes, the same principle operates so as to prevent States parties from invoking provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty. In this respect, **the Committee reminds States Parties with a federal structure of the terms of article 50, according to which the Covenant's provisions 'shall extend to all parts of federal states without any limitations or exceptions'**.¹*

The UN Human Rights Committee continues:

“Where there are inconsistencies between domestic law and the Covenant, article 2 requires that the domestic law or practice be changed to meet the standards imposed by the Covenant's substantive guarantees.”²

¹ General Comment No. 31 *CCPR/C/21/Rev.1/Add.13*, 26/05/2004

The Nature of the General Legal Obligation Imposed on States Parties to the Covenant **Para 4.**

² *Ibid* para 13

4. Legalizing another's complicity in suicide as an "end of life choice"—incompatible with *ICCPR universal obligations to protect "everyone" from "arbitrary deprivation of life"*

Any proposed laws attempting to legalize the aiding, abetting, counselling or procuring the suicide of another person contravene human rights obligations.

Any proposed State laws introducing and encouraging 'assisted' suicide assert a 'new' right which, conflicting with an established right, is rendered invalid.³

Under international human rights law, facilitating "voluntary assisted suicide", contravenes the duty to provide legal protection of the right to life for everyone, especially the most vulnerable including those with suicidal ideation.

The framers of our international human rights instruments had good reason for insisting that the right to legal protection from arbitrary deprivation of life is non-derogable and inalienable.

Not even in 'public emergencies' may any government derogate from legal protection of the right to life of every human being in its jurisdiction [*ICCPR Article 4 (2)*].

5. Rights "*extend to all parts of federal States without any limitations or exceptions*"

Article 50 of the *ICCPR* states that "the provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions".

On all matters pertaining to the possible violation of the right to life of the terminally ill and the suicidal, the Federal Government is obliged to challenge State and Territories laws that have failed to provide adequate protection against the professional medicalized killing of the terminally ill and the suicidal.

"Every human being has the inherent right to life. This right shall be protected by law No one may be deprived of their life arbitrarily" ICCPR Article 6(1) .

³ See Malik, Charles, "International Bill of Human Rights", *United Nations Bulletin*, July, 1948. Charles Malik, President of the Economic and Social Council and Rapporteur of the Commission on Human Rights in 1948 called the last article of the *Universal Declaration* "the article of inner consistency":

...it states that nothing should flow from this Declaration that can contradict or nullify its effect. Thus no person aiming at the destruction of the fundamental rights can take cover under any of the freedoms granted by this Declaration...

It is the Federal legislature's responsibility to provide laws that **“strictly control and limit the circumstances in which the State may condone deprivation of life”**.⁴

In view of the irreversible nature of each act of professional medicalized killing of a terminally ill or suicidal person, Federal legislatures must scrupulously observe all international and regional standards protecting the right to life **and must ensure that the States and Territories of the Federation also observe these standards.**

6. So called ‘assisted’ suicide contravenes the universal human rights principle of inalienability

The drafting history of the *International Covenant on Civil and Political Rights* makes it clear that medicalized killing, even when requested in response to suicidal distress, violates the fundamental human rights principle of inalienability. **Human beings cannot be deprived of the substance of their rights, not in any circumstances, not even at their own request.**

Addition of the term ‘voluntary’ cannot legitimate violation of the inalienability principle.

States Parties’ human rights obligation to provide legal protection for the terminally ill means that governments are prohibited from legalizing, promoting, condoning or paying for medical interventions where the intended outcome is arbitrary deprivation of the life of the suicidal and the terminally ill.

Any State or Territory law which legalizes medicalized killing of the suicidal and the terminally ill must be found sooner or later to be invalid. It will be found to have been void at the very time of its enactment because it is incompatible with the universal human rights commitments of the *ICCPR* to protect by law the inherent right to life of every human being, including the inherent right to life of the terminally ill, the suicidal and other vulnerable persons.

States which have ratified the *ICCPR* must at all times take positive steps to effectively protect the right to life of every human being. The right to life of persons at risk of suicide, as protected by international human rights law, means, *inter alia*, that States have a strict legal duty at all times to prevent, investigate and redress threats to the right to life wherever such violations occur, both in private and in public (Article 4(2) *ICCPR*).

Only a corruption of this strict legal duty to prevent, investigate and redress threats to the right to life could enable a government to tolerate interventions having the intended outcome of encouraging or facilitating arbitrary deprivation of life involved in ‘assisted’ suicide as an “end of life choice”.

States Parties’ human rights obligations in a Federation that has ratified the Covenant are prohibited from tolerating the promotion of ‘assisted’ suicide as a human right.

⁴ UN HRC: General Comment 6, Para. 3

7. Localized majorities may not pass laws in violation of universal human rights

In the drafting of the Covenant, introduction of the concept of arbitrariness was always intended to guarantee that even measures provided for by domestic law should be in accordance with the provisions, aims and objectives of the Covenants.

In other words, localized majorities may not pass laws in violation of universal human rights.

The people of ACT retain their rights to make laws for the peace, order and good government of their Territory, including the right to legislate for the terminally ill and the suicidal, but those laws must conform to international human rights norms that have been guaranteed under the human rights instruments to which the Federation of Australia is a party. It is the international community and international law that must guarantee the right to have rights.⁵

“The meaning of the word ‘ laws’ in the context of a system for the protection of human rights cannot be disassociated from the nature and origin of that system.”⁶ The protection of human rights is in effect based on the very first and singularly important affirmation in all three foundational human rights instruments of the *International Bill of Rights*:

...in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...

At the foundation of modern international human rights law is this recognition that “*the equal and inalienable rights of all members of the human family*” cannot be legitimately restricted through arbitrary exercise of governmental power or through arbitrary exercise of the majority’s democratic will.

In order to guarantee universal human rights, it is therefore essential that, in a federation, all state and territory actions affecting basic rights **not be left to the discretion of localized governments** but, rather, that they be surrounded by a set of guarantees designed to ensure that the inviolable attributes of the individual will not be impaired.

It is true that one of these guarantees is the requirement that restrictions to basic rights should only be established by a law passed by the Legislature in accordance with a state or national constitution. Such a procedure, according to one international court of human rights, not only clothes these acts with the assent of the people through its representatives, but also allows minority groups to express their disagreement, propose different initiatives,

⁵ J. E. Nijman: *The Concept of International Legal Personality, An Inquiry into the History and Theory of International Law*. The Hague: T. M. C. Asser Press, 2004. p.473

⁶ The Word “Laws ” , Advisory Opinion OC-6/86, May 9, 1986, Inter-Am. Ct. H.R. (Ser. A) No. 6 (1986) para 21

participate in the shaping of the political will, or influence public opinion so as to prevent the majority from acting arbitrarily.⁷ The Court, however, goes on to sound a timely warning:

*Although it is true that this procedure does not always prevent a law passed by the Legislature from being in violation of human rights – a possibility that underlines the need for some system of subsequent control—there can be no doubt that it is an important obstacle to the arbitrary exercise of power.*⁸ [emphasis added]

While this is from an Advisory Opinion of the Inter-American Court of Human Rights, it has, I believe, a very real relevance to our own state and national constitutions, legislatures and formal obligations to conform domestic laws to international human rights conventions that Australia has ratified, such as the *ICCPR*.

Of special relevance is this understanding that the political will of a democratic majority *does not always prevent a law passed by the Legislature from being in violation of human rights – a possibility that underlines the need for some system of subsequent control*. Federal intervention in the form of the *Euthanasia Laws Act 1997* was an excellent demonstration of just such a need for some system of subsequent control **when a localized majority (the Northern Territory Legislature) has acted arbitrarily to pass a law that is in violation of human rights treaties.**

In this respect, the ACT legislature may need to be reminded that the term “peace, order and good government” may under no circumstances be invoked as a means of denying any right guaranteed by the *International Covenant on Civil and Political Rights* or to impair or deprive it of its true content.

The suicidal may not be deprived “lawfully” of their lives. Laws that arbitrarily deprive the suicidal of their lives are bad laws, impermissible because they allow for unjust deprivation of lives—the only just deprivation of life allowed for in the *ICCPR* under very limited conditions relates to State imposition of the death penalty for only the most serious crimes, and only after a final judgment rendered by a competent court [Article 6 (2)].

It should be remembered that no executions or death penalties have ever been carried out in the Australian Capital Territory, where federal legislation abolished capital punishment in 1973. **The ACT legislature rightly has never embraced the concept of government sponsored legalized killing even for those who have committed the most heinous crimes. It should not spoil this excellent record** by introducing new laws facilitating the professional medicalized killing of the suicidal and the terminally ill.

⁷ Ibid para 22

⁸ Ibid

8. The inherent right to life of persons at risk of arbitrary deprivation of life shall be protected by law

Today, the suicidal and the terminally ill are among the most vulnerable human beings on earth; and legal systems must not permit them to be placed at risk of lethally persuasive arguments and initiatives. Persons at risk of suicide are entitled to have their genuine rights fully respected in accordance with the special safeguards and duty of care guarantees as set out and agreed in the original international human rights instruments which the Australian Federation has ratified.

Article 2(2) of the *International Covenant on Civil and Political Rights* states:

Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Legislative or other measures must be adopted by each State party to the *ICCPR* to provide protection for the inherent right to life of persons at risk of suicide.

Article 6(1) of the *International Covenant on Civil and Political Rights* asserts:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

9. Arbitrary death (as opposed to natural death) is not an “end of life choice”

Natural death comes inevitably to all human beings. Natural death is an unprovoked, spontaneous natural event. Death is not an “end of life choice”, but an inevitability. Human rights are applicable to the living. **For as long as persons at risk of suicide are alive, their inherent right to life is to be protected by law—their lives are to be protected even against self-harm and against facilitating self-harm.**

There are to be no exceptions and no limitations placed on a government’s duty to protect the inherent right to life and this duty applies to all individual states and territories within a federation (*ICCPR* Art.50).

The law must ensure that no one is arbitrarily deprived of his life. The term ‘arbitrarily’ has immense significance in that it prohibits aiding, abetting, counselling or procuring the suicide of another person precisely for the reason that both the timing and the manner of death are arbitrary rather than inevitable.

From the very beginning of the drafting of modern international human rights instruments, a clear understanding of the term ‘arbitrarily’ was established—it was to be interpreted as “without justification in valid motives and contrary to established legal principles.”⁹

It is not lawful to condone propaganda or legislative programmes that promote suicide as a reasonable and valid course of action. Legal tolerance of such promotions of arbitrary deprivation of life is

○ *without justification in valid motive*

They aspire to do good (relieve suffering and/or pain) by doing evil (intentional premature deprivation of life); and

○ *contrary to established legal principles*

They contravene the established legal principle that the state may condone deprivation of life only for those who are judged guilty of serious crime. [ICCPR Article 6 (2)]. They contravene also the established human rights legal principles of the inherency and inalienability of the right to life.

Dr Stephen Hall, in a discerning article in the *European Journal of International Law*, warns that it is when we are “unmindful of the richness of the common good under the natural law” that the temptation to turn moral wrongs into human rights arises; he intimates that laws authorizing the killing of human beings are “radically unjust (and radically immoral) in that they permit choosing directly against a self-evident form of human flourishing; *i.e.*, life.”¹⁰

It is the Federal legislature’s responsibility, in cooperation with the States and Territories, to provide both laws and programmes that protect *the inherent right to life* and the inalienability of all the rights of persons at risk of suicide especially:

- the terminally ill, including provision of access to palliative care and to all other necessities required during this last stage of life; and
- the psychologically distressed, including provision of access to continuing psychiatric and medical care as well as ongoing access to material needs and social support necessary to their well-being.

⁹ « ...arbitraires (c’est-a-dire sans justification pour des motifs valables et contraires a des principes juridiques bien etablis)... » Verdoodt, Albert, *Naissance et Signification de la Déclaration Universelle des Droits de l’Homme*, Société d’Etudes Morales, Sociales et Juridiques, Louvain-Paris, Editions Nauwelaerts, 1964, p.143

¹⁰ Hall, Stephen: [*The Persistent Spectre: Natural Law, International Order and the Limits of Legal Positivism*](#) *European Journal of International Law*, Oxford: 2001. Vol. 12, Iss. 2; p. 269

10. Legal protection for genuine rights of the terminally ill and the suicidal under human rights law

- The inherent right to life of the terminally ill and the suicidal is inalienable

The term “inalienable rights of all members of the human family” applied to the terminally ill means that these human rights cannot be taken from the terminally ill person, not by anyone, and not even by himself. Thus the right to life, because it is inalienable, rules out “voluntary assisted suicide” as an assault on life.

Professional medicalized killing cannot be offered as a legitimate response to the suicidal distress of a terminally ill person as it is in violation of the fundamental human rights principle of inalienability. Human beings cannot be deprived of the substance of their rights, not in any circumstances, not even at their own request.

The natural law principles relevant here are that a human entity should be allowed to persist in being; and that one must not directly attack any basic good in any person, not even for the sake of avoiding bad consequences. This last principle, that the basic aspects of human well-being are never to be directly suppressed, is cited by Professor John Finnis as the principle of natural law that provides the rational basis for *absolute* human rights, for those human rights that “*prevail in all circumstances, and even against the most specific human enactment and commands*”.¹¹

The concepts of dignity, sanctity, status, worth, and ultimate value—*each individual an end in himself*¹²—underpin the understanding and acceptance by the drafters of the *Universal Declaration of Human Rights* of the first principle of natural law—the moral imperative to do good and avoid evil, and emanating from this, the precept that affirms support for and preservation of each human life as a good and proscribes the deliberate killing of human beings suffering suicidal ideation.

¹¹ Finnis, John: *Natural Law and Natural Rights* (1980) and *Aquinas: Moral, Legal and Political Theory* (1998)

¹² Speech to the UN General Assembly by Eleanor Roosevelt [Adoption of the Declaration of Human Rights](#) (December 9, 1948).

International humanitarian law has recognized that special safeguards must be accorded to persons in positions of extreme vulnerability. It is prohibited to subject such persons “to any medical procedure which is not indicated by the state of health of the person concerned... **even with their consent**”¹³ (emphasis added). Most significant here is the concept that some medical procedures are prohibited for human beings in vulnerable situations “even with their consent”. There is indeed humane recognition here that some medical treatments are so lethal that even the consent of the persons concerned cannot give them legitimacy.

- **The terminally ill and the suicidal have the right to recognition of their inherent dignity**

The *International Covenant on Civil and Political Rights* (ICCPR) recognizes that all human rights derive from the inherent dignity of the human person.

Recognizing that these rights derive from the inherent dignity of the human person...
(Preamble)

Inherent dignity is a core value of the *International Bill of Rights*:

“...recognition of the inherent dignity and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

This appears in the Preamble of all three instruments and as such is a foundational premise upon which all the rights that follow are based. It is “the foundation of...justice” i.e. it is the foundation *inter alia* of international human rights law.

Given this foundation in the human rights instruments, there is no “right to die” nor a right to an “end of life choice” to suicide or to be ‘assisted’ to suicide. Nor is there what euthanasia advocates call “a right to die with dignity”. The confusion here is engendered in their failure to grasp that human rights belong to the living—that every human being, because of his/her inherent dignity, has a right to live – a right that stems from the inherent dignity of every human being and inheres in every human person from conception through to the moment of their death.

The terminally ill, although they are dying, are still alive. It is their life not their death that entitles them to all their human rights. It is their live humanity, their living membership of the human family that entitles them to “...recognition of the inherent dignity and inalienable rights of all members of the human family”.

¹³ *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts* (Protocol 1, Article 11, “Protection of Persons”).

It is this recognition that obliges us to travel in human solidarity with the terminally ill, to provide them with the best attainable palliative care, in their homes or hospices or intensive care units, or even on the streets (as exercised by Mother Teresa's Sisters) to be attentive to their needs, to be with them to the moment of natural death. While every person with a terminal illness has a right to refuse burdensome medical intervention intended to prolong life, no person has a right to demand of carers a medical intervention intended to kill. There is no right to procure arbitrary deprivation of life. The terminally ill have no right to medicalized killing which is the antithesis of genuine recognition of the inherent dignity and worth of the human person who is terminally ill.

So even while living through the natural process of dying, the terminally ill retain that inherent dignity. The term "inherent dignity" applied in the spirit and purpose of the *Universal Declaration* means that every human being, from the first moment of existence as a discrete, genetically unique human entity to the point of natural death, has an immutable dignity, a dignity that does not change with external circumstances such as levels of personal independence, satisfaction or achievement, mental or physical health, or prognoses of quality of life, or functionality or wantedness. There is no conceivable condition or deprivation or mental or physical deficiency that can ever render a human being "non-human". Pejorative terms such as "just a vegetable" or "non-person in a permanent vegetative state" and dismissive attitudes such as "May as well put him out of his misery—he's going to die anyway..." cannot justify violation of the human rights of the human person so described. Such prejudices cannot destroy *the inherent dignity of the human person*. As long as a human being lives, he or she retains all the human rights of being human, all the rights that derive from his or her inherent dignity as a human being.

- **The terminally ill have the right to security of person**

Everyone has the right to life, liberty and security of person (Universal Declaration Article 3)

The terminally ill and the suicidal have the right to life, liberty and security of person. They have an inalienable right to life up to the very moment of natural death; and the right to security of person is very closely related to the right to life. The right to security of person means *inter alia*, that the right to life is to be protected and *secured* for the terminally ill and the suicidal. **They are to be protected from all attempts against their life, including self-harm and all other measures intentionally directed towards inflicting death.**

The right to life cannot be distorted to mean a right to be killed. All human rights "*derive from the inherent dignity of the human person*" (ICCPR), and must be rightly ordered towards sustaining the human person in his/her being. Clear human rights obligations are set out in the *Universal Declaration* Article 25 (1):

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of

unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

The terminally ill have a right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of “... sickness, disability...old age or other lack of livelihood in circumstances beyond his control”. This last phrase has special relevance to the terminally ill—truly the terminally ill are *in circumstances beyond their control*.

The dependency, pain and deep sorrow that often accompanies terminal illness is part of the human condition—it is part of life, part of living. Dying is the final natural life event—it should not be transformed into act of arbitrary medicalized killing. Medical technology has overreached the proper purvey of medicine when it is used to kill instead of to provide palliative relief for the terminally ill and the suicidal.

11. The limits of autonomy and “end of life choices” and the duty to secure the rights of all

The autonomy concerning “end of life choices” of the terminally ill and the suicidal is limited by respect for the rights of others and for the security of all. Laws endorsing medicalized killing of suicidal persons who are terminally ill result in an abrupt disconnect of autonomous rights from the natural context of responsibilities to the community. Even persons who are terminally ill cannot unilaterally divorce their human rights from their human responsibilities to their family, their community, and mankind. Relationship between duties and rights remains valid for all human beings, including the terminally ill. Everyone has duties to the community. (UDHR Article 29 (1)).

The autonomy of the terminally ill may be limited by law in order to secure due recognition and respect for the rights and freedoms of others and to meet the just requirements of morality, public order and the general welfare in a democratic society. (UDHR Art.29(2).

States have a duty to maintain their part in a social and international order in which the rights and freedoms set forth in the human rights instruments can be fully realized for everyone. (UDHR Art.28)

These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. (UDHR Art.29(3))

Nothing in this Declaration [or in any of the subsequent human rights instruments] may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein. (UDHR Art. 30).

Unfortunately, proposed State laws aimed at expanding “end of life choices” to include aiding, abetting, counselling or procuring the suicide of another person *are* engaging in an activity aimed at the destruction of the inalienable right to life of the terminally ill.

Rita Joseph: End of life care and legal protection—a duty not a “choice”

In promoting a spurious new right, they take from the terminally ill who are not suicidal the security of a much older assumption. Assumptions go far deeper in human nature and in basic social organizations like the family, than any merely legal right. In this case, the original assumption is that there exists an unlimited duty of care owed by the living towards the dying, on which hitherto we have all been able to depend.

This is one of the vitally important assumptions on which the fabric of civilization has been founded and which are far deeper than any merely legal right established by legislatures.

In a clumsy grab for the personal right to suicide more comfortably, those who support aiding, abetting, counselling or procuring the suicide of another person threaten to undermine the common respect for a fundamental right of all human beings—the right *not* to have to choose when to die, the right *not* to have to justify lingering on, the right *not* to have to consider suicide in order to relieve one's carers of physical, medical, or financial responsibilities. Although that assumption was not formally inscribed in any legal enactment, in fact all human beings in modern civilized societies have relied on it.

12. Any laws to facilitate suicide/ 'assisted' suicide —an assault on human solidarity

State subsidized and condoned medical programs used to destroy rather than to ameliorate the human condition of the terminally ill must be eschewed. As an assault on true human solidarity, the campaign to medicalize suicide will constrain the automatic entitlement of those living with a terminal illness—an automatic entitlement to have all their needs met for as long as the natural life cycle requires. It will introduce, unforgivably, a disturbing question that will threaten the peace of mind of all the terminally ill who may now be forced in subtle ways to answer this new question of *when* to die, of whether “to choose” to submit to professional medicalized killing.

In making this choice, the terminally ill will be made to wrestle with their new "duty" to consider the burdensome nature of their continued life on their carers.

This pressure promises to be intolerable.

13. Professional medicalized killing—“a tragedy of the commons”

Regrettably, any proposal to withdraw universal protection from the terminally ill is deficient in its short-sightedness. Laws permitting the professional medicalized killing of suicidal persons who are terminally ill will alter most unjustly our present social environment in which the terminally ill are entitled unconditionally to whatever palliative care, financial and other resources are necessary. Social environmental economists might recognize in the making here a tragedy of the commons. Legalized medical killing of the terminally ill sets a socially engineered trap, in which individual interests freely and legally gain access to a public resource (a health care system that provides unconditional specialized care for the terminally ill) and proceed to change drastically the ethos of that public resource—to change it from unconditional palliative care to a dangerous combination *viz.*, optional care together with the option of medically 'assisted' suicide.

A tragedy of the commons will unfold as the terminally ill are pressured subtly to accept the cheaper swifter option. This will lead eventually to the severe depletion of the shared resource—the end, effectively, of an admirable human endeavour to build a truly universal, unconditional and beneficent system of care for the terminally ill. A gradual reduction of specialized clinics, hospices, palliative care resources and research dedicated to the needs of the terminally ill is therefore a typical “externality” – *i.e.*, the unintended and negative consequence of private decisions that ends up affecting everyone.

Inexorably, more research resources, more clinics, more medical personnel will be directed towards the science of killing (ktenology)—the science of annihilation—as fewer research dollars, fewer palliative care facilities, fewer medical professionals are dedicated to looking after the terminally ill with true compassion which often requires a loving patience that does not seek to hasten or to abend abruptly or conveniently the natural process of dying.

Decriminalization of professional medical killing of the terminally ill who are suicidal must lead to an immense paradigm shift in the ethical webbing that holds together our communal health care systems around the world. To remove the human rights principles of the inherent dignity and worth of all human beings and the equality of all human beings (irrespective of an individual’s impaired quality of life or negative prognosis) is to begin an unravelling of the common good that has been painstakingly established over years of careful effort.

Laws allowing and (implicitly) encouraging medicalized killing destroy an important aspect of our civilization’s heritage—the profound good will that has been forged towards the terminally ill, the very vulnerable, the very young, the very old, the very disabled. Such laws are an attack on the fundamental human rights principles of human dignity and worth that inhere in every human being, in all members of the human family from conception to natural death irrespective of externalities and individual circumstances—human rights are inherent and belong to all human beings precisely and only because they are humans.

The great paradigm shift that will be wrought by legalizing medicalized killing involves the abandonment of principles of goodness of life, the triumph of endurance, the virtue of patience in adversity, of helping others in pain and distress, of loving the feeble, the discouraged, the incapacitated, the needy. It is our humanity that recognizes that we are all in this together—that we must go on carrying with us the very old, the very young, the terminally ill and all those who are troubled and in distress.

Professional medicalized killing is not a humane response.

Conclusion

We, in the ACT, must reject plans to legalize professional medicalized killing of the suicidal and turn our compassion and resources to providing the best and most comprehensive practical, medical, psychological and palliative health care that we can achieve.

Abandoning the suicidal to legalized professional medicalized killing does not conform with the ACT’s grave duty as a responsible player in the support of the modern international human rights initiative—to build the rule of law that will function to protect the human rights of every human being *without discrimination*.

It is not justice when we abandon human rights protection for the suicidal and try to justify it with the propaganda language of “choices”.

The duty to uphold the right to life for every human being is permanently and very deeply embedded in our understanding of modern international human rights law. It is one of the original *Universal Declaration* principles and a proper respect for it must remain in all interpretations of the subsequent human rights Covenants and Conventions.

Domestic governments, both local and national, may not contravene with impunity the grave obligation to protect the right to life of every human being by introducing a right to professional medicalized killing, not without compromising the inner coherence of the deontological foundation of the whole international human rights system.

Indeed, the drafters of the Universal Declaration built the whole structure of modern international human rights law on the critical premise that human rights are logically antecedent to the rights enumerated in various systems of positive law and are held independent of the state. Human rights, they agreed "**constitute a law anterior and superior to the positive law of civil society**".¹⁴

The rule of law must continue to protect the right to life for everyone, including the suicidal.

¹⁴ United Nations, Official Records of the General Assembly (GAOR) , Tenth Session, Annexes, (1955) A/2929 Chapter III para. 6.