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Subject: 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

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Summary

Human Rights Council 45th Session discussed the promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development from September 14 to October 2, 2020. The Working Group on Enforced or Involuntary Disappearances shared its follow-up report to the recommendations made on its visit to Turkey in March 2016 (A/HRC/33/51/Add.1).

The Working Group made 24 recommendations for Turkey to advance the rights of victims and their families guaranteed by international law in meeting its human rights and humanitarian obligations. It is considered as a test for the rule of law and democracy in Turkey.

The Working Group recommended the government of Turkey to make enforced disappearance an autonomous offence, including committing, ordering, soliciting or inducing the commission of, attempting to commit, being an accomplice to, and participating in, an enforced disappearance. Furthermore, the Turkish Penal Code 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.

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.

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.

Abductions & Enforced Disappearances

Over the years, the UN Working Group on Enforced or Involuntary Disappearances (WGEID) transmitted to Turkey 202 cases of disappeared persons where 79 of them were outstanding as of March 2016.

In the aftermath of the 2016 attempted coup, there have been, *inter alia*, disturbing allegations of enforced and involuntary disappearances by agents acting on behalf of the Turkish Government, both in Turkey and in countries all over the world. At least 26 individuals have been subject to enforced disappearance in broad daylight across Turkey, in strikingly similar circumstances. Many remain unaccounted for.

In addition to enforced disappearances in Turkey, through a variety of illegal means the Government of Turkey has managed to forcibly bring back over 100 victims from other countries. At least 40 victims have been subject to enforced disappearance, kidnapped off the streets or their homes from all over the world, many times along with their children.

The Culture of Impunity in Turkish Law

The United Nations Working Group on Enforced or Involuntary Disappearances has concluded that an entrenched culture of impunity provided a fertile ground for cases of enforced disappearance to increase in Turkey in the wake of the attempted coup. According to the Working Group, a tangible stride of the Government of Turkey 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 domain - is a *litmus test* for the rule of law and democracy in Turkey.

In its follow-up report, the United Nations 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. According to the United Nations, 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.

Systematic and State-sponsored Abductions

The Working Group is further 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. According to the United Nations, 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 underlined 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.

The Working Group underlined that the practices of enforced disappearances, 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 for the Working Group that victims 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.

Lack of Safeguards and Judicial Guaranties

In its follow-up report, the Working Group also noted 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 defense lawyer of one's choice, and lawyer-client privilege.

The Working Group also remains preoccupied about the implications of curfews in the southeastern region on the enjoyment of basic rights, as well as the alleged involvement of the Turkish armed forces in the disappearance of Syrian nationals following Operation "Peace Spring" in northern Syria.

Impunity for State Officials

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. 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, according to the Working Group, 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/Gulen 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.

Intimidation and Harassment of the Relatives

Particularly disconcerting for the Working Group are allegations of intimidation and harassment of the relatives of the disappeared because of their activism and calls for truth and justice. In this connection, 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 United Nations urge the Government of Turkey to protect and uphold their guaranteed rights to expression, peaceful assembly and association, along with the rights to truth, justice, memory, and reparations.

The Working Group finally urges the Government of Turkey to repeal provisions that have undermined the independence of Turkey's Human Rights and Equality Institution (HREI) 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.

Contributions provided by:

Human Rights Watch (HRW); Human Rights Association (HRA); Journalists and Writers Foundation (JWF); International Association of Human Rights Advocates (IAHRA); International Commission of Jurists (ICJ); London Legal Group (LLG); Turkey Human Rights Litigation; Support Project (THRLSP); Turkish Ministry of Justice (TMJ); Truth Justice Memory Center (TJMC); The Human Rights Joint Platform (HRJP)