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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

Addendum

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I. REPLIES FROM GOVERNMENTS

Nigeria 2

GE.90-10283/2598a

NIGERIA

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1. Generally these Principles and Guarantees are welcome for the reasons that:

(i) They protect and guarantee the rights of the mentally ill by means of a legal instrument; and

(ii) They would aid the improvement of the treatment of the mentally ill.

2. However, there are constraints namely:

(i) Inadequacy of facilities for the treatment of mentally ill persons; and

(ii) Limitations of the existing facilities and inadequacy of qualified personnel, in all relevant disciplines.

Comments

3. Article 5: The Government is of the view that the freedom of communication granted to a patient in paragraph 1 of this article is too wide and should be limited (as in para. 2) to prevent communication taking place where it would be "dangerous to the safety and well-being of other patients".

4. Article 7.1: The emphasis on the community approach in the treatment of the mentally ill is commendable. This is particularly germane to Nigeria where Primary Health Care is the cornerstone of the National Health Policy. In line with the community-centred approach, these principles and guidelines should be known not only to the doctors but to other community health workers.

5. The role of the family system in the care of the patient should be recognized. With regard to "informed consent", therefore, such alternatives as wife, husband, parent, oldest family member may be inserted. This is because in the Nigerian (African) setting, more psychotics than neurotics come to facilities for treatment and so are mostly not in any state to give informed consent.

6. Article 7.2: Paragraph 2 should be amended to include a limit on the right to return to the community. It should therefore be redrafted to read as follows:

"Where treatment in a mental health facility is necessary, a patient shall whenever possible be treated in a facility near his home or the home of his relatives or friends and if admitted to a facility, has the right, limited only as strictly necessary in the interests of the health and safety of himself or others, to return to the community as soon as possible".

7. Articles 12, 13, 14 and 15: Recognition of the traditional treatment of the mentally ill, and the modes of therapy which may be directly or indirectly contradictory to some of the principles contained in the instrument should be made. Therefore, clarification is required on whether the instrument applies

to both modern and traditional facilities and services. If not, what should be the status of the instrument in relation to traditional facilities? What happens to the rights of the patients in such traditional treatment settings?

8. There may be a need to add to paragraph 2 of the Introduction on page 4 of the document, the concept of culture/tradition so that the last sentence of the paragraph reads: "In view of the great variety of legal, medical, socio-cultural, economic and geographical conditions of the World Community, it is obvious that not all the principles and guarantees are capable of immediate application in all countries at all times." It is important, however, to make explicit the influence and effect of culture when account is taken of article 6.4, and article 15.3 of the document.

9. Article 5.2 b: "The right to send and receive unread and uncensored ... communications". A few patients, e.g. those awaiting trial for serious offences, such as armed robbery or subversion, should probably not be granted this facility, for reasons of security.

10. Article 5.2 a and b: Exception may have to be made for the treatment of drug addicts when visitors and mail may need to be restricted because of the probable risk of drugs being brought or sent to the addict.

11. Article 5.3: Participation in hospital ward domestic chores and in occupation therapy should be regarded as part of treatment and not remunerated. This point needs to be made.

12. Article 5.3 c: There should be a final sentence to read: "Such active occupation shall be for the shortest period necessary to promote rehabilitation and reintegration in the community".

13. Article 6.2: There is a positive aspect of background of past treatment or hospitalization which should be made. This background can guide present management and treatment and should not be ignored. It is also not certain whether this implies non-consideration of past medical/psychiatric history in arriving at a diagnosis and a course of management and treatment. If so, this provision may be unrealistic.

14. Article 6.3: If discrimination implies punishment or non-ethical treatment then the provision is acceptable.

15. Article 6.4: This provision will be realistic and acceptable with the addition of the words "the only". The section will then read "(4) Non-conformity with moral, social, cultural or political values or religious beliefs prevailing in a person's community shall never be the only determining factor in diagnosing mental illness". This is especially relevant as some basic symptoms, e.g. delusion, are defined and determined using these factors as parameters of reference.

16. Article 8.2: Some treatment modalities can occasion mental distress and physical discomfort and provision should be made for this. Examples include withdrawal symptoms in drug addicts which should of course be countered as much as possible and the behaviour modification practice of flooding or implosion.

17. Article 9, to be preceded by the words, "within the context of available resources".

18. Article 9.3: A third paragraph, No. 3, should be introduced under article 9, and this should perhaps read: "Alternative mental health facilities (traditional/spiritual) shall be regulated and licensed to make them accountable for the patients/clients that go to them".

19. Article 11.1: "Medication shall be given to a patient only for therapeutic purposes ..." The inclusion of the word "diagnostic" before the word "therapeutic" is strongly recommended for abreaction.

20. Article 12.3 a: This must be in writing by the patient or his/her next of kin as the case may be.

21. Article 12.3 b: There must be a second professional person.

22. Article 12.4: This section must be worded in such a way as to include sanction for non-compliance.

23. Article 12.9: "Consent to and limitations to treatment". The provisions under this article must be considered within the context of available professional manpower resources and the fact that a sizeable proportion of patients in mental facilities do not accept a need for treatment. The general level of medical literacy in the population should also be a relevant factor. "A second professional opinion" may not be available.

24. Article 12.10: An additional sentence should be added to paragraph 10 to read as follows:

> "The duly appointed representatives of patients shall as soon as possible be informed of the nature and duration of such treatment".

25. Article 13: Unless "admission" means broadly acceptance for community, out-patient, domiciliary and in-patient care, article 13 does not appear to take cognizance of community, out-patient and domiciliary care. It is suggested that wherever "admission" or "admitted" is used in the article "acceptance or admission" or "accepted or admitted" should be used. Alternatively "admission" should be broadly defined. Few patients nowadays need to be kept in bed.

26. Article 15.3: The paragraph should read "as much as possible, within the context of medical ethics, and resources available, the best interests of the person shall be assessed to determine the need for involuntary admission".

27. Article 16: A section should be added which reads, "The review body may release the involuntary patient on parole if the existing conditions warrant it".

28. Article 16.4: "... entitled to be discharged". The following addition is suggested, "... or continue with voluntary treatment and programmed discharge". This will allow for increasing the period of "home leave" which will enhance rehabilitation.

29. Article 17.1: The Government is of the view that paragraph 1 should take into account situations where the patient is for one reason or the other, incapable of appointing his/her own representatives. It is therefore proposed that the following sentence be added to the end of the paragraph:

> "Where the patient is incapable of appointing a representative an application may be made in accordance with existing national laws to the appropriate court for the appointment of a representative".

30. Article 17.2: A subsection "a" should be added to read, "The composition of the review body must be spelt out, where the National Law is silent on such".

31. Article 17.6: Should be amended to read, "The hearing shall be in camera unless the patient and his representative otherwise request".

32. Articles 17.6 and 18.2: These two articles appear to conflict. If patients have right to confidentiality of their medical records and patients can also have their records, reports and documents exposed in public hearing, then medical records are only as confidential as patients want them to be.

33. Annex A. Section I.2: The following phrase should be added to this article, "... ability of the patient to take a plea, understand the trial and to accept criminal responsibility to stand trial ..."

34. Annex A. Section III: "No person affected by mental illness shall be compelled to testify during a criminal proceeding". This is too general and does not take into account different classifications of mental illness. There is no reason why a mildly neurotic person cannot testify in a criminal proceeding.

35. Annex A. Section IV and Section VII.2: The terms "involuntary community-based facilities", "community-based treatment" and "treatment in a mental health facility" occur in these sections. They need to be defined as they are rather confusing as they are used at present.