

Professional Codes of Ethics

Alfred Heijder • Herman van Geuns

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Codes d'éthique professionnelle

Alfred Heijder • Herman van Geuns

AMNESTY INTERNATIONAL

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Introduction: The Role of the Teacher

The teacher's role is to guide the student through the learning process, providing support and encouragement as needed. The teacher should create a safe and supportive environment where students can learn and grow. The teacher should also be a role model, demonstrating the values and attitudes that are expected of the student.

The teacher should also be a facilitator, helping the student to discover the answers for themselves. The teacher should ask questions that challenge the student to think critically and creatively. The teacher should also provide feedback that is constructive and helpful. The teacher should be a listener, paying attention to the student's needs and concerns. The teacher should be a collaborator, working with the student to solve problems and achieve their goals.

The teacher should also be a communicator, sharing information and ideas with the student. The teacher should use a variety of communication methods, including direct instruction, collaborative learning, and self-directed learning. The teacher should also be a reflector, reflecting on their own practice and seeking to improve their effectiveness. The teacher should be a lifelong learner, staying current in their field and seeking to expand their knowledge and skills. The teacher should be a leader, inspiring the student to reach their full potential and to make a positive impact on the world.

The teacher should also be a mentor, providing guidance and support to the student. The teacher should be a role model, demonstrating the values and attitudes that are expected of the student. The teacher should be a listener, paying attention to the student's needs and concerns. The teacher should be a collaborator, working with the student to solve problems and achieve their goals. The teacher should be a communicator, sharing information and ideas with the student. The teacher should be a reflector, reflecting on their own practice and seeking to improve their effectiveness. The teacher should be a lifelong learner, staying current in their field and seeking to expand their knowledge and skills. The teacher should be a leader, inspiring the student to reach their full potential and to make a positive impact on the world.

ethics relevant to the protection of persons subjected to torture.

Concerning codes of conduct for the legal profession, Amnesty International, in conjunction with the International Commission of Jurists, has drafted a code relevant to lawyers and is seeking to stimulate discussion of this code within national and international legal circles (see Appendix D).

The two essays that follow were written by professional people with a history of commitment to Amnesty International's program against torture. Dr Herman van Geuns, Dutch physician and former member of the AI International Executive Committee, chaired the medical commission at the AI Conference for the Abolition of Torture (Paris, December 1973), which initially formulated AI's guidelines for medical personnel in the prevention of torture. Professor Alfred Heijder, professor of criminal law at Amsterdam University and current member of AI's International Executive Committee, delivered his paper on the subject of professional codes against torture to a seminar at the September 1975 UN congress in Geneva.

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Professional Codes of Ethics Against Torture
by Professor Alfred Heijder

We are privileged and burdened to live in a world in which technological developments and innovations increase rapidly and amazingly, leaving our social ingenuity and moral consciousness far behind.

This leads to the civilized barbarity which we find in many parts of the world—with bureaucratic processing of individuals in all-powerful social and economic structures—and to the institutionalized violence of contemporary times. This tendency is reinforced by the fact that human beings have a great capacity for excess, especially when in power.

It is an important issue—for the survival of some sense of humanity it is probably even vital—for research by philosophers and the behavioural sciences in order to understand how people come to use cruel violence on defenceless victims, apparently without moral restraint. Until now the dynamics of this have been poorly understood. I refer here specifically to the increasing use of torture as an accepted or at least tolerated means of making detained persons confess or give information, or of discouraging political opponents by a general climate of terror.

It is all too easy to label torturers as sadists. Although occasionally there may be some sadists among them, it is more likely that the clinical traits of sadism are manifested in such cruel behaviour rather than being the motivation itself for the behaviour.

It is all too easy to locate the evil in some psychological traits of the perpetrators, especially when they do not belong to our own group, party or nationality. Bad acts are easily identified with bad persons. Furthermore, since torture seems to be a nearly universal phenomenon, occurring in all places and countries at certain times, we cannot blame other political or economic systems *per se*—unless of course we pretend to judge world history and propose that torture in one political system reveals the very nature of that system, while declaring that in another system torture is only an ephemeral, historically necessary phase on the arduous road to salvation.

Rather than repeat the many surveys and analyses which already have been made, I invite your attention to a strategy for the prevention of torture. On

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2 November 1973 the General Assembly of the United Nations unanimously adopted a resolution (3059, XXVIII) against torture and decided to examine, as an item at a future session, the question of torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment.

On 6 November 1974 a stronger resolution (3218, XXIX) was adopted, again unanimously. In this resolution we find some practical steps to be taken in the fight against torture. First of all, member states were requested to furnish information to the Secretary General relating to the legislative, administrative and judicial measures, including remedies and sanctions, aimed at safeguarding persons within their jurisdiction from being subjected to torture and other cruel, inhuman or degrading treatment or punishment. The Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders was requested to give urgent attention to the question of the development of an international code of ethics for police and related law enforcement agencies.

The World Health Organization was invited—taking into account the various declarations on medical ethics adopted by the World Medical Association—to draft an outline of the principles of medical ethics which would be relevant to the protection of persons subjected to any form of detention or imprisonment against torture.

The development of codes of professional conduct as a strategy to prevent torture had already been strongly advocated in the recommendations of the Conference for the Abolition of Torture, convened by Amnesty International in Paris in December 1973. One of the recommendations this conference made was that codes of ethics and conduct be formulated for all those whose professional skills might be perverted in the service of torture: doctors, lawyers, prison officers, military personnel and police.

On the international level the development of codes of professional conduct for police, doctors and lawyers is required in the struggle for the abolition of torture. It is a well known fact that a tight legal definition of torture is extremely difficult. An important element in any definition of torture pertains to the *systematic* way in which it is applied: torture as part of an administrative procedure. This and other preconditions make the use of torture the almost exclusive province of the state.

This is a vital point, for it denotes that only the recognition of the unique value of each individual human being as such, irrespective of race, creed, political allegiance or nationality and above considerations of national security, power politics and ideology, can lead to the total and unconditional abolition of torture. If a state uses the individual as a means to get information or to terrorize opponents into submission, it makes an object of him. Human beings, however, resist this process and if their resistance to it is broken, humanity itself is broken.

To promote human rights is to fortify this resistance of the individual against the overwhelming powers of the state. Respect for humanity is the basic motivation of the emerging new international ethos, generated mainly by the holocaust of the second world war.

This is the mournful and hopeful context in which we have to consider the question of codes of professional ethics.

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Functions of codes of professional conduct

The regulation of professional behaviour has many sources. Most of these sources can be located in four different fields.

First, all professional bodies, and thus each individual member of the professions, work in the context of a given *political system*. This simple observation has disturbing implications in the case of professionals working in or connected with the service of the state. The values, goals and accepted means of the general political system are an important regulating force for professional behaviour. In an official document of the United Nations (A/Conf. 56/5, page 36) it is said that corruption within the police depends largely upon the influence, guidance and interest of the total society in the police. Such a statement also holds true for the attitude towards torture. The connivance of other significant persons in the political system is of crucial importance.

Second, within such an overall political system, no one works alone. The work is mostly done in *organizations and functional units*. Every professional has colleagues who exert influence by their opinion on his or her attitudes, behaviour and performance. The influence of social interaction in the professional group is pervasive and omnipresent.

Third, in general, and given certain conditions of information and publicity, *public opinion* is a regulating force too, either in a direct way or via the political system or the opinions of colleagues. In a way and to a certain degree, public opinion sets the boundaries for professional conduct. Hence the strenuous attempts to modify or manipulate public opinion.

Fourth, there are of course the *individual values*, which the professional expresses to a certain degree in his professional behaviour, too.

Each of these four fields—the political system, the professional group, public and individual opinion—can have its own value orientation and its different sets of rules of conduct. The question whether these four fields constitute a hierarchy of values is relevant only in case of conflicting values.

There are two categories of conflicts. First, there may be different values in *one field*, which under certain conditions may conflict. Thus we find in the general political system conflicts between the *raison d'etat* and morality or between the concept of national sovereignty and individual human rights. Second, conflicts may arise between values not in one field alone but in different fields. Thus the general political system will find the preservation of national security an overriding consideration, while professionals such as doctors or lawyers defend human lives and human rights irrespective of the issue of security. In many situations the doctor, lawyer or policeman has to choose among competing values in the face of a variety of situations.

It is obvious that the professionals who are in the service of the state are most exposed to conflicting demands of allegiance. For their skills and expert knowledge are most easily perverted against their original intentions. In cases where such conflicts become manifest and a choice must be made, the individual will look for concrete orientation points to guide his behaviour.

When the individual is part of a professional group, he will be aware of what his colleagues do in the same situation. Since not only general recognition but a prolonged specialized training is a precondition for an occupation being

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recognized as a profession, he will have undergone during that training a process of anticipatory socialization. He is taught not only the skills of the job but also is orientated to the professional values and norms. The generative traits of a profession call for a measure of professional autonomy against the pressures of the general political system, public opinion and sometimes even one's own value orientation. Codes of professional conduct can be seen as a formalization of the more or less diffuse colleague opinion in the professional field. Sometimes the existence of a full-fledged code is even mentioned as one of the main traits of a profession. A code of professional conduct will help the individual to cope with the problems arising from the different demands of a situation. Its influence may even reach beyond that.

Preliminary to any self-determined act of behaviour there is always a stage of examination and deliberation which we may call the definition of the situation. In many instances there is rivalry between the spontaneous definition of the situation made by someone and the definitions which others provide. The prison doctor should not see an enemy of the state on hunger strike, he should see a patient. The defence lawyer should see a client entitled to a fair trial, not a security risk to be eliminated by judicial means. One aspect of morality is that it provides a generally accepted definition of the situation, expressed in some socially visible form.

There are several defining agencies in society. In fact, the four fields we referred to as sources for rules can be seen as harbouring several defining agencies. Institutions and professional groups offer standardized definitions of the situation, implying that the standard reaction of the individual is not only the expected, reasonable one, but the safe one too. That is why it is so important for doctors, lawyers and law enforcement personnel that their codes of professional conduct should enlarge upon the implications of article 5 of the Universal Declaration of Human Rights, which addresses itself to 'all people and all nations, every individual and every organ of society'.

But will a code be an effective force? From a sociological point of view we can say that the reaction to an induced force will vary, depending, among other things, on the person's relation to the inducing agent. Rules and pressure to conform, coming from a friend or colleague, may be accepted in such a way that it acts more like one's own force. A force induced by a stranger or an enemy may be resisted and compliance may arouse conflicts and tensions. Thus a code of professional ethics can be a strong force since it is an acceptable induced force. The acceptance of an induced force sets up additional personal forces in the same direction, while rejection does the same in the opposite direction.

Once a code is established, we can expect—since attitudes and group affiliation are closely connected—that it will play its part in the process of shaping professional attitudes. In this way a code of professional ethics, as a model pattern of behaviour, exerts influence first of all on a conceptual level and only after some time and after some enforcement mechanisms are set in motion, on an operational level. So we can be modestly optimistic about the effectiveness of such codes.

From this general and not exhaustive survey we come to the criteria on which the merits of different proposals should be judged. There are, I suggest, three

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points on which to focus attention.

1. Is the code more than a declaration of good intentions? Does it formulate real and detailed norms of conduct?
2. Does the code provide for the mechanisms necessary for its implementation and enforcement?
3. Does the code provide for freedom of information about its norms, reports on deviance and efforts to enforce its rules?

A medical code against torture

Since the medical profession has a long history in which concepts of medical ethics were evolved, it does not seem too difficult to explore the old principles for their relevance to the modern situation. Medicine is in general meant to be practised in the service of humanity. The doctor is in duty bound to restore bodily and mental health without distinction as to persons. He is expected to have the utmost respect for human life and human dignity. In spite of this and in flagrant conflict with the tradition and self-image of the medical profession, there are disturbing reports that doctors are involved in torture.

This serious accusation is substantiated in many instances. During a workshop on human rights organized by Amnesty International in London in 1974, former Greek torture victims, in describing their own experiences and those of others, all agreed that some military and prison doctors had been involved in the practice of torture:

- by ensuring that torture could continue;
- by deliberately neglecting sick or injured prisoners; by covering up evidence of torture;
- and sometimes even by participating themselves.

Likewise, Portuguese participants and former victims of torture stressed that the system of torture in Portugal would have been impossible without the collaboration of doctors. Doctors ensured that torture could continue, reinforced the image of the security police and helped with the systematic, scientific study of various techniques of torture. And for some years increasing attention has been drawn to the frightening infringement of individual liberty widely committed in the name of psychiatric care. Such facts are embarrassing, shameful and repugnant.

The guiding principle for a medical code against torture could be the following rule from the International Code of Medical Ethics:

Under no circumstances is a doctor permitted to do anything that could weaken the physical or mental resistance of a human being, except for strictly therapeutic or prophylactic indications imposed in the interest of the patient.

It should be generally recognized that doctors, by virtue of their profession, have special duties to humanity, which transcend considerations of national interest and security. Therefore, they should never allow authorities to make use of their skills and research knowledge for the purpose of punishment or for the control of dissenters. Such were the conclusions, which are still valid, of a Scandinavian conference on the physical and mental consequences of

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imprisonment and torture, held in Oslo, Norway, in October 1973, under the auspices of Amnesty International.

The draft "Declaration of Tokyo"* of the World Medical Association states in paragraph 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.

This is a straightforward and detailed statement, the adoption of which should be applauded. It meets the first of the minimum requirements for any code. But the Declaration of Tokyo fails to meet the other two criteria. It leaves out the question of the mechanisms necessary for its implementation and it does not mention the freedom of information. To meet these points and to avoid the tacit complicity of doctors, this draft should be amended with two of the proposals submitted to the UN Congress by Amnesty International, which read:

Those covered by the code have an affirmative obligation to make publicly known, or to inform proper national and international bodies of, any activities which inflict torture or other cruel, inhuman or degrading treatment upon anyone, or which grossly violate fundamental human rights.

Any organization or body, national or international, which adopts, proposes or promulgates the code, should maintain some mechanism for hearing appeals from those covered by the code, claiming that any of its provisions have been violated.

A police code against torture

It would seem superfluous to raise the question: "Why an international code of ethics for the police?" The police and other security forces are the most prone to find their profession and expertise perverted in the service of torture. This is so obvious that it is small wonder that international efforts to create such a code for the police started more than 10 years ago. In the report of the 1963 seminar on the role of the police in the protection of human rights, which was held under the auspices of the United Nations in Canberra, Australia, with participants from most countries of the Far East region, we read:

Those who participated in the discussion considered that it was certainly desirable to have rules of ethics for the police, and they mentioned that usually there was no distinct code of ethics promulgated for the police, but in each country the territorial laws, regulations, police guides and manuals set out what could be considered as rules of ethics to be followed by policemen.

It was suggested that since the fundamental functions and responsibilities of the police did not greatly differ from country to country, universal

*Since adopted by the 29th World Medical Assembly, Tokyo, 10 October 1975.

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ethical standards based upon humanity and justice could be established for the police.

There is a growing awareness of the specific and vital role that the police perform in the protection of human rights. The various United Nations resolutions on the subject, the law enforcement code of ethics adopted in 1957 by the International Association of Chiefs of Police and the recent initiative by the International Federation of Senior Police Officers within the framework of the Council of Europe, to name but three current developments, indicate clearly that there exists a consensus within the world of the police itself as well as within the international community as a whole regarding the need for and the value of an international code of ethics for the police and related law enforcement agencies.

For a police code of ethics one of the most difficult points is the plea of superior order. In only one of the available drafts and statements is this unsavory point laid bare.

In June 1975 a seminar on an international code of police ethics was convened by Amnesty International at the Peace Palace in The Hague, Holland. Participants were members of police forces, police authorities and of national and international police organizations from eight European countries. At the end of this meeting several conclusions were unanimously reached:

Aware of the grave problems regarding the enforcement of the international rules forbidding torture or any inhuman or degrading treatment, the participants supported the creation of an international code of police ethics. This code should in their view contain at least the following requirements and basic provisions.

These have been enumerated in what is now known as the "Declaration of The Hague". I draw attention especially to point five, which reads:

Police officers and all others covered by this code have the *right* to disobey or disregard any order, instruction or command, even if lawfully made within the context of national legislation, which is in clear and significant contradiction to basic and fundamental human rights, as described in the Universal Declaration of Human Rights. They have a *duty* to disobey or disregard any order, instruction or command summarily to execute, torture or otherwise to inflict bodily harm upon a person under their custody. They also have the *duty*, where they have carried out orders, instructions or commands which they believe to be otherwise in clear and significant contradiction to basic and fundamental human rights—such as lengthy detention without effective judicial supervision—to protest against the issuance of such order, instruction or command.

To the best of my knowledge this is the strongest, the most audacious and the most subtle statement currently available. It is strong and audacious in its direct approach to the difficult problem with its many ramifications. It is subtle in its solution which mentioned a *right to disobey* and a *duty to protest* afterwards whenever fundamental human rights are infringed upon and a *duty to*

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disobey whenever torture is involved. The solution is in accordance with the principles of international law laid down in the charter and judgement of the Nuremberg Tribunal.

The corroborating provision is the principle of vicarious liability, laid down in point four, which reads:

There should be established a clear chain of command responsibility whereby superior officers, civilian or military, are personally liable for acts of commission or omission in connection with acts of torture and other ill-treatment.

In paragraph seven the point about information is touched on:

Those covered by the code have an obligation to inform the proper national and international bodies of those activities which are in direct contravention of the principles and provisions of this code of ethics and in gross violation of human rights, as described in the Universal Declaration of Human Rights. If necessary as a last resort, they should make such information publicly known.

Paragraph 10 covers the implementation point in the same way as in the Amnesty International proposal for a medical code.

Any draft of a police code which does not solve these uneasy points avoids the vital issue and runs the risk of being no more than a harmless declaration of good intentions.

A lawyers' code against torture

An obtrusive feature of torture is that it is nearly always perpetrated in direct violation of national and international legislation. Torture today is not merely the occasional lapse of legal restraints in a few isolated instances. The practice often remains uncontrolled because the victims have no means to assert their legal rights or are obstructed in asserting them. Here the legal profession clearly bears a special responsibility.

As is pointed out in the Amnesty International document "Lawyers against Torture", this special responsibility reaches many functions at many levels of the state. Legislators are responsible for securing adequate safeguards, such as an unequivocal prohibition of torture, an independent judiciary and the right to immediate and unrestricted access to a lawyer upon detention. Members of the judiciary are responsible for the due process of law, including the obligation to examine allegations of torture made during the judicial procedure and to exercise proper control over detaining authorities. Defence lawyers are responsible for disclosing acts of torture that come to their knowledge. Academic lawyers and legal bodies are responsible for assuming a leading role in improving the legal system whenever necessary and safeguarding it from potential or real abuses.

When courageous lawyers speak out against torture of their clients, many of them are victimized and penalized. The list of lawyers in prison, compiled by Amnesty International, bears witness to that and is by no means exhaustive.

Draft principles and provisions for a code of ethics for lawyers have been jointly formulated by Amnesty International and the International Commission

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of Jurists. In them the duties of lawyers, working in different functions, with regard to the judicial means of preventing torture, are clearly outlined. It should be amended with provisions concerning its implementation and the freedom of information.

Although UN resolution 3218 makes specific reference only to police and medical ethics, it seems quite appropriate that Amnesty International calls upon national and international legal bodies to work towards the adoption of an international code of ethics for lawyers that would be relevant to torture. For no right is guaranteed where there is no one willing to tend it.

Epilogue

Although the establishment of codes of ethics for professionals is but one strategy in the struggle for the abolition of torture and although the immediate results can only be modest, it nevertheless seems to be a realistic and promising one. It is a feasible way to prevent doctors, policemen and lawyers from becoming silent or overt accomplices in the infamous crime of torture. The professionals who met at the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, should make it abundantly clear to all states and to world opinion that torture can never be condoned and that no professional body of doctors, police or lawyers can restrict their activities to the nice technicalities of the job.

The dignity of man is at stake. Personal liberty is a beautiful but delicate flower. It needs protection against the cold, adverse winds rising from all directions.

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ON
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*The Responsibilities of the Medical Profession in Connection
with Torture*
by Dr Herman van Geuns

I. Introduction

According to the *Amnesty International Report on Torture*:

Policemen, soldiers, doctors, scientists, judges, civil servants, politicians are involved in torture, whether in direct beating, examining victims, inventing new devices and techniques, sentencing prisoners on extorted false confessions, officially denying the existence of torture, or using torture as a means of maintaining their power. And torture is not simply an indigenous activity, it is international; foreign experts are sent from one country to another, schools of torture explain and demonstrate methods, and modern torture equipment used in torture is exported from one country to another.

It is commonplace to view our age as one of "ultra violence" Much of the mass of information we are exposed to in the West reports catastrophes, atrocities, and horrors of every description. Torture is one of these horrors, but even in an age of violence, torture stands out as a special horror for most people. Pain is a common human denominator and while few know what it is to be shot, to be burned by napalm, or even to starve, all know pain. Within every human being is the knowledge and fear of pain, the fear of helplessness before unrestrained cruelty. The deliberate infliction of pain by one human being on another to break him is a special horror. It is significant that torture is the one form of violence today that a state will always deny and never justify. The state may justify mass murder and glorify those that kill as killers, but it never justifies torture nor glorifies those that torture as torturers.

Torture can be regarded as a social cancer, both rapid and malignant in growth and it can be treated only by total eradication.

II. General responsibility of the medical profession

This paper deals with the responsibility and sometimes direct involvement that the medical profession may have with torture. When considering this subject one

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is inclined to think primarily of all those cases in which physicians are involved in the infliction of torture, directly or indirectly.

Before going into the different problems related to this aspect of involvement in torture, we must put the problem in a wider, more general perspective.

We will have to admit that the whole medical profession as such has a clear responsibility as far as the physical and mental consequences of torture are concerned. We should avoid trying to limit the problem to or put the whole responsibility on the shoulders of, a small group of physicians such as police doctors, military doctors and prison doctors. In fact only a relatively small number of physicians ever have to face the decision whether or not to cooperate in the practice of torture. It would be wrong, therefore, to judge their conduct in isolation and to draft a code of rules for these physicians alone: we must be conscious of the fact that the whole medical profession carries responsibility as well. If we do not realize this sufficiently, a heavy load of guilt will rest upon us, too.

Wherever cruelties are committed routinely—be it at the moment of arrest, during interrogation or in prison—a real danger is posed to the mental health of the whole population concerned. Two examples which recently occurred in the Netherlands may illustrate this:

During the Second World War many Dutch people were horribly ill-treated in concentration camps. The majority of them did not survive, and a considerable number of those who did had to try, after the war, to start functioning in society again.

Recently (during the last 5-10 years) it has become clear that many of these people have developed a so-called post-concentration camp syndrome. This not only results in a greater over-all morbidity and an increased vulnerability to all kinds of stress but also in developing typical forms of neuroses and nervousness. J Bastiaans, Leo Eitinger *et al* and Paul Thygesen have reported on these reactions. Holland has even had to build a special clinic for this type of patient. Professor Bastiaans, the founder of this clinic, produced a film about these late effects of the concentration camps which was shown on television and subsequently caused emotional turmoil among the Dutch people.

It was clearly a mass reaction which even had political consequences preventing the government from carrying out its plan to release the country's three remaining German war criminals.

A second observation to mention in this respect:

During the postwar decolonization period the Dutch army twice conducted a "police action" in Indonesia, mainly performed by troops consisting of conscripted soldiers. When 15-20 years afterwards the atrocities that had been committed by the military during these police actions were made public and supplemented by a television program, we witnessed an outbreak of confessions on one side, and protest on the other, on a much larger scale than could have been explained just by the limited number of those directly involved. Again there was an emotional turmoil that lasted longer than one would have thought possible, and which had more repercussions and consequences than could have been expected.

Without pretending that what has been said constitutes conclusive scientific

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argument, I would maintain that such events underline the view that the commission of planned, rather than individual, cruelties may have an influence on the mental health of the population concerned for a long time to come—through the victims as well as through the executants. No one will deny the responsibility (at least partially) of the medical profession for public health in general and accordingly for public mental health. If we accept the thesis that the systematic use of torture affects public mental health, then we have thus automatically established the responsibility of the medical profession to refuse to countenance any form of torture. Quite apart from the question of the direct involvement of individual doctors in torture practices, this constitutes a collective responsibility, which especially calls for professional organizations to assume this responsibility and give it adequate expression.

III. Responsibility of the individual doctor

Next to the above general aspects, there is the responsibility of individual doctors when faced with the threat of getting involved in torture procedures. Generally this concerns doctors in some kind of government service who may receive the following orders in the course of their official duty:

- a) to perform medical examinations on suspects before they are subjected to forms of interrogation—which might include torture;
- b) to attend torture sessions in order to intervene, as in a boxing ring, when the victim's life is in danger;
- c) to treat the direct physical effects of torture, and often to "patch up" a seriously injured torture victim temporarily so that later on the interrogation can be continued;
- d) to develop, by means of his own techniques, methods which produce the results desired by his superiors, as when psychiatric methods are used.

In the first three of these cases the apparent motive is protection of the victim to a certain degree to ensure that he will not die as a result of the torture he has suffered. However, it is often meant much more as a protection of the torturers to keep them from outright murder. The fact that the assistance of doctors is indeed readily used to give certain forms of torture at least some semblance of acceptability was shockingly revealed by the Parker Committee report in Great Britain—officially called "Report of the Committee of Privy Councillors appointed to consider authorized procedures for the interrogation of persons suspected of terrorism" (March 1972).

The chairman and one other member of the committee, which had been instructed to investigate whether and, if so, to what extent, torture methods used in Northern Ireland would need modification, made the following recommendation in their majority report:

We think that a doctor with some psychiatric training should be present at all times at the interrogation center, and should be in a position to observe the course of oral interrogation. It is not suggested that he should be himself responsible for stopping the interrogation—rather that he should

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warn the controller if he felt that the interrogation was being pressed too far having regard to the demeanour of the detainee, leaving the decision to the controller. This should be some safeguard both for the constitutionally vulnerable detainee and at the same time for the interrogator. (paragraph 42)

The third member of this committee, Lord Gardiner, however, stated in his minority report:

All our medical witnesses agreed that the variations in what people can stand in relation to both physical exhaustion and mental disorientation are very great and believe that to fix such limits is quite impracticable. We asked one group of medical specialists we saw to reconsider this and they subsequently wrote to us: "Since providing evidence to your committee we have given much thought to the question of whether it might be possible to specify reasonably precise limits for interrogation and those having charge of internees. The aim of such limits would be to define the extent of any 'ill-treatment' of suspects so that one could ensure with a high degree of probability that no lasting damage was done to the people concerned.

"After a further review of the available literature we have reluctantly come to the conclusion that no such limits can safely be specified. Any procedure such as those described in the Compton report designed to impair cerebral functions so that freedom of choice disappears is likely to be damaging to the mental health of the man. The effectiveness of the procedures in impairing willpower and the danger of mental damage are likely to go hand in hand so that no safe threshold can be set."
(paragraph 20)

We must realize that the doctors who have to face the question whether or not to assist in some way when torture is being carried out will often find themselves in a serious conflict of conscience. Besides their professional oath they have made an oath of office, or they are anyway obliged to give orders, often corroborated by emergency laws, regardless of their own professional ethics. And then there is always the underlying thought: "If I refuse there is no chance whatsoever of any medical assistance for the victim." This somewhat resembles the conflict that faced a number of mayors of Dutch towns during the German occupation: "If I resign, a fascist will be appointed who would make things even worse than they already are, while now I may still be able to do whatever is possible." In reality this very often turned out to be a false argument misused with cunning by the occupying forces.

The four points mentioned above can serve to make a rather artificial classification of the conscientious decisions that the individual doctor may have to face:

- a) Should he consent to carry out a medical examination before an interrogation that will obviously include torture?

Personally I am positively convinced that a doctor should refuse to cooperate in this. It is inadmissible that by this more or less negative selection, persons are

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picked out who are apparently presumed to be 'fit for torture'. In this connection the following remark was made in a *British Medical Journal* editorial: "Without ever becoming a participant in the interrogation a doctor could, if he were automatically required to examine every prisoner before the interrogation started, come to be regarded as a part of the process and as sanctioning it in medical terms."

- b) Should he attend torture procedures in order to indicate when the victim is pushed "too far"?

Here again a categorical refusal seems justified.

- c) Should he give medical care in the sense of treating the effects of torture?

At first sight there seems to be no pitfall here, for the doctor is trained to cure, whatever the causes of the injuries. However, there are two things to be taken into account. First, there is the fact that under normal circumstances a patient is, generally speaking, free to choose his own doctor. But what is far more important, the patient then deliberately seeks medical help for his suffering. In a torture situation it is conceivable that the victim prefers quick death to being patched up so that his ill-treatment can be continued.

This is not necessarily just a matter of narrowed consciousness under the pressure of circumstances. It may very well be a deliberate choice, for instance out of fear that at a later stage confessions might be extorted that would endanger other people's lives, ie the fear of "breaking down".

The conclusion must be that there may be some restrictions on the duty of a doctor to keep the torture victim alive.

- d) All those instances finally, in which the doctor directly or indirectly puts his technical knowhow into the service of the authorities, who by these means want to extort confessions or certain actions, are utterly unacceptable.

IV. Consequences and conclusions

How can we reach a point where individual doctors will actually refuse to recognize any obligation to be involved in any way at all in torture? It is essential first of all that an internationally accepted code of conduct is drafted analogous to the Geneva Conventions covering the treatment of war victims and prisoners of war. Furthermore, torture must be universally condemned and stigmatized in such a way that it becomes a matter of course that members of the medical profession utterly refuse to involve themselves in these practices. Unfortunately still far too little attention is paid to this problem. In connection with the events in Northern Ireland the *British Medical Journal* ran an editorial which stated:

The question is whether a doctor should have any relationship whatsoever to interrogation procedures however humanely conducted, and it is not necessarily an easy one to answer.

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And a little further:

There is a grave dilemma here, and the Declaration of Geneva formulated by the World Medical Association in 1946 is worth calling to mind in these words from it: "I will maintain the utmost respect for human life from the time of conception: even under threat I will not use my medical knowledge contrary to the laws of humanity."

The article concludes:

The doctor's position in all this needs to be most carefully safeguarded, and his sheet anchor is the ethical tradition that has been tested over the centuries.

Summing up, we can conclude that doctors do have a great responsibility with regard to torture. Besides the individual responsibility of every doctor who as a result of circumstances has become involved in torture procedures, a much wider responsibility rests upon the whole medical profession. Only if medical organizations on a national as well as on an international level take a firm stand can the individual doctor be given the support which he has a right to expect when he refuses to assist in torturing a fellow human being.

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Appendix A

DRAFT CODE OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS*

The General Assembly

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recalling, in particular, the rights and freedom proclaimed in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

Recalling the Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by resolution 3452 (XXX) of the General Assembly,

Mindful that the nature of the functions of law enforcement and the manner in which these are exercised have a direct impact on the quality of life of individuals as well as of society as a whole,

Conscious of the difficult task which law enforcement officials are performing conscientiously and with dignity, in compliance with the principles of human rights, yet aware of the potential of abuse which the exercise of such awesome duties entails,

Recognizing that the establishment of a code of conduct for law enforcement officials is only one of several important measures for providing the citizenry served by law enforcement officials with protection of all their rights and interests,

Aware that there are additional important principles and prerequisites for the humane performance of law enforcement functions, namely,

That, like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive and accountable to the community as a whole;

That the effective maintenance of ethical standards among law enforcement officials depends on the existence of a well conceived, popularly accepted and humane system of laws;

That every law enforcement official is part of the criminal justice system, the aim of which is to prevent and control crime, and that the conduct of every functionary within the system has an impact on the entire system;

That every law enforcement agency, in fulfilment of the first premise of every profession, should be held to the duty of disciplining itself in complete conformity with the principles and standards herein provided and that the actions of law enforcement officials be responsive to public scrutiny, whether exercised by a review board, a ministry, a procuracy, the judiciary, an ombudsman, a citizens' committee, or any combination thereof, or any other reviewing agency;

*This is an unofficial text of the draft that was agreed by the United Nations Committee on Crime Prevention and Control, 21 June-2 July 1976.

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That standards as such remain moot unless their content and meaning, through education and training, and through monitoring, become part of the creed of every law enforcement official;

Adopts the following Code of Conduct for Law Enforcement Officials to serve as a body of principles for observance by law enforcement officials of all nations:

1. Law enforcement officials must at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Commentary

(a) The term law enforcement official includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest and detention.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by state security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

(c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

(d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to conduct by persons not capable of incurring criminal liability.

2. In the performance of their duty, law enforcement officials should respect and protect human dignity and maintain and uphold the human rights of all persons.

Commentary

(a) The human rights in question derive from national and international law. The human rights under international law are guaranteed under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations declaration on the elimination of all forms of racial discrimination, the International Convention on the elimination of racial discrimination, the International Convention on the suppression and punishment of the crime of *apartheid*, the United Nations Standard Minimum Rules for the Treatment of Prisoners, the Vienna Convention on Consular Relations and other international instruments.

(b) National commentaries to this provision should identify regional or national provisions identifying these rights.

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3. Law enforcement officials may never use more force than necessary in the performance of their duty.

Commentary

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional.

(b) While it implies that law enforcement officials may be authorized to use such force as is reasonable under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, any force used beyond what is essential for these purposes is not tolerable.

(c) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case, however, should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

4. Matters of a confidential nature in the possession of law enforcement officials should be kept confidential, unless the performance of duty or the needs of justice require otherwise.

Commentary

By the nature of their duties, law enforcement officials obtain information which may be potentially harmful to the interests, especially the reputation, of others. By law, such information can be utilized only for the conduct of legal proceedings. Any divulgence not in the performance of duty, nor serving the needs of justice, is improper.

5. No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Commentary

(a) This prohibition derives from the General Assembly's Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which declares that:

"Such acts are offensive to human dignity and are condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other international human rights instruments."

(b) The declaration defines torture as follows:

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"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."

(c) The terms "cruel, inhuman or degrading treatment or punishment" have not been defined by the General Assembly but should be interpreted to extend the widest possible protection against abuses, whether physical or mental.

(d) The provision is intended to cover all persons who are in any way involved in conduct covered by this provision.

6. Law enforcement officials having custody of persons needing medical attention should secure such attention and take immediate action to meet the needs of the person in custody.

Commentary

(a) The term "medical personnel" encompasses certified medical practitioners, including para-medics. While in practice the medical personnel referred to is likely to be attached to the law enforcement operation, the provision should be understood to require law enforcement officials to take into account the judgement of medical personnel from outside the law enforcement operation. This envisages that the person in question has access to medical attention from other medical personnel, including such person's own physician.

(b) All medical personnel must act in conformity with principles of medical ethics.

7. Law enforcement officials must refrain from and rigorously oppose and pursue all acts of corruption.

Commentary

(a) Corruption is intolerable in all phases of life, particularly in the public service agencies. Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce their law against their own agents and within their own agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.

8. Law enforcement officials must refrain from and prevent and rigorously oppose all violations of this code by taking appropriate action to the best of their capability. When violations have occurred, or can be expected to occur, law

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enforcement officials should report the matter within the chain of command or take such other actions as are lawfully open to them, including, when necessary, the reporting to any agency with reviewing or remedial power.

Commentary

(a) The provision seeks to preserve the balance between the need for internal discipline of the agency on whom the public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. A law enforcement official should report violations within the chain of command and take legal action outside the chain of command only when no other remedies are available.

(b) The term "agency with reviewing or remedial power" refers to any agency existing under national law, whether internal to the law enforcement agency, or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this code.

(c) While in most countries such agencies are statutory bodies, in some countries the mass media may be regarded as performing similar complaint review functions so that a law enforcement official, on his own initiative, may be justified in bringing his report to public attention by such means, as a last resort, consistent with the laws and customs of the country in question.

9. A law enforcement official who, in fulfilling the obligations of this code, erroneously exceeds the limits of law despite honest and conscientious assessment, is entitled to the full protection afforded by national law.

10. A law enforcement official who complies with the provisions of this code deserves the respect, the full support and the collaboration of the community and of the law enforcement agency in which such official serves, as well as the support of the law enforcement profession.

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DECLARATION OF TOKYO OF THE WORLD MEDICAL ASSOCIATION

Appendix B

Guidelines for Medical Doctors

Concerning Torture and other Cruel, Inhuman or Degrading Treatment
or Punishment in relation to Detention and Imprisonment

Adopted unanimously by the 29th World Medical Assembly, Tokyo, Japan
10 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

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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.

Appendix C

Resolution adopted by the Council of National Representatives of the International Council of Nurses (ICN), Singapore, August 1975.

ROLE OF THE NURSE IN THE CARE OF DETAINEES AND PRISONERS

WHEREAS the ICN *Code for Nurses* specifically states that

1. "The fundamental responsibility of the nurse is fourfold: to promote health, to prevent illness, to restore health and to alleviate suffering.
2. "The nurse's primary responsibility is to those people who require nursing care.
3. "The nurse when acting in a professional capacity should at all times maintain standards of personal conduct which reflect credit upon the profession.
4. "The nurse takes appropriate action to safeguard the individual when his care is endangered by a co-worker or any other person," and

WHEREAS in 1973 ICN reaffirmed support for the Red Cross Rights and Duties of Nurses under the Geneva Conventions of 1949, which specifically state that, in case of armed conflict of international as well as national character (ie internal disorders, civil wars, armed rebellions):

1. Members of the armed forces, prisoners and persons taking no active part in the hostilities
 - a) shall be entitled to protection and care if wounded or sick,
 - b) shall be treated humanely, that is:
 - they may not be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest,
 - they shall not be wilfully left without medical assistance and care, nor shall conditions exposing them to contagion or infection be created,

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—they shall be treated humanely and cared for by the Party in conflict in whose power they may be, without adverse distinction founded on sex, race, nationality, religion, political opinion, or any other similar criteria.

2. The following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above mentioned persons:
- violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - outrages upon personal dignity, in particular humiliating and degrading treatment.

WHEREAS in 1971 ICN endorsed the United Nations Universal Declaration of Human Rights and, hence, accepted that

- "Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (article 2).
- "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (article 5);" and

WHEREAS in relation to detainees and prisoners of conscience, interrogation procedures are increasingly being employed which result in ill effects, often permanent, on the person's mental and physical health;

THEREFORE BE IT RESOLVED that ICN condemns the use of all such procedures harmful to the mental and physical health of prisoners and detainees; and

FURTHER BE IT RESOLVED that nurses having knowledge of physical or mental ill-treatment of detainees and prisoners take appropriate action including reporting the matter to appropriate national and/or international bodies; and

FURTHER BE IT RESOLVED that nurses participate in clinical research carried out on prisoners, only if the freely given consent of the patient has been secured after a complete explanation and understanding by the patient of the nature and risk of the research; and

FINALLY BE IT RESOLVED that the nurse's first responsibility is towards her patients, notwithstanding considerations of national security and interest.

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Appendix D

DRAFT PRINCIPLES
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CODE OF ETHICS FOR LAWYERS, RELEVANT
TO TORTURE and other CRUEL, INHUMAN OR
DEGRADING TREATMENT OR PUNISHMENT

Torture of detained persons has spread rapidly around the world, in spite of the fact that it is a criminal offence in nearly every country. The practice mostly remains uncontrolled because the victims have no means to assert their legal rights or are obstructed in asserting them. Lawyers are often victimized and penalized for raising the issue of torture on behalf of their clients, or even for just defending them, for investigating allegations or evidence of torture in their capacity as prosecutors and judges, or for protesting such methods as representatives of government offices.

When torture is an institutionalized practice, lawyers may be greatly aided by the support of other lawyers in the exercise of their duty to protect individual rights. For this reason, professional associations of lawyers should adopt and circulate a code of ethics which specifies the obligations of lawyers, regarding torture and other cruel, inhuman or degrading treatment or punishment of detainees. The associations should make known to their members and to similar organizations that they will come to the full support of any lawyer who adheres to the code.

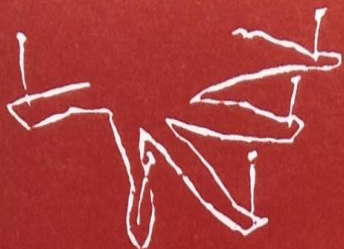
- (1) A defence lawyer representing a person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment while detained by any authority and for any cause should be prepared to raise such allegations before the competent authorities, unless instructed to the contrary by his client.
- (2) If the client wishes to have such allegations raised, the lawyer must do so fully and fearlessly. He should take a detailed statement from his client and present to the court or competent authority all the evidence or information available to substantiate the allegations, and use all procedures available to obtain protection and an appropriate remedy for his client.
2. A prosecuting lawyer has a personal duty to introduce as evidence in any proceedings only those statements which he honestly believes are freely made and obtained without the use of torture or other cruel, inhuman or degrading treatment or punishment. In case of any doubt, the prosecutor must reject the statement.
3. (1) A judge or other judicial authority should reject any statement made by an accused person or witness unless he is satisfied that the statement was freely made and obtained without the use of torture or other cruel, inhuman or degrading treatment or punishment.

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- (2) A judge or other judicial authority must not summarily reject allegations that an accused person or witness has been subjected to torture or other cruel, inhuman or degrading treatment or punishment. He has a duty to inquire thoroughly into such allegations and to provide the complainant with full facilities for submitting evidence in support of the allegations.
- 4. Lawyers in government service should do all they can in their official capacity to promote the incorporation of the Standard Minimum Rules for the Treatment of Prisoners into the law of that jurisdiction and to see that the rules and all standards relating to the treatment of detained persons are observed and enforced and that violations thereof are subject to disciplinary action or criminal prosecution.
- 5. (1) All lawyers, both individually and through their professional associations, should give their full support to lawyers carrying out the obligations of this code.
- (2) They should insist before the competent authorities that the code be respected and observed, and, especially at the highest level of their professional organizations, they should come to the aid of any lawyer victimized or penalized for adhering to the principles of this code.
- (3) Those covered by the code have an obligation to inform the proper national and international bodies of those activities which are in direct contravention of the principles and provisions of this code and in gross violation of human rights, as described in the United Nations Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. If necessary as a last resort, they should make such information publicly known.
- (4) Any organizational body, national or international, which adopts, proposes or promulgates the code should maintain some mechanism for hearing appeals from those covered by the code who claim that any of its provisions have been violated.

Presented by Amnesty International in consultation with the International Commission of Jurists.

Further information about Amnesty International's Campaign for the Abolition of Torture or other aspects of the work of Amnesty International can be obtained from the offices of the national sections of Amnesty International or from the International Secretariat, 53 Theobald's Road, London WC1X 8SP, England.



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