

**Mandates of the Working Group on Arbitrary Detention; the the Working Group on Enforced or Involuntary Disappearances; 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 the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE: UA TUR 7/2016:

19 August 2016

Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 24/7, 27/1, 24/6, 25/18, 26/7, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **arbitrary and incommunicado detention, torture and ill-treatment, and denial of fundamental rights of detainees in the aftermath of the failed coup attempt of 15 July 2016.**

The allegations described below are taking place in the context of a newly declared state of emergency, and a decree with the force of law ("Kanun Hükümünde Kararname", KHK/667) adopted within the framework of the state of emergency, as well as notices of derogation to the European Convention on Human Rights (ECHR), and the International Covenant on Civil and Political Rights, in the aftermath of the coup attempt of 15 July 2016. In a press release dated 19 July 2016, a group of 5 independent human rights experts urged your Excellency's Government to respect human rights and fundamental freedoms, and abide by its fundamental human rights obligations in a time of crisis, as the best way to uphold constitutional order.

The human rights situation in Turkey after the attempted coup on 15 July 2016 have been the subject of a related communication, dated 3 August 2016 (case reference TUR 2/2016).

According to the information received:

Following the failed coup attempt of 15 July 2016, according to authorities, more than 20,000 persons, including soldiers, police officers, judges, prosecutors, and other judicial officials, human rights defenders, lawyers and healthcare personnel,

have been detained in both official and unofficial detention facilities. Some detainees are reportedly being held in unofficial makeshift facilities including sports centers, riding stables, and the corridors of public buildings. Detainees in Ankara and Istanbul have allegedly been subjected to torture and other ill-treatment, including severe beatings, rape and other sexual violence, being held in stress positions for up to 48 hours, denial of food and water for periods of up to three days, denial of, or restricted medical treatment, threats, and verbal abuse. According to eyewitness reports, hundreds of detainees in the Ankara police headquarters reportedly showed signs of severe beatings. At least one detainee reportedly continued to be subjected to torture after being transferred from police custody to pretrial detention. We have additionally received information about acts of intimidation, arbitrary detention and attacks against healthcare personnel who, against this background, have attempted to provide medical care to detainees.

On 20 July 2016, the Government declared a state of emergency for duration of three months, a decision that was approved by the Grand National Assembly and took effect the following day. The Government informed that measures taken as a part of this process “may involve derogation from the obligations under the Convention for the Protection of Human Rights and Fundamental Freedoms” (the European Convention on Human Rights), under article 15 of the Convention. On 21 July 2016, the Government further informed that measures taken as part of this process “may involve derogation from obligations under the International Covenant on Civil and Political Rights regarding articles 2/3, 9, 10, 12, 13, 14, 17, 19, 21, 22, 25, 26, and 27, as permissible in article 4 of the said Covenant.” On 23 July 2016, the Government issued its first decree (“Kanun Hükmünde Kararname”, KHK/667) under new powers authorised by the state of emergency. Under the decree, individuals can be held without charge or access to a judge for 30 days. The decree also provides for officials to observe or even record meetings between pre-trial detainees and their lawyers, and detainees are restricted in their choice of legal counsel.

It is reported that detainees are being held arbitrarily, without evidence being submitted to establish reasonable suspicion of criminal behavior, and that soldiers are being placed in pre-trial detention for simply having left their barracks on the evening of 15 July, regardless of the reasons. In some cases, individuals brought before a judge were asked irrelevant questions or no questions at all during their hearings. Detainees are being held pre-charge for four or more days by the police, and are held incommunicado throughout this period, being denied access to a lawyer and their families. In most cases, lawyers have only been able to speak to their clients until shortly before being brought to court or being interrogated by prosecutors, with neither the detainees nor their lawyers having been informed of the charges brought against them, thereby making it difficult to prepare a defense.

It is also reported that detained soldiers have been brought before courts in groups of up to 25 persons. Detainees are most of the time not permitted to choose their lawyer and are instead assigned a bar association legal aid lawyer by the authorities.

It is further reported that the National Prevention Mechanism (NPM) is unable to carry out its monitoring mandate, that no other institution is available to perform this essential function, and that civil society groups are not permitted to conduct monitoring of places of deprivation of liberty. Human rights groups and defenders working on the ground in Turkey have reportedly been subjected to intimidation and retaliation and are operating in a climate of fear and growing restrictions on fundamental rights and freedoms.

We wish to express grave concern at the arbitrary and incommunicado detention of a high number of individuals and the allegations of widespread torture and ill-treatment, as well as at the reported denial of fundamental due process guarantees, and urge your Excellency's Government to take all necessary measures to restore and protect the rights of the persons who have been detained, imprisoned, or sentenced in the aftermath of the attempted coup. We are furthermore concerned at allegations of attacks and intimidation against healthcare personnel willing to provide detainees' with medical care, as well as against human rights defenders and civil society for their legitimate work.

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 norms and standards that are applicable to the issues brought forth by the situation described above. The above mentioned allegations appear to be in contravention of the right not to be deprived arbitrarily of liberty, and the right to a fair trial and due process, including the fundamental principle of the presumption of innocence, as enshrined, *inter alia*, in articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003, and in articles 9 and 10 of the Universal Declaration of Human Rights (UDHR). These allegations also seem to be in contravention of the UN Basic Principles on the Role of Lawyers and the UN Basic Principles on the Independence of the Judiciary.

With regards to your Excellency's possible derogations from some of its international treaty obligations, we wish to stress that the Human Rights Committee clarified that, even if article 9 is not included in the list of non-derogable rights of article 4 of the Covenant, "there are limits on States parties' power to derogate." Indeed, States "must ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation". Moreover, the Committee states that the "fundamental guarantee against arbitrary detention is non-derogable, insofar as even situations covered by article 4 cannot justify a deprivation of liberty that is unreasonable or unnecessary under the circumstances." Finally, the Committee noted that "in order to protect non-

derogable rights, including those in articles 6 and 7, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention must not be diminished by measures of derogation.” (see General Comment no. 35, CCPR/C/GC/35, paras. 65-67). With regard to article 14, the Human Rights Committee noted that while article 14 is not included in the list of non-derogable rights of the Covenant, States should ensure that derogations under article 14 “do not exceed those strictly required by the exigencies of the actual situations”. Moreover, “the guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights.” Finally, the Committee stated that “deviating from fundamental principles of fair trial, including the presumption of innocence is prohibited at all times.” (see General Comment No. 32, CCPR/C/GC/32, para. 6).

We would also like to remind your Excellency’s Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which Turkey ratified on 2 August 1988, and in article 7 of the ICCPR. The Convention against Torture reaffirms the absolute and non-derogable prohibition against torture and other ill-treatment (article 2); unequivocally prohibits the use of information obtained under torture as evidence in any proceedings (article 15); and provides that each individual who alleges he or she has been subjected to torture has the right to complain to, and to have his or her case promptly and impartially examined by, a competent judicial authority (article 13).

Moreover, we would like to draw the attention of your Excellency’s Government to the fact that the Committee against Torture and the Human Rights Committee consistently have found that conditions of detention can amount to inhuman and degrading treatment, and that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and, in itself, constitute a form of such treatment.

With respect to the information of individuals being detained in both official and unofficial detention facilities, we would like to recall article 10 (1) of the 1992 United Nations Declaration on the Protection of All Persons from Enforced Disappearance, which states that: “Any person deprived of liberty shall be held in an officially recognized place of detention”. The same provision also provides that individuals deprived of liberty shall be brought before a judicial authority promptly after detention.

Regarding access to medical treatment in detention, we would like to refer your Excellency’s Government to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Turkey on 23 Sep 2003 and to the General Comment 14 of the Committee on Economic, Social, and Cultural rights, which indicates that, under ICESCR article 12, States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons,

including prisoners or detainees to medical care (GC 14, Para 34). In addition, the Nelson Mandela Rules (Standard Minimum Rules for the Treatment of Prisoners) establish the provision of care for the physical and mental health of all prisoners, including sick prisoners, those who complain of illness, and any prisoner who may require it. Moreover, the right to health requires States in situation of conflict, including emergency, to take concrete steps to provide protection for health-care workers and individuals seeking health-care services (A/68/297, para 15).

With regard to the allegations concerning human rights defenders, we would also like to refer to 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 articles 1, 2, 9 and 12. We also wish to refer to Human Rights Council resolution 22/6, which urges States to ensure that legislation designed to guarantee public safety and public order contains clearly defined provisions consistent with international human rights law and that it is not used to impede or restrict the exercise of any human right (OP 4).

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response as soon as possible on the initial steps taken by your Excellency's Government to halt the above-mentioned allegations and prevent their re-occurrence and safeguard the fundamental human rights of all persons detained in the aftermath of the attempted coup.

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 comments you may have on the above mentioned allegations.
2. Please provide information on any measures taken to ensure the physical and psychological integrity of all persons detained in the aftermath of the attempted coup.
3. Please provide the details, and where available, the results of any investigation, and judicial or other inquiries carried out as a result of the above-mentioned allegations, and indicate what kind of measures are being taken to ensure that any public actors are being investigated and prosecuted to ensure accountability. If no inquiries have taken place, or if they have been inconclusive, please explain why.

4. Please provide information about existing framework available and steps taken to ensure due process of law and fair trial, including access to a lawyer of their choice, the right to visitation and communication with their families, and access to adequate health care in detention to all persons detained in the aftermath of the coup attempt.

5. Please provide information concerning the legal grounds for the arrest, detention, and prosecution of the persons detained in the aftermath of the attempt coup, and explain how these measures are compatible with the international human rights obligations of Turkey.

6. Please provide information on measures taken to ensure that persons detained in the aftermath of the coup are held in humane conditions and exclusively in official places of detention.

7. Please provide information on reports that the NPM is unable to perform its functions, and indicate what measures are being taken to ensure the Mechanism and/or any other appropriate institutions are enabled to conduct independent monitoring of all places of deprivation of liberty in accordance with the principles contained in the Optional Protocol to the Convention against Torture.

8. Please provide information on measures taken to ensure that decrees promulgated within the framework of the current state of emergency comply with international norms and standards regulating the limitation of rights under state of emergency and are not used to limit the fundamental human rights of detainees, including the prohibition of torture and other ill-treatment, due process and fair trial safeguards, and the rights to freedom of expression and opinion of people within Turkey more generally.

9. Please indicate the measures adopted and undertaken to ensure that human rights obligations are being met and that individuals, including healthcare personnel, are able to exercise their rights in a safe and enabling environment without fear of reprisals, violence, or harassment of any sort, in the aftermath of the attempted coup.

10. Please provide information on the concrete steps taken by Turkey to ensure the right to health of detainees and to provide protection for health-care workers and individuals seeking health-care services in official and unofficial detention facilities.

11. Please indicate what measures have been taken to ensure that human rights defenders in Turkey are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment and persecution of any sort.

12. Please indicate what steps are being taken to ensure that any derogations from the ECHR are strictly required by the exigencies of the situation, not inconsistent with other obligations under international law, and involve no derogation from the absolute prohibition of torture and other ill-treatment under article 3 of the ECHR , and under customary international law.

13. Please indicate what steps are being taken to ensure that any derogations from the ICCPR are limited to the extent strictly required by the exigencies of the situation, that no measure derogating from the provisions of the Covenant is inconsistent with the State party's other obligations under international law, and that the requirements imposed by the Human Rights Committee's General Comment No. 29 on States of Emergency are met in their entirety.

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 responsible of 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.

José Guevara  
Vice-Chair-Rapporteur of the Working Group on Arbitrary Detention

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

Dainius Puras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health

Michel Forst  
Special Rapporteur on the situation of human rights defenders

Mónica Pinto  
Special Rapporteur on the independence of judges and lawyers

Juan Ernesto Mendez  
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or  
punishment

