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TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT

Development of codes of medical ethics

Note by the Secretary-General

1. In accordance with General Assembly resolutions 3218 (XXIX) and 31/85, the Secretary-General has the honour to transmit to the members of the General Assembly the report of the World Health Organization (WHO) on the development of codes of medical ethics (EB 63/35) communicated to him by the Director-General of WHO on 13 March 1979.

2. The Director-General informed the Secretary-General that the Executive Board of WHO at its sixty-third session in January 1979, after considering the report, adopted the following decision:

"The Executive Board endorsed the principles set forth in the Director-General's report on the development of codes of medical ethics, and requested the Director-General to transmit this report to the Secretary-General of the United Nations."

3. The Director-General underlined that the "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" applied not only to medical personnel, but might also provide guidance for other health personnel having clinical responsibility for prisoners and detainees.

* A/34/50.

ANNEX

Report of the Director-General of the World Health Organization
on the development of codes of medical ethics



WORLD HEALTH ORGANIZATION
ORGANISATION MONDIALE DE LA SANTÉ

11 December 1978

EXECUTIVE BOARD

Sixty-third Session

Provisional agenda item 32.2

COORDINATION WITHIN THE UNITED NATIONS SYSTEM
DEVELOPMENT OF CODES OF MEDICAL ETHICS

Report by the Director-General

In this report the Director-General summarizes the events leading to the submission to the Executive Board at its current session of the CIOMS document 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". The document, which is annexed to this report, was prepared in accordance with resolution EB61.R37 adopted by the Board in January 1978. Should the Executive Board endorse the proposed principles, the Director-General would transmit them to the Secretary-General of the United Nations for submission to the United Nations General Assembly.

1. Background

1.1 The United Nations General Assembly invited the World Health Organization in 1974 to draft an outline of the principles of medical ethics which may be relevant to the protection of prisoners or detainees against torture and other cruel, inhuman or degrading treatment or punishment (resolution 3218 (XXIX)).

1.2 In January 1975 the Executive Board requested the Director-General to prepare an appropriate study (resolution EB55.R64), following which a WHO paper entitled "Health aspects of avoidable maltreatment of prisoners and detainees" was presented in September 1975 to the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and in December to the United Nations General Assembly. The United Nations General Assembly then invited WHO to give further attention to the matter, and in January 1976 the Executive Board, at its fifty-seventh session, requested the Director-General to collaborate with other interested organizations for the purpose of developing codes of medical ethics, including those related to the protection of prisoners against any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment (resolution EB57.R47).

1.3 The Director-General subsequently consulted with the Council for International Organizations of Medical Sciences (CIOMS) and with the World Medical Association, and it was agreed that the Declaration of Tokyo, adopted by the World Medical Assembly in October 1975, would serve as a basic document on which CIOMS, on behalf of WHO, would obtain the views of medical practitioners and other health personnel. In December 1976 the United Nations General Assembly, having been apprised of the action taken by WHO, invited the Organization to prepare a draft code of medical ethics relevant to this matter (resolution 31/85). In May 1977 the Thirtieth World Health Assembly considered the matter and requested the Director-General to transmit the CIOMS study to a future session of the Executive Board for its consideration before forwarding it to the United Nations General Assembly (resolution WHA30.32).

1.4 The Director-General submitted the CIOMS study to the Executive Board at its sixty-first session,¹ in January 1978, and the Board endorsed the Director-General's suggestion that CIOMS and the World Medical Association be invited to elaborate a draft code of medical ethics relevant to this matter (resolution EB61.R37).

2. The CIOMS document

2.1 Members of the Executive Board will find in the Annex to this report the document submitted by CIOMS to the Director-General in conformity with resolution EB61.R37. The document 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" sets out a number of proposed principles which would supplement the Declaration of Tokyo adopted by the World Medical Association and the United Nations Standard Minimum Rules for the Treatment of Prisoners. An explanation is given of the proposed principles, and it will be noted that, while they apply essentially to physicians, it is suggested that these principles might also provide guidance for other health personnel having clinical responsibility for prisoners or detainees.

2.2 The second part of the document provides background information and describes the action taken by CIOMS in preparing the document. The texts of the Declaration of Tokyo and of the Declaration on the Protection of all Persons from being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment are reproduced in Appendices 1 and 2.

2.3 It is expected that comments on the proposed principles by the governing body of the World Medical Association will be submitted early in 1979.

2.4 The Executive Board, after consideration of the proposed principles contained in the CIOMS document, may wish the Director-General to forward the document to the Secretary-General of the United Nations for submission to the United Nations General Assembly.

¹ Document EB61/35.

COUNCIL FOR INTERNATIONAL
ORGANIZATIONS
OF MEDICAL SCIENCES

C.I.O.M.S.

CONSEIL DES ORGANISATIONS
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DES SCIENCES MEDICALES

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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 paragraph 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 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.

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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".

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 nongovernmental 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

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).

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 the 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.

DECLARATION OF TOKYO

Guidelines for Medical Doctors concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to Detention and Imprisonment.

As adopted by the 29th World Medical Assembly, Tokyo, Japan, October 1975.

PREAMBLE

It is the privilege of the medical doctor to practise medicine in the service of humanity, to preserve and restore bodily and mental health without distinction as to persons, to comfort and to ease the suffering of his or her patients. The utmost respect for human life is to be maintained even under threat, and no use made of any medical knowledge contrary to the laws of humanity.

For the purpose of this Declaration, torture is defined as the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason.

DECLARATION

1. The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedures is suspected, accused or guilty, and whatever the victim's beliefs or motives, and in all situations, including armed conflict and civil strife.
2. The doctor shall not provide any premises, instruments, substances or knowledge to facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment.
3. The doctor shall not be present during any procedure during which torture or other forms of cruel, inhuman or degrading treatment is used or threatened.
4. A doctor must have complete clinical independence in deciding upon the care of a person for whom he or she is medically responsible. The doctor's fundamental role is to alleviate the distress of his or her fellow men, and no motive whether personal, collective or political shall prevail against this higher purpose.
5. Where a prisoner refuses nourishment and is considered by the doctor as capable of forming an unimpaired and rational judgement concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially. The decision as to the capacity of the prisoner to form such a judgement should be confirmed by at least one other independent doctor. The consequences of the refusal of nourishment shall be explained by the doctor to the prisoner.
6. The World Medical Association will support, and should encourage the international community, the national medical associations and fellow doctors, to support the doctor and his or her family in the face of threats or reprisals resulting from a refusal to condone the use of torture or other forms of cruel, inhuman or degrading treatment.

DECLARATION ON THE PROTECTION OF ALL PERSONS FROM BEING
SUBJECTED TO TORTURE AND OTHER CRUEL, INHUMAN OR
DEGRADING TREATMENT OR PUNISHMENT

Article 1

1. 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.

2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

Article 2

Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.

Article 3

No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 4

Each State shall, in accordance with the provisions of this Declaration, take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practised within its jurisdiction.

Article 5

The training of law enforcement personnel and of other public officials may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. This prohibition shall also, where appropriate, be included in such general rules or instructions as are issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of such persons.

Article 6

Each State shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment.

Article 7

Each State shall ensure that all acts of torture as defined in article 1 are offences under its criminal law. The same shall apply in regard to acts which constitute participation in, complicity in, incitement to or an attempt to commit torture.

Article 8

Any person who alleges he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned.

Article 9

Wherever there is reasonable ground to believe that an act of torture as defined in article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint.

Article 10

If an investigation under article 8 or article 9 establishes that an act of torture as defined in article 1 appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with national law. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings.

Article 11

Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation, in accordance with national law.

Article 12

Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.

(Adopted without vote by the General Assembly
of the United Nations on 9 December 1975.)
