

Is it time for South Africa to resuscitate the national dialogue on the right to end one's own life?

In June this year, members of Parliament in the UK approved a bill that gives terminally ill adults in England and Wales the right to end their own lives, sparking debate on the topic globally. The Terminally Ill Adults Bill was backed by 314 votes to 291. It now goes to the House of Lords for further scrutiny.^[1] The Bill was debated for the first time in November last year, where it was approved by a majority of 55.^[2] At the recent sitting, there was a drop to 23. Should the House of Lords approve the Bill later this year, ministers would have a maximum of 4 years to implement the measures, hence assisted dying could only become available in 2029.^[1] A number of countries, including Austria, Germany, Italy, New Zealand, Portugal, Spain and some Australian states, have changed laws to permit assisted dying.^[3]

Under South African (SA) law, it is illegal for terminally ill patients to consent to assisted dying, meaning that terminally ill adults do not have the right to end their own lives. A medical practitioner who assists a patient with this will be criminally charged with murder, despite the patient agreeing to the practice. Currently, only withholding and withdrawing life-sustaining treatment is allowed in the country. In 2015, a court challenge against the existing legal position on euthanasia and assisted dying was heard in the case of *Stransham-Ford v Minister of Justice and Correctional Services and Others* (4 May 2015). In this much-publicised case, Mr Stransham-Ford, who at the time was suffering from stage 4 carcinoma, applied to the High Court to end his own life, by having a medical practitioner either administer or provide him with a lethal substance to do so. The court granted an order that declared that the medical practitioner would not be acting unlawfully in assisting Mr Stransham-Ford to end his life, but this was 2 hours after he had died. Hence the judgement had to be rescinded by the Presiding Judge as the applicant was no longer alive. Accordingly, no precedent was set, and the practice of assisted dying remains illegal. Furthermore, the Supreme Court of Appeal held that the current legal standing of euthanasia had not been adequately examined. Therefore, a landmark case was prevented from coming to fruition by a matter of 2 hours, and the discussion and debate on the legality of the right to die continues.^[4]

The problem was comprehensively considered in the November 1998 South African Law Commission Report, Project 86: Euthanasia and the Artificial Preservation of Life.^[5] It was stated in the report that society was divided, and moral controversy was rife when it came to active euthanasia. While the commission explored various options for legal clarification on end-of-life decisions, including living wills and the artificial preservation of life, it did not make specific recommendations on the right to end one's own life.

A discussion on the right to end one's own life needs to also include considerations around the availability and quality of palliative care, which the World Health Organization (WHO) defines as 'an

approach that improves the quality of life of patients (adults and children) and their families who are facing problems associated with life-threatening illness. It prevents and relieves suffering through the early identification, correct assessment and treatment of pain and other problems, whether physical, psychosocial or spiritual.^[6] Hence addressing suffering means dealing with problems beyond physical symptoms. Palliative care is unambiguously recognised as a human right to health. However, as underscored by the WHO, there is insufficient access to palliative care in many countries. This applies to SA as well. For someone to make an informed decision to exercise the right to die, an understanding of palliative care and whether it is of appropriate quality and standard, and available in the country, is necessary.

In SA, the debate around the right to die involves complex ethical, legal, and social considerations. Arguments for exercising the right usually hinge on patient autonomy, informed choices on how and when to end one's life, and the right to treat a person with dignity. Concerns about the sanctity of life, the possibility of abuse, the slippery slope and the availability of palliative care as an alternative are emphasised in arguments against exercising one's right to die. Both conservative and liberal positions need to be considered, and there must be ongoing endeavours to find a balance between these competing concerns. We require a legal framework that respects both individual autonomy and the broader societal values in the matter of issues of life and death. Perhaps it is time to resuscitate the national dialogue on the right to end one's own life, and for the South African Law Reform Commission to revive and update its 1998 report and make specific recommendations on this issue.

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