

Clinical forensic medicine and human rights – doctors as human rights defenders

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The Bill of Rights is the cornerstone of democracy in South Africa, and enshrines rights of all people in South Africa. This imposes a duty on the state to respect, protect, fulfil and promote these rights.¹ Organs of state and certain persons, including medical practitioners, have duties arising from the Bill of Rights.

In its report on the health sector, the Truth and Reconciliation Commission (TRC) stated that 'the health sector, through apathy, acceptance of *status quo* and acts of omission, allowed the creation of an environment in which the health of millions of South Africans was neglected, even at times actively compromised, and in which violations of moral and ethical codes of practice were frequent, facilitating violations of human rights'.²

Medical practitioners have a key role to play in protecting, promoting and fulfilling human rights of patients. This is particularly so in clinical forensic medicine, where most of the patients are suspects in criminal activities, victims of abuse or in detention, or have been tortured. The practice of clinical forensic medicine cannot be separated from the protection, promotion and fulfillment of human rights.

The district surgeon system

Clinical forensic medicine is a branch of medicine that deals with medico-legal examinations, evidence collection, accurate documentation and report writing.

This involves interacting with victims of sexual assault, drinking and driving suspects, torture victims, detainees, etc. At the heart of clinical forensic medicine are the principles of objectivity and impartiality. Medico-legal examination ought to be conducted in a fair and non-judgemental manner.

In South Africa, district surgeons were responsible for, *inter alia*, rendering some clinical forensic medical services. This included rendering medical care to prisoners and rape survivors. However, the district surgeon system had major ethical deficiencies. The TRC in its conclusion found that 'District surgeons, with few exceptions, failed to record complaints and/or report allegations and evidence of torture and abuse of political detainees, thus allowing such practices to continue unabated for years'.⁴

In an article entitled 'District surgeons in apartheid South Africa', Gready and de Gruchy state, 'Through political naiveté, depoliticisation, and letting law determine practice, district surgeons distanced themselves from moral responsibility for the shortcomings of the system within which they worked'.¹³

Clinical forensic medicine, through the district surgeon system, missed an opportunity to be a key player in the defence of human rights.

Dual loyalty and human rights in clinical forensic medicine

There are certain codes, ethical guidelines and rules that govern doctors in their practice of the medical profession. These can arise from the Hippocratic Oath that doctors take, the Health Professions Council of South Africa (HPCSA)'s Codes of Conduct, declarations by the United Nations or international medical bodies, e.g. the World Medical Association's Helsinki Declaration, or the Constitution of the Republic of South Africa. In most of these, doctors are called upon increasingly to avoid harming their patients, to respect patients' bodily integrity and to respect the privacy of patients, among other duties, the primary role of doctors being to alleviate distress.⁵

The practice of clinical forensic medicine has a non-therapeutic component. This may include collection of DNA evidence, assessment of fitness to stand trial, examination of alleged torture victims, estimation of age, etc. In practice, this often involves an additional obligation to a third party, so-called 'dual loyalty'. The doctor is therefore faced with a duty to both the patient (suspect or detainee) and the state (e.g. police service). Sometimes these obligations may conflict.

Physicians for Human Rights advocates the balance of such a conflict in a way that is consistent with human rights and states that 'any decision to depart from patient fidelity in dual loyalty conflict should be in a recognised framework of exceptions'.⁶

It is the duty of clinical forensic medical practitioners to be honest and fair in documenting injuries and evidence. Even if accurate documentation will be contrary to the interests of the employer (the state), doctors must always maintain their impartiality. To give in to third-party pressure may lead to a violation of the patient's interests. Doctors should not take part in abuses of human rights. Turning a blind eye to such violations or failing to document abuses and injuries is not equivalent to taking a neutral stance. It amounts to a failure of the duty to protect patients' rights.

Amnesty International defines human rights defenders as 'individuals or groups of people who promote and protect human rights through peaceful and non-violent means'.⁷ Examples include judges, lawyers, religious leaders, educators, etc. In the Declaration on Human Rights Defenders, the United Nations calls upon professionals to uphold human rights and freedoms.⁸ The promotion of human rights is in keeping with the medical professional code. Peel states in *Human Rights and Ethics* that 'Human rights and medical ethics are complementary'.⁹

Human rights in clinical forensic medicine

The practice of clinical forensic medicine involves interacting with vulnerable individuals, whose human rights may be violated at the hands of law enforcement agencies. Chill and Nightingale state: 'Members of the medical and health professions become involved in four major ways: as victims, as perpetrators, as bystanders (a powerful role), and as protectors and defenders of human rights.'¹⁰ Health professionals continue to play a role in human rights, in one way or another.

During the apartheid regime in South Africa, medical personnel were willing perpetrators of human rights violations in several instances. Health professionals in South Africa advised torturers on ways to break down the resistance of victims and to mask the existence of torture.⁶ Under the Pinochet regime in Chile, medical personnel administered overdoses of drugs that eventually led to the death of detainees.⁶

Health workers have also been victims in South Africa and abroad; they 'were a special target of the Ciskei police ... because of their part in documenting assaults',¹¹ and in Nepal, health professionals were threatened because they treated people who were injured during protests.¹² Iraqi physicians 'who refused to comply with the requests of state agents faced physical harm including imprisonment and torture or corporal punishment of themselves or their family members'.¹³

Today, health professionals continue to be complicit in the face of human rights violations. Suspects taken to a health establishment who are accused of driving under the influence of alcohol may be verbally abused, called criminals or drunkards, handcuffed and pushed around, and even assaulted while medical staff look on. Their right to be presumed innocent is eroded. These violations may not be documented, as the health professionals ignore the assault of what appears to be an unco-operative drunk suspect. Orbinsky *et al.* refer to the responsibility of medical practitioners as being to 'document and bear witness to violations of human rights, and to intervene to alleviate suffering if possible'.¹² The clinical forensic medical officer should not be a bystander.

Contemporaneous documentation and exposure of such abuses may discourage further abuses. Being complicit in the face of violations makes doctors bystanders, and implies that they are failing to protect these basic human rights.

Clinical notes and medical reports should be accurate, and kept confidential. Evidence that may favour the suspect should not be overlooked. Medical reports should not be manipulated for the benefit of law enforcement agencies. Writing false reports both disrespects and fails to promote human rights, turning doctors into perpetrators of human rights violations. Proper documentation and confidentiality are essential to ensure that the suspect's privacy is respected, and that his/her defence is not compromised. This will promote his/her right to a fair trial.

Some argue that doctors should stay out of politics and concentrate on the practice of medicine. This suggestion is part of the reasoning that led to complicity with the apartheid regime on the part of some health professionals in South Africa, since the district surgeons 'showed no awareness that whatever they did in certain situations was political. They practised medicine or public health

as though it were an objective, technical science, removed from social and political context.'¹³

Hannibal and Lawrence stated in 'The health professional as human rights promoter' that the decision to create an organisation for health professionals working on behalf of human rights arose from two insights: firstly that many human rights violations had significant health consequences, and secondly that health professionals are uniquely situated to collect the medical documentation that provides concrete evidence of human rights violations.¹⁴ Medical practitioners should not stand by and watch human rights being violated.

Conclusion

Participation of physicians in human rights violations as perpetrators has been widely condemned, while their role as bystanders continues. What should doctors do in their day-to-day practice of the profession?

The concept of a multi-layered breakdown of obligations as described by Chinkin¹⁵ may be helpful. This concept places specific negative and positive obligations on the state (or the medical profession).

The first is a negative obligation to respect human rights. Doctors must not impede individuals' pursuit of health goals, e.g. they must provide proper documentation of injuries, respect patient's privacy, and not obstruct detainees from accessing HIV medication.

The second is a positive obligation to protect individuals' rights. Doctors should protect detainees from abuse by third parties and also expose torture.

The third is a further positive obligation to fulfil human rights. This is through advocacy for policy change.

The fourth is a long-term positive obligation to promote rights of patients. This can be achieved through teaching human rights and ethics in medical schools, and dissemination of information through publications and conferences.

The only role that clinical forensic medical practitioners should play in human rights is that of defender and promoter.

Conflict of interest: Nil.

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