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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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CHILE

/Original: Spanish/

/9 October 1980/

A comparative study of the proposed principles of medical ethics and the legislation on the subject existing in Chile shows that these rules are for the most part consistent with national legislation, which establishes legal precepts providing for the free and equal access of persons deprived of liberty to services for the promotion, protection and recovery of health and to rehabilitation services and prescribes penalties for breaches of the obligations of physicians towards their patients, whether the latter are free or are detainees or prisoners, thus guaranteeing the fundamental rights of the individual without distinction of any kind.

NEW ZEALAND

/Original: English/

/3 October 1980/

1. The New Zealand Department of Health supports the over-all approach taken in the draft which appears to cover medical ethics in regard to torture and the intentional infliction of severe pain or cruel or inhuman acts on prisoners and detainees.

2. The New Zealand Department of Health has the following specific comments to make on part I of the draft which deals with "Proposed principles":

(a) The ethics appear to be related specifically to the practice of doctors and perhaps could be extended to include all health professionals having a clinical responsibility for prisoners and detainees.

(b) The phrase "maintenance of health" may be more positive than "protection of health" used in principle I.

(c) Subsection (I) of principle II could be misleading as it seems to suggest that only "public officials" can cause torture.

(d) Although principle IV is abhorrent it may be better that a physician assess the fitness of a prisoner for punishment, than that such punishment be carried out on a sick person.

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UKRAINIAN SOVIET SOCIALIST REPUBLIC

/Original: Russian/

/10 October 1980/

1. The draft Principles submitted for consideration only touch upon an insignificant part of the problem of medical ethics.
2. The Ukrainian SSR takes the view that, in considering the question of international co-operation in the field of medical ethics, it is essential to take into account principally the achievements of national legislation and the practice of States in this field.
3. With regard to the Ukrainian SSR, the legislation of the Republic not only prohibits very categorically all kinds of cruel treatment, but also excludes even the possibility of the subjection of any person whatsoever to torture and other cruel, inhuman or degrading treatment or punishment, and contains all the necessary legal guarantees to this end.
4. Among these constitutional guarantees, particular mention should be made of a number of articles of the Fundamental Law of the Republic. Article 4 of the Constitution of the Ukrainian SSR states that "the Soviet State and all its bodies function on the basis of socialist law, ensure the maintenance of law and order, and safeguard the interests of society and the rights and freedoms of citizens". Article 52 of the Constitution of the Ukrainian SSR affirms that citizens of the Ukrainian SSR are guaranteed inviolability of the person. Article 55 of the Constitution of the Ukrainian SSR affirms the right to protection by the court against encroachments on a citizen's honour and reputation, life and health, and personal freedom and property.
5. Developing these constitutional guarantees, the criminal legislation provides that no one may be brought to trial except on the grounds and in the manner prescribed by law (art. 5 of the Criminal Procedure Code of the Ukrainian SSR). Article 22 of the Code contains a provision prohibiting the use of violence, threats and other illegal measures to extract statements from an accused person.
6. In a definition of the purposes of punishment, article 22 of the Criminal Code of the Ukrainian SSR states that the purpose of punishment is not to cause physical suffering or personal humiliation. The same provision is to be found in article 1, part 2, of the Correctional Labour Code of the Ukrainian SSR, which deals with the purpose of inflicting punishment.
7. In addition to the rules prohibiting any kind of physical or psychological violence against persons being tried on criminal charges or serving a sentence of imprisonment, the legislation of the Ukrainian SSR affirms the criminal and disciplinary responsibility of officials who are guilty of violating the rules regarding the treatment of persons tried on criminal charges or sentenced to imprisonment.

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8. For example, in the Criminal Code of the Ukrainian SSR, extraction of evidence by coercion is regarded as a serious offence. According to article 175 of the Criminal Code, extraction of evidence during an interrogation by means of unlawful acts on the part of the person conducting the inquiry or preliminary investigation is an offence punishable by imprisonment. Extraction of evidence by coercion, combined with the use of violence or mockery against the person under interrogation, is punishable by a longer sentence of imprisonment.

9. In addition to criminal responsibility, article 443 of the Civil Code of the Ukrainian SSR provides that the State organs concerned have a property liability, in cases and within limits specified by law, for damage caused by wrongful acts committed in the performance of their duties by officials of the organs of inquiry or preliminary investigation, or of the prosecutor's office or court.

10. In our view, the content of the draft Principles does not altogether correspond to their title. The title implies that the document is to define specific principles as fundamental provisions or basic rules of conduct for health personnel in this matter; but principle I of the draft Code deals with the question of the right of prisoners and detainees to the protection of health and the treatment of diseases - an issue which is unrelated to principles of medical ethics for health personnel. Principles II to VI do not contain principles of medical ethics either, but rather list certain acts by the physician which are regarded as contraventions of medical ethics.

11. The draft Code contains a number of inconsistencies and uses a variety of different terms. For example, the title of the draft Code refers to principles of medical ethics for health personnel, but the body of the text refers only to physicians who are only one category of medical personnel.

12. In general, the draft Principles cannot be accepted in their present form, since much work still remains to be done on them. The following are only some of the observations which should be taken into account in the further elaboration of the draft Code.

#### Principle I

13. This principle should be redrafted in such a way as to contain a provision to the effect that prisoners and detainees have the same rights as other citizens to the protection of health and the treatment of disease.

#### Principle II

14. The wording of this principle should be brought into line with that of article 7 of the 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

#### Principle III

15. /Proposal affecting the Russian text only/.

16. The words "its purpose is" should be replaced by the words "it has an adverse effect on".

#### Principle IV

17. The wording of this principle needs to be changed substantially since it is at variance with the second part of subparagraph (i) of principle II. To a certain extent all punishment has an adverse effect on the mental state of the person punished; and a physician's opinion on the question whether punishment can be administered should not therefore be made to depend on the consideration that his decision would contravene the principles of medical ethics if the punishment adversely affected mental health.

18. Also, the wording of this principle in its present form is contrary to provisions of the criminal procedure legislation of the Ukrainian SSR which state that, where necessary, the physician is entitled and required, on instructions from the organs of investigation, to give an opinion on the state of health of a prisoner or detainee and on the question whether he can or cannot be interrogated.

19. The use of the physician's experience in the course of an interrogation is not only contrary to the principle of the humane treatment of persons under interrogation; indeed, it follows directly from this principle. The participation of medical experts in determining the state of health of a prisoner, for the purpose of deciding whether he should or should not be punished, is obligatory in cases where it is necessary to decide on his sanity, i.e. his mental state. Only the findings of medical psychiatrists can answer the question whether the person concerned should be punished. The same applies also in cases where it is necessary to establish the age from which a person can be held to be criminally liable. It is therefore impossible to agree that acts of this nature by a physician are contraventions of medical ethics.

20. /Proposal affecting the Russian text only/.

21. It would seem to be advisable to include in the text a provision prohibiting medical personnel from conducting medical and biological experiments on prisoners and detainees.

22. The Ukrainian SSR reserves the right to make further comments at a later stage in the elaboration of this document.

UNION OF SOVIET SOCIALIST REPUBLICS

/Original: Russian/  
/25 August 1980/

1. The draft code is based on a narrow interpretation of the concept of medical ethics, reducing it to the conditions in which prisoners or detainees are kept and treated. As has been repeatedly emphasized by Soviet representatives in WHO, the

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subject of medical ethics and its principles encompass a far wider range of ethical problems, including questions concerning the relationship between medical personnel and patients the attitude of medical personnel to clinical death, transplants of human organs and tissues, experiments on human beings, the publicity for new medical products, the place and role of medical personnel in environmental protection measures, etc.

2. Consideration of the problem of international co-operation in the field of medical ethics would appear to call for a comprehensive approach covering the whole range of different aspects of the problem, including, inter alia, questions relating to the relationship of medical personnel to torture and other cruel and inhuman or degrading treatment and punishment. Such an approach must be based primarily on the achievements of national legislation and the practice of States in this field.

3. The preparation of a special legal document setting forth the duty of medical personnel to protect prisoners and detainees from torture touches upon only an insignificant part of the problem of medical ethics. The provisions of principle regulating the position of medical personnel in matters relating to torture have already been confirmed in such international instruments as the Declaration of Tokyo (Guidelines for Medical Doctors concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to Detention and Imprisonment) adopted by the World Medical Assembly in 1975, the Standard Minimum Rules for the Treatment of Prisoners of 1955, and the Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations General Assembly in 1975.

4. The 1975 Declaration on Torture (arts. 5 and 6) imposes upon States the main responsibility for the effective practical observance of its prohibition against torture and other cruel, inhuman or degrading treatment or punishment.

5. Thus the question of the principles of medical ethics relating to the role of health personnel in the protection of persons from torture and other cruel, inhuman or degrading treatment and punishment must, in the first place, be decided by national legislation and not in international legal instruments.

6. Soviet legislation completely excludes the possibility of anyone being subjected to torture and other cruel, inhuman or degrading treatment and punishment and contains all the necessary legal guarantees to this end.

7. The constitution of the USSR provides, in article 4, that the Soviet State and all its bodies function on the basis of socialist law, ensure the maintenance of law and order, and safeguard the interests of society and the rights and freedoms of citizens. Article 58 of the constitution of the USSR stipulates that actions by officials that contravene the law or exceed their powers and infringe the rights of citizens may be appealed against in a court in the manner prescribed by law. Developing the constitutional provisions, the criminal legislation of the USSR establishes responsibility for coercion to give evidence through the use of threats, violence or mockery against a person under interrogation, and also the coercion of

a witness, victim or expert to give evidence or submit conclusions under the threat of murder, violence or the destruction of property belonging to them or their near relatives (arts. 179 and 183 of the Criminal Code of the Russian Soviet Federation of Socialist Republics and the corresponding articles of the criminal codes of the Union Republics). Criminal proceedings are brought in the event of abuse of authority or official powers by workers of the judicial and investigatory organs and other officials when it is accompanied by violence, the use of weapons or harassment insulting the personal dignity of the victim.

8. The content of the present draft code does not fully correspond to its title, which implies that the draft sets forth the principles governing the basic rules of conduct for health personnel in this matter. Principle I of the draft, however, regulates the rights of prisoners and detainees rather than the conduct of medical personnel. Principles II to VI also do not contain principles of medical ethics but rather list certain actions by the physician regarded as contraventions of medical ethics.

9. The terminology used in the draft is inconsistent and distorts the content of the document. The title speaks of principles of medical ethics for health personnel, but the text deals only with physicians, who form only a part of medical personnel.

10. The following proposals and comments are made with regard to specific principles contained in the draft:

#### Principle I

11. Having regard to the foregoing, it is proposed that this principle should be worded in such a way as to set forth a provision to the effect that the medical personnel of the relevant institutions must treat prisoners or detainees as having equal rights with free citizens for the protection of health and the treatment of disease.

#### Principle II

12. It seems advisable to bring the wording of this principle into line with that of article 7 of the 1975 Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which regards all acts of torture ..., acts which constitute participation in, complicity in, incitement to or an attempt to commit torture ... as offences".

#### Principle III

/Amendment affecting the Russian text only/

13. The provisions of the principle should, as already noted above, cover not only physicians but all medical personnel. Obviously, the definition of a contravention of medical ethics contained in the principle, expressed in the form of participation by physicians in any activity harming the health of prisoners and detainees, must be regarded as being such not only "outside the prison environment" but also within correctional institutions.

14. At the same time, it ought to be stipulated that this principle does not extend to educational and other activities in which the medical personnel of correctional institutions are entitled to participate in addition to their immediate professional duties.

#### Principle IV

15. This needs to be made more precise, since in the present wording it is in contradiction with the second part of subparagraph (i) in principle II of the draft and accordingly, with article 1 of the 1975 Declaration on Torture. The following wording of this principle is proposed: "It is a contravention of medical ethics for the physician to certify that prisoners or detainees are fit to endure torture or other forms of coercion whose use contravenes the provisions of the 1975 Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment".

#### Principle V

16. It seems advisable to clarify the term "medical criteria" in the text of the principle by placing after it the words "without danger to the health of prisoners or detainees". The following drafting changes should be made in the Russian text of the draft (two suggested drafting changes in Russian).

#### Principle VI

17. The first part of this principle should be worded as follows: "The failure of medical personnel to comply with the above principles is inadmissible in any circumstances, including public emergency".

18. The second sentence should be worded having regard to the provisions of the 1975 Declaration of Tokyo, as follows: "Medical personnel shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures and shall actively oppose their use in all situations. The State has an obligation to take measures against any attempt to subject medical personnel or members of their families to threats or reprisals resulting from a refusal by such personnel to condone the use of torture or other forms of cruel, inhuman or degrading treatment or punishment".

19. It is also proposed that the draft should include a prohibition on the conduct by medical personnel of medical and biological experiments on prisoners and detainees.

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