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Dear Professor Narr

YOUR CORRESPONDENCE 18 MAY AND 22 JUNE 2013

Dear Professor Narr,

Thank you for re-sending your letter of 18 May 2013 with a covering letter dated 22 June 2013. I apologise for the delay in this reply.

You raise an important issue -- the rights of people to be free of torture in a psychiatric setting. The prohibition of torture and other ill-treatment is universal and absolute, so it obviously includes persons diagnosed with mental disorders. As you know, torture is defined in the Convention against Torture as "Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

Where the requirements of this definition are met, in any context whatsoever, a serious human rights violation will have occurred which, moreover, is a crime under international law and its perpetrators must face justice. Also, cruel, inhuman or degrading treatment or punishment not amounting to torture is equally prohibited in an absolute and non-derogable manner under international law. Where there is official consent or acquiescence to such acts perpetrated by non-state actors, including where states fail to exercise due diligence in preventing such acts, the state would still be responsible for violating the human rights to be free from torture and other cruel, inhuman or degrading treatment or punishment. This can happen in cases such as domestic violence, female genital mutilation or indeed ill-treatment in private medical institutions.

Psychiatry, at least in its current, mainstream forms, has as its purpose what medicine as a whole does -- maintaining health, treating conditions that are detrimental to health, alleviating pain etc. This is at variance with use of pain and suffering as a means to an end in torture as defined in international human rights law. Dealing as it does with human thoughts, feelings and behaviour, psychiatry does, however, have clear human rights implications, in particular when the autonomy of persons with intellectual or psychosocial disabilities and their right to be recognised as a person before the law are concerned. As you know, under the Convention on the Rights of Persons with Disabilities health professionals must provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent. Involuntary treatment of such persons without acquiring their informed consent would certainly raise, where other conditions are met, human rights issues,

including – if it occasions pain or suffering - the right to freedom from torture and other ill-treatment. Nevertheless, the obligation to obtain informed consent is not absolute, neither for disabled nor for non-disabled persons, in situations where it is impossible to obtain (for instance emergency treatment and palliative care).

These observations point to differences between psychiatry and torture but also to the possibility that in specific circumstances that legal framework would apply, all of which requires some reflection. And Amnesty International is currently carrying out such reflection.

Moreover, reflection is still ongoing far beyond the confines of Amnesty International. It would be premature to predict, for instance, how the following will be reconciled: the view of the UN Special Rapporteur on Torture that "involuntary treatment and other psychiatric interventions in health-care facilities are forms of torture and ill-treatment" (4 March 2013, p.15); his observation that "Except in emergency cases, the individual concerned should not be deprived of his liberty unless he has been reliably shown to be of 'unsound mind' (4 March 2013, p.16) his recommendation to the Government of Morocco that the government "Amend ... the Criminal Code in order to ensure that all offenders suffering from a mental disability are placed in a psychiatric institution, regardless of the degree of the offence" [28 February 2013, para. 87(i)]; the views of European Court of Human Rights that "a measure which is of therapeutic necessity from the point of view of established principles of medicine cannot in principle be regarded as inhuman and degrading" (though the manner in which this is carried out could render it torture), (*Herczegfalvy v. Austria*, 24 September 1992, para. 82) and that the failure to provide psychiatric care when needed can render states in breach of Article 3 of the Convention (*Dybeku v. Albania*, 18 December 2007).

More generally, there are paradoxes: "'Among all the conditions in the world of health, mental health occupies a unique and paradoxical place. On the one hand is over-treatment and over-medicalization of mental health issues... On the other hand exists profound under-recognition of the suffering and breadth of mental health issues affecting millions of people across geographies" (PLoS editorial: The paradox of mental health: over-treatment and under-recognition. PLoS Med 10(5): e1001456).

In addition to struggling against torture and other ill-treatment, Amnesty International is campaigning for the realisation of the right to health including to persons who are very vulnerable and marginalised.

This complex range of issues requires thought and we are reviewing these issues to establish our policy. The "big picture" is clear: we oppose all arbitrary detention, we oppose torture, we oppose violations of medical ethics, we support the right of all people to the highest achievable standard of physical and mental health; we support the principle of informed consent; we believe that involuntary treatment, where unavoidable, must be limited to the minimum necessary in the circumstances; if it is of longer duration it must be subjected to frequent review, including access to judicial oversight.

For these various reasons it seems to us not unreasonable that a specialist group in one national section of our international movement wants to refer this to the Amnesty International secretariat in London. We aim to have guidance developed before our next international council meeting in 2015, at which point it will be simpler for all sections to make choices as to where they place the weight of their advocacy and their affiliations.

Thanks and best wishes



Michael Bochenek
Director, Law and Policy Program

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