

## Abstract

*The concept of euthanasia sits in stark contrast to the deeply ingrained doctrine of sanctity of life that permeates every society. Sanctity of life is an inviolable natural principle rooted in every human consciousness, transcending religion, culture, or law. Hence, the conscientious advocacy for its preservation and respect as reflected in every legal system cannot be overemphasized. Provisions of several enactments in Nigeria proscribe acts intentionally causing the death of another, irrespective of the motive. However, evolving societal values call for review of these stringent rules to accommodate circumstances where a dying person's request for euthanasia cannot be ignored especially when going through the torture of death. Adopting the doctrinal research methodology, this paper examines the legal framework of euthanasia in selected jurisdictions. It has become necessary that Nigeria go back to the drawing board to reconsider its position on euthanasia. Taking a firm stand on giving room for euthanasia, accommodating and balancing peculiar fate of the dying patient with his right to live and his right to die, encouraging better palliative care among other recommendations will ensure compassionate end-of-life-care.*

**Keywords:** Life, Death, Euthanasia, Right-to-die, Right-to-live, Sanctity-of-life

## 1. Introduction

From time immemorial, issues of life and death have been components of philosophical thoughts. Worldwide, discussions on euthanasia have sparked intense controversy and differing opinions.<sup>1</sup> These differences are largely shaped by legal, religious, cultural, ethical or socioeconomic considerations which present formidable challenges to legal systems worldwide.<sup>2</sup> It has formed the foundation of advocacy for public policies and laws that may be beneficial or detrimental to the human society. Modern societies make policies most times based on utilitarian perceptions- all for the greater good of the people and sometimes based on individualistic perception or choice.<sup>3</sup> However, where individual choice does not affect public good, the law may not blink an eye but where it affects public good then it calls for concern. Euthanasia is associated with several moral dilemmas starting with human rights and in particular, the respect for human life.<sup>4</sup> Human rights are fundamental and said to be inalienable because they flow from and protect the core of human existence. Infringing them is tantamount to 'distorting humanhood,' 'destroying humanity' and endangering the value of human existence.<sup>5</sup> The value of human life is a universal norm that is acknowledged. This right is sacrosanct and inviolable.<sup>6</sup> Therefore, the respect for life is non-negotiable and must be protected from the moment of conception until natural death.<sup>7</sup> Where this right is not protected the value placed on human life is deflated and opened to risk. On the other side of the divide is the issue of death. Death is an inevitable phenomenon that every human is destined for. It is a debt owed to nature, which everyone must eventually pay. The right to a dignified life comes with the right to a dignified death which every human desires.<sup>8</sup> A dignified death encompass dying painlessly but not everyone is privileged to experience this.<sup>9</sup> Even though the agony of dying may be unavoidable, the burden of taking care of a terminally ill person in intractable pain is difficult to bear. The global discourse on euthanasia is rapidly evolving with several jurisdictions adopting permissive approaches, albeit under strict regulatory safeguards. The right of choice to die is hinged on the basis that euthanasia is a simple solution to the tragedy of a badly managed terminal illness paving way for a gentle and easy death.<sup>10</sup> Euthanasia has been argued not to be a legal wrong as it does not affect any other person or have any negative effect on the public. If the procedure is indeed an expression of an individual right to die, then it may be important to address inherent tensions between the proscription of euthanasia and the enforcement of fundamental human rights.

Nigeria is a nation grappling with the intersection of traditional values, evolving socioeconomic realities, and a burgeoning human rights consciousness. Nigeria is therefore a compelling case study for exploring the legal framework surrounding euthanasia and its inherent constitutional tensions. This paper navigates the restrictive provisions of Nigerian criminal law, the aspirational guarantees enshrined in the Constitution, and the growing voices advocating for a more nuanced and compassionate approach to end-of-life decisions. By appraising the extent of absorption of euthanasia into the legal system of jurisdictions examined, learning points for Nigeria are drawn.

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<sup>1</sup>N. M Harris. 'The Euthanasia Debate' (2001) (147) (3) *BMJ Military Health*.

<sup>2</sup>B.S. H. B Naga and M. T. Mrayyan, 'Legal and Ethical Issues of Euthanasia: Argumentative Essay' (2013) (7) (5) *MEJN*.

<sup>3</sup>T. Devos (ed), 'Euthanasia: Searching for the Full Story Experiences and Insights of Belgian Doctors and Nurses' (Springer Publishers, 2019).

<sup>4</sup>V. Goel. 'Euthanasia – A Dignified End of Life!' (2008) (3) (12) *International NGO Journal*, 224-231,

<sup>5</sup>See B. Olutola and I. Kolade-Faseyi, 'Transvaluation of the Protection of the Rights of Children in African Constitutions: A Comparative Analysis' Conference Paper delivered at the International Conference on Children's Rights at Stellenbosch University on 10 September, 2024. pg5.

<sup>6</sup>Section 33 CFRN, 1999(as amended).

<sup>7</sup>I. Vecchio, C. Tornali *et al.* 'Brief History of Euthanasia and the Contribution of Medical and Surgical Ethics to the Cultural Debate' (2012) (28) *Acta Medica Mediterranea*, 185-189.

<sup>8</sup>D. K Nehra, P. Kumar and S. Nehra, 'Euthanasia: An Understanding' *in* A. Yadava, and N.R. Sharma., (eds), *Suicide: Attitude and Prevention* (Global Vision Publishing House, 2013).

<sup>9</sup>*Ibid.*

<sup>10</sup>I. Kolade- Faseyi, 'The Right to Die: The Place of Religion, Ethics and the Law' (2017) (8)(1) *NAUJILJ*, 100.

## 2. Conceptual Clarification and Classification of Euthanasia

Euthanasia is from Greek words 'eu' and 'thanatos' which means 'good death'. Euthanasia is an act that brings death in order to shorten or relieve the suffering of a terminally ill person.<sup>11</sup> Euthanasia has been likened to suicide orchestrated by an individual with the assistance of a health practitioner who facilitates the act, hence it is referred to as 'physician assisted suicide'.<sup>12</sup> The act is usually at the patient's request and in his interest.<sup>13</sup> Persons in need of aid-in-dying are usually experiencing intractable pains, terminally ill, in a vegetative condition, and for them, death is inevitable.<sup>14</sup> An euthanasia-decision is usually made by the patient himself, but when he is too ill to do so, his relatives, medics or the courts can order it.<sup>15</sup> The essence of obtaining 'informed consent' of the victim is based on the recognition of every individual right to accept or refuse treatment and/or diagnostic tests proposed by physicians<sup>16</sup> and that the patient exercised his autonomy in considering the information received from the physician.<sup>17</sup>

Euthanasia may be categorized into Voluntary Euthanasia, Involuntary Euthanasia and Non-voluntary Euthanasia.<sup>18</sup> Voluntary euthanasia is when an individual expresses the desire for his life to end and gives informed consent to that effect. In this state the patient is asking for help with dying and refuses burdensome medical treatment or he may be asking for medical treatment to be stopped, or life support machines to be switched off, he may refuse to eat or take medications.<sup>19</sup> The Physician must be sure the patient is well informed of his situation, his decision is well considered and he gives unequivocal consent usually documentary so as to escape liability for murder.<sup>20</sup> Euthanasia is involuntary where an individual can neither decide his fate, nor express his wish to live or die.<sup>21</sup> Usually such person is either in a vegetative state, in coma, is too young, senile, severely mentally retarded, or brain damaged. As a result, the decision is left to a proxy. In *Airedale National Health Service Trust v Bland*,<sup>22</sup> Bland suffered catastrophic irreversible brain damage as a result of a punctured lung which left him in a persistent vegetative state on life support machine and being fed with a tube. The court held that since there was no potential for improvement, Bland's treatment was not in his best interest and it was lawful to withhold the life-extending treatment being administered.

The procedure adopted in executing euthanasia could be passive or active. Passive euthanasia is simply allowing the person to die, either by withholding treatment or by discontinuing such treatment, once begun.<sup>23</sup> Active euthanasia on the other hand, is taking positive steps to terminate life, such as the administration of a toxic substance or the injection of an air bubble into the blood stream.<sup>24</sup> In the case of *Aruna Shanbaug v. Union of India*,<sup>25</sup> Shanbaug had been in a vegetative state for thirty-seven years. The Court rejected active euthanasia by means of lethal injection. The court ruled that while the constitutionally guaranteed right to life does not include right to die, in certain circumstances, passive euthanasia could be allowed.

Arguments in support of euthanasia have always been based on alleviating the pain of a patient who request for it; failure of which would be tantamount to lacking compassion.<sup>26</sup> Denial of euthanasia is seen as a breach of right to personal autonomy, the right to decide what should happen to one's own body and life.<sup>27</sup> It has been argued that it is immoral to compel people to continue to live with unbearable pain and suffering.<sup>28</sup> If a competent adult has the right to refuse treatment and cannot be forced to undergo treatment he has not consented to, why should he not be able to exercise that right to die the way he wants to?<sup>29</sup> On the other hand, euthanasia has been argued to reduce unnecessary financial burden on the patient's family.<sup>30</sup> Perhaps, it saves family and friends the emotional burden and pain of seeing their loved one go through excruciating agony that will eventually end in death, thereby devaluing human life.<sup>31</sup>

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<sup>11</sup>I. Vecchio, C. Tornali *et al.* *op cit*, 185.

<sup>12</sup>V. Goel, *op cit*.

<sup>13</sup>L. B. Tom, and I. D. Arnold, 'The Definition of Euthanasia' (1979) (3) (4) *JMP*, 294.

<sup>14</sup>I. Kolade-Faseyi, *op cit*.

<sup>15</sup>E. K. Adetifa and O. O. Ogunkorode, 'A Legal Insight into the Concepts of Suicide and Euthanasia within the Context of Individuality of Life' (2024) (11) (2) *NAUJCPL*, 14.

<sup>16</sup>I. Vecchio, C. Tornali *et al.*, *op cit*.

<sup>17</sup>S. O. Ahaneku and C. C. Arinze-Umobi, 'Legalizing Euthanasia in Nigeria: Comparative Study of Law of Euthanasia in Netherland, Belgium and Canada' (2024) (11) (4) *NAUJCPL*, 139.

<sup>18</sup>V. Goel, *op cit*.

<sup>19</sup>I. Kolade-Faseyi, *op cit*.

<sup>20</sup>P. Singer. *Practical Ethics*. (Cambridge University Press, 2011).

<sup>21</sup>D. K Nehra, *op cit*.

<sup>22</sup>(1993) 1 ALL ER 821.

<sup>23</sup>M. C Obi, 'A Critical Appraisal of Euthanasia under Nigerian Laws' (2014) (5) *NAUJILJ*, 75.

<sup>24</sup>*Ibid*.

<sup>25</sup>(2011) 4 SCC, 454.

<sup>26</sup>T. Devos, *op cit*.

<sup>27</sup>*Ibid*

<sup>28</sup>D. K Nehra, *op cit*.

<sup>29</sup>*ibid*

<sup>30</sup>S. O. Ahaneku and C. C. Arinze-Umobi, *op cit*.

<sup>31</sup>*Ibid*.

Opposition against euthanasia on religious ground is hinged on the belief that since life is a gift from God, only God has the power to take it away.<sup>32</sup> Thus, it is not within the rights of any individual to decide how and when they die. The procedure can be a cloak to cover annihilation of the weak, old and vulnerable persons in the society.<sup>33</sup> Euthanasia has been criticized because of its negative effect on the medical profession. It is said to undermine the trust in the patient-physician relationship.<sup>34</sup> It is antithetical to place a doctor's role as a 'healer' side-by-side his role as a 'killer' when carrying out euthanasia. The switching of roles would likely pose societal risks and the downward slope could lead to gradual erosion of ethical boundaries.

While it is a general notion that the patient's protection, treatment and to some extent life and death (with dignity) largely depends on the physician-patient-relationship, the need for legalizing euthanasia is still largely debated at both national and international platforms. Not all countries have come to terms with legalizing euthanasia especially as it relates to taking lives. Some jurisdiction's absorption of euthanasia into their legal system is qualified and limited to when it becomes absolutely unavoidable, while in others, it is illegal and criminalized.

### 3. Legal Framework on Euthanasia in Nigeria

Suicide, assisted or not, in Nigeria is generally an abomination.<sup>35</sup> The non-acceptance of euthanasia in Nigeria and similar other jurisdiction is based on the religious and moral principle of the sanctity of the human life. The sanctity of human life is a notion that is interpreted subjectively, based on an individual or group's perspective. Although no specific legislation regulates euthanasia in Nigeria, there are enactments addressing the need to protect sanctity of life. Provisions of these enactments prohibit the illegal deprivation of a person's right to life, whether consented or not. These include the 1999 Constitution of Nigeria (as amended), Rules of Professional Conduct for Medical and Dental Practitioners (Medical Code of Ethics) made pursuant to the Medical and Dental Practitioners Act, Criminal Code, Penal Code, among others. Some of these enactments will be analyzed briefly.

One important duty of a medical practitioner is the preservation of life. A doctor should not terminate life whether the patient is in sound health or terminally ill. It amounts to a breach of professional ethics and the Hippocratic Oath if a practitioner terminates the life of a patient even at the patient's request. The administration, prescription or supply of drugs to a patient with the intention of helping him end his own life is proscribed. Undertaking these acts under the guise of acting in the best interest of the patient is ethically wrong.<sup>36</sup> Though the ethical code serves as guidelines, it appears in reality they are not judiciously followed. Instances abound where doctors in Nigeria would not admit or attend to patients even under emergencies, until minimal deposit of medical fees have been made. There are allegations of gunshot-wound-patients turned back from accessing health care for non-possession of police report.<sup>37</sup> The assertion that life is valued and active euthanasia is not encouraged by the medical profession sound hypocritical because passive and involuntary euthanasia are allegedly conducted indiscriminately. Where this is the case, what justification would stakeholders have for not legalizing euthanasia for terminally ill patient who are at the edge of painful death?

Several sections of the Nigerian Criminal Code and Penal Code criminalize euthanasia.<sup>38</sup> Hastening the death of another person amounts to murder.<sup>39</sup> Counselling any person to kill himself is a felony.<sup>40</sup> An attempt to commit suicide attracts one year imprisonment.<sup>41</sup> Generally, killing a person is unlawful unless such death is authorized by law.<sup>42</sup> The degree of criminal responsibility only reduces to manslaughter where the act is unintentional. Consent by a victim to his own death does not affect the criminal responsibility of the person who assist in the killing, and same cannot be raised as a defense under the law.<sup>43</sup> In *State v Okezie*,<sup>44</sup> the accused, a native doctor prepared charms for the deceased. The deceased invited the accused to test the potency of the charm by firing gunshot at him, he died as a result. Upon a conviction of murder, the court opined that consent of the person killed is not an excuse. Similarly, physicians who at a patient's request, administer lethal injection or medication on a patient, would be criminally liable for murder, manslaughter or assisted suicide depending on the facts and circumstances of the case.<sup>45</sup> The Penal Code punishes culpable homicide with death, it is not an excuse whether deceased is terminally ill or consented to the act.<sup>46</sup>

<sup>32</sup>J. Deblois, and K.D. O'Rourke, 'Care for the Beginning of Life' (1995) *Health Progress*, 36. <https://www.chausa.org/docs/default-source/health-progress/care-for-the-beginning-of-life-pdf.pdf?sfvrsn=0>(accessed 9 February 2025).

<sup>33</sup>A. Haddadi, and F. Ravaz, 'Historical Approaches to Euthanasia: The Unfinished Story of a Concept' (2021) (8) (1) *KLR*.

<sup>34</sup>B. Mckinnon and M. Orellana-Barrios, 'Ethics in Physician-Assisted Dying and Euthanasia' <https://pulmonarychronicles.com/index.php/pulmonarychronicles/article/view/561/1236>(accessed 17 March 2025).

<sup>35</sup>E.A Akhigbe, 'An Analysis of the Concept of Euthanasia in Relation to Right to Life in Nigeria' (Thesis for award of L.L.B, Faculty of Law, University of Abuja, 2016).

<sup>36</sup>Rule 68, Rules of Professional Conduct for Medical and Dental Practitioners, 2008.

<sup>37</sup>This is in contravention of the Compulsory Treatment and Care of Victims of Gunshots Act 2017. See <https://nms.ng/files/Compulsory%20Treatment%20and%20Care%20for%20Victims%20of%20Gunshot%20Act%202017.pdf>(accessed 17 March 2025).

<sup>38</sup>Criminal Code Cap C38 and Penal Code Cap P3, LFN, 2004.

<sup>39</sup>Section 311, Criminal Code.

<sup>40</sup>Section 327, Criminal Code.

<sup>41</sup>Section 327, Criminal Code.

<sup>42</sup>Section 306, Criminal Code.

<sup>43</sup>O. Ibitoye, 'The Practice of Euthanasia and the Nigerian Legal System' (Thesis for award of LLB in Law, Faculty of Law, Joseph Ayo Babalola University, Ikeji-Arakeji, 2021).

<sup>44</sup>(1972) 2 E.C.S.L.R 419.

<sup>45</sup>M. C Obi, *op cit*.

<sup>46</sup>Section 220, 222&224 Penal Code.

A holistic study of the fundamental rights entrenched in the Constitution reveals that effort at the preservation of life is projected by emphasizing the dignity of life of every Nigerian. As a result, no person should be subject to torture, inhuman or degrading treatment as this is tantamount to the relegation of the dignified life.<sup>47</sup> The need to preserve the sanctity of life is also expressed in the right to a person's personal liberty.<sup>48</sup> Personal liberty encompasses the right of choice on how to be treated. The right to privacy of medical information, correspondences and communications in the constitution can be interpreted to cover a right to confidentiality of medical information and the right to freedom of conscientious thoughts and religion even as it regards medical treatment.<sup>49</sup> These rights are no doubt accompanied by the right to freedom of expression, to hold opinions, to receive and impart ideas and information without interference.<sup>50</sup> For promoters of euthanasia, these rights, form the basis for the respect of every person's opinion and choices when they are faced with the dilemma of choosing to live or die.

The increasing recognition of patient autonomy and informed consent in medical ethics is noteworthy. While Nigerian law has not explicitly codified a right to refuse medical treatment in all circumstances, the principle of self-determination in healthcare has been acknowledged in courts.<sup>51</sup> There appear to be a growing acceptance of individual's right to make informed choices about medical care even if those choices ultimately lead to death.<sup>52</sup> The concept of passive euthanasia finds some degree of implicit acceptance in Nigeria. However, the lack of clear legal guidelines leaves medical practitioners insecure. They are often forced to navigate these ethically fraught situations without the protection of explicit legal sanctions.<sup>53</sup>

The decision in *Medical and Dental Practitioner Disciplinary Tribunal v Okonkwo*<sup>54</sup> is noteworthy. The court held that 'the liberty which the law permits a competent adult to determine what would be done with or to his own body cannot be regarded as an unjust and immoral course.'<sup>55</sup> The patient's constitutional right to object to blood transfusion on religious grounds is protected by his right to privacy, right to freedom of thought, conscience and religion. Therefore, the doctor should not be held accountable as withdrawal of treatment was based on patient's instruction and consent. The court opined that an individual should be left to choose a course of his life, unless there are clear and compelling overriding state interest.<sup>56</sup> This position was further affirmed in *Okekearu v. Tanko*<sup>57</sup> where appellant, a medical doctor claimed to have obtained consent of respondent's aunt before amputating the respondent's finger. The court held that the consent of the aunt was invalid and damages were awarded against the appellant.

From the discussions above, it is obvious that what is permissible in Nigeria is passive euthanasia and not active euthanasia. We respectfully hold the opinion that euthanasia strictly carried out on behalf of a terminally ill individual with no hope of recovery is not inconsistent with his right to life. It would rather be a violation of his rights to be kept against his will in excruciating pain, anguish and in an undignified manner<sup>58</sup> We opine that if there is a right to life, there should be a corresponding right to live a 'good' life or to determine not to be kept alive in an undignified state. The essence of criminalization should in fact be to prevent abuse of euthanasia, where a person is killed for the wrong motive. It is submitted that the law should give room for euthanasia once it fulfills certain legal conditions.

#### **4. Legal Framework on Euthanasia in Selected Jurisdictions**

The decision to legalize euthanasia in any jurisdiction is a function of the culture of the people which is the yardstick for measuring sanctity and dignity of human life.<sup>59</sup> While most African countries prohibit assisted suicide, western culture views chronic sickness as offensively degrading, hence the dignity in dying a painless death.<sup>60</sup> The call for legalizing euthanasia is to give people the opportunity to decide for themselves how they want to be treated in their last days while alive.<sup>61</sup> This will also guide professionals (physicians, psychologists, lawyers, healthcare policymakers and medical ethicists) in helping patients (and their families) make end-of-life decisions, and to fashion out acceptable standards for euthanasia and acceptable degree of

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<sup>47</sup>Section 34 CFRN, 1999(as amended).

<sup>48</sup>Section 34 CFRN, 1999(as amended).

<sup>49</sup>Section 37 CFRN, 1999(as amended). See also O. Ayenakin, T. Akindejoye and I. Kolade-Faseyi, 'Examination of the Legal and Institutional Frameworks of Medical Law in Nigeria (2021) (9) (6) *GJPLR*, 12-24.

<sup>50</sup>Section 38 CFRN, 1999 (as amended).

<sup>51</sup>M.O Ilobinso and M.N. Umenweke 'An Appraisal of the Nigerian Laws on Euthanasia vis-a-vis the Right to Life (2024) (8) (2) *AJLHR*.

<sup>52</sup>C.N. Arinze-Umobi and G.N. Okeke. 'A Review of Socio-Cultural Factors affecting Patients' Right to Informed Consent and Autonomy in Medical Practice in Nigeria' (2020) (4)(1) *AJLHR*,132.

<sup>53</sup>D. Adaji, 'Mercy Killing Illegal in Nigeria says NMA' *Punch Newspaper* (16 May, 2024) <https://punchng.com/mercy-killing-illegal-in-nigeria-says-nma/?amp>(accessed 1 March 2025).

<sup>54</sup>(2001)7NWLR (Pt. 711)206.

<sup>55</sup>*Per* Ayoola JSC, 243.

<sup>56</sup>*Per* Ayoola JSC, 244.

<sup>57</sup>(2002) LPELR-SC 73/1998.

<sup>58</sup>B. E. Oniha, '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>(accessed 10 March 2025).

<sup>59</sup>M.C Obi, *op cit*.

<sup>60</sup>V. Köneke, 'Trust Increases Euthanasia Acceptance: A Multilevel Analysis using the European Values Study' (2014) (15) (86) *BMC Medical Ethics*.<http://www.biomedcentral.com/1472-6939/15/86>(accessed 10 March, 2025).

<sup>61</sup>N. Dalal, S. Gulpur, and R. Varma, 'Euthanasia in India, Canada, Netherlands, and Sweden with a Special Emphasis on Canada' (2020) (7) (4s) *BiLD Law Journal*, 116.

liability in cases of abuse.<sup>62</sup> The legal framework in selected jurisdictions that legalize and criminalize euthanasia are analyzed below.

### Netherlands

Netherlands is the first country in the western world to legalize euthanasia.<sup>63</sup> Like many other countries, ending someone's life, except in extreme conditions (like war and capital punishment) is considered to be murder.<sup>64</sup> Killing a person attracts punishment of 12 years imprisonment.<sup>65</sup> Offering assistance to kill is prohibited, liability upon conviction is three years imprisonment or fine or both.<sup>66</sup> Even though euthanasia is generally considered criminal offence, a physician is not criminally liable where certain conditions are met. Criminal liability will not be imputed against a physician who has observed the due care criteria listed in article 2 of the Termination of Life on Request and Assisted Suicide (Review Procedures) Act 2001.<sup>67</sup> The required protocol under the Act is that explicit requests for euthanasia from the patient should be voluntary, well-considered and persistent.<sup>68</sup> The physician must have informed the patient about his condition as well as prospects of improvement or reasonable alternatives. These must be confirmed by at least one autonomous physician with an independent view. The physician must have seen the patient and given a written opinion on the due care criteria. The physician and the patient must have discussed alternatives to euthanasia and have agreed that there is no other foreseeable solution. The procedure must be performed in conformity with prescribed medical standard of care after consultation with an independent physician.<sup>69</sup> The physician is duty bound to report to the municipal pathologist the type of euthanasia carried out.<sup>70</sup> Euthanasia becomes a criminal offence where standards are disregarded and the procedure does not meet specific conditions laid down under the Act. Since September 2004, euthanasia has been available for children with deformities in Netherlands under the Groningen Protocol.<sup>71</sup> Children between 12 and 16 years with unbearable suffering and requisite mandatory consent are eligible for the procedure. In April 2023, the Protocol was expanded to include children of all ages. Like euthanasia for adults, minimum standards of practice are also set to ensure that the lives of these critically ill children are responsibly ended. Netherlands law on euthanasia exonerates from criminal liability doctors who performed the procedure in good faith.<sup>72</sup> The law invariably promotes patients' autonomy in making informed decision on the mode of medical treatment they want.<sup>73</sup> An underlying requirement is that there has to be a long-standing doctor-patient-relationship.<sup>74</sup>

### New Zealand

Previously in New Zealand, there were legal barriers in offering aid-in-dying. In the case of *Seales v. Attorney General*,<sup>75</sup> a terminally ill patient sought court declarations that her doctor would not be charged with murder, manslaughter or assisting suicide if he helped in euthanizing her. Unfortunately, the judge declined grant of the declarations and the patient died the day after the judgment was delivered. It was the reasoning of the court that legal reforms particularly in favour of physician-assisted suicide would reduce the high rate of suicide in the country. Reflections from Seales case and several others led to the discussions on whether or not the state should allow people take control of their 'life and death.' This eventually led to the End-of-Life Choice Act which is the extant law on euthanasia in New Zealand.<sup>76</sup> The Act set out strict criteria and safeguards that must be followed before carrying out euthanasia. The procedure is limited to New Zealanders who are above eighteen years, who have terminal illness (likely to die within six months), experiencing unbearable pain and in 'advanced state of irreversible decline in physical capacity.'<sup>77</sup> It is important to state that 'assisted suicide' is illegal in New Zealand.<sup>78</sup> Assisting a terminally ill individual must be in line with regulated framework for end-of-life choice and consent must be given of free will. Healthcare providers in New Zealand approached the court to know the extent of their rights and obligations under the End-of-Life Choice Act. It was important to be sure whether they could lawfully operate an 'euthanasia free service' or refuse to provide end of life services to patient who approached them seeking one. In *Hospice New Zealand v. Attorney General*,<sup>79</sup> the court held that the End-of-Life Act does not impact professional obligations on hospices. They could inform their patients requesting euthanasia

<sup>62</sup>P. Domanku, 'Bioethics, Euthanasia and Physician-Assisted Suicide' [https://www.academia.edu/23761776/Bioethics\\_Euthanasia\\_and\\_Physician\\_Assisted\\_Suicide](https://www.academia.edu/23761776/Bioethics_Euthanasia_and_Physician_Assisted_Suicide) (assessed 10 February 2025).

<sup>63</sup>Euthanasia have been legalized in Netherlands since 2002. See J. Cohen, *et al.* 'End-of-life decision-making in Belgium, Denmark, Sweden and Switzerland: Does Place of Death make a Difference?' (2007) (61) *J ECH*, 1062.

<sup>64</sup>L. Grue, 'Eugenics and Euthanasia: Then and Now' (2009) (12) (1) *SJDR*, 33-45.

<sup>65</sup>Netherlands Penal Code, article 287.

<sup>66</sup>Netherlands Penal Code, article 293 and 294.

<sup>67</sup>Adopted on 12 April 2001 and came into force on 1 April 2002.

<sup>68</sup>See article 2(2) (3) (4).

<sup>69</sup>See article 2(1) (a-f).

<sup>70</sup>*Ibid.*

<sup>71</sup>I Kolade-Faseyi, *op cit* 103. See A.A.E Verhagen, 'Neonatal Euthanasia in the context of Palliative and EoL Care' (2023)(28)(3) *Seminars in Fetal and Neonatal Medicine*, 101439.

<sup>72</sup>P.S.C Kouwenhoven, *et al.*, 'Developments in Euthanasia Practice in Netherlands: Balancing Professional Responsibility and the Patient's Autonomy' (2019) (25) (1) *EJGP*, 44-48.

<sup>73</sup>*Ibid.*

<sup>74</sup>N. Dalal, *op cit*.

<sup>75</sup>(2015) NZHC, 1239.

<sup>76</sup>New Zealand End-of-Life Choice Act, 2019 came into force in 2021.

<sup>77</sup>Section 5 End-of-Life Choice Act 2019 [www.legislation.govt.nz/act/public/2019/0067/latest/DLM7285905.html](http://www.legislation.govt.nz/act/public/2019/0067/latest/DLM7285905.html) (accessed 15 March, 2025).

<sup>78</sup>Section 179, New Zealand Crimes Act, 1961. See also M. Dubey, A. Rath, and H. Singh. 'Euthanasia and the Countries which Positively Regulated Active Euthanasia' (2024) (12) (10) *JLSD*, 8.

<sup>79</sup>[2020] NZHC 1356. <https://www.nzlii.org/nz/cases/NZHC/2020/1356.html> (accessed 17 March 2025).

of their conscientious objection and share contact details of a replacement practitioner who is willing to provide the services they are declining.

### Denmark

Like many nations, assisting someone in ending their life is a punishable offense while attempting to end one's own life is not an offence in Denmark.<sup>80</sup> Active suicide is criminal under the Danish law but the right to passive euthanasia is recognized, however for the procedure to be procured the patient must be irreversibly dying.<sup>81</sup> In the case of *Lings v. Denmark*,<sup>82</sup> Dr Lings who was found guilty of causing the death of at least two people was convicted and sentenced for the offence of assisted suicide by the Danish Supreme Court in 2019. A year after, he complained to the European Court of Human Rights (ECHR) alleging the violation of his right to freedom of expression.<sup>83</sup> The Court ruled that the applicant's actions in offering guides, pharmaceutical prescriptions, detailed procedure and specific information on how to commit suicide to one of the deceased persons amounted to assisted suicide contrary to section 240 Danish Penal Code. The ECHR unanimously held that the right to assisted suicide do not exist under the Convention and thereafter ruled that Ling's conviction was necessary to protect vulnerable people against actions which can endanger their lives. Doctors in Denmark and the Danish Council of Ethics have consistently opposed legalizing euthanasia.<sup>84</sup> Their reasoning revolves round personal autonomy, sanctity of life and appropriate physician-patient relationships.<sup>85</sup> An overwhelming majority of the Danish Council on Ethics have advised the country's parliament against voting to legalize euthanasia because it would be 'impossible to establish proper regulation of euthanasia.' It is believed that euthanasia will decisively change people's ideas of 'old age, the coming of death, quality of life and what it means to take others into account.' To them, if euthanasia becomes an option, the procedure may be targeted at special and vulnerable people.<sup>86</sup> It was concluded that those with intractable pain or suffering require palliative care and the old, infirm and vulnerable should be protected.<sup>87</sup> In 2019, the Health Care Act was revised to strengthen patients' rights to refuse treatment and allow them to decline life-sustaining measures. The purpose of the Danish Physician Orders for Life-Sustaining Treatment is to ensure that patients' health care needs or preferences are known, documented and respected.<sup>88</sup> Even though the Danish Health Act did not give room for active euthanasia, it allows for pain relief and the withholding of life-prolonging treatment, even if it will lead to death.<sup>89</sup> The right of a patient's self-determination is recognized and exercised in certain cases such as in connection with hunger-strikes and refusal to receive blood.<sup>90</sup> These are indications that with informed patient's consent, certain passive measures for assisted dying are allowed. Physicians are allowed to withhold or withdraw medical treatment if the patient is dying or will inevitably die.<sup>91</sup> They may prescribe analgesics, sedatives or similar drugs when necessary to calm the patient even if that action hastens the moment of death.<sup>92</sup>

### South Africa

The concept of euthanasia in African countries appears to be the same. Most Africans hold the duty of care and preservation of life as the hallmark of medical care and practice.<sup>93</sup> Emphasis is usually placed on making palliative care accessible to and affordable for people. There is the opinion that where parameters are put in place for palliative care, the debate for legalizing euthanasia will wane.<sup>94</sup> South Africa is discussed because of its peculiarity in the African-Euthanasia debate. Despite proposals and persistent calls for its decriminalization, euthanasia still remain illegal. In the case of *Stransham-Ford v. Minister of Justice and Correctional Services & others*<sup>95</sup> a Gauteng high court granted an order that a doctor would not be acting unlawfully in assisting a terminally ill patient with intractable suffering to end his life. The judgment was eventually rescinded and overruled by the Supreme Court of Appeal in *Minister of Justice and Correctional Services and Others v Estate Late Stransham-Ford and Others*<sup>96</sup> where the court opined that the high court's judgment would amount to 'legislating' which is within the powers of parliament, not the courts. Hastening the death of a critically ill patient even on compassionate grounds is not a defence to criminal liability in South Africa. However judicial discretion could be applicable in allowing lesser sentences to be imposed

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<sup>80</sup>Section 239 and 240 Danish Penal Code.

<sup>81</sup>J. Vestergaard, 'Medical Aid-in-Dying under Danish Law: Mainly Regarding Living Wills and other Forms of Renouncing Life Prolonging Treatment' (2000) (7) *EJHL*, 405-425.

<sup>82</sup>(Application no. 15136/20 at the ECHR, 12th April 2022.

<sup>83</sup>Right to freedom of expression is encapsulated in Article 10, ECHR.

<sup>84</sup>The Danish Council of Ethics is a body that gives advice on health care ethics in Denmark. See Danish Council of Ethics. *End of Life: Ethical Challenges and Problems*, 124. <https://etiskraad.dk/Media/638368606650305310/End-of-Life-2006ef65.pdf> (accessed 10 March 2025); see also CNE News, *Danish Doctors against Euthanasia: The Answer to Suffering must always be Care* (26 June 2023) <https://cne.news/article/3254-danish-doctors-against-euthanasia-the-answer-to-suffering-must-always-be-care> (accessed 9 February 2025).

<sup>85</sup>*End of Life: Ethical Challenges and Problems. Ibid*, 123-125.

<sup>86</sup>*Ibid*, 100.

<sup>87</sup>*Ibid*.

<sup>88</sup>L. D Tiesen, *et al.* 'Discussing Patient Preferences for Levels of Life-Sustaining Treatment Development and Pilot Testing of a Danish POLST Form' (2022) (21) (9) *BMC Palliative Care*, 3.

<sup>89</sup>J. Vestergaard, *opcit*, 405.

<sup>90</sup>Sections 23&24 of the Danish Health Act 2005.

<sup>91</sup>Article 6(5) Medical Profession Exercise Act, 1992.

<sup>92</sup>N. Ferreira, 'Revisiting Euthanasia: A Comparative Analysis of a Right to Die in Dignity' (2005) *ZERP Discussion Paper No. DP 4/2005*.

<sup>93</sup>J. Amzat, *et al.* 'Euthanasia in Africa: A Scoping Review of Empirical Evidence' (2023) (6) *HSR*, 3.

<sup>94</sup>F. Otamendi. 'Africa rejects Euthanasia, the Focus is on Palliative Care' *Omnes Magazine* (8 August, 2022.) <https://www.omnesmag.com/en/focus/africa-euthanasia/> (accessed 17 March 2025).

<sup>95</sup>2015 (4) SA 50(GP).

<sup>96</sup>[2017] 1 All SA 354(SCA).

where substantial and compelling circumstances exist.<sup>97</sup> There have been debates and proposals in South Africa to legislate on euthanasia and decriminalize it. The South African Law Commission published a report on euthanasia and artificial preservation of life in November 1998.<sup>98</sup> The report (Project 86) was accompanied by a draft legislation that would govern the practice of euthanasia. This document till date remained unimplemented despite advocacy efforts.<sup>99</sup> As a result, euthanasia in South Africa remains illegal as participants risk prosecution if found guilty.

## **5. Conclusion and Recommendations**

The issue of euthanasia in Nigeria is a multifaceted one, encompassing legal, ethical, and religious dimensions. A balanced and informed dialogue have become necessary taking into account the diverse perspectives of relevant stakeholders. While the legalization of euthanasia remains a distant prospect in Nigeria, the ongoing debate highlights the need for compassionate and holistic approach to end-of-life care, one that respect sanctity of life, dignity of the human person and underscores personal autonomy. In view of the foregoing, the following recommendations are proffered.

**Constitutional Review:** It is proposed that the Nigerian government review certain sections of its constitution especially sections 33(1) and 34. It is important to clarify the value of human life. It is the opinion of these writers that the right to life is more than existence. The dignity and worth attached to that life should not wane at any point in time

**Specific Enactment:** It is recommended that specific laws regulating end-of-life-decisions be enacted in Nigeria. The underlying tone of such a legislation in Nigeria should be first to affirm respect for individual human rights including the right of self-determination and autonomy. It is further recommended that the legalization of euthanasia in Nigeria should be in the passive form- permissible and highly regulated so as not to give room for abuse. It may be necessary to amend provisions of the criminal and penal codes which currently criminalize euthanasia. The Netherlands and New Zealand Euthanasia-Model can be adopted as framework for Nigeria. With streamlined procedures for execution and structured authority, the procedure can be carried out within safe boundaries of the law.

## **Accessible Medical Care and Palliative Care**

Globally, the preservation of life and unwavering care for the sick has been established as distinctive attributes of medical practice. Improved and accessible health care, incorporation of technologically advanced health mechanisms, availability of palliative care for terminally ill patients among other innovative measures will all go a long way to improve the quality and longevity of life, ease the pain and reduce whatever feeling of discomfort experienced.

## **Public debates and Referendum:**

It is recommended that before any major step is taken on euthanasia in Nigeria, public discourse and consultations with citizens in the form of referendum should be encouraged. Taking a stand on euthanasia will also reduce death tourism currently being experienced in most jurisdictions where the procedure is outrightly illegal.

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<sup>97</sup>See *S v. Hartmann* 1975 (3) SA 532(C) 1975; *S v. De Bellocq* 1975 (3) SA 538 (T); *S v. Marengo* 1991 (2) SACR 43(W) and section 51 South African Criminal Law Amendment Act, 1997.

<sup>98</sup>Report: Euthanasia and the Artificial Preservation of Life [https://www.justice.gov.za/salrc/reports/r\\_prj86\\_euthen\\_1998nov.pdf](https://www.justice.gov.za/salrc/reports/r_prj86_euthen_1998nov.pdf)(accessed 17 March 2025).

<sup>99</sup> C. Kotzé, and J.L. Roos. 'End-of-Life Care in South Africa: Important Legal Developments' (2022) (28) *SAJP*, 2.