



PERMANENT MISSION OF THE REPUBLIC OF TURKEY
TO THE UNITED NATIONS OFFICE IN GENEVA

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The Permanent Mission of the Republic of Turkey to the United Nations Office at Geneva and other international organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the joint communication letter sent by Mr. José Guevara - Vice-Chair of the Working Group on Arbitrary Detention, Ms. Houria Es-Slami - Chair Rapporteur of the Working Group on Enforced or Involuntary Disappearances, Ms. Agnes Callamard - Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Dainius Puras - Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Ms. Rita Izsak-Ndiaye - Special Rapporteur on minority issues, Mr. Ben Emmerson - Special Rapporteur on the promotion and protection of human rights while countering terrorism, Mr. Nils Melzer - Special Rapporteur on torture, Ms. Dubravka Simonovic - Special Rapporteur on violence against women and Mr. Léo Heller - Special Rapporteur on the human rights to safe drinking water and sanitation, dated 10 April 2017 (Reference: AL/TUR 3/2017), has the honour to enclose herewith an information note comprising the response of the Government of the Republic of Turkey.

The Permanent Mission of the Republic of Turkey avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 6 June 2017

Encl: As stated



Office of the High Commissioner for Human Rights
Palais des Nations
1211 Geneva 10

Observations Regarding the Joint Communication of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on minority issues; the Special Rapporteur on the promotion and protection of human rights while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur on the human rights to safe drinking water and sanitation dated 10 April 2017

(REFERENCE: AL/TUR 3/2017)

1. The Government would like to present its observations in following paragraphs, in respect of the Joint Communication of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on minority issues; the Special Rapporteur on the promotion and protection of human rights while countering terrorism; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur on the human rights to safe drinking water and sanitation dated 10 April 2017.

2. In the instant Joint Communication, the Government is requested to submit information and comments on the allegations regarding alleged human rights violations in the context of the security operations and curfews imposed in the Ömerli, Nusaybin and Artuklu districts of Mardin.

3. At the outset, it should be pointed out that Turkey is exposed to severe threats by the notorious terrorist organization PKK. It is the right, duty and obligation of the Turkish State to fight against terrorism in all its forms as terrorist activity itself is a fundamental violation of human rights.

PKK is a vicious terrorist organization, listed as such in the democratic world by numerous countries and international organizations, including the EU and NATO. Turkey has been countering PKK terrorism which claimed thousands of lives of innocent people and violated the fundamental rights and freedoms of people; first and foremost, right to life.

Taking this opportunity, the Government would like to reiterate its explanations on its response dated 20 January 2017 to the Joint Appeal no. TUR 5/2016, regarding the PKK terrorist organization and counter-terrorism operations against PKK.

In addition, the Government strongly condemns the absence of any indication in the instant Joint Communication document that PKK is a terrorist organization. The phrase stated in the paragraphs 3 and 4 of the Joint Communication "*violent clashes between security forces and armed groups in the southeast of Turkey*" disregards the fact that the PKK is a terrorist organization and serves to create a wrong impression about southeast Turkey. Therefore the Government also deplors and rejects that phrase in the strongest terms.

4. On the other hand, the Government strongly objects to the characterization of Turkish citizens of Kurdish origin as “minority” in the Joint Communication.

It should be clarified that the minority rights in Turkey are regulated in accordance with the Lausanne Peace Treaty of 1923, under which Turkish citizens belonging to non-Muslim minorities fall within the scope of the term “minority”. Turkish citizens belonging to non-Muslim minorities as such enjoy and exercise the same rights and freedoms as the rest of the population. Additionally, they benefit from their minority status in accordance with the Lausanne Peace Treaty. However, citizens of Kurdish origin in Turkey are not recognized as a minority according to the national legislation including Lausanne Peace Treaty.

The Turkish nation is not a juxtaposition of communities or groups. It is an amalgamation of individuals from various backgrounds, who have found their home in this land throughout centuries. Thus, it is composed of those citizens, who are equal before the law irrespective of their origins in terms of language, race, colour, ethnicity, religion or any other such particularity, and their fundamental rights and freedoms are enjoyed and exercised individually in accordance with the relevant law. In line with the fundamental principles of equality and non-discrimination, every Turkish citizen is considered an integral part of the Turkish national identity and culture. Diversity in their origins is the source of richness in Turkish society. Their fundamental rights and freedoms can be enjoyed through the exercise of individual liberties. Duly taking into account the needs and aspirations of our citizens from all backgrounds, important achievements have been made in recent years for the further protection and promotion of human rights, including additional measures to promote economic, social and cultural rights for those including the Turkish citizens of Kurdish origin in relation to their origin.

5. As regards the claims cited in the Joint Communication, the Government would like to begin with the background information regarding the security operation.

In Mardin, it was found as a result of intelligence works that 45 to 50 terrorists used the various villages mentioned in the Joint Communication as logistics bases and formed a network of terrorists and aides covering the villages mentioned. This information was passed on to the relevant authorities.

Subsequently, security operation was carried out from 11 February to 1 March 2017, jointly by Gendarmerie Special Forces and Police Special Forces units. The operation was centered in Mardin, Nusaybin District, Kuruköy and was aimed at neutralizing members of the terrorist organization and destroying the shelters used by them. The security operation targeted the terrorists who also coerced the locals by way of unlawful criminal methods such as threats and extortion.

Moreover, with a view to protecting the safety of life and property of the local population, a curfew was declared from 12 February 2017 until the end of the operation under the relevant provisions of the Provincial Administration Law no. 5442.

In the meantime, 11 members of the PKK terrorist organization were neutralized, including the so-called “Mardin Province Chief” and the so-called “Special Forces Chief” who used to prepare suicide bomb devices.

The statement of a PKK terrorist organization member who was captured alive and other evidences revealed the following:

- The so-called Mardin Province Chief of PKK terrorist organization who was killed in the operation had turned out to be a matter of grave concern for the people of Kuruköy and the nearby villages, where he used as his post;
- He had exercised absolute control (by the force of weapons and intimidation) over the entire local population, including village governors, store owners, farmers, tradesmen, etc.;
- By way of the supervisory network he had formed, he had been able to summon everyone to give orders and instructions, and collected extortion money ;
- The explosive materials and devices transported from this region to the west were hidden in cheese packages and inside the tires of trucks, which indicates the heavy intimidation tactics placed upon the locals.

6. Contrary to the claim cited in the Joint Communication that no investigation has been launched regarding the allegations, the Chief Public Prosecutor's Office in Nusaybin initiated an investigation (no. 2017/592) in respect of the operations. However, the persons whose statements were taken during the investigation have not raised any such claims as those allegedly referred in the Joint Communication.

7. During the operation 44 persons were taken into custody, one of which was the PKK terrorist organization member captured alive. 12 of these, including a PKK member, were remanded in custody by court decision. The remaining persons were also subsequently detained on remand by court decision as new evidence was found. The file concerning a detained suspect, named R.B., was separated from the case and on 25 April 2017 a summary investigation report was issued by the Mardin Chief Public Prosecutor's Office and a restriction was placed on the examination of that file.

Another detained suspect, named A.A. alleged in his statement that he had been battered while being taken into custody and tortured. Accordingly, an investigation was initiated *ex officio*, involving him as a complainant. The investigation is under way.

Moreover, another detainee, named A.G. claimed that damages inflicted upon his animals and his house. An investigation was initiated *ex officio* into allegations, involving him as a complainant, which is also under way.

8. On the other hand, tunnels were found under demolished houses, connecting these to other homes. Terrorist members were identified inside these tunnels and were neutralized in the clashes that followed. Many illegal documents, clothes and electronic devices were found inside these tunnels. Some of the houses which had tunnels underneath collapsed while the clashes continued. Investigations into the incidents are underway. However, there have been no complaints filed with the Nusaybin Chief Public Prosecutor's Office regarding images of burned or otherwise destroyed homes from the beginning or end of the curfew.

In addition, a large number of physical and digital material by the terrorists were seized during the ongoing operations. As a result of such documentary evidence, M.A. and his father R.A., who were found to have been affiliated to the PKK terrorist organization, were taken into

custody on 21 February and 8 April 2017, respectively, upon orders by the Nusaybin Chief Public Prosecutor, and the relevant judicial proceedings were carried out in accordance with the law.

9. In addition to explanations above, the Government would like to submit the relevant legal provisions in force in relation to torture and ill-treatment. Torture and ill-treatment has been prohibited by the Turkish Constitution and deterrent judicial penalties are stipulated in Turkish legal system. The first sentence of Article 94 of the Penal Code, which concerns the offense of torture reads: "A public officer who performs any act towards a person that is incompatible with human dignity, and which causes that person to suffer physically or mentally, or affects the person's capacity to perceive or his ability to act of his own will or insults them shall be sentenced to a penalty of imprisonment for a term of three to twelve years". Paragraph six of the Article 94 clearly states that statute of limitations shall not apply for this offense.

Administrative proceedings in addition to judicial proceedings have been envisaged regarding a public officer who was allegedly involved in torture or ill-treatment. According to Article 9 of the Decree-Law no. 682 on General Law Enforcement Disciplinary Provisions, coming into force on 23 January 2017, law enforcement staff is to be penalized by the penalty of "dismissal from public office" if the offense of torture has been committed. In other words, committing acts of torture have been listed among reasons for dismissal of law enforcement officers from public service with no possibility of being re-employed. With a view to ensuring that people receive security services in trust and peace of mind, the Decree-Law also provides sanctions in respect of officers, including those of the General Directorate of Security, who commit ill-treatment or make insulting or disrespectful remarks or conduct, which shall be imposed in proportion with their acts.

Moreover, to ensure that the law enforcement complaints system works effectively and swiftly, improve transparency and reliability, and to record and monitor, through a centralized system, the acts and proceedings carried or to be carried out by the administrative authorities in response to offenses allegedly committed by law enforcement officials, or their acts, behavior or conduct which require disciplinary penalties, the Law on the Establishment of a Law Enforcement Oversight Commission was put in force on 20 May 2016. It has been aimed through this commission that a system be established whereby people can have an investigation initiated upon their complaints regarding law enforcement officials or the security authority.

Furthermore, it should be emphasized that, from 22 July 2015, investigations/inquiries have been conducted in respect of 68 security officials on allegations of misconduct and abuse of duty in the eastern and southeastern provinces of Turkey.

10. Regarding the reparation, the Government would like to mention the Law no. 5233 on the Compensation of Damages Resulting from Terrorism and the Measures Taken against Terrorism ("Law no. 5233"). Law no. 5233 which entered into force on 27 July 2004 aimed at the determination of the principles and procedures governing the compensation of material damage inflicted on persons as a result of terrorist activity and the measures taken against terrorism. It is stipulated in the law that the material damages suffered by real or legal persons resulting from acts that fall within Articles 1, 3 and 4 of the Anti-terror Law and the actions taken against terrorism, shall be reimbursed on the basis of reconciliation. Moreover, the composition of the damage assessment commissions as well as the functions of the commissions are laid down in the Law no. 5233.

Real persons, their inheritors or legal persons who claim damages under the provisions of the law shall apply to the relevant Governor's Office within 60 days of becoming aware of the incident causing damage, which shall not be later than one year after the incident. Damage Assessment Commissions are under the obligation to conclude applications within six months, a period that may be extended for a further three months in compelling circumstances.

The following damages are eligible for compensation under the Law no. 5233:

- a) Damage to livestock, trees, products and other movable and immovable property;
- b) Damage suffered due to injury, incapacitation or death; medical treatment and funeral expenses;
- c) Material damage arising from inability to access assets as a result of anti-terror activities.

The damages that have occurred shall be established by the Commission, directly or through experts, based on current economic conditions and equity, and taking into account the statement of the injured, the information or documents by judicial, administrative and military authorities, the way the incident happened, the precautions taken by the injured, and any fault or neglect by the injured party. These damages may be compensated in money or kind.

In this respect, 603 nationals who suffered damage as a result of terrorism and the measures taken against terrorism in Mardin were granted a total 4,157,666 TL (app. 1,184,520 US Dollar by June 2017) compensation in 2017 as per the Law no. 5233. Naturally, compensation based on the Law no. 5233 shall continue for such damages to occur in the future.

11. Within the framework of the operation, food aid has been provided for the local people by the security forces. Also, ill persons were treated through the ambulances dispatched by the Ministry of Health, veterinary assistance was also provided in order for the locals to have their livestock cured. Photographs showing the aid provided to the people during the operations are submitted in the Annex.

In addition, to avoid interruption of education and training activities, the students' transportation to schools has been ensured by the vehicles provided.

12. Moreover, the Ministry of Family and Social Policies have actively involved regarding the problems of psychosocial support for citizens who were directly exposed to terrorist acts in southeast Turkey or for those who had to leave their home addresses due to terrorism. In this context, emergency psychosocial works have been started. Professional staff were assigned in the provinces Mardin, Diyarbakır and Şırnak for ten days on various dates in 2016 and 2017. Works were undertaken for the determination of needs by families who have been victims of terrorism and providing psychosocial support for them.

"Psychosocial Support Teams" have been set up by provincial directorates, consisting of professionals (psychologists, social service experts, child development experts and sociologists) in charge of providing psychosocial support for the families and identifying urgent needs (shelter, food, education, health, etc.).

The Psychosocial Support Teams established by the Mardin provincial directorate have carried out professional interviews with families in their homes to identify their urgent needs and to provide psychosocial support for them.

13. With regard to the allegations in respect of the provision of health services, the Government would like to emphasize that, no restrictions or interruptions have occurred during the curfew period, in the provision of health services by the Ministry of Health. For example, whereas, from 4 to 5 February 2017, during which a curfew was not in effect, approximately 4,000 calls were received by the 112 emergency hotline in Mardin; nearly the same number of calls were received from 11 to 12 February 2017, when the curfew was in effect. There has not been an unusual spike in the number of emergency calls received during the curfews. As to the provision of ambulance services, as a result of a pre-medical assessment, ambulances were dispatched in 145 cases during the no-curfew and in 148 cases during the curfew periods stated above. These figures verify that there have been no shortcomings in the provision of healthcare services.

14. Lastly, as regards the allegations on the access to safe water, the Government would like to mention about the "Mardin-Kızıltepe Drinking Water Project". In this context, drinking water needs of some districts of Mardin have been met by the said project. Furthermore, by ongoing projects, the water needs of other districts of Mardin will be met. The facilities built by the General Directorate of State Hydraulic Works were transferred to the relevant municipalities and therefore the provision of safe drinking water to the villages referred in the Joint Communication are now operated by the relevant municipalities. However, no problem was found out regarding drinking water in Nusaybin, Ömerli and Artuklu districts of Mardin during the security operation. Furthermore, waterlines damaged during the operation in Nusaybin district were fixed and necessary controls were conducted properly.