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TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT

Draft Code of Medical Ethics

Report of the Secretary-General

Addendum

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* A/37/150.

BARBADOS

[Original: English]

[14 June 1982]

The Government of Barbados strongly supports the draft principles of medical ethics set forth in the annex to General Assembly resolution 36/61.

BELGIUM

[Original: French]

[4 August 1982]

Considerable improvements on the original text have certainly been made. However, reservations must still be expressed, particularly with regard to principle 2 (see reply from the Government of Belgium of 2 October 1981, reproduced in document A/35/140/Add.1).

JAPAN

[Original: English]

[22 June 1982]

1. With regard to the phrase "the same rights to the protection of physical or mental health and the treatment of disease as those who are not in prison or detained", as given in paragraph 1 of the draft principles of medical ethnics, annexed to General Assembly resolution 36/61, the Government of Japan has no objection to it as long as it is understood to mean that prisoners and detainees are guaranteed access to health care and medical attention of the same quality and standard as those enjoyed by free citizens. But, if it is to be understood to mean that prisoners and detainees are guaranteed free access to medical services rendered by medical personnel (including a physician of the prisoner's or the detainee's own choice) who are not staff of the penal institution or who are not designated by the chief of the penal institution or the police detention house, we cannot accept it because it should be entirely the responsibility of the State to provide such prisoners and detainees with health care and medical attention of the same quality and standard as those enjoyed by free citizens, since the State has the legitimate jurisdiction over such detained persons. It is to be feared that, if such persons should have free access to medical care from outside the penal institutions, it might have quite an adverse effect on the objectives of detention.
2. As for the actual conditions of medical care available to prisoners and detainees, it should be noted that provision of such medical care is based on prison law and other related regulations, and that such medical care includes guidance on medical care and health care as well as medical treatment, all of which

are provided by medical officers assigned to each of the penal institutions in Japan. In the case of sick prisoners and detainees, appropriate measures will be taken to hospitalize them in medical prisons or in ordinary medical facilities in the outside community for proper treatment, depending on the conditions of such persons. Prisoners and detainees in Japan are thus fully guaranteed good health and adequate medical treatment.

3. It is understood that the proposed principles are not meant to prohibit the involvement of physicians in acts in the process of criminal proceedings, such as examining the mental condition of the defendant in order to determine whether or not he is criminally responsible or to judge whether or not he is fit for security measures, or conducting a health check of the defendant to be used in determining whether or not he is physically fit for detention as a part of the criminal proceedings or for incarceration for the purpose of execution of sentence. But, since such exceptions to the prohibited acts of physicians are not stated as expressly and as clearly as would leave no room for doubt, the Government of Japan cannot accept the principles unless they are so modified that the above-mentioned points are made perfectly clear.

MAURITIUS

[Original: English]

[16 June 1982]

The Government of Mauritius agrees with the principles proposed in the draft Code of Medical Ethics relevant to the role of health personnel in the protection of people against torture and other cruel, inhuman or degrading treatment or punishment.

NICARAGUA

[Original: Spanish]

[29 July 1982]

1. The Government of Nicaragua shares the concerns underlying the draft principles of Medical Ethics annexed to General Assembly resolution 36/61.
2. One of the first acts of the Government of Nicaragua which emerged from the triumph of the Sandinist Popular Revolution was promulgation of the Statute of Rights and Guarantees of Nicaraguans (21 August 1979), title 2, article 6, of which states:

"Everyone has the right to respect for his or her physical, mental and moral integrity. Penalties shall not extend to the person of the offender. No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. No sentence or sentences which, individually or cumulatively, exceed 30 years shall be imposed."

3. The Government of Nicaragua believes that the participation of health personnel, or of any other personnel, in acts of torture is primarily a reflection of the characteristics of the prevailing political and social system and agrees with the World Medical Association that the competent bodies should direct their efforts towards revision of the Standard Minimum Rules for the Treatment of Prisoners.

4. With regard to the draft, the following comments on the proposed principles may be made:

(a) Draft principle 3 should be worded more precisely, so as not to exclude relationships between physicians and prisoners (or detainees) which would be legitimate outside the prison environment.

(b) In stating that it is "a contravention of medical ethics for ... physicians ... to apply their knowledge and skills in order to assist in certain methods ...", the Spanish text of principle 4 implicitly recognizes the professional involvement of physicians in (other methods of) interrogation that are harmful to the individual; this is contrary to the fundamental concepts of medical ethics and to the Statute of Rights and Guarantees of Nicaraguans.

(c) Principle 5 is not expressed very clearly, and this could leave an opening for harmful procedures on the part of persons who, in an Olympian manner, "injure out of compassion". We believe that the content of this principle should be made very clear, even if this means spelling it out at length.

(d) The second part of principle 6 entails a derogation from the proposed principles and also contradicts draft principle 2.

5. We consider it important (even if this is to be covered in another type of document) to add an introductory or final paragraph stating that it is a flagrant violation of the principles to coerce or require a physician to participate actively or passively in the administration of any method of torture.

PERU

[Original: Spanish]

[9 July 1982]

1. It should be noted that these principles are already generally reflected in Peruvian positive law, as can be seen from the following:

(a) Our current Constitution provides that statements obtained by violence are invalid and that anyone using them incurs criminal liability. This constitutional guarantee is set out in title I (Fundamental rights and duties of the individual), chapter I, article 2, paragraph 20 (j), and in broad terms it furnishes the protection envisaged in draft principles 2 and 5, concerning torture or the use of corrective procedures against prisoners or detainees.

(b) The Peruvian Penal Code very clearly embraces the above-mentioned principles by stating, in article 340, paragraph 9 (2):

"The penalty shall be imprisonment for not more than six years and not less than two years and disqualification, in accordance with article 271, paragraphs 1, 2 and 3, for twice the length of the sentence if, during the detention any person or the investigation of any offence, an official uses violence or practises torture on the detainee or person under investigation".

This text was added to the above-mentioned article 340, paragraph 9, under article 6 of the Legislative Decree No. 121 of 12 June 1981, adopting amendments to the Penal Code; thus, the crime of abuse of authority is also included among such cases.

(c) Article 16 of the Peruvian Health Code, adopted by Decree-law No. 17505, sets out a very important right, namely, equal enjoyment of the right to health. Article 16 states that "there shall be no incapacity, relative or absolute, in respect of health for the enjoyment of the right to health". Thus, this article provides the equality proposed in principle 1 of the draft Principles of Medical Ethics (see annex to General Assembly resolution 36/61), which states that prisoners and detainees have the same rights to the protection of physical or mental health and the treatment of disease as those who are not in prison or detained.

(d) In connexion with the above, we should point out that, through Decree-Law No. 18965, Peruvian legislation has prescribed the manner and conditions in which untried prisoners or persons sentenced to penalties privative of liberty must be treated when they require medical assistance or hospital treatment. It should be noted that differential provisions are made only for obvious security reasons, and not because of the legal status of the persons concerned.

2. Following this outline of the manner in which Peruvian legislation has already guaranteed the principles enunciated in the draft Code, it only remains to mention that it would be appropriate to bring the Code to the attention of the medical profession so that it may state its views on the aspects which are of concern to it.

SURINAME

[Original: English]

[24 June 1982]

The Republic of Suriname fully agrees with the revised draft principles of medical ethics set forth in the annex to General Assembly resolution 36/61, entitled "Draft Code of Medical Ethics", adopted by the Assembly on 25 November 1981.
