




Turkey: Pushing the re-set button: Ten benchmarks for a zero-tolerance policy on torture in Turkey

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Nothing could have revealed the problems of the criminal justice system and torture prevention so clearly as the COVID-19 crisis did. It has exposed systemic shortcomings of the policies and practice resulting in torture as well as the effect of underfunding and neglect of the detention and criminal justice sector, concerns raised by human rights defenders for decades. The impact of the pandemic may also be an opportunity to have a fresh start and put priorities right and setting a new agenda to protect from torture.

The legal and institutional framework as well as practice need serious improvement putting in place effective institutional and legal guarantees against torture and ill-treatment in Turkey. But since the summer of 2015 when the security operation restarted in South East Turkey with more intensity and particularly after the failed coup d'états attempt in 2016, as part of state of emergency, a number of regressive measures have been implemented: a number of laws and decrees have been adopted that are considered as significant backslide in terms of tackling impunity and guaranteeing basic human rights. The number of detainees has skyrocketed right after the coup d'états attempt. In parallel judicial protection, due process rights and the right to fair trial became under attack.

Over the last few years, universal and regional human rights bodies, including the and the Council of Europe Committee for the Prevention of Torture, the UN Special Rapporteur on Torture as well as the UN Committee Against Torture in their Concluding Observations have expressed their concern about the shortcomings of Turkey in meeting its international human rights obligations and have issued multiple recommendations to the country.

Resetting of an anti-torture agenda is a matter of vital importance for a much needed broader rule of law agenda for the country. The following ten benchmarks would help to give live to a zero tolerance policy on torture in Turkey.



1. Combating impunity is the litmus test for any anti-torture strategy: recommit to the fight against torture, recognise victims whatever their affiliation, and eliminate incentives for torture, cruel inhuman or degrading treatment.

June 26, the United Nations Day for the Victims of Torture, commemorates the survivors of torture around the world. The recognition, protection and rehabilitation of survivors of torture - whoever they are - is at the core of any anti-torture strategy. The consensus on the foundational notion that no circumstance can justify torture and that no one is above the law needs consistent confirmation, application, and requires avoiding discourses dehumanising persons - whoever they may be - as not enjoying rights.

Centrally the commitment against torture needs to be translated into the reality of law enforcement and judicial authorities in Turkey. Again and again our experience shows impunity is a main incentive for torture to persist. In this context, we call for a full review of laws, policies and practices that support an environment of impunity. This should lead in particular to the repeal of impunity and indemnity clauses contained in Law N 6722 adopted on 23 June 2016 and decrees KHK/667 and 668 that were adopted in July 2016 under the state of emergency. They unduly limit the liability and hinder the access to the effective remedies. The decree KHK/667 clearly articulate that "legal, administrative, financial and criminal liabilities shall not arise in respect of persons who have adopted decisions and fulfil their duties within the scope of this Decree Law". Such indulgence granted for any actions of law enforcement personnel, directly lends to abuses, torture, cruel inhumane and degrading treatment. It is incompatible with Turkey's international legal obligation. Emergency decrees shall be abolished once the emergency situation is over.

2. Guarantee an independent, full and prompt investigation and documentation of torture cases in accordance with the UN Convention Against Torture and the Istanbul Protocol

Investigating the crime of torture requires special attention. We recommend to consider to set up a specialised investigative body in line with best practices of torture investigation. This should exclude situations that torture is investigated by the same police force from which the torture allegation originates. Developing a credible process of investigation would greatly benefit from fully incorporating the United Nations Istanbul Protocol providing for independent medical documentation of torture improving the solidity of evidence in judicial proceedings. State should guarantee victims' independent documentation of torture allegations in accordance with Istanbul Protocol by specialised independent civil society organisations. Istanbul Protocol should become a part of the training curriculum for medical doctors, law enforcement personnel and lawyers.

3. Ensure an effective prevention of torture through strengthened procedural guarantees and rebuild an independent judiciary as protector of rights

Rebuilding an effective protection framework requires investment into the judiciary to protect rights. The practice of political influence on the judiciary and the use of judicial harassment of dissent and human rights defenders has to end. To move forward, it is vital to ensure that the New Judicial Strategy announced in 2019 will be discussed within an open, transparent, accountable and inclusive process with civil society to ensure a fundamental reform of the justice system in accordance with universal and Council of Europe standards. The constitutional guarantees for the independence of the judiciary and procedural fair trial guarantees altered during the state of emergency need to be restored, and a review of criminal legislation in line with the guidance provided by Council of Europe bodies should accompany this process. Over the past years the cadres of the judiciary as well as of prosecuting authorities and law enforcement have been significantly altered. This has not only been questioned for respect of the independence of the judiciary, but requires a significant re-investment into the anti-torture training of the judiciary, prosecuting authorities and law enforcement actors to create a culture for the protection of rights.

4. Create the space: protect victims, family members and witnesses against any form of reprisals and secure the right to defend from torture by anti-torture actors.

Our research shows that most victims of torture refrain from filing complaints with the authorities because of fear of retaliation and reprisals against them or their families. Unfortunately, there appears a deep mistrust in the willingness of the prosecution and the judiciary to investigate allegations of the countries own police and law enforcement. This is matched by an experience of victims of the lack of serious follow-up by the prosecution and the judiciary to such complaints. To overcome those challenges, it needs clear commitment, but also law and guidance to protect against any form of reprisals as well as their swift investigation and sanctioning when it occurs. Best practices in the fight against torture also provide for the integration of victim rights in the investigate process and judicial process in order to avoid reprisals and re-victimization. Finally, there is no effective protection of victims without the full respect of the right to defend from torture and guarantees against judicial harassment of human rights defenders.

5. Learning the COVID 19 lesson: Prevent overcrowding in detention on a lasting basis and ensure humane conditions in accordance with UN Mandela Rules

The COVID 19 experience illustrates the inherent dangers of overcrowded detention and prison facilities for public health - inside and outside prisons - and showed the risks of security incidents and violence in detention when prisoner rights are curtailed. The protection of those detained as well as that of prison guards remains an important responsibility and requires access to health care. Following the adoption of the Law No. 7242 amending Law No. 5275 on the Execution of Penal and

Security Measures on detention it will be important to ensure that incarceration rates continue to be reduced in a lasting fashion. We recommend a policy encouraging the use of alternatives to imprisonment, clear policy guidelines for early conditional release of inmates, and a significant reduction of prison terms for non-violent crimes, especially speech offences. In Turkey as elsewhere there is need to reduce the number of remand prisoners also after the COVID19, leaving the deprivation of liberty as a matter of last resort and utilise the alternatives to arrest like conditional release, bail, fine etc.

6. Refrain from prolonged police custody and delayed registration of the arrest and ensure immediate access to lawyers.

Revoke the law on prolongation of the police custody adopted under the state of emergency and stop the practice of late registration of arrest. The first few hours and days are the most vulnerable period of time for torture and access to legal counsel is a fundamental safeguard against abuse. The period of initial police custody should be shortened with no prolongation without a court order in order to reduce the risk of abuse. Not registering the arrest in time, is an infringement of law and should be punished under relevant provisions. Judges should closely monitor the respect for due diligence during the arrest and take sanctions against violations of due procedures. In this regard it is important to ensure that at any level there will be respect to the decisions of Turkey's Constitutional Court, the ECtHR and other human rights bodies.

7. Guarantee the right to health care and access to doctor and provide holistic rehabilitation services to the victims of torture and ill treatment with victim centered approach.

The right to health and rehabilitation are core components of a credible anti-torture strategy by any state. Inmates should have a guaranteed access to a doctor of their choice and the state should be able to provide health care support and service of a medical professional under any circumstances. Victims of ill treatment and torture should not be hindered from access to a medical doctor. In addition states should guarantee a professional and independent rehabilitation services to victims of torture which should be accessible, affordable and of adequate quality. The state should either provide independent services directly or allocate funding for the medical and psychological services provided by third parties in accordance with the General Comment No.3 on Article 14 of the UN Convention Against Torture. It is essential in this regard, that victims have the right to choose rehabilitation service providers.

8. Review the practice of confession-based investigation and conduct a justice sector reform that ensures that no information is obtained by torture or cruel, inhuman or degrading treatment can infect legal procedures

The practice relying on confessions in investigating crimes contributes towards the practice of torture and ill-treatment. Interrogation techniques are heavily based on intimidation and fear. The new protocol on non-coercive interrogations presently in the process of adoption provides important guidance to move away from a confession based system. In some cases we have seen confessions made by third persons accompanied by intimidation, harassment and torture being used in legal proceeding. In the light of existing investigation practices the justice sector reform is paramount to reduce reliance on confessions and to fully secure in practice respect for the exclusionary rule (no evidence under torture permitted in legal proceedings).

9. Transparency beats secrecy: secure viable and systematic monitoring of the places of deprivation of liberty with inclusion of civil society, guarantee a space for functioning of civil

society free of persecutions and repressions

A clear agenda to prevent torture and cruel and inhuman or degrading treatment should allow for effective monitoring and visiting to places of detention. We recommend in line with best practices internationally, that regular civil society monitoring of places of deprivation of liberty with respect of confidentiality of meetings with inmates is becoming possible. Establishing a fully independent National Preventive Mechanism, as required under the Optional Protocol of the UN Convention Against Torture, to be established in consultation and with inclusion of civil society organisations should become a key priority. The composition and independence should be in line with UN Paris Principles with a full mandate of unhindered access to any place in which persons are deprived of liberty.

10. Uphold the principles of democratic society on plurality and diversity, and protect those vulnerable to torture, including refraining from hate speech against national, religious and sexual minorities and vulnerable groups like refugees.

The struggle against torture is closely linked to a society based on the principles of the rule of law and democracy and it is based on a paradigm of 'me' and the 'other'. Unfortunately, discourses and hate speech against vulnerable groups risks to create an atmosphere where violence, abuse and torture becomes possible.

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- Foundation for Society and Legal Studies, TOHAV
- Human Rights Association, IHD
- Human Rights Foundation of Turkey, HRFT
- World Organisation Against Torture - Europe, OMCT Europe

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