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HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

Principles and guarantees for the protection of persons  
detained on grounds of mental ill-health or suffering  
from mental disorder

Report of the Secretary-General

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## INTRODUCTION

1. The Sub-Commission on Prevention of Discrimination and Protection of Minorities, at its fortieth session in 1988, in its resolution 1988/28 of 1 September 1988, adopted the draft body of principles and guarantees for the protection of mentally ill persons and for the improvement of mental health care (E/CN.4/Sub.2/1988/23). In that resolution, the Sub-Commission recommended that the Commission on Human Rights request the Secretary-General to transmit the draft body of principles and guarantees to Governments, specialized agencies and non-governmental organizations for comments and suggestions.
2. The Commission on Human Rights, at its forty-fifth session in 1989, acting on the recommendation of the Sub-Commission, decided, by its resolution 1989/40 of 6 March 1989, to establish an open-ended working group of the Commission to examine, revise and simplify as necessary the draft body of principles and guarantees submitted by the Sub-Commission, with a view to submitting it to the Commission at its forty-sixth session. It invited all Governments, specialized agencies, in particular the World Health Organization, and non-governmental organizations to participate in this work and to consider including in their delegations to the working group persons with expertise in the legal and mental health fields. It requested the working group to meet for a period of two weeks before the forty-sixth session of the Commission.
3. In paragraph 6 of resolution 1989/40, the Secretary-General was requested to invite comments, for consideration by the working group, from Governments, specialized agencies and non-governmental organizations on the draft body of principles and guarantees as submitted by the Sub-Commission. The Secretary-General was further requested to circulate these comments to all Governments in advance of the session of the working group.
4. In its resolution 1989/76 of 24 May 1989, the Economic and Social Council authorized the meeting of an open-ended working group of the Commission. In addition, the Council requested the Secretary-General, on the basis of the comments received from Governments, specialized agencies and non-governmental organizations in response to paragraph 6 of Commission on Human Rights resolution 1989/40, to prepare a working paper showing the modifications that would be made to the existing draft body of principles and guarantees as a result of those comments.
5. The present document contains the comments received pursuant to paragraph 6 of Commission on Human Rights resolution 1989/40. The working paper showing the modifications that would be made to the existing draft body of principles and guarantees as a result of those comments will be before the open-ended working group in document E/CN.4/1990/WG.8/WP.1.
6. In May 1989, a note verbale was sent to all Governments requesting that they submit comments on the draft principles and guarantees. Requests for comments were also sent in May 1989 to specialized agencies and non-governmental organizations.

7. By 20 November 1989, substantial replies had been received from the Governments of Bahrain, Equatorial Guinea, Finland, the Netherlands, Spain, the United States of America, the United Kingdom of Great Britain and Northern Ireland and Venezuela.

8. The Governments of the Bahamas, Qatar and South Africa sent the texts of their relevant legislation. References to their national legislation were also made in replies by Finland, the Netherlands and the United Kingdom. The texts of those replies are available in the files of the Centre for Human Rights for consultation.

9. Replies have also been received from the International Labour Organisation (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). The Friends World Committee for Consultation also sent comments.

#### I. GENERAL COMMENTS AND SUGGESTIONS

10. The Governments of Finland, the Netherlands, Spain, the United Kingdom of Great Britain and Northern Ireland and the United States of America commended the Sub-Commission for its work on the draft principles and guarantees. They regarded the elaboration of that draft as an important step in the protection of the rights of mentally ill persons.

11. In the view of Bahrain, the submitted draft was excellent and did not require any further revision. Other Governments, the United Nations Educational, Scientific and Cultural Organization and the Friends World Committee for Consultation offered some general, as well as specific comments and suggestions, bearing particularly on the question of the protection of the rights of persons detained on the grounds of mental ill-health or suffering from mental disorder.

12. The Netherlands Government believed that the principles and guarantees were mainly concerned with admission to psychiatric hospitals under civil law and not with compulsory admission at the order of a criminal court, subject to the responsibility of the Minister of Justice; as this was an entirely separate matter, the Netherlands felt that article 19 needed to be interpreted broadly.

13. The Government of the United States of America believed that the draft principles and guarantees, including annex A, should employ language that was strictly gender neutral.

14. The Friends World Committee for Consultation was also of the opinion that the language of the draft should be gender neutral.

#### II. COMMENTS AND PROPOSALS IN RESPECT OF PRINCIPLES AND GUARANTEES

##### A. TITLE

15. The United Kingdom noted that the principles and guarantees as drafted related primarily to the question of the protection of mentally ill persons, rather than to the improvement of mental health care, although of course one result of the protection of mentally ill persons might be the improvement of mental health care. In view of this, the United Kingdom believed that the

title should be that given to the sessional working group, namely "Principles and guarantees for the protection of persons detained on the grounds of mental ill-health or suffering from mental disorder". If that wording caused confusion, the title might be worded as follows: "Principles and guarantees for the protection of persons suffering from mental disorder or detained on grounds of mental ill-health".

16. In the view of the Government of the United States, the title of the draft principles, as it appeared on page 5 of document E/CN.4/Sub.2/1988/23, should include the phrase "and for the improvement of mental health care". The addition of this phrase would bring the title into conformity with the title of the instrument as it appeared on page 3 of the same document.

## B. APPLICATION

### Article 1

17. Regarding article 1, no comments have been received.

## C. DEFINITIONS AND USAGE

### Article 2

18. With regard to article 2, Finland, the Netherlands and the United Kingdom viewed the definitions as too narrow. Finland noted that limiting the definition of a mental health facility to an establishment which as its primary function provided care and treatment for patients with mental illness might be misleading. The principle should also relate to those establishments which provided health care to such patients in addition to other patient categories. The Netherlands pointed out that the definition of mental illness was too detailed.

19. In the view of Spain, it was essential for the document to contain a clear glossary of the terms used, giving precise definitions of a number of concepts that were open to a wide variety of interpretations if they were not made absolutely plain. Spain further stated that definitions should be provided, inter alia, of the following terms: "treatment", "qualified mental health practitioner" and "person with a mental illness". Otherwise, if those terms were interpreted loosely, it would be impossible under subparagraph 8 of article 12 to administer any type of medication, even in an emergency, to an "involuntary patient" without his consent until an "independent authority", after examining "expert evidence" and making a full study of the treatment proposed by the practitioner treating the patient, had so authorized. Similarly, if the concept of "qualified mental health practitioner" was not clearly defined the ambiguity of the term would leave open the possibility that a practitioner without the proper training and knowledge might decide that a patient should be interned.

20. Furthermore Spain noted that a precise definition of "mental illness" was essential, particularly when the term was used in articles relating to forensic psychiatry, since, while subparagraph 1 of article 6 did state that "a diagnosis that a person has a mental illness shall be in accordance with internationally accepted medical standards", no indication whatsoever was given as to which of the different standards that had achieved a greater or lesser degree of international acceptance were referred to. That need was

admittedly recognized in article 2 of the draft, which offered an incomplete and ambiguous glossary of terms while at the same time referring to its provisional nature and stating that definitive definitions would have to be developed by "multidisciplinary experts concerned with mental health". But in any case, considering the fundamental importance of that aspect, it was suggested that the greatest possible attention should be devoted to preparing a detailed and coherent glossary.

21. The United Kingdom stated that it would prefer the reference to a "psychologist", in the definition of a "mental health practitioner", to read a "clinical psychologist". The definition of "mental illness", which, as the note to article 2 recognized, needed to be refined, should be expanded to cover the full range of mental disorder. The term "mental illness" was too limiting. Certain persons, although not suffering from "mental illness", suffered from other mental disorders. Those persons required the protection offered by the principles and guarantees. The term "mental illness" might be replaced by "mental disorder". That would, in addition, bring the terms in the text of the principles and guarantees into line with their title, if the title were "principles and guarantees for the protection of persons suffering from mental disorder or detained on grounds of mental ill-health".

22. The United States noted the appropriately broad definition of "mental health practitioner" and expressed the view that several other provisions of the draft principles that adopted narrower language, in particular, article 10, paragraph 3, should be brought into conformity with the article 2 definition.

23. The Friends World Committee for Consultation stated that the term "mentally ill person" was discriminatory and should be replaced by "a person with a mental illness".

#### D. FUNDAMENTAL FREEDOMS AND BASIC RIGHTS

##### Article 3

24. Finland considered that the freedoms and rights as listed in this article were of great importance for the welfare of the mentally ill in the community.

25. The United States stated that the draft principles should include an article dealing explicitly with the improvement of mental health care. Such an article could be based on language developed by the World Health Organization, contained in document E/CN.4/Sub.2/WG.3/WP.3, dated 11 August 1988, as follows:

"All persons have the right to the best possible mental health care, which shall be part of the health, mental health, and social care system."

26. The United Kingdom proposed that the opening wording of paragraph 4 (a) should be amended to read "Subject to a decision of a court as to any incapacity or as otherwise provided by domestic law in relation to incapacity, ...". It further noted that it was not clear whether the rights

mentioned in paragraph 4 (b) and (c) were rights "defined" in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Those rights might flow from the rights contained in those instruments but that was different from saying that they were "defined" in those instruments.

27. UNESCO expressed the view that paragraph 2 of the article should not only be restricted to the right to protect from exploitation, abuse and degrading treatment but should also take into account the concepts used in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Paragraph 5 of article 3, was related to the appointment of a guardian to protect the interests of a person affected by mental illness. It might be appropriate to indicate that such a guardian could be held accountable to the court that had appointed him.

#### Article 4

28. In the view of the United Kingdom, this article appeared to place an absolute requirement on "the authorities" (which do not appear to be defined) to inform a patient in a form and language he could understand of his rights in accordance with the principles and guarantees and under domestic law. No exception was made here as regards a person who, because of his mental disorder, was incapable of understanding his rights.

29. Spain noted that the effective application of article 4 in cases of severe mental deficiency and some forms of dementia, among other disorders, seemed impossible in view of the limited reasoning ability of the patients concerned. Consequently, it was suggested that the article be amended so as to state that the obligatory information referred to should be given provided the patient possessed a minimum degree of mental capacity.

#### Article 5

30. The Netherlands pointed out that in some respects article 5 went to extreme lengths to protect patients' rights. For example, under Dutch legislation, patients had a right to communicate freely by telephone, to receive visits and to move freely in and around the psychiatric hospital. In the Netherlands, those rights could be restricted only in accordance with the criteria stated in a bill currently before the Netherlands Parliament, which included the disturbance of order in the hospital (as described in the house rules) or the possibility of serious detrimental effects on the patient's health. Although restrictions could be placed on visiting, these must not apply to certain types of visitor, such as the lawyer who was acting as the patient's counsel and the Inspector of Public Health. The patient must enjoy freedom of correspondence. However, it must be possible for mail addressed to the patient or sent by him/her to be checked in the patient's presence for objects which might have been enclosed in it.

31. The United Kingdom stated that patients in that country did not have a right to demand to mix with other patients. That would not be possible where it was felt not to be in the best interests of either patient involved including situations where it was felt a patient was open to exploitation. In its opinion, article 5, paragraph 1, should therefore be qualified by words similar to those in article 5, paragraph 2: "limited only as strictly necessary in the interests of the health or safety of himself or others".

32. As regards paragraph 3 (c) of article 5, it was suggested by Venezuela that the final sentence should read "He shall be properly remunerated for any work done when such work results in earnings being paid to the administration of the establishment." The grounds for this proposal were that the conditions did not exist in developing countries for patients to be remunerated for all work carried out from the budgetary resources of the establishment itself.

33. The ILO noted that the aspect of the question which was of direct concern to it related to the vocational training and rehabilitation of mentally ill persons. Relevant ILO standards included the Vocational Rehabilitation (Disabled) Recommendation, 1955 (No. 99); the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) and Recommendation, 1983 (No. 168). This aspect was dealt with in article 5, paragraph 3 (b), of the draft.

34. The ILO further noted with interest that a reference was made in article 5, paragraph 4, of the draft to the Forced Labour Convention, 1930 (No. 29) in connection with any work to be done by patients in a mental health facility. It was suggested that the meaning of paragraph 4 could be made clearer by changing it to the following wording:

"4. Every patient shall be free from forced labour, in accordance with the terms of the Forced Labour Convention, 1930 (No. 29)."

35. The Friends World Committee for Consultation suggested that in article 5, paragraph 3, the words "Where possible, every patient shall:" should be deleted and that subparagraphs (a), (b) and (c) should become (f), (g) and (h) of paragraph 2. Paragraph 4 would become paragraph 3.

#### Article 6

36. No comments have been made on this article.

### E. TREATMENT

#### Article 7

37. Finland emphasized that the treatment in one's own community and the right to return to that community should be regarded as the basic principle of providing mental health care.

#### Articles 8 and 9

38. In the view of Finland, the principles in these articles were of great practical importance. There were, however, great difficulties in making sure that the mental health establishments had access to the same resources as any other health establishment. Therefore, it would be important to study in great detail what measures could be taken in order to give effect to those principles. As far as Finland was concerned, it had used an earmarked quota as a part of the annual National Health Plans in order to allocate resources for community-based mental health services in 1983-1989.



39. The Friends World Committee for Consultation suggested that in paragraph 1 (c) of article 9 the words "Appropriate medical care" should be replaced by "Appropriate professional care" and that in paragraph 1 (d) the words "Adequate and regular supplies of medication" should be replaced by "Adequate and regular treatment".

#### Article 10

40. The United Kingdom considered that amplification was needed in line with the language of, for example, article 12, paragraph 5, and article 15, paragraph 1 (b). Thus article 10, paragraph 1, would read:

"Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's needs and the need to protect others."

41. The United States noted that in order for the language of this article to conform with the broad definition contained in article 2, paragraph 3 of article 10 should be amended to provide that:

"Mental health knowledge and skills shall be employed only for diagnosis, therapy, and rehabilitation of the patient and shall never be abused by being employed for other purposes."

#### Article 11

42. With respect to article 11, the United States believed that language should be added making clear that medical practitioners should only administer medication of known or demonstrated efficacy.

43. In the view of Spain, the wording of article 11 would seem to exclude the administration of medication for diagnostic purposes, which was a possible procedure in medical practice.

### F. CONSENT TO AND LIMITATIONS ON TREATMENT

#### Article 12

44. The United States noted that in order to obtain informed consent, mental health practitioners must provide adequate and understandable information to the patient of the sort specified in article 12, paragraph 2, as drafted. With respect to patients who, due to their mental illness, could not grant informed consent, mental health practitioners should be required to seek such consent from other individuals or institutions responsible for the well-being of the patient. With this in mind, the Government of the United States suggested that article 12, paragraph 2, be amended to provide:

"Informed consent is consent obtained freely without threats or improper inducements, from patients with sufficient mental capacity, after the provision of adequate and understandable information. With respect to such patients, mental health practitioners should seek such consent after discussing with the patient, and with others of the patient's choice, the nature of the patient's mental illness, the nature, purpose and duration of the proposed treatment, the specific methods to be used in the course of such treatment, possible pain and discomfort,

possible risks, side-effects and expected benefits of such treatment, and alternative modes of treatment. With respect to patients who do not possess sufficient mental capacity to grant informed consent, mental health practitioners should seek such consent from individuals or institutions responsible for the well-being of the patient, such as guardians, relatives or courts, after provisions of the same information."

45. Finland pointed out that, logically, operations to change a patient's sexual gender in any form other than castration should also be included in a recommendation like the one contained in paragraph 3 of article 12.

46. The Netherlands considered that the consent referred to in article 12 would have to be given in writing.

47. In the view of the United Kingdom, paragraph 3 of this article might include a provision to the effect that, in certain cases, if the patient was not capable of understanding the nature of the treatment and was unable to give consent, the doctor should submit the matter for decision to an appropriate independent authority prescribed by law or to a court.

48. With respect to paragraph 3, UNESCO stated that, in the absence of the patient's informed consent, it did not seem enough for the decision to be entrusted only to an independent specialist authority. There should be provision for at least contradictory opinions.

49. The United Kingdom proposed the rewording of paragraph 4 of this article as follows:

"Adequate ethical and/or legal safeguards shall be established to protect the rights of voluntary or involuntary patients who may be unable to give informed consent to clinical trials and experimental treatments. For patients who are able to give informed consent, such trials and treatments shall only be carried out if such consent is given."

#### G. VOLUNTARY ADMISSION TO A MENTAL HEALTH FACILITY

##### Article 13

50. Finland noted that, though efforts had been made to avoid prejudice and stigma and to integrate mental health facilities with other health establishments, the provisions of this article might work to stigmatize units providing care for the mentally ill. Therefore, the wording of this article should be reconsidered so as to prevent it from operating against those in need of care and proper treatment.

##### Article 14

51. Regarding this article, no comments have been received.

#### H. INVOLUNTARY ADMISSION TO A MENTAL HEALTH FACILITY

##### Article 15

52. According to the point of view of Finland, it might be reasonable to reconsider the wording of articles 15, 16 and 17 in order to make them less strict in terms of acknowledging different national traditions.

53. Finland felt that the procedure provided for in the articles was an expensive one, and other alternatives which could guarantee the same level of safety limits should be considered, especially keeping in mind the lack of resources in providing proper treatment facilities for the mentally ill all over the world.

54. Finland further noted that involuntary treatment of drug abusers in particular, as well as care of certain other patient groups (for example, the mentally handicapped) had common features with the involuntary treatment of mentally ill persons. The principles presented in the document therefore should be applied - at least in most instances - also in the care of patients other than the mentally ill against their will.

55. In the view of the Netherlands, the patient's interests alone were insufficient grounds for involuntary admission. Moreover, it must not be assumed too readily that a danger existed.

56. The United Kingdom stated that, in considering paragraph 1 of this article, the working group might wish to consider the wording of the Council of Europe's resolution R(83)2 concerning "the protection of persons suffering from mental disorder placed as involuntary patients" (article 3):

"In the absence of any other means of giving the appropriate treatment:

(a) A patient may be placed in an establishment only when, by reason of his mental disorder, he represents a serious danger to himself or to other patients;

(b) States may, however, provide that a patient may also be placed when, because of the serious nature of his mental disorder, the absence of placement would lead to a deterioration of his disorder or prevent the appropriate treatment being given to him."

57. The United Kingdom further proposed a rewording of the first sentence of paragraph 2 as follows: "Involuntary admission shall initially be for a specified period for the purpose of observation and preliminary treatment pending review ...".

58. The Friends World Committee for Consultation was of the view that paragraph 1 of this article should be redrafted to read:

"A person shall be admitted to or retained in a mental health facility only if two mental health practitioners consider that there is an immediate or imminent likelihood that the person, because of ...".

59. It further suggested that paragraph 3 of the same article should be redrafted as follows:

"For the purpose of this article the best interest of the person shall be assessed in accordance with what is best for the individual concerned."

I. REVIEW AND APPEAL

Article 16

60. Equatorial Guinea proposed the replacement, in the Spanish text of paragraph 4 of article 16, of the word "cumpliendo" by "dando" or "apreciando". It also considered it appropriate to insert in paragraph 5 of the article the words "after examining the patient" after the words "if satisfied".

61. The United States suggested that the language of paragraph 5 of this article ought to conform to the definition contained in article 2. Thus, paragraph 5 should be amended to provide:

"At any time a patient may be discharged by an authorized mental health practitioner if the practitioner is satisfied that conditions appropriate for discharge have been achieved."

62. The United Kingdom suggested the addition in paragraph 5 of the word "or review body" after "authorized mental health practitioner".

63. With reference to paragraph 5, Venezuela considered that the words "authorized mental health practitioner" might be a cause of confusion in countries in which the admission and discharge of the patient was a decision for a doctor. It therefore suggested that the paragraph in question should read:

"At any time a patient may be discharged by an authorized physician if satisfied that the conditions for discharge are satisfied."

64. As to paragraph 6, the United Kingdom proposed that this paragraph should begin as follows:

"A patient or his representative or any person whose rights or interests are affected shall have the right to appeal to a higher court or tribunal against a decision that the patient be admitted ...".

J. PROCEDURAL RIGHTS OF THE PATIENT

Article 17

65. The United Kingdom proposed the following amendment to the second sentence of paragraph 1:

"If the patient does not himself secure such services and wishes to be represented, the review body shall appoint a lawyer or other qualified representative. The services of a lawyer or other qualified representative shall be free of charge to the patient unless his means are sufficient to contribute some or all of the costs of his representation."

66. For the reasons mentioned in paragraph 22 above, the United States suggested that paragraph 2 of this article should be amended to provide:

"The patient and his representative may request and produce to the review body and the authorities of the facility independent medical health reports and any other relevant evidence."

67. Equatorial Guinea considered that in paragraph 2 the word "and" after the words "The patient" should be altered to "and/or". It was also of the view that the cases in which the report might be produced and for what purposes should be indicated.

#### Article 18

68. The United Kingdom pointed out that in its country, access to a patient's medical records or summaries was allowed to a registered medical practitioner acting on behalf of the patient or former patient, but that patients themselves were not entitled to such access.

### K. CRIMINAL PROCEEDINGS

#### Article 19

69. In the view of the Netherlands Government, the formulation of article 19 should be amended as follows. The stipulation that the articles of the draft body of principles should apply mutatis mutandis to "mentally ill offenders who are admitted to a mental health facility" should be open to an interpretation which permitted sufficient scope for deviation from the provisions of the articles of the draft body of principles with regard to this category. In the Netherlands, compulsory psychiatric care of offenders under an in-patient hospital order (which was a criminal penalty) was subject to the responsibility of the Minister of Justice. This meant that under certain circumstances it must be possible for patients' correspondence to be censored, that the criminal court which periodically decided whether the hospital order should be extended should act as a review body, that the Minister of Justice should decide whether a patient should be released during the period of validity of a hospital order and that in so doing the Minister should likewise act as a review body, and that patients should not be allowed to see all particulars concerning them.

#### Article 20

70. Equatorial Guinea pointed out that, in principle, it was quite dangerous to anticipate that persons who were not mentally ill could be admitted to mental health facilities. It was obvious, however, that persons suspected of suffering from mental illness could be admitted to such facilities.

71. The United States was of the view that article 20 should be clarified to specify that persons who were not mentally ill should not be admitted to mental health facilities.

72. Venezuela considered that it would be unethical to admit persons who were not mentally ill to mental health facilities. Article 20 was liable to cause confusion and should therefore be deleted.

### L. REMEDIES

#### Articles 21 and 22

73. No comments have been received regarding these articles.

M. IMPLEMENTATION

Articles 23 and 24

74. Venezuela was of the view that consideration of this matter should not end with the adoption of these principles but that machinery should be established to monitor their implementation.

N. GUIDELINES ON CRIMINAL PROCEEDINGS (ARTICLE 19.2)

Annex A

75. The Government of the United States generally supported the present text of annex A. However, it suggested that the annex be amended so that most of the special protections and procedures would apply to persons with a "severe mental illness" as defined in article 2 of the draft principles, rather than to all persons suffering from any form of mental illness, however slight.

76. With regard to guideline III, paragraph 2, of annex A, the United States noted that persons accused of a crime, including the mentally ill, could not generally be compelled to testify against themselves. However, individuals, including some with minor mental illnesses, could be compelled to testify in other circumstances. In such circumstances, only those competent to testify should be compelled to do so.

77. The United States also felt that changes similar to those which it had proposed for other articles were needed in several paragraphs of annex A.

78. Spain stated that the provision or guarantee set out in guideline III, paragraph 2, raised serious doubt in view of its general nature, since there did not appear to be adequate clinical justification for applying it to all mental patients. The extensive bibliography in the field of forensic psychiatry clearly defined, among other important issues, to what type of patient this article should apply and which patients were sufficiently competent to make statements before the court authorities.

79. The United Kingdom suggested that guideline IX would read better as follows:

"A convicted prisoner afflicted by mental illness shall be provided with adequate mental health care and treatment and shall be transferred from prison to an ordinary mental health facility if adequate mental care and treatment and an appropriate special place is not available in the prison but only for the time necessary."

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