Human Rights Council

Complaint Procedure Form

- **You are kindly requested to submit your complaint in writing in one of the six official UN languages (Arabic, Chinese, English, French, Russian and Spanish) and to use these languages in any future correspondence;**
- **Anonymous complaints are not admissible;**
- **It is recommended that your complaint does not exceed eight pages, excluding enclosures.**
- **You are kindly requested not to use abusive or insulting language.**

I. Information concerning the author (s) of the communication or the alleged victim (s) if other than the author

Individual ☐ Group of individuals ☑ NGO ☐ Other ☐

Last name: Andersen
First name(s): Lauren
Nationality: American & British
Address for correspondence on this complaint: PO Box 500, Cold Spring Harbor, NY 11724
Tel and fax: (please indicate country and area code) +1 516 606 1254 direct (mobile), +1 516 584 7133 (fax)
E-mail: mailto:myhumanrights2@gmail.com
Website: http://www.sanerights.com

Submitting the complaint:

On the author's own behalf: **yes**
On behalf of other persons: **yes** (Please specify)

SaneRights Inc. is a new nonprofit organization, which aims to combat the widespread human rights violations that take place in mental healthcare in the U.S., and eliminate the stigma associated with mental disorders.

A patient who was mistreated in one of the highest-profile hospital systems in the U.S. formed SaneRights to help other former patients to seek justice. The organization's website, http://www.sanerights.com, contains information for the public, and for the dozens of other patients whom founder Lauren Andersen says have contacted her about their own harrowing experiences with psychiatric hospitalization.

Ms. Andersen submitted complaints to an array of government officials who are responsible for investigating fraud and misconduct in mental healthcare facilities… from local district

attorneys to the White House. Most of these officials showed deliberate indifference, and the others sent only a grudging form letter, followed by silence.

II. Information on the State concerned

Name of the State concerned and, as applicable, name of public authorities responsible for the alleged violation(s): United States – individual state departments of mental health, city governments, law enforcement agencies and emergency medical services, district attorneys, The Federal Bureau of Investigation (FBI), The US Department of Health and Human Services (HHS), and the U.S. Department of Homeland Security (DHS).

III. Facts of the complaint and nature of the alleged violation(s)

The complaint procedure addresses consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.

Please detail, in chronological order, the facts and circumstances of the alleged violations including dates, places and alleged perpetrators and how you consider that the facts and circumstances described violate your rights or that of the concerned person(s). ……..……...

Complainants are individuals who have been unlawfully detained under the "emergency detention" provisions of various states' Mental Hygiene Laws. These are the sinister statutes that allow a psychiatrist to commit a person to a locked hospital psychiatric ward without notice. Generally speaking, these laws require that a patient be an imminent physical danger to himself or others to be detained.

Unfortunately, the American psychiatric industry's regulatory compliance is so lax that it consistently detains people who are nonviolent, and are only admitted to the hospital because they are eccentric, or are acting out of character. Often, family members facilitate this misuse of the psychiatrist's detention power, because they can't or don't want to care for the patient at home, or due to some other domestic squabble. Some patients and their families don't speak English well enough to communicate with the doctors, or the other way around. Staff errors are common in hospital psychiatry. Frequently, patients go to the emergency room about a medical problem, only to become victim of a "bait and switch" trick when they are sent to the psych ward, and are prevented from leaving. This is problematic because many medical conditions cause symptoms that can mimic psychiatric illness; this includes diabetes, epilepsy hypothyroidism, and many more. Once on the psych ward, these patients have difficulty obtaining treatment for the underlying medical condition.

Most disturbingly, hospitals are incentivized to admit patients, due to the high relative profitability of psychiatric ward beds. The US may be the only developed country in the

world in which a hospital can – and routinely does – charge large fees to individuals that it detains involuntarily. This meets the UN's definition of human trafficking, from the "Protocol to Prevent, Suppress and Punish Trafficking in Persons" (Article 3, subparagraph a), which the U.S. ratified in 2005.

In addition to unlawful involuntary commitment and physical or sexual assault, former patients allege their experiences include forcible drugging, physical abuse, excessive fees and mistreatment by unlicensed and unsupervised staff, and denial of legal counsel and court hearings. Patients say they frequently face discrimination based on race, gender, age, religion, disability and sexual orientation. They also face discrimination from law enforcement and the court system when they try to obtain justice.

These patients tend to be among society's most vulnerable people, with disproportionate numbers of seniors, youngsters and women. They tend to have low incomes, and their care is likely to be paid by Medicare or Medicaid. The vast majority of them are non-dangerous and nonviolent.

There are 75 million people in the US who suffer from mental disorders, such as depression, dementia, PTSD, autism, schizophrenia, bipolar disorder, and anorexia/bulimia. However, fewer than one-third of adults and one-half of children with a diagnosable mental disorder in America receive mental health services in a given year. It is common knowledge that there is a skills shortage in psychiatry, which makes it even more hypocritical for this profession to practice widespread involuntary commitment of non-dangerous people.

Sadly, psychiatric commitment in America brands the patient with an indelible stigma that can destroy his life. In many states, a mental hospital automatically sends the committed patient's name to the national crime statistics (NICS) database, without due process, even though no criminal charges were ever filed. That mark on his record can prevent him from practicing his profession, participating in many academic programs, and carrying on personal relationships. It can prevent an individual from holding various professional licenses, from applying for many government jobs, and from graduating from certain academic programs. Any thorough background check of an individual by a prospective employer would flag up the NICS database entry, and likely prevent that person from obtaining employment. Even the public knowledge that she has been taking psychoactive medication carries a damaging stigma for a patient. In these ways, involuntary psychiatric commitment is worse than a criminal conviction.

Inappropriate use of a psychiatrist's detention power violates a long list of laws. Notably, it defies Americans' due process rights, because patients are frequently denied the attorney consultations and hearings that are mandated by law. Detention often interferes with patients' freedom of speech and religion, because it is difficult to exercise these rights while locked in a psych ward. The invasive yet common practices of strip-searching, unwarranted interrogation, and confiscating patients' possessions on admission infringe their privacy rights. And fees based on unlawful involuntary treatment, when they are charged to Medicare or Medicaid, constitute not only human trafficking but also fraud against the federal government. State mental hygiene laws and human rights laws should guarantee patients

protection from most of the typical abuses, however they are widely ignored by hospitals, regulators and law enforcement.

Following are some of the appalling aspects of mental healthcare in the US, which demonstrate its systematic defiance of human rights law, and its routine discrimination. This is not an exhaustive list, but these are the major ones:

1. **No security cameras** – Appallingly, there is no legislation (U.S. or state) requiring psychiatric hospitals to have security cameras in their wards, which is carte blanche for staff to abuse patients. Use of force incidents don't need to be videotaped in hospitals but they do in prisons, at least federal ones. Cameras should be mandatory in all psych wards in the US.

2. **Weak protection for patients** – State animal cruelty laws, U.S. federal prison policies, and U.N. laws governing the treatment of prisoners of war, are all more stringent than U.S. and most state laws applying to psychiatric hospitals. Hospitals aren't required to guarantee patients any fresh air time, visits from their children, drinking water, appropriate clothing, freedom from corporal punishment...etc. This means that even Saddam Hussein and your dog would be guaranteed more respect of their human rights than psych patients are in America.

3. **No access to hospital policies** – There is no law specifically requiring hospitals to show patients their policies and procedures. In other words, hospitals say you must abide by their rules but they aren't required to tell you what the rules actually say. This is akin to a company requiring you to sign a contract to buy its services, without allowing you to read the contract. Hospitals' policies and procedures should be publicly available.

4. **No access to your own medical records** – There is no specific legislative requirement for a hospital to show patients their own clinical records while they are in the hospital – other than the HIPAA 10-day federal law, for which allegedly no "private cause of action" exists, i.e. you can't sue hospitals under this law. Patients should be entitled to review their own medical records, unless there is some compelling medical reason to withhold them.

5. **The police don't understand the laws** – The police in America generally seem to think that penal code doesn't apply inside of a psychiatric hospital, so if you are assaulted inside a hospital they think it isn't their problem. However, state authorities do little or no oversight, leaving patients with no access to law enforcement. Wouldn't you expect the police to deal with it if you found out your loved one was assaulted in a hospital? Recall that psychiatric patients have not been convicted of any crime, and most are not dangerous at all.

6. **Even Guantanamo is better equipped** – The facilities at Guantanamo Bay are better than the so-called "best" psychiatric hospitals in the U.S. And “Gitmo” is being upgraded too, at great expense, thanks to the federal government. It will have a soccer field, DVDs, newspapers and library books, while many of the so-called "best" psych hospitals in the country have none of those features.

7. **State laws are unconstitutional** – Most States’ mental health “emergency detention” provisions are unconstitutional, because they permit a psychiatric hospital to detain you indefinitely based on a subjective assessment of dangerousness by only one psychiatrist. There does not need to be probable cause – i.e. you don't need to be carrying weapons, or to

have committed any crime. The doctor signing the form does not need to be very experienced; in many cases junior (i.e. resident) doctors have been allowed to do so, apparently unlicensed and unsupervised. And there does not need to be more than one doctor involved for the first two days in most states. This could hardly be considered due process. If you compare various state laws governing emergency detention in mental hospitals, you will find that there is an alarmingly wide variety in requirements. [see attached]

These types of mistreatment might be expected from a third world country, but certainly not from the country that calls itself the leader of the free world.

These problems could be avoided by a genuine effort at quality assurance in mental healthcare, including better training and supervision of hospital personnel, law enforcement officers, and department of health regulators. But there first needs to be a change of attitude toward people with mental disorders at the very top of these organizations, and perhaps the UN could provide the catalyst to make that happen since Washington has failed to do so.

IV. Exhaustion of domestic remedies

1- Steps taken by or on behalf of the alleged victim(s) to exhaust domestic remedies– please provide details on the procedures which have been pursued, including recourse to the courts and other public authorities as well as national human rights institutions*, the claims made, at which times, and what the outcome was:

Regrettably, the U.S. Department of Homeland Security (DHS) has shown deliberate indifference to complaints to John Sandweg, Acting Director, U.S. Immigration and Customs Enforcement, which is part of DHS and is responsible for investigating allegations of human trafficking.

Patients have also found that Department of Health and Human Services (HHS) has a policy or practice of showing deliberate indifference to complaints from patients or former patients of psychiatric hospitals, including Ms. Andersen's complaint to Kathleen Sebelius, when she was Secretary of the U.S. Department of Health & Human Services. Equally, the Federal Bureau of Investigation (FBI) typically ignores patients' pleas for assistance, even when complaints to local law enforcement and state departments of health have been exhausted. Ms. Andersen wrote to James Comey, FBI Director, several times, without response. Human Rights Watch has ignored SaneRights' correspondence, as has nearly every legislator in Albany and on Capitol Hill to whom she has written since 2011. Ms. Andersen's two letters to President Obama also went unanswered.

* National human rights institutions, established and operating under the Principles Relating to the Status of National Institutions (the Paris Principles), in particular in regard to quasi-judicial competence, may serve as effective means of addressing individual human rights violations.

Disappointingly, even Eileen Chamberlain Donahoe, United States Representative to the United Nations Human Rights Council, has failed to respond to Ms. Andersen's correspondence.

Several of the patients in the SaneRights group, and thousands of others over several decades, have attempted to seek justice through the court system, but these cases are typically unsuccessful due to the bias against psychiatric patients in the legal profession. This makes it extremely difficult for them to find legal representation, even if they are lucky enough to have the financial resources to do so. If they do manage to find an attorney, their cases are usually settled quietly in state court, rather than being allowed to set precedents that might help other patients in future. The so-called "Iqbal-Twombly pleading standard" has made it very difficult, since 2009, for a plaintiff to get to the discovery stage in a U.S. federal case without basic evidence that he should be entitled to anyway under the Freedom of Information Laws, such as his clinical records, any police reports, and regulatory reviews.

Ms. Andersen filed a personal civil case in March 2012 in U.S. district court, *Andersen v. North Shore Long Island Jewish Health System (NSLIJ), et. al.,* EDNY Civil Action No: 12-CV- 1049 ("Andersen v. HILLSIDE"), which is still ongoing. Ms. Andersen was arrested at JFK airport, ostensibly for the grave offence of attempting to buy a ticket to London without a passport. The police handcuffed her, without probable cause, and without reading her the Miranda rights (a legal requirement in the US), deprived her of drinking water, and then transported her to Hillside Hospital where she was detained for 18 days, drugged, interrogated and violently stripped of her clothes by the staff, among other methods of deliberate cruelty. The records show that she was in no way agitated or dangerous in the terminal or at the hospital at any time, but was never granted a hearing of any kind, or any legal advice. "Torture" might sound like too strong a word in this context, however the abuse that was inflicted on her does technically meet the United Nations' definition of torture.

SaneRights is also preparing to file a case – on behalf of the thousands of other former patients who have been similarly mistreated – against DHS, HHS, and a number of national organizations that make up the psychiatric-industrial establishment, including notably the American Psychiatric Association.

Ms. Andersen actually received a death threat related to this matter on 13th May, 2014. The threat was highly likely to have been triggered by her email to the U.S. Senate Permanent Subcommittee on Investigations a few days prior, given the temporal relationship between the two events, and the way in which the threat was worded.

The UN has recently asked the Vatican to hand over sex abuse dossiers to police forces, so surely the UN should also be in a position to warn American hospital systems and state departments of mental health to hand over their files of abused psychiatric patients. This file is likely to be an even bigger one, since there are approximately 200,000 psychiatric inpatient beds in America, and the abusive indefinite detention practices have been going on as long as psychiatry has existed.

2- If domestic remedies have not been exhausted on grounds that their application would be ineffective or unreasonably prolonged, please explain the reasons in detail: ……(not applicable)……

V. Submission of communication to other human rights bodies

1- Have you already submitted the same matter to a special procedure, a treaty body or other United Nations or similar regional complaint procedures in the field of human rights?

NO – only Interpol, and the British government (since Ms. Andersen has dual US/UK citizenship)

2- If so, detail which procedure has been, or is being pursued, which claims have been made, at which times, and the current status of the complaint before this body:

……(not applicable)……

VI. Request for confidentiality

In case the communication complies with the admissibility criteria set forth in Council resolution 5/1, kindly note that it will be transmitted to the State concerned so as to obtain the views of the latter on the allegations of violations.

Please state whether you would like your identity or any specific information contained in the complaint to be kept confidential.

Request for confidentiality (*Please tick as appropriate*): Yes ☐ No ☑

Please indicate which information you would like to be kept confidential

Date: 26th May, 2014 Signature: 

N.B. The blanks under the various sections of this form indicate where your responses are required. You should take as much space as you need to set out your responses. Your complaint should not exceed eights pages.

VII. Checklist of supporting documents

Please provide copies (not original) of supporting documents (kindly note that these documents will not be returned) in one of the six UN official languages.

- Decisions of domestic courts and authorities on the claim made (a copy of the relevant national legislation is also helpful): ☐

- Complaints sent to any other procedure mentioned in section **V** (and any decisions taken under that procedure): ☐

- Any other evidence or supporting documents deemed necessary: ☑

A list of U.S. state law "emergency detention" provisions is attached and also online at http://www.mentalhealthclassaction.com/other-states-mh-laws.html

VIII. Where to send your communications?

Office of the United Nations High Commissioner for Human Rights
Human Rights Council Branch-Complaint Procedure Unit
OHCHR- Palais Wilson
United Nations Office at Geneva
CH-1211 Geneva 10, Switzerland
Fax: (+41 22) 917 90 11
E-mail: CP@ohchr.org
Website: http://www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx