

# **EUTHANASIA AND ASSISTED SUICIDE AS BASIC CONSTITUTIONAL RIGHTS UNDER THE 1999 CONSTITUTION OF NIGERIA**

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## INTRODUCTION

Few subjects evoke such great avalanche of human sentiments, legal, moral/ethical, religious and other considerations as the highly volatile and controversial subjects of euthanasia and assisted suicide. The reason for this, quite clearly, is not farfetched. Put simplistically, the very emotive subjects of euthanasia and assisted suicide principally is a matter of life and death. Quiet understandably, therefore any subject relating to the creation, continuation, preservation and termination of life is naturally bound to throw up a rich dust of overflowing social, economic, religious, ethical, and legal perspectives.

Historically, mankind has been sharply divided along the lines of those deeply favourably disposed to the right of a patient to euthanasia and assisted suicide and those against. Advocates on both sides of the divide deeply convinced in the rightness of their convictions.

This paper seeks to examine the subject of euthanasia and assisted suicide, with greater spotlight on the former, both really with the same end product – death. It shall try to give a general overview of their meaning, history, key arguments for and against the practice and their status under Nigerian Law. Furthermore, calling in aid relevant Nigerian Supreme court decisions and pronouncements in related cases, It shall also seek to show that the 1999 Constitution of Nigeria, some salient provisions thereof, must be construed to accommodate voluntary euthanasia and assisted suicide as basic fundamental human rights.

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## **What is Euthanasia and Assisted Suicide?**

According to Blacks' Law Dictionary, Euthanasia, (also referred to as Mercy killing) 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 reasons of mercy.*<sup>1</sup>

Assisted suicide, as the term suggests, is defined as:

*The intentional act of providing a person with the medical means or the medical knowledge to commit suicide.*<sup>2</sup>

When a doctor or physician provides the means of actualizing, bringing about death, it is usually referred to as physician assisted suicide (PAS).

Assisted suicide has also been termed Assisted self -determination.

Similarly, Chamber's 21<sup>st</sup> Century Dictionary<sup>3</sup> holds out euthanasia as:

*"The act or practice of ending the life of a person who is suffering from an incurable and often painful or distressing illness".*

As can be gleaned from the above therefore, euthanasia and assisted suicide essentially relates to the termination of the life of, often times, a terminally ill person. It must however, be noted that whilst the end result of both terms are the same i.e. death, the concepts of physician Assisted Suicide and Euthanasia are not the same. Physician assisted suicide refers to the physician providing the means of death, most often with a prescription. The patient and not the physician ultimately administer the lethal medication. Euthanasia on the other hand

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<sup>1</sup> 9<sup>th</sup> ed.

<sup>2</sup> Blacks Law Dictionary, 9<sup>th</sup> ed.

<sup>3</sup> Revised Edition, 451

generally means the physician acts directly, for instance, by giving a lethal injection to end the patient's life<sup>4</sup>.

It is perhaps also noteworthy that the term euthanasia may also be applicable to terminally sick or injured animals. But this is clearly outside the purview of this paper. Suffice to say that even here, its application to animals traverse essentially similar path and considerations.

### **Origin / History**

Generally, the term euthanasia has been said to be of Greek origin, traceable to the Greek word, EU (good) and Thanatosis (death) meaning therefore 'good death' – 'Gentle and easy death' or what has now become known as 'mercy killing'.

The first recorded use of the word euthanasia was by Suetonius<sup>5</sup> to describe the death of Augustus Caesar who according to him –

*“... For almost always on hearing that anyone had died swiftly and painlessly, he prayed that he and his might have a like euthanasia, for that was the term he was want to use.”<sup>6</sup>*

Although, it must be said that Augustus Caesar's death while termed, "a euthanasia" was not hastened by the actions of any other person.

Historically, euthanasia and assisted suicide have evolved and permeated ancient thoughts and societies often times with contrasting fortunes in its recognition and applicability, while some societies vehemently opposed and indeed, outlawed it. It met with greater sympathy, understanding and acceptability in many others. For example, in Jewish societies, obviously

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<sup>4</sup> The World Federation of Right to Die Societies, [www.worldnet.net](http://www.worldnet.net)

<sup>5</sup> A Roman Historian, in his Devita Caesarum – Darius Augustus (The lives of Caesars – The Deified Augustus).

<sup>6</sup> A General History of Euthanasia, [www.life.org.nz](http://www.life.org.nz)

tainted with religious and moral/ethical considerations, as contained in some strict religious injunctions such as the precept of 'thou shall not kill (without any form of qualifications), the Jews rejected every theory of euthanasia for the terminally ill or disable persons. Jewish societies therefore regard life as sacred and equated euthanasia and suicide (whether assisted or self -inflicted) ungodly.

In Ancient Rome, euthanasia and assisted suicide was criminalized and regarded as murder. The fortunes of Euthanasia fared better in Sparta. New born male children were often examined for signs of disability or sickness. Where any is found, they were put to death. This practice was seen as a way to protect the society from unnecessary burden.

Among the Greeks, suicide of the terminally ill was made easy and physicians gave poisoned drinks to such patients. The first objection, however, to this practice came from the Hippocratic oath with its pretext, "I will not administer poison to anyone when asked to do so, nor suggest such a course".

Europe in the Middle Age, no doubt due largely to the spread of Christianity, generally opposed euthanasia and assisted suicide for the same reason as Judaism. Accordingly, Europeans held to the belief that every individual has the right to live, since God created life, he too must enjoy the monopoly to take life. This view remains largely prevalent today.

European adventurism in Africa and the accompanying religious bigotry exported this culture of anti-euthanasia and assisted suicide to that part of the world. Post -colonial African countries therefore largely adopted this European view point.

It must however be pointed out that just like ancient European societies, there was no uniform precept or practice for or against euthanasia and assisted suicide in pre-colonial Africa. It may however be safely asserted that a vast majority of African societies condemned any form

of killing of another; terminally ill or not. Suicide was regarded as a taboo and in many African societies; the corpse of a deceased person who committed suicide is not buried within the inhabited part of the community but in some 'evil forest'.<sup>7</sup> Among most countries of the Middle East and North Africa due to similar religious considerations, in this case Islam, euthanasia and any form of suicide is also condemned.

At present, jurisdictions where euthanasia or assisted suicide is legal include the Netherlands, Belgium, Luxembourg, Switzerland, Estonia, Oregon, Montana and from 2015, the Canadian province of Quebec. Belgium legalized euthanasia for people over 18 in 2002 and in February 2014, this was extended to children of any age. This new Belgian law applying to children however includes certain safeguards: two doctors and a psychiatrist shall vet each case and the consent of the parents of affected children must be obtained.<sup>8</sup>

In the U.K, euthanasia and assisted suicide remain illegal. This is despite various attempts in the past years to change the law so that those who assist persons in the commission of suicide do not face subsequent prosecution<sup>9</sup>.

The recent tragic case of assisted suicide in Oregon of Brittany Maynard, an American who had a stage four malignant brain cancer and an ardent campaigner for "Death with dignity" and who was assisted to die on 21/11/2014, once again brought to the front burner the advocacy for the right to assisted suicide.<sup>10</sup>

### **Types of Euthanasia**

There are different forms of euthanasia. Essentially, it can be classified into the following heads:

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<sup>7</sup> Wikipedia, Euthanasia, en.wikipedia.com

<sup>8</sup> [www.Newscientist.com](http://www.Newscientist.com).

<sup>9</sup> Ibid.

<sup>10</sup> The Independent, *Brittany Maynard: Terminally Ill Cancer Patient and American Euthanasia Activist ends life by assisted suicide*, [www.independent.co.uk](http://www.independent.co.uk).

- (1) Active euthanasia
- (2) Passive euthanasia
- (3) Voluntary euthanasia
- (4) Non Voluntary euthanasia

According to the British Broadcasting Corporation, ethics guide,<sup>11</sup> active euthanasia entails direct and deliberate causing of the death of a patient. Passive euthanasia on the other hand entails a situation where death is not directly brought about, rather the patient is merely allowed to die. Therefore, in the case of active euthanasia, death arises out of an act e.g. the administration of an overdose of painkillers, passive euthanasia envisages a situation where the cause of death arises out of an omission. This may be by –

- (a) Withdraw up treatment e.g. switching off a life support machine, so that death occurs.
- (b) Withholding treatment e.g. withholding the conduct of life extending surgery.

Voluntary euthanasia usually arises at the request of the person who dies. Non voluntary euthanasia occurs when a person is unconscious or otherwise incapable of making a meaningful choice between living and dying and an appropriate person takes the lethal decision on his behalf e.g. a very young person or person with extremely low intelligence. The same can also be said of cases where the person is a child or an infant, generally regarded in the eyes of the law as legally incapable of giving consent, save by his parents, next friend or guardian *ad litem*.

### **KEY ARGUMENTS FOR AND AGAINST THE PRACTICE OF EUTHANASIA**

For ages, arguments for or against euthanasia are legion. These arguments, mostly very passionate are deeply rooted in moral/ethical, religious and legal considerations. Social and economic reasons have also been implicated in this regard.

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<sup>11</sup> [www.BBC.Co.UK/ethics/euthanasia/overview](http://www.BBC.Co.UK/ethics/euthanasia/overview).

The gravamen of some of these principal words trading can be distilled as follows:

### **Arguments for Euthanasia**

- It is an act of compassion
- It provides a way of relieving cases of extreme pain and anguish
- h of a terminally ill person when all hope of survival is clearly lost.
- It is an expression of the freedom to choose and of self-determination inherent in all individual recognized by nature and even by God.
- It preserves the bodily integrity and dignity of a terminally ill or incapacitated person.
- It frees up scarce medical funds to help other people who are less ill and with clear chances of survival.

### **Arguments Against Euthanasia**

- Euthanasia represents an attempt by man to play God
- It devalues human life i.e. degrade the sanctity of human life.
- It can easily become a selfish and short cut means of health care cost containment.
- Rather than being an act of compassion, euthanasia is indeed an act of cruelty.
- It is against natural laws of human relations.
- In the case of the involvement of physicians, it is against the Hippocratic oath.
- There is a “slippery slope” effect that has occurred where euthanasia has been first legalized for only the terminally ill and later laws were amended to allow it for other people or to be done non-voluntarily i.e. the real possibility of things becoming uncontrollable or of abuse of the process.

It is instructive to point out that, perhaps the strongest and most passionate opponents of euthanasia and assisted suicide are adherents of the major religions of the world. In the

Christendom, just as we saw in Judaism, euthanasia and assisted suicide are unacceptable and indeed, inconceivable. Among the Christians, the Catholics for example, drenched in this view point, clearly reject euthanasia and assisted suicide. According to them, they run contrary to the word of God as contained in the Holy Scriptures.

They believe strongly that life is a 'gift' from God. Man does not have 'absolute dominion' or control over this gratuitous gift. "We are mere stewards, not owners of our lives" they are often heard advocating. Consequently, the time, date and circumstances of our death can only be determined by God and no one else. This view is made more appealing to them given their resolute belief in divine miraculous intervention by God in the affairs of men at anytime. Indeed, even at the point of death when we least expect.

Similarly, in Islam the concept of sanctity of human life is also sacrosanct. Muslims believe that Allah (God) is the maker and the owner of life. He begins human life from conception and him alone can end it through natural death. Consequently, euthanasia and suicide (assisted or not) are not scripturally allowed. This is borne out by many verses of the Holy Koran. Some of these precepts include:

- "Do not kill yourselves, for verily Allah has been most merciful."<sup>12</sup>
- "... take not life which Allah has made sacred".<sup>13</sup>
- "... and (Allah) is the one who gave life, then shall he ordain you to die, then shall he give you life again, truly mankind is ungrateful".<sup>14</sup>

Indeed, Prophet Mohammed was said to have refused to bless the body of a person who had committed suicide.

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<sup>12</sup> The Holy Koran Chapter 4 verse 29

<sup>13</sup> Ibid, Chapter 6 verse 151.

<sup>14</sup> Ibid, Chapter 22 verse 66.



## **Some Notable/Celebrated Cases of Euthanasia /Assisted Suicide.**

### **1. The Case of Terri Schiavo<sup>15</sup>**

Terry Schiavo, a Philadelphia woman in the United States of Roman Catholic faith, on February 25, 1990, she collapsed in her Florida home in full cardiac arrest and suffered massive brain damage. She went into a vegetative state. In this state, she remained for over 15 years. Both her doctors and court appointed doctors returned the opinion that there existed no hope of recovery. Her husband and also her legal guardian by Florida law, Michael Shiavo, contended that it was his wife's wish that she was not to be kept alive through unnatural mechanical means and that her feeding tube be removed. This diagnosis and prescription was strongly opposed by her parents, Mr. and Mrs. Schendler. A highly publicized and prolonged series of legal challenges presented by them and by State and Federal legislative intervention caused a 7-year delay. During which time her husband described her state this way:

*I see a shell of somebody I used to know. Somebody I loved and adored very much. And now she's a shell... she is not existing. That's not life.*

After all attempt at appeals through the Federal Court system, including a futile signing of legislation designed to keep her alive by the US President, George W. bush, doctors at the Pinellas Park Hospital facility, where Terry was being cared for disconnected her feeding tubes on 18<sup>th</sup> March, 2005. Terry died 13 days later.

### **2. The Case of Tony Nicklinson<sup>16</sup>**

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<sup>15</sup> The Sanctity of Human Life is a basic concept in Islam, [www.spuc.org.uk](http://www.spuc.org.uk)

Also of very sad complexion is the case of Tony Nicklinson. In this case, a stroke in 2005 left Mr. Tony Nicklinson with 'locked-in syndrome' i.e. mentally sound but paralyzed from the neck down and incapable of speaking. He requested to be euthanized but was unsuccessful. As British law stands, any doctor who carried out her request might find themselves facing a charge of murder. Consequently, Tony Nicklinson instituted an action in a London High Court urging the judges to rule that if and when he decides to die, a doctor will be immune from prosecution if they help him. At the hearing, Nicklinson who communicates by blinking or with limited head movement described his existence as dull, miserable, demeaning, undignified and intolerable and not worth living.<sup>17</sup> He further bemoaned his present state of having no privacy or dignity left and having his right to choose life or death taken away.

His application for euthanasia or assisted suicide was refused by the High Court. Nicklinson died 6 days thereafter from starvation and pneumonia, after having refused food following the ruling. British police, rather significantly, declined conducting investigation into the circumstances of his death.

### **3. The Case of the Belgian Twins – Marc and Eddy Yerbesssem**

Marc and Eddy Yerbesssem 45, who were identical twins were both born deaf. They sought to end their lives after learning that they would also imminently go blind. They were also reported to have trudged from one medical condition to the other, including spinal and heart diseases.

Having spent their entire lives together, sharing an apartment and working as cobblers, the brothers told doctors that they could not bear the thought of not being able to see each other. Euthanasia, being legal in Belgium as we have seen, they contended that not been able to see

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<sup>16</sup> Cabel News Network, Background on the Schiavo Case, [www.cm.com/2005](http://www.cm.com/2005).

<sup>17</sup> Mail online, [www.dailymail.co.uk](http://www.dailymail.co.uk).

each other would amount to suffering unbearable pain within the contemplation of the law in Belgium to earn the right to euthanasia.

Their plea succeeded. Consequently, the pair was subsequently euthanized by lethal injections by doctors at Brussels University Hospital.

#### **4. The Case of Aruna Shanbang**

Aruna Shanbang was a nurse in India. In 1973, while at work at King Edward Memorial Hospital, Mumbai, she was sexually assaulted by a ward boy, Sohanlal Bhartha Walmiki, a sweeper in the same hospital. During the process of the sexual assault, he choked her with a dog chain. The asphyxiation cut off oxygen supply to her brain, resulting in brain stem contusion injury and cervical cord injury, leaving her cortically blind and in a vegetative state. An application for her to be allowed to die after having spent 37 years in this state was refused by the Indian Supreme Court. However, in a landmark judgment, it allowed passive euthanasia in India.<sup>18</sup>

#### **Laws on Euthanasia and Assisted Suicide in Nigeria**

##### **Statutes**

Under the Nigerian Criminal Code applicable in southern Nigeria and the Penal Code in the North, the term euthanasia cannot be found. In the Criminal Code, a person who kills another is liable to be convicted either for murder or manslaughter, depending on the circumstance.<sup>19</sup>

If the person kills that other at his request, he will still be so liable because consent is not a defence to either murder or manslaughter. These penal laws also make no provision for killing that is carried out with the assistance of a physician, the state of the patient notwithstanding. Therefore, under Nigerian Criminal Law, euthanasia is murder simpliciter.

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<sup>18</sup> Aruna Shanbang case, en.wikipedia.org.

<sup>19</sup> Criminal Code Law, section 315

This position is consistent with that in the United Kingdom and Wales and naturally flow from common law heritage of Nigeria.

In this regard, the Nigerian Criminal Code criminalizes the killing by one of another person unless such killing is authorized or justified by law.<sup>20</sup> Murder is defined under section 316 of the Code.

Furthermore, by the provisions of the code, any person who does any act or makes any omission which 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>21</sup>

This provision strikes directly at the heart of physician assisted suicide and when read together with section 326 of the Code, indeed all forms of assisted, or in the words of the statute, aiding suicide or criminalized and an offender is liable to be imprisoned for life. Also in this regard, an attempt to commit suicide is made punishable with a term of imprisonment for a year.<sup>22</sup>

Similar provisions are also contained in the Penal Code (as applicable in Northern Nigeria). Consequently, the combined effect of the above provision is that euthanasia and assisted suicide is illegal in Nigeria as things stand.

### **Euthanasia and Assisted Suicide As Basic fundamental human rights under the 1999 Nigerian Constitution**

The 1999 Constitution of Nigeria clearly provides for the right of every person to life and that no one shall be deprived intentionally of his life, save in the execution of the sentence of a

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<sup>20</sup> Ibid, sections 306 and 308.

<sup>21</sup> Ibid, section 311.

<sup>22</sup> Ibid section 327

court of a criminal offence of which he has been found guilty in Nigeria<sup>23</sup>. Section 33(2) (a-c) goes further to exclude certain situations where loss of life may be occasioned from the meaning of deprivation of life.

The above provision is consistent with other international human rights instruments such as the Universal Declaration of Human Rights 1948,<sup>24</sup> the American convention on Human Rights,<sup>25</sup> the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>26</sup> and the African Charter on Human and Peoples Rights,<sup>27</sup> all of which provide for and guarantee right to life.

From the provisions of section 33 of the 1999 Constitution like the above International Human Rights Instruments, it would appear that euthanasia is prohibited under the Constitution. The same can also be said of assisted suicide. The view has been strongly urged by anti-euthanasia/assisted suicide advocates. Quite clearly this will only be consistent with a literal interpretation of this section of the Constitution. After all, euthanasia and assisted suicide necessarily involves the intentional deprivation of the life of another person which the wordings of section 33(1) appear to prohibit.

But it is submitted that the interpretation of this section and indeed constitutional provisions must necessarily go beyond this rather over simplistic approach in order for one to accord the true and effectual meaning to the Constitution. In this regard, it is further submitted that section 33(1) of the Constitution cannot be read in isolation. In its interpretation, this section must be read together with other related provisions of the Constitution, particularly section 34(1) thereof. This approach is consistent with the mindset of Nigeria's apex court in this respect. The Nigerian Supreme Court has in a plethora of cases held that the interpretation of

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<sup>23</sup> S. 33(1).

<sup>24</sup> Article III

<sup>25</sup> Article 4

<sup>26</sup> Article 2

<sup>27</sup> Article iv

the Constitution must be given a broad and literal interpretation, particularly as they relate to fundamental human rights provisions. All relevant provisions of the Constitution must be read together and not disjointedly. In other words, what is often referred to as ‘the whole reading’ or ‘community reading rule’ must be adopted. This rule requires that constitutional provisions must be read in community and not in isolation, they must be accorded broad and liberal interpretation rather than narrow and restrictive interpretation which the literal approach often engenders.

See the following cases:

1. *Nafiu Rabiu v. State*<sup>28</sup>
2. *A.G of Bendel State v. A.G. Federation*<sup>29</sup>
3. *A.G. of Ogun v. A.G. Federation*<sup>30</sup>
4. *Lafia Local Government v. The Executive Government of Nasarawa State & 35 ors.*<sup>31</sup>

With the above Supreme Court roadmap, it is submitted that section 33(1) of the 1999 Constitution cannot be read in isolation. But must be read together with sections 34 & 35(1) of the Constitution which borders on the quality of human life and therefore ancillary to section 33(1) of the constitution.

Section 34 provides inter alia:

- (1) Every individual is entitled to respect for the dignity of his person, and accordingly –
  - (a) No person shall be subjected to torture or to inhuman or degrading treatment
  - (b) No person shall be held in slavery or servitude...

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<sup>28</sup> (1981) 2 NCLR 293

<sup>29</sup> (1982) 3 NCLR 166

<sup>30</sup> (1982) 3 NCLR I

<sup>31</sup> (2013) All FWLR (Pt. 608), 956

By the provisions of Section 35(1) every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in cases spelt out therein and in accordance with a procedure permitted by law.

Where this guide is adopted, the corresponding right of a terminally ill-patient to his basic right to human dignity and right to personal liberty cannot be ignored simply because his life is guaranteed by the Constitution. No doubt, it has been rightly contended that this basic right to life is the most important of all rights, upon which plank other rights rests, but it is submitted that the right to life must necessarily go beyond the continuous functionality of basic human organs. Consideration must be given to the nature and quality of such life. This is made more imperative with modern technological advancement which enables human organs to be kept alive even where a patient is functionally dead and in a permanent and hopeless vegetative state. This cannot be what section 33 of the constitution contemplates.

Also inherent and a necessary corollary to the right to life, is the right to dignity of every human and the right to be free of a permanent state of torture and inhuman or degrading treatment within the contemplation of section 34(1) of the Constitution. The image of a terminally ill patient trapped within a body and undergoing constant and permanent pains, torture and suffering with no hope of recovering and without a possibility of medical euthanasia or assisted suicide cannot be the intention of the makers of the Constitution in section 33(1).

It is little wonder that even staunch anti-euthanasia advocates often times when faced with this situation in the case of a family member or friend, breathe a sigh of relief when such terminally ill relation or friend in the above conditions of excruciating pains and suffering finally dies. It is not uncommon to hear some mutter uncomfortably under their breath, of the deceased, the sad words '*at least let him go and rest*'.

The sad case of Tony Nicklinson is particularly noteworthy in this regard. Also instructive as has been pointed out, is the fact that his death coming only a few days after his application for euthanasia was refused by the London High Court was quietly received with such relief that the UK police did not consider it necessary to conduct an investigation into the circumstances of his eventual death and quickly issued a statement to this effect.

Furthermore, as it relates to the right to personal liberty under section 35 of the Constitution, it is submitted that this right must be interpreted as clearly going beyond simply a freedom of movement. It necessary must entail the concept of individual autonomy or self – determination / the right to choose. This right continues to inure even to the terminally ill and indeed becomes more imperative.

The right to voluntary euthanasia or assisted suicide must necessarily find accommodation within section 35 of the Constitution. Therefore, it is submitted that a denial of the right of a terminally ill adult with full mental capacity to choose to die by way of euthanasia or assisted suicide or to decide to choose or reject a medical mode of treatment which may result in his death constitute a breach of sections 34 and 35 of the Constitution. This submission it must be added does not necessarily derogate from the provisions of section 33 thereof and is consistent with the reasoning and the decision of the Nigerian Supreme Court in the celebrated case of *Medical and Dental Practitioners Disciplinary Tribunal v. Dr. John Emewulu N. Okonkwo*.<sup>32</sup> Where the Supreme Court of Nigeria upheld a patient's right to self-determination within the context of his constitutionally guaranteed right to freedom of conscience and religion. Because of the significant nature of this case to this paper, it is imperative that we examine it in greater details.

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<sup>32</sup> (2001) 6 NWLR (Pt 710)2, (2001) All NLR 305



In this case, a patient, Mrs. Martha Okonkwo and her husband, being members of the Jehovah's' Witness sect i.e. a Christian religious sect, gave birth to a baby. She subsequently refused life-saving blood transfusion after complications arose. She was later re-admitted in the hospital of the respondent, himself also a Jehovah's' Witness, who managed the patient without life-saving blood transfusion until she eventually died on 22/08/1991.

The respondent was subsequently found culpable of professional negligence and suspended for 6 months by the Medical and Dental Practitioners Disciplinary tribunal. He appealed to the Court of Appeal. After his successful appeal at the Court of Appeal, the tribunal appealed to the Supreme Court. The Supreme Court upheld the paramouncy of a patient's right to consent to medical intervention/treatment. Where therefore, upon evidence that the patient was a mature, competent adult, the constitutional right to privacy include the right of such a patient to refuse treatment that may prolong his life. Even though that refusal may seem unwise, foolish or ridiculous to others and may ultimately lead to death. The Supreme Court per Ayoola JSC went ahead to state as follows:

*Prevailing medical ethical practice does not, without exception demand that all efforts towards life prolongation be made in all circumstances, but seem to recognize that the dying are more often in need of comfort than of treatment. 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 than to give the patient's comfort?... (Emphasis mine).*

Arising from the above decision, one may naturally be permitted to wonder aloud and ask the question; if a patient has the constitutional right to unwisely refuse necessary and lifesaving medical treatment/intervention, predictably leading to death, such as Mrs. Okolie in this case, which in our view is akin to one voluntarily committing suicide, why should a terminally ill

patient suffering from unbearable pains and anguish be denied his basic constitutional rights under sections 34 and 35 and so be treated differently. This no doubt will be discriminatory and in breach of section 42 of the Constitution.

This Supreme Court decision, it is submitted, is clearly in support of at least the cardinal principles in favour of voluntary euthanasia/assisted suicide. Terminally ill persons cannot in deserving and compelling cases be denied the right to euthanasia or assisted suicide simply because of general right to life even where it is obvious that what one is seeking to preserve is not life within the meaning of the Constitution devoid of any form of dignity, but 'hell'. The teary statement of Mr. Nicklinson that he has been completely devoid of all forms of human dignity really brings home this sad fact which is often overlooked by anti-euthanasia advocates.

## **Conclusion**

In conclusion, it must be stated that the time has come for courts, particularly the Nigerian apex courts to uphold the right to voluntary euthanasia and assisted suicide for the terminally ill who is embedded in a regime of unbearable pains, suffering and torture with no hope of recovery. Necessary legislations must be put in place as has been done in some countries of the world where euthanasia and assisted suicide has been legalized. This will also entail effecting amendments to existing penal laws which clearly seek to discourage the exercise of these rights. The proposed new legislations shall not only recognize and make provisions for voluntary euthanasia and assisted suicide in special circumstances depending on the facts of each case, but must also include safeguards against possible abuse. The decision as to what constitute such special circumstances shall be placed in the hands of the judiciary.

In fact, the Supreme Court in the Okonkwo's case (supra) has fashioned out a template for this when it stated thus:

*“... the courts are the institutions society has agreed with the responsibility of balancing conflicting interests in a way as to ensure the fullness of liberty without destroying the existence and stability of society itself...”*.