

Mandates of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

REFERENCE:
AL TUR 6/2020

11 May 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 34/19, 41/12 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning allegations of torture and ill-treatment in the Ankara Police Headquarters of 56 students accused of being members of a terrorist organisation.

Concerns regarding the conditions of detention and alleged torture and ill-treatment at the hands of security officials at the Ankara Police Headquarters have been the subject of a previous communication under the reference of UA TUR 6/2019. We thank your Excellency's Government for the reply dated 9 August 2019, however we remain concerned that these new allegations appear to be of a similar pattern involving mass arrest and detention, followed by ill-treatment based on the individuals' alleged association.

According to the information received:

On 28 February 2020, arrest warrants were issued by the Office of the Prosecutor for 56 Turkish nationals for alleged membership in a terrorist organization and terrorism under the Anti-Terror Law. On the same day, the police executed the warrants and arrested 56, mostly female university students, alleged to have an affiliation with the Gülen movement and detained them at the Ankara Police Headquarters in the custody of the Anti-Terror Bureau of the Ankara Provincial Security Directorate.

In the days following the arrest, the detainees were locked up in dark rooms, interrogated regularly several times a day, subjected to physical torture including being beaten, psychological violence and intimidation and sleep deprivation, forcibly stripped naked, and verbally abused. More specifically, on 3 and 4 March 2020, a female detainee was allegedly taken into a room in which there were five persons, all her clothes except her underwear were removed, she was handcuffed

at the back and repeatedly suffocated with a plastic bag placed over her head. She was beaten and made to stand for extended periods. She was also threatened with having her nails pulled out, and insulted with profane and offensive language.

It is reported that a doctor visited the detention centre to examine the detainees. However, despite the detainees' attestations of the ill-treatment that they had been subjected to, the medical examination reports failed to adequately reflect their complaints but asserted that the detainees displayed no physical signs of harm.

Following complaints to the Ankara Bar Association Human Rights Centre, two assigned lawyers attempted to inquire about the detainees at the Police Headquarters. They were denied access and were unable to assess the conditions of detention or to interview the detainees to verify the allegations. Following public protests including by members of the Turkish Parliament and the Human Rights Inquiry Committee, the detainees reported that the violence by the officers subsided.

On 10 March 2020, a hearing was held before the 8th Criminal Peace Judgeship of Ankara for all the detainees. 15 of them were charged and sent to pre-trial detention, while the remaining 41 students were released on provisional measures of judicial control.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our grave concern at the treatment and conditions the detainees reportedly have been subjected to at the Police Headquarters, including ill-treatment that may amount to torture, the violation of their rights to liberty and security, and to freedom of association. Should the facts alleged above be confirmed, they would amount to a violation of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in Articles 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), ratified on 2 August 1988. These acts would also constitute a violation of Articles 7, 9, 10 and 14 of the International Covenant on Civil and Political Rights (ICCPR) to which Turkey became a State Party on 23 September 2003.

With regard to those individuals who remain in detention, we appeal to your Excellency's Government to take the necessary measures to guarantee their right not to be deprived arbitrarily of their liberty and that they be granted fair trial proceedings before an independent and impartial tribunal, in accordance with articles 9 and 14 of the ICCPR, so that they can challenge the legality of their deprivation of liberty.

We further express our concerns at the alleged use of counter-terrorism legislation to criminalize association and assembly and caution against overly broad interpretations of terrorism acts and armed organisations, which may result in unintended human rights abuses. While there is no internationally agreed definition of terrorism, and States thus resort to establishing their own definitions, the Special Rapporteur stresses that Turkey should ensure that national counter-terrorism legislation is limited to the countering of

terrorism as properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity and proportionality. The definition of terrorism in national legislation should be guided by the model definition proposed in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism. The seriousness of, and punishment for, a criminal conviction must be proportionate to the culpability of the perpetrator. No one should be convicted of participating in a terrorist act, or facilitating or funding terrorism, unless it can be shown that that person knew or intended to be involved in terrorism as defined under national law. Under international human rights law, non-violent criticism of the State or any of its institutions, including the judiciary, cannot be made a criminal offence in any society governed by the rule of law. Countering terrorism should not be used as an excuse to suppress peaceful critics, human rights activists and members of minority groups.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for the observations of your Excellency's Government on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide detailed information about the factual and legal grounds for the arrest and continued detention of the 15 persons referred to in this letter, and how these measures are consistent with Turkey's obligations under international human rights law, including the ICCPR. Please also provide information on the charges against all of the 56 persons, including those who have been released on provisional measures of judicial control.
3. Please provide information on why charges related to membership in a terrorist organization and terrorism under the Anti-Terror Law have been levied against these individuals and indicate how this complies with United Nations Security Resolution 1373, and a strict understanding of the definition of terrorism as elucidated by international law norms including but not limited to United Nations Security Council Resolution 1566 (2004).
4. Please provide the details, and where available the results, of any additional investigation, and judicial or other inquiries carried out in relation to consistent allegations of torture and/or cruel, inhuman or degrading treatment of persons accused of criminal offences in the custody

of the Ankara Police Headquarters. If no investigation has been initiated, please explain why and how this is compatible with the international human rights obligations of Turkey.

5. Please provide details on measures taken to ensure that medical examinations are conducted in accordance with the Istanbul Protocol, by an independent medical doctor, and without the presence of law enforcement officers during the examination.
6. In the event that torture or ill-treatment has occurred and the perpetrators of these alleged acts have been identified, please provide the full details of any penal, disciplinary, or administrative sanction that has been taken against them, and the suspension measures that are applied until the investigation is completed.
7. Please provide information in details of how your Excellency's Government's counter-terrorism efforts comply with the United Nations Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123, 72/180 and 73/174 in particular with international human rights law, refugee law, and humanitarian law contained therein

We would appreciate receiving a response within 60 days. Thereafter, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudice any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

Please accept, Excellency, the assurances of our highest consideration.

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental
freedoms while countering terrorism

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like reiterate the international norm of *jus cogens* of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment as reflected inter alia, in Human Rights Council Resolution 25/13 and General Assembly Resolution 68/156.

We stress the findings of the Committee against Torture and the Human Rights Committee that conditions of detention can amount to inhuman and degrading treatment and refer your attention to UN Standard Minimum Rules for the Treatment of Prisoners (as amended on Nov. 5, 2015 by the General Assembly and readopted as the “Mandela Rules”). In particular, rules 12 to 17 pertaining to appropriate accommodation, including minimum cubic content of air and floor space, lighting and ventilation, and rule 82 which states that prison staff shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. We also refer to paragraph 28 of the General Assembly resolution 68/156 (2014) which emphasizes that conditions of detention must respect the dignity and human rights of persons deprived of their liberty and calls upon States to address and prevent detention conditions that amount to torture or cruel, inhuman or degrading treatment or punishment.

As outlined in the UN Basic Principles on the Use of Force and Firearms by Law Officials, we would also like to draw the attention of your Excellency’s Government to Principle 15 which provides that, “(l)aw enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.” Furthermore, the use of threats and intimidation can also amount to torture and other cruel, inhuman or degrading treatment or punishment as stated in paragraph 8a of Human Rights Council Resolution 16/23, which reminds States that “Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture”.

In accordance with article 9 and 14 of the International Covenant on Civil and Political Rights, we recall that, “arresting or detaining an individual as punishment for the legitimate exercise of the rights guaranteed by the Covenant constitutes a violation of article 9” (CCPR/C/GC/35, para 17). Furthermore, we would also like to refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights. (OP 10).

Articles 21 and 22 of the ICCPR protect the right of peaceful assembly and the right to freedom of association. The importance of these rights are rooted in the role they play “as a platform for the exercise of other rights, inter alia the right to freedom of expression, cultural rights and the right to political participation” (A/61/267, para 9). No

restrictions may be placed on the right of peaceful assembly and of association unless they comply with the principles of necessity, as enumerated in articles 21 and 22 (and exercised with due proportionality and non-discrimination). These interests are limited to interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.