

# LEGALITY OF EUTHANASIA AND THE RIGHT TO DIE IN NIGERIA

BY

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## Abstract

The question of the existence of a right to die by euthanasia otherwise referred to as mercy killing and assisted suicide is one that transcends national boundaries and diverse legal systems. The dominant legal regime around the world is that euthanasia and assisted suicide is unlawful and criminalized. However, with advancements in medical technology leading to remarkably greater ability to sustain and prolong human life far beyond what was previously thought possible, coupled with corresponding growth in human right law, many countries such as Belgium, Netherlands, etc. have legalized the acts of euthanasia and assisted suicide. There is no doubt that there is global acceptance of a right to life. The question that is the bedrock of the euthanasia controversy is whether or not there is also conversely a right to die. This paper examines the law on euthanasia and assisted suicide in Nigeria. With the aid of factual cases, the constitution, international legal instruments, statutes and judicial decisions, it x-rays the meaning, types, forms, perspectives and the legal status of Euthanasia and assisted suicide generally and Nigeria in particular. From all of these, it identifies the existence of constitutional basis for a right to die in Nigeria. The country's outdated and anachronistic state of the penal laws in relation to euthanasia and assisted dying is explored and exposed. Finally, the dire need for law reforms in form of amendment of the existing penal laws as well as the enactment of specific laws on euthanasia and assisted suicide is recommended. This proposal will, permit euthanasia and assisted suicide in deserving cases, depending on the circumstances of each case. This shall be subject of course, to the provision of adequate legal safeguards against abuse.

## 1.0. INTRODUCTION

Globally and historically, human euthanasia and assisted suicide, like other life and death issues such as abortion always engender immense controversy and very divergent perspectives. Much of these differences, rests squarely on legal, religious, ethical /moral, social and economic pillars. On the legal front, most opponents of euthanasia and assisted suicide (sometimes referred to as "pro-life" adherents) base their legal and moral revulsion to

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euthanasia and assisted suicide principally on the principle of sanctity of human life and the need to accord utmost respect to its sustenance. They therefore actively and completely seek to discourage any law that detracts from it. Pursuant to this resolve, pro-life adherents are therefore quick to call in aid a host of national and International legal instruments that guarantee the right to life and the promotion of its sanctity. These instruments include the municipal constitutions of most countries of the world and International instruments such as the Universal Declaration of Human Rights (UDHR) 1948<sup>1</sup>, the International Covenant on civil and political Rights (ICCPR) 1966<sup>2</sup> and the African Charter on Human and Peoples Rights 1981<sup>3</sup>. Undoubtedly, in the vast majority of countries around the world, anti-euthanasia/assisted suicide legal regime is all pervasive. Therefore, euthanasia and assisted suicide is either wholly or partially prohibited or criminalized in most countries.

However, this legal status quo is now being challenged and the edges of the prohibition envelope being more acutely and fiercely pushed by twin advancements in the area of human rights law and technology in the field of medicine. As a result of the latter, remarkable progress has been made in the development and usage of highly sophisticated ways and means of artificial or mechanical prolongation of human life to previously impossible limits by advanced life support machines, ventilators etc. The effect of this is a radical extension of the medical definition of death far beyond a narrow perception as mere stoppage of breathing in the natural sense. In contemporary medical practice, it has become medically possible to prolong and sustain life for decades; even in a persistent vegetative state (PVS). A typical example is evident in the landmark Indian case of Aruna Shanbaug v. Union of India<sup>4</sup>. This case involved an Indian nurse who was a victim of violent sex assault, resulting in massive brain damage and her falling into a persistent vegetative state (PVS). Given that all forms of euthanasia were then illegal in India, she was medically kept alive in this unconscious state for 42 years before she died naturally in 2015. Her case led to the legalization of passive

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<sup>1</sup> Article 2

<sup>2</sup> Article 6

<sup>3</sup> Article 4

<sup>4</sup> (2011) 4 SCC 454

euthanasia by the Indian Supreme Court in India in 2011. This kind of situation has engendered an advocacy by pro-choice adherents for the recognition and legalization of a right to die or to die with dignity. According to renowned English physicist, Professor Stephen Hawkins for instance, "to keep someone alive against their wishes is the ultimate indignity."<sup>5</sup> Many countries have keyed into this surging legal renaissance and have therefore legalized euthanasia. These countries include the Netherlands, Belgium, Ireland, Columbia, India (passive euthanasia) and Luxembourg. Whilst assisted suicide is legal in countries or places like Switzerland, Germany, Japan, Albania, and Canada and in the United States of Washington, Oregon, Vermont, Montana and California.<sup>6</sup> In 2014 Belgium became the first country in the world to remove all age restrictions on euthanasia, thereby legalizing euthanasia of young children.<sup>7</sup> Only recently the European court on human rights refused to set aside a ruling of the Supreme court of the United Kingdom to withdraw life support treatment to 10 months old Charlie Gard who has brain damage and a rare genetic condition called encephalomyopathic mitochondrial DNA depletion syndrome (MDDS). This case has attracted worldwide interest including Pope Francis and Donald Trump the US president, who have both offered medical aid. Nigeria, like Britain and most other common law countries criminalizes euthanasia and assisted suicide. Even before the advent of colonialism, generally, the customary law of most societies in Nigeria also strictly prohibits euthanasia and assisted suicide. Indeed they were generally regarded as mortal taboos. The corpse of a deceased person who died by any of these means is usually not buried anywhere else but the devil forest and anyone who participated in the process, banished from the community. A very elaborate process of atonement and cleansing of the community or land follows soon thereafter. Although, in few communities some practices that had the semblance of euthanasia were also prevalent. Such as the presentation of a calabash representing a call to

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<sup>5</sup> Stephen Hawkins, "I would Consider Assisted suicide". Available at [www.theguardian.com](http://www.theguardian.com) accessed on 15/5/16 at 6:00pm

<sup>6</sup> *Legality of Euthanasia*, available at en.wikipedia.com accessed on 12/6/17 at 1.00pm.

<sup>7</sup> ABC News, "Euthanasia law: Belgium passes legislation giving terminally ill children right to die". Available at [www.abc.net](http://www.abc.net) accessed on 1/2/17 at 08.00 am.

suicide to an Alafin (king) that had fallen out of favour with the generality of his subjects that was commonly practiced among some Yoruba communities; south west Nigeria.

## 2.0. Euthanasia and Assisted Suicide.

2.1. Euthanasia. In Etymological terms, the word euthanasia is derived from the Greek word *eu* and *thanatos* which means 'good death' or 'easy death'.<sup>8</sup> Since virtually everyone naturally wishes to die a good or painless death, the above definition of euthanasia quite clearly merely scratches the surface of this highly volatile and controversial subject. We must therefore trudge further in our quest for a more revealing definition. According to Black's Law Dictionary, Euthanasia, is the act or practice of causing or hastening the death of a person who suffers from an incurable or terminal disease or condition especially a painful one, for reason of mercy.<sup>9</sup> Similarly, the Encyclopedia Britannica defines euthanasia as, 'the practice of painless putting to death persons suffering from painful or incurable diseases or incapacitating physical disorder or allowing them to die by withholding treatment or withdrawing artificial life support measures'.<sup>10</sup>

It is imperative to state at this point that whilst the above definitions highlight the fact that often times the subject of euthanasia and assisted suicide suffers from some form of incurable or terminal condition, this is not always the case. There have been reported cases where euthanasia and assisted suicide have been carried out in less extreme situations

## 2.2. Assisted Suicide

The term assisted suicide as it connotes is the intentional act of providing a person with the medical means or medical knowledge to commit suicide.<sup>11</sup> Where a doctor provides the means, it is referred to as 'physician assisted Suicide' (PAS)<sup>12</sup> Here, a physician knowingly

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<sup>8</sup>Oniha B. E. and Oniha M. O., "Euthanasia and Assisted Suicide as Basic Constitutional Rights under the 1999 Constitution of Nigeria" available at [www.nigerianlawguru.com](http://www.nigerianlawguru.com) accessed on 25/1/17 at 05.19pm.

<sup>9</sup>Bryan A. Garner, Black's Law Dictionary 9<sup>th</sup> Ed. (Texas; LawProse Inc., 2009), 634.

<sup>10</sup> Encyclopedia Britannica, 'Euthanasia' available at [www.britannica.com](http://www.britannica.com) accessed on 15/2/17 at 12:10pm

<sup>11</sup>Supran.9, 1571

<sup>12</sup>Ibid

and intentionally provides a person with the knowledge or means or both required to commit suicide, including counseling about lethal drugs, prescribing such lethal doses or supplying the drugs.

Euthanasia differs from assisted suicide in that in the latter case, a person voluntarily brings about his or her own death i.e. commits suicide with the assistance of another person who provides the means to end the patient's life, coupled with a clear knowledge of the intention of the person to commit suicide, often times due to a medical condition. The means could be by way of lethal medication. The provider unlike in the case of euthanasia does not necessarily act as the direct agent of death.

### 3.0 Forms of Euthanasia

Euthanasia can either be passive or active in form.

#### 3.1 Active Euthanasia

According to Black's Law Dictionary, this form of euthanasia is performed by a facilitator (such as a health care practitioner) who not only provides the means of death but also carries out the final death causing act.<sup>13</sup> It entails the taking of specific steps to cause the death of another such as injecting the patient with a lethal injection or medication. In practice, this may be undertaken by the use of an overdose of painkillers or sleeping medication.

#### 3.2 Passive Euthanasia

This is the act of allowing a terminally ill person to die either by withholding or withdrawing life sustaining support, such as a respirator or feeding tube.<sup>14</sup> In other words, the withdrawal of medical treatment accompanied with a deliberate intention of causing the death of another. The clear distinction between active and passive euthanasia is that whilst in the case of the former, something is done to terminate the life of another, in the latter case, something is done or withdrawn that could have preserved or elongated the life of the patient.

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<sup>13</sup>*Supra* n.9.

<sup>14</sup>*Ibid*

### 3.0 Types of Euthanasia

There are basically three types of Euthanasia. These are Voluntary euthanasia, Non-Voluntary euthanasia and involuntary euthanasia.

#### 4.1 Voluntary Euthanasia

This is euthanasia performed with the consent terminally ill person.<sup>15</sup> Such patient may grant such consent in advance, sometimes by way of a living will or directive which may simply, while still legally capable, declare that his life be terminated or request that lifesaving treatment be stopped with full knowledge that it will invariably lead to death. A typical example of this type of euthanasia is the celebrated case of Dr. Cox in 1992; Dr. Cox openly defied the law and assented to a 70 year old Mrs Boyes's persistent request for voluntary active euthanasia. Mrs. Boyes was so ill that she screamed like a dog if any one touched her. Conventional medicine did not relieve her pains. In her last days, following her repeated request to die, Dr. Cox finally gave her an injection of potassium chloride leading to her peaceful passage. Dr. Cox was subsequently given a suspended sentence.

Similarly, in France, an 18 year old Vincent Humbert acted as a volunteer in the Fire department. He was involved in a road traffic accident and was virtually completely paralyzed. Nearly all his vital organs were damaged. The only functions which remained intact were his sense of hearing, the ability to think and the ability to move one thumb. This last ability enabled him to express his desire to die. One person read the alphabet and when he moved his thumb the corresponding letter was dotted down. In this way, he dictated a letter to the then French president, Chirac, pleading for the right to die in a dignified manner. The president responded that whilst he sympathized with his situation, he was unable to do anything because euthanasia is prohibited in France. Vincent's mother subsequently took the laws into her own hands and administered an overdose of sleep reducing drugs into his blood stream. But he did not die but went into deep coma. The doctors eventually stopped the

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<sup>15</sup> *ibid*

provision of oxygen and removed the intravenous drip knowing that it will invariably lead to his death. He passed on soon thereafter.

#### 4.2. Non Voluntary Euthanasia

This is euthanasia of an incompetent and therefore non-consenting person.<sup>16</sup> It may arise in situations where the consent of the affected person is unavailable such as where the patient is unconscious or is otherwise incapable of granting consent. The English case of *Airedale N.H.S v. Bland* (The Airedale case)<sup>17</sup> decided by the House of Lords presents a typical instance of this form of euthanasia. In that case, Anthony Bland, a 17 year old, was one of the Liverpool football club supporters crushed in the Hillsborough football club tragedy of 15<sup>th</sup> April 1989. In the course of this unfortunate disaster, his lungs were crushed and punctured. Supply to his brain was interrupted. As a result, he suffered catastrophic and irreversible damage to his brain. For 3 years he was in a persistent vegetative state (PVS). He could not see, hear, or feel anything. In order to maintain him in this condition he was fed and rehydrated by artificial means of nasogastric tube. According to eminent medical opinions, there was no prospect whatsoever that he would ever make a recovery from this condition, but there was likelihood that he would maintain this state of existence for many years to come provided the artificial means of medical care was maintained. In this state, doctors took the view supported by his parents that no useful purpose would be served by continuing medical care and that artificial feeding and other measures aimed at prolonging his existence should be stopped. However, since there was doubt whether this might constitute an offence, the hospital sought a declaration from the English High Court seeking legal pronouncement on this. The case eventually went to the House of Lords. The Lords were unanimous in their decision that Anthony Bland be allowed to die. The *foresaid* Indian case of

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<sup>16</sup> *Ibid*

<sup>17</sup> (1993) ALL ER 82 (HL)

*ArunaShanbaug v Union of india*<sup>18</sup> who was in a persistent vegetative state (PVS) also falls under this head.

#### 4.3. Involuntary Euthanasia

Euthanasia carried out on a competent non consenting person. This type of euthanasia is performed on a person who would be able to provide informed consent but does not either because they do not want to die or because they were not asked. Involuntary euthanasia is widely opposed and regarded as a crime in all legal Jurisdictions. Reference to or fear of it is often used as a reason for opposition to other types of euthanasia. This type of euthanasia must however be distinguished from non-voluntary euthanasia previously considered. In the former, the patient is unable to give informed consent.

#### 5.0 Perspectives on Euthanasia and Assisted Suicide

For ages, there have been different perspectives for or against euthanasia and assisted suicide. These perspectives, mostly very passionate, are deeply rooted in moral ethical, religious, philosophical, economic, social and legal considerations. Perhaps a key block of such passionate and consistent opponents of euthanasia and associated suicide are adherents of the major religions of the world. For follower of Christianity (Judaism inclusive), euthanasia and assisted suicide are completely unacceptable, indeed inconceivable, being contrary to the Holy book (the Bible). They hold the strong belief that life is a gift from God. Man does not have absolute dominion or control over this gratuitous divine gift. Men are mere stewards. Consequently, the time, date, manner and circumstances of our death can only be determined by God and no one else. According to the Holy book of Christians i.e.(The Holy Bible) therefore, "Thou shall not kill".<sup>19</sup> In addition, there is also a firm belief in divine miracles under whose regime God intervenes positively in the affairs of men at any time and in seemingly impossible circumstances, even those deserving of euthanasia and assisted suicide. Similarly, in Islam, the Concept of sanctity of life is also highly revered. Muslims

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<sup>18</sup> *Supra* note 4.

<sup>19</sup> Exodus 20:13



generally believe that Allah (God) is the maker and owner of life. Consequently, euthanasia and assisted suicide are strongly disallowed. These fact is borne out by the following verses of the holy Koran (The Holy book of Islam) -

“Do not kill yourselves, for verily Allah has been most merciful<sup>20</sup>  
“....Take not life which Allah has made sacred”<sup>21</sup>  
“.... and (Allah) gave life then shall he ordain you to die  
Then shall he give you life again, truly mankind is ungrateful.”<sup>22</sup>

### 5.1 Key Arguments for and against Euthanasia and Assisted Suicide:

Apart from the above perspectives, key arguments by the proponents and opponents of euthanasia and assisted suicide can be compressed into the following:

#### 5.1.1 Arguments for Euthanasia/Assisted Suicide

- a) It is an act of compassion.
- b) It provides relief in cases of extreme pain and anguish, particularly for the terminally ill when all hopes of survival is clearly lost.
- c) It is an expression of the freedom to choose or self-determination inherent in all individuals, recognized by nature and God.
- d) It preserves as well as promotes bodily integrity and dignity for the terminally ill or incapacitated.
- e) It frees up scarce medical facilities and funds to assist other people who are less ill, with clear chance of survival.

#### 5.1.2 Arguments against Euthanasia/Assisted Suicide

- (a) Euthanasia and Assisted Suicide represent an attempt by man to play God.
- (b) It devalues human life i.e. degrade the sanctity of human life.

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<sup>20</sup> Holy Koran Chapter 4 verse 29.

<sup>21</sup> *ibid* chapter 6 verse 151

<sup>22</sup> *ibid* chapter 22 verse 66

- (c) It can easily become a selfish and short cut means of health care cost containment
- (d) It is an act of cruelty, rather than an act of compassion
- (e) It is against natural laws of human relations
- (f) In the case of physicians, it is against the Hippocratic oath
- (g) There exists a 'slippery slope' effect that can occur where there is a legalization of euthanasia/assisted suicide.

## 6.0 Law on Euthanasia and Assisted Suicide in Nigeria.

There is no specific law on euthanasia in Nigeria. The law on euthanasia and assisted suicide is embedded in the penal laws of the country and therefore statutory. Also germane to the law on euthanasia and assisted dying are the human rights provisions of the 1999 Constitution (as amended) which brings a constitutional dimension to euthanasia law in Nigeria. The relevant sections of these statutes and the constitution shall now be examined.

### 6.1. Statutes

There are two primary statutes encapsulating the penal laws of Nigeria. These are the Criminal Code Act (applicable to the Southern states of Nigeria) and the Penal Code (applicable to the Federal Capital Territory (FCT) Abuja and other Northern States). In addition to this, there is also, in some Northern States such as Zamfara State, the enactment of the Sharia Penal Code.<sup>23</sup> This law became operational in Zamfara State on 27<sup>th</sup> day of January 2000.<sup>24</sup> These Penal laws contain significant number of provisions that directly or indirectly relate to the practice of euthanasia and assisted suicide as can be gleaned from a careful examination of these some salient provisions. In this regard, the criminal and penal codes being the principal penal enactments in Nigeria shall be of particular interest.

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<sup>23</sup> Sharia Penal Code Law No. 10 of 2000 of Zamfara State.

<sup>24</sup> *Ibid* Section (1)

### 6.1.1 The Criminal Code.

A number of Criminal Code provisions relate either directly or otherwise to euthanasia and assisted suicide. For instance, under the Act, any form of killing of any person (euthanasia clearly inclusive) is unlawful unless such killing is authorized, justified or excused by law.<sup>25</sup> Therefore, 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.<sup>26</sup> In all of these instances, an offender may be found guilty of murder or manslaughter, depending on the circumstances of the case.<sup>27</sup> In the case of the former, the prescribed punishment is a mandatory sentence of death.<sup>28</sup> Whilst in the latter, it is life imprisonment. Under the Code, the offence of murder is defined as comprising the following:ö..... 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 which is such that the offender may be arrested without warrant or for the purpose 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 over powering things for either of the purposes aforesaid;

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<sup>25</sup> Section 306 Criminal Code Act Cap 41 Laws of Federation of Nigeria 2004.

<sup>26</sup> *Ibid* section 308

<sup>27</sup> *Ibid* section 315

<sup>28</sup> *Ibid* section 319

(6) If death is caused by willfully stopping the breath of any person for either of such purposes<sup>29</sup>. Under this section, it is immaterial that the official did not intend to hurt the particular person who is killed. Other than the above instances, a person who unlawfully kills another in such circumstances as not to constitute murder is guilty of manslaughter.

Similarly, under the acceleration of death provision of the Criminal code, a person who hastens the death of another person who, when the act is done or the omission is made is laboring under some disorder or disease arising from another cause is deemed to have killed that other person.<sup>30</sup> This provision quite clearly speaks directly to the practice of euthanasia and assisted suicide in all but name.

In addition to this, the practice of assisted suicide is specifically made an offence in section 326 of the code. Under this provision;

“Any person who-

- (1) Procures another to kill himself, or
- (2) Counsels another to kill himself and thereby induces him to do so or,
- (3) Aid another in killing himself is guilty of a felony and is liable to imprisonment for life.”<sup>31</sup>

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. It is therefore not a defense under the law to raise a defense of consent.<sup>32</sup> From the above any person, physician or other health care who at a patient’s request, administers a 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.

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<sup>29</sup> *Ibid* Section 316

<sup>30</sup> *Ibid* Section 311

<sup>31</sup> *Ibid* section 326

<sup>32</sup> *Ibid* Section 299. The case of State v Okezie (1972) 2 E.C.S.L.R 419.

Apart from the above specific or direct provisions, there are a number of other salient provisions that are relevant to the practice of euthanasia and assisted suicide in Nigeria.

These provisions include the following:

- (a) Surgical Operations<sup>33</sup>
- (b) Duty to provide necessaries to the aged, sick, unsound mind, a child under 14 years, servants etc.<sup>34</sup>
- (c) Duty of persons doing or in charge of dangerous acts or things.<sup>35</sup>
- (d) Duty to do certain acts.<sup>36</sup>
- (e) Offence of infanticide.<sup>37</sup>
- (f) Grievous harm<sup>38</sup>
- (g) Malicious administration of poison with intent to harm.<sup>39</sup>

#### 6.1.1 Penal Code

The Penal Code, like the criminal code, creates the offence of murder and manslaughter. Although the code prefers to refer to them as culpable homicide punishable with death,<sup>40</sup> for murder and culpable homicide not punishable with death,<sup>41</sup> for manslaughter. The definition of these offences is basically the same as that of the criminal code earlier considered. The prescribed punishments are also similar. Under the Penal Code, abatement of suicide of persons lacking in legal capacity such as a minor under the age of 18, insane person, a delirious person, any idiot or any person in a state of intoxication in committing suicide is

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<sup>33</sup> *Ibid* Section 297

<sup>34</sup> *Ibid* Sections 300 - 302

<sup>35</sup> *Ibid* sections 303 & 304

<sup>36</sup> *Ibid* Sections 305

<sup>37</sup> *Ibid* Section 327A

<sup>38</sup> *Ibid* Section 335

<sup>39</sup> *Ibid* section 337

<sup>40</sup> Section 221 penal code law cap 89

<sup>41</sup> *Ibid* section 222

criminalized and made punishable with death.<sup>42</sup> In the same vein, abatement of suicide generally is made an offence punishable for a term which may extend to ten years in addition to a fine.<sup>43</sup>

Furthermore, as in the case of the criminal code, under the penal code;

whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug or things with intent to cause hurt to that person or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine.<sup>44</sup>

In the light of the above, it is clear that the practice of euthanasia and assisted suicide is criminalized under the criminal Penal code of Nigeria. The extent to which this is true within the context of the constitution shall now be examined.

#### 7.0. Euthanasia / Assisted Suicide and the 1999 constitution of Nigeria.

It is pedestrian that under the legal regime in Nigeria, the 1999 Constitution (as amended) is supreme and its provisions shall prevail. Where any other law is inconsistent with the constitution, to the extent of that inconsistency, that other law(s) shall be void.<sup>45</sup>

A key component of the constitution is enshrined in chapter IV of the constitution. Under this chapter, elaborate provisions relating to the recognition and protection of basic fundamental Human rights are contained. According to Augustine Alegeh SAN, former National President, Nigerian Bar Association "Perhaps the greatest gift of mankind as far as law is concerned is the evolution of Fundamental Human Rights as inalienable rights."<sup>46</sup> Therefore, in line with global best practice, and the country's treaty obligations, the constitution of Nigeria 1999 (as amended) contains fundamental human rights provisions. Some of these provisions have direct bearing on the law and practice of Euthanasia and assisted suicide. These provisions

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<sup>42</sup> *Ibid* section 227

<sup>43</sup> *Ibid* section 228

<sup>44</sup> *Ibid* section 249

<sup>45</sup> Section 1 (1) and 1 (B) of the 1999 Constitution of Nigeria (as amended)

<sup>46</sup> Alegeh Augustine, in a paper 'Law and Natural development' delivered at the Annual Justice Idigbe Memorial Lecture 2016 at the University of Benin, Benin City.

include the right to life, human dignity, liberty, privacy, freedom of thought, conscience and religion freedom from discrimination, torture, human or degrading treatment etc. Accordingly under the constitution, the right to life is guaranteed.<sup>47</sup> Under this section, every person has a right to life and therefore no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. The Constitution further guarantees other rights. For the purpose of this paper, specific mention shall be made to the following: right to human dignity<sup>48</sup> under which there is freedom from torture or in human or degrading treatment freedom from all forms of discrimination,<sup>49</sup> thought Conscience and religion<sup>50</sup>, right to personal liberty etc.<sup>51</sup>

From the reading of the constitution, there is little doubt that the right to life is the most significant of all rights captured by the constitution. No wonder therefore that serious efforts is evident to try to discourage its truncation save as provided for under the law. Nonetheless, it is submitted that this right to life cannot be read in isolation or independent of other provisions of the constitution, particularly as they relate to human rights. This submission is strengthened by a plethora of judicial decisions of the Nigerian Supreme Court relevant to this issue, where the Nigerian apex Court has clearly shown the right path to take in constitutional interpretation. In this regard, the Supreme Court has stated emphatically that Constitutional provisions, particularly as they relate to fundamental human rights must be read broadly and together and not disjointedly. In other words, what is referred to as the òwhole or community reading ruleö must be adopted. This was the decision of the apex

court in the following cases:

1. *NafiuRabiuv. State*<sup>52</sup>

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<sup>47</sup>*Supra* n.45 Section 33 (1).

<sup>48</sup>*Ibid* Section 34

<sup>49</sup>*Ibid* Section 42

<sup>50</sup>*Ibid* Section 38

<sup>51</sup>*Ibid* Section 31

<sup>52</sup> (1981) 2 NCLR 293

2. *A.G of Bendel v. A.G. Federation*<sup>53</sup>
3. *A.G of Ogun v. A.G Federation*<sup>54</sup>
4. *Lafia Local government v. the Executive Government of Nasarawa State.*<sup>55</sup>

Adopting the above reading, it follows that the principle of sanctity of life enshrined in section 33 (1) of the Constitution often cited by opponents of euthanasia and assisted suicide, must be read not isolation but together with other human rights related provisions of the constitution. Such provisions must necessarily include the right to dignity (with freedom from torture, in human and degrading treatment embedded within), right to personal liberty (within which the right to self-determination is contained), the right to freedom of thought, conscience and religion and from discrimination.

It is further submitted that, for the enjoyment of the constitutionally guaranteed right to life to have any meaning at all, the makers of the 1999 constitution clearly envisage that there shall also be a corresponding enjoyment of the right to life as inseparable from other rights highlighted above. These rights are available in equal measure to all Nigerians irrespective of a state of health or circumstances, the terminally ill inclusive. A sad picture of a terminally ill Nigeria in a persistent vegetative state, with no hope of improvement or survival, in excruciating pains and anguish, inhuman indignity, being kept medically and mechanically alive but functionally dead by life support devices, desirous of dying being denied the right of euthanasia and/or assisted suicide, can certainly not be the intention of the framers of the constitution in drafting section 33 (1) of the constitution. It is submitted, therefore that the right to euthanasia and /or assisted suicide or generally to die is recognized and preserved by necessary implication under the 1999 constitution as a fundamental human right as an integral part of the right to life.

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<sup>53</sup> (1982) 3 NCLR 166

<sup>54</sup> (1980) 3 NCLR 1

<sup>55</sup> (2013) ALL FWLR (Part 608) 956



In other jurisdictions, the United States Supreme Court in the landmark case of *Roe v Wade*<sup>56</sup>, in adopting this mode of constitutional interpretation in a life and death issue of abortion in its consideration of the provisions of the fourteenth amendment to the US constitution, from which the Nigerian constitution of 1999 was fashioned, held in relation to abortion (by a majority of 7-2), that a right to privacy under the due process clause of the 14<sup>th</sup> Amendment to the American constitution extended to a woman's decision to have an abortion.

Specifically in relation to passive euthanasia, the British House of Lords in the celebrated case of *Airedale N.H.S.S trust v. Bland*,<sup>57</sup> held that the principle of sanctity of life is not an absolute one. Therefore it does not for instance; compel a medical practitioner on pain of criminal sanction to treat a patient who will die, if he does not, according to the express wish of his patient. It does not also authorize forceful feeding of prisoners on hunger strike etc.

In Nigeria, this view finds express agreement in the landmark decision of the Nigeria Supreme Court in the case of *Medical and Dental Practitioners Disciplinary Tribunal v. Dr John Emewulu Okonkwo*.<sup>58</sup> In this case the Nigeria Supreme Court upheld the right of a patient to consent to medical intervention/treatment in pursuit of her exercise of the right to freedom of thought, conscience and religion under the constitution. The decision, it is submitted effectively endorsed passive voluntary euthanasia by way of the exercise of a patient's right to self-determination expressed in his refusal of medical intervention even where it will surely lead to her death, where such intervention runs contrary to her constitutionally guaranteed right. Due to its significance to this paper, it is imperative to briefly state the facts of this case. In this case, the patient Mrs. Martha Okorie, her husband and one Dr. John Emewulu Okonkwo are all members of the Jehovah's Witness Christian religious sect. This sect passionately holds the belief that blood transfusion is contrary to God's injunctions for Christians not to "eat blood". The patient, having had a baby developed post-delivery complication and was admitted at one Kanayo Specialist hospital for

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<sup>56</sup> 410 US 113(1973)

<sup>57</sup> *Supra n. 16*

<sup>58</sup> (2001) 3 S.C. 76

a period of 9 days. A diagnosis was carried and it was found that she had a serious condition for which blood transfusion was needed but she declined transfusion. She was on this ground discharged from that hospital with a note that she refused transfusion and that she might die. She was taken to another hospital where the respondent, Dr. Okonkwo practices, by her husband. Here, she presented the doctor with a card directing that in accordance with her rights as a patient and her beliefs as a Jehovah's Witness, no blood transfusion should be carried out on her. She also absolved the medical personnel of the hospital from responsibility. Her husband also executed a similar document. The doctor therefore went ahead to treat her without blood transfusion in accordance with her directive. She subsequently died. The doctor in charge, Dr. Okonkwo was later charged before the medical and Dental Practitioners' disciplinary tribunal on 2 counts of acting contrary to his oath of practice and negligence. The tribunal found him guilty of the counts and he was suspended from practice for 6 months. He appealed to the Court of Appeal and his appeal succeeded. Upon a further Appeal by the tribunal to the Supreme Court, the apex Court held (unanimously dismissing the appeal), that the patient was well within her legal and constitutional rights to decline medical treatment which include blood transfusion and the doctor could not have done anything infringing this right. According to Ayoola JSC:

The patient's constitutional right to object to medical treatment or particularly, as in this case, to blood transfusion on religious grounds is founded on fundamental rights protected by the 1979 constitution as follows: (1) Right to privacy: Section 34, (ii) right to freedom of thought, conscience and religion, section 35. All of these are preserved in section 37 and 38 of the 1999 Constitution respectively. The right to privacy implies a right to protect one's thought, conscience or religious beliefs and practice from coercive and unjustified intrusion and one's body from unauthorized invasion. The right to freedom of thought, conscience and religion implies a right not to be prevented, without lawful justification from choosing the course of one's life.... if a competent adult patient exercising his right to reject lifesaving treatment on religious grounds thereby chooses a path that may ultimately lead to his death, in the absence of judicial intervention overriding the patient's decision, what meaningful option is the practitioner left with other than perhaps to give the patient's comfort. More so against the back drop of the fact that prevailing medical ethical practice does not without exceptional demand that all efforts towards life prolongation be made in all circumstance,

but seems to recognize that the dying are often in need of comfort than treatment.<sup>59</sup>

The primacy of the informed consent of a patient to all forms of medical treatment by a medical doctor was again reaffirmed by the Supreme Court in the case of *Okekearu v. Tanko*.<sup>60</sup>

In light of the above, it is submitted that the right to euthanasia and assisted suicide for the terminally ill with no hope of recovery is not inconsistent with the right to life. On the contrary, any insistence on keeping the patient alive against his will, in excruciating pains and anguish or a permanent vegetative state often times in an undignified manner is contrary to a patient's constitutionally guaranteed rights to liberty (self-determination), dignity of the human person, privacy, freedom of thought, conscience and religion and against discrimination. Consequently, a wholesale criminalization of euthanasia and assisted suicide as we have seen in the criminal and penal code of Nigeria without regard for the peculiar and extenuating circumstances of deserving cases of euthanasia and assisted suicide runs contrary to the spirit and letters of the 1999 constitution and is therefore unconstitutional. This is clearly consistent with the principles and decision of the Supreme Court in the *MDPT v. Okonkwo*<sup>61</sup> case and should accommodate deserving cases of voluntary euthanasia and assisted suicide.

## 8.0. Conclusion and Recommendation

### 8.1. Conclusion

The fact that the penal laws of Nigeria have become outdated and therefore anachronistic is no longer in doubt. The Nigerian criminal code for instance, came into being on 1<sup>st</sup> June, 1916.<sup>62</sup>

Obviously, the provisions of the criminal and penal code relating to murder, manslaughter and assisted suicide and its outright prohibition of euthanasia and assisted suicide, presents a

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<sup>59</sup>Per Ayoola JSC at 103-104. See also the case of *Esterhuizen v. Administrator, Transvaal* (1957) 3 S.A 7 10T where the court decided that a person of sound mind may refuse medical treatment irrespective of whether it would lead to his death or not.

<sup>60</sup>(2002) FWLR Part 131, 1888

<sup>61</sup>*Supra* n 58

<sup>62</sup>*Supra* n 25

gaping disconnect between these penal laws and modern technological advances and development in medicine, human rights law and society in general. Indeed, it is submitted that a wholesale and criminalization of Euthanasia and assisted suicide as is presently the case in the penal laws of Nigeria is no longer good law and unconstitutional, therefore null and void to the extent of their inconsistency with the constitution.

## 8.2. Recommendation

It is recommended that a comprehensive reform of existing penal laws be carried out aimed at creating an exception to deserving cases for the exercise of a right to die by Euthanasia and assisted suicide. In addition to this, specific laws on Euthanasia be enacted clearly spelling out the gamut of euthanasia law in Nigeria and spelling out cases where the right to die is permissible. Adequate provisions for legal safeguards also made against abuse similar to the Belgium Act on Euthanasia 2002

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