



**THE SUBCOMMITTEE ON PREVENTION OF TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT
(SPT)**

*Call for Comments on the Draft General Comment of the Subcommittee on Prevention of
Torture (SPT) on the Article 4 of the OPCAT
(Optional Protocol to the Convention against Torture)*

Written Comments of the Human Rights Foundation of Turkey (HRFT)

Turkey

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**Human Rights Foundation of Turkey
(Türkiye İnsan Hakları Vakfı)**

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HRFT is an internationally recognized civil society organization that has been offering treatment and rehabilitation services in Turkey, for those subjected to torture and other forms of ill-treatment along with their families, and has been working to prevent human rights violations, most notably torture, since 1990.

**Written Comments of the HRFT for the Draft General Comment No. 1
on Places of Deprivation of Liberty (Article 4)**

To this date, many vital documents and international legal standards were produced for the prevention of torture and ill-treatment, which is absolutely prohibited under all circumstances, including all kinds of exceptional cases. Despite all these efforts and worthwhile documents produced, unfortunately torture and ill-treatment continue in many countries of the world, including Turkey, and untold numbers of people suffer due to the ongoing torture and ill-treatment practices. In addition, we are witnessing the spread of new torture and other ill-treatment methods and places of practice, as well as attempts to legitimize torture around the world. On the one hand, for many reasons, states are insufficient to fulfil their obligations for the prevention of torture, also, torturers are looking for new ways to neutralize our achievements. Therefore, a requirement to closely monitor the updates and develop comprehensive programs for the prevention of torture has emerged.

In this respect, as in the text of the Call for Comments on the Draft General Comment of the SPT on the Article 4 of the OPCAT, we believe that the present study “*with the aim of clarifying and addressing questions that States parties, national preventive mechanisms and other relevant actors may have regarding the obligations of States parties to the Optional Protocol as they pertain to the definition of places of deprivation of liberty*” is very valuable.

Below, we would like to share Human Rights Foundation of Turkey’s comments on the Draft General Comment of the SPT on the Article 4 of the OPCAT.

Comment 1):

In paragraph 1 of the text, after the sentence of “*In order to effectively fulfil the legal obligations relating to torture prevention contained in the Optional Protocol, States parties are obliged to designate national preventive mechanisms and must allow visits to all places of deprivation of liberty by those mechanisms and by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment.*” an additional sentence should be added.

Our suggestion for this addition as follows: “*A strict scrutiny should be paid for the institutions that are not, prima facie, in compliance with the Paris Principles and the rules of OPCAT, accepted as national preventive mechanisms by the States.*” We believe that this addition would be very necessary and useful.

The reasoning of this addition can be explained with an example from Turkey. The Human Rights and Equality Institution of Türkiye (HREIT/TİHEK), which allegedly also assumes the function of National Prevention Mechanism since its establishment (20 April 2016) does not contribute to the prevention of torture, and furthermore harms efforts to prevent torture.¹ Moreover, it has been announced by the Subcommittee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) that, the HREIT is to be accredited with “B” status as of 8 November 2022, and that the SCA’s recommendations are considered final.² Although the SCA took notes with concern on many issues of the national preventive mechanism in Türkiye, they accredited HREIT with B status, which means it “partially

¹ For the latest HRFT report with detailed reviews on national preventive mechanism in Turkey, see (in Turkish): <https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/ulusal-onleme-mekanizmasi-2021-yili-degerlendirme-raporu/>.

² See, <https://ganhri.org/wp-content/uploads/2022/11/SCA-Adopted-Report-October-2022-EN.pdf>.

meets the Paris Principles.” We believe that this approach has inevitable negative effects for the prevention of torture in Turkey, and the above-mentioned addition to the paragraph could assist to prevent and resolve such issues.

Comment 2:

In paragraph 40 of the text, we suggest an addition to the sentence of “*Similarly, places of quarantine and isolation may also constitute places of deprivation of liberty: any place where a person is held in quarantine or isolation and from which that person is not free to leave is a place of deprivation of liberty for the purposes of the Optional Protocol and so falls within the visiting mandate of a national preventive mechanism.*”

We believe that addition of the phrase of “*places of curfews in the state of emergency*” to this sentence would be very necessary and useful.

To show the importance of this issue, below we would like to share a short information note about Turkey based on concrete data.

In 2015, a state of emergency was introduced in Turkey. Since 24 July 2015 after the clashes commenced between State security forces and the Kurdistan Workers’ Party (PKK), the most intense times concerning the armed conflict has marked the violations of human rights. The authorities have stated that the curfews are being imposed in order to allow for the capture of members of the PKK, to remove barricades, to protect the security of the people and their property.

According to the information gathered by the Human Rights Foundation of Turkey Documentation Center, between August 16, 2015 and August 16, 2017, there has been at least 252 officially confirmed round-the-clock [all daylong] and open-ended curfews in 11 cities and at least 45 districts of Turkey within the 2 years. It is estimated that, according to the 2014 population census, at least 1 million 809 thousand residents have been affected by these curfews and fundamental rights of these people such as right to liberty and security of person; right to privacy, family, home or correspondence; freedom of assembly and association; freedom of religion; freedom of receive and impart information; right to reserve of property; right to education and especially right to life; right to health and prohibition of torture are explicitly violated.

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”, last for months. The residents of places where there is an absolute control of State, are under the threat of right to life, are deprived of fundamental needs such as water, food and health care for extended periods. **For these reasons, such places of curfews should also be defined as places of deprivation of liberty.** In addition, this practice of “continuous curfew” must 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.

This issue was specifically addressed at the Committee against Torture, at its fifty-seventh session on 18 April-13 May 2016, and in the Committee's Concluding observations on the fourth periodic reports of Turkey published on 2 June 2016, in paragraph 14 (c).³

Comment 3:

After paragraph 40 of the text, we would like to suggest an additional sentence from the report of the Special Rapporteur on torture and other cruel, inhuman, or degrading or punishment, titled “Extra custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.”⁴ We believe that this addition would be very necessary and useful.

The sentence from the paragraph 71 of the report as follows: “... *Although the Optional Protocol does not require States to provide national preventive mechanisms with powers of oversight outside places where persons are deprived of their liberty, nothing in the relevant instruments prevents the extension of their monitoring responsibilities, as a matter of national law, to the use of force in extra custodial settings.*”⁵

To show the importance of this matter, we would like to share a below short information note based on concrete data on “Torture or other forms of ill-treatment in unofficial places of detention and extra-custodial settings” about Turkey.

Torture and other forms of ill-treatment experienced during the intervention of law enforcement authorities in peaceful meetings and demonstrations, which are gradually increasing in the recent years, as well as in streets and outdoor spaces, or in places such as homes and workplaces, i.e. in unofficial places of detention or in places not intended for detention, have become ordinary and part of the daily life.

We would like to mention the fact that, as proven by the complaints of and medical findings and diagnoses regarding the individuals attending HRFT rehabilitation centres because of the torture they suffer, the increasing trend of “use of force” by law enforcement authorities in their responses at peaceful meetings and protests - which can only be regarded as “torture and other types of ill-treatment” - and which is even tried to be normalized as “a standard practice”, has become a characteristic feature of the recent times.

According to the HRFT 2022 Treatment and Rehabilitations Centres data, taking into consideration of the applicants were tortured in more than one unit, out of 1201 new applicants, 766 (69%) of the HRFT applicants of that year stated that they had been subjected to torture and ill-treatment in outdoors and demonstrations.

In 2021, taking into consideration of the applicants were tortured in more than one unit, out of 984 new applicants, 417 (47.9%) of HRFT applicants were exposed to torture and other forms of ill-treatment in

³ CAT/C/TUR/CO/4, para. 14 (c): “*Promptly, impartially and effectively investigate allegations that the State party’s imposition of curfews during security operations has had the effect of depriving affected persons of access to food and health care, causing severe suffering; discipline or prosecute those responsible for the imposition of such ill-treatment; and take measures to ensure that measures taken in the course of future security operations do not have such effects.*”

⁴ A/72/178.

⁵ The footnote of the paragraph 71, footnote number 73, as follows: “*Examples of national preventive mechanisms monitoring the extra custodial use of force are those of Austria (Austrian Ombudsman Board, “Annual report on the activities of the Austrian national preventive mechanism, 2014”, international version, June 2015, p. 2, and “Annual report, 2015”, international version, October 2016, pp. 208, 218 and 235, on police conduct during demonstrations and raids) and Brazil (2014 investigation into the use of force during a demonstration, available from <http://apt.ch/en/blog/world cup preventing torture in rio de janeiro/#.WU1CmpDyvIW>).*”

open spaces and during demonstrations, and 151 (17.3%) were subjected to torture and other forms of ill-treatment in places such as their homes and workplaces, it can be concluded that torture and other forms of ill-treatment at unofficial detention places have visibly reached a very critical level in recent years.

We would like to express once more that social places such as streets/open spaces, living spaces of people, and vehicles used for transportation are turning into places of torture, torture is becoming widespread, and detainees are being repeatedly subjected to torture in the places they are taken to. The violence used by law enforcement authorities, including watchmen, that is witnessed by everyone, is tried to be justified with claims such as “proportionate force is applied”; no action is taken against those who are responsible, and those who are subjected to torture are prevented from achieving any favorable legal outcome through counter lawsuits.

The fact that torture has been taken to the streets and continued in more than one place and that impunity practices prevailed at every stage are all important pieces of data that allow a glimpse into the changing face of torture, as we have always been expressing recently.

In the recent period, the practices at people’s homes during detention before “official detention procedures” are another important topic of the recent period in terms of torture and other forms of ill-treatment.

Additional Note:

In addition to our comments, we would like to express our interest in participating in to the public discussion about the draft, as stated in the call for this submission. We would like to submit our request for oral intervention. We would be very grateful for acknowledgement of this request and look forward to your reply in due course.