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CENTER FOR HEALTH & HUMAN RIGHTS

**High Court of South Africa**

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## 1. Introduction

The Center for Health and Human Rights at the O'Neill Institute for National and Global Health Law at Georgetown University Law Center respectfully submits the following expert contribution on the legal framework of assisted dying in Colombia. This submission aims to support the constitutional challenge brought by DignitySA before the High Court of South Africa, which seeks to declare the criminalization of medical assistance in dying unconstitutional and to direct Parliament to enact legislation establishing appropriate safeguards and guidelines for the provision of this service.

We have been instructed to provide this expert opinion by Adams & Adams Attorneys on behalf of DignitySA to outline the legal and constitutional developments regarding the right to die with dignity in Colombia.

The O'Neill Institute is a non-profit institution located at Georgetown University in Washington, D.C. Its mission is to conduct rigorous research to identify solutions to pressing national and international health concerns. The Center for Health and Human Rights, one of the areas of work within the O'Neill Institute, works to improve health through academic research that focuses on the intersection of health and national and international human rights law. A key facet of our work involves engagement in domestic and international standard-setting processes to advance health, justice, and equity in all of its dimensions through the strategic use of human rights and comparative legal frameworks.

This expert opinion is submitted by Oscar Cabrera, Silvia Serrano Guzman and Natalia Acevedo Guerrero.

Oscar A. Cabrera is the co-director of the Center for Health and Human Rights and the director of the Global Center for Legal Innovation on Food Environments at the O'Neill Institute, as well as a visiting professor of law at Georgetown University. He previously served as the executive director of the O'Neill Institute from 2010-2018. Cabrera earned his Bachelors of Laws in Venezuela at the Universidad Católica Andrés Bello and his LL.M., with concentration in health law and policy, at the University of Toronto.

Silvia Serrano Guzman is the co-director of the Center for Health and Human Rights at the O'Neill Institute and an adjunct professor of law at Georgetown University. She obtained her law degree in Colombia at the Universidad Autónoma de Bucaramanga. She also holds an LL.M. in international legal studies with a certificate in international human rights law from Georgetown University Law Center and an M.A. in legal argumentation from the University of Alicante. She is currently an S.J.D. candidate at Georgetown University Law Center, focusing in discrimination and structural inequality.

Natalia Acevedo Guerrero is a senior consultant with the Center for Health and Human Rights at the O'Neill Institute. She is a Lawyer with a minor in History from Universidad de los Andes in Bogota, Colombia. She



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holds an LL.M. from McGill University and a Master of Arts in Bioethics and a Certificate in Latin American Studies from the University of Pittsburgh.

Our submission is structured as follows: First, we describe the jurisprudence of the Constitutional Court of Colombia, explaining how the Court has framed the "right to die with dignity", its different elements, and the requirements they have established to access this right; Second, we focus on the developments from the Ministry of Health, emphasizing on the procedural requirements to organize the services and provide safeguards; Finally, we explore the available data describing the access to end-of-life services in Colombia.

## 1. The development of the right to die by the Constitutional Court of Colombia

Through ruling C-239 of 1997, the Constitutional Court of Colombia examined the issue of end of life for the first time, deciding on an abstract constitutional challenge against the Criminal Code, which sanctioned "compassionate homicide" in all cases. The Court determined that criminal penalties could not be applied to compassionate homicide when three conditions are met: (i) the patient provides consent, (ii) the procedure is carried out by a physician, and (iii) the patient has been certified as suffering from a terminal illness that causes unbearable pain incompatible with their concept of dignity. The Court held that the State's duty to protect life must be reconciled with respect for human dignity and the fundamental right of free development of personality recognized by the Colombian Constitution. Therefore, the State cannot oppose an individual's decision to end their life when they are suffering from a terminal illness that causes unbearable pain and is incompatible with their own notion of dignity. The Court concluded that 'the fundamental right to live with dignity implies, therefore, the right to die with dignity, since forcing a person to prolong their existence for a short time when they do not wish to and are suffering deeply, amounts not only to cruel and inhuman treatment, which is prohibited by the Constitution (…), but also to an annulment of their dignity and autonomy as a moral subject." [1]

Following this decision, which applies generally to the entire Colombian population, the Constitutional Court has since ruled on several *tutela* cases in which patients have sought protection of their fundamental rights after being denied access to euthanasia[2]. Different from the abstract action of unconstitutionality, the *acción de tutela* is the constitutional mechanism provided for in the Colombian legal system to challenge specific situations where fundamental rights are violated. Through these rulings, the Court has clarified the scope of the right to die with dignity, defined the requirements for informed consent in euthanasia procedures[3], and

[1] Constitutional Court of Colombia, ruling C-239 of 1997.
[2] Constitutional Court, Rulings, T-970 of 2014, T-132 of 2016, T-322 of 2017, T-423 of 2017, T-721 of 2017, T-544 of 2017, T-060 of 2020, T-048 of 2023, T-445 de 2024, T-057 of 2025.
[3] The Court has analyzed the nuances of informed consent for end-of-life procedures in the rulings T-970 de 2014, T-544 de 2017, T-721 de 2017, T-060 de 2020, T-048 de 2023 y T-445 de 2024

addressed special considerations for children, adolescents[4], and individuals with disabilities[5] seeking access to euthanasia.

With regard to informed consent, the Court has emphasized that it is a fundamental requirement for any end-of-life procedure and has outlined several key principles. First, the legitimacy to decide when existence is no longer desirable and compatible with human dignity lies primarily with the individual, whose will prevails. Second, consent requires the individual's capacity to understand their medical condition and end-of-life choices, along with the responsible exercise of the medical profession by treating physicians, who must both inform the patient about the procedure and assess the maturity of their judgment and decision-making capacity. Third, consent must be free, informed, and unequivocal. Fourth, the validity of consent must be assessed in light of each individual's specific circumstances. Finally, substitute consent is valid only if given under conditions that allow for a reasonable inference that it reflects the choice the patient. It must genuinely represent the preferences the person would have expressed if conscious, and a more rigorous verification process must be conducted to ensure compliance with the other requirements[6].

In 2021, the Constitutional Court reviewed a new abstract constitutional challenge to the Criminal Code, arguing that limiting euthanasia to individuals with a "terminal illness" excluded people with extreme health conditions who experience intense suffering, thereby violating their rights to integrity, equality, free development of personality, dignity, and the principle of solidarity. In ruling C-233 of 2021, the Court held that 'the condition of a terminal illness constitutes a barrier to the fundamental exercise of the right to a dignified death, an undue restriction on human dignity in its dimensions of autonomy and physical and moral integrity" [7]. The Court emphasized that extreme health conditions causing intense suffering should also qualify an individual for euthanasia. It further explained that requiring a prognosis of imminent death does not necessarily serve the purpose of protecting life but instead "imposes a significant limitation on autonomy and the right to avoid conditions that contradict an individual's critical interests or personal concept of a dignified life." As a result, the Court ruled that euthanasia could be accessed when three conditions are met: (i) the patient provides free and informed consent, (ii) the procedure is performed by a physician, and (iii) the patient experiences intense physical or psychological suffering due to a bodily injury or a serious and incurable disease. Consequently, a terminal illness is no longer a prerequisite for euthanasia in Colombia.

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[4] According to the rulings T-721 of 2017 and T-544 of 2017 and the administrative Resolution 825 of 2018 from the Ministry of Health and Social Protection, terminally ill children from the age of 6 who have a terminal illness or condition and who are in constant and unbearable suffering that cannot be relieved can access euthanasia. In the case of minors between the ages of 6 and 14, it is mandatory to have the consent of those who exercise parental authority over the child and it must be certified that they achieve exceptional neurocognitive and psychological development and that their concept of death reaches the level expected for a child over 12 years old. On the other hand, for adolescents from 14 to 17 years-old, it is not mandatory to have the concurrence of consent of those who exercise their parental authority.

[5] In the ruling T-048 de 2023 the Constitutional Court recognized that persons with disabilities can provide their informed consent for end-of-life purposes if their consent is free, informed, and unequivocal. Thus, affirming that a person with a disability doesn't have capacity and should or should not be allowed to access end of life care is contrary to their right to autonomy and to the right to die with dignity. This case also stresses the need to understand the importance of controls and safeguards for decisions around dying, especially when someone with a disability is involved. Similarly, in the case

[6] *See* Constitutional Court, rulings T-048 de 2023 and T-057 of 2025.

[7] Constitutional Court, ruling C-233 of 2021.

In 2022, through ruling C-164, the Court upheld the constitutionality of Article 107 of the Criminal Code regarding the criminal offense of inducing or assisting suicide. It ruled that "providing assistance to suicide" does not constitute a crime when performed by a physician and when the existing requirements for accessing euthanasia are met. As a result, the Court recognized medical assistance in dying as an additional option within the right to die with dignity[8].

The Constitutional Court of Colombia has addressed end-of-life issues in various decisions over the past 20 years. Through multiple rulings, the Court has shaped the *fundamental right to die with dignity* as an autonomous and independent right that encompasses different facets, including: (i) palliative care, which aims to manage pain and suffering in cases of diseases that lack effective therapeutic and curative measures; (ii) the modification of therapeutic effort, which involves suspending or limiting life-support measures when they may cause greater suffering to the patient; and (iii) specific dying procedures, including active euthanasia, terminal sedation and medical assistance in dying[9]. The Court has clarified that these different aspects are not mutually exclusive but should instead contribute to enhancing the dignity and self-determination of individuals facing the end of life. Therefore, as the Court has stated, "a person cannot be forced to exhaust one aspect before another or to accept a treatment they consider disproportionate; instead, it is up to the patient to determine which course best suits their health condition, vital interests, and concept of a dignified life." [10] Consequently, patients cannot be required to undergo palliative care before accessing euthanasia or other end-of-life options.

### 1.2. Fundamental rights used by the Constitutional Court to frame the "right to die with dignity"

Through its various rulings, the Constitutional Court of Colombia has established a strong constitutional foundation for the *right to die with dignity* as an autonomous fundamental right. The Court has determined that this right is rooted in multiple constitutional guarantees and human rights treaties that form part of Colombia's constitutional framework, including the rights to life, human dignity, autonomy, the free development of personality, and health[11]. Accordingly, the Court's framework aligns with International Human Rights Law[12].

#### *The right to life and autonomy*

In its rulings, the Court has recognized that a dignified life extends beyond mere subsistence and must take into account its quality, particularly from the perspective of the individual. Life cannot be reduced to biological existence alone, nor can it be indifferent to minimum conditions of well-being and human dignity[13]. The Court has emphasized the connection between the right to life and autonomy, holding that the State cannot protect life while disregarding individual autonomy and dignity. In its 1997 ruling, the Court concluded that the

[8] Constitutional Court, ruling C-164 of 2022.
[9] Constitutional Court, ruling C-164 of 2022. *Also see*: Ruling C-233 of 2021.
[10] Constitutional Court, ruling C-233 of 2021.
[11] Constitutional Court, ruling C-239 of 1997, C-233 of 2021. *Also see*: T-970 of 2014, T-132 of 2016, T-322 of 2017, T-423 of 2017, T-721 of 2017, T-544 of 2017, T-060 of 2020, T-048 of 2023, T-445 de 2024, T-057 of 2025. Also see:
[12] *See*: Silvia Serrano-Guzman, Oscar Cabrera, "The right to a dignified death: an interpretive proposal "(El *derecho a la muerte digna: una propuesta interpretativa). In: Liliana Ronconi (dir.), Human* rights from the global south: Current discussions (*Los derechos humanos desde el sur global: Discusiones actuales)*, DER Ediciones-CEDIDH, Santiago de Chile (2024).
[13] Constitutional Court, ruling C-239 of 1997 and C-233 of 2021.



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constitutional duty to protect life must consider its *quality* and includes the obligation to prevent the prolongation of painful or undignified conditions, as determined by each individual's interests and experiences. For terminally ill patients suffering from unbearable pain, the Court held that "the fundamental right to live with dignity thus implies the right to die with dignity." [14]. Expanding on this reasoning, in 2021, the Court underscored that respect for the right to life also requires recognizing the subjective experiences of those living with extreme health conditions, even in cases where their death is not imminent[15].

***The right to dignity, free development of personality and autonomy***

Article 16 of the Colombian Constitution recognizes the right to the *free development of personality*, which is closely linked to human dignity, freedom, and autonomy. This right grants individuals the power to make autonomous life choices. Accordingly, individuals have the right to exercise their "free and spontaneous choice regarding their lifestyle and life plan" and the State is obligated to respect "their ability to act and feel differently, as well as to determine their own life choices in accordance with their personal aspirations"[16].

In the context of end-of-life decisions, this right ensures that individuals facing severe illness may choose whether to continue medical treatment or to bring their suffering to an end[17]. The Court has held that the rights to dignity and free development of personality encompass the right to freely choose a dignified death. Concluding otherwise would reduce a person to a mere instrument for preserving life as a biological fact or an abstract value, thereby nullifying their dignity and autonomy as a moral subject[18]. The Court has affirmed that the Constitution "does not favor any specific model of life but instead upholds a strong commitment to autonomy and the free development of personality, which includes the autonomous choice of a dignified mode of death."[19] In this sense, the right to human dignity protects individuals experiencing intense suffering, and the State cannot deny them access to relief.

***The right to be free from cruel and degrading treatment***

Through its jurisprudence, the Constitutional Court has also linked the right to a dignified death to physical and moral integrity, understood as the right to live without humiliation. This principle is a fundamental aspect of human dignity and is reinforced by Article 12 of the Constitution which prohibits cruel, inhuman, and degrading treatment. The Court has explicitly stated that "the fundamental right to live in a dignified manner thus implies the right to die with dignity, since condemning a person to prolong their existence for a short time, when they do not want to and suffer from deep afflictions, amounts not only to cruel and inhuman treatment, prohibited by the Constitution (Article 12), but also to an annulment of their dignity and autonomy as a moral subject. The person would be reduced to an instrument for the preservation of life as an abstract value." [20].

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[14] Ibid.
[15] Constitutional Court, ruling C-233 of 2021.
[16] Constitutional Court, rulings T-413 of 217 and C-639 of 2010.
[17] Constitutional Court, ruling C-239 of 1997.
[18] Ibid.
[19] Constitutional Court, ruling C-233 of 2021.
[20] *See* Constitutional Court, ruling C-239 of 1997, C-233 of 2021, T-970 of 2014.



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***The right to health***

More recently, the Court has developed the connection of the right to die with dignity with the right to health. In ruling C-233 of 2021, the Court stated: "The right to die with dignity is a **humanitarian bridge between life and death, built through health services or care**, or, where applicable, through their omission (in dimensions such as palliative care, adjustment of therapeutic efforts, or specific provisions for dying). (...)"[21]. (Emphasis added) As such, access to healthcare services and procedures that uphold the right to die with dignity is a necessary component of protecting the right to health. Moreover, the Court has stated that interrelated and essential elements of the right to healthcare are also applicable to the right to die with dignity. This includes the elements of availability, accessibility, acceptability, and quality[22]. Accordingly, healthcare services that ensure the fundamental right to a dignified death must: (i) guarantee the presence of competent services and professionals; (ii) respect differential conditions and medical ethics; (iii) be accessible to all individuals under conditions of equality and non-discrimination, ensuring both accessibility and affordability; and (iv) be user-centered, technically, medically, and scientifically appropriate, and meet quality standards[23].

### 1.3. Constitutional orders to Congress and the Ministry of Health

Since 1997, the Constitutional Court has repeatedly urged the Colombian Congress to enact comprehensive legislation on the right to a dignified death. In subsequent rulings[24], the Court reiterated its call for Congress to conduct a thorough review and legislate on the matter. Most recently, in ruling C-233 of 2021, the Court once again emphasized the need for legislative action, urging Congress to advance "the protection of the fundamental right to die with dignity, with the aim of eliminating the barriers that still exist for effective access to this right".[25]

Despite at least 15 bills being introduced in Congress since 1998 regarding the right to a dignified death, none have been successfully passed, and there is currently no statutory law regulating the matter in Colombia[26]. In response, the Court has acknowledged that, as long as the structural elements of the right to die with dignity remain unregulated by statutory law, its protection is supported by the minimum standards established by the Court, which carry the normative force of the Constitution.[27]

Additionally, the Court has instructed the Ministry of Health and Social Protection to issue regulations providing greater clarity on the guidelines, procedures, and protocols for accessing euthanasia. As a result, the Ministry has issued various administrative regulations to develop and implement the process for access.

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[21] Constitutional Court, ruling C-233 of 2021.
[22] Constitutional Court, ruling C-233 of 2021. Also see: Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), E/C.12/2000/4CESCR, 11 August 2000, para 12.
[23] Constitutional Court, ruling C-233 of 2021.
[24] Constitutional Court, rulings T-970 of 2014, T-423 of 2017, T-544 of 2017, T-721 of 2017 and T-060 of 2020.
[25] Constitutional Court, ruling C-233 of 2021.
[26] "The bill that sought to regulate euthanasia in Colombia fails due to lack of votes", Cambio, March, 2024, https://cambiocolombia.com/pais/se-hunde-proyecto-ley-que-buscaba-regular-eutanasia-por-falta-de-votos
[27] Constitutional Court, ruling C-233 of 2021.

## 2. Regulation of the right to die by the Ministry of Health of Colombia

The Ministry of Health has issued administrative Resolutions 1216 of 2015 and 971 of 2021, which establish guidelines for the provision of euthanasia procedures in Colombia. It was only in 2015, following ruling T-970 of 2014, that the Ministry of Health took action in response to the Court's mandate to issue "a directive and take all necessary measures to ensure that hospitals, clinics, healthcare providers, and, in general, healthcare service providers, establish the interdisciplinary committee referred to in this ruling and comply with the obligations set forth in this decision."[28] In compliance with this ruling, the Ministry of Health officially created the *Interdisciplinary Scientific Committees for the Right to Die with Dignity*. These committees must be established in all medium- and high-complexity hospitals and clinics. They are responsible for reviewing every euthanasia request and issuing a response within ten days. Additionally, they must guide both patients and physicians throughout the process[29]. Each committee must consist of at least three members: a physician with expertise in the patient's pathology or illness, a lawyer, and a psychiatrist or psychologist qualified to assess the patient's mental capacity to make an informed decision[30]. Once a request is approved, the patient has 15 days to undergo the procedure[31]. If a patient disagrees with the committee's decision, they have the right to seek a second opinion by submitting a new request to another physician[32].

In these administrative regulations, the Ministry of Health also established that conscientious objection cannot constitute a barrier to accessing euthanasia. Physicians who wish to invoke conscientious objection must do so before becoming aware of a specific request, and it can only be claimed by the physician directly responsible for performing the procedure. It cannot be invoked by administrative personnel or healthcare institutions[33]. Additionally, the Ministry has stated that members of the *Interdisciplinary Scientific Committees for the Right to Die with Dignity* cannot be conscientious objectors[34].

In 2015, the Ministry of Health also issued the 'Protocol for the Application of the Euthanasia Procedure", which formally recognizes euthanasia as both a right and a healthcare procedure covered by the national health plan[35]. This ensures that patients are not required to pay any fees to access euthanasia. The protocol also reviews relevant medical evidence on the subject and provides guidelines for determining eligibility, assessing a patient's competence to make end-of-life decisions when necessary, and recommending appropriate pharmacological interventions[36].

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[28] Constitutional Court, ruling T-970 of 2014.
[29] Ministry of Health and Social Protection, Resolution 1216 of 2015 "that created the requirements for the "Scientific Interdisciplinary Committees for the Right to Die"", art 5 and 7. Available online: https://www.minsalud.gov.co/Normatividad_Nuevo/Resoluci%C3%B3n%201216%20de%202015.pdf
[30] Ibid, art 6.
[31] Ibid, art 16.
[32] Ministry of Health and Social Protection, Resolution 971 of 2021 "Through which the procedure for receiving, processing, and reporting euthanasia requests is established, as well as the guidelines for the organization and operation of the "Committee to Ensure the Right to Die with Dignity through Euthanasia". art 12.
[33] Ibid, art 33.
[34] Ministry of Health and Social Protection, Resolution 1216 of 2015, art 6.
[35] Ministry of Health and Social Protection, Clinical Protocol for the Procedure of Euthanasia, 2015. Available online: https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/DE/CA/Protocolo-aplicacion-procedimiento-eutanasia-colombia.pdf
[36] Ibid.



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Finally, in 2018, the Ministry of Health issued Resolution 825, which defines the scope of pediatric palliative care and recognizes the right of children and adolescents with life-threatening or life-limiting conditions to die with dignity[37].

### 3. Statistical information on euthanasia in the country

According to data from the Ministry of Health and the National Health Superintendence, between 2015 and 2020, 92 euthanasia procedures were performed in Colombia. Of these, 82 involved patients with cancer, while 10 were performed on patients with non-cancerous conditions. Only one of these procedures was carried out based on substitute consent[38]. Additionally, information provided to the Constitutional Court by the Ministry of Health indicates that oncological diseases account for the majority of euthanasia requests in the country. Among non-oncological conditions, amyotrophic lateral sclerosis (ALS) is the most common reason for requesting euthanasia, representing 75% of such cases[39].

More recently, DESCLAB, a non-profit organization in Colombia, published a study analyzing data obtained from the Ministry of Health through formal information requests. According to their most recent report, between 2015—the year euthanasia was regulated by the Ministry of Health and the registration of procedures began—and December 31, 2023, a total of 692 medically assisted death procedures through euthanasia were carried out in Colombia[40].The report concluded that the vast majority of these procedures have been performed on adults, with the average age of those who requested euthanasia in 2023 being 62.5 years[41]. Furthermore, 76% of all euthanasia procedures have been conducted on individuals whose primary diagnosis was related to cancer[42].

Despite euthanasia being legal in Colombia for 28 years, significant barriers to access remain. The Constitutional Court has identified several obstacles that patients face when seeking end-of-life procedures. These include: (i) delays in the authorization of procedures; (ii) failure to apply established standards, guidelines, or care protocols; (iii) numerous complaints related to lack of access to information and noncompliance with legal requirements for accessing a dignified death; and (iv) restrictive interpretations of the eligibility criteria for euthanasia[43].

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[37] Ministry of Health and Social Protection, Resolution 825 of 2018 that regulated the right to die with dignity of children and adolescents. Available online: https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/DE/DIJ/resolucion-825-de-2018.pdf
This administrative resolution also responds to constitutional orders provided in rulings T-721 of 2017 and T-544 of 2017 where the Court determined children and adolescents were also covered by the right to die with dignity and that the Ministry of Health should provide guidelines and safeguards to protect this right.

[38] Constitutional Court, ruling C-233 of 2021.

[39] Constitutional Court, ruling C-233 of 2021.

[40] Desclab, "Euthanasia in Colombia: Figures and Barriers to Exercising the Right to Die with Dignity", August 6, 2024, available online: https://www.desclab.com/post/eutanasiactifras#:~:text=Con%20corte%20al%2031%20de%20diciembre%20de%202023%20%2C%20366%20hombres,registrado%20casos%20de%20personas%20intersexuales.

[41] Ibid.

[42] Ibid.

[43] Constitutional Court, ruling C-233 of 2021. *Also see*: Rulings T-970 of 2014, T-132 of 2016, T-322 of 2017, T-423 of 2017, T-721 of 2017, T-544 of 2017, T-060 of 2020, T-048 of 2023, T-445 de 2024 and T-057 of 2025.



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**4. Conclusion**

The jurisprudence of the Constitutional Court of Colombia has firmly established the right to die with dignity as a fundamental constitutional right. Though recognized as an autonomous right, the Court has closely linked its foundation to the rights to life, autonomy, human dignity, the free development of personality, and the right to health. Furthermore, the Court has consistently affirmed that the right to die with dignity encompasses multiple aspects, including the right to issue advance directives for end-of-life care, access to palliative care, and the ability to request euthanasia or medically assisted suicide when specific legal and medical criteria are met. As a result, patients in Colombia can access assisted dying if they: (i) Provide free and informed consent, which may be given directly, through an advance directive, or via substituted consent under specific circumstances; (ii) Obtain authorization from a *Scientific Interdisciplinary Committee for the Guarantee of the Right to Die with Dignity* within a designated clinic or hospital; and (iii) Demonstrate that they are experiencing intense physical or psychological suffering caused by a bodily injury or a serious and incurable disease.

The constitutional development of the right to die with dignity, along with the regulations issued by the Ministry of Health, have established clear guidelines and safeguards that protect patients' autonomy and informed consent. These legal frameworks have enabled individuals, particularly those with severe illnesses and that are experiencing intense physical or psychological suffering, to access a dignified death while exercising their right to make autonomous and informed decisions at the end of life.

We appreciate the opportunity to present the Colombian legal framework to this Court and hope that this comparative analysis contributes to its deliberation on assisted dying in South Africa. We remain available to address any questions regarding this document. In the meantime, please accept our highest consideration and regard.


**Oscar A. Cabrera**
Co-Director, Center for Health and Human Rights
O'Neill Institute for National and Global Health Law, Georgetown University Law Center

**Silvia Serrano-Guzmán**
Co-Director, Center for Health and Human Rights
O'Neill Institute for National and Global Health Law, Georgetown University Law Center

**Natalia Acevedo Guerrero**
Senior Consultant
Center for Health and Human Rights.
O'Neill Institute for National and Global Health Law, Georgetown University Law Center




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