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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Follow-up to the recommendations made by the Working Group on Enforced or Involuntary Disappearances in its report on its visit to Turkey from 14 to 18 March 2016 (A/HRC/33/51/Add.1)\***

### **Report of the Working Group on Enforced or Involuntary Disappearances**

The present document contains information supplied by the Government of Turkey, civil society and other stakeholders relating to follow-up measures to the recommendations made by the Working Group on Enforced or Involuntary Disappearances following its visit to Turkey in 2016 (A/HRC/33/51/Add.1).

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\* The present document is being issued without formal editing.

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## I. Introduction

1. This document contains information supplied by Government, civil society and other stakeholders, relating to the follow-up measures to the recommendations made by the Working Group on Enforced or Involuntary Disappearances, following its country visit. In paragraph 7 a) of its Resolution 7/12, the Human Rights Council requested Governments that have accepted visits “to give all necessary attention to the Working Group’s recommendations” and invited them to inform the Working Group of “any action they take on those recommendations”. The Human Rights Council reiterates this request in paragraph 16 a) of its Resolution 21/4. Resolution 36/6 renews the mandate of the Working Group in conformity with the terms set forth in Human Rights Council resolution 7/12.
2. The Working Group decided in 2010 to adopt the present format to its follow-up reports with the aim of rendering it reader-friendly and of facilitating the identification of concrete steps taken in response to the specific recommendations and to reflect the opinions of the different actors involved in the process. For this reason, follow-up tables have been created. The tables contain the recommendations of the Working Group, a brief description of the situation when the country visit was undertaken, an overview of the steps taken on the basis of the information gathered by the Working Group both from governmental and non-governmental sources, and the observations of the Working Group on the level of implementation of the recommendations.
3. The Working Group continues to offer its assistance to the Governments that have received a visit, to comply with the recommendations made and stands ready to assist them in their efforts to prevent and combat the heinous crime of enforced disappearance.

## II. Turkey

### **Follow-up to the recommendations made by the Working Group on Enforced or Involuntary Disappearances in the report of its visit to Turkey from 14 to 18 March 2016 (A/HRC/33/51/Add.1)**

4. On 18 November 2019, the Working Group on Enforced or Involuntary Disappearances requested the Government of Turkey to provide information on measures taken to implement the recommendations that were made in the report A/HRC/33/51/Add.1 (paragraphs 64 - 102), after its visit to the country in March 2016. On 14 February 2020, the Government of Turkey provided the requested information. On 30 July 2020, the Government of Turkey submitted additional observations, which are contained in A/HRC/45/13/Add.7.
5. The Working Group thanks the Government of Turkey for the co-operation with the process of the follow-up report. While recognizing that limited progress was made in the legislative domain, notably in abolishing statutory limitations for the crime of torture, the Working Group notes that many recommendations have only been partially addressed or have not been addressed at all. The Working Group therefore underlines the importance of full implementation of all of the recommendations made in the report.
6. The Working Group recognizes that following its visit in March 2016, the Government of Turkey faced dire security challenges during and in the immediate aftermath of the attempted coup on 15 July 2016. The events added a sense of urgency for Turkey to consolidate democratic institutions and the rule of law, in an effort to protect and promote fundamental rights and freedoms of all citizens without discrimination. In particular, any progress was contingent on a durable cessation of hostilities and implementation of an effective transitional justice process for its conflict-riven southeastern region. To that end, the report’s recommendations provided a blueprint to the Government of Turkey to come to terms with past enforced disappearances in all relevant areas, namely truth, justice, reparation, and memory of the victims.
7. In the wake of the attempted coup, the Working Group is concerned that an entrenched culture of impunity provided a fertile ground for cases of enforced disappearance to increase.

The Working Group is particularly alarmed by allegations of enforced disappearances reported to have been perpetrated under the pretext of combatting terrorism against actual or perceived members of Gulen/Hizmet movement, classified by the Government of Turkey as ‘Gülenist Terror Organization (Fethullahçı Terör Örgütü, FETÖ)’ or ‘Parallel State Organisation (Paralel Devlet Yapılanması, PDY)’. Distressing reports of abductions by state agents in broad daylight, followed by months of torture and ill-treatment in clandestine detention sites aimed at extracting confessions for future prosecutions should be investigated as a matter of urgency.

8. The Working Group is gravely concerned at what appears to be a systematic practice of State-sponsored extraterritorial abductions and forced returns of Turkish nationals from numerous States to Turkey. To date, at least 100 individuals suspected of involvement with the Gulen/Hizmet movement are reported to have been subjected to arbitrary arrests and detention, enforced disappearance and torture, as part of covert operations reportedly organized or abetted by the Government of Turkey in coordination with authorities of several States. In addressing the issue of extraterritorial abductions, the Working Group underlines that a failure to acknowledge deprivation of liberty by state agents and a refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration.

9. Based on information received after the country visit, the Working Group is concerned over the alleged involvement of the Turkish armed forces in the disappearance of Syrian nationals following Operation “Peace Spring” in northern Syria.

10. The Working Group is equally concerned that the aforementioned practices, conducted within Turkey or abroad, epitomized a denial of justice, insofar as these individuals were reportedly deprived of liberty in the form of secret, unacknowledged or incommunicado detention and completely removed from the protection of law. It is further disconcerting that they may have been deprived of the rights to an effective remedy and fair trial whilst held incommunicado, including through forced confession of guilt, denial of the presumption of innocence, inability to challenge the lawfulness of detention, denial of access to legal representation, as well as torture and ill-treatment. Further distressed by these patterns, the Working Group underlines that such practices can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment.

11. The Working Group notes with concern that even after the suspension of the state of emergency, the authorities have not complied with procedural safeguards upon arrest and during the first hours of deprivation of liberty aimed at preventing possible violations, such as torture. These safeguards include immediate registration and judicial oversight of detention, notification of family members as soon as an individual is deprived of liberty, the hiring of a defence lawyer of one’s choice, and lawyer-client privilege.

12. The Working Group remains preoccupied about the implications of curfews in the southeastern region on the enjoyment of basic rights. A matter of serious concern is the apparent lack of effective, independent, timely and impartial investigation into allegations of human rights violations, including enforced disappearances, which continue to perpetuate impunity, deepen grievances and provoke more violence in the region.

13. The Working Group welcomes the adoption of amendments to the Penal Code that abolished statutory limitations for the crime of torture. However, it regrets that no progress has been made in relation to qualifying enforced disappearances as an autonomous crime. As a result, Turkey continues to apply a statute of limitation period of 20 years for crimes under which enforced disappearances are usually investigated and prosecuted. In addition, the Working Group is alarmed by reports that emergency decrees effectively afforded blanket immunity to state officials who may have been implicated in serious human rights violations, including enforced disappearances.

14. The Working Group regrets that Turkey continues to deny the families of the disappeared their guaranteed and absolute right to the truth by failing to establish a dedicated and independent search mechanism in accordance with its humanitarian obligations. Without an effective extrajudicial search mechanism in place, Turkey cannot provide closure to so many families seeking truth, justice and remembrance for their disappeared family members. In this regard, the Working Group underscores that the termination or suspension of a

criminal investigation regarding an alleged act of enforced disappearance does not release the State from its obligation to search for, locate and identify disappeared person or his/her remains, including their return to the relatives, with due respect for cultural customs.

15. Concerning identification of new burial sites, establishment of a DNA bank and creation of a register with the exact or approximate number of the disappeared, the Working Group regrets not having received detailed information from the authorities about progress made in this regard. Against this backdrop, the Working Group recommends that the authorities should consider independent initiatives led by civil society, such as studies mapping burial sites across Turkey.

16. The Working Group considers 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.

17. The Working Group further observes that the entrenched culture of impunity for human rights violations perpetrated by state agents continues to be a main obstacle to holding officials accountable in Turkey. While there are various factors that foster a culture of impunity in the criminal justice system, the lack of judicial independence and impartiality are reported to have been most critical ones. In addition, the recent tendency to incriminate actual or perceived supporters of the Hizmet/Gülen movement by the country’s leadership is presumed to have curtailed independent and effective investigations into enforced disappearances. Dismally low prosecution and conviction rates appear to be a further testament to these systemic deficiencies.

18. Particularly disconcerting are allegations of intimidation and harassment of the relatives because of their activism and calls for truth and justice. Reprisals targeting lawyers and human rights defenders who represent families of the disappeared are equally alarming and should be investigated by the authorities as a matter of priority. In this respect, the Working Group emphasizes the obligation of Turkey 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. In the same manner, Turkey should ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of lodging of a complaint or during the investigation procedure is appropriately punished.

19. The authorities should transfer trials to geographically distant courts as a measure of last resort, while considering adverse effects this practice has on access to justice for the relatives of the disappeared. As a positive step in this regard, the Working Group welcomes the amendment to the Criminal Procedure Code that allows reimbursements of travel costs and hopes that all victims and their families will benefit from it without distinction as to gender, ethnicity, nationality, language, disability, and religious or political affiliation.

20. While the Working Group welcomes the adoption of Judicial Reform Strategy, it is regrettable that a national reparation programme has not still been rolled out that includes compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition for all victims of human rights violations, including enforced disappearance, without discrimination.

21. The forty-year experience of the Working Group demonstrates that the effects of enforced disappearances are lived and faced in different ways by women and girls due to gender roles, which are deeply embedded in history, tradition, religion and culture. The Government of Turkey should recognize that women play a fundamental role in securing and advancing the rights of disappeared persons. Because of structural vulnerabilities to which women are exposed, as often they are sole breadwinners of their families, they are entitled to commensurate redress that should include at minimum financial reparations, psychosocial support, and guarantees of non-repetition.

22. It is regrettable that the Government of Turkey has not supported family associations in their efforts to commemorate the disappearance of their family members. In this regard, the Working Group condemns the authorities’ response to the protests of Saturday Mothers

who have been seeking truth and justice for their loved ones for decades. As a remedial action, the Government of Turkey is urged to protect and uphold their guaranteed rights to expression, peaceful assembly and association, along with the rights to truth, justice, memory, and reparations.

23. The Working Group is deeply concerned that the Emergency Decree n.703 and Presidential Circular n.2018/1 have undermined the independence of the Human Rights and Equality Institution (HREI). According to information received, no *ex officio* investigations into alleged cases of enforced disappearances have been conducted by the HREI to date. The Working Group therefore urges the Government of Turkey to repeal these provisions and adopt the new ones in full compliance with Paris Principles. It further recommends the HREI to extend its support to the relatives of the disappeared, their lawyers, and civil society representatives advocating for their basic rights.

24. With a view to advancing the rights of victims and their families guaranteed by international law, the Working Group encourages the Government of Turkey to implement these recommendations in an effective and timely manner. To that end, the Working Group remains committed to providing technical assistance to the Government in meeting its human rights and humanitarian obligations within the framework of eradicating enforced disappearances and protecting the rights to truth, justice, memory, and reparations. A tangible stride in this domain is a litmus test for the rule of law and democracy in Turkey.

**Follow up to the recommendations made by the Working Group on Enforced or Involuntary Disappearances, following its visit to Turkey in March 2016 (A/HRC/33/51/Add.1, paragraphs 64 - 102)**

Recommendations A/HRC/33/51/Add.1	Situation during the visit A/HRC/33/51/Add.1	Measures taken/current situation	Level of implementation and observations (to be completed by the WGEID)
<b>General</b>			
<p>The Working Group recommends that the Government of Turkey:</p> <p>65. Recognize the enforced disappearances of the past and adopt a comprehensive policy to fully address them in all relevant areas in order to guarantee the victims' rights to truth, justice, reparation and guarantees of non-recurrence, through both a strengthened judicial system and a newly created extrajudicial mechanism.</p>	<p>Paragraphs 7-9</p>	<p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>The Government of Turkey has not acknowledged the enforced disappearances of the 1990s or made the slightest effort to ensure the right of the relatives of the disappeared, and society as a whole, to learn their fate and whereabouts, the identity of perpetrators, and the causes that gave rise to the violations.</p> <p>Nor has the Government of Turkey recognized or responded in any way to compelling reports of around two dozen cases of possible enforced disappearances over the past three years. These have consisted of abductions of men – many of them in Ankara and in some cases last seen in the custody of individuals whom witnesses identified as state officials. The men were then reported by their families missing for periods ranging from several weeks to many months. In 2019, five men resurfaced in police custody after being missing for over five months and a sixth for around nine months. They were then promptly brought before courts which ordered their pretrial detention. They were restricted from seeing independent lawyers sent by their families.</p> <p>In cases of reported abductions in 2017, only one among several who went missing before resurfacing in police custody chose to issue a formal complaint.</p>	<p>Since the presentation of the report in September 2016, Turkey has not made significant progress in dealing with the past, particularly in upholding and promoting the victims' rights to truth, justice, reparation, memory, and guarantees of non-recurrence. The Working Group notes with concern that a culture of impunity perpetuated by the Turkish authorities has in turn led to systematic violations of basic rights, most notably in the aftermath of the attempted coup. The Working Group is particularly alarmed by an increase in alleged cases of enforced disappearances reported to have been perpetrated against actual or perceived members of Gulen/Hizmet movement, classified by the Government of Turkey as 'Gülenist Terror Organization (Fethullahçı Terör Örgütü, FETÖ)' or 'Parallel State Organisation (Paralel Devlet Yapılanması, PDY)'. Serious allegations have also been made concerning what appears to be a systematic practice of State-sponsored extraterritorial abductions and forcible return of Turkish nationals from numerous States to Turkey. Similarly, the Working Group has received</p>

Recommendations A/HRC/33/51/Add.1	Situation during the visit A/HRC/33/51/Add.1	Measures taken/current situation	Level of implementation and observations (to be completed by the WGEID)
		<p>The cases have been discussed in reports by Human Rights Watch,<sup>1</sup> Rights Initiative,<sup>2</sup> most recently on February 13, 2020 by the Ankara Bar Association Human Rights Centre,<sup>3</sup> the Human Rights Association,<sup>4</sup> and in an urgent action by Amnesty International.<sup>5</sup> To date there have been no effective investigations into any of these cases, no response to families' repeated requests for investigations and complaints, and no additional measures taken to prevent such abuses occurring.</p> <p>Human Rights Watch has concerns that five men of the six who resurfaced in 2019 have been and are still being prevented from speaking about their enforced disappearance. The sixth man, Gökhan Türkmen, began to speak out about being abducted and tortured during his February 10, 2020 court hearing at the Ankara Heavy Penal Court no. 2.</p> <p>Human Rights Watch has obtained a record of part of the hearing. A further update will be sent on this matter.</p> <p><u>Human Rights Association</u></p> <p>Unfortunately, Turkey has not developed a policy and taken necessary steps regarding the prevention and effective investigation of enforced and involuntary disappearances.</p> <p>Enforced disappearances of the last decades had occurred during the armed conflicts which have taken place within the framework of Kurdish Question. Since the Peace Process which started in 2013 and ended in 2015, the general policy of the State</p>	<p>information about disappearances of Syrian nationals in the areas controlled by the Turkish armed forces in northern Syria. In view of these disconcerting allegations, the Working Group urges the Government of Turkey to immediately stop and prevent enforced disappearances, be it within the country, in northern Syria, or in third countries where Turkish nationals may live.</p>

<sup>1</sup> See <https://www.hrw.org/news/2019/08/06/turkey-concerns-disappeared-men-now-police-custody>, <https://www.hrw.org/report/2017/10/12/custody/police-torture-and-abductions-turkey>.

<sup>2</sup> <https://haknisiyatifi.org/wp-content/uploads/2019/06/Haknisiyatifi.2019AlıkonulmaİddialarıRaporu.pdf>.

<sup>3</sup> See report in Turkish by Ankara Bar Association Human Rights Centre, "Ortak İzleme Raporu" (Joint monitoring report on the subject of enforced disappearances), [http://www.ankarabarasu.org.tr/upload/HD/Donem65/2020/diger/20200213\\_ihmrapor.pdf](http://www.ankarabarasu.org.tr/upload/HD/Donem65/2020/diger/20200213_ihmrapor.pdf).

<sup>4</sup> <https://www.ihd.org.tr/zorla-kacirmalara-son-verilsin-etkili-sorusturma-acilsin/>.

<sup>5</sup> <https://www.amnesty.org/en/documents/eur44/0881/2019/en/>.

Recommendations A/HRC/33/51/Add.1	Situation during the visit A/HRC/33/51/Add.1	Measures taken/current situation	Level of implementation and observations (to be completed by the WGEID)
		<p>concerning enforced and involuntary disappearances has not changed. On the contrary, the armed conflicts have resumed on 24 July 2015 and the conflict zone has expanded in a way to include northern regions of Iraq and Syria.</p> <p>Another issue regarding disappearances is the problem of disappeared persons in Cyprus. Despite the efforts of civil society organisations and civil actors, no official steps were taken to solve the problem.</p> <p>Turkey is still struggling with the existence of [armed] groups within the state organisation acting as a tool for counter-insurgency. Such groups were involved in the disappearance incidents in the past. No necessary steps were taken for revealing and investigating these groups.</p> <p>Following the last visit of the Working Group, on 15 July 2016, there had been an attempt to stage coup d'état in Turkey. As is known, the State of Emergency (SoE) that was in effect in Turkey since July 21, 2016 was lifted on July 18, 2018. Nevertheless, Law No. 7145 on the Amendment of Some Laws and Emergency Decrees was adopted that would render the SoE permanent on July 25, 2018 by the Grand National Assembly of Turkey (GNAT). During the implementation of SoE, according to the information gathered by İHD, at least 30 persons were abducted and interrogated in unregistered detention centres under torture. In sum, the situation concerning enforced and involuntary disappearances has worsened year by year.</p> <p><u>JWF – IAHR</u><sup>6</sup> Geneva</p>	

<sup>6</sup> Journalists and Writers Foundation (JWF) and International Association for Human Rights Advocacy (IAHRA) Geneva contacted forty-seven (47) victims of enforced disappearances or their family members in Turkey and outside of Turkey, to obtain information concerning the implementation by the Government of Turkey of the recommendations of the WGEID. Sixteen victims and their families reported first-hand information about enforced disappearances. Five (5) out of seven (7) victims or their family members currently in Turkey chose not to respond, out of fear of reprisals. Among those currently in Turkey who chose to respond to the questionnaire, one is a victim of enforced disappearance and one respondent is a close family member of a victim of recent enforced disappearance. Victims and family members of victims outside of Turkey, by contrast, enthusiastically expressed readiness to share information on the implementation of the recommendations.

Recommendations A/HRC/33/51/Add.1	Situation during the visit A/HRC/33/51/Add.1	Measures taken/current situation	Level of implementation and observations (to be completed by the WGEID)
		<p>There is no recognition of enforced disappearances of the past and certainly no government policy to address them has ever been adopted. Most ironic of all, participants in the “Saturday Mothers” sit-in, people who had lost their sons and their loved ones have been routinely subjected to arbitrary arrest and torture.</p> <p>Thousands of enforced-disappearance investigation files are estimated to have been disregarded and not followed through by prosecutors around Turkey, who only wait for the 20-years statute of limitation to finally close the cases. The crime of enforced disappearance is still not an autonomous offence punishable by appropriate penalties, and the few cases seeing their day in court are routinely prosecuted as isolated incidents of abduction and murder, disregarding their systematic occurrence.</p> <p><u>LLG – TGRLSP<sup>7</sup></u></p> <p>Turkey has not duly acknowledged past disappearances. Enforced disappearance has not yet been introduced in the criminal code as an autonomous crime; there are virtually no convictions for enforced disappearances, the fate and the whereabouts of many disappeared persons is still unknown. Turkey also has not acknowledged recent enforced disappearance incidents following the 15 July 2016 coup attempt. There has been no effective investigation into these incidents, nor has there been any effective investigations into the incidents to find the whereabouts of those disappeared, to clarify the circumstances of their disappearance and those responsible of the incidents.</p>	

Fourteen (14) victims or family members of victims of enforced disappearance, all did so in the hope that their contribution would help prevent new enforced or involuntary disappearances – in Turkey and abroad. All the contributions helped the JWF and IAHRAGeneva draw relevant conclusions and make recommendations to address the issue of enforced or involuntary disappearances. The JWF and IAHRAGeneva carefully examined and found all the information provided by the victims and their close family members consistent and credible. The JWF and IAHRAGeneva withheld the names and other relevant information of the victims, in order to protect them and their family members in Turkey (and outside of Turkey) from eventual reprisals.

<sup>7</sup> London Legal Group (LLG) and the Turkey Human Rights Litigation Support Project (THRLSP).

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		<p><u>ICJ</u><sup>8</sup></p> <p>There has not been any case of criminal responsibility or of civil liability for acts of enforced disappearance since the WGEID visit on 27 July 2016. In cases initiated either the defendants have been acquitted or the cases have been dropped due to statute of limitation. There are still no reparation programmes, social or psychological support programmes for families. There is still no public memorial site.</p>	
<p>66. Undertake a thorough and impartial investigation into all allegations of human rights violations in the context of the current security operations in the south-east, including of families not being able to have access to the bodies of their killed loved ones and of bodies being disposed of.</p>	<p>Paragraphs 10-13</p>	<p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>The investigations into the enforced disappearances of the 1990s have long been protracted by the public prosecutors, who have abstained from effectively taking the investigative measures to establish the truth about the circumstances surrounding the incidents and identify and –if appropriate – punish those responsible<sup>9</sup>. The public prosecutors’ unwillingness to collect available evidence and failure to proceed with reasonable expedition have caused the closure of investigations without shedding light on the fate or whereabouts of the disappeared due to the expiration of statute of limitation periods.</p> <p>In relation to the security operations in the south-east during the curfews declared between 2015-2016, the data of the prominent NGOs<sup>10</sup> reveal the continuation of the similar pattern. The</p>	<p>The Working Group reiterates its serious concern at the apparent lack of effective, independent, timely and impartial investigations into allegations of human rights abuses, including enforced disappearances, which have occurred under the guise of combatting terrorism amid the ongoing curfews in the southeast. Allegations of improper disposal and desecration of bodies with a view to concealing evidence is a matter of serious concern, which should be investigated without further delay. The families’ right to the truth is</p>

<sup>8</sup> International Commission of Jurists (ICJ).

<sup>9</sup> For a comprehensive analysis of the effectiveness of the investigations into the enforced disappearances of the 1990s, please see, Hakikat Adalet Hafıza Merkezi, “Enforced Disappearances and the Conduct of the Judiciary”, 2013, pp. 15-47, available at <http://hakikatadalethafiza.org/en/kaynak/enforced-disappearances-and-the-conduct-of-the-judiciary/>.

<sup>10</sup> Hakikat Adalet Hafıza Merkezi (Truth Justice Memory Center), İnsan Hakları Derneği (Human Rights Association) and Türkiye İnsan Hakları Vakfı (Human Rights Foundation of Turkey) submitted an analysis to the European Court of Human Rights of the 115 investigations into the killings which occurred during the curfews imposed between 14 December 2015 and 3 March 2016 in the district of Cizre in the Sirnak province. This unpublished analysis aims to set forth whether the

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		<p>analysis of the NGOs indicates that throughout the investigation process the public prosecutors did not conduct the investigations into killings in a way that would shed light on the events and/or identification of the perpetrators. Given the absence of the official data, reportedly in some cases bodies remain missing<sup>11</sup>.</p> <p>Between January and April 2016 there have been amendments made to the Regulations relating to the implementation of the Law on the Forensic Institute, as well as to the Regulations relating to cemeteries, which stipulate a time period (from 15 to 5 days<sup>12</sup>) that family members can claim dead bodies of their relatives from the morgue, the bodies were buried at various cemeteries of the nameless without waiting for the results of DNA analysis or identification processes. This resulted in mix-ups of the bodies and stalled further investigation of evidence. Moreover, with the Law No. 6722 of 23 June 2016, the Government of Turkey had made amendments to the Provincial Administration Law based on which the curfews were declared and anti-terrorism operations conducted<sup>13</sup>. These amendments inter alia provide impunity for the military personnel deployed in operations. The amendments subject the judicial investigations of military personnel deployed in operations based on the Provincial Administration Law to an administrative approval at the ministerial level. They also acknowledge any offence committed in the framework of these operations to be a military offence which results in the perpetrators to be tried by military courts, effectively shielding military personnel from any civil investigation or proceedings.</p>	<p>absolute and must be protected and upheld at all times.</p> <p>It is against this background that the Working Group reminds the Government of Turkey that acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified, as stipulated by Article 17 of the Declaration on the Protection of all Persons from Enforced Disappearance. Similarly, the Working Group underscores that the termination or suspension of the criminal investigation regarding an alleged enforced disappearance does not release the State from its obligation to search, locate and identify disappeared person or his/her remains, including their return to the relatives, with due respect for cultural customs.</p>

proceedings are conducted in compliance with the standards of the European Court of Human Rights determined in its jurisprudence under Article 2, which recognizes the duty of states to ensure effective investigation into deaths resulting from the actions of State agents, both from the use of lethal force, and also in situations arising from the negligence of agents that leads to a death.

<sup>11</sup> The written parliamentary question of Ms. Nuran İmir, Şırnak MP, indicates the names of 14 people that their bodies have not been discovered yet. The written parliamentary question is available at <https://www2.tbmm.gov.tr/d27/7/7-22833s.pdf>.

<sup>12</sup> Although the time period is regulated as 5 days, the governors and sub-governors were authorised to order the burial themselves if the families had failed to do so within 24 hours. In addition, the governors and sub-governors were authorised to order the bodies to be given to them instead of the families if they consider there will be a possibility of disrupted public order during a burial.

<sup>13</sup> The provisions of the amendment further extend this protection to village guards.

Recommendations A/HRC/33/51/Add.1	Situation during the visit A/HRC/33/51/Add.1	Measures taken/current situation	Level of implementation and observations (to be completed by the WGEID)
		<p><u>Human Rights Association</u></p> <p>Only a few of the cases involving enforced disappearances of the 1990s have been subject to prosecution. A total of 14 trials have been initiated for the disappearance of 81 persons. Three of them concerning the disappearance of three people were commenced and concluded during the 1990s. While two of these trials resulted in the conviction of low-level members of security forces, who received nominal and low sentences, the defendants were acquitted in the third trial. In 2009-2014, many years after the crimes occurred, 11 more trials concerning the disappearance of 79 persons were commenced days before the expiry of statutes of limitation. This was seen as an opportunity for truth and accountability at the time. However, after some years of significant efforts, the prosecutions were ineffective, so the trials were concluded in acquittals or the cases were terminated due to the expiry of statutes of limitation as of 2015. This radical shift raised the question of whether the judiciary was hindered by political interference of the executive. Up until today, while eight trials have resulted in the judgments of acquittal, two are still ongoing.</p> <p>Furthermore, regarding the recent developments in Turkey, a politics of impunity during the course of 2016 has also enabled the state to violate the rights under de facto unconstitutional conditions. The Governorship and District Governorship of various provinces have been pressured to issue and enforce curfews for months in response to state directives. This was done despite the fact that the state is granted no such express authority or jurisdiction in the 5442 numbered Provincial Administration Code, indicating conditions outside the bounds of the law. The lack of adequate investigations into these abuses implicating government officials has further emboldened the proliferation of these violations. The ruling party has further solidified these conditions of impunity through the passing of code 6722. According to Code 6722 announced on 14 July 2016, all investigations concerning violations committed by military and state security personnel must receive special approval, representing the codification of impunity into law. An</p>	<p>Furthermore, the Working Group urges the Government of Turkey to take decisive steps in ensuring independence of the judiciary in line with international standards.</p>

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		<p>examination of the events of 2016 reveals just how grave these violations are and reveals the pervasive extent to which impunity has been firmly established. The extent of impunity in Turkey is aptly summarized by the public torture and maltreatment of those thousands who were implicated in the failed coup attempt, the images of which were widely circulated and broadcasted by state news agencies and TV stations.</p> <p>According to the information gathered by the Human Rights Foundation of Turkey Documentation Center, between 16 August 2015 and 1 January 2020, there have been at least 351 officially confirmed round-the-clock [all daylong] and/or open-ended curfews in 11 cities and at least 51 districts of Turkey. In connection with the torture and ill-treatment allegations and incidents, only two investigations were initiated.</p> <p><u>JWF – IAHRA Geneva</u></p> <p>The three crucial components of what constitutes a fair trial, namely the defense, the prosecution and the courts, have all collapsed in Turkey in recent years, turning the judicial system into merely an extension of the political authority that thwarts an effective defense and employs partisan and loyalist prosecutors and judges. Since July 2016, at least 4,463 judges and prosecutors have been dismissed and most of them are either detained or arrested. Over 590 lawyers have been arrested, while 1,546 lawyers are under investigation and have been subjected to prosecution. 182 lawyers have been already sentenced on coup related charges.<sup>14</sup> Lawyers are reluctant to defend those accused of terrorism offenses, and in many cases, lawyers have been arrested themselves.<sup>15</sup></p> <p>The Human Rights Watch 2020 report notes that, “Executive control and political influence over the judiciary in Turkey has led to courts systematically accepting bogus indictments, detaining and convicting without compelling evidence of criminal activity individuals and groups the Erdoğan government regards as political opponents. Among these are journalists,</p>	

<sup>14</sup> Based on sources from the submitting organizations, corroborated also from other relevant stakeholders.

<sup>15</sup> Freedom House 2018 Freedom in the World report, available at <https://freedomhouse.org/report/freedom-world/freedom-world-2018>.

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		<p>opposition politicians, and activists and human rights defenders. The largest group was people alleged to have links with the movement run by US-based Sunni cleric Fethullah Gülen, whom the government accuses of masterminding the July 2016 coup attempt.”</p> <p>According to the 2017 OHCHR report on the Human Rights Situation in South-East Turkey, “In the wake of the July 2016 attempted coup, according to the statement of the Minister of Justice, issued on November 22, 2016, legal proceedings, which entailed detentions, legal investigations and arrest warrants, were opened against 92,607 people, of whom 39,378 were placed under arrest. The number of people arrested and detained in South-East Turkey is not known.<sup>16</sup> In addition, pursuant to the same report, “OHCHR has seen no evidence that effective and independent investigations had been conducted into the reported killings. Residents who were trying to trace the mortal remains were reportedly taken to the police station and interrogated.”<sup>17</sup></p> <p>According to families of victims killed at Cizre (South-East Turkey), and as reported by several NGOs, the bodies of an undetermined number of people were completely or partially destroyed in fire induced by shelling and the subsequent rushed demolition of the location of the incident. The subsequent demolition of the buildings destroyed evidence and has therefore largely prevented the basic identification and tracing of mortal remains. Moreover, instead of opening an investigation into the circumstances surrounding the reported excessive use of force, recourse to heavy weapons and the resulting deaths, the local authorities accused the people killed of participating in terrorist organizations and took repressive measures affecting members of their families.<sup>18</sup></p> <p><u>LLG – TGRLSP</u></p>	

<sup>16</sup> OHCHR Report on the Human Rights Situation in South-East Turkey, July 2015 to December 2016, Paragraph 54.

<sup>17</sup> Ibid, paragraph 31.

<sup>18</sup> OHCHR Report on the Human Rights Situation in South-East Turkey, July 2015 to December 2016, Paragraph 25.

Recommendations A/HRC/33/51/Add.1	Situation during the visit A/HRC/33/51/Add.1	Measures taken/current situation	Level of implementation and observations (to be completed by the WGEID)
		<p>There have been no effective and impartial investigations into the killings of civilians, instances of torture, ill-treatment and mass destructions of premises and displacements taken place in 2015 and 2016 during the security operations carried out in several Kurdish south-east towns that were under curfews.<sup>19</sup> According to Huseyin Tul, a lawyer from Sirmak, many families have still not been able to access the bodies of their loved ones who were killed during the operations. Mr Tul suggested that as of December 2019 the fate of 14 missed persons remain unknown.<sup>20</sup> "Non-prosecution" decisions have been made on 86 files to date regarding investigations initiated by the Cizre Chief Public Prosecutor's Office into these incidents. The Ministry of Interior refused 59 applications claiming pecuniary and non-pecuniary damages resulting from violations during the curfew in Cizre..<sup>21</sup></p> <p><u>ICJ</u></p> <p>There has not been any progress in investigations into the death of 310 civilians during the curfews in the south-east.1 Some decisions of non-prosecution have been taken to the Constitutional Court. However, no positive decision so far has been given by the Constitutional Court.</p>	
<p>67. Thoroughly and independently investigate allegations of disappearances of migrants in, or transiting through, Turkey, including reports of women and children disappearing in trafficking networks when being trafficked from the Syrian Arab Republic to Turkey.</p>	<p>Paragraph 14</p>	<p><u>Human Rights Association</u></p> <p>To the best of our knowledge, there is no such investigation.</p> <p><u>JWF – IAHRA Geneva</u></p> <p>The JWF and IAHRA Geneva are not aware of any policy or changes in law and practice to thoroughly and independently investigate the disappearance of migrants, in particular women and children transiting Turkey.</p>	<p>The Working Group regrets not having received any observations from the authorities in relation to this recommendation and reiterates its request to investigate allegations of disappearances of migrants, including asylum seekers, as outlined in the mission report.</p>

<sup>19</sup> European Commission, Turkey 2019 Report, 29 May 2019 <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf> accessed 11 February 2020.

<sup>20</sup> Evrensel, Cizre ve Silopi'deki sokağa çıkma yasaklarının üzerinden 4 yıl geçti, 11 December 2019. < <https://www.evrensel.net/haber/392914/cizre-ve-silopideki-sokaga-cikma-yasaklarinin-uzerinden-4-yil-gecti>> accessed 10 February 2020.

<sup>21</sup> Ibid.

Recommendations A/HRC/33/51/Add.1	Situation during the visit A/HRC/33/51/Add.1	Measures taken/current situation	Level of implementation and observations (to be completed by the WGEID)
		<p><u>ICJ</u></p> <p>There is no evidence to suggest that any measures have been taken.</p>	
<b>Legislation</b>			
<p>68. Swiftly make enforced disappearance an autonomous offence punishable by appropriate penalties that reflect its extreme seriousness. The offence should also cover the various modes of criminal liability, including committing, ordering, soliciting or inducing the commission of, attempting to commit, being an accomplice to, and participating in, an enforced disappearance. It should also expressly provide for the application of command responsibility or superior individual criminal responsibility for such crime, and contain the explicit provision that enforced disappearance is a continuous crime to which amnesties and immunities cannot be applied. Furthermore, it should include the practice of widespread or systematic enforced disappearances in the definition of crimes against humanity to which the statute of limitations does not apply.</p>	<p>Paragraph 15</p>	<p><u>Ministry of Justice</u></p> <p>Despite lack of an autonomous offence under TPC, there has yet been no loophole in national legislation pertaining to the incidents falling within the scope of "enforced disappearance"s as such commissions constitute at least one of the crimes, namely, "intentional killing", "intentional killing by act of omission", "torture", "torment" and "deprivation of liberty", regulated in the articles 81, 82, 83, 94, 95, 96 and 109 of the TPC , respectively. All of those offences have to be investigated and prosecuted ex-officio.</p> <p>Systematic commission of intentional killing, torture, torment or slavery and deprivation of liberty against a part of society and in accordance with a plan with a political, philosophical, racial or religious motive also constitutes a crime against humanity for which no statutory limitation shall apply. In addition to the remarkably long periods of statutory limitations which were predetermined by TPC that came into force in 2005, it is stipulated for continuous offences -as is the case for the crime of deprivation of liberty- that the limitation period shall begin on the day when the continuing act ended (art. 66 par.6). Furthermore, Turkey is among few countries completely abolished statutory limitations for the crime of torture.</p> <p>Articles from 37 to 41 of the TPC are dedicated to jointly committed offences where the principles for those who commits, orders, solicits or induces the commission of, attempts to commit, becomes an accomplice to or participates in any type of crime, including offences within the scope of enforced disappearances, are explicitly set out.</p>	<p>The Working Group welcomes the adoption of amendments to the Penal Code that abolished statutory limitations for the crime of torture. However, it regrets that no progress has been made in relation to qualifying enforced disappearances as an autonomous crime. In addition, the Working Group is alarmed by reports that emergency decrees effectively afforded blanket immunity to state officials who may have been implicated in serious human rights violations, including enforced disappearances. In that light, the Working Group underscores the need to implement this recommendation in full and as a matter of urgency.</p> <p>In its general comment on enforced disappearances as a continuous crime, the Working Group observes that enforced disappearances are prototypical continuous acts, which begin at the time of the abduction and extend for the whole period of time that the crime is not complete. That is to say until the State acknowledges the detention or releases information pertaining to the fate or whereabouts</p>

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		<p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>Turkey still has not criminalized the act of enforced or involuntary disappearance in its domestic law. Thus, disappearances have so far been investigated and prosecuted under other criminal offences, especially murder or arbitrary deprivation of liberty, which are subjected to the relevant statute of limitation periods prescribed by law, i.e. 20 years.</p> <p>Although as per the Article 77 of the Penal Code of Turkey in force defines crimes against humanity, enforced disappearance is not included among the acts listed herein.</p> <p>Given the absence of legislation making enforced disappearance an autonomous crime, the evidentiary burden required to establish the facts in criminal proceedings is the high standard of proof ‘beyond reasonable doubt’. The lack of special standards for lowering of the evidentiary burden has decreased the likelihood of holding the perpetrators accountable. Thus, in the trials on the enforced disappearances of the 1990s, the judgments of acquittal were rendered on the grounds that the evidence was not sufficient for conviction of the defendants. However, there are circumstantial or indirect evidence in the case-files, which clearly allow to establish a pattern or practice of enforced disappearances<sup>22</sup>.</p> <p><u>Human Rights Association</u></p> <p>Under the Article 77 of Turkish Penal Code, crimes against humanity are listed. Crimes related to enforced and involuntary disappearances are not among those crimes.</p>	<p>of the individual. (A/HRC/16/48, p. 11)</p>

<sup>22</sup> For instance, in the trial of retired Colonel Cemal Temizöz and others, who were accused of working as a criminal gang involved in the disappearance of twenty persons in and around the town of Cizre in Şırnak province in 1993-1995, the testimonies of several witnesses exposed that there had been a pattern of disappearances. According to the testimonies, persons were taken away in a white Renault car, in daylight in the middle of the street, and found dead in roadside a few days later. Although the testimonies were also corroborated by the other evidence, the trial resulted in the acquittal of all defendants due to insufficient evidence.

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		<p>At least, since the amendments in 2013, no statute of limitation shall apply to the torture related offence. [Still, there are many problems in the implementation.]</p> <p><u>JWF – IAHR Geneva</u></p> <p>Enforced disappearance does not constitute an autonomous offence under the Turkish criminal law and the government has not publicly expressed any intention to designate it as an offense in the foreseeable future. The climate of impunity, including over alleged cases of enforced disappearances, was legally “reinforced” with the promulgation of the Decree Law 667<sup>23</sup> which provided that, “Legal, administrative, financial and criminal liabilities shall not arise in respect of the persons who have adopted decisions and fulfill their duties within the scope of this Decree Law.”<sup>24</sup> With a September 2016 decree<sup>25</sup> the government also dissolved the prison monitoring boards, evidently with the intention of preventing allegations of torture making it beyond prison walls.</p> <p>Further to granting impunity for public officials, Decree Law No. 696 issued on December 24, 2017, extended that immunity to civilians (vigilantes)<sup>26</sup> who use violence against anyone who opposes the government or anyone they claim to suspect of opposing the government or of having been involved in the attempted coup of July 15, 2016 (or its continuation).<sup>27</sup></p> <p>In absence of making enforced disappearance an autonomous offence punishable by appropriate penalties that reflect its extreme seriousness, the 20-year statute of limitations applies and</p>	

<sup>23</sup> Decree-Law 667 was published in the Official Gazette on July 23, 2016.

<sup>24</sup> Article 9 of Decree-Law 667.

<sup>25</sup> Decree-Law No. 672 of September 1, 2016.

<sup>26</sup> The paragraph reads in pertinent part: “regardless of an official title or duties or the lack thereof, people who played a role in the suppression of a failed coup attempt on July 15, 2016 and subsequent events and terrorist activities will be exempt from criminal, administrative, financial and legal liability.”

<sup>27</sup> Pursuant to the provisions of the decree-law, vigilantes would go unpunished thereafter.

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		<p>thousands of cases from the 1980s and 1990s cannot be prosecuted.</p> <p><u>LLG – TGRISP</u></p> <p>Turkey has not made enforced disappearance an autonomous criminal offence in Turkish criminal code.</p> <p><u>ICJ</u></p> <p>Enforced disappearances continue to be investigated and prosecuted as an element of other criminal offences, such as murder, torture or arbitrary deprivation of liberty.</p>	
<p>69. Adopt without delay comprehensive legislation on enforced disappearances, which should provide, inter alia, for:</p> <p>a) A specific procedure for filing complaints with regard to enforced disappearances;</p> <p>b) A mechanism for investigation and verification of reported cases of enforced disappearance;</p> <p>c) A national register of forcibly disappeared persons, and of reported and discovered burial sites;</p> <p>d) Full access to the above-mentioned register for relatives, lawyers, human rights defenders and any other concerned person;</p> <p>e) Introduction of the declaration of absence following the enforced disappearance, making certain that the issuance of certificates of absence will not terminate the rights of victims’ families to pursue truth</p>	<p>Paragraphs 16-21</p>	<p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>No such legislation adopted.</p> <p><u>Human Rights Association</u></p> <p>There is no legislation or specific procedural tools particularly regulating the prevention and effective investigation of enforced and involuntary disappearances.</p> <p>Turkey has not signed the United Nations International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly of the UN on 20 December 2006 and entered into force on 23 December 2010. Under Article 1 of the Convention “No one shall be subjected to enforced disappearance. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political stability or any other public emergency, may be invoked as a justification for enforced disappearance.”</p> <p>a) There is no specific procedure for filing complaints with regard to enforced disappearances;</p>	<p>In the apparent absence of comprehensive legislation on enforced disappearances, the Working Group calls on the Government of Turkey to enact it with the aim of eradicating enforced disappearances and protecting the rights of the victims and their families to truth, justice, memory and guarantees of non-recurrence.</p> <p>The Working Group recalls its recommendations in this regard which remain relevant.</p>

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<p>and justice and will cover all disappearances regardless of the time of their occurrence;</p> <p>f) Full protection and support for the relatives of disappeared persons and witnesses;</p> <p>g) The right to full reparation, including compensation.</p>		<p>b) There is no mechanism for investigation and verification of reported cases of enforced disappearance;</p> <p>c) There is no national register of forcibly disappeared persons, and of reported and discovered burial sites; [Only Human Rights Association mapped the burial sites]</p> <p>d) Irrelevant regarding the situation in Turkey;</p> <p>e) General missing person procedures are implemented;</p> <p>f) On the contrary, the relatives are also subjected to incrimination and ill-treatment;</p> <p>g) There is no mechanism for the right to full reparation, including compensation.</p> <p><u>JWF – IAHRAGeneva</u></p> <p>The JWF and IAHRAGeneva are not aware of any initiative to adopt legal, administrative or practical measures to address enforced disappearances.</p> <p><u>LLG – TGRISP</u></p> <p>Turkey has not introduced a comprehensive legislation on enforced disappearances addressing any of the Working Group’s recommendations in paragraphs 16-21. Furthermore, no support has been offered to relatives of disappeared persons. The Turkish authorities continue to deny allegations of enforced disappearances since the coup attempt of 15 July 2016. The cases of past enforced disappearances taken place in the 1980s and 1990s have been continuing to be closed by the judicial authorities without any effective investigation into the incidents, which has been accompanied by a persisting policy of impunity and denial.</p> <p><u>ICJ</u></p> <p>There is no legislation adopted on enforced disappearances.</p>	

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70. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance without delay and without reservations and recognize the competence of the Committee on Enforced Disappearances in accordance with articles 31 and 32 of the Convention.	Paragraph 21	<p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u> Turkey is still not party to the International Convention for the Protection of All Persons from Enforced Disappearance.</p> <p><u>Human Rights Association</u> Turkey has not signed the United Nations International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly of the UN on 20 December 2006 and entered into force on 23 December 2010.</p> <p><u>JWF-IAHRA Geneva</u> The Republic of Turkey has so far failed to accede to the International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED), despite repeated calls by other states parties and the civil society,<sup>28</sup> and the renewed widespread and systematic pattern of enforced disappearances in the country.</p> <p><u>LLG – TGRLSP</u> Turkey has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance.</p> <p><u>ICJ</u> Turkey has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance.</p>	In the same vein, the Working Group urges the Government of Turkey to ratify promptly the International Convention for the Protection of All Persons from Enforced Disappearance.
<b>Truth</b>			
71. Adopt immediately a comprehensive policy to address disappearances, which would include the creation of an extrajudicial mechanism specifically devoted to searching for those who have disappeared. This body should be composed	Paragraphs 22-28	<p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u> The Government of Turkey has neither adopted a policy to address disappearances nor taken a nonjudicial measure, such as establishing a truth commission or forms of remembrance and commemoration, to satisfy the right to truth<sup>29</sup>.</p>	The Working Group regrets that Turkey continues to deny the families of the disappeared their guaranteed and absolute right to the truth by failing to establish a dedicated and independent search mechanism in

<sup>28</sup> See for example: <https://lib.ohchr.org/HRBodies/UPR/Documents/Session21/TR/TurkeyMatriceRecommendations.pdf>.

<sup>29</sup> Although a sub-commission was established within the Human Rights Inquiry Commission of the Turkish Parliament, which has so far only investigated the disappearances of Cemil Kirbayır in 1980 and Tolga Baykal Ceylan in 2004, the findings of inquiries have never been seriously taken into account by the judicial authorities and no trial has been commenced on these regards.

Recommendations A/HRC/33/51/Add.1	Situation during the visit A/HRC/33/51/Add.1	Measures taken/current situation	Level of implementation and observations (to be completed by the WGEID)
<p>of independent and professional personnel and should be set up through a comprehensive consultative process with all the stakeholders involved. It should also be granted dedicated and sufficient human and financial resources as well as ample powers to accept and review complaints from relatives and to properly investigate and make recommendations for possible criminal prosecutions. Furthermore, it should be equipped with the technical capacity to conduct exhumations, including forensic expertise.</p>		<p>Furthermore, the judicial establishment of the truth about the disappearances has not been possible due to the failure of the investigating and prosecuting authorities in carrying out thorough, adequate, and independent criminal investigations capable of gathering necessary evidence.</p> <p><u>Human Rights Association</u></p> <p>There is no specific, extra-judicial mechanism established for the search of disappeared persons and investigation into allegations of disappearances.</p> <p><u>JWF – IAHR Geneva</u></p> <p>Family members of the victims in Turkey did not receive any assistance from any specialized state agency to search for the disappeared individual and establish his/her whereabouts. In their knowledge, no such body has been established after July 2016. In one case, the family of the victim submitted a complaint with the prosecutor’s office, but no investigation was carried out. Family members of the other victim in Turkey submitted a complaint to the Gendarmerie, the Prosecutors Office and the Constitutional Court, but no proper relief has been yet received. Thirteen victims and their family members outside Turkey responded that they were not aware of any extrajudicial mechanism specifically devoted to searching for those who have disappeared, in Turkey or in the countries of their residence. One family member did not respond to the question as it felt that it did not apply to the situation of her spouse.</p> <p><u>LLG – TGRSLP</u></p> <p>Turkey has not adopted any policy to address disappearances. According to Turkey’s 2019 Progress report by European Commission, there is still no comprehensive, consistent approach in relation to missing persons, to the exhumation of mass graves</p>	<p>accordance with its humanitarian obligations. Turkey is obliged to provide closure to so many families seeking truth, justice and remembrance for their disappeared family members.</p>

Recommendations A/HRC/33/51/Add.1	Situation during the visit A/HRC/33/51/Add.1	Measures taken/current situation	Level of implementation and observations (to be completed by the WGEID)
		<p>and to the independent investigation of all alleged cases of extrajudicial killings by security and law enforcement officers.<sup>30</sup></p> <p><u>ICJ</u></p> <p>There is still no policy adopted to address disappearances. There is no extrajudicial mechanism to search for those who have disappeared.</p>	
<p>72. Ensure the proper investigation of existing burial sites, the proper preservation of the sites and the protection of the samples' chain of custody.</p>	<p>Paragraph 24</p>	<p><u>Ministry of Justice</u></p> <p>While the onus in collecting and securing evidence both in favor and disfavor of the suspect is on the public prosecutor, all allegations of enforced disappearances and burial sites have been taken seriously by prosecution authorities and forensic examinations where necessary have been meticulously carried out by expert teams. Turkish Ministry of Justice (MoJ) issued a circular on 20 Feb 2015 reminding investigation teams of technical prerequisites for such examinations including securing of the samples' chain of custody.</p> <p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>Bodies of many disappeared persons remain missing and a mechanism has never been established to search the remains. According to the data of Hakikat Adalet Hafiza Merkezi (Truth Justice Memory Center), the bodies of 289 of them are still missing. Although a few exhumations were conducted on burial sites within the scope of some of the investigations into the disappearances of the 1990s, which allowed the identification of some victims, the methods used during the excavations was not in line with the principles set out in the Istanbul Protocol and the Minnesota Autopsy Protocol. The authorities failed to maintain</p>	<p>While the Working Group notes the information provided by the Ministry of Justice, it remains concerned that the enforcement of relevant legislation and the compliance with international standards in the search, storage, and DNA-led human identification of human remains is still lacking. It therefore calls on the Government of Turkey to closely consider information on burial sites collected by civil society and to take appropriate action. Furthermore, the Working Group wishes to reiterate that the application of statutory limitations to cases of enforced disappearances does not release Turkey from its obligation to search for, locate and identify disappeared person or his/her remains, including their return to the relatives, with due respect for cultural customs.</p>

<sup>30</sup> European Commission, Turkey 2019 Report, 29 May 2019 <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf> accessed 11 February 2020.

Recommendations A/HRC/33/51/Add.1	Situation during the visit A/HRC/33/51/Add.1	Measures taken/current situation	Level of implementation and observations (to be completed by the WGEID)
		<p>forensic evidence at the excavations and were lax in maintaining evidence after it has been disinterred<sup>31</sup>.</p> <p><u>Human Rights Association</u></p> <p>İHD has prepared and released a report on burial sites in 2011 and the report has been updated in 2014. According to the report, there are 348 burial sites -including identified and alleged ones- there are allegedly 4201 bodies. The report has been shared with the official authorities and no legal or administrative measures have been taken.</p> <p>On the other hand, there are 17 cemeteries for militants and victims of disappearances. 263 bodies has been exhumed from the cemetery in Yukarıölek village of Tatvan district in Bitlis province: The bones/bodies have been transferred to the Forensic Institute in İstanbul. After having been kept there for 2 years without any examination, the bodies/bones have been buried in a common grave.</p> <p><u>JWF – IAHRAGeneva</u></p> <p>The JWF and IAHRAGeneva are not aware on any measures by the government to ensure proper investigation of existing burial sites, the proper preservation of the sites and the protection of the samples' chain of custody.</p> <p><u>LLG – TGRLSP</u></p> <p>Turkey has not taken any steps towards instigating the investigation of burial sites or the preservation of the sites.</p> <p><u>ICJ</u></p>	

<sup>31</sup> Bianet, "Bones of the Disappeared Get Lost again after Excavation", available at <http://bianet.org/english/minorities/128282-bonesof-the-disappeared-get-lost-again-after-excavation>.

Recommendations A/HRC/33/51/Add.1	Situation during the visit A/HRC/33/51/Add.1	Measures taken/current situation	Level of implementation and observations (to be completed by the WGEID)
		Existing burial sites are not yet investigated. On 9 September 2019, the Kızıltepe JITEM case concerning a burial site in Mardin, Kızıltepe dropped due to statutory limitations.	
73. Be proactive in the proper investigation of existing burial sites and in the identification of new ones.	Paragraphs 24, 25	<p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u> There has been no progress in this regard.</p> <p><u>Human Rights Association</u> The state has not taken any steps for prevention and investigation of existing burial sites or for the determination &amp; identification of other burial sites.</p> <p>In fact, Abdülkadir Aygan former member of the PKK and of the Turkish Gendarmerie's JITEM intelligence unit, confessed that he had been involved in "blacklisting people [and] kidnappings, torture, hostage-taking, murder, extortion, theft and smuggling". His confessions referred to the places of burial sites. Unfortunately, these allegations have not been investigated effectively.</p> <p><u>LLG – TGRLSP</u> No steps have been taken towards instigating the investigation of existing burial sites and the identification of new ones.</p> <p><u>ICJ</u> No measures have been taken.</p>	The Working Group regrets not having received detailed information from the Turkish authorities as to the number of investigations of existing and new burial sites as well as the results obtained.
74. Examine without undue delay all locations of potential mass graves and establish a mapping of all burial sites.	Paragraph 24, 25	<p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u> According to the interactive map of the mass graves in Turkey prepared by İnsan Hakları Derneği (Human Rights Association) Diyarbakır Branch, the remains of 4.201 people have been found in 348 mass graves<sup>32</sup>. No step has been taken by the Government of Turkey so far.</p> <p><u>Human Rights Association</u></p>	The Working Group calls on the Government to establish an official map of existing and potential burial sites of victims of enforced disappearance and to identify properly all remains, in conformity with Minnesota Protocol.

<sup>32</sup> Bianet, "İHD: 348 Mass Graves 4.201 Bodies Found", available at <http://bianet.org/english/human-rights/164783-ihd-348-massgraves-4-201-bodies-found>.

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		<p>Relying on the testimonies, confessions and information gathered, İHD mapped the burial sites. Hafiza Merkezi keeps the records of the burial sites, as well.</p> <p><u>LLG – TGRISP</u></p> <p>The Turkish Government has not taken any steps to examine potential mass graves or establish a mapping of all burial sites, despite hundreds of mass graves uncovered by the Human Rights Association.<sup>33</sup> A report by the Office of the UN High Commissioner for Human Rights published in February 2017<sup>34</sup> and the February 2017 Council of Europe report on missing persons and victims of enforced disappearance<sup>35</sup> highlighted that human rights defenders face major difficulties in accessing the field on cases of enforced disappearances that occurred in the 1990's, for example in order to locate mass graves. The situation remains the same in 2020 due to on-going violence and a sharp deterioration of human rights record after the military coup attempt of July 2016.</p> <p><u>ICJ</u></p> <p>There is no information available to the public that necessary measures have been taken.</p>	<p>The Working Group reiterates its request to the Government of Turkey to take into serious account the interactive map of mass graves in Turkey prepared by NGO Human Rights Association and to take appropriate action in coordination with the families of the disappeared.</p>
75. Establish a register with the exact or approximate number of disappeared persons.	Paragraphs 22-28	<p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>There has been no progress in this regard.</p> <p><u>Human Rights Association</u></p> <p>There is no registry -even on the estimated figures- of disappeared persons or burial sites.</p>	<p>The Working Group notes with concern that the Government of Turkey has yet to establish a register with the exact or approximate number of disappeared people and urges</p>

<sup>33</sup> Bianet, HD: 348 Mass Graves 4.201 Bodies Found, 25 May 2015. <<http://bianet.org/english/human-rights/164783-ihd-348-mass-graves-4-201-bodies-found>> accessed 11 February 2020.

<sup>34</sup> Office of the United Nations High Commissioner for Human Rights, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, January – December 2017, March 2018. <[https://www.ohchr.org/Documents/Countries/TR/2018-03-19\\_Second\\_OHCHR\\_Turkey\\_Report.pdf](https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf)> accessed 11 February 2020.

<sup>35</sup> CoE: Commissioner for Human Rights, Missing Persons and Victims Of Enforced Disappearance In Europe: Round-Table with human rights defenders organised by the Office of the Council of Europe Commissioner for Human Rights Strasbourg, 30 June and 1 July 2016, 22 February 2017. <[https://rm.coe.int/ref/CommDH\(2017\)4](https://rm.coe.int/ref/CommDH(2017)4)> accessed 11 February 2020.

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		<p><u>JWF – IAHRA Geneva</u> Family members of one victim in Turkey stated that there are special forms to fill out in the case of a missing person. They were aware that there is a database compiled on the basis of these inputs and that the missing persons are tracked via this database. They were also aware that there is a separate office at the Ankara Police Administration specialized in missing persons (Kayip Sahis Burosu). <a href="https://onlineislemler.egm.gov.tr/Sayfalar/kayipsahiscocuk.aspx">https://onlineislemler.egm.gov.tr/Sayfalar/kayipsahiscocuk.aspx</a>. They are not sure about it, but they think that there might be some relevant information in the database. All the necessary forms are filed by families of the victims though and thereafter submitted to relevant law enforcement agencies. The family of the other victim in Turkey and all other fourteen family members currently outside Turkey stated that they were not aware of any register with the exact or approximate number of disappeared persons and whether the name of their loved one disappeared was included in that list.</p> <p><u>LLG – TGRISP</u> Currently, no such register has been published by the Government of Turkey.</p> <p><u>ICJ</u> There is no progress on a public register with the number of disappeared persons. The available figures show that allegedly 29 persons have disappeared since January 2016.<sup>36</sup></p>	<p>relevant authorities to do so without delay.</p> <p>The Working Group calls on the Turkish authorities to use all the information available in its archives to establish such a register.</p>
76. Create a national DNA bank to which families can send samples.	Paragraph 25	<p><u>Ministry of Justice</u> As long as appropriate samples for comparison could be found on site DNA analyses have been performed by the Forensic Medicine Institute. Unidentified samples confirmed to belong to</p>	Whereas the information provided by the Ministry of Justice suggests that a dedicated database is operational, the Working Group underlines the importance of creating a national

<sup>36</sup> Hak İnisiatifi Derneği, “Report on allegations of illegal detention by public servants after 2016”, See, <https://hakinisiatifi.org/wpcontent/uploads/2019/06/Hak%C4%B0nisiatifi.2019A1%C4%B1konulma%C4%B0ddialar%C4%B1Raporu.pdf>, last checked 04.02.2020.

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		<p>humankind have been recorded to a dedicated database for further and/or future inquiries.</p> <p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u> There has been no progress in this regard.</p> <p><u>Human Rights Association</u> There is no DNA bank.</p> <p><u>JWF – IAHR Geneva</u> Family members of the victims who are currently in Turkey responded that they were not aware that the government had created a DNA bank and the authorities did not collect or did not request any DNA samples from family members for comparison. Twelve of the fourteen family members currently outside Turkey replied that they were not aware of any DNA bank and no sample was requested. Two families responded that the DNA data bank was not related to their case.</p> <p><u>LLG – TGRLSP</u> No DNA bank was created for families to send samples.</p> <p><u>ICJ</u> DNA samples of unidentified bodies buried after the 1999 earthquake have been matched with the families whose relatives were lost during the earthquake. No similar measure has been taken for alleged victims of enforced disappearance victims.</p>	<p>DNA data bank with a view to facilitating effective DNA-led human identifications.</p>
<p>77. Immediately open archives, including military archives, that are relevant to cases of enforced disappearance, in order to facilitate the finding of undiscovered gravesites and speed up the search for missing persons.</p>	<p>Paragraph 26, 27</p>	<p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u> There has been no progress in this regard.</p> <p><u>Human Rights Association</u> The archives are not accessible. Not only for the archival material relevant to cases of enforced disappearance, in order to facilitate the finding of undiscovered gravesites and speed up the search for missing persons, but also the archives of land registry before 1920 are closed for individual and independent researchers.</p> <p><u>JWF – IAHR Geneva</u> The two families in Turkey informed that they did not have any access to any government archive or documentation in searching</p>	<p>The Working Group regrets that no progress has been made in this regard. It further observes that the right to truth is both a collective and an individual right. It is therefore essential that archives, including military archives, be opened and made fully accessible to the public.</p>

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		<p>for the whereabouts of the disappeared person. In addition, in both cases, the families did not get any response from the prosecutor's office or any police station despite their constant requests and follow-up. In one case, the vehicle that the disappeared person was using was found shortly after he disappeared, however, even though the family had requested investigation and forensics on the vehicle many times; no research took place. It was 5 months after the disappearance, when the government received some pressure from international organizations, that an investigation on the vehicle of the disappeared person was opened. In the other case in Turkey, not only the information in the archives was not available but even when the prosecutors officially requested to track victim's phone signal, no replies were provided by the law enforcement. Eleven of the fourteen family members currently outside Turkey replied that they did not have any access to any government archive or documentation in searching for the whereabouts of the disappeared person. The three remaining families replied that this was not related to their case.</p> <p><u>LLG – TGRISP</u> Turkey has not made its archives accessible to the public to ensure that information held in state and military archives on missing persons and victims of enforced disappearance is properly assembled.</p> <p><u>ICJ</u> No measures have been taken.</p>	
78. Promulgate a law on access to information and a proper legislative framework on archives, so as to guarantee full access to all information that could potentially lead to clarification when investigating cases of disappeared persons.		<p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u> There has been no progress in this regard.</p> <p><u>Human Rights Association</u> Only official tool for access to information that could potentially lead to clarification when investigating cases of disappeared persons is the Law No: 4982 “On Right of Information Acquirement”. But, in the Law, the State is given the right not to share information in case the information is classified as state secret.</p>	<p>The Working Group notes with concern that no progress has been made in this regard.</p> <p>The Working Group recalls its recommendation about the right to access to information in this regard.</p>

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		<p><u>JWF – IAHRA Geneva</u> No such law has ever been promulgated or even proposed for discussion and adoption in the Turkish Parliament.</p> <p><u>LLG – TGRISP</u> Turkey has not introduced a law or legislative framework recommended by the Working Group. The Government still lacks transparency and arbitrarily withholds information on the activities of state officials and institutions.</p> <p><u>ICJ</u> There is still no legislative framework concerning access to information in enforced disappearance cases.</p>	
<p>79. Continue cooperating with the humanitarian mandate of the Committee on Missing Persons in Cyprus and activate the process of access to burial sites to support the families affected through return to them of the remains of their missing relatives.</p>	<p>Paragraph 28</p>	<p><u>Ministry of Foreign Affairs</u></p> <p>Turkey continues to support the work of the Committee on Missing Persons (CMP) in Cyprus. Turkey has been contributing annually to the budget of the CMP, which reached almost 1 million dollars. The most recent contribution was in the amount of 100,000 Dollars in July 2019. In addition to 30 areas for the period 2015-2018, CMP's request for access to 30 additional suspected burial sites located in the military areas in the TRNC have been granted in June 2019. There will be no time constraints attached to this unhindered access and excavation planning will be made by the CMP.</p> <p><u>Human Rights Association</u></p> <p>It is not the case</p> <p><u>ICJ</u></p> <p>On 14 June 2019, CMP reported that Turkey had granted access for CMP excavation teams to 30 suspected burial sites in military areas in the north of Cyprus. According to CMP, Turkey also donated 92.000 EUR and 200.000 USD from 2017 to 2019. Since 2016, a total number of 345 missing Turkish and Greek Cypriots were identified during excavations and exhumations.</p>	<p>The Working Group welcomes the readiness of the Government of Turkey to support the ongoing transitional justice processes led by the Committee on Missing Persons (CMP) in Cyprus. However, it calls on the Turkish military authorities to make the sites in the northern parts of Cyprus accessible to the CMP for further assessments at all times. In addition, full access to military archives should be provided to the CMP and family associations, with a view to identifying new burial sites.</p> <p>The Working Group recalls its general comment on the right to the truth in relation to enforced disappearances which provides that “each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State</p>

Recommendations A/HRC/33/51/Add.1	Situation during the visit A/HRC/33/51/Add.1	Measures taken/current situation	Level of implementation and observations (to be completed by the WGEID)
			Party shall take appropriate measures in this regard.” (A/HRC/16/48, p.13)
<b>Justice</b>			
80. Guarantee that criminal investigations into enforced disappearances are carried out from the beginning by highly professional and independent teams of prosecutors, investigators and forensic experts.	Paragraphs 29-34	<p><u>Ministry of Justice</u></p> <p>Rules and procedures regarding judicial investigations, as well as duties and powers of public prosecutors, are regulated by the Code of Criminal Procedure (CCP - no:5271). According to the article 160 of the CCP, public prosecutor is entrusted with the task of initiating investigation as soon as s/he is informed of a fact bearing an impression that a crime has been committed.</p> <p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>Since the investigations into enforced disappearances are investigated under other criminal offences, no special unit has been established to carry out the criminal investigations into enforced disappearances.</p> <p><u>Human Rights Association</u></p> <p>No criminal investigations concerning enforced disappearances have been carried out from the beginning by highly professional and independent teams of prosecutors, investigators and forensic experts. Forensic experts were involved in the investigation in only one case.</p> <p><u>JWF – IAHR Geneva</u></p> <p>Family members in Turkey (2) and outside Turkey (14) concur that the Government of Turkey or other governments did not carry out any professional criminal investigation into the disappearance of their loved ones. According to most of the</p>	The Working Group remains concerned at the apparent lack of independence and impartiality on the part of prosecutors and investigators leading the investigations into alleged cases of enforced disappearance, which ultimately hampers the effective delivery of justice. In this regard, the Working Group recalls article 15 of the Declaration on the Protection of All Persons from Enforced Disappearance, which stipulates that each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively. Moreover, no measure shall be taken to curtail or impede the investigation.

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		<p>families, the perpetrator was the government and it cannot thus investigate itself. In a case of a family of four abducted from abroad and forcibly transferred to Turkey one of the perpetrators was with one of the victims during the transfer from Istanbul to Ankara police station. Another perpetrator even attended their court hearing personally.</p> <p><u>LLG – TGRLSP</u></p> <p>There are mounting case studies that evidence the lack of proper investigation by the Turkish Government into criminal complaints.</p> <p>Victims of enforced disappearance and their families do not have adequate access to the investigation case files, and they are not sufficiently informed about the process. Several military officers were tried in domestic courts on charges of state crimes including enforced disappearances during the 1990s. However, the cases were transferred to remote towns due to “security reasons”<sup>37</sup> which impeded participation in the proceedings by relatives and lawyers of the victims.<sup>38</sup> In most of the cases the panel of judges and prosecutors were changed several times; the defendants were released one by one, considering their extensive period of incarceration. The majority of these cases have ended with the acquittal of all the defendants.<sup>39</sup></p> <p>The joint report by three prominent NGOs in Turkey, İnsan Hakları Dereği, Hafıza Merkezi and İnsan Hakları Vakfı, provides an analysis of 115 investigations into the killings</p>	

<sup>37</sup> Hafıza Merkezi, Any Hopes For Truth? A Comparative Analysis Of Enforced Disappearances And The Missing In The Middle East, North Africa And The Caucasus, 1 March 2019. < <https://hakikatadalethafiza.org/en/kaynak/any-hopes-for-truth-a-comparative-analysis-of-enforced-disappearances-and-the-missing-in-the-middle-east-north-africa-and-the-caucasus/>> accessed 11 February 2020.

<sup>38</sup> CoE: Commissioner for Human Rights, Missing Persons and Victims Of Enforced Disappearance In Europe: Round-Table with human rights defenders organised by the Office of the Council of Europe Commissioner for Human Rights Strasbourg, 30 June and 1 July 2016, 22 February 2017.

<sup>39</sup> Hafıza Merkezi, Any Hopes For Truth? A Comparative Analysis Of Enforced Disappearances And The Missing In The Middle East, North Africa And The Caucasus, 1 March 2019.

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		<p>resulted from the security operations during 2015-2016 curfews. The report concludes that none of those investigations were genuine investigations aiming at clarifying the circumstances of the killings and held those responsible to account.</p> <p>Since the coup attempt in July 2016, a new pattern of enforced disappearances has arisen, with more than twenty cases of academics, teachers and public servants being kidnapped by alleged plain clothed security agents acting for MIT (National Intelligence Organisation).<sup>40</sup> These cases share similar characteristics with the corroborated kidnappings (often witnessed by families, recordings of closed-circuit television and members of the public) and were carried out by groups of men in Volkswagen vans claiming to be police officers. The majority of the individuals targeted also have some alleged or perceived links to Gulenists (the organisation alleged by the Turkish Government to have been the power behind the coup attempt of July 2016), with many having lost their jobs or had their previous employment institutions shut down by the state of emergency measures for the alleged links to terrorist organisations. These cases of abductions and enforced disappearances by security or intelligence services in several provinces have not been adequately investigated.<sup>41</sup> For instance, In July 2019, the authorities confirmed that they arrested four men, Salim Zeybek, Yasin Ugan, Özgür Kaya, and Erkan Irmak, who had been reported as abducted four months before the date of the arrest. The Turkish authorities, however, have failed to reveal or clarify where the four persons had been. The families of the four men were permitted to see them briefly in the presence of police officers following the arrests, but the families' lawyers have been completely barred from visitation. When the families tried to ask</p>	

<sup>40</sup> Stockholm Centre for Freedom, 'Enforced disappearances in Turkey', January 2019 < <https://stockholmcf.org/enforced-disappearances-in-turkey-2/> > accessed 8 March 2017. See also, Human Rights Watch report, 'Police Torture and Abduction in Turkey', 12 October 2017: <https://www.hrw.org/report/2017/10/12/custody/police-torture-and-abductions-turkey>.

<sup>41</sup> European Commission, Turkey 2019 Report, 29 May 2019 <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf> accessed 11 February 2020.

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		<p>the men where they had been since their abduction, the men were reluctant to provide answers and the police intervened to stop further questions. The wives of the four men also reported that each of the men said, with police officers standing by, that they did not want to see a lawyer and that the wives should stop campaigning for them or lodging complaints about their cases. They further asked them to withdraw existing complaints to international bodies and organizations.<sup>42</sup></p> <p><u>ICJ</u></p> <p>Criminal investigations into enforced disappearances are not carried out by specialised prosecutors or experts.</p>	
81. Equip investigative teams and courts with the necessary means and resources to handle cases of enforced disappearance.	Paragraph 29-34	<p><u>Ministry of Justice</u></p> <p>Enjoying the same constitutional guarantees granted to judges, public prosecutors are functioning independently and prosecution services have been provided with sufficient resources in carrying out investigative duties.</p> <p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>There has been no progress in this regard.</p> <p><u>JWF – IAHR Geneva</u></p> <p>The families of the disappeared persons in Turkey felt the investigative teams and/or courts are equipped properly with necessary means and resources to handle the cases of enforced disappearances. They submitted all the necessary information to the responsible offices about the phone number of the disappeared, the last place that he was seen on the day that he got missing, his auto plate number and everything, but no investigation was opened. They strongly believe however that their loved ones who have disappeared can be easily found in the</p>	The Working Group urges the Government of Turkey to take decisive steps in ensuring independence of the judiciary in line with international standards.

<sup>42</sup> Human Rights Watch, Turkey: Concerns for Disappeared Men Now in Police Custody, 6 August 2019. < <https://www.hrw.org/news/2019/08/06/turkey-concerns-disappeared-men-now-police-custody> > accessed 11 February 2020.

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		<p>city of Ankara, the capital, where there is a camera tracking system for vehicles all over the city. In one case the vehicle operated by the disappeared person was found 4 days later, but there was no investigation. No camera recordings were taken from the nearby places where our missing relative's car was found. As regards the court system, the families in Turkey feel that they were only an extension of the executive, as even the judges with high powers did not use those powers to properly handle the cases of enforced disappearances. Because of the political pressure from the executive, five of the families outside Turkey are of the view that even though the courts have the necessary means to handle disappearance cases, they even rejected investigations into the enforced disappearance. Five other families outside Turkey were of the view that the courts did not have the necessary means to handle disappearance cases. Four families outside Turkey replied that this question was not applicable to their case or did not respond to this particular question.</p> <p><u>ICJ</u> No measures have been taken.</p>	
<p>82. Prosecute all cases of enforced disappearance, regardless of the perpetrator and of the time when they were committed.</p>	<p>Paragraph 32</p>	<p><u>Ministry of Justice</u></p> <p>Public prosecutor who bears the main responsibility to ascertain the material truth may conduct any kind of examination either directly or through law enforcement officers under his command and demand all kinds of information needed in the course of investigation from all public servants, public and private institutions. Written requests of public prosecution units for information during pending investigations have to be responded within a certain period of time, as stipulated in the article 322 of the CCP, non-compliance of which can give rise to criminal liability, an infringement of the article 257 of the Turkish Penal Code (TPC - no:5237).</p> <p>Law enforcement officers, on the other side, are obliged to notify immediately the incidents they have handled, the individuals who have been apprehended, and all the initial measures taken to the</p>	<p>The Working Group notes with concern that Turkey continues to apply a statute of limitation period of 20 years for crimes under which enforced disappearances are usually investigated and prosecuted.</p> <p>Dismally low prosecution and conviction rates have fostered a widely perceived culture of impunity.</p> <p>The Working Group reiterates that the termination or suspension of the criminal investigation regarding an alleged enforced disappearance does not release the State from its obligation to search, locate and</p>

Recommendations A/HRC/33/51/Add.1	Situation during the visit A/HRC/33/51/Add.1	Measures taken/current situation	Level of implementation and observations (to be completed by the WGEID)
		<p>public prosecutor, and responsible for executing all orders without any delay. Taking suspected individuals into custody (detention) is by principle up to public prosecutor's decision and police officers have been exceptionally permitted to detain suspects only for certain crimes and under strictly limited conditions, as is stated in the article 91 of the CCP.</p> <p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>Turkey applies a statute of limitation period of 20 years for crimes under which enforced disappearances are usually investigated and prosecuted. Considering the lengthy time elapsed from the date of crimes, most of the investigations have high likely been or are about to be closed by the decisions of non-prosecutions based on the expiry of statute of limitation period. Only a few of the enforced disappearances of the 1990s have been able to be prosecuted<sup>43</sup>.</p> <p><u>JWF - IAHRA Geneva</u></p> <p>Two families in Turkey informed that the government did not criminally prosecute anyone for the act of enforced disappearance of their loved ones. Thirteen out of fourteen family members outside Turkey informed that the Government of Turkey or other governments did not criminally prosecute anyone for the enforced disappearance of their loved ones. In one case, an investigation was initiated but was discontinued following political pressure. Certainly, the investigation stopped short of criminally prosecuting anyone for the enforced disappearance, acting on behalf of the government or any non-state actor.</p> <p><u>LLG – TGRLSP</u></p>	<p>identify disappeared person or his/her remains, including their return to the relatives, with due respect for cultural customs.</p> <p>After the attempted coup, it is further disconcerting that the Turkish authorities are reported to have overlooked that the fate and the whereabouts of many individuals had been unknown for months before they appeared in custody. Allegations that they had been routinely tortured in secret detention sites with the aim of extracting confessions about their alleged or imputed affiliation with the Hizmet/Gulen movement should be investigated promptly and thoroughly. The rights of victims and their families to truth, justice and reparations must be upheld at all times. The unimpeded exercise of these rights is a litmus test for the rule of law and democracy in Turkey.</p> <p>The Working Group does not differentiate between direct and indirect victims, but rather considers that both the disappeared person and those who have suffered harm as a</p>

<sup>43</sup> A total of 14 trials have been opened for the disappearance of 81 persons. Three of them concerning the disappearance of three persons were commenced and concluded during the 1990s, i.e. trial of Mehmet Şerif Avşar, the trial of Şeyhmuz Yavuz, and the trial of Abdullah Canan. While two of these three trials resulted in the conviction of low-level members of security forces, who received nominal, low sentences, in the other trial, the defendants were acquitted. In 2009-2014, many years after the date of crimes, the remaining 11 trials concerning the disappearance of 79 persons were commenced days before the expiry of statute of limitation periods (These trials do not only concern the enforced disappearances, but also include the extra-judicial killings of the 1990s); two of them later were joined, i.e. The trial of Main JİTEM (JITEM is the Turkish abbreviation for the Gendarmerie Intelligence and Counter-Terrorism) was joined with the trial on the extra-judicial killing of Musa Anter and later on with the trial on the disappearance of Ayten Öztürk.

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		<p>As enforced disappearance is not classified as an autonomous criminal offence and remains being prosecuted as elements of other crimes, acts of enforced disappearance remain subject to the statute of limitations applicable to those crimes. Therefore, most of the investigations into cases of enforced disappearances from the 1990s are, or will soon be, facing the 20-year statute of limitations, although these crimes are not to be subject to statutes of limitation under international law.</p> <p><u>ICJ</u> A statute of limitation of 20 years applies to investigations and prosecutions of enforced disappearance that were committed in 1990s. The statute of limitation was extended with a new criminal law approved by Parliament in 2005. However, no other amendments have been made in criminal law since 2005.</p>	<p>result of the disappearance are to be considered victims of the enforced disappearance and are therefore entitled to obtain reparation. For the purposes of reparation, a broad definition of the victim, not linked to the establishment of the criminal liability and conviction of the accused, should be adopted.</p>
<p>83. Investigate the perpetrators and instigators of such crimes, as well as those hierarchically accountable under the principle of command responsibility.</p>	<p>Paragraph 34</p>	<p><u>Ministry of Justice</u></p> <p>The letter of the law does not correspond to a blank check for police as it neither excludes judicial scrutiny possible for all types of detention nor provides any kind of impunity in case of misuse of power. National legislation devotes particular attention to the rights of individuals deprived of their liberty in a manner consistent with the principles of international human rights law.</p> <p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>The entrenched culture of impunity for human rights violations perpetrated by state agents has continued to be the main obstacle in ensuring accountability for enforced disappearances. In the indictments of the few of the enforced disappearances, the defendants are accused of establishing and/or being a member of an organization to commit crimes. In this regard, the organizational structure of JITEM (Turkish abbreviation for the Gendarmerie Intelligence and Counter-Terrorism) is described in detail in some of the indictments as an underground Turkish nationalist organization formed within the Turkish Gendarmerie to enforced unlawful measures in the fight against the Kurdish</p>	<p>The Working Group observes that the entrenched culture of impunity for human rights violations perpetrated by state agents has been a main obstacle to holding officials accountable in Turkey. While there are various factors that foster a culture of impunity in the criminal justice system, the lack of judicial independence and impartiality are reported to have been most critical ones. In addition, the recent tendency to incriminate actual or perceived supporters of the Hizmet/Gülen movement by the country’s leadership is presumed to have curtailed independent and effective investigations into these abuses.</p> <p>In this regard, the Working Group recalls the obligation of Turkey to take any lawful and appropriate action</p>

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		<p>Workers' Party (PKK). However, the trials have resulted in the judgements of acquittal so far.</p> <p><u>JWF – IAHR Geneva</u></p> <p>Family members of the victims, inside and outside Turkey, all concur that the government did not investigate the perpetrators and instigators of enforced disappearance, including those hierarchically higher in the chain of command.</p> <p><u>ICJ</u></p> <p>As noted that there has not been any conviction in enforced disappearance cases since the WG's last visit.</p>	<p>available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control.</p>
<p>84. Take appropriate measures to fully ensure the protection of relatives and witnesses throughout the proceedings, including by fostering conditions and providing incentives to encourage more witnesses to furnish crucial information.</p>	<p>Paragraphs 23, 40-41</p>	<p><u>Ministry of Justice</u></p> <p>During investigation and prosecution phases authorities have sufficient means and resources to encourage witnesses to participate in legal proceedings and to protect both witnesses and relatives of victims by covering some expenses and initiating protection programs where it is deemed necessary. Article 58 of the CCP in general and the Law on Witness Protection (no:5726) in detail envisage principles and procedures regarding the protection of witnesses at risk in criminal proceedings.</p> <p>According to the Article 5 of the Law, issuance of critical documents (ID cards, social security information, passports, tax registration information, criminal records and university diplomas) under a new name and maintaining the secrecy of new identities, financial help, domestic or international relocation assistance and the changing of school or workplaces as well as altering physical appearance with or without plastic surgery are all cited within the scope of the protective measures.</p> <p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>There has been no progress in this regard.</p> <p><u>JWF – IAHR Geneva</u></p> <p>The two families in Turkey stated that no protection against possible reprisals by perpetrators was provided, because in fact the perpetrators are agents acting on behalf of the government. In addition, no incentive was provided to come forward and furnish</p>	<p>The Working Group notes from the government's observations that protection programmes have been put in place.</p> <p>However, reports suggesting that family members have been denied access to case files or court proceedings are worrisome and should be investigated appropriately. In this respect, the Working Group emphasizes the obligation of Turkey 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. In the same manner, as stipulated by article 13 of the Declaration, Turkey should ensure 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 procedure is appropriately punished.</p>

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		<p>crucial information on the disappearances. On the contrary, not only the authorities were disregarding information furnished by the families, but in one case they even warned that too many postings on social media will harm the attempts to eventually find the victims.</p> <p>Eleven out of the fourteen family members currently outside Turkey replied that they did not receive any protection against possible reprisals, even though all of them received threats, in particular through social media. In one case outside Turkey, the victim stated that he was placed in a house arrest, in order to limit the access of perpetrators. In another case outside Turkey, the victim stated that he was provided a one-month security protection by the government of a third country following his enforced disappearance by intelligence officers. One family did not answer this question.</p> <p><u>LLG – TGR LSP</u></p> <p>Measures have not been appropriately taken to ensure the protection of relatives and witnesses throughout the proceedings. For example, the trial of Ozgur Kaya was held on 24 October 2019 in a secret courtroom at the Ankara courthouse. Kaya’s family were denied information from the court officials as to in which courtroom his trial was being held. He told them he was taking orders from the presiding judge.<sup>44</sup></p> <p><u>ICJ</u></p> <p>No measures have been taken.</p>	
85. Reconsider the practice of transferring trials to geographically distant courts, in order to maximize effectiveness, reduce	Paragraph 35	<u>Ministry of Justice</u>	The Working Group welcomes the amendment to the Criminal Procedure Code that allows reimbursements and

<sup>44</sup> IPA News, Enforced disappearance victim being tried in “secret courtroom,” opposition MP claims, 25 October 2019. < <https://ipa.news/2019/10/25/enforced-disappearance-victim-being-tried-in-secret-courtroom-opposition-mp-claims/>> accessed 11 February 2020.

Recommendations A/HRC/33/51/Add.1	Situation during the visit A/HRC/33/51/Add.1	Measures taken/current situation	Level of implementation and observations (to be completed by the WGEID)
delays and improve access to justice for families.		As the principle of natural judge is clearly stipulated by the Article 37 of the Turkish Constitution, everyone has the right to be tried before competent courts legally designated. As per the relevant provision of the CCP, the court in whose district the offence has been committed, as a rule, has jurisdiction over the case.	hopes that it will be adequately enforced for all victims and their families without discrimination.
86. Guarantee access to justice for relatives when the cases of their loved ones are moved to geographically distant courts, including by considering reimbursing expenses incurred for attending the hearings.		<p>However, transferring of cases to an equivalent instance court of another judicial district has been made possible by the law if only compelling reasons require such action. Article 19 of the CCP provides for that if competent court is, on either legal or factual grounds, hindered from exercising its duties or if conducting the prosecution before the competent court would be endangering the public safety, the case could be assigned to the court of another district. The crux of the matter is the power to take such decisions which is all up to judicial authorities, apart from any administrative intervention.</p> <p>Notwithstanding the exceptional nature of transferring cases to other courts, Turkey has most recently taken necessary steps in ensuring victim's and others right to effective access justice, by amending the article 234 of the CCP, titled "Rights of victim and complainant". Lately introduced paragraph within the aforementioned article envisages the total expenditure on travel and accommodation as well as daily allowance for food to be reimbursed by the MoJ, in case of the trial has been transferred to another district.</p> <p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>With the Omnibus Law No. 7188 dated 17 October 2019, which took effect on 24 October 2019, Article 234 of the Code of Criminal Procedure has been amended. As per this amendment, the accommodation, food and transportation expenses of the victim will be reimbursed through the Ministry of Justice's budget in case of the victim travels to a place other than his/her residence due to the transfer of the trial or forensic procedures, during the investigation or prosecution proceedings. However, considering the connection with the transfer of trials to other</p>	<p>As suggested in the mission report, the authorities should transfer trials to geographically distant courts as a measure of last resort, while considering adverse effects this practice has on access to justice for relatives of the disappeared.</p>

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		<p>cities and the impunity<sup>45</sup>, such amendment shall not impact the ending impunity.</p> <p><u>Human Rights Association</u> Trials concerning the cases of disappearances of the past had been heard in distant provinces. There are no newly initiated investigations at the moment. There are no specific legislation or measures limiting this practice.</p> <p><u>JWF – IAHR Geneva</u> One of the families in Turkey informed that the trial was in the same city. No hearing has taken place for the second victim subject to enforced disappearance and he is still missing. Twelve out of fourteen families currently residing outside Turkey inform that the trial of their loved ones is taking (took) place between 950 and 6,000 km away. In one case the victim is attending his trial via the online system. In three cases no trial had yet taken place.</p> <p>One of the families in Turkey informed that the government did not compensate or reimburse any attendance expenses. No hearing has taken place for the second victim subject to enforced disappearance and he is still missing.</p> <p>Eleven out of fourteen families currently residing outside Turkey reported that no expenses were reimbursed for family members attending the hearings of their loved ones in distant courts in Turkey. Three family members of victims did not respond to the question.</p> <p><u>ICJ</u></p> <p>Almost all cases concerning gross human rights violations are pending at distant courts.</p> <p>A Judicial Reform Strategy Document announced that sensitivities will be observed in the transfer of the convicts and</p>	

<sup>45</sup> For further information please see the report by Truth Justice Memory Center, “Enforced Disappearances and the Conduct of the Judiciary” available at <https://hakikatadalethafiza.org/en/kaynak/enforced-disappearances-and-the-conduct-of-the-judiciary/> and “The Impunity Problem: Investigation Process” available at <https://hakikatadalethafiza.org/en/kaynak/the-impunity-problem-investigation-process/>.

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		<p>detainees. On 17 October 2019, article 234 of Criminal Procedural Code was amended. According to the amendment, travel and accommodation expenses of victims will be reimbursed by the Ministry of Justice when cases are moved to other venues. No measures have been taken for the relatives.</p>	
<p>87. Take measures to tackle intimidation and harassment of relatives, human rights defenders and lawyers working on cases of enforced disappearance, including punishing those responsible for such acts, in accordance with articles 13 (3) and (5) of the Declaration.</p>	<p>Paragraphs 40, 41</p>	<p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u> There has been no progress in this regard. <u>Human Rights Association</u> In 2009, former Vice Chairperson of the İHD and former Chairperson of the İHD’s branch in Diyarbakır Muharrem Erbey has been arrested by the Anti-Terror Unit of the Diyarbakır Security Directorate as part of an operation launched simultaneously in 11 provinces in Turkey. He has been actively involved in investigation of disappearances and also extra-judicial killings. His arrest was based on the alleged membership to the Kurdish Communities Union (KCK), an organization said to be the “urban branch” of the armed Kurdistan Workers Party (PKK). Consequently, he was charged with “being a member of an illegal organisation”, pursuant to Article 314 of the Turkish Criminal Code. He was sentenced to a term of imprisonment as well. Former Diyarbakır Bar Association Chairperson and prominent human rights defender Tahir Elçi was killed on 28 November 2015. To date, 3 police officers have testified as suspects in this case. <u>JWF – IAHR Geneva</u> One of the families in Turkey informed that the wife of the victim of enforced disappearance was taken under custody for 3 days and the authorities even launched an investigation against her. During the 3 days of her absence, their 3 children were looked after by other relatives. It was not immediately clear why her detention was relevant to the case of the enforced disappearance, but they suspect that her detention aimed at instilling fear to the</p>	<p>The Working Group recognizes that in the absence of institutional support, relatives of the disappeared have spearheaded the search for their loved ones and sought justice, at times in the face of organized intimidation campaigns reported to have been orchestrated or supported by State authorities. In this regard, the Working Group highlights the obligation of Turkey to protect relatives of the disappeared from intimidation and harassment, whether online or offline.</p>

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		<p>wife of the victim. In the other case in Turkey, government representatives urged the wife of the victim to not get involved in the case. They even suggested her that she “should divorce him” because he would most likely receive a life sentence. His lawyer was also harassed.</p> <p>Five out of fourteen families currently residing outside Turkey reported intense pressure and intimidation against them and their lawyers. In one case, the lawyers hired from the family were also arrested. The next ones that were not allowed to have access to the victim in the detention center. Eventually they were also subject to threats and withdrew from the case. The family was forced to continue representation with the government-appointed lawyer, and not have a lawyer of their choice. The government-appointed lawyer does not even visit the victim. He did not apply to any international organization and most of the time he does not even pick up the phone when family members call him. The only thing he says is that “these are political cases, there is not much to do.” In another case, the lawyer has not visited the victim for more than a month despite receiving numerous faxes from the victim and the spouse of the victim. The lawyer expressed the intention to withdraw from representation in December 2019, but later informed the family that had changed her mind. Ever since the lawyer barely replies to any of the messages by family members and when it does it is often very late. In two other cases the families have been subject to threats, however, they do not believe that those threats originate from the government or its representatives.</p> <p><u>LLG – TGRLSP</u></p> <p>The Turkish Government introduced several measures under the state of emergency, which was declared following the July 2016 coup attempt, by way of a state of emergency decree laws. The decrees were subsequently made laws and some important measures were incorporated permanently into Turkey’s Criminal Procedure Code (CPC) and Law on the Execution of Sentences</p>	

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		<p>and Security Measures. These undermine the right of a suspect to legal counsel and a defense. For example, prosecutors have the power, routinely invoked, to authorize police, with post facto court approval, to restrict lawyers from meeting with clients during the first 24 hours of their police custody in anti-terror laws related investigations. Lawyers' privileged communication with their clients in pre-trial detention has also been effectively left ineffective as authorities are permitted to record and monitor all communications between lawyers and clients in similar cases. Relatives feel pressured to stop sharing statements on the treatment of their relatives who have been in police custody or prison. This becomes more apparent by the requests of the abducted persons to their relatives to withdraw applications they made to international organisations and courts, such as the United Nations and the European Court of Human Rights (see our comment on recommendation no. 80 for more details), and not to share anything on social media about the abductions.</p> <p><u>ICJ</u></p> <p>No measures have been taken. On 12 October 2019, police forces have intervened against the 759th protest of Saturday Mothers, who have been asking the fate and whereabouts of their loved ones disappeared in custody. Human rights defenders and lawyers have been subjected to judicial harassment, including criminal prosecution, violent attacks, threats, surveillance, prolonged arbitrary detention, and ill-treatment.</p>	
88. Ensure that lawyers are not subject to criminal or any other sanctions for the mere fact of defending clients accused of terrorism-related crimes.	Paragraph 39	<p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>In the aftermath of the attempted coup of 15 July 2016, targeting lawyers with criminal investigation and arbitrary detention, and associating them with their clients' alleged crimes increased<sup>46</sup>.</p>	The Working Group remains deeply concerned about reports according to which lawyers, human rights defenders and independent journalists continue to be targeted by the Turkish

<sup>46</sup> For further information please see Human Rights Watch, "Lawyers on Trial: Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey", available at [https://www.hrw.org/sites/default/files/report\\_pdf/turkey0419\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/turkey0419_web.pdf).

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		<p><u>Human Rights Association</u></p> <p>Although defence has arguably been one of the three constituent elements of the judiciary, there is an ample number of lawyers in Turkey who are being prosecuted because of their professional activities, and the identity and actions of their clients. As can be seen in the attached list of lawsuits, many professional activities such as: acting as a defense lawyer for Abdullah Öcalan; acting as a lawyer for the public opposition and the people; visiting inmates who went on hunger strikes in prisons in order to determine their legal and medical conditions; attending funerals and autopsy procedures of their clients charged with affiliation with a terrorist organization; exercising their right to assembly and peaceful protest; exercising their right to freedom of speech; reminding the state of its liability in massacres brought about by bombing attacks perpetrated by illegal armed organizations; defending the rights and sharing the conditions of their clients who were subjected to torture and ill-treatment by law-enforcement officers with the public; reminding their detained clients of their right to remain silent as designated by law; promoting human rights; and most significantly fighting against impunity -- are considered to be criminal offences. Lawyers stand trial for aiding and abetting an armed organization regulated under Article 220/6-7 and 314/2-3 of the Turkish Penal Code and frequently making propaganda for an armed organization as per Article 7 of the Anti-Terror Code, even having been charged with claims that such activities were conducted on behalf of those organizations.</p> <p>UN Special Rapporteur on the Independence of Judges and Lawyers visited Turkey between October 10 and 14, 2011. A preliminary survey report was issued following this visit. The recommendations put forward in this report have unfortunately not been put into practice yet, while the situation has deteriorated under the State of Emergency conditions.</p> <p><u>JWF – IAHRA Geneva</u></p> <p>One of the lawyers retained by the family for an individual subject to enforced disappearance in Turkey was subject to severe beating. One family currently residing outside Turkey reported</p>	<p>authorities under the pretext of combatting terrorism.</p> <p>With respect to the impact of emergency laws on human rights and fundamental freedoms, the Working Group has underlined that procedural safeguards upon arrest and during the first hours of deprivation of liberty are fundamental to prevent possible violations, such as enforced disappearances, torture and ill-treatment. These safeguards include immediate registration, judicial oversight of the detention, notification of family members as soon as an individual is deprived of liberty, and the hiring of a defence lawyer of one's choice, and lawyer-client privilege.</p> <p>It is a matter of grave concern that some of the emergency measures have been incorporated in the post-emergency legislation with a view to combatting terrorism and protecting national security. The Working Group cautions against the imprecise or vague use reference to "terrorism threats" as a basis to deny individuals their fundamental non-derogable rights.</p>

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		<p>that the lawyer of their choice that they hired first was also arrested on terrorism-related charges.</p> <p><u>LLG – TGRISP</u></p> <p>Human Rights Watch reported that there are constraints by the Government of Turkey against the lawyers themselves, particularly those who have been involved in human rights and politically sensitive cases. Accordingly, many lawyers feel pressure when they challenge official written police reports during police interrogations where the lawyers themselves are present with their clients. Prosecuting authorities have criminalized lawyers for activities undertaken by discharging their professional duties and have associated them without evidence with the alleged crimes of their clients. Some of these prosecutions appear to have come about in reprisal for their efforts to document police abuse and other human rights violations and to protect the rights of their clients.<sup>47</sup></p> <p>The Law Society Gazette report from 2019 states that more than 1,500 lawyers have been prosecuted, with 216 receiving prison terms of up to 11 years for defending clients facing terrorism - related charges. Lawyers' privileged communications with their clients in pre-trial detention for terrorism offenses has been effectively abolished as authorities are now permitted to record and monitor all such communications. Lawyers can also be barred from acting for a client facing a terrorism investigation for up to two years if they themselves are under investigation for terrorism. Courts can also restrict individual lawyers from accessing investigation files of people in police custody on suspicion of terrorism offenses. Police use such court decisions to prevent the lawyers from meeting with detainees.<sup>48</sup></p> <p><u>ICJ</u></p> <p>1,546 lawyers have been prosecuted since the coup attempt, with 274 among them convicted in first-instance courts of membership</p>	

<sup>47</sup> Human Rights Watch, Lawyers on Trial: Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey, 10 April 2019.

<<https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey>> accessed 11 February 2020.

<sup>48</sup> The Law Society Gazette, Endangered lawyers: 216 jailed in Turkey, 25 January 2019, <https://www.lawgazette.co.uk/law/endangered-lawyers-216-jailed-in-turkey/5069029.article> accessed 11 February 2020.

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		of a terrorist organization, and 598 having spent time in pre-trial detention. <sup>6</sup> There is no evidence that all of these cases concern issues other than defending clients accused of terrorism-related crimes.	
<b>Reparations and memory</b>			
89. Urgently develop a national reparation programme that includes compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition for all victims of human rights violations, including enforced disappearance, without discrimination. Social and psychological support for victims should be a key component of this national reparation programme.	Paragraphs 42-51	<p><u>Ministry of Justice</u></p> <p>Moreover, establishing a special department in 2013 under its organization so as to provide victims of crimes in vulnerable situations, including but not limited to children, women, elderly and disabled individuals, with legal guidance and support services, the MoJ pursues efforts to extend central and provincial units for those services. Drawing attentions to the expectation of victims that the consequences of the (criminal) acts to be remedied and their damages to be compensated, Judicial Reform Strategy has addressed the issue and set the goal of completing preparations for the legislation that pertains to victim rights. Establishing a comprehensive victims support system is in this regard under consideration.</p> <p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>There has been no progress in this regard.</p> <p><u>JWF – IAHR Geneva</u></p> <p>Family members of the disappeared persons, inside and outside Turkey are not aware of the existence of any national reparation programme that includes compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition for all victims of human rights violations, including enforced disappearance, without discrimination. Several of them even specifically asked the court for the provision of psychological support, but their needs were ignored. Not only the families cover their court and all other expenses in full, but in one case all assets of an enforced disappeared person were arbitrarily confiscated by the authorities.</p> <p><u>LLG – TGRLSP</u></p>	<p>The Working Group welcomes the adoption of Judicial Reform Strategy and hopes that it will lead to the development and implementation of a national reparation programme, with a victim-centered and gender-based approach.</p> <p>The Working Group thereby refers to its study on enforced or involuntary disappearances and economic, social and cultural rights. (A/HRC/30/38/Add.5)</p>

Recommendations A/HRC/33/51/Add.1	Situation during the visit A/HRC/33/51/Add.1	Measures taken/current situation	Level of implementation and observations (to be completed by the WGEID)
		<p>Turkey has not developed any reparation programme recommended by Working Group under paragraphs 42-51.</p> <p><u>ICJ</u> No measures have been taken to develop a reparation programme.</p>	
<p>90. Establish a system for providing for social allowances or appropriate social and medical measures for relatives of disappeared persons in relation to the physical, mental and economic consequences of the absence of the disappeared.</p>	<p>Paragraph 49</p>	<p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u> There has been no progress in this regard.</p> <p><u>JWF – IAHR Geneva</u> Fifteen out of sixteen family members of disappeared persons, including the two currently in Turkey, reported lack of knowledge of any government program that provides social allowances or appropriate social and medical measures for relatives of the disappeared person, in relation to the physical, mental and economic consequences of the absence of the disappeared. None has ever been a recipient from such a program, because in their knowledge it does not exist. In one case, a family member of a disappeared person chose not to respond to this specific question.</p> <p><u>LLG – TGRISP</u> Turkey has not introduced any kind of support mechanism to provide social or medical measures for the relatives of disappeared persons.</p> <p><u>ICJ</u> No measures have been taken.</p>	<p>The Working Group notes with regret that no progress has been made in this regard.</p> <p>The Working Group also notes that its recommendation remains relevant in this regard.</p>
<p>91. Take a gender perspective in all policies in the area of reparation, truth and justice, following the standards developed by the Working Group in its general comment on women affected by enforced disappearances (A/HRC/WGEID/98/2).</p>	<p>Paragraph 50</p>	<p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u> There has been no progress in this regard.</p> <p><u>ICJ</u> There is no evidence to suggest that any measures have been taken. Women continue to suffer the most from the economic and social consequences of the enforced disappearances of their loved ones.</p>	<p>The Working Group regrets not having received observations from the authorities as to the level of implementation of this recommendation.</p> <p>The experience of the Working Group demonstrates that the effects of enforced disappearances are lived and faced in different ways by women and girls due to gender roles,</p>

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			<p>which are deeply embedded in history, tradition, religion and culture.</p> <p>The Government of Turkey should recognize that women play a fundamental role in securing and advancing the rights of disappeared persons. They are entitled to commensurate redress, which should include at minimum financial reparations, psychosocial support, and guarantees of non-repetition.</p>
<p>92. Sponsor memorials as well as support civil society remembrance initiatives, including their proper maintenance through public funds.</p>	<p>Paragraph 51</p>	<p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>There has been no progress in this regard. Moreover, the Saturday Mothers/People, who started to demand to know the truth about whereabouts of the disappeared in 1995, have been staging the longest running protest in Turkey for 700 weeks each Saturday at 12:00 pm in Galatasaray Square in Istanbul by carrying the photographs of hundreds of our people who were forcibly disappeared under custody. They have been prevented from staging their silent sit-in protest at Istanbul’s Galatasaray Square since the 700th gathering. On the 700th gathering on 25 August 2018, the police forcefully dispersed the group by using tear gas and plastic pellets. Shortly after, Interior Minister Süleyman Soylu made a statement that the group has been “exploited by terrorist organizations.”<sup>49</sup> Since then they are not allowed to gather at the Galatasaray have been reading out their weekly Square, they read out their weekly statements for the press in front of İnsan Hakları Derneği (Human Rights Association) İstanbul Office every Saturday under the intense pressure of the security forces.</p> <p><u>Human Rights Association</u></p>	<p>In condemning the authorities’ response to the protests of Saturday mothers who have been seeking truth and justice for decades, the Working Group urges the Government of Turkey to protect and uphold their right to expression, peaceful assembly and association, along with the rights to truth, justice, memory, and reparations.</p>

<sup>49</sup> “Joint İHD-HRFT Statement On the Attack Against Saturday Mothers, Families of the Disappeared, and Human Rights Defenders Before The 700th Sit-In”, available at <https://ihd.org.tr/en/joint-ihd-thiv-statement-on-the-attack-against-saturday-mothers-families-of-the-disappeared-and-human-rights-defenders-before-the-700th-sit-in/>.

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		<p>As the families of the disappeared and human rights defenders, Saturday Mothers/People have been staging the longest running protest in Turkey each Saturday at 12:00 pm in Galatasaray Square by carrying the photographs of hundreds of our people who were forcibly disappeared under custody.</p> <p>The Saturday Mothers/People sit-ins have also been held in such various locations as Diyarbakır, Batman, Urfa, Cizre et al. over the years. The sit-in protests staged in Hakkari province have been banned for years now.</p> <p>Saturday Mothers/People, who started to demand to know the truth about whereabouts of the disappeared in 1995, have been prevented from staging their silent sit-in protest at Istanbul's Galatasaray Square since the 700th gathering. They have been reading out their weekly statements for the press in front of İHD İstanbul branch every On the 700th gathering on 25 August 2018, the police forcefully dispersed the group by using tear gas and plastic pellets. Shortly after, Interior Minister Süleyman Soyulu made a statement that the group has been "exploited by terrorist organizations."</p> <p><u>ICJ</u> No measures have been taken to support or sponsor civil society remembrance initiatives. Officials do not attend to remembrance activities.</p>	
93. The design of such monuments and the planning and conducting of commemoration events should be carried out in consultation with victims' families and other stakeholders.		<p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>There has been no progress in this regard.</p> <p><u>ICJ</u> There are no monuments established or commemoration events carried out by the administration.</p>	The Working Group regrets not having received detailed information from the government as to the implementation of remembrance-related initiatives.
<b>Awareness-raising and other preventive measures</b>			
94. Include the relevant provisions of the Declaration in the training given to military personnel and the police and to medical personnel, public officials, migration officials and other persons who may be	Paragraph 52	<p><u>National Human Rights Institution</u></p> <p>According to the Article 9 of the Law no. 6701, one of the duties of the Human Rights and Equality Institution (HREI) of Turkey is to raise awareness on human rights, fight against torture and ill-treatment and non-discrimination through providing</p>	The Working Group notes the information it has received from the Human Rights and Equality Institution (HREI). Concerning future capacity-building activities, the Working

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involved in the custody or treatment of any person deprived of liberty.		<p>information and education by use of mass media. Within this framework, the Institution has provided pre-service and in-service human rights and equality trainings for more than 1000 participants in several public institutions, professional organisations and civil society organizations. HREI also carried out cooperation activities with public institutions and agencies, non-governmental organisations, professional organisations and universities working in the field of protection of human rights and fight against discrimination. Specifically, the Institution has provided a training programme for the directors and personnel of detention centres, which is titled “Fighting Against Ill-Treatment within the Scope of International and National Standards” on 7-9 November 2018.</p> <p>Furthermore, HREI has launched its peer-reviewed journal “TİHEK Academic Journal” in 2018 in order to contribute to academic field of human rights, fighting against torture and ill-treatment and anti-discrimination and encourage scientific studies on these fields. The second issue of the journal was published on the website on 22 July 2019.</p> <p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>Through many European Union and Council of Europe projects, law enforcement units have been given extensive trainings. Unfortunately, their effect in practice has been far from providing solutions to the fundamental human rights violations.</p> <p><u>Human Rights Association</u></p> <p>Relevant provisions are only named and/or referred during the trainings delivered to military personnel and the police and to medical personnel, public officials, migration officials and other persons who may be involved in the custody or treatment of any person deprived of liberty.</p> <p><u>ICJ</u></p> <p>Public officers do not receive specific training on prevention of enforced disappearances.</p>	Group recommends the HREI to provide regular and independent assessments of the impact of the trainings in its public reports.
95. Guarantee to all persons deprived of their liberty the rights recognized in the	Paragraphs 53-56	<u>National Human Rights Institution</u>	The Working Group has stressed that a failure to acknowledge deprivation

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Declaration and in other relevant international instruments.		<p>Pursuant to Optional Protocol on the Convention Against Torture (OPCAT) states are obliged to establish, appoint or maintain national preventive mechanisms. In this context, national prevention mechanisms are separate institutions that operate exclusively in this field in some states, while in some states they are established within certain structures. In our country, the national prevention mechanism (NPM) mandate has been given the Human Rights and Equality Institution (HREI) of Turkey which has roles in the area of protection and promotion of human rights and anti-discrimination.</p> <p>NPM mandate, is carried out as a unit at the Institution. NPM Unit has its own staff which consists of 18 personnel. The NPM receives both individual applications of the persons who deprived from their liberty and conducts regular announced and unannounced visits under the OPCAT, as well as other preventive activities regulated in the law on the prevention of torture and ill-treatment. Within this context, NPM developed guidelines for each categories of places of detention. The Guidelines which include sui generis principles have instructions for selecting the theme of a visit, for conducting private interviews, for developing policies for dealing with vulnerable groups of detainees and for ensuring that information from all available sources.</p> <p>Undertaking regular visits, with or without prior notice, to places where those deprived of their liberties or those under protection are held; delivering the reports related to such visits to relevant agencies and organizations, and disclosing such reports to the public when considered necessary by the Board.</p> <p>In 2019, NPM visited 37 institutions including 14 prisons, 3 police custody centers and a transit zone, 2 removal centers, 3 psychiatric hospitals, 4 homes for the aged, 2 social care homes for disabled, 2 care homes for children and a refugee camp. 6 of the visited conducted in 2019 were follow up visits.</p> <p>After each visit, a visit Report which include recommendations is prepared. The reports related to such visits are delivering to relevant agencies and organizations. The reports may disclose to</p>	<p>of liberty by state agents and a refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration. The Working Group has also underlined that procedural safeguards upon arrest and during the first hours of deprivation of liberty are essential in order to prevent possible violations. These safeguards include immediate registration, judicial oversight of the detention, notification of family members as soon as an individual is deprived of liberty, and the hiring of a defence lawyer of one's choice, among others.</p>

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		<p>the public when considered necessary by the Board. 23 of the visit reports has been available on the website. Besides, NPM prepared its annual report of 2018 and the report is published on the official web site of the Institution. Recommendations were made to the detention centers administrations as well as the relevant authorities as follows: Ministry of Justice, Ministry of Family, Labour and Social Services, Ministry of Education, Ministry of Health Security General Directorate Disaster and Emergency Management Presidency, Directorate General of Migration Management, General Commandership of Gendarmerie.</p> <p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>Shortly after the attempted coup in July 2016, a state of emergency was declared and the majority of the legislative measures were amended by Emergency Decrees. These amendments were subsequently adopted by the National Assembly, making them permanent. This legislative framework lacks basic human rights safeguards, falling short of Convention requirements and Turkey’s obligations under international law. Through numerous provisions of the Emergency Decrees passed under the state of emergency and subsequently enshrined in law, crucial human rights safeguards have been removed, inter alia having adverse effect on the rights of detainees, triggering the occurrence of enforced disappearances.<sup>50</sup></p> <p><u>JWF – IAHR Geneva</u></p> <p>Family members of those subject to enforced disappearance in Turkey or outside Turkey, and now deprived of their liberty, do not believe that their rights under the Declaration and other international instruments are observed.</p>	
96. Abolish the provisions giving the police under certain circumstances the authority to detain persons for up to 48 hours without the authorization of a judicial authority.		<p><u>Ministry of Justice</u></p> <p>In cases of flagrante delicto, only specific senior police officers appointed in advance have the authority of detaining suspects for up to 48 hours for certain crimes committed collectively if the</p>	The Working Group continues to call on the Turkish authorities to amend this provision and align it with international human rights standards. Drawing on its experience, the

<sup>50</sup> For more detailed recent information please see UN, “Compilation on Turkey”, available at <https://undocs.org/A/HRC/WG.6/35/TUR/2>.

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		<p>spread of violent incidents poses a serious threat to public order during mass incidents.</p> <p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>The Emergency Decree numbered 667 extended the maximum length of police detention without judicial review from four to 30 days – later this reduced to 7 days, which can be extended upon request of the prosecutor for another 7 days if deemed necessary with Emergency Decree numbered 684.</p> <p><u>Human Rights Association</u></p> <p>Currently, the detention period is up to 4 days. With the decision of a judge, the period can be prolonged for additional 4+4+4 days.</p> <p><u>JWF – IAHRA Geneva</u></p> <p>The Decree-law 667, the first decree law following the attempted coup, increased the amount of time a detainee could be held without charge from four to 30 days. The maximum period in custody without bringing the suspect before a judge was then reduced from 30 to seven days with a possible extension to 14 days (Decree 684 article 10). Detention of an individual for 14 days without judicial oversight would constitute a violation of Turkey’s human rights obligations.</p> <p><u>LLG – TGRISP</u></p> <p>Despite the January 2017 amendments, under Turkey’s Anti-Terror Law, lawyer’s meetings with clients in police detention can still be legally restricted for the first 24 hours. However, lawyers have reported that in some cases police still attempted to bar access beyond that period, forcing them to apply to the prosecutor’s office to negotiate access. Lawyers’ rights to access the case file in such cases can also be restricted during the investigation stage which lasts until the conclusion and approval of the indictment. This widely applied provision has been used to effectively prevent lawyers from working on the file and defending their clients’ interests in the course of investigations. Thus, lawyers’ privileged communication with their clients in pretrial detention has been effectively abolished as authorities are permitted to record and monitor all communications between lawyer and client.</p>	<p>Working Group cautions that the absence of independent judicial review of detention provides a fertile ground for gross human rights violations to occur, including enforced disappearances.</p>

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<p>97. Ensure strict adherence by the relevant authorities to the applicable procedures for extradition, return and expulsion, and in particular, guarantee evaluation on a case-by-case basis in order to establish whether there are grounds for believing that the person could be subjected to enforced disappearance.</p>		<p><u>ICJ</u> The provision has not been abolished.</p> <p><u>Ministry of Justice</u> Being a party to the European Convention on Extradition, the European Convention on Mutual Assistance in Criminal Matters, as well as to the European Convention of Human Rights and bilateral agreements with concerned states, Turkey performs extradition proceedings on the legal basis of the "Law on International Cooperation in Criminal Matters" (LICCM - no:6706), which was adopted in 2016 in line with the said international instruments, attaching great importance to observe obligations deriving from her national legislation and international human rights law.</p> <p><u>Human Rights Association</u> In practice, the procedural safeguards and guarantees are not met or followed.</p> <p><u>ICJ</u> There is no evidence to suggest that any measures have been taken.</p>	<p>The Working Group has underscored that when States actively condone expulsions and other forms of forcible return of migrants including asylum-seekers, they may not only violate their national laws that provide for fair and due process, but also their international obligations, most notably the principle of non-refoulement. It is essential that in each case, as provided for in international law, comprehensive individual assessments are carried out to determine whether and what risks for their rights the individual may face upon return.</p>
<p>98. Fully comply in this respect with article 8 (1) of the Declaration, in which it is specified that “no State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance”.</p>		<p><u>Ministry of Justice</u> Article 11 of the LICCM has set the criteria for rejection according to which request for extradition shall not be accepted if there are grounds (by letter of the law "strong suspicion") for believing that the person could be subject to an investigation or prosecution or be punished or be subject to torture or ill-treatment because of his/her race, ethnic origin, religion, nationality, his/her connection to a certain social group or political opinions. The LICCM ensures extradition requests to be evaluated on a case-by-case basis.</p> <p><u>Human Rights Association</u> For the past three years, since the adoption of the EU-Turkey Statement in March 2016, IHD and many other organisations</p>	<p>The Working Group continues to commend the efforts made by the Government of Turkey in hosting millions of Syrian refugees.</p> <p>However, the Working Group is concerned about a spike in the number of reports it has received according to which the government has deported hundreds of Syrian refugees possibly in violation of the principle of non-refoulement. For that reason, the Working Group underscores the fundamental international protection principle of non-refoulement, which is enshrined in several key human rights</p>

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		<p>have been repeatedly stating that the EU-Turkey Deal is undermining human rights and Europe’s fundamental principles. The essence of the “deal” is for Turkey to accept back every refugee that reaches the Greek Islands from Turkey, in exchange for liberalization of the visa policy on the part of the EU and 6 billion euro in aid to Turkey to use for ensuring proper reception conditions for refugees. The European Commission and many EU Member State governments still present the EU-Turkey Deal as a success, measuring success only by the drop in numbers of people managing to reach Europe via the Aegean Sea route.</p> <p>Currently, hundreds of Syrians have reportedly been deported from Turkey to Syria following the recent government crackdown on unregistered refugees, while the Turkish authorities cannot guarantee effective access to registration of protection applications. Many of the deportees have reportedly been transported to the Turkey-Syria border near Idlib. Syrian refugees and migrants of other nationalities have also been detained by the Turkish authorities in view of removal. Public opinion in Turkey towards Syrian refugees has been hardening since Turkey’s recent local elections, which featured prominent anti-Syrian rhetoric, also seen in the context of Turkey’s ongoing economic crisis.</p> <p><u>JWF – IAHR Geneva</u></p> <p>Turkey is currently hosting one of the largest refugee populations in the world, with some 3.65 million Syrians under a “temporary protection” status, which the Turkish authorities say automatically applies to all Syrians seeking asylum. Turkey is bound by the international customary law of <i>non-refoulement</i>, which prohibits the return of anyone to a place where they would face a real risk of persecution, torture or other ill-treatment, or a threat to life. Turkey is also a State party to the International Covenant on Civil and Political Rights and the European Convention on Human Rights. These important instruments prohibit arbitrary arrest and detention, inhuman and degrading treatment, as well as enforced disappearances. Turkey also may not use violence or the threat of violence or detention to coerce</p>	<p>instruments ratified by Turkey, in particular CAT (Article 3) and the 1951 Convention on the status of refugees (Article 33). Likewise, the principle of non-refoulement is universally recognized as a principle of international customary law and, as such, constitutes an indispensable component of the customary prohibition of torture and other cruel, inhuman or degrading treatment and punishment.</p>

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		<p>individuals at risk to return to places where they face harm or enforced disappearance. This includes Syrian asylum seekers, who are entitled to automatic protection under Turkish law.</p> <p>Addressing the UN General Assembly in September 2019, the Turkish President Recep Tayyip Erdoğan stated that Turkey would set up a so-called “safe zone” in territories held by Kurdish-led Autonomous Administration in northeastern Syria. The stated intention of the Turkish authorities was to return to the “safe zone” in Syria between one million and three million refugees. Preceding and following the announcement by the Turkish President and the withdrawal of the American forces from Northern Syria, authorities throughout Turkey began to arbitrarily detain and deport hundreds of Syrian refugees between January and September 2019, despite active hostilities and dangers there. Deported Syrians sometimes stated that Turkish officials forced them to sign forms they were not allowed to read, in some cases after beating or threatening them, and transported them to Syria.</p> <p><u>LLG – TGRISP</u></p> <p>Human Rights Watch reported in July 2019 that the Turkish authorities are detaining and coercing Syrian refugees into signing forms declaring they wish to return to Syria and forcibly returning them there. On July 24, 2019, Interior Minister Süleyman Soylu denied that Turkey had “deported” Syrians but said that Syrians “who voluntarily want to go back to Syria” can benefit from procedures allowing them to return to “safe areas.”<sup>51</sup></p>	

<sup>51</sup> Human Rights Watch, Turkey Forcibly Returning Syrians to Danger: Authorities Detain, Coerce Syrians to Sign “Voluntary Return” Forms, 26 July 2019. <<https://www.hrw.org/news/2019/07/26/turkey-forcibly-returning-syrians-danger>> accessed 11 February 2020.

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		<p><u>ICJ</u></p> <p>Since 2016, European Court of Human Rights communicated at least 10 refoulement complaints to the government. 7 There is no evidence to suggest that any measures have been taken to comply with article 8 (1) of the Declaration.</p>	
<b>National human rights institution</b>			
<p>99. Ensure the independence and impartiality, both formal and substantial, of the forthcoming national human rights institution, in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The national human rights institution should have competence to monitor and address issues related to enforced or involuntary disappearances.</p>	<p>Paragraph 57</p>	<p><u>National Human Rights Institution</u></p> <p>The Law no. 6701 on the Human Rights and Equality Institution (HREI) of Turkey entered into force on 20 April 2016. HREI is responsible for protecting and promoting the human rights, guaranteeing the right of equal treatment, preventing discrimination and fighting against torture. HREI was designated as:</p> <ol style="list-style-type: none"> <li>1. national human rights institution, for protecting and promoting the human rights, in line with the Paris Principles</li> <li>2. national preventive mechanism, for the fight against torture, in line with OPCAT provisions</li> </ol>	<p>The Working Group welcomes the establishment of the HREI. However, the Working Group shares concern that the Emergency Decree n.703 and Presidential Circular n.2018/1 undermined the independence of the HREI. The Working Group therefore urges the Government of Turkey to repeal these provisions and adopt the new ones in full compliance with Paris Principles, with effective functional and financial independence.</p> <p>It also urges the Government to endow the HREI with adequate resources and</p>

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		<p>3. equality body, for preventing discrimination and safeguarding the right of equal treatment, in line with EU directives on equality</p> <p>The general preamble of the Law no. 6071 includes direct references to the United Nations Paris Principles, CoE Conventions and EU Directives (2006/54/EC, 2000/43/EC, 2000/78/EC).</p> <p>According to Law no. 6701, the Institution shall have the duty and power to investigate the allegations of discrimination, ill-treatment and torture upon application or ex officio. The Institution shall have the duty and power to investigate human rights violations only ex officio.</p> <p><i>Independence</i></p> <p>According to the Article 149 of the Statutory Decree no. 703 dated 9 July 2018, which envisages amendments to the Law no. 6701, “The Human Rights and Equality Institution of Turkey, affiliated to the Minister appointed by the President, with public legal entity status and administrative and financial autonomy, has been established in order to fulfil the duties and execute the powers conferred on it by this Law and other relevant legislation. The President, when necessary, may exercise his authority through the Minister in matters concerning the management of the Institution.” In addition, the Presidential Circular No. 2018/1 provides that the Human Rights and Equality Institution of Turkey is affiliated with the Ministry of Justice. Affiliation is the weakest possible attachment type in Turkish administration system.</p> <p>HREI has public legal personality, administrative and financial autonomy and private budget in order to ensure the independence of the Institution.</p> <p>The Law no. 6701 regulates that the Board shall consist of 11 members including a head and a deputy head. Additionally, according to Article 10 of the Law, the Board as the decision-making body of the Institution, shall perform and exercise its</p>	<p>necessary powers to act as an independent National Preventive Mechanism as mandated by the Optional Protocol of the Convention against Torture.</p>

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		<p>duties and powers independently and under its own responsibility. No body, authority, office or person shall give orders and instructions, recommendations or suggestions to the Board on matters falling within the scope of its duties and powers.</p> <p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>The Law on 6332 dated 21/6/2012 concerning the establishment of National Human Rights Institute of Turkey was abolished with a new law no. 6701 on 6 April 2016 concerning the establishment of Human Rights and Equality Institute (TİHEK). According to the founding law, 3 members of the Board of TİHEK was appointed by the President of the Republic and 8 other members were appointed by the Council of Ministers.</p> <p>Following the Constitutional Amendments in 2017, the governance system of Turkey was changed. The President of the Republic of Turkey became the head of executive organ. In addition, the rule of independency of the President from political parties was abolished.</p> <p>During the adoption of the new constitution into domestic legislation, the legislation of TİHEK was amended by a Decree having the force of law no.703 published on the Official Gazette of 9 July 2018. Through the Decree, the President was given the authority to appoint all 11 members of the TİHEK Board. The election of President and Vice President of the Board by the Board members among themselves was abolished. The President of the Republic of Turkey was given the authority to identify the President and Vice President of the Board. The Decree no 703 also abolished some of the requirements to be elected as the Board member. The abolished requirements are as follows: a) have a broad knowledge and experience on the subjects within the area of work of the Institution; b) have worked at least ten years in total, in public institutions and organizations, international organizations, NGOs or professional organizations with the nature of public organization or in the private sector; c) particular attention shall be paid to the selection of members on</p>	

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		<p>the basis of pluralism and among the persons having knowledge and experience in the area of work of the Institution.</p> <p>Overall, independency and the autonomy of the Institute has not been safeguarded.</p> <p>TIHEK became operational by November 2017 following the publication of the implementation regulation.</p> <p>Although having the duty to “investigate, decide, and follow up on human rights violations ex officio” as identified in the founding Law of TIHEK, there has been no work carried out concerning allegations about “short-term enforced disappearances” which have been reported on by Human Rights Watch, Ankara Bar Association, Human Rights Association and Rights Initiative Association and are described in detail in the commentary responding to the Working Group’s first recommendation (see page 1 of this document). TIHEK does not have enough staff, experience, budget and necessary power to act as an independent National Preventive Mechanism as identified by the Optional Protocol of the CAT.</p> <p><u>Human Rights Association</u></p> <p>The problems that form the basis of our critique of the Human Rights and Equality Institution of Turkey (TIHEK) authorized as the “National Prevention Mechanism” which is supposed to be an effective and significant instrument for the prevention of torture have also remained the same as of 2019. No steps were taken to make TIHEK operate in line with the Paris Principles and OPCAT provisions. Functional and financial independence problems, which are among these foremost principles, have yet to be resolved. There are principal and methodological errors in the visit reports issued by the institution as well. İHD and HRFT are of the impression based on these reports issued in 2019 that preventive visits to detention centres did not bear the minimum standards and that these visits were paid only as a formality.</p> <p><u>JWF – IAHRA Geneva</u></p> <p>The Law on Turkish Human Rights and Equality Institution of April 20, 2016 provided for a new body, which is fully dependent</p>	

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		<p>on the executive.<sup>52</sup> Under the existing circumstances the Human Rights and Equality Board cannot effectively and adequately carry out its mandate because it lacks the independence required under the Paris Principles.<sup>53</sup> Incapacitating and rendering completely ineffective the Human Rights and Equality Institution of Turkey and the Parliament's Committee on Human Rights Inquiry,<sup>54</sup> the government has also ensured that perpetrators of serious human rights violations, including enforced or involuntary disappearances, are granted complete immunity from prosecution.</p> <p><u>LLG – TGRISP</u></p> <p>Two main human rights institutions of Turkey, the Office of Ombudsman and the Human Rights and Equality Institution of Turkey (NHREI) do not satisfy the criteria of the Paris Principles and with ECRI's General Policy Recommendations Nos. 2 and 7 in terms of their statute, structure, function, activities, financial and operational independence and eligibility and appointment criteria for appointments to the offices.<sup>55</sup> In its 2019 progress report, the European Commission also confirmed that neither of these institutions are operationally, structurally or financially independent, and their members are not appointed in compliance with the Paris Principles.<sup>56</sup></p> <p><u>ICJ</u></p> <p>Emergency Decree n.703 and Presidential Circular n.2018/1 tied the national human rights institution to the Ministry of Justice. According to these regulations, all members and the chairmen of</p>	

<sup>52</sup> Eight members of the board are chosen by the government, and three by the president.

<sup>53</sup> Principles relating to the status of national institutions for the promotion and protection of human rights.

<sup>54</sup> Serving as a national monitoring mechanism, the Commission continues to have limited ability in influencing government decision-making.

<sup>55</sup> UN Human Rights Council Working Group on the Universal Periodic Review, Summary of Stakeholders' submissions on Turkey, 12 November 2019. <<https://undocs.org/A/HRC/WG.6/35/TUR/3>> accessed 11 November 2020.

<sup>56</sup> European Commission, Turkey 2019 Report, 29 May 2019.

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		the institution are appointed by the President of the Republic. Competency conditions of board members were also abolished.	
100. Ensure transparency and consultation with civil society in the activities of the newly established national human rights institutions.		<p><u>National Human Rights Institution</u></p> <p>According to the Law, one of the duties of HREI of Turkey is to cooperate with non-governmental organizations, professional organizations and universities working in the field of protection of human rights and fight against discrimination. The Institution also may set up ad-hoc committees for six months composed of public institutions and agencies, non-governmental organizations and experts in the relevant field for the purpose of working on issues falling under its mandate.</p> <p>Furthermore, the Institution has set up a consultative committee and carried out consultation meetings in the centre and provinces with the participation of public institutions and agencies, non-governmental organizations, unions, social and professional organizations, higher education institutions, printed and audio-visual media, researchers and relevant persons, agencies and organizations so as to discuss problems and proposed solutions pertaining to human rights and non-discrimination issues and to exchange information and opinions on these matters. Within this context, the first meeting of the Consultative Committee was held in Ankara on 22 October 2018 and the Second Meeting was held on 2 December 2019. Furthermore, consultative meetings were also held in Konya and Istanbul.</p> <p>Furthermore, HREI organized “The Workshop on Prevention of Violence” on 15-16 November 2019, in order to produce solutions to the problem of violence that damages human dignity, right to life, right to freedom and security, social life, private life and family life. In the Workshop, the phenomenon of violence, causes, dimensions and effects of violence were discussed in all aspects by the academicians, representatives of public institutions, representatives of non-governmental organizations</p>	The Working Group acknowledges the initiatives undertaken to this effect and further encourages the HREI to extend its support to the relatives of the disappeared, family associations, and their lawyers.

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		<p>and experts in the field. The issues of violence and different opinions were discussed in an interdisciplinary manner in various fields from education to health and sports, from family life to working life and the media. Finally, recommendations were made to strengthen a prosperous society free of violence where human dignity was protected.</p> <p><u>JFW – IAHRAGeneva</u></p> <p>The JWF and IAHRAGeneva are not aware of any policy or changes in law and practice to ensure transparency and consultation with civil society in the activities of the newly established national human rights institutions.</p> <p>Pursuant to Article 121 § 2 of the Constitution, the scope of the Government’s emergency powers is defined in the Law on the State of Emergency of 1983 (the 1983 Law). Articles 9 and 11 of the 1983 law contain a catalogue, a closed list of measures, which may be taken by the government in situations such as the attempted coup of July 2016. In particular, the 1983 Law does not provide for permanent dissolution of legal entities; Article 11(o) only provides for the “suspension of the activities of associations for periods not exceeding three months, after considering each individual case.” In defiance of constitutional and other legal provisions, 29 trade unions,<sup>57</sup> 1,419 associations and 145 foundations were permanently closed following the attempted coup. A total of approximately 150 civil society organizations that served youth and children were also permanently closed by the Decree Law 667, including 102 associations, 36 private dormitories, 11 foundations and 1 federation.<sup>58</sup></p> <p><u>ICJ</u></p>	

<sup>57</sup> These trade unions were affiliated to two Confederations.

<sup>58</sup> Closed women and children NGOs are listed in pages 8-11 of the written submission of the Journalists and Writers Foundation to the report of the High Commissioner for Human Rights, pursuant to Human Rights Council resolution 32/31 on civil society space. Available at <http://jwf.org/jwf/wp-content/uploads/2018/06/Shrinking-CivilSociety-Space-1-1.pdf>.

Recommendations A/HRC/33/51/Add.1	Situation during the visit A/HRC/33/51/Add.1	Measures taken/current situation	Level of implementation and observations (to be completed by the WGEID)
		No measures have been taken.	
101. Facilitate access for victims to the national human rights institution by creating regional and local offices.		<p><u>National Human Rights Institution</u></p> <p>According to Law No. 6701, each and every natural person and legal person who claim to have suffered from violations of non-discrimination can apply to the Institution. Applications to the Institution may be filed via governorates in provinces and sub-provincial governorates in sub-provinces.</p> <p>Furthermore, the Law has regulated that when deemed necessary and upon a proposal by the Institution, bureaus attached to the Institution may be set up through a Presidential Decree.</p> <p>The institution has not set up any bureaus yet.</p> <p>On the other hand, Article 1 of the Regulation on the Establishment, Duties and Working Principles of Provincial and District Human Rights Boards has regulated that Provincial and District Human Rights Boards have been set up in order to protect and promote human rights, raise awareness on human rights in the society, and examine and investigate allegations of human rights violations.</p> <p>In the light of the Provisional Article 1 of the Law, Provincial and Sub-provincial Human Rights Boards has remained operation until a new arrangement is done by the Presidency. Therefore, until the establishment of the local offices of HREI, these Boards act as the local bureaus of the Institution.</p> <p><u>Truth Justice Memory Center - the Human Rights Joint Platform – Human Rights Watch</u></p> <p>The Institute does not have any regional and local offices.</p> <p><u>ICJ</u></p> <p>No measures have been taken.</p>	The Working Group reiterates this recommendation to the HREI.
102. The Working Group invites the Government of Turkey to submit, within 90 days of the date of presentation of the	Paragraphs 1-57	<u>Human Rights Association</u>	The Working Group encourages the Government of Turkey to implement these recommendations in an effective

Recommendations A/HRC/33/51/Add.1	Situation during the visit A/HRC/33/51/Add.1	Measures taken/current situation	Level of implementation and observations (to be completed by the WGEID)
<p>present report to the Human Rights Council, a timetable showing the steps that it will take to implement the recommendations of the Working Group.</p>		<p>Just like the responsibilities to many other UN mechanisms and treaty bodies, Turkey does not meet its obligations in submitting reports, preparing follow-up submissions, and following recommendations. Turkey did not take necessary steps to implement the recommendations of the Working Group. To the best of our knowledge, there is no such “timetable” for possible and future steps to be taken regarding the implementation of the recommendations of the Working Group.</p> <p><u>LLG – TGRISP</u></p> <p>The Government of Turkey has undertaken no such measures to present a timetable showing the implementation of Working Group’s recommendations.</p>	<p>and timely manner. To that end, the Working Group remains committed to providing technical assistance to the Government and its specialized agencies in meeting its human rights and humanitarian obligations in the context of eradicating enforced disappearances and protecting the rights to truth, justice, memory, and reparations.</p>