Egyptian Initative for Personal Rights

El Nadeem Center

for Rehabilitation of Victims of Violence

Commentary on Draft Implementing Regulations of the Law for the Care of Psychiatric Patients

September 2009

Introduction

In 1996, the General Assembly of the World Psychiatric Association (WPA) endorsed the Madrid Declaration on Ethical Standards for Psychiatric Practice as a reference to guide and organize the ethics and morality of the profession of psychiatry. It stressed that all its members follow these guidelines in the exercise of their profession. The Egyptian Psychiatric Association (EPA) was one of those members, and its president was then chair of the WPA's Ethics Committee, which drafted the declaration.

The Madrid Declaration is one of several codes of ethics that explicitly call for the respect of patients with mental disorders' human rights, stressing that the relationship between psychiatrist and patient should be based on partnership, respect for choice and the dignity and rights of the patient. We refer to this background to stress that international principles for patients' rights are not imposed upon or alien to our psychiatrists and society. We have contributed to their formulation and participated in their endorsement, seeking support from national psychiatric associations and societies all over the world.

This paper aims to study the draft Implementing Regulations (IR) of the Law for the Care of Psychiatric Patients from a rights-based perspective and to provide suggestions and recommendations to ensure that the IR are in harmony with international standards, providing patients with mental disorders with stronger protection of their rights and psychiatrists with a more accurate guiding framework for their practice.

1- Safeguards in cases of Involuntary Admission and Compulsory Treatment

a- An accurate diagnosis of mental disorder is a crucial safeguard upon involuntary admission or compulsory treatment, especially to prevent the use of a mental-disorder diagnosis as a means to oppress individuals whose conduct or attitudes fall outside the mainstream of society. The implementing regulations should therefore stress the correct grounds for making a diagnosis of a mental disorder. We recommend an amendment of article (1) of the IR to explicitly adopt the provisions of Principle (4) of the United Nations' "Principles for the Protection of Persons with Mental Illness and the

Improvement of Mental Health Care" (1991),[1] which stresses the importance of the link between the law and human rights principles. The same article 1 of the IR states that psychiatrists should be *guided* by the most recent references of the World Health Organization (WHO), whereas we prefer that it should go further, *obligating* psychiatrists to abide by these international standards. In addition, to ensure the standardization and quality of professional practice, the IR can also require the National Council for Mental Health to prepare its own, periodically updated medical manual as a reference on technical matters, many of which are mentioned in the law.

b- **Independent monitoring of involuntary admission:** The requirement that an independent body approve, in a timely manner, the involuntary admission of a patient is considered one of the most important principles for the protection of patients with mental disorders. This approval means that the monitoring council issues an informed decision of approval or rejection of this admission. However, this point is not included in the IR. While the law and the IR oblige the hospital and the psychiatrist to undertake specific, scheduled procedures to inform the Local Councils for Mental Health of involuntary admissions of patients and hold them responsible for the consequences of not abiding by those regulations, they do not include any regulations nor specify a time limit for the Local Councils to decide on the matter.

The role of the Local Councils for Mental Health is to act as independent monitoring bodies. Their mandate is to undertake evaluations and then issue their decisions, not merely to be informing bodies. If the councils are not given a deadline for issuing decisions, patients with mental disorders are deprived of one of the primary safeguards of their rights.

[1] This provision states that diagnosis of a mental disorder be made in accordance with internationally accepted medical standards; that a determination of mental illness shall never be made on the basis of political, economic or social status, or membership in a cultural, racial or religious group, or for any other reason not directly relevant to mental health status; that family or professional conflict or non-conformity with moral, social, cultural or political values or religious beliefs prevailing in a person's community shall never be a determining factor in the diagnosis of mental illness; that a background of past treatment or hospitalization as a patient shall not in and of itself justify any present or future determination of mental illness; and that no person or authority shall classify a person as having, or otherwise indicate that a person has, a mental illness except for purposes directly relating to mental illness or the consequences of mental illness.

c- Oversight during forced transfer of a patient: In the case of a medical necessity, the law permits entry into a person's home or place of residence, restriction of the individual's movement and his or her forceful transfer and admission to a hospital. These actions violate basic rights that are protected by law and the Constitution as well as international conventions, and thus they should not be permitted without appropriate legal oversight. Informing and having the permission of a member of the prosecution is the minimal necessary requirement to ensure that this extreme option is not subject to abuse.

In fact, some of the articles concerning the compulsory commitment of patients state the necessity to inform the prosecution.[2] However, article (18) of the law (concerning the forced transfer of patients in cases of emergency) does not stipulate this necessity, nor does the IR (article 21). We believe that the absence of this precondition is a major gap that has to be addressed by the IR.

d- Special and intrusive treatments: Psychosurgery and other intrusive and irreversible treatments should never be carried out on an involuntary patient in a mental-health facility. Even in the case of voluntary patients, the use of such treatments must be conditional and in accordance with international standards.[3]

e- Psychiatric emergencies and urgent cases: We are concerned about the possible abuse of what is called psychiatric emergencies to prevent the release of patients or coerce them into undergoing certain treatments, especially as the law permits an unspecialized physician to commit a patient, refuse discharge and compel treatment in cases of emergency. It is therefore essential that the IR specify the types of treatments permitted during this exceptional

[2] Article (14) of the law (17 of the IR), which permits an unspecialized physician to admit an involuntary patient for 48 hours dictates that the prosecution must be informed within 24 hours of the patient's admission. Article (17) of the law (20 of the IR) stipulates that any forced admission of a patient in non-emergency situations should be based on informing and the approval of the prosecution.

[3] UN principle 11 paragraph 14 permits the use of such treatments for voluntary patients under the conditions that this be done "to the extent that domestic law permits them to be carried out, that they be carried out on the patient only where the patient has given informed consent and an independent external body has satisfied itself that there is genuine informed consent and that the treatment best serves the health needs of the patient." The UN principles also stated that sterilization shall never be carried out as a treatment for mental illness.

period, making sure to exclude medications with long-term effect or any irreversible procedures. It is advised to refer to a manual of guidelines to be prepared by the National Council for Mental Health.

2- Rights of Patients with Mental Disorders

The chapter on the rights of patients with mental disorders is one of the most important achievements of the law, despite some shortcomings. Instead of substituting for the gaps in the chapter, the IR has further impoverished the list of patients' rights. We therefore provide a list of those rights below, demanding that they be included in the IR in place of the two short articles (35) and (36).

Chapter V: Rights of patients with mental disorders

Human rights standards and internationally accepted standards for medical practice constitute the main reference on which all rights of patients with mental disorders are based. A patient with a mental disorder, receiving treatment in one of the mental-health facilities listed in article 2 of the Law for the Care of Psychiatric Patients, enjoys all rights and liberties to which all citizens are entitled by law, the Constitution and international treaties and conventions to which Egypt is party. Patients cannot be denied those rights and liberties except in accordance with applied legislation, granting them the full right to appeal any decisions to that effect.

A patient is entitled to enjoy the following rights in particular:

1- The right to receive a comprehensive explanation, in a language understood by him/her, of all the rights granted by the law immediately upon his/her admission, including his/her right to appeal undertaken procedures. In case the patient lacks the capacity to understand those rights, they must be explained to his/her relatives or representatives.

2- The right to receive the necessary medical and psychiatric care in a safe and clean environment, which should be as similar as possible to his/her normal environment, including provision of educational and cultural facilities, facilities for vocational training, communication and

recreation. The National Council for Mental Health should specify those criteria as conditions for accreditation of Mental Hospitals.

3- The right to enjoy freedom of movement except in cases where the law permits its restriction. The involuntarily admitted patient shall enjoy sufficiently supervised freedom of movement, in accordance with his/her mental condition and with regard to the patient's own safety or the safety of others.

4- The right to receive treatment in accordance with internationally accepted medical and ethical standards and by qualified personnel.

5- The right to be fully informed of his/her diagnosis, its possible prognosis and the treatment plan, which must be tailored to the patient's needs and include rehabilitation and follow-up management. The institution providing treatment should permit the patient's participation in the process, and the plan must be documented in the patient's file, all with consideration to his/her mental abilities.

6- The right to not be given treatment without the patient's informed consent, which is consent obtained freely, without threats or improper inducements, after appropriate disclosure to the patient of adequate and apprehensible information in a form and language understood by the patient. This information must include diagnostic assessment; purpose, method, likely duration and expected benefit of the proposed treatment; alternative modes of treatment; and possible side effects. The patient has the right to refuse the proposed treatment after being told the health consequences of refusing. This should be done in accordance to the patient's mental capacity.

7- The right to leave the mental-health facility unaccompanied once the conditions that necessitated the patient’s involuntary admission no longer exist. The institution must draw up a plan for subsequent mental-health care, including social and medical care.

8- The right to not be subject to any clinical trials or experimental treatment without informed consent and the approval of the Committee for the Ethics of Scientific Research. The treatment,

including its expected effects, must be explained to the patient. The patient must receive an independent evaluation of his/her condition and the approval of the Local Council for Mental Health. No such experiments will be carried out on involuntarily admitted patients or patients receiving compulsory treatment.

9- The right to confidentiality of information related to the patient and his/her medical file. All mental-health facilities should have systems that maintain the privacy of such information, which is not to be disclosed except for therapeutic purposes and in cases dictated by the law.

10- The right to privacy and protection of personal belongings, the right to use his/her personal belongings and to keep them in a safe place. The patient shall not be deprived of this right, with due consideration of all safety regulations.

11- The right to receive a complete and comprehensive report regarding his/her mental state, upon a written request by the patient or his/her custodian or representative, submitted to the director of the mental-health facility. The report should include at least a description of the patient's medical condition, case development, the treatment plan and any interventions undertaken in the facility. The National Council for Mental Health should decide which elements should be covered in such reports.

12- The right to receive a photocopy of his/her complete file, upon a request submitted to the Local Council for Mental Health. The council will respond to the request within two weeks. After examination of the patient by an independent committee, the council has the right to withhold some of the information for a renewable limited period of time (three months), if the council estimates that it might constitute a threat to the safety of the patient, his/her health or the safety of others. The patient has the right to appeal that decision.

13- The right to appeal or file a complaint to the Patients' Rights Committee in the facility, the National Council for Mental Health, the Local Council for Mental Health, the public prosecution or the court of

misdemeanor. The Patients' Rights Committee is obliged to raise the patient's complaint with the body specified by him/her, as well as provide the patient with legal aid upon his/her request, while securing all procedural safeguards including his/her right to choose a lawyer and to receive copies of reports or necessary documents related to his/her condition. The patient and his/her lawyer have the right to submit independent reports and certificates concerning his/her mental condition, in addition to the right to attend the sessions addressing his/her appeal or complaint. The patient and his/her lawyer also have the right to ask for witnesses.

14- The right to receive or to refuse to receive visitors. The patient should not be deprived of his/her right to receive visitors except in exceptional circumstances, as long as the visit does not contradict the treatment plan. The situation must be documented in the patient's file.

15- The right to be protected from economic and sexual exploitation as well as physical or psychological harm or demeaning treatment by the staff or other patients. Economic exploitation includes forced labor or labor without financial remuneration or cases where the labor is not part of the rehabilitation program of the patient. If the patient labors in the treating facility, this has to be based on a legal contract, a copy of which is to be kept in the patient's file, with a second copy kept with the Patients' Rights Committee. Any work agreement must take into consideration the safety of the patient, others and standards for occupational safety.

16- The right to uncensored communication with other individuals in the facility and the outside world through various means, as well as the provision of all services for internal or external communication, to as great an extent as possible—such as mail, phone calls, newspapers/magazines and TV—except for circumstances where such communication could harm the patient or others, according to the prescribed treatment plan.

3- Supporting Mechanisms of Monitoring and Supervision

Supervisory boards that monitor mental-health facilities are the main safeguard for sound implementation of the law and, for this reason, must remain independent. Although the formation of the mental health councils is prescribed by law and cannot be changed in the IR, the technical secretariat of the councils can be created in a way that ensures plurality and a multidisciplinary nature. It is necessary to ensure that its membership can be renewed. The IR should permit the secretariat to seek the help of civil-society representatives and representatives of patients and their families, and ensure that the secretariat not only monitors involuntary admission but also voluntarily admitted patients who have been in the facility for a long period of time. Supervision should include inspection of the different parts of a facility, monitoring of patients' conditions, documentation of statistics, providing guidance and submitting recommendations. All monitoring must be undertaken on a periodic basis.ss

Mechanisms must be introduced to give the Patients' Rights Committees more support and independence. For example, the Local Council should approve the Committee members appointed by the director of the hospital. The committee membership must also include a representative of the patients and their families and a representative of civil society; it must be provided with an office; and its members must be available full time. The committees must also be given executive powers to ensure that their role is effective and not merely a formality. It must be able to hold periodic meetings with the Local Council, during which the committee must document all complaints, observations and interventions.

4- Realization of Community Integration

The law does not include clear specifications that ensure community treatment and integration. Accordingly, the IR can only make limited additions.

Regarding the principle that patients be kept in the least restrictive environment possible, the IR must oblige the admitting physician to ensure that in-hospital treatment is necessary for a patient's condition. This is especially important in cases of voluntary admission or admission of children.

While the IR cannot require that community-based outpatient clinics or long-stay homes be available, they can stipulate that rehabilitation services are part of the treatment plan and outline criteria and guidelines for such services. The IR can also state the need for provision of post-treatment services for patients, such as supervised home care and family support, as well as dictate that the availability and quality of rehabilitation services, including human resources, programs and facilities, be among the factors for accreditation of mental health facilities.