

Mandates 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

REFERENCE:
AL TUR 3/2017

10 April 2017

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on minority issues; Special Rapporteur on the promotion and protection of human rights while countering terrorism; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on violence against women, its causes and consequences; and Special Rapporteur on the human rights to safe drinking water and sanitation, pursuant to Human Rights Council resolutions 33/30, 27/1, 26/12, 33/9, 25/5, 31/3, 34/19, 32/19 and 33/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged human rights violations committed in the context of security operations in the Omerli, Nusaybin and Artuklu districts of Mardin province in southeast Turkey**, including raids on and destruction of houses, surveillance of residents, deprivation of access to food, safe drinking water and sanitation, and health services, arbitrary arrests and detentions, acts of torture and ill-treatment, enforced disappearances, and killings.

A previous communication concerning alleged violations of the rights to life and to health in the context of curfews imposed in response to violent clashes between security forces and armed groups in the southeast of Turkey (case no. TUR 1/2016) was transmitted to your Excellency's Government on 21 January 2016 by 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. We acknowledge receipt of your Excellency's Government reply dated 25 February 2016.

A previous communication concerning the reported killing of 500 people, similarly in the context of violent clashes between security forces and armed groups in the southeast of Turkey (case no. TUR 5/2015), was sent by the Special Rapporteur on extrajudicial, summary or arbitrary executions on 24 December 2015. We acknowledge receipt of your Excellency's Government reply dated 1 February 2016.

A related communication concerning the alleged destruction of historic buildings and residential neighbourhoods in the Sur and Diyarbakir districts, mainly Kurdish populated areas, in southeast Turkey, and the plan to expropriate the inhabitants of the city of their homes and lands for urban renewal and regeneration, which would drastically change the ethnic, social and cultural demographics of the region (case no. TUR 5/2016), was transmitted to your Excellency's Government on 21 September 2016 by the Special Rapporteur in the field of cultural rights, Special Rapporteur on the rights to freedom of peaceful assembly and of association, 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, Special Rapporteur on the human rights of internally displaced persons and Special Rapporteur on minority issues. We acknowledge receipt of your Excellency's Government reply dated 20 January 2017.

According to the information received:

On 11 February 2017, official round the clock curfews were imposed on nine villages, including Kuruköy, in the Omerli, Nusaybin and Artuklu districts of Mardin province in southeast Turkey. This was done by the Office of the Governor of Mardin in the context of the start of new security operations against armed movements affiliated to the Kurdistan Worker's Party (PKK).

On 18 February 2017, the Office of the Governor issued a statement announcing that the operations were being conducted to "neutralize the terrorists and to find and destroy the shelters and warehouses they use" and to "arrest the collaborators who help them". It is reported that these security operations took place in areas home to, in large part, the Kurdish minority residing in the southeast of Turkey and targeted citizens of Kurdish origin of all ages for their perceived affiliation to the PKK.

During the operations conducted in these nine villages, security forces reportedly raided and burned houses, placed residents under surveillance, prevented all access to the villages, including by outside observers wanting to monitor the situation, blocked communication of residents with the outside world by cutting telephone and internet lines, deprived them of food, safe drinking water and sanitation, beat, threatened at gunpoint and fired at several civilians, blocked the transfer of several wounded to the hospital, sexually abused women and committed other acts of torture as well as killed at least three individuals.

In Kuruköy village (Xeraba Bava village), residents, in some cases families of up to 10 persons, were forced to stay inside their houses for nine days and not allowed to buy food or harvest produce from their garden. They reportedly also suffered from inadequate access to safe drinking water. As the transformer providing clean water to the village was destroyed in January 2017, during previous operations, residents were forced to access water from nearby villages by using water tanks. However, this was not allowed during the curfew and residents had to be supplied by an unsafe source. It is reported that this resulted in an

outbreak of water-related diseases and an increase in the number of people referred to the hospitals.

Among statements obtained (after the lifting of the curfews), one indicated that residents witnessed a 16-year-old boy being taken from his home by security forces during a raid and that he showed signs of torture after being returned. Another statement indicated that a mother was threatened at gunpoint by security forces to provide them with information on the whereabouts of terrorists or watch her 14-year-old daughter be killed. A third statement indicated that a resident was severely beaten by security forces while they raided his house leaving him lying unconscious in his garden for two days before they returned to arrest him.

It is reported that 38 individuals of all ages, including at least three women and possibly several minors, were arrested by security forces and taken to the Anti-Terror Office (TEM) Branch of the Nusaybin police station. Nine of them had reportedly been subjected to acts of torture in the central square of Kuruköy village before their transfer to Nusaybin police station.

On 23 February 2017, 23 of the 38 individuals were released. A number of them reported that they had been subjected to psychological and physical ill-treatment and torture while in detention, that women were being held in the same ward as men, and that they were forced to sign documents without knowing their contents. A week later, one of the individuals remaining in detention was charged with aiding a terrorist organization and remanded in custody by the court. The whereabouts of two others detainees remain unknown and, based on reports of at least three unidentified bodies having been sent to a local morgue from the TEM Branch, it is feared that they have been killed.

On 2 March 2017, the Office of the Governor of Mardin announced that the curfews had been lifted. Subsequently, photos and videos appeared on social media showing burned and demolished houses, dead bodies of animals lying in the streets, dozens of bullet marks on the walls of some of the houses as well as the mutilated bodies of individuals allegedly having had ties to the PKK.

Reportedly, despite requests, no investigation has been launched into the above described events by the authorities.

While we do not wish to prejudge the accuracy of the above information, we reiterate our grave alarm at the reported human rights violations committed in the context of security operations in southeast Turkey, more specifically the deprivation of access to food, safe drinking water and sanitation and health services, acts of ill-treatment and torture, including of a sexual nature, arbitrary arrest and detention, enforced or involuntary disappearances and killings during the imposed curfews that lasted for almost three weeks. We express particular concern that the alleged victims included not only men and women of all ages but also children. We further express grave concern over the reported blocking of all access to and communication with the residents of villages under

curfew, thereby effectively preventing any outside monitoring of the situation during this period.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your Excellency's Government 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 information concerning the legal grounds for the arrest and detention of the 38 individuals and explain how these measures are compatible with international human rights law.
3. Please provide full details, and when available the results, of any investigation that may have been carried out in relation to the excessive use of force by Turkish security forces, which may amount to unlawful killings and extrajudicial executions as well as torture and ill-treatment, and regarding allegations of sexual abuse by soldiers of women residing in the villages in question, and efforts made to ensure that perpetrators of the alleged acts are brought to justice.
4. In the event that these allegations are confirmed, and the alleged perpetrators identified, please provide the full details of any prosecutions that have been undertaken. Have penal, disciplinary or administrative sanctions been imposed on the alleged perpetrators?
5. Please provide information on measures taken to ensure the safety of all residents of villages during curfew and steps taken to prevent the commission of human rights violations in the context of security operations in southeast Turkey.
6. Please indicate whether the affected victims and their families, have or will receive reparations.
7. Please provide information on the measures being taken to provide access to safe, affordable and accessible water and sanitation for the residents in the nine villages mentioned above.

We would appreciate receiving a response within 60 days.

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(s) responsible for 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.

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Vice-Chair of the Working Group on Arbitrary Detention

Houria Es-Slami
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Agnes Callamard
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Dainius Puras
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Rita Izsák-Ndiaye
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Ben Emmerson
Special Rapporteur on the promotion and protection of human rights while countering terrorism

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Dubravka Šimonovic
Special Rapporteur on violence against women, its causes and consequences

Léo Heller
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Annex

Reference to international human rights law

In connection with 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.

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, respectively, provide that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life.

In General Comment No. 6, the Human Rights Committee reiterates that the right to life is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation. Moreover, in General Comment No. 31 the Committee has observed that there is a positive obligation on States Parties to ensure protection of Covenant rights of individuals against violations by its own security forces as well as by private parties or entities. States Parties permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate and bring perpetrators to justice could give rise to a breach of the Covenant (CCPR/C/21/Rev.1/Add.13).

With regards to the use of force by the Turkish military, under international law any loss of life that results from the excessive use of force without strict compliance with the principles of necessity and proportionality is an arbitrary deprivation of life and therefore illegal. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides that intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life (principle 9). Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles (principle 8). According to the Basic Principles and the UN 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.

We would like to remind your Excellency's Government of the duty to investigate, prosecute, and punish all violations of the right to life. The allegations presented appear to be in contravention with the human rights standards related to prevention and investigation of extra-judicial, arbitrary and summary executions (Principles 4, 9 and 18 of the Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council resolution 1989).

Moreover, we would like to reiterate the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Turkey ratified in 1988. Article 7 ICCPR further provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

The Security Council, beginning with its adoption of resolution 1456 (2003), has consistently affirmed that States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law. More recently, the Council has underscored that effective counter-terrorism measures and respect for human rights, fundamental freedoms, and the rule of law are complementary and mutually reinforcing, and constitute an essential part of successful counter-terrorism efforts. In its resolution 2178 (2014), the Council stated that failure to comply with these and other international obligations, including under the Charter of the United Nations, fosters a sense of impunity and is one of the factors contributing to increased radicalization.

In relation to counter-terrorism operations and the alleged failure to investigate allegations of human rights violations committed by the Turkish security forces, we would like to stress that States are obliged to promptly start an effective official investigation when a plausible allegation is made that public officials have committed (or been complicit in the commission of) gross or systemic human rights violations (A/HRC/22/52, para. 28 and A/HRC/29/51, para. 58). This obligation is triggered whenever there is a plausible indication from any source that civilian casualties have been sustained, including where the facts are unclear or the information partial or circumstantial, and whether civilian casualties were anticipated or not (A/68/389, paras. 41–45).

In relation to the allegations that the fate and whereabouts of two detainees remain unknown, we would like to draw your Excellency’s Government attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance. In particular, we would like to recall the prohibition to practice, permit or tolerate enforced disappearance (article 2); the obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (article 3); that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7); the right to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention, and the obligation to make available accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest (article 10); and the obligation to maintain in every place of detention an official up-to-date register of detained persons (article 12).

We also make reference to the findings contained in the report of the Working Group on Enforced or Involuntary Disappearances, following its country visit to Turkey

in March 2016 (A/HRC/33/51/Add.1). The Working Group was concerned at the situation in the southeast of the country, where a wide security operation had been in place since July 2015. Although during the visit the Working Group had not received allegations of recent enforced disappearances, its experience suggests that such situations are conducive to human rights violations, including enforced disappearances. The Working Group stressed that only a thorough, independent and credible investigation may clarify facts and dispel any doubts as to the nature and extent of the violations occurring on the ground.

We would also like to bring to your Excellency's Government's attention article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which notes the responsibility of States to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. In this context, we wish to recall that the Committee on the Elimination of Discrimination against Women (CEDAW) in its general recommendation No. 19 (1992), defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of the Convention on the Elimination of All forms of Discrimination Against Women, ratified by Turkey on 20 December 1985, whether perpetrated by a State official or a private citizen, in public or private life. Thus, the Committee considers that States parties are under an obligation to act with due diligence to investigate all crimes, including that of sexual violence perpetrated against women and girls, to punish perpetrators and to provide adequate compensation without delay.

We would also like to draw your Excellency's Government's attention to the CEDAW's general recommendation No. 33 on women's access to justice, which recommends states to pay special attention to the situation of women prisoners; ensure that men and women are detained in separate institutions and apply international guidance and standards on the treatment of women in detention, in accordance to United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and principle 8 of the Standard Minimum Rules for the Treatment of Prisoners.

Furthermore, we would like to remind your Excellency's Government of its obligations under various international human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Turkey is a party since 23 September 2003, and more specifically article 11.1 recognizing the right of everyone to an adequate standard of living for himself and his family, including food and housing, and to the continuous improvement of living conditions. This article must be read in conjunction with article 2.2 ICESCR which provides for the exercise of any right under the Covenant without discrimination of any kind.

Furthermore, we recall the recognition of the human right to safe drinking water and sanitation by the United Nations General Assembly (resolution 64/292) and the Human Rights Council (resolution 15/9), which derives from the right to an adequate

standard of living, protected under, inter alia, article 25 of the Universal Declaration of Human Rights, and article 11 ICESCR. In its General Comment No. 15, the Committee on Economic, Social and Cultural Rights clarified that the human right to water means that everyone is entitled to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses, which includes sanitation. The human right to sanitation means that everyone, without discrimination, has physical and affordable access to sanitation, in all spheres of life, which is safe, hygienic, secure, socially and culturally acceptable, provides privacy and ensures dignity.

We would also like to refer to your Excellency's Government to the international standards in relation to the protection of the rights to persons belonging to minorities, in particular to the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on the Rights of Minorities). Article 1 of the Declaration establishes the obligation of States to protect the existence and identity of minorities within their territories and to adopt appropriate measures to this end. Furthermore, article 2.3 Declaration states that persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life. Moreover, States are required to ensure that persons belonging to minorities may exercise their human rights without discrimination and in full equality before the law (article 4.1) and consider appropriate measures so they "may participate fully in the economic progress and development in their country".