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<p style="text-align: center;">MEDICAL CONCERN</p> <p style="text-align: center;">Combatting impunity: the role of effective documentation of torture</p> <p style="text-align: center;">Turkey</p>
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Introduction

Amnesty International is concerned at the impunity which exists in Turkey with regard to those who carry out torture. Medical documentation of torture can play an important role in fighting impunity. Several circumstances, however, impede the effective documentation of torture, including:

- intimidation of detainees and doctors before, during and following examinations; impediments to the use of medical reports in torture investigations; harassment of health professionals working against torture; complicity of health professionals with those who carry out torture.

This action is part of Amnesty International's campaign against torture and summarizes concerns described in the paper *Turkey: An end to torture and impunity is overdue* (see AI index: EUR 44/072/2001). It specifically addresses impunity caused or exacerbated by the failure of investigating authorities to obtain and use good medical documentation.

Intimidation of detainees and doctors before, during and following examinations

According to the Turkish Regulation on Apprehension, detainees are to be presented to doctors shortly after their arrest, when their detention is extended and at the end of their custody. This practice could be a safeguard against torture if these medical examinations took place in an atmosphere without intimidation and were comprehensive.

However, when detainees are taken for an official medical examination, they are reportedly often told by police officers that if they declare their injuries they will be brought back to the police station for further "interrogation".

The case of Hacı Inan and Kamuran Kabul

A group of some 20 people, including Hacı Inan and Kamuran Kabul, were arrested in Sirnak on 21 March 2000 and reportedly tortured in Sirnak Police Headquarters. The men reported that methods included electric shocks, beating of the hands with a truncheon and hosing with pressurized water. On the way to a medical examination police officers threatened the detainees saying that they would kill them if they mentioned torture. According to the detainees, most of the doctors were afraid to record what they saw. One reportedly told a detainee, "If I note torture wounds I will be tortured myself". Other doctors did not allow the police inside the examination room. The doctor examining Hacı Inan noted that he had a wound on his hand caused by beatings. When, after 10 days, the group was brought to Mardin Prison the prison director did not accept them because of the wounds on their bodies.

They were sent back to Sirnak and on request of the prosecutor examined on 3 April 2000 at an infirmary. This time the doctors noted wounds for some of the alleged torture victims. A complaint was filed by their lawyers, but the prosecutor decided not to prosecute. The lawyers appealed and two men who had been released were sent to the State Forensic Institute in Istanbul in October 2000.

According to reports they were only asked whether there were any wounds on their bodies, and the men were not asked to undress. No attempt at examination was made. Eventually, the lawyers' appeal was accepted and a trial started before Sirnak Heavy Penalty Court on 25 September 2001: five police officers were charged with torture under Article 243 of the Turkish Penal Code and six doctors from the State Hospital and the Infirmary No. 2 in Sirnak with preparing a forged document under Article 339.

The above case also highlights some of the circumstances constraining a comprehensive and independent examination of detainees by doctors. Firstly, doctors at local hospitals or infirmaries are frequently asked by security officers to examine a large group of detainees in a very short time. This often happens in the middle of the night. Secondly, medical examinations often take place in the presence of security officers who are either in the same room or within hearing distance in order to intimidate both detainee and doctor. In one case, consultations between a psychiatrist and a female prisoner who had complained of rape in custody were conducted in writing, because the security officers who had brought the woman from prison to the hospital refused to leave the room. The Turkish government reportedly plans to change some provisions of the Regulation on Apprehension. Article 10 of the Regulation would read:

*"It is a basic rule for the relationship between the patient and the doctor that the person to be examined stays only with the physician. Only the doctor or the suspect may ask for personal security reasons that the examination is carried out in the presence of the security officers."*¹

Amnesty International has also received several reports that doctors have been told by police or security personnel not to mention any evidence of torture in their reports.

The case of Mehmet Ali Celik

Mehmet Ali Celik, a 17-year-old Kurd working for a legal pro-Kurdish daily newspaper, reported that he was heavily beaten by plainclothes police officers when they came to search his house in Nusaybin in the province of Mardin on the night of 18 February 2001. When he filed a formal complaint and tried to obtain a medical report the police commissioner reportedly intimidated doctors at the local hospital not to write such a report. When he subsequently went to Mardin, doctors were afraid to write a report as soon as they learned that he had been tortured.

When, in spite of intimidation, the detainee obtains a medical report confirming signs of torture, security officers have sometimes refused to accept such a medical report, pressing the doctor to re-write the report in a more "acceptable" form. Where this has not worked, they have sometimes gone to a second doctor who provides them with a report not mentioning signs of torture.

The case of Seher Durgac

Seher Durgac was reportedly tortured by severe beating, electric shocks, pressurized water and rape threats when she was held at the Anti-Terror Branch of Diyarbakir Police Headquarters from 13 June 2001 for six days. She reported that she was subsequently taken to an infirmary. When the doctor wrote a report confirming her torture allegations, police officers took her to another doctor who wrote a report stating that she had not been tortured.

Impediments to the use of medical reports in torture investigations

Effective documentation of torture is hampered by a number of difficulties, including work load of the State Forensic Institute, non-acceptance of psychiatric reports and reports by the Turkish Human Rights Foundation and the lack of training of doctors in preparing judicial medical reports.

State Forensic Institute

It is extremely difficult to achieve a proper investigation and prosecution for torture without a corroborating medical certificate from a doctor or health centre authorized by the State Forensic Institute. In a number of cases, however, it has proven to be difficult to obtain a comprehensive report

¹Information from Human Rights Foundation of Turkey, 20 August 2001 IS THIS RIGHT?

from the State Forensic Institute. The experts at the institute have a very high work load, causing major delays in investigations. Furthermore, fees for examinations have to be paid by the victim, which may act as a deterrent to poor families.

Human Rights Foundation of Turkey

The Human Rights Foundation of Turkey (TIHV) on the other hand offers free treatment and rehabilitation to victims of police violence and torture. TIHV experts also have equipment, knowledge and experience with which they are able to identify traces left by a variety of torture techniques. However, prosecutors and courts often do not accept expert reports prepared by institutions other than the Forensic Institute. Furthermore, TIHV has repeatedly been put under pressure from the authorities, making their work more difficult and less secure (see below: the health professional role with respect to torture).

Non-acceptance of psychiatric reports

In addition, courts have sometimes not sought as evidence expert psychiatric reports. Psychiatric reports have gained importance in the documentation of torture, since the security forces increasingly use psychological and other forms of torture which do not leave visible wounds, making torture allegations more difficult to verify. (It is also increasingly recognised that physical torture has profound effects on the mental well-being of survivors of that torture.) Police and gendarmerie may use methods such as hosing with pressurized cold water; squeezing men's testicles or women's breasts; making the detainee stand or sit in uncomfortable positions for hours; deprivation of sleep, food and drink; and the widespread use of psychological forms of torture like threats of death and rape. It is therefore especially important to include in an examination psychological evidence of torture and an account of events as provided by the complainant. Psychiatric reports are particularly important in rape cases, because the usual delay in obtaining physical medical examinations seriously hinders the usefulness of such examinations. The Legal Aid Project in Istanbul for women who have been sexually tortured has been urging Turkish courts to accept psychiatric reports as evidence in trials on rape-in-custody allegations. Although some courts have accepted such reports, Amnesty International has been informed of several trials concerning alleged rape in custody in which the courts did not accept expert psychiatric reports concerning the victim.

The case of Fatma Cakir

An AI delegate observed the 28 March 2001 session of the trial of three gendarmes charged with having tortured Fatma Cakir in 1993. Only years later could Fatma Cakir find the strength to report her torture (which included a serious sexual assault by gendarmes in Mardin Gendarmerie Headquarters). Her lawyers requested her transfer to the Psycho-social Trauma Centre at Capa Medical Faculty in Istanbul, but the Heavy Penalty Court in Mardin referred her only to the Forensic Institute in Diyarbakir where no such specialized expertise exists.

In other cases psychiatric reports prepared by experts at the Psycho-social Trauma Centre at Capa Medical Faculty in Istanbul were forwarded by prosecutors and courts to the Forensic State Institute.

The case of Asiye Guzel Zeybek

Asiye Guzel Zeybek, chief editor of the leftist magazine *Iscinin Yolu*, was arrested on 22 February 1997. She was detained at the Anti-Terror Branch of Istanbul Police for 13 days after which she was remanded to prison. On 8 October 1997 in a trial against her she detailed the torture that police officers from 'Team 3' had subjected her to. She said that she had been blindfolded, suspended by the arms, stripped naked and raped. In spite of repeated requests the court did not initiate an investigation into her allegations of torture. In another trial eight police officers were charged in connection with the alleged torture of 15 people who had been arrested in the same operation. Asiye was called as a witness and repeated the torture allegations. A report issued by specialists from the Medical Faculty of Istanbul University stated that she was "preoccupied with the traumatic experience [rape] she said she had experienced in February 1997" and that she suffered from post-traumatic stress disorder. This report was read out in the above trial on 10 December 1998 and was sent to the State Forensic Institute.

The Forensic Institute stated in its report on 14 August 2000 that the findings as described in the report of Istanbul University Medical Faculty could have resulted from the alleged rape in custody but that they also could have resulted from other traumatic events either in custody or in prison. A second report from the Forensic Institute stated that there was no medical evidence pointing to physical trauma and rape. On 17 October 2000, the prosecutor decided not to proceed against the

alleged perpetrators. Asiye Guzel's lawyer argued in an appeal that the Forensic Institute did not conduct a comprehensive examination by a female psychiatrist; that there had been no further traumatic events in prison; and that three years after the alleged rape it was impossible to produce medical evidence. The lawyer's appeal was rejected on 5 December 2000.

Amnesty International has similar concerns for impunity in the case of torture of two young women, Fatma Polattas and N.C.S.². The two women were allegedly tortured and forced to give false confessions while detained at Police Headquarters in Iskenderun in March 1999. According to their testimonies, their torture included anal rape with a serrated instrument and other sexual assault. Following a public outcry and international campaigning, four police officers were put on trial for torture. However, the trial has still not been concluded. Reports prepared by psychiatrists at the Psycho-Social Trauma Centre at the Medical Faculty in Istanbul certify that the two young women were exposed to a trauma and are suffering from Post-Traumatic Stress Disorder. The courts say that they are waiting for the psychiatric reports to be officially submitted. Amnesty International is concerned that those responsible for the alleged torture are still not brought to justice.

Lack of training of doctors in preparing judicial medical examination reports

In nearly all recent cases known to Amnesty International, doctors only used one-page forms (and noted "no signs of beating or force") instead of using the three-page forms for general judicial medical examination reports and sexual assault reports prescribed by the Justice Ministry since 20 September 2000.

²See: 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) (AI index: EUR 44/006/2001, 20 February 2001).

The consistent failure of forensic and other doctors to follow acceptable procedures in the investigation and documentation of torture and in subsequent report writing led a number of Turkish doctors to join initiatives for a new standard for medical investigation of torture. In August 1999 the result of this initiative -- the Istanbul Protocol -- was delivered to the UN High Commissioner for Human Rights, Mary Robinson -- and in mid-2001 the protocol was published in the UN's Professional Training Series.³

The health professional role with respect to torture

Both the Turkish Medical Association (TMA) and health professionals working for human rights organizations have contributed to the struggle against torture in Turkey. The TMA has documented the problems faced by doctors during the 1990s in the face of military action in the southeast of Turkey and urged necessary reforms⁴. It also has promoted standards of medical ethics to its membership and investigated allegations of physicians' participation in torture. Its concerns about torture led to its contribution in the development of the Istanbul Protocol (see above). Similarly medical teams working for the TIHV have documented torture and contributed expert opinion in cases where official investigations have failed to record the evident signs of torture sequelae. These human rights activities have led to harassment. For example, doctors from the TIHV were prosecuted in connection with their work in the organization's treatment centres for victims of torture as well as records being seized in breach of accepted notions of medical confidentiality⁵. The TMA was prosecuted in early 2001 in connection with visits made by TMA delegates to examine and inform prisoners undertaking the major hunger strike which began in October 2000. The prosecution led to acquittal of all those charged.

However, as noted above, some doctors reportedly have failed to note evidence of torture in their examination reports of detainees alleging torture.

11 men alleging torture in Sivasli

In three villages and the small town of Sivasli in the western province of Usak, 11 people were arrested from their homes by gendarmerie during the night of 23 and 24 January 2001. The local prosecutor gave permission to hold them in detention for four days. On 27 January they were released by a prosecutor. The men reported that they were blindfolded and handcuffed from the moment of their arrest. During transport and at the gendarmerie station they were beaten and forced to sit on a very cold concrete floor, having been stripped of their trousers and underpants. Two of them also reported that they had been subjected to *falaka* (beating on the soles of the feet), one squeezing of his testicles, another one squeezing of his penis. They were also threatened with other forms of torture. The men reported that they were taken to the state hospital in Sivasli the morning after their arrest, blindfolded and with their hands chained. The doctors reportedly did not examine them fully and did not note or take seriously their complaints of, for example, pain in their legs and head because of the beatings. After their release the men filed formal complaints against the gendarmerie officers and the doctors. With the support of human rights organizations, four of the men were medically examined in Izmir. The Medical Chamber in Izmir concluded that medical and psychiatric results corroborated the torture allegations.

In another case, the deputy health director of Diyarbakir tried to persuade his medical staff to change their reports noting evidence of torture of Sait Donmus and Mehmet Ali Kaplan.

The case of Sait Donmus and Mehmet Ali Kaplan

Sait Donmus and Mehmet Ali Kaplan were arrested on 30 June 2000 in the Silvan district of Diyarbakir on suspicion of support for the PKK. Subsequently they were reportedly stripped naked, blindfolded and tortured at Silvan gendarmerie headquarters. They were beaten, had their testicles squeezed and were given electric shocks for six days, until they were brought before a prosecutor and released. On

³ *Istanbul Protocol - Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Geneva, 2001. Available on-line at: <http://www.unhchr.ch/pdf/8istprot.pdf>.

⁴ *Turkey: Human rights and the health professions*, AI Index: EUR 44/159/1996, December 1996.

⁵ This occurred, for example, after the Diyarbakir branch of the TIHV was raided by the police on 7 September 2001. See: AI press release. Turkey: Risk of reprisals against torture victims and human rights defenders, AI Index EUR 44/063/2001, 10 September 2001.

1 July they were examined at Diyarbakir State Hospital where doctors noted their torture wounds. After gendarmes complained about the medical report, the deputy health director intervened and tried to persuade the doctors to change their report. When the doctors refused to issue a false report the gendarmes reportedly destroyed the original report and went to a hospital in Silvan from where they obtained a report stating "No signs of beating or violence".

Later, the Medical Chamber of Diyarbakir, Batman and Siirt filed a formal complaint against the gendarmes, the doctor in Silvan who issued the false report and the deputy health director. Under the 1999 Law on the Prosecution of Civil Servants, the governor of Diyarbakir refused permission for the prosecution of the deputy health director, but the local prosecutor appealed against this decision. The appeal was accepted and finally a trial was opened in which the deputy health director was charged with misuse of his duty. On 15 November 2001 the deputy health director was convicted to 10 months' imprisonment and 2 ½ months' suspension from office for abuse of his professional role. His sentence was suspended.

Conclusion

Torture persists in Turkey in part because of the impunity usually enjoyed by those who carry out this abuse. Medical evidence can contribute to the exposure of torture and to an increasing pressure to weaken impunity and to end torture. Strengthening the capacity of the judicial system in Turkey to use expert medical evidence is an important goal and AI continues to urge the Turkish authorities to take measures to strengthen this important contribution to justice.

Appendix I

Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [1]

The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment (hereafter referred to as torture or other ill-treatment) include the following: clarification of the facts and establishment and acknowledgment of individual and State responsibility for victims and their families, identification of measures needed to prevent recurrence and facilitation of prosecution or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of 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. [1]

States shall ensure that complaints and reports of torture or ill-treatment 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 might 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.

The investigative authority shall have the power and obligation to obtainable the information necessary to the inquiry.[2] 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 acting in an official capacity allegedly involved in torture or ill-treatment 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. Alleged victims of torture or ill-treatment, 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 or ill-treatment 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.

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. 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. [3]

A written report, made within a reasonable 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, reply to the report of the investigation, and, as appropriate, indicate steps to be taken in response. Medical experts involved in the investigation of torture or ill-treatment 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 follow 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.

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

(a) The name of the subject and the name and affiliation 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); 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, demeanour of those accompanying the prisoner, threatening statements to the examiner) and any other relevant factors;

(b) A detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the time when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;

(c) A record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, colour photographs of all injuries;

(d) 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 further examination should be given;

(e) The report should clearly identify those carrying out the examination and should be signed.

The report should be confidential and communicated to the subject or a 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 transfer.

[1] The Commission on Human Rights, in its resolution 2000/43, and the General Assembly, in its resolution 55/89, drew the attention of Governments to the Principles and strongly encouraged Governments to reflect upon the Principles as a useful tool in efforts to combat torture.

[2] Under certain circumstances professional ethics may require information to be kept confidential. These requirements should be respected.

[3] See footnote above.

[Note: The footnotes above are numbered 132-134 in the published version of the Istanbul Protocol.]