

 **Submission to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

## *Call for input to a report: “The duty to investigate crimes of torture in national law and practice” to be presented to the 52nd session of the Human Rights Council*

**International Association for Human Rights Advocacy Geneva (IAHRAG)**

**November 2022**

**Introduction**

1. The International Association for Human Rights Advocacy in Geneva (hereafter IAHRAG) welcomed the call for input of the new Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (hereafter the Special Rapporteur) and seizes the opportunity of this report to extend its sincere congratulations and wishes for every success in carrying out these important responsibilities.

2. IAHRAG is a Swiss-based NGO that has been created in 2017. The purpose of the organization is to assist, support, guide and sustain victims of human rights violations. One of its main sources of concerns as well as activities are the violations of human rights in Turkey. As such, IAHRAG receives requests for support from various victims in Turkey.

3. IAHRAG is conscious of the global character of this call for input. It will, however, bring to the attention of the Special Rapporteur legal and factual elements of consideration regarding Turkey. Keeping in mind the global character of this call for input, IAHRAG firmly believes that those examples are crucial for assessing the challenges in implementing the obligation to investigate crimes of torture in the context of authoritarian regimes. In addition, Turkey is an excellent example given that all relevant stakeholders have observed the return of systematic torture in the country.[[1]](#footnote-1) The former High Commissioner for Human Rights, Mr. Zeid Ra’ad Al Hussein, called Turkey in July 2016 to “*not turn back the clock on human rights*”.[[2]](#footnote-2) Six years after July 2016, Turkey is unfortunately showing all indicators of a major human rights setback, the withdrawal from the Istanbul Convention in March 2021 being one of the strongest evidence.

4. On the ground of the various individual torture cases IAHRAG is following before treaty bodies or special procedures, the report will address: (a) the crucial importance of institutions to ensure independent and impartial investigations; (b) the intangibility of the duty to investigate crimes of torture, including in state of emergency context; and (c) the crucial importance of repealing any legal provision providing impunities to torture perpetrators. On a more global basis, the report will address (d) “innovative” options when facing authoritarian regimes unwilling to provide remedies for cases of torture or situations of systematic use of torture.

5. Although not directly related to the duty to investigate, IAHRAG, based on its expertise of the Turkish context, invites the Special Rapporteur to include in her next report, some elements of preventive nature such as: (a) global ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter OPCAT); (b) full implementation of the OPCAT for States that are already parties[[3]](#footnote-3); (c) authorization of publicity of the Subcommittee on Prevention of Torture[[4]](#footnote-4); and (d) systematic condemnation and prosecution of public speech lauding impunity for acts of torture.[[5]](#footnote-5)

1. **Crucial importance of independent and impartial institutions**
2. *The role of National Human Rights Institutions*

6. In the case of Turkey, it cannot unfortunately be said that the Human Rights and Equality Institution meets the criteria of independence provided in the Paris principles, as revealed in the latest EU Commission 2022 report on Turkey.[[6]](#footnote-6)

7. National Human Rights Institutions are, however, a key stakeholder to investigate allegations of torture, even more in context where the authorities are not willing to conduct effective investigations. They can notably, following instructions of the Istanbul protocol, preserve evidence for the purpose of the future prosecution procedures.

**8. IAHRAG respectfully invites the Special Rapporteur to raise the importance of independent and impartial NHRIs in her next report and to invite NHRIs to fully investigate all allegations of torture. Especially for the NHRIs operating in a context of authoritarian regimes, to train their staff to the Istanbul protocol procedures in order to keep record of all evidence available for the purpose of future prosecutions.**

1. *The role of forensic medicine*

9. IAHRAG would like to flag to the Special Rapporteur that there are serious concerns as to the impartiality of the medical forensic system in Turkey. Based on the many interactions IAHRAG had with victims or family of victims, it appears that mandatory medical controls are far from being systematic. In addition, many victims reported the presence of police authorities when they were examined. In the case of Mr. Gökhan Türkmen, Mr. Yasin Ugan and Mr. Hüseyin Kötüce, three victims of enforced disappearance and torture IAHRAG is following, they were never properly examined by a doctor and the lawyers’ request to appoint a private doctor to report on ill-treatment or torture were always denied. The victims with whom we have been in contact who received a medical examination reported that the final medical report was sloppy and superficial.

10. In addition, at least for politically targeted groups, such as Kurdish or Hizmet Movement Supporter or leftists, there are more and more allegations of bias and a culture of complacency in the forensic medical system. The last public report from the CPT supports this view.[[7]](#footnote-7) The claims around the bias and impartiality in the system are getting more and more public.[[8]](#footnote-8)

11. IAHRAG has been pleased that the Special Rapporteur joined the Urgent Appeal on the case of Ms. Sebnem Korur Fincancı,[[9]](#footnote-9) a recognized forensic medical practitioner and anti-torture expert, who has been arbitrarily detained following the abuse of anti-terror legislation. Ms. Sebnem Korur Fincancı was also the President of the Turkish Medical Association. She was dismissed from her position following a prosecutor request and a new leadership will be soon designated. The TMA and its president were attacked in the media in the days preceding the arrest, including by President Recep Tayyip Erdoğan who stated the government was determined to accelerate the introduction of new structures in professional organizations, particularly the TMA.

**12. IAHRAG invites the Special Rapporteur to: (a) address the key role forensic medicine plays regarding the duty to effectively investigate crimes of torture; (b) recall the crucial importance of their independence and impartiality; and (c) to firmly condemn any attempt to sabotage their independent activities.**

1. *The role of prosecutors*

13. It is no surprise that an independent and effective judiciary system is key to ensure proper investigation of crimes of torture. In view of the many allegations IAHRAG review regarding prosecutors refusing, delaying, or complicating cases of allegations of torture or enforced disappearances in Turkey, it strongly encourages the Special Rapporteur to devote an important part to the role of prosecutors. As per the jurisprudence of the Human Rights Committee regarding article 14 of the International Covenant on Civil and Political Rights, prosecution services are part of the justice administration system and as such are part of the judiciary power.

14. In Turkey, at least since 2014, with an increase after the July 2016 coup attempt (with the arrest of thousands of judges and prosecutors and their replacement with “*consistent reports that loyalty to the ruling coalition appears to have become a key criterion for selection*”[[10]](#footnote-10)), the independence of the judiciary system is under attack. The culmination of these attacks has been the amendments to the Constitution in 2017.[[11]](#footnote-11)

**15. IAHRAH invites the Special Rapporteur to include in her upcoming report an important section on the importance of the selection, processes of advancement and sanctions, security of tenure of prosecutors in order to ensure independent investigations of crimes of torture.**

**b) The intangibility of the duty to investigate crimes of torture, including in a state of emergency context**

16. IAHRAG will not come back on the state of emergency that has been declared by Turkey in July 2016 and that lasted two years. The violations, including torture (see para. 77 to 89) committed in this context are infamously discussed in the 2018 OHCHR report.[[12]](#footnote-12)

**17. IAHRAG invites the Special Rapporteur to strongly recall in her next report the intangible character of the duty to investigate crimes of torture, including in the context of state of emergency.**

**c) Crucial importance of repealing legal provisions providing impunity to torture perpetrators**

18. IAHRAG hereby highlights that there are several provisions in the Turkish legal system that do lead to impunity for perpetrators of torture: Law no. 2937 on the State Intelligence Services and the National Intelligence Agency and Laws on Senior Military Commanders and Security Forces (Law No. 353, February 11, 2014 and Law No. 6722 - amending Law no. 5442 on Provincial Administration - June 23, 2016). A series of decrees approved by the Grand National Assembly of Turkey and have become ordinary laws (laws no. 6749, 6755 and 7079) during the State of emergency also do prevent prosecution of torture perpetrators.

19. Law n° 4483 of 1999 on the Prosecution of Civil Servants and Other Public Officials (including police) excludes their prosecution without the permission of relevant administrative authorities for crimes that are not excluded from the scope of law and committed in the course of the civil servant’ duty. While torture is excluded from the scope of the law, in practice, there is an ambiguity due to the distinction between judicial and administrative law enforcement. The administrative and judicial practice of law n° 4483 leads to *de facto* the requirement of authorization issued by highest ranking civil administrator for the prosecution of crimes committed by security forces in the course of their administrative law enforcement duties and activities.

**20. IAHRAG invites the Special Rapporteur to urge all States to repeal any provision that in law or in practice might grant perpetrators of crimes of torture of immunities, hence fostering an impunity climate, in her upcoming report.**

**d) Thinking out of the box: exploring options when facing authoritarian regimes unwilling to provide remedies for crimes of torture**

21. When facing authoritarian regimes unwilling to provide remedies for crimes of torture, relevant stakeholders must adopt alternative approaches.

22. IAHRAG hereby flags the *Turkey Tribunal* initiative, a People’s Tribunal composed notably of former ECtHR judges as well as human rights renowned experts (among them Ms. Françoise Barones Tulkens, Mr. Giorgio Malinverni, Mr. Ledi Bianku, former ECtHR judges, Mr. John Pace, former Secretary to the UN Commission on Human Rights, Mr. Johann van der Westhuizen, former Constitutional Court judge in South Africa).[[13]](#footnote-13) Not only such an initiative gave hope to victims and raised an immense support including in Turkey, it also documented cases of torture and might constitute the first step of further criminal processes, either before national jurisdictions or international jurisdictions.

23. On that note, IAHRAG was pleased to read mention of universal jurisdiction in the call for inputs. IAHRAG is firmly convinced that universal jurisdiction is key to tackle the lack of investigations and prosecutions in authoritarian regimes. **IAHRAG expresses the hope that the Special Rapporteur will invite State to subsidiarily consider universal jurisdiction to tackle the impunity for torture perpetrators’ issue. States, when creating new mandates, should also consider the recent examples of the International, Impartial and Independent Mechanism for Syria established by the General Assembly. The OHCHR should also explore more avenues related to cooperation with domestic courts for the purpose of universal jurisdiction.**

24. Inspired by the recent claim of Gambia against Myanmar before the International Court of Justice, the recent claims of Qatar against Saudi Arabia and the United Arab Emirates before the Committee on the Elimination of Racial Discrimination, **the Special Rapporteur may also wish to invite States to consider raising inter-state disputes before the treaty bodies (article 41 of the International Covenant on Civil and Political Rights – article 21 of the Convention against Torture) in cases of systematic torture not addressed at the domestic level**.

Yours sincerely,

Ali Furat, President of IAHRAG

November 25, 2022

1. See for instance OMCT, *Five years into visit by united Nations Special Rapporteur, torture remains widespread*, December 2021, [here](https://www.omct.org/en/resources/statements/turkey-five-years-into-visit-by-united-nations-special-rapporteur-torture-remains-widespread). [↑](#footnote-ref-1)
2. See [here](https://www.ohchr.org/en/stories/2016/07/turkey-do-not-turn-back-clock-human-rights). [↑](#footnote-ref-2)
3. Although party to the OPCAT, Turkey did not fully implement the OPCAT. There is unfortunately no efficient NPM although the Government claims that the NHRI, the Human Rights and Equality Institution, also functions as such. See the 2019 SPT report on Turkey, CAT/OP/TUR/1, para. 18 and f. [↑](#footnote-ref-3)
4. Turkey did not authorize the latest report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment following its 2019 visit. The SPT recently visited Turkey (4 to 15 of September) and the civil society fears that the Government this time will not authorize the publicity of the report. [↑](#footnote-ref-4)
5. In August 2016, Mr. Mehmet Metiner, AKP Parliamentarian and Chairman of the Parliamentary Prisoners and Convicts Rights Sub-Committee, publicly stated “*We will not examine the allegations of torture against those who attempted the July 15 Coup attempt just because they threw a slap or two during the arrest* (allegations of torture are) *black propaganda carried out by Pennsylvania and some circles*”, see [here](https://www.omedyam.com/akpli-mehmet-metiner-iki-tokat-attilar-diye-inceleyemeyiz-62965/). The former Economy Minister, Mr. Nihat Zeybecki, also publicly stated, mentioning Gülen/Hizmet Movement supporters The then Economy Minister, Mr. Nihat Zeybecki, also publicly stated “*We will put them into such holes for punishment that they won’t even be able to see the sun of God as long as they breathe. They will not see the light of day. They will not hear a human voice. They will beg for death, saying ‘just kill us’*”, see [here](https://www.turkishminute.com/2016/08/01/economy-minister-says-govt-will-make-coup-plotters-beg-for-death/). [↑](#footnote-ref-5)
6. See *Türkiye 2022* *Report*, available [here](https://www.ab.gov.tr/siteimages/birimler/kpb/trkiye_report_2022.pdf). [↑](#footnote-ref-6)
7. See CPT report, Visit from 6 to 17 May 2019, [here.](https://rm.coe.int/16809f20a1) [↑](#footnote-ref-7)
8. See for instance Turkey’s Forensic Medicine Institute is biased against Kurdish or political prisoners, 22 December 2021, [here](https://medyanews.net/turkeys-forensic-medicine-institute-is-biased-against-kurdish-or-political-prisoners/). [↑](#footnote-ref-8)
9. See [here](https://www.ohchr.org/en/press-releases/2022/11/turkiye-un-experts-call-release-and-end-judicial-harassment-anti-torture). [↑](#footnote-ref-9)
10. See [here](https://rm.coe.int/report-on-the-visit-to-turkey-by-dunja-mijatovic-council-of-europe-com/168099823e), para. 23. [↑](#footnote-ref-10)
11. See Commissioner for Human Rights of the Council of Europe’ report “*these concerns have been largely overshadowed by far more serious ones as a result of new constitutional changes introduced in 2017. The Commissioner observes that the new composition of the HSK allows for all the members of the HSK to be appointed either by the President of the Republic or the Parliament, without a procedure guaranteeing the involvement of all political parties and interests. This means that no member of the HSK is elected by their peers, in clear contradiction with European standards which foresee that at least half of the members of judicial councils that are in charge of overseeing the professional conduct of judges and prosecutors (including appointments, promotions, transfers, disciplinary measures and dismissals of judges and public prosecutors) should be elected by judges among their peers from all levels of the judiciary and with respect for pluralism inside the judiciary*”, [here](https://rm.coe.int/report-on-the-visit-to-turkey-by-dunja-mijatovic-council-of-europe-com/168099823e), para. 14. Similarly the 2018 OHCHR report mentions that “*the new appointment system for the members of the Council of Judges and Prosecutors (formerly High Council of Judges and Prosecutors), introduced through amendments to the Constitution, does not abide by international standards*.(…) *Because of the Council’s key role of overseeing the appointment, promotion and dismissal of judges and public prosecutors, the President’s control over it effectively extends to the whole judiciary branch*”, [here](https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf), para. 121. [↑](#footnote-ref-11)
12. March 2018, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East ([here](https://www.ohchr.org/sites/default/files/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf))**.** [↑](#footnote-ref-12)
13. See motivated opinion of the Tribunal [here](https://turkeytribunal.org/wp-content/uploads/2021/11/MOTIVATED-FINAL-OPINION-TURKEY-TRIBUNAL_07102021.pdf). [↑](#footnote-ref-13)