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| **JWF’s SUBMISSION**  TO THE REPORT OF THE SPECIAL RAPPORTEUR ON TORTURE  AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT  OR PUNISHMENT  **THE DUTY TO INVESTIGATE CRIMES OF TORTURE IN NATIONAL LAW AND PRACTICE**  to be presented to the 52nd Session of the Human Rights Council  in March 2023  **Submitted by:**  **JWF Logo_transparent.png**  **24 November 2022** |

**QUESTIONNAIRE**

In order to inform work on this report, the Special Rapporteur seeks inputs and submissions to her report. She would welcome information pertaining to:

**(i) Challenges, impediments and obstacles to effective national investigations and prosecutions of acts of torture:** What are the main impediments preventing full and prompt investigations into allegations of torture – consider matters such as gaps in legal and regulatory frameworks, political-cultural-leadership, institutional, practical, and other challenges?

In the aftermath of the attempted coup of July 15, 2016, the authorities of Türkiye have willingly and intentionally taken consistent actions to promote impunity, including through (i) changes to legal and regulatory frameworks; (ii) political measures; as well as (iii) institutional, practical, and other measures.

**Legal and Regulatory Frameworks**

The prohibition of torture is provided for in Article 17 of the Turkish Constitution. In its articles 94, 95 and 96, the Turkish Criminal Code (TCC) provides several criminal penalties for committing the offense of torture. Article 94 provides for penalties when acts of torture are committed by state agents acting on behalf of the Government of Türkiye.

1. Although the Criminal Code defines torture as a specific offence in Article 94, its definition fails to mention the purpose of the act. In addition, in the aftermath of the attempted coup there have been frequent reports that relatives of persons sought for prosecution are often subjected to torture, to force the latter surrender or return to Türkiye for prosecution. The law however makes no specific mention of the act of torture carried out to intimidate, to coerce or to obtain information or a confession from a person other than the person who was tortured.
2. Immediately following the attempted coup and thousands of credible reports of torture across the country, on July 23, 2016, the government enacted Decree Law 667,[[1]](#footnote-1) which provided that, “Legal, administrative, financial and criminal liabilities shall not arise in respect of the persons who have adopted decisions and fulfil their duties within the scope of this Decree Law.”[[2]](#footnote-2)
3. On September 1, 2016, the government enacted Decree-Law No. 672 providing, *inter alia*, for the dissolution of prison monitoring boards, with the intention of preventing the allegations of torture making it beyond prison walls.
4. Further to granting immunity for public officials, Decree Law No. 696 issued on December 24, 2017, extended that immunity to civilians (vigilantes)[[3]](#footnote-3) who use violence against anyone who opposes the government or anyone they claim to suspect of opposing the government or of having been involved in the attempted coup of July 15, 2016 (or its continuation).[[4]](#footnote-4)
5. Since October 13, 2016, with the abduction and illegal transfer of an individual at risk from Malaysia to Türkiye - using an expansive guilt by association approach, in its transnational repression efforts the government of Türkiye continues to aggressively and relentlessly pursuing dissidents around the world.[[5]](#footnote-5) Most of the victims, if not all, have been subject to extensive torture in the origin country, during transfer and finally on arrival in Türkiye. Zabit Kişi and Enver Kilic for example, abducted in Kazakhstan in September 2017, “reappeared” in Türkiye after 108 days and 191 days respectively.[[6]](#footnote-6) Their physical appearance had completely changed due to severe torture, ill-treatment, and malnourishment.

Those subjected to enforced disappearance in Türkiye also share the same fate. Gökhan Güneş for example was abducted on January 20 and released on January 26, 2021, left blindfolded in the same area he was abducted in İstanbul. With bruises on his face and hands Gökhan Güneş described being held in a coffin-like box called “*the grave*.” The building he was held was “*a torture center*,” where he was alternately dazzled by lights and then kept in darkness, unable to see or identify the perpetrators.[[7]](#footnote-7)

Pursuant to Article 26 of Law No. 2937, “On State Intelligence Services (NIA) and the National Intelligence Organization (MİT)” however, their personnel enjoy full immunity from criminal proceedings unless an authorization of prosecution is issued by the head of the NIA or MİT respectfully. In addition, the heads of the NIA or MİT may be subject to prosecution only following an authorization by President Erdoğan. In absence of necessary changes to Law 2937, agents acting on behalf of the Government of Türkiye will continue to enjoy immunity from prosecution for their actions in Türkiye and across the world.

1. In accordance with Article 15/A of Law 353 of February 11, 2014, the Chief of the General Staff and Chief of Staff of the Land, Sea and Air Forces, may only be prosecuted if President Erdoğan issues a prior authorization for prosecution. In addition, Law No. 6722 on some changes to the Law on Provincial Administration of June 23, 2016, provides for a prior authorization by the authorities for the investigation of soldiers or public officials suspected of having committed crimes, including torture and alleged war crimes in conflict situations where the Turkish armed forces are involved, including in Southeast Türkiye, Syria and Libya.

The above legal and regulatory frameworks therefore provide full immunity to agents acting on behalf of the Government of Türkiye, in practice decriminalizing torture, inside and outside Türkiye.

**Political-cultural-leadership**

Between December 21, 2013, and May 1, 2017, civil society organizations have identified 240 insults by President Erdoğan against the alleged members of the Hizmet Movement. His favourite set of insults includes: “*Ignoble, traitors, scoundrels, Hashashin, blood-sucking vampires, false preacher, tomb raiders, malignant tumor, impostors, mean*.” [[8]](#footnote-8) Each derogatory phrase and instance of hate speech has been voiced by President Erdoğan dozens and even hundreds of times, repeatedly employing it in public speeches, and asking the public to use them.

These derogatory insults are aimed not only at “normalizing” torture and ill-treatment by law enforcement against perceived members of Hizmet Movement, but also to provide assurances for immunity to all law enforcement in case they are involved in acts of torture.

**Institutional, Practical, and other Challenges**

For over 15 years the authorities of Türkiye claim they are implementing a so-called “zero tolerance policy against torture,” with the view of “preventing all forms of torture and other cruel, inhuman or degrading treatment or punishment.”

In practice however there have been constant reports and reasonable ground (and sometimes solid evidence) to believe that extra-custodial force amounting to torture, or other cruel, inhuman, or degrading treatment or punishment is constantly used by law enforcement with impunity. No measures have been taken whatsoever to investigate credible allegations of torture in Türkiye or abroad to ensure accountability for such acts, including to ensure that victims receive adequate redress and rehabilitation.

In addition to the lack of measures to prevent torture and ill-treatment, reports point out to the fact that security officials systematically interfere with medical examinations and many doctors continue to refrain from signing medical reports alleging torture, due to fear of reprisals. This ultimately results in victims being unable to obtain medical documentation that would help prove their claims.

(ii) **Regulatory frameworks:** How is torture (and other forms of cruel, inhuman, or degrading treatment or punishment, as applicable) criminalized in your national legislation? Please provide examples (and copies) of national laws that criminalize torture (and other forms of cruel, inhuman, or degrading treatment or punishment, as applicable), and approaches to questions such as immunities, amnesties, statutes of limitations, defenses of superior orders, and sentencing.

The Criminal Code of Türkiye (Law No. 5237) was adopted on September 26, 2004 and published in the Official Gazette No. 25611 of October 12, 2004. Penalties for acts of torture and ill-treatment are provided for in Articles 94-96 below.

**Part 3**

**Torture and Torment Torture**

**Article 94**

(1) A public officer who performs any act towards a person that is incompatible with human dignity, and which causes that person to suffer physically or mentally or affects the person’s capacity to perceive or his ability to act of his own will or insults them shall be sentenced to a penalty of imprisonment for a term of three to twelve years.

(2) If the offence is committed against:

a) a child, a person who is physically or mentally incapable of defending himself or a pregnant woman; or

b) a public officer or an advocate on account of the performance of his duty, a penalty of imprisonment for a term of eight to fifteen years shall be imposed.

(3) If the act is conducted in the manner of sexual harassment, the offender shall be sentenced to a penalty of imprisonment for a term of ten to fifteen years,

(4) Any other person who participates in the commission of this offence shall be sentenced in a manner equivalent to the public officer.

(5) If the offence is committed by way of omission there shall be no reduction in the sentence.

(6) (Added on 11 April 2013 – By Article 9 of the Law no. 6459) No statute of limitation shall apply to this offence.

**Aggravated Torture on Account of its Consequences**

**Article 95**

(1) Where the act of torture causes (of the victim); a) a permanent impairment of the functioning of any one of the senses or an organ, b) a permanent speech defect; c) a distinct and permanent scar on the face, d) a situation which endangers a person’s life, or e) the premature birth of a child, where eth victim is a pregnant woman the penalty determined in accordance with the above article shall be increased by one half.

(2) Where the act of torture causes (of the victim): a) an incurable illness or if it has caused the victim to enter a vegetative state, b) the complete loss of functioning of one of the senses or organs, c) The loss of the ability to speak or loss of fertility, d) a permanent disfigurement of the face, or e) the loss of an unborn child, where the victim is a pregnant woman The penalty determined in accordance with the article above shall be doubled.

(3) Where an act of torture results in the breaking of a bone, the offender shall be sentenced to a penalty of imprisonment for a term one to six years according to the effect of the broken bone on his ability to function in life.

(4) Where an act of torture causes the death of the victim, the penalty to be imposed shall be aggravated life imprisonment.

**Torment**

**Article 96**

(1) Any person who performs any act which results in the torment of another person shall be sentenced to a penalty of imprisonment for a term of two to five years

(2) Where the acts falling under the above paragraph are committed against:

1. a child, a person who is physically or mentally incapable of defending himself or a pregnant woman; or
2. a direct ascendant, direct descendant, adoptive parent or spouse, a penalty of imprisonment for a term of three to eight years shall be imposed.

(iii) **Elements of human rights-compliant investigations and prosecutions:** Please provide concrete examples of laws, regulations or practices that ensure that torture investigations and prosecutions are:

a. independent and impartial,

b. prompt,

c. adequate and effective,

d. accessible and safe,

e. open to public scrutiny and transparent, and

f. secure rights and remedies for victims and survivors.

N/A

(iv) **Mechanisms/institutions/entities involved in complaints, investigations, and prosecution:** What are the institutional arrangements in place to secure independent and effective investigations and prosecutions of allegations of torture (and other forms of cruel, inhuman, or degrading treatment or punishment, as applicable)? How are complaints initiated? Please elaborate on competence, composition, and expertise, working methods, legal and regulatory framework, etc.

The Office of the Ombudsman (under the Grand National Assembly of Türkiye), along with the National Human Rights and Equality Institution (Türkiye’s NHRI) serve as government’s human rights monitoring bodies. In the face of daily instances of torture and ill-treatment in Türkiye, both in custodial and extra-custodial circumstances, the Ombudsman has remained totally silent, siding with the government to ensure immunity from prosecution for the perpetrators.

The National Human Rights and Equality Institution is the NHRI of Türkiye; eight members of its board are chosen by the government, and three by the president. This body is therefore fully controlled by the government on the executive level and cannot carry out its mandate because it lacks the independence required under the Paris Principles.[[9]](#footnote-9)

One of the roles of the Human Rights and Equality Institution taken over by the former Human Rights Institution is to act as the National Preventative Mechanism (NPM) under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT); however, the recent establishment of a fully dependent body and its lack of adherence to Paris Principles, cannot provide for an OPCAT-compliant National Preventive Mechanism (NPM). The establishment of the Human Rights and Equality Board of Türkiye is also contrary to the recommendations by the Subcommittee on Prevention of Torture (SPT) for a “fully independent, well-resourced, multi-disciplinary, professional and highly visible” NPM, with a strong mandate.

In addition to significant limitations on institutions and entities involved in complaints, on December 24, 2020, the Parliament of Türkiye adopted a new law,[[10]](#footnote-10) significantly increasing the powers of the Ministry of Interior to limit CSOs activities and seriously threatening this freedom. The law arbitrarily curtails legitimate activities by civil society organizations and its implementation is expected to seriously impair this right. 475 nongovernmental organizations in Türkiye signed a statement[[11]](#footnote-11) calling on the government to withdraw provisions of the law relating to the associations, foundations, and fundraising.

At the Turkish parliament, one of the handful Turkish MPs raising high the plight of the victims of Turkish government’s crackdown on dissent is Mr. Ömer Faruk Gergerlioğlu, at the same time one of the strongest human rights defenders in Türkiye. For many years Mr. Ömer Faruk Gergerlioğlu has passionately and without compromise protected human rights of hundreds of thousands of victims in Türkiye, including individuals subject to acts of torture and cruel, inhuman or degrading treatment or punishment.

The authorities however have made everything in their power to make the investigations impossible and shield the perpetrators from prosecution. In February 2021 for example, Faruk Gergerlioğlu transmitted to the Speaker of the Turkish Parliament (Mustafa Şentop) a letter by a torture victim, requesting the beginning of a parliamentary inquiry into allegations. The Speaker replied to Ömer Faruk Gergerlioğlu, claiming that the latter’s letter contained “vulgar and hurtful words.”[[12]](#footnote-12) On February 19, 2021, the Supreme Court of Appeals upheld a prison sentence of two years, six months arbitrarily imposed on Mr. Ömer Faruk Gergerlioğlu over bogus terrorism-related charges for allegedly disseminating terrorist propaganda. His conviction was based on the fact that he shared a social media post on August 20, 2016, which also included a link to a statement by the outlawed Kurdistan Workers’ Party (PKK).

(v) **Victim participation and protection:** What measures are in place to secure victim participation in proceedings involving allegations of torture, and how are their rights and safety secured? Are there special arrangements and protections available for victims of sexual and gender-based violence? Please give consideration also to witness protection schemes, as well as whistleblower legislation and protection and other measures taken to ensure protection of complainants against reprisals.

There are no measures in place in Türkiye to secure victim participation in proceedings involving allegations of torture. On the contrary, even when the victims take the risk of reprisals and report torture, their accounts before court are suppressed and there is no investigation or measures against the perpetrators.

Orhan İnandı appeared before court in December 2021, where he informed the court that he was abducted in Kyrgyzstan on May 31, 2021, and immediately transferred to Türkiye, where Türkiye’s National Intelligence Organization (MİT) interrogated him for 35 days. İnandı was taken to a “black site” for “interrogation”. Pursuant to court records there, *İnandı* was placed in a cell he described as “a large grave or a coffin… two and a half meters by two meters wide and two and a half meters high”. During his first interrogation at MİT’s black site, İnandı was told; “You will now tell us everything you know… If you make our job easier, it will be easy for you. Otherwise, my friends here will torture you in ways you can’t even imagine. We know how to make you talk”; the torture then began with the utilization of “***a heavy stick with barbed wire wrapped around it.”***

As in all other cases, when victims have taken the risk of reprisals for reporting torture and ill-treatment, the court as in the instant case decided to disregard the account by İnandı and take no measure in investigating these events or take any measure against the perpetrators.

(vi) **Complex investigations:** Please share concrete examples of handling complex investigations and prosecutions, including those where the crime was committed outside the territory of the prosecuting state (extradite or prosecute), during ongoing armed conflict or occupation or ongoing public emergency. Do you have experience of mutual legal assistance in torture cases, or universal jurisdiction? Also please share information about handling situations where both domestic and international investigations and prosecutions are occurring simultaneously.

N/A

(vii) **Evidence collection and innovation:** Please provide examples of innovative practices to secure evidence collection and any associated challenges around use of new technologies, open-source documentation, application of the Istanbul Protocol, or other innovative practices and developments.

The wholesale attack of the Turkish government on dissent is equally directed to those who collect evidence of torture and ill-treatment, when those subject to torture are perceived members of Hizmet Movement.

The Turkish Medical Association is an independent medical and health professional association comprising 80% of all the physicians in Türkiye. On 3 May 2019 for example, the 32nd High Criminal Court in Ankara sentenced eleven council members of the Turkish Medical Association on the charge of “provoking the public to hatred and enmity”, in connection with two public statements that they had issued, drawing attention to the negative effects of war and conflict on public health. On October 26, 2022, Şebnem Korur Fincancı,[[13]](#footnote-13) President of the Turkish Medical Association and one of the authors of the Istanbul protocol was arbitrarily detained following her public remarks about allegations on the use of chemical weapons by the Government of Türkiye in the Kurdistan regional federation of Iraq, and her call for an urgent investigation into these allegations. Following Şebnem Korur Fincancı’s return to Türkiye and in reaction to her statements on the use of chemical weapons, on October 25, 2022, President Recep Tayyip Erdoğan announced “legal measures” and whatever it takes to stop the Turkish Medical Association, and Şebnem Korur Fincancı in particular.

Şebnem Korur Fincancı’s arrest takes place as the authorities in Türkiye are in the process of closing the Turkish Medical Association and replacing Korur Fincancı by a trustee. These extreme actions to silence dissent, are aimed mainly to control the process of evidence collection in ongoing cases of torture and ill-treatment.

*Please share in annex copies of legal provisions referenced in one of the following UN languages (English, French, Spanish or Arabic)*

* **Annex 1** – Constitution of Türkiye <https://www.constituteproject.org/constitution/Turkey_2017?lang=en>
* **Annex 2** – Criminal Code of Türkiye

<https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)011-e>

* **Annex 3** – Decree-Law 667 of July 23, 2016

<https://www.dusun-think.net/en/turkey-today/statutory-decrees-under-state-of-emergency/>

* **Annex 4** – Decree-Law 672

<https://www.dusun-think.net/en/turkey-today/statutory-decrees-under-state-of-emergency/>

* **Annex 5** – Decree-Law 696

<https://www.dusun-think.net/en/turkey-today/statutory-decrees-under-state-of-emergency/>

* **Annex 6** - Law 2937 on the State Intelligence Services (NIA) and the National Intelligence Organization (MIT)

<https://irp.fas.org/world/turkey/kanun.html>

* **Annex 7** - Law No. 353 “On the Establishment of Military Courts and Tribunal Procedure” of October 25, 1963

<https://www.refworld.org/docid/3ae6b4d12c.html#:~:text=Military%20courts%20shall%20be%20established,the%20Chief%20of%20General%20Staff>.

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1. Decree-Law 667 was published in the *Official Gazette* on July 23, 2016. [↑](#footnote-ref-1)
2. Article 9 of Decree-Law 667. [↑](#footnote-ref-2)
3. The paragraph reads in pertinent part: “regardless of an official title or duties or the lack thereof, people who played a role in the suppression of a failed coup attempt on July 15, 2016, and subsequent events and terrorist activities will be exempt from criminal, administrative, financial and legal liability.” [↑](#footnote-ref-3)
4. Pursuant to the provisions of the decree-law, vigilantes would go unpunished thereafter. [↑](#footnote-ref-4)
5. See also: <http://jwf.org/jwf/wp-content/uploads/2019/10/JWF-Report-2019-Erdogans-Policies-A-Threat-to-Global-Peace-and-Security.pdf>. [↑](#footnote-ref-5)
6. <https://boldmedya.com/en/2019/07/01/zabit-kisi-who-was-tortured-for-108-days-i-no-longer-find-odd-the-ones-who-committed-suicide/>. [↑](#footnote-ref-6)
7. Gökhan Güneş stated that, “*I could not move my hands. I was kept blindfolded for hours. They tortured me from time to time. This included electric shocks, beatings and pouring ice-cold water over me. They did this to me either while I was naked or wearing only my underwear. They also threatened me with rape*.” His torturers also asked him to cooperate by serving as an informant. Güneş added, “*They asked me whether I knew who they were. When I told them, they were probably from [Turkish] intelligence, they remained silent. Sometimes they told me they were the invisibles*.” [↑](#footnote-ref-7)
8. See for more: <http://stockholmcf.org/wp-content/uploads/2017/06/Erdogans-Vile-Campaign-Of-Hate-Speech-Case-Study-Targeting-Of-The-Gulen-Movement_2017.pdf> [↑](#footnote-ref-8)
9. Principles relating to the status of national institutions for the promotion and protection of human rights. [↑](#footnote-ref-9)
10. Law “On Preventing Financing of Proliferation of Weapons of Mass Destruction,” entered into force on December 31, 2020, [↑](#footnote-ref-10)
11. See <https://siviltoplumsusturulamaz.org/> [↑](#footnote-ref-11)
12. See for example: https://www.turkishminute.com/2021/02/12/parliament-speaker-reject-request-for-inquiry-into-torture-allegations/ [↑](#footnote-ref-12)
13. Şebnem Korur Fincancı is President of the Turkish Medical Association (Türk Tabipler Birliği – TTB) and Board Member of the Human Rights Foundation of Türkiye (HRFT) [↑](#footnote-ref-13)