Euthanasia: where are we in 2015?

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Nelson Mandela appointed the SA Law Commission to write the South African Law Commission paper – project 86.

Handed to Minister of Health: 1999. Never debated or opened for public comment.

Currently: advance directive and refusal to treatment.

Euthanasia not allowed – criminal offence for medical practitioner – 14 years in jail.
Mentally competent, terminally ill, extreme suffering, older than 18 years.

A second independent medical practitioner to confirm diagnosis – to record this.

Patient to make the request repeatedly.

Voluntary active euthanasia or physician assisted suicide.
April 2015: High court in Pretoria granted the request – assisted suicide or active euthanasia without the threat of legal action against the doctor while he had only a few weeks left to live.

Court indicated only applicable to this case

No medical doctor is obliged to accede to the request.

Not required to declare who the doctor will be, when, where or which lethal agent to be used.
Section 39 of the Constitution: Interpretation of Bill of Rights

When interpreting the Bill of Rights, a court, tribunal or forum.
Must promote the values that underlie an open and democratic society based on human dignity, equality and freedom.
Must consider international law.
May consider foreign law.
When interpreting any legislation, and when developing the common or customary law, every court, tribunal or forum must promote the spirit and purpose of the Bill of Rights.
Section 8 (3) of the Constitution

When applying on provision of the Bill of Rights to a natural or juristic person, a court, in order to give effect to a right in the Bill, must apply, or if necessary develop, the common law to the extent that legislation does not give effect to that right;
Section 8 (3) of the Constitution
b) may develop rules of the common law to limit the right, provided the limitation is in accordance with section 36(1).

- Stransham-Ford: Common law – by declaring the conduct lawful and constitutional in this circumstances.
Section 10: everyone has inherent dignity and the right to have their dignity respected and protected.

Opposing the case...

- Acting Chief Director: legal services – application should be dismissed as it would promote inequalities and discrimination of the poor by the way of limiting access to the courts to the rich only.
National Prosecuting Authority (NPA) will appeal the ruling. Assisted suicide is illegal.

Ruling will affect NPA because they can’t prosecute the doctor.

Supreme court of appeal to rule over this Constitutional court and parliament.

Justice department to receive several applications for case by case considerations - people take advantage of this ruling.
Public to participate in debate, before parliament votes on draft bill

Parliament to develop common law to be presented for comments
Living Will/Advance Directive

- Living will not a will in the true sense of the word.
- Advance directive drawn up by a mentally competent person older than 18 years, setting out terms to medical professionals, care givers and next of kin – what to do in the event of a permanent and incurable illness or condition.
Euthanasia (from the Greek: ἐυθανασία, meaning "good death": εὖ, eu, well + θάνατος, thanatos, death)

Most studied bioethics topic
Involves religion, medical ethical science and social science
Passive

- Withholding treatment with the deliberate intention of causing the patient’s death.
- Patient terminating chemotherapy treatment.
- Something is NOT DONE to preserve the patient’s life.

Example: Do Not resuscitate.

Active

- Taking specific steps to cause a patients’ death.
- Example: Dr to administer a Lethal dose of medication.
- You DO something to end the patient’s life.
- Assisted Suicide: lethal dose to be administered by patient.

Different social and moral issues.
### Passive

- Withholding treatment: patient will die due to the disease
- Death is not immediate
- Currently lawful – self determination
- The intent of doctor is the relieve suffering

### Active

- Patient dies because of the medication, not the disease
- Medication provided by physician, so patient dies because of the physician
- Death is immediate: unlawful
- Intent of doctor is to kill

#### Assisted Suicide:
- Patient also actively involved. Self-destruction assisted by physician
<table>
<thead>
<tr>
<th>Involuntary</th>
<th>Performing euthanasia against the individual's wishes. Criminal punishment: execution.</th>
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<tbody>
<tr>
<td>Non-voluntary</td>
<td>Life of patient is ended without the patient’s knowledge and consent. In general patient is unconscious or unable to communicate.</td>
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<tr>
<td>Voluntary:</td>
<td>A conscious and sane patient’s request – full knowledge it will lead to death.</td>
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Palliative Care

Medical treatment of terminally ill patients, health can’t be restored.

Instead of preserving life – relieving pain and suffering.

Pain medication hasten patient’s death.

HCW should recognise that death is approaching and prepare for it.
Palliative Care

To comfort and care during suffering, is it too much for us?

We are NOT adequately trained for this.

We do not need to change the law for this.

We don’t need to argue how to interpret human rights.

Ageing population increase—more illness, more money (restricted) needed for palliative care.
Palliative Care

- By comforting people demonstrates the value on humanity and the intrinsic value of life
- Ombudsman: Poor pain control, communication, care planning
- Ombudsman: inadequately out-of-hours service
- Ombudsman: failure to recognise that someone is dying
- Ombudsman: delays in diagnosis and referral to care unit
Palliative Care: Barriers

- Inadequate pain assessment, use of pain medication.
- Fear of legal action if opioids are used.
- Inadequate completion of Advance Directives.
- Lack of discussion about treatment preferences.

Fear of failing to control pain may increase requests for euthanasia.

Improved utilization of palliative care.
Palliative Care: Stransham-Ford – NO dignity

- Having severe pain.
- Being confused and dissociative, not able to say goodbye.
- Being dulled and unaware of surroundings and loved ones.
- Being unable to care for one’s own hygiene.

Dying away from home.
• 450 000 worldwide > 100 years.
• Advances in medical technology have increased medicine’s capacity to prolong life to a point where it is unnecessarily burdensome and may diminish an individual’s quality of life and personal dignity.
• Ageing population: Fastest growing part of the population.
• It can be described as the reflection on moral actions within the framework of health care.
• Its objective is to promote health, to care, to heal, to alleviate pain and prevent suffering.....and now to enhance.

Euthanasia would change the ETHOS of Medicine.
Freedom of choice is the hallmark of human identity.

Right to die with dignity, to deny this right is to deny human rights. To die with dignity is pain free at a chosen time of death. Right to dignity in life and dignity in death is not competing rights.

To be able to control our lives more important to some people than other, legitimate part of human rights.
Autonomy

To have the right to decline treatment.

Perhaps not the right to demand treatment that could kill

Sick people may well choose to have their own life terminated because they are aware of the burden they place on others.

Undignified death = lack of autonomy.
The real wishes and needs of the dying are often elusive and poorly expressed because of their condition, the effect of medications, their fears and beliefs, the information presented to them and their biases, needs and beliefs of those caring for them.

Many working in palliative care argue that the decisions made by the dying must not be readily accepted, but instead be sensitively explored.

The request for euthanasia may be based on the institutionalisation of the elderly and the growing social problems of isolation and loneliness.

SA has a democratic society with a cultural, religious and moral pluralism. Individual rights should be respected, individuals should have moral authority over their own lives and should be allowed the means to end their own lives.
Autonomy: killing a person

Killing is violation of autonomy

Voluntary euthanasia if seen as supporting autonomy

Killing a person deprives them of good things they would have otherwise experienced.

Is it better to kill someone than let them suffer?
Autonomy or something else? FEAR.

Stransham-Ford: fear to die in pain.

Stransham-Ford: not to be treated in a cruel, inhuman or degrading way. Bodily and psychological integrity.

Right to life is not only biological life, but also entitlement to quality of life. Life is not synonymous to an obligation to live.
Animals must be euthanized – humane treatment if severely injured or sick. Not to do is a crime. Why not same dignity for humans?

Main intention of medical practitioner to ensure patient’s quality of life and dignity – is there a justifiable distinction between withdrawal of life sustaining treatment and euthanasia?

Suicide and attempted suicide are not criminal offences, but we currently discriminate against people that can’t commit suicide.
Beneficence

This reflects actions involving prevention of harm, removal of harmful conditions and positive benefiting.

Balancing of harm and benefit

If further treatment outweighs the benefits – to stop treatment, to ease suffering and avoid prolonging of process of dying.
Non-maleficence...absence of harm

Above all, do no harm.

Prohibit intentional harm.

Pro- debate: Euthanasia is rather seen as an act of mercy than doing harm.

Anti – euthanasia: killing somebody – do harm, take away his life.

Require the justification of risk versus benefit.
Non-maleficence

If voluntary cognitive request is made to end suffering – by means of assisted suicide, to deny it may cause harm.

Countries with assisted suicide – people are less likely to attempt suicide.

Morally harder to justify letting somebody die a slow and ugly death.
The ACT should...

- Strict set of safeguards that ensure as best as possible that a distinction is made between voluntary euthanasia and murder.
- Perhaps have a panel of independent professionals from various fields to assess components of a request to avoid abuse.
Restricting the right to die to people who are terminally ill is very different to what most of us think of as justifiable euthanasia.

Incurable conditions causing great suffering in which death may not be imminent.
Conditions that may justify euthanasia

- Physical suffering in general accepted as justified.
- Suffering caused by grief, or shame or hopelessness.
- Physical pain versus emotional pain.
Conditions that may justify euthanasia

• Some jurisdictions were euthanasia is legal – will include psychiatric illness provided it is unbearable emotional suffering.
• If we don’t include all it is doomed to fail because the lines we drawn between acceptable and unacceptable death decisions, are cultural and arbitrary.
• Decision to die is not an ordinary choice.
• Decision has a quality of tragedy – some people have loved ones, but also because we are all involved in mankind.
• Death remains a tragedy. Deep down: death itself is bad.
To ensure that physician-assisted death is voluntary, only adults with decision-making capacity should be eligible for physician-assisted death.

From a pure choice perspective, strict adherence to the choice criterion would at least seem to safeguard a slide from voluntary to non-voluntary euthanasia.
Refusing treatment may turn off life-supporting machines, feeding tubes removed, switching pace-makers off.

These cases involve people suffering extensive paralysis and chronic debilitating illnesses, all caused pain and suffering but were not terminal conditions.

Mentally competent people can refuse treatment that will keep them alive, even if you are not terminally ill.

These may be excluded if the ACT is too strict.
People care about knowing that they are going to die.  
Being able to prepare.  
Where they die and with whom.  
Also shows concern for pain-free death.  

NB: Fear of death: unexpectedness, squalor, loneliness.  
Fear of what progression of disease will bring, therefore to control life.
Religious views

Religious argument will be the most influential one to change the law as it often dictates a person’s choice.

11 Sept 2015 – MP’s England and Wales voted against changes in law. Warning letter to MP’s: Roman Catholic Church, Muslim Council of Britain; Hindu Forum of Britain; Sikh Organisations, for Christian denominations including

Desmond Tutu claimed he did not want his own life to be “prolonged artificially” and announced that he supports assisted suicide.
Can’t impose your religious views on other. What makes a life worth living is subjective and specific to each individual, what is satisfactory to one person is not necessarily satisfactory for another.

Euthanasia will be immoral to some, but not to other......
Euthanasia is killing somebody (murder) and is morally not the same as allowing somebody to die.

To have a law to permit it, the law will be lacking finesse, sensitivity and compassion to deal with the dying.

Medical knowledge is limited and can’t always predict the nature of an individual’s life, dying and death.
Doctor’s may make an incorrect diagnoses or fail to predict an individual’s prognosis accurately, and even the sickest patient may recover.

When euthanasia is performed it can’t be reversed.

Euthanasia may undermine the trust and confidence patients have in their doctor.
The discovery of a new therapy or diagnostic error is of no value to a patient who is already dead and this risk of error weighs heavily against advocating euthanasia.

Not morally acceptable to intervene and intentionally kill a patient – Maleficence and not Beneficence.

Focus should be on the sanctity of life.
Euthanasia Debate

Right to life.

Humans to test the limits of any regulation.

Prohibit intentional killing is cornerstone of law and of social relationships.

It protects each of us impartially, we do not wish that protection to be diminished.
Euthanasia Debate: Anti-euthanasia

• The availability of a quick death may introduce subtle coercion on those who are frightened, powerless or feel their invalid state is a burden to others and they may choose death and not life.
The process of dying is not a science nor a problem to be solved by the application of euthanasia. Euthanasia will hamper the deep spirituality and morality of death. The dying process should be addressed by improving palliative care services.
The central moral issues in the euthanasia debate are whether it is ever right to take one's own life and whether it is ever right for a physician to take the life of a patient who requests it.

The Hippocratic Oath, expressly prohibits euthanasia. The oath reads, "Neither will I administer a poison to anybody when asked to do so, nor will I suggest such a course."
The law has developed a long uncontrolled momentum.
Terminally sick would soon be joined by the mentally ill, clinically depressed, severely disabled, the elderly and the unwanted babies.

All those considered better off dead.

OR NOT!
Slippery slope – people less sensitive and eventually broaden the sphere of euthanasia and include the elderly, weak, demented, socially unproductive or disabled

It may become a generally available, acceptable, and efficient alternative to suicide

They will be replaced with the act of euthanasia

It may eventually change the society’s perception of the sick, the elderly, the disabled and ultimately our very understanding and respect of life and the process of dying
At least 11 countries or states which allowed assisted suicide or active voluntary euthanasia.

24 May 1995 – Northern Australia passed the Rights of the Terminally Ill Act. But it was overruled later.

Belgium, Luxemburg, The Netherlands, Oregon, Washington, Montana. Albania, Canada, Columbia, Switzerland, Vermont, New Mexico

California: assisted suicide signed by Governor, Oct 2015.
Unbearable pain, illness must be incurable, fully conscious.

April 2002 1st country to legalise euthanasia & assisted suicide.

Rate of euthanasia constantly increasing year on year.

Life expectancy of less than 2 weeks.

To receive lethal cocktail under medical supervision.
Active euthanasia is illegal.

Assisted suicide: Oregon, Montana & Washington: terminally ill, mentally competent, < 6 months to live, to request Rx

Should have lived in USA states to qualify for assisted dying

2013: 300 Rx issued but 230 used it
Switzerland: Assisted suicide allowed. Dr only required to prescribe cocktail, not required to be next to bedside. Pt to self administer meds.

Switzerland: organisations Dignitas and Exit; provide services for a fee.

Anyone to qualify for assisted dying – suicide tourism.
Germany

Word euthanasia not used.

Assisted suicide legal, active suicide not legal, but allow under certain situation.

NOW: Tighten the law, ban organisation such as Dignitas and Exit.
2014: 5 euthanasia cases per day. Increase of 27% from 2013. 2010 – 2013 increased by 89%.


Assisted suicide not mentioned in law – physician to be present at the bedside.

2002 – 2nd country

Prisoner had a terminal illness, requested euthanasia.

9 other prisoners applied, they claim they suffer from unbearable suffering to be locked in a cell. “dangerous” people deprivation of liberty. Not sick.

Senator: prisons overcrowded, inadequate facilities, and no prospect of a future – thus rather die than leave the prison. Prisoners confined for 3 hours/day 2 square meters.

Prisoners apply in despair.
• to avoid prison sentence, looking for “freedom”

• is the prison conditions so bad?
• should euthanasia be used to free space in prisons?

• why did they abolish the death sentence?
Belgium 2 decades later....

Belgium surgeons – harvest organs from people requesting euthanasia

Medical staff will not declare non-compliance

No control – not all cases are reported to the Federal Control and Assessment Group
A landmark ruling in Belgium has seen serial rapist and murderer, prisoner Frank Van Den Bleeken, who is serving a life sentence, win the 'right-to-die' request.

The 50-year-old filed a request for euthanasia in 2011, citing "unbearable psychological suffering" and uncontrollable violent sexual urges.

What am I supposed to do? What's the point in sitting here until the end of time and rotting away? I'd rather be euthanised...
Euthanasia was planned for 5 Jan 2015

The board of assessors previously insisted that he must seek psychological help, but after failing to find adequate treatment, his request was granted.

*Netherlands clinic can treat, but Government denied request.*

Physician to administer lethal meds: I decided to no longer act as attending physician for the euthanasia because I believe certain legal due diligence has not been respected.
We will all decide differently.

But we must think long and hard about why and where we draw those lines.

Society to be involved to participate in debate.
Ethical responsibility

Our society have problems

Do we adequately provide care, compassion, respect, understanding and communications to those who are terminally ill?

Visit GHDonline: Initiating End-of-Life Care Conversations
Ethical responsibility

To avoid debating on a dangerously naïve view of rights, autonomy and society.

Study and learn from our euthanasia predecessors.

Fundamental issue, it impacts you as the individual and your profession.

This is not about politics.
We have a pervasive lack of an ethos of respect of human life.

We are a violent society: 45 murders a day.

Health care workers down tools during labour disputes.

Needless deaths in hospitals through staff neglect and indifference.
Euthanasia Debate

Is SA a safe place and appropriate place for voluntary euthanasia legislation?

Severe constraints on health care facilities, total inadequate allocation of resources of highly effective medical treatments. Perhaps in a country with proper care for terminally ill, strong culture for respect of life, access to palliative care and well functioning judicial institutions...
• Prof Sean Davidson: Arrested in 2010 – assisted his mother, 85 years old, terminally ill from cancer in New Zealand.
The law shall obey its own nature and not the will of legislators, and it shall inevitably bear the fruit we have sown in it.

“G.K. Chesterton”
Being human is given.
But keeping our humanity is a choice.

FINISH