

## **A right to be protected from instigation to self-harm**

**A public submission by Rita Joseph**

**to the Inquiry into Suicide in Australia**

**Senate Community Affairs Committee**

One important aspect that needs the urgent attention of the Committee is the availability of an exponentially expanding volume of

1. instructional material on how to commit suicide; and
2. pro-suicide propaganda misrepresenting suicide as a rational decision and a human right.

On the internet and in the mainstream media through advocacy groups and individuals such as Dr Philip Nitschke, this material is made available with seeming legal impunity to the self-harm that it encourages in the most vulnerable victims, persons at risk of suicide.

This grave abuse of genuine human rights must be dealt with under Terms of Reference, paragraph (d):

the effectiveness, to date, of public awareness programs and their relative success in providing information, encouraging help-seeking and enhancing public discussion of suicide;

Certainly, there is a great need for positive educational material to counteract the harmful effects of material that encourages and promotes suicide. But in addition to public awareness programs, the right to life of persons at risk of suicide must be protected by law, and all actions aimed at encouraging or promoting suicide must be condemned.

States which have ratified the International Covenant on Civil and Political Rights (*ICCPR*) must at all times take positive steps to effectively protect the right to life of every human being. The right to life of persons at risk of suicide, as protected by international human rights law, means, *inter alia*, that States have a strict legal duty at all times to

prevent, investigate and redress threats to the right to life wherever such threats occur, both in private and in public. (Article 4(2) *ICCPR*)

Only a corruption of this strict legal duty to prevent, investigate and redress threats to the right to life could enable a government to tolerate interventions having the intended outcome of encouraging arbitrary deprivation of life involved in suicide.

States Parties' human rights obligation to provide legal protection for persons at risk of suicide means that governments are prohibited from tolerating the promotion of suicide as a human right.

### **The limits of autonomy and the duty to secure the rights of all**

The autonomy of the suicidal person is limited by respect for the rights of others and for the security of all. The law must not tolerate pro-suicide propaganda that encourages and instructs persons at risk of suicide to do self-harm. Autonomous rights cannot be lawfully separated from the natural context of responsibilities to the community. Even persons who are terminally ill cannot unilaterally divorce their human rights from their human responsibilities to their family, their community, and mankind. In human solidarity, the relationship between duties and rights remains valid for all human beings, including the psychologically afflicted (in so far as they are capable of rational understanding) and the terminally ill. Everyone has duties to the community. (UDHR Article 29 (1)).

The autonomy of all suicidal persons may be limited by law in order to secure due recognition and respect for their own rights as well as for the rights and freedoms of others and to meet the just requirements of morality, public order and the general welfare in a democratic society. (UDHR Art.29 (2)).

States have a duty to maintain their part in a social and international order in which the rights and freedoms set forth in the human rights instruments can be fully realized for everyone. (UDHR Art.28)

These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. (UDHR Art.29 (3))

Nothing in this Declaration [or in any of the subsequent human rights instruments] may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein. (UDHR Art. 30).

Unfortunately, those who are promoting suicide and assisted suicide are engaging in an activity aimed at the destruction of the inalienable right to life of persons at risk of suicide.

### **The inherent right to life of persons at risk of suicide shall be protected by law**

The suicidal are among the most vulnerable human beings on earth; and legal systems must not permit them to be placed at risk of lethally persuasive arguments. Persons at risk of suicide are entitled to have their rights fully respected in accordance with the special safeguards and duty of care guarantees as set out and agreed in the original international human rights instruments which the Australian Federation has ratified.

Article 2(2) of the *International Covenant on Civil and Political Rights* states:

*Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.*

Legislative or other measures must be adopted by each state party to the *ICCPR* to provide protection for the inherent right to life of persons at risk of suicide.

Article 6(1) of the *International Covenant on Civil and Political Rights* asserts:

*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.*

### **Natural death or arbitrary death?**

Natural death comes inevitably to all human beings. Natural death is an unprovoked, spontaneous natural event. Death is not a right, but an inevitability. Human rights are applicable to the living. For as long as persons at risk of suicide are alive, their inherent right to life is to be protected by law—their lives are to be protected even against self-harm. There are to be no exceptions and no limitations placed on a government's duty to protect the inherent right to life and this duty

applies to both individual states and territories within a federation. (ICCPR Art.50).

The law must ensure that no one is arbitrarily deprived of his life. The term “arbitrarily” has immense significance in that it prohibits suicide and assisted suicide precisely for the reason that both the timing and the manner of death are arbitrary rather than inevitable.

From the very beginning of the drafting of modern international human rights instruments, a clear understanding of the term “arbitrarily” was established—it was to be interpreted as “without justification in valid motives and contrary to established legal principles.”<sup>1</sup>

It is not lawful to condone propaganda that promotes suicide as a reasonable and valid course of action. Legal tolerance of such promotions of arbitrary deprivation of life is

- *without justification in valid motive*

They aspire to do good (relieve suffering and/or pain) by doing evil (arbitrary deprivation of life); and

- *contrary to established legal principles*

They contravene the established legal principle that the state may condone deprivation of life only for those who are judged guilty of serious crime. (ICCPR Article 6 (2)). They contravene also the established human rights legal principles of the inherency and inalienability of the right to life.

Dr Stephen Hall, in a recent article in the *European Journal of International Law*, warns that it is when we are “unmindful of the richness of the common good under the natural law” that the temptation to turn moral wrongs into human rights arises; he intimates that laws authorizing the killing of human beings are “radically unjust (and

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<sup>1</sup> « ...arbitraires (c'est-à-dire sans justification pour des motifs valables et contraires a des principes juridiques bien etablis)... » Verdoodt, Albert, *Naissance et Signification de la Déclaration Universelle des Droits de l'Homme*, Société d'Etudes Morales, Sociales et Juridiques, Louvain-Paris, Editions Nauwelaerts, 1964.p.143

radically immoral) in that they permit choosing directly against a self-evident form of human flourishing; i.e. life.”<sup>2</sup>

It is the Federal legislature’s responsibility, in cooperation with the States and Territories, to provide both laws and programs that protect *the inherent right to life* and the inalienability of all the rights of persons at risk of suicide especially:

- the terminally ill, including provision of access to palliative care and to all other necessities required during this last stage of life; and
- the psychologically distressed, including provision of access to continuing psychiatric and medical care as well as on-going access to material needs and social support necessary to their well-being.

## **Some genuine rights of persons at risk of suicide**

### **1. The inherent right to life of persons at risk of suicide is inalienable**

The term “inalienable rights of all members of the human family” applied to a person at risk of suicide means that these human rights cannot be taken from his person, not by anyone, and not even by himself. Thus the right to life, because it is inalienable, rules out suicide and assisted suicide.

Blueprints for medicalized killing or for other forms of lethal self-harm cannot be promoted or offered as a legitimate response to the suicidal distress of any person as it is in violation of the fundamental human rights principle of inalienability. Human beings cannot be deprived of the substance of their rights, not in any circumstances, not even at their own request.

The natural law principles relevant here are that a human entity should be allowed to persist in being; and that one must not directly attack any basic good in any person, not even for the sake of avoiding bad consequences.

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<sup>2</sup> Hall, Stephen: *The Persistent Spectre: Natural Law, International Order and the Limits of Legal Positivism* European Journal of International Law, Oxford: 2001. Vol. 12, Iss. 2; p. 269

This last principle, that the basic aspects of human well-being are never to be directly suppressed, is cited by Professor John Finnis as the principle of natural law that provides the rational basis for *absolute* human rights, for those human rights that “*prevail in all circumstances, and even against the most specific human enactment and commands*”.<sup>3</sup>

The concepts of dignity, sanctity, status, worth, and ultimate value—*each individual an end in himself*<sup>4</sup>—underpin the understanding and acceptance by the drafters of the *Universal Declaration of Human Rights* of the first principle of natural law—the moral imperative to do good and avoid evil, and emanating from this, the precept that affirms preservation of each human life and proscribes arbitrary deprivation of any human life.

International humanitarian law has recognized that special safeguards must be accorded to persons in positions of extreme vulnerability. It is prohibited to subject such persons, and we would argue, to allow such persons to be subjected to persuasive material that would encourage or facilitate suicide.

## **2. Persons at risk of suicide, especially those who are terminally ill, have the right to recognition of their inherent dignity**

The *International Covenant on Civil and Political Rights* (ICCPR) recognizes that all human rights derive from the inherent dignity of the human person.

*Recognizing that these rights derive from the inherent dignity of the human person...* (Preamble)

Inherent dignity is a core value of the *International Bill of Rights*:

*“...recognition of the inherent dignity and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”*

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<sup>3</sup> Finnis, John: *Natural Law and Natural Rights* (1980) and *Aquinas: Moral, Legal and Political Theory* (1998)

<sup>4</sup> Speech by Eleanor Roosevelt [Adoption of the Declaration of Human Rights](#) (December 9, 1948).

This appears in the Preamble of all three instruments and as such is a foundational premise upon which all the rights that follow are based. It is “the foundation of...justice” i.e. it is the foundation *inter alia* of international human rights law.

Given this foundation, there is no “right to die” in the human rights instruments. Nor is there what assisted suicide advocates call “a right to die with dignity”. The confusion here is engendered in their failure to grasp that human rights belong to the living—that every human being, because of his/her inherent dignity, has a right to live – a right that stems from the inherent dignity of every human being and inheres in every human person from conception through to the moment of their death.

The terminally ill, although they are dying, are still alive. It is their life not their death that entitles them to all their human rights. It is their live humanity, their living membership of the human family that entitles them to “...*recognition of the inherent dignity and inalienable rights of all members of the human family*”. It is this recognition that obliges us to travel in human solidarity with the terminally ill, to provide them with the best attainable palliative care, in their homes or hospices or intensive care units, or even on the streets (as exercised by Mother Teresa’s Sisters) to be attentive to their needs, to be with them to the moment of natural death. While every person with a terminal illness has a right to refuse burdensome medical intervention intended to prolong life, no person has a right to exercise himself or to demand of carers a medical intervention intended to kill. There is no right to procure arbitrary deprivation of life. The terminally ill have no right to medicalized killing which is the antithesis of genuine recognition of the inherent dignity and worth of the human person who is terminally ill.

So even while living through the natural process of dying, the terminally ill retain that inherent dignity. The term “inherent dignity” applied in the spirit and purpose of the *Universal Declaration* means that every human being, from the first moment of existence as a discrete, genetically unique human entity to the point of natural death, has an immutable dignity, a dignity that does not change with external circumstances such as levels of personal independence, satisfaction or achievement, mental or physical health, or prognoses of quality of life, or functionality or wantedness. There is no conceivable condition or deprivation or mental or physical deficiency that can ever render a human being “non-human”. Pejorative terms such as “just a vegetable” or “non-person in a permanent vegetative state” and dismissive attitudes such as “he’s better off dead—he’s going to die anyway...” cannot justify violation of the human rights of the

human person so described. Such prejudices cannot destroy *the inherent dignity of the human person*. As long as a human being lives, he or she retains all the human rights of being human, all the rights that derive from his or her inherent dignity as a human being.

### 3. Persons at risk of suicide have the right to security of person

*Everyone has the right to life, liberty and security of person (Universal Declaration Article 3)*

Persons at risk of suicide have the right to life, liberty and security of person. They have an inalienable right to life up to the very moment of natural death; and the right to security of person is very closely related to the right to life. The right to security of person means, *inter alia*, that the right to life is to be protected and *secured* for those at risk of suicide. They are to be protected from all attempts against their life, including self-harm and all other measures intentionally directed towards inflicting death.

The right to life cannot be distorted to mean a right kill oneself or a right to access information that would facilitate suicide. All human rights “*derive from the inherent dignity of the human person*” (ICCPR), and must be rightly ordered towards sustaining the human person in his/her being. Clear human rights obligations are set out in the *Universal Declaration Article 25 (1)*:

*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*

The person at risk of suicide has a right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of

“... sickness, disability...old age or other lack of livelihood in circumstances beyond his control”.



This last phrase has special relevance to the psychologically distressed and the terminally ill—truly these persons at risk are *in circumstances beyond their control*.

The dependency, pain and deep sorrow that often accompanies tragic personal circumstances, failure or terminal illness is part of the human condition—it is part of life, part of living. Dying is the final natural life event—it should not be transformed into an act of arbitrary killing.

**Recommendations:**

- (1) Advocacy materials promoting suicide must be more strictly controlled so that positive programs for assisting persons at risk of suicide can achieve their full potential.
- (2) Education programs should emphasize the human person as the true source of human dignity and teach the inalienability of the inherent right to life.