

**NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME**

**PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME**

**UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS**

**SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL**

**Mandates of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms
while countering terrorism.**

REFERENCE: AL G/SO 214 (33-27) Terrorism (2005-4)
TUR 3/2012

22 February 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism pursuant to General Assembly resolution 60/251 and to Human Rights Council resolution 17/5 and 15/15.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **the death of 35 people in Uludere district due to a bombardment by the Turkish Air force.**

According to information received

On 28 December 2011, 35 people, including 17 children, were killed during a bombardment by the Turkish Air force in the vicinity of Gülyazi (Bujeh) and Ortasu (Roboski) villages of Uludere district of Şırnak Province. Reportedly the group of villagers had crossed the Iraqi border at around 4:00 p.m. with their mules to bring oil and food back to Turkey. On their way to the Iraqi border they heard unmanned air planes (drones) passing by; however, as this was not an unusual event they continued on their journey. When the group arrived back to their villages' plateau, they were stopped by the security forces, an illumination flare was fired to light the scene and air bombardments from reportedly four F-16 warplanes directly targeted the group for nearly an hour.

It is reported that the dead and wounded were brought to the villages by their relatives. Public authorities allegedly did nothing to intervene in the situation, to provide immediate first-aid to the victims, to carry the bodies, to transfer the

injured victims to hospital or to protect the scene and evidence for the future investigation. It is alleged that a ban imposed against access of ambulances to the spot prevented them from helping the victims. It is feared that some victims froze or bled to death as a result of this ban.

We have received information on the death of the following victims: Çetin Encü, aged 12; Bedran Encü, aged 15; Erkan Encü, aged 13; Sivan Encü, aged 15; Mehmet Encü, aged 11; Bilal Encü, age unknown; Aslan Encü, aged 17; Adem Ant, aged 19; Savas Encü, aged 14; Orhan Encü, aged, 19; Celal Encü, aged 25; Fadil Encü, aged 20; Mahsum Encü, aged 17; Servan Encü, aged 16; Cemal Encü, aged 17; Cihan Encü, aged 17; Vedat Encü, aged 17, Serhat Encü, aged 16; Salih Encü, aged 16; Özcan Uysal, aged 17; Hüseyin Encü, aged 20; Nevzat Encü, aged 19; Hamza Encü, aged 21; M. Ali Tosun, aged 24; Selam Encü, age unknown; Zeydin Encü aged 22; Yüksel Ürek, aged 16; Salih Ürek, aged 16; Nadir Alma, aged 25; Seyithan Enç, aged 17; Fikret Encü, aged 27; Hüsnü Encü, aged 30; Osman Kaplan, aged 31; Selahattin Encü, aged 16; and Selman Encü, aged 40.

A statement from the Turkish Military Forces following the bombing indicated that since the area is frequently used by terrorists and that in the evening movement was detected near the border, aerial bombardment was taken into consideration and the target was fired at between 9:37 and 10:24 p.m. It was alleged that the area where the incident had occurred is an area near the border of northern Iraq called Sinat-Haftanin region close to the main camps of the organization, with no civilian settlement.

On 8 January 2012, a deputy border regiment commander was reportedly dismissed from his post in the context of an administrative investigation by the Interior Ministry. Furthermore, the head of the Turkish Parliament's Human Rights Commission has reportedly established a sub-commission to investigate the killings. On 24 January 2012, Turkish Prime Minister Recep Tayyip Erdoğan informed that each family of the deceased would receive 123,150 Turkish Lira as compensation and that the Government was taking measures to prevent a repetition of similar incidents.

We would like to express our concern at the alleged killing of civilians during an unprovoked attack. Furthermore, we would like to seek information from your Excellency's Government on measures taken to distinguish civilians from military targets during the attack and ensure compliance with the principles of proportionality and necessity.

We wish to draw your Excellency's Government's attention to relevant international principles and norms governing the use of force. Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23

September 2003, provides that every individual has the right to life, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life. Under international law when force is used excessively without strict compliance with the principles of necessity and proportionality, any loss of life that results is an arbitrary deprivation of life and therefore illegal.

Under international law, in situations outside of an armed conflict, including in the course of counter-terrorism measures, a State may only use force when it is strictly necessary and only to the extent required, in the circumstances, for the performance of its duties. This means that the use of force must be proportionate to the legitimate objective to be achieved. The use of firearms will only be considered a proportionate response where less extreme measures are insufficient to restrain or apprehend the suspect, and the suspect either offers armed resistance or otherwise jeopardizes the lives of others, (see also Code of Conduct for Law Enforcement Officials, General Assembly resolution 34/169 of 17 December 1979; read with the United Nations Basic Principles on the Use of Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990).

Reference is also made to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990), which, though not in itself binding law, provides an authoritative and convincing interpretation of the prohibition of arbitrary deprivation of life. According to principle 4 of the Basic Principles, non-violent means should as far as possible be applied before resorting to the use of force and firearms. However, whenever the lawful use of force and firearms is unavoidable, it should be applied while exercising restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; minimizing damage and injury, and respecting and preserving human life; ensuring that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; and ensuring that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

We would also like to remind your Excellency's Government of the duty to investigate, prosecute, and punish all violations of the right to life. The investigation of such cases "shall be thorough, prompt and impartial ... The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death" (Principle 9 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, "Prevention and Investigation Principles"). Furthermore, principle 17 ("Prevention and Investigation Principles") provides that "[a] written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope

of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law.”

We therefore urge your Excellency’s Government to take all necessary measures to ensure that the deaths are promptly, independently and thoroughly investigated, to ensure the accountability of any person responsible for their deaths and to prevent further recurrence of such acts.

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. Since we are expected to report on these cases to the Council, we would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the summary of the cases accurate?
2. What measures have been taken to investigate the deaths of the victims and to ensure accountability of any persons responsible?
3. With specific regard to the alleged cases of killings in counter-terrorism related activities by the Army as a result of excessive use of force, please explain which authorities are competent to investigate and prosecute the officials responsible for any unlawful killings. What steps have been taken to hold those responsible for such killings, both as material perpetrators and as commanders or instigators, criminally accountable?
4. Please indicate what broader steps, if any, are being taken to address the use of force by the military during counter-terrorism activities, including measures that are taken to comply with the rules and principles pertaining to proportionality and necessity. Please also provide information on measures taken to distinguish civilians from military targets.
5. Please provide information regarding the measures being taken to prevent a repetition of similar incidents.

We would appreciate a response within sixty days. We undertake to ensure that your Excellency’s Government’s response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration.

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

Christof Heyns
Special Rapporteur on extrajudicial, summary or arbitrary executions

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