

APRIL 2016

## Submission to the United Nations Committee against Torture on Turkey

This memorandum submitted to the United Nations Committee Against Torture (“the Committee”) ahead of its upcoming review of Turkey, highlights areas of concern Human Rights Watch hopes will inform the Committee’s consideration of the Turkish government’s (“the government”) compliance with the International Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (“the convention”). It contains information on the treatment of detainees and demonstrators in Turkey and other relevant matters and proposes specific recommendations that Committee members could raise with the government of Turkey.

Human Rights Watch has monitored the human rights situation in Turkey for over three decades and has most recently traced the sharp deterioration in the rights environment in the context of the breakdown of the Kurdish peace process and escalating violence in the southeast, and a crackdown on media and political opponents of President Erdoğan and the Justice and Development Party (AKP) government.<sup>1</sup> Human Rights Watch has worked closely on the erosion of the rule of law in this context and the increasing political pressure on the justice system. Alongside weak mechanisms for accountability for wrong-doing by state officials and members of the security forces, Turkey has in recent years introduced problematic laws giving the police greater powers to detain individuals without judicial oversight and thereby increasing the risk of ill-treatment and arbitrary detention.<sup>2</sup>

### **Increase in torture allegations by Kurds**

Human Rights Watch is concerned to report an increase in allegations of police torture or ill-treatment of detainees, including children, in southeast Turkey over the past nine months, and over the past five years a pattern of widespread police ill-treatment of demonstrators and excessive use of force to disperse protests.

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<sup>1</sup> For a general summary of the deterioration in human rights in Turkey, see Human Rights Watch World Report 2016 chapter on Turkey, January 2016: <https://www.hrw.org/world-report/2016/country-chapters/turkey>

<sup>2</sup> “Turkey Security Bill Undermines Rights,” Human Rights Watch news release, December 11, 2014: <https://www.hrw.org/news/2014/12/11/turkey-security-bill-undermines-rights> and “Is Turkey Just Copying the EU in Increasing Police Powers?”, *Hurriyet Daily News* op-ed: <https://www.hrw.org/news/2015/02/16/turkey-just-copying-eu-increasing-police-powers>

The breakdown in 2015 of the government-initiated peace process with Abdullah Öcalan, the imprisoned leader of the armed Kurdistan Workers' Party (PKK), has been accompanied by an increase in violent attacks, armed clashes, and serious human rights violations since summer 2015. The latter includes violations of the right to life and mass displacement of residents in eight southeastern towns where the security forces and PKK-affiliated youth groups have engaged in armed clashes, as well as denial of access to basic services including healthcare, food and education for residents placed under blanket curfew conditions for extended periods and in some cases months at a time. The past eight months have seen hundreds of security personnel, Kurdish armed fighters and civilians killed, with almost no government acknowledgement of the civilian death toll estimated at between 200 and 300 in this period. The renewed violence has provided the context too for numerous arrests of political activists and alleged armed youth on terrorism charges and ill-treatment of detainees.

The increase in allegations of ill-treatment and torture of detainees includes reports of ill-treatment at the moment of apprehension as well as in transit to and in formal places of detention. The increase in reports mainly concern individuals detained during or after security operations against PKK-affiliated groups or following armed clashes.

In August 2015, Human Rights Watch documented allegations of police repeatedly beating, humiliating and issuing death threats to detainees in Silopi, a town in the southeastern Şırnak province, and Silvan, a town in Diyarbakir province.<sup>3</sup>

During a March 2016 visit to Cizre, in Şırnak, the organization also obtained from the Human Rights Association (HRA), 52 (out of a reported total of 64) written allegations by young men and boys now held in pretrial detention in Şırnak T Type Prison sent to the HRA in January and February 2016. The boys are held in one ward of the prison separated from adults. The detailed allegations all concern ill-treatment or torture at the time of apprehension and during police detention in Cizre and Silopi. The allegations state that the young men and boys were repeatedly beaten and had their heads hit against a wall, were sworn at and verbally threatened with death, made to kneel, in some cases blindfolded, handcuffed behind the back for hours on end. They reported being physically coerced to sign statements put in front of them without being allowed to read them and to identify people allegedly involved in the PKK youth movement or who had participated, whether armed or not, in resistance against state authorities. It would appear from these accounts that security forces detained many of the young men and boys on the basis that their names were on a list partially compiled from evidence extracted under duress from other detainees.

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<sup>3</sup> Human Rights Watch documented in detail cases of torture or ill-treatment in Silopi in research published September 2, 2015; see "Turkey: Beaten and Threatened With Death":

<https://www.hrw.org/news/2015/09/02/turkey-beaten-threatened-death-police> and in Silvan in research published December 22, 2015; see "Turkey: Mounting Security Operation Deaths,":

<https://www.hrw.org/news/2015/12/22/turkey-mounting-security-operation-deaths> (final paragraph).

The 52 written allegations all related to detention in the course of on-going security operations in Cizre and Silopi. Four lawyers, who spoke to Human Rights Watch, had visited the detainees in Şırnak prison, interviewed them and subsequently forwarded the detainees' hand-written complaints to the HRA to the public prosecutor requesting a full investigation. The lawyers reported that in some cases medical reports existed that corroborated the allegations. Because non-governmental organizations are not granted access to prisoners in Turkey, Human Rights Watch has not been able to interview current detainees in person. Human Rights Watch would like to undertake its own interviews with those who have lodged complaints and others in Şırnak prison if the government were to grant permission for a prison visit. The organization heard similar reports of ill-treatment, including of female detainees, from another lawyer appointed by the legal aid service of the Şırnak bar association who had access to individuals shortly after they had been detained at a Cizre police station.

The lawyer reported the following to Human Rights Watch:

I attended over twenty interrogations at the police station during the Cizre curfew from mid-December to early March. I saw the state of the detainees brought in. To give two examples that come to mind and whose names I remember, K.U. had clearly been beaten, his lip was split open and bleeding and his whole face so swollen that he couldn't even see properly. He was dressed in a t-shirt and trousers, had no shoes on and was visibly shaking. It was one of the coldest days of the year. In another case detainee H.Y. who had been ill-treated got a doctor's report mentioning it but the police attempted to cover it up by claiming "a group whose identity was unknown had attacked her."

I was endlessly prevented from doing my job as a lawyer for those I was representing during the curfew period. In general on arrival at the police station the police would have the detainee's statement ready and typed up and I would be asked to sign pre-prepared statements which included a lot of extra information which when I talked to the detainee I understood they hadn't supplied. This included identification of lots of other individuals which would then justify the police detaining them too. I tried to resist signing these statements but was under huge pressure in a context in which there was no security of life.

Some individuals were afterwards released by the court, but they are very afraid to lodge complaints on the torture they suffered because they feel at risk of being detained again and this time imprisoned since the police can essentially produce evidence of people's connections to get them jailed on suspicion of association with armed groups.

The information supplied by this lawyer would seem to indicate that that there may be serious abuse of police procedures concerning statement-taking and attempts to circumvent the key role of the lawyer in making sure statements prepared reflect what detainees have stated.

In view of the extremely concerning indications of a pattern of ill-treatment amounting to torture in the context of detentions during security operations and armed clashes between the security forces and PKK associated groups, the Committee should ask the government:

- Are there investigations being conducted into 1) the over 52 allegations of serious ill-treatment and torture lodged by detainees in Şırnak T Type prison, and 2) the allegations of ill-treatment and torture in Silopi and Silvan Human Rights Watch publicly documented on September 2 and December 22, 2015?
- What steps have been taken by the relevant public prosecutors to interview those who have lodged complaints and to examine any medical reports prepared about them or any other witnesses with a view to probing these allegations? What steps have been taken to interview members of the security forces (the police and gendarmerie, police special teams and gendarmerie special teams and their commanding officers) on duty at the relevant times in the above-mentioned towns?
- Were there safeguards against ill treatment, including 1) access to an independent doctor and medical examinations before and after detention and interrogation 2) access to legal counsel of their own choosing without interference by police or other officials observed? What evidence is there that these safeguards were implemented as intended?
- Have any disciplinary investigations against the police and gendarmerie been initiated following these allegations?
- Would the government grant Human Rights Watch access, at the first available opportunity, to interview, individually and in private, remand prisoners in Şırnak T Type prison who have alleged ill-treatment on apprehension in January and February 2016?

### **Widespread pattern of excessive use of force against demonstrators**

Since the last review of Turkey by the Committee there has been a significant increase in governmental intolerance of public assembly and ever greater restrictions and bans imposed on demonstrations.<sup>4</sup> Police use high levels of violence when they regularly, forcibly disperse demonstrators. Their misuse of tear gas has been particularly concerning and Human Rights Watch documented many injuries resulting from tear gas canisters fired at demonstrators during the Istanbul Gezi protests that spread round the country in summer 2013.<sup>5</sup> Demonstrator Abdullah Cömert died as a result of a head injury from a tear gas canister and 15-year-old Berkin Elvan died due to a similar injury after a prolonged period in a coma.<sup>6</sup>

The Committee should ask the Turkish government:

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<sup>4</sup> "Turkey: End Police Violence at Protests," Human Rights Watch news release, June 1, 2013:

<https://www.hrw.org/news/2013/06/01/turkey-end-police-violence-protests> and "Why Banning May Day in Taksim Doesn't Work," Human Rights Watch dispatch, May 1, 2014: <https://www.hrw.org/news/2014/05/01/dispatches-why-banning-may-day-taksim-doesnt-work>

<sup>5</sup> "Turkey: End Incorrect and Unlawful Use of Teargas," Human Rights Watch report, July 16, 2013:

<https://www.hrw.org/news/2013/07/16/turkey-end-incorrect-unlawful-use-teargas>

<sup>6</sup> "Justice for Berkin Elvan," Human Rights Watch dispatch, March 11, 2014:

<https://www.hrw.org/news/2014/03/11/dispatches-turkey-justice-berkin-elvan>

- How many complaints were lodged after the Gezi protests and what is the status of the criminal investigations into excessive use of force and ill-treatment; how many such investigations have led to prosecution and how many resulted in a decision that there is no case to answer; how many have resulted in conviction and what have the penalties been? How many of those convicted received a suspended sentence or a fine? Similar questions should be asked about the number of disciplinary investigations to date and the outcomes and nature of the penalties or sanctions.
- What is the state of the investigation into the March 11, 2014 death of Berkin Elvan who died after 269 days in a coma after police shot him in the head with a teargas canister on June 16, 2013 in the context of the Istanbul Gezi protests?

### **Setbacks on establishing a National Preventative Mechanism**

In January 2014 the Turkish government announced the establishment of a National Preventative Mechanism within the Human Rights Institution of Turkey (Türkiye İnsan Hakları Kurumu, TİHK). However, in an unexpected move in January 2016 the government announced new draft legislation on the setting up of a Human Rights and Equality Board of Turkey (Türkiye İnsan Hakları ve Eşitlik Kurumu) which would replace TİHK. While UN special rapporteurs, the Human Rights Council and other intergovernmental bodies as well as human rights groups, had repeatedly criticized TİHK for its lack of adherence to the Paris Principles, the January 2016 draft legislation ties the proposed new body even more closely to the executive. Eight members of the board will be chosen by the cabinet, and three by the president. There will be no independently elected member of the board and the cabinet will appoint both the chair and the deputy chair. In this context, one of the roles of the new body stated in the draft legislative is to act as the National Preventative Mechanism.

The Committee should ask the government:

- In view of concerns that the proposed Human Rights and Equality Board of Turkey is closely tied to the executive, how does the Turkish government envisage that it will be able to perform the function of National Preventative Mechanism in adherence to the principles laid out in the OpCAT?

### **Officials Statistics Demonstrate Impunity for Torture a Key Problem**

In answer to the Committee's request for statistical information about measures to prosecute torture and excessive use of force, the data provided by the government in the appendixes to its fourth periodic review state report suggest that there are a declining number of investigations into and prosecutions of members of the security forces under the articles of the Turkish Penal Code relating to the crimes of torture (TPC article 94) and excessive use of force (TCK article 256), and a very low rate of conviction. The

data shows that most convictions (up to 2014) are for crimes such as basic injury or injury (article 86) rather than for torture or excessive use of force. Out of the 550 members of the security forces stated to have been convicted for offences under those articles of the Turkish Penal Code during the period 2010-14, only 16 were convicted of torture, and 19 of excessive use of force. Since many of the sentences are low (around a year on average) it is highly likely that many of them were suspended – though no information is provided on this. The available information raises the concern that the few public officials who are brought to account for mistreating people do not receive penalties commensurate with the severity of the crime.

Updated figures are needed to make a fuller assessment, but it is a matter of concern to note that the rate of investigation, prosecution and conviction seem to bear little relation to the incidence of torture or ill-treatment and excessive use of force being reported in Turkey today. Moreover, a failure to investigate, prosecute and punish crimes of ill-treatment not only represents a violation of that obligation under the convention, it directly provides an environment of impunity in which ill-treatment and torture can carry on unabated, or as we see happening in Turkey today, increase.

### **Persisting Impunity for Past Abuses: Torture, Enforced Disappearances and Unlawful Killings**

Human Rights Watch welcomes Turkey's 2013 move to repeal the statute of limitations for torture while raising the serious concern that prosecutors, lower courts and the Court of Cassation have since then blocked a number of attempts to investigate or prosecute instances of torture committed in the past by insisting that the 2013 law cannot apply to cases of torture before 2013. Furthermore they have argued that crimes against humanity were only accepted into Turkey's criminal code in 2004 and that therefore torture committed after the 1980 military coup but prior to 2004 cannot be prosecuted as a crime against humanity, even when it falls into that category.

Human Rights Watch has related concerns about the widespread impunity that prevails in Turkey for enforced disappearances and extrajudicial killings by suspected state perpetrators. After some hopeful signs of a readiness to prosecute crimes committed in the 1990s against Kurds in the southeast,<sup>7</sup> over the past year there have been at least five court decisions to disregard compelling evidence and acquit military personnel and other state perpetrators for egregious human rights abuses in that period.<sup>8</sup>

Impunity for serious human rights violations in the past and in the present remains an entrenched problem in Turkey and needs to be addressed as a matter of great urgency.

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<sup>7</sup> "Turkey: Time for Justice: Ending Impunity for Killings and Disappearances in 1990s Turkey," Human Rights Watch report, September 4, 2012: <https://www.hrw.org/sites/default/files/reports/turkey0912ForUpload.pdf>

<sup>8</sup> "Turkey: No Answers for Kurdish Victims," Human Rights Watch news release, November 5, 2015: <https://www.hrw.org/news/2015/11/05/turkey-no-answers-kurdish-victims>

### **Updated information on cases raised by the Committee**

The Committee also raised a number of cases and asked the Turkish government for updated information on the state of ongoing investigations and prosecutions. Human Rights Watch below provides information on some of these cases:

#### *Case of Ahmet Koca, beaten by group of police in the street*

Istanbul Heavy Penal Court No 2 on October 30, 2014 found six police officers captured on a mobile phone video beating Ahmet Koca in a street in Istanbul guilty of the crime of “torment” (Turkish Penal Code article 96). The court suspended their one-year-eight-month prison sentence and acquitted five others. The prosecutor appealed the verdict seeking that they be convicted of torture. The appeal is pending a decision from the Court of Cassation. Ahmet Koca was acquitted of insulting and resisting the police.

#### *Case of Fevziye Cengiz, beaten in police custody*

On May 13, 2015, Izmir Heavy Penal Court no. 6 convicted two police officers of “basic injury” and sentenced them to one year and three months prison time. A security camera had shown them repeatedly beating and mistreating Fevziye Cengiz in an office of a police station. One judge offered a dissenting opinion that the police should have been convicted for torture. However Fevziye Cengiz was fined 8840 TL (2750 Euro), equivalent to 440 days in prison – similar to the time given to the police officers – for insulting the police. The court suspended the fine but ruled that Cengiz should pay fees for three police officers’ lawyers amounting to 10,800 TL (3360 Euro). Lawyers for both the police and Cengiz have appealed the decisions.

#### *Case of Ankara demonstration following May 2011 Hopa incidents*

To protest the violent police dispersal of a demonstration in the Black Sea town of Hopa during which a man died and a police officer was injured, protesters took to the streets in Ankara on May 31, 2011. The Turkish government in its state report suggests the Ankara demonstration was “organized by terrorist organizations” and that there was no evidence of police ill-treatment. This information fails to mention that thirty-seven demonstrators prosecuted for acting on behalf of illegal organizations, participating in an unauthorized demonstration and resisting the police were, in February 2014, acquitted of terrorism charges. In the course of the same trial the court was shown security camera footage showing one demonstrator, Dilşat Aktaş, general secretary for women of a civil society organization, Halkevleri, being severely ill-treated and dragged in the street by police, resulting in her sustaining a broken hip. Despite

this important evidence, there has been no effective investigation into the police for mistreating and injuring Aktaş.

#### *Uludere airforce bombing*

A stark indicator of Turkey's prevalent culture of impunity is typified in the decision of non prosecution of perpetrators in the case concerning 34 Kurds, 17 of them boys, who died in a December 2011 air force bombing on the Turkish border near Uludere. In March 2016 the Constitutional Court rejected the case. Lawyers for the families will now apply to the European Court of Human Rights.

### **Recommendations**

The Committee should recommend that the government of Turkey undertakes the following urgent measures:

#### Political Will to Eradicate and Punish Torture

- Review as a matter of priority all on-going security operations to ensure that security forces comply with the absolute ban on torture under international law and as articulated in the Convention, the International Covenant on Civil and Political Rights, the European Convention on Human Rights and in Turkey's own laws;
- Show firm political commitment at the highest level of the government and presidency to eradicate torture and publicly commit to and enforce a zero tolerance policy and reign in security forces who commit the crime and public officials who fail to prevent it;
- Ensure effective investigations, of both criminal and administrative nature, of all allegations of ill treatment, that are capable of leading to the identification and prosecution of offenders;

#### Investigations of torture allegations

- Establish a National Preventative Mechanism fully adhering to the principles laid out in the Optional Protocol to the Convention
- Urgently lift restrictions on access to places of detention by representatives of independent non governmental organizations, medical professionals, and members of local bar associations.
- Ensure that all video and audio recording devices, whether from armored personnel carriers employed during security operations, or from police stations during all interviews with suspects in custody, and in all locations in police stations, are operational at all times, cannot be



tampered with or erased, and are promptly and routinely made available to public prosecutors for purposes of investigation of allegations of human rights violations.

- Ensure that prosecutors investigate the responsibility of commanding officers where law enforcement officials are alleged to have perpetrated acts of ill-treatment including torture. Commanding officers who know or should have known of such acts, and who fail to take action to prevent and punish them, should be included in prosecutors' investigation and, where appropriate, face sanctions.
- Ensure that effective and meaningful disciplinary sanctions alongside criminal sanctions are imposed on law enforcement officials who commit human rights violations.
- Ensure that commanding officers who know or should have known of such acts, and who fail to take action to prevent and punish them also face disciplinary sanctions.
- Suspend from active duty officers under investigation for torture and other ill-treatment and ensure their dismissal if convicted.
- Make the Forensic Medical Institute both functionally and formally independent from the Ministry of Justice.

### **Introduce legal reforms**

- Repeal articles of April 2015 Domestic Security Law ("Law changing various articles of the Law on the Powers and Duties of the Police and of the Law on the Gendarmerie, its duties and powers, and in Statutory Decrees," no. 6638) which give the police new powers to use lethal force against demonstrators and to search and to detain people they suspect of posing a threat to public order, both without judicial oversight.
- Repeal the provision in the Anti-Terror Law to restrict the right of a detainee in police custody suspected of terrorism offenses to legal counsel for the first 24 hours at the request of a prosecutor and on the decision of a judge.
- Revise appendix article 2 of the Anti-Terror Law, and article 4 of the Law on the Powers and Duties of the Police, to ensure that the use of force by law enforcement officials is compatible with relevant international standards that provide that lethal force be used as a last resort where necessary in order to protect life.
- Revise Law 4483 on the Trials of Civil Servants and other public officials, and take any other necessary legislative measures to ensure that civil servants, including police and other law enforcement officers of all ranks, can be prosecuted without administrative authorization for all serious crimes or abuse of power.

