

Preliminary observations and recommendations of the United Nations Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Nils Melzer on the Official visit to Turkey – 27 November to 2 December 2016

Ankara, 2 December 2016

I. Introduction

At the invitation of the Government, I visited Turkey from 27 November to 2 December 2016 to assess the prevailing situation and challenges concerning torture and other cruel, inhuman or degrading treatment or punishment.

At the outset, I would like to express my sincere appreciation to the Government of the Republic of Turkey for renewing the invitation extended to my predecessor to visit the country. I thank the Turkish authorities for the excellent cooperation my team and I enjoyed during the visit, and for the efforts displayed by the representatives of the Ministry of Foreign Affairs to facilitate and organise meaningful official meetings. I would also like to thank the United Nations Resident Coordinator and the United Nations Office in Turkey for supporting my team before and throughout the visit.

Since 15 July 2016, Turkey is going through a critical moment of its modern history. In this era of uncertainty, I wish to express my sincere solidarity with all segments of the Turkish population. Despite the difficult circumstances facing the country, the discussions I had with Turkish officials in Ankara, Diyarbakir, Sanliurfa and Istanbul were open, frank and constructive. During my visit, I had the opportunity to exchange views with high level officials of the Ministries of Foreign Affairs, Justice and Interior in Ankara. I also had valuable discussions with Magistrates of the Constitutional Court and of the Court of Cassation, with the Public Prosecutors of Ankara and Diyarbakir as well as with members of the Forensic Medical Institute in Istanbul. I also had the opportunity of meeting extensively with devoted Turkish activists, lawyers and doctors as well as with members of non-Governmental organisations. I also met with representatives of the diplomatic community in Ankara.

Throughout our visit, my team and I enjoyed unrestricted access to all places where people are deprived of their liberty and were able to interview inmates in private, in accordance with the terms of reference of my mandate. For that, I again express my sincere appreciation to the Government of the Republic of Turkey. In the course of the past week, we visited the Sincan prison complex in Ankara, including the F-Type High Security and the female detention facilities, the D-type high security and E-type closed prisons in Diyarbakir, including the male, female and juvenile Sections, the Counter-Terrorism Police lock-up in Sanliurfa and two police stations in Esenler as well as the Closed Prison Nr. 9 of the Silivri Penitentiaries Campus in Istanbul. In these places of detention, we conducted private interviews with numerous male, female and juvenile

inmates, including persons arrested for reasons related to the failed coup, persons detained or convicted in relation to the situation in the South East, for organized crime or common crimes.

II. Preliminary findings

Given the limited duration of my stay in the country, and the limited number of detention places and inmates visited, the observations I am presenting today are preliminary and non-exhaustive. Based on the information collected during my mission, I will draft a more comprehensive and updated report that will be presented to the United Nations Human Rights Council in March 2018.

1. Legal and procedural framework

In principle, Turkey's institutions and legislation provide sufficient safeguards against torture and ill-treatment. Thanks to the commitment of the Government, substantial progress has been made in the fight against torture since the 1990s. Article 17 of the Turkish Constitution, articles 94 to 96 of the Criminal Code and articles 147 and 148 of the Code of Criminal Procedure provide legal standards for the prevention and investigation of torture and other forms of ill-treatment and for the exclusion of evidence extracted under torture. Judicial safeguards are in place, including at the level of the Constitutional Court, which allow individuals to directly file petitions for allegations of human rights violations, torture and ill-treatment included.

During our meetings with the authorities, all officials of the judicial, legislative and executive branches of the State emphasized their commitment to Turkey's "zero tolerance" policy on torture. At no point did any official at any level in the hierarchy challenge the absolute and non-derogable prohibition, or suggest any exceptions or interpretations inconsistent with international law.

2. Disconnect between policy and reality

However, during my interactions with inmates, lawyers and civil society representatives, I also received persistent allegations suggesting a serious discrepancy between the legal and procedural safeguards put in place and their actual implementation as far as the investigation of alleged violations is concerned. Based on my preliminary assessment, this discrepancy seems to be the result of several coinciding factors:

- The sweeping security measures taken by the Government in response to the failed coup of 15 July 2016 seem to have resulted in a general sense of intimidation and distrust in many segments of the population, preventing not only inmates and their families, but also civil society, lawyers, and doctors from initiating or participating in any procedure that may be perceived – rightly or wrongly - as opposing or criticizing the Government and its officials.
- Some recently passed legislation and statutory decrees have created an environment conducive to torture and other forms of ill-treatment, including:
 - the extension of the period of custody without judicial review to 30 days;

- the extension of the period without access to a lawyer to five days;
- the denial of confidential exchange between inmates suspected of terrorist crimes and their lawyers;
- the introduction of immunity from criminal prosecution for forces conducting counter-terrorist operations in the Southeast.
- As a consequence of the recent dismissals of thousands of judges, prosecutors and other officials, the case-load of individual complaints cannot be processed in a timely manner.
- Due to these dismissals and other delays caused in administrative appointment processes, the National Human Rights and Equality Institution, which according to Turkish domestic law is also to exercise the function of the National Preventive Mechanism foreseen in OPCAT, currently cannot assume its decisive preventative role of carrying out regular, independent and objective inspections of all places of detention in Turkey.

For certain phases of detention, we also received numerous allegations of torture and other ill-treatment following the patterns outlined below. The forensic expert who accompanied me throughout the visit, conducted a number of medical examinations of inmates, some of which confirmed physical injuries consistent with the testimonies we received.

3. Post-Coup Arrests

After the state of emergency was declared in the immediate aftermath of the attempted coup of 15 July 2016, mass arrests of individuals suspected to be associated with the Gulenist movement (labelled by the Government as “Fethullahist Terrorist Organisation”, FETÖ) were conducted.

Testimonies received from inmates and their lawyers suggest that, in the days and weeks following the failed coup, torture and other forms of ill-treatment were widespread, particularly at the time of the arrest by police and gendarmerie officials or military forces and subsequent detention in police or gendarmerie lock-ups as well as in unofficial detention locations. Many of my interlocutors reported that law enforcement officials felt free to harass, intimidate and insult anyone perceived as opposing the Government or its authority, in all impunity. After this initial phase marked by arbitrariness, however, the ill-treatment appears to have ceased. Apart from occasional verbal threats, my team received no allegations and collected no evidence of currently ongoing torture or ill-treatment with respect to those inmates, male or female, who were arrested for reasons related to the attempted coup.

The majority of those reporting previously to have been subjected to torture or ill-treatment said that they did not file complaints to the authorities for fear of retaliation against them or their families and because of a deep distrust in the independence of the prosecution and the judiciary and, consequently, in their willingness or ability to adequately investigate and adjudicate their claims. Upon my request, the Turkish authorities agreed to provide statistical data on individual complaints filed for alleged torture or other forms of ill-treatment. While I have not yet received and analysed all the data requested, preliminary information gathered seems to suggest that the small number of investigations carried out by the authorities so far is grossly disproportionate to the alleged frequency of violations.

In my interactions with the authorities, I witnessed the deep and lasting trauma that the events of 15 July 2016 have inflicted on the authorities, officials and citizens of Turkey. Officials explained that the shock of the events prompted the determination of the Government to preserve the integrity and security of the institutions of Turkey. This resulted in the subsequent adoption of extensive emergency legislation. Of particular concern to my mandate are Statutory Decrees 667 and 668, which extend the period of custody without judicial review to a maximum of 30 days, and the period without access to a lawyer to a maximum of five days. Furthermore, the confidentiality of the exchange between inmates suspected of terrorist crimes and their lawyers is denied through systematic monitoring.

While I fully recognise the imperative of Turkey to protect its citizens and institutions and its right to take extraordinary measures in times of emergency, worldwide experience shows that it is precisely in the first hours and days after arrest that the risk of abuse, including torture and other forms of ill-treatment, is highest. In practice, therefore, expedient access to lawyers and judicial review and systematic monitoring by an effective National Preventive Mechanism are indispensable tools to avoid creating an environment conducive to torture and other forms of ill-treatment.

As noted above, the dismissals, the related arrests and other sweeping security measures taken by the Government in response to the failed coup of 15 July seem to have resulted in a general sense of intimidation and distrust in many if not most segments of the population, discouraging not only inmates and their families, but also civil society, lawyers, and medical doctors from initiating or participating in any procedure that may be perceived – rightly or wrongly - as opposing or criticizing the Government and its officials. As a result, allegations of torture and other forms of ill-treatment related to the failed coup have not been effectively investigated.

4. The Situation in the South-East

Since July 2015, violent clashes between the Turkish army and the PKK have resurged, accompanied by round-the-clock curfews in specific neighbourhood and cities in the South-East of Turkey. Law 6722 passed by the Turkish Parliament grants counter-terrorism forces immunity from prosecution for acts carried out in the course of their operations, thus rendering investigations into allegations of torture and ill-treatment by the involved security forces more difficult, if not impossible. The situation was further compounded with the adoption of the emergency laws and their application also in the South East.

My team and I received numerous troubling testimonies of torture and other forms of ill-treatment of both male and female inmates suspected to be members or sympathisers of the PKK. Most instances of ill-treatment were reported to have been inflicted by the police or gendarmerie in connection with the arrest itself, as well as during interrogation, in most cases allegedly in order to obtain forced confessions or denunciation of others. Many inmates reported that they had been arrested based on false accusations made against them under torture. While my team and I generally received no allegations and collected no evidence with regard to currently ongoing torture or ill-treatment, we did receive a small number of allegations by

inmates of occasional brutality and degrading treatment in their current place of detention, in particular of male guards or soldiers manhandling or sexually harassing female detainees during transfers and denying them privacy during medical examinations, or both visitors and inmates being subjected to disrespectfully conducted naked searches on the occasion of open visits.

Again, the majority of those reporting to have been subjected to torture or ill-treatment said that they did not file complaints to the authorities for fear of retaliation against them and their families and because of their distrust in the independence of the prosecution and the judiciary and, consequently, their willingness or ability to adequately investigate and adjudicate their claims. Those who reported to have filed formal complaints alleged that no follow-up had been made by the prosecutor's office.

5. Conditions of detention

Overall, conditions of detention in the visited places of detention were satisfactory or, at least, acceptable. The facilities we visited are purpose-built detention centres and generally adequately equipped. However, all of the police lock ups we visited in Sanliurfa and Istanbul, currently holding detainees for up to 30 days as allowed by the emergency decrees, clearly are neither designed nor adequate to detain anyone for more than 48 hours. The cells with barred doors do not allow for even the most basic degree of privacy and, in some places, are extremely narrow. Detainees reported a loss of their sense of time because of the constant bright lighting and, in one place, the freezing temperature, which had prevailed until the recent instalment of heaters. Inmates in police lock ups had no access to sunlight and fresh air during their entire detention.

A major concern is that all visited facilities, except Closed Prison Nr. 9 of the Silivri Penitentiaries Campus, were significantly overcrowded, with occupancy ranging from 125 to more than 200% of the actual capacity. In some institutions, the overcrowding appeared to result from the recent influx of inmates following the massive arrests after the failed coup. However, in other locations, the overcrowding was alleged to have been persistent for several years. This overcrowding has had a significant negative impact on prompt access to medical care, as well as on recreational activities, working opportunities, training activities and the frequency of family visits. Inmates under high security regimes are not allowed to work at all. While distance learning is available to all inmates, I am particularly concerned about the lack of schooling and insufficient access to recreational activities for juvenile pre-trial detainees whom I visited in a detention facility in the South-East. I also would like to reiterate my serious concerns about the conditions of detention in police lock-ups, which clearly are neither designed nor adequate for detention periods exceeding 48 hours.

While a strict separation between male, female and juvenile inmates is maintained in all visited institutions, pre-trial detainees and convicts often have been found to be held together in the same cells and blocks. On some occasions, adolescent girls have been found to be detained in female adult blocks.

Sanitary and hygienic conditions observed in the facilities are generally satisfying, but also affected by the overcrowding.

Although access to health care and dental and psychiatric support is guaranteed in principle, some improvements are required. In particular, the large facilities we visited have an insufficient number or presence time of General Practitioners compared to the number of detainees they are required to care for. This shortcoming is even more acute regarding dental care and psychological support. The supply and provision of medicines is adequate but we have noticed a lack of specific programmes for common situations in detention facilities such as contagious diseases, drug abusers and HIV/Aids. Inmates with long-term, chronic diseases including fatal diseases should be given special consideration, including potential release at an advanced stage of their illness.

The forensic medical assessment and photo documentation for inmates with signs of physical or psychological trauma seems not to be a routine procedure and occasionally seems to have been delayed until the visible signs of the trauma had disappeared. We have received numerous allegations of physicians refusing to confirm physical trauma in medical reports, and access to independent physicians at the request of inmates and their relatives was reportedly denied.

In my interactions with inmates, I heard consistent reports that naked body searches are conducted both on inmates and visitors. While there may be situations requiring such searches, their frequency seems to have increased significantly since the failed coup and reportedly can be administered at any time, without warning, which makes the adequacy of this measure even more questionable and, if disrespectfully conducted, may amount to degrading treatment.

III. Concluding remarks

I would like to stress once again that I fully acknowledge the extreme volatility of the security situation in Turkey and the right and duty of the Government to take security measures to protect its citizens from acts of violence and political overthrow. However, just as much as there can be no justification for acts of terrorism and military coups, there also can be no justification, under any circumstances, for acts of torture and other cruel, inhuman or degrading treatment or punishment, or for any form of impunity for alleged violations in that matter.

I firmly believe that there is no better deterrent to torture and other ill-treatment than a strong national will to investigate, prosecute and punish such abuse. The Turkish authorities have the ability to prevent torture – they have proven so in the last decade and they have consistently and unequivocally assured me of their continued commitment in that respect.

I therefore appeal to the Turkish Government to publicly reinforce its “zero tolerance” policy on torture and, in particular, to unequivocally make clear to State officials at all levels that they are expected and, indeed, obliged to report and investigate all allegations of torture and to bring perpetrators to justice.

