

# Torture and ill-treatment in Turkey

Since 2015, the exacerbation of violence related to the Kurdish issue, the failed coup attempt in July 2016, and the state of emergency (SoE) proclaimed in its aftermath have had a dramatic impact on the human rights situation.

Curfews and armed conflict brought about systematic gross and serious human rights violations, including violation of the prohibition of torture, right to life, right to access to health services, and restriction of access to basic needs. According to Human Rights Foundation of Turkey (HRFT) data, between the dates of 16.08.2015 and 16.08.2016 at least 321 civilians were killed during curfews and armed clashes. The vast majority of the investigations into these deaths have been closed without prosecution.

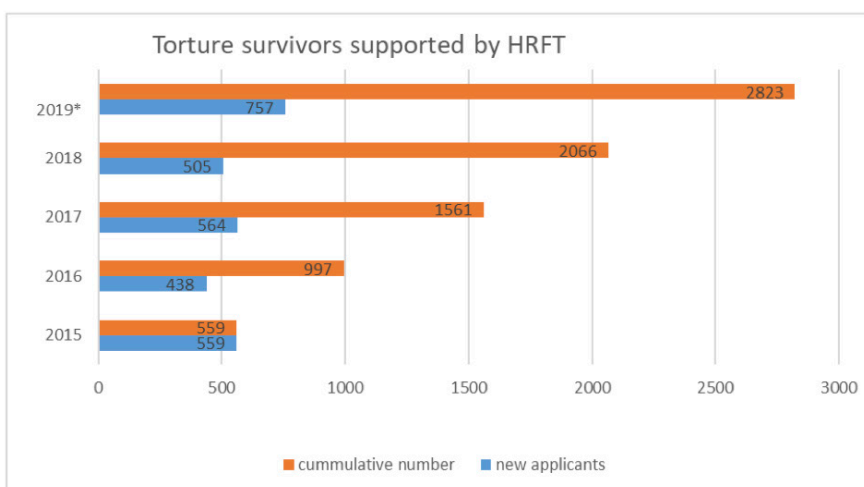
Allegations of torture and other ill treatment also significantly increased after the military coup attempt and under the SoE, which was declared on 20.07.2016 and lasted until 19.07.2018. The

weakening and abolishment of procedural safeguards created an environment that facilitated torture practices and impunity.

Between 2015 and October 2019, 2823 torture survivors were supported by HRFT, among whom nearly 40% were women. Most of the applicants were subjected to torture in multiple places, such as police headquarters or police stations, police vehicles, outdoor spaces, home or work place. While these numbers are far from covering the total number of persons tortured or ill-treated in Turkey, they are an important indicator of the prevalence of torture during this period.

In the period, HRFT has experienced a significant increase in the number of victims seeking support from 559 in 2015 to 757 during the first 10 months of 2019. Based on decades of experience documenting and fighting torture in Turkey, the HRFT believe that this reflects an increase in the use of torture by the authorities.

## Torture survivors supported by HRFT



\*Based on the first ten months of 2019

## 1. Legislation and mechanisms to prevent and eradicate torture

### Previous UPR recommendations

During the 2nd cycle, Turkey received recommendations to bring the National Preventive Mechanism in line with the Paris Principles (148.20/148.23, 148.24/148.25/148.26/148.32/149.8) and to consider the views of the civil society when elaborating the security law package (149.43)

The UPR recommendations (151.1/151.2/151.3/151.4) on the signature and Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) were not accepted by Turkey.

### Current State of Implementation

During the armed conflict and SoE, the procedural safeguards for the prevention of torture have been significantly weakened and repressive legislation has been passed without consultation with civil society. In 2015, through Law no 6638, known as “Domestic Security Package”, law enforcement officers were granted extended powers to use firearms and detain persons without a warrant. During the same period, the maximum duration of police custody was extended, and restrictions were imposed on access to a lawyer during custody and in prison. Despite the official termination of the SoE in 2018, many restrictions have been turned into law. According to law n.7145 passed in 2018, police custody can be extended up to twelve days, a duration which has been considered too long by the ECtHR. The Human Rights and Equality Institution of Turkey (HREIT) created on 2016 to fulfil the function of the National Preventive Mechanism did not satisfy the criteria established by the Paris Principles and the OPCAT in terms of statute, structure, function, activities and independence. Since July 2018, all the board member must be appointed by the President of Republic and the HREIT is subordinate to the Ministry of Justice. The HREIT thus remains inefficient in responding to the widespread torture allegations.

Turkey is still to sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED) and the crime of enforced disappearance remains undefined in the Turkish Criminal Code.

## Recommendations

a. Abolish temporary Art.19 of Law no.3713 that extends the maximum duration of police custody to 12 days

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b. Remove all restrictions that weaken procedural safeguards and investigations concerning torture, such as Art.59 of Law no. 5275, restricting access to a lawyer, and Law no. 6722, granting counter-terrorism forces immunity from prosecution for acts carried out in the course of their operations.

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c. Sign and ratify ICPPED, recognize enforced disappearance as crime in the Penal Code, remove the statute of limitations to act retrospectively on past allegations.

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d. Amend Law no. 6638 known as “Domestic Security Package”, particularly the provisions regarding the police use of weapons and detention, which enhance the risk of torture and violation of the right to life.

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e. Amend Law n.6701 on HREIT to comply with Paris Principles and ensure its financial, structural and functional independence and guarantee the competency of its board members

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f. Establish a National Prevention Mechanism separate from HREIT or amend the HREIT statute, to comply with OPCAT

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g. Amend the Commission on Monitoring of Law Enforcement Officers appointment procedure, ensure its independence and transparency, and provide financial and administrative sources for its activities

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## 2. Prevention of torture

### Previous UPR recommendations:

During the second UPR cycle, Turkey received recommendations to consider the establishment of budgetary allotments to improve the conditions of the prison population (149.21); to continue its efforts in the area of human rights training, particularly for staff of penitentiary establishments (148.50); and to monitor and investigate the excessive use of police force during peaceful assemblies (149.36).

### Current State of Implementation:

Prison overcrowding has kept rising since 2015: according to the Ministry of Justice, there were 260.144 inmates for a carceral capacity of 220 000 by November 2018. Allegations of beatings at entry, disciplinary punishments, cell confinement, restriction of access to health services, handcuffed medical inspections and forced displacement of prisoners have dramatically increased since 2015. Amendments to the Penal Execution Law in 2013 and 2014 have also restricted the postponement of penal execution due to a health condition, with a requirement of “not constituting a serious and concrete danger for public safety”.

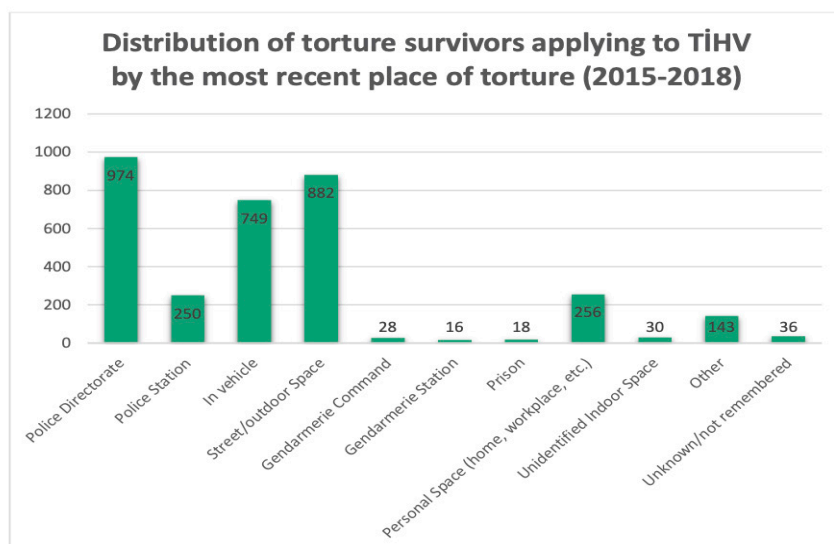
Excessive use of police force during peaceful assemblies throughout the country, amounting to torture and other ill-treatments, has become the rule, targeting peaceful demonstrations by opposition groups, LGBTI marches, Women’s Day March and Saturday Mothers gatherings. Blunt trauma and injuries caused by inappropriate use of tear gas were frequently observed among the participants of these demonstrations.

Abductions and enforced disappearances, practices that marked the 1990s in Turkey, particularly in the context of

the Kurdish issue, reoccurred in the recent period. In 2018, HRFT documented sixteen persons who were abducted and held incommunicado for up to two months and upon their release made credible and well documented allegations of torture. In 2019, abduction attempts continued, while it turned out in February 2019 that six abducted persons were actually detained by the police. One person has been missing since 9 August 2019.

### Recommendations:

- a. End arbitrary restriction on peaceful assemblies and protests.
- b. Follow the 2017 recommendations of the Special Rapporteur Against Torture regarding extra-custodial use of force by considering the intentional use of force against peaceful protesters unable to escape or resist as an aggravated form of cruel, inhuman or degrading treatment or punishment, and introducing the necessary changes in law and policy.
- c. Ban the use of pepper sprays and tear gas chemicals during peaceful protests
- d. Abolish the public safety requirement in postponement of penal execution due to health conditions, and establish objective criteria based on medical evidence and independent medical evaluation processes for release of seriously ill inmates.
- e. Improve prison conditions for inmates, including by prohibiting the use of isolation as a disciplinary measure.



### 3. Lack of effective documentation and investigation

#### Previous UPR recommendations:

During the second UPR cycle, Turkey received and accepted a recommendation to step up efforts to combat impunity and carry out rapid, impartial, effective and in-depth inquiries for all past or present allegations of human rights violations committed by security forces and ensure that such violations do not remain unpunished (148.109)

#### Current State of Implementation:

Although the statute of limitation was abrogated for the crimes of torture by the amendment of Article 94 of the Turkish Penal Code in 2013, legal gaps remain regarding the retroactive application of this article. Successive court decisions concerning allegations of torture after the 1980 military coup have interpreted the article in a restrictive way that prevented accountability for the perpetrators.

Since 2015, the possibility to investigate human rights violations perpetrated by government officials has been severely restricted. Investigation of alleged torture and other ill-treatment perpetrated by security forces, including the military, are subjected to a special process of authorization by public authorities. In addition, since 2017, both state officials and civilians have been granted immunity for human rights violations perpetrated while fighting against coup attempts and terrorist acts.

The use of counter-charges to deter torture victims from filing a complaint have also risen since 2015. In 2015-2017, 53.521 persons were convicted for aspersion against public officers, a charge often used against those who bring allegations of torture.

#### Recommendations:

a. Ensure that the abrogation of the statute of limitations for crimes of torture is applied in a retroactive way to cover the crimes perpetrated after the military coup of 12 September 1980 and during the 1990s

b. Ensure torture investigations are conducted in accordance with the UN endorsed standards in the Istanbul Protocol

c. Establish an independent unit to investigate complaints against law enforcement officers suspected of torture

d. Abolish authorization procedure for investigation of law enforcement officers and remove the postponement of execution of sentences in criminal proceedings related to the crime of torture

### 4. Access to reparation for torture victims

#### Previous UPR recommendations:

No previous UPR recommendations

#### Current State of Implementation:

While the duty to provide reparations is enshrined in Art. 14 of the Convention against Torture ratified by Turkey, Turkey's laws do not provide sufficient guarantees of compensation, non-repetition, adequate satisfaction and rehabilitation to victims of torture.

Furthermore, HRFT, the most prominent civil actor in Turkey providing rehabilitation to torture survivors and their relatives has been subject to judicial harassment and pressures, in violation of the state parties' obligation to refrain from intimidation and reprisal against such service providers and to sustain their work.

#### Recommendations:

a. Ensure that all survivors of torture and ill-treatment obtain redress, including an enforceable right to fair and adequate compensation and the means for as full rehabilitation as possible

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Established in 1990, **the Human Rights Foundation of Turkey (HRFT)** is an internationally recognized human rights organization with the main aims of providing treatment and rehabilitation for torture survivors and contributing to the prevention of torture in Turkey.

**The International Rehabilitation Council for Torture Victims (IRCT)** is a health-based umbrella organisation that supports the rehabilitation of torture victims and the prevention of torture worldwide.

Our members comprise more than 150 independent organisations in over 70 countries. Our work is governed by these member organisations. Today, we are the largest membership-based civil society organisation to work in the field of torture rehabilitation and prevention.

