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Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people.
2. This report outlines how the permissibility of assisted suicide in Switzerland stands in flagrant violation of both the values enshrined in the Swiss Constitution and international human rights, including the principles of equality and non-discrimination. Assisted suicide is an affront to human dignity and violates the rights of persons in situations of vulnerability. Furthermore, the report identifies the inadequate provision of palliative care, suicide prevention, intervention, and postvention resources and programs, the for-profit nature of the healthcare sector, and the role of media as key factors contributing to increasing suicide rates in the country.

(a) Right to Life

Background

1. Under Swiss law, assisting suicide is not punishable in the absence of self-interested motives.¹ Indeed, under Article 115 of the Swiss Criminal Code, only the involvement in suicide for selfish reasons constitutes an offence punishable by up to five years of imprisonment. Furthermore, there is no legal requirement for the involvement of a physician nor that the patient be terminally ill. Legal assisted dying continues to be unregulated since 1942.
2. In recent years, the demand for assisted suicide has been steadily increasing. With 1176 recorded cases in 2018, the number of assisted suicides has more than tripled compared to 2010, with 1176 recorded cases, nearly 2% of all deaths in Switzerland in that year.²
3. A number of organisations in Switzerland have been facilitating the performance of assisted suicides since 1982. They offer instruction and personal guidance in committing suicide according to their own internal regulations. If they fulfil certain criteria, members of such organizations can directly make use of their 'services'.³ Membership numbers of just two such groups in Switzerland increased last year to more than 166,000, a growing trend that continued into 2021.⁴

New Medical Guidelines on Assisted Suicide

4. In May 2022, the Swiss Medical Association (FMH), representing over 42,000 members, a majority of physicians in Switzerland, adopted new guidelines on 'Management of dying and death', proposed by the Swiss Academy of Medical Sciences (SAMS) in 2021.⁵ The new guidelines are binding on physicians who are

¹ Swiss Criminal Code, 21 December 1937 (Status as of 1 June 2022), Article 115 <https://www.fedlex.admin.ch/eli/cc/54/757_781_799/en>; Swiss National Advisory Commission on Biomedical Ethics 'Assisted Suicide' Opinion no.9/2005 <https://www.nek-cne.admin.ch/inhalte/Themen/Stellungnahmen/en/suizidbeihilfe_en.pdf>.

² Bundesamt für Statistik 'Todesursachenstatistik: Häufigste Todesursachen bleiben im Jahr 2018 stabil - assistierter Suizid nimmt stark zu' (2018) <<https://www.bfs.admin.ch/bfs/de/home/aktuell/neue-veroeffentlichungen.assetdetail.15084042.html>>.

³ Swissinfo 'Growing number of people sign up for assisted suicide' (2018) <https://www.swissinfo.ch/eng/a-way-out_growing-number-of-people-sign-up-for-assisted-suicide/43899702>.

⁴ Swissinfo 'Assisted Suicide option remains in demand in Switzerland' (February 2021) <<https://www.swissinfo.ch/eng/assisted-suicide-option-remains-in-demand-in-switzerland/46390388>>.

⁵ Swiss Academy of Medical Sciences 'Umgang mit Sterben und Tod' (2018, angepasst 2021) <<https://www.samw.ch/de/Publikationen/Richtlinien.html>>; Swissinfo 'Swiss doctors adopt tighter assisted suicide guidelines' (May 2022) <<https://www.swissinfo.ch/eng/swiss-doctors-adopt-tighter-assisted-suicide-guidelines/47610372>>.

members of the FMH. They also play an important role in legal interpretation and practice, as the guidelines are frequently used by the Federal Supreme Court as a standard for the state of medical science.⁶

5. The new guidelines considerably expand the promotion of assisted suicide within the medical profession. First, their scope of application is broadened to include situations of 'intolerable/unbearable suffering', and not merely situations in which the patient's illness '[justifies] the assumption that the end of their life is near' as indicated in the previous guidelines. Moreover, the new guidelines are also applicable to children and adolescents of any age, as well as to patients with mental, psychosocial and multiple disabilities.⁷
6. The old SAMS guidelines from 2018 were originally rejected by the FMH after public consultations and discussions on the basis that the legal term 'unbearable suffering' was too vague and would result in great legal uncertainty.⁸⁹ However, this concern was dismissed after agreement that the guidelines include an assertion that 'assisted suicide for healthy persons is not medically and ethically justifiable', and that a person who wants to end their life must prove that their suffering is 'unbearable', and that 'other options have been unsuccessful or are rejected by the patient as unreasonable'.¹⁰
7. In contrast to the 2018 SAMS guidelines, the new 2021 version was not subject to public discussion but submitted directly to the FMH without prior consultation with physicians. The FMH's approval of the new SAMS guidelines was again given without consulting its members.¹¹
8. The endorsement of such guidelines by a professional organization representing approximately 95% of the physicians in Switzerland reflects a major slide down the slippery slope of normalization and encouragement of suicide, in direct violation of fundamental human rights.
9. The concept of 'unbearable suffering' fundamentally denies the mutability of physical or emotional pain. This is not an objective concept, subject to significant difference in interpretation, and ultimately one that discourages both doctors and society as a whole from fully caring for a patient until the end of his or her life. It opens the door for significant potential for an individual to be left alone in distress and increases the pressure to take his or her life away.¹²

⁶ Swiss Medical Association 'Rechtliche Grundlagen im medizinischen Alltag' (2020) <<https://www.fmh.ch/files/pdf7/01-grundlagen-2020-de-v2.pdf>>.

⁷ Swiss Academy of Medical Sciences 'Umgang mit Sterben und Tod' (2018, angepasst 2021) <<https://www.samw.ch/de/Publikationen/Richtlinien.html>>; in comparison with old SAMW guidelines: 'Betreuung von Patientinnen und Patienten am Lebensende' (2013).

⁸ Swiss Academy of Medical Sciences Newsletter 'Richtlinien «Umgang mit Sterben und Tod»: Stellungnahme zum Entscheid der FMH (October 2018) <<http://createsend.com/t/d-415123F194947C882540EF23F30FEDED>>.

⁹ Schweizerische Ärztezeitung 'FMH und SAMW überarbeiten die Richtlinien «Umgang mit Sterben und Tod» (November 2021) <<https://saez.ch/article/doi/saez.2021.20257>>.

¹⁰ Swissinfo 'Swiss doctors adopt tighter assisted suicide guidelines' (May 2022) <<https://www.swissinfo.ch/eng/swiss-doctors-adopt-tighter-assisted-suicide-guidelines/47610372>>.

¹¹ Henning Hachtel *et al* 'Practical Issues of Medical Experts in Assessing Persons with Mental Illness Asking for Assisted Dying in Switzerland' *Frontiers in Psychiatry, Policy and Practice Reviews* (July 2022) <<http://www.frontiersin.org/articles/10.3389/fpsyt.2022.909194/full>>.

¹² Hippokratische Gesellschaft Schweiz 'Euthanasie/Assistierter Suizid' <<https://hippokrates.ch/topic/sterbehilfe/>>.

10. Furthermore, the expansion of the subjective scope of applicability of the new FMH guidelines to also include patients with mental, psychosocial and multiple disabilities further exacerbates the prejudice and stigma associated with disability, and fuels stereotypes that characterize persons with disabilities as living an undesirable life that is not worth living.
11. For example, one end-of-life organization speaks of an 'unendurable incapacitating disability' as grounds for request for assisted suicide.¹³ A prominent assisted suicide advocate highlighted that the fear and vulnerability associated with disability often underly the desire for suicide: 'pain is not the main reason we want to die. It's the indignity. It's the inability to get out of bed or get into the toilet...'.¹⁴ However, many thousands of persons with disabilities have learned to rely on personal assistance in their daily lives, without finding this dependency undignified.¹⁵
12. Disability charities report that persons with disabilities feel pressure to end their lives when they are made to feel ashamed of their condition or that they are a 'burden' to society.¹⁶ The availability of on-demand assisted suicide inevitably has introduced a perceived duty to not be a social or economic hindrance to society, the family and the health care system.
13. More generally, the legality of assisted suicide undermines the values enshrined in the Swiss Constitution, which affirms that the 'the strength of a people is measured by the well-being of its weakest members'.¹⁷ Offering death as an alternative to suffering diverts critical attention from the underlying social, psychological, medical, economic and spiritual needs of the most vulnerable.

Inadequate Suicide Prevention Efforts

14. In November 2016, Switzerland adopted a national action plan on suicide prevention. Unreasonably, this action plan focuses exclusively on non-assisted suicides, allegedly on grounds that 'in the area of assisted suicide, the federal government has only an indirect influence, e.g., by promoting palliative care'.¹⁸
15. Despite the federal government's stated commitment, access to quality palliative care in Switzerland remains limited. That palliative care is finally encouraged represents only a recent development, with greater resources traditionally focused on curative treatment, acute care and assisted suicide. ¹⁹ Based on a 2019 study, palliative care physicians in Switzerland regularly receive assisted suicide requests without having received any specific training in managing these requests. Participants in the study expressed concern at the incompatibility of the suicide wishes of patients with palliative care principles and voiced a desire for a more structured debate on

¹³ Dignitas brochure <<http://www.dignitas.ch/images/stories/pdf/informations-broschuere-dignitas-e.pdf>>.

¹⁴ Marilyn Golden and Tyler Zoanni 'Killing us softly: the dangers of legalizing assisted suicide', *Disability and Health Journal* Volume 3, Issue 1 (January 2010).

¹⁵ *Ibid.*

¹⁶ SCOPE 'Scope concerned by reported relaxation of assisted suicide guidance' (2018) <<https://www.scope.org.uk/media/press-releases/scope-concerned-by-reported-relaxation-of-assisted-suicide-guidance/>>.

¹⁷ Federal Constitution of the Swiss Confederation of 18 April 1999 (Status as of 13 February 2022), Preamble <<https://www.fedlex.admin.ch/eli/cc/1999/404/en>>.

¹⁸ Government of Switzerland 'Suicide prevention in Switzerland Starting point, need for action and action plan' (2016) <<https://www.bag.admin.ch/bag/en/home/strategie-und-politik/politische-auftraege-und-aktionsplaene/aktionsplan-suizidpraevention.html>>, 3.

¹⁹ Swissinfo 'Why is Switzerland behind in palliative care?' (July 2016) <https://www.swissinfo.ch/eng/end-of-life_why-is-switzerland-behind-in-palliative-care/42273642/>.

assisted suicide availability in hospitals and a clearer legal and institutional framework.²⁰

16. Steffen Eychmüller, Professor of Palliative Care at the University of Bern, has lamented that both the legal framework and conversation around assisted suicide must not be reduced to a matter of alleged self-determination and dignity:

Many see it as death through ... physician assisted suicide versus suffering endlessly in today's healthcare. But this attitude might change if you see the opportunity to create, with your friends and family and the professionals, a vision for your end of life in dignity – and supported by palliative care.²¹

Undue Economic Influence

17. It is often overlooked that assisted suicide occurs within the context of a profit-driven healthcare system. The estimated cost of assisted suicide is CHF 7,500.²² This is significantly less cost-intensive than treatment for most long-term medical conditions, including palliative care. For example, the mean cost of care in Switzerland during a person's last year of life is CHF 32,700.²³ With assisted suicide legally available and effectively not discouraged within the medical profession, the incentive to save on costs poses a significant danger of steering many to consider taking their lives. This bitter reality falls hardest on socially and economically disadvantaged people, especially those who have progressive or chronic conditions or are terminally ill.

Role of Media

18. Swiss media outlets regularly give space to advertise assisted suicide. In 2018, the Swiss media database SMD showed more than 1200 articles with the keywords 'euthanasia' and 'assisted suicide'. Fifteen years earlier, there were not even half as many.²⁴
19. The medical director of the Münsingen Psychiatric Center in Bern and head of research on suicide and suicide prevention has criticized the headline-grabbing, detailed and glorifying ('new icon of euthanasia', 'last meal like Jesus Christ') manner in which assisted suicide is reported on and promoted. On the one hand, concerns have been raised over the so-called Werther effect, a special risk associated to media whereby excessive reporting may lead to copycat suicides.²⁵ On the other, evidence shows that the responsible dissemination of information on mastery of crisis decreases suicide rates (Papageno effect).²⁶ According to sociologist David Phillips, especially among older people, the media's glorification of assisted suicide settles into the 'mindset' and is brought out when life circumstances become difficult, for

²⁰ Claudia Gamondi et al 'Responses to assisted suicide requests: an interview study with Swiss palliative care physicians' *BMJ Support Palliat. Care* (March 2019) <<https://pubmed.ncbi.nlm.nih.gov/28801317/>>.

²¹ Swissinfo 'Why is Switzerland behind in palliative care?' (July 2016) <https://www.swissinfo.ch/eng/end-of-life_why-is-switzerland-behind-in-palliative-care/42273642#:~:text=Swiss%20law%20tolerates%20assisted%20suicide,euthanasia%2C%20is%20legal%20in%20Switzerland>.

²² Dignitas brochure <<http://www.dignitas.ch/images/stories/pdf/informations-broschuere-dignitas-e.pdf>>.

²³ Radoslaw Panczak, PhD et al 'Regional Variation of Cost of Care in the Last 12 Months of Life in Switzerland: Small-area Analysis Using Insurance Claims Data' *Med Care* Volume 55, Issue 2, p155-163.

²⁴ Medien Woche 'Sterbehilfe als Medienereignis (February 2019) <<https://medienwoche.ch/2019/02/21/sterbehilfe-als-medienergebnis/>>.

²⁵ Ibid.

²⁶ Niederkrotenthaler T et al 'Role of media reports in completed and prevented suicide: Werther v. Papageno effects' *BJ Psych* Volume 197 (2010), p 234-243 <<https://www.meduniwien.ac.at/web/ueber-uns/news/detailseite/2018/news-im-november-2018/papageno-effekt-aufklaerung-durch-andere-menschen-mit-eigenen-suizidalen-erfahrungen-kann-suizidgedanken-verringern/>>.

example, because a need for care arises, to the point where they would then no longer even consider alternatives to assisted suicide.²⁷

20. These concerns are exasperated by the manner in which a number of organisations advertise their assisted suicide and their services.²⁸
21. According to Guideline 7.9. of the Declaration of a Journalist's Duties and Rights 2000, and its accompanying Directives, also known as the Journalist's Code, the Swiss Press Council urges restraint in reporting suicides, except in cases where there is a clear public interest.²⁹ The Press Council has since dealt with multiple complaints about reports on assisted suicide.³⁰ Regrettably, as outlined above, the Journalist's Code has remained largely ignored by a large number of media outlets.

The Right to Life in International Law

22. There is no 'right to die' under international law. Article 6 of the International Covenant on Civil and Political Rights (ICCPR), which Switzerland acceded to in 1992, recognizes that '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'.³¹ Article 10 of the Convention on the Rights of Persons with Disabilities (CRPD), to which Switzerland became a State Party 2014, safeguards the right to life of persons with disability without discrimination by affirming that 'State Parties ... shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others'.³²
23. The obligation of states to protect this most fundamental human right is strictly interlinked to that to guarantee the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. It thus requires ensuring the highest possible quality of care to persons experiencing suffering of any kind, including palliative care.
24. Article 12 of the International Covenant on Economic, Social, Cultural Rights (ICESCR) imposes an obligation on its States Parties to achieve the progressive realization of 'the right to everyone to the enjoyment of the highest attainable standard of physical and mental health'.³³ The CRPD further specifies in its Article 25 that 'persons with disabilities have the right to the enjoyment of the highest attainable standard of health, without discrimination on the basis of disability',³⁴ and requires States Parties to take measures to 'enable persons with disabilities to attain and maintain independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life'.³⁵
25. The legalization of practices such as assisted suicide constitutes a blatant violation of the right to life. As affirmed inter alia by the European Court of Human Rights in *Haas*

²⁷ Medien Woche 'Sterbehilfe als Medienereignis (February 2019)

<<https://medienwoche.ch/2019/02/21/sterbehilfe-als-medienergebnis/>>.

²⁸ See, for example, the website of ETERNAL SPIRIT Foundation (2022) <<https://www.eternalspirit.ch/en/>>.

²⁹ Swiss Press Council 'Directives relating to the «Declaration of the Duties and Rights of the Journalist»' <<https://presserat.ch/en/journalistenkodex/richtlinien/>>.

³⁰ Medien Woche 'Sterbehilfe als Medienereignis (February 2019)

<<https://medienwoche.ch/2019/02/21/sterbehilfe-als-medienergebnis/>>.

³¹ International Convention on Civil and Political Rights (as adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art.6.

³² Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 2 May 2008) 2515 UNTS 3 (CRPD), art. 10.

³³ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 171 (ICESCR), art. 12.

³⁴ *Ibid.*, art. 25.

³⁵ *Ibid.*, art. 26.

v Switzerland and *Pretty v United Kingdom*, the right to life does not include a diametrically opposite right to die.³⁶ These cases affirm that the rights invoked by proponents of assisted suicide, such as the right to privacy, as well as the freedom from torture or cruel, inhuman or degrading treatment or punishment, must be understood in conjunction with Article 2, which not only prohibits the State from intentionally taking life, but also imposes a positive obligation on States to take appropriate steps to safeguard the lives of individuals within its jurisdiction.³⁷

26. The permissibility of assisted suicide in Switzerland stands in flagrant violation of international law. It follows that States should not permit individuals to actively facilitate the suicide of others. Accordingly, the Swiss legal framework should be reformed to recognize and respect the equal dignity and right to life of all persons including particularly older persons and persons with disabilities among others. Moreover, the Swiss government should redouble its commitment to address the underlying social, psychological, medical, and economic as well as spiritual needs of the most vulnerable.

(b) Recommendations

27. In light of the foregoing, ADF International suggests the following recommendations to be made to Switzerland:

- a. Amend Article 115 of the Penal Code to also prohibit assisted suicide;
- b. Undertake legal and policy measures to protect the dignity and human rights of persons with disabilities, the elderly, sick and other vulnerable members of society;
- c. Strengthen policies and increase investments to promote the medical, psychological, social and economic well-being of persons with disabilities and other vulnerable members of society;
- d. Ensure that all patients are provided with high-quality, comprehensive palliative care;
- e. Broaden the scope of the national action plan on suicide prevention to also focus on preventing recourse to assisted suicide;
- f. Promote awareness-raising campaigns to eliminate harmful stereotypes about disability and ageing;
- g. Support efforts to encourage responsible media reporting on assisted suicide.

³⁶ *Haas v Switzerland* (2011) 53 EHRR 33; *Pretty v United Kingdom* (2002) 35 EHRR 1.

³⁷ *Ibid.*