

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on extrajudicial, summary or arbitrary executions

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on extrajudicial, summary or arbitrary executions pursuant to Human Rights Council resolutions 24/6 and 26/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged obstructions of access to health care as well as alleged attacks, including killings, against health workers, in violation of the right to life and right to health of civilians in the context of curfews imposed since 16 August 2015 in response to ongoing violent clashes between security forces and armed groups in the southeast of Turkey.**

The current situation in the southeast of Turkey was subject to an urgent appeal dated 24 December 2015, case no. 5/2015, by the Special Rapporteur on extrajudicial, summary or arbitrary executions concerning reported killings of over 500 people in the context of violent clashes between security forces and armed groups in the southeast of Turkey. The urgent appeal also mentioned obstructions in the delivery of and access to healthcare during the clashes. We regret that, to date, no response has been received in relation to this communication.

According to new information received:

Since the breakdown of the ceasefire agreed by the Turkish Government and the Kurdistan Worker's Party (PKK) in July 2015, urban battles have taken place between security forces and the Patriotic Revolutionary Youth Movement (YDG-H), an armed movement associated with the PKK. Since 16 August 2015,

provincial authorities in the southeast of Turkey have imposed repeated and prolonged curfews in several cities, towns or particular neighbourhoods, affecting approximately 1.3 million people. The indefinite 24-hour curfews declared on 11 December 2015 in the Sur District of Diyarbakır, and on 14 December 2015 in the Cizre and Silopi Districts of Şırnak, are reportedly ongoing.

Since the beginning of the curfews, 162 Kurdish civilians, including 32 children; 29 women; and 24 elderly residents, have reportedly lost their lives in the context of counter-terrorism operations.

It is alleged that several of these deaths occurred as a result of the obstruction of access to, and the delivery of, essential health services, goods and facilities. Reports indicate that wounded civilians have been denied access to medical treatment, either because ambulances were prevented from entering certain areas or because security forces blocked those who tried to drive wounded victims to hospitals. One person was, for example, shot in the yard of his home and died due to blood loss after waiting for the ambulance for about 20 hours. Another person was shot to death while trying to take family members, who were shot by snipers, to the nearby emergency services. The fear of being shot at or arrested reportedly deters many people from seeking medical help in hospitals.

According to reports received, the establishment of trenches and barricades by supporters of the youth movement as well as the control and blockade of State hospitals by security forces have also had an adverse impact, depriving the population of access to medical care and impeding the delivery of emergency services. In addition, it has been reported that preventive, curative and rehabilitative health services are not being provided under the current conditions.

Reports further indicate intensified attacks against health workers, preventing them from carrying out their work in safety and without fear of reprisals. On 29 December 2015, a health worker was arrested, allegedly for providing health services to his injured uncle. As of today, according to the reports received, he remains in detention. On 30 December 2015, another health worker was allegedly shot and killed by police forces upon attempting to aid a civilian woman who had been shot on a street. Moreover, it is alleged that doctors in Diyarbakır have been declared PKK members and are targeted by security forces for proposing to set up medical tents.

It is further reported that at least six civilians died due to the stress effects that the curfews and the intensified attacks had on their health conditions. Among them are four elderly citizens who died of a heart attack when their houses and neighbourhoods were fired on or hit by missiles. Food, water and electricity shortages further contribute to the deterioration of health conditions of the civilian population.

Doctors and health care providers in Diyarbakır have repeatedly filed applications for a one-day ceasefire enabling them to reach people in need of health services and to assess the overall health situation. These applications have reportedly been rejected by the governorate. Appeals for setting up tents in order to provide health services have also been rejected.

While we do not wish to prejudice the accuracy of these allegations, we reiterate our alarm at allegations that hundreds of persons, including civilians, have died during violent clashes between security forces and armed groups in the southeast of Turkey. We also reiterate our grave concern about the alleged responsibility of security forces in obstructing the delivery of emergency services and the access to essential health services, goods and facilities. Further serious concern is expressed regarding allegations of attacks against health workers, including arrests and killings. Finally, we express serious concern at the detrimental effects that the counter-terrorist operations and the indeterminate curfews had on the health conditions of the civilian population in the southeast of Turkey.

In connection to the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

While recognizing the duty of your Excellency's Government to protect the population from violence by armed groups, we urge you to ensure access to healthcare in the context of counter-terrorist operations, in full compliance with international human rights standards.

We would like to refer your Excellency's Government to Articles 3 of the Universal Declaration of Human Rights and 6 (1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003, which respectively guarantee the right of every individual to life and security and provide that these rights shall be protected by law and that no one shall be arbitrarily deprived of his life.

The Human Rights Committee in its General Comment 6, para. 3, has said that it considers article 6 (1) of the ICCPR to include that States parties should take measures to prevent and punish deprivation of life by criminal acts, and to prevent arbitrary killing by their own security forces.

According to the Basic Principles and the Code of Conduct for Law Enforcement Officials, law enforcement officials may only use force when it is strictly necessary and only to the extent required for the performance of their duties. Force used must be proportionate to the legitimate objective to be achieved. Should lethal force be used, restraint must be exercised at all times and damage and/or injury mitigated. Medical assistance should be provided as soon as possible when necessary.

Pursuant to principle 5(c) of the Basic Principles of the Use of Force and Firearms by Law Enforcement Officials and 6 of the Code of Conduct, law enforcement officials should ensure the provision of timely medical assistance whenever required.

We would like to remind your Excellency's Government of the duty to investigate, prosecute, and punish all violations of the right to life. We urge your Excellency's Government in line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Prevention and Investigation Principles), in particular principle 9, that there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions.

We would also like to refer your Excellency's Government to the right to health contained in article 25(1) of the Universal Declaration of Human Rights, article 12 of the International Covenant on Economic, Social and Cultural Rights, which Turkey ratified in 2003, and article 24 of the Convention on the Rights of the Child, which Turkey ratified in 1995.

In this connection, we would like to refer your Excellency's Government to General Comment 14 of the Committee on Economic, Social and Cultural Rights (CESC), which indicates that a State party which restrict the right to health on grounds such as national security has the burden of justifying any serious measures in relation to each of the elements identified in article 4 of the International Covenant on Economic Social and Cultural Rights (GC 14, Para.28). With regards to children, article 24 (2)(b) of the Convention on the Rights of the Child further obliges States parties to ensure the provision of necessary medical assistance and health care to all children.

Concerning the alleged obstruction of access to health care services, we would like to underline that physical accessibility is one of the essential element of the right to health. According to the CESC, physical accessibility implies that health facilities, goods and services must be within safe physical reach for all sections of the population (GC 14, para.12(b)). States should ensure that movement restrictions for people in conflict areas are legitimate and essential and provide exceptions for access to health facilities, goods and services that can be exercised with minimal delays. More specifically, the compatibility of prolonged curfews with the right to health must be ensured (A/68/297, paras. 23-25).

In this respect, we would like to recall the decision on interim measures issued on 12 January 2016 by the European Court of Human Rights where it calls upon your Excellency's Government to ensure that physically vulnerable individuals, affected by the curfews, can have access to treatment if they so request.

With respect to the alleged attacks against health workers, we would like to remind your Excellency's Government of General Assembly Resolution A/RES/69/132 on Global health and foreign policy, which strongly condemns all attacks on medical and health personnel, their means of transport and equipment, as well as hospitals and other medical facilities. The resolution further stresses that attacking, threatening or otherwise preventing medical and health personnel from fulfilling their duties not only undermines their physical safety, but also impedes the attainment of the right health and has long-lasting consequences on health care systems.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.com or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response taken on the initial steps taken by your Excellency's Government to safeguard the rights of the civilian population in the southeast Turkey in compliance with international instruments. We would also be grateful for your response to the allegations and questions contained in case no. 5/2015 of 24 December 2015.

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

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide detailed information on the legal basis for the obstruction of health care delivery and access, specifying how the authorities' actions are in compliance with international human rights law. In particular, please provide information regarding any measures that may have been taken to ensure that the imposed curfews are compatible with the right to health.
3. Please provide full details on any investigation that may have been carried out concerning the role of security forces in obstructing health care delivery and access.
4. Please also provide the full details of any investigations which have been carried out concerning cases of alleged excessive use of force by Turkish security forces, which may amount to unlawful killings and extrajudicial executions.
5. Please provide detailed information on the legal grounds for the arrest and detention of healthcare workers, specifying how the authorities' actions are compatible with international human rights norms and standards.

6. Please provide detailed information concerning any measures taken to protect health workers in the discharge of their duties, and to ensure that they can carry out their work in safety and without fear of retaliation, including for providing medical services to wounded civilians.
7. Please indicate whether the families of the victims have or will receive reparations.

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

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Dainius Puras

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Christof Heyns

Special Rapporteur on extrajudicial, summary or arbitrary executions