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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 Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

REFERENCE: UA G/SO 218/2 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) G/SO 214 (33-27) G/SO 214 (53-24) Housing (2000-9) G/SO 214 (3-3-16)
TUR 3/2013

14 June 2013

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions 15/18, 17/2, 16/4, 15/21, 16/5, 17/5, 15/8, and 16/23.

In this connection, we would like to bring to the attention of your Excellency's Government's information we have received concerning the **alleged excessive use of force during peaceful demonstrations resulting in injuries of thousands of protesters.**

According to the information received:

On 28 May 2013, a few hundred protesters gathered at Gezi Park in Taksim, Istanbul, to peacefully demonstrate against the municipal urban redevelopment plan for the area, an important public venue for assembly and freedom of speech, and against demolishing the park. Allegedly, previous attempts to establish a

dialogue with the Government about this project by civil society organizations had not found adequate channels. It is also reported that this demonstration follows a series of protests in relation to urban development projects undertaken since 2005 in Istanbul. Allegedly, there have been hundreds of people evicted from traditional central neighborhoods to the peripheries, many of which have been carried out without providing opportunities for participation in public decision-making by the affected individuals and communities. Gentrification of the area has been triggered by the redevelopment projects, and has had an impact on affordability of housing for local residents as well as displacement from the areas of middle and low-income households.

In the early hours of 29 May 2013, police reportedly started to disperse protesters through the widespread and indiscriminate use of tear gas. Many canisters were reportedly dropped from helicopters above residential areas devoid of protesters and were shot into homes or business offices that had opened their doors to fleeing protesters. Reports also indicate that tear gas was fired close to the entrance of Taksim Emergency Hospital, close to the scene of many protests.

Following the reaction of the police in Istanbul, hundreds of thousands of people have, since 31 May 2013, started gathering across the country in support of the protesters.

These demonstrations have reportedly been met with excessive use of force by law enforcement officials, resulting in thousands of people being injured and arrested. In the context of these protests at least four people reportedly died, including Mr. Mehmet Ayvalıtış, Mr. İrfan Tuna, Mr. Abdullah Cömert and Mr. Mustafa Sarı. Sources stated that the majority of the injuries were caused by the use of water cannons and tear gas. It is also reported that many of the protesters arrested were subjected to acts of torture and ill-treatment in detention, and were denied prompt access to medical care.

On 11 June 2013, riot police used again tear gas and water cannons to disperse protesters who continued gathering in Istanbul's Taksim Square and Gezi Park, despite the Istanbul Governor's pledge earlier in the same day to halt the police intervention. Several people were reportedly injured by plastic bullets as a result of police use of force. It is also alleged that the protest was infiltrated by agent provocateurs who contributed to creating disorder.

On the same day, it is reported that at least 50 lawyers who had gathered in front of the Çağlayan Justice Palace in Istanbul to make a statement about the situation in Gezi Park were arrested by members of Turkey's Special Forces. Many of the lawyers were allegedly beaten and their clothes torn during their arrest. It is further reported that the lawyers were brought to the Anti-Terror Branch of Istanbul Police Headquarters. All lawyers arrested on that day are alleged to have been released.

Serious concerns are expressed that the aforementioned allegations of excessive use of force by law enforcement officials against peaceful protesters could be related to their dissenting views and their legitimate exercise of fundamental freedoms. Serious concerns are expressed that the use of force, arrest, torture and ill-treatment of protesters may be solely based on the exercise of their rights to freedoms of peaceful assembly and of opinion and expression.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international standards that are applicable to the issues brought forth by the situation described above.

We would like to refer your Excellency's Government to article 21 of the International Covenant on Civil and Political Rights (ICCPR), ratified on 23 September 2003 which provides that "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

In this connection, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that "reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law."

We would further like to recall article 19 of the ICCPR, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Similarly, we would like to refer to article 25 of the ICCPR, which guarantees for every citizen the right to participate in the conduct of public affairs, without any distinctions and without unreasonable restrictions. The right to participate in public decision-making is paramount to the realisation of the right to adequate housing without discrimination, as provided for by article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary steps to guarantee their

right not to be deprived arbitrarily of their liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the ICCPR.

Furthermore, we would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth *inter alia* in the UDHR, the ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

We would also like to draw the attention of your Excellency's Government to the Standard Minimum Rules for the Treatment of Prisoners. Rule 22(2) provides that, "Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers. Furthermore, Rule 25(1) provides that, "The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed." (approved by the Economic and Social Council by resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.)

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

Furthermore, we would like to refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

We would also like to bring to the attention of your Excellency's Government article 12, paras 2 and 3, of the mentioned Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of

everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We would also like to recall principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms.” Furthermore, principle 5 provides that, “Whenever the use of force and firearms is unavoidable law enforcement officials shall, (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate object to be achieved; (b) Minimize damage and injury, and respect and preserve human life; (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment and (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.” (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990).

With regard to the information on the unlawful deaths that may have resulted as a consequence of the excessive use of force by the security officers, we would like to refer to article 6(1) of the ICCPR, and under which the Government of Turkey has the obligation to protect every individual’s right to life and to ensure that no individual on its territory or subject to its jurisdiction is arbitrarily deprived of his or her life. In its General Comment on article 6, the Human Rights Committee stated that “[t]he protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6(1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity.” (HRI/GEN/1/Rev.9, Vol. I, p. 177, para. 3).

The use of lethal force by law enforcement officials is strictly regulated under international human rights law, according to which, 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. The principles of necessity and proportionality under international human rights law are interpreted to mean that lethal force may be used as a last resort, with the sole objective of saving life, as reflected in the aforementioned principles 4 and 5 of the UN Basic Principles on the Use of Force and Firearms by Law Officials.

These provisions apply also to the use of so-called “less lethal” weapons, which can also constitute lethal force if they are used in an excessive manner that results in death. In this regard, in his report on the country visit to Turkey (A/HRC/23/47/Add.2), the Special Rapporteur on extrajudicial, summary or arbitrary executions stated in paragraph 19: “the use of so-called “less lethal” weapons, such as pepper spray and tear gas, can also constitute lethal force if they are used in an excessive manner that results in death, of which the Special Rapporteur heard several times. The lawfulness of such use is regulated by the same principles of proportionality and necessity – as understood under international human rights law – as any other weapon employed by law enforcement officials. To the extent that the weapons have been used excessively not to save life, but to maintain public order, these cases may also constitute unlawful killing.” The recommendations contained in this report with regard to the use of force are recalled to the attention of your Excellency’s Government.

We would like to further draw the attention of your Excellency’s Government to the duty to investigate, prosecute and punish all violations of the right to life, in line with the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (adopted by the Economic and Social Council resolution 1989/65). In particular, principle 9 provides that “[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances”. Principle 18 further requires Governments to “ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice.” We wish to recall also that the families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time pursuant to principle 20.

In relation to the reported arrest of lawyers, we would like to refer Your Excellency’s Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular principle 23, which states: “Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.”

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the protesters in compliance with the above international instruments.

Moreover, since 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. Are the facts alleged in the summary accurate?
2. Please provide the full details of the legal basis for the use of force during the peaceful demonstrations that have been taking place since 28 May 2013.
3. Please provide detailed information concerning the legal grounds for the arrest and detention of the above mentioned persons and explain how these grounds are compatible with international human rights norms and standards as stated, inter alia, in the UDHR and the ICCPR.
4. Please provide information on the measures taken to ensure the physical and psychological integrity of those who have been arrested and who are now detained.
5. Please provide the details, and where available the results, of any investigation, medical examinations, and judicial or other inquiries which may have been carried out in relation to the alleged cases of deaths, torture and ill-treatment. If no inquiries have taken place, or if they have been inconclusive, please explain why.
6. Please indicate whether complaints have been lodged by or on behalf the victims and whether compensation has been provided to the victims or their families.
7. Please indicate what measures have been taken to ensure that the legitimate right to assemble peacefully and the related right to freedom of expression is respected and that the physical and psychological integrity of those exercising this right is guaranteed.
8. Please provide information concerning consultation and participation of individuals and communities in the decisions related to the redevelopment project of the Gezi Park in Taksim and surrounding area, including in relation to the protection of the right to adequate housing.

We undertake to ensure that your Excellency's Government's response to is reflected in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of protesters are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

El Hadji Malick Sow
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