

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

Ref.: AL TUR 10/2023
(Please use this reference in your reply)

27 December 2023

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 52/4, 54/14, 52/9 and 50/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the violent interference by the police with the peaceful weekly vigils organised by Saturday Mothers/People in Galatasaray Square, Istanbul, and the judicial harassment of human rights defenders taking part in these vigils.

Saturday Mothers/People (Cumartesi Anneleri/İnsanları) is a human rights group consisting of human rights defenders and relatives of victims of enforced disappearances and political killings during the 1980s and 1990s who gather for a peaceful vigil every Saturday at noon in Galatasaray Square, Istanbul. The group was the subject of joint communication [AL TUR \(7/2021\)](#). We thank Your Excellency for the response received dated 8 July 2021. However, we wish to reiterate our concern at the continued judicial harassment of the peaceful protesters, as well as the continued interference with the group's right to freedom of peaceful assembly. The present situation of the Saturday Mothers/People group has been raised by the Working Group on Enforced or Involuntary Disappearances in its prompt intervention letter sent to your Excellency's Government on 23 November 2023, and which has not yet been responded to.

According to the information received:

Background information

Saturday Mothers/People began gathering peacefully every Saturday in Galatasaray Square on 27 May 1995. Inspired by the Mothers of the Plaza de Mayo movement in Argentina, participants in these vigils display photographs of their forcibly disappeared relatives to commemorate the victims of enforced disappearances and politically-motivated killings, and to call for the disclosure of their fate and whereabouts and an end to impunity for these crimes.

700th week vigil

On 25 August 2018, Saturday Mothers/People gathered for their 700th weekly vigil. This vigil was subject to a ban, pursuant to the Law on Assemblies and

Demonstrations adopted in 1983 (Law no. 2911). The justification for this ban was that Galatasaray Square was not included on the list of lawful gathering places identified by this law.

The police violently dispersed the participants in this vigil, using tear gas and excessive force, and imposed a ban on further weekly gatherings. Criminal charges were also brought against 46 peaceful protesters, including human rights defenders, for allegedly violating the Law on Assemblies and Demonstrations.

The Constitutional Court of Türkiye delivered two judgements, dated 16 November 2022 and 29 March 2023 respectively, which held that the right to freedom of peaceful assembly of participants in the 25 August 2018 vigil had been violated when the vigil was violently dispersed by the police. Both judgements further held that the right to gather peacefully must be respected in a democratic society. Despite these Constitutional Court decisions, the criminal case against the 46 peaceful protesters charged in relation to the 700th week vigil is still pending before the Istanbul 21st Penal Court of First Instance.

In accordance with these judgements from the Constitutional Court, lawyers of Saturday Mothers/People requested for an immediate acquittal for all defendants. In the most recent hearing on 3 November 2023, the court of first instance rejected these acquittal requests. The next hearing is scheduled for 5 April 2024.

Subsequent vigils and police interference

On 8 April 2023, following the Constitutional Court's decisions, Saturday Mothers/People gathered in Galatasaray Square for the first time since 2018 and continued their peaceful vigils. Since then, participants in these vigils have been regularly dispersed by police officers using excessive force.

The police have allegedly justified their interference in these vigils through the use of ban orders. The Beyoğlu district police requested that these vigils be banned due to alleged concerns about safety and public security, and these requests were approved by the district governor, despite a lack of evidence establishing the risk to public order posed by these vigils.

When participants would begin to gather for the vigils, police would immediately surround them and form a "security circle" using riot shields. Police would then announce the ban on the gathering without giving participants sufficient time to disperse from the gathering spot before handcuffing and arresting some participants.

The use of force against human rights defenders and participants in these peaceful vigils has reportedly intensified over time. On 8 July 2023, while participating in a vigil, human rights defender and lawyer Murat Çelik fell to the ground and was kicked by police officers, including in the head, before being handcuffed and forced into a police bus.

Human rights defenders and siblings Besna and Ali Tosun, children of forcibly disappeared Fehmi Tosun, have also repeatedly been subject to ill-treatment during these peaceful vigils. On 14 October 2023, they were both subjected to reverse handcuffs by the same police officer who allegedly acted with the intent to cause them harm.

Reportedly, 26 people, including relatives of forcibly disappeared people and human rights defenders, were detained during the 969th week vigil on 21 October 2023 and 28 people were detained during the following week's vigil on 28 October 2023.

The lawyers of Saturday Mothers/People have filed numerous criminal complaints against the police officers involved for their excessive use of force in dispersing the protesters, which they believe may amount to torture or ill-treatment. The Istanbul Governor's Office has only responded to one of these complaints, on 13 July 2023, and denied authorisation for the opening of a criminal investigation against the police officers involved.

On the 971st weekly vigil held on 4 November 2023, and for the following two weeks, participants and human rights defenders were not detained during the gatherings. However, their right to freedom of peaceful assembly was still interfered with, as the police continued to form a "security circle" around them. On 11 November 2023, they were prevented from gathering in Galatasaray Square, which was reportedly surrounded by police barricade. On 18 November 2023, they were only permitted to gather in front of the barricade surrounding the square and were subjected to heavy police inspection.

Without wishing to prejudice the accuracy of the abovementioned allegations, we express our serious concern at the continued judicial harassment against members of Saturday Mothers/People for exercising their right to freedom of peaceful assembly. We express further concern at the continued violent interference by the police in their weekly vigils which, if proven to be true, would constitute a violation of their right to freedom of peaceful assembly and their right to freedom of expression, including the right to seek information about the fate and whereabouts of their loved ones and their right to know the truth.

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 comment(s) you may have on the above-mentioned allegations.
2. Please provide detailed information about the factual and legal grounds for the interference with and excessive use of force by the police in the weekly vigils held by Saturday Mothers/People and how this is

compatible with Türkiye's obligations under international law, especially articles 19 and 21 of the ICCPR.

3. Please provide detailed information about the reasons for the continued legal proceedings against peaceful protesters at the 25 August 2018 vigil in spite of the judgements of the Constitutional Court in their favour.
4. Please provide detailed information on the measures taken to guarantee the right to form and participate freely in the organizations and associations concerned with attempting to establish the circumstance of enforced disappearances and the fate and whereabouts of disappeared persons, and to assist victims of enforced disappearance.
5. Please provide detailed information on the measures taken to ensure that relatives of disappeared persons and human rights defenders are protected against any ill-treatment or intimidation as a consequence of their complaints or attempts to participate in the search for their loved ones.

We would appreciate receiving a response within 60 days. Past 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

Aua Baldé

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, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), which guarantee the right to freedom of expression, freedom of peaceful assembly and freedom of association. We would also like to draw the attention of your Excellency's Government to articles 7 and 17, read alone and in conjunction with article 2.3 of the ICCPR, in relation to relatives of disappeared persons.

We stress that the right to freedom of expression includes inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism' (General Comment no. 34 of the Human Rights Committee). Further, the Human Rights Committee made clear that "It is not compatible with article 19 paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information". It is the States' duty to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (Ibid.).

We would like to remind your Excellency's Government 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." In its General Comment no. 37, the Human Rights Committee underlines the right to freedom of peaceful assembly and the State responsibility to allow such assemblies to take place "without unwarranted interference" and to protect the participants of such assemblies (CCPR/C/GC/37, para. 8).

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 like in particular 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 for the right to form, join and participate in non-governmental organizations, associations or groups;
- article 6 (a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- 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 on 5 September 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 United Nations Declaration on the Protection of All Persons from Enforced Disappearance, in its article 13, paragraphs 3 and 5, establishes that steps shall be taken to ensure that “all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal” and that “any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation is appropriately punished”. In this regard, the Working Group recalls that according to Principle 14 for the search for disappeared persons,¹ during the search process, the competent authorities should ensure the protection of the victims at all times, regardless of the level of involvement that they choose to have in the search.

The Working Group’s General Comment on the right to truth (A/HRC/16/48) states that the right of the relatives to know the truth of the fate and whereabouts of the disappeared persons is an absolute right, not subject to any limitation or derogation. No legitimate aim, or exceptional circumstances, may be invoked by the State to restrict this right. The inalienable right to know the truth about past events concerning the perpetration heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes, is also established in the updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity of February 2005 (principle 2). We would like to recall that the full and effective exercise of the right to truth provides a vital safeguard against the recurrence of violations (principle 5).

States have an obligation under international human rights law to investigate and punish human rights violations and to combat impunity for such crimes, pursuant to article 2 of the ICCPR. As established by the Human Rights Committee in its

¹ See Guiding Principles for the search for disappeared persons, [CED/C/7](#).

General Comment No. 31, States have an obligation to investigate and punish serious human rights violations, such as torture, extrajudicial killings and enforced disappearances. Failure to investigate and prosecute such violations is in itself a breach of the norms of human rights treaties (paragraph 18). Impunity for such violations can be an important element contributing to the recurrence of violations. The Human Rights Committee, General Comment No. 36, notes that an important element of the protection afforded to the right to life is the obligation on the States parties, where they know or should have known of potentially unlawful deprivations of life, to investigate and, where appropriate, prosecute the perpetrators of such incidents. Investigations should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations. Investigations should explore, inter alia, the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates.