

London Legal Group

Alternative report to the Committee against Torture – Turkey

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Introduction

This alternative report is drafted by the London Legal Group (LLG), a network of lawyers who provide advice on and actively participate in legal and advocacy activities before international courts and institutions, including the European court of Human Rights (ECtHR), United Nations Human Rights Council and Treaty and Charter bodies, and the Organisation for Security and Co-operation in Europe (OSCE).

This report is a response to the Turkish government's State Report to the United Nations Committee against Torture (hereafter "the Committee") under the Convention against Torture (CAT). The report provides an NGO perspective on the progress made by Turkey in implementing CAT, particularly in relation to Article 2, which imposes an obligation on State Parties to take all appropriate legislative, judicial and administrative measures to prevent acts of torture.

LLG welcomes the opportunity to make this submission to the Committee in advance of its examination of Turkey's compliance with its obligations under CAT. LLG seeks to work constructively with the Committee and the Turkish government.

Executive summary

Turkey, as a State party to the CAT,¹ has committed itself to comply with Article 2 of the CAT, imposing an obligation on States to take all appropriate legislative, administrative, judicial or other measures to prevent acts of torture against all individuals under its jurisdiction.² The Committee has interpreted the positive obligations enshrined in Article 2 as imposing a duty on States parties, not only to include the prohibition of torture, degrading, cruel and inhuman treatment in their domestic laws, but also to prosecute such acts.³ Article 2 aims at effectively targeting both action and inaction by States.⁴

We welcome the prohibition of torture under the Turkish Constitution and the criminalisation of torture under the Criminal Law.⁵ Domestic law provisions, however, as they stand, continue to raise concerns due to: (a) the ambiguity of the distinction between torture and other criminal offences; (b) lack of nuances responsive to the specific needs of torture victims and narrow recognition of their rights. Establishing a National Preventive Mechanism in 2014 is a positive step taken by Turkey. Civil society representatives, however, are still concerned regarding compliance with the standards established by both the Paris Principles⁶ and the Optional Protocol to the Convention against Torture (OPCAT).⁷ The institution continues to lack independence as well as structural, functional and financial capacity to exercise its mandate.⁸

Excessive use of force by police officers and prison guards continues to be extensively practiced in Turkey. In Turkey's detention facilities, overcrowding and poor living conditions remain unresolved, and torture and ill-treatment of inmates, including beatings, sexual and psychological harassment, and rapes, are still common. Turkey does not respect principles of juvenile justice and Turkey's anti-terrorism laws allow juveniles to be detained for their alleged participation in pro-Kurdish protests. In 2014, there were 133 reported cases of torture against children by either police officers or prison

¹ UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 UNTS 85.

² UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 UNTS 85; Article 2.

³ Committee against Torture, *General Comment n.2*, CAT/C/GC/2CRP.1/Rev.4, para 11.

⁴ Committee against Torture, *General Comment n.2*, CAT/C/GC/2CRP.1/Rev.4, para 11.

⁵ Grand National Assembly of Turkey, *Constitution of the Republic of Turkey*, 1982. Available at https://global.tbmm.gov.tr/docs/constitution_en.pdf (last accessed 21 March 2016); Parliament of Turkey, *Law n. 5232/2004 (Criminal Code)*, Articles 94-95. Available at <http://www.legislationline.org/documents/action/popup/id/6872/preview> (last accessed 10 March 2016).

⁶ UN General Assembly, *Paris Principles*, 20 December 1993, A/RES/48/134. Available at <http://enoc.eu/wp-content/uploads/2015/01/Paris-Principle.pdf> (last accessed 8 March 2016).

⁷ UN General Assembly, *Optional Protocol to the Convention against Torture and other Cruel Inhuman and Degrading Treatment or Punishment*, 22 June 2006, A/RES/57/199, Article 18.

⁸ Human Rights Foundation of Turkey, *National Preventive Mechanism – Evaluation Report*, 2015. Available at <http://tihv.org.tr/wp-content/uploads/2015/08/5.-U%C3%96M-Rapor-II-ing.pdf> (last accessed on 8 March 2016).

guards.⁹ Serious cases of child abuse have been documented, in particular in Pozanti, Mugla, Sincan and Şakran juvenile prison facilities.

Torture and ill-treatment at the hands of law enforcement officials also occurs during demonstrations and protests, particularly in the Kurdish region or during demonstrations related to minority rights across the country. Excessive and disproportionate use of force by police officers and security forces in the form of firearms used indiscriminately against the crowds, tear gas, water cannons and beatings as means to manage demonstrations and protests, and domestic laws do not comply with international standards on the use of force by law enforcement. Reports on the Gezi Park demonstrations show that more than 8.000 people suffered injuries as a result of the methods used by the police to control the protests. In 2014 at least 12 people were killed during demonstrations and between January and September 2015, 74 disproportionate interventions by Turkish security forces during public protests have been reported.¹⁰

Following the collapse of the ceasefire between Turkish authorities and the Kurdistan Workers' Party (PKK) in 2015, curfews were declared in at least 19 districts of 7 cities. Security operations were launched in civilian areas. The deployment of 10.000 law enforcement officers, using armed weapons in 22 cities across the country resulted in clashes that took a particularly heavy toll on the civilian population.¹¹ While responding to recent security threats in the South-Eastern part of the country, Turkish police and security forces have engaged in torture, severe ill treatment and abuse of detainees and other gross human rights violations against the civilian population.¹²

Excessive use of force by the security forces and human rights violations against the civilian population have not been addressed by the Turkish authorities. Statements of the State representatives regarding these incidents repeatedly portrayed the reported atrocities as lies and media fabrications, often minimising the seriousness of the human rights violations perpetrated by law enforcement officers and security forces. Turkish State continues to refuse to carry out thorough and fair investigations into torture and ill-treatment allegations.¹³

Lack of investigation and impunity for perpetrators undermine Turkey's obligation to prevent and prosecute torture and ill-treatment. While torture is criminalised in Turkey, allegations involving

⁹ Hurriyet Daily News, *113 Children Tortured in Turkish Prisons or in Custody*, 20 November 2014. Available at <http://www.hurriyetdailynews.com/113-children-tortured-in-turkish-prisons-or-in-custody-in-2014-ngo.aspx?pageID=238&nID=74594&NewsCatID=339> (last accessed on 21 March 2016).

¹⁰ ANFNews, *What Has the State Done in Kurdistan in 9 Months?*, 16 October 2015. Available at <http://anfenglish.com/kurdistan/what-has-the-state-done-in-kurdistan-in-9-months> (last accessed on 15 March 2016)

¹¹ Hurriyet News, *22 ilde terör operasyonu*, 25 July 2015. Available at <http://www.hurriyet.com.tr/22-ilde-teror-operasyonu-29637761> (last accessed on 21 March 2016).

¹² Human Rights Watch, Press Release, *Beaten, Threatened with Death by Police – Disturbing Abuse during Security Operations*, 2 September 2015. Available at <https://www.hrw.org/news/2015/09/02/turkey-beaten-threatened-death-police> (last accessed on 21 March 2015).

¹³ European United Left, *Report on the Human Rights Violations, Torture and Sexual Abuse against Jailed Children in Pozanti M Type Juvenile Prison in Adana*, 2012: p. 2. Available at: <http://peaceinkurdistancampaign.com/2012/03/15/report-into-sexual-abuse-at-pozanti-prison-released/> (last accessed 21 March 2016).

police officers, prison guards and security forces are not duly investigated and perpetrators are not brought to justice in practice, When prosecutions do take place, sanctions are often reduced or suspended, or they are charged with less serious offences under the Criminal Code.¹⁴ Such climate of impunity is also fuelled by the practice of counter-charges against complainants. Between 2010 and 2013, there were 102.247 counter-charges against complainants, as a result of which 41.500 individuals were convicted for “resisting” or “insulting” public officials amounting to a crime under the Criminal Code.¹⁵

Such shortcomings in relation to the prevention, investigation, and prosecution of torture and ill-treatment constitute a violation of the obligations enshrined in Article 2 of the CAT Convention. The latter not only states an absolute and non-derogable prohibition against torture but also imposes a duty on Turkey to take positive measures to prevent and address cases of torture within its jurisdiction, but There is no possible justification for Turkey’s non-compliance with its obligation to take all the appropriate measures to eradicate such practices. The London Legal Group calls on the Turkish State authorities to amend its domestic laws in order to prevent future cases of torture and ill-treatment and address the climate of impunity and to ensure the investigation and prosecution of torture allegations.

List of Recommendations

- *Turkish State authorities should explicitly recognise the rights of torture victims within the Turkish legal system. Particularly, the right to reparation should be explicitly recognised within the domestic legal framework.*
- *Turkish State authorities should promptly amend the founding law of the Human Rights Institution of Turkey, to provide it with the necessary institutional and structural autonomy and independence, in order for it to effectively fulfil its role as Turkey’s National Preventive Mechanism.*
- *Turkey should take all the necessary legislative, judicial and administrative measures to effectively prevent and address torture and ill-treatment in prison. Practical steps should be taken by Turkey to improve the living conditions of the prison population: access to water, food, and health services should be guaranteed. Particularly, overcrowding should be addressed as a first step to prevent torture and ill-treatment. Effective follow-up and investigations into torture allegations against prison guards should be guaranteed by Turkish State authorities.*

¹⁴ International Rehabilitation Council for Torture Victims, *Torture in Turkey, Country Factsheet*, 2014, p. 3. Available at www.irct.org (last accessed 15 March 2016).

¹⁵ United States Government, *Turkey 2014 Human Rights Report*, p. 11. Available at: <http://www.state.gov/documents/organization/236798.pdf> (last accessed on 15 March 2016).

- *Turkey's State authorities should increase its efforts in the area of human rights training, particularly targeting prison staff and law enforcement officials.*
- *Turkish State authorities should provide children and juvenile offenders with their own detention centres, separate from adult facilities. Special training should be organised for prison guards on the prohibition of torture, in the light of the best interest of the child and principles of juvenile justice. Specific measures should be taken to investigate torture against juveniles.*
- *Training on international standards, particularly the Istanbul Protocol, should be provided and made compulsory for professionals, in particular for medical professionals.*
- *Measures should be taken in order for medical examinations to be carried out thoroughly: the Turkish Criminal Code should be amended to include punishment for medical professionals who do not conduct fair and thorough medical examinations or provide inaccurate reports.*
- *The Turkish Criminal Procedure Code should be amended to recognise everyone's right to have access to a lawyer. The enjoyment of the latter should not be subject to any condition or limitation.*
- *Turkish State authorities should amend domestic laws regulating the use of force by law enforcement officers in line with international standards, such as the UN Basic Principles on the Use of Force and Firearms.*
- *Circulars and other documents issued by Turkey's Ministry of the Interior providing guidelines on the lawful use of force by law enforcement officers should be updated to comply with international standards, including international human rights law, and made available to the public.*
- *An independent mechanism should be established, and should be provided with the necessary structural and functional resources to deal with complaints against unlawful police conduct.*
- *Turkish State authorities should take active steps to manage demonstrations and protests through peaceful means in order to protect protestors from ill-treatment and torture. Investigation into allegations of abuse by officials must be conducted promptly, thoroughly, and independently, without recourse to counter-charge on complainants.*
- *Turkish State authorities should take measures to immediately stop the gross human rights violations amounting to torture and ill-treatment against civilians, in particular in the context of security operations in south-east Turkey.*
- *Turkish State authorities should lift all curfews in the Kurdish region of Turkey and end the military operations threatening life and security of the civilian population, in order to ensure the civilian population's access to public services, fundamental needs and medical care.*

- *Turkish State authorities should initiate an independent investigation into all allegations of torture and ill-treatment since the declaration of curfews in the Kurdish region of Turkey, ensuring that members of the Security Forces and government officials who were involved are held to account.*
- *Turkish State authorities should allow international monitoring bodies to access to the region where security operations are taking place in order to ensure that security forces are complying with international standards on human rights and the use of force.*
- *Turkish State authorities should immediately take steps to end the climate of impunity by initiating impartial investigations and prosecution, in particular in cases of human rights violations allegedly perpetrated by members of the law enforcement, in order to guarantee accountability.*

1. Torture in Turkey – a brief overview

Turkey is a State Party to the Convention against Torture (CAT),¹⁶ and, therefore, it is under the obligation to comply with Article 2 of the Convention.

Turkey ratified CAT in 1988, and, since then, a number of measures have been taken to comply with the positive obligations enshrined in the Convention. Turkish law prohibits torture in the Constitution and criminalises it under the Criminal Code. The Criminal Code identifies torture as well as cruel, inhuman and degrading treatment as punishable offences.

A closer look at Turkey's recent history, however, reveals that prevalent practice of torture and ill-treatment remains as an unresolved problem in the country. The authoritarian inclinations of the government over the past few years and expansion of the powers of the law enforcement officers resulted in excessive use of force by the police against dissidents and political opponents as well as minority groups, both during demonstrations and in detention facilities. There is, furthermore, alarming lack of effective investigations into torture allegations, as well as regressive legal amendments, which are in violation of Turkey's obligations under Article 2.¹⁷

Turkey underwent its second Universal Periodic Review (UPR) cycle in January 2015 during which the Turkish government received over twenty recommendations on torture prevention, excessive use of force by state agents, and human rights violations in detention.¹⁸ The pressing need to address these issues is confirmed by recent data showing how, only in 2014, 3.401 people were subjected to torture, maltreatment, humiliation or unjust punishment - 1.021 of those, including 64 children, allegedly suffered such ill-treatment while in custody.¹⁹ More recent information was published by the Human Rights Association (HRA) and the Human Rights Foundation of Turkey (HRFT) according to which, in the first 11 months of 2015, 560 people applied to HRFT, 347 of whom claiming to have been subjected to torture or ill-treatment. In the first 11 months of 2015, 1433 were reported to be tortured while under custody but outside detention centres according to the additional data released by HRA.²⁰

One of the main reasons for the increase of the practice of torture and ill-treatment in Turkey is the on-going internal conflict between State authorities and the Kurdistan Workers' Party (PKK). The excessive use of force by security forces against protesters during demonstrations has characterised the past few months, with curfews established in Cizre and Diyarbakir in 2015 that resulted in

¹⁶ UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 UNTS 85.

¹⁷ International Rehabilitation Council for Torture Victims, *Torture in Turkey, Country Factsheet*, 2014, p. 1. Available at www.irct.org (last accessed 15 March 2016).

¹⁸ Data available at <http://www.upr-info.org/database/> (last accessed on 15 March 2016).

¹⁹ Home Office, *Country Information and Guidance – Turkey*, February 2016, p. 17. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/500222/CIG - Turkey - Background.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/500222/CIG_-_Turkey_-_Background.pdf) (last accessed 8 March 2016).

²⁰ Bianet "IHD ve TIHV: Baris bir insan hakkidir" 9 December 2015. Available at: <http://bianet.org/bianet/insan-haklari/170007-ihd-ve-tihv-baris-bir-insan-hakkidir> (last accessed on 21 March 2016)

widespread human rights violations and the death of hundreds of civilians, including children.²¹ However, other events, such as the Gezi protests and the Pozanti Prison abuses show that torture and ill-treatment constitute a wider issue.²²

Indeed, while, as stated in a recent report by Amnesty International, the number of torture cases decreased between 2014 and 2015, it is estimated that, since the 1980 coup, more than 1 million people have been subject to torture in Turkey.²³ Moreover, although the designation by the Turkish government of a National Preventive Mechanism (NPM), in compliance with its obligation under the Optional Protocol to the Convention against Torture (OPCAT),²⁴ represents a step forward, the means and instruments, or the lack thereof, chosen by Turkish State authorities to prevent and address torture still raise concerns.

2. Torture Prevention – measures and norms

Torture is prohibited under Turkish domestic law: for instance, Article 17.3 of the Constitution of Turkey²⁵ establishes that “no one shall be subjected to torture or ill-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity”. Moreover, Article 94 of the Turkish Criminal Code²⁶ punishes any act, committed by a public officer, which is “incompatible with human dignity, and which causes a person to suffer physically or mentally, or affects the person’s capacity to perceive or his ability to act of his own will or insults them”. The penalty established for such conduct is imprisonment for a term of three to twelve years, and no statute of limitation is present. Although the aforementioned provisions seem to comply with the obligations enshrined in CAT’s Article 2, they do present issues if analysed from a human rights law perspective.

Article 17.3 of the Turkish Constitution, , if read in conjunction with Article 40 on the right to access to authorities, Article 125 on the strict liability of the administration and Article 129 on actions for damages against the administration, stipulates that the State has an obligation to provide compensation for cases of unlawful treatment by public officers. However, there is no provision

²¹ Human Rights Foundation of Turkey, *Fact Sheet on Curfews in Turkey*, 6 February 2016. Available at <http://en.tihv.org.tr/recent-fact-sheet-on-curfews-in-turkey-between-the-dates-16-august-2015-5-february-2016/> (last accessed 9 March 2016).

²² Human Rights Foundation of Turkey, *Fact Sheet on Curfews in Turkey*, 6 February 2016. Available at <http://en.tihv.org.tr/recent-fact-sheet-on-curfews-in-turkey-between-the-dates-16-august-2015-5-february-2016/> (last accessed 9 March 2016).

²³ Human Rights Foundation of Turkey, *Fact Sheet on Curfews in Turkey*, 6 February 2016. Available at <http://en.tihv.org.tr/recent-fact-sheet-on-curfews-in-turkey-between-the-dates-16-august-2015-5-february-2016/> (last accessed 9 March 2016).

²⁴ UN General Assembly, *Optional Protocol to the Convention against Torture and other Cruel Inhuman and Degrading Treatment or Punishment*, 22 June 2006, A/RES/57/199, Article 17.

²⁵ Grand National Assembly of Turkey, *Constitution of the Republic of Turkey*, 1982. Available at https://global.tbmm.gov.tr/docs/constitution_en.pdf (last accessed 21 March 2016).

²⁶ Parliament of Turkey, *Law n. 5232/2004 (Criminal Code)*, Articles 94-95. Available at <http://www.legislationline.org/documents/action/popup/id/6872/preview> (last accessed 10 March 2016).

explicitly establishing a right to reparation for torture victims:²⁷ torture victims do not receive the support they need by the authorities.²⁸

Moreover, although Article 94 of the Turkish Criminal Code explicitly punishes acts of torture perpetrated by public officials, it should be noted how this provision fails to list one element of the crime of torture:²⁹ purpose. While, on the one hand, this could pave the way for a broader interpretation of the prohibition of torture, one that is not limited to the purposes listed in CAT's Article 1; on the other hand, it should also be underlined how, particularly in a country where torture is still systemic, the lack of the element of purpose in the definition of torture might result in a higher risk of impunity for perpetrators. Indeed, blurring the lines between torture and other punishable conducts, adding ambiguity to the distinction between torture and other crimes, might render accountability harder to achieve.³⁰

Lastly, it is worth mentioning that the Turkish Criminal Procedure Code fails to address the specific needs of torture victims. Indeed, Article 234 of the Code broadly refers to the rights of the "victims of a crime", without providing specific references to torture survivors.³¹ Along these lines, the Criminal Procedure Code does not establish safeguards in relation to torture victims, their lawyers and witnesses during criminal investigations on torture allegations, which contributes to strengthening the impunity issue in relation to public officials accused of conducts incompatible with the prohibition of torture under Article 94 of the Criminal Code.³²

A legal framework that, despite prohibiting torture and ill-treatment, leaves the above mentioned gaps in relation to the protection and safeguards to be offered to torture victims is not compatible with the obligation imposed by Article 2 of CAT. The absence of the purpose element in Article 94 of the Criminal Code, the lack of specific references to the rights of torture survivors and the failure to provide appropriate safeguards to victims, lawyers and witnesses, paired with the lack of an explicit right to reparation for torture survivors, do not comply with Turkey's obligation to take "effective measures to prevent public authorities and other persons acting in an official capacity from directly committing, instigating, inciting, encouraging, acquiescing in or otherwise participating or being

²⁷ International Rehabilitation Council for Torture Victims, *Torture in Turkey, Country Factsheet*, 2014, p. 3. Available at www.irct.org (last accessed 15 March 2016).

²⁸ For an overview of the Turkish legal framework on torture prevention, see *Comparative Study on the Legal Framework of Torture in Turkey and Israel*, July 2015, p. 18 ss. Available at <http://tihv.org.tr/wp-content/uploads/2015/09/Comparative-Study.pdf> (last accessed on 14 March 2016).

²⁹ UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 UNTS 85; Article 1.

³⁰ For an overview of the Turkish legal framework on torture prevention, see *Comparative Study on the Legal Framework of Torture in Turkey and Israel*, July 2015, p. 18 ss. Available at <http://tihv.org.tr/wp-content/uploads/2015/09/Comparative-Study.pdf> (last accessed on 14 March 2016).

³¹ International Rehabilitation Council for Torture Victims, *Torture in Turkey, Country Factsheet*, 2014, p. 3. Available at: www.irct.org (last accessed 15 March 2016).

³² International Rehabilitation Council for Torture Victims, *Torture in Turkey, Country factsheet*, 2014, p. 3. Available at www.irct.org (last accessed 15 March 2016).

complicit in acts of torture”.³³ When a State party to CAT, such as Turkey, fails to fulfil such obligations, they are in violation of the Convention.³⁴

2.1 National Preventive Mechanism

In January 2014, Turkey, as a State party to the Optional Protocol to the Convention against Torture (OPCAT), took an important step forward in terms of its compliance with its obligation under the Protocol, by establishing its own National Preventive Mechanism (NPM). Article 17 of OPCAT imposes a positive obligation on States to maintain, designate or establish their own NPM, i.e. an institution with the specific mandate to conduct visits to all types of places of detention, make recommendations to improve the protection of detainees, as well as comment on laws and regulations,³⁵ in order to contribute to the prevention of torture and other forms of ill-treatment at a domestic level.³⁶

The Turkish government designated the Human Rights Institution of Turkey (HRIT) to become Turkey’s NPM:³⁷ while choosing a State’s National Human Rights Institution (NHRI) to function as an NPM does not constitute a violation of OPCAT, concerns arise in relation to the HRIT’s capability to fulfil its role as NPM. The OPCAT, while not identifying a specific structure for NPMs, does provide a list of minimum requirements to be fulfilled in order for institutions to exercise their role as NPMs.³⁸ Such list, drafted along the lines of the provisions of the Paris Principles,³⁹ requires that NPMs should be independent; have sufficient financial, human, and logistical resources; and have the necessary expertise to fulfil their mandate.⁴⁰

According to a 2015 report by the Human Rights Foundation of Turkey (HRFT),⁴¹ doubts arise on the capability of the HRIT to act as an NPM, particularly in relation to the skills and resources, as well as

³³ Committee against Torture, *General Comment n.2*, CAT/C/GC/2CRP.1/Rev.4, para 17.

³⁴ Committee against Torture, *General Comment n.2*, CAT/C/GC/2CRP.1/Rev.4, para 17.

³⁵ See <http://www.ap.t.ch/en/national-preventive-mechanisms-npms/>

³⁶ Association for the Prevention of Torture, *National Human Rights Institutions as National Preventive Mechanisms: Opportunities and Challenges*, 2013, p. 2. Available at http://www.ap.t.ch/content/files_res/ap_t_briefing-on-nhris-as-npms-en.pdf (last accessed on 10 March 2016).

³⁷ Government of Turkey, *Cabinet Decree n. 2013/5711*, 28 October 2014. Available at: <http://www.resmigazete.gov.tr/eskiler/2014/01/20140128-4.htm> (last accessed on 10 March 2016).

³⁸ UN General Assembly, *Optional Protocol to the Convention against Torture and other Cruel Inhuman and Degrading Treatment or Punishment*, 22 June 2006, A/RES/57/199, Article 18.

³⁹ UN General Assembly, *Paris Principles*, 20 December 1993, A/RES/48/134. Available at <http://enoc.eu/wp-content/uploads/2015/01/Paris-Principle.pdf> (last accessed 8 March 2016).

⁴⁰ UN General Assembly, *Paris Principles*, 20 December 1993, A/RES/48/134. Available at <http://enoc.eu/wp-content/uploads/2015/01/Paris-Principle.pdf> (last accessed 8 March 2016).

⁴¹ Human Rights Foundation of Turkey, *National Preventive Mechanism – Evaluation Report*, 2015. Available at <http://tihv.org.tr/wp-content/uploads/2015/08/5.-U%C3%96M-Rapor-II-ing.pdf> (last accessed on 8 March 2016).

guarantees of independence, needed to fulfil such role.⁴² Indeed, the report not only raises concerns around the institutional and functional independence of the HRIT, but it also questions the body's compliance with the minimum requirements listed by OPCAT, and deemed necessary to fulfil its role as NPM. The HRIT has recognised its flaws, by working on a draft bill to amend its founding law, the "Working Document on the Draft Bill Amending the Law on the Human Rights Institution of Turkey", and by sharing it with human rights organisations in January 2014.⁴³

The document presents a series of proposed amendments that to Law no. 6332 of 21st June 2012,⁴⁴ recognising the structural and functional obstacles for the HRIT to exercise its role as NPM. In particular, the HRIT states that its current structure and organisation, as well as the number of staff available to the institution, render the functions of an NPM harder to perform. Although recognising its structural shortcomings, the HRIT does not mention any commitment to undertake steps in order to improve its capacity to function as NPM. Moreover, the articles in the draft bill that include references to the functions of an NP do not seem to be in line with the requirements imposed by the Paris Principles and OPCAT. As stated in OPCAT, the designation of an NPM is not sufficient on its own: in order for a State party to comply with its obligations under the Protocol, it is fundamental that the mandate, structure and independence of the designated NPM are established by law.⁴⁵ While the bill drafted by the HRIT does include amendments to its structure, it does not take into consideration the specific functions of an NPM, therefore rendering the proposed changes to the law redundant.⁴⁶

Furthermore, the draft bill fails to address the issue of the independence of the HRIT as the newly established NPM: under the proposed bill, the government would continue to cover a fundamental role, particularly in relation to the election of the Members of the Board of the HRIT.⁴⁷ Independence and immunity would be further challenged by the power accorded to the Prime Minister to grant an

⁴² Amnesty International, *The State of the World's Human Rights – Report 2015/2016*, p. 375. Available at: <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/> (last accessed on 14 March 2016).

⁴³ Human Rights Foundation of Turkey, *National Preventive Mechanism – Evaluation Report*, 2015; p. 12. Available at <http://tihv.org.tr/wp-content/uploads/2015/08/5.-U%C3%96M-Rapor-II-ing.pdf> (last accessed on 8 March 2016).

⁴⁴ Parliament of Turkey, *Law n. 6332 of 21 June 2012 – Law on the Human Rights Institution of Turkey*. Available at http://www.un.org.tr/humanrights/vm/Law_on_the_Human_Rights_Institution_of_Turkey.pdf (last accessed on 21 March 2016).

⁴⁵ Human Rights Foundation of Turkey, *National Preventive Mechanism – Evaluation Report*, 2015; p. 13. Available at <http://tihv.org.tr/wp-content/uploads/2015/08/5.-U%C3%96M-Rapor-II-ing.pdf> (last accessed on 8 March 2016).

⁴⁶ Human Rights Foundation of Turkey, *National Preventive Mechanism – Evaluation Report*, 2015; p. 14. Available at <http://tihv.org.tr/wp-content/uploads/2015/08/5.-U%C3%96M-Rapor-II-ing.pdf> (last accessed on 8 March 2016).

⁴⁷ Human Rights Foundation of Turkey, *National Preventive Mechanism – Evaluation Report*, 2015; p. 14. Available at <http://tihv.org.tr/wp-content/uploads/2015/08/5.-U%C3%96M-Rapor-II-ing.pdf> (last accessed on 8 March 2016).

authorisation to investigate and prosecute Board members.⁴⁸ Moreover, the draft bill does not include any provision addressing gender balance or representation of ethnic and religious minorities within the Board.⁴⁹ Therefore, although one of the declared purposes of the draft bill was to provide the HRIT with enough functional autonomy to fulfil its mandate as NPM, in compliance with Article 20 of the OPCAT, the above mentioned amendments do not seem to provide enough safeguards, particularly in relation to the independence requirement.

These issues were recently addressed by both the Human Rights Council (HRC) and the UN Sub-Committee on the Prevention of Torture (SPT). Turkey underwent its second cycle Universal Periodic Review (UPR) in January 2015: during the examination of Turkey's State report, Turkish State authorities received several recommendations on the need to amend the founding law of the HRIT to meet the minimum requirements listed both in the Paris Principles, and OPCAT.⁵⁰ Moreover, a delegation of the SPT visited Turkey in October 2015: during such visit the Turkish government was encouraged to comply with its commitment to adopt a specific law providing the NPM with a strong mandate to make it "fully operational, functional, independent and well-resourced".⁵¹

The lack of an NPM capable of effectively exercising its role in preventing torture, cruel, inhuman, and degrading treatment, not only constitutes a violation of Turkey's obligations under OPCAT, but such shortcomings are not compatible with CAT, as they constitute further evidence that Turkey has yet to comply with its obligation to take all the "effective legislative, administrative, judicial measures to prevent acts of torture in any territory under its jurisdiction",⁵² as required under Article 2.

⁴⁸ Human Rights Foundation of Turkey, *National Preventive Mechanism – Evaluation Report 2015*; p. 15. Available at <http://tihv.org.tr/wp-content/uploads/2015/08/5.-U%C3%96M-Rapor-II-ing.pdf> (last accessed on 8 March 2016).

⁴⁹ Human Rights Foundation of Turkey, *National Preventive Mechanism – Evaluation Report, 2015*; p. 15. Available at <http://tihv.org.tr/wp-content/uploads/2015/08/5.-U%C3%96M-Rapor-II-ing.pdf> (last accessed on 8 March 2016).

⁵⁰ Human Rights Council, *Draft Report of the Working Group on the Universal Periodic Review – Turkey*, A/HRC/WG.6/21/L.12, 29 January 2015. Available at http://www.upr-info.org/sites/default/files/document/turkey/session_21_-_january_2015/a_hrc_wg.6_21_l.12.pdf (last accessed on 8 March 2016).

⁵¹ UN Office of the High Commissioner for Human Rights, *UN Experts encourage Turkey to fulfil commitments thorough effective detention monitoring body*, 9 October 2015. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16589&LangID=E> (last accessed on 14 March 2016).

⁵² UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 UNTS 85; Article 2.

2.2 Recommendations

- *Turkish State authorities should explicitly recognise the rights of torture victims within the Turkish legal system. Particularly, the right to reparation should be explicitly recognised within the domestic legal framework.*
- *Turkish State authorities should promptly amend the founding law of the Human Rights Institution of Turkey, to provide it with the necessary institutional and structural autonomy and independence, in order for it to effectively fulfil its role as Turkey's National Preventive Mechanism.*

3. Police brutality

Police brutality has become a widespread issue in Turkey: media outlets as well as civil society reports often describe Turkish police officers as abusing their powers and exercising an excessive use of force against civilians, which often amounts to torture or ill-treatment. Indeed, alleged cases of torture and ill-treatment in detention or in the context of police or military operations against the PKK have increased during the past year.⁵³ The following sections will focus on providing a picture of the current situation in Turkey in relation to excessive use of force by police officers.

3.1 Torture and ill-treatment in places of detention

With Turkey's prison population growing rapidly from 55.000 in 2001 to 160.000 in 2015,⁵⁴ overcrowding in detention facilities represents a serious issue within the country. While a five-year programme was launched in 2013 to build more than 200 new detention centres,⁵⁵ prisons facilities are still inadequate, as the number of detainees is higher than their actual capacity. According to human rights organisations, prison facilities often lack access to water, heating, ventilation and lighting.⁵⁶ Moreover, prison overcrowding, while negatively affecting the living condition of people held in detention, also increases the risk of human rights violations.

⁵³ Amnesty International, *The State of the World's Human Rights – Report 2015/2016*. Available at: <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/> (last accessed on 14 March 2016).

⁵⁴ Penal Reform International, *Global Prison Trends*, 2015, p. 7. Available at: <http://www.penalreform.org/wp-content/uploads/2015/04/PRI-Prisons-global-trends-report-LR.pdf> (last accessed on 14 March 2016).

⁵⁵ Hurriyet Daily News, *Turkey to build 207 prisons over 5 years*, 24 September 2013. Available at: <http://www.hurriyetdailynews.com/turkey-to-build-207-prisons-over-5-years.aspx?pageID=238&nID=54999&NewsCatID=341> (last accessed on 15 March 2016).

⁵⁶ United States Government, *Turkey 2014 Human Rights Report*, p. 7. Available at: <http://www.state.gov/documents/organization/236798.pdf> (last accessed on 15 March 2016).

The Turkish government is said to be continuing to promote its “zero tolerance” campaign to prevent torture and mistreatment: one of the measures adopted to prevent and address torture is the installation of digital audio and video systems in police stations, detentions centres, and testimony rooms. In 2014, the Turkish National Police (TNP) stated that such systems had been installed in 12 provincial anti-terror directorates, as well as several detention centres and testimony rooms. Furthermore, in August 2014 the Jandarma - military forces within law enforcement - confirmed that CCTV systems had been installed in 1.936 internal detention centres and 30 testimony rooms all over the country, with 56 new systems awaiting their installation.⁵⁷

Yet, despite the above mentioned measures, abuses by prison guards are still a widespread phenomenon in Turkey: recent reports by human rights organisations state how there have been several documented cases of prison guards ill-treating inmates, subjecting them to beatings, rapes and other forms of torture. Within the first six months of 2014, the Human Rights Association received 366 allegations of torture and excessive use of force,⁵⁸ but it is alleged that the number of victims might be higher, as it has been reported how often detainees refrain from filing complaints against their abusers either in fear of retaliation or simply because they do not trust Turkish State authorities to effectively investigate their allegations.⁵⁹

Torture and ill-treatment in, as much as outside, places of detentions are often directed at vulnerable individuals, such as children. Prosecution of children under Turkey’s anti-terrorism law for their alleged participation in pro-Kurdish demonstrations often results in their ill-treatment by the authorities, particularly police officers and prison guards. Indeed, reports states that, in 2012, 80% of the juvenile detainees had been charged under anti-terrorism laws and that all of the known cases of abuse against minors in prison had been perpetrated against Kurdish children.⁶⁰ Moreover, data shows that in 2014 there were 1.724 children in prison - 1.232 in pre-trial detention and 492 convicts⁶¹ - as well as 133 known cases of children tortured in Turkey, of which 49 in prison and 64 in police custody.⁶²

Examples of torture and ill-treatment of children and juveniles in detention centres are the physical, psychological and sexual abuse suffered by juvenile detainees in the Pozanti and Mugla prisons. In

⁵⁷ United States Government, *Turkey 2014 Human Rights Report*, p. 6. Available at: <http://www.state.gov/documents/organization/236798.pdf> (last accessed on 15 March 2016).

⁵⁸ United States Government, *Turkey 2014 Human Rights Report*, p. 6. Available at: <http://www.state.gov/documents/organization/236798.pdf> (last accessed on 15 March 2016).

⁵⁹ United States Government, *Turkey 2014 Human Rights Report*, p. 6. Available at: <http://www.state.gov/documents/organization/236798.pdf> (last accessed on 15 March 2016).

⁶⁰ European United Left, *Report on the Human Rights Violations, Torture and Sexual Abuse against Jailed Children in Pozanti M Type Juvenile Prison in Adana*, 2012: p. 2. Available at: <http://peaceinkurdistancampaign.com/2012/03/15/report-into-sexual-abuse-at-pozanti-prison-released/> (last accessed 21 March 2016).

⁶¹ United States Government, *Turkey 2014 Human Rights Report*, p. 7. Available at: <http://www.state.gov/documents/organization/236798.pdf> (last accessed on 15 March 2016).

⁶² Hurriyet Daily News, *113 Children Tortured in Turkish Prisons or in Custody*, 20 November 2014. Available at <http://www.hurriyetdailynews.com/113-children-tortured-in-turkish-prisons-or-in-custody-in-2014-ngo.aspx?pageID=238&nID=74594&NewsCatID=339> (last accessed on 21 March 2016).

the Pozanti case, the torture allegations came from seven children aged between 13 and 17 years, accused of having taken part in political demonstrations and having thrown stones at the police during the protests. The abuses were reported to the Human Rights Association in 2011: the concerned children stated how they used to be verbally abused by the prison administration and the prison guards, often prevented from eating, beaten naked and sexually abused by other adult prisoners with the complicity of their guardians. Moreover, sexual abuse was not the only type of ill-treatment, children were also denied medical attention and tortured by being hung from basketball hoops until they were close to choking.⁶³ Furthermore, due to the overcrowding at the Pozanti prison, which is reported to host three times more prisoners than its actual capacity, children often had to share the same bed with other juvenile detainees or the same ward with adult prisoners, increasing the risk of abuse by other inmates.⁶⁴ Authorities dismissed the seriousness of the allegations, as the then Minister of Justice Sadullah Ergin claimed that the alleged abuses were the result of fabrications and lies told by the children to help the Kurdish cause.⁶⁵ Journalists reporting on the case were accused of being complicit with the KCK, a Kurdish organisation close to the PKK, and detained.⁶⁶ As a consequence of the unwillingness of the Turkish State authorities to prosecute and hold accountable the prison guards and the administration involved in the scandal, all the charges against 20 prison officers accused of psychological, sexual and physical abuse of the juvenile detainees in the Pozanti prison were dropped.⁶⁷

More recently, a similar case was brought to light in Mugla, where four minors aged between 12 and 15 were allegedly tortured and sexually abused by adult inmates in a juvenile detention facility.⁶⁸ Media reports state that the children's accounts of the torture they suffered resemble those of the juveniles exposed to abuse at the Pozanti prison in 2012.

Furthermore, the Human Rights Association reported that in January 2014, 12 children were beaten by prison guards in the Sincan Juvenile Correction Facility, where tear gas and high-pressure hoses

⁶³ The Guardian, Turkey: *a History of Sexual Violence*, 10 June 2013. Available at <http://www.theguardian.com/global-development-professionals-network/2013/jun/10/turkey-history-sexual-violence> (last accessed on 21 March 2016).

⁶⁴ European United Left, *Report on the Human Rights Violations, Torture and Sexual Abuse against Jailed Children in Pozanti M Type Juvenile Prison in Adana*, 2012: p. 2. Available at: <http://peaceinkurdistancampaign.com/2012/03/15/report-into-sexual-abuse-at-pozanti-prison-released/> (last accessed 21 March 2016).

⁶⁵ European United Left, *Report on the Human Rights Violations, Torture and Sexual Abuse against Jailed Children in Pozanti M Type Juvenile Prison in Adana*, 2012: p. 2. Available at: <http://peaceinkurdistancampaign.com/2012/03/15/report-into-sexual-abuse-at-pozanti-prison-released/> (last accessed 21 March 2016).

⁶⁶ The Guardian, Turkey: *a History of Sexual Violence*, 10 June 2013. Available at <http://www.theguardian.com/global-development-professionals-network/2013/jun/10/turkey-history-sexual-violence> (last accessed on 21 March 2016).

⁶⁷ ANF News, *Rape Suspects Cleared while Pozanti Child Victims Face Life Terms*, 22 February 2015. Available at <https://anfenglish.com/human-rights/rape-suspects-cleared-while-pozanti-child-victims-face-life-terms> (last accessed on 21 March 2016).

⁶⁸ Hurriyet Daily News, *Report Reveals Violence against Minors in Mugla Prison*, 15 December 2015. Available at <http://www.hurriyetdailynews.com/report-reveals-violence-against-minors-in-mugla-prison.aspx?PageID=238&NID=92574&NewsCatID=509> (last accessed on 21 March 2016).

were also used against minors. Four of these children were then transferred to another detention facility in Sakran where they continued to be subject to ill-treatment, including strip searches and isolation. On the 28 April 2015, the Contemporary Lawyers Association and the Juvenile Prisons “Must Be Banned Initiative” demanded an audit of Şakran Prison by independent institutions and the ‘urgent ban’ of juvenile prisons in Turkey due to the prevalence of systematic oppression, torture, violence and abuse.⁶⁹ The Ankara Prosecutors’ Office, although informed of the events, declined to open a case.⁷⁰

Systematic and widespread abuse of prisoners, particularly juveniles, at the Şakran Prison has been an ongoing issue of concern. Despite evidence to the contrary, Turkish authorities have denied any allegation of abuse: in January 2014, the Minister of Justice, Bekir Bozdağ, claimed that, given the 288 CCTV camera installed in the detention centre and the 24h surveillance system, there was no ground to support the allegations of torture, solitary confinement, and sexual abuse at Şakran. As a consequence, despite an internal note by officials at Şakran revealing that cases of abuse and ill-treatment at the hands of prison guards were a common practice,⁷¹ claims of severe beating, demeaning treatments and abusive behaviour were dismissed.⁷²

Violence against women, often amounting to torture and cruel, inhuman and degrading treatment, also remains a common and unmitigated practice in detention centres.⁷³ While beatings and sexual violence are still the primary torture methods adopted by prison guards, ill-treatment can also take other forms. For example, in 2015 media outlets reported that in Şakran Women's Prison a new measure was implemented, particularly addressing prisoners sentenced to life, following the suicide of one of the detainees: inmates are monitored by prison guards who go from cell to cell, every thirty minutes, asking each prisoner how they are feeling.⁷⁴ The practice, which goes on non-stop,

⁶⁹ Bianet, *The Symbol of Violence in Prisons: Şakran Prison*, 28 April 2015. Available at <http://bianet.org/english/diger/164158-the-symbol-of-the-violence-in-prisons-sakran-prison> (last accessed on 21 March 2016).

⁷⁰ Bianet, *The Symbol of Violence in Prisons: Şakran Prison*, 28 April 2015. Available at <http://bianet.org/english/diger/164158-the-symbol-of-the-violence-in-prisons-sakran-prison> (last accessed on 21 March 2016).

⁷¹ Haber 3, *Opposition Deputy Asks if Justice Ministry Hid Truth About Notorious Turkish Juvenile Prison*, 26 June 2015. Available at <http://www.haber3.com/opposition-deputy-asks-if-justice-ministry-hid-truth-about-notorious-turkish-juveni-3223564h.htm> (last accessed on 21 March 2016).

⁷² Hürriyet Daily News, *Turkish Justice Ministry Denies Juvenile Prison Torture Claims*, 28 May 2013. Available at <http://www.hurriyetdailynews.com/torture-abuse-reign-in-izmir-juvenile-prison-claim-.aspx?pageID=238&nID=47749&NewsCatID=339%3Cbr%20/%3E> (last accessed on 21 March 2016).

⁷³ The Guardian, *Turkey: a History of Sexual Violence*, 10 June 2013. Available at <http://www.theguardian.com/global-development-professionals-network/2013/jun/10/turkey-history-sexual-violence> (last accessed on 21 March 2016).

⁷⁴ Zaman Today, *Measure Introduced to Prevent Suicides in Prison: a Form of Torture for Inmates*, 24 April 2016. Available at http://www.todayszaman.com/anasayfa_measure-introduced-to-prevent-suicides-in-prison-a-form-of-torture-for-inmates_378925.html (last accessed on 16 March 2016).

even at night, has been described as a form of torture, as detainees, due to this new preventive measure, are sleep deprived, with negative implications for their psychological well-being.⁷⁵

The above examples, not only provide further proof of how torture and ill-treatment still constitute a widespread issue, particularly vicious as vulnerable groups of individuals, such as children or women, are often the designated victims of such practices, but they also show how Turkish State authorities are still far from complying with their obligations under CAT. On the one hand, State authorities do not seem to have made enough efforts, in practice, to address torture and ill-treatment. On the other hand, the deep involvement of police officers and prison guards in serious human rights violations suffered by detainees, indicates how often Turkish authorities willingly allow such incidents to happen or actively participate as perpetrators – clearly violating their obligation under Article 2 to take all the necessary measures, whatever they might be, to effectively prevent and address torture and ill-treatment.⁷⁶

3.1.1 Medical examination

When a person is arrested and his or her detention is ordered by the prosecutor, the latter is under the obligation to order the suspect to be medically examined. Under Turkish law, medical examinations need to be carried out either by a State hospital or by the Institute of Forensic Medicine.⁷⁷ The law requires the medical examination to be repeated in case of release or transfer to another prison.⁷⁸ Medical examination is a recognised right for alleged victims of torture: not only, at an international level, Turkey is a State party to the Council of Europe Convention on Human Rights and Biomedicine,⁷⁹ but, at a domestic level, Turkish State authorities are bound by their obligations under the Regulation on Apprehension, Detention and Statement Taking.⁸⁰

While medical examination is required by law as a safeguard measure for detainees, particularly directed at preventing torture or ill-treatment, this procedure is reportedly often overlooked or not

⁷⁵ Zaman Today, *Measure Introduced to Prevent Suicides in Prison: a Form of Torture for Inmates*, 24 April 2016. Available at http://www.todayszaman.com/anasayfa_measure-introduced-to-prevent-suicides-in-prison-a-form-of-torture-for-inmates_378925.html (last accessed on 16 March 2016).

⁷⁶ UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 UNTS 85; Article 2.

⁷⁷ *Regulation on Apprehension, Detention and Statement Taking*, Article 9.5.

⁷⁸ Legal Aid Reformers' Network, *Turkey Country Report*, p. 24. Available at http://www.legalaidreform.org/criminal-legal-aid-resources/item/download/155_57b458249b2c1c42075eae3436a3e2ea (last accessed on 15 March 2016).

⁷⁹ Council of Europe, *Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine*, 4 April 1997. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007cf98> (last accessed on 16 March 2016).

⁸⁰ *Regulation on Apprehension, Detention and Statement Taking*, Article 9.5.

taken seriously by the appointed doctor.⁸¹ It is not uncommon for the medical examination be carried out by simply asking detainees whether they have any complaints, rather than conducting a thorough exam.⁸² The latter clearly constitutes a violation of the Istanbul Protocol,⁸³ on which Turkish doctors are still to be given any professional training, as well as a practice contrary to Articles 9.9 and 9.10 of the Regulation on Apprehension, Detention, and Statement Taking which state that doctors have a duty both to inform the prosecutor should they find any sign of torture or ill-treatment, and to conduct thorough examinations.

Lastly, according to domestic law, the only avenue made available to torture victims to issue a complaint against their inaccurate medical examination, is by bringing a case before the Turkish Medical Association Discipline Committee. While in 2015 the Committee ruled against a doctor accused of having carried out an inaccurate medical examination of a woman who had been tortured at a police station,⁸⁴ doctors' accountability still represents an issue in Turkey.

A legal framework, such as the one currently in force in Turkey, that does not guarantee the right to a fair and thorough medical examination to torture victims cannot be identified as compliant with CAT. On the basis of Article 2 of the Convention, Turkey is under the obligation to take all the necessary measure to prevent torture against all those under its jurisdiction: the lack of provisions safeguarding the right to a fair medical examination is not compatible with such obligation.

3.1.2 Access to a lawyer

The right to have access to a lawyer is a fundamental safeguard against ill-treatment. Whenever a suspect is arrested, the Turkish Criminal Procedure Code requires that they are informed of their right to choose a defence attorney,⁸⁵ and that statements taken in the absence of a lawyer cannot be used in court, unless they are confirmed before a judge.⁸⁶ Moreover, the Criminal Procedure Code includes provisions stating that the suspect or the accused has the right to consult with his or

⁸¹ International Rehabilitation Council for Torture Victims, *Torture in Turkey, Country Factsheet*, 2014, p. 2. Available at www.irct.org (last accessed 15 March 2016).

⁸² International Rehabilitation Council for Torture Victims, *Torture in Turkey, Country Factsheet*, 2014, p. 2. Available at www.irct.org (last accessed 15 March 2016).

⁸³ Office of the United Nations High Commissioner for Human Rights, *Istanbul Protocol*, 2004. Available at: <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf> (last accessed on 17 March 2016).

⁸⁴ Hurriyet Daily News, *Doctor Fined Over Inaccurate Report on Tortured Woman in Turkey's West*, 6 July 2015. Available at <http://www.hurriyetdailynews.com/doctor-fined-over-inaccurate-report-on-tortured-woman-in-turkeys-west.aspx?pageID=238&nID=85036&NewsCatID=509> (last accessed on 17 March 2016).

⁸⁵ Parliament of Turkey, *Criminal Procedure Code*, 2005; Article 148.4. Available at <http://www.legislationline.org/documents/section/criminal-codes/country/50> (last accessed on 16 March 2016).

⁸⁶ Parliament of Turkey, *Criminal Procedure Code*, 2005; Article 149.1. Available at <http://www.legislationline.org/documents/section/criminal-codes/country/50> (last accessed on 16 March 2016).

her lawyer, and that such right shall not be prevented or restricted:⁸⁷ the latter provision constitutes a guarantee that interviews between suspects and lawyers remain private and confidential, which should represent a fundamental safeguard in cases in which suspects report torture allegations.⁸⁸

While the above provision seems to provide an effective framework to protect a suspect's right to have access to a lawyer, in practice State authorities are under the obligation to respect such right only in cases of persons accused of offences that require a punishment of minimum 5 years of imprisonment. Therefore, for people accused of less serious crimes, their access to a lawyer merely depends on their own request: as individuals might not be aware of the existence of such rights, in this case where a suspect is accused of a crime punishable with less than 5 years of imprisonment, there are not sufficient procedural safeguards to ensure that he/she exercises his/her right to have access to a lawyer. Lack of protection and procedural safeguards increases the risk to be subject to torture and ill-treatment.⁸⁹ Moreover, even when suspects exercise their right to have access to a lawyer, the latter can be often hindered, as shown by a 2014 case which involved a lawyer being charged with perjury for having tried to take photographic evidence of the physical abuse his client had suffered while in police custody.⁹⁰

Turkish domestic provisions do not offer enough safeguards in relation to the right of detainees to have access to a lawyer. This has a negative impact from a preventive point of view: as the SPT has noted, "access to a lawyer is an important safeguard against ill-treatment. [...] The presence of a lawyer during police questioning may not only deter the police from resorting to ill-treatment or other abuses, but may also work as a protection for police officers in case they face unfounded allegations of ill-treatment."⁹¹ In light of the above, the provisions of the Turkish Criminal Procedure Code that do not guarantee the full and effective enjoyment of the right to have access to a lawyer do not comply with CAT Article 2, imposing an obligation to take all the necessary measure to prevent torture.

⁸⁷ Parliament of Turkey, *Criminal Procedure Code*, 2005; Article 149.3. Available at <http://www.legislationline.org/documents/section/criminal-codes/country/50> (last accessed on 16 March 2016).

⁸⁸ *Comparative Study on the Legal Framework of Torture in Turkey and Israel*, July 2015, p. 84. Available at <http://tihv.org.tr/wp-content/uploads/2015/09/Comparative-Study.pdf> (last accessed on 14 March 2016).

⁸⁹ *Comparative Study on the Legal Framework of Torture in Turkey and Israel*, July 2015, p. 85. Available at <http://tihv.org.tr/wp-content/uploads/2015/09/Comparative-Study.pdf> (last accessed on 14 March 2016).

⁹⁰ Radikal, *Avukata iftira ve suç uydurma davası*, 21 November 2015. Available at <http://www.radikal.com.tr/antalya-haber/avukata-iftira-ve-suc-uydurma-davasi-1236167/> (last accessed on 18 March 2016).

⁹¹ Committee against Torture, *Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives*, CAT/OP/MDV/1; para 62. Available at <http://www.refworld.org/docid/49eed8ae2.html> (last accessed on 18 March 2016).

3.2 Torture and ill-treatment outside places of detention

Violence and abuse by the police as a phenomenon is not limited to places of detentions, as there are reported cases of excessive use of force by police officers during protests and demonstrations and transfers to prisons. According to a report by Amnesty International, for example, in 2015 four men charged with the murder of two policemen in Ceylanpinar, in the south-east of Turkey, were allegedly severely beaten by while in police custody, with the first beating taking place while being transferred to a detention centre in the Adana province.⁹²

3.3 Excessive use of force by the police

One of the most urgent issues when dealing with torture and ill-treatment in Turkey is the often excessive use of force by law enforcement officers. Examples of police interventions characterised by a disproportionate and unnecessary amount of force can be found during protests and demonstrations, in the course of “anti-terrorist” operations, and during curfews in the south-east of Turkey.

3.3.1 Demonstrations

The issue of the excessive use of force by law enforcement officers has become particularly vicious, as not only it is contrary to the prohibition of torture and ill-treatment, recognised both at a domestic and at an international level, but it is also related to the peaceful enjoyment of the rights to freedom of assembly and freedom of expression. As stated in the 2014 European Commission Progress Report on Turkey,⁹³ not only the frequent use of excessive force during demonstrations still raises concerns, but Turkish legislation on the use of force by law enforcement officers is yet to comply with European standards.

Under Turkish law, law enforcement officials are granted a number of powers in order to maintain public order and prevent crimes: according to Article 16 of the Law on the Duties and Discretion of the Police (“the Police Law”),⁹⁴ such powers include the use of physical force or firearms, which is limited to specific situations (e.g. self-defence). In March 2015, however, the Parliament passed the

⁹² Amnesty International, *The State of the World’s Human Rights – Report 2015/2016*. Available at: <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/> (last accessed on 14 March 2016).

⁹³ European Commission, *Turkey Progress Report, 2014*; p. 2. Available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf (last accessed 17 March 2016).

⁹⁴ Law No. 2559 on the Duties and Discretion of the Police.

so called “Homeland Security Package”:⁹⁵ it consists of laws that tighten government control over national security and public order, by amending a number of pre-existent provisions. Some of the most controversial amendments extend the power of law enforcement officers, members of security forces and governor of provinces: the Police Law now allows law enforcement to use firearms in cases in which individuals attack or attempt to attack officers or others in “workplaces, dwellings, public buildings, schools, dormitories, houses of worship, vehicles or indoor or outdoor areas where there are individuals or people congregated in a group using Molotov cocktails, explosives, inflammables, incendiaries, suffocating devices, or injurious or similar” weapons, in order to neutralise the attack and to incapacitate persons to the necessary extent. Under the amended Police Law, officers are now allowed to use firearms to prevent individuals from damaging property, without having to rely on less harmful measures first.

The European Commission addressed such issues and highlighted how “Turkey needs to adopt clear and binding rules on the proportionate use of force in demonstrations, in line with the relevant Council of Europe Committee for the Prevention of Torture recommendations and ECtHR case-law”.⁹⁶ Moreover, the European Committee stated how the lack of appropriate training for law enforcement officers on international standards negatively impacts on the already insufficiently regulated use of force by police officers.⁹⁷ Furthermore, in March 2015, an internal “security package” was launched, raising concerns from a human rights perspective. According to a 2015 report by the European Commission,⁹⁸ this document grants “broad discretionary powers to law enforcement agencies, [...] further curtailing the freedom of expression and freedom of assembly of peaceful demonstrators”.⁹⁹

A striking example of how in the most recent years the Turkish National Police has been showing a tendency to use excessive and disproportionate force during demonstrations can be identified in the events that took place during the Gezi Park protests. In May 2013 protestors gathered in Gezi park to oppose its destruction: law enforcement officers dispersed the crowd by using brutal and disproportionate force against the protesters. The Turkish Medical Association stated that, by July 2013, more than 8.000 people had suffered injuries as a consequence of the police behaviour during the demonstrations: of these, 61 people were severely injured, 11 people lost an eye, and 5 people

⁹⁵ The Wall Street Journal, *Turkey Passes tough New Security Law*, 27 March 2015. Available at <http://www.wsj.com/articles/turkey-passes-tough-new-security-law-1427448854> (last accessed 21 March 2016).

⁹⁶ European Commission, *Turkey Progress Report*, 2014; p. 15. Available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf (last accessed 17 March 2016).

⁹⁷ European Commission, *Turkey Progress Report*, 2014; p. 15. Available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf (last accessed 17 March 2016).

⁹⁸ European Commission, *Turkey 2015 Report*, 2015. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015SC0216&from=EN> (last accessed on 16 March 2016).

⁹⁹ European Commission, *Turkey 2015 Report*, 2015; p. 60. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015SC0216&from=EN> (last accessed on 16 March 2016).

died.¹⁰⁰ Indeed, reports state that law enforcement officers, from the very beginning of the demonstrations, used beatings, tear gas, water cannons, as well as pepper spray, with the only purpose to disperse the crowd, made of peaceful protesters who were therefore disproportionately and unnecessarily targeted by the police, as showed by television footage and social media.¹⁰¹ Female protestors arrested during the Gezi Park demonstrations and taken into police custody, as reported by Amnesty International, suffered sexual harassment by officers in the form of repeated use of sexual insults, threat of sexual violence, and sexual assault.¹⁰²

The Gezi Parks events prompted the Ministry of Interior to issue of two circulars on the use of tear gas.¹⁰³ However, not only the content of such documents was never made public,¹⁰⁴ but their distribution, as stated by several international NGOs,¹⁰⁵ has had little impact on police behaviour: even after the issuing of the circulars tear gas continued to be used against peaceful protestors “in a manner that was manifestly inappropriate, abusive and in violation of their rights”.¹⁰⁶

The Gezi Park incidents were only the first of a long chain of protests in which law enforcement chose to rely on brutal force to deal with demonstrations. In 2014, media reported that at least 12 people were killed during protests across Turkey, particularly as Kurds demonstrated against the government to ask for more protection for the Syrian-Kurdish town of Kobane, attacked by ISIS.¹⁰⁷ Five people were killed in Diyarbakir, the largest Kurdish city in the south-eastern region of Turkey, during the clashes with the police: for example, a 24 years old man who had joined a protest in the Baglar district in Diyarbakir was seriously injured by the bullets indiscriminately fired by the police to

¹⁰⁰ Amnesty International, *Gezi Park Protests – Brutal Denial of the Right to Peaceful Assembly in Turkey*, 2013; p. 15. Available at <https://www.amnestyusa.org/sites/default/files/eur440222013en.pdf> (last accessed on 17 March 2016).

¹⁰¹ Amnesty International, *Gezi Park Protests – Brutal Denial of the Right to Peaceful Assembly in Turkey*, 2013; p. 16. Available at <https://www.amnestyusa.org/sites/default/files/eur440222013en.pdf> (last accessed on 17 March 2016).

¹⁰² Amnesty International, *Gezi Park Protests – Brutal Denial of the Right to Peaceful Assembly in Turkey*, 2013; p. 16. Available at <https://www.amnestyusa.org/sites/default/files/eur440222013en.pdf> (last accessed on 17 March 2016).

¹⁰³ Ministry of Interior, *Circular No. 2013/28* of June 2013; and Ministry of Interior, *Circular No. 2013/33* of July 2013.

¹⁰⁴ Amnesty International, *Gezi Park Protests – Brutal Denial of the Right to Peaceful Assembly in Turkey*, 2013; p. 19. Available at <https://www.amnestyusa.org/sites/default/files/eur440222013en.pdf> (last accessed on 17 March 2016).

¹⁰⁵ Human Rights Watch, *Letter to the Turkish Minister of Interior on Unlawful Use of Teargas*, 26 July 2013. Available at <https://www.hrw.org/news/2013/07/26/letter-turkish-minister-interior-unlawful-use-teargas> (last accessed on 17 March 2016) and Amnesty International, *Gezi Park Protests – Brutal Denial of the Right to Peaceful Assembly in Turkey*, 2013; p. 20. Available at <https://www.amnestyusa.org/sites/default/files/eur440222013en.pdf> (last accessed on 17 March 2016).

¹⁰⁶ Amnesty International, *Gezi Park Protests – Brutal Denial of the Right to Peaceful Assembly in Turkey*, 2013; p. 20. Available at <https://www.amnestyusa.org/sites/default/files/eur440222013en.pdf> (last accessed on 17 March 2016).

¹⁰⁷ AlJazeera, *Deaths in Kurdish Protests in Turkey*, 8 October 2014. Available at <http://www.aljazeera.com/news/middleeast/2014/10/deaths-kurdish-protests-turkey-201410722504757570.html> (last accessed on 21 March 2016).

disperse the crowd and stop the protest.¹⁰⁸ Between January and September 2015, it is reported that 74 disproportionate interventions by Turkish security forces during public demonstrations, as well as 1,975 house raids took place in the Kurdish region of Turkey.¹⁰⁹ As a consequence of such raids, 3,564 people were detained and among them 788 were remanded in custody.¹¹⁰ The arrests carried in the course of the above mentioned interventions often resulted in the violation of the rights of mainly Kurdish detainees, who were allegedly subject to violence during detention, including sexual abuse and torture. More recently, one of the latest examples of the excessive use of force by police officers was the use of tear gas and water cannons against protesters who gathered outside the headquarters of Zaman, Turkey's biggest newspaper, to protest against its takeover by the authorities.¹¹¹

The excessive and disproportionate use of force by the Turkish National Police cannot be deemed lawful, neither at a domestic nor at an international level. As stated above, Article 17 of the Constitution of Turkey explicitly prohibits torture, which is also criminalised in the Criminal Code. Moreover, while Article 16 of the Police Law defines the specific conditions which would allow officers to use force, it also requires such force to be subject to the proportionality principle.¹¹² Moreover, an excessive use of force by law enforcement is not compatible with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,¹¹³ whose Article 5(a) clearly restrains the use of force and firearms to cases in which force represents an unavoidable measure, imposing an obligation on law enforcement officers to "act in proportion to the seriousness of the offence and the legitimate objective to be achieved".¹¹⁴ Article 16 of the Police Law fails to incorporate international law norms and standards that the use of lethal force must be as a last resort and only permissible in order to protect life.¹¹⁵ Lastly, considering the fact that, over

¹⁰⁸ APA, *Death Toll Reaches 32 in Turkey Protest*, 11 October 2014. Available at <http://en.apa.az/xeber-death-toll-reaches-32-in-turkey-protest-217491.html> (last accessed on 21 March 2016).

¹⁰⁹ ANFNews, *What Has the State Done in Kurdistan in 9 Months?*, 16 October 2015. Available at <http://anfenglish.com/kurdistan/what-has-the-state-done-in-kurdistan-in-9-months> (last accessed on 15 March 2016)

¹¹⁰ ANFNews, *What Has the State Done in Kurdistan in 9 Months?*, 16 October 2015. Available at <http://anfenglish.com/kurdistan/what-has-the-state-done-in-kurdistan-in-9-months> (last accessed on 15 March 2016)

¹¹¹ BBC News, *Turkish Police Use Tear Gas on Newspaper Protesters*, 5 March 2016. Available at <http://www.bbc.co.uk/news/world-europe-35737130> (last accessed on 14 March 2016).

¹¹² Amnesty International, *Gezi Park Protests – Brutal Denial of the Right to Peaceful Assembly in Turkey*, 2013; p. 17. Available at <https://www.amnestyusa.org/sites/default/files/eur440222013en.pdf> (last accessed on 17 March 2016).

¹¹³ United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Use of Firearms by Law Enforcement Officials*, 1990. Available at <http://www.ohchr.org/Documents/ProfessionalInterest/firearms.pdf> (last accessed on 15 March 2016).

¹¹⁴ United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Use of Firearms by Law Enforcement Officials*, 1990; Article 5(a). Available at <http://www.ohchr.org/Documents/ProfessionalInterest/firearms.pdf> (last accessed on 15 March 2016).

¹¹⁵ The United Nations Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, Christof Heyns, expressed concern about inadequate safeguards of use of lethal force by Turkish police UNOHCHR, Heyns,

the most recent years, the Turkish National Police and law enforcement agencies have been allowed to use force in a disproportional, brutal and excessive manner, often resulting in the unlawful ill-treatment of protestors, the lack of attempts on behalf of Turkish State authorities to address such behaviour is not in line with Turkey's obligation to take effective measures to prevent acts of torture and ill-treatment under Article 2 of CAT.

3.3.2 "Anti-terrorist" operations and curfews

In 2015 the precarious ceasefire between the Turkish authorities and the PKK collapsed: since July 2015, there have been numerous armed attacks against civilians in Turkish towns near the border with Syria, which were attributed to the extremist group Islamic State (ISIS) and the PKK. In response to these attacks Turkish authorities decided to take more severe security measures against terrorism,¹¹⁶ which consisted of police operations in 22 cities across the country, involving 10.000 law enforcement officers.¹¹⁷

Since then clashes between State forces and the PKK have intensified, taking a particularly heavy toll on the civilian population.¹¹⁸ The mass deployment of security forces in the south-east region of Turkey exacerbated an already difficult situation and resulted in the killing of hundreds of civilians,¹¹⁹ as well as in the tangible increase in the number of detention orders against people allegedly linked to the PKK and prosecuted under anti-terrorism laws. By August 2015, it is reported that more than 2.000 had been detained on such charges, and over 260 were kept in pre-trial detention.¹²⁰ many of the people arrested during such counter-terrorist operations were individuals with Kurdish ethnicity,¹²¹ the majority of which were civilians with no affiliation with terrorist groups.¹²² In such

Christof, *Preliminary Observations on official visit to Turkey*, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, 26-30 November 2012.

¹¹⁶ Today's Zaman, *Turkey Discusses Measures to Protect National Security in Wake of Terror Attacks*, 23 July 2015. Available at

http://www.todayszaman.com/anasayfa_turkey-discusses-measures-to-protect-national-security-in-wake-of-terror-attacks_394431.html (last accessed on 21 March 2016).

¹¹⁷ Hurriyet News, *22 ilde terör operasyonu*, 25 July 2015. Available at <http://www.hurriyet.com.tr/22-ilde-teror-operasyonu-29637761> (last accessed on 21 March 2016).

¹¹⁸ Amnesty International, *The State of the World's Human Rights – Report 2015/2016*. Available at: <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/> (last accessed on 14 March 2016).

¹¹⁹ Amnesty International, *The State of the World's Human Rights – Report 2015/2016*. Available at: <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/> (last accessed on 14 March 2016).

¹²⁰ Amnesty International, *The State of the World's Human Rights – Report 2015/2016*. Available at: <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/> (last accessed on 14 March 2016).

¹²¹ Milliyet News, *Teröre karşı dev operasyon... Çatışma çıktı, 1 ölü var*, 24 July 2015. Available at <http://www.milliyet.com.tr/istanbul-da-flas-operasyon-gundem-2091907/> (last accessed on 21 March 2016).

¹²² Hurriyet Daily News, *At Least 44 Detained in Latest Istanbul "Anti-Terror" Operation*, 2 October 2015. Available at <http://www.hurriyetdailynews.com/at-least-44-detained-in-latest-istanbul-anti-pkk-operation.aspx?pageID=238&nid=89291> (last accessed on 21 March 2016).

context, allegations of torture and ill-treatment in detention facilities as well as during police and military operations targeted at defeating the PKK increased:¹²³ Human Rights Watch reported that, while responding to recent security threats in the South-Eastern part of the country, Turkish police have engaged in torture, severe ill treatment and abuse of detainees.¹²⁴

Between the 16 August 2015 and 18 March 2016 there have been 63 officially confirmed, open-ended and round-the-clock [all daylong] curfews in at least **22 districts** of **7 cities** in Southeastern Turkey. These cities are as follows; **Diyarbakır** (34 times), **Şırnak** (9 times) **Mardin** (11 times), **Hakkâri** (5 times), **Muş** (1 time), **Elazığ** (1 time) and **Batman** (2 times).¹²⁵ Since December 11th 2015, military dispatch tightened and measures taken by military officials towards the civilian population intensified in the region. The regions affected by curfews, as a result, expanded since that date. According to the data of Human Rights Foundation of Turkey's Documentation Center, between 16 August 2015 (the date of first declared curfew) and 18 March 2016 **at least 310 civilians** lost their lives in areas where curfews were officially declared.¹²⁶ Besides, there are at least 59 bodies from Cizre that were buried without waiting for the identification process to be completed, and at least 20 bodies from Sur are still waiting in Forensic Medicine Institutions - these bodies are not included in the given data.¹²⁷

As it will be examined, Turkey lacks of an effective investigative mechanism to bring torture perpetrators to justice. This is particularly worrying in relation to the human rights violations listed above, as a classified document published by the Dicle News Agency (DİHA) revealed that an order was given to soldiers to use firearms and not to fear being prosecuted for doing so. The document, numbered "84933840-3000-350-15" and titled as "Soldiers' Authority to Use Arms And Vigilance of Personnel," was issued by the Cizre/Şırnak 3rd Tank Battalion Command affiliated with the 172nd Armored Brigade Deputy Command of Land Forces on 30 July 2015.¹²⁸ Moreover, in 2016 President

¹²³ Amnesty International, *The State of the World's Human Rights – Report 2015/2016*. Available at: <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/> (last accessed on 14 March 2016).

¹²⁴ Human Rights Watch, Press Release, *Beaten, Threatened with Death by Police – Disturbing Abuse during Security Operations*, 2 September 2015. Available at <https://www.hrw.org/news/2015/09/02/turkey-beaten-threatened-death-police> (last accessed on 21 March 2015).

¹²⁵ Human Rights Foundation of Turkey, *Fact Sheet on Declared Curfews Between August 16th 2015 and March 18th 2016 and Civilians Who Lost Their Lives*. Available at <http://en.tihv.org.tr/fact-sheet-on-declared-curfews-between-august-16th-2015-and-march-18th-2016-and-civilians-who-lost-their-lives/> (last accessed on 22 March 2016).

¹²⁶ Human Rights Foundation of Turkey, *Fact Sheet on Declared Curfews Between August 16th 2015 and March 18th 2016 and Civilians Who Lost Their Lives*. Available at <http://en.tihv.org.tr/fact-sheet-on-declared-curfews-between-august-16th-2015-and-march-18th-2016-and-civilians-who-lost-their-lives/> (last accessed on 22 March 2016).

¹²⁷ Human Rights Foundation of Turkey, *Fact Sheet on Declared Curfews Between August 16th 2015 and March 18th 2016 and Civilians Who Lost Their Lives*. Available at <http://en.tihv.org.tr/fact-sheet-on-declared-curfews-between-august-16th-2015-and-march-18th-2016-and-civilians-who-lost-their-lives/> (last accessed on 22 March 2016).

¹²⁸ Haberler, *IHD: 25 Women Died During Curfews Operations in South East*, 5 January 2016. Available at <http://en.haberler.com/ihd-25-women-died-during-curfews-operations-in-868527/> (last accessed on 21 March 2016).

Recep Tayyip Erdogan, during his January 2016 meeting with the district governors, encouraged them to set aside some part of the legislation when necessary to counter terrorism, particularly in the mainly Kurdish Southeast region.¹²⁹

A report by the International Crisis Group states that in Sur, a historic district in the city of Diyarbakir, seven civilians lost their lives during anti-curfew protests.¹³⁰ According to Kurdish politicians, since 2 December 2015 there have been up to 26 civilian deaths.¹³¹ In Cizre, a district in the south-east region of Turkey, four official curfews were declared between August and December 2015. During these curfews, 23 people died. On 14 December 2015, another curfew was declared in Cizre and it is currently ongoing. Since August 2015, Security Forces have been carrying out security operations using heavy weaponry, in order to discharge and dissolve the YDG-H, the youth wing of the PKK. During armed operations, the Security Forces have been bombing and demolishing civilian houses and causing threat to civilian life and security. Since the beginning of the curfew in December 2015, security forces have been using tanks, cannons, grenade throwers and heavy machine guns in order to render the YDG-H ineffective, while causing civilians to be trapped in an armed conflict and to experience war-like circumstances. Moreover, in February 2015 it was reported that 150 people had allegedly been burnt alive by Turkish military forces during a counter-terrorism operation against the PKK in Cizre.¹³²

Turkish security forces involved in the above mentioned operations are reportedly blocking access to urgent medical care for the sick and wounded. Reports of human rights organizations suggest that wounded civilians are calling for assistance, but ambulances are being prevented from responding to their calls. These include reports of people in need of medical care being trapped, not just for hours, but for days.¹³³ The government is cutting the delivery of water, food, and electricity, all critical to the provision of basic health care. Restrictions on the mobility of medical and rehabilitation staff, 24-hour curfews, and the refusal to allow international monitoring of security operations are entailing

¹²⁹ Today's Zaman, *Erdogan Kicks off Campaign for Turkish-style presidential system*, 28 January 2016. Available at <https://newcoldwar.org/erdogan-kicks-off-campaign-for-turkish-style-presidential-system-constitution/> (last accessed on 21 March 2016).

¹³⁰ International Crisis Group, *The Human Cost of the PKK Conflict in Turkey: The Case of Sur*, 2016; p. 3. Available at <http://www.crisisgroup.org/en/regions/europe/turkey-cyprus/turkey/b080-the-human-cost-of-the-pkk-conflict-in-turkey-the-case-of-sur.aspx> (last accessed on 22 March 2016).

¹³¹ International Crisis Group, *The Human Cost of the PKK Conflict in Turkey: The Case of Sur*, 2016; p. 20. Available at <http://www.crisisgroup.org/en/regions/europe/turkey-cyprus/turkey/b080-the-human-cost-of-the-pkk-conflict-in-turkey-the-case-of-sur.aspx> (last accessed on 22 March 2016).

¹³² RT Question More, *150 Allegedly "burned alive by Turkish military" during crackdown on Kurdistan Workers' Party (PKK)*, 19 February 2016. Available at <https://www.rt.com/news/332951-kurds-burned-alive-turkey/> (last accessed on 16 March 2016).

¹³³ Human Rights Watch, *Turkey: Mounting Security operation Deaths*, 22 December 2015. Available at <https://www.hrw.org/news/2015/12/22/turkey-mounting-security-operation-deaths> (last accessed on 14 March 2016).

severe consequences for the civilian population, and are resulting in a failure to safeguard health services and health workers.¹³⁴

Once again, the excessive use of force, paired with the widespread human rights violations against the Kurdish population in the south-eastern region of Turkey, are clearly in contrast with Turkey's obligations at an international level, and particularly with CAT's Article 2. The previous paragraphs show how security forces not only have been allowed to use a disproportionate amount of force against the civilian population, under the shield offered by so-called "anti terrorist" operations, but Turkish State authorities have also repeatedly encouraged such brutalities and actively promoted a climate of impunity. Such behaviour from the authorities at all levels is strongly incompatible with Turkey's international obligation to effectively prevent torture and prosecute perpetrators.

3.4 Recommendations

- *Turkey should take all the necessary legislative, judicial and administrative measures to effectively prevent and address torture and ill-treatment in prison. Practical steps should be taken by Turkey to improve the living conditions of the prison population: access to water, food, and health services should be guaranteed. Particularly, overcrowding should be addressed as a first step to prevent torture and ill-treatment. Effective follow-up and investigations into torture allegations against prison guards should be guaranteed by Turkish State authorities.*
- *Turkey's State authorities should increase their efforts in the area of human rights training, particularly targeting prison staff and law enforcement officials.*
- *Turkish State authorities should provide children and juvenile offenders with their own detention centres, separate from adult facilities. Special training should be organised for prison guards on the prohibition of torture, in light of the best interest of the child and principles of juvenile justice. Specific measures should be taken to investigate torture against juveniles.*
- *Training on international standards, particularly the Istanbul Protocol, should be provided and made compulsory for professionals, in particular for medical professionals.*

¹³⁴ Physicians for Human Rights, *Turkey Security Forces Blocking Access to Medical Care in Southeastern Turkey*, 8 February 2016. Available at <http://physiciansforhumanrights.org/press/press-releases/turkish-security-forces-blocking-access-to-medical-care-in-southeastern-turkey.html?referrer=https://www.google.co.uk/> (last accessed on 15 March 2016).

- *Measures should be taken in order for medical examinations to be carried out thoroughly: the Turkish Criminal Code should be amended to include punishment for medical professionals who do not conduct fair and thorough medical examinations or provide inaccurate reports.*
- *The Turkish Criminal Procedure Code should be amended to recognise everyone's right to have access to a lawyer. The enjoyment of the latter should not be subject to any condition or limitation.*
- *Turkish State authorities should amend domestic laws regulating the use of force by law enforcement officers in line with international standards, such as the UN Basic Principles on the Use of Force and Firearms.*
- *Circulars and other documents issued by Turkey's Ministry of the Interior providing guidelines on the lawful use of force by law enforcement officers should be updated to comply with international standards, including international human rights law, and made available to the public.*
- *An independent mechanism should be established, and should be provided with the necessary structural and functional resources to deal with complaints against unlawful police conduct.*
- *Turkish State authorities should take active steps to manage demonstrations and protests through peaceful means in order to protect protestors from ill-treatment and torture. Investigation into allegations of abuse by officials must be conducted promptly, thoroughly, and independently, without recourse to counter-charges on complainants.*
- *Turkish State authorities should take measures to immediately stop the gross human rights violations amounting to torture and ill-treatment against civilian, in particular in the context of security operations in south-east Turkey.*
- *Turkish State authorities should lift all curfews in the Kurdish region of Turkey and end the military operations threatening life and security of the civilian population, in order to ensure the civilian population's access to public services, fundamental needs and medical care.*
- *Turkish State authorities should initiate an independent investigation into all allegations of torture and ill-treatment since the declaration of curfews in the Kurdish region of Turkey, ensuring that members of the Security Forces and government officials who were involved are held to account.*
- *Turkish State authorities should provide international monitoring bodies access to the region where security operations are taking place, in order to ensure that security forces are complying with international standards on human rights and the use of force.*

4. Torture allegations: lack of investigation and impunity

As underlined by the recommendations received by the Turkish government during Turkey's second cycle UPR in January 2015, lack of effective investigation is one of the main issues when it comes to preventing and prosecuting torture and ill-treatment within the country. While, in theory, law enforcement officers responsible for perpetrating torture and ill-treatment should be tried and convicted under Article 94 of the Turkish Criminal Code, which includes an explicit prohibition of torture; in practice, perpetrators are rarely brought before a judge, and when they are, it is often on the basis of other, less serious charges, particularly Article 256 on the prohibition of excessive use of force, and Article 86 on the prohibition of bodily harm, for which shorter terms of imprisonment are imposed.¹³⁵ Lack of evidence is one of the reasons that hinder the investigation process: it not uncommon for the police to hamper investigations by withholding crucial evidence - from the names of the officers on duty when the ill-treatment allegedly took place, to footage from the CCTV cameras.¹³⁶

Such malpractice means that allegations of torture are not properly investigated, and therefore ill-treatment, particularly by law enforcement, is rarely sanctioned. A 2015 report by the European Commission states that only a very small number of cases brought against prison guards accused of torture and ill-treatment against detainees have resulted in the suspects being charged, however often with lenient sanctions.¹³⁷ In the vast majority of cases, law enforcement officers are found to be innocent.¹³⁸ As an example, Amnesty International reports that, despite the serious allegations of human rights violations against Kurds in the south-east region of Turkey over the past year, including cases of individuals being shot dead by police officers, investigations have not progressed.¹³⁹

The above described lack of prompt and effective investigations into torture allegations can also be interpreted as a lack of consideration towards the rights of torture victims: indeed, while Article 234 of the Criminal Procedure Code does include provisions allowing victims of any kind of crime to demand for evidence, request copies of documents from prosecutors and appeal against the prosecutor's decision not to prosecute; there is no consideration towards the specific needs of

¹³⁵ International Rehabilitation Council for Torture Victims, *Torture in Turkey, Country Factsheet*, 2014, p. 3. Available at www.irct.org (last accessed 15 March 2016).

¹³⁶ European Commission, *Turkey 2015 Report*, 2015. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015SC0216&from=EN> (last accessed on 16 March 2016).

¹³⁷ European Commission, *Turkey 2015 Report*, 2015; p. 62. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015SC0216&from=EN> (last accessed on 16 March 2016).

¹³⁸ International Rehabilitation Council for Torture Victims, *Torture in Turkey, Country Factsheet*, 2014, p. 3. Available at www.irct.org (last accessed 15 March 2016).

¹³⁹ Amnesty International, *The State of the World's Human Rights – Report 2015/2016*. Available at: <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/> (last accessed on 14 March 2016).

torture victims, nor any protection is provided to survivors, their lawyers and/or witnesses during criminal investigations, further hampering the prosecution of torture allegations.¹⁴⁰

Such lack of consideration for the rights of torture survivors, including their right to see their abusers prosecuted, is also reflected by the widespread practice of filing counter-charges against individuals seeking justice for alleged abuse and ill-treatment by law enforcement officers. Data shows that, between 2010 and 2013, 102.247 files were opened and 41.500 individuals were convicted for “resisting” or “insulting” public officials, a crime punished under Article 265 of the Criminal Code.¹⁴¹ In many instances, a complicit judicial system allowed these counter-cases to be prioritised by Turkish courts.¹⁴²

Given the lack of thorough investigations into torture allegations, impunity is still systemic in Turkey, particularly in relation to human rights abuses committed by public officials. As stated above, from lack of evidence to State authorities’ unwillingness to prosecute, several of the factors that contribute to create a climate of impunity for torture perpetrators. The Turkish Constitutional Court in a recent ruling stated that the lack of an appropriate penalty for torture means that there is no “deterrent for future acts of torture”.¹⁴³ Despite this ruling, Turkish State authorities do not appear to be making any effort to address impunity, as media outlet recently reported the news of the drafting of a new law proposal demanding the consent of the Minister of Defence and the Prime Minister in order to prosecute soldiers charged with human rights abuses.¹⁴⁴

As stated above, even in the rare cases in which investigation is carried out, abuse and torture by security forces rarely result in proper prosecution of the accused offenders. In fact, torture related crimes are often punished under other provisions, *de facto* providing impunity for torture perpetrators: an example is the recent case of six police officers beating a civilian in the street, who were found guilty of a lighter crime, torment, and whose prison sentences were suspended. Moreover, data shows that in 2012, 705 were the cases filed against enforcement officials, but only 105 of these concerned torture allegations, while the remaining 600 were based on the allegedly excessive use of force by law enforcement officers. Furthermore, of the 705 cases filed, only 45 resulted in the actual conviction of the accused, and only 9 of these rulings were based on the

¹⁴⁰ International Rehabilitation Council for Torture Victims, *Torture in Turkey, Country Factsheet*, 2014, p. 3. Available at www.irct.org (last accessed 15 March 2016).

¹⁴¹ United States Government, *Turkey 2014 Human Rights Report*, p. 11. Available at: <http://www.state.gov/documents/organization/236798.pdf> (last accessed on 15 March 2016).

¹⁴² European Commission, *Turkey Progress Report*, 2014; p. 15. Available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf (last accessed 17 March 2016).

¹⁴³ Hurriyet Daily News, *Turkey’s Top Court Rules against State in Torture Victim’s Appeal*, 22 December 2015. Available at <http://www.hurriyetdailynews.com/turkeys-top-court-rules-against-state-in-torture-victims-appeal.aspx?pageID=238&nID=92871&NewsCatID=509> (last accessed on 16 March 2016).

¹⁴⁴ Today’s Zaman, *National Draft Requiring Consent for Trial of Soldiers Raises Human Rights Concerns*. Available at http://www.todayzaman.com/national_draft-requiring-consent-for-trial-of-soldiers-raises-human-rights-concerns_413541.htm (accessed on 15 March 2016).

violation of the prohibition of torture (Article 94 of the Criminal Code).¹⁴⁵ The CAT Committee in its General Comment n. 2 stated that torture needs to be distinguished from other types of common assault or crimes: naming and defining torture has the intrinsic purpose of “alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime”.¹⁴⁶ Therefore, Turkey’s State authorities practice of prosecuting torture suspects under provisions other than Article 94 of the Criminal Code, not only is directly damaging to the victims, but it also has a broader negative impact on the prevention of torture.

Impunity has broad consequences that go beyond the mere lack of accountability for torture perpetrators. On the one hand, knowing that their case will not be heard and that the perpetrators will not be brought to justice or will not be convicted, acts as a deterrent for torture victims to file complaints, particularly against State authorities.¹⁴⁷ On the other hand, impunity fuels the abuse at the expenses of civilians, as authorities regularly allow officers accused of having perpetrated ill/treatment to remain on duty during trial. For example, while authorities investigated 164 police officers in relation to the above mentioned human rights violations occurred during the Gezi Park protests, only 3 of these officers were suspended.¹⁴⁸

Along with the lack of fair and thorough investigations and impunity, the independence of the judiciary is another serious issue that increases the difficulties in holding torture perpetrators accountable for their abuse. The Venice Commission of the Council of Europe in a recent statement underlined how “there are insufficient guarantees for the independence of the judiciary in Turkey”.¹⁴⁹

Such shortcomings in relation to the investigation process and the actual prosecution and accountability of torture suspects constitute a violation of the obligations enshrined in Article 2 of the CAT Convention. The latter not only imposes a duty on State parties, including Turkey, to take positive measures to prevent and address cases of torture within their jurisdiction, but it has been interpreted by the CAT Committee itself as implying that “impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture and

¹⁴⁵ *Comparative Study on the Legal Framework of Torture in Turkey and Israel*, July 2015, p. 29. Available at <http://tihv.org.tr/wp-content/uploads/2015/09/Comparative-Study.pdf> (last accessed on 14 March 2016). and *Response of the Ministry of Justice to the parliamentary question no.56020453-610.01-297/2880/5529*, issued on 12.09.2013.

¹⁴⁶ Committee against Torture, *General Comment n.2*, CAT/C/GC/2CRP.1/Rev.4, para 11.

¹⁴⁷ United States Government, *Turkey 2014 Human Rights Report*. Available at: <http://www.state.gov/documents/organization/236798.pdf> (last accessed on 15 March 2016).

¹⁴⁸ United States Government, *Turkey 2014 Human Rights Report*. Available at: <http://www.state.gov/documents/organization/236798.pdf> (last accessed on 15 March 2016).

¹⁴⁹ Council of Europe – Venice Commission, *Declaration on Interference with Judicial Independence in Turkey*, 20 June 2015. Available at <http://venice.coe.int/files/turkish%20declaration%20June%202015.pdf> (last accessed on 14 March 2016).

ill-treatment violate the principle of non-derogability".¹⁵⁰ Article 2.2 provides an absolute and non-derogable prohibition against torture, no exceptions can be invoked to justify torture and ill-treatment: therefore, there is no justification for Turkey's non-compliance with its obligation to take all the appropriate measures to eradicate such practices.

4.1 Recommendations

- *Turkish State authorities should take positive measures to combat impunity and carry out rapid, impartial, effective and thorough investigations for all past or present allegations of torture and ill-treatment by security forces and ensure that perpetrators are held accountable.*
- *Turkish State authorities should immediately take steps to end the climate of impunity by initiating impartial investigations and prosecutions, in particular in cases of human rights violations allegedly perpetrated by members of the law enforcement, in order to guarantee accountability.*

5. Conclusion

Despite being considered one of the most modern and democratic countries in the region, Turkey still does not comply with its international human rights obligations in relation to torture and ill-treatment. In particular, Turkish State authorities, as shown in the previous sections, do not seem to have undertaken enough steps to comply with their positive obligations, under Article 2 of the CAT, to take all the appropriate measures, whether legislative, judicial, administrative, to effectively prevent torture and ill-treatment of individuals under their jurisdiction.

While the domestic legal framework does include provision on the prohibition of torture, further consideration needs to be given to the specific rights and needs of torture victims: from the right to reparation to the right to have access to a lawyer. Moreover, despite partially addressing the use of force by law enforcement agencies, Turkey's domestic law still lacks a focus on the principle of proportionality and necessity: widespread human rights violations during protests and anti-terrorist operations provide strong evidence on Turkey's current trend in using force disproportionately against civilians.

The London Legal Group calls on the Turkish government to address such shortcomings by amending its domestic law in line with international standards, in order to comply with Turkey's obligations under CAT, and particularly under Article 2.

¹⁵⁰ Committee against Torture, *General Comment n.2*, CAT/C/GC/2CRP.1/Rev.4, para.5.; Committee against Torture, *Keppa Urra Guridi v. Spain*, Communication No. 212/2002, UN Doc. CAT/C/34/D/212/2012 (2005), paras. 2.3, 2.5, 2.6.