TORTURE AND THE HEALTH WORKER -

The Nature of Culpability (2)

The Medical Association of South Africa (MASA), is a voluntary body with jurisdiction over its own members and is limited in its powers of censuring their ethical conduct. It appears that it can do no more than expel.

Subsequent to the Biko inquest it appointed a two-man Commission to consider the ethical issues raised by it. In the confidential report they made in June 1981 (15) they examined standing orders and instructions to the police (not published officially or available to the public at large). They reveal that if a person is seriously injured or appears to be ill the police are required to call a doctor, and his orders are to be carried out without delay. The report, however, makes it clear that it is uncertain whether these provisions – not legally binding – extend to detainees held under the Terrorism Act. Subsequent to the death of Biko a further standing order *has been issued to the effect that a detainee* can be moved to a hospital other than a prison hospital only after 'Head Office' has been consulted if it is thought that there is a security risk.

The report also reproduces a warrant for the detention of a person under the Terrorism Act; this appears to permit no more than immediate routine treatment and the administration of ordinary medical prescriptions, and does not cover removal to a hospital.

It is significant that the proposals in the report go no further than objecting to the final decision resting with the police on whether or not a patient may be taken to hospital for treatment.

It also proposes that medical examination of a detainee should not be conducted in the presence of the police, and says that with proper safeguards there are no insuperable security risks. It states that these proposals are not merely in the interests of the detainee but of the State also. Herein is the significant factor, for the purpose of the report is to suggest ways in which the operation of the security laws can be *improved; it does not consider whether* they are compatible with medical ethics.

The report expressly rejects the proposition that where the doctor's advice is overruled by the police he should wash

his hands of the case. Its solution is to propose that the doctors should call in, at the State's expense, another doctor; if the two are in agreement the police should not be permitted to override their opinion, and it suggests that the standing instruction should be amended accordingly. Failing this, it concludes that it would be the ethical duty of the practitioner to report directly to the Minister that his instructions had been overruled and he should immediately seek support from his local medical association.

The report does not consider what form that support might take. The association could only support the doctor by agreeing with him that the interests of the patient should prevail over security considerations; this would be the inevitable effect of agreeing that the patient should be in hospital and taken from or not returned to police custody, and this is obviously unacceptable. The entire thrust of the legislation is to ensure that security considerations as perceived by the police are paramount at all times.

As the MASA Report makes clear, the proper operation of the security legislation depends on the cooperation of doctors who may be involved; and if they withhold their cooperation they would be deemed to be acting unethically. Clearly, if their conduct has the effect of hampering the police in their operation of the legislation the doctors involved would become victims themselves. One would therefore expect that the medical associations would not support a doctor in the manner suggested.

One can only say that the evidence of what has happened up to now has not been encouraging. Told by Counsel for the Biko family during the inquest that Dr. Tucker had said that the Hippocratic Oath bore on his ethical conduct but that he was actually *governed by the rules of the South African* Medical and Dental Council (SAMDC), Dr. Gluckman expressed surprise, and said that there was no conflict between the Hippocratic Oath and the rules of the SAMDC, adding that "the ethical component of the rule is a legal codification of the prinicples fundamental to the Hippocratic Oath. In terms of accepted medical ethics, the interest of the patient – and nothing else – is paramount to the doctor."

Dr. Gluckman's view of his ethical duties has been rejected by the SAMDC – this is the only possible explanation for the decision of the SAMDC not even to consider whether Doctors Lang and Tucker acted improperly.

Torture of Thozamile Gqweta

That difficulties would follow for the administration of the security legislation should any other view prevail, is shown by the case of Thozamile Gqweta, the National President of the South African Allied Workers Union. He was detained under the Terrorism Act on 8 December 1981, admitted to a psychiatric ward in Johannesburg in February 1982, and released on 3 March 1982.

The Attorney-General for the Ciskei said he was being released so that he would be in a fit state to give evidence for the State in a Terrorism Act trial; Mr. Gqweta however denied this, saying that the police had said nothing about it. He said that he had been released for health reasons: "I was released because the doctors who were treating me refused to continue if I was to go back into detention. The treatment was for me to go back into society." (16) It appears that the police have attempted to avoid the problems posed by uncooperative doctors in the case of another trade unionist, Sam Kikine, by taking him back into custody on condition that he was not held in isolation. (17) They resolved the matter in the case of Gqweta by rearresting him barely twelve hours after he had been *taken back to his home, and releasing him* on condition that he reported three times daily until the trial at which he was required.

The case of Gqweta, as far as can be determined, is almost unique. The duties of the medical profession, as perceived by

The face of a torturer - Lieutenant Steven Whitehead, chief interrogator of Dr Neil Aggett

the generality of the practitioners and reflected by the SAMDC, may be gathered from other cases. For example, a detainee (Dean T. Farisani) held under the Terrorism Act on 19 October 1981 was taken to hospital three times under police guard, twice for psychiatric treatment, being returned to detention on 14 January 1982 and again in February; and finally in February again, with critical head injuries. (18) As far as can be determined, the medical staff involved have not considered that the matter is of further interest or significance.

The doctors in cases such as Farisani's may well claim not to have known of torture and he may not have been tortured. What is disturbing is that there is no evidence that they were at all concerned or that the matter was investigated by their professional association.

The Minister of Police appears to have decided that where medical and specialist treatment and care are considered to be adequate then no access will be given to the detainee's own private doctor. (19) The new Internal Security Act accordingly provides only for fortnightly visits by a district surgeon; apparently he is regarded as a sufficiently independent monitor of a detainee's condition despite the Biko scandal.

The Minister has rejected for "security reasons" a request that detainees should be seen by an independent panel of doctors or doctors of their own choice. (20)

The Federal Chairman of MASA, Professor Guy de Klerk (21) announced that MASA was prepared to set up an independent panel of doctors to see detainees. This was in response to the demand by the Detainees' Parents' Support

Committee that detainees should be seen by a panel appointed by themselves. He said that such a panel would be as suspect as one appointed by the State; in his view, only MASA could be trusted as it "stands above suspicion". (22) Two comments seem to be called for. First, MASA seems to be trying to run with the hare and hunt with the hounds simultaneously; and secondly, it seems clear that a deep mistrust now exists within the medical profession in South Africa over the security laws.

Nothing illustrates the point more clearly than the case of Motaung, recently sentenced to death for treason. While being arrested, he told the court, he was shot in the hip by a policeman who then pulled him up and shot him again in the genitals. He said that he was then told that he would be taken to hospital only when he produced the guns the police were seeking, although he was bleeding and in pain. He was examined the same day by a district surgeon, Dr. M.S. Snyman. She testified that she had been told that Motaung was a "terrorist who had to do important things". Accordingly she certified that he was fit to help the police and gave him "painkilling tablets" but no other treatment. She told the court that she considered that it was more important for him to assist the police than to undergo immediate medical treatment. Motaung was taken to hospital two days later.
He was operated on and kept for eight days. (23)

There is evidence that the police have confidence in the doctors whom they call on to examine detainees, and that where injuries are noted the doctors will accept police explanations. This confidence extends to general practitioners.

Magistrates have also acknowledged the need for full cooperation from doctors. The decision in the Biko case, that the available evidence did not prove that death was brought about by an act or omission involving an offence by any person, reflects this. Any other verdict would have clashed with the view taken by the SAMDC and MASA as explained above. This appears to have affected also the decision in the inquest held into the death of another detainee, Moufhe, who died in December 1980 after 112 days in detention. The magistrate held that he could not find anyone to blame; he apparently agreed with the allegation that the dead man had killed himself by joining his pair of socks, tying them round his neck, and tying the other end to the window and then, lying down on the floor while so tied, he had covered himself with a blanket and by using the left-arm to exert pressure he had caused his own death by strangulation. (24)

Where the defence alleged that a detainee called as a witness for the State had been so severely assaulted that he lost an eye, the court does not appear to have seen any need to investigate the matter further. In this case, another detainee called to give evidence for the prosecution said he had cooperated with the police because he was 'petrified' of them, and described an assault on another detainee. (25)

Understanding the Doctors

MASA and the SAMDC simply reflect accepted perspectives, and it would be extraordinary if the medical implications of the legislation discussed above would prompt its rejection. This would require the bodies concerned to react to the political implications of what the medical profession is required to do. Moreover, many practitioners – and not only those dealing with detainees – are regime supporters who would in any event argue strenuously that the laws are necessary.

The entire basis on which the security legislation functions creates an assumption on the part of the public that a person detained, questioned, tried or otherwise adversely affected is involved in subversive violence.

The fact that a person has been detained itself points to a criminal involve-

ment. The legislation makes it clear that only those considered by the police to be involved in security offences may be detained and it is 'natural' for such persons to be treated as guilty for all purposes. There is little prospect of their being believed when they make allegations of torture, because from the very outset they appear to have an interest in lying. Other problems of credibility are shown by the case of Bentley, mentioned earlier, where the defendant told the court that he had not told the doctor or magistrate who visited him earlier how he had been injured because he feared that this information would be given to the police, who would continue to assault him. As we have seen, the doctor confirmed the defendant's fears only too clearly.

Moreover, it must be remembered that the police have sole responsibility for investigating allegations against themselves. The system is one which is geared to manufacture guilt, and the medical profession is an integral part of this structure. There is a remarkable paradox to be taken into account: the rhetoric used is that of a fair trial, the right to present a defence, and the freedom from improper pressure from the State to confess; yet the massive volume of evidence pointing to the violation of these rights and raising questions of involvement by the medical profession is not even investigated by it, and in practice the system is designed to reject such allegations.

For there to be any point to detention for interrogation, questions must be answered. It is ludicrous to propose that no pressure may be exerted on detainees to induce them to cooperate, especially when the State emphasises how important a confession in a criminal trial is by providing that, unless the contrary is proved, it is to be presumed to have been freely and voluntarily made and is sufficient evidence by itself for a conviction. This is one of the essential reasons for interrogation. The police must, and invariably do, deny having put pressure on detainees to answer questions.

In addition to simple assaults, much of the evidence of torture refers to methods that leave no visible marks – e.g. continuous interrogation for days and nights, with sleep deprivation; "statue" torture; humiliation and intimidation; hooding; psychological assault (false reports of death or illness of relatives or friends, or threats of indefinite and solitary confinement); partial suffocation; subjection to extreme noise; and alternate immersions of the feet in hot and icy water. Where injuries are sustained, protracted periods in isolation are said to follow until visible signs have healed. In addition, statements made to magistrates visiting detainees, which may be evidence of torture, are transmitted to the police, while detainees are not permitted to have copies of the reports on visits made by magistrates. They may however have a copy of a doctor's report.

It should be remembered that by law detainees are not permitted to have access to lawyers. Attempts have been made to silence witnesses to torture by detaining them or – as in the case of the inquest into the death of Dr. Neil Aggett earlier last year – by a banning order. In this case, a person detained with Dr. Aggett swore an affidavit which he gave to lawyers for Dr. Aggett's family describing how Dr. Aggett had been tortured in his presence not long before his death. In addition, steps have been taken to prevent the inquest from hearing a statement made by Dr. Aggett himself describing electric shock treatment, by seeking a ruling that the statement is inadmissible.

The ethical duties of a doctor require him to note, record, and treat injuries. No matter how suspicious he may be as to their origin there is, on the evidence, no chance that the court will believe that they were caused by torture of the detainee who now challenges the confession allegedly made by him. In any event, as the Biko and other cases considered illustrate, no action

by the doctor must interfere with the operation of the security legislation. It it absolutely essential for the administration of justice in South Africa that this should be so, and the SAMDC and MASA are inexorably compelled to play their part.

Conclusions

In the context within which it functions, the South African medical profession has shown itself to be incapable of coping with the ethical implications arising from the security legislation. While doubtless in individual cases practitioners may justifiably be suspected of having acted with evil motives, the greatest part of the problem arises from the very structure of the institutions involved. The statutes and definitions, both explicity and in the manner in which the courts have interpreted them, equate with treason all opposition to the Slate's established policies. The medical profession consists of individuals who in many cases, as white voters, accept the fundamental political implications of this legislation. Accordingly, one must not expect them willingly to confront it. This, however, is an inadequate explanation for what is happening in South Africa today for it does not take into account the manner in which the medical associations , are structured into the system: not only are the individuals reluctant to come into conflict with the system, but should they be willing to do so their professional associations are rendered incapable of giving support.

In South Africa, the ethical standpoints of the professional associations require them to ensure that they play their full part in ensuring that the security laws do what they are meant to do — i.e. convict **those** who oppose the regime. The medical profession is required to play its part in the formal manufacture of guilt. It does not have the means to test the conduct of its members against accepted ethical standards used elsewhere in the world, and it does not want them; these two factors combine in a vicious circle in which impotence and unwillingness support each other.

Ultimately, the causes of this terrible medical tragedy are fear of the monster the medical profession is required to serve, and sympathy for it. Comforting the profession from abroad will not help it to overcome these problems but merely reassure it and enable it to live with them. The only solution lies with the processes of change within South Africa itself; so far as the medical profession itself is concerned, isolation will encourage it to develop the tensions and splits necessary for the healing process to commence.

Footnotes

15. "Report to the Medical Association of South Africa by the Ad Hoc Committee appointed to consider certain ethical issues".
16. Sowetan. 5th March 1982.
17. 77ie Star, 11 March 1982.
18. Sunday Express (Johannesburg) 17 January 1982, Sunday Times (Johannesburg) 21 February 1982.
19. The Star, 6 March 1982.
20. Rand Daily Mail, 11 February 1982; Sowetan, 3 February 1982.
21. Rand Daily Mail, 5 March 1982; Financial Mail, 16 March 1982.
22. Rand Daily Matt, 7 May 1982.
23. Rand Daily Mail, 28 August 1982; Sowetan 28-29 August 1982
24. Rand Daily Mail. 26 September, 9 October 1981.
25. Post, 15 April 1980; Rand Daily Mail, 16 April 1980, 25 July 1980.