

Euthanasia in Nigeria: An Appraisal

Chanya Gomba-Osaro *

Prof. Matthew E. Nwocha

Abstract

Euthanasia is a sensitive and controversial issue in bioethics. The existence of a right to die via euthanasia (also known as 'mercy killing' or 'assisted suicide') is a question that crosses geographical boundaries and legal systems. Globally, prevalent jurisprudence prohibits and criminalizes assisted suicide and euthanasia. However, due to improvements in medical technology that have significantly increased the capacity to sustain and lengthen human life well beyond what was previously attained, along with a corresponding expansion of human rights law, many nations have legalized euthanasia and assisted suicide. This article aims to examine the socio-legal dynamics governing assisted suicide and euthanasia in Nigeria. With the use of the doctrinal research methodology, the definition, kinds, perspectives, and legal position of euthanasia and assisted suicide in Nigeria were appraised. It was found, among others, that under Nigerian criminal law, euthanasia is officially illegal as well as unconstitutional. However, the ethical value of euthanasia is beginning to gain ground in Nigeria in modern times. The core issue in the ongoing discussion over euthanasia is whether or not there is a countervailing argument, given an apparent contrast between statutory and judicial positions. It was recommended, among others, that the Nigerian government should make a definite stand on the issue of euthanasia and take cognizance of contemporary culture and disposition towards euthanasia.

Keywords: Euthanasia, Death, Medical ethics, Nigeria

1. Introduction

The idea that death should occur as mercifully as possible is not new. The practice of euthanasia has been in existence since ancient times, dating back to the Romans and the Greeks.¹ The agitation or quest for legalizing euthanasia arose out of compassion for the terminally ill who has no hope of survival or recovery. Sometimes certain illness robs off the happiness of a person, such that life becomes meaningless to him. His desire to end his life increases when he sees himself deteriorating day by day. The physician and the loved ones of the sick are most times stuck in the dilemma of whether or not to help the sick get rid of themselves, especially when there have been repeated requests by the patient to end his suffering. This ensures that they keep living even when they see no justification to continue staying alive; as what they merely do is to wake up every day to find themselves in the same state as they were the previous day or even worse. They do not enjoy the life they have, have no comfort as pains continue tormenting them, and hence the essence of living is not there anymore.² This article, therefore, analyzes euthanasia in contemporary Nigerian jurisprudence.

2. Meaning of Euthanasia

Etymologically, euthanasia is derived from two Greek words: *Euthukos*, which means good cheer, courage, or cheerfulness, and *Thanatos*, which means death. Therefore, simply put, euthanasia

* Doctoral candidate, Faculty of Law, Ebonyi State University, Abakaliki, Ebonyi State, Nigeria

¹G. Lopes, *Dying with Dignity: A Legal Approach to Assisted Death* (ABC-CLIO, 2015) 4.

² S. O. Ahaneku and C. C. Arinze-Umobi, 'Legalizing Euthanasia in Nigeria: Comparative Study of Law of Euthanasia in the Netherlands, Belgium and Canada' [2024] *Nnamdi Azikiwe University Journal of Corporate and Property Law* (11) (4) 138.

means a good or an easy death.⁴ Bamgbose views euthanasia as the taking of human life by another or with the assistance of another.⁵ Obi surmises that euthanasia is generally defined as the act of killing an incurably ill person out of concern and compassion for that person's suffering.⁶ Euthanasia is sometimes called mercy killing, but it has been opined that mercy killing is more precisely the ending of another's life without his or her request.⁷ A close examination of these definitions above indicates that the practice involves three parties: the dying patient, the dying patient's family, or the physician who is to act. The dying patient out of distress may use his initiative to request a physician to terminate his life voluntarily. The concept of euthanasia would not apply to a person who sleeps away peacefully and painlessly without any intervention after a fulfilled life. Euthanasia requires an intervention by the person wishing to die or by a person acting on her behalf to hasten a wanted death.⁸ For this paper, the working definition of euthanasia is as proffered by Draper because of its comprehensiveness. Draper describes euthanasia thus:

[Death by euthanasia] must be defined as death that results from the intention of one person to kill another person, using the most gentle and easy means possible, that is solely motivated by the best interests of the person who dies.⁹

3. Types of Euthanasia

Euthanasia can be classified into six headings: passive euthanasia; active euthanasia; physician-assisted suicide; voluntary euthanasia;¹⁰ involuntary euthanasia; and non-voluntary euthanasia. These are discussed *seriatim*:

a) Passive euthanasia: This is hastening the death of a person by altering some form of support and letting nature take its course.¹¹ Examples include such things as turning off respirators, halting medications, discontinuing food and water to allow a person to dehydrate or starve to death, or failing to resuscitate an unconscious patient. Passive euthanasia also includes giving a patient a large dose of morphine to control pain, despite the likelihood that the painkiller will suppress respiration and cause death earlier than it otherwise would have happened. Such doses of painkillers have a dual effect of relieving pain and hastening death.¹² Administering such medication is regarded as ethical in most political jurisdictions and by most medical societies. These procedures are performed on terminally ill, suffering persons so that natural death will occur sooner. They are also commonly performed on persons in a persistent vegetative state, for example, individuals

³ R. I. Adebayo, 'Euthanasia in the light of Islamic Law and Ethics' [2008] *Journal of Nigeria Association of Arabic and Islamic Studies* (11) 1.

⁴ M. C. Obi, 'A Critical Appraisal of Euthanasia under Nigerian Laws' [2014] *Nnamdi Azikiwe University Jurisprudence and International Law Journal* 75.

⁵ O. Bamgbose, 'Euthanasia: Another Face of Murder' [2004] *International Journal of Offender Therapy and Comparative Criminology* (48) (1) 111-121.

⁶ Obi (n 4) 76.

⁷ C. B. William, *Euthanasia* (The McGrawHill Companies Inc., 2007) 4.

⁸ Adebayo (n 3) 2.

⁹ H. Draper, 'Euthanasia' in R. Chadwick (ed.), *Encyclopaedia of Applied Ethics*, Vol. 2. (Academic, 1998) 38.

¹⁰ L. Robin, *Oregon's Death with Dignity Law and Euthanasia in Netherlands: Factual Disputes* (Montpelier Publishing, 2004) 3.

¹¹ William (n 7) 3.

¹² C. Sigley, 'Ethical Issue: Passive Euthanasia' [2015-2016] *International Journal of Healthcare Sciences* (3) (2) 663-666.

with massive brain damage or in a coma form who likely may not regain consciousness.¹³

b) Active euthanasia: Active euthanasia involves causing the death of a person through a direct action, in response to a request from that person.¹⁴ The important difference between active and passive euthanasia is that, in passive euthanasia, the doctor does not do anything directly to bring about the patient's death.¹⁵ The doctor does nothing, and the patient dies of whatever ills already afflict him. In active euthanasia, however, 'the doctor does something directly to bring about the patient's death: he kills him.'¹⁶ The physician is the instigator of the death.¹⁷ The doctor who gives the patient with cancer a lethal injection has himself caused his patient's death, whereas, if he merely ceases the treatment, the cancer is the cause of the death.¹⁸

c) Physician-assisted suicide: This is a hybrid of passive and active euthanasia. In this situation, a physician supplies information and or means of committing suicide (for example, a prescription for a lethal dose of sleeping pills, or a supply of carbon monoxide gas) to a person, so that that individual can successfully terminate his or her own life.¹⁹ This can also occur when a person is assisted, either through guidance or means to take his or her own life; this is called assisted suicide.²⁰ It has been explained as a physician providing medications or other interventions to a patient with the understanding that the patient intends to use them to commit suicide.²¹

d) Voluntary Euthanasia: Voluntary euthanasia entails a person requesting a doctor to put an end to his or her life. In this situation, the patient understands the nature of her demand and its implications. That is to say that he or she is mature, sane, and competent enough to understand her action or demand.²² The patient might have also given this consent in the form of an advance directive before he or she becomes incapacitated, or unconscious (coma) as a result of the sickness.²³

e) Involuntary euthanasia: The term involuntary euthanasia is used to describe the killing of a person who has not explicitly requested aid in dying. This term is most often used concerning patients who are in a persistent vegetative state and who probably will never

¹³ William (n 7) 1-2.

¹⁴ *Ibid.*, 2.

¹⁵ D. V. K. Chao, N. Y. Chan and W. Y. Chan, 'Euthanasia revisited' [2002] *Family Practice* (19) (2) 128-134.

¹⁶ V. B. Louis-Jacques, 'Voluntary Active Euthanasia: The Debate' in J. Kure (ed.) *The 'Good Death' Controversy in Humans and Animals* (Intech, 2011) 34.

¹⁷ D. Brock, 'Voluntary Active Euthanasia' in H. J. Curzer (ed.), *Ethical Theory and Moral Problems* (Wadsworth, 1999) 46-54.

¹⁸ J. Rachel, 'Active and Passive Euthanasia' [1975] *New England Journal of Medicine* (292) (19) 1911-1914. See also *People v. Kevorkian* (2001) 248 Mich. App. 373. See also J. A. Singer, 'Dr. Kevorkian Was Convicted of Murder 25 Years Ago Today' (26 March 2024) <<https://www.cato.org/commentary/dr-kevorkian-was-convicted-murder-25-years-ago-today>> accessed 27 November 2024.

¹⁹ E. C. Goligher and others, 'Physician-Assisted Suicide and Euthanasia in the ICU: A Dialogue on Core Ethical Issues' [2017] *Critical Care Medicine* (45) (2) 149-155.

²⁰ The assistance referred to here includes a situation where the person concerned orally takes an overdose of drugs prescribed or made available to him by a physician, doctor, nurse or even a Chemist. See A. Worthington, I. Finlay and C. Regnard, 'Efficacy and safety of drugs used for 'assisted dying'' [2022] *British Medical Bulletin* (142) (1) 15-22.

²¹ *Ibid.*

²² B. A. Omipidan, 'Euthanasia: The 21st Century Culture of Death' [2011] *Nigerian Bar Journal* (7) (1) 214.

²³ *Medical and Dental Practitioners' Disciplinary Tribunal v. Okonkwo* (2001) 7NWLR (Pt. 617) 208-255.

recover consciousness.²⁴ According to Robin, involuntary (active) euthanasia is intentionally administering medications or other interventions to cause a patient's death when the patient was competent but without the patient's explicit request and or full informed consent (for example, patient was not asked).²⁵ Research has shown that the majority of those who are victims of involuntary euthanasia are mostly infants or babies born with deformities by physicians in conjunction with the parents of such babies.²⁶

1. Examination of Euthanasia under Nigerian Law

The practice of euthanasia and assisted suicide can be said to be denuded of any cultural history in Nigeria.²⁷ The right to life is arguably the most sacrosanct right under the 1999 Constitution (as amended)²⁸ which can be derogated from only in exceptional cases.²⁹ A significant case law bordering on euthanasia in Nigeria is the *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo*.³⁰ In that case, the Supreme Court (per Ayoola JSC) held thus:

If a competent adult patient exercising his right to reject lifesaving treatment on religious grounds, thereby chooses a patch 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, perhaps than to give the patient the comfort?³¹

The Supreme Court further held that a patient has a constitutional right to object to medical treatment on religious grounds.³² The Court also stated that the physician could lawfully withdraw any form of treatment on a patient who by the refusal of blood transfusion consented to die on grounds of religion.

From the above dicta, it is arguable that the apex court has expressly or impliedly approved passive euthanasia in Nigeria. Apart from these instances, euthanasia and assisted suicide have no place in Nigeria because like every typical African customary law, suicide and deliberate killing of the one who is ill is a taboo and an abomination in the country.³³ It can, therefore, be said that euthanasia and or assisted suicide is illegal in Nigeria. This illicit status is, however, not as a result of any special legislation, but as based on existing laws that do not specifically provide for euthanasia and assisted suicide.³⁴

In respect of assisted dying/suicide, therefore, the position of the law is clear. Section 326(3) of the Criminal Code Act³⁵ provides that 'any person who aids another in killing himself is guilty of felony, and is liable to imprisonment for life.' The syllogism here is that consent by a person to the causing of his own death does not affect the criminal responsibility of any person by whom such

²⁴ William (n 6) 3-4.

²⁵ Omipidan (n 22) 216.

²⁶ *Ibid.*

²⁷ Obi (n 4) 12.

²⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 33(1).

²⁹ *Ibid.*, s. 33(2).

³⁰ (2001) FWLR (Pt. 44) 242.

³¹ *Ibid.*, 244-245.

³² *Ibid.*, 219.

³³ Obi (n 4) 11.

³⁴ *Ibid.*

³⁵ Cap. C38, LFN 2004.

death is caused.³⁶ In *State v. Okezie*,³⁷ the accused, a native doctor, prepared some charms for the deceased. The deceased then invited the accused to test the charm on him by firing a shot at him. The accused shot him in the chest and killed him. He was convicted of murder. It is a criminal offence attracting life imprisonment for aiding someone to commit suicide in Nigeria. Thus, section 326 of the Criminal Code Act provides that: 'any person who aids another in killing himself is guilty of felony, and is liable to imprisonment for life.'³⁸

From the foregoing, it is irrelevant that the deceased person is a terminally ill patient suffering from pain or incurable disease, that the patient's life span is six (6) months or below, or that they or the family members consented to his /her killing. Under Nigerian Law, it is a crime for someone to facilitate the suicide of another person, whether old or young, sick or healthy.³⁹ Thus, section 326 of the Criminal Code states that any person who counsels another to kill himself and thereby encourages him to do so is guilty of a felony, and is liable to imprisonment for life.⁴⁰ However, in Nigeria, any person who attempts to kill himself has committed an offence and that person would be tried by the state authority. Thus, section 327 of the Criminal Code provides that 'any person who attempts to kill himself is guilty of a misdemeanor and is liable to imprisonment for one year.'⁴¹ The pertinent question is whether consent to die exonerates the criminal liability of the physician who assisted the patient in dying. Under Nigerian law, consent by any person of his death does not exonerate the killer from criminal liability. Section 299 of the Criminal Code provides that 'consent by a person to the causing of his own death does not affect the Criminal responsibility of any person by whom such death is caused.'⁴² Thus, in the case of *State v. Okezie*,⁴³ the accused, a native doctor, prepared some charms for the deceased. The deceased then invited the accused to test the charm on him by firing a shot at him, on the chest, and he died. He was convicted of murder even though the accused acted with the consent of the deceased.

As earlier stated, what may be seen as a legal nod to passive euthanasia in Nigeria is reflected in the reasoning of the Supreme Court in *MDPDT v. Okonkwo*,⁴⁴ wherein the apex court held that the total of the rights of privacy and freedom of thought, conscience, or religion which an individual has, put in a nutshell, is that an individual should be left alone to choose a course for his life unless a clear and compelling overriding state interest justifies the contrary. The role of the law is to ensure the fullness of liberty when there is no danger to the public interest. This is why, if a decision to override the decision of an adult competent patient not to submit to blood transfusion or medical treatment on religious grounds, is to be taken on the grounds of public interest or recognized interest of others, such as dependent minor children, it is to be taken by the courts. According to the court, that the patient's consent is paramount has been determined in several cases in the United

³⁶ Criminal Code, ss. 316 (1)-(2) and 229; Penal Code, s. 222(5). See also C.O. Okonkwo, *Criminal Law in Nigeria* (Spectrum Law Publishing, 1994) 231-232.

³⁷ (1972) 2 ECSLR, 419.

³⁸ Criminal Code, s. 326. See also Penal Code, s. 220.

³⁹ Criminal Code, s. 326.

⁴⁰ *Ibid.*, ss. 326 (1) and (2).

⁴¹ *Ibid.*, s. 327.

⁴² Criminal Code, s. 299.

⁴³ (1972) 2ECSLR. 419.

⁴⁴ *Supra*.

⁴⁵ *Superintendent of Belkerton State School v. Sackewicz*, 93 ALR3d 75.

States of America where this area of law has received considerable judicial attention.⁴⁵ The Supreme Court further emphasized that 'the constitutional right of privacy includes the right of a competent, mature adult to refuse treatment that may prolong one's life even though that refusal may seem unwise, foolish or ridiculous to others.'⁴⁶ In the court's judgment in that case, it was further held that:

If a competent adult patient exercising his right to reject life-saving 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, perhaps than to give the patient comfort?⁴⁷

The Supreme Court also affirmed in approval in the case of *Re Osborne*.⁴⁸ There, the court affirmed the lower court's order refusing to appoint a guardian to give consent for the administration of a blood transfusion to a patient who had refused it on religious grounds, and whom the physician feared would die without blood, upon evidence that the patient had validly and knowingly chosen this course and upon the lower court's finding that there was no compelling state interest which justified overriding the patient's decision to refuse blood transfusions. Also in the affirmative, the Supreme Court adopted the opinion of Lord Scarman, in *Sideway v. Board of Governors Bethlem Royal Hospital*⁴⁹ where it opined that '... the court should not allow medical opinion of what is best for the patient to override the patient's right to decide for himself whether he will submit to the treatment offered him'; and that of Lord Templeman,⁵⁰ who was of the view that the patient is free to decide whether or not to submit to treatment recommended by the doctor.

While the majority of the stakeholders' views favour the maintenance of the *status quo* (that is, criminalizing active euthanasia) in Nigeria,⁵¹ almost all the views are silent as regards passive euthanasia such as with-holding and or withdrawal of the treatment.⁵² It is opined that some artificial method of sustaining life, more especially via feeding tube and or respirator, that aimed to be permanent is worse than euthanasia itself and should be discouraged. Surprisingly, however, the impression created by the Criminal Code and Penal Code that all forms of euthanasia and or assisted suicide are illegal in Nigeria can no longer be sustained.⁵³ The major important finding shows that the Supreme Court by its decision in *MDPDT v. Okonkwo's case*⁵⁴ has approved passive euthanasia (though not expressly, but by implication) as legal.

It is respectfully submitted that the Supreme Court decision in this case, placing the right to privacy and right to freedom of thought, conscience, and religion over and above the 'mighty' right to life, which is the mother of all the rights in the constitution, is a dangerous oversight, which will and can never augur well with the Nigerian jurisprudence. There is no way the above two rights can take precedence over the right to life. If the trend is allowed in our legal system, there is every opportunity for our citizens to indulge in all sorts of practices, including euthanasia, on the ground

⁴⁶ *MDPDT v. Okonkwo* (n 42) 245, paras. G-H.

⁴⁷ See also the opinion of Uwaifo, JSC at 255.

⁴⁸ (1972), Dist. Col. App. 294 A2d 372.

⁴⁹ (1985) 1 All E R., .645

⁵⁰ *Ibid*, 666.

⁵¹ Obi (n 4) 128.

⁵² *Ibid*.

⁵³ *MDPDT v. Okonkwo* (n 42).

⁵⁴ *Ibid*.

that it accords to their conscience and privacy. In view of this, it is suggested that when opportunity arises, the Supreme Court will reverse itself. While it is agreed that a patient has a right to object to a particular treatment, it is also argued the patient has the right to prefer death where there is available medical treatment such as blood transfusion that can help to revive the patient's health. It is quite understandable that the patient has the right to reject certain treatments too artificial enough to sustain his life (such as a respirator, feeding tube, etc.), but will not bring him/her back to a normal or manageable condition.⁵⁵ It is also gathered that the culture of the people plays an important role in their end-of-life decisions. Therefore, the yardstick for the dignity of human life depends on each country's perspective.⁵⁶

It is also feared that the legalization of euthanasia will have detrimental effects concerning vulnerable populations and to the fact that it will transform a healing profession into a killing profession. The slippery slope argument should be enough reason to criminalize euthanasia and or assisted suicide.⁵⁷ This is so because if euthanasia is legalized, people especially the physicians and family members or relations who may have certain interests in the death of the patient may take advantage of the legal framework in place to coax the patient into voluntary euthanasia. As noted, certain interests infiltrate the minds of the decision-makers of euthanasia which include: the relatives- who may have a vested interest in the estate of the terminally ill person; the doctor who has lost interest in a protracted and difficult case; and the hospital administrator, who is short of beds. These factors play a secret role when deciding on what becomes of the terminally ill patients. In view of this, no other person will bear witness as to what transpired between the family relatives and the physician except death.⁵⁸

If euthanasia is legalized in Nigeria, people and their loved ones will certainly be affected. The practice of medicine will likely change because healing and killing will become equally valid goals of the medical profession. If death becomes a legal right, doctors will feel obligated to offer death as an option to all of their patients whose treatment they find a bit difficult. Those at risk of being killed without consent or against their wishes would become fearful of seeing a physician, being hospitalized, or entering a nursing home. One would stand viewing medical professionals and even one's family members with suspicion fearing that they will choose death by lethal injection, without one's consent, or even against one's wishes.⁵⁹

4. Conclusion

It has been observed that the impression that all forms of euthanasia are criminalized in Nigeria is not the truth, as the Supreme Court's decision in *Okonkwo's* case⁶⁰ impliedly approved passive euthanasia. The prohibition of all forms of killing (euthanasia inclusive) by both the Penal Code and Criminal Code and approval of passive euthanasia vide Supreme Court judgment amount to double jeopardy, which may lead to a legal tsunami in Nigerian jurisprudence. It is equally observed that the reason for criminalization of euthanasia and or assisted suicide (though not expressly stated) under the Nigerian criminal law is not far from the cultural perspectives of

⁵⁵ *Ibid.*, 123.

⁵⁶ O. R. Obiora, 'Euthanasia: An Igwebuikwe Perspective' [2023] *Tolle Lege: Augustinian Journal of Philosophy and Theology* (5) (1) 269.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ Obi (n 4) 135.

⁶⁰ *Supra* (n 42).

Nigerians on the sanctity of human life. Further, the disadvantageous aspect of legalizing or decriminalization of euthanasia in Nigeria through legislation will outweigh its advantages. There is also a high probability of an emergency or a slippery slope in the practical aspect of the law, which is enacted in Nigeria.

5. Recommendations

Based on the foregoing, the following recommendations are made:

1. The Nigerian government, especially the judicial and legislative arms, should take a bold stance on how to address what amounts to double standards in the existing laws governing euthanasia practice in the country. As it stands now, no one can surely say whether or not passive euthanasia is a crime under Nigerian law. To this end, it is recommended that either the Supreme Court reversed itself in *Okonkwo's* case as being reached *per incuriam*, or if there is no possibility of doing so in the near future, it is thus suggested that the National Assembly abrogate or nullify the decision in the course of legislating. This is because the National Assembly has the power in the course of making law to nullify or abrogate decisions of any court of law, including that of Supreme Court (being a common law), and once that is done, that particular decision of the court will no more have the force of law, and court of law cannot question the *vires* of the legislature to nullify or abrogate the common law.⁶¹
2. There is an urgent need for the Nigerian government to enact a specific law, guiding or governing euthanasia/assisted suicide. Going by the modern trend in medical technology, the issue of euthanasia has become a global trend that requires a specific law to either expressly criminalize or decriminalize the practice. The taciturnity of the Nigerian law on the subject has become overdue, hence the need for specific legislation on that aspect.
3. If the Nigerian government is inclined towards criminalizing euthanasia, it should also do well in providing alternative treatment or care centres such as hospice care, palliative care, and other medical centers for the management of terminally ill patients. They should make the services of such centers either free of charge or affordable within the reach of every citizen of Nigeria suffering pain as a result of terminal sickness. This, when done is believed to achieve much results rather than criminalizing it. Even if such practice is criminalized without adequate hospice care or other life care services, the law will not be effective; people will go ahead doing 'their thing' underground.
4. Existing penal laws should be thoroughly revised to grant an exemption to worthy instances for the practice of euthanasia and assisted suicide rights. Additionally, special euthanasia regulations should be created, outlining the scope of the practice in Nigeria as well as the circumstances under which it is acceptable.

⁶¹ See *A. G. Abia State v. A. G. Federation* (2006) 16NWLR (Pt.1005) 454.