

PUBLIC

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To: Health professionals
From: Medical office / East Adriatic & Aegean team
Date: 20 February 2001

MEDICAL LETTER WRITING ACTION

**Torture of women and children in Turkey:
Fatma Tokmak (26) and son (2), Fatma Polattas (19),
N.C.S (16) and Zeynep Avci (21)**

Key words torture/ill-treatment / rape / impunity / women / children

Summary

Amnesty International's Campaign Against Torture 2000 -2001 focuses on three related areas: preventing torture, confronting discrimination and overcoming impunity. This action addresses discrimination of women and children tortured in Turkey and focuses on the prevailing climate of impunity. This action has been prepared for 8 March 2001, International Women's Day. The following cases of four women illustrate rape and other forms of torture in police custody and also includes the torture of the two-year-old child of one of the women.

Recommended actions

The first set of recommended actions applies to all three cases. In addition there are specific recommendations for each case. Please ensure that members and groups in particular write letters for the case of Fatma and Azat Tokmak; there has been little campaigning by Amnesty International on their behalf yet, whereas there has been high profile campaigning on the cases of Fatma Polattas, N.C.S. and Zeynep Avci. Please write letters in English, Turkish or in your own language to the addresses below:

(1) General recommendations:

- introducing yourself in your professional capacity and/or as a member of the health professional network of Amnesty International;
- calling on the authorities to inform all officials involved in the custody, interrogation and medical care of detainees and prisoners, that rape and sexual abuse are acts of torture / ill-treatment and will not be tolerated;
- calling for the suspension of the alleged perpetrators from active duties until the investigation is concluded, and if they are convicted to dismiss them from the forces;
- expressing concern that the medical investigations during the detention of the women in these cases did not meet acceptable standards for the forensic evaluation of torture allegations, including those standards set out in the Principles on the Effective Documentation of Torture (Istanbul Protocol), and that further evaluation is called for [please attach a copy of the Principles to your letter - see appendix of this action];

- reminding the authorities that those who have suffered from torture must be entitled to full and timely reparation, including compensation and rehabilitation;
- reminding authorities of their duties under the UN Convention against Torture which Turkey ratified in 1988; article 4 and 5 oblige state parties to bring alleged torturers to justice, and article 13 requires that victims, plaintiffs and witnesses in torture trials are protected.

Please add the following recommended actions to the individual cases:

(2) Letters on the case of Fatma and Azat Tokmak:

- to initiate an independent and thorough investigation including appropriate medical and psychiatric examinations into the alleged torture of Azat and Fatma Tokmak;
- calling on the authorities to clearly and unequivocally condemn the torture of children whenever it occurs;
- to ensure that Azat and Fatma Tokmak receive all necessary medical and psychological treatment and are given fair and adequate compensation.

(3) Letters on the case of Fatma Deniz Polattas and N.C.S.:

- welcoming that a trial has been opened against four police officers charged with having tortured N.C.S. and Fatma Deniz Polattas in police detention between 6 and 12 March 1999;
- pointing out deficiencies in the medical examinations which the young women underwent while detained by the Anti-Terror Branch:
 - according to the Turkish Medical Association the medical reports issued in March 1999, while Fatma Deniz and N.C.S were detained at the Anti-Terror branch in Iskenderun, fall short of the criteria for forensic reports of both the Turkish Health Ministry as well as of the Turkish Medical Association;
 - according to the young women they were intimidated by police officers not to report the torture to the doctors and guards were present during the examinations;
- pointing out the medical report by the Turkish Medical Association supporting charges of torture obtained after the young women's transfer to prison, and a report by the Psycho-Social Trauma Centre of the Istanbul Capa Medical Faculty Hospital diagnosing Fatma Polattas and N.C.S. with Post Traumatic Stress Disorder;
- expressing concern that the sentence of the two young women was upheld without waiting for the results of the investigation into their torture allegations. Article 15 of the UN Convention against Torture obliges the state parties to "ensure that any statement which is established to have been made as a result of torture should not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made". For concluded trials, a body should be established to review the convictions based on evidence alleged to have been extracted under torture and, where appropriate, to arrange for a prompt retrial.
- expressing your concern about the trial against women and men who publicly criticized rape and sexual abuse in custody;
- calling for the charges brought against these women's rights activists, N.C.S.'s father and her lawyer to be dropped.

(4) For Zeynep Avci:

- calling for a comprehensive and impartial investigation into Zeynep Avci's allegations of torture including rape, with the results made public;
- urging the authorities to ensure that Zeynep Avci is given fair and adequate compensation.

If you receive no reply from the government or other recipients within two months of dispatch of your letter, please send a follow up letter seeking a response. Please check with the medical team if you are sending appeals after 30 April and send copies of any replies you do receive to the International Secretariat (att: medical team).

Addresses

Professor Hikmet Sami Turk
Minister of Justice
Adalet Bakani,
Adalet Bakanligi,
06659 Ankara, Turkey

Mr Hasan Gemici
State Minister responsible for women and children
Office of the Prime Minister
Basbakanlik
06573 Ankara, Turkey
Telegrams: Basbakanlik, Ankara, Turkey
Faxes: + 90 312 417 0476
Salutation: Dear Minister

Copies

Please send copies to:

Mr Rhustu Kazim Yucelen
State Minister with responsibility for human rights
Office of the Prime Minister
Basbakanlik
06573 Ankara, Turkey
Faxes: + 90 312 417 0476

and to diplomatic representatives of Turkey accredited to your country.

Date: 20 February 2001

MEDICAL CONCERN

**Torture of women and children in Turkey:
Fatma Tokmak (26) and son (2), Fatma Polattas (19),
N.C.S (16) and Zeynep Avci (21)**

Amnesty International's Campaign Against Torture 2000 - 2001 focuses on three related areas: preventing torture, confronting discrimination and overcoming impunity. This action addresses discrimination of women and children tortured in Turkey and also focuses on the prevailing climate of impunity. The following cases of four women illustrate rape and other forms of torture in police custody and also includes the torture of the two-year-old child of one of the women.

Case 1: Fatma and Azat Tokmak: "You won't see your child again, we're going to kill him now"

Detention and torture

Fatma Tokmak and her two-year-old son Azat were detained on 9 December 1996 on suspicion that she and her husband were supporters of the Kurdistan Workers' Party (PKK). Fatma Tokmak spent eleven days in detention with her son at the Anti-Terror Department of the police headquarters in Istanbul. During this period she was subjected to repeated physical and mental torture at the hands of police officers.

According to reports, police officers also tortured Azat in order to elicit confessions from Fatma Tokmak and to make her accept the allegations against her. Fatma saw police officers burn her infant son's hands with cigarettes and administer electric shocks to his back.

Fatma herself was sexually abused and threatened with rape. Police officers violently undressed her, forced her to lie naked on the floor and threatened to rape her. She was hung by her arms and was sexually abused. Her naked body was touched and grabbed by police officers.

Police officers entered Fatma's cell one night and took away Azat Tokmak, reportedly saying: "you won't see him again because we are going to kill him now". On 20 December 1996 Fatma was taken to the State Security Court in Istanbul which remanded her to prison in Gebze where she still is being held at the moment.

Fatma Tokmak's lawyer searched for Fatma's child. Her lawyer was denied information on Azat's situation by the chief police officer and chief prosecutor. Eventually the director of the Anti-Terror branch of the police in Istanbul admitted: "We brought him to an orphanage. Should we have kept this boy with a terrorist mother?". After a bureaucratic struggle, Azat was found and returned to his mother. Subsequently he either stayed in prison with his mother or with a friend outside. From December 1997 he stayed mainly with relatives, visiting his mother from time to time.

The orphanage staff reported that Azat Tokmak was in a very bad condition when he was brought to them. They said that he was very uncommunicative during the two and a half months he was with them.

Complaint of torture filed

In 1997 Fatma Tokmak filed a formal complaint with the help of lawyers against the police officers who tortured her son and herself. The public prosecutor in Fatih decided in July 1998 not to initiate proceedings. The prosecutor's office had not considered the report given by the Istanbul Medical Chamber on 21 April 1998 after examining Azat (see below) nor had they taken statements from Fatma Tokmak or the police officers. Fatma's lawyers appealed against this decision. The local court then requested a medical examination at the Forensic Institute Third Committee in order to determine when the alleged cigarette burns were inflicted on his body.

Medical reports

The Istanbul Medical Chamber provided the court with a medical report on 21 April 1998. These findings reportedly described a pale lesion of 1x0.5cm on the third finger of his left hand consistent with the allegation of having cigarettes stubbed out on the hand. The report also stated that Azat suffered from Post Traumatic Stress Syndrome, which added weight to torture allegations. He was reportedly especially disturbed by cigarettes and showed fear when he saw police officers.

The Forensic Institute examined Azat Tokmak on 29 December 1999 and found a superficial scar of 1x0.4cm. The examiners stated that it was medically impossible to identify when the wound was caused.

Impunity

Referring to the examiners' report that it was medically impossible to identify when the wound was caused, Fatma Tokmak's complaint was rejected in June 2000 on the basis of inadequate evidence. None of the police officers responsible for subjecting Fatma Tokmak and her two-year-old son to torture have been prosecuted four years after their actions.

Meanwhile Fatma Tokmak is still in Gebze prison, charged with PKK membership, in a trial in which the death penalty is sought for her. She has yet to receive a comprehensive medical or psychiatric examination.

Case 2: Fatma Deniz Polattas and N.C.S. (full name known to Amnesty International)

Detention and torture

Fatma Deniz Polattas, a Kurdish woman aged 19 who was preparing for examinations for admission to university, was called to the police on 8 March 1999. Sixteen-year-old high school student N.C.S. was arrested on 6 March 1999. Both young women were blind-folded and brought to the Anti-Terror Branch of Police Headquarters in Iskenderun where they were detained, interrogated and reportedly tortured for respectively five and seven days until 12 March. Subsequently the women were taken to prison, being charged with being members of the PKK and with being involved in an attack on a minibus.

At the Anti-Terror branch N.C.S was blindfolded throughout her detention. On the first two days she was forced to stand on her feet continuously with her fingers pressing on the wall. She was prevented from sleeping, from using the toilet and was denied food and drink except for sour milk. N.C.S. was forced to listen to loud music and marches, to stay on a cold floor, to strip and stay naked. She was insulted and threatened with an increase in the level and length of torture, with being killed and that her mother would be sexually abused and raped. N.C.S. was continually beaten especially on her genitals, buttocks, breast, head, back and legs, forced to sit on a wet floor for a long time and afterwards to roll naked in water. She was suspended from the arms and exposed to pressurized cold water. When the bell of her near-by school rang they said: "Go to school".

Fatma Deniz Polattas was exposed to the same torture methods as N.C.S. She was also threatened that both her father and her mother would be raped in front of her and that her father would be dismissed from his job although he had only one year left to retirement. When she was struck with a fist on her mouth, one of her teeth broke. In her testimony she stated: "*A police officer asked me to take off my trousers and socks. I again was scared and obeyed. I was standing. A police officer in uniform asked me to bend. He inserted something into my anus. It was something long and serrated. At that moment I started bleeding. I was totally bent. They were beating with their sticks, saying 'Stand*

straight". After the anal rape the police officers reportedly told her: "Even if you go to a doctor, you cannot prove anything".

On 2 November 1999, Fatma Deniz Polattas was sentenced to a total of 18 year's imprisonment. N.C.S. was sentenced to a total of 12 years' imprisonment due to her young age. The two women claim that their convictions are based on statements extracted under torture. On 29 June 2000 the Appeal Court upheld their sentences without waiting for the outcome of their examinations at the Psycho-social Trauma Centre of Capa Medical Faculty in Istanbul nor for the outcome of the trial against the four police officers charged with torturing them. In summer 2000 they were transferred to Bakirkoy Women's and Children's prison in Istanbul in order to allow for psychiatric examination and treatment.

Medical examinations

While in detention at the Anti-Terror branch in March 1999, Fatma Polattas and N.C.S were brought to five different doctors, including gynaecologists. None of the doctors reported any signs of violence. N.C.S. said later that the police told her during the hospital visit in the presence of a doctor: "We didn't torture you. If we did, tell them".

In July 1999 four doctors from the Turkish Medical Association were allowed to speak with the women in prison, yet not examine them. According to their report, the medical symptoms as described by the young women corroborate their detailed torture testimonies. The TMA also stressed that official medical reports issued in March fall short of criteria for forensic reports of both the Turkish Health Ministry as well as of the Turkish Medical Association. The TMA called for physical and psychiatric examinations for N.C.S to be carried out - provided she gives consent - in order to assess whether and how she was tortured. The TMA also said that Fatma's pain in her anus and the continuing bleeding corroborate her testimony on anal rape.

Psychological reports

A group of psychiatrists at the Psycho-Social Trauma Centre at the Istanbul Medical Faculty Hospital, specialized in traumatic stress, examined N.C.S. and Fatma Deniz Polattas several times between June and September 2000. The report on N.C.S. said that her mind is frequently engaged with the physically and sexually traumatic events of one-and-a-half years ago. She is hesitant to speak about them, afraid of having to live through the same experience. She experiences fear and nightmares and withdrawal from social relations. The doctors conclude that N.C.S. experienced a trauma and that she needs psychotherapy.

For Fatma Deniz Polattas they state similar, but aggravated findings. They add that she had difficulties in concentrating, that she did not enjoy living any more and even contemplated suicide. Like N.C.S. she suffers from chronic PTSD as well as a major depression. Considering various psychiatric tests results the doctors' conclusion was to "seriously believe that Fatma Deniz Polattas experienced a heavy trauma and that the psychotherapy should continue".

Complaints filed with prosecutor and medical association

After Fatma Polattas and N.C.S. had been remanded to Adana prison on 12 March 1999, they informed their lawyers about the torture that had been inflicted on them. In the summer the young women contacted the Istanbul-based legal aid project for women raped in custody.

On 5 November 1999 N.C.S.'s father filed a complaint to the Medical Association of Hatay against the doctors who had examined his daughter while detained by the Anti-Terror Branch in March that year. The Medical Chamber subsequently opened a disciplinary investigation into the doctors' conduct for possible concealment of torture. One doctor reported to the TMA that Fatma was shaking during the examination and did not want to be touched. No disciplinary measures were taken against the doctors in question because they did not have the mandatory forms to write their reports on.

On 9 November 1999 the lawyers filed a formal complaint against the police, requesting an investigation to be opened against them for torture, rape and sexual harassment. However, the chief prosecutor decided not to prosecute the accused police officers. He referred to the five medical reports issued while the young women were detained at the Anti-Terror Branch which said they were

in good health. In addition, the prosecutor stated that the women had not mentioned torture when they were taken to a prosecutor on 12 March 1999. He said that he had not taken reports of the Turkish Medical Association into account as they were "based on interpretation".

However, in January 2000 the local Penal Court accepted the lawyers' appeal against the prosecutor's decision not to prosecute the police officers. They criticized the lack of proper medical examinations as suggested by the TMA and that statements had not been taken from police officers nor from the doctors.

Trial against the four police officers charged

The four police officers who signed the statements of the girls in police custody were charged. Yet according to Fatma and N.C.S. they were tortured by at least six or seven police officers. During the first trial session in April 2000 the four indicted police officers said that they did not accept the medical reports issued by the Medical Association, but only the medical reports issued their period of detention at the Anti-Terror branch.

Two doctors who had examined the young women in March 1999 while they were held at the Anti-Terror Branch testified that there were no signs of torture and that no police had been present during the examinations.

The first trial session lasted six hours. The young women were traumatized and burst out into tears. According to the intervening lawyers the court board was affected by their account. Ultranationalists gathered in front of the court and beat and kicked the fathers of the girls.

During the second trial session a doctor testified that during the examination on 12 March 1999 the police were waiting one metre from the door and could hear and partly see the examination. N.C.S.'s mother testified that when she and her husband were allowed to see their daughter in detention that N.C.S. had a swollen face, a bruised lip and the brace on her teeth was broken.

During the most recent trial session on 6 February the hearing was adjourned to 12 April, awaiting the report from the Psycho-Social Trauma Centre at Capa Medical Faculty of which the court did not receive an original copy.

Trial against N.C.S.'s father, lawyers and women activists

While the trial against the suspected perpetrators is continuing, a trial will be opened against 13 women and three men, among them N.C.S.'s father, her lawyer Fatma Karakas and women's activists for having "insulted the Turkish army and police" which carries heavy sentences of one to six years' imprisonment. Fatma Polattas will also be indicted. An investigation was opened after a conference was organised in Istanbul called "No to sexual abuse and rape" on 10-11 June 2000 during which statements against rape and sexual abuse in custody were made. It appears that this trial is mainly targeted at silencing and deterring women and men who make sexual torture in custody public and try to bring the perpetrators to justice. The trial will take place in Istanbul on 21 March.

According to the indictments, incriminating statements made by participants at the conference included the following:

- Safiye Top (24): "I was detained at the Anti-Terror Branch of Istanbul Headquarters. I was exposed to torture and rape".
- N.C.S.'s father: "The duty of the police is to torture. They are in the first row. The second are doctors and courts. They are all torturers. This state has no mercy".
- Sultan Secik (25): "In 1997 I was arrested and brought to Police Headquarters in Vatan street [in Istanbul]. There I underwent rape by five or six police officers".
- Nazli Top (31): "I was arrested in 1992. They brought me to the back room of a police station. They started to beat me. They applied electro shocks to my toes and fingers. They raped me with a truncheon. Sometimes they stripped me naked and poured cold water over me".

Fatma Karakas, N.C.S.'s lawyer and representative of the Legal Aid Project for women raped and sexually abused in custody, is held responsible for accusing the state of systematic rape and sexual violence against Kurdish women.

Nazli Top: one of the first women to speak out on sexual torture experienced in custody

Nazli Top was working as a nurse and was two months pregnant when she was arrested on 27 April 1992. She was reportedly tortured, raped with a truncheon and especially beaten on her belly because she was pregnant. She was examined at the Istanbul Forensic Medicine Institute - with police present - which stated in a report that there were no marks of torture. After her release on 7 May 1992 she underwent a medical examination at the Bakirkoy Forensic Medicine Institute where marks on her breast and stomach were identified. Haseki hospital confirmed and documented the injuries. Nazli Top filed a complaint against the Istanbul Forensic Institute and her torturers. The prosecutor rejected the complaint against the Istanbul Forensic Institute for lack of evidence. Amnesty International campaigned on her behalf [see medical action EUR 44/53/92 and document EUR 44/52/92]. At the end of 1993 seven police officers were put on trial, accused of torturing her. Five months later they were acquitted on the grounds that there was not sufficient evidence to convict them. The acquittal was upheld by the appeal court.

Case 3: Zeynep Avci

Zeynep Avci was arrested in November 1996. She was held for over three weeks at the Anti-Terror branch of Izmir and the Istanbul Police Headquarters. During this period she was held in incommunicado detention with no access to legal counsel. She was finally brought before a prosecutor and judge on 18 December 1996 and subsequently remanded to Gebze prison. Since then she has been imprisoned pending trial in which she is charged with separatism under article 125 of the Turkish Criminal Code which carries the death sentence.

Two months after being charged, Zeynep Avci reported to a female lawyer what had happened to her while in police custody in Izmir. She told the lawyer that when she was arrested that the police officers "placed me on the back seat of a car and started to abuse me with their hands. They stripped me naked and again started to abuse me. Later they brought me to the police station. They put a wet sponge under my neck and (...) repeatedly exposed me to electric shocks over several hours. Meanwhile they let me hear R.'s¹ screams under torture. Afterwards they put me on another table. I had a cyst operation a while ago. They pressed something cold on the scar. I think it was a pistol. And they brought a truncheon. They told me "kneel down". And they slowly inserted the truncheon into my anus. Suddenly, they pushed me and forced me to sit on the truncheon. I started to bleed. Later they again forced me to lie on my back and gave me electric shock...Then one of them climbed on me and raped me. Afterward they exposed me to [further] electro shocks".

In May 1997 Zeynep Avci's lawyer submitted a complaint to the Izmir prosecutor accusing the police officers of torture and rape. The prosecutor decided in August 1997 not to pursue the case on the basis of two medical reports issued in July 1997. These stated that it was medically impossible to assess when sexual intercourse had taken place. In addition it was argued that no one had seen the rape taking place. The lawyer unsuccessfully appealed against this decision and filed an application to the European Court of Human Rights.

It was not until March 1999 that Zeynep Avci received a psychological examination for the first time at the Department of Psychiatry at the Istanbul Capa Medical Faculty and started a course of psychotherapy. However, in July 1999 after just three sessions she told the lawyer that the treatment could not continue as the security officers responsible for transporting her refused to leave the room during the therapy. Treatment was resumed during the third quarter of 2000. In November 1999, the

¹R.K., also charged with involvement in the PKK and a friend of Zeynep Avci, was arrested at the same time as her.

Psycho-Social Trauma Centre of the Istanbul Capa Medical Faculty Hospital reported that Zeynep Avci was suffering from a chronic form of post traumatic stress disorder.

Background information: torture and impunity in Turkey

The cases illustrate the scale of the problem of impunity still experienced by victims of torture and ill-treatment in Turkey today. Even where complaints of serious human rights violations are pursued by the authorities and security officers are prosecuted, only a negligible proportion of them are eventually convicted. According to recent official figures, investigations of 577 security officials accused of torture between 1995 and 1999 resulted in only 10 convictions (1.7 %). In the same period, 2851 investigations into cases of ill-treatment ended with 84 convictions (2.9 %). In cases where a conviction occurs, security officials often receive the lightest possible sentences.

During incommunicado detention in police or gendarmerie custody women and men are routinely stripped naked. Torture methods repeatedly reported to Amnesty International include electro-shocks and beating on the genitals and women's breasts, sexual abuse, including rape or rape threats. Between mid-1997 and November 2000, 133 women sought the help of a legal aid project in Istanbul for women raped and sexually abused in custody. The alleged perpetrators are almost always police officers, but include gendarmes, soldiers and village guards. They are rarely brought to justice.

Torture persists as a major concern for Amnesty International in Turkey although Turkey is a State Party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention obliges a State Party to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction (Article 2 (1)).

According to the first UN Special Rapporteur on Torture, Peter Kooijmans, "it [is] clear that rape and other forms of sexual assault against women in detention are a (...) violation of the inherent dignity and right to physical integrity of the human being, [and] constitute an act of torture".

The Convention on the Elimination of All Forms of Discrimination against Women to which Turkey is State Party obliges Turkey to condemn discrimination against women in all its forms (Article 2). The Committee on the Elimination of Discrimination against Women (CEDAW) noted in General Recommendation 19 that gender-based violence impairs or nullifies a number of rights, including:

- the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment;
- the right to equal protection according to humanitarian norms in time of international or internal armed conflict;
- the right to liberty and security of person;
- the right to equal protection under law.

The torture Azat Tokmak suffered in police custody is an especially gross human rights violation. Amnesty International is informed that many children are tortured or ill-treated in Turkey but finds it difficult to document individual cases. Children are entitled to special protection against torture and ill-treatment. Additional safeguards to protect children are provided in a range of international standards.

According to the UN Convention on the Rights of the Child, Article 37 states that "(a) No child shall be subject to torture or other cruel and inhuman or degrading treatment or punishment". According to Article 2, "States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members". Article 39 states that "States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment (...). Turkey ratified this convention in 1995. However, all the above- cited rights have been violated in the case of Azat Tokmak.

In 1997 the International Federation of Gynaecology and Obstetrics (FIGO) adopted a resolution on Violence against Women. Article 2 states that FIGO recommends that obstetricians and gynaecologists assist in the legal prosecution of cases of sexual abuse and rape by careful and sensitive documentation of the evidence.

For the effective investigation of torture, Amnesty International believes that doctors need to be given adequate resources to enable detailed examinations to be carried out by trained personnel to establish whether marks of observable physical and psychological effects are consistent with the torture that has been described. The principles for such examinations, as well as details of the required methodologies, are set out in a recently adopted international standard on the medical investigation of torture allegations, *'The Istanbul Protocol: Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment'*. The Protocol includes the *'Principles for the Effective Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment'*. These Principles make clear that a doctor's examination of a person alleging torture should include:

- a history, *"including alleged methods of torture or ill-treatment, the times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms"*;
- a physical and psychological examination; and
- an opinion, *"an interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment"*.

[See the appendix for the *Principles for the Effective Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*].

Appendix I

Principles on the Effective Documentation of Torture (Istanbul Protocol) (1999)

The following Principles evolved in the drafting of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which was submitted to the United Nations by an ad hoc coalition of professional and human rights bodies and individuals in August 1999. The full text of the Istanbul Protocol is available at: <http://www.phrusa.org/research/istanbul.html> .

Principles for the Effective Documentation of Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment

The following principles represent a consensus among individuals and organizations having expertise in the investigation of torture.

1. The purposes of effective investigation and documentation of torture and other cruel, inhuman, or degrading treatment (hereafter torture or other ill treatment) include the following:

- (i) clarification of the facts and establishment and acknowledgment of individual and state responsibility for victims and their families;
- (ii) identification of measures needed to prevent recurrence;
- (iii) facilitating prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible, and demonstrating the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

2. States shall ensure that complaints and reports of torture shall be promptly and effectively investigated. Even in the absence of an express complaint, an investigation should be undertaken if there are other indications that torture or ill treatment may have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards, and the findings shall be made public.

3a. The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those allegedly involved in torture to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved and to demand the production of evidence.

3b. Alleged victims of torture, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture shall be removed from any position of control or power, whether direct or indirect over complainants, witnesses and their families, as well as those conducting the investigation.

4. Alleged victims of torture or ill treatment and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence.

5a. In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse, or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

5b. A written report, made within a reasonable period of time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. On completion, this report shall be made public. It shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, either reply to the report of the investigation or indicate the steps to be taken in response.

6a. Medical experts involved in the investigation of torture should behave at all times in conformity with the highest ethical standards and in particular shall obtain informed consent before any

examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

6b. The medical expert should promptly prepare an accurate written report. The report should include at least the following:

- i. **Circumstances of the interview:** name of the subject and names and affiliations of those present at the examination; the exact time and date, location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house, etc.); and the circumstances of the subject **at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination demeanor of those accompanying the prisoner, threatening statements to the examiner, etc.); and any other relevant factor;**
- ii. **History:** A detailed record of the subject's story as given during the interview, including alleged methods of torture or ill treatment, the times when torture or ill treatment is alleged to have occurred and all complaints of physical and psychological symptoms;
- iii. **Physical and psychological examination:** A record of all physical and psychological findings on clinical examination including, appropriate diagnostic tests and, where possible, color photographs of all injuries;
- iv. **Opinion:** An interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill treatment. A recommendation for any necessary medical and psychological treatment and/or further examination should also be given;
- v. **Authorship:** The report should clearly identify those carrying out the examination and should be signed.

6c. The report should be confidential and communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process should be solicited and recorded in the report. It should also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report should not be made available to any other person except with the consent of the subject or on the authorization of a court empowered to enforce such a transfer.

Definitive online text can be found as an Appendix to the 1999 report of the Special Rapporteur on Torture to the General Assembly (UN General Assembly Document A/54/426, 1 October 1999). Available by searching at the UNHCHR web site:

<http://www.unhchr.ch/Huridocda/Huridoca.nsf>.