



**UNITED NATIONS WORKING GROUP ON ENFORCED OR  
INVOLUNTARY DISAPPEARANCES**

*Study to mark the 30th anniversary of the Declaration on the Protection of  
All Persons from Enforced Disappearance*

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**Written Submissions of the Human Rights Foundation of Turkey (HRFT)  
to provide input for the preparation of the foreseen study**

**Turkey**

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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 Submission of HRFT for the Questionnaire<sup>1</sup>

**Q1: Can you please share examples of how the Declaration on the Protection of All Persons from Enforced Disappearances (hereinafter, “the Declaration”) has contributed to the development of domestic legislation in your country (or countries in focus)? Can you kindly share examples of domestic provisions that were adopted in your country (or countries in focus) as a result of the implementation of the Declaration?**

The Declaration on the Protection of All Persons from Enforced Disappearance has not been implemented in any laws or regulations in Turkey. The legislative authorities of Turkey has not formally recognized the crime of enforced disappearance in any form, therefore there have not been any development on this matter. As stated by the UN Working Group on Enforced or Involuntary Disappearances there have been no progress in relation to codifying enforced disappearances as a special crime.<sup>2</sup> Therefore, disappearances have so far been investigated and prosecuted under other criminal offences, especially murder or arbitrary deprivation of liberty, which are subjected to the relevant statute of limitations.<sup>3 4</sup> Even if there has been thirty years long period of time since the efforts of international recognition of enforced disappearance marked 30 years, and Turkey has been one of the most prominent cases for such matter, the utter reluctance of providing justice and accountability of enforced disappearance has been clearly observed throughout this time. Because of the absence of legislation making enforced disappearance a special crime, the evidentiary burden for these crimes are considerably higher than the international standards for the crime of enforced disappearance. Even if consistent patterns, and circumstantial or indirect evidence clearly indicate the presence of such crime, high standard of proof ‘beyond reasonable doubt’ significantly prevents the perpetrators to be hold accountable. Therefore limited number of cases on the enforced disappearance in the 1990s Turkey has been finalized with acquittal judgements, on the basis of lack of sufficient evidence. Of relevance of this submission, it is clear that the

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<sup>1</sup> Certain articles of this Questionnaire were not filled out due to the character limitation and their lack of relevance with Turkey.

<sup>2</sup> A/HRC/45/13/Add.4, Report of the Working Group on Enforced or Involuntary Disappearances: Follow-up to the recommendations made by the Working Group on Enforced or Involuntary Disappearances in its report on its visit to Turkey from 14 to 18 March 2016 (A/HRC/33/51/Add.1), para.13, available at <https://digitallibrary.un.org/record/3878154?ln=en>.

<sup>3</sup> Communication to the Committee of Ministers of the Council of Europe, in accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by Truth Justice Memory Center (Hafıza Merkezi), Human Rights Association (İnsan Hakları Derneği), and London Legal Group regarding the Mahmut Kaya v. Turkey (Application No. 22535/93) group of cases. para.50, available at <https://hudoc.exec.coe.int/eng?i=004-34566>.

<sup>4</sup> As a continuation of this situation, the Constitutional Court of Turkey has declared inadmissible 28 individual applications out of 32 cases on enforced disappearance applications.

inconsistency between domestic regulations, the Declaration and the Convention had been resulted as flagrant denial of justice for enforced disappearance crimes.

**Q2: Can you please indicate the status of the Declaration in the domestic legal order in your country (or countries in focus), i.e. with respect to ordinary legislation?**

The status of the Declaration in Turkey is non-legally binding international soft law instrument. Since the Declaration does not carry a binding force effect, the judges of Turkey can apply the Declaration as an advisory source of law.<sup>5</sup> Article 90 of the Constitution of Turkey provides for the ratification of international treaties and states that the ratification of treaties concluded with foreign states and international organizations are subject to adoption by the National Assembly by a law approving the ratification. Article 90 further recognizes the *supremacy of international law*. Article 90 reads as, “*International agreements duly put into effect bear the force of law. ... In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.*” Even if the international obligations in the field of human rights prevails over domestic law, the judicial authorities neither consider the Declaration, nor directly binding European Convention on Human Rights, and European Court of Human Rights case-law on enforced disappearances. Therefore, *in praxi* status of the Declaration, or any binding and non-binding instrument on the enforced disappearances field are not taken in the consideration. The effective implementation of the Declaration would be thoroughly strengthened with the support of the international mechanisms at the UN level.

**Q3: Can you please illustrate if the provisions of the Declaration can be invoked before domestic courts in your country (or countries in focus) and, if so, share examples of case law where domestic courts made reference to the Declaration in their verdicts (if possible, summarizing to which provisions of the Declaration reference was made and how they were interpreted)?**

The Declaration cannot be invoked before the domestic courts in Turkey, but can only be used as a reference to the general source of international law. As Turkey is not a party to the Convention, and there has been a consistent judicial practice to overlook the qualification of enforced disappearances, we have not encountered with any piece of judicial decision referencing the Declaration. Even if there are very limited cases of references to the Convention, as part of the dissenting opinions for the individual

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<sup>5</sup> The primary sources of Turkish law are the constitution, laws, law amending ordinances, international treaties and agreements, regulations, and by-laws.

application cases before the Constitutional Court of Turkey,<sup>6</sup> the Declaration is not utilized as an instrument for such cases.

**Q4: Can you please illustrate how has the Declaration contributed to the development of international law on enforced disappearance?**

As paving the way to the drafting of the Convention, the Declaration has immensely contributed to the international law on enforced disappearances as being one of the first international documents to shed a light on the matter. Following a General Assembly Resolution in 1992, 21 articles long Declaration on enforced disappearance has ensured the establishment of “Inter-Sessional Open-Ended Working Group to Elaborate a Draft Legally Binding Normative Instrument for the Protection of All Persons from Enforced Disappearance” in 2001. Even if the Declaration is not of binding nature, it showed a strong basis of international consensus to criminalize enforced disappearances and recognize such cases as an international crime. This characterization had been supported and confirmed with a number of UN resolutions and opinions. This consistent path of crystallization of international law had amounted the adoption of the Convention in 2006.

**Q5: Has your State (or countries in focus) ratified or acceded to the International Convention on the Protection of All Persons from Enforced Disappearances? If your State (or countries in focus) has not yet ratified or acceded to the Convention, is there any pending project or initiative to do so?**

Turkey has not ratified nor acceded the International Convention on the Protection of All Persons from Enforced Disappearances. As illustrated above, the long-arching reluctance to recognize the notion of enforced disappearances has been the definitive aspect of the Turkey for that matter. The civil society organizations such as the HRFT, the Human Rights Association (İHD), Hafıza Merkezi, and a vast number organizations, platforms and initiatives has been calling to the authorities of Turkey to ratify the Convention for years. For a long time, the most prominent advocacy for enforced disappearances, specifically for the ratification of the Convention, has been carried out by the Saturday Mothers/People Movement.

On May 27, 1995, Saturday Mothers/People gathered for the first time on Galatasaray Square for the ones who disappeared in custody. The first sit-in protests started after the deceased body of Hasan Ocak, who was taken into custody on March 21, 1995, was found in the Cemetery of the Nameless after being tortured. The Saturday protests at Galatasaray Square (at İstanbul, Taksim) were interrupted for an indefinite period on March 13, 1999, due to heavy police intervention for the last three years. The interruption continued for the next 10 years. The silent sit-in protests of Saturday Mothers/People, which they started

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<sup>6</sup> For example, the judgement of the Constitutional Court of Turkey, *Delali Özdemir and Leyla Padır*, App. No: 2015/19218, 4/7/2019, Dissenting Opinion of Judge Engin Yıldırım.

again at Galatasaray Square in 2009, continued until the police intervention in August 2018. In the 700th sit-in on August 25, 2018, the police attacked the crowd with rubber bullets, detaining several relatives of the disappeared.<sup>7</sup> The detained were released after giving their testimonies on the same day. Speaking about the incident, İHD İstanbul Branch Chairperson Gülseren Yoleri said that the 700th week of the gathering was "arbitrarily banned with a decision signed by the Beyoğlu Sub-Governor within the knowledge of Interior Minister Süleyman Soylu." Detained in the 700th week, Maside Ocak stated that, "In 1997, we used to be detained as two generations; today, we were detained as three." Maside Ocak, the elder sister of Hasan Ocak, said that her 82-year-old mother Emine Ocak was attempted to be detained as well, she was not taken to the police bus at the last minute, she was pushed with police shields and her arms were bruised.<sup>8</sup> In the current situation, participants of the Saturday Mothers/People gatherings are prosecuted for their so-called unlawful participation to the protests, and the judicial harassment they face are now constituting an integral part of the their advocacy.<sup>9</sup> Even within this judicial process, the Saturday Mothers/People still continue their requests for ratification of the Convention, and overall institutional and structural reforms direly needed for the justice and accountability for enforced disappearance cases. The Saturday Mothers/People gatherings still continue every Saturday, and the mentioned prosecution is still pending.

**Q6: Can you kindly indicate the main obstacles – practical and legal – encountered by you/your country (or countries in focus)/ institution/organization in the implementation of the Declaration (if possible, making reference to specific provisions and concrete examples)?**

In relation with the subject matter of the Declaration, of enforced disappearance as a widespread and systemic state tactic, emerged in the state of emergency conditions after the 12 September, 1980 coup and it was used as a tool within the systematic state violence in the 1990s Turkey. This common tactic has been adopted under the pretext of counter-terrorism, specifically armed conflict between PKK (Kurdistan Workers' Party) and security forces. The number of disappearances after being detained or arrested increased every year after the 1990s, especially in the Kurdish-majority provinces declared as a state

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<sup>7</sup> See the UN Special Procedures Joint Statement on the Saturday Mothers/People, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26402>.

<sup>8</sup> Bianet, "Investigate enforced disappearances impartially and courageously", available at <https://m.bianet.org/bianet/human-rights/249492-investigate-enforced-disappearances-impartially-and-courageously/>; also see (in Turkish) HRFT and İHD, "Cumartesi Anneleri'nin 700. Buluşmasına Yönelik Saldırı Hakkında Ortak Basın Açıklaması", available at <https://tihv.org.tr/basin-aciklamalari/cumartesi-annelerinin-700-bulusmasina-yonelik-saldiri-hakkinda-ortak-basin-aciklamasi/>.

<sup>9</sup> The World Organisation Against Torture (OMCT) and FIDH, the Observatory, Urgent Intervention titled "Turkey: Judicial harassment of the Saturday Mothers/People movement", available at <https://www.omct.org/en/resources/urgent-interventions/turkey-judicial-harassment-of-the-saturday-mothers-people>.

of emergency site.<sup>10</sup> Even if the civil society organizations such as the HRFT and İHD record the data as to the number of enforced disappearances, there is no official data hold for the enforced disappearance cases in Turkey. According to the 2021 Report of the Working Group on Enforced or Involuntary Disappearances, as of October 2021, there have been total 235 enforced disappearance cases for Turkey; and one person's enforced disappearance case still remains open before the Working Group.<sup>11</sup> Specifically marking the resurgence of conflict in Turkey in 2015, and 2016 coup attempt and its continuing *de facto* state of emergency measures, enforced disappearance has reappeared and became one of the most pressing human rights issues in today's human rights climate of Turkey. Moving from this background, the implementation of the Declaration is highly difficult for institutional and structural shortcomings of Turkey, non-ratification of the Convention being the principal reason. Since the crime of enforced is not defined as an offence in the Turkish Penal Code, for the investigations for the disappearances the public prosecutors apply to the provisions for the crime of homicide, which are subject to the statute of limitations for 20 years. In the case of *Birsen Gülünay*, the Constitutional Court found this statute of limitation lawful, as the 20 years has been the statute of limitations applicable to the accused.<sup>12</sup> Taken into consideration the vast majority of the enforced disappearance cases had taken place in 1990s, the highest judicial institution has affirmed one of the hardest institutional barriers for the accountability of enforced disappearance cases. Combining with the series of ineffective investigations, flawed prosecutions and overall lack of political and administrative will to bring justice and accountability for such cases, enforced disappearance cases never comes to an end. This dire outline is repeatedly confirmed by the European Court of Human Rights, as out of 73 individual applications, 61 applications consisting of 129 applicant persons to the Court had been adjudicated as at having at least one violation.<sup>13</sup> The implementation of the Declaration, the Convention and the already binding European Court of Human Rights case-law requires the clear execution of the international obligations of Turkey, and for this reason, every avenues of advocacy is constantly used by the human rights defenders in Turkey.

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<sup>10</sup> For a detailed information, please see the report by Hafıza Merkezi, "Unspoken Truth: Enforced Disappearances", available at <https://hakikatadalethafiza.org/en/kaynak/unsspoken-truth-enforceddisappearances/>, also see the report by HRFT, (in Turkish), "İşkence ve Diğer Ağır İnsan Hakları İhlallerinde Zamanasımı", available at <https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/iskence-ve-diger-agir-insan-haklari-ihlallerinde-zamanasimi/>.

<sup>11</sup> A/HRC/48/57, Report of the Working Group on Enforced or Involuntary Disappearances, page 34 and 51, available at <https://undocs.org/A/HRC/48/57>. Also see Data hold by the İHD, "Kayıplar Bulunsun, Failler Yargılansın!", available at (in Turkish) <https://www.ihd.org.tr/kayıplar-bulunsun-failler-yargilansin-2/>; and Data hold by the Hafıza Merkezi "Türkiye'nin zorla kaybetme gerçeği", available at (in Turkish) <https://hakikatadalethafiza.org/turkiyenin-zorla-kaybetme-gercegi/>.

<sup>12</sup> The Constitutional Court of Turkey, *Birsen Gülünay*, App. No: 2013/2640, 21/4/2016.

<sup>13</sup> *Ibid.*