LEGAL WORKING GROUP

Preamble:

We were approached by the World Federation of Right to Die Societies (WFRtDS) to compile a list of fundamental legal principles which inform many, if not all, of the jurisdictions which currently have right to die legislation.

The purpose of this compilation was to provide a resource for WFRtDS to facilitate and inform member societies which are embarking on the promotion or passage of comparable legislation in their own jurisdictions, or involved in the prosecution of cases concerning the right to die. By having a law or a court case similar to other countries, advocates for law reform and counsel in this area are first of all not without precedent elsewhere, and secondly, not without knowledge, experience, support or advice from lawyers, practitioners, legislators and activists around the world.

What we offer here is a simple list of legal foundations which are or may be of relevance to all individuals and groups promoting such legislation in their own country. These are common principles at law and principles which have been to greater or lesser degrees successful in other countries. We have tried to provide some useful references and links to give those researching these matters a starting point for their own research. Each jurisdiction is subtly or clearly different, depending on the cultural mores of the country. Therefore each of the principles described here will in all likelihood require some moderating and change to fit with levels of acceptability in different countries.

Our purpose has been limited and discrete. This is not the comprehensive answer to all legal arguments in the area of the right to die, and the right and access to receiving help to die. But we hope it will be of some assistance to those advocating for law change, and those prosecuting law cases in their country.

Importantly, we do not make any recommendation as to the adoption or inclusion of any of these legal principles in any country's legislation, or in the prosecution of any active case in this area. We simply draw to the attention of members of the WFRtDS that these are commonly held and regularly argued principles of law at the foundation of right to die legislation.

The authors remain available for comment or contact should anyone wish to follow up the principles outlaid here. Their details are to be found at the conclusion of this paper.

Our mission on behalf of the WFRtDS was expressed to us as follows:

Purpose:

1. **To formulate common legal principles which may support the right to die across a range of jurisdictions.**
2. **To assist member societies when they are prosecuting cases for the right to die or advancing legislation to permit the right to die.**

Identified Legal Principles in Right to Die Legislation	
1.	**Decriminalise the act of ending one's own life:** The act is legally "suicide" and decriminalised in most States. The act does not imply that another person or an organisation helps (assists). It is only (but at least) the freedom to end one's own life by one's own action. Research should be conducted to see if there are States where suicide is still a crime, followed by efforts to decriminalise it. Reference: European Court of Human Rights judgment of 20 January 2011, Case of Haas v. Switzerland, paragraph 51: "In the light of this case-law, the Court considers that an individual's right to decide by what means and at what point his or her life will end, provided he or she is capable of freely reaching a decision on this question and acting in consequence, is one of the aspects of the right to respect for private life within the meaning of Article 8 of the Convention." web: http://hudoc.echr.coe.int/eng?i=001-102940
2.	**The state has no right to take away one's right to die:** Where the act of suicide is not a crime, as a next step the question arises, to what extent the State has legal provisions to make it difficult or impossible for an individual to put this personal act of ending one's own life by one's own action into practice (restriction of access to means, etc.). The restrictions may have a chilling effect on those otherwise ready to help (e.g. medical doctors) and/or turn the act into a "sheer mission impossible" with high risks of failure and thus dire consequences for the individual and possible third persons (family, friends, emergency rescue teams, etc.). The restrictive law provisions should be researched / identified. References: Bill of Rights Act 1990, New Zealand – the right to refuse medical intervention, nutrition, hydration. Medical Treatment Agreement Act (Wet op de geneeskundige behandelingsovereenkomst), The Netherlands Patient Rights Act (Wet op de patientenrechten), Belgium. European Court of Human Rights, judgment of 13 May 1980, Case of Artico v. Italy, paragraph 33 (which turned into a standing, so-called "Artico-jurisdiction"): "The Court recalls that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective;. . . " web: http://hudoc.echr.coe.int/eng?i=001-57424 German Federal Constitutional Court, judgment 2 BvR 2347/15 and others, of 26 February 2020: "The prohibition of assisted suicide services violates the general right of personality […] in its manifestation as a right to a self-determined death afforded to persons determined to end their own lives. […] As an expression of personal autonomy, the general right of personality encompasses a right to a self-determined death. This right entails not only the freedom to take one's own life but also protects the freedom to seek and, if offered, utilise assistance from third parties to this end." web: https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2020/bvg20-012.html

3.	**The right / freedom to be assisted to die:** a. PAD – Physician Assisted Dying refers to the prescription of lethal medication to be voluntarily self-administered by the individual. b. Voluntary euthanasia refers to the administration of lethal medication, usually by a physician. c. MAID – Medical Assistance in Dying refers to (usually) both options a) and b) together. References: a.: Death with Dignity Act in the US State of Oregon and further US States which have enacted laws based on the "Oregon model", Switzerland, Germany. b.: Belgium, Luxembourg, Colombia. c: The Netherlands, Canada, Victoria (Australia). US: https://www.deathwithdignity.org/in-your-state/
4.	**Self – determination or patient choice:** Where the choice of the **patient** is paramount and protected in law.
5.	**Mental competence to make the decision:** a. The individual / patient is assumed to be competent and has to be proven to be incompetent otherwise; b. The individual / patient has to be proven to be competent. Reference: Swiss law is based on the assumption that everybody has capacity of judgment, unless there are clear signs that this is not the case (such as the person being delirious due to drugs or having hallucinations due to a psychiatric ailment) – article 16 of the Swiss Civil Code (https://www.admin.ch/opc/en/classified-compilation/19070042/index.html#a16). This matches common law which recognises, as a long-cherished right, that all adults must be presumed to have capacity until the contrary is proved. This approach is also found in the Voluntary Assisted Dying Act 2017 of Victoria, Australia: " ...a person is presumed to have decision-making capacity unless there is evidence to the contrary". http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/f932b66241ecf1b7ca256e92000e23be/B320E209775D253CCA2581ED00114C60/%24FILE/17-061aa%20authorised.pdf American law in all states assumes that a person who seeks to hasten death has at least cast doubt on whether he or she is driven by depression, which should be treated. The Dutch euthanasia law requires that the physician performing the euthanasia or providing the euthanatics ensures that the request for euthanasia / euthanatics is based on a well-considered and voluntary decision by the patient. References: Netherlands, New Zealand, Switzerland.
6.	**Legal protection/immunity from prosecution for doctors or health practitioners who assist people to die:** Where legislation explicitly protects health professionals from criminal liability when end of life choice regulations are complied with, either in a PAD or MAID procedure. References: Netherlands, Belgium, New Zealand. United States – in the nine jurisdictions where PAD is legalised via a death with dignity law.
7.	**Mercy – health professional acts out of mercy and /or without selfish reasons:**

	Where compassion is explicitly supported and self-interest is prohibited. References: Netherlands, Switzerland.
8.	**People who disagree on religious or other grounds must not be allowed to prevent others from making a legitimate and lawful choice to die:** Where religious freedom is protected but imposition of religious beliefs on the laws of a pluralist society is prevented. References: Argument used in Dignitas' Constitutional Court complaint in Austria done by "Dignitas – To live with dignity – To die with dignity". Based on the "freedom of thought, conscience and religion" (article 9 of the European Convention on Human Rights ECHR) The liberal-democratic legal systems of Europe are obliged to maintain ideological neutrality in laws, especially in areas which can be seen quite differently on the basis of the world view. The provisions of Art. 9 ECHR also not only safeguard the rights of private individuals, but also oblige the state to ensure that the rights guaranteed by the aforementioned provisions can actually be exercised within the framework of public order."
9.	**Support for professional associations' engagement in the development of ethical and medical standards in right to die procedures:** Where statutory bodies are established to support, train and otherwise assist medical practitioners who wish to participate in right to die procedures. It should be researched / identified to what extent such statutory bodies have a base in law to establish "guidelines" that may become obligatory in the sense of good conduct/practice, possibly seen as "soft law". Such soft law may be used by / referred to by courts. For example in Switzerland, a Court pointed out that the "medical-ethical guidelines" set up by the "Swiss Academy of Medical Science" may be taken into consideration but not as far as these would regulate issues beyond what law provisions. It must be kept in mind that "guidelines" set up by statuary bodies may lack "a democratic base" since such guidelines are set up by a certain small group of people/experts with certain interests / views bound to the interests of the issue at stake. For example, "medical-ethical guidelines" take a view to regulating issues for the medical profession, but their interests may not be the same as the interests of individuals / patients, and it may be in conflict with basic constitutional and/or human rights provisions. References: Netherlands, Belgium, New Zealand, Switzerland.
10.	**Universal and free access to the appropriate medication or other means to exercise the right to die:** Where access to appropriate medication (means) is enabled in law. Connected with point 2 above: There may be **either** no "right" / no law provision in a State to block access to the means, **or** explicitly worded in law the right to have access to the means. References: Germany - Federal Administrative Court decision of 2 March 2017, judgment BVerwG 3 C 19.15: see press release by "Dignitas – To live with dignity – To die with dignity": http://www.dignitas.ch/images/stories/pdf/medienmitteilung-08032017.pdf and translation by

	the court based on an edited version of the original ruling: https://www.bverwg.de/en/020317U3C19.15.0 Bundesverfassungsgericht 26 February 2020.
11.	**Binding provision of the right to die for those who are no longer competent to decide, according to the explicit direction of advance directives made when competent:** Where a patient's express wishes previously recorded are able to be enacted after the patient has lost the competence to verify them again. References: Netherlands.
12.	**Guarantee that where the right to die is enshrined in law, all people have access to it (role of the state to provide):** Where the law explicitly protects the right of all people to access right to die legislation and enables its universal access. Note: there are two different approaches possible: a) the state has an obligation to provide access b) the state has an obligation not to block access (to make it impossible).
14.	**Protect and provide a range of delivery methods, including self-administering of lethal medication, medical aid by a health professional:** Where both PAD and MAID are permitted and protected. References: Canada, the Netherlands.
15.	**Preserve dignity:** Where dignity is established as a driver of the legislation and is defined by the patient themselves. Reference: United States – in the nine jurisdictions where PAD is legalised via a death with dignity law.
16.	**Preserve patient autonomy:** Where autonomy and self-determination are established as drivers of the legislation and are defined and exercised by the patient themselves. Reference: United States – in the nine jurisdictions where PAD is legalised via a death with dignity law. German Federal Constitutional Court, judgment 2 BvR 2347/15 and others, of 26 February 2020 (see also above): "Rooted in the belief that personal autonomy and development of one's personality are integral to human freedom, the guarantee of human dignity encompasses in particular the protection of one's individuality, identity and integrity. Inalienable human dignity accordingly requires that any human being be unconditionally recognised as an individual with personal autonomy." Web: https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2020/bvg20-012.html
17.	**Compassion and the alleviation of suffering:**

	Where compassion is established as a driver of the legislation and the level of suffering to be endured is determined by the patient themselves. References: May be derived from the "Declaration of Geneva" by the WMA, adopted in1947. See: https://www.wma.net/what-we-do/medical-ethics/declaration-of-geneva
18.	**The protection of the highest values of the state: life, dignity, choice, self-determination:** Where these are all established as drivers of the legislation and defined and exercised by the patient themselves. References: Generally, "western-world" constitutions, Human Rights Acts (UK), European Convention of Human Rights (Europe), etc.
19.	Items not included: Dementia – where a patient has become incapable through dementia. However, for incapable dementia (and other diagnosis / situations which have led to an incapacity of judgment, the "passive euthanasia" ("to let die") approach may apply. This, if the law of a country makes it clear that an "advance (health care) directive" (sometimes called "advance directive to refuse treatment" and other names) is applicable / has to be respected by the treating health care professionals.

Reference Material:

http://hudoc.echr.coe.int/eng?i=001-102940

http://www.dignitas.ch/images/stories/pdf/diginpublic/stellungnahme-submission-end-of-life-choices-south-australia-31072019.pdf

http://www.dignitas.ch/index.php?option=com_content&view=article&id=34&Itemid=74&lang=en

https://www.jesusandmo.net/comic/zurich2

http://www.dignitas.ch/index.php?option=com_content&view=article&id=89&Itemid=183&lang=en

https://docs.google.com/spreadsheets/d/1DtRLRUCVzTuE2y2arQEhVXlD30DuWyXFmk_jMSiPD_E/edit#gid=1248995596

https://docs.google.com/document/d/1LUOLVBAAKBAKazggk7bsn-umQ27fWyAqldaFD7vypYc/edit#heading=h.weffumg20t2p

www.finalexitnetwork.org

World Map - The World Federation of Right to Die Societies (wfrtds.org)

APPENDIX 1: Membership of the Legal Working Group

Chairperson – Hon Maryan Street (New Zealand)
Maryan Street is a former Member of the New Zealand Parliament. Before becoming a Member of Parliament in 2005, Maryan was a teacher, a union official, an academic and an industrial relations practitioner. She was made a Cabinet Minister in the Labour Government in 2007. As an MP, Maryan promoted an End of Life Choice Bill, which she developed with the End of Life Choice Society in New Zealand. When she left Parliament in 2014, she continued to promote end of life choice issues through various means. She became the President of the End-of-Life Choice Society of New Zealand, a position she held for two years. She has maintained her activism, working across all political parties to assist the passage of the End of Life Choice Act 2019. The law is subject to a popular referendum at the General Election of 2020 and so Maryan's campaigning continues.

Miriam de Bontridder (Netherlands)
Miriam de Bontridder has worked in the international legal profession for over 26 years at the Law Firm Stibbe, Simont, Monahan & Duhot (now called Stibbe for brevity). Since 2006 to date she has also been a deputy judge at the Amsterdam Court of Appeal. In the period 2013-2019 in which she was a board member, she was the driving force behind Stichting De Einder. This foundation, which is mainly active in the Netherlands, provides information about humane suicide methods and provides (moral) support to people who want to end their lives.

Laura De Vito (Netherlands)
Dr Laura De Vito is a lawyer and academic and works as legal adviser for the largest right to die organisation, the Dutch NVVE (Nederlandse Vereniging voor Vrijwillig Euthanasie), founded in 1973. She has researched and written extensively on international right to die legislation and practice and presented at the 2018 Conference of the World Federation of Right to Die Societies.

Peter Gowin (Austria)
Mag. Dr. Dr. Gowin is the director of the Human and Global Development Research Institute (DRI), an independent non-governmental research institute that deals with global development in the 21st century, and the chair of the Austrian Society for a Humane End of Life (ÖGHL), established in 2019 and the only organization of its kind in Austria. Dr. Gowin studied in Vienna (Austria), Stuttgart (Germany) and Oxford (U.K.) and holds doctorate degrees in physics and in psychotherapy. Since 1997 he held a number of posts and other engagements with the United Nations in the areas of water, energy, sustainable development and knowledge management.

Silvan Luley (Switzerland)
Silvan Luley is a team member and lawyer at the not-for-profit membership association "DIGNITAS – To live with dignity – To die with dignity" founded 1998 in Switzerland, working internationally in guidance, advice and education on suicide attempt prevention, safeguarding quality of life and end-of-life choices, as well as legal further development to implement human rights relating to these issues.

Robert Rivas (Florida, USA)
Robert Rivas, the general counsel for Final Exit Network, is a partner in the Tallahassee office of Sachs Sax & Caplan, a law firm based in Boca Raton, Florida. Before becoming a lawyer, Mr. Rivas was a reporter for *The Miami Herald*, a correspondent in Central America and the Caribbean, and an editor at *The Palm Beach Post*. As a lawyer for 29 years, Mr. Rivas has concentrated in First Amendment-

related law for media and non-media, general civil litigation and appeals. He first became involved in the Death-With-Dignity movement in 1996 as counsel in a joint ACLU-Hemlock Society project that led to a landmark Florida physician-aid-in-dying case, *Krischer v. McIver*. More recently, as general counsel to Final Exit Network, he has defended the Network and its Exit Guides in civil and criminal cases in Arizona, Georgia, and Minnesota. He has engaged and overseen at least 24 other attorneys in the process.