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**Joint Submission to the Committee against Torture's Consideration of
the Fifth Periodic Report of Türkiye at its 80th Session**

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Introduction

This report is a response to the Turkish government's State Report to the United Nations Committee against Torture (the Committee) under the Convention against Torture (UNCAT). The report has been prepared by the London Legal Group and the Turkey Human Rights Litigation Support Project. ("the NGOs"). It provides the NGOs perspective on Türkiye's progress in implementing UNCAT, with a particular focus on Article 2 UNCAT, which requires State Parties to 'take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction'.

London Legal Group (LLG) is a network of lawyers who provide legal advice and actively engage in advocacy before international courts and institutions such as the European Court of Human Rights (ECtHR), the United Nations Human Rights Council and Treaty and Charter bodies, and the Organisation for Security and Co-operation in Europe (OSCE).

Turkey Human Rights Litigation Support Project (TLSP) provides expertise and legal assistance on human rights issues to domestic lawyers in Türkiye, collaborating closely with Bar Associations and civil societies, to pursue effective strategic litigation.¹ Involving leading academics, human rights lawyers, and researchers both within Türkiye and internationally, the project engages in litigation, research, advocacy, and capacity building. The project supports cases before the Turkish Constitutional Court, the ECtHR and UN bodies.

The NGOs welcome the opportunity to submit this report to the Committee in anticipation of its review of Türkiye's compliance with its obligations under UNCAT. These organisations aim to collaborate constructively with both the Committee and the Turkish government.

¹ See TLSP website: <https://www.turkeylitigationssupport.com/> (last accessed 4 June 2024).

Executive Summary

As a State party to the UNCAT,² Türkiye has committed itself to complying with Article 2 UNCAT, imposing an obligation on States to ‘take all appropriate legislative, administrative, judicial or other measures to prevent acts of torture against all individuals under its jurisdiction’.³ The Committee interprets the positive obligations in Article 2 UNCAT as requiring States parties not only to prohibit torture, degrading, cruel and inhuman treatment in their domestic legal framework, but also to prosecute such acts.⁴ Article 2 UNCAT is designed to address effectively both action and lack thereof by States.⁵

We welcome the prohibition of torture under the Turkish Constitution and its criminalisation under the Turkish Penal Code (TPC).⁶ However, the current domestic law provisions raise concerns due to: (a) the ambiguous distinction between torture and other criminal offences; and (b) the lack of nuances that address the specific needs of torture victims and the limited recognition of their rights. The establishment of a National Preventive Mechanism (NPM) in 2014 represented a positive step taken by Türkiye. Nonetheless, civil society representatives remain concerned about Türkiye’s compliance with the standards set by the Paris Principles⁷ and the Optional Protocol to the Convention against Torture (OPCAT).⁸ In fact, the NPM seems to persist to lack independence as well as structural, functional and financial capacity to fulfil its mandate.⁹

Excessive use of force by law enforcement authorities, prison guards and military personnel remains widespread in Türkiye. Detention facilities in the country are overwhelmed by unresolved issues, such as overcrowding, poor living conditions, torture and ill-treatment of inmates, including beatings, sexual and psychological harassment, and rapes. Furthermore, Türkiye fails to adhere to principles of juvenile justice, and its anti-terrorism laws foster and allow for children and juveniles to be detained for their alleged participation in pro-Kurdish protests.

² UN General Assembly, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 UNTS 85 (UNCAT).

³ UNCAT, article 2.

⁴ Committee against Torture, *General Comment n.2*, CAT/C/GC/2CRP.1/Rev.4, para 11.

⁵ Ibid.

⁶ *Constitution of the Republic of Turkey*, 1982, available at https://global.tbmm.gov.tr/docs/constitution_en.pdf (last accessed 15 April 2024); *Law no. 5237/2004 Penal Code of Turkey*, Articles 94-95, available at https://legislationline.org/sites/default/files/documents/58/Turkey_CC_2004_am2016_en.pdf (last accessed 15 April 2024).

⁷ UN General Assembly, *Paris Principles*, 20 December 1993, A/RES/48/134, available at <http://enoc.eu/wp-content/uploads/2015/01/Paris-Principle.pdf> (last accessed 15 April 2024).

⁸ UN General Assembly, *Optional Protocol to the Convention against Torture and other Cruel Inhuman and Degrading Treatment or Punishment*, 22 June 2006, A/RES/57/199 (OPCAT), article 18.

⁹ TİHV, *National Preventive Mechanism – Evaluation Report*, 2015, available at <http://tihv.org.tr/wp-content/uploads/2015/08/5.-U%C3%96M-Rapor-II-ing.pdf> (last accessed 15 April 2024).

Additionally, it has now become a widespread practice to have torture and ill-treatment inflicted by law enforcement officials also during demonstrations and protests, particularly in the Kurdish region or in demonstrations pro minority rights across the country. Police officers and security forces frequently use excessive and disproportionate force, including indiscriminate use of firearms, tear gas, water cannons, and beatings to manage crowds. This demonstrates that Turkish domestic laws do not comply with international standards on the use of force by law enforcement.

Following the collapse of the ceasefire between Turkish authorities and the Kurdistan Workers' Party (PKK) in 2015, curfews were imposed in southeastern towns and districts. Security operations were launched in civilian areas. The deployment of 10.000 law enforcement officers, using armed weapons in 22 districts across the country resulted in clashes involving the civilian population and gross human rights violations.¹⁰ Turkish police and security forces have engaged in torture, severe ill treatment and abuse of detainees and other gross human rights violations against the civilian population.¹¹ In 2022, Türkiye's Constitutional Court unanimously ruled that no violation of rights took place in the deaths of people affected by the curfew in 2015-2016.¹²

Another important issue in Türkiye is the lack of a comprehensive approach to addressing missing persons, exhuming mass graves, and investigating alleged extrajudicial killings by security forces. Most investigations into disappearances from the 1990s have been hampered by the statute of limitations and a climate of impunity. Concerns persist about ongoing extraterritorial abductions and forced returns under counterterrorism measures. The village guard system, implicated in human rights violations, especially against Kurds, remains active and hinders the return of displaced villagers and political resolution efforts.

In the southeast, the situation has worsened following February 2023 earthquakes. Reports indicate an increase in child deaths and injuries due to armoured vehicles, mines, and unexploded ordnance, particularly after the collapse of the peace process between the Turkish state and the PKK in 2015. Despite the earthquakes, the Turkish government has continued its security and military operations domestically and in neighbouring countries. Human rights violations, including torture, arbitrary arrests, and abuses by security forces, have persisted, especially after the earthquakes and during the state of emergency. There are ongoing disputes over land expropriation and exclusion of residents from reconstruction planning in affected areas. The need for improved investigation and accountability to address these human rights issues remains critical.

¹⁰Hurriyet News, *22 ilde terör operasyonu*, 25 July 2015, available at <https://www.hurriyet.com.tr/gundem/22-ilde-teror-operasyonu-29637761> (last accessed 4 June 2024).

¹¹ Human Rights Watch, Press Release, *Beaten, Threatened with Death by Police – Disturbing Abuse during Security Operations*, 2 September 2015, available at <https://www.hrw.org/news/2015/09/02/turkey-beaten-threatened-death-police> (last accessed 4 June 2024).

¹² Duvar English, *Top Turkish court finds no rights violation in death of Cizre curfew victims*, 8 July 2022, available at <https://www.duvarenglish.com/top-turkish-court-finds-no-rights-violation-in-death-of-cizre-curfew-victims-news-61010> (last accessed 5 June 2024).

The Turkish authorities have not addressed the excessive use of force by security forces and human rights violations against civilians. State representatives often dismiss these reported atrocities as lies and media fabrications, downplaying the seriousness of the human rights violations committed by law enforcement officers and security forces. The Turkish State continues to refuse to conduct thorough and fair investigations into allegations of torture and ill-treatment.

The lack of investigation and impunity for perpetrators undermine Türkiye's obligation to prevent and prosecute torture and ill-treatment. Although torture is criminalized in Türkiye, allegations involving police officers, prison guards, and security forces are not properly investigated, and perpetrators are rarely brought to justice. When prosecutions do occur, sanctions are often reduced or suspended, or the offenders are charged with less serious offences under the TPC. This climate of impunity is further fuelled by the practice of counter-charges against complainants.

These shortcomings in preventing, investigating, and prosecuting torture and ill-treatment constitute a violation of the obligations under Article 2 UNCAT. This legal provision not only mandates an absolute and non-derogable prohibition against torture but also imposes a duty on Türkiye to take positive measures to prevent and address cases of torture within its jurisdiction. There is no justification for Türkiye's failure to take appropriate measures to prevent and eradicate such practices. The NGOs call on Turkish state authorities to amend domestic laws to prevent future cases of torture and ill-treatment, address the climate of impunity and its inherent issue of statutory limitations, ensure the proper investigation and prosecution of torture allegations and related punishments.

List of Recommendations

- *Turkish State authorities should explicitly recognise the rights of torture victims within the Turkish legal system, particularly the right to reparation.*
- *Turkish State authorities should promptly amend the founding law of the Human Rights and Equality Institution of Türkiye, to provide it with the necessary institutional and structural autonomy and independence, enabling it to effectively fulfil its role as Türkiye's NPM.*
- *Türkiye should take all the necessary legislative, judicial and administrative measures to effectively prevent and address torture and ill-treatment in prison. Practical steps should be taken to improve the living conditions of the prison population, ensuring access to water, food, and health services. Overcrowding should be addressed as a priority to prevent torture and ill-treatment. Effective follow-up and investigations into torture allegations against prison guards should be guaranteed by Turkish State authorities.*
- *Türkiye's State authorities should increase its efforts in human rights training, particularly targeting prison staff and law enforcement officials.*

- *Turkish State authorities should provide children and juvenile offenders with their own detention centres, separate from adult facilities. Special training should be organised for prison guards on the prohibition of torture, in the light of the best interest of the child and principles of juvenile justice. Specific measures should be taken to investigate torture against juveniles.*
- *Training on international standards, particularly the Istanbul Protocol, should be provided and made compulsory for professionals, in particular for medical professionals.*
- *Measures should be taken in order for medical examinations to be carried out thoroughly: the Turkish Penal Code should be amended to include punishment for medical professionals who do not conduct fair and thorough medical examinations or provide inaccurate reports.*
- *The Turkish Criminal Procedure Code should be amended to recognise everyone's right to have access to a lawyer. The enjoyment of the latter should not be subject to any condition or limitation.*
- *Turkish State authorities should amend domestic laws regulating the use of force by law enforcement officers in line with international standards, such as the UN Basic Principles on the Use of Force and Firearms.*
- *Circulars and other documents issued by Türkiye's Ministry of the Interior providing guidelines on the lawful use of force by law enforcement officers should be updated to comply with international standards, including international human rights law, and made available to the public.*
- *An independent mechanism should be established and be provided with the necessary structural and functional resources to deal with complaints against unlawful police conduct.*
- *Turkish State authorities should take active steps to manage demonstrations and protests through peaceful means in order to protect protestors from ill-treatment and torture. Investigation into allegations of abuse by officials must be conducted promptly, thoroughly, and independently, without recourse to counter-charge on complainants.*
- *Turkish State authorities should take measures to immediately stop the gross human rights violations amounting to torture and ill-treatment against civilians, in particular in the context of security operations in south-east Türkiye.*
- *Turkish State authorities should initiate an independent investigation into all allegations of torture and ill-treatment during the curfews in place in the Kurdish region of Türkiye, ensuring that members of the Security Forces and government officials who were involved are held to account.*
- *Turkish State authorities should allow international monitoring bodies to access to the region where security operations are taking place in order to ensure that security forces are complying*

with international standards on human rights and the use of force. Turkish State authorities should also allow international monitoring bodies to render their visit reports public, in compliance with the principles of transparency and accountability.

- *Turkish State authorities should immediately take steps to end the climate of impunity by initiating impartial investigations and prosecution, in particular in cases of human rights violations allegedly perpetrated by members of the law enforcement, in order to guarantee accountability.*

1. Torture in Türkiye – a Brief Overview

Türkiye is a State Party to the UNCAT,¹³ and, therefore, it is under the obligation to comply with Article 2 of the Convention. Since Türkiye's ratification of UNCAT in 1988, a number of domestic measures have been taken to comply with the positive obligations enshrined in the Convention. Turkish law prohibits torture in the Constitution and criminalises it under the Criminal Code, under which torture as well as cruel, inhuman and degrading treatment are identified as punishable offences.¹⁴

However, recent historical developments reveal that the prevalent practice of torture and ill-treatment remains as an unresolved problem in the country. The authoritarian inclinations of the government over the past years and expansion of the powers of the law enforcement officers resulted in excessive use of force by the police against dissidents and political opponents as well as minority groups, both during demonstrations and in detention facilities. There is, furthermore, alarming lack of effective investigations into torture allegations, involving issues such as impunity and statutory limitations, as well as regressive legal amendments, which are in violation of Türkiye's obligations under Article 2.

During its second Universal Periodic Review (UPR) cycle in January 2015, the Turkish government received over twenty recommendations on torture prevention, excessive use of force by state agents, and human rights violations in detention.¹⁵ Comparatively, Türkiye's third UPR cycle, taking place in January 2020, shows that the number of recommendations on the above-mentioned issues has increased to a 30 recommendations.¹⁶ The recommendations also included aligning Anti-Terror laws with international standards and ceasing its use to interfere with freedom of press; creating a secure environment, both online and offline, for human rights defenders to pursue their peaceful activities; refraining from arbitrary arrests; and ensuring free exercise of basic rights without facing retaliation. Türkiye backed some of these recommendations,

¹³ UNCAT.

¹⁴ Turkish Penal Code, Articles 77, 94-96.

¹⁵ UPR Info Database, data available at <https://upr-info-database.uwazi.io/> (last accessed 6 June 2024).

¹⁶ UPR Info Database, data available at <https://upr-info-database.uwazi.io/> (last accessed 6 June 2024).

claiming they had already been put into action. The remaining ones, which covered aspects like harmonizing Anti-Terror laws with international standards, reducing the undue prosecution of journalists and human rights defenders, and enacting comprehensive laws for human rights protection, were simply acknowledged by Türkiye.¹⁷

The pressing need to address these issues is confirmed by the data provided by the Human Rights Foundation of Türkiye (TİHV or HRFT), a non-governmental organization providing treatment and rehabilitation services for torture survivors and documenting human rights violations in Türkiye. The HRFT declared that a total of 1201 people applied for their services on the grounds that they were subjected to torture and other ill-treatment in 2022. Some of these applicants are relatives of torture victims, while others were subjected to torture and other ill-treatment practices outside of Türkiye. Over the first five months of 2023, HRFT received applications from 270 people.¹⁸ Data also show how in 2023, a total of 750 people applied to the HRFT on the grounds that they were subjected to torture and ill-treatment.¹⁹ Of the applicants, 343 of the applicants stated that they were tortured and ill-treated in the same year. At least 396 people were subjected to torture and other ill-treatment outside of detention places.²⁰ In 2023, no fewer than 108 individuals endured torture and other forms of ill-treatment in public spaces, while 14 others experienced similar abuses during home raids. According to the data of HRFT Documentation Center, as a result of the intervention of law enforcement forces in peaceful protests and events held within the scope of freedom of assembly and demonstration, at least 3679 people, including 58 children, were detained in 2023 with practices amounting to torture and ill-treatment, and at least 44 people were injured.²¹

One of the main reasons for the increase of the practice of torture and ill-treatment in Türkiye is the on-going conflict between State authorities and the PKK. Starting from the state of emergency declared in 2015, when clashes erupted between state security forces and the PKK, the peak periods of the armed conflict have been marked by grave human rights violations. Authorities claim that the curfews are imposed to capture PKK members, remove barricades, and safeguard people and their property. Based on data from the HRFT Documentation Center, Türkiye experienced at least 252 officially declared round-the-clock and indefinite curfews in 11 cities and at least 45 districts over a span of two

¹⁷ Human Rights Watch, *Adoption of the Outcome of the UPR of Turkey*, 29 September 2020, available at <https://www.hrw.org/news/2020/09/29/adoption-outcome-universal-periodic-review-turkey> (last accessed 15 April 2024).

¹⁸ TİHV, *Verilerle Türkiye'de İşkence*, 26 June 2023, available at <https://tihv.org.tr/wp-content/uploads/2023/06/Verilerle-Turkiye-de-iskence-26-06-2023.pdf> (last accessed 15 April 2024).

¹⁹ TİHV, *Human Rights Violations in Turkey*, 10 December 2023, available at <https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/verilerle-2023-yilinda-insan-haklari-ihlalleri/> (last accessed 15 April 2024).

²⁰ Ibid.

²¹ Ibid.

years.²² Since 2016, members of the Kurds and Gülenists²³ are at high risk of accusations of terrorism-related charges, and hence torture and inhumane treatment.²⁴ No further actions have been taken regarding this situation. In 2022, Türkiye's Constitutional Court unanimously ruled that no violation of rights took place in the deaths of people affected by the curfew in 2015-2016.²⁵ The court found that Article 17 of the Constitution, concerning the “right to life” was not breached as the lethal force used by police was necessary to ensure security.²⁶ The decision was harshly criticised by the representative of the victims' families, who plans to apply to the ECtHR, bearing in mind that in 2019 the ECtHR dismissed 34 applications on the grounds that not all domestic legal avenues had been pursued.²⁷

Moreover, although the designation by the Turkish government of a NPM, as required under its obligation under the OPCAT,²⁸ was presented a step forward, the means and instruments, or the lack thereof, chosen by Turkish State authorities to prevent and address torture still raise concerns. The Human Rights and Equality Institution of Türkiye (HREIT), which assumed the function of NPM since its establishment in 2016 does not contribute to the prevention of torture, and furthermore harms efforts to prevent torture.²⁹

2. Torture Prevention – Domestic Measures and Norms

Torture is prohibited under Turkish domestic law: for instance, Article 17/3 of the Constitution of Türkiye³⁰ establishes that “no one shall be subjected to torture or ill-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity”. Moreover, Article 94 of the TPC punishes any act, committed by a public officer, which is “incompatible with human dignity, and which causes a person to suffer physically

²² HRFT, *Written Comments on the Draft General Comment of the Subcommittee on Prevention of Torture (SPT) on the Article 4 of the OPCAT (Optional Protocol to the Convention against Torture)*, 5 April 2023, available at <https://www.ohchr.org/sites/default/files/documents/hrbodies/spt-opcat/cfis/gc1-art4/submission-spt-gc-article4-HRFT.pdf> (last accessed 15 April 2024).

²³ The Gülenists are followers of an Turkish Islamic preacher Fethullah Gülen, currently based in the USA. Turkish government has been accusing them of orchestrating the coup attempt of 15 July 2016 and designated them as a terrorist organisation.

²⁴ HRFT, *Written Comments on the Draft General Comment of the Subcommittee on Prevention of Torture (SPT) on the Article 4 of the OPCAT (Optional Protocol to the Convention against Torture)* (n. 24).

²⁵ Duvar English, *Top Turkish court finds no rights violation in death of Cizre curfew victims*, 8 July 2022, available at <https://www.duvarenglish.com/top-turkish-court-finds-no-rights-violation-in-death-of-cizre-curfew-victims-news-61010> (last accessed 5 June 2024).

²⁶ SCF, *Top court finds no rights violations of victims of 2015 curfew in Kurdish-majority city*, 5 November 2022, available at <https://stockholmcf.org/top-court-finds-no-rights-violations-of-victims-of-2015-curfew-in-kurdish-majority-city/> (last accessed 5 June 2024).

²⁷ Duvar English, *Top Turkish court finds no rights violation in death of Cizre curfew victims*, 8 July 2022, available at <https://www.duvarenglish.com/top-turkish-court-finds-no-rights-violation-in-death-of-cizre-curfew-victims-news-61010> (last accessed 5 June 2024).

²⁸ OPCAT, Article 17.

²⁹ HRFT, *Written Comments on the Draft General Comment of the Subcommittee on Prevention of Torture (SPT) on the Article 4 of the OPCAT (Optional Protocol to the Convention against Torture)* (n. 24).

³⁰ *Constitution of the Republic of Turkey*, 1982, available at https://global.tbmm.gov.tr/docs/constitution_en.pdf (last accessed 15 April 2024).

or mentally, or affects the person's capacity to perceive or his ability to act of his own will or insults them".³¹ The penalty established for such conduct is imprisonment for a term of three to twelve years, and no statute of limitation is present. Although the aforementioned provisions seem to comply with the obligations enshrined in Article 2 UNCAT, they do present issues if analysed from a human rights law perspective. Provisions prescribing prosecution of the offense of torture still remain obscure. Criminal complaints against the offense of torture either end up in non-prosecution decisions on various grounds or are investigated under "excessive use of force" or "misuse of public duty" offenses that prescribe lesser sentences and are subject to statute of limitations.³²

Article 17/3 of the Turkish Constitution, if read in conjunction with Article 40 on the right to access to authorities, Article 125 on the strict liability of the administration and Article 129 on actions for damages against the administration, stipulates that the State has an obligation to provide compensation for cases of unlawful treatment by public officers. However, there is no provision explicitly establishing a right to reparation for torture victims, meaning that torture victims do not receive the support they need by national authorities.³³

Moreover, although Article 94 of the TPC explicitly punishes acts of torture perpetrated by public officials, it should be noted how this provision fails to list one element of the crime of torture:³⁴ purpose. While, on the one hand, this could pave the way for a broader interpretation of the prohibition of torture, one that is not limited to the purposes listed in Article 1 UNCAT; on the other hand, it should also be underlined how, particularly in a country where torture is still systemic, the lack of the element of purpose in the definition of torture might result in a higher risk of impunity for perpetrators. Indeed, blurring the lines between torture and other punishable conducts, adding ambiguity to the distinction between torture and other crimes, renders accountability harder to achieve.³⁵

Lastly, it is worth mentioning that the Turkish Criminal Procedure Code fails to address the specific needs of torture victims.³⁶ Indeed, Article 234 of the Code broadly refers to the rights of the "victims of a crime", without providing specific references to torture

³¹ Turkish Penal Code, Articles 94-95.

³² TİHV, *Torture in its Various Dimensions in Turkey 2020*, 26 June 2020, available at <https://ihd.org.tr/en/wp-content/uploads/2020/07/I%CC%87HD-HRET-2019-Torture-Report.pdf> (last accessed 5 June 2024).

³³ For an overview of the Turkish legal framework on torture prevention, see TİHV, *Comparative Study on the Legal Framework of Torture in Turkey and Israel*, July 2015, p. 18 ss, available at <http://tihv.org.tr/wp-content/uploads/2015/09/Comparative-Study.pdf> (last accessed 15 April 2024).

³⁴ UNCAT, Article 1.

³⁵ TİHV, *Comparative Study on the Legal Framework of Torture in Turkey and Israel*, July 2015, p. 18 ss, available at <http://tihv.org.tr/wp-content/uploads/2015/09/Comparative-Study.pdf> (last accessed 15 April 2024).

³⁶ *Turkish Criminal Procedure Code*, 2005, available at https://sherloc.unodc.org/cld/uploads/res/document/tur/2005/turkish_criminal_procedure_code_html/2014_Criminal_Procedure_Code.pdf (last accessed 4 June 2024).

survivors.³⁷ Along these lines, the Criminal Procedure Code does not establish safeguards in relation to torture victims, their lawyers and witnesses during criminal investigations on torture allegations, which contributes to strengthening the impunity issue in relation to public officials accused of conducts incompatible with the prohibition of torture under Article 94 of the TPC.³⁸

A legal framework that, despite prohibiting torture and ill-treatment, leaves the above-mentioned gaps in relation to the protection and safeguards to be offered to torture victims is not compatible with the obligation imposed by Article 2 UNCAT. The absence of the purpose element in Article 94 of the TPC, the lack of specific references to the rights of torture survivors and the failure to provide appropriate safeguards to victims, lawyers and witnesses, paired with the lack of an explicit right to reparation for torture survivors, do not comply with Türkiye's obligation to take "effective measures to prevent public authorities and other persons acting in an official capacity from directly committing, instigating, inciting, encouraging, acquiescing in or otherwise participating or being complicit in acts of torture".³⁹ When a State party to UNCAT, such as Türkiye, fails to fulfil such obligations, they are in violation of the Convention.⁴⁰

2.1 National Preventive Mechanism

In January 2014, Türkiye established its NPM under the OPCAT, designating the Human Rights Institution of Turkey (HRIT) for this role.⁴¹ Article 17 of OPCAT mandates that NPMs visit detention facilities, recommend improvements, and comment on laws to prevent torture, requiring them to be independent and well-resourced.⁴² Concerns arose about HRIT's ability to fulfil its NPM duties due to doubts about its independence, resources, and expertise.⁴³ A 2015 HRIT report highlighted these issues, questioning HRIT's compliance with OPCAT's standards.⁴⁴ HRIT acknowledged its shortcomings and drafted amendments to its founding law, sharing these with human rights

³⁷ International Rehabilitation Council for Torture Victims, *Torture in Turkey, Country Factsheet*, 2014, p. 3, available at www.irct.org (last accessed 15 April 2024).

³⁸ Ibid.

³⁹ Committee against Torture, *General Comment n.2*, CAT/C/GC/2CRP.1/Rev.4, para 17.

⁴⁰ Ibid.

⁴¹ Government of Turkey, *Cabinet Decree n. 2013/5711*, 28 October 2014, available at <http://www.resmigazete.gov.tr/eskiler/2014/01/20140128-4.htm> (last accessed 10 March 2016).

⁴² Association for the Prevention of Torture, *National Human Rights Institutions as National Preventive Mechanisms: Opportunities and Challenges*, 2013, p. 2, available at http://www.apt.ch/content/files_res/apt-briefing-on-nhris-as-npms-en.pdf (last accessed 15 April 2024).

⁴³ OPCAT, Article 18.

⁴⁴ TIHV, *National Preventive Mechanism – Evaluation Report*, 2015, available at <http://tihv.org.tr/wp-content/uploads/2015/08/5.-U%C3%96M-Rapor-II-ing.pdf> (last accessed 15 April 2024). Amnesty International, *The State of the World's Human Rights – Report 2015/2016*, p. 375, available at <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/> (last accessed 15 April 2024).

organizations.⁴⁵ During Türkiye's UPR in January 2015, the Human Rights Council (HRC) and the UN Sub-Committee on the Prevention of Torture (SPT) recommended amending HRIT's law to meet international standards.⁴⁶ An SPT delegation visited Türkiye in October 2015, encouraging the government to ensure the NPM's full functionality, independence, and adequate resourcing.⁴⁷

However, in January 2016 the government unexpectedly announced a new draft legislation establishing the HREIT in replacement of the HRIT as the new body acting as the NPM.⁴⁸ In spite of the repeated criticism directed at the HRIT by UN special rapporteurs, the HRC and other intergovernmental bodies as well as human rights groups, for its lack of adherence to the Paris Principles, the 2016 draft seemed to bring the proposed new body even closer to the executive, therefore accentuating its lack of independence as NPM. The HREI conducts prison visits but lacks clear and independent criteria for announced visits.⁴⁹ During some visits, it only engages with the administration without speaking to detainees. It has either not visited or visited with significant delays the prisons with the highest allegations of human rights violations.⁵⁰ Most of its recommendations focus on minor issues rather than addressing serious human rights abuses. The HREI needs to enhance its credibility by effectively addressing human rights issues and fostering constructive dialogue with civil society.

The HREI's effectiveness is hampered by legislative and structural constraints. It doesn't accept applications from civil society organizations and is overly cautious in handling cases of torture and ill-treatment. In 2022, 132 out of 3,638 applications submitted to the parliament's Human Rights Inquiry Committee were left unprocessed.⁵¹ The environment for civil society organizations and human rights defenders remains constrained due to ongoing pressures, including judicial and administrative investigations, threats, surveillance, arbitrary detentions, and ill-treatment. Despite being designated as the NPM, the HREI doesn't meet the essential criteria outlined in the OPCAT and it has not effectively handled cases referred to it. Reports from the Council of Europe's Committee for the Prevention of Torture (CPT) for the years 2018, 2021, 2022 and 2024 have not been

⁴⁵ TiHV, *National Preventive Mechanism – Evaluation Report*, 2015; p. 12, available at <http://tihv.org.tr/wp-content/uploads/2015/08/5.-U%C3%96M-Rapor-II-ing.pdf> (last accessed 15 April 2024).

⁴⁶ Human Rights Council, *Draft Report of the Working Group on the Universal Periodic Review – Turkey*, A/HRC/WG.6/21/L.12, 29 January 2015, available at http://www.upr-info.org/sites/default/files/document/turkey/session_21_-_january_2015/a_hrc_wg.6_21_l.12.pdf (last accessed 15 April 2024).

⁴⁷ UN Office of the High Commissioner for Human Rights, *UN Experts encourage Turkey to fulfil commitments thorough effective detention monitoring body*, 9 October 2015, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16589&LangID=E> (last accessed 15 April 2024).

⁴⁸ See the official website of the Human Rights and Equality Institution of Türkiye, available at <https://www.tihk.gov.tr/en> (last accessed 15 April 2024).

⁴⁹ European Commission, *Türkiye 2023 Report*, 8 November 2023, available at https://neighbourhood-enlargement.ec.europa.eu/turkiye-report-2023_en (last accessed 16 April 2024).

⁵⁰ Ibid.

⁵¹ Ibid.

authorized for publication by the authorities.⁵² On top of this, there are documented instances of violence, torture, and other abuses by the police and gendarmerie in areas affected by the February 2023 earthquakes. In this context, lawyers who documented torture cases have faced threats. The SPT visited Türkiye in September 2022 to evaluate the implementation of its previous recommendations by the authorities and Türkiye's NPM.⁵³ However, effective investigations into allegations of torture and ill-treatment remain scarce.

The lack of an NPM capable of effectively exercising its role in preventing torture, cruel, inhuman, and degrading treatment, not only constitutes a violation of Türkiye's obligations under OPCAT, but such shortcomings are not compatible with UNCAT, as they constitute further evidence that Türkiye has yet to comply with its obligation to take all the "effective legislative, administrative, judicial measures to prevent acts of torture in any territory under its jurisdiction",⁵⁴ as required under Article 2.

2.2 Recommendations

- *Turkish State authorities should formally recognise the rights of the victims of torture within the Turkish legal system. Specifically, the right to reparation should be explicitly recognised and implemented into the domestic legal framework.*
- *Turkish State authorities should promptly amend the founding legal framework of the Human Rights Institution of Turkey, to provide it with the required institutional and structural autonomy and independence, enabling it to effectively fulfil its duties and responsibilities as Türkiye's National Preventive Mechanism.*

3. Torture and Ill-treatment Allegations

Torture in relation to police brutality stands out as a significant and widespread issue in Türkiye. Reports from both media outlets and civil society consistently depict Turkish police officers as overstepping their authority and employing excessive force against civilians, frequently resulting in instances of torture or ill-treatment. Reported incidents of torture and ill-treatment within detention facilities or amid police or military actions against the PKK have notably risen, especially after the end of the State of Emergency in 2018 and the earthquakes in 2023.⁵⁵ Allegations of torture and ill-treatment carried out within police and gendarmerie custody and prison have rarely been effectively

⁵² Ibid.

⁵³ Ibid. See also UN OHCHR Press Release, *Türkiye needs to strengthen effective torture prevention measures, UN experts find*, 21 September 2022, available at <https://www.ohchr.org/en/press-releases/2022/09/turkiye-needs-strengthen-effective-torture-prevention-measures-un-experts> (last accessed 16 April 2024).

⁵⁴ UNCAT, Article 2.

⁵⁵ Amnesty International, *The State of the World's Human Rights – Report 2023/2024*, available at <https://www.amnesty.org/en/documents/pol10/7200/2024/en/> (last accessed 25 April 2024).

investigated, and perpetrators even more rarely prosecuted.⁵⁶ The following sections will provide an overview of the prevailing situation in Türkiye in relation to excessive use of force by law enforcement personnel.

3.1 Torture and Ill-treatment in Places of Detention

Overcrowding remains a major problem in Türkiye, as its prison population exceeds 300,000 and continues to be the largest in Europe.⁵⁷ The Human Rights Association (İHD) prison report highlights the increasing number of prisons in Türkiye, with 19 new prisons opened in 2023, and 12 additional ones in 2024.⁵⁸ According to this report and to the General Directorate of the Prison and Detention Houses, as of 2 May 2024, the Turkish prison population counts 282,709 convicts and 46,442 detainees, for a total of 329,151 inmates.⁵⁹ In contrast with these data, the combined capacity of the 403 penal institutions in Türkiye is 295,328.⁶⁰ In 20 years, the country has witnessed an exponential growth of the incarcerated population that has not grown proportionally to the prisons capacity, therefore resulting in overcrowding. According to human rights organisations, the situation is exacerbated by the lack in prison facilities of access to water, heating, ventilation, lighting and proper healthcare.⁶¹ On 5 December 2023, the ECtHR dealt with a case on poor prison conditions suffered by eight people who were given less than three square meters of living space in overcrowded prisons in the aftermath of the 2016 coup.⁶² The Court unanimously ruled that Türkiye violated Article 3 of the ECHR.⁶³

Türkiye has experienced a resurgence of torture and ill-treatment in custody since the coup attempt on 15 July 2016. There has been an increased use of arbitrary and pre-trial detention, as well as numerous instances of torture and suspicious deaths at the hands of state agents allowing for prolonged pre-trial detention without adequate court oversight or redress options. Since the coup attempt in 2016, allegations of torture, suspicious deaths in custody and enforced disappearances have become extremely common. There have been no effective investigations into cases of enforced disappearance and torture. In 2021, allegations of torture and suspicious deaths in custody became worryingly common in

⁵⁶ Human Rights Watch, *'Turkey' in World Report 2024*, 2024, available at <https://www.hrw.org/world-report/2024/country-chapters/turkey> (last accessed 16 April 2024.)

⁵⁷ See data available at <https://www.prison-insider.com/en/countryprofile/turkiye-2024> and <https://www.prisonstudies.org/country/turkey> (last accessed 20 April 2024).

⁵⁸ İHD, *2023 Prisons Report*, 1 June 2024, available at <https://www.ihd.org.tr/wp-content/uploads/2024/06/2023-Y%C4%B1%C4%B1-Hapishane-Raporu.pdf> (last accessed 5 June 2024).

⁵⁹ See data from the General Directorate of the Prison and Detention Houses, available at <https://cte.adalet.gov.tr/Resimler/Dokuman/6052024163106istatistik-1.pdf> (last accessed 5 June 2024).

⁶⁰ See data from the General Directorate of the Prison and Detention Houses, available at <https://cte.adalet.gov.tr/Home/SayfaDetay/cik-genel-bilgi> (last accessed 5 June 2024).

⁶¹ United States Government, *Turkey 2023 Human Rights Report*, p. 5, available at <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/turkey/> (last accessed 20 April 2024).

⁶² ECtHR, *İlerde and Others v. Türkiye* (Judgment) Nos. 35614/19 and 10 others, 5 December 2023, available at <https://hudoc.echr.coe.int/fre?i=001-229320> (last accessed 17 April 2024).

⁶³ *Ibid*, para 3.

Türkiye. NGOs and opposition politicians reported prison administrators used strip searches punitively against prisoners and visitors, particularly in cases involving prisoners convicted on terrorism charges. Some human rights activists and lawyers reported prisoners and detainees were sometimes arbitrarily denied access to family members and lawyers.⁶⁴

In recent years, breaches of procedural safeguards, including evasion of legal oversight, arbitrariness, deliberate negligence, prolonged periods of detention, malfunctioning monitoring and prevention mechanisms, or the absence of independent oversight, have led to a significant rise in incidents of torture and other forms of ill-treatment in official detention facilities. The İHD reports at least 17,218 violations under the heading of torture, including 772 cases of beating, threats, and insults, 175 strip searches, 567 oral cavity searches, 252 standing counts, and 240 instances of being denied outdoor time.⁶⁵ In 2023, 109 prisoners filed complaints with TİHV alleging torture and ill-treatment.⁶⁶ According to the TİHV Documentation Center, at least 192 individuals experienced torture and ill-treatment in official detention centres in 2020, with one suspicious death recorded in custody. This number rose to at least 86 individuals in the first five months of 2021. During the same period, one individual was subjected to torture and ill-treatment by a superior officer while fulfilling mandatory military service, and one suspicious death occurred in custody.

Incidents erupted within Hatay's T-Type Closed Prison when authorities refused inmates' pleas to visit their earthquake-affected families.⁶⁷ While pilot programs are underway across several prisons to enhance familial contact through secure video teleconferencing, reports persist of human rights infringements, encompassing arbitrary constraints on detainee rights, obstructed medical access, maltreatment, restricted visitation, and solitary confinement. Efforts to advance education, rehabilitation, and social reintegration programs remain constrained, while the introduction of new S-type security prisons exacerbates prisoner isolation.⁶⁸ Communal activities remain scarce and discretionary, with transfers to remote facilities occurring abruptly, often disrupting family visits, particularly impacting impoverished families and juvenile detainees. Allegations of

⁶⁴ United States Government, *Turkey 2023 Human Rights Report*, p. 5, available at <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/turkey/> (last accessed 20 April 2024).

⁶⁵ İHD, *2023 Prisons Report*, 1 June 2024, available at <https://www.ihd.org.tr/wp-content/uploads/2024/06/2023-Y%C4%B1%C4%B1-Hapishane-Raporu.pdf> (last accessed 5 June 2024).

⁶⁶ TİHV, *Human Rights Violations in Turkey*, 10 December 2023, available at <https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/verilerle-2023-yilinda-insan-haklari-ihlalleri/> (last accessed 15 April 2024).

⁶⁷ European Commission, *Türkiye 2023 Report*, 8 November 2023, available at https://neighbourhood-enlargement.ec.europa.eu/turkiye-report-2023_en (last accessed 16 April 2024); EuroNews, *Three inmates dead in earthquake-hit Turkey prison riot*, 9 February 2023, available at <https://euroweeklynews.com/2023/02/09/three-inmates-dead-in-earthquake-hit-turkey-prison-riot/> (last accessed 24 May 2024).

⁶⁸ European Commission, *Türkiye 2023 Report*, 8 November 2023, available at https://neighbourhood-enlargement.ec.europa.eu/turkiye-report-2023_en (last accessed 16 April 2024).

discrimination by prison officials, notably against LGBTIQ individuals, persist without resolution. Investigations into allegations of suicides, strip-searches, and discriminatory conduct by guards show no signs of improvement, raising concerns about the Forensic Medicine Institute's autonomy.⁶⁹ Uneven and sometimes withheld medical care for sick inmates leads to deaths in custody or shortly after release. Following complaints regarding food quality and living conditions, the daily allowance for prison meals was raised from TRY 20 to TRY 50 in March 2023.⁷⁰

Violence against women, often amounting to torture and cruel, inhuman and degrading treatment, also remains a common and unmitigated practice in detention centres. For example, in August 2023, three female political prisoners, Mizgin Atabey, Lale Kabişen and Nazlıcan Barışer, detained in the L-Type Prison in Patnos district of Ağrı, Türkiye, were subjected to torture and ill-treatment.⁷¹ The women report of having been battered for about 40 minutes by approximately 40 correctional officers and a gendarmerie unit, hogtied for four hours in their cells, and dragged by their hair on the floor.⁷² The İHD reported the involvement in the torture also of prison authorities. In addition to the beating, ill-treatment and use of force, the prisoners were dragged by their hair to the prison vehicle and transported “hogtied” to the hospital.⁷³

The above examples, not only provide further proof of how torture and ill-treatment still constitute a widespread issue, particularly vicious as vulnerable groups of individuals, such as children or women, are often the designated victims of such practices, but they also show how Turkish State authorities are still far from complying with their obligations under UNCAT. On the one hand, State authorities do not seem to have made enough efforts, in practice, to address torture and ill-treatment. On the other hand, the deep involvement of police officers and prison guards in serious human rights violations suffered by detainees, indicates how often Turkish authorities willingly allow such incidents to happen or actively participate as perpetrators – clearly violating their obligation under Article 2 to take all the necessary measures, whatever they might be, to effectively prevent and address torture and ill-treatment.⁷⁴

3.1.1 Medical Examination

When a person is arrested and his or her detention is ordered by the prosecutor, the latter is under the obligation to order the suspect to be medically examined. Under Turkish law,

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ ANF, *PKK and PAJK Committees call on people to protest torture in prisons*, 12 September 2023, available at <https://anfenglishmobile.com/human-rights/pkk-and-pajk-call-on-people-to-protest-torture-in-prisons-69265> (last accessed 16 April 2024).

⁷² ANF, *Female prisoners tortured in Patnos transferred to other prisons*, 21 September 2023, available at <https://anfenglishmobile.com/human-rights/female-prisoners-tortured-in-patnos-transferred-to-other-prisons-69430> (last accessed 16 April 2024).

⁷³ Ibid.

⁷⁴ UNCAT, Article 2.

medical examinations need to be carried out either by a state hospital or by the Institute of Forensic Medicine.⁷⁵ The law requires the medical examination to be repeated in case of release or transfer to another prison. Medical examination is a recognised right for alleged victims of torture: not only, at an international level, Türkiye is a State party to the Council of Europe Convention on Human Rights and Biomedicine,⁷⁶ but, at a domestic level, Turkish State authorities are bound by their obligations under the Regulation on Apprehension, Detention and Statement Taking.⁷⁷

While medical examination is required by law as a safeguard measure for detainees, particularly directed at preventing torture or ill-treatment, this procedure is reportedly often overlooked or not taken seriously by the appointed doctor. It is not uncommon for the medical examination be carried out by simply asking detainees whether they have any complaints, rather than conducting a thorough exam. The latter clearly constitutes a violation of the Istanbul Protocol,⁷⁸ on which Turkish doctors are still to be given any professional training, as well as a practice contrary to Articles 9/9 and 9/10 of the Regulation on Apprehension, Detention, and Statement Taking which state that doctors have a duty both to inform the prosecutor should they find any sign of torture or ill-treatment, and to conduct thorough examinations. Lastly, according to domestic law, the only avenue made available to torture victims to issue a complaint against their inaccurate medical examination, is by bringing a case before the Turkish Medical Association Discipline Committee.

There is a significant number of severely ill prisoners in Türkiye. According to the the 2022 İHD prisons report there are 1,517 sick prisoners in Turkish prisons, including 651 in critical condition, with an unspecified number of them being women.⁷⁹ According to İHD, obstacles to the right to health are at the forefront of the rights violations experienced by people in prison, with increasingly severe isolation conditions causing damage to both their physical and mental health.⁸⁰ In 2023, there were 13,819 female and 2,983 child

⁷⁵ *Regulation on Apprehension, Detention and the Taking of Statements*, 2005, Article 9/5.

⁷⁶ Council of Europe, *Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine*, 4 April 1997, available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007cf98> (last accessed 4 June 2024).

⁷⁷ *Regulation on Apprehension, Detention and the Taking of Statements*, 2005, Article 9/5.

⁷⁸ UN OHCHR, *Istanbul Protocol*, 2004, available at <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf> (last accessed 4 June 2024).

⁷⁹ İHD, *2022 Prisons Report*, 27 September 2023, available at https://ihd.org.tr/en/wp-content/uploads/2023/08/sr2023_2022-Prisons-Report.pdf (last accessed 4 June 2024). See also Turkish Minute, *İHD report reveals at least 10,789 rights violations in 153 Turkish prisons in 2022*, 1 August 2023, available at <https://www.turkishminute.com/2023/08/01/ihd-report-reveal-at-least-10789-rights-violations-in-153-turkish-prison-in-2022/> (last accessed 4 June 2024).

⁸⁰ İHD, *Yaşam Hakkı Korunsun, Hasta Mahpuslar Serbest Birakılsın!*, 29 April 2022, accessed 11 December 2023, available at <https://www.ihd.org.tr/yasam-hakki-korunsun-hasta-mahpuslar-serbest-birakilsin/>. See also Idil Aydınoglu et al., *Prison constructions in Turkey: An endless race to nowhere?*, Penal Reform International, 28 November 2022, accessed on 11 December 2023, available at www.penalreform.org/blog/prison-constructions-in-turkey-anendless-race-to.

detainees, whose rights to healthcare and privacy were being violated most frequently.⁸¹ In 2023, a total 6,639 violations were identified regarding the right to health, including the right to proper nutrition, prisons' security personnel not unlocking handcuffs and medical staff not requesting their removal, the failed provision of hygiene products, failed assistance to disabled prisoners and refusal to allow the changing of bed linens.⁸²

According to the prison and correctional facilities statistics of the Ministry of Justice, as of September 2022, there were seven medical doctors, 195 dentists, 129 nurses, 895 psychologists, and 457 other health workers serving the prison population.⁸³ Human rights organisations expressed serious concern regarding the inadequate provision of health care to prisoners, particularly the insufficient number of prison doctors. NGOs reported that prison wardens rather than health-care officials often decided whether to allow a prisoner's transfer to a hospital. Reports by human rights organizations suggested some doctors refused to issue medical reports alleging torture due to fear of reprisal. As a result, victims were often unable to get medical documentation of their abuse.⁸⁴ The lack of access to timely and adequate medical treatment is another serious issue in Turkish prisons. The ECtHR has in the past ruled that Türkiye has failed to offer adequate medical care to sick prisoners and that the conditions for them have been inadequate.⁸⁵ Türkiye has also refused to release terminally ill inmates and continues to imprison certain detainees who have been declared unfit to be in prison on medical grounds.

In December 2023, Şebnem Korur Fincancı, the deposed chair of the Turkish Medical Association (TTB), criticized the healthcare conditions in Türkiye's prisons.⁸⁶ She emphasized the challenges prisoners face in accessing medical attention, including long waits and difficulties in transferring to external health facilities during emergencies. Fincancı also shed light on the conditions of prisoner transport, mentioning inappropriate vehicles, lack of heating or cooling systems, and degrading entry and exit procedures. Additionally, Fincancı questioned the independence of the Institute of Forensic Medicine (ATK), pointing to its affiliation with the Ministry of Justice and raising doubts about its impartiality. Moreover, overcrowding remains a major problem, further exacerbating the issue of ill prisoners.

⁸¹ İHD, *2023 Prisons Report*, 1 June 2024, available at <https://www.ihd.org.tr/wp-content/uploads/2024/06/2023-Y%C4%B1%C4%B1-Hapishane-Raporu.pdf> (last accessed 5 June 2024).

⁸² Ibid.

⁸³ United States Government, *Turkey 2022 Human Rights Report*, available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/turkey/> (last accessed 4 June 2024).

⁸⁴ Ibid.

⁸⁵ ECtHR, *Tekin Yıldız v. Turkey* (no. 22913/04), *Gulay Cetin v. Turkey* (no 44084/10), *Ebedin Abi v. Turkey* (no. 10839/09).

⁸⁶ Medya News, *Crisis in Turkish prisons: Ousted Medical Association chair criticises Forensic Medicine Institute*, 11 December 2023, available at <https://medyanews.net/crisis-in-turkish-prisons-ousted-medical-association-chair-criticises-forensic-medicine-institute/> (last accessed 4 June 2024).

With regards to the right to life, at least 81 inmates died in Turkish prisons in 2022 and at least 234 prisoners in 33 prisons have engaged in hunger strikes and/or death fasts to protest problems in the system.⁸⁷ The 2022 report further revealed that 19 inmates were alleged to have died by suicide, with two of them being minors.⁸⁸ The TİHV and İHD report that in 2023 at least 43 prisoners lost their lives due to illness, suicide, violence and neglect.⁸⁹ Green Left political party deputy Ömer Faruk Gergerliđlu questioned the circumstances surrounding the declared suicides, emphasizing that preventive measures should be in place. He also highlighted the extended nature of prisoners' suicide attempts, observed by cameras without intervention, raising doubts about the veracity of reported suicides.⁹⁰

A legal framework, such as the one currently in force in Türkiye, that does not guarantee the right to a fair and thorough medical examination to torture victims cannot be identified as compliant with UNCAT. On the basis of Article 2 UNCAT, Türkiye is under the obligation to take all the necessary measure to prevent torture against all those under its jurisdiction: the lack of provisions safeguarding the right to a fair medical examination is not compatible with such obligation.

3.1.2 Access to a Lawyer

The right to have access to a lawyer is a fundamental safeguard against ill-treatment. Whenever a suspect is arrested, the Turkish Criminal Procedure Code requires that they are informed of their right to choose a defence attorney,⁹¹ and that statements taken in the absence of a lawyer cannot be used in court, unless they are confirmed before a judge.⁹² Moreover, the Criminal Procedure Code includes provisions stating that the suspect or the accused has the right to consult with his or her lawyer, and that such right shall not be prevented or restricted:⁹³ the latter provision constitutes a guarantee that interviews

⁸⁷ İHD, *2022 Prisons Report*, 27 September 2023, p. 27, available at https://ihd.org.tr/en/wp-content/uploads/2023/08/sr2023_2022-Prisons-Report.pdf (last accessed 4 June 2024). See also Turkish Minute, *İHD report reveals at least 10,789 rights violations in 153 Turkish prisons in 2022*, 1 August 2023, available at <https://www.turkishminute.com/2023/08/01/ihd-report-reveal-at-least-10789-rights-violations-in-153-turkish-prison-in-2022/> (last accessed 4 June 2024).

⁸⁸ İHD, *2022 Prisons Report*, 27 September 2023, p. 22.

⁸⁹ TİHV, *Human Rights Violations in Turkey*, 10 December 2023, available at <https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/verilerle-2023-yilinda-insan-haklari-ihlalleri/> (last accessed 15 April 2024); İHD, *2023 Prisons Report*, 1 June 2024, available at <https://www.ihd.org.tr/wp-content/uploads/2024/06/2023-Y%C4%B1%C4%B1-Hapishane-Raporu.pdf> (last accessed 5 June 2024).

⁹⁰ Gerçek News, *At least 26 deaths in the Turkish prisons since the start of the year*, 3 July 2023, available at <https://www.gerceknews.com/turkey/at-least-26-deaths-in-the-turkish-prisons-since-the-start-of-the-year-220469h> (last accessed 4 June 2024).

⁹¹ Turkish Criminal Procedure Code, Article 148/4.

⁹² Turkish Criminal Procedure Code, Article 149/1.

⁹³ Turkish Criminal Procedure Code, Article 149/3.

between suspects and lawyers remain private and confidential, which should represent a fundamental safeguard in cases in which suspects report torture allegations.⁹⁴

During the state of emergency, the national legal framework was amended in a way that would pose a threat to this right. While the law generally guaranteed detainees the right to immediate access to a lawyer of their choosing, it permitted judges to withhold this access for up to 24 hours.⁹⁵ In criminal proceedings, the law also mandated the government to provide a public defender for indigent detainees upon request. Additionally, in cases involving potential prison sentences exceeding five years or when the defendant was a minor or a person with disabilities, a defence lawyer was assigned, even without the defendant's request. Human rights observers pointed out that authorities typically provided legal representation to defendants who could not afford it. The government retained the authority to detain suspects without charge (or appearance before a judge) for 48 hours for "individual" offenses and 96 hours for "collective" offenses allegedly related to "terrorism".⁹⁶ These detention periods could be extended twice with judicial approval, totalling six days for "individual" offenses and 12 days for "collective" offenses. Furthermore, the law granted prosecutors the power to suspend attorney-client privilege and to monitor and record conversations between accused individuals and their legal representatives.

Lack of protection and procedural safeguards increases the risk to be subject to torture and ill-treatment.⁹⁷ Moreover, even when suspects exercise their right to have access to a lawyer, the latter can be often hindered, as the authorities continue to use "terrorism" and "defamation" charges to harass human rights defenders, opposition politicians and other critical voices and arrest is used as a tool to target them.⁹⁸ The national legislation and its enforcement do not align with the EU acquis or European standards due to the absence of fundamental procedural rights' standards.⁹⁹ The 2023 earthquakes significantly impeded access to justice in the affected regions, particularly for marginalized groups, women, and children. Apart from the loss of life, numerous lawyers' offices and some bar associations' facilities were demolished by the earthquakes. While the Union of Bar Associations offered assistance to lawyers in the impacted areas, the challenges regarding access to justice persisted extensively.

⁹⁴ TİHV, *Comparative Study on the Legal Framework of Torture in Turkey and Israel*, July 2015, p. 84, available at <http://tihv.org.tr/wp-content/uploads/2015/09/Comparative-Study.pdf> (last accessed 15 April 2024).

⁹⁵ United States Government, *Turkey 2023 Human Rights Report*, p. 5, available at <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/turkey/> (last accessed 20 April 2024).

⁹⁶ Ibid.

⁹⁷ TİHV, *Comparative Study on the Legal Framework of Torture in Turkey and Israel* (n. 96).

⁹⁸ Human Rights Watch, *'Turkey' in World Report 2024*, 2024, available at <https://www.hrw.org/world-report/2024/country-chapters/turkey> (last accessed 16 April 2024).

⁹⁹ European Commission, *Türkiye 2023 Report*, 8 November 2023, available at https://neighbourhood-enlargement.ec.europa.eu/turkiye-report-2023_en (last accessed 16 April 2024).

In July 2019, the Constitutional Court invalidated specific articles concerning restrictions on detainees' access to lawyers, among various regulations enacted during the state of emergency and subsequently made permanent.¹⁰⁰ Notably, paragraphs (5) and (10) of Article 59 of Execution Law No. 5275, allowing authorities to limit detainee-lawyer meetings, were affected. Provisions such as the requirement for monitoring officers during meetings and the seizure of documents exchanged between detainees and lawyers were nullified.¹⁰¹ These revoked articles were replicated almost identically in the 'Regulation on the Management of Penal Institutions and the Execution of Penalty and Security Measures,' enacted just four months later, after the Constitutional Court's decision. For instance, in İmralı Prison, where the PKK leader Abdullah Öcalan has been held since 1999, a unique form of isolation is being implemented. According to reports, only three family meetings and five lawyer visits took place in 2019, and one family meeting was allowed on 3 March 2020. All lawyers and family visits have been banned since then, preventing the İmralı Prison detainees from having any access to outside world, including their lawyers.¹⁰² It appears that the recommendations outlined in the reports released by the CPT following its visits to Turkish prisons in 2017 and 2019 have not been heeded. This practice underscores not only the unlawful nature and arbitrary imposition of legislative measures but also highlights the erosion of legal and ethical principles.

Turkish domestic provisions do not offer enough safeguards in relation to the right of detainees to have access to a lawyer. This has a negative impact from a preventive point of view. In light of the above, the provisions of the Turkish Criminal Procedure Code that do not guarantee the full and effective enjoyment of the right to have access to a lawyer do not comply with Article 2 UNCAT, imposing an obligation to take all the necessary measure to prevent torture.

3.2 Torture and Ill-treatment *Outside* Places of Detention

Police brutality and abuse is not a phenomenon limited to places of detentions, as there are reported cases of excessive use of force by police officers during protests and demonstrations and transfers to prisons. Under the conditions of the pandemic, instances of torture and other forms of ill-treatment have taken on a heightened severity and frequency during law enforcement interventions in peaceful gatherings and demonstrations. These interventions occur not only in public spaces such as streets and open areas but also in private settings such as homes and workplaces, essentially unofficial places of detention or environments beyond formal detention facilities. The right to assemble and demonstrate, integral to a democratic society, has become an exception in recent years in Türkiye, with interventions and prohibitions becoming the norm. The use

¹⁰⁰ TİHV, *The Reality of Torture in Its Various Dimensions in Turkey*, 26 June 2021, available at <https://tihv.org.tr/wp-content/uploads/2021/06/Tu%CC%88rkiyede-I%CC%87s%CC%A7kence-Gerc%CC%A7eg%CC%86i.pdf> (last accessed 15 April 2024).

¹⁰¹ Ibid.

¹⁰² Ibid.

of law enforcement violence, escalating to the level of torture and other forms of ill-treatment against individuals exercising their right to peaceful assembly and demonstration, has almost become routine.

A trend in torture and ill-treatment practices during home raids, occurring before the "official detention process" begins, has been observed recently. In 2020, among those who sought assistance from TİHV, 229 individuals (41%) reported experiencing torture and ill-treatment in public areas and during demonstrations, while 110 individuals (20%) reported such incidents in private settings like homes and workplaces.¹⁰³ According to data from the İHD Documentation Unit, in 2020, 397 individuals, including 28 children, claimed to have been subjected to torture and other ill-treatment in unofficial places of detention and non-detention environments. Additionally, at least 2,980 individuals were reportedly subjected to torture and other ill-treatment due to security force interventions in social demonstrations.¹⁰⁴

The TİHV Documentation Center reported that in 2020, at least 2,014 individuals experienced torture and ill-treatment, with 65 individuals injured as a result of law enforcement interventions in peaceful assemblies and events protected under freedom of assembly and demonstration. Within the first five months of 2021, at least 2,153 individuals faced torture and ill-treatment, with 23 individuals sustaining injuries due to law enforcement interventions.¹⁰⁵ Moreover, TİHV data revealed that in 2020, at least 170 individuals experienced torture and ill-treatment in public spaces, while at least 40 individuals were subjected to similar treatment during home raids. In the initial five months of 2021, at least 161 individuals experienced torture and ill-treatment in public spaces, with at least 10 individuals facing such treatment during home raids.

3.2.1 Torture and Ill-treatment during Demonstrations

The issue of the excessive use of force by law enforcement officers has become particularly vicious, as not only it is contrary to the prohibition of torture and ill-treatment, recognised both at a domestic and at an international level, but it is also related to the peaceful enjoyment of the rights to freedom of assembly and freedom of expression. As stated in the 2014 European Commission Progress Report on Turkey,¹⁰⁶ not only the frequent use of excessive force during demonstrations still raises concerns, but Turkish legislation on the use of force by law enforcement officers is yet to comply with European standards.

Under Turkish law, law enforcement officials are granted a number of powers in order to maintain public order and prevent crimes: according to Article 16 of the Law on the Duties

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

¹⁰⁶ European Commission, *Turkey Progress Report 2014*, 8 October 2014, p. 2, available at https://neighbourhood-enlargement.ec.europa.eu/turkey-progress-report-2014_en (last accessed 4 June 2024).

and Discretion of the Police (the Police Law),¹⁰⁷ such powers include the use of physical force or firearms, which is limited to specific situations (e.g. self-defence). In March 2015, however, the Parliament passed the so called “Homeland Security Package”.¹⁰⁸ It consists of laws that tighten government control over national security and public order, by amending a number of pre-existent provisions. Some of the most controversial amendments extend the power of law enforcement officers, members of security forces and governor of provinces: the Police Law now allows law enforcement to use firearms in cases in which individuals attack or attempt to attack officers or others in “workplaces, dwellings, public buildings, schools, dormitories, houses of worship, vehicles or indoor or outdoor areas where there are individuals or people congregated in a group using Molotov cocktails, explosives, inflammables, incendiaries, suffocating devices, or injurious or similar” weapons, in order to neutralise the attack and to incapacitate persons to the necessary extent. Under the amended Police Law, officers are allowed to use firearms to prevent individuals from damaging property, without having to rely on less harmful measures first.

The European Commission addressed such issues and highlighted how “Türkiye needs to adopt clear and binding rules on the proportionate use of force in demonstrations, in line with the relevant CPT recommendations and ECtHR case-law”.¹⁰⁹ Moreover, the European Commission stated how the lack of appropriate training for law enforcement officers on international standards negatively impacts on the already insufficiently regulated use of force by police officers.¹¹⁰ On the March 2015 “Homeland Security Package”, the European Commission stated that the document granted “broad discretionary powers to law enforcement agencies, [...] further curtailing the freedom of expression and freedom of assembly of peaceful demonstrators”.¹¹¹

In recent years, the Turkish Police has shown a tendency to use excessive and disproportionate force during protests.¹¹² Since the Gezi Park protests in 2013, police brutality continues to be a widespread practice during demonstrations, raising concerns on human rights and police conduct. A good example would be the case of the Saturday Mothers, a group of mothers and relatives of individuals who disappeared under suspicious circumstances while in state custody, who have held weekly peaceful and silent

¹⁰⁷ Law No. 2559 on the Duties and Discretion of the Police, 2007, available at https://www.icnl.org/research/library/turkey_polis/ (last accessed 4 June 2024).

¹⁰⁸ The Wall Street Journal, *Turkey Passes tough New Security Law*, 27 March 2015, available at <http://www.wsj.com/articles/turkey-passes-tough-new-security-law-1427448854> (last accessed 20 April 2024).

¹⁰⁹ European Commission, *Turkey Progress Report 2014*, 8 October 2014, p. 15, available at https://neighbourhood-enlargement.ec.europa.eu/turkey-progress-report-2014_en (last accessed 4 June 2024).

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Turkey Human Rights Litigation Support Project and 32 NGOs and Bar Associations, Joint Rule 9.2 submission to the Council of Europe Committee of Ministers concerning the case group of Oya Ataman v. Turkey (Application No. 74552/01), 23 January 2023, pp 16-20.

vigils in Istanbul since 1995, demanding information and government accountability.¹¹³ The Saturday Mothers face systematic attempts at criminalization through excessive police presence and street closures; arbitrary detentions; torture and ill-treatment including handcuffing, confinement in poor conditions, and psychological abuse; and active police efforts to obstruct observers and press from documenting these violations. These cases also involved failure to carry out effective investigations into allegations of ill-treatment, and lack of an effective remedy in this respect, resulting in violations of the right to freedom of peaceful assembly (therefore violating Articles 2, 3, 5, 10, 11, and 13 of the ECHR).

More recently, during the 2024 May Day demonstrations in Istanbul, Turkish police detained over 200 people as crowds attempted to reach Taksim Square, a historically symbolic venue for International Workers Day.¹¹⁴ Authorities used pepper spray and rubber bullets to disperse tens of thousands of protesters gathered in the Saraçhane district. Local media reported numerous injuries and footage showed police forcibly handling demonstrators. Women Press Freedom expressed deep concern over Turkish authorities' actions during the May Day march in Istanbul's Saraçhane district. Police obstructed, tear-gassed, and shot at journalists, endangering their safety.¹¹⁵ The police blocked march routes, fired tear gas and rubber bullets, and detained hundreds of protesters. Nearly 42,000 officers were deployed, and major roads were closed to prevent access to Taksim, which was heavily barricaded.¹¹⁶ Only a few government-affiliated union members were allowed into the square to lay wreaths in memory of those killed in the 1977 May Day incident. Opposition groups and human rights organizations criticized the restrictions and police actions. Women Press Freedom documented the excessive use of force through videos and condemned the deliberate targeting of journalists. They called for a transparent investigation and urged Turkish authorities to allow the press to work without violence or intimidation. The organization highlighted a pattern of aggression against journalists in Türkiye, especially those covering government-critical events.¹¹⁷

¹¹³ DGI Directorate General of Human Rights and Rule of Law, *Communication 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 Human Rights Foundation of Turkey, Truth Justice Memory Center Media and Law Studies Association, the International Federation for Human Rights regarding the OYA ATAMAN v. Turkey group of cases*, 27 May 2024.

¹¹⁴ Al-Monitor, *Turkey: Over 200 detained in May Day demonstrations*, 1 May 2024, available at <https://www.al-monitor.com/originals/2024/05/turkey-over-200-detained-may-day-demonstrations> (last accessed 4 June 2024).

¹¹⁵ Women Press Freedom, *Turkiye: Police Fires Rubber Bullets at Fatoş Erdoğan and Colleagues During May Day Protests*, 1 May 2024, available at <https://www.womeninjournalism.org/threats-all/turkiye-istanbul-police-attack-and-impede-journalists-during-may-day-march> (last accessed 4 June 2024).

¹¹⁶ Al-Monitor, *Turkey: Over 200 detained in May Day demonstrations* (n. 116).

¹¹⁷ Women Press Freedom, *Turkiye: Police Fires Rubber Bullets at Fatoş Erdoğan and Colleagues During May Day Protests* (n. 117).

Turkish police also intensified their crackdown on LGBTQ activists, detaining over 200 people during Pride marches in Istanbul and Izmir on 25 June 2023.¹¹⁸ Istanbul's governor justified the detentions by emphasizing the importance of preserving "national and moral values" and the family institution. Since 2015, authorities have banned Istanbul's LGBTQ Pride March, citing security concerns. In 2023 police blocked access to key locations of the city, forcing activists to gather in alternative spots. Despite the bans, activists chanted slogans and waved flags, declaring their determination to continue their presence despite governmental prohibitions.¹¹⁹ In Izmir, similar actions were taken by the police, detaining more than 40 participants to "protect public morality and public order." The crackdown follows a broader pattern of increasing anti-LGBTQ rhetoric from the Turkish government. During his recent election campaign, president Erdoğan openly attacked the LGBTQ community, reinforcing his political party's stance against LGBTQ rights.¹²⁰ Reports from the U.S. State Department and the Ankara-based LGBTQ rights group KAOS-GL indicate a rise in discrimination and violence against LGBTQ individuals in Türkiye.¹²¹ Furthermore, in March 2024, the Nevruz celebrations, a culturally significant spring festival for Türkiye's Kurdish minority, were disrupted by detentions and attacks on dozens of individuals, including journalists. In Istanbul's Yenikapı Square, 75 people were detained, among them journalist Eylül Yaşar, who was held for over six hours and subjected to a harsh body search, alongside 14 others.¹²² Yaşar and others reported being verbally abused by police. Journalists from Bianet, Tuğçe Yılmaz and Ali Dinç, were beaten and thrown to the ground by police while filming the detentions. Yılmaz claimed on social media that a police officer sat on her and throttled her for several minutes.¹²³ Additionally, members of the Istanbul Pride Parade Committee and other LGBTQ individuals reported experiencing physical, psychological, and verbal assaults while attempting to gather for the festival. Legal protections for LGBTQ people in Türkiye are insufficient as the Turkish Constitution does not explicitly protect against discrimination based on sexual orientation or gender identity, which complicates legal recourse for LGBTQ individuals facing discrimination.¹²⁴ The government's withdrawal from the Istanbul Convention in 2021 not only weakened protections against violence for women but also LGBTQ people.

¹¹⁸ Voa News, *Turkey Detains Dozens of LGBTQ Activists During Pride March*, 27 June 2023, available at <https://www.voanews.com/a/turkey-detains-dozens-of-lgbtq-activists-during-pride-march/7154381.html> (last accessed 4 June 2024).

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ United States Government, *Turkey 2023 Human Rights Report*, p. 5, available at <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/turkey/> (last accessed 20 April 2024).

¹²² Turkish Minute, *Journalists among dozens detained, attacked during Nevruz celebrations across Turkey*, 18 March 2024, available at <https://turkishminute.com/2024/03/18/journalist-among-dozen-detained-attacked-during-nevruz-celebration-across-turkey/> (last accessed 4 June 2024).

¹²³ Ibid.

¹²⁴ Voa News, *Turkey Detains Dozens of LGBTQ Activists During Pride March* (n. 120).

The excessive and disproportionate use of force by the Turkish Police cannot be deemed lawful, neither at a domestic nor at an international level. As stated above, Article 17 of the Constitution of Türkiye explicitly prohibits torture, which is also criminalised in the Criminal Code. Moreover, while Article 16 of the Police Law defines the specific conditions which would allow officers to use force, it also requires such force to be subject to the proportionality principle.¹²⁵ Moreover, an excessive use of force by law enforcement is not compatible with the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,¹²⁶ whose Article 5(a) clearly restrains the use of force and firearms to cases in which force represents an unavoidable measure, imposing an obligation on law enforcement officers to “act in proportion to the seriousness of the offence and the legitimate objective to be achieved”.¹²⁷ Article 16 of the Police Law fails to incorporate international law norms and standards that the use of lethal force must be as a last resort and only permissible in order to protect life. Lastly, considering the fact that, over the most recent years, the Turkish Police and law enforcement agencies have been allowed to use force in a disproportional, brutal and excessive manner, often resulting in the unlawful ill-treatment of protestors, the lack of attempts on behalf of Turkish State authorities to address such behaviour is not in line with Türkiye’s obligation to take effective measures to prevent acts of torture and ill-treatment under Article 2 UNCAT.

3.2.2 Situation in South-East Türkiye

When it comes to protection against torture and the right to an effective investigation as part of the procedural guarantees in Türkiye, one should consider the crucial role of national anti-terrorism laws and how they affected the role of the accused and their lawyers in criminal proceedings. Currently, there are two separate laws on anti-terrorism: several provisions of the Turkish Penal Code and the Anti-Terrorism Law No 3713.¹²⁸ ‘Terrorist offences’ as well as ‘establishment’ and ‘membership of a terrorist group’ are highly criminalized in the Turkish legal system under both the Turkish Penal Code and the Anti-Terrorism Law. Under Turkish law, terrorism is defined in terms of its opposition to the State.¹²⁹ It deviates from the traditional understanding of terrorism as terrorist actions and activities aimed at intimidating the (civilian) population.

The vagueness of the definitions of terrorism, including a wide variety of ‘acts’ or even ‘opinions’ that might allegedly endanger and jeopardize the existence, integrity, and order

¹²⁵ Amnesty International, *Gezi Park Protests: Brutal Denial of the Right to Peaceful Assembly in Turkey*, 2 October 2013, p. 17, available at <https://www.amnestyusa.org/sites/default/files/eur440222013en.pdf> (last accessed 4 June 2024).

¹²⁶ UN Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Use of Firearms by Law Enforcement Officials*, 27 August to 7 September 1990, available at <http://www.ohchr.org/Documents/ProfessionalInterest/firearms.pdf> (last accessed 4 June 2024).

¹²⁷ Ibid.

¹²⁸ Turkish Penal Code; Anti-Terror Law No. 3713, amended with the Law No. 5532, available at <https://ms.hmb.gov.tr/uploads/sites/2/2019/04/AntiTerrorLawNo3713.pdf> (last accessed 4 June 2024).

¹²⁹ Anti-Terror Law No. 3713, Article 1.

of the State, makes them prone to arbitrary application and abuse by State authorities. Moreover, such vagueness seems to repeat itself also in the Turkish Penal Code, lacking definitions of what constitutes armed groups or the offence of ‘membership’ of a terrorist organization. Once again, the lack of definitions allows for a wide margin of discretion in the interpretation and application of anti-terrorism laws, often resulting in a breach of international human rights standards.¹³⁰ Under Turkish law, the label ‘terrorist’ is very likely and too often applied to several acts and/or individuals that in most jurisdictions would be qualified as legitimate acts of freedoms of expression.¹³¹ These anti-terrorism laws have been instrumentalised to eliminate all the potential rivals and ‘enemies of the State’. As a consequence, people enjoying a specific status such as teachers, civil servants, journalists, lawyers and politicians have been targeted because of their work and arrested on terrorist charges.¹³²

In 2015 the precarious ceasefire between the Turkish authorities and the PKK collapsed: since July 2015, there have been numerous armed attacks against civilians in Turkish towns near the border with Syria, which were attributed to the extremist group Islamic State (ISIS) and the PKK. The situation in the southeastern region remained a matter of concern, especially following the earthquakes in February 2023. The Turkish government conducted security and military operations in Iraq and Syria on the pretext of attacks by the PKK.¹³³ There was no advancement in restarting a credible political peace process to address the Kurdish issue. Turkish officials linked the allegedly PKK-affiliated People’s Protection Units (YPG) to an attack in Istanbul in November 2022, although the PKK denied involvement.¹³⁴ Türkiye continued to conduct airstrikes against the PKK and affiliated groups in northern Syria and Iraq.

Since 2016, Türkiye is conducting military operations in northern Syria and the northern border strip. Türkiye oversees the Syrian National Army and administers occupied regions, with the alleged aim of establishing "safe zones" and facilitating refugee return. However, Türkiye has failed to ensure civilian safety, leading to widespread lawlessness and insecurity, with serious abuses and potential war crimes committed by its forces and

¹³⁰ Turkey Human Rights Litigation Support Project, Human Rights Watch, the International Commission of Jurists, and the International Federation for Human Rights, Rule 9.2 Communication to the Council of Europe Committee of Ministers concerning Selahattin Demirtas v. Turkey (No. 2) group of cases (Application No. [14305/17](https://hudoc.exec.coe.int/?i=DH-DD(2024)216E)), 12 February 2024, pp. 16-19, available at [https://hudoc.exec.coe.int/?i=DH-DD\(2024\)216E](https://hudoc.exec.coe.int/?i=DH-DD(2024)216E).

¹³¹ United States Government, *Turkey 2020 Human Rights Report*, available at <https://www.state.gov/reports/country-reports-on-terrorism-2020/turkey/> (last accessed 4 June 2024).

¹³² The Arrested Lawyers Initiative, *Abuse of the Anti-Terrorism Provision by Turkey is steadily increasing (2013-2020)*, 10 June 2021, available at <https://arrestedlawyers.org/2021/06/10/abuse-of-the-anti-terrorism-laws-by-turkey-is-steadily-increasing/> (last accessed 4 June 2024).

¹³³ European Commission, *Türkiye 2023 Report*, 8 November 2023, available at https://neighbourhood-enlargement.ec.europa.eu/turkiye-report-2023_en (last accessed 16 April 2024).

¹³⁴ *Ibid.*

allied groups.¹³⁵ Human Rights Watch found that Turkish forces and intelligence agencies were directly involved in abductions, arbitrary arrests, unlawful detention, sexual violence, and torture.¹³⁶ Türkiye is responsible for serious abuses and potential war crimes committed by its forces and local armed groups in Turkish-occupied northern Syria, including direct involvement in some cases.

Once again, the excessive use of force, paired with the widespread human rights violations against the Kurdish population in the south-eastern region of Türkiye, are clearly in contrast with Türkiye's obligations at an international level, and particularly with Article 2 UNCAT. The previous paragraphs show how security forces not only have been allowed to use a disproportionate amount of force against the civilian population, under the shield offered by so-called "anti-terrorist" operations, but Turkish State authorities have also repeatedly encouraged such brutalities and actively promoted a climate of impunity. Such behaviour from the authorities at all levels is strongly incompatible with Türkiye's international obligation to effectively prevent torture and prosecute perpetrators.

With regard to the southeast area of the country, the situation remains concerning, with a further aggravation after the earthquakes in February 2023, which affected part of the region. A report from the Diyarbakır Bar Association has revealed that 67 children have been killed by armoured vehicles, mines, and unexploded ordnance in Türkiye since 2011, with 66 of these deaths occurring in the eastern and southeastern regions.¹³⁷ The report indicates that armoured vehicles caused 22 deaths, while mines and explosive remnants of war caused 45 deaths. Additionally, 162 children were injured during this period due to the same hazards. The report highlights a significant increase in child deaths and injuries after the collapse of the peace process between the Turkish state and the PKK in 2015, particularly from 2016 to 2018.¹³⁸ It criticizes the state's protection of security personnel involved in these incidents by granting them immunity from prosecution, resulting in impunity for the perpetrators. The Diyarbakır Bar Association called for the removal of all landmines and unexploded munitions in accordance with the Ottawa Convention and recommended minimizing the use of armoured vehicles in urban areas to prevent further child deaths.¹³⁹

¹³⁵ Human Rights Watch, *Syria: Abuses, Impunity in Turkish-Occupied Territories*, 29 February 2024, available at <https://www.hrw.org/news/2024/02/29/syria-abuses-impunity-turkish-occupied-territories> (last accessed 6 June 2024).

¹³⁶ Human Rights Watch, *Syria: Abuses, Impunity in Turkish-Occupied Territories*, 29 February 2024, available at <https://www.hrw.org/news/2024/02/29/syria-abuses-impunity-turkish-occupied-territories> (last accessed 6 June 2024).

¹³⁷ Duvar English, *67 children killed by armored vehicles or abandoned explosives in 11 years in Turkey*, 3 March 2022, available at <https://www.duvarenglish.com/67-children-killed-by-armored-vehicles-or-abandoned-explosives-in-11-years-in-turkey-news-60516> (last accessed 30 May 2024); English Bianet, *Kurdish children in Turkey die in armored vehicle crashes or explosions of war remnants*, 3 March 2022, available at <https://bianet.org/haber/kurdish-children-in-turkey-die-in-armored-vehicle-crashes-or-explosions-of-war-remnants-258514> (last accessed 30 May 2024).

¹³⁸ Ibid.

¹³⁹ Ibid.

Even after the earthquakes in 2023, the Turkish government persisted in its security and military operations domestically and across borders in Iraq and Syria. Border areas faced ongoing security risks due to alleged attacks by the PKK. While the government has the right to combat terrorism, such actions should adhere to the rule of law and respect fundamental rights. Progress toward a viable political peace process for the Kurdish issue remained stagnant. The Kurdistan Communities Union (KCK) declared a temporary ceasefire after the earthquakes, lasting until the Turkish elections in May 2023, but it was terminated in June.¹⁴⁰ The CPT raised concerns about limited outside contact for inmates, including PKK leader Öcalan, in high security İmralı prison.¹⁴¹ In Diyarbakır's Sur municipality, disputes arose over land expropriation for public use, with residents' participation in reconstruction planning overlooked. Reports of human rights violations, including torture, arbitrary arrests, and abuses by security forces, persisted, particularly during the period of curfews in 2015-2016, during the state of emergency of 2016-2018 and after the earthquakes.

According to the İHD Summary of Human Rights Violations for 2023 in Eastern and Southeastern Anatolia, many human rights violations have occurred in the region, especially in relation to the prohibition against torture and ill-treatment.¹⁴² Arbitrary killings, excessive force by law enforcement, and extrajudicial executions resulted in the deaths of five civilians and injuries to seven others. Village guards were responsible for the death of one civilian and the injury of another. In regional prisons, six inmates died due to various illnesses, including one from breathing difficulties, and nine were injured, while two detainees reportedly committed suicide while in custody. At least six civilians were killed and two severely injured in attacks by unknown assailants, while one civilian died due to unidentified political attacks. Various attacks injured twelve political party members, seven journalists, a teacher, two workers, a lawyer, and five doctors. Curfews were imposed four times in 22 villages across three provinces. Domestic violence led to the deaths of 36 women and injuries to 10, with two cases of sexual assault, while social violence resulted in the deaths of 10 women, injuries to 14, and at least eight cases of sexual assault. Seven citizens were tortured in custody, 182 outside detention centres, and 77 prisoners faced torture in prisons. Fifteen citizens were coerced by law enforcement to become informants, and seven were threatened. Additionally, 542 prisoners were transferred without justification, health rights of 23 prisoners and family visit rights of two were violated, fourteen prisoners received disciplinary punishment, and executions for 31 prisoners were postponed for various reasons.

¹⁴⁰ European Commission, *Türkiye 2023 Report*, 8 November 2023, available at https://neighbourhood-enlargement.ec.europa.eu/turkiye-report-2023_en (last accessed 16 April 2024).

¹⁴¹ Ibid.

¹⁴² İHD, *Eastern and Southeastern Anatolia Region 2023 Human Rights Violations Report*, available at <https://ihddiyarbakir.org/tr/post/24911/dogu-ve-guneydogu-anadolu-bolgesi-2023-yili-i> (last accessed 30 May 2024).

3.3 Recommendations

- *Türkiye should implement legislative, judicial, and administrative measures to effectively prevent and address torture and ill-treatment in prisons. Legislative reforms should focus on improving living conditions for the prison population, ensuring access to water, food, and healthcare services. Particularly, overcrowding should be addressed as a first step to prevent torture and ill-treatment. Effective follow-up and investigations into torture allegations against prison guards should be guaranteed by Turkish State authorities, thereby reinforcing accountability and adherence to human rights standards.*
- *Türkiye's State authorities should increase their efforts and resources in providing adequate human rights training, particularly targeting prison staff and law enforcement officials.*
- *In relation to children and juvenile offenders, separate detention centres should be instituted. Specific measures should be taken to investigate torture against juveniles, and a mandatory special training on the prohibition of torture, in light of the best interest of the child and principles of juvenile justice, should be made mandatory for prison guards.*
- *Specific training on international standards, particularly the Istanbul Protocol, should be provided and made compulsory, in particular for medical professionals. New measures should be introduced to ensure thorough medical examinations. For instance, the Turkish Penal Code could be amended to include punishment for medical professionals who do not conduct fair and thorough examinations or provide inaccurate medical reports.*
- *Ensuring recognition and enjoyment of everyone's right to have access to a lawyer, without being subjected to any condition or limitation.*
- *Turkish State authorities should align domestic laws regulating the use of force by law enforcement officers with international standards, such as the UN Basic Principles on the Use of Force and Firearms. Any document issued by Türkiye's Ministry of the Interior providing guidelines on the lawful use of force by law enforcement officers should be updated to comply with international human rights standards and made available to the public.*
- *An independent mechanism to handle complaints against unlawful police conduct should be established and provided with the necessary structural and functional resources.*
- *Turkish State authorities should take measure to manage demonstrations and protests through peaceful means in order to protect protestors from ill-treatment and torture. Investigations into allegations of police abuse must be conducted promptly, thoroughly, and independently, without recourse to counter-charges on complainants.*

- *Turkish State authorities should take active steps to stop gross human rights violations amounting to torture and ill-treatment against civilian, in particular in the context of security operations in south-east Türkiye.*
- *Turkish State authorities should initiate an independent investigation into all allegations of torture and ill-treatment during the curfews of 2015-2016 in the Kurdish region of Türkiye, ensuring that members of the Security Forces and government officials who were involved are held to account.*
- *Turkish State authorities should cease airstrikes against the PKK in northern Syria and Iraq, ensure civilian safety, investigate and hold accountable those responsible for abuses and potential war crimes, and provide reparations and protections for affected individuals in occupied regions.*
- *Turkish State authorities should provide international monitoring bodies access to the region where security operations are taking place, in order to ensure that security forces are complying with international standards on human rights and the use of force.*

4. Impunity and Lack of Accountability

4.1 Lack of Investigations

As underlined by the recommendations received by the Turkish government during Türkiye's second and third UPR cycles, lack of effective investigation is one of the main issues when it comes to preventing and prosecuting torture and ill-treatment within the country. In theory, law enforcement officers who engage in torture and ill-treatment should be prosecuted and convicted according to Article 94 of the TPC, which expressly prohibits torture. However, in practice, such perpetrators are seldom brought to trial, and when they are, it is often under lesser charges, such as Article 256 concerning the excessive use of force, or Article 86 regarding bodily harm. These charges typically result in shorter prison sentences. Insufficient evidence is a major obstacle in the investigation process, with police frequently impeding inquiries by withholding crucial information, including the identities of officers present during alleged instances of ill-treatment and surveillance footage from CCTV cameras.¹⁴³

When complaints, investigations, or lawsuits are lodged against law enforcement officers accused of torture, immediate countersuits are filed against the victims on various grounds such as "insulting the officer," "resisting arrest," "causing injury to the officer," or "damaging public property." While cases against perpetrators of torture often go

¹⁴³ European Commission, *Türkiye 2023 Report*, 8 November 2023, available at https://neighbourhood-enlargement.ec.europa.eu/turkiye-report-2023_en (last accessed 16 April 2024).

unpunished, those brought against the victims can result in severe penalties swiftly. In 2019, Public Prosecutors' Offices initiated investigations against 38,582 individuals under Article 265 of the TPC, which pertains to the offense of 'resisting a public officer,' with public lawsuits filed against 28,843 of them.¹⁴⁴ On the other hand, during the same period, while investigations were launched against 1,098 individuals under Article 94 of the TPC, the crime of torture, public lawsuits were filed against only 97 people.¹⁴⁵ The stark contrast between the number of cases filed for torture and resisting a public officer underscores the prevalence of impunity and suggests a systemic policy of maintaining such impunity. Such malpractice means that allegations of torture are not properly investigated, and therefore ill-treatment, particularly by law enforcement, is rarely sanctioned. In the vast majority of cases, law enforcement officers are found to be innocent.

The above described lack of prompt and effective investigations into torture allegations can also be interpreted as a lack of consideration towards the rights of torture victims: indeed, while Article 234 of the Criminal Procedure Code does include provisions allowing victims of any kind of crime to demand for evidence, request copies of documents from prosecutors and appeal against the prosecutor's decision not to prosecute; there is no consideration towards the specific needs of torture victims, nor any protection is provided to survivors, their lawyers and/or witnesses during criminal investigations, further hampering the prosecution of torture allegations. Such lack of consideration for the rights of torture survivors, including their right to see their abusers prosecuted, is also reflected by the widespread practice of filing counter-charges against individuals seeking justice for alleged abuse and ill-treatment by law enforcement officers.

Due to inadequate investigations into allegations of torture, Türkiye continues to grapple with systemic impunity, particularly concerning human rights violations committed by government officials. As outlined earlier, a range of factors, including insufficient evidence and the reluctance of state authorities to pursue prosecution, combine to foster an environment where perpetrators of torture operate with impunity.

4.2 Impunity

As per Law No. 6722, passed in 2016, the investigation of military personnel involved in operations linked to accusations of torture and other forms of ill-treatment underwent a special permit procedure, accompanied by a retroactive shield of impunity.¹⁴⁶ Similarly, through the Decree on the State of Emergency, it was stipulated that individuals making decisions and participating in matters pertaining to the state of emergency would be exempt from legal, administrative, financial, and criminal liabilities arising from these

¹⁴⁴ Justice Statistics 2019, cited in TİHV, *The Reality of Torture in Its Various Dimensions in Turkey*, 26 June 2021, available at (last accessed 15 April 2024).

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

duties, introducing absolute immunity.¹⁴⁷ This legislation effectively removes torture from the purview, further solidifying impunity. It extends judicial privileges to the security services, heightens the likelihood of impunity and continues to be enforced. In numerous instances, authorities have withheld permission to prosecute government officials, significantly impeding accountability and perpetuating an environment of impunity for the security forces.¹⁴⁸ Moreover, there have been no credible investigations initiated into several reported cases of deaths as covered in the media. Additionally, alleged incidents of abductions and enforced disappearances by the security services, reported since the 2016 attempted coup, have not undergone adequate investigation. Due to the systematic impunity framework and practice, in the rare instances when a charge is brought to law enforcement officers who engage in torture, they are typically charged with the offense of "deliberate injury," carrying a less severe penalty.

The culture of impunity persisted within the security sector, affording security personnel de facto judicial and administrative protection in instances of alleged human rights violations and disproportionate use of force. Military personnel and senior command officials retained special legal privileges during prosecution. Furthermore, the investigation of alleged offenses committed by security personnel necessitated prior authorization from either military or civilian superiors. In a March 2018 report addressing the impact of the state of emergency on human rights in Türkiye, the UN High Commissioner for Human Rights emphasized that his office had documented various forms of torture and ill-treatment during custody.¹⁴⁹ These actions were typically aimed at coercing confessions or compelling detainees to incriminate others. The report identified perpetrators as including members of the police, gendarmerie, military police, and security forces. Of particular concern in the report was the observation that emergency decrees contributed to impunity and a lack of accountability by granting legal, administrative, criminal, and financial immunity to administrative authorities acting under the decrees.¹⁵⁰ As a matter of fact, in 2022, the Public Prosecutors' Offices initiated legal proceedings against 45,982 individuals for offenses categorized as "crimes against the reliability and functioning of public administration" (outlined in Articles 247 – 266 of the TPC), which encompassed acts such as "resisting a public official" as per Article 265 of the TPC.¹⁵¹ Conversely, during the same period, only 872 individuals faced public prosecution for

¹⁴⁷ Ibid.

¹⁴⁸ European Commission, *Türkiye 2023 Report*, 8 November 2023, available at https://neighbourhood-enlargement.ec.europa.eu/turkiye-report-2023_en (last accessed 16 April 2024).

¹⁴⁹ UN OHCHR, *Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East*, March 2018, paras 77-80, available at <https://www.refworld.org/docid/5ab146c14.html> (last accessed 4 June 2024).

¹⁵⁰ Ibid, para 5.

¹⁵¹ TİHV, *Human Rights Violations in Turkey*, 10 December 2023, available at <https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/verilerle-2023-yilinda-insan-haklari-ihlalleri/> (last accessed 15 April 2024).

crimes of torture and torment (outlined in Articles 94 – 96 of the TPC).¹⁵² Such a significant contrast between the two figures starkly underscores the systematic pursuit of impunity.

Impunity has broad consequences that go beyond the mere lack of accountability for torture perpetrators. On the one hand, knowing that their case will not be heard and that the perpetrators will not be brought to justice or will not be convicted, acts as a deterrent for torture victims to file complaints, particularly against State authorities. On the other hand, impunity fuels the abuse at the expenses of civilians, as authorities regularly allow officers accused of having perpetrated ill-treatment to remain on duty during trial.¹⁵³ The stance of Turkish judges, compounded by significant challenges within the judicial system such as political pressure, the intimidating impact of dismissals and forced transfers, and widespread self-censorship among judges and prosecutors, contributes to both the practice and the perception of impunity in the country.¹⁵⁴ Judges often wield greater discretion in arbitrarily dismissing cases, as evidenced by numerous instances of "acquittal and dismissal verdicts."

Such shortcomings in relation to the investigation process and the actual prosecution and accountability of torture suspects constitute a violation of the obligations enshrined in Article 2 UNCAT. The latter not only imposes a duty on State parties, including Türkiye, to take positive measures to prevent and address cases of torture within their jurisdiction, but it has been interpreted by the Committee itself as implying that "impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture and ill-treatment violate the principle of non-derogability".¹⁵⁵ Article 2(2) provides an absolute and non-derogable prohibition against torture, no exceptions can be invoked to justify torture and ill-treatment: therefore, there is no justification for Türkiye's non-compliance with its obligation to take all the appropriate measures to eradicate such practices.

4.3 The Issue of Statutory Limitations

In Türkiye, there has been a lack of a comprehensive and consistent approach for addressing missing persons, exhuming mass graves, and independently investigating alleged cases of extrajudicial killings by security and law enforcement officers. Most investigations into disappearances from the 1990s have exceeded the 20-year statute of

¹⁵² Ibid.

¹⁵³ Turkey Tribunal, *Impunity in Turkey Today*, September 2020, available at <https://turkeytribunal.org/the-reports/impunity-in-turkey-today/> (last accessed 4 June 2024).

¹⁵⁴ Turkey Human Rights Litigation Support Project, Human Rights Watch, and the International Commission of Jurists, Rule 9.2 Communication to the Council of Europe Committee of Ministers concerning the case of Kavala v. Türkiye (Application No. [28749/18](https://hudoc.exec.coe.int/?i=DH-DD(2024)263E)), 26 January 2024, pp. 11-21, available at : [https://hudoc.exec.coe.int/?i=DH-DD\(2024\)263E](https://hudoc.exec.coe.int/?i=DH-DD(2024)263E).

¹⁵⁵ Committee against Torture, *General Comment n.2*, CAT/C/GC/2CRP.1/Rev.4, para 5.; Committee against Torture, *Keppa Urra Guridi v. Spain*, Communication No. 212/2002, UN Doc. CAT/C/34/D/212/2012 (2005), paras 2.3, 2.5, 2.6.

limitations.¹⁵⁶ Among over 1,400 missing persons cases since then, only 16 have resulted in court proceedings, with 14 cases involving forcibly disappeared people being ruled out because of statutory limitations.¹⁵⁷

In March 2024, the so-called Kulp case, which addressed the disappearance of 11 Kurdish villagers in Diyarbakır's Kulp district in 1993 and named General Yavuz Ertürk as the sole defendant, was dismissed by the Supreme Court of Appeals due to the expiration of the statute of limitations.¹⁵⁸ Concerns persist regarding the ongoing use of extraterritorial abductions and forced returns under the guise of counterterrorism and national security. The village guard system, a paramilitary force supporting Turkish security forces, remains operational. Some village guards have been implicated in widespread human rights violations and excessive use of force, particularly against the Kurdish population.¹⁵⁹ This system impedes the return of displaced villagers and hinders progress towards a political resolution of the Kurdish issue. Most of these cases have involved military or police officers, as highlighted by judgments from the ECtHR and reports from the UN Working Group on Enforced or Involuntary Disappearances concerning Türkiye. However, investigations into these cases have been consistently lacking.

The statute of limitations remains a significant concern, allowing offenders to evade accountability. In the southeast, many crimes from the 1990s have gone unpunished either due to acquittals or the expiration of the statute of limitations, such as the murder of a prominent journalist and writer Musa Anter in Diyarbakır in 1992.¹⁶⁰ On 21 September 2022, the Ankara 6th Heavy Penal Court rejected a request to classify the case as a "crime against humanity," which would have prevented it from being dropped. Consequently, the court dismissed the case, as the 30-year statute of limitations expired on 20 September 2022. Notably, the court had previously adjourned the final hearing to one day after the expiration date.¹⁶¹ Another example is the Ankara JİTEM case, involving the Minister of Interior of the time Mehmet Ağar, filed into the enforced disappearance or illegal arbitrary execution of 19 people in the 1990s. In 2023, the Ankara 1st Heavy Penal Court, holding the hearing in this case, which was reheard after the acquittal verdict was overturned, decided to drop the case and acquit all defendants.¹⁶²

¹⁵⁶ European Commission, *Türkiye 2023 Report*, 8 November 2023, available at https://neighbourhood-enlargement.ec.europa.eu/turkiye-report-2023_en (last accessed 16 April 2024).

¹⁵⁷ This information has been collected from the Memory Center (Hafıza Merkezi).

¹⁵⁸ Medya News, Families react to dismissal of Kulp Massacre case in Turkey, 24 March 2024, available at <https://medyanews.net/families-react-to-dismissal-of-kulp-massacre-case-in-turkey/> (last accessed 6 June 2024). This information has been confirmed by local sources collaborating with LLG.

¹⁵⁹ European Commission, *Türkiye 2023 Report*, 8 November 2023, available at https://neighbourhood-enlargement.ec.europa.eu/turkiye-report-2023_en (last accessed 16 April 2024).

¹⁶⁰ English Bianet, *Musa Anter murder case dropped due to statute of limitations*, 22 September 2022, available at <https://bianet.org/haber/musa-anter-murder-case-dropped-due-to-statute-of-limitations-267513> (last accessed 5 June 2024).

¹⁶¹ Ibid.

¹⁶² Medya Scope, *All defendants were acquitted in the Ankara JİTEM case in which Mehmet Ağar and Korkut Eken were tried*, 26 May 2023, available at <https://medyascope.tv/2023/05/26/mehmet-agar-ve-korkut-ekenin->

4.4 Recommendations

- *Turkish State authorities should take positive action in fighting impunity and conducting prompt, impartial, and effective investigations into all past or present allegations of torture and ill-treatment by security forces; ensuring accountability of the perpetrators; providing transparent reporting on the outcomes of these investigations.*
- *Turkish State authorities should urgently revise and amend Law No. 6722 and related decrees that grant immunity to military personnel and other officials involved in operations linked to accusations of torture and ill-treatment.*
- *Turkish State authorities should ensure judicial accountability of law enforcement and military personnel by removing the requirement for prior authorization from superiors before investigating alleged offenses and ensuring that all such cases are handled by civilian judicial authorities.*
- *Turkish State authorities should immediately take steps to end the climate of impunity by initiating impartial investigations and prosecutions, in particular in cases of human rights violations allegedly perpetrated by members of the law enforcement.*
- *The domestic legal framework should explicitly recognize and protect the rights of torture victims, including the right to reparation, in accordance with international standards.*

5. Conclusion

Despite being regarded as one of the most modern and democratic countries in the region, Türkiye still falls short of complying with its international human rights obligations concerning torture and ill-treatment. As demonstrated in previous sections, Turkish State authorities have not taken sufficient steps to meet their positive obligations under Article 2 UNCAT to implement all appropriate legislative, judicial, and administrative measures to effectively prevent torture and ill-treatment.

While the domestic legal framework includes provisions criminalising torture, they need to be applied properly and more attention is needed to address the specific rights and needs of torture victims, such as the right to reparation and access to legal representation. Furthermore, despite partially addressing the use of force by law enforcement, Türkiye's domestic law still lacks clear guidance on the conditions justifying use of force and an emphasis on the principles of proportionality and necessity. The widespread human rights violations during protests and operations carried out under the pretext of

[yargilandigi-ankara-jitem-davasinda-tum-saniklar-beraat-etti-hakim-bollugunda-fail-yoklugu-yasandi/](https://www.yargilandigi-ankara-jitem-davasinda-tum-saniklar-beraat-etti-hakim-bollugunda-fail-yoklugu-yasandi/) (last accessed 6 June 2024).

'counterterrorism' strongly indicate Türkiye's current tendency to use disproportionate and punitive force against civilians.

The NGOs urge the Turkish government to address these shortcomings by amending its domestic laws and changing its current policies and practice to align with international standards, ensuring compliance with Türkiye's obligations under UNCAT, particularly Article 2.