

Involvement of medical practitioners in inhuman sentencing

As the CRIN country reports on inhuman sentencing reveal, in many States the administration of corporal punishment as a sentence for crime requires the involvement of medical practitioners, for example to examine victims before whipping, flogging or caning and assess their fitness to receive the inhuman punishment, to witness the administration of the punishment and examine victims after the punishment; in some cases doctors are required to perform amputation. The continuing imposition of the death penalty on child offenders in some States also requires participation of doctors.

The law specifies medical involvement in judicial corporal or capital punishment in these countries: <http://www.crin.org/violence/campaigns/sentencing/#countries>

CRIN recommends that organisations campaigning at national level should contact national medical organisations and seek to involve them.

Involvement of this kind by medical practitioners violates international and regional human rights standards, as detailed below, as well as internationally agreed standards of medical ethics and a number of international human rights agreements relating to medical practice and the right to health – see below.

More about human rights standards:

<http://www.crin.org/violence/campaigns/sentencing/#standards>

International standards/agreements to prevent involvement of medical practitioners in inhuman sentencing

The UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 37/194 of 18 December 1982 and applicable to all health professionals, state that it is against medical ethics for health personnel:

- (a) to be in any relationship with detainees “the purpose of which is not solely to evaluate, protect or improve their physical and mental health”,
- (b) to use their knowledge and skills to assist in the interrogation of detainees “in any manner that may adversely affect physical or mental health”, or
- (c) to certify the fitness of detainees for any “treatment or punishment that may adversely affect their physical or mental health”. Furthermore, there should be no

derogation from these principles on any ground.

<http://www.un.org/documents/ga/res/37/a37r194.htm>

The 1975 Declaration of Tokyo, adopted by the 29th World Medical Assembly (WMA), is a set of ethical standards which prohibit doctors from participation in, or being present during, torture or other cruel, inhuman or degrading treatment and from providing the knowledge to facilitate such acts. The 1997 Declaration by the WMA in Hamburg (adopted by the 49th World Medical Assembly) was intended to unite the profession to support doctors who refuse to participate, or to condone, the use of torture and other forms of cruel, inhuman or degrading treatment. A further WMA resolution on the

Responsibility of Physicians in the Documentation and Denunciation of Acts of Torture or Cruel or Inhuman or Degrading Treatment was adopted by the WMA General Assembly in Helsinki in 2003 and amended by the WMA General Assembly in Copenhagen, October 2007

<http://www.wma.net/en/30publications/10policies/t1/index.html>. These were all reaffirmed by the 2009 World Medical Association Council in Tel Aviv, May 2009
http://www.wma.net/en/30publications/10policies/30council/cr_8/index.html.

The International Conference on Islamic Medicine in Kuwait in 1981 stated:
“Health is a basic human necessity and is not a matter of luxury.... [The doctor] should be an instrument of God’s mercy not of God’s justice, forgiveness and not punishment, coverage and not exposure.... The medical profession shall not permit its technical, scientific, or other resources to be utilised in any sort of harm or destruction or inflicting upon man of physical, psychological, moral, or other damage ... regardless of all political or military considerations.”

Many national medical associations oppose medical participation in corporal punishments and recommend that doctors do not participate in such punishments. As the British Medical Association has stated: “From a medical perspective, it is important to acknowledge that facilitating deliberate physical injury or execution contravenes the traditional codes of medical ethics of all cultures.

The BMA, like many other medical associations, has firmly taken the view that where societies insist on carrying out corporal or capital punishment, it is not the role of doctors to assist, even if their participation would reduce the suffering of the condemned.

Medical ethics are distinct from matters of law. Doctors should not consider it acceptable to breach standards of professional ethics simply because legislation permits, or even appears to require them to participate in, such forms of punishment. Logically, the ethical reasons underpinning international condemnation of medical participation in illegal

torture or killing apply equally to medical participation in the same acts when they are legally endorsed.”¹

In its 2006 report “The Medical Profession and Human Rights: handbook for a changing agenda,” the BMA states on capital and corporal punishment:

“The BMA welcomes the trend to limit the application of capital punishment. The BMA believes that active involvement of doctors in carrying out the death sentence is unethical. The BMA recommends that all medical associations should adopt resolutions condemning active medical involvement in application of this punishment.

“In the BMA's opinion, certification of death is part of normal medical duties and that this extends to death by judicial execution. The BMA strongly recommends that, where judicial executions are carried out, certification of death should take place away from the site of execution and several hours after it so that there is no doubt about life being extinct.

“The BMA does not consider that giving forensic medical evidence to help determine guilt or innocence at a capital trial is different in substance from giving evidence for such purposes at other trials and therefore believes that giving evidence of fact is non-problematic. The BMA remains concerned that medical speculation about future dangerousness might well be highly unreliable and lacking scientific basis and considers that doctors should not be involved in assessing whether a prisoner should be executed or not.

“Some forms of corporal punishment inflict grave suffering or disability. Punishments such as amputation are not only cruel but seriously and permanently hinder individuals' ability to provide for themselves and for dependent relatives and so contribute to an under-class of destitute and marginalised people. The medical profession should not only oppose such punishments but exercise an educative influence over such policies which affect the health of society.

“The BMA is opposed to doctors certifying people fit for corporal punishments or execution. It calls upon other associations to campaign to remove such requirements from legislation. In the meantime, the reality in many countries, however, is that the task cannot be avoided. If doctors play such a role, it is important that they, and their professional bodies, ensure that poor health of prisoners qualifies for commutation of such sentences rather than simply postponement.”

¹ Chapter 7, p.170

Full details here:

http://www.bma.org.uk/ethics/human_rights/MedProfhumanRightsRecommendations.jsp?page=1&media=print#Capitalandcorporalpunishment

Further information about the campaign here:

www.crin.org/violence/campaigns/sentencing