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Assisted suicide & human rights in Switzerland

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

The practice of assisted suicide in Switzerland is quickly growing and, through suicide tourism, affects people all around the world. The Minnesota Citizens Concerned for Life Education Fund urges the Human Rights Council to consider this issue in light of the nation's human rights obligations. The Swiss practice of assisted suicide threatens the right to life, the right to health, and non-discrimination. These rights are protected by international human rights instruments to which Switzerland is a party.

An overview of assisted suicide in Switzerland

Assisted suicide is when an individual (or group of individuals) deliberately assists someone else in the intentional taking of his or her own life. Those who die by assisted suicide usually ingest a lethal drug overdose, such as a barbiturate dissolved in liquid. Under Swiss law, assisting suicide cannot be prosecuted unless the assistance is motivated by selfishness (e.g., the possibility of financial gain from the death). Article 115 of the Swiss Criminal Code states: "Any person who for selfish motives incites or assists another to commit or attempt to commit suicide is, if that other person thereafter commits or attempts to commit suicide, liable to a custodial sentence not exceeding five years or to a monetary penalty."

The Swiss law originated in 1942, but not until 40 years later did organizations begin to arise with the purpose of facilitating suicide. Today, EXIT Deutsche Schweiz, EXIT Suisse Romande, Dignitas, and other end-of-life associations offer assisted suicide to their members. The scope of their suicide assistance is constrained, however, by the fact that physicians are needed to write prescriptions for the drugs typically used in assisted suicide, and physicians are expected to follow medical ethics guidelines. (The European Court of Human Rights has criticized

these guidelines, though, for a lack of clarity as to “under which circumstances a doctor is entitled to issue a [lethal] prescription ... to a patient who ... is not suffering from a terminal illness.”¹)

Accordingly, end-of-life organizations apply certain criteria to determine who is eligible for their suicide assistance. Dignitas, for example, requires that assisted suicide patients “be of sound judgment” and have either (1) a terminal illness, (2) “unendurable disabilities,” or (3) “unbearable pain.” Dignitas assists in the suicides of some people who have only mental health problems (rather than physical problems) and some people who have no health problems at all but “who wish to end their life because they feel that it has become too arduous for them due to old age.”²

The incidence of assisted suicide in Switzerland has consistently and significantly increased over time. A total of 742 assisted suicide deaths among Swiss residents were registered for the year 2014 (the latest year for which government data is available), according to the Federal Statistical Office. That’s a 26 percent increase over the previous year and a 150 percent increase from five years earlier. The assisted suicide total has risen every year since 2008.³ The end-of-life organization EXIT reports that, in 2015 alone, it assisted in 782 suicides, a 34 percent jump over the previous year and 70 percent increase since 2013.³ Among assisted suicide patients from 2010-2014, according to the Federal Statistical Office, 42 percent had cancer; 14 percent had neurodegenerative disorders; 11 percent had cardiovascular illnesses; 3 percent had depression; and 0.8 percent had dementia.⁵

The circumstances in which assisted suicide is deemed acceptable have clearly expanded. A study in the *Journal of Medical Ethics* found a growing percentage (32 percent) of EXIT Deutsche Schweiz patients who had no terminal illness. The study concluded that many patients were opting for suicide because they were “weary of life,” not because they had a “fatal or hopeless medical condition.”⁶ A 2014 study of assisted suicides facilitated by end-of-life organizations in Switzerland found that in 16 percent of cases no underlying illness was even listed on the death certificate.⁷

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Stories publicized in the media over the last few years confirm the flexibility of Swiss assisted suicide guidelines. Two elderly cousins who were not terminally ill received assisted suicide because they feared living alone.⁸ One woman, who was reportedly in good health, sought and received an assisted suicide because she was upset about losing her physical appearance as she grew older.⁹ Another woman who died by assisted suicide was not sick but worried about a declining “quality of life” and felt that her life was “complete.”¹⁰ And another person chose assisted suicide because she felt alienated from the modern world.¹¹

¹ European Court of Human Rights, *Gross v. Switzerland*, Application No. 67810/10, May 14, 2013.

² Dignitas, “Brochure of Dignitas,” <http://www.dignitas.ch/images/stories/pdf/informations-broschuere-dignitas-e.pdf> (accessed March 28, 2017).

³ Federal Statistical Office, “Cause of Death Statistics 2014: Assisted Suicide and Suicide in Switzerland,” October 11, 2016.

⁴ SWI swissinfo.ch, “EXIT Reports Jump in Assisted Suicide Numbers,” March 2, 2016.

⁵ Federal Statistical Office, “Cause of Death Statistics 2014: Assisted Suicide and Suicide in Switzerland.”

⁶ Susanne Fischer et al., “Suicide Assisted by Two Swiss Right-to-Die Organisations,” *Journal of Medical Ethics*, Vol. 34, No. 11 (2008), pp. 810-14.

⁷ Nicole Steck et al., “Suicide Assisted by Right-to-Die Associations: A Population Based Cohort Study,” *International Journal of Epidemiology*, Vol. 43, No. 2 (2014), pp. 614-22.

⁸ Lyndsey Telford, “Elderly Cousins Undergo Joint Euthanasia for Fear of Being Separated,” *The Telegraph*, February 1, 2015.

⁹ Hannah Roberts, “Italian Woman, 85, Ends Her Life at Swiss Euthanasia Clinic Because She Was Upset about Losing Her Looks,” *Daily Mail Online*, February 20, 2014.

¹⁰ “Death of Healthy Ex-Nurse at Swiss Suicide Clinic ‘Deeply Troubling,’” *BT News*, August 3, 2015.

¹¹ Adam Withnall, “Retired British Art Teacher Ends Life at Dignitas ‘Because She Couldn’t Adapt to Modern World,’” *The Independent*, April 6, 2014.

Under Swiss law, a recipient of assisted suicide need not be a citizen of Switzerland. This has led to a practice that is sometimes called “suicide tourism”—when citizens of other countries travel to Switzerland for the purpose of ending their lives through assisted suicide. Dignitas and some of the other end-of-life organizations facilitate the suicides of foreign nationals. A 2014 study of suicide tourism found that assisted suicides of foreign patients in Switzerland were “increasing unabated,” including cases involving mental illness and non-terminal diseases. Among the cases studied, 227 involved cancer; 40 involved impairment of eyesight or hearing; 37 involved arthritis; and 14 involved mental illness.¹²

Assisted suicide and the right to life

The assisted suicide practiced in Switzerland involves, by definition, the intentional killing of human beings. But international human rights instruments—including binding treaties to which Switzerland 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 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. It must be understood, therefore, to protect those who are killed through assisted suicide. States should not permit individuals to actively facilitate the suicides of others. They 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.

Even if the right to life could be forfeited, however, assisted suicide in Switzerland may not always be a free and competent choice. In its latest evaluation of Switzerland, the United Nations Human Rights Committee wrote that it is “concerned about the lack of independent or judicial oversight to determine that a person seeking assistance to commit suicide is operating with full free and informed consent.” The Committee concluded that Switzerland “should consider amending its legislation” to ensure such oversight.¹³

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¹² Saskia Gauthier et al., “Suicide Tourism: A Pilot Study on the Swiss Phenomenon,” *Journal of Medical Ethics*, Vol. 41, No. 8 (2014).

¹³ U.N. Human Rights Committee, “Concluding Observations of the Human Rights Committee, Switzerland,” U.N. doc CCPR/C/CHE/CO/3, November 3, 2009.

Evidence shows that the Committee's concerns are warranted. Many patients with psychiatric disorders, including depression, have received assisted suicide in Switzerland. A study of assisted suicides performed by Swiss end-of-life groups found 20 cases in which a mental health problem was the sole underlying condition mentioned.¹⁴ An older study of 43 assisted suicide cases published in *Swiss Medical Weekly* found that 14 percent of individuals dying by assisted suicide had been treated in a psychiatric institution. In 12 percent of cases, patients chose assisted suicide because of bereavement.¹⁵ Other research has indicated that requests for death—even among terminally ill patients—are closely associated with depression that is potentially treatable.¹⁶ Depression, bereavement, and similar factors hinder a person's judgement and prevent proper consent.

Moreover, the *Swiss Medical Weekly* study determined that in 23 percent of cases the length of time between an assisted suicide patient's first contact with EXIT and the actual suicide was less than a week; in 9 percent of cases the length of time was less than a day.¹⁷ Given such a short window of time, there is no guarantee that individuals who die by assisted suicide are making truly free and competent choices.

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Assisted suicide, equality, and non-discrimination

Suicide is not considered generally acceptable in Switzerland or elsewhere. Indeed, the latest evaluation by the United Nations Committee on Economic, Social, and Cultural Rights expressed concern regarding “the high rate of suicides in the State party, which is reported to be three to four daily, in particular among young people.” The Committee called on Switzerland to “take effective measures to combat suicide, including through the adoption and implementation of a national action plan for the prevention of suicide.”¹⁸ And Switzerland has pursued such anti-suicide measures.

Under Swiss law, however, it is permissible to facilitate the suicides of individuals who meet certain criteria. Most of these patients have illnesses or disabilities. 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).

A 2013 study of Swiss assisted suicide patients' experiences found that patients chose assisted suicide largely because they were concerned about losing autonomy and becoming more dependent on others. “Pain and symptom burden were not regarded by patients as key reasons to seek assisted suicide,” the study's authors conclude. Rather, “existential distress and fear of loss of control were the determinants. ... A general need for perceived control and fear of dependency were reported as a common characteristic of these patients.”¹⁹ Patients

¹⁴ Nicole Steck et al., “Suicide Assisted by Right-to-Die Associations: A Population Based Cohort Study.”

¹⁵ Andreas Frei et al., “Assisted Suicide as Conducted by a ‘Right-to-Die’-Society in Switzerland: A Descriptive Analysis of 43 Consecutive Cases,” *Swiss Medical Weekly*, Vol. 131 (2001), pp. 375-80.

¹⁶ H.M. Chochinov et al., “Desire for Death in the Terminally Ill,” *American Journal of Psychiatry*, Vol. 152, No. 8 (1995), 1185-91.

¹⁷ Andreas Frei et al., “Assisted Suicide as Conducted by a ‘Right-to-Die’-Society in Switzerland: A Descriptive Analysis of 43 Consecutive Cases.”

¹⁸ U.N. Committee on Economic, Social and Cultural Rights, “Concluding Observations of the Committee on Economic, Social and Cultural Rights, Switzerland,” U.N. doc E/C.12/CHE/CO/2-3, November 26, 2010.

¹⁹ C. Gamondi et al., “Families' Experiences with Patients Who Died after Assisted Suicide: A Retrospective Interview Study in Southern Switzerland,” *Annals of Oncology*, Vol. 24, No. 6 (2013), pp. 1639-44.

request assisted suicide, therefore, because they have become or fear becoming disabled. Switzerland permits assistance in their suicides even as it aims to *prevent* the suicides of others.

This is a violation of international law. 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).

By authorizing assistance in the suicides of some human beings, Swiss 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.

Assisted suicide and the right to health

The International Covenant on Economic, Social and Cultural Rights protects “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (Article 12.1). The facilitation of suicide, in at least some instances, can prevent patients from receiving the full health care to which they are entitled. That includes mental health care. Many assisted suicide patients in Switzerland suffer from depression or other mental disorders, and a study in the *International Journal of Epidemiology* determined that assisted suicide is associated with living alone.²⁰ These patients should not be abandoned to suicide.

The practice of assisted suicide also points to a failure, in some cases, to ensure proper palliative care. A 2013 study found that Swiss assisted suicide patients “held misunderstandings about the nature and purpose of palliative care.” The study noted that these patients had “some negative preconceptions about the use of morphine and other drugs which were believed to reduce consciousness leading to incapacity in decision making.” Moreover, the study’s authors explain, “some patients did not recognize the [palliative care] professionals as possible partners in discussing their existential and moral concerns.”²¹ These issues must be addressed so that patients receive the care they need.

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Assisted suicide also has other health implications that hinder the enjoyment of the right to health. A study of people in Switzerland who witnessed the assisted suicide of a family member or close friend found that 20 percent experienced some form of post-traumatic stress disorder. Sixteen percent of those surveyed experienced depression, the study noted, and 5 percent met the criteria for complicated grief.²²

Conclusion

Switzerland 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 threatened by the country’s current practice of assisted suicide. Therefore, to fulfill its international human rights obligations, Switzerland should change its law by prohibiting assisted suicide. This change is necessary to protect human rights and to safeguard elderly, sick, disabled, and other vulnerable members of society.

²⁰ Nicole Steck et al., “Suicide Assisted by Right-to-Die Associations: A Population Based Cohort Study.”

²¹ C. Gamondi et al., “Families’ Experiences with Patients Who Died after Assisted Suicide: A Retrospective Interview Study in Southern Switzerland.”

²² B. Wagner et al., “Death by Request in Switzerland: Posttraumatic Stress Disorder and Complicated Grief after Witnessing Assisted Suicide,” *European Psychiatry*, Vol. 27, No. 7 (2012), pp. 542-6.