

# DOCTORS AND TORTURE

## INTRODUCTION

A 16-year-old high school student testified that she was continually beaten, particularly on her genitals, buttocks and breasts, during several days of interrogation at the Anti-Terror Branch of Police Headquarters in Iskenderun, Turkey, in March 1999. Five doctors saw her. None reported any signs of violence.<sup>1</sup>

Torture is banned in all circumstances by international law. Yet in three-quarters of the countries of the world, members of the police and security forces - the very people who should uphold the law and protect human rights - are using torture and thereby devastating the lives of their victims. Doctors, by virtue of their professional training, can become involved in torture, whether they wish to or not.

The prevalence of torture does not excuse anyone who becomes involved in it or exonerate any government that allows it to continue. Doctors can play an important role in both facilitating and combating torture. This paper aims to help doctors fight torture - by highlighting what they can do to stop torture and how medical associations can help. The paper also describes how and why doctors can become involved in torture and cites international principles of medical ethics on this issue.

## CHAPTER 1: HOW DOCTORS GET INVOLVED IN TORTURE:

It is difficult to imagine how doctors can be linked with torture. Doctors are trained to reduce suffering and save lives. Torture involves the deliberate infliction of suffering, sometimes to the point of death.

Doctors come into contact with torture in many ways. Torture victims often need medical attention, whether in the detention centre or in hospital. As a result, doctors are frequently the first line of detection for cases of torture as they are the first to examine the victim.

Those who commit torture sometimes seek the help of doctors. For instance,

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<sup>1</sup> See *Turkey: Medical letter writing action B Torture of women and children in Turkey*, AI Index: EUR 44/006/2001.

they may ask doctors for advice on the health of their victim before and during torture to make the torture “more effective” or to prevent death. Those who practice torture may need doctors to help cover their crime, for example by writing false or inaccurate medical records. They may also need doctors to lend a “spurious respectability” to their wrongdoings, as M. Philips and J. Dawson show in their book *Doctors Dilemmas: Medical Ethics and Contemporary Science*.

Torture usually takes place in prisons, police detention centres and military institutions. Prison, police and military doctors are therefore the types of doctor most likely to encounter cases of torture and most likely to become involved in torture. Such doctors may be employed directly by the institutions where torture takes place, or be brought in from outside to treat torture victims.

Doctors may get involved in three phases of torture - the preparation, the torture itself, and the follow-up.

#### 1) Preparation phase

Prisoners may receive a medical examination before they are tortured. This information is sometimes used to make the torture more effective. Doctors have been asked to evaluate whether a person is fit enough to withstand torture, of what kind and to what extent. For example, they have been asked to highlight any medical condition that could be seriously aggravated by torture.

It has also been reported that doctors have been asked to identify a victim’s weak points so that they can be exploited during torture.

#### 2) Torture phase

Reports from various countries indicate that some doctors are present when torture takes place or assist in the torture, for example by designing an instrument of torture, by actually helping with the torture, or by denying the victim timely medical care. Doctors have facilitated torture by acting as medical advisers or supervisors of torture, for example by providing advice when a life-threatening situation has been reached. Doctors have also used their expertise to provide medical treatment during torture to sustain the victims or resuscitate them.

#### 3) Follow-up phase

Doctors have been called upon to provide a medical record or forensic assessment of the victims (or their remains) after torture has been inflicted. They have also provided urgent medical care after the torture has ended, and “patched up” victims before they are seen publicly -- in a court of law, during meetings with family or on release.

Doctors have not always carried out medical examinations with due care or given adequate medical treatment, and in some cases have refused to treat torture victims at all. They have also placed undue delays on the transfer of torture victims to appropriate medical care centres for treatment of injuries sustained during torture.

Doctors who have been asked to document the medical condition of a torture victim have issued inaccurate or false certificates or reports. Examples of this range from the omission of important medical information such as marks of ill-treatment and injuries, to the deliberate falsification of findings.

In some cases, doctors have reportedly produced medical reports on torture victims without having examined or seen the victims or their remains. In others, doctors have refused to document any torture case they come across or to acknowledge evidence of torture. Some doctors, when needed to give evidence of torture at a court hearing, have refused to come forward and testify.

On occasion, victims of torture have been returned to their interrogators after prolonged medical care in hospital. While doctors are not always able to protect their patients from such a fate, in some cases they appear to have made no effort to protect them.

**Case examples:**

*In South Africa, 33-year-old Basil Jaca was reportedly beaten by six soldiers and a police reservist at home at Flaxton Farm, near Ixopo, on 1 July 2000. They assaulted him by repeatedly pushing a rifle into his anus, while demanding to know the whereabouts of a gun. The doctor who later examined him failed to refer him to hospital although Basil Jaca was bleeding, in great pain and barely able to walk. Basil Jaca died on 2 July.*<sup>2</sup>

*In China, 62-year-old Li Xin was arrested when disputing the way the police handled a complaint in the main street of his home town in Huading Town of Jilin Province on 12 July 1999. He was subsequently detained because he refused to give his name and demanded to see the head of the court. During detention, he was*

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<sup>2</sup> See South Africa entry in *Amnesty International Report 2000*, AI Index: POL 10/001/2001.

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*allegedly tortured. He was taken by his son from the detention centre to the town hospital, and died there on 14 July.*

*Two legal medical experts carried out a post-mortem on Li Xin and produced the autopsy report. They concluded that he had died of coronary heart disease and that his broken ribs were probably caused by heart massage during resuscitation. It later emerged that Li Xin had no history of heart disease and that all his ribs and both collarbones were broken.*<sup>3</sup>

*In the USA, Lawrence Frazier, a diabetic prisoner held at Wallens Ridge State Prison, was repeatedly given electric shocks with a stun gun after being taken to the prison infirmary apparently suffering from hypoglycaemia. Prison officials said the stun gun was used to restrain him after he became “combative” when being examined by a doctor. Lawrence Frazier died on 4 July 2000, five days after being sent to the infirmary.*

*On 13 July 2000 the Virginia Department of Corrections (VDOC) issued a statement announcing that a medical study had concluded that use of a stun device had played no part in Lawrence Frazier’s death. However, it emerged that this “study” (which the department refused to make public) was carried out for the VDOC by one doctor who had no access to the forensic reports and did not examine the body.*<sup>4</sup>

## **CHAPTER 2: WHY DOCTORS GET INVOLVED:**

There are many reasons why doctors become involved in torture, ranging from workplace loyalty to threats of violence.

### **1) Bureaucratic necessity**

Some doctors work within a bureaucratic structure in which their loyalty to their employer is both assumed and expected. They may even become, as one report

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<sup>3</sup> See *Falu Tiandi*, 2000, Vol.5, pp.4-9.

<sup>4</sup> *USA: Abuses Continue Unabated? Cruel and Inhumane Treatment at Virginia Supermaximum Security Prisons*, AI Index: AMR 51/065/2001.

described it, “cogs in a system of state terror”.<sup>5</sup> Doctors may not feel comfortable with their involvement, but those enmeshed in bureaucratic structures may find it difficult to oppose their employers.

## **2) Persuasion**

Some doctors are persuaded to get involved in torture. The persuasion can take various forms, but is often made effective by linking torture with grandiose objectives such as preserving national security. If doctors are sympathetic to or become persuaded of such objectives, they might be talked into taking part in torture. Doctors may also be persuaded by offers of rewards.

## **3) Pressure and threats**

Doctors may come under subtle or overt pressure to assist in torture procedures. The pressure may involve intermittent interference in the work of doctors or persistent intimidation. It may involve threats of dismissal, transfer or physical injury. It may also involve death threats to uncooperative doctors or their families.

## **4) Workplace pressures**

Doctors working in prisons, detention centres and military institutions appear to be more susceptible and vulnerable to persuasion, pressure and threats, and are thus more likely to slide into participating in torture.

Most of these institutions are run as a closed system where the flow of information and personnel are closely monitored and controlled. In these circumstances, those wishing to inflict torture can more easily influence the behaviour of doctors. The pressure and threats are intensified because the doctors normally have limited access to outside help. This is particularly true for newly recruited doctors or interns.

Doctors working in such institutions are usually employed by the individual institutions or national prison service, rather than by an independent health institute. They may believe that their obligation to serve these institutions matches their obligation to meet the needs of their patients. They may therefore not defend clinical independence as much as they should when being persuaded by their employers to assist with or facilitate torture.

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<sup>5</sup> *Uruguay's Military Physicians: Cogs in a System of State Terror*, Bloche GM, Washington, DC, American Association for the Advancement of Science, 1987.

### 5) Lack of awareness of medical ethics

In some cases, the involvement of doctors in torture has simply been a result of their inadequate awareness of medical ethics (see below). Some doctors may believe that if they do not actually take part in torturing an individual, they are not infringing medical ethics.

#### Case examples

*In India, Laxman Singh was attacked and severely injured by a group of men in the village of Guthakar in Rajasthan on 23 October 2000. The police reportedly agreed to protect the perpetrators, and subsequently took Laxman Singh to Bharatpur hospital, where he was not given a bed or immediate treatment for his injuries. The attackers reportedly gave a doctor money to falsify the medical records and told the doctor that it did not matter if Laxman Singh died. Laxman Singh was later transferred to a hospital in Jaipur where doctors told him that, because of the poor treatment he had received at Bharatpur hospital, his legs had developed gangrene and would have to be amputated.*<sup>6</sup>

*In Nepal, Bishnu Lal Batar, accused of theft, appeared before Jhapa district court with a wounded arm. The judge ordered that the wound be examined and Bishnu Lal Batar was taken to the local government doctor. It was alleged, however, that the police contacted the doctor soon after the judge made the order, in order to ensure that the medical report would not cause them problems. The doctor's report stated that the wound had been inflicted "a long time ago", i.e. before the accused was taken into custody. The case was further investigated, resulting in the police officer who had inflicted the wound during torture paying Rupees 9,000 (\$122).*<sup>7</sup>

## CHAPTER 3: ETHICAL STANDARDS:

According to international standards, torture constitutes a violation of human rights. The United Nations (UN) Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states (Article 2):

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<sup>6</sup> *Freedom from Racial Discrimination, AI Index: IOR 41/003/2001.*

<sup>7</sup> *Nepal: Make Torture a Crime, ASA 31/002/2001.*

*“Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.”*

Moreover, torture is never justified, whatever the circumstances. Article 2 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to which the People’s Republic of China is a state party, states:

*“1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.*

*“2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.*

*“3. An order from a superior officer or a public authority may not be invoked as a justification of torture.”*

Doctors’ involvement in torture, of whatever form and degree, is always contrary to medical ethics. This is stated clearly in the UN Principles of Medical Ethics

Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment:

*“1. Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.*

*“2. It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment...”*

*“4. It is a contravention of medical ethics for health personnel, particularly physicians:*

*a) To apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments;*

*b) To certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.”*

The Declaration of Tokyo, agreed in 1975 by the World Medical Association (of which the Chinese Medical Association is a member), states:

*“1. The doctor shall not countenance, condone or participate in the practice of torture or cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedures is suspected, accused or guilty, and whatever the victim's beliefs or motives, and in all situations, including armed conflict and civil strife.*

*“2. The doctor shall not provide any premises, instruments, substances or knowledge to facilitate the practice of torture or other forms of cruel, inhuman, degrading treatment to diminish the ability of the victim to resist such treatment.*

*“3. The doctor shall not be present during any procedure during which torture or other forms of cruel, inhuman or degrading treatment are used or threatened.”*

According to domestic law in China, torture is a criminal offence, and doctors should always safeguard the interests of their patients.

People's Republic of China Criminal Law:

(Article 247)

*“Any judicial officer who extorts confession from a criminal suspect or defendant by torture or extorts testimony from a witness by violence shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention. If he causes injury, disability or death to the victim, he shall be convicted and given a heavier punishment in accordance with the*

*provisions of Article 234 or 232 of this Law.”*

People’s Republic of China Practising Doctors Law (effective from 1/5/1999):

(Article 3)

*“Doctors should possess good professional ethics and medical practice standard. They should promote humanitarianism and perform the sacred duties of prevention and curing, healing the wounded and rescuing the dying, safeguarding the people’s health...”*

(Article 22)

*Doctors shall perform the following obligations during their practice:*

*(1) to abide by laws and regulations and to comply with technical operation standards;*

*(2) to establish the spirit of working diligently, to observe the professional ethics, to perform doctor’s duties and to serve patients dutifully and responsibly;*

*(3) to be concerned for, care and respect patients, and to protect patients’ privacy...”*

People’s Republic of China, State Council’s decree No. 149: Medical Institution Management Ordinance (effective from 1/9/1994):

(Article 30)

*“Staffs of medical institutions must bear nametags with their names, duties or titles when performing duties.*

(Article 31)

*Medical institutions should effect immediate rescue to critical patients and timely transfer patients who cannot be diagnosed and received treatment because of limitations of equipment and technical conditions.*

(Article 32)

*Medical institutions should not issue certificates like certificates of diagnosis, healthiness certificates or death certificates without diagnosis of patients by doctors (practitioners) nor birth certificates or miscarriage reports without practice by doctors (practitioners) or midwives.”*

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In addition to the standards above, doctors' involvement in torture is considered contrary to all the international and regional human rights standards and the ethics standards listed below:

- \_ Universal Declaration of Human Rights (United Nations, 1948)
- \_ Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment (United Nations, 1988)
- \_ African Charter on Human and Peoples' Rights (Organization of African Unity, 1981)
- \_ Inter-American Convention to Prevent and Punish Torture (Organization of American States, 1985)
- \_ European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Council of Europe, 1987)
- \_ The Declaration of Geneva (World Medical Association, 1948)
- \_ International Code of Medical Ethics (World Medical Association, 1949)
- \_ Resolution on Human Rights (World Medical Association, 1990)

#### **CHAPTER 4: WHAT DOCTORS CAN DO:**

All the evidence shows that most doctors consistently attempt to act in the best interests of their patients. They find torture abhorrent and do not want to assist or take part in it in any way. Despite this, as shown above, some doctors come under pressure to

*act in ways contrary to medical ethics.*

*Amnesty International believes that if doctors act according to the following principles, drawn from international ethics and human rights standards, they would be better able to resist efforts to get them involved in torture and better equipped to protect their patients from torture.*

### ***1) Clinical independence***

*Doctors should always act with clinical independence. They should offer clinical recommendations for their patients based on their findings and not as a result of instruction from third parties. Their primary responsibility is to their patients, not the authorities. Where they are acting in a forensic capacity or in any other way that imposes responsibility to a third party, then the doctor must make clear to the patient these additional responsibilities. They should nevertheless act in conformity with medical ethics and, in particular, act with honesty and integrity. Clinical patient records should be kept confidential.*

### ***2) Transparency***

*Doctors should always be identifiable to their patients and should expect to know the identity of the person whom they are examining or treating. They should not be expected to treat a patient who is blindfolded (for non-medical reasons) or is in any other way prevented from seeing the doctor. The doctor should*

not be expected to examine or interview a patient in the presence of third parties who impede free contact or alter the normal relationship between doctor and patient unless the doctor freely requests the presence of a third party to assist in communications or to maintain security. Doctors should never prescribe any treatment without sound clinical reasons.

### 3) Treatment

When an injured person is brought for treatment, doctors should always demand an explanation for the injury. Medical treatment should be given to torture victims, subject to their consent, in an ethical manner. If the victims are unable to consent because they are unconscious or drugged, for example, medical care should be provided in accordance with the ethical guidelines that would cover any similar case. The doctor should take all possible steps to prevent the patient being placed at further risk of torture.

### 4) Truth, clarity and accuracy

Doctors should make a clear and competent record of the findings of their medical interviews and examinations. This should include a careful record of any sign and effect of torture when that is found. They should never cover or hide evidence of torture. Such a record is crucial to achieving justice for victims of torture.

### 5) "Blowing the whistle"

Doctors should take action when they see or learn of torture. If security considerations permit it, they should bring evidence of torture to the attention of the manager of the institution in question. If this cannot be done in safety, they should report to a responsible body at the earliest opportunity. Doctors should use their best judgment to decide what national body can be trusted to handle such information responsibly. In the absence of any such body, they should contact international bodies such as the United Nations, the World Medical Association and the International Committee of the Red Cross.

#### **6) The role of medical associations**

While it is important that all doctors be required to refuse to collaborate in torture, it has to be recognised that placing the burden of refusal on the individual doctor is to impose a difficult decision. The refusal of the doctor to participate in torture will be made immeasurably easier if the collective weight of the medical profession stands behind such refusals. National medical associations should therefore implement the following measures:

- \_ Incorporate international human rights and ethical standards in professional codes of practices, and adopt a declaration opposing the involvement of doctors in torture;
- \_ Promote a wider knowledge of these standards by, for example, including them in professional training about human rights education and practical skills in detection,

- documentation and treatment of torture;*
- \_ Help doctors withstand pressure to become involved in torture, and support and encourage them to report any act of torture by, for example, providing a confidential contact number and ensuring that doctors have access to legal support;*
  - \_ Remove from their membership or register any doctor found, after fair and thorough investigation, to have taken part in torture;*
  - \_ Help doctors defend clinical independence in the face of interference from any government bodies by intervening with responsible government ministers;*
  - \_ Maintain links with overseas associations with a common concern against torture.*

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