

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 43/20 and 42/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the lack of independent investigation into the allegations of torture and ill-treatment against Mr. Mehmet Sıddık Meşe, who was severely beaten by Diyarbakir prison guards and denied adequate medical care.

According to the information received:

On 27 June 2020, Mr. Meşe was remanded pending trial at the Diyarbakir T-Type prison No. 3, on fraud-related charges. On 1 December, at around 10 am, a fellow inmate, responsible for the cell, told Mr. Meşe that he was encountering problems with other inmates. In response, and to avoid being overheard, Mr. Meşe wrote a note to his fellow inmate, advising him to raise those issues with the prison management, which the inmate passed on to prison guards. Subsequently, four prison guards came into the cell and took Mr. Meşe into a separate room called the 'Aquarium', where the view of the surveillance camera was partially obstructed by a poster or a banner, and subjected him to severe beating, including under his feet (falaka) as well as all over his face and body with a wooden baton, for almost 40 minutes.

The next day, on 2 December, Mr. Meşe told his family about the incident during their weekly telephone call. His lawyer, who was alerted and attended the prison the same day, witnessed that Mr. Meşe's face was bruised and swollen, both his eyes were bloodshot and his feet were severely bruised. Mr. Meşe further complained of dizziness, as well as pain in his feet and his back.

The lawyer documented Mr. Meşe's injuries and filed a criminal complaint with the Prosecutor, who launched an investigation, on 3 December. On the same day, the prison doctor comprehensively examined Mr. Meşe. However, he concluded in his medical report that no bodily injuries could be detected. Mr. Meşe was further allegedly denied adequate medical care. On the days following the incident, he was only treated with ice and cold water at the prison's infirmary.

Furthermore, on 4 December, the Diyarbakır Bar Association issued a statement expressing concern about the lack of medical examination at a hospital despite the prosecutor's order to investigate the case. They suspected that the prison administration is delaying such an examination until bruises and other injuries disappear, in order to conceal the signs of torture and ill-treatment committed against Mr. Meşe.

On 8 December, the prosecutor interviewed Mr. Meşe, through video conference, in the absence of his lawyer despite his request to be present, and further rejected the lawyer's request to conduct an independent forensic examination of Mr. Meşe, in compliance with the Istanbul Protocol.

On 9 December, based on the statements of the guards suspected of being the perpetrators and the prison doctor report indicating that there was no physical evidence of bodily injuries, the prosecutor decided to close the case for lack of evidence.

While we do not wish to prejudge the accuracy of the information received, we wish to express our serious concern at the allegations of torture and ill-treatment against Mr. Meşe and the lack of proper investigation into those allegations including the conduct of a forensic examination by an independent doctor. Those allegations, if confirmed, would be in contravention of the International Covenant on Political and Civil Rights (ICCPR) and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified by Turkey on 23 September 2003, and 2 August 1988 respectively.

We are further concerned about the physical and mental integrity, and security of Mr. Meşe whilst in detention. In this context, we would like to remind your Excellency's Government of the absolute and non-derogable obligation to protect all persons against acts of torture and ill-treatment as well as to ensure that competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed, and if confirmed, prosecute those responsible.

We are also concerned at Mr. Meşe's lack of access to appropriate medical care, and at the *prima facie* contravention of the Principles of Medical Ethics (General Assembly resolution 37/194) in terms of the alleged involvement of the prison's physician in acts which may constitute complicity in the commission of torture or other cruel, inhuman or degrading treatment or punishment.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please provide detailed information about the measures taken by your Excellency's Government to effectively protect, in law, procedures and practice, individuals from ill-treatment and torture while in police custody.
3. Please provide detailed information, on the measures undertaken by the prosecutor and other competent authorities to ensure the prompt, impartial, independent and effective investigation into the above mentioned allegations of torture and ill-treatment in full compliance with international standards, notably the Istanbul Protocol, including full photographic evidence taken during the official medical examination conducted on 3 December 2020. If no such photographic evidence was taken, please explain how this is compatible with Turkey's investigative duties under international human rights law and the professional standards set out in the Istanbul Protocol.
4. In particular, please provide detailed information on the factual and legal grounds for the decision to close the investigation related to Mr. Meşe allegations of torture and ill-treatment. Also, please explain why Mr. Meşe was not examined by an independent forensic doctor in the course of investigation.
5. Please provide information about the measures taken to ensure Mr. Meşe's timely access to appropriate health care. Kindly also explain how the medical report by the prison's doctor is compatible with international standards, in particular with the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Tlaleng Mofokeng
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and article 7 of the International Covenant on Civil and Political Rights, providing that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

In this connection, we would like to draw the attention of your Excellency's Government to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture. We further recall paragraph 14 of General Comment No. 20 of the Human Rights Committee, which provides that, "Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective". In this regard, we would also like to draw your Excellency's Government's attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States "(t)o take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture."

We would also like to reference the concluding observation of the Committee Against Torture (CAT/C/TUR/CO/4, Paragraph 10), on the impunity for acts of torture and ill-treatment, urging the State to "The Committee urges the State party to: "(a) Ensure that all instances and allegations of torture and ill-treatment are investigated promptly, effectively and impartially and that the perpetrators are prosecuted and convicted in accordance with the gravity of their acts; (b) Ensure that alleged perpetrators of torture and ill-treatment are immediately suspended from duty for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act, to commit reprisals against the alleged victim or to obstruct the investigation; (c) Ensure that state officials do not use the threat of countercharges as a means of intimidating detained persons or their relatives into not reporting torture; and (e) Establish an independent authority tasked with investigating

complaints against law enforcement officers that is independent of the police hierarchy”.

We would like to also refer to Article 6 of the ICCPR which protects the right to life, as torture and ill-treatment may seriously affect the physical and mental health of the mistreated individual and could generate the risk of deprivation of life. In its General Comment No. 36 (CCPR/C/GC/36) the Human Rights Committee stresses that States parties have a heightened duty of care to protect the lives and bodily integrity of individuals deprived of their liberty, including through the provision of the necessary medical care and appropriate regular monitoring of their health (para. 25).

We wish to further underline the reviewed Standard Minimum Rules for the Treatment of Prisoners (as amended and adopted by the UN General Assembly on 5 November 2015 and renamed the “Mandela Rules”). Rule 27 establishes that all prisons shall ensure prompt access to medical attention in urgent cases and where a prison service has its own hospital facilities, they shall be *adequately* staffed and equipped to provide prisoners referred to them with appropriate treatment and care. Furthermore, Rule 34 provides that “If, in the course of examining a prisoner upon admission or providing medical care to the prisoner thereafter, health-care professionals become aware of any signs of torture or other cruel, inhuman or degrading treatment or punishment, they shall document and report such cases to the competent medical, administrative or judicial authority. And that “proper procedural safeguards shall be followed in order not to expose the prisoner or associated persons to foreseeable risk of harm”.

In this connection, we would like to refer to the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 37/194 of 18 December 1982. Accordingly, “It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment” (Principle 2); “It is a contravention of medical ethics for health personnel, particularly physicians to certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health” (Principle 4), and “There may be no derogation from the foregoing principles on any ground whatsoever, including public emergency” (Principle 6).