

**Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE:  
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Excellency,

We have the honour to address you in our capacities as Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 36/6, 34/21, 40/16 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning what appears to be a systematic practice of state-sponsored extraterritorial abductions and forcible return of Turkish nationals from multiple States to Turkey. To date, at least 100 individuals suspected of involvement with the Hizmet/Gülen movement have been subjected to arbitrary arrests and detention, enforced disappearance and torture, as part of covert operations reportedly organized or abetted by Your Excellency's Government in coordination with authorities in Afghanistan, Albania, Azerbaijan, Afghanistan, Cambodia, Gabon, Kosovo<sup>1</sup>, Kazakhstan, Lebanon and Pakistan, among others.

In this regard, we recall that similar allegations had been the subject of several joint communications by different Special Procedures mechanisms or had been treated under standard or regular procedures by the Working Group on Enforced or Involuntary Disappearances and the Working Group on Arbitrary Detention, respectively.

According to the information received:

Since the attempted coup in 2016, it is alleged that the Government of Turkey has resorted to extraterritorial abductions and forcible return of Turkish nationals with the direct participation, support or acquiescence of other States. These forcible repatriations have been justified in the name of combatting terrorism and appear to have been conducted in a climate of widespread impunity in violation of national legislation and relevant protections afforded under international human rights law.

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<sup>1</sup> All references to Kosovo shall be understood to be in the context of UN Security Council Resolution 1244 (1999)

Serious allegations of human rights violations had been reported to Special Procedures shortly before or in the immediate aftermath of extraterritorial operations in Afghanistan, Albania, Azerbaijan, Cambodia, Gabon, Kosovo, Kazakhstan, Lebanon and Pakistan. These cases are purportedly emblematic of a much wider practice. The Government of Turkey, in coordination with other States, is reported to have forcibly transferred over 100 Turkish nationals to Turkey, of which 40 individuals have been subjected to enforced disappearance, mostly abducted off the streets or from their homes all over the world, and in multiple instances along with their children.

### **Security co-operation agreements**

Since the attempted coup of 2016, Turkey has targeted the suspected members of the Hizmet/Gülen movement, classified by the Government of Turkey as ‘Gülenist Terror Organization (Fethullahçı Terör Örgütü, FETÖ)’ or ‘Parallel State Organisation (Paralel Devlet Yapılanması, PDY)’. In this context, the Government has signed bilateral security co-operation agreements with multiple States allegedly containing broad and vague references to combatting terrorism and transnational crime. Sources claim that the agreements have been phrased ambiguously to allow for expulsion or abduction of anyone deemed to be a “security risk” from third countries party to the agreements.

There appears to be a clear link in the timing of the alleged operations – most, if not all, have been carried out within two years since the agreements entered into force. For instance, allegations are made that Turkey has signed secret agreements with several States, including Azerbaijan, Albania, Cambodia and Gabon, where several operations are reported to have taken place. Parallel to these agreements it appears that with the aim of facilitating expeditious arrests abroad, Turkish authorities have reportedly revoked citizenships or annulled passports of targeted individuals. Meanwhile, Turkish government dignitaries have been reportedly providing their counterparts with updated lists of “FETÖ suspects or sympathizers” requested for immediate deportation.

Turkish authorities have not only acknowledged direct responsibility in perpetrating or abetting abductions and illegal transfers, but have also vowed to run more covert operations in the future. On September 21, 2018, it is alleged that Turkey’s Presidential Spokesperson stated during a press conference that the Government would continue its operations against the Hizmet Movement, similar to the one in Kosovo (March 29, 2018). It is also reported that in November 2018 the Turkish Foreign Minister briefed the Turkish Parliament that the government had sent extradition requests to 83 countries for 452 individuals suspected of being affiliated to “FETÖ”.

On 26 July 2019, during an official visit to Albania, the Turkish Interior Minister reiterated a request that the Hizmet-administered schools in the country be closed down and their Turkish staff be deported to Turkey. This visit was reportedly

preceded by a Note Verbale dated 28 May 2019, which contained the names and passport numbers of 82 Turkish nationals with residence in Albania whose travel documents had been arbitrarily annulled, with a view to facilitating their arrest and eventual deportation.

In 2017, Turkey's National Intelligence Organization (MIT) allegedly established a separate department tasked with conducting or abetting the operations abroad, to which the Government is believed to have allocated five million US dollars, also to be allegedly used for payments to various criminal and other illegal groups in achieving the stated "objectives". It is further indicated that following the establishment of the department, Turkish nationals began disappearing in large numbers from Afghanistan, Azerbaijan, Cambodia, Gabon, Iraq, Kazakhstan, Kosovo, Malaysia, Moldova, Mongolia, Myanmar, Pakistan, Qatar, Saudi Arabia, Sudan, Ukraine and other countries/territories.

### **State-sponsored extraterritorial abductions and forcible return**

The cases submitted for consideration of Special Procedures appear to follow a well-established pattern.

When Turkish authorities fail to secure the extradition through legal means, they resort to covert operations, in cooperation with law enforcement agencies from the third countries, including intelligence agencies and police. This primarily includes swift illegal actions to place vulnerable individuals outside the protection of the law and their subsequent transfer. In some cases, these acts have directly contravened judicial orders against illegal deportation.

Faced with increasing pressure to comply, host states conduct around-the-clock surveillance, followed by house raids and arbitrary arrests in undercover operations by law enforcement or intelligence officers in plainclothes. The individuals' names are cross-checked against prepared lists, before being taken to unmarked vehicles by force.

They remain forcibly disappeared for up to several weeks in secret or incommunicado detention before deportation. During that period they are often subjected to coercion, torture and degrading treatment aimed at obtaining their consent on voluntary return and at extracting confessions that would inform criminal prosecution upon arrival in Turkey. At this stage, individuals are denied access to medical care and legal representation and are unable to challenge the lawfulness of detention before a competent court, effectively placing them outside the protection of the law. Their family members are unaware of their fate and whereabouts. According to testimonies obtained, the victims of these operations have recounted unabated abuse perpetrated by intelligence agents, primarily aimed at obtaining forced confession. Most prevalent forms of torture include food and sleep deprivation, beatings, waterboarding, and electric shocks. This is

coupled with threats against lives, security and personal integrity of family members and relatives.

*Case of Mr. Mustafa Ceyhan<sup>2</sup>*

In Azerbaijan, Mr. Mustafa Ceyhan was remanded to extradition custody upon crossing into the country with invalid travel documents. Following the court's decision not to order extradition, he was abducted in front of the courthouse by a group of eight men in plainclothes, ostensibly from the Azerbaijani and Turkish intelligence services. Following his abduction, Mr. Ceyhan was reportedly tortured by electric shocks three times until he lost consciousness. He was also shown video footage of his family members and was threatened that they would be kidnapped unless he agreed to be transferred to Turkey. He was deported to Turkey on 26 April 2018.

*Case of Mr. Harun Çelik<sup>3</sup>*

In July 2019, Mr. Harun Çelik was detained at the Tirana airport on the grounds of counterfeiting a Canadian visa. Pursuant to the Law on Foreigners, the High Court sentenced him to eight months in prison. It is alleged that the Turkish authorities requested his immediate deportation, after which an expulsion order was issued by the Albanian Ministry of Interior on 1 January 2020. Instead of being released, Harun Çelik was abducted and his whereabouts remained unknown for several hours.

Mr. Çelik was brought to the Regional Border and Migration Department, where he could not appeal the expulsion order, given that he was denied legal representation. While he was being taken to an unidentified vehicle, several bystanders confirmed that he had been loudly demanding the right to asylum. Shortly after, his lawyer learned that he had been transferred by an Air Albania flight to Istanbul.

*Case of Mr. Mesut Kaçmaz, Ms. Meral Kaçmaz and their two children<sup>4</sup>*

Four members of the Kaçmaz family, including two minors, were abducted by Pakistani state intelligence, held in secret or incommunicado detention for 17 days, and then involuntarily returned to Turkey on 14 October 2017. The house of the Kaçmaz family was raided by intelligence agents in the middle of the night while the family was asleep, presumably after days of surveillance. According to the source, the agents behaved brutally, having pushed, shoved and slapped the

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<sup>2</sup> Transmitted as an opinion by the Working Group on Arbitrary Detention (A/HRC/WGAD/2019/10), as well as a joint allegation letter to Azerbaijan (AL/AZE/1/2019)

<sup>3</sup> Transmitted as a joint urgent appeal to Albania (UA/ALB/1/2020)

<sup>4</sup> Transmitted as an opinion by the Working Group on Arbitrary Detention (A/HRC/WGAD/2018/11), as well as a case treated under standard procedure of the Working Group on Enforced or Involuntary Disappearances (A/HRC/WGEID/114/1)

parents and the children. The family was deprived of any contact with the legal counsel or the extended family, while their identification documents were forcibly taken during the arrest. Whilst being detained incommunicado, the family was reportedly subjected to physical and verbal abuse aimed at coercing them to voluntarily return to Turkey. The transfer was conducted despite a judicial order against deportation issued on 28 September 2017.

*Case of Msrs. Mustafa Erdem, Yusuf Karabina, Kahraman Demirez, Cihan Özkan, Hasan Hüseyin Günakan and Osman Karakaya*<sup>5</sup>

In Kosovo, the Kosovo Intelligence Agency unilaterally annulled residence permits of Msrs. Mustafa Erdem, Yusuf Karabina, Kahraman Demirez, Cihan Özkan, Hasan Hüseyin Günakan and Osman Karakaya on public security grounds in March 2018. They were arbitrarily detained and expelled within 24 hours in collaboration with Turkish intelligence service. In the aftermath of the transfers, the Kosovo Parliamentary Investigation Commission concluded that the six Turkish nationals had been arbitrarily detained, forcibly disappeared and illegally transferred to Turkey in direct violation of Kosovo laws, the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

*Case of Msrs. Osman Özpınar, Ibrahim Akbaş and Adnan Demirönel, their spouses and children*<sup>6</sup>

In Gabon, sources reported that three Turkish nationals and teachers, Msrs. Osman Özpınar, Ibrahim Akbaş and Adnan Demirönel, their three spouses and seven children were arrested and held in incommunicado detention for 23 days, before they were forcibly returned to Turkey due to their alleged affiliation with a foreign terrorist group. They were deported from Gabon to Turkey on 7 April 2018.

*Case of Mr. Osman Karaca*<sup>7</sup>

On 1 November 2018, Mr. Osman Karaca, a dual Mexican-Turkish national, was visiting Cambodia on a business trip, using his Mexican passport. According to the information available, the Turkish diplomatic mission in Phnom Penh reported to the Cambodian police that Osman Karaca was holding a fraudulent Mexican passport, after which the authorities arrested Osman Karaca. The Turkish Embassy then demanded his deportation to Turkey due to “the lack of an international travel document.” It is also alleged that the Turkish authorities have bribed local officials to secure their cooperation in illegal actions to arbitrarily

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<sup>5</sup> Transmitted as a joint allegation letter to Kosovo authorities via UNMIK (AL/OTH/1/2018) and to Turkey (AL/TUR/6/2018)

<sup>6</sup> Transmitted as a joint allegation letter to Gabon (AL GAB 2/2018)

<sup>7</sup> Transmitted to Cambodia through urgent action under art.30 of the Committee on Enforced Disappearance

arrest him. Mr. Karaca was deported to Turkey after he had been subjected to enforced disappearance for several days.

#### *Case of Ms. Ayten Öztürk*

On 8 March 2018, Ms. Öztürk was taken into custody by Lebanese authorities at Beirut airport. On 13 March 2018, she was brought to Turkey on a private aircraft while handcuffed and blindfolded. For many months after, information shared with the mandate holders indicates that she was held captive in a basement and routinely questioned, whilst the interrogators wore masks. She was handcuffed and often subjected to electrical shocks, waterboarding, and hanging upside down. It is alleged that they placed her inside an inflated tire in an attempt to rape her.

One day she was given back her clothes and told that she would be “delivered to justice”. She was then handed over to police officers who transferred her to the counterterrorism unit of Ankara Police Department. After she had been taken to prison, she filed an official complaint but the prosecutor issued a decision not to prosecute and no probe was launched into her allegations of torture.

On 13 June 2019, during her hearing before the Istanbul 3rd High Criminal Court, Ms. Öztürk submitted to the court a 12-page petition about her conditions of detention, torture and ill-treatment.

#### *Case of Mr. Zabit Kişi*

Mr. Kişi was detained by Kazakh authorities at Almaty airport in Kazakhstan. He was later referred to the court, where he received an order of extradition. On 30 September 2017, it is alleged that he was delivered to plainclothes Turkish agents on the same night, and forcibly taken to a non-scheduled aircraft with military camouflage patterns. After arriving into Turkey, he was placed into a cell where he was allegedly detained and tortured for months.

On 18 January 2018, he was brought to the Ankara Courthouse by the Counterterrorism Unit of Ankara Police Department. The police asserted that Mr. Kişi surrendered himself, although he refuted the claim and stated that he was kidnapped, flown to Turkey and detained at Kandıra F-Type High Security Prison.

#### **Lack of accountability**

In some of the above-mentioned cases, host authorities appear to have flouted international protection afforded to migrants, including asylum seekers. According to information received, nine individuals who had previously submitted asylum applications were forcibly disappeared in the context of extraterritorial operations. Six of these individuals were forcibly returned to Turkey. At least one individual was prevented from submitting an asylum claim prior to being forcibly returned to Turkey.

Common to all reported cases is the disregard for the rule of law and legal safeguards aimed at protecting rights, as well as the lack of accountability for enforced disappearances, arbitrary detention, torture and other violations of basic rights. It is further observed that the entrenched culture of impunity for human rights violations perpetrated by state agents has been a main obstacle to holding officials accountable in Turkey.<sup>8</sup> While there are various factors that foster a culture of impunity in the criminal justice system, the lack of judicial independence and impartiality are reported to have been most critical ones. In addition, the recent tendency to incriminate actual or perceived supporters of the Hizmet/Gulen Movement by the country's leadership is presumed to have curtailed independent and effective investigations into these abuses.

As illustrated by the responses of the Turkish, Pakistani and Azerbaijani authorities with respect to the allegations of arbitrary detention<sup>9</sup>, it appears that no investigation into the alleged extraterritorial abductions has been conducted and no one has been held accountable for the reported human rights abuses. In response to these allegations, the authorities either denied that the operations took place or maintained that they were necessary, legal, and proportionate to neutralize an imminent terrorist threat.

The aforementioned individuals forcibly brought to Turkey were largely indicted immediately upon arrival and remanded to pre-trial custody pursuant to counter-terrorism legislation and emergency decrees. Conversely, Msrs. Ceyhan and Kişi as well as Ms. Öztürk were allegedly subjected to short-term enforced disappearance right after their arrival. Their whereabouts and state of health could not be established for several days until their relatives learned that they were imprisoned in Istanbul and Ankara, respectively.

Whilst in detention in Turkey, it is alleged that the individuals have not been permitted to retain lawyers of their choice or contact their family members on a regular basis. Similarly, the authorities are said to have threatened them with reprisals unless their families withdraw applications before national and international human rights bodies. In the case of rare acquittals or early releases, the authorities apparently failed to provide redress to the victims and their families, but rather curtailed their freedom of movement, limited their access to basic services such as employment, and stigmatized them as traitors. Under such circumstances, some were forced to flee Turkey to be able to make a living and for fear of being rearrested.

While we do not wish to prejudge the accuracy of these allegations, we remain deeply concerned at what appears to be a systematic and deliberate practice of

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<sup>8</sup> Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Turkey, A/HRC/33/51/Add.1, inter alia, para. 13, 15, 36 and 37.

<sup>9</sup> Contained in A/HRC/WGAD/2018/11 and A/HRC/WGAD/2019/10, respectively

extraterritorial abductions and forcible return perpetrated or abetted by the Government of Turkey, in co-operation with multiple States.

State-sponsored extraterritorial abductions and forcible return of Turkish nationals from third countries may result in serious violations of the individuals' rights to liberty, personal security, integrity and fair trial in contravention of the Universal Declaration of Human Rights (Articles 3, 5, 9 and 14), the International Covenant on Civil and Political Rights (ICCPR, Articles 7, 9, 13, 14, 18, 19 and 22) and the Convention against torture and other cruel, inhuman or degrading treatment or punishment (CAT, in particular Article 3), as well as the Declaration on the Protection of All Persons against Enforced Disappearance (Articles 2, 3, 6, 7, 13, 14 and 20). In particular, we refer to Article 7 of the Declaration stipulating that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

Turkey appears to have concluded a series of secret security co-operation agreements with other States, with the aim of facilitating expedited capture and arrest of Turkish nationals suspected of affiliation with the Hizmet/Gülen movement. Invoking the principle of legality, we stress that any inter-State agreements or arrangements the execution of which may result in substantial interference with human rights, must be publicly accessible so as to allow individuals to take cognizance of the terms of such agreements and regulate their conduct accordingly. Secret agreements fall short of this requirement and appear to be *prima facie* in contravention of a State's obligation of legal certainty under international human rights law.<sup>10</sup>

Furthermore, any such arrangements and their implementation must be in full compliance with the human rights obligations of all State parties, including in relation to habeas corpus, the respect of due process, and the principle of non-refoulement. The illegal and secret detention and treatment of these individuals outside the protection of the law, constitute impediments to domestic courts exercising effective or fair jurisdiction over the case in question. We note the jurisprudence of the international criminal tribunals in this respect, emphasizing that "in a situation where an accused is very seriously mistreated, maybe even subjected to inhuman, cruel or degrading treatment, or torture, before being handed over to the Tribunal, this may constitute a legal impediment to the exercise of jurisdiction over such an accused."<sup>11</sup>

It is also a matter of concern that such bilateral agreements seem to have been used by Turkey to bypass the conditions and safeguards provided under regular

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<sup>10</sup> E/CN.4/2006/98, para. 46. Noting also that under the European Convention on Human Rights the requirement of legal precision and notice applies both to criminal and civil detriments that may be experienced by an individual. In the context of rendition, there is a consistent view that agreements made on the basis of impugned acts that are imprecise, vague, and lack precision impinge upon the fundamental rights of individuals.

<sup>11</sup> Prosecution v. *Barayagwiza*, ICTR-97-12-AR72, Decision on the Extremely Urgent Motion by the Defence for Orders to Review and/or Nullify the Arrest and Provisional Detention of the Suspect, Appeals Chamber, 3 November 1999, para. 74 and 114.

extradition and deportation processes.<sup>12</sup> We note in this respect that deprivation of nationality for the sole purpose of facilitating expulsion or removal goes against international law norms and standards.<sup>13</sup> Finally, we wish to highlight that violations of international human rights obligations resulting from these agreements engage Turkey's responsibility under international law as well as the third countries parties to the agreements. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has underscored that cooperation agreements in the counter-terrorism arena are not a human rights free zone, and that the fundamental obligations of human rights law unilaterally and consentingly entered into by States apply in their bilateral relations with one another, as do the human rights protections found in customary international law. These obligations are essentially voided where citizens are being transferred (formally lawfully or unlawfully) from one state to another but where serious concerns underpin both the (formally) lawful and unlawful transfer including due process, a lack of meaningful guarantees, and concerns are further heightened given the rights to non-derogable rights including torture, inhuman and degrading treatment in the process of disappearance, or return to Turkey.<sup>14</sup>

We caution against the imprecise or vague use reference to “terrorism threats” as a basis to deny individuals their fundamental non-derogable rights. We remind all States that the definition of terrorism in international law is framed by the precise and specific guidance given by the United Nations Security Council in Resolution 1566 and we urge governments to maintain a definition of terrorism and terrorist acts consistent with the core legal meanings adopted by States there. We also recommend the definition of terrorism developed by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism for your re-consideration.<sup>15</sup>

We note with concern that in almost all instances reported to us the arrests seem to have been carried out without any legal basis; the arresting officers did not identify themselves; no arrest warrants were presented; no explanations were provided to explain or justify the arrests; the persons were taken by force from their home or in the street; they were blindfolded, hooded and handcuffed. They were subsequently detained in secret or incommunicado detention, where they were subjected to acts that may constitute torture, for the purpose of obtaining by force either their consent on voluntary return or confessions of guilt that may be used against them in future prosecutions.

In addressing the issue of **extraterritorial abductions**, we have stressed on numerous occasions that a failure to acknowledge deprivation of liberty by state agents

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<sup>12</sup> Cf. Inter-American Juridical Committee, Legal Opinion on the Decision of the Supreme Court of the United States of America, CJI/Res. II-15/92.

<sup>13</sup> See, for example, International Law Commission, Draft articles on the expulsion of aliens, Yearbook of the International Law Commission, 2014, vol. II, Part Two, Article 8; Human rights and arbitrary deprivation of nationality. Report of the Secretary-General, A/HRC/25/28, para. 26.

<sup>14</sup> <https://www.ohchr.org/EN/Issues/Terrorism/Pages/Statements.aspx>

<sup>15</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin; Ten areas of best practices in countering terrorism [A/HRC/16/51](https://www.ohchr.org/EN/Issues/Terrorism/Pages/Statements.aspx).

and refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration. We have also underlined that procedural safeguards upon arrest and during the first hours of deprivation of liberty are essential to prevent possible violations, such as torture. These safeguards include immediate registration, judicial oversight of the detention, notification of family members as soon as an individual is deprived of liberty, and the hiring of a defence lawyer of one's choice.

Moreover, customary international human rights law mandates robust habeas corpus guarantees and stipulates that a trial should be completed within a reasonable time. Should the allegations be accurate, the aforementioned extraterritorial operations epitomized a denial of justice, insofar as individuals were deprived of liberty in the form of secret, unacknowledged or incommunicado detention and completely removed from the protection of law. They were deprived of the rights to an effective remedy and fair trial whilst held incommunicado, including through forced confession of guilt, denial of the presumption of innocence, inability to challenge the lawfulness of detention, denial of access to legal representation, as well as torture and ill-treatment. Further alarmed by these patterns, we recall that such practices can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment.

When states actively condone such practices, they may not only violate their national laws that provide for fair and due process, but also a host of international obligations, most notably the non-refoulement principle. It is essential that in each case, as provided for in international law, comprehensive individual assessments are carried out to determine whether and what risks for their rights the individual may face upon return. Institutional oversight mechanisms should guarantee that this is happening in an independent, impartial and fair manner.

We are deeply concerned about the personal safety and integrity of the deported individuals as well as those at imminent risk of deportation from third countries. According to multiple sources, persons returned to Turkey upon allegations that they are affiliated to the Hizmet/Gülen movement face a high likelihood of being subjected to torture or ill-treatment as well as unlawful detention and unfair trial. In the case of Ferhat Erdoğan who recently faced imminent deportation from Morocco, the Committee against Torture reaffirmed the need to conduct an individual assessment of the personal and real risk to which the complainant would be exposed in Turkey, taking into account, in particular, the documented treatment by the Turkish authorities of those linked to the Hizmet/Gülen movement.<sup>16</sup>

In the same manner, we are profoundly concerned at the apparent lack of independent and effective investigations by Turkish authorities into the alleged abuses resulting from extraterritorial abductions and forcible return to Turkey of Turkish nationals.

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<sup>16</sup>Décision adoptée par le Comité au titre de l'article 22 de la Convention, concernant la communication n° 827/2017; CAT/C/66/D/827/2017

The implications of extraterritorial rendition, torture, and arbitrary detention as part of the so-called “the war on terror” for the protection of human rights have been closely examined by Special Procedures<sup>17</sup>. Despite repeated calls for greater accountability in these cases, we regret that States have largely denied victims and their families the right to an effective remedy, which should at minimum guarantee cessation of violations, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. We also deplore that in most instances, a policy of impunity has prevailed over these crimes.

We wish to express, in particular, our concern at the specific vulnerability of the children who, together with their parents, have been subjected to enforced disappearance, arbitrary detention, torture and ill-treatment prior to, prior to or after the deportation. All children should enjoy special protection in accordance with the Convention on the Rights of the Child and its Optional Protocols and the Convention on the Elimination of Discrimination against Women. Children must always be treated primarily as victims, while their best interest must equally be a primary consideration. States have the obligation to undertake individualized assessments of each child, determining their needs based on comprehensive, multiagency and multidisciplinary approaches.

In the same light, we underscore the fundamental international protection principle of non-refoulement, which is enshrined in several key human rights instruments ratified by Turkey, in particular CAT (Article 3) and the 1951 Convention on the status of refugees (Article 33). Likewise, the principle of non-refoulement is universally recognized as a principle of international customary law and, as such, constitutes an indispensable component of the customary prohibition of torture and other cruel, inhuman or degrading treatment and punishment.

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 your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations;
2. Please provide information on the factual and legal grounds for the arrest, deportation and deprivation of liberty of the above-mentioned individuals,

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<sup>17</sup> Guantánamo Bay, 14 years on – Rights experts urge the US to end impunity and close the detention facility, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16935&LangID=E>; UN experts deeply concerned by ‘new practice’ of State-sponsored abductions, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23736&LangID=E>

and how these measures and similar operations for the arrest and deportation of Turkish nationals residing in third countries are compatible with Turkey's international legal obligations under the conventions it has ratified;

3. Please provide precise figures of Turkish nationals who were residing in foreign countries and who have been forcibly deported to Turkey at the request of the Government of Turkey; what has happened to these individuals upon their return to Turkey?
4. What are the existing legal framework, procedures and institutional arrangements in place to guarantee the right to life, to liberty, to personal security, to physical and psychological integrity, to due process and to an effective remedy, with a view to prohibiting and preventing enforced and involuntary disappearances of individuals residing in Turkey?
5. Please clarify what is the purpose of the security co-operation agreements signed by Turkey with the third countries where Turkish nationals reside, and how they are compatible with Turkey's international human rights obligations, in particular the cardinal principle of non-refoulement;
6. What are the measures in place in Turkey to guarantee the unhindered exercise of their freedom of movement by Turkish nationals residing in Turkey and abroad?
7. What is the role of Turkey's National Intelligence Organization (MIT) with regard to extraterritorial abductions and forcible return of Turkish nationals living in foreign countries? What oversight mechanism – judicial, parliamentary or others – exercises oversight and control of its activities in this regard?
8. Please provide detailed information about the measures taken by your Excellency's Government to effectively protect, in law, procedures and practice, individuals from ill-treatment and torture in detention. Have independent investigations by competent authorities been conducted into allegations of enforced disappearance, torture and other ill-treatment of Turkish nationals at the hands of security personnel at various stages of their forcible return and since their return to Turkey?

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

**In the current context of a global pandemic, and in accordance with the WHO recommendations of 15 March 2020 concerning the response to Covid-19 in prisons**

**and other places of detention<sup>18</sup>, we urge the Government of Turkey to prioritize the use of non-custodial alternatives to detention at all stages of criminal proceedings, including during the pre-trial phase, during the trial and sentencing, as well as after sentencing. Priority should be given to non-custodial measures for suspected offenders and prisoners with low-risk profiles and dependants, while paying particular attention to pregnant women and those with dependent children.**

**Moreover, given the heightened risk of contagion between persons in custodial and other detention settings, the Subcommittee on Prevention of Torture urges all States to reduce prison populations and other detention populations wherever possible and provide medical care to detainees who are in need of it, outside of the detention facility, whenever possible.<sup>19</sup>**

We may publicly express our concerns in the near future as, in our view, the information in our possession confirms a recurrent matter, indeed a pattern of abuses, warranting serious attention and corrective action. We also believe that the wider public should be informed about the human rights implications of these practices. We would appreciate, however, a prompt response to this communication. Any public expression of our concerns on our part will indicate that we have been in contact with your Government to clarify the issue/s in question.

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

Luciano Hazan

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Felipe González Morales

Special Rapporteur on the human rights of migrants

Fionnuala Ní Aoláin

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

Nils Melzer

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

## **Annex**

### **Reference to international human rights law**

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<sup>18</sup> WHO interim guidance on “Preparedness, prevention and control of COVID-19 in prisons and places of detention (15 March 2020), [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1](http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1), accessed 1 April 2020.

<sup>19</sup> Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic (adopted on 25th March 2020), <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>, accessed 1 April 2020.

We wish to remind Your Excellency's Government of its obligation of ensuring the absolute protection against torture as entailed in articles 2 and 16 of the Convention against Torture (CAT), which Turkey ratified on 2 August 1988, as well as article 7 of the International Covenant on Civil and Political Rights (ICCPR), to which Turkey is a party since 23 September 2003. The universal prohibition of torture and other ill-treatment has become a peremptory norm of international customary law. It is non-derogable and, therefore, continues to apply in situations of internal political instability or any other public emergency. No justification whatsoever may ever be invoked to justify its perpetration.

In this regard, we also remind your Excellency's Government of article 3 of CAT, according to which no State Party shall expel, return ("refouler") or extradite a person to another State, when there are substantial grounds for believing that he or she would be in danger of being subjected to torture, inhuman or degrading treatment or other serious human rights violations. Furthermore, we would like to draw your attention to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. Article 33(1) of the 1951 Convention stipulates that no Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

We would also like to refer your Excellency's Government to article 13 of ICCPR, which provides that "an alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority." In its general comment No. 15, the Human Rights Committee reaffirms this principle (paragraphs 9 and 10).

In addition, we would like to bring to the attention of your Excellency's Government articles 9, 14, 19 and 22 of ICCPR, which establish the right not to be deprived arbitrarily of liberty, the guarantees of due process, and the protection of the rights to freedom of opinion and expression, as well as freedom of association, respectively, and which note that no restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order ("ordre public"), the protection of public health or morals or the protection of the rights and freedoms of others.

As stipulated by the Convention on the Rights of the Child, ratified by Turkey in 1995, States are to ensure that the best interests of the child shall be a primary consideration. Similarly, the child must be provided such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. (Article 3)

States should also ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment, as well as arbitrary arrest, detention or imprisonment. It is incumbent upon States to guarantee the right of every child deprived of liberty to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action. (Article 37)

We also refer to the relevant provisions of 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 and 72/180, which require that States must ensure that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

The Declaration on the Protection of All Persons from Enforced Disappearances establishes that no State shall practice, permit or tolerate enforced disappearances (Article 2) and that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (Article 7). It also proclaims that each State shall ensure the right to be held in an officially recognized place of detention, in conformity with national law, and to be brought before a judicial authority promptly after detention; and accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest (Article 10). In addition, Article 8 provides that no State shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds to believe that he or she would be in danger of enforced disappearance. The Declaration outlines the obligation of States to promptly, thoroughly and impartially investigate any acts constituting enforced disappearance (Article 13) and prevent enforced disappearance of children (Article 20).

We wish to highlight the General Comment on Children and Enforced Disappearance adopted by the Working Group on Enforced or Involuntary Disappearances in 2012. Enforced disappearance of children is an extreme form of violence and it is not justifiable under any circumstance. All forms of enforced disappearances of children are preventable. States therefore should enhance the legislative, administrative, social, and educational measures to prevent children from becoming victims of enforced disappearance.