

## End of Life Assistance (Scotland) Bill

### Bishops' Conference of Scotland Submission to Committee

May 2010

#### Overview

In common with all people of good will, the Catholic Church seeks to assist those at the end of their natural life to achieve a dignified and pain-free completion of their life. Indeed throughout history, the Church has had a special mission to the care of the dying, founding hospices to care for the terminally ill and supporting religious orders with this vocation.

It is important to state clearly at the outset that the Catholic Church does not take a "vitalist" mentality. In other words the Church does NOT hold that life must be preserved at all costs. Rather the Church recognises that discontinuing medical procedures that are burdensome, dangerous, extraordinary or disproportionate to the expected outcome can be legitimate. Such a decision is simply the acceptance of one's own mortality.

However there is a clear and dramatic difference between allowing someone to die with dignity and taking a decision to bring their life to an end, either by interrupting their feeding and hydration or by direct intervention to kill them by medical means. It is for this reason that the Bishops' Conference of Scotland firmly opposes the End of Life Assistance (Scotland) bill. The proposals in the bill are contrary to the rule of law which requires the uniform protection of all human life. The bill, however, is intrinsically discriminatory by identifying classes of people whose lives are not to be provided full protection under the law. This is aggravated by the frail procedures which will permit many lives to be put at risk through varying degrees of psychological, social or cultural coercion. The proposals therefore strike at the basic principle of human solidarity by abandoning those most likely to be in need of support.

#### Definitions

There appears to be some confusion as to whether the bill is intended to introduce only assisted suicide or euthanasia and assisted suicide. Assisted suicide involves providing the means or assistance for a person to take his own life. Euthanasia involves a person directly taking the life of another person through an act or omission which is intended to cause death.<sup>1</sup> This should not be confused with withholding or withdrawing futile or over-burdensome treatment which is morally and legally licit. The bill states: "In this Act "end of life assistance" means assistance, including the provision or **administration** of appropriate means, to enable a person to die with dignity and a minimum of distress.[Emphasis added]" The definition clearly permits a third party<sup>2</sup> to administer lethal means and therefore the bill would permit euthanasia and assisted suicide.

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<sup>1</sup> C.f. Pope John Paul II, *Evangelium Vitae* 65

<sup>2</sup> The bill does not require the doctor to administer the means of death but merely to be present

## **Dignity of all human life**

The value of human life is the common foundation for all those who have concern for the wellbeing of every person. Proponents of assisted suicide and euthanasia, frequently claim that they wish to support human dignity. However, seeking to avoid the possibility of suffering or of loss of control is not based on an adequate or objective vision of the dignity of the human person. The Church maintains that every human life, irrespective of the capacities or state of health of the person, has an intrinsic dignity which must be respected and that their life must be protected.

## **Duty of State to protect every human life**

It is a duty of the State to protect the lives of all of its members. This duty arises from the value of human life created in God's image. It is a duty which is also recognised by those who do not believe in God. Throughout history and across cultures the inviolability of human life has been upheld<sup>3</sup>, such that the intentional killing or hastening of death is contrary to the law. This is the basis of the right to life which is protected by homicide laws and by article 2 of the European Convention on Human Rights.<sup>4</sup>

The protection provided by Article 2 entails positive obligations such that states bound by the terms of the convention are obliged to take actions to prevent threats against life arising within society.

Permitting an individual to request and receive help to end their life is therefore contrary to this duty of protection. This is affirmed in the comments of the Parliamentary Assembly of the Council of Europe which has stated:

“The Assembly therefore recommends that the Committee of Ministers encourage the member states of the Council of Europe to respect and protect the dignity of terminally ill or dying persons in all respects . . . (c) by upholding the prohibition against intentionally taking the life of terminally ill or dying persons, while: (i) recognising that the right to life, especially

with regard to a terminally ill or dying person, is guaranteed by the member states, in accordance with article 2 of the European Convention on Human Rights which states that 'no one shall be deprived of his life intentionally'; (ii) recognising that a terminally ill or dying person's wish to die never constitutes any legal claim to die at the hand of another person; (iii) recognising that a terminally ill or dying person's wish to die cannot of itself constitute a legal justification to carry out actions intended to bring about death”<sup>5</sup>

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<sup>3</sup> For example c.f. St Augustine, City of God Book I, Chapter 20

<sup>4</sup> ECHR Article 2

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

a. in defence of any person from unlawful violence;  
b. in order to effect a lawful arrest or to prevent escape of a person lawfully detained;  
c. in action lawfully taken for the purpose of quelling a riot or insurrection.

<sup>5</sup> Pretty v DPP [2001] UKHL 61 at 823, Article 9.c. of the Council of Europe Parliamentary Assembly Recommendation 1418 (1999)

## **Suicide**

Since many of the supporters of assisted suicide make reference to suicide being permissible as a logical basis for permitting assisted suicide, we wish to comment briefly on suicide. Suicide is always a tragedy, both for those actively involved, and those of their loved ones who are left to grieve. Laws which ostensibly decriminalise suicide are not based on an acceptance of the rightness of choosing to end one's own life, but typically on compassion for the victim who needs support rather than prosecution.

It is relevant to note that depression and other mental health problems are factors for a very high proportion of attempted suicides. This underlines the need for compassionate support for those who feel tempted to suicide and to those who suffer from illnesses and conditions which make them prone to feel suicidal. This in fact is the natural response to those who have suicidal feelings as exemplified by organisations such as the Samaritans and the campaigns aimed at avoiding suicide by successive Scottish Governments.<sup>6</sup>

## **Assisted Suicide**

Laws which decriminalise suicide do not undermine the basic requirement of law that human life must be protected. Hence the provision of assistance to permit a person to commit suicide is contrary to this basic protection and is rightly a criminal act to which a severe penalty is attached. The proposal to permit assisted suicide is therefore contrary to the inalienable respect that must be given to every human person.

The terrible consequences of the use of this provision more widely than envisaged by the bill's proposer must be considered. That is, the benefit that a minimal number of people may believe they obtain from assisted dying cannot outweigh the concern for the grave dangers that are thereby raised for the whole of society from the abuse or widening of the practice of assisted killing.

## **Consent and Verification Process**

The bill's practical arrangements for processing requests to die are not proportionate to the level of power which is to be given to those who would administer the proposed process. If passed the bill would enable the termination of life and therefore, if such a power could be legitimately conferred, it would require the most stringent control of the process. The process therefore would have to be more akin to that used for implementation of the death penalty rather than the meagre consultation requirements proposed by the bill. The proposed two-stage request process gives little confidence that serious and detailed consideration could be given to ensure that applicants were not suffering from depression or mental illness; and were not subject to any undue influences arising from family, carers or general social attitudes. The window within which someone can die from their first request under the bill is between 19 and 60 days. This is a startling fact which raises many concerns about the haste over which a decision may be taken and the level of seriousness that alternative solutions are given in response to a person's wish to die.

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<sup>6</sup> See for example <http://www.scotland.gov.uk/Topics/Health/health/mental-health/servicespolicy/DFMH/suicideprevention> (last accessed 6 May 2010)

## Safeguards

Access to euthanasia/PAS is typically described in the context of a loved one helping a family member to implement their autonomous choice.<sup>7</sup> The cases of assistance motivated by compassion may be one aspect, but another, neglected aspect, is the extent of abuse that takes place against those who are vulnerable. For instance the House of Commons Select Committee on Health has noted that in England estimates propose that 500,000 to 900,000 elderly people are victims of abuse typically by members of their family or other carers and that psychological, financial and physical abuse account for the most common types of such abuse.<sup>8</sup> In Scotland members may be familiar with the local campaigns to highlight the extent of exploitation and abuse that is inflicted on elderly people by family members.<sup>9</sup> These routinely identify that vulnerable people are targeted by family members eager to procure money and property. Similarly, it is pertinent that abuse of disabled people by carers is reported to be extensive.<sup>10</sup> These social concerns provide a context where vulnerable people face grave danger of being manipulated by those with a financial or emotional interest in their death.<sup>11</sup>

A further concern is that the nature of the doctor-patient relationships makes it difficult to ensure absolute probity and competence in assessing the relevant factors. For example, doctors may not be competent in giving palliative care, may misdiagnose or give wrong prognosis or may miss depression.<sup>12</sup> The legalisation of assisted suicide and euthanasia will greatly affect the relationship of trust between patient and doctor. A change in the law would also undermine the doctor's right not to be drawn into activities contrary to Hippocratic ethics which have guided medicine for centuries. It is a concern compounded by the absence of a conscience clause in the bill; which therefore raises the prospect of doctors being compelled to participate in killing patients.

## Cultural change

An important point to consider when examining a proposal to change important principles in society is the cultural message that it promotes. Once a particular principle is established as acceptable then it is natural that some people will seek to build on this principle. It is not difficult to envisage that a system of ending lives of

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<sup>7</sup> Jon Swaine, 'Assisted suicide "a marvellous possibility" says Dignitas founder Ludwig Minelli', Daily Telegraph, 2 April 2009, available at URL <http://www.telegraph.co.uk/health/healthnews/5094292/Assisted-suicide-a-marvellous-possibility-says-Dignitas-founder-Ludwig-Minelli.html> (last accessed 6 May 2010)

<sup>8</sup> House of Commons, Health Committee, Elder Abuse, Second Report of Session 2003–04, HC111-I At p10, available at URL <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmhealth/cmhealth.htm> (last accessed 6 May 2010)

<sup>9</sup> For example the 'Uncomfortable Reading' campaign supported by Renfrewshire Council, Strathclyde Fire and Rescue and Strathclyde Police, see [http://news.bbc.co.uk/1/hi/scotland/glasgow\\_and\\_west/8241488.stm](http://news.bbc.co.uk/1/hi/scotland/glasgow_and_west/8241488.stm) (last accessed 21 April 2010)

<sup>10</sup> For example 'Open to Abuse', Disability Now, available at URL <http://www.disabilitynow.org.uk/living/features/open-to-abuse/> (last accessed 21 April 2010)

<sup>11</sup> Richard Edwards, 'Assisted suicide could be excuse to kill burdensome elderly, says police chief', The Telegraph, 28 August 2009, available at URL <http://www.telegraph.co.uk/news/uknews/6104734/Assisted-suicide-could-be-excuse-to-kill-burdensome-elderly-says-police-chief.html> (last accessed 21 April 2010)

<sup>12</sup> John Keown, *Euthanasia, Ethics and Public Policy* (Cambridge University Press, 2002) at p73

people may eventually become one that is far removed from that envisaged by those who believe that only a small number of people in hopeless positions and in terrible suffering will be provided with assistance to die.

Making one particular decision, in this case that some should be permitted to be killed, can change the moral or empirical assumptions about further courses of actions which are presently not acceptable, or people can become desensitized to such actions.<sup>13</sup>

It is the progression from one activity to another which is important in assessing the risk of state approving the ending of innocent lives. For example the Netherlands has witnessed the move from ending the lives of individuals who are terminally ill, to those who are chronically ill, to those who are not physically ill at all.<sup>14</sup> Also they have seen a move from acceptance of physical suffering, to mental suffering, to apathy for life as justifying euthanasia.<sup>15</sup> The pool of potential candidates has also grown from competent adults to minors and newly born children.<sup>16</sup> Around a thousand people a year, without requesting, have their lives ended in the Netherlands.<sup>17</sup>

There are also changes in the dynamics of the environment in which care is provided, for example euthanasia or assisted suicide may appear a tempting solution when there are financial pressures; or the demand for improved quality of care may be lessened if a means of avoiding providing care by ending the life of the patient is an option.<sup>18</sup>

Advocates for assisted dying, it is submitted, are too quick to reject the famous warning of Leo Alexander, commenting on the holocaust, who observed that "It started with the acceptance of the attitude, basic in the euthanasia movement, that there is such a thing as a life not worthy to be lived... But it is important to realize that the infinitely small wedged-in lever from which this entire trend of mind received its impetus was the attitude toward the non-rehabilitable sick".<sup>19</sup> The likelihood of moving to the practise of previously unacceptable behaviour once the principle of killing is accepted is strongly affirmed by the experience of the Netherlands.<sup>20</sup>

The danger is not lost on those who may be first to be exposed to the inherent eugenic practice of deciding which persons are right to want to die. Campaigners for the disabled have noted that: "In 1939, Hitler authorised Aktion-T4, a programme of mass-murder targeting disabled people. T4, combined with unstructured so-called "wild euthanasia", killed more than a quarter-of-a-million disabled people, yet this

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<sup>13</sup> Eugene Volokh, 'The Mechanisms of the Slippery Slope' (2002-2003) 116 Harv. L. Rev. 1026 at 1033

<sup>14</sup> John Keown, *Euthanasia, Ethics and Public Policy* (Cambridge University Press, 2002) at p114

<sup>15</sup> Richard Fenigsen, 'Dutch Euthanasia: the new government ordered survey' (2004) 20 Issues in Law and Medicine 73 at 76

<sup>16</sup> *Ibid* at 75

<sup>17</sup> *Ibid*

<sup>18</sup> For example as in the case of Barbara Wagner denied funding for treatment of cancer in the U.S state Oregon, but offered funding for assisted suicide. See

<http://abcnews.go.com/Health/story?id=5517492&page=1> (Last accessed 6 May 2010)

<sup>19</sup> Leo Alexander, 'Medical Science Under Dictatorship', [1949] July, *The New England J. of Med.* 39

<sup>20</sup> Eugene Volokh, 'The Mechanisms of the Slippery Slope' (2002-2003) 116 Harv. L. Rev. 1026 at 1058-9

history is largely forgotten”.<sup>21</sup> In light of the public efforts to promote euthanasia, it is submitted, that it is understandable that there should exist a determined effort to dismiss this history lesson.

## **Conclusion**

The bill effectively aims at enabling people to act in a manner incompatible with the basic good of the human individual. It will strike a blow against the fundamental sanctity of human life and against human solidarity. Support of the bill would be a misguided support for those who want to exercise exaggerated control over their own lives and will sacrifice the sanctity of life in general and the protection of vulnerable people in particular. The role of the law in restraining the malicious or those of ill intent cannot be ignored because of the special pleading of those who wish absolute control over their lives. The moral law, upon which the law ultimately finds its source, ensures that the weak are not placed at the mercy of the powerful. The proposals for ‘end of life assistance’, as it is euphemistically called, are truly a path which places the weak at considerable risk. It is appropriate to consider that in no way can such a law be described as compassionate. “True compassion leads to sharing another’s pain; it does not kill the person whose suffering we cannot bear”.<sup>22</sup>

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<sup>21</sup> ‘T4: Hitler's holocaust rehearsal’, Disability Now, see <http://www.disabilitynow.org.uk/living/features/t4-hitlers-holocaust-rehearsal> (last accessed 5 May 2010)

<sup>22</sup> John Paul II, *Evangelium Vitae*, 66