**CALL FOR INPUTS WITH A VIEW TO ISSUING A JOINT STATEMENT ON THE NOTION OF SHORT-TERM ENFORCED DISAPPEARANCE**

1. The International Association for Human Rights Advocacy in Geneva (hereafter IAHRAG) presents its compliment to the Committee on Enforced Disappearances (hereafter the Committee) and the Working Group on Enforced or Involuntary Disappearances (hereafter the Working Group). IAHRAG thanks the Committee and Working Group for their engagement with civil society and for providing this opportunity to be associated with the process of issuing a joint statement on the notion of short-term enforced disappearance (hereafter STED). IAHRAG is based in Geneva (place Jean Marteau 1) and can be contacted at: info@iahrageneva.org.

2. IAHRAG is a Swiss non-governmental organization created in 2017 with the global aim of improving the rule of law and the human rights situation in Türkiye, which has continuously deteriorated since July 15, 2016. IAHRAG regularly cooperated with the Committee, the Working Group, and other treaty bodies on enforced disappearance cases perpetrated by Turkish authorities. Consequently, IAHRAG’s contribution to the call for contribution focuses on Turkish practices.

1. **Context in which short-term enforced disappearances occur in Türkiye**
2. ***The Turkish practice of short-term domestic enforced disappearances***
	1. ***Few hours or few days enforced disappearances***

“*They forced me into a car. They took me to a cave and I did not know where it was. First, two people spoke to me in Kurdish and asked me if I had any connection with the’ organization. Every time I said no, they began hitting me. They tortured me with the electricity. They dug a grave inside the cave and said that if I did not work with them, they would put me in that grave. They said that if they buried me, no one would be able to find my body, that the judges and prosecutors were all subordinate to them, and that they were the state. There were many of them. They started hitting me with hoses. After handcuffing me at certain intervals, they continued to electrocute me. They called one of them 'the president.’ That person they called the president was saying 'shoot him in the head and do not let him talk. The person they called the chairman said, 'After we shoot you in the head, we will leave a note next to you. We will write that this is the end for traitors. He even said, 'We'll have two policemen dress up as guerrillas and take a photo with you' (...) They left me at night and told me that if I filed a complaint, they would take me again and shoot me on the head. They told me 'rest for a week, we will see you again'*.”[[1]](#footnote-1)

3. This is the testimony of Mazlum Çelik, who was abducted on July 14, 2023, released the same night and whose police officers refused to register the complaint.

4. This is one of the many testimonies received either from Hizmet Movement sympathizers (real or alleged) or from pro-Kurdish sympathizers since July 15, 2016.

***Pattern identified***

5. Turkish authorities have followed a pattern of STED.[[2]](#footnote-2) **In all the cases reviewed, either the authorities intended to intimidate the person abducted or intended to turn the person abducted into an informant**. The İHD has noted an alarming increase in recent years in the informal detention of various people with the use of threats and ill-treatment to coerce them into becoming informants. Based on applications filed with the İHD, at least 141 individuals “*were subjected to abductions, enforced informant-making attempts, and threats within the first 11 months of 2021*’ (see report [here](https://ihd.org.tr/en/wp-content/uploads/2022/01/sr20211230_Informant-Making-Report-2021.pdf)). The İHD specified that

“*the actual figures are well above its findings since the victims both seem to refrain from filing complaints before public prosecutors’ offices or lodging applications before organizations working for human rights and freedoms because of their perceptions that their applications would not produce any viable outcomes. Nevertheless, limited available data clearly shows that the number of violations is on the rise as complaints are not effectively investigated and finalized*”.

* 1. ***Few weeks or months of enforced disappearances***

6. In its follow-up report to recommendations after its visit to Türkiye, the Working Group noted its concerns that

“*an entrenched culture of impunity provided a fertile ground for cases of enforced disappearance to increase. The Working Group is particularly alarmed by allegations of enforced disappearances reported to have been perpetrated under the pretext of combatting terrorism against actual or perceived members of Gülen/Hizmet movement, classified by the Government of Turkey as ‘Gülenist Terror Organization (Fethullahçı Terör Örgütü, FETÖ)’ or ‘Parallel State Organisation (Paralel Devlet Yapılanması, PDY)’. Distressing reports of abductions by state agents in broad daylight, followed by months of torture and ill-treatment in clandestine detention sites aimed at extracting confessions for future prosecutions should be investigated as a matter of urgency*”.

7. Since July 2016, many cases of domestic STED of Hizmet Movement sympathizers, real or alleged, have been reported.[[3]](#footnote-3) Most of the time the disappeared for a period of 90 days (see footnote 3).

**Mustafa Özben, a former teacher, who disappeared for three months testified about what happened to him before the *Turkey Tribunal*: we respectfully invite the members of the Committee and Working Group to watch his testimony accessible** [**here**](https://www.youtube.com/watch?v=8pzo4zwMrXw)**.** He explained how he had disappeared in 92 days, abducted in broad daylight, detained in a secret place of detention, and tortured.

***Pattern identified***

8. In all cases, we know that abductees:

* were under similar global criminal investigations launched for alleged terrorist activities (i.e. being an Hizmet Movement sympathizer);
* were kidnapped in similar circumstances (victims forced into a black Volkswagen Transporter van with tinted windows – called “black transporter cases” in Türkyie, with references to “white taurus cases” when white Renault 12 automobiles were used to abduct civilians in Kurdish southeast in the 1990s);
* by persons who can be connected with the Turkish police forces or secret services;
* the abductors did not fear acting openly;
* reappeared under similar circumstances;
* were tortured to obtain names and confessions.

9. IAHRAG specifically followed the cases of Gökhan Türkmen (case 10009082), Hüseyin Galip Küçüközyiğit (case 19911130) before the Working Group: the cases revealed the same pattern.

1. ***The Turkish practice of short-term enforced disappearances in the context of extraterritorial abductions***

10. The Turkish pattern of performing extraterritorial abductions on Hizmet Movement sympathizers is recognized by the Working Group, which qualified the situation as the “*systematic practice of state-sponsored extraterritorial abductions and forced returns of Turkish nationals from numerous States to Türkiye*’ ([AL/TUR 5/2020](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25209), May 2020). In July 2019, the Working Group stated:

“*One such development is the increasing use of extraterritorial abductions, as the Working Group observed before the General Assembly in 2018.*(…)*Türkiye continue to seek the cooperation of other States to arrest, often in undercover operations,* (…) *alleged supporters of the Hizmet/Gülen movement, respectively, living outside the country. The allegations received by the Working Group indicate that individuals often disappear during these operations or once they arrive in the country of destination*” ([A/HRC/42/40](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/229/25/PDF/G1922925.pdf?OpenElement), para. 56).[[4]](#footnote-4)

11. The Committee is also aware of the practice, as it registered on February 2, 2023, the case of Mr. Mehmet Cintosun under the Urgent Action procedure (Article 30 of the International Convention for the Protection of All Persons from Enforced Disappearances) registered under number **UA No 1570/2023**. **As suspected, Mr. Cintosun disappeared from Iraq and was abducted by MIT on January 29, 2029. He reappeared on April 14, 2023, in Turkish territory at the hands of the MIT**.

12. IAHRAG also followed the case of **Mr. Orhan İnandı**, a dual national from Kyrgyzistan and Türkiye, who **disappeared on May 31, 2021, in Bishkek and reappeared on July 5, 2023, in Türkiye**.[[5]](#footnote-5)

13. For 37 days, Orhan İnandı was in an unknown location and was tortured to give statements. He reported that he was told “***We are the State, if we want, we can say that you killed Eşref Bitlis[[6]](#footnote-6) and you will be in prison for life. You can stay in prison for at least 20 years, the choice is yours. By the way, what will happen to your children, will they fall into the street or become a prostitute? In fact, we brought your daughter, she is standing behind the screen***.”

14. Orhan İnandı has been handed over to the Anti-Terrorism Branch of the Ankara Security Directorate by the National Intelligence Agency on July 6, 2021. His statement was taken for six days. **His official date of arrest in all legal documents is July 6, 2021**.

15. On July 5, 2021, the President himself, Recep Tayyip Erdoğan, made the following statement after the Cabinet meeting

“***We continue our efforts to eradicate FETÖ****, which is responsible for many betrayals against our country, especially the July 15 coup attempt. We uncovered all the intimate structures and archives of the organization in strategic institutions one by one.* ***Orhan Inandı, one of FETÖ's top figures, was captured and brought to Turkey***”.[[7]](#footnote-7)

***Pattern***

16. The process is now clearly identified: the Turkish government and its intelligence services persuade states to hand over individuals without due process or with corruption or cooptation of host state institutions, such as the local police or intelligence services.[[8]](#footnote-8)

17. **There is no issue for executive power to publicly acknowledge Turkish accountability**, as in the case of Orhan İnandı, at least in the domestic frame.[[9]](#footnote-9)

18. However, **Turkish authorities deny the existence of this abduction pattern when it comes to the international framework**. Answering to a communication from the Working Group and other mandate holders on state-sponsored extraterritorial abductions ([AL TUR 5/2020](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25209)), the Turkish authorities denied, answering that

“*Abduction allegations baselessly asserted by the communication are part of an overall strategy of FETÖ to disrupt investigations and prosecutions conducted by Turkish judiciary in accordance with Turkey’s constitutional order as well as its international obligations*” ([here](https://spcommreports.ohchr.org/TMResultsBase/DownLoadFile?gId=35335)).

19. Equally, **the judiciary and police authorities refuse to acknowledge abductions and enforced disappearances**. In the case of Orhan İnandı, his lawyer made an official denunciation of the torture and enforced the disappearance he suffered at the hands of the MIT on October 5, 2021.[[10]](#footnote-10) On November 2, 2021, the Office of the Prosecutor of Ankara decided not to open an investigation following the act of denunciation by Orhan İnandı, stating that:

“*it has not been possible to obtain convincing and sufficient evidence, which is far from all kinds of doubt, which will require the opening of a public action against the allegations made by the complainant. (…) it is understood that his allegations were abstract and general in nature, and that his complaint about his arm being broken as he claimed was not based on serious documents and findings*”.

1. **Legal frameworks and practices that favor short-term enforced disappearances in Türkiye and legal frameworks and practices that might prevent them**

20. Unsurprisingly, all these STED occur in the **context of the alleged fight against terrorism**. Many of these STED also occurred in the **context of the state of emergency** (July 16, 2015, to July 19, 2018).

21. IAHRAG firmly believes that **the best safeguards against human rights violations, including STED, are respecting the principles of the rule of law, strong democratic institutions, and legal frameworks**. In Türkiye, the State of emergency created the perfect opportunity for the regime to step up internal repression and push for constitutional reform, introducing a president with full powers and no checks and balances. Indeed, the April 2017 referendum introduced a presidential system in which the elected president is accountable only before the nation, exercising control every five years by voting. **The new regime deprived the Parliament of the means to question the executive power regarding its policies, placed the judiciary under the direct power of the President, and granted the president a broad area to govern by decree, *de facto* short-circuiting legislative power** (see the opinion of the Venice Commission on constitutional reform, [here](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)005-e)).[[11]](#footnote-11)

22. In addition, in spite of the lifting of the state of emergency, **Türkiye adopted on July 31, 2018 law No. 7145 amending anti-terrorism law No. 3713 and the penal code**, **which “normalizes emergency powers into ordinary law**” (see communication from Special Procedures, [OL TUR 13/2020](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25482)):

“*Article 13 of Law No. 7145 extends the period during which* ***suspects of terrorism-related crimes can be held in police custody for up to 12 days without charge****. Initial police custody is set between two to four days but it can be extended twice if the person is taken before a judge. Suspects can also be repeatedly detained under the same investigation*” ([OL TUR 13/2020](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25482)).

23. These kinds of **anti-terror legislations associated with the state of emergency, the culture of impunity, a non-independent judiciary power, and prosecutors who refuse to investigate allegations of STED** (see the case of Orhan İnandı) **create a climate of full impunity** (revealed by testimonies that abductions occurred in daylight) **that enhances the practice of short-term enforced disappearances.**

1. **Procedural questions that may arise for domestic authorities, the Committee and the Working Group when dealing with short-term enforced disappearances**

24. In the case of Türkiye, in addition to the lack of will to investigate STED cases, **criminal legislation does not codify enforced disappearance as a separate crime. Judicial authorities rely on various provisions including those relating to homicide, deprivation of liberty, and extortion when dealing with enforced disappearance. This denies the peculiarities of the enforced disappearance crime and entails an enhanced burden of proof that impedes victims from remedies for enforced disappearances, let alone STED**.

25. In addition, Türkiye did not accede to the International Convention for the Protection of All Persons from Enforced Disappearances.

1. **Conclusion**

26. IAHRAG thanks the Committee and the Working Group and respectfully invites them to stress in their joint statement on STED:

- the crucial importance of respect for the principles of the rule of law, strong democratic institutions, and separation of powers, as a means to deter STED;

- to raise the issues of STED occurring in the context of states of emergency, recalling States related human rights obligations;

- to raise the issues of STED occurring in the context of an alleged fight against terrorism, recalling States abide by their human rights obligations;

- to raise the issue of STED occurring in the context of extra-territorial abductions.

1. See report from TIHV, Türkiye Insan Haklari Vakfi, *Human Rights Foundation of Turkey,* [here](https://tihv.org.tr/gunluk-ih-raporlari/15-17-temmuz-2023-gunluk-insan-haklari-raporu/). [↑](#footnote-ref-1)
2. See for instance: **on June 12, 2023: Dildar Didêrî** testified that “*When I went to the district garage, 3 people cut in front of me, showed me their police IDs and put me in a car. These three people did not take me to the police station. They handed me to three people in another car. There was no license plate in the car. I was taken to a place in the Kerxê (Üç Tepe) area. It was an empty land, there was no one around*”. He stated that he was left on the side of the road after four hours and then applied to İHD (the Turkish Human Rights Association, which receives and gathers petitions from the citizens). Didêrî said that he had been interrogated. He explained that his attackers wanted to know more about his contacts, and were upset by his refusal to cooperate. They threatened him saying “***In this desert, we can make you disappear without anyone noticing. We are the State****. If you help us, we will help you*” while beating him up (see [here](https://rojinfo.com/repression-culturelle-au-kurdistan-le-musicien-dildar-dideri-temoigne-de-son-enlevement-et-de-sa-torture/)**). On April 1, 2023, Zeki Oğuz**, a Kurdish businessman and German citizen, was abducted on March 21, 2023, by unidentified persons who forced him into a car and kidnapped him on March 21, 2023, when he was leaving a supermarket in Istanbul. Zeki Oğuz's lawyer stated the following in his statement to the press “*Zeki Oğuz was abducted 10 days ago in Istanbul.* (...) *We still have no news* (...) *On Friday, March 31, we reached an AKP MP. We demanded to know his whereabouts and asked him to take action. He told us that he was in the hands of the state, that he was alive and that the state only needed a few days*” (see [here](https://tihv.org.tr/gunluk-ih-raporlari/1-3-nisan-2023-gunluk-insan-haklari-raporu/)). **On March 8, 2023: Azad Aktaş** in the Lice district of Diyarbakır was abducted by alleged plainclothes police officers on March 8, 2023, was forced to be a police informant and was released on the same day. Similarly, his attackers told him that they were the state, and that he should cooperate (see [here](https://tihv.org.tr/gunluk-ih-raporlari/11-13-mart-2023-gunluk-insan-haklari-raporu/)). [↑](#footnote-ref-2)
3. **Mustafa Yilmaz** (Hizmet Movement – abducted February 19, 2019, resurfaced October 22, 2019); **Salim Zeybek** (Hizmet Movement – abducted February 21, 2019, resurfaced July 28, 2019); **Özgür Kaya** (Hizmet Movement – abducted February 13, 2019, resurfaced July 28, 2019); **Gökhan Turkmen** (Hizmet Movement – abducted February 7, 2019, resurfaced November 5, 2019); **Erkan Irmak** (Hizmet Movement – abducted February 16, 2019, resurfaced July 28, 2019); **Yasin Ugan** (Hizmet Movement – abducted February 13, 2019, resurfaced July 28, 2019); **Önder Asan** (Hizmet Movement – abducted April 1, 2017, resurfaced May 12, 2017); **Fahri Mert** (Hizmet Movement - abducted August 12, 2018, still disappeared); **Hasan Kala** (Hizmet Movement - abducted July 21, 2018, still disappeared); **Ahet Ertürk** (Hizmet Movement – abducted November 16, 2018, resurfaced January 4, 2019); **Ümit Horzum** (Hizmet Movement – abducted on December 6, 2017, resurfaced April 16, 2018); **Mesut Geçer** (Hizmet Movement - abducted on March 18, 2017, resurfaced on July 14, 2018); **Sunay Elmas** (Hizmet Movement - abducted on January 27, 2016 still disappeared); **Ayhan Oran** (Hizmet Movement - abducted on November 1st, 2016 still disappeared); **Mustafa Özgür Gültekin** (Hizmet Movement - abducted on December 21, 2016 and resurfaced on April 21, 2017); **Hüseyin Kötüce** (Hizmet Movement - abducted on February 28, 2017 resurfaced April 25, 2017); **Orçun Şenyücel** (Hizmet Movement - abducted on April 20, 2018, resurfaced on July 2018); **Turgut Çapan** (Hizmet Movement - abducted on March 31 2017, still disappeared); **Cengiz Usta** (Hizmet Movement – abducted on April 4, 2017, resurfaced on June 30, 2017); **Mustafa Özben** (Hizmet Movement - abducted on May 9, 2017, resurfaced on August 8, 2017); **Fatih Kiliç** (Hizmet Movement – abducted on May 14, 2017, still disappeared); **Cemil Koçak** (Hizmet Movement – abducted on June 15, 2017 and resurfaced in late September 2017); **Murak Okumuş** (Hizmet Movement – abducted June 16, 2017, still disappeared); **Hüseyin Galip Küçüközyiğit** (Hizmet Movement – abducted on December 29, 2020, resurfaced on April 2021); **Yusuf Bilge Tunç** (Hizmet Movement – abducted August 6, 2019, still disappeared – **a case pending before the Human Rights Committee**, CCPR 4275/2022), see thereport from the Rapporteur on the *Turkey Tribunal* *Abduction in Turkey Today*, [here](https://turkeytribunal.org/wp-content/uploads/2021/11/AbductionsinTurkey_Turkey-Tribunal-Report_FINAL.pdf). [↑](#footnote-ref-3)
4. The Working Group also specified: “*To date, at least 100 individuals suspected of involvement with the Gülen/Hizmet movement are reported to have been subjected to arbitrary arrests and detention, enforced disappearance and torture, as part of covert operations reportedly organized or abetted by the Government of Türkiye in coordination with authorities of several States*” ([AL/TUR 5/2020](https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=25209), May 2020). [↑](#footnote-ref-4)
5. The case is currently pending before the Human Rights Committee (CCPR 3958/2021). [↑](#footnote-ref-5)
6. A former general in the [Turkish Gendarmerie](https://en.wikipedia.org/wiki/Turkish_Gendarmerie), who died in in 1993 in a controversial plane crash*.* [↑](#footnote-ref-6)
7. See [here](https://www.hurriyet.com.tr/gundem/son-dakika-fetoye-agir-darbe-erdogan-duyurdu-o-hain-de-yakalandi-41846922). [↑](#footnote-ref-7)
8. The head of the intelligence agency in Kosovo had to resign following scandalous cases of renditions in March 2018 and recently got sentenced to four years and eight months in prison – [here](https://euronews.al/en/former-kosovo-intelligence-chief-sentenced-to-4-years-in-prison-for-deporting-turkish-citizens/#:~:text=The%20former%20head%20of%20the,as%20the%20)– and Moldova has been condemned by the European Court of Human Rights, *Ozdil and Others v. Republic of the Modolva*, 42305/18, June 11, 2019 [↑](#footnote-ref-8)
9. For instance, Turkish former Foreign Minister Mevlüt Çavuşoğlu confirmed in 2018 that 104 Gülenists from 21 countries were abducted and brought back to Turkey as part of the Turkish government’s global manhunt ([here](https://www.sabah.com.tr/gundem/2018/11/15/452-fetocu-83-ulkede)). Ismail Hakki Pekin, former head of the Turkish Armed Forces Intelligence Department, also confirmed that, unless the sympathizers of the Hizmet movement are “*returned to Turkey by force, they must be exterminated wherever they are, just like ASALA or the MOSSAD did with the former Nazis*” ([here](https://twitter.com/cemkucuk55/status/810908276208599040?lang=en)). The presidential spokesperson Ibrahim Kalin furthermore publicly stated that operations abroad against the Gülen movement were being carried out “*under clear instructions*” from President Erdoğan ([here](http://www.haber7.com/siyaset/haber/2717161-ibrahim-kalin-her-an-her-sey-olabilir)). [↑](#footnote-ref-9)
10. See extract of the decision of the Prosecutor not to investigate: ““*In summary, the complainant Orhan İnandı, in his petition dated 05/10/2021 submitted to our Office of the Chief Public Prosecutor through his lawyer claimed that while he was in the city of Bishkek, in the country of Kyrgyzstan, he was brought to Turkey through a restriction of his freedom, by three people in plain clothes, on 31/05/2021, while he was getting into his car to go home, that he was forced to give false statements, that he was handed over to the Ankara Security Directorate Anti-Terrorism (TEM) Branch Office by the National Intelligence Organization (MIT) officers on 06/07/2021, that he was kept in bad conditions in a place other than a detention center, that insulting and threatening words were employed and that he was beaten. He further claimed that he was detained, his will was invalidated, his statement was taken, that his right arm was bent by the people who restricted his freedom and that they were sitting on it in the vehicle, and that his arm was broken, that he was officially detained on 12/07/2021 and sent to the penitentiary institution, and that no treatment was given until he came to the penitentiary institution because of this he complained of the public officials who worked in this process.* *In the examination of the UYAP records of our Office of the Chief Public Prosecutor; it is observed that Orhan İnandı was taken into custody on 06/07/2021 in the investigation carried out against him, who was registered with the 2016/175216 investigation number, that with the decision of the Ankara 1st Criminal Court of Peace dated 12/07/2021 and query number 2021/673, he was detained for being a manager of the FETO/PDY armed terrorist organization*”. [↑](#footnote-ref-10)
11. “*The proposed constitutional amendments aim to establish what the Turkish authorities have described as a “Turkish-style” presidential system, although they in no way reflect the well-rooted tradition of parliamentarism in Turkey but would constitute a decisive break in the constitutional history of the country. They are not based on the logic of separation of powers, which is characteristic for democratic presidential systems. Presidential and parliamentary elections would be systematically held together to avoid possible conflicts between the executive and the legislative powers. Their formal separation therefore risks being meaningless in practice and the role of the weaker power, parliament, risks becoming marginal. The political accountability of the President would be limited to elections, which would take place only every five years.* (…) *The enhanced executive control over the judiciary and prosecutors which the constitutional amendments would bring about would be even more problematic, in the context in which there have already been longstanding concerns regarding the lack of independence of the Turkish judiciary. The amendments would weaken an already inadequate system of judicial oversight of the executive*”, para. 126 and 129, [CDL-AD(2017)005](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)005-e). [↑](#footnote-ref-11)