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Euthanasia & human rights in the Netherlands

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MCCL GO contribution to the Human Rights Council's Universal Periodic Review of the Netherlands

Although the practice of euthanasia in the Netherlands has received significant outside scrutiny, few have considered the issue in light of the nation's human rights obligations. The Minnesota Citizens Concerned for Life Education Fund urges the Human Rights Council to take this matter into serious consideration. In the following contribution, we explain how the practice of euthanasia and assisted suicide in the Netherlands violates the right to life, the right to health, and non-discrimination. These rights are protected by international human rights instruments to which the Netherlands is a party.

An overview of euthanasia and assisted suicide in the Netherlands

Euthanasia may be defined as the intentional killing (typically by lethal injection) of a patient for his or her alleged benefit (e.g., for the purpose of relieving the patient's suffering). Assisted suicide is when someone (usually a physician) assists the patient in the intentional taking of his or her own life (such as by prescribing a lethal drug overdose). Both of these acts are different from merely allowing death by withdrawing or withholding medical treatment.

The Netherlands codified euthanasia and assisted suicide into law in 2002 (though euthanasia was practiced and legally accepted long before then). Under the Termination of Life on Request and Assisted Suicide Act, physicians may euthanize or assist in the suicide of patients if certain criteria are met. Patients must, for example, experience "unbearable suffering," and they must make a voluntary request for euthanasia. They need not have a terminal illness. Patients as young as 12 years old may ask for euthanasia.

But these requirements don't tell the whole story. The "suffering" required for eligibility has been interpreted very broadly and very subjectively, encompassing psychological and emotional pain. One woman in her 20s, for example, received a lethal injection because she had been sexually abused and was still traumatized by the experience.¹ A mother of two teenage children received assisted suicide because she had tinnitus (a ringing in the ears).² A 70-year-old was killed because she couldn't see and considered blindness to be "unbearable suffering."³ Dutch euthanasia patients include people with dementia and people with only psychiatric (non-physical) problems, such as depression, loneliness, and post-traumatic stress. They also include people who are "tired of living."⁴

Moreover, physicians in the Netherlands euthanize some patients who have made no explicit request for death. Most such patients are mentally incompetent (they may, for example, have advanced dementia or be in a coma). This non-voluntary euthanasia is not classified as "euthanasia" in the Netherlands and thus falls outside of the euthanasia policy. It has rarely been prosecuted.

In addition, euthanasia is not, in fact, limited to those who are at least 12 years old. The Groningen Protocol, which has been accepted by the Dutch medical profession, establishes criteria according to which doctors may, without fear of prosecution, euthanize human infants with the permission of their parents. (This is another form of non-voluntary euthanasia and is not classified as "euthanasia" in the Netherlands.) Some of the babies who are euthanized would otherwise be expected to die from an underlying condition. Others have received a very poor prognosis and would require intensive care. And a third category of infants are those who are "not

dependent on intensive medical treatment but for whom a very poor quality of life, associated with sustained suffering, is predicted."⁵ These babies usually have disabilities such as spina bifida.

The reported number of Dutch patients killed through euthanasia and assisted suicide has increased substantially—rising from 2,331 in 2008 to 5,516 in 2015. (These numbers do not include those who are killed without an explicit

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request.) In 2015, 109 dementia patients were euthanized, and 56 people were killed for psychiatric reasons; both figures have increased significantly in recent years. Cancer, however, remains by far the most common underlying condition among those who die by euthanasia.⁶

Euthanasia in the Netherlands violates the right to life

The euthanasia and assisted suicide practiced in the Netherlands involve the intentional killing of human beings. But international human rights instruments—including binding treaties to which the Netherlands is a party—recognize the right to life of all human beings. They also require protection of this right by law.

The Universal Declaration of Human Rights (UDHR) affirms "the inherent dignity and ... equal and

¹ Matt Payton, "Sex Abuse Victim in Her 20s Allowed by Doctors to Choose Euthanasia Due to 'Incurable' PTSD," *The Independent*, May 11, 2016.

² Sue Reid, "The Country Where Death Is Now Just a Lifestyle Choice: A Mum with Ringing Ears. Babies Whose Parents Don't Want Them to Suffer. They've All Been Allowed to Die by Assisted Suicide in Holland," *Daily Mail*, January 1, 2015.

³ DutchNews.nl, "Woman, 70, Is Given Euthanasia after Going Blind," October 7, 2013.

⁴ See, for example, Marianne C. Snijdewind et al., "A Study of the First Year of the End-of-Life Clinic for Physician-Assisted Dying in the Netherlands," *JAMA Internal Medicine*, Vol. 175, No. 10 (October 2015), pp. 1633-40.

⁵ Eduard Verhagen and Pieter J.J. Sauer, "The Groningen Protocol—Euthanasia in Severely Ill Newborns," *The New England Journal of Medicine*, Vol. 352, No. 10 (March 10, 2005), pp. 959-62.

⁶ Netherlands Regionale Toetsingscommissies Euthanasie, *Jaarverslag 2015*, April 2016.

inalienable rights of all members of the human family” (preamble). It also states, “Everyone has the right to life, liberty and security of person” (Article 3). The International Covenant on Civil and Political Rights (ICCPR) declares, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life” (Article 6.1). The European Convention on Human Rights states, “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally” (Article 2.1).

Human dignity and rights, these documents proclaim, are *inherent*. Human beings have a right to life simply because they are human—regardless of age, ability, health, dependency, or other characteristics. This right protects all individuals from intentional killing. Why should it not protect those who are killed through euthanasia? States must safeguard the lives of everyone.

One could assert that the right to life does not apply if the killing is voluntary (on the part of the one who is killed). But human rights treaties make no such exception. Moreover, the treaties consider the right to life to be an *inalienable* right. The ICCPR, following the UDHR, affirms “the equal and inalienable rights of all members of the human family” (preamble). And an inalienable right is one that cannot be taken away or forfeited by the rights-bearer. An individual’s desire to die, therefore, does not nullify his or her right to life.

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Even if the right to life could be forfeited, however, euthanasia in the Netherlands is not always a free and voluntary choice. One former member of a Dutch regional euthanasia review committee estimates that 20 percent of euthanasia patients feel pressure to die from family members or family circumstances. A survey published by the Royal Dutch Medical Association found that 70 percent of doctors had experienced pressure to euthanize patients.⁷

In its most recent evaluation of the Netherlands, the United Nations Human Rights Committee noted that it “remains concerned at the extent of euthanasia and assisted suicides in the State party. Under the law on the Termination of Life on Request and Assisted Suicide, although a second physician must give an opinion, a physician can terminate a patient’s life without any independent review by a judge or magistrate to guarantee that this decision was not the subject of undue influence or misapprehension.” The Committee urged that the Dutch law “be reviewed in light of the [ICCPR’s] recognition of the right to life.”⁸

Most disturbing, however, is the fact that doctors in the Netherlands intentionally kill some (usually incompetent) patients who have made no explicit request for death. Government-sponsored national surveys—conducted every five years—indicate that hundreds of patients each year are euthanized without an explicit request. In 2010, according to the latest study, 310 patients were so killed; in 2005, a total of 550 were euthanized without request.⁹ In cases like these, the right to life has been flagrantly violated.

Similarly, the killing of newborns involves no request or consent on the part of the one who is killed. The Human Rights Committee condemned infant euthanasia in 2001. “The Committee is gravely concerned at reports that new-born handicapped infants have had their lives ended by medical personnel. The [Netherlands]

⁷ DutchNews.nl, “Pressure on Patients Is Cause for Concern: Euthanasia Expert,” July 3, 2015.

⁸ U.N. Human Rights Committee, “Concluding Observations of the Human Rights Committee, The Netherlands,” U.N. doc CCPR/C/NLD/CO/4, August 25, 2009.

⁹ Bregje D. Onwuteaka-Philipsen et al., “Trends in End-of-Life Practices Before and After the Enactment of the Euthanasia Law in the Netherlands from 1990 to 2010: A Repeated Cross-Sectional Survey,” *The Lancet*, Vol. 380, No. 9845 (September 8, 2012), pp. 908–15.

should scrupulously investigate any such allegations of violations of the right to life (article 6 of the [ICCPR]), which fall outside the law on euthanasia.”

The current practice of euthanasia in the Netherlands is not compatible with the right to life guaranteed by international law.

The Committee also expressed concern about the euthanasia of children as young as 12 years old. “The Committee considers it difficult to reconcile a reasoned decision to terminate life with the evolving and maturing capacities of minors. In view of the irreversibility of euthanasia and assisted suicide, the Committee wishes to underline its conviction that minors are in particular need of protection.”¹⁰ Likewise, the United Nations Committee on the Rights of the Child wrote in 2015 that it “remains concerned that euthanasia can be applied to patients under 18 years of age. The Committee is also concerned about the insufficient transparency and oversight of the practice.”¹¹

For all of these reasons, the current practice of euthanasia in the Netherlands is not compatible with the right to life guaranteed by international law.

Euthanasia in the Netherlands violates equality and non-discrimination

The Netherlands’ euthanasia policy authorizes the killing of only those who ostensibly meet certain criteria. Most people are protected under the law while others—typically people who have diseases, disabilities, or mental problems—are deemed eligible to be killed.

But the right to life protects not only the young, healthy, and able-bodied, but also the elderly, sick, and disabled. Discrimination in law is contrary to the equality and non-discrimination required by international human rights instruments. The UDHR guarantees the rights and freedoms of everyone “without distinction of any kind” (Article 2) and states, “All are equal before the law and are entitled without any discrimination to equal protection of the law” (Article 7). The ICCPR also prohibits discrimination (Article 26).

The non-voluntary euthanasia of disabled infants, practiced in the Netherlands under the Groningen Protocol, is an especially clear violation of equality and non-discrimination. The Convention on the Rights of Persons with Disabilities (CRPD) considers “discrimination against any person on the basis of disability ... a violation of the inherent dignity and worth of the human person” (preamble). Parties to the CRPD “reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others” (Article 10). More specifically, the CRPD calls on states to “ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children” (Article 7.1).

By authorizing the killing of some human beings, Dutch law creates a distinction in how it treats different categories of people. It also sends a message to society about the kind of lives that are worth living and the kind that are not. This discrimination must be rejected.

Euthanasia in the Netherlands violates the right to health

The International Covenant on Economic, Social and Cultural Rights protects “the right of everyone to the

¹⁰ U.N. Human Rights Committee, “Concluding Observations of the Human Rights Committee, The Netherlands,” U.N. doc CCPR/CO/72/NET, 2001.

¹¹ U.N. Committee on the Rights of the Child, “Concluding Observations on the Fourth Periodic Report of the Netherlands,” U.N. doc CRC/C/NDL/CO/4, June 8, 2015.

enjoyment of the highest attainable standard of physical and mental health” (Article 12.1). The facilitation of euthanasia, in at least some instances, can prevent patients from receiving the full health care to which they are entitled, especially palliative and mental health care.

A 2016 study published in *JAMA Psychiatry* reviewed the cases of 66 Dutch patients who were euthanized for psychiatric reasons. Depression was the primary issue in 55 percent of the cases. A majority of patients were described as socially isolated or lonely. Some had post-traumatic stress, eating disorders, or autism. And 56 percent of patients had refused some recommended treatment—yet were still granted euthanasia. The authors of the study note that the “granting of [euthanasia] requests appears to involve considerable physician judgment, usually involving multiple physicians who do not always agree (sometimes without independent psychiatric input).” In 12 percent of cases, the psychiatrist who was involved did not believe that the legal criteria for euthanasia had been met.¹²

The right to health includes the right to mental health. There can be little doubt that the mental health of some Dutch euthanasia patients has not been adequately addressed.

In addition, the United Nations Committee on Economic, Social and Cultural Rights has expressed concern regarding “reports that many older persons are denied appropriate care, including in nursing homes, due to the insufficient number of caregivers, the lack of sufficiently trained personnel and the absence of a comprehensive enactment on geriatric health care.” The Committee called on the Netherlands “to accord priority to the improvement of the health-care system for older persons, in order to meet its obligation of ensuring availability, accessibility, acceptability and quality of health care for them.”¹³ There is a danger that, in such an environment, euthanasia may serve as a replacement for the care that patients deserve.

The killing of disabled infants—especially those whose deaths are not imminent—also violates the right to health. The Convention on the Rights of the Child protects “the right of the child to the enjoyment of the highest attainable standard of health” (Article 24.1) and calls on nations to “ensure to the maximum extent possible the survival and development of the child” (Article 6.2). It affirms, in particular, “the right of the disabled child to special care” (Article 23.2) and states that “a mentally or physically disabled child should enjoy a full and decent life” (Article 23.1).

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Recommendations

The Netherlands has committed to human rights instruments that guarantee the right to life, the right to health, and non-discrimination. But all of these guarantees are violated by the country’s current practice of euthanasia. Therefore, to fulfill its international human rights obligations, the Netherlands should enact legislation to prohibit euthanasia and assisted suicide, and should work to eliminate the intentional killing of patients who have made no explicit request for death. These changes are necessary to protect human rights and to safeguard the most vulnerable members of society.

¹² Scott Y. H. Kim et al., “Euthanasia and Assisted Suicide of Patients with Psychiatric Disorders in the Netherlands 2011 to 2014,” *JAMA Psychiatry*, Vol. 73, No. 4 (April 2016), pp. 362-68.

¹³ U.N. Committee on Economic, Social and Cultural Rights, “Concluding Observations of the Committee on Economic, Social and Cultural Rights, the Kingdom of the Netherlands,” U.N. doc E/C.12/NDL/CO/4-5, December 9, 2010.