

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the rights to freedom of peaceful assembly and of association**

REFERENCE:  
AL TUR 7/2021

12 May 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the rights to freedom of peaceful assembly and of association, pursuant to Human Rights Council resolutions 43/16, 45/3, 43/4 and 41/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning criminal charges brought against peaceful participants of the **Saturday Mothers/People (Curmatesi Anneleri/Insanlari)**. Saturday Mothers/People is a group of human rights defenders who gather every Saturday at noon for half an hour on Galatasaray Square in Istanbul, holding photographs of their loved ones, victims of enforced disappearance or political killings in the 1980s and 1990s. They demand the disclosure of the fate and whereabouts of their relatives and ending impunity for these crimes.

Galatasaray Square in front of Galatasaray High School in Beyoğlu, Istanbul became a site of memory as the Saturday Mothers/People and Human Rights Association (Insan Haklan Dernegi) Istanbul Branch's Commission on Enforced Disappearances had been holding sit-in protests there for 700 weeks (26 years) without any interruptions. On 25 August 2019, which marked the 700<sup>th</sup> vigil, the police dispersed the gathering by force, using tear gas and rubber bullets, and detained 47 protestors. Since that date, the group has been prevented from gathering in Galatasaray Square.

According to the information received:

On 18 November 2020, the Istanbul Penal Court of First Instance charged 46 peaceful protestors, including members of the families of the disappeared, as well as members and executives of the Human Rights Association (Insan Haklan Dernegi) with 'unarmed participation in an unauthorized assembly and refusal to disperse without warning' (art 32 of the Law on Assemblies and Demonstrations) in connection with their participation in the Saturday Mothers/People 700<sup>th</sup> vigil, held on 25 August 2018, despite the ban imposed by the Beyoglu District Governorate.

The indictment from the Terrorist Offences Investigation Bureau of the Istanbul Chief Public Prosecutor's Office argued that the 700<sup>th</sup> vigil had been banned by the authorities to 'guarantee national security, public order, public morality, public health and to prevent the commission of crimes'. Participants were allegedly not notified of the ban before the meeting.

On 25 March 2021, the first hearing of the case took place before the Istanbul 21<sup>st</sup> Penal Court of First Instance. During the hearing, lawyers representing the defendants requested their acquittal, which was rejected by the court. The judge issued an interim ruling, adjourning the trial until 12 July 2021.

Without prejudging the accuracy of the information received, we express our concern about the continued judicial harassment of members of the Saturday Mothers/People protest movement. We also express serious concerns about the excessive use of force used against the 46 participants of the vigils. We would furthermore express our continued concerns about the systematic restrictions on the right to peaceful assembly in Turkey. We are equally concerned that the Government of Turkey continues to undermine the rights of relatives of the disappeared to truth, justice, reparation and memory.

Additionally, we are also concerned that this case may be representative of a seemingly deliberate and systematic pattern of judicial persecution of human rights defenders in Turkey, as well as what appear to be a systematic restrictions on the right to peaceful assembly and to freedom of expression.

We would like to convey our concern for the significance that this case has on all civil society in Turkey. If human rights defenders are criminalised while conducting their legitimate activities, we fear for the chilling effect that this may have on all those seeking to uphold and defend international human rights law in Turkey, as well as exercising their own rights of freedom of opinion and expression and right to peaceful assembly.

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

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/or any comment(s) you may have on the above-mentioned allegations.
2. Please provide information on why the 46 members of the Saturday Mothers/People were arrested during a peaceful protest.
3. Please provide detailed information about the factual and legal grounds for the arrest and charges against the 46 members of the Saturday Mothers/People and how they are compatible with Turkey's obligations under international human rights law.
4. Please indicate the measures undertaken by your Excellency's Government to ensure that human rights defenders are able to carry out their legitimate work in a safe and enabling environment, without the fear of prosecution, intimidation, harassment and violence, in full respect of their civil and political rights.

5. Please provide information on the measures taken to protect the rights of relatives of the disappeared to truth, justice, reparation and memory.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

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

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Tae-Ung Baik

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

Irene Khan

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule

Special Rapporteur on the rights to freedom of peaceful assembly and of association

## **Annex**

### **Reference to international human rights law**

We would like to refer your Excellency's Government to articles 19 and 21 of the International Covenant on Civil and Political Rights ICCPR, which guarantee the right to freedom of opinion and expression and of peaceful assembly.

We would like to remind your Excellency's Government that any limitation to the right to freedom of expression must meet the criteria established by article 19 (3) of the ICCPR. Any limitations must be determined by law and must conform to the strict test of necessity and proportionality must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. Article 19 of the ICCPR protects, *inter alia*, political discourse, commentary on one's own and on public affairs and discussion on human rights (Human Rights Committee, General Comment no. 34, para 11). The Human Rights Committee further highlighted that States should "put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Paragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights" (*Ibid.*, para. 23).

We also recall that according to Article 21 of the ICCPR, "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." The 'provided by law' requirement means that any restriction 'must be made accessible to the public' and 'formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly' (CCPR/C/GC/34). Moreover, it 'must not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution'. The requirement of necessity implies an assessment of the proportionality of restrictions, with the aim of ensuring that restrictions 'target a specific objective and do not unduly intrude upon the rights of targeted persons. The ensuing interference with third parties' rights must also be limited and justified in the interest supported by the intrusion. Finally, the restriction must be 'the least intrusive instrument among those which might achieve the desired result'.

In this context, we would also 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.

We would also like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 5 (a), which provides for the right to meet or assemble peacefully;
- article 5 (b) which provides the right to form, join and participate in non-governmental organizations, associations or groups;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone 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.

We would also like to refer to the report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly in 2006 (A/61/312), where the Special Representative urges States to ensure that law enforcement officials are trained in and aware of international human rights standards and international standards for the policing of peaceful assemblies and to investigate allegations of indiscriminate and/or excessive use of force by law enforcement officials.

The Working Group on enforced or involuntary disappearances has observed that the right to truth is both a collective and an individual right. Each victim has the right to know the truth about violations that affected him or her, but the truth also has to be told at the level of society as a vital safeguard against the recurrence of violations. It is therefore essential that archives, including military archives, be opened and made fully accessible to the public (A/HRC/16/48).

We also wish to reiterate the obligation of your Excellency's Government to ensure that all involved in the investigation into cases of enforced disappearance, including complainant, their relatives, lawyers and witnesses, are protected against ill-treatment, intimidation or reprisal, as stipulated by article 13 of the Declaration on the Protection of All Persons from Enforced Disappearance.

The full texts of the human rights instruments and standards recalled above are available on <https://www.ohchr.org> or can be provided upon request.