

General allegation

127th session (9-13 May 2022)

Türkiye

The Working Group received information from the sources concerning obstacles encountered in the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance (hereafter, 'the Declaration') in Türkiye (Republic of).

1. According to the sources, under the current criminal legislation, enforced disappearance is not codified as a separate crime, which renders extremely difficult, if not virtually impossible, to hold perpetrators accountable. On the one hand, this allegedly entails an enhanced burden of proof, which does not reflect the peculiarities of this crime, that is by nature shrouded in secrecy and where some information and evidence are not available to the relatives of the disappeared person. On the other hand, this has allegedly resulted into the discontinuation of several cases of enforced disappearance, due to the failure to comply with the said burden.
2. The sources informed the Working Group that, in the absence of a separate crime of enforced disappearance in the domestic Criminal Code, in the few cases that are actually investigated, prosecutors refer to the provisions concerning homicide. Under the applicable criminal legislation, the prosecution of homicide is subjected to a statute of limitations of 20 years. Allegedly, this has already expired for most of the cases of enforced disappearances begun in the Nineties and the Turkish Constitutional Court already found such a state of limitation to be acceptable.
3. The allegations received by the sources and summarised in the two previous paragraphs seem to confirm the concerns expressed by the Working Group in its report on the country visit conducted in March 2016 (A/HRC/33/51/Add.1, paras. 15-20) and its subsequent follow-up report (A/HRC/45/13/Add.4, para. 13). The Working Group formulated specific recommendations to overcome the obstacles identified.
4. Additionally, sources reported that relatives of disappeared person have been facing unjustified interferences in their right to form and participate freely in associations concerned with attempting to establish the circumstances of enforced disappearances and the fate and whereabouts of disappeared persons and to assist victims. In particular, their gatherings and manifestations have allegedly been forbidden. These allegations seem to reflect concerns expressed by the Working Group in its follow-up report on the country visit (A/HRC/45/13/Add.4, paras. 18 and 22), which were the object of dedicated recommendations.
5. Moreover, the criminal prosecution of relatives of disappeared persons under the charges of 'unlawful participation to protests' is reportedly being used to trigger a chilling effect on civil society. According to the information received by the sources, criminal charges have been pressed against relatives of disappeared persons who are more than 80 years old, with the intention to stall their attempts to seek justice and redress for the harm suffered and to establish the fate and whereabouts of their loved ones.

The Working Group would like to bring to the Government's attention the following provisions of the Declaration, which are directly related to the present allegation:

Article 2

- 1. No State shall practice, permit or tolerate enforced disappearances.*
- 2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.*

Article 3

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

Article 4

1. All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness.

2. Mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance.

Article 13

1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.

3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.

5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.

6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

Article 17

1. Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.

2. When the remedies provided for in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearance shall be suspended until these remedies are re-established.

3. Statutes of limitations, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence.

The Working Group would be grateful for your Excellency's Government cooperation and observations on the following questions:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide information on the applicable criminal legal framework to deal with allegations of enforced disappearance and clarify whether the latter is codified as a separate criminal offence.
3. In case of the absence of a separate crime of enforced disappearance under Turkish legislation, please inform on which are the offences used in criminal investigations and which is the applicable statute of limitation. Kindly inform on how this reflects the continuous nature of an enforced disappearance.
4. Is any legislative reform envisaged in order to assure that enforced disappearance is codified as a separate offence under domestic criminal legislation and is sanctioned in a way that is commensurate to the gravity of the crime?
5. How does the application of a 20-year statute of limitation take into account the permanent nature of the crime of enforced disappearance and its continuous nature as a violation of multiple human rights?
6. What is the progress made in the implementation of the recommendations formulated by the Working Group in its country visit report (A/HRC/33/51/Add.1, para. 68) and in the subsequent follow-up report (A/HRC/45/13/Add.4, paras. 13, 18 and 22) concerning existing loopholes in the applicable legislation (notably, with respect to the lack of progress in relation to qualifying enforced disappearances as an autonomous crime and the applicable 20-year statute of limitation) and instances of harassment against family members of disappeared persons and hindrances in the exercise of their freedom of association and assembly?
7. How does your Government secure that persons alleged to have committed an enforced disappearance are suspended from any official duties during the investigation of the corresponding complaint?
8. How does your Government ensure that any person, having knowledge or legitimate interest, who alleges that a person has been subjected to enforced disappearance is able to lodge a complaint to a competent and independent State authority? How does your Government ensure that enforced disappearances are promptly, thoroughly and impartially investigated by the authority even if there has been no formal complaint?
9. How does your Government guarantee the right to form and participate freely in organisations of relatives of disappeared persons or working to support them? In particular, what are the preventative measures put in place to ensure that the pressing of criminal charges against human rights defenders and relatives of enforced disappearance is not used to silence them?

10. What are the measures taken to ensure that all those involved in the investigation of an enforced disappearance, and, in particular, witnesses, complainants and their relatives, are protected against reprisals and intimidations?
11. Has any investigation into alleged reprisals against relatives of disappeared persons and their representative organisations been carried out? If not, what are the reasons? Otherwise, what are the results or progress of such investigations?

The Working Group requests your Excellency's Government to provide a response to the above questions within sixty days.