



TÜRKİYE İNSAN HAKLARI VAKFI

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I. INTRODUCTION

1. Established in 1990, the Human Rights Foundation of Turkey (HRFT) is an internationally recognized human rights organization with the main aims of providing treatment and rehabilitation for torture survivors and contributing to the prevention of torture in Turkey. This report prepared by the HRFT provides information on the implementation of 2nd cycle recommendations, and information and recommendations in relation to the current situation of respect of international human rights obligations. HRFT has also submitted its report on the 2nd cycle of the UPR.¹

II. GENERAL OVERVIEW

2. Turkey has been undergoing a drastic period marked by widespread and systematically conducted gross and serious human rights violations. The resumption of armed clashes related to the Kurdish issue in July 2015, the failed coup attempt in July 2016, and the state of emergency in the aftermath significantly exacerbated the human rights situation.

A. Armed Conflicts and Curfews in the South-Eastern Turkey

3. Curfews and armed conflicts brought about systematic gross and serious human rights violations, including violation of prohibition of torture, right to life, right to access to health services, and restriction of access to basic needs.
4. HRFT determined that between the dates of 16.08.2015 and 01.07.2019, 369 curfews were declared for a day or an unlimited period in 11 cities.² These curfews implemented in densely populated residential areas without any measures taken for protection of the inhabitants and for the fulfilment of their most basic needs, were in themselves violations of fundamental rights that are protected by the Constitution and international treaties; such as the right to respect for private and family life, the freedom of thought, conscience and religion, the right to property, the right to education.³
5. According to HRFT data,⁴ between the dates of 16.08.2015 and 16.08.2016, during the curfews and conflicts at least 321 civilians were killed. The vast majority of the investigations into civilians died during armed clashes and curfews have resulted in non-prosecution.⁵

B. Military Coup Attempt and State of Emergency

6. There is a dramatic increase in the number of the allegations of torture and other ill treatment after the military coup attempt and under the SoE, declared on 20.07.2016 until lasted until 19.07.2018. The allegations of torture and other ill-treatment of detainees who were accused of attempting a coup or being a member of a terror organisation are raised by statements of victims, lawyers or family members, documented in medical reports. The weakening and abolishment of procedural safeguards provided an environment that facilitated torture practices.

¹<http://en.tihv.org.tr/wp-content/uploads/2015/06/UN-UPR-Report.pdf>

²<http://en.tihv.org.tr/curfews-in-turkey-between-the-dates-16-august-2015-1-july-2019/>, Curfews declared by Governors and District Governors without an authorization of law, do not pass the legality threshold in the opinion of the Venice Commission and the Council of Europe Commissioner for Human Rights.

³ According to the United Nations High Commissioner for Human Rights report on the human right situation in South-East Turkey between July 2015 and December 2016. Additionally the UN Committee Against Torture in its Concluding observations of the 4th Periodic Report of Turkey considered curfews and the anguish caused by the inability to access food and health caused by these curfews as ill-treatment.

⁴<http://en.tihv.org.tr/curfews-between-august-16-2015-august-16-2016-and-civilians-who-lost-their-lives/>

⁵ The Office of the United Nations High Commissioner for Human Rights published the "report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East" in March 2018.

RECOMMENDATIONS: State should,

- a. Ensure effective investigations (including reinitiating the investigations resulted with non-prosecution in the past) into serious allegations of violations of right to life and prohibition of torture, including civilian deaths, that occurred in the context curfews and conflicts in from July 2015 and in the aftermath of the failed coup attempt and under the SoE
- b. Establish effective mechanisms of redress for gross and serious human rights violations that occurred during armed conflicts and under the SoE
- c. Abolish Law No. 7145 that enables persistence of SoE practices in reality
- d. Abolish laws that revoke procedural safeguards for the prevention of torture

III. LEGISLATION IN PREVENTIVE MEASURES AND MECHANISMS AGAINST TORTURE AND ILL-TREATMENT

7. One of the most fundamental steps towards normalization of torture and ill-treatment practices was the enactment of the Law no. 6638 known as “Domestic Security Package” in 2015.⁶ This law gave enforcement officers unrestricted powers and made judicial scrutiny impossible. Despite a recommendation on considering the views of the civil society when elaborating the security law package (149.43), none of the legislations enacted in and after 2015 took into account the views of civil society.
8. From July 2015 onwards, the **procedural safeguards** for the prevention of torture and justice for victims were weakened both in legal legislation and in practice. In the aftermath of the coup attempt, an emergency decree extended the maximum duration of detention to 30 days, and later, in 2017 was reduced to 14 days. A restriction of the right to consult a lawyer in detention was regulated to be up to 5 days. Although this restriction was then reduced to 24 hours on paper, the former practice continued. During SoE, emergency decree n.676 changing Art.59 of the Penal Execution Law allowed audio and video recordings of the lawyer’s interview in prisons; guardians to accompany the interviews; confiscation of documents given to or kept by the lawyer, and the restriction of the timing of interviews. Following the official termination of the SoE, the legislation n.7145⁷ established a 12 days of prolonged arrest.
9. **Bringing the National Preventive Mechanism in line with the Paris Principles** (148.20/148.23, 148.24/148.25/148.26/148.32/149.8) The Human Rights and Equality Institution of Turkey (HREIT) created on 2016 to fulfil the function of the National Preventive Mechanism did not satisfy the criteria established by the Paris Principles and OPCAT in terms of its statute, structure, function, activities, financial and operational independence, independence of its board members and eligibility; compliance with the Paris Principles has been further reduced during the period. The Decree Having Force of Law No.703, dated 9 July 2018, amending the article regulating the election of the board members of the THREI Law, adjudicated that all the board members, alongside the President and the Vice President, were to be appointed by the President of Republic. With the first Presidential Circular dated 15 July 2018, the THREI was associated with the Ministry of Justice. With the THREI, a board completely dependent on the executive was constituted.⁸ As a result, this institution remained completely dysfunctional in a period of serious and widespread torture allegations.
10. Although in line with the recommendations 149.30 and 149.11 a commission on monitoring of law enforcement officers was established by law on 2016, this Commission remained ineffective. Moreover, with its composition and institutional structure, this commission is not designed as an independent body that can fulfil the role expected.
11. UPR recommendations (151.1/151.2/151.3/151.4) on the **signature and Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance**

⁶Legislation n.6638 amended 21 legislations including the principal internal security laws that are namely “Law on Duties and Competences of Police”, “Law of Gendarmerie Organization, its Duties and Competences”, “Law on Assemblies and Demonstrations”, “Anti-Terror Law”, “Penal Code”, Penal Procedure Law,” Provincial Administration Law”. Concerning this HRFT’s critics can be observed; <https://tihv.org.tr/turkiye-insan-haklari-vakfinin-tihv-yeni-ic-guvenlik-paketinin-estirisi/>, <https://tihv.org.tr/tihv-kurucular-kurulu-ic-guvenlik-paketi-aciklamasi/>

⁷ Emergency Decree published on 30.07.2018 amended art.11 of legislation n.5442.

⁸ Such concerns are raised in international monitoring bodies’ reports on Turkey. For an example, see the European Commission’s “Turkey 2018 Report”.

(ICPPED) was not adopted. The convention which not only bans the enforced disappearance, but also stipulates that the governments define it act as a crime in their legal systems, is open to signature since 2010, but has not been signed by Turkey as yet. The crime of enforced disappearance remains undefined in the Turkish Criminal Code.

RECOMMENDATIONS: State should,

- a. Abolish temporary Art.19 of Law no.3713 that extends the maximum duration of detention up to 12 days
- b. Remove all restrictions that weaken procedural safeguards and investigations concerning torture such as; Art.52 of Law no. 5275; Law no. 6722; retroactive statute of limitations in torture investigations
- c. Sign and ratify ICPPED, recognize enforced disappearance as crime in the Penal Code, remove the statute of limitations to act retrospectively on past allegations.
- d. Amend Law no. 6638 known as “Domestic Security Package”, particularly in a way to avert the risks it brought in terms of torture and violations of right to life
- e. Amend Law n.6701 on HREIT to comply with Paris Principles and ensure its financial, structural and functional independence and guarantee the competency of its board members
- f. Establish a National Prevention Mechanism separate from HREIT or amend the HREIT statute, to comply with OPCAT
- g. Amend the Commission on Monitoring of Law Enforcement Officers appointment procedure, ensure its independence and transparency, provide financial and administrative sources for its activities

IV. RECENT TORTURE AND OTHER ILL-TREATMENT PRACTICES

12. Torture and other ill-treatment that is frequently used to intimidate, punish and establish authority, have also been widely used in criminal investigations to obtain confessions. Widespread torture occurs in official detention centres, informal places of detention, on streets, in prisons. Additionally, excessive use of police force during assemblies that reach the level of “torture” became more common.
13. Between 2015 and 2018, **2284 persons** applied to HRFT with a claim to be subjected to torture. In 2018, 584 persons applied to HRFT for treatment and rehabilitation, most of them were subjected to torture in multiple places. Many were tortured or ill-treated in police headquarters (257 persons), open fields or in assemblies (221), in police vehicles (298), in police centres (90), at home or work places (87). While these numbers are far from covering the total number of persons tortured or ill-treated nationwide in Turkey, they are an important indicator of the prevalence of torture.

A. Torture and other ill-treatment in official detention centres

14. There are several allegations of torture and other ill-treatment in official places of detention, especially in the context of armed conflicts and under the SoE.⁹ The horrendous dimension of torture and other ill-treatment is well documented with images served to the media after the coup attempt and in reports issued by human rights organizations and international mechanisms.¹⁰
15. In the 2015 UPR, Turkey received a recommendation to establish budgetary allotments to improve the prison conditions (149.21). However, according to the Ministry of Justice, the number of people kept in prisons by 16.11.2018 is 260.144 despite the capacity of these institutions being 220.000. There has been a dramatic increase in the number of allegations of beatings at entry, stigmatising political prisoners as “terrorists”, arbitrary treatment and disciplinary punishments, cell confinement, restricting access to health services, handcuffed medical inspections and forced displacement of prisoners.

⁹ A recent example of such allegations concerns 51 people taken into detention in Halfeti district of Sanliurfa province and brought to the Şanlıurfa Police Headquarters Anti-Terrorism Branch. Survivors and their lawyers reported a multiplicity of torture methods including electricution, rape, foot whipping were used. Şanlıurfa Bar Association Human Rights Center report on Halfeti Torture Incidents can be observed. <http://web2.e-baro.web.tr/uploads/63/Dokumanlar/Haber/RAPOR%20HALFET%C4%B0.pdf>

¹⁰ Report of the UN Special Rapporteur on Torture that is published on 18 December 2017 based on the visit to Turkey between the dates of 27 November and 2 December 2016, includes a definition and assessment of the situation in Turkey. There are 31 concrete recommendations in the report. UN Rapporteur expressed once again his deep concerns about the topic on 27 February 2018. The report of the Office of the United Nations High Commissioner for Human Rights “on the impact of the state of emergency on human rights in Turkey, including an update on the South-East” published in March 2018 and “Turkey 2018 report” that is prepared by the European Commission and published on 17 April 2018 includes similar assessments.

Sick Inmates (149.9)

16. According to the Human Rights Association data of 12.04.2019, there are 1333 sick inmates and 456 of them are seriously ill, and their health conditions are significantly worsening due to their confinement in prison. With the amendments to the Penal Execution Law in 2013 and 2014, the postponement of penal execution due to health conditions was restricted with a requirement of “not constituting a serious and concrete danger for public safety”. Based on this law, release of many sick inmates are restricted arbitrarily, despite the existence of reports by independent medical experts stating that health conditions of these inmates are not suitable to stay in prison.¹¹

B. Torture and other ill-treatment in informal places of detention and in extra-custodial settings

17. There is ample evidence that excessive use of police force during peaceful assemblies throughout the country has reached the level of torture and other ill-treatment.¹² These practices continue despite the UPR recommendations (149.35/149.36/149.39) in 2015. Among many others peaceful demonstrations by opposition groups, LGBTI marches, including in Istanbul and Ankara, Women’s Day March and Saturday Mothers’ demonstrations were banned, and protesters were subjected to acts that amount to torture. According to the data compiled in the GATE Anti-Torture Database¹³ focusing on the applicants to the HRFT Treatment and Rehabilitation Centre in Istanbul in 2018 and 2019, 48 out of 198 applicants reported to have been subjected to torture or ill-treatment as protesters, and 112 incidents out of 519 took place in an “open area”, referring to the venue of demonstrations. Chemical exposure (exposure to tear gas) and blunt trauma are common in this group.

18. Abduction and enforced disappearance attempts

Abductions and enforced disappearances, practices that marked the 1990s in Turkey, particularly in the context of the Kurdish issue, reoccurred in the recent period. HRFT detected that in 2018, sixteen persons were abducted and released after being subjected to torture. The Human Rights Association detected that in 2018, 28 persons were abducted or attempted to be abducted.¹⁴ Additionally, at the time of this report, no news is received for five months from 6 persons, who were allegedly abducted by persons claiming to be police officers.¹⁵

RECOMMENDATIONS: State should;

- a. End arbitrary restriction of peaceful assemblies and change regulations accordingly
- b. Make legal arrangements and consider the intentional use of force to demonstrators who cannot escape during assemblies and demonstrations as torture
- c. Prohibit pepper sprays and tear gas chemicals

¹¹In addition to the problems related to access to health services, there are serious problems on various issues concerning the obtention of medical evaluation reports based on independent and qualified medical evaluation including the lack of independence of the Forensic Medicine Institute. Concerning this, Human Rights Association’s sick inmates report can be observed. <https://www.ihd.org.tr/bu-ulkenin-hapishanelerinde-binlerce-hasta-ve-olumun-sinirinda-insan-yatiyor/>

¹² Concerning this, on 20 July 2017, UN Special Rapporteur on Torture published “*Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment*” report. In paragraph 47, an important assessment of “*notwithstanding any additional elements that may be required for a formal qualification as “torture” under the applicable treaty definition, any extra-custodial use of force that involves the intentional and purposeful infliction of pain or suffering on a powerless person as a vehicle for achieving a particular purpose will always amount to an aggravated form of cruel, inhuman or degrading treatment or punishment, irrespective of considerations of lawful purpose, necessity or proportionality and irrespective of its qualification as torture under the applicable treaty definition*” was given.

¹³ HRFT is currently participating in the Global Anti-Torture Evidence (GATE) Project implemented by the International Rehabilitation Council for Torture Victims (IRCT) together with 14 other torture rehabilitation centres from around the world. Under the auspices of the GATE project, HRFT Istanbul Treatment and Rehabilitation Centre is using the IRCT’s innovative Anti-Torture Database (ATD), a clinical record-keeping software that allows torture rehabilitation centres to capture, store and analyse data collected from torture victims throughout the rehabilitation process, within strict ethical and safety standards.

¹⁴ Concerning this, the Human Rights Association’s special report on “extracting statements and interviewing with threat, abduction and spy accusations” and “Human Rights Violations of 2018” reports can be observed: <https://ihd.org.tr/en/?p=2054>, <https://ihd.org.tr/en/?p=2109>

¹⁵ Right Initiative’s observation and research report on the allegations of illegal abduction by State officers after 2016 <http://hakinisiyatifi.org/wp-content/uploads/2019/06/Hak%C4%B0nisiyatifi.2019A1%C4%B1konulma%C4%B0ddialar%C4%B1Raporu.pdf>

- d. Abolish the public safety requirement in postponement of penal execution due to health conditions¹⁶, and establish objective criteria based on medical evidence and independent medical evaluation processes (rather than considering the Forensic Medicine Institute as the sole authority to state opinion on the issue) for release of seriously ill inmates.
- e. Improve prison conditions for inmates, including avoiding isolation as a punishment method.

V. EFFECTIVE INVESTIGATION OF TORTURE AND OTHER ILL-TREATMENT, THE CULTURE OF IMPUNITY (148.109/149.31).

19. After 2015, a trend is observed towards strengthening of the impunity for torture, both through a series of legal arrangements, and in practice. In a period where numerous allegations of torture (particularly, in the context of armed clashes related to the Kurdish issue and in the aftermath of the failed coup attempt) were raised, and despite the existence of witnesses and concrete evidence including visual evidence and independent medico-legal reports, effective investigations into serious allegations of torture and ill-treatment were not conducted, and only rarely investigations led to punishment of perpetrators.¹⁷
20. Despite the recommendation on the abolishment of any legal restrictions on the investigation of crimes by government officials, like torture, extrajudicial killings, and disappearances, (150.11), more strict requirements were brought for such investigations, after 2015. With the legislation no.6722, investigation of alleged torture and other ill-treatment of military personnel involved in operations were provided immunity for their acts, through introduction of a special process of authorization by public authorities.¹⁸
21. In 2013, an amendment to Art.94 of the Penal Code repealed the statute of limitation on torture. However, this arrangement did not act retrospectively to cover the crimes of torture committed in the past, including those during the 1980 military coup and in 1990s.¹⁹ Moreover, since enforced disappearance is not defined as a crime in the Penal Code, statute of limitation remains a significant limitation with regards to investigations into enforced disappearances, particularly those that took place in the 1990s.
22. The emergency decrees no. 696 (dated December 24, 2017), was one of the most dangerous attempts to increase the culture of impunity in Turkey. The decree provided immunity to civilians -whether they hold an official position or not - who would fight against coup attempts and terrorist acts. On the one hand, the decree encourages the state officials and civilians to use torture and other forms of ill-treatment without having any punishment under the name of fighting against terrorism. On the other, it encourages the lynching culture in which anyone can use violence (art. 121). With this regulation, for the first time, the impunity was extended to include the civilians.²⁰
23. The Article 13 of UNCAT, states that the State has a clear obligation to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of this complaint or any evidence given. However, an increase in counter-charges that aim to deter torture victims from filing a complaint is observed in the recent period. In 2015-2017, 53.521 persons were convicted under the Article 265 of the Penal Code that regulates the prevention of public duty of a public officer, and that is often used arbitrarily for intimidating persons who were subjected to torture and ill-treatment, or retaliating against those who filed a complaint against public officials.²¹
24. Many public authorities adopted a discourse that justifies torture and violations of the right to life with

¹⁶ Regulation amending Art.16 of the Penal Execution Law.

¹⁷ For instance, the first criminal complaint submitted to the Chief Public Prosecution Office concerning the large number of persons (130 to 189) who were killed in the “basements” in Cizre during the “curfew”, resulted with a decision of non-prosecution, based on the judgment that there are no grounds for prosecution. The decision was made on accounts of “existence of legal grounds in the incident”, and “lack of evidence for the excess of self-defence limits”.

¹⁸ Legislation n.6722 is published on 14.07.2016, <http://www.resmigazete.gov.tr/eskiler/2016/07/20160714-1.htm>

¹⁹ <https://tihv.org.tr/12-eylul-2014-tihv-dokumantasyon-merkezi-gunluk-insan-haklari-raporu/> (09/051)

²⁰ Emergency Decree n.696 is published on 24.12.2017, <http://www.resmigazete.gov.tr/eskiler/2017/12/20171224-22.htm>

²¹ <http://www.adlisicil.adalet.gov.tr/adaletistya.html>

the pretext of “fight against terrorism”, “national security” and “public order”.²² There have been instances where high ranking state officials publicly encouraged security forces to use torture or ill-treatment²³.

RECOMMENDATIONS: State should;

- a. Ensure torture investigations are conducted in accordance with the Istanbul Protocol
- b. Establish an independent unit to investigate complaints against law enforcement officers suspected of torture to eliminate the perpetrator's interference with investigation
- c. Abolish authorization procedure for investigation of law enforcement officers
- d. Abolish the postponement of execution of sentences given in criminal proceedings related to the crime of torture
- e. Prevent counter-charges
- f. Give Istanbul Protocol trainings to relevant public officials on prohibition of torture, and conduct these trainings with the participation of non-governmental organisations
- g. Immediately authorize publishing of complete observation reports by CPT based on its visits to Turkey²⁴

VI. INADEQUACIES CONCERNING THE RIGHT TO REPARATION

25. Turkey's laws do not provide sufficient guarantees of compensation, non-repetition, adequate satisfaction and rehabilitation to victims of torture despite that Art.14 of the Convention Against Torture recognizes an obligation to provide reparations.
26. Furthermore, HRFT, the most prominent civil actor in Turkey providing rehabilitation to torture survivors and their relatives since 1990, has been subject to judicial harassment and pressures. As part of the right to rehabilitation under Article 14 of UNCAT, the State has a clear obligation to refrain from intimidation and reprisal against such service providers and to sustain their work.

RECOMMENDATIONS: State should;

- a. Ensure that all survivors of torture and ill-treatment obtain redress, including an enforceable right to fair and adequate compensation and the means for as full rehabilitation as possible
- b. Ensure that no reprisals or other actions are taken to deter the work of NGOs, including those that provide professionally independent medical service
- c. Ensure that charges of terror organisation propaganda (Art.7/2), defamation (Art.125), incitement of hatred and hostility and degradation (Art.216), and defamation of the president (Art.299) charges are not used for judicial harassment of human rights defenders, and journalists who reveal human rights violations and who work to prevent them

²² Some examples of impunity just in 2019: The perpetrator received a suspended 3000 liras of penalty as a result of a trial concerning the ill-treatment of 75-year-old Perihan Pulat by the police in an “I want my job back” protest on Yuksel street in Ankara, <http://en.tihv.org.tr/08-february-2019-hrft-documentation-center-daily-human-rights-report/> (02/090).

Three children who were detained in the Public Security Department of Van were subjected to torture and other ill-treatment. Governor of Van filed a criminal complaint against Van Bar Association that raised the issue. <https://tihv.org.tr/16-18-subat-2019-gunluk-insan-haklari-raporu/> (02/209)

During the Gezi Events, the police who shot and killed Ethem Sarısülük in the head received a penalty of 15.200 liras that was upheld by the Court of Cassation. <https://tihv.org.tr/22-29-mart-2018-tihv-dokumentasyon-merkezi-gunluk-insan-haklari-raporu/> (03/174)

During the police intervention to Saturday Mothers' 700th gathering, a citizen named Aydın Aydoğan's arm was broken, the investigation launched against this police officer was resulted with a non-prosecution decision. <https://tihv.org.tr/13-15-nisan-2019-gunluk-insan-haklari-raporu/> , (04/188)

In the case of four villagers who had returned from collecting mushrooms in the Gevaş district of Van province were severely subjected to torture, the court acquitted the police officers on the grounds that the camera footage which clearly showed the signs of torture was not bright. <https://tihv.org.tr/25-nisan-2019-gunluk-insan-haklari-raporu/> (04/309)

²³ For example in 2018, the Minister of Internal Affairs, Suleyman Soylu said “The police who didn't break drug dealer's leg didn't do their duty. We have to treat drug dealers and terrorists the same, just as cruelly. I'm responsible for whatever a security officer does when he sees a drug dealer.”

²⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) made an ad-hoc visit to Turkey between 29.08.2016 to 06.09.2016 and a periodic visit between 10.05.2017 to 23.05.2017.