

	<p><b>TÜRKİYE İNSAN HAKLARI VAKFI</b></p> <p>Human Rights Foundation of Turkey Mithatpaşa Cad. 49/11 6. Kat Kızılay/Ankara Tel: +90 312 310 6636 Fax: +90 312 310 6463 e-mail: <a href="mailto:tihv@tihv.org.tr">tihv@tihv.org.tr</a> <a href="http://www.tihv.org.tr">www.tihv.org.tr</a></p>
---	--

**HUMAN RIGHTS FOUNDATION OF TURKEY**  
**TURKEY'S 5<sup>TH</sup> PERIODIC REPORT**  
**SUBMISSION TO THE COMMITTEE AGAINST TORTURE**  
**ON LIST OF ISSUES PRIOR TO REPORTING**  
**25 JUNE 2018**

Human Rights Foundation of Turkey is established in 1990 by 32 intellectuals advocating human rights and by the legal entity of Human Rights Association (IHD), and as a result of the efforts in the circles of Turkish Medical Association (TTB) and the Human Rights Association (IHD). HRFT is an internationally renowned and esteemed human rights organization, which has been contributing to the access of torture survivors to the treatment and rehabilitation services, and which has been carrying out activities for the documentation and prevention of torture, since 28 years.

In recent years, there are serious and widespread allegations pointing that the practices of torture and other forms of ill-treatment have enormously increased as a method for intimidating and punishing individuals and establishing authority, and as an instrument in criminal proceeding (force someone for a confession or getting information/"gathering an evidence"). Recently, we have also witnessed promotion of torture and other forms of ill-treatment practices with the aim of increasing government's control and oppression on different segments of society, of sowing terror and fear. On the other hand, in the field of legislation on human rights and freedoms -including the legislation on the prohibition of torture and other forms of ill-treatment-, there had been developments that might have extremely destructive and irreversible effects in the following period.

**1. Issues regarding Article 2**

**1.1. Issue on the allegations of torture or other forms of ill-treatment in official places of detention**

Especially in Southeast and Eastern Anatolia in the context of armed conflicts resumed in July 2015; and in the context that extends from the process of suppression of the coup attempt to the state of emergency; there are serious and widespread allegations and concrete evidence of torture and other forms of ill treatment in official detention places, including allegations of torture for non-political reasons. The terrifying extent of the practices of torture and other forms of ill-treatment are signalled by the images served to the media following the failed coup attempt and by the reports of human rights organizations<sup>1</sup> and international monitoring mechanisms<sup>2</sup>.

---

<sup>1</sup> In 2017, out of 564 torture survivor applicants to the HRFT, 381 (60%) reported to have been subjected to

## **1.2. Issue on the allegations of torture or other forms of ill-treatment in unofficial places of detention and extra-custodial settings**

i. There is evidence, including human rights organizations<sup>3</sup> and international monitoring bodies reports<sup>4</sup>, and video footages and images on media, that during peaceful public demonstrations throughout the country, the use of “extreme and disproportionate force” by security forces on individuals exercising their rights to assembly and demonstration, has reached an extent that amounts to torture or other forms of ill treatment. The police interventions to the peaceful demonstrations under the Human Rights Monument on the Yüksel Street in Ankara that take place at least twice each day, are only one example of many involving use of extreme and disproportionate force, across the whole country.

ii. Especially in Southeast and Eastern Anatolia in the context of armed conflicts resumed in July 2015; and in the context that extends from the process of suppression of the coup attempt to the state of emergency; there are serious and widespread allegations of torture and other ill-treatment in places which can be considered as unofficial places of detention, such as police vehicles, houses, workplaces, sports halls and some different places, evidenced by reports and images and video recordings on media.

*In the face of serious and widespread allegations of torture and other forms of ill-treatment in official and unofficial places of detention and in extra-custodial settings, please provide information on any new measures adopted by the State party to prevent, prosecute, and punish such conduct during the reporting period. Please provide data on investigations undertaken into allegations of torture in official and unofficial places of detention and in extra-custodial settings and indicate how many resulted in prosecution and conviction, including any disciplinary or criminal sentences.*

## **1.3. Issue on torture and ill-treatment in prisons, including conditions of detention, deaths in custody and aggravated life imprisonment**

According to the data by the Ministry of Justice, the number of detainees and arrestees in prisons rose from 55.870 in 2005 to 232.179 in December 31, 2017. Continuous growth of the population of prisons in the recent years has brought about the worsening of physical conditions and an increase in

---

<sup>2</sup> The report by the UN Special Rapporteur on Torture, based on a visit to Turkey in November 27-December 2, 2016 and published on December 18, 2017, includes a description and evaluation of the situation in the country, alongside 31 concrete recommendations were presented in the concerned report. The UN Rapporteur has once again expressed deep concerns on this issue on February 27, 2018. Similar assessments were included in the report by the UN High Commissariat on Human Rights, published on March 2018 and entitled “Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East” and in the “Turkey 2018 Report” by the EU Commission, published on April 17, 2018.

<sup>3</sup> In 2017 226 (40%) of 576 applicants to HRFT reported to have been subjected to torture or other forms of ill-treatment on the streets, open spaces and venue of public demonstrations, and 70 (12%) at home and workplace, which are turned into unofficial places of detention. In 2016, 243 (55%) of 487 HRFT applicants reported to have been subjected to torture or other forms of ill-treatment on the streets, open spaces and venue of public demonstrations.

<sup>4</sup> See the special report of the UN Special Rapporteur on Torture, published on 20 July 2017 and entitled “Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment”

the deprivation of rights. On the other hand, the practices of torture and other forms of ill-treatment in prisons have extremely increased again in the context of armed conflicts resumed in July 2015; and in the context that extends from the process of suppression of the coup attempt to the state of emergency.

i. It is suggested that beating in entrance to prison and continuing afterwards, labelling of detainees who are detained for political crimes as “terrorists”, and their beating for this reason, all kinds of arbitrary treatment and arbitrary disciplinary punishments, solitary confinement, exile and transfer practices have increased in an unprecedented extent.

ii. Practices of a single person or small group isolation / solitary confinement practices (especially in F-type prisons) that have been in force since 2000, and that cause a serious damage in the physical and psychological integrity of inmate, is increasingly aggravating and becoming widespread.

iii. Restrictions in access to health services, denial of the right of visiting prison infirmary, practice of ill-treatment including handcuffing in transfer of prisoners to the Council of Forensic Medicine hospital, or court house, and the failures in solving prisoners’ health problems in timely and effective manner, are persistent problems. Especially, in order to open up room for people who were arrested after the 15 July 2016 coup attempt, many prisoners in certain cities such as Ankara, İstanbul and İzmir, were exiled to other prisons, which seriously restricted their right to access health services.

iv. According to the HRA data updated on March 1, 2018, there are 1154 ill-prisoners, 401 of which are suffering from severe illnesses. There are serious problems alongside those related to access to health services, such as problems concerning obtaining a medical evaluation report based on independent and qualified medical evaluations, related to several issues including that the Council of Forensic Medicine is not independent.

Moreover, according to the response of Ministry of Justice, as of February 2017, the number of arrestees and detainees, whose serious and continuous illnesses were documented by the report of the Council of Forensic Medicine; has reached to 841. On the other hand, the amendment dated June 18, 2014 on the Law on the Execution of Penalties and Security Measures, includes the expression “who are evaluated to constitute no severe or substantial danger in terms of social security”, subjecting the release of prisoners with severe illnesses to completely arbitrary decisions. Again according to the data of the Ministry of Justice, in the past five years, 451 arrestees and detainees, whose illnesses were detected by the Council of Forensic Medicine, have lost their lives in prisons, and even the reliability of this figure is questionable.

v. The Decree Having Force of Law (DHFL) no. 696 (dated December 24, 2017) has brought an additional article to the Law on the Execution of Sentences and Security Measures no. 5275, which stipulates inmates to wear uniform attires (coveralls). The attires are colour coded according to the crimes listed in the Turkish Penal Code. The women are exempted from wearing coveralls (art. 103). Although the regulation has not yet been put in practice, it is on its own against human dignity and against the Mandela rules.

vi. On the other hand, news on suspicious deaths and suicide incidents in prisons were revealed in the media. According to the data of HRA, only in 2017, 8 inmates lost their lives, allegedly committing suicide. There are no effective investigations within our knowledge despite the existence of allegations concerning these suspicious deaths.

vii. We are concerned by the restrictive conditions of detention for persons sentenced to aggravated life imprisonment. There is no commuting aggravated life sentences and repealing article 47 of the

Criminal Code, as well as section 25, paragraph 1, of the Law on the Execution of Sentences and Security Measures as recommended the Committee in its last report.

*In the face of serious and widespread allegations of torture and ill-treatment in prisons, please provide information on any new measures adopted by the State party to prevent, prosecute, and punish such conduct during the reporting period. Please provide data on investigations undertaken into allegations of torture in prisons and indicate how many resulted in prosecution and conviction, including any disciplinary or criminal sentences. Please provide information on any measures taken by the State party to ensure that the conditions of detention, including health services, in prisons are arranged to meet the fundamental needs of inmates in the face of the growing population in prisons; and to improve the conditions of ill prisoners. Please indicate the number, and status or outcome of investigations into the death and suicide incidents in prisons in the reporting period.*

#### **1.4. Issue on counter-charges brought against victims of alleged torture and ill-treatment**

Counterclaims remain as a deterrence/intimidation method to prevent torture survivors' filing a complaint against perpetrators. In the recent period, it is suggested that processes of counter charges/counterclaims against individuals subjected to violence reached immense dimensions, on accounts of "insulting an officer", "resisting an officer", "injuring" and "vandalism". The study published by Kerem Altıparmak and Feray Salman on June 9, 2016, reveals the extent of the relationship between the crime of exceeding the authority of use of force in the meetings and public demonstrations, and the crime of resistance for obstructing an officer in the execution of his duty<sup>5</sup>. The study shows that the ratio of law enforcement officers sentenced to imprisonment, to the protestors sentenced to imprisonment was 1/100 in 2006 and 1/2500 in 2013.

*Please indicate whether, the State party has reviewed the cases of individuals convicted under articles 265 ("using violence or threats against a public official"), 125 ("defaming the police"), 301 ("insulting Turkishness") and 277 ("attempting to influence the judicial process") of the Penal Code, in an effort to clarify whether any of these convictions were the result of counter-charges. Please provide any measure taken by the State party to avoid counter-charges are brought against victims of alleged ill-treatment or their families by public officials as a means to intimidate them from reporting the alleged abuse.*

#### **1.5. Issue on procedural (Fundamental legal) safeguards**

i. Under the state of emergency, the procedural guarantees for individuals deprived from their freedom –which were already disrespected in practice- were formally abolished with several DHFLs. The procedural guarantees such as informing individuals about detention, informing third persons, access to a lawyer, access to a physician, carrying out appropriate medical examinations in appropriate circumstances and reporting properly, rapid access to a judicial authority for inspection of legality, keeping of detention records properly, possibility of independent monitoring; have been lifted, and an entirely arbitrary environment has been created, in this respect.

ii. The first DHFL no. 667, dated 23 July 2016 extended the maximum duration of detention from 4 days to 30 days. On 23 January 2017, this regulation was amended and the maximum duration of detention was regulated as 7 days, which can be extended to 14 days, upon the Prosecutor written

---

<sup>5</sup> [http://bianet.org/bianet/insan-haklari/175633-gezi-de-yazilan-kahramanlik-degil-cezasizlik-destani?bia\\_source=rss](http://bianet.org/bianet/insan-haklari/175633-gezi-de-yazilan-kahramanlik-degil-cezasizlik-destani?bia_source=rss)

order. This amendment still contradicts with the criteria of the ECHR, stipulated in *Aksoy vs. Turkey* judgment of the ECtHR. The court ruled that the 14 days of detention without judicial supervision was exceptionally long and hence, was in breach of the convention.

iii. Several restrictions have been imposed on the right to access to a lawyer and the right of defence through various DHFL. The DHFL no. 668 (dated 27 July 2016) stipulated that for the duration of state of emergency, detainees' right to see a lawyer could be restricted by the prosecutor up to five days in the case of offences enumerated under the Fourth, Fifth, Sixth and Seventh Sections of the Fourth Chapter of Second Volume of the Turkish Penal Code (No. 5237, dated 26 September 2004), the offences falling under the Anti-Terror Law (No. 3713, dated 12 April 1991) and of the collective offences. The 5-day restriction was lifted and a 24-hour restriction was introduced by the DHFL no. 676 (dated 29 October 2016), for the offences enumerated under Fourth, Fifth, Sixth and Seventh Sections of Fourth Chapter of Second Volume of the Penal Code of Turkey no. 5237 dated 26 September 2004, the offences falling under the Anti-Terror Law no. 3713 dated 12 April 1991.

Furthermore, the DHFL no. 667 and the Law No. 6749 stipulated that under the state of emergency, oral consultations between the detainees and their lawyers may be recorded for security reasons, and the documents they exchange may be seized; the timing of such consultations may be regulated, and the lawyer may be replaced, at the request of the prosecution. The DHFL no. 676 (dated 29 October 2016) made these restrictions permanent beyond the state of emergency, with an amendment to the Law on Execution of Punishments No. 5275.

iv. Statements or confessions taken from persons deprived of their liberty, other than those made in the presence of a judge and with the assistance of a legal counsel, have no probative value in proceedings against that person; and confessions and testimonies that may have been obtained through torture or other ill-treatment are not admitted as evidence in any proceedings. However, especially under the state of emergency, unofficial interviews were conducted in numerous detention cases, and solely based on statements from these unofficial interviews, penal sentences were given, as reflected in the court proceedings by the efforts of the defendants and in the lawyer-client interviews. For an example, see Şanlıurfa 6th Heavy Penal Court decision dated 22 January 2018 and No. E.2017/295, K.2018/46.

v. On the other hand, as was the case during the September 12, 1980 military coup period, some other regulations allowed arrestees to be taken from prisons for re-testimonies, a practice that violates the right to a fair trial due to the risk of torture.

vi. In addition, DHFLs under state of emergency have ended membership of all members of the Prison Monitoring Boards, and new members were appointed, making these Boards even more dysfunctional at a time when torture allegations were extraordinarily increased.

vii. As stated in all international documents, forensic medical examinations should be carried out in health institutions; after detention, in transfers between units during detention, periodically and at the end of the detention period. However, in the recent period; medical doctors have been forced to conduct medical evaluations in other places such as police centres, and have been forced to visit places other than health centres, with the pretext of extraordinary conditions. It is clear that this situation has negative effects on doctor-patient confidentiality and on the conditions under which medical doctors prepare forensic examination reports independently and objectively. Such an environment also leads to a situation that prevents the conduct of the consultation and examination processes that may be necessary for the detection of possible torture findings. Unfavourable examination environments bring about an increase in the incomplete and incorrect forensic medicine

reports contradicting the standards of the Istanbul Protocol, which is the only guide to the detection of torture in detention entry / exit medical examinations.

viii. The “Tripartite Protocol”, regulating the administration, protection and health services in prisons between the Ministries of Justice, Interior and Health signed on 6 January 2000 was renewed in 30 October 2003, 19 August 2011, and once again in 21 January 2017. The Protocol implies a constant violation of the right to proper medical examination of detainees. The protocol is still used as a legitimization tool on the presence of law enforcement officials during medical examination.

*Please provide information on any efforts by the State party to amend the legal framework concerning procedural safeguards in order to protect persons deprived from their liberty in line with the requirements of the international law and please indicate any measures taken to ensure that forensic medical examinations are conducted in conditions compliant with the requirements of the Istanbul Protocol.*

#### **1.6. Issue on enforced and involuntary disappearances**

The reoccurrence under state of emergency, of abduction and forced disappearance incidents is a concerning fact. According to the information by the Human Rights Association released on 30 May 2017, 11 abduction and forced disappearance cases, most of which were in Ankara, took place. 4 of these were released afterwards, and one of these individuals committed suicide. Besides, in Ankara and in the surrounding region, several individuals were abducted, threatened, and were subjected to torture and ill-treatment during abduction. Similarly, Human Rights Watch has reported 5 abduction cases of possible forced disappearance on October 2017. It is indicated that in one of these cases, the concerned individual, who alleged that he was kept in a secret place for 42 days and was subjected to torture during this time, was found under police detention.

*Please provide on measures taken to ensure effective, transparent and independent investigations into all outstanding cases of alleged disappearances, and indicate the status or outcome of investigations concerning these cases and please provide information on any efforts by the State party to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearances and the Rome Statute.*

## **2. Issues regarding Article 4**

### **2.1. Issue on legislation on torture, including Definition and criminalization of torture**

The recent period witnessed developments in legislation on human rights and freedoms -including the legislation on the prohibition of torture and other forms of ill-treatment that might have extremely destructive and irreversible effects in the further period. The Article 94 of the Turkish Penal Code defining the crime of torture is not in line with the Article 1 of the Convention as recommended by the Committee in its last report.

### **2.2. Issue on permission system**

With amendments to “The Law on the Amendment of the Turkish Armed Forces Personnel Law and of Certain Other Laws” published on the Official Gazette on 14 July 2016 (just one day before the military coup attempt on July 15, 2016), judicial privileges granted to military personnel and legal powers of armed forces in domestic security operations were expanded (article 12/J/a and b.). With this regulation, investigation and trial of members of the Turkish Armed Forces and all security officers have become subject to the authorization of the prime minister, the ministry of defence, and

the ministry of interior, making investigations into allegations of torture and ill-treatment by the security forces almost impossible. While immunizing the crimes of all personnel with the pretext of “counterterrorism”, the regulation also reinforced the legal armour of impunity retrospectively.

*Please describe measures to ensure that special permission is not needed to prosecute high level officials for torture or ill-treatment, and indicate whether (article 12/J/a and b.) of the Law on the Amendment of the Turkish Armed Forces Personnel Law and of Certain Other Laws of 14 July 2016 repealed. Please indicate whether article 94 of the Penal Code has been amended.*

### **2.3. Issue on Statute of Limitations**

Although with the amendment of the Article 94 of the Turkish Penal Code, the statute of limitation was abrogated in crimes of torture; legal gaps in the retrospective practice of the article, is an important problem. For example, after the decision of the Supreme Court of Appeal, dated 4 December 2013 on statute of limitation concerning the period of military coup of 12 September 1980, the judicial mechanisms related to these allegations were closed to a serious extent. The court decision dated May 4, 2017 also means that the legal proceedings concerning allegations of torture during the 12 September military coup period have been completely closed.

On the other hand, statute of limitation on gross/serious human rights violations apart from torture (such as, extra judicial executions and forced disappearances) remains. The issue of the statute of limitations is the biggest obstacle in front of investigating and finding missing persons, punishing the perpetrators and the reparation of the relatives of the missing persons. The cases on enforced disappearances which took place in the early 90s are faced with the risk of being time barred due to the fact that the period limitation was 20 years in the previous TPC.

*Please indicate whether the Penal Code has been amended so that gross and serious human rights violations are not subject to a statute of limitations and measures to ensure investigation of torture isn't subjected to statute of limitations, retrospectively*

## **3. Issues regarding Article 10**

### **3.1. Issue on Istanbul Protocol training programmes**

HRFT has long been carrying out Istanbul Protocol trainings for health and legal professionals. However, within our knowledge there have been no Istanbul Protocol trainings organized by the government during the reporting period.

*Please discuss efforts since the last review to train all professionals involved with detainees and documenting and investigating torture on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), and the results of such training.*

## **4. Issues regarding Article 11**

### **4.1. Issue on independent visits and official visits to detention places**

During the reporting period, no formal regulations related to the independent visits by civil parties, were adopted. Request of visits to detention centres by civil organizations are systematically rejected. The Prison Monitoring Boards' structure is not independent and these boards are not entitled an independent budget, making them non-functional and dependent on the Government.

*Please indicate any measures taken by the State party to enable independent and official visits to detention places.*

#### **4.2. Issue on designation of National Preventive Mechanism and National human rights institution**

The Law on Turkish Human Rights and Equality Institution (THREI), incompliant with the UN Paris Principles and the OPCAT, was published on the Official Gazette on April 20, 2016 and came into force. The concerned law designated the THREI as the new NPM without informing any civil organization and without taking the concerns and their suggestions into consideration. According to the OPCAT, the adoption of NPM functions is not only dependent on a designation of an institution; but also on the existence of a regulation that covers the definition of the duties, mandates, structure, functional independency, adequate resources and transfer of funds in terms of budget and personnel as well a legal regulation ensuring of the safety of the members. The THREI as the new NPM not fulfilling these conditions, remained completely dysfunctional in a period of serious and widespread torture allegations.

*Please provide information about any future plans for making the Turkish NPM and TNHRI conform with the OPCAT and Paris Principles relating to the status of national institutions for the promotion and protection of human rights, and for ensuring their functional, structural and financial independence and to guarantee that the TNHRI can effectively and fully fulfil its investigative powers. Please also provide information about formal regulations explicitly authorizing human rights non-governmental organizations, medical professionals and members of local bar associations to undertake independent visits to places of detention.*

### **5. Issues regarding Article 12 and 13**

#### **5.1. Issue on effective investigation**

Although it is clear that as per the principle of ex officio investigation, filing of a complaint by the torture survivor is not required to launch an investigation against possible perpetrators; there are almost no examples of ex officio investigations within our knowledge. Furthermore, the number of investigations launched has declined as the authority of the law enforcement officers has been expanded, despite the dramatic increase in the allegations of torture especially in the context of armed clashes in the Eastern and Southern Turkey following July 2015, and in the period after the failed coup attempt<sup>6</sup>. Some rare examples of investigations related to the appeals for the detection and punishment of torture perpetrators, are mainly based on other reasons, including the spread of the images of people who have lost their lives, and the resulting public pressure. The investigation on the killing of Kemal Kurkut by the police during Newroz celebrations on 21 Mart 2017 is an example of such investigations triggered by public pressure. There is also at least one case, where investigation was launched against those who spread the images via media, rather than the perpetrators.

---

<sup>6</sup> The necessity for effective investigations and the risk of impunity were highlighted with justifications, in the “Fourth Periodic Report of Turkey” of the UN Committee Against Torture published on June 2, 2016, in the “Memorandum on the Human Rights Implications of the Anti-Terrorism Operations in South-eastern Turkey”, published by the Council of Europe Human Rights Commissioner on December 2, 2016, and also in the statement by the ECHR dated April 25, 2017, concerning 34 cases before the Court, concerning serious human rights violations that occurred during the curfews and operations in the South-eastern Turkey.



The same applied to the serious allegation of gross/serious human rights violations. The first criminal complaint submitted to the Chief Public Prosecution Office concerning the large number of persons (130 to 189) who were killed in the basements in Cizre during the “curfew”, resulted with a decision of non-prosecution, based on the judgment that there are no grounds for prosecution. The decision was made on accounts of “existence of legal grounds in the incident”, and “lack of evidence for the excess of self-defence limits”. Another example concerns the investigation of the extrajudicial killing of Abdulaziz Yural. On 30 December 2015, Abdulaziz Yural, health worker at the Cizre State Hospital and a distinguished volunteer of HRFT, was shot death on the street in the Nur neighbourhood, while trying to provide emergency care to a woman who was also shot from her feet. The investigation into the incident was not effective and no progress has been achieved within this period.

*Please provide data on any ex officio investigations into torture and ill-treatment practices, and indicate the number, status and outcome of investigations into torture and ill-treatment practices, in the reporting period.*

## **5.2 Issue on implementation of ECtHR judgments**

The fabrication of various obstacles before the implementation of decisions of the European Court of Human Rights (ECtHR), including compensation and other reparations, remains an important problem. There are no effective and transparent mechanisms enabling the civil society organizations to be informed of and monitor the implementation of Court’s decisions concerning Article 3. On 01 March 2014 “Action Plan on Prevention of ECHR Violations” was published in Official Gazette. The follow-up methods remain unknown.

*Please provide any efforts by the State party to establish a transparent and open mechanism to enable independent civil actors to monitor the implementation of ECtHR decisions on Article 3.*

## **5.3. Issue on impunity for acts of torture and ill-treatment**

i. The discourse, attitudes and approaches of state and public officials are important elements in preventing torture and other forms of ill-treatment. However, in the recent period, the negative attitudes of state and public officials towards the prohibition of torture and other forms of ill-treatment have aggravated further. A statement by the parliamentary member, who is also the Turkish Grand National Assembly, Jail Sub-Committee President (“I do not care about the kicks and slaps he was subjected to during his capturing. If it was me, I would have done the same, or even more”) is just an example of this negative attitude.

ii. On 23 July 2016, an absolute impunity clause has been introduced, stating that no legal, administrative, financial and criminal liability linked to the functions will arise, for persons who take decisions and fulfil duties in the scope of DHFL. Impunity continues through new institutional mechanisms under a legal cover in today’s state of emergency regime.

As an example; in an investigation launched against the police officers with allegation of “misfeasance in public office”, due to claims of threats and beating in detention, the Trabzon Public Prosecution Office gave the following decision on 5 January 2017: “Within the scope of the Article 9 of the Decree Having Force of Law No. 667, it is stated that legal, administrative, financial and criminal liabilities shall not arise in respect of the persons who have adopted decisions and fulfil their duties within the scope of this Decree Having Force of Law. Therefore, it appears that there is a prohibition of prosecution concerning those who have been complained against, for the act that is subject of the allegation.” In the face of public reaction, it was claimed that there had been a misunderstanding on the matter, and the decision was withdrawn.

iii. The DHFL no. 696 and dated 24 December 2017, was one of the latest and most dangerous attempts to increase the culture of impunity in Turkey. The decree provided immunity to civilians -

whether they hold an official position or not - who would fight against coup attempts and terrorist acts. On the one hand, the decree encourages the state officials and civilians to use torture and other forms of ill-treatment without having any punishment under the name of fighting against terrorism. On the other, it encourages the lynching culture in which anyone can use violence (art. 121). With this regulation, for the first time, the impunity was extended to include the civilians.

*Please indicate any measures taken to ensure that the perpetrators of torture and ill-treatment practices under the state of emergency are investigated and punished.*

## **6. Issues regarding Article 14**

### **6.1. Issue on redress**

The comprehensive reparative concept under UNCAT and related soft law tools have not been actualized. Domestic law does not provide required legal regulations for restitution, rehabilitation, satisfaction and guarantees of non-repetition. On 17 July 2017, the Victim Rights Draft Law was prepared. However, this draft law only foresees financial aid for torture survivors. As such, it reveals the mentality of the State, which neglects the rights to treatment, rehabilitation, and to judicial reparation stipulated by the international documents, and which ignores the responsibility of public authorities for torture and other gross/serious human rights violations.

Although the right to redress (effective remedy and reparation) is an important element of the right to life and of the prohibition of torture. It became a common practice that the concerned ministries present pleas stating that “the physical damage occurred was caused by the fault of the person; the administration cannot be held responsible, and therefore, the law enforcement officer who performed the intervention is not guilty”, in judicial proceedings concerning individuals wounded as a result of police interventions to the peaceful demonstrations. For instance, the request for compensation by A.Y. (aged 13) who was wounded as a result of a gas canister shot by the police hitting his face on 28 March 2006, was rejected by the Diyarbakır 2<sup>nd</sup> Administrator Court on the grounds that “the individual himself is responsible of injuries that occurred during illegal activities.” Such decisions are increasingly common.

### **6.2. Issue on rehabilitation**

The state does not have any effective programmes for rehabilitation for torture survivors and their dependants. There are several non-state rehabilitation programmes run by organisations like HRFT. But several administrative and judicial impediments are imposed against these.

*Please provide information on any efforts by the State party, including any improvements in the legal framework, to ensure that torture survivors and their dependants have access to free treatment and rehabilitation services in an independent setting and to ensure they can obtain redress, including an enforceable right to fair and adequate compensation and the means for as full rehabilitation as possible.*

## **7. Issues regarding Article 16**

### **7.1. Issue on extrajudicial killings**

According to the information gathered by the HRFT Documentation Centre, between 16 August 2015 and 1 June 2018, there have been at least 314 officially confirmed round-the-clock [all daylong] and/or open-ended curfews in 11 cities and in at least 49 districts of Turkey, and in this period, at

least 321 civilians lost their lives in the regions under curfew. Of the civilians who lost their lives, 79 were children, 71 were female and 30 were over the age of 60.

The corpses of the individuals, who lost their lives in areas under curfew remained on streets and calls for ambulance and request of treatment for the wounded were never returned. "Regulation for Implementation of Forensic Medicine Institution Law" dated January 7th and 16th, 2016 and again "Regulation on Transfer and Burial of Corpses" dated January 16th, 2016 allowed the bodies to be buried collectively to common graves or unknown places without waiting for the necessary period of time for identification. With this amendment on the Regulation for Implementation of the Law of Council of Forensic Medicine, the former 15-day period to hand over to the municipalities, corpses of the persons with no relatives and of those whose bodies were not received by their families or kin, was reduced to three days. In response to the State Council's decision on cancelling the implementation of this 3-day practice, this period was extended to 5 days on 20 April 2016 with a new amendment on the Regulation for Implementation of the Law of Council of Forensic Medicine. However, the amendment on the Regulation on the Procedures of Transfer and Burial of Corpse on January 16, 2016 had stipulated that these corpses "could be buried within 24 hours". With these regulations; in addition to the municipalities, local administrative authorities were also entitled to receive the corpses. It was also enacted that the corpse would be handed over directly to the local authority, if authorities were convinced that the public order could be disturbed and social events or criminal acts could occur during the corpse transportation and burial process.

*In the face of serious and widespread allegations of extrajudicial killings, please provide information on any new measures adopted by the State party to prevent, prosecute, and punish such conduct during the reporting period. Please provide data on investigations undertaken into allegations of extrajudicial killings and indicate how many resulted in prosecution and conviction, including any disciplinary or criminal sentences. Please provide information on any efforts by the State party, including any improvements in the legal framework, to ensure that in all cases the family members of individuals killed during the operations are given notice and a reasonable opportunity to retrieve their bodies, and investigate allegations that family members have been denied this opportunity.*

## **7.2. Issue on pressures, threats and judicial harassments against human rights defenders, journalists and medical doctors**

i. Judicial harassment, pressure and physical threats against human rights defenders and organizations have dramatically increased, particularly in the context of the state of emergency.

- As of 20 March 2018, 1564 CSOs and 174 media organizations were shut down and 112.679 public officials and 5705 academics were dismissed from their posts in the public sector in the aftermath of the coup attempt. 386 of these academics are signatories of the Peace Petition. The Progressive Lawyers Association, Lawyers for Liberty, Sarmaşık Association for the Struggle against Poverty and Sustainable Development, Agenda: Children Association, Van Women Association and Human Rights Research Association that were fulfilling significant roles in terms of the human rights environment in Turkey, are among the shut-down CSOs.
- Only within the last three years, one of the founders of the HRFT, Tahir Elci, and one of its volunteers, Abdulaziz Yural have been killed. HRFT Cizre Reference Center was burned out during the 79-days curfew in the town. Chairperson (Prof. Dr. Şebnem Korur Fincancı), the Board Members (Prof. Umit Bicer and Coşkun Üsterci), and a number of volunteers of the HRFT have been taken into detention. The Chairperson was released after 10 days of arrest,

Cizre Reference Center Representative (Serdar Küni, M.D.) was released after 6 months, yet there are ongoing trials concerning them. An HRFT Board Member, a HRFT Ethical Council Member, and a number of our volunteers have been removed from their posts at the public universities and public institutions, and their passports were cancelled. Several other HRFT founders and volunteers are facing trials and investigations.

- A report published by the Human Rights Association (HRA) on 1 June 2018, includes information on 221 legal cases out of more than 500 cases against the directors of the HRA. A total of 143 court cases were launched against Eren Keskin, alone. On one of these cases, Eren Keskin was sentenced to 7,5 years imprisonment on the grounds of Articles 299 and 301 of the Turkish Penal Code, on 29 March 2018, alongside a substantial amount of fines from other cases.
- On 5 July 2017, 8 human rights defenders, along with two consultants, were detained on Buyukada island of Istanbul in Turkey as they attended a workshop on the welfare and security of human rights defenders, organized by the Amnesty International Turkey. Following 13 days of police detention they all were referred to the Criminal Peace Judge on 17 July 2017. Two of them were released after 13 days and the others were released on 25 October 2017. Taner Kılıç, Chair of the Amnesty International Turkey, was detained on 6 June 2017 in Izmir and remanded in pre-trial detention, since then he is held at the Şakran prison in Izmir.
- Besides, there have been both administrative and criminal harassments against the legal personalities of prominent human rights organisations, like HRFT and HRA. Following the routine inspection by the General Directorate of Foundations in December 2016, questions were addressed to the HRFT on the content of its activities concerning documentation of gross/serious human rights violations in towns under curfew in the South-eastern Turkey, for the first time in the history of the Foundation. It occurred that the reports based on fact-finding missions in the region, and factsheets on civilian death during the curfews prepared by the HRFT in association with some other human rights organizations, had been the subject of a correspondence by the General Staff of the Turkish Army Forces sent to the relevant ministries and asking for 'the necessary actions to be taken' regarding the HRFT. In the beginning of January 2017 the organisations that prepared the above mentioned reports were notified that they have been under criminal investigation with an accusation of violating article 301 of Penal Code of Turkey. Also, there are two on-going investigations against HRA.

ii. During the current review period, hundreds of investigations were launched against journalists, who have a critical stance of the government, and many were detained and/or arrested. According to the Solidarity Platform with Imprisoned Journalists' data, 213 journalists, including 27 publishers and editors in chief, were in prison by 31 December 2017. 46 editor-on-watch of the Ozgur Gundem Daily, who attended to a solidarity campaign- to protest the pressures and judicial harassments the journalists and the newspaper was facing due to its anti-governmental and pro-Kurdish stance- were investigated with an accusation on terrorism-related charges in June 2016. 37 criminal cases were brought before the Courts, and proceedings are still on-going.

iii. There has been increased pressures on and judicial harassment against physicians who resist to circumstances that contradict the universal values and ethics of medical practice, as well as the principles of the Istanbul Protocol.

- An example is MD. Elif Turan, who refused to conduct medical examination at the police vehicle. She was exposed to the pressure of security forces and administrative authorities, which resulted in her dismissal from public service. In addition, since 2015, many doctors/medical professionals have faced investigations, arrests or detentions for providing treatment to alleged militants or political dissidents.
- Recently, physicians who made statements denouncing war and armed conflict, as part of their professional responsibility and duty, were detained, arrested and subjected to penal investigations. All the eleven members of the Turkish Medical Association's (TTB) Central Council were detained on January 30, 2018, due to their statement on January 24, 2018 denouncing war, and reminding once again that “war is a public health problem. Four of them were released four days later; the others were released seven days later. The investigation against them is still ongoing.
- Following a press declaration calling for peace on 4th of February 2018, Prof. Dr. Onur Hamzaoğlu, a well-respected public health professor, the Editor of the Community and Physician (Scientific Journal of the Turkish Medical Association), and the Co-Spokesman of Peoples’ Democratic Congress was detained on February 9, 2018 and following 8 days of detainment, was arrested and held in Ankara Sincan F Type prison since then. Prof. Dr. Onur Hamzaoglu was previously dismissed from his post at the Kocaeli University, as a signatory of the Academics for Peace petition.

*Please provide information on the measures taken by the State party to ensure that all human rights defenders, including members of human rights organizations, journalists, lawyers and medical doctors and other health professionals, are protected from harassment, intimidation and violence, particularly by public officials, as a result of their activities. Please also describe any legislation recognizing such defenders or efforts to revise legislation allegedly used to harass human rights defenders, including the Anti-Terrorism Law.*

## **8. Other issues of concern**

### **8.1. Issue on international commitments**

Rejecting the requests for visits<sup>7</sup> by the international monitoring mechanisms within the UN and the Council of Europe, postponing the scheduled ones<sup>8</sup>, not allowing/requesting the publication of reports<sup>9</sup>, systematically disregarding the suggestions by these bodies<sup>10</sup>, and adopting a negative and

<sup>7</sup> The request of the Office of the UN High Commissioner for Human Rights to visit Turkey concerning allegations of gross/serious human rights violations, particularly in the Eastern and South-eastern Anatolia, in the context of the armed clashes resumed on July 2015; has been refused.

<sup>8</sup> The visit of the UN Special Rapporteur on Torture to Turkey on October 10-14, 2016 was delayed by Turkey. The postponed visit took place from November 27th to December 2nd, 2016, after the new rapporteur took office.

<sup>9</sup> The government did not allow or request the publication of the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), concerning “the special purposed/ad hoc” Turkey visit on 29 August-6 September 2016.

<sup>10</sup> The Fourth Periodic Report of Turkey of the UN Committee Against Torture prepared in April 2016 and published on June 2, 2017, the Final Observations containing various warnings, recommendations and suggestions in 47 paragraphs were accepted. Nevertheless, the responses of the Turkish government bodies to

repetitive attitude in response to the reports prepared, the State of Turkey has prevented the effective functioning of international monitoring bodies.

## **8.2. Issue on Curfews**

According to the information gathered by the HRFT Documentation Centre, between 16 August 2015 and 1 June 2018, there have been at least 314 officially confirmed round-the-clock [all daylong] and/or open-ended curfews in 11 cities and at least 49 districts of Turkey. It has to be stated that approximately 1 million 809 thousand people are intentionally and “arbitrary deprived of their liberty” as a result of “continuous curfews”, lasting for months. The rights to live of residents of regions under the absolute control of State, were deprived of fundamental needs such as water, food and health care for extended periods. This practice of “continuous curfew” has to be considered on prohibition of torture and other forms of ill treatment basis as persons have been individually or collectively suffered harm including severe pain and emotional suffering that has already amounted to a certain level of gravity<sup>11</sup>.

---

the monitoring process requested by the Committee reveal the negative approach of the state organs on the Committee’s warnings and suggestions. Other examples concern the reports by the UN and the Council of Europe, regarding the gross/serious human rights violations, especially in Southeast and Eastern Anatolia in the context of armed conflicts resumed in July 2015; and in the context that extends from the process of suppression of the coup attempt to the state of emergency.

<sup>11</sup> These issues were stated in the Final Observations of the UN Committee Against Torture, dated June 2, 2016 as follows: “...effective investigation of allegations regarding curfews that cause severe suffering; and inflict a non-judicial punishment for those responsible for such ill-treatment ...” Also, the Human Rights Commissioner of the Council of Europe, in a statement dated 25 April 2017, indicating his intervention in 34 cases before the ECHR concerning the violations of human rights during operations and curfews in the Southeast; remarked that this practice “amounts to a restriction of liberty equivalent to house arrest for all intents and purposes”, and led to “mental suffering”.

The Commissioner for Human Rights of the Council of Europe, Nils Muižnieks’s stated in the “Memorandum on the Human Rights Implications of Anti-Terrorism Operations in South-Eastern Turkey” dated 02 December 2016; “numerous human rights of a very large population in South-Eastern Turkey have been violated in the context of the anti-terrorism operations conducted since August 2015. The priority for Turkey must therefore be to abandon the approach which has led to this situation, followed by the demonstration of a clear will to remedy its effects”. Similar assessments were included in the report by the UN High Commissariat on Human Rights, published on March 2018 and entitled “Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East”.

On 15 December 2016 European Court of Human Rights published a statement related to applications before the Court. It has decided to communicate complaints to the Turkish Government in the 34 applications concerning the curfew measures taken in Turkey since August 2015. The complaints which have been communicated are related to allegations of extra judicial killings and failure to take steps to protect the right to life; torture and ill-treatment; and, unlawful deprivation of liberty on account of some of the applicants’ confinement to their homes for extended periods. On 21 February 2017, the Council of Europe Commissioner for Human Rights informed the European Court of Human Rights of his decision to intervene as a third party in the Court’s proceedings, in accordance with Article 36, paragraph 3 of the European Convention on Human Rights, and to submit written observations concerning a group of 34 cases. <https://rm.coe.int/168070cff9>

*In the face of serious and widespread allegations that the State party's imposition of curfews during security operations has had the effect of depriving persons from access to food and health care, causing severe suffering. Please provide detailed information any investigations undertaken into allegations on this issue; and indicate any measures taken by the State party to ensure that the fundamental needs of the civilian population in areas under curfew are met.*

### **8.3. Issue on State of Emergency**

The period of state of emergency declared in the aftermath of the failed coup attempt and of -in total 31- decrees having force of law, can be considered as a period which deepened the destruction of democratic principles, such as rule of law, judicial independence, separation of powers and respect for fundamental human rights and freedoms; and as a period of legislation and practices that aims at regulating the life in all aspects and against the laws of human rights, as we see in military coup government periods. Lift of state of emergency, under which torture practices have enormously increased and become widespread, is a vital priority for Turkey.

*Please indicate any plans towards the lift of the state of emergency in the upcoming period, and please provide information about any efforts for re-regulating the current legal framework, which with the amendments under the state of emergency, created an environment that risks to instigate torture and ill-treatment practices throughout the country.*