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TORTURE AND OTHER CRUEL, INHUMAN OR
DEGRADING TREATMENT OR PUNISHMENT

Draft Code of Medical Ethics

Report of the Secretary-General

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I. INTRODUCTION

1. In accordance with General Assembly resolutions 3218 (XXIX) of 6 November 1974, 3453 (XXX) of 9 December 1975 and 31/85 of 13 December 1975, the World Health Organization (WHO) was invited to prepare a draft Code of Medical Ethics relevant to the protection of persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment.
2. At its thirty-fourth session the General Assembly considered the note (A/34/273) by which the Secretary-General transmitted to the Assembly the report of the World Health Organization on the development of codes of medical ethics. In resolution 34/168 of 17 December 1979, the General Assembly noted that the Executive Board of the World Health Organization had endorsed the principles set forth in the report of its Director-General on the development of codes of medical ethics and had requested its Director-General to transmit that report to the Secretary-General of the United Nations.
3. By that resolution, the General Assembly requested the Secretary-General to circulate the draft Code of Medical Ethics to Member States, the specialized agencies concerned and interested intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council for comments and suggestions, and to submit a report to the General Assembly at its thirty-fifth session.
4. In conformity with resolution 34/168, the present report contains a summary of the replies received as at 15 August 1980. 1/ Replies received subsequently will be the subject of an addendum to the present report.

II. REPLIES RECEIVED FROM GOVERNMENTS

CAPE VERDE

/Original: French/
/25 April 1980/

With reference to the note concerning resolution 34/168, the competent Cape Verdean authorities have the honour to inform the Division of Human Rights that they have no objection to the draft Code of Medical Ethics.

CYPRUS

/Original: English/
/27 May 1980/

1. The Government of Cyprus, regarding resolution 34/168 entitled "Torture and

1/ The full texts of the replies are on file in the Secretariat and are available to delegations upon request.

other Cruel, Inhuman or Degrading Treatment or Punishment: draft Code of Medical Ethics" adopted by the General Assembly on 17 December 1979, has the honour to inform that both the relevant legislation in force and the code of ethics of the medical profession in Cyprus are already in full compliance with the provisions of the proposed draft Code of Medical Ethics.

2. Therefore the Government of Cyprus fully supports the adoption by the General Assembly of the aforesaid draft Code.

DENMARK

/Original: English/

/13 June 1980/

The Government of Denmark declares that the Danish Government has no specific observations concerning the draft Code of Medical Ethics contained in General Assembly resolution 34/168 of 17 December 1979.

DOMINICAN REPUBLIC

/Original: Spanish/

/16 May 1980/

With reference to the subject of your note and its annex, I have the duty to inform you that the Government of the Dominican Republic has no objections to make with regard to the draft Code of Medical Ethics annexed to that note.

GABON

/Original: French/

/27 June 1980/

The competent Gabonese authorities have no objection to the draft Code of Medical Ethics.

GERMAN DEMOCRATIC REPUBLIC

/Original: English/

/16 July 1980/

1. The German Democratic Republic declares that it fundamentally agrees to the draft Code of Medical Ethics. The principles postulated in the draft Code have already become applicable law in the German Democratic Republic and are being

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fully implemented in practice. The pre-conditions required are ensured by the prevailing socialist order of society.

2. The German Democratic Republic also points out that:

(a) Professional statutory regulations for doctors, dentists, pharmacists and other medical personnel as, for instance, nurses, put high moral and ethical demands on their professional activities, including respect for personal rights and human dignity. This obligation results from the high responsibility of doctors and other medical personnel for the lives and the health of the patients entrusted to them. It is these moral and ethical principles that are essential components of medical ethos in socialist society. These moral and ethical principles are also vowed to by doctors and nurses in their professional oath upon their graduation.

(b) The approbation code for medical doctors, too, sets high standards regarding a doctor's humanist modes of behaviour.

(c) Since it is the State that gives the approbation, it expresses its certainty and conviction that the future doctors, dentists and pharmacists will fulfil their duties vis-à-vis patients to the best of their knowledge and belief and will fully meet their high responsibility for implementing socialist health policy which is aimed at restoring the health and preserving the lives of citizens, and is marked by respect for the dignity of man.

3. The socialist order of society in the German Democratic Republic and applicable legal provisions, as well as the professional ethics of those working in the field of social health care, are a guarantee of the strict respect for the principles contained in the draft Code of Medical Ethics.

JAPAN

/Original: English/
/11 August 1980/

1. With regard to the phrase, "the same rights to the protection of health and the treatment of disease as from citizens", as given in paragraph 1, part I of the proposed Principles, 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 the same health care and medical attention as those enjoyed by free citizens. But if it purports to guarantee "prisoners and detainees" free access to such medical services as would be rendered by medical personnel from outside penal institutions, including physicians of their own choice, we cannot accept it, since it should entirely be 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 as the State has the legitimate jurisdiction over such detained persons, while the supposition that such persons should have free access to medical care from outside penal institutions, it is feared, might have quite an adverse effect on the objectives of the detention.

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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 this country. In the case of sick prisoners and detainees, appropriate measures will be taken for them to be hospitalized into medical prisons or into ordinary medical facilities in the outside community for proper treatment, depending on the conditions of such persons.

3. Prisoners and detainees in this country are thus fully guaranteed good health and adequate medical treatment.

4. It is understood that the proposed Principles, particularly those of paragraph III to paragraph V, are not meant to prohibit the involvement of physicians in such acts in the process of criminal proceedings as making an examination of the mental condition of the defendant which will help determine whether or not he is criminally responsible or judge whether or not he is fit for security measures, or as 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, we cannot manage to accept the Principles unless they are so modified that the above-mentioned points are perfectly clarified.

JORDAN

/Original: English/

/28 April 1980/

The Hashemite Kingdom of Jordan, in reference to the note G/SO 214 (33-1-3) of 14 March 1980, concerning the resolution 34/168 entitled "Torture and other cruel, inhuman or degrading treatment or punishment: draft Code of Medical Ethics" adopted by the General Assembly on 17 December 1979, has the honour to inform that the Ministry of Health of Jordan has given its approval of the said draft Code of Medical Ethics, for transmittal to the General Assembly at its thirty-fifth session.

MALDIVES

/Original: English/

/6 July 1980/

The Government of Maldives does not have any comments on the resolution 34/168 entitled "Torture and other cruel, inhuman or degrading treatment or punishment: draft Code of Medical Ethics", adopted by the General Assembly on 17 December 1979.

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NORWAY

/Original: English/

/2 May 1980/

1. The Government of Norway states that in the Norwegian laws there are no acts specifically regulating the medical measures that may be used to treat mentally-ill persons, with the exception that it is prohibited to employ mechanical or physical means of force. The Norwegian authorities have found it difficult to try to establish general guidelines applicable in situations emanating from different mental illnesses.

2. The Ethical Guidelines for Norwegian psychiatric treatment are found in the so-called "Declaration of Hawaii" adopted at the General Assembly of the World Psychiatric Association in 1977.

3. The question of admission procedures are regulated in the above-mentioned Mental Health Act of 1961. A person cannot be hospitalized for more than three weeks without his consent. According to article 5 of the Act, a person having a severe mental disease (psychosis) with additional psycho-social problems that represent a threat to himself or to the society, may be kept in hospital for a longer period without his consent.

4. The decision of involuntary admission of a mentally-ill person is taken by the hospital's chief medical officer following an examination by another physician. The Norwegian courts have no jurisdiction to detain mentally-ill persons. To secure the legal and civil rights of a person who involuntarily has been admitted to a hospital, the decision can be reviewed by a specially established Control Commission comprising of a judge, a physician and two other members. The decision of the Control Commission can, however, be appealed and examined by the courts.

5. Questions have been raised whether the present system of legal safeguards relating to involuntary hospitalization are adequate, and a review of the Mental Health Act of 1961 will be initiated in the course of this year.

SUDAN

/Original: Arabic/

/1 July 1980/

1. The Government of the Democratic Republic of the Sudan declares itself in agreement in principle with the draft Code of Medical Ethics submitted to it for consideration.

2. However, it wishes to make the following observations with regard to article 5. In its view, that article calls for more detailed consideration. It believes that consultation with the medical association would be necessary. The Government

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wishes to raise the problem of the pressure that could be exerted on the doctor in order to force him to practise torture. It appears that the draft Code of Medical Ethics does not take that factor into account.

3. The Government of the Republic of the Sudan refers to the Tokyo Convention, in particular the clause concerning protection of doctors who refuse to practise torture. The draft Code does not appear to take that aspect of the question into consideration.

SURINAME

/Original: English/
/23 May 1980/

The Government of Suriname, in accordance with General Assembly resolution 34/168, expresses its agreement with respect to the draft Code of Medical Ethics.

III. REPLIES RECEIVED FROM SPECIALIZED AGENCIES

INTERNATIONAL LABOUR ORGANISATION

/Original: English/
/26 March 1980/

The International Labour Office, referring to resolution 34/168 of the General Assembly of the United Nations, declares that, after having carefully examined this draft Code, they do not feel qualified to comment on its substantive contents, nor are there any matters falling within the competence of the International Labour Organisation to which it appears necessary to draw attention in connexion with the draft Code.

IV. REPLIES RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

INTERNATIONAL FEDERATION OF HUMAN RIGHTS

/Original: French/
/30 July 1980/

The International Federation of Human Rights suggests that the rules laid down by this Code embody the following concepts:

1. Free choice of the doctor in every case by the detained person or his family.

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2. The obligation for all doctors placed in the situation of attending torture sessions to make it known that torture is taking place, subject to the victim's consent.

WORLD FEDERATION OF OCCUPATIONAL THERAPISTS

/Original: English/

/10 April 1980/

The World Federation of Occupational Therapists supports the draft Code of Medical Ethics and is in agreement with the suggestion 2.1 of part I thereof that the principles contained therein should provide guidance not only to physicians but also to other health personnel having clinical responsibility for prisoners or detainees.

WORLD MEDICAL ASSOCIATION

/Original: English/

/20 March 1980/

1. At its spring meeting, in May 1979, the Council of the World Medical Association gave full consideration to document CIOMS/HE/P.2 of October 1978 entitled "Principles of medical ethics relevant to the role of health personnel in the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment".
2. During this meeting, the Council also met Dr. Zbigniew Bankowski, Executive Secretary of CIOMS and discussed with him fully the scope and purpose of this document.
3. The World Medical Association has been invited to comment on this document, and submits the following observations.

Part I. Proposed principles

4. The World Medical Association in its comments expressed the opinion that it is still not clear to whom this document is addressed. The main title refers to "health personnel", whereas immediately below this is a statement that the following principles of medical ethics for physicians will supplement the Declaration of Tokyo of the World Medical Association. Moreover, the remainder of the document refers almost exclusively to physicians.
5. The World Medical Association reiterated its view that the ethical standard for physicians is a professional matter. It confirmed the text of the Tokyo Declaration and believes that it still stands as a guideline for the medical profession.

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6. Under the second proposed principle doctors do not accept a legal restraint on professional independence and ethical standards. Thus, the World Medical Association cannot accept the definition of torture included in this paragraph. The reference to "lawful sanctions" weakens the ethical principles involved.

7. It is the view of the World Medical Association that the appropriate bodies should devote their energies to revising the standard minimum rules for the treatment of prisoners. In such an exercise the Association would be ready to advise society if so requested.

8. Principles III, IV and V have already been expressed in the Declaration of Tokyo.

9. The World Medical Association is unable to accept paragraph VI, which is contrary to the preceding principles and open to wide interpretation.

Explanation of proposed principles

Paragraph 1

10. It is not clear to the World Medical Association what other health personnel would have clinical responsibility for prisoners or detainees. This is surely the province of the physician.

Paragraph 6

11. Contrary to what is said here, the World Medical Association believes that the Declaration of Tokyo has set out ethical principles for the profession on this subject. It does not exclude the possibility of preparing an explanatory document on the "grey areas" mentioned, once these have been more clearly defined, but they are not covered in document CIOMS/HE/P.2 nor do the six principles proposed provide any further guidance as is suggested.

12. In conclusion, the World Medical Association feels that further progress can be made along these lines, giving consideration to some of the contentious issues but freed from the necessity of attempting to produce at this stage an all-encompassing document. In the meantime, society should be concerned with the revision of the standard minimum rules for the treatment of prisoners.

ANNEX

Draft Principles of Medical Ethics relevant to the role of
health personnel in the protection of persons against
torture and other cruel, inhuman or degrading treatment or
punishment

Part I. Proposed principles

As a result of the sequence of events summarized in part II of this document, it is proposed that the Declaration of Tokyo of World Medical Association and the United Nations Standard Minimum Rules for the Treatment of Prisoners should be supplemented by the following principles of medical ethics for physicians who are in a clinical relationship with prisoners or detainees.

I. Prisoners and detainees have the same rights to the protection of health and the treatment of disease as free citizens.

II. It is a gross contravention of medical ethics for physicians to participate actively or passively in any form of torture as defined in article I of the Declaration on Torture of the United Nations (1975), which reads as follows:

- (i) For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.
- (ii) Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

III. It is also a contravention of medical ethics for physicians to be involved in any other relationship with prisoners or detainees that is not a medical relationship in the sense that its purpose is the protection or improvement of the health of the prisoner or detainee and would be accepted as such outside the prison environment.

IV. It follows that it is a contravention of medical ethics for physicians to apply their knowledge and skills in order to assist in methods of interrogation or to certify prisoners or detainees as fit for any form of punishment that may adversely affect physical or mental health.

V. Participation of physicians in any procedure for restraining prisoners or detainees is not in conformity with medical ethics unless it is determined by purely medical criteria and is necessary for the health and safety of the prisoner himself, and/or of his fellow prisoners or detainees or his guardians.

VI. There may be no derogation from the foregoing principles in case of public emergency or for whatever other reason. However, in situations in which physicians may be compelled under duress to contravene the letter of the foregoing principles their actions should be determined by the will to protect the prisoner or detainee and to minimize noxious effects to health of any cruel, inhuman or degrading treatment or punishment that they may be powerless to prevent.

Explanation of proposed principles

1. In the present context, the term "detainees" does not include persons deprived of their liberty for medical reasons in order to protect the public or themselves, as in the case of those suffering from clearly definable mental disorders or from dangerous communicable diseases. While these principles apply essentially to physicians, it is suggested that they might also provide guidance for other health personnel having clinical responsibility for prisoners or detainees.

2. In framing these ethical principles, it has been regarded as axiomatic that it would not be realistic to attempt to formulate a detailed and universally applicable inventory of practices that are permissible and others that are not. Practices that may be considered acceptable in some cultural, political, and religious contexts may be rejected in others, as is also the case of attitudes to such practices as induced abortion and capital punishment. In modern times there have been in some countries radical changes in such attitudes within the span of a generation. A detailed code of medical ethics applicable in all contexts and in all times is therefore unthinkable. There are nevertheless general principles of medical ethics of universal applicability.

3. The principles proposed above do not, therefore, refer to specific practices, but are intended to provide the physician who is in clinical relationship with prisoners or detainees with an internationally accepted framework that may help to form a judgement as to whether a specific practice is in conformity with medical ethics or - to use a broader term - health ethics (see para. 9).

4. These principles are based on the postulate that physicians are trained to acquire their knowledge and skills for the sole purpose of maintaining or improving the health of those with whom they are in professional relationship, and that the application of such knowledge and skills for the furtherance of practices that may be detrimental to physical or mental health is unethical.

5. The difficulty of defining how cruel a specific practice must be to constitute torture are insuperable. There are some practices that would universally be recognized as constituting torture, while there are others that would be regarded

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by some as torture and by others as "cruel, inhuman or degrading" but nevertheless falling short of torture.

6. While the Declaration of Tokyo unconditionally rejects any participation by physicians in torture or other forms of cruel, inhuman, or degrading treatment, it does not formulate ethical principles that would provide guidance for professionally conscientious physicians in respect of the "grey areas" that fall short of frank torture. The six principles proposed above are intended to provide such guidance.

Part II. Background

7. In 1974 the General Assembly of the United Nations invited the World Health Organization to draft, in consultation with other appropriate organizations, "an outline of the principles of medical ethics which may be relevant to the protection of persons subject to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment". The General Assembly requested that WHO should bring this draft to the attention of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which was held in September 1975, with a view to the amplification of the Standard Minimum Rules for the Treatment of Prisoners that had been elaborated at the first of these congresses in 1955. 1/

8. In view of the complexity of the problem, and of the multiplicity of consultations required, WHO decided as a first step to prepare a report that was a survey of specific aspects of the problem by reference to the available literature and the various views expressed therein. Among the aspects discussed were: mentally disordered offenders; drug dependent persons; corporal punishment; restricted diets; solitary confinement; various forms of restraint; electroconvulsion therapy; psychosurgery; castration of recidivist sexual offenders; intensive interrogation methods; and biomedical experiments on prisoners. 2/

9. In its report WHO made the reservation that, as an intergovernmental organization, it was not directly concerned with medical ethics in the sense of rules of professional relationships with patients and between members of a health profession, but rather with "health ethics". This term was defined as referring to "the right of all peoples, including prisoners and detainees, to be spared avoidable hazards to physical or mental health and to have access to the best facilities for medical care that it is feasible to provide".

1/ United Nations General Assembly resolution 3218 (XXIX), 6 November 1974.

2/ World Health Organization Health Aspects of avoidable maltreatment of prisoners and detainees, United Nations document A/Conf.56/9 (1975).

10. The WHO report was received by the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Prisoners. In the report, it was suggested that a "Health Charter for Prisoners" might be elaborated, and the Director-General of WHO stated his willingness to consider the extent to which WHO might be able to assist in the drafting of such a charter. The Congress did not adopt this suggestion.

11. Subsequently, the WHO report was received by the Thirtieth General Assembly of the United Nations (1975), which requested WHO to "give further attention to this subject". This request was reiterated by the thirty-first General Assembly in 1976.

12. In 1976 WHO requested CIOMS to collaborate by obtaining the views of its members, especially the World Medical Association, and of other relevant international non-governmental organizations.

Action taken by CIOMS

13. In response to the WHO request, CIOMS prepared a study on: "The Role of Health Personnel in the Protection of Persons against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment", (document CIOMS/HE/P.1). In this study, specific aspects on which comments were requested were the ethics of participation of health personnel in: corporal punishment; confinement in a dark cell; other close confinement; reduction of diet; methods of restraint; interrogation under duress; other interrogation procedures, such as monitoring of physiological responses or administering psychoactive drugs; committal of drug-dependent persons to penal institutions; castration of sexual offenders; and biomedical experiments on prisoners. The study was presented in November 1976 to the Tenth General Assembly of CIOMS, which requested the Executive Secretary to circulate copies of it for comments to all CIOMS member organizations as well as to other relevant bodies.

14. The Executive Secretary circulated the study to a total of 205 recipients. No replies were received from 101 recipients, in spite of follow-up letters. Of the 104 that replied, exactly half stated that they were not competent to offer comments, but some of these respondents commended CIOMS for concerning itself with a subject of evident importance.

15. Many of those replying affirmatively were not able to give definitive comments before submitting the problem to their executive council or committee. However, by last quarter of 1977, a sufficient number of comments had been received to provide a representative cross-section of opinion on each of the aspects discussed in the CIOMS study. None of the respondents suggested that any aspect had been overlooked.

16. A report on this survey was prepared by the CIOMS secretariat. This analysed and commented on the replies received and arrived at certain general

conclusions. It also suggested that "the World Health Organization might wish to consider sponsoring some joint action by the World Medical Association and CIOMS in order for these two organizations to elaborate the Declaration of Tokyo (of the World Medical Association) with a view to satisfying more fully the several requests on this subject that have been made to WHO by the General Assembly of the United Nations".

17. The report was approved by the CIOMS Executive Committee at its fifty-second session in December 1977, and submitted to the Director-General of WHO. In January 1978 the Director-General referred the report to the WHO Executive Board, which requested him to invite CIOMS and the World Medical Association "to elaborate a draft code for medical ethics relevant to the protection of persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment". Such invitations were duly sent both to CIOMS and to the World Medical Association.

18. Taking into account the comments received by respondent organizations, CIOMS has prepared the present document in response to the request by WHO and in explanation of the principles of medical ethics proposed in part I of the document.
