

TABLE OF CONTENTS

# Turkey

## End sexual violence against women in custody!

<i>Chapter 1:</i>	
Chapter 1: Introduction .....	3
Chapter 2: Background .....	5
International Law .....	10
Due diligence .....	10
What is “honour”? .....	11
What is rape? .....	13
Rape as a form of torture .....	18
<b>Chapter 4: Inhuman or degrading treatment .....</b>	<b>20</b>
<b>Strip-searching and stripping during questioning.....</b>	<b>20</b>
<b>Chapter 5: Patterns of discrimination .....</b>	<b>22</b>
Gender-based discrimination .....	22
Ethnic discrimination .....	23
“Virginity testing” .....	27
The consequences of sexual violence against women .....	32
<b>Chapter 6: Women’s access to justice .....</b>	<b>34</b>
Disclosure and reporting violence to police.....	34
Gathering medical evidence.....	38
Justice delayed and denied.....	41
Chapter 7: Conclusion.....	43
Chapter 8: Amnesty International’s Recommendations .....	43



# Turkey

## End sexual violence against women in custody!



Police “escorting” Eren Keskin (centre), a human rights defender who acts for women who have been subjected to sexual violence in custody, Istanbul 2002 © Private.

### Chapter 1: Introduction

Every day women across Turkey experience sexual and other physical violence. Women from all social and cultural backgrounds have been abused, assaulted and raped by state security forces, acquaintances, complete strangers, and by family members, including their partners. In a twisted and paradoxical use of the term, the concept of “honour” can be used to attempt to silence women who are sexually assaulted. As a consequence sexual violence flourishes and

perpetrators act with impunity. The United Nations Special Rapporteur on violence against women, its causes and consequences, in her 1997 report to the UN Commission on Human Rights, has said:

*“As a manifestation of violence against women, rape and sexual violence, including sexual harassment, are universal, cutting across State borders and cultures, used in all countries and in all cultures as weapons of degradation and terror against women. All forms of sexual violence against women serve as methods of subjugating women by controlling their sexuality through violence, fear and intimidation.”<sup>1</sup>*

Although all women are at risk of violence, due to specific patterns of discrimination in Turkey Amnesty International is concerned that Kurdish women, particularly those living in the south-east, and women who hold political beliefs that are unacceptable to the government or the military, have been at increased risk of violence at the hands of agents of the state. Such violence is in violation of their internationally guaranteed right to be free from torture and inhuman and degrading treatment. Women who have the courage to speak out about their experiences have extreme difficulty in obtaining justice and both state and society combine to silence them.

In the last twelve months Turkey has undertaken legislative reforms with the stated aim of eradicating torture. However, as Amnesty International’s recent report, *Systematic torture continues in 2002*, documents,<sup>2</sup> torture is still systematically utilized, particularly in the Anti-Terror branches of police headquarters, and in the south-east. Furthermore, recent cases highlighted in this report demonstrate that torturers have modified their techniques, and continued to perpetrate sexual violence against women detained. Concerted action is needed to ensure Turkey’s commitment to international obligations to prevent and prohibit torture. In addition to the cases outlined in this report, Amnesty International’s research reveals that stripping women naked during questioning continues to be a form of inhuman and degrading treatment routinely perpetrated against women deprived of their liberty. Amnesty International is concerned that when agents of the state perpetrate violence against women a clear

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<sup>1</sup> UN Doc

<http://www.unhchr.ch/huridocda/huridoca.nsf/70ef163b25b2333fc1256991004de370/043c76f98a706362802566b1005e9219?OpenDocumentE/CN.4/1997/47>, at para 18, 16 January 1997, *Report of the Special Rapporteur on violence against women, its causes and consequences*.

<sup>2</sup> AI Index: EUR 44/040/2002

message is sent condoning violence against women, and encourages a culture of discrimination that places all women at risk.

Amnesty International, in writing this report, does not discount the sexual torture routinely perpetrated by state agents against men. For decades, Amnesty International has documented the practice of anal rape of men in prisons and police stations in Turkey. Recent reports received by Amnesty International suggest that currently, the most widespread form of sexual violence against men involves the squeezing of their testicles, although other forms of sexual violence continue. However, the subject of this report is sexual violence perpetrated against women. The report will focus on violence perpetrated by state actors, but will also look at the state's responsibilities in protecting women from other perpetrators of sexual violence. It will examine how patterns of discrimination perpetuated by the state can contribute to violence and compound the consequences of sexual violence for women. It will also examine the state's failure to provide redress.

This report is based on research undertaken by Amnesty International, including visits to Turkey in June and September 2002. Whilst steps are being taken with the declared aim of combating the use of torture in Turkey, Amnesty International seeks to ensure that the mechanisms which foster sexual violence against women by state and society are permanently eradicated, and to ensure that those women who have been subjected to sexual violence have access to mechanisms which enforce their rights to protection, reparation and redress. In compiling this report Amnesty International has worked in partnership with women who for reasons of "honour", state repression, discrimination or fear of ostracism, have found it difficult to speak out against sexual violence, although some continue to do so. Some of the survivors' names, whose cases have been highlighted in this report, have been withheld at their request - the full names are known to Amnesty International.

## **Chapter 2: Background**

Turkey had an early promising start in the promotion and protection of women's rights. Turkey's women won the right to vote in 1930, less than a decade after the formation of the Republic, and earlier than many of their European counterparts. Recent important developments have included the passage of the 1998 "Law on the Protection of the Family" which was achieved by persistent and tireless lobbying by women who for decades had sought measures to protect the rights of women in their homes and communities. The law includes judicial powers to forbid violent men from

coming near their family homes, and no longer recognizes men as the “head of the family”. However, despite these important developments, Amnesty International is concerned that the Turkish government has yet to implement fully its obligations to respect, protect and fulfil the rights of women.

In common with women across the world, women in Turkey run the risk of encountering violence. A majority of these women are subjected to physical and psychological violence such as assault, blows, and humiliation. Most women experience this type of violence at the hands of their partners, although many women also report these types of abuse from other members of their families and families-in-law. The majority of women who experience violence also report that it is either frequent or continuous. In surveys, a majority of health and other professionals have revealed that they perceive domestic violence as a private issue between husband and wife and unequivocally state that they will not intervene. A majority of women who report being beaten by their husbands are subsequently forced to have sexual relations with them.<sup>3</sup> One study found that more than half the women interviewed had experienced marital rape.<sup>4</sup> Acts of sexual violence within marriage are widespread but not punishable by law, as, for example, rape within marriage is not currently a crime in the Turkish Criminal Code. Some women in Turkey are forced to marry against their will. For example, amongst other reasons, a woman can be forced into a marriage because she has been raped, either to her rapist or to a third party. One human rights defender has sardonically termed the provision in Turkish law that enables men who rape women to receive a suspended sentence if they marry the victim “a Hollywood happy ending”.

Gender discrimination is widespread. Studies reveal that boys are more likely than girls to be educated beyond primary school<sup>5</sup>, and schoolbooks reinforce gender stereotypes of men in leadership roles and women doing housework.<sup>6</sup> Women

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<sup>3</sup> eg. Gölge, Z., Gökdoğan, M., Cantürk, G., Safran, N., Çöloğlu, S., Yavuz, M. *Domestic violence; the relationship between spouses*. Forensic Science Congress, 10-13 May, İstanbul, 2001; or Family Studies Organization of the Office of the Prime Minister. *Türkiye’de Kadın* 2001, 1994: 84 per cent of women have been subjected to verbal, and 79 per cent to physical violence.

<sup>4</sup> 35.6 per cent sometimes, and 16.3 per cent often (Ilkcaracan, P.. *Exploring the context of women’s sexuality in eastern Turkey*. Pp 229-244. In: Ilkcaracan, P. (Ed.) *Women and sexuality in Muslim societies*. WWHR Publications: İstanbul, 2000).

<sup>5</sup> In 1998 8.9 per cent of 21-24 year women were still studying compared with 14.7 per cent of men in that age group; 19.6 per cent of 16-20 year olds were still studying compared with 31.6 per cent of men, and 62.6 per cent of 6-15 year olds were studying compared with 74 per cent of men (Turkey Population and Health Survey, HUNEE, 1998)

<sup>6</sup> Üstündağ, N. (2001). A review of the 1-3 grade school books in Turkey according to human rights and gender equality criteria, WWHR: İstanbul.

experience social discrimination, such as the inability to choose their own marriage partner;<sup>7</sup> economic discrimination, in that men earn higher wages, own 92 per cent of all property and approximately 90 per cent of all GDP; and lack of representation in politics. As a result of the November 2002 elections 24 women (4.3 per cent) will sit in the assembly.



International Women's Day, 8 March 2002, Istanbul © Private

International bodies recognize that the continuing discrimination that women encounter in their communities often make women vulnerable to acts of violence. The UN Economic and Social Council recognized that sexual violence is "pervasive and cuts across lines of income, class and culture... [V]iolence against women derives from their unequal status in society."<sup>8</sup>

The international community recognizes that the denial of equal rights to women reinforces violence against them in detention and at home. Although the issue of gender-based violence is not expressly set out in the **Convention on the Elimination of All Forms of Discrimination against Women** (Women's

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<sup>7</sup> 58.1 per cent of women's families chose their marriage partner, although in 81.9 per cent of these cases the women approved; in 5.8 per cent of cases someone outside the family chose the woman's partner (Social Gender Statistics, Turkish Institute of Statistics, 1998)

<sup>8</sup> Economic and Social Council Resolution 1990/15, Recommendations and conclusions arising from the first review and appraisal of the implementation of the Nairobi Forward-looking strategies for the advancement of women to the year 2000, para. 23.

Convention) - ratified by the Turkish government with reservations<sup>9</sup> in 1985 - it is fundamental to its most basic provisions. The expert body charged with the responsibility of monitoring the implementation of the Women's Convention by state parties, called the Committee on the Elimination of Discrimination against Women, affirmed, in its General Recommendation 19, that violence against a woman constitutes a violation of her internationally recognized human rights.<sup>10</sup> This had been articulated in the Platform for Action of the Fourth World Conference on Women in Beijing, 1995, which stated that:

*"violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms. The long standing failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all States and should be addressed."*<sup>11</sup>

In General Recommendation 19, the Committee stated that:

*"the definition of discrimination includes gender-based violence, that is, violence that is directed at a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."*

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<sup>9</sup> "Reservations of the Government of the Republic of Turkey with regard to the articles of the Convention dealing with family relations which are not completely compatible with the provisions of the Turkish Civil Code...as well as with respect to article 29, paragraph 1. In pursuance of article 29, paragraph 2 of the Convention, the Government of the Republic of Turkey declares that it does not consider itself bound by paragraph 1 of this article." (Article 29, para 1 "Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.")

<sup>10</sup> General Recommendation 19, adopted in 1992, deals entirely with violence against women, and explicitly states that gender-based violence is a form of discrimination which seriously inhibits a woman's ability to enjoy rights and freedoms on a basis of equality with men.

<sup>11</sup> UN Doc A/CONF. 177/20, para 112.



General Recommendation 19 also states that "gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence".

The Women's Convention obligates states which are parties to it to take measures to protect women against and to prevent discriminatory acts, including those committed by private individuals or organizations. If the state authorities fail to offer protection against such practices and abuses or to bring to justice those who commit such abuses and to ensure reparation for the survivors, the state is in breach of its obligations under this Convention and other international human rights treaties.<sup>12</sup>

On 29 October 2002 Turkey ratified the **Optional Protocol to the Women's Convention**, a step which Amnesty International warmly welcomes. In doing so it has offered to women a means of seeking redress at the international level for violations of their rights under the Women's Convention. In particular, Turkey has authorized the Committee on the Elimination of Discrimination against Women to consider complaints by individuals and groups alleging that their rights under the Convention have been violated. The Protocol also allows the Committee to initiate a confidential investigation if it receives reliable information of grave or systematic violations by a state party of rights guaranteed under the Women's Convention.<sup>13</sup>

Discrimination against women and the sexual assault of women are linked. When individuals representing the state express discriminatory attitudes, this not only falls far short of upholding women's rights, but Amnesty International is concerned that it may contribute to violence against them. Discrimination, which devalues women, has the effect of making violence against them seem less significant than it is. Research in Turkey on the views of a number of professions on rape found that, in general, police more than other groups working with survivors of rape were more likely to have misconceptions about rape, including the beliefs that: women's appearance and behaviour predispose them to being subjected to rape; not every woman can be raped; it is less serious if a woman is raped by someone that she has

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<sup>12</sup> See Amnesty International, *Respect, protect, fulfil - Women's human rights: State responsibility for abuses by 'non-state actors'*, AI Index: IOR 50/01/00 and *Broken bodies, shattered minds - Torture and ill-treatment of women*, AI Index: ACT 40/001/2001.

<sup>13</sup> See Amnesty International's report, *Claiming women's rights: the Optional Protocol to the UN Women's Convention* (AI Index: IOR 51/001/2001)

previously had a sexual relationship with; and that one should be suspicious of the statement of a sex worker who alleges rape.<sup>14</sup>

### **International Law**

International human rights standards which prohibit violence against women include several treaties which Turkey has ratified – including the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child - and is therefore under a legal obligation to implement.

The Turkish legal system recognizes these obligations. In 1991, Turkey's Council of State, its highest administrative court, stated that international agreements are hierarchically superior to Turkish legal codes and that individuals are the subjects of international law. It also ruled that states like Turkey which are parties to the European Convention on Human Rights and Fundamental Freedoms undertake the obligation to provide the rights enshrined in the Convention for their citizens.<sup>15</sup>

International human rights treaties not only regulate the conduct of states and set limits on the exercise of state power; they also require states to take action to prevent abuses of human rights by private individuals. States have a duty under international law to take positive measures to prevent and prohibit rape, for example, and to respond to instances of rape, regardless of where they take place and whether the perpetrator is an agent of the state, a husband or a total stranger.

### **Due diligence**

In addition to its obligations to protect its citizens from torture at the hands of agents of the state, Turkey also has an obligation under international law to ensure that women are free from violence in their homes and communities. These obligations are not merely limited to legislating against and criminalizing violence, but require that the state adopt a whole range of measures including the training of state personnel, and the adoption of practical policies and mechanisms to protect women's rights.

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<sup>14</sup> Gölge, Z., Yavuz, M., & Günay, Y. (1999). *Professional attitudes and beliefs concerning rape*, 36(3), 146-153. Archives of Neuropsychiatry (Turkey). Other groups surveyed were judges, lawyers, trainee lawyers, psychologists, psychiatrists and forensic medical specialists.

<sup>15</sup> Danıştay 5<sup>th</sup> Chamber No.1991/933, 22 September 1991.

These measures should include not only legal measures such as penal sanctions, civil remedies and avenues for compensation, but also preventive measures such as public information and education programs, and protective measures, including the availability of shelters and services for women who have been exposed to violence.

The concept of due diligence describes the threshold of effort which a state must undertake to fulfil its responsibility to protect individuals from abuses of their rights by non-state actors. The Special Rapporteur on violence against women has held that “a State can be held complicit where it fails systematically to provide protection from private actors who deprive any person of his/her human rights”.<sup>16</sup> Due diligence includes taking effective steps to prevent abuses, to investigate them when they occur, to investigate the perpetrators and bring them to justice in fair proceedings, and to ensure adequate reparation including compensation, and redress. In addition to ensuring that the law is accessible to women who have experienced any form of violence, the state must also ensure that the law can best serve their needs.

### **What is “honour”?**

In addition to the physical and psychological effects of rape, women who have been sexually assaulted risk death, further violence, forced marriage or ostracism by their families or communities as a result of their experiences. In Turkey, the concept of “honour” is used as an excuse for inaction and as a means of silencing survivors of sexual violence, whilst ostensibly protecting them. Secrecy and non-intervention keep sexual violence “private” whilst the state continues to perpetrate and tolerate sexual violence against women by failing to act to protect their rights.

*“My cards and letters all said the same thing.*

*You gave us courage too.*

*It’s not you who should be ashamed, but the perpetrators.*

*You have taken an honourable step.*

*You are our honour.*

*There were dozens of cards and letters like this.*

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<sup>16</sup> UN Doc E/CN.4/1996/53 para 32

*My family and my husband's family never abandoned me. They took me to them from the start. My mother-in-law said: 'Is this not torture?' I was most afraid of my father's reaction: that he wouldn't call me his daughter and wouldn't visit me; whereas in fact my father said: 'Why didn't you tell me when I came to the division station?' I got the opportunity on one of the visiting days, I jumped at the possibility of embracing him and he kissed me on the forehead.*

*For them I was clean. My honour was untouched. This made me feel better. But at the same time the questioning and facing myself continued to be difficult. I had got stuck on the honour concept.*

*What was honour?"*

Asiye Güzel Zeybek<sup>17</sup>

There are many words for honour in Turkish. The most commonly used are *namus*, and *şeref*. Men and women possess *namus*. *Namus* can be clean when individuals - usually women - are deemed to have behaved appropriately, or it can be stained. Perpetrators of murder against female family members talk of "cleansing their honour" when they commit murder. Only men possess *şeref*, which is also honour, and is perceived as social standing and visibility in the public sphere. A man's honour is largely determined by his own behaviour and by the behaviour of his kin. A woman's *namus* is seen to be primarily defined through her sexuality, her physical appearance, and her behaviour. Men allegedly achieve *namus* through the sexual "purity" of their mothers, wives, daughters and sisters.

*"In a culture ... where family relations are very strong and the extended family dominates the individual...women's purity before marriage is not only an individual choice, but a family matter. Therefore, women's bodies are controlled by the family. The virginity of the women is not a personal matter, but a social phenomenon."*<sup>18</sup>

Women who live in communities which hold this belief system find it very difficult to speak out against sexual violence. They are perceived as "shameful" for

<sup>17</sup> *İşkencede Bir Tecavüz Öyküsü (A story of rape during torture)*; Ceylan: Istanbul 1999

<sup>18</sup> Cindoğlu, D. "Virginity tests and artificial virginity in modern Turkish medicine," pp 215-228, in: Ilkkaracan, P. (Ed.) *Women and sexuality in Muslim societies*. Women for Women's Human Rights Publications: Istanbul, 2000.

bringing up matters that should be kept “private”, and may be looked upon as guilty for simply disclosing sexual assaults, for, despite the fact that these assaults occurred against their will, blame is somehow still attached to the women. Even when individuals do not agree with this attribution of blame, the force of public opinion can be stronger than their private views. The disapproval of others in such circumstances can affect the livelihood of entire families – for example, a shopkeeper who does not “cleanse his family honour” may lose customers to his store.

However, the concept of “honour” is not merely a belief system. It has significantly impacted on the lives of women as a result of codification by law. The Turkish Criminal Code is constructed so that crimes involving sexual violence against women are defined as “Felonies against public decency and family order”, as opposed to other forms of assault against the person, which are classified as “Felonies against Individuals”. This definition has been carried forward to the draft criminal code currently before parliament. Amnesty International is concerned that this classification has the consequence that when a woman is sexually assaulted, the family or community, and not the individual, is defined as the wronged party, and the “honour” of that family or community is deemed to have been harmed. This has the effect that women’s physical and psychological integrity become less visible before the law.

Given this construction of “honour”, the use of sexual violence against women by agents of the state is particularly invidious. “Honour” is abused by the state when agents of the state sexually assault women. A community’s attachment to the “honour” of its women as represented by their sexual “purity” becomes a tool by which state agents can control dissent – torturing and degrading women as a means of attacking the woman, her family, group, and community. “Honour” is also abused by families and communities when women are locked in their homes, ostracized, and even murdered for their perceived wrongdoings in being raped, having extramarital affairs, choosing their own marriage partner, speaking to men, having songs played about them on the radio, or visiting the cinema. So-called “honour” crimes, the murder of women to cleanse a family’s honour, are anything but honourable. They are acts of violence which compound injustices already perpetrated against women.

### **What is rape?**

Rape is a crime of violence, domination and coercion, which affects women disproportionately. Rape causes severe physical or mental suffering, is a deliberate act

by the perpetrator and is a discriminatory act carried out with the intention to intimidate, degrade or humiliate the victim. The Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict defined rape as “the insertion, under conditions of force, coercion or duress, of any object, including but not limited to a penis, into a victim's vagina or anus; or the insertion, under conditions of force, coercion or duress, of a penis into the mouth of the victim”.<sup>19</sup> However, it has also been held that to formulate a definition of rape in international law, one should assume that “the central elements of the crime of rape cannot be captured in a mechanical description of the body parts”.<sup>20</sup>

23-year-old **H.T.** was held in detention between 8 and 11 March 2002 at the Anti-Terror Branch of Istanbul police headquarters on suspicion of membership of an illegal organization. During the detention she was allegedly tortured, including by having a stream of water forced up her vagina with a high-pressure hose, and she was stripped naked, spat at, and forced to sit in excreta. An official complaint about her treatment to the public prosecutor in Fatih, Istanbul, was filed, and her lawyers asked that she be sent from prison for psychological treatment.

There is no explicit definition of rape according to codified international treaty law. However, rape and other serious sexual assaults are implicitly prohibited under a number of international treaties, including the **European Convention for the Protection of Human Rights and Fundamental Freedoms**, and the statutes of the international criminal tribunals. The **International Criminal Tribunal for Rwanda** defined rape as: “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence, which includes rape, is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive.”<sup>21</sup> Rape is also explicitly prohibited as a crime in international law under the International Criminal Court statute, both as a war crime and as a crime against humanity.

The finalized draft text of the Elements of Crimes for the Statute of the **International Criminal Court** offers the following definition of rape:

<sup>19</sup> E/CN.4/Sub.2/1998/13 at para 24, Final report of Ms Gay J McDougall, *Special Rapporteur on Systematic rape, sexual slavery and slavery-like practices during armed conflict*.

<sup>20</sup> 1996 *Akayesu* judgment, Case No. ICTR-96-4-T

<sup>21</sup> *ibid.*

1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.<sup>22</sup>

However, as the Turkish Criminal Code currently stands, the definition of rape has been interpreted by the Turkish Supreme Court of Appeals as penetration of the vagina by the penis, or as anal rape of a man or woman by the penis. This definition and the relevant commentary has been carried forward to the draft criminal code currently before parliament. This definition of rape is extremely limiting when compared with definitions of rape and torture implicitly accepted in international humanitarian and human rights law. For example, rape with a foreign object and forced oral sex are not defined as rape; and women cannot be considered to be perpetrators of rape.

Amnesty International urges that rape be defined more comprehensively in domestic legislation and commentary, and that a range of serious sexual assaults be penalized appropriately. The current legislation provides lesser sentences for perpetrators of a wide range of sexual offences that do not fall within the narrow definition. A broader definition of rape should not discount the element of psychological pressure or coercion when seeking to establish the woman's claims of non-consent.

### **Chapter 3: Sexual violence in custody and rape as a form of torture**

#### **Sexual violence in custody**

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<sup>22</sup> Recent judgments, such as the Appeals Chamber judgment *Prosecutor vs Kunarac, Kovac & Vukovic*, 12 June 2002, IT-96-23/1-A, have also provided that "some acts establish per se the suffering of those upon whom they were inflicted. Rape is obviously such an act", and that "Sexual violence necessarily gives rise to pain or suffering, whether physical or mental, and in this way justifies its characterisation as an act of torture." para 150

Amnesty International continues to receive reports of the sexual assault of detainees in police custody in Turkey. In a study published in 2000, two per cent of women situated in Turkey's mainly Kurdish south-east reported being the victims of sexual violence at the hands of security forces.<sup>23</sup> This figure is likely to be even higher given the reluctance of women to report such abuses because of fear of retaliation, ostracism or forced marriage. Reports received by Amnesty International indicate that women detained are frequently stripped naked by male police officers during periods of questioning in police custody or in prison. Reports received by Amnesty International also suggest that the majority of women who report sexual violence by state security forces are Kurdish, or express political opinions that are unacceptable to the military or the government. Sometimes a woman is subjected to sexual violence in the presence of her husband or family member, apparently as a means of forcing her husband or family member to "confess", or, in a cynical utilization of the concept of "honour", as a way of demeaning her family and her community.

On 5 March 2002 **Hamdiye Aslan**, a 37-year-old Kurdish woman, wife of a political prisoner and mother of five, was taken into detention in the Kızıltepe district of Mardin province, and held at the Anti-Terror branch of Mardin police headquarters until 7 March 2002. During her detention she was reportedly blindfolded and threatened. When she used a Turkish word, she was taunted and called a liar, police saying, "I thought you couldn't speak Turkish". Police officers reportedly poured cold water over her whilst an air-conditioner blew cold air over her. She was allegedly stripped and anally raped with a truncheon. The Turkish Medical Chamber, an independent body for medical practitioners, has opened a case against two doctors who wrote reports stating that she had not experienced torture. Another doctor who reported that she had injuries consistent with ill-treatment was subsequently transferred to another province. Hamdiye Aslan was remanded to Mardin Closed Prison until she was released by a court on 23 May 2002. Following her formal complaint about her treatment she had further medical reports which recorded injuries consistent with her allegations of torture. The Mardin prosecutor has opened an investigation against five police officers alleged to have tortured her.

Journalist **Yüksel Bulut** was detained on 7 April 2002 in Gaziantep and reportedly immediately blindfolded at the police station. She was allegedly beaten when she complained about this. Her detention was allegedly not recorded at the police station. She told Amnesty International that while being questioned she was stripped naked, insulted, threatened with death, beaten and had her hair pulled, was

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<sup>23</sup> Ilkcaracan, P. (2000). Op cit.



sprayed with cold pressurized water, and was sexually assaulted. She also believes that she was photographed whilst naked. Although she is unable to be sure about this as she was blindfolded at the time, she heard a voice saying “take [the photograph]” and a sound consistent with a shutter clicking. Yüksel Bulut’s complaint to the prosecutor resulted in a decision not to investigate.<sup>24</sup>

“**Zeynep**”<sup>25</sup> was taken into police custody on 29 July 2001, and held at Istanbul Anti-Terror branch for more than two days. Whilst in the police car, she was reportedly insulted and threatened with rape. Whilst in custody she was reportedly questioned for hours, sworn at, pulled by the hair and threatened with rape again. When she requested a lawyer she was reportedly told, “There’s nothing like that here.” She was allegedly forced to make a statement, forced to memorize and recount the statement whilst being videotaped, and was taken to a place she was unable to identify. When she was taken for a medical examination on her last day in custody, it was reported that the policeman came into the examining room with her.

**S.Y.** was detained at Istanbul Anti-Terror branch between 24 and 27 September 2002 before being remanded to Bakırköy Women and Children’s Prison. During her three days in custody, she was initially searched by a female police officer before being taken elsewhere. Whilst she was blindfolded one police officer allegedly starting moaning and making noises as though he was having sex. The same person reportedly swore continuously, and repeatedly opened S.Y.’s mouth and spat into it. As a result of the effects of the saliva in her mouth S.Y. retched. It was reported that, whilst other officials held the applicant’s hands behind her back, she was hit repeatedly on the head to prevent her from spitting out the saliva, as a result of which she became dazed and confused. She was reportedly grabbed by the hair and thrown to the ground; she was insulted with statements such as “whore, look at the condition you’re in, what’s the difference between you and a whore”. She was allegedly asked whether she was a virgin or not, and insulted for being Alevi.<sup>26</sup> She was reportedly deprived of sleep, food and drink, and blindfolded at various times. She was

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<sup>24</sup> Whether or not such a photograph was actually taken in this case is not clear. However, the implied threat of having such a photograph available in the public domain is a form of cruel or degrading treatment and can have the effect of silencing women who may believe their “honour” or “reputation” would be damaged. It is also potentially another means of protecting perpetrators from prosecution, as the survivor may be wary of further consequences, such as the publication of the photographs. In addition to the fear, isolation and humiliation experienced by the detainee, and the loss of ability to identify perpetrators, blindfolding also contributes to the inability of detainees to determine the exact nature of their experiences in custody.

<sup>25</sup> Not her real name

<sup>26</sup> Alevis are a Muslim minority considered to be heterodox, and constitute perhaps up to 25 per cent of the population of Turkey.

reportedly told to strip, which she did, and police officers again started swearing at her and teasing her. She reported that whilst she was blindfolded she was put on the ground and one of the police officers also stripped and rubbed his hands and penis against her. After this procedure S.Y. was allegedly taken naked to the toilet and sprayed with cold pressurized water. On the last day S.Y. was in custody, she was reportedly stripped naked and sexually assaulted again. She alleged that she was threatened with anal rape using the hose from the pressurized water, and that police attempted to insert it into her anus.

A doctor from the state forensic medical institute, the service which reports to the Ministry of Justice and provides forensic assessments at the request of public prosecutors and courts, examined S.Y. and wrote a report on her condition the day she was taken from police custody to prison. However, it is unlikely that a standard medical report would be able to provide evidence of the degrading and humiliating nature of the treatment to which S.Y. was allegedly subjected, unless the medical report incorporated a psychological assessment.

### **Rape as a form of torture**

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture in Article 1 as: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, for such purposes as obtaining... information, or a confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official...". In *Aydin v. Turkey*, the European Commission on Human Rights stated that "the nature of the act of rape, which strikes at the victim's physical and moral integrity, must be characterized as particularly cruel and involving acute physical and psychological suffering (...) and must be regarded as torture".<sup>27</sup>

The state fails to meet its obligations under the Convention against Torture if it fails to protect against torture, investigate allegations of torture, bring the perpetrators to justice, and ensure reparation to survivors.

*"In the face of what's happened, it doesn't matter anymore [if people*

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<sup>27</sup> Para. 189 *Aydin v. Turkey*, Report of the Commission, Application No. 23178/94; see also the judgment of the court which concluded that the rape amounted to torture, *Aydin v. Turkey*, Judgment of the European Court of Human Rights on 25 September 1997, para 8b.

*find out I've been raped]. There's been a war here."*

Female prisoner disclosing rape to her lawyer after ten years.

Amnesty International is concerned that state agents may be resorting to torture in the form of rape in the knowledge that survivors are unlikely to want to report their experiences. In many cases women and men who have been raped take many years before they so much as disclose sexual assault, if they disclose at all.<sup>28</sup> Also, when rape is acknowledged, the impact of the rape on the woman can impact on the perceived "honour" of all the members of her family and community. Hence the perpetrators have been effective in targeting both the survivor and her community, and in committing their crimes with impunity.

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<sup>28</sup> This has been widely reported of sexual assault experiences in the general community. No studies exist reporting average time to reporting of sexual assault in custody, but anecdotal evidence from many cases reported to Amnesty International in Turkey reveal that some women disclose sexual assault after up to ten years, with no secondary gain for doing so. In one study, average time to disclosure of assault was 2.3 years; no data exists on time to disclosure of assault in custody, but one would assume, given the range of factors contributing to decreased lack of desire to disclose, that this period would be higher for a detained group. One U.S. study found that only 16 per cent of women report rapes to the police; of those who do not, nearly 50 per cent of women would do so if they could be assured that their names and private details would not be released publicly (National Victim Center /Crime Victims Research and Treatment Center, 1992). The Council of Europe stated that nine in ten rapes go unreported (Vermot-Mangold, *Violence against women in Europe*, 2000). Presumably, reporting rape committed by law enforcement officials to the same law enforcement bodies would decrease this figure further.

*“I am living in a country where injustice in society and all kinds of cruelty exist. I considered it my duty as a human being to come out against these things. For many years I had worked on a socialist newspaper. As a result I had been raped under torture. My shame wasn't from this, there was something else. What was it?*

*Honour? It was the police torturers that raped me. So now had I lost my honour? Was honour in my sexual organs or in my brain? Was my honour stained because I couldn't protect these organs, they being outside my willpower? Or, hadn't I defended the values I believed in to the end?*

*How about my husband? Was my honour defiled for him? Why did I see myself as his honour? Why did I think he'd never touch me again? I wasn't to blame. And why did I look for blame in myself? I didn't think that when I was naked and hanging. Why did I think like that now?”*

Asiye Güzel Zeybek

## **Chapter 4: Inhuman or degrading treatment**

### **Strip-searching and stripping during questioning**

Reports received by Amnesty International indicate that women deprived of their liberty in Turkey have been frequently strip-searched in a manner which is not consistent with international standards. Amnesty International contends that whilst stripping a detainee during questioning is not acceptable, the circumstances in which strip-searches are performed can constitute inhuman and degrading treatment. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has stated that only same-gender staff should search persons deprived of their liberty and any search requiring a woman to undress should be conducted out of the sight of male custodial staff.<sup>29</sup>

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<sup>29</sup> The 9th General Report of the CPT/Inf (99) 12, para 26.

On 23 September 2002, N.C. (discussed below), before being taken into custody, was taken to her sister's house where the house was searched. Allegedly at the house plainclothes police pulled N.C.'s hair, and threw her to the ground. They hit her head and swore at her. One police officer searched N.C. and then called a female police officer. Reportedly N.C. was stripped naked, and whilst the female officer was searching her, the male police officials wandered in and out of the room, taunting her and making threats that they would rape and kill her.

In Turkey, an amendment to the Regulation on Apprehension, Custody and Interrogation adopted in August 1999 requires that women detainees be searched only by female police officers or by another woman who can be found to undertake the duty. However, according to information received by Amnesty International, in practice, this regulation is not always adhered to, or as in the case above, when implemented, the spirit of the regulation is not adhered to. The use of the word "search" is disingenuous in any situation where male officials are within sight, and women are at high risk of exposure to violence and humiliation.

Under no circumstances should male officials strip-search female detainees, or be within sight when such a search is taking place. In line with recommendations by the CPT, the blindfolding of persons who are in the custody of law enforcement agencies should also be expressly prohibited,<sup>30</sup> amongst other reasons so that female detainees can be assured that male security forces are not present during search procedures.

Reports received by Amnesty International also indicate that detainees have been frequently stripped naked during questioning.

On 25 October 2000 plainclothes police in Mersin took "**Berrin**"<sup>31</sup> into custody. She was allegedly beaten and sexually abused by male police officers during a search. She was forced to undergo a "virginity test"<sup>32</sup>, and the doctor was reportedly threatened by police not to issue a medical report detailing her torture. Berrin was allegedly then taken back to the cell, forcibly stripped naked, sexually harassed and threatened with rape. After one night in detention she was taken back

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<sup>30</sup> Report on Turkey CPT/Inf (2002) 8

<sup>31</sup> Not her real name

<sup>32</sup> See the section in this report on "Virginity testing"

to the forensic medical facility, did not receive a medical report, and was released without appearing before the prosecutor.

The UN Special Rapporteur on torture has recommended “that female security personnel be present during interrogation of women detainees, as interrogation and detention of female detainees by exclusively male personnel constitute conditions that may be conducive to rape and sexual abuse of women prisoners or the threat or fear thereof”.<sup>33</sup>

Although the 1999 regulation changes specifying that only females undertake searches of female detainees are important, Amnesty International is concerned that such changes will have little meaning unless: a) the regulation is consistently implemented; b) male officials are out of sight when search procedures are taking place; and c) women are not stripped during questioning. In addition Amnesty International calls on the Turkish authorities to ensure that officials who fail to comply with the regulations and the law are investigated and brought to justice.

## Chapter 5: Patterns of discrimination

The Turkish Constitution states that:

*“All individuals are equal without discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or other such considerations.*

*No privilege shall be granted to any individual, family, group or class. State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.”<sup>34</sup>*

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<sup>33</sup> Report of the Special Rapporteur on torture to the UN Commission on Human Rights (12 January 1995). U.N. Doc. E/CN.4/1995/34 para. 24.

<sup>34</sup> Article 10, Constitution of the Turkish Republic (1982).  
<http://www.ibb.gov.tr/ibbeng/244/24400/01/1982constitution.htm>

### **Gender-based discrimination**

Despite the guarantee in the Turkish Constitution of equality before the law, gender discrimination is practised by the state. The practice by agents of the state of discriminatory activities, such as sexual violence, and the failure of the state to ensure that women have equal opportunities for education, food, shelter, employment and access to formal state power, are both facets of state responsibility for gender-based discrimination and abuses of women.

For example, on 23 October 2002, two police officers were acquitted of raping **N.O.** She had approached the police officers in a suburb of Istanbul to ask them for directions. The striking aspect of the decision to acquit was based on the fact that N.O. had been carrying condoms and this was cited by the judge as evidence of her willingness for sexual intercourse.

Violence against women is rooted in discrimination, and reinforces discrimination. When state officials express discriminatory attitudes, this not only falls far short of effectively upholding women's rights, but also contributes to a climate in which violence against women is seen as acceptable. Demonstrating the way in which tacit state support for sexual violence against women encourages private individuals to maintain a culture of violence against women, **Eren Keskin**, a human rights defender who acts for women who have been subjected to sexual violence in custody, has been the subject of personal threats of a sexual nature. After Eren Keskin was reported to have made a statement at a conference in Germany that members of the military had raped and sexually assaulted women, newspaper columnist Fatih Altaylı stated in a radio interview<sup>35</sup>, "If I do not sexually assault Eren Keskin at the first opportunity, I would be a coward<sup>36</sup>," and "I think that when Eren Keskin comes she's owed some abuse". Whilst Fatih Altaylı was merely issued with a warning by the media group, Eren Keskin continues to stand trial for insulting the state security forces.

### **Ethnic discrimination**

Individuals of Kurdish origin are being actively discriminated against. The Turkish government took a step towards meeting the political criteria for accession to the European Union by the passage of legal reforms on 2 August 2002 which allowed

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<sup>35</sup> Radio "D", 18 March 2002, and 20 March 2002; in his column in *Hürriyet* newspaper on 2 May 2002 he refused to apologize.

<sup>36</sup> "Coward" from the Turkish *namert*, literally, "non-manly"

language courses and broadcasting in “languages traditionally used and spoken by Turkish citizens in their daily lives”. At the same time, thousands of people who filed petitions for Kurdish as an elective course or for education in Turkish have been arrested and charged, including many people who were charged with aiding and abetting the armed opposition group, the Kurdistan Workers’ Party (PKK) or its successor KADEK. Recently, individuals have been prosecuted for playing Kurdish music,<sup>37</sup> and for giving their children Kurdish names.<sup>38</sup> A group of teachers was taken into custody on 10 May 2002 and allegedly tortured and ill-treated in police custody including being beaten with their own books written in Kurdish.<sup>39</sup>

*“I was raped in custody; I experienced various forms of torture. My only crime was to be a Kurd. I am proud of being Kurdish. Nor am I ashamed that I was raped. Really, it is those, those men without honour, who should be ashamed.”*

Speaker at a “rape in custody” conference, Istanbul, quoted in *Hürriyet* newspaper, 12 June 2000

Amnesty International considers that discrimination against ethnic minorities contributes to violations of the rights of women belonging to ethnic minorities in Turkey, including the rights to health, education, and freedom from violence. A significant proportion of women in the predominantly Kurdish south-east do not speak Turkish<sup>40</sup>, and Turkish is the official language of all government institutions. In practice, this has meant that women’s access to government institutions to redress

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<sup>37</sup> Abdullah Yağın was sentenced to 45 months’ imprisonment on 19 July 2002 by Diyarbakır State Security Court under Article 169 of the Turkish Criminal Code, for playing Kurdish music to the passengers in his minibus.

<sup>38</sup> In July 2002 the public prosecutor opened a case in Siirt demanding that the children of 19 families be forced to change the names of children born between 10 July 1997 and 19 March 2002. In May 2002 a bookseller, Gürsel Karabil went to the registry office to register his son Roger (meaning passing day in Kurdish). He was refused permission, and on 4 July 2002 a police officer of the Anti-Terror branch detained and interrogated him for six hours on allegations that he was supporting the political arm of the PKK/KADEK. In the weeks following the reforms, numerous individuals were refused permission to register their children with Kurdish names.

<sup>39</sup> Although the teachers were acquitted by the State Security Court on 5 September 2002 of charges of aiding and abetting an illegal organization, the results of a Ministry of Education internal investigation resulted in ten of the teachers being posted to other regions of the country, with the reported justification that “Kurdish books were found in their homes”. In addition to being reportedly tortured, they had been suspended from work since their detention.

<sup>40</sup> According to one study of 599 women, 19.1 per cent of women can speak little or no Turkish, and 55.3 per cent spoke Kurdish as their mother-tongue (Ilkkaracan & WWHR, 2000).



violations of their legal rights, and their access to health and support services, has been severely circumscribed, as women are often unable to communicate in the language spoken by officials, doctors and courts. The impoverishing impact of nearly two decades of conflict, with the concomitant human rights abuses perpetrated by state security forces and the PKK, such as the burning and forcible evacuation of thousands of villages<sup>41</sup>, and the death, “disappearance”, or imprisonment of large numbers of the male population, has meant that many families have lost the main source of their livelihoods. There has been a huge migration from rural areas to the urban centres of Turkey, both to the west of the country and to eastern and southern centres such as Diyarbakır, Mersin and Adana. Many unskilled workers, the majority of whom are women, are unemployed. The increase in the violence and discrimination against women, which ensues in the wake of economic disintegration and political conflict, has been widely recognized.<sup>42</sup>

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<sup>41</sup> See, for example, AI Index: EUR 44/024/1999, the *AI Annual Report 2000* or the Human Rights Watch report “Displaced and disregarded: Turkey’s failing village return program”, October 2002, [www.hrw.org/reports/2002/turkey](http://www.hrw.org/reports/2002/turkey)

<sup>42</sup> According to the UN Secretary-General’s report on women, peace and security, “women do not enjoy equal status with men in any society. Where cultures of violence and discrimination against women and girls exist prior to conflict, they will be exacerbated during conflict. If women do not participate in the decision-making structures of a society, they are unlikely to become involved in decisions about the conflict or the peace process that follows.” (document S/2002/1154). Also see for example, *Reproductive health during conflict and displacement*, World Health Organization (2000), WHO/RHR/00.13



Kurdish women celebrating International Women's Day in Siirt, 8 March 2002 © Private.

Amnesty International considers that discrimination and sexual assault by agents of the state are linked. Some women, such as Kurdish women, are at particular risk of sexual violence by the state. The organization is concerned that inaccurate beliefs -such as, for example, the beliefs that speaking Kurdish is an indication of "terrorism" or "separatism"<sup>43</sup> or that domestic violence only occurs in Kurdish communities - may contribute to the perpetuation of sexual violence against Kurdish women by agents of the state, and to impunity for such actions.

A Kurdish woman and mother of six, **Fehime Ete**, was arrested on 21 October 2001 in her home in Siirt in southeastern Turkey. On 25 October she was remanded to Van prison by the State Security Court on charges of "supporting an illegal organization". A week later, she was transferred to the women's section of Bitlis E-type prison with her five-year-old daughter Şahadet Ete. On 25 November Fehime Ete

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<sup>43</sup> As one lawyer defending clients accused of "aiding and abetting an illegal organization" for speaking and writing in Kurdish stated: "If an organization's policy is that everyone should brush their teeth and drink tea every day, and I do so, can I then be accused of aiding and abetting that organization?" (Interview with Amnesty International, September 2002)

was transferred - together with her daughter - to gendarmerie headquarters in Diyarbakır for questioning. Her lawyer was reportedly not informed of their whereabouts despite repeated inquiries. Fehime Ete was not returned to prison until 14 December 2001. Fehime Ete told Amnesty International that she had been subjected to torture and ill-treatment throughout the time that she spent in detention at Diyarbakır gendarmerie headquarters. She said she had been blindfolded, beaten with truncheons about the head, stripped naked, fondled, and sprayed with pressurized water. She had reportedly fainted several times and since this abuse has experienced health problems. Fehime Ete now suffers from shortness of breath and has difficulty moving her arms as a result of the alleged torture. Both she and her family were threatened that they would be tortured if she complained about her treatment. Fehime Ete was also allegedly threatened that her daughter would be tortured. Şahadet Ete had reportedly been able to hear her mother's screams as she was being tortured. A doctor has reportedly diagnosed Şahadet Ete as suffering from "shock".

28-year-old Kurdish woman **Zahide Durgun**, who was from Hakkâri but had married an Iraqi man and was living in Iraq, returned to Turkey without her official documents to visit her family. On 20 August 2002 Zahide Durgun, her two brothers, a visitor to the house, and her brother's son, Savaş, were arrested and taken to the Anti-Terror branch of Hakkâri police headquarters. Police reportedly wanted her to make a statement that she was an active member of the PJA<sup>44</sup> and that she had come to Turkey to make propaganda before the elections. When Zahide Durgun refused to make such a statement she was allegedly tortured. Reportedly, she was blindfolded, her hair was pulled and torn out, her head was banged against the wall whilst she was held by her hair, she received blows to the neck, arms, torso, feet and legs, her face was slapped and beaten, electric shocks were applied to her ear, she was threatened with electric shocks to her breasts, her breasts were hit hard, she was threatened with rape, and immediately after this threat all the buttons were ripped from her shirt. She said she could hear the sounds of her brothers yelling and being tortured in the nearby cells. In the end, Zahide Durgun, who does not read or write, reportedly had her thumb-print placed on a pre-prepared statement. Reportedly, on the fourth day in custody she was taken for a medical exam, and given a report detailing her injuries. She was also subjected to a "virginity test".

On 22 August 2002 **Şükriye Beyter**, also Kurdish, was taken into custody at the Anti-Terror branch of Hakkâri police headquarters. She was also kept in custody for four days. During that time she reported having her hair pulled and torn out, having her head beaten against the wall, receiving blows to various parts of her body,

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<sup>44</sup> Partiya Jinmên Azad, reportedly the women's arm of the PKK (now known as KADEK)

and being given electric shocks to her ear and a finger on her left hand. She also reported that she had her throat squeezed with electric cable, that she was blindfolded and had a handkerchief stuffed into her mouth to prevent her making noise, that she was threatened with rape, insulted, and promised money if she accepted statements. When she refused money offered if she signed a pre-prepared statement, she was reportedly beaten again and threatened with rape and electric shocks to her breasts, that her children would be killed, that she would be killed and her body would be thrown into the river. Şükriye Beyter was reportedly taken to the doctor twice whilst she was in custody, but no report resulting from her examinations has been forthcoming.

### **“Virginity testing”**

Discrimination against women also results in gender-specific forms of violence. In Turkey women face forced “virginity tests” as a form of punishment or humiliation.

*“All the games here are played out on the bodies of women”*  
(Turkish sociologist)<sup>45</sup>

“Virginity testing” means the inspection of the external genitalia for damage to the hymen. Quite apart from its failings as an indicator of virginity, it is particularly inappropriate as a technique in a forensic investigation of rape since it fails to address injury and assault to other parts of the genitalia and anus. In Turkey, forced “virginity testing” has been widely utilized as a means of controlling women’s sexuality. The consequences of “virginity testing” for many women whose hymens have been reported to be absent following examination have included violence, humiliation, and on occasion, death. Recent legal changes have limited the circumstances in which “virginity testing” can be carried out. In January 1999, in response to a sustained and forceful campaign by women’s and medical groups, the Ministry of Justice issued a decree banning the practice of examining women against their consent in ways that may hurt or torment them or for reasons of disciplinary punishment, except in cases of gathering proof of sexual assault, in cases where sexual conduct with minors is suspected, or in cases where prostitution is suspected.<sup>46</sup>

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<sup>45</sup> The *Independent* newspaper, London, May 7 1999

<sup>46</sup> The decree also stated that only a judge can order a vaginal or anal examination without the consent of the woman, and only if there is no other way of gathering evidence and time passing may interfere with gathering evidence about the crime, and that the judicial decree should be accompanied by written approval from the public prosecutor.

However, Amnesty International has continued concerns about the utilization of so-called “virginity testing”, in particular in relation to reports of women in custody being subjected to forced “virginity tests”. Amnesty International considers non-consensual examination of the genitalia to constitute a form of cruel, inhuman and degrading treatment. Forced “virginity testing” would include conditions where a woman is in the custody of security forces, as custodial conditions necessarily obviate consent. In visits to prisons in Diyarbakır, Muş, Mardin, Batman and Midyat and interviews with over 100 female prisoners, representatives of the Diyarbakır Bar Women’s Commission established that nearly all of the women had been subjected to “virginity testing”, and nearly all had experienced some form of sexual abuse, either verbal or physical, whilst in police custody.<sup>47</sup>

The use of the term “virginity testing” is widespread and often inaccurate. The threat and practice of so-called “virginity testing” is also used in situations where women are suspected of prostitution, which is illegal in Turkey if it occurs outside officially registered brothels. At other times, women may be given “virginity tests” in order to establish the existence of recent sexual activity, which can ostensibly be used as “evidence”. For example, in the past women who had husbands suspected of being PKK members were taken for testing to establish whether or not there had been recent sexual contact, apparently so that security forces could establish the men’s whereabouts. Such practices constitute inhuman and degrading treatment, and serve as another means by which women’s sexuality and physical integrity is abused.

*“Our bodies are ours. Women's bodies should be taken out of the hands of the state”*

Placard in women’s demonstration protesting the comments of the State Minister responsible for women and the family, Işıl Saygın, who was quoted by a newspaper as saying in 1998, “Virginity testing is a serious preventative matter. If a young girl kills herself because of a virginity test, she kills herself. It's not that important, it's only a few [girls]. Don't let them get into such a dialogue with men”.

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<sup>47</sup> *Women live with violence*: NTV, 28 September 2002

In June 2001 16-year-old **F.D.F.** was on her way to visit a relative. She was taken from a bus by members of the gendarmerie, and held in police custody before being taken to Muş Closed Prison. Her parents were initially not informed of her detention, or her whereabouts. F.D.F. told Amnesty International that she was blindfolded, stripped, sworn at, shouted at, threatened with sexual assault, and laid on the ground with a member of the gendarmerie on top of her. She was threatened with “disappearance” and had cigarettes put out on her body. She was taken for two medical examinations during her detention. On 30 June 2001, upon a written request from the gendarmerie, a doctor subjected F.D.F. to a “virginity test”. On 3 July 2001 she was subjected to a second virginity test, and an anal examination, again at the request of the gendarmerie chief sergeant. Despite documentary evidence demonstrating that the sergeant major of the gendarmerie signed and ordered the tests, the Van chief prosecutor opened an investigation against one of the police officers who reportedly took F.D.F. to and from the examinations. The Van provincial governor’s office stated that there were insufficient grounds to open an investigation into the doctors who performed the tests.

The majority of forensic medical personnel continue to believe that “virginity examinations” – in the limited sense of inspection of the state of the hymen – are useful in determining sexual assault. However, virginity is not necessarily indicated by the presence of an intact hymen, and a virginity test does not necessarily establish evidence of sexual assault.<sup>48</sup> According to experts, “*The routine legal practice of reducing the trauma of sexual assault to the presence or absence of an intact hymen is not only simplistic and inaccurate; it results in unnecessary psychological consequences for those subjected to virginity examinations.*”<sup>49</sup>

Amnesty International notes a draft law proposed on 26 July 2002, which institutes fines and jail sentences for those non-forensic services personnel who conduct “virginity testing”, and calls on all forensic and non-forensic medical personnel to uphold their ethical responsibilities to deny requests for forced “virginity testing”.

M.C. was forced to undergo a “virginity test” on release from custody in 2001. Above the signature of the doctor was the report that M.C. was “still a virgin.” One woman held in police custody - **Aynur Siz** - was reportedly taken for “virginity

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<sup>48</sup> Guidelines for appropriate examinations for those who report sexual torture have been outlined in the Istanbul Protocol, pp 39-42

<sup>49</sup> Supra. Frank et al, p. 489

testing” three times on the same day, 24 May 1999; and a second woman - **Devrim Turan** - was reportedly taken twice on 23 May 1999. In these cases, the women refused to undergo tests.

**N.C.** was detained at the Anti-Terror branch of Istanbul police headquarters between 23 and 27 September 2002. Reportedly, when N.C. refused to sign a statement, she was taken by her hair and thrown to the ground. (Sentence removed). Another reportedly put her on the ground, spat into her mouth and nose, and threatened her with rape. She had cold water tipped over her. Three policemen allegedly stripped her naked, and blindfolded her. She was allegedly forced to remain naked for half an hour and was fondled all over and threatened with rape. She was also reportedly asked whether or not she is a virgin. “It doesn’t matter, we won’t go that far in”, she heard someone say, then she was reportedly put on the ground and rape was imitated. Allegedly she was also threatened with having a hose inserted inside her. Reportedly her face was stroked whilst she was threatened. She wanted to vomit but was reportedly told “if you vomit we will make you lick it up”. Water was poured in the direction of her vagina, personal comments about her menstruation were made, and she was allegedly given electric shocks twice. A policeman allegedly squatted in front of her whilst her hands were bound, and tried to force her to take his penis into her mouth. She was forbidden to go to the toilet or to eat. She was forced to sign a statement.

N.C. was examined by a forensic medical institute doctor who wrote a report on her condition on the day she was taken from police custody to prison. Her lawyers have filed a complaint against the alleged perpetrators with the public prosecutor. A report was requested by the examining doctor to determine “[W]hether or not there are lesions relating to sexual assault (hymen examination).”

Amnesty International considers the terms “virginity test” and “hymen examination” to be misnomers and to be totally inappropriate substitutes for a thorough sexual assault investigation. In several reports seen by Amnesty International police superintendents have also sent women for examinations requesting “hymen reports”. Although the 1999 decree instructs that anal and vaginal examinations should be carried out where sexual assault is suspected, in many cases Amnesty International has received reports that individuals are subjected to “virginity testing” on their release from police custody in place of a thorough medical assessment as advised by the **Istanbul Protocol**, a set of guidelines for medical personnel examining individuals who allege torture or ill-treatment.

The relevant decree refers to “vaginal and anal examinations”, which should only be carried out by qualified forensic medical personnel with relevant experience and sufficient equipment and facilities. However, vaginal and anal examinations are also insufficient. The **Istanbul Protocol** recommends that an entire physical examination be given to an individual alleging sexual assault. A detailed interview and whole body examination should be undertaken, including collection of material from the survivor's hair, and examination of her clothing, and would involve a clear explanation from the examining doctor as to the purpose of the examination. The examinations should be subject to three conditions. Examinations should take place with the woman's *consent*, and in a *private* examination area. That the circumstances of a forensic report preclude confidentiality from relevant authorities should also be explained to the woman *prior* to obtaining her consent.

Merely the threat of a test can be sufficient to cause psychological consequences for the victim of sexual assault. To refuse can be perceived as an admission of “stained honour” and may put the survivor at increased risk of sexual assault. When a woman has been raped, a refusal also carries the risk of being unable to provide evidence that sexual assault has taken place, although a “virginity test” cannot be equated with a proper forensic examination.

Forced “virginity testing” cannot be condoned under any circumstances. Amnesty International calls on all medical personnel to refuse to conduct non-consensual “virginity testing”. Amnesty International believes that intimate genital examinations of any woman deprived of her liberty should be medically indicated or necessary for medico-legal purposes in which case consent is essential and the examination should conform to international best practice - something which “virginity tests” conspicuously fail to do. Amnesty International also calls on the Interior Ministry to ensure that a thorough investigation is undertaken into any instance in which the police or gendarmerie order a virginity examination, and if sufficient credible evidence exists, for those responsible to be brought to justice in criminal or disciplinary proceedings.



## The consequences of sexual violence against women



The body of 14-year-old Necla Akdeniz who was killed by a member of her family after she was raped. Diyarbakır 1999 © Private.

Some families in Turkey have found the rape of a female family member impossible to accept, and often face strong community pressure to “cleanse the family’s honour”. **Necla Akdeniz** was a 14-year-old girl from the province of Kulp, Diyarbakır. One evening in 1999 she was sleeping with her sisters aged seven and nine, at the home of relatives. A 40-year-old man, a relative of Necla Akdeniz and a village guard<sup>50</sup>, knocked at the door. He reportedly raped Necla Akdeniz after threatening her with a gun. Necla Akdeniz did not report the rape to anyone, but six months later it became clear that she was pregnant. A young boy was reportedly asked to confess to the rape in exchange for money but later Necla Akdeniz stated that she had been raped by her relative, who was taken into custody

and later released. Necla Akdeniz’s child was stillborn. In the meantime a council of Necla Akdeniz’s family members met and agreed to “cleanse their honour”. People started to hear of the decision of the family council, and someone reported it to the police. The police reportedly stated that they were unable to get involved. In the meantime, lawyers heard of Necla Akdeniz’s story, and attempted to contact her. Police officers prevented them from getting information about her whereabouts. The lawyers were unable to contact Necla Akdeniz in time. She returned to a relative’s house and was killed by her cousin, who fired two shots into her head. After nine days, when no one claimed her body, the municipality buried her in the unidentified persons’ cemetery.

<sup>50</sup> Village guards are villagers paid and armed by the government to operate as militias in remote areas of the south-east. They have been implicated in many human rights abuses. The village guard system was strengthened in the late 1980s with the increased activities of the PKK, and village guards enjoyed a similar level of impunity to other state security forces such as the police and gendarmerie. Many guards have been accused of rape and violence. At present, civilians remain vulnerable to the assumed powers they utilize in the region. See the Human Rights Watch report “Displaced and disregarded: Turkey’s failing village return program”, October 2002, [www.hrw.org/reports/2002/turkey](http://www.hrw.org/reports/2002/turkey)

*“Tell me, in what sense is honour a positive term for women in Turkey?”*

Activist on honour killings in Turkey, at interview

The south-east of the country is emerging from a period of 24 years of martial law and emergency rule.<sup>51</sup> Since 1984 security forces have engaged in a conflict with armed separatist groups which has resulted in the loss of tens of thousands of lives and spawned a disproportionate and egregious level of human rights violations in the area. Whilst human rights violations occur across Turkey, the south-east has been a focus for abuses, with the increased powers to detain<sup>52</sup> and lack of accountability enjoyed by administrators of state of emergency rule.

*“Those who raped me are not being punished. I am.”*

Rape survivor

The consequences of state security forces and village guards operating with relative impunity in the region have been far-reaching for the region’s women. One of the consequences of sexual violence against women can be suicide. There is a high rate of suicide of young women in the south-east of the country. Many suicides can be attributed, either directly or indirectly, to state violence. On 16 November 1998 **Medine Öncel** was taken into custody by police and reportedly subjected to sexual assault and other forms of torture during a 12-day detention. When police came to her house on 14 July 1999 to take her into custody a second time, she committed suicide by jumping from her apartment window. Demands by her father that the incident be investigated resulted in a refusal to prosecute. In Batman, a town in the south-east greatly affected by the conflict, the number of suicides in the first eight months of 2000 was double the country average, with a rate of 6.42 for every 1,000 members of the population. Of these, 81 per cent were women.<sup>53</sup>

Women surviving sexual violence often have their experiences compounded by being ostracized. Amnesty International received reports of a man who witnessed his sister’s rape by police: he now refuses to talk to her and reportedly uses words like “whore” and “prostitute” when he speaks about her.

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<sup>51</sup> The regions of Tunceli and Hakkâri were removed from state of emergency rule on July 30 2002, whilst the regions of Diyarbakır and Şırnak had state of emergency restrictions lifted on 30 November 2002.

<sup>52</sup> See AI Index: EUR 44/10/2002

<sup>53</sup> Benninger-Budel & Bourke-Martignoni, “Violence Against Women.” *10 Reports for the protection and promotion of the human rights of women/Year 2001*. World Organization against torture (OMCT): Geneva, 2002.

Other women have been forced to flee their homes, with or without their families. This can also put a woman at ongoing risk of unwanted sexual contact. “To strive to live and work outside the watchful gaze of the family and community is to risk becoming a target for male violent behaviour.”<sup>54</sup>

*“Our dignity is not for sale”*

A woman who was raped by village guards in 1998 was forced to flee from her village due to threats of violence. In bringing an action against the alleged perpetrators, the family refused to accept a cash settlement from the village guards. Finally, as a result of the threats the entire family left the province where they lived and moved to a province far from their own.

Women who would like to flee from sexual violence have nowhere to go. In spite of a European Union report estimating that there should be one shelter per 10,000 head of population, which would result in approximately 7,000 shelters in Turkey, there are between seven and nine “guesthouses.”<sup>55</sup> Two independently run shelters performing invaluable services to women escaping violence and to community education, including an effective police education campaign, were closed in 1997 and 1999 due to lack of funding.

## **Chapter 6: Women’s access to justice**

The state must not compound severe human rights abuses such as rape and sexual assault by failing to ensure that women have access to effective redress and protection from further abuse.

### **Disclosure and reporting violence to police**

*“You can rape someone again and again knowing their fear that someone will find out.”*

Lawyer describing the dilemma that victims of sexual assault face

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<sup>54</sup>Report of the *UN Special Rapporteur on violence against women, its causes and consequences*, to the UN Commission on human rights, E/CN.4/1997/47

<sup>55</sup> In Turkish the term for shelter is *sığınak*, but the government-run houses have been called guesthouses or *konakvevleri*, demonstrating a crucial lack of commitment to and knowledge of the concept of shelter.

Sexual assault generally goes unreported. Although some women may find the courage to disclose sexual assault, the vast majority of assaults in custody go unreported. The reasons for this vary between psychological distress and shame experienced by the survivor, fear of retribution at the hands of the state, fear of shame in the woman's family or her community.

*"If my family found out, I would die. What can I do?"*

Response of a 16-year-old rape survivor, to her lawyer's suggestion that the young woman press charges against the perpetrators

In the case of "**Selda**," the details of which are known to Amnesty International, "Selda" withdrew her complaints of sexual assault against the police at the request of her father, who did not wish information about her sexual assault to become public. This case is illustrative of many others that never get to the stage of investigation.

*"I wanted to share my pain. They are blaming me. Why? What did I do? Because I went out, because I told my story, they are blaming me? Of course I shall tell my story, I have pride also. I have honour. I am compelled to tell. If they keep me quiet, what shall I do? People deal me blows, if I don't speak, how shall I cleanse my [honour, name]. Then I would be hiding, others who were assaulted would hide, and then what would happen! Should women not go out on the streets at all?"*

Rape victim living in Turkey

*"I hope one day I will have the courage to face you without covering my face."*

Rape victim speaking at a conference on "Sexual Violence in Custody", Istanbul, June 2000

Other women do not disclose sexual assaults in the belief – accurate in the vast majority of cases –for example, the case of N.O. discussed on page 22 - that reporting sexual assault by state security forces would not result in the perpetrators being punished.



Nazlı Top, *centre*, is one of the defendants on trial for “insulting the Turkish army and police” after describing sexual torture in custody at a conference. © AP

Women who speak out against sexual violence by agents of the state are at risk of further abuse by state agents. As a result of speaking out against such violence, women in Turkey have been subjected to legal action, threats or actual imprisonment. Women who organized and spoke at a conference on “Sexual Violence in Custody” in Istanbul in June 2000 were charged with having insulted the security forces with their denunciation of rape in custody.<sup>56</sup> The trial against the accused is ongoing, although the first hearing was in March 2001. Amnesty International has called on the Turkish authorities to drop the charges against these women's rights activists who the organization considers have been charged solely on account of exercising their right to freedom of expression.

Lawyers representing women in Turkey who have been sexually assaulted in custody have been subjected to official, media, and peer persecution. This makes it even more difficult for survivors of sexual violence to obtain justice, and contributes to the silence surrounding sexual crimes. For speaking about rape and torture by security officials, **Eren Keskin** is facing trial. She commented publicly, “The peace mothers... were blindfolded, stripped naked and sexually ill-treated by soldiers young enough to be their grandchildren. They were harassed and insulted using names such as ‘whore’ and ‘bitch’.” For this statement, she was charged with “insulting the state security forces”.<sup>57</sup> Eren Keskin has been the subject of 86 lawsuits in relation to her

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<sup>56</sup> AI Index: EUR 44/013/2001

<sup>57</sup> Article 159 of the Turkish Criminal Code

human rights activities.<sup>58</sup> Seven of these relate to statements she has made in her role as head of a legal aid project which supports women who have been sexually assaulted in custody. She has also been the subject of death threats and insults.



Eren Keskin, *centre*, and colleagues at a press conference, Istanbul 2002 © Private.

On 6 February 1997, Eren Keskin had been convicted by the Istanbul State Security Court under Article 8 of Turkey’s controversial “Anti-Terror” law in connection with making “separatist propaganda” when she used the word “Kurdistan” in an interview that she had given to the newspaper *Medya Güneşi* in 1995. She was sentenced to a prison term of one year, one month and ten days, but the sentence was conditionally postponed. However, in November 2002, in a worrying departure from one of its traditional roles as a defender of human rights causes, the Istanbul Bar Association decided to implement a controversial decision by the Turkish Union of Bar Associations to suspend Eren Keskin’s licence as a lawyer for one year as a result of this conviction.

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<sup>58</sup> As of November 2002, 52 were ongoing, 31 resulted in acquittal, one in abandonment mid-trial, and two in postponement.

### Gathering medical evidence

On 12 August 1999, police took **Esra Armanci**, a law student selling newspapers to passers-by, into custody. Esra Armanci was handcuffed and put into the back of a police car. Whilst the car was in pursuit of her companion, she was allegedly forcibly searched, and a police officer reportedly squeezed her breasts and pushed his hand between her legs to the extent that these areas later became severely bruised. The police officer reportedly threatened that the entire police station would rape her. She was taken to a police station, and later to the Anti-Terror branch of Istanbul police headquarters. She told Amnesty International that she was detained for three days, during which time she was allegedly beaten, her head was hit against the wall, and she was deprived of sleep and food. When taken to a hospital for a report, she asked the doctor twice to ensure that the police left the examining cubicle but the doctor did not comply. She told the doctor she wanted a report but the doctor initially wrote a report without examining her. She eventually received an examination behind a curtain, but apparently at that time there was no visible bruising on her body. The chief prosecutor opened a case of “indecent assault,” which carries a light sentence, against the police officer involved.

The World Medical Association's Declaration on Physician Independence and Professional Freedom, adopted by the 38th World Medical Assembly in October 1986, stated that:

*"...Physicians must have the professional freedom to care for their patients without interference. The exercise of the physician's professional judgement and discretion in making clinical and ethical decisions in the care and treatment of patients must be preserved and protected."*

However, in Turkey, medical examinations do not always take place in situations conducive to either safety or disclosure. In many cases reported to Amnesty International, individuals refuse to undergo an examination in the presence of security forces. When medical personnel do not insist that security forces are removed, the individual is not able to obtain medical evidence to document their torture claims without violation of the right to privacy. The case above highlights several of the difficulties facing individuals attempting to seek redress for their experiences at the hands of state agents. Doctors in Turkey are employed by the state, and run the risk of being transferred from their duties or overlooked for promotion if they write reports

which document signs of torture (see, for example AI Index: EUR 44/009/2002). They are also subject to various other forms of pressure.

The Turkish criminal procedures code states that individuals must be examined by a member of the Forensic Medicine Facility; the Facility is overseen by the Ministry of Justice. However, in practice, as with Esra Armanç, security forces take individuals to primary health care centres or busy hospital services where it may be easier to intimidate younger or less experienced doctors.

For victims of sexual violence in custody, access to a thorough, impartial and independent investigation is severely circumscribed. In the case of *Şükran Aydın v. Turkey* before the European Court of Human Rights, on 25 September 1997 the Court found that **Şükran Aydın** had been the victim of torture at the hands of officials, and that Turkey was in violation of Articles 3 and 13 of the European Convention on Human Rights. In this judgment, the Court found that the state had not conducted a full, thorough and impartial investigation into allegations of torture, and specifically stated that a thorough investigation of rape allegations should include a psychological examination by independent medical authorities. “The manner in which the medical evidence was taken and the content of the medical reports were also deficient having regard to the nature of the offence under investigation.”<sup>59</sup>

The European Court of Human Rights is not the only international body calling for the utilization of psychological reports as evidence in cases of alleged sexual assault. The Istanbul Protocol also specifies that psychological examination is integral to the assessment of alleged sexual torture. Such evidence is crucial in cases of sexual assault where medical evidence is difficult and sometimes impossible to obtain.

In the wake of the *Aydın v. Turkey* judgment, psychological reports have been requested by the prosecutor for Asiye Güzel Zeybek, Güneş Baltaş, Fatma Deniz Polattaş, NCS, and Zeynep Avcı.<sup>60</sup> The prosecution accepted the report written by Asiye Güzel Zeybek’s psychiatrists as evidence, although in 2000 they decided not to proceed in an investigation of rape against the alleged perpetrators. However, in the case of Fatma Deniz Polattaş and NCS, the chief prosecutor initially decided not to prosecute the police officers involved as the reports by the Turkish Medical Chamber

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<sup>59</sup> *Aydın v. Turkey*, Judgment of 25 September 1997 (Application No 23178/94, p. 27)

<sup>60</sup> All of whom are plaintiffs in cases of sexual assault in custody: see AI Index: EUR 44/073/2001; EUR 44/004/2000; EUR 44/006/2001.



were “based on interpretation”.<sup>61</sup> Delays or refusals by prosecutors in requesting psychological and psychiatric reports in combination with a directive from at least one university administration which has forbidden state employed hospital staff<sup>62</sup> to provide reports unless they are requested by a prosecutor or a court, has meant that independent psychosocial assessment as a form of evidence is not always available. This is despite routine requests for such assessments from lawyers to prosecutors in cases of alleged sexual assault.

Whilst Amnesty International welcomes the directive that appropriately trained expert personnel should carry out investigations into allegations of torture, this decree should not be utilized to exclude independent expert personnel from issuing reports. All survivors of sexual assault or their representatives, in cases where they are defendants or sub-plaintiffs, have the right to request medical assessments from relevant experts – including state-employed experts - and courts should admit their reports as evidence.

Amnesty International urges the government to ensure that appropriate and timely forensic examination procedures and reporting be undertaken in all cases where individuals report ill-treatment or torture. Prosecutors who launch investigations should refer victims of abuse to appropriate specialist services for assessments as required. This would be particularly important in situations where the relevant forensic medical facilities do not have available specialist female staff to undertake medical or psychiatric assessment where women report sexual assault. Women who are undergoing forensic medical examination during or after detention should always have access to such specialist services.

Delays in obtaining medical reports or refusals to request them by the relevant courts or prosecutors, the refusal to accept medical reports from independent sources, and the refusal to make medical reports available to plaintiffs or their lawyers all contribute to the probability that perpetrators of sexual violence remain unpunished for their crimes, and that victims of sexual violence will be denied their right to redress and reparation.

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<sup>61</sup> See AI Index: EUR 44/006/2001.

<sup>62</sup> In 2002, Istanbul University’s Çapa Psychosocial Trauma Centre, which specializes in the assessment of the psychological effects of sexual assault, was forbidden by the university rector to issue psychological or psychiatric reports for individuals unless explicitly requested by the Chief Prosecutor or the relevant court. In 2000 an investigation, resulting in a decision not to prosecute, was opened into medical staff who had written reports.

### **Justice delayed and denied**

Access to redress has been particularly difficult when perpetrators of sexual violence have been state actors, both because of the scarcity of prosecutions<sup>63</sup> and because the law on the prosecution of state officials means that individuals who are able to take advantage of the statute of limitations are more likely to be state officials than other individuals facing criminal charges. At present, individuals cannot be sentenced for crimes after a specified period of time has passed from the date of the crime. Legal commentators have pointed to significant problems with the statute of limitations,<sup>64</sup> although the adoption of a proposed new law, which excludes crimes like torture from having a statute of limitations, would be welcomed by Amnesty International. In a number of key torture cases in which police officers have been the defendants, they have not shown up to hearings, their lawyers have resigned, or they have failed to provide required evidence in a timely fashion.

Lengthy delays contribute not only to delays in justice, but also to perpetrators not being brought to justice at all.

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<sup>63</sup> Law No. 4483 on the Prosecution of Civil Servants and other Public Employees was adopted by the Grand National Assembly of Turkey (TBMM) on 2 December 1999 and entered into force on 5 December. This law was aimed at making it easier to hold civil servants accountable. Under this law, however, it was still not possible to open an investigation against civil servants who committed a crime unless their superior granted permission (see AI Index: EUR 44/038/2000). Legislation which came into force in January 2003 repealed this requirement for permission.

<sup>64</sup> Approximately 200,000 cases per year in Turkey become invalid as a result of the expiry of the statute of limitations (Professor of criminal law Adem Sözüer, Istanbul University, on NTVcnbc's "Three basic needs: Justice" program, July 13, 2001).



Gülderen Baran, reportedly tortured at the police headquarters in Istanbul in August 1995. © Private

This is what happened in the case of **Gülderen Baran**, who had been reportedly tortured at the age of 22 at the police headquarters in Istanbul in August 1995. According to her statement, she was beaten, hosed naked with cold pressurized water, kept blindfolded and deprived of sleep, sexually molested and repeatedly hung by the arms. Repeated hanging by the arms left her with a loss of movement in both arms. Medical reports detailed linear marks under both arms, minimal movement in her fingers and only partial ability for flexion of the left wrist. Intensive physiotherapy was recommended but prison authorities failed to take her from prison to the majority of appointments. Gülderen Baran was sentenced to life imprisonment. A trial was opened against five policemen in connection with her torture. Despite admissions of using force and beatings from a chief

commissioner and a police officer during the course of their trial, the case was discontinued on 12 March 2002. It was reported to Amnesty International that many of the court sessions were adjourned by the court at the request of lawyers for the police officers, including, amongst other reasons, the non-attendance of the defendants and their failure to provide photographs of themselves for identification purposes. One of the officers on trial, who was not suspended from his duties whilst proceedings against him were pending and who was subsequently promoted to chief superintendent, has been the beneficiary of the expiry of the statute of limitations in two trials in which he has been charged with torture.<sup>65</sup>

Amnesty International calls for reforms to criminal procedures to ensure that criminal proceedings, including investigations and trials, of suspected perpetrators of sexual assaults are not subjected to undue delays and dragged out past the statute of limitations. Particularly in cases where survivors have experienced sexual torture, the lengthy nature of trial proceedings can add to the suffering, isolation and ostracism experienced by them.

<sup>65</sup> The same police officer has also reportedly been convicted of torture in a third case but received a suspended sentence for “good conduct”, *Radikal* newspaper, 15 June 2002: “Plenty of time for torture”

## **Chapter 7: Conclusion**

In the past twelve months Turkey has taken steps to prevent human rights abuses against women. The draft law on criminalizing the performing of “virginity tests” by non-forensic medical personnel on 26 July 2002; the proposed amendments to the Turkish Criminal Code which include abolishing suspended sentences for rapists who subsequently marry their victims; and the ratification of the Optional Protocol to the Women’s Convention in October 2002 are all promising developments. However, given the Turkish state’s disregard in the past for treaties it has ratified, its apparent inability to implement its own legal code with regard to the prosecution of state actors for human rights violations, and its failure to ensure that state personnel act with due diligence when abuses against women are committed by private actors, Amnesty International views these developments with caution.

Amnesty International also notes the initiatives designed to combat torture and impunity already taken by the Turkish government. However, taking into consideration the persistence of torture in violation of Turkey's obligations under international law, comprehensive reforms and their implementation are required urgently. Amnesty International repeats its recommendations to end torture and impunity and urges the Turkish authorities to implement them in a form compatible with international human rights law and standards and the recommendations of international human rights bodies such as the European Committee for the Prevention of Torture, the UN Committee against Torture and the UN Special Rapporteur on torture. All cases of torture, not merely high profile ones, should be investigated thoroughly and impartially and torturers should be prosecuted.

## **Chapter 8: Amnesty International’s Recommendations**

- **Condemn sexual violence against women:** The Turkish government must demonstrate its total opposition to sexual violence against women and condemn sexual violence unreservedly whenever it occurs. It must publicly recognize that rape and sexual abuse of women in custody always constitutes torture or other inhuman and degrading treatment and should be prevented. Sexual abuse includes threats, fondling, forced “virginity testing”, and the deliberate use of body searches or sexually explicit language to degrade or humiliate. The authorities should make clear to all members of the police, military and other security forces that any form of sexual violence against women will not be tolerated. All officials involved in the custody, interrogation and medical care of detainees and prisoners should be informed

that rape and sexual abuse are acts of torture or other inhuman or degrading treatment.

- **Investigate allegations of sexual violence:** Ensure prompt, independent, thorough and impartial investigations into all allegations of sexual violence and ensure that perpetrators are brought to justice.
- **End the stripping of detainees during questioning:** This constitutes a form of inhuman or degrading treatment and individuals doing so should be prosecuted immediately.
- **End the strip-searching of female detainees by male officials:** Male officers should never strip-search female detainees and must be out of sight when someone else is doing so.
- **End blindfolding:** Steps to promote accountability by police and to end torture should include ending the practice of blindfolding in police custody. Blindfolding is a form of ill-treatment in itself, and makes the reliable identification of officers responsible for abuses more difficult.
- **Define rape and sexual abuse in line with international standards.**
- **Pass legislation that reforms the framework of sexual crimes:** Change the categorization of sexual crimes to crimes against the individual.
- **Abolish the practice of forced “virginity testing”:** Ensure that a thorough investigation is undertaken into any instance in which the police or gendarmerie order a virginity examination, and if sufficient credible evidence exists, for those responsible to be brought to justice in criminal or disciplinary proceedings.
- **Medical reports:** Detainees should have immediate access to independent, impartial and competent medical experts. Independent medical or psychiatric reports should be admissible evidence to the investigation. Appropriate equipment for the medical investigation of different forms of torture and ill-treatment should be provided. Medical examinations should be conducted in private under the control of the medical expert and not in the presence of security or other government officials. In the case of rape and other forms of sexual abuse, the examining health personnel should be of the same sex as the victim unless otherwise requested by the victim.
- **Open detention records for scrutiny by detainees and their lawyers:** Relatives and lawyers should be able to find out immediately where a detainee is held and under which authority. Scrupulous record-keeping of all detentions is important, to establish responsibility for any violations committed during

custody. The standardized registration form provided for in the Regulation on Apprehension, Police Custody and Interrogation, issued jointly by the Justice and Interior Ministries on 1 October 1998, should be presented in the form of a bound ledger with numbered pages.

- **Abolish incommunicado detention:** Incommunicado detention should be abolished and clear guidelines should be introduced to ensure that in practice all detainees have immediate access to legal counsel.
- **Provide witness protection:** Alleged victims, witnesses, their families and those conducting the investigation should be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those implicated in human rights violations should be removed from any position of control or power, whether direct or indirect, over complainants, witnesses, their families, and those conducting the investigation.
- **Prosecution:** Those responsible for human rights violations, including those who order them, should be brought to justice. As recommended by the UN Special Rapporteur on torture after his visit to Turkey, “prosecutors and judiciary should speed up the trials and appeals of public officials indicted for torture and ill-treatment. Sentences should be commensurate with the gravity of the crime”.
- **Suspension from active duty of officers suspected of torture:** Police officers or gendarmes under investigation or trial for torture should be suspended from active duty and if convicted they should be dismissed.
- **Compensation and rehabilitation:** Victims of torture should be entitled to fair and adequate redress and reparation (Article 14 of the UN Convention against Torture). This should include appropriate medical and psychological care, financial compensation and rehabilitation.
- **Training:** It should be made clear during the training of all officials involved in the custody, interrogation and medical care of detainees and prisoners that torture and ill-treatment, including sexual assaults, are criminal acts. They should be instructed that they have the right and duty to refuse to obey any order to engage in such unlawful conduct.
- **Realize positive obligations:** In line with the Women’s Convention, to implement social policy reforms which act to ensure equality between men and women in the field of political participation, education, health care, family law and equality before the law.