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Submission to the Universal Periodic Review for the 2nd Cycle

I. Introduction

1. HRFT has been providing treatment and rehabilitation services to torture survivors and their relatives since 1990. This report presents HRFT's assessment of Turkey's implemented of recommendations received during the first UPR cycle within our main areas of work.

2. A long with a history of human rights violations in Turkey, the military coup of 12 September 1980 and its aftermath brought a peak in extensive, massive and intense human rights violations, such as torture and ill treatment. By 1990, mainly as a result of the fact that the "Kurdish issue" has not yet been resolved the human rights situation had worsened. There has been some progress between 2000 and 2005 in terms of the relevant legal framework and its implementation. Nevertheless after 2005, several progressive reforms were rolled back; various articles of the new Turkish Penal Code and the new Criminal Procedural Code were amended in a negative way. Moreover, amendment to the Anti-Terrorism Code and the Code on Powers and Duties of Police were in 2006 and 2007, respectively gave the police more authority to use of force including fire arms, and restricted possibilities for complaining, which has resulted in more police brutality, and a weakening of the procedural safeguards. These regressive amendments have also led to an increase in other human rights violations, including of freedom of speech, freedom of assembly, right to liberty and security, and right to life¹. In 2013, so-called Gezi Park Protests and Corruption Operation of 17 December resulted in violations targeting the effective realization of protection and promotion of human rights.

3. HRFT submitted its report to the 8th session of UPR for the 1st cycle of Turkey². Therefore the assessment will cover the period after 2010.

II. Previous Recommendations with regards to Prohibition of Torture

4. During the first UPR, Turkey accepted the establishment of an independent national human rights institution (NHRI) in accordance with the Paris Principles; ratifying Optional Protocol to CAT (OPCAT) and, in line with its provisions, establishment of an independent national preventive mechanism and ensuring prompt, independent and thorough investigations of all allegations of torture and ill treatment.

A. Establishment of NHRI

5. Law on Human Rights Institution of Turkey was published in Official Gazette and entered into force on 30 June 2012 with number 6332. This formally established Turkey's National Human Rights Institution (NHRI).

5.1. The process of establishment of the NHRI has been carried out in a manner, which lacked transparency, and broad stakeholder participation contrary to the spirit of Paris Principles³.

¹ See Report of Human Rights Watch on The Arbitrary Use of Terrorism Laws to Prosecute and Incarcerate Demonstrators in Turkey: <http://www.hrw.org/reports/2010/11/01/protesting-terrorist-offense-0> and see Report of Human Rights Watch on Barriers to Tackling Police Violence in Turkey: <http://www.hrw.org/reports/2008/12/05/closing-ranks-against-accountability-0>; see Annex I with regards to the violation of right to life and table on the numbers of prisoners which puts forward the rise.

² Human Rights Foundation of Turkey, UPR Submission for the 8th Session, Turkey : http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/TR/HRFT_UPR_TUR_S08_2010_TheHumanRightsFoundationofTurkey.pdf

³ Kirsten Roberts, Bruce Adamson- Chapter 23 Peer- Review Mission: Human Rights Institutions. 17-21 January 2011, Ankara, Turkey: <http://www.avrupa.info.tr/Files//2011%20Peer%20Review%20Report%20on%20the%20National%20Human%20Rights%20institutions.pdf>

5.2.The NHRI lacks structural and operational independent as required in the Paris Principles. As already demonstrated in the reports of the Human Rights Commissioner of the Council of Europe⁴, Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions⁵, and EC Progress Report (2013)⁶, there is a lack of guarantees for the independence and impartiality of the members who are appointed by Government; there isn't adequate and independent funding for its operations; there are restrictions on civil society contribution, which jeopardise the future independence of the Institution. Since the establishment of the NHRI, despite the widespread human rights violations, it has failed to carry out effective monitoring and investigation of major incidents. In its concluding observations of 13 November 2012, Human Rights Committee underlines that "State should amend the 2012 law for the establishment of the national human rights institution, guaranteeing the organic and financial independence of the National Human Rights Institution in full compliance with the Paris Principles"⁷.

Recommendations: The State should amend the Law (a)to ensure the structural and operational independence in full compliance with the Paris Principles and (b)to guarantee that the NHRI effectively and fully fulfil its investigative powers.

B. Ratification of OPCAT

6.Turkey ratified OPCAT on 27 September 2011 and the NPM was established through Cabinet Decree No. 2013/2711 promulgated in the Official Gazette of 28 January 2014, which identified the NHRI as the NPM⁸. This was more than one year past the deadline established by article 17 of the OPCAT.

6.1. The NPM was designated through a cabinet decree, which fails to satisfy the requirement for establishment through constitutional or legislative text established in the Paris Principles and the SPT Guidelines⁹ raising concerns about its structural and operational independence. This concern is further aggravated by the lack of independence of the NHRI designates as NPM.

6.2. In addition to the lack of independence, NPM isn't established as a separate entity within the NHRI leaving it the necessary resources and expertise to perform the NPM function. This was confirmed during the 3rd Event of HRFT on 16 January 2013 evaluating the NPM establishment where the NHRI was represented by its members. At this meeting, with participation of Malcolm Evans and Jean Pierre Restellini a full consensus has been reached among all participants from public and civil sectors that this function could not be undertaken by the NHRI.

Recommendations: The State should (a)cancel Cabinet Decree on the designation of NPM and (b)ensure establishment of a NPM in full compliance with OPCAT.

C. Effective Investigations into Torture

7. As indicated in the 2010 Concluding Observations of the Committee against Torture (CAT) on the third periodic report of Turkey¹⁰ and in the European Commission (EC) 2011, 2012 and 2013 Turkey Progress

⁴ 26 November 2013 dated report of Nils Muiznieks:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2395759&SecMode=1&DocId=2079692&Usage=2>

⁵ Christof Heyns' report of 18 March 2013: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/122/89/PDF/G1312289.pdf?OpenElement>

⁶ EU Commission's 2013 Progress Report on Turkey dated 16 October 2013:

http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/tr_rapport_2013_en.pdf

⁷ Concluding observations on the initial report of Turkey adopted by the Committee at its 106th session, 15 October to 2 November:

www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-TUR-CO-1.doc; HRFT Submission is available :

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGO%2fTUR%2f45%2f10192&Lang=en

⁸ <http://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/Turkey4Feb2014.pdf>

⁹ See SPT Guideline (15-19 November 2010), CAT/OP/12/5: www2.ohchr.org/english/bodies/cat/.../SPT_Guidelines_NPM_en.doc and also see 2013 Observation Report of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights: <http://nhri.ohchr.org/EN/AboutUs/Documents/ICC%20SCA%20General%20Observations.pdf>

¹⁰ CAT/C/SR.975, <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.TUR.CO.3.pdf>; also see the Submission of the Human Rights

Foundation of Turkey to the UN Committee against Torture for its consideration of the 3rd Periodic Report of Turkey:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fNGO%2fTUR%2f45%2f10192&Lang=en

Reports¹¹ the authorities have continuously failed to conduct effective, prompt and independent investigations into allegations of torture. Investigations generally fail to comply with the standards in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

7.1. There are grave concerns as to the independence and impartiality of investigations. According to the Law on the Proceedings against Civil Servants and Other Public Officials, the public prosecutor shall directly investigate crimes involving excessive use of force. The law also established a permission system for launching an investigation against the highest level law enforcement officers who are in charge of such acts. In addition, there isn't any separate, judicial police unit to conduct the investigations resulting in law enforcement officers investigating themselves and their close colleagues.¹².

Recommendations: The State should (a)ensure that investigations into allegations of torture are conducted in line with Istanbul Protocol(b)abolish the permission system for investigation of law enforcement officers.(c) establish and independent authority to investigate complaints against law enforcement officers suspected of torture and ill-treatment.

III.Other Key Issues of Concern

A.Impunity

8. There is an absolute manner of maintaining impunity both in legislation and implementation. As stated in both CAT Report and the EU progress reports, judicial authorities do not evaluate cases under provisions against torture, and therefore the importance of the increase in penalties for acts of torture that has been introduced has a limited impact. Prosecutions following allegations of torture are often conducted under Article Articles 256 ("excessive use of force") or 86 ("intentional injury") of the Turkish Penal Code rather than Articles 94 ("torture") or 95 ("aggravated torture due to circumstances") which stipulate heavier sentences¹³. It is important to remark that the wordings of the provisions leave the distinction between torture and other related crimes that are in the scope of the unlawful acts of public officials ambiguous.

Also as European Court of Human Rights (ECtHR) pointed out, the suspensions of the pronouncement of the judgment or delaying the execution of sentences result in the impunity of the perpetrators¹⁴.

8.1. Aforementioned reports reveal the fact that use of counter-charges to intimidate persons reporting torture remains prevailing and countrywide. Moreover the State is failing to implement decisions including remedies and compensations awards from the ECtHR. As illustrated in the ECtHR ruling on Veli Saçılık and Others v. Turkey¹⁵ and the subsequent implementation, the State has introduced a new tactic of recourse of rewards based claims that the victim had personal fault in the torture and ill-treatment incident that prompted the compensation award. This situation gives immunity to perpetrators and thus avoids torture survivors to bring cases.

8.2 Despite the amendment on the repealing of statute of limitation on investigations to crime of torture, there is still a loophole on the retrospective effect of the amendment.

Recommendations: The State should (a)produce clear guidance on when articles 256 and 86 of the Penal Code will be required to prosecute instead of article 94 and 95.(b)avoid rendering suspension of the pronouncement of the judgment or delaying the execution of sentences to the offence of torture.(c)Ensure that officials do not use the threat of counter-charges as means of avoiding people from reporting torture and/or recourse of rewards.(d)ensure investigation of torture isn't subjected to statute of limitations, retrospectively.

¹¹ Reports are available under key documents: http://ec.europa.eu/enlargement/countries/detailed-country-information/turkey/index_en.htm

¹² See Report of 10 January 2012, by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2005423&SecMode=1&DocId=1842380&Usage=2>

¹³ Despite the recommendations and observations of CAT, the detailed, current and comparative data of Ministry of Justice isn't still available.

¹⁴ See Böber v. Turkey, no. 62590/09, 09 April 2013; Eski v. Turkey, no. 8354/04, 5 June 2012; Taylan v. Turkey, no. 32051/09, 3 July 2012; Okkalı v. Turkey, no. 52067/99, ECHR 2006-XII extracts; and Zeynep Özcan v. Turkey, no. 45906/99, 20 February 2007

¹⁵ See Saçılık and Others v. Turkey, nos. 43044/05 and 45001/05, 05 July 2011

B.Right to Protest and Torture

9.During the reporting period there has been an increase in the violations of right to protest related with prohibition of torture and other forms of ill treatment.

9.1.As European Court of Human Rights (ECtHR) has already determined that the use of pepper spray against people whose liberty has been restricted can amount to a violation of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) ¹⁶. Particularly during the protests, chemical agents such as pepper spray, tear gas, and pressurized water have been arbitrarily used against peaceful demonstrators¹⁷. Despite another latest ECtHR decision, Turkey is still in breach of ECHR¹⁸. The arbitrary and excessive use of force by police officers against peaceful demonstrators and bystanders during protests illustrates that torture and ill-treatment is increasingly applied to frighten, threaten, punish and/or impose authority, rather than to obtain information, which puts the whole population under the risk of being tortured. As stated in UN General Assembly Resolution A/RES/68/156, acts which can amount to torture committed against persons exercising their rights to peaceful assembly and freedom of expression are deeply concerning¹⁹.

9.2.These acts kept alive the issue of torture in unofficial places of detention, including public places, which has been a priority item in the review period. Also the political discourse legitimises uncontrolled use of force with the Prime Minister remarks on the use of fire arms against protestors, stating "*I don't know how the police tolerate all this?*"²⁰.

Recommendations: the State should(a)promote and protect protestors from being subjected to torture or ill treatment.(b)ban the use of tear gas and pepper spray.(c)ensure that effective investigations are conducted into the use of force.(d)refrain from encouraging acts of torture in its political discourse.

C.Gross Violations of Human Rights

10.There is no comprehensive approach to the right to a remedy and reparation for victims of gross violations of international human rights law involving enforced disappearances, the exhumation of mass graves or effective and independent investigations into alleged cases of extrajudicial killings that took place in 1990's, related with Kurdish issue²¹. Mass graves discovered in the south-east have not been adequately investigated²². The investigations aren't conducted in line with Minnesota Protocol.

As ceasefire was declared in 2013 there is a decrease in the number of deceased people in relation to armed conflict in Turkey²³. But the past massive human rights violations still have to be resolved. Moreover there is still a statute of limitation regarding these gross violations.

Recommendations: The State should(a)repeal statute of limitations on prosecution of gross violations of human rights.(b)conduct investigations of extrajudicial killings in line with Minnesota Protocol.(c)develop specific programme on reparation for victims of gross violations.

D.Lack of Right to Reperation

¹⁶ See Ali Günes v. Turkey, no. 9829/07, 10 April 2012

¹⁷ See HRFT report on the Medical evaluation of Gezi Protests: <http://www.tihv.org.tr/wp-content/uploads/2014/06/geziraporu.pdf> ; also see Amnesty International's Report on Brutal Denial of the Right to Peaceful Assembly in Turkey: <http://www.amnesty.org.tr/ai/system/files/GeziParkiEN.pdf>

¹⁸ In a recent judgment by the European Court of Human Rights in the case of Yaşa and Others v. Turkey (App. No. 44827/08), on 16 July 2013 the court ruled that Turkey violated Article 3 of the ECHR (prohibition of torture and other forms of ill-treatment) considering the lack of specific provisions in law regulating the use of tear gas at demonstrations and appropriate training for police officer.

¹⁹ Resolution adopted by the General Assembly on 18 December 2013, A/RES/68/156:

http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/156; see also Human Rights Council Resolution on Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, A/HRC/25/L.20 : http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/25/L.20

²⁰ http://www.todayszaman.com/columnist/gunay-hilal-aygun_349379_gezi-anniversary-frightened-the-government.html

²¹ See Annex II- Worksheet on Enforced Disappearances, Truth Justice Memory Center

²² See Report of Human Rights Watch on Ending Impunity for Killings and Disappearances in 1990s Turkey:

<http://www.hrw.org/reports/2012/09/03/time-justice-0>; also see the Reports of Truth Justice Memory Center on Enforced disappearances: <http://www.hakikatadalethafiza.org/kaynak.aspx?GResourceId=85&LngId=5> and Enforced Disappearances and the Conduct of Judiciary: <http://www.hakikatadalethafiza.org/kaynak.aspx?GResourceId=86&LngId=5>

²³ See Annex III-Tables on violation of right to life between 1990-2013 in conjunction with violation of right to life in clashes

11.The comprehensive reparative concept under UNCAT and related soft law tools²⁴ haven't been realized.

Domestic law does not provide for restitution, rehabilitation, satisfaction and guarantees of non-repetition. Furthermore, there are no specific provisions for compensation for torture and ill-treatment resulting in the courts generally failing to award compensation to torture survivors.

There are several non-State rehabilitation programmes run by organisations like HRFT. As part of the right to rehabilitation under Article 14 of UNCAT, the State has a clear obligation to refrain from intimidation and reprisal against such service providers.²⁵ Recent amendments to the Law on Health Services require punishment for providing "unauthorized" medical services during emergencies. Considering the prevalence of torture and ill-treatment during recent emergencies in Turkey and the need to ensure immediate rehabilitation services to the victims, this amendment serves to criminalise the provision of rehabilitation services²⁶.

Recommendations: The State should(a) ensure full scope of measures required to implement the right to redress.(b) ensure that no reprisals or intimidation are directed to NGOs including professionally independent and adequate health care providers.

E.Sick Inmates

12. On 24 January 2013, an amendment to article 16 of Code on Execution of Penalties stipulated that stay of execution of sentences on medical grounds will be conditional on the detainee "not threatening public order". In a situation where Forensic Medicine Institution indicates the convict's health condition to be grounds for release this may be rejected upon claim of threat against public order²⁷. Despite the ECtHR ruling that the lack of proper, sufficient legislation on continuing detention of inmates who have serious illness constitutes violation of Article 3 of ECHR, there are still restrictions regarding right to health including right to release. ²⁸.It has to stated that Institititon is functioning under Ministry of Justice which lacks the medical neutrality and independency.

Recommendations: The State should(a) abolish the legal restrictions on the release conditions of sick inmates by ensuring that solely clinical approach and medical evaluation will be determining factor. (b)ensure that independent, efficient medical evaluation is adequate for the decisions on release of sick inmates.(c)stop solely relying on the Forensic Medicine Institution reports.

²⁴ UN Human Rights Council, 12 April 2013, Resolution No. 22/21; CAT, 30 December 2012, General Comment No 3

²⁵ CAT, 30 December 2012, General Comment No 3, paragraph 15

²⁶ UN Special Rapporteur on the right to health Physicians for Human Rights, World Medical Association, British Medical Association, German Medical Association, and other leading medical groups have all criticized the amendment. See more at:

<http://physiciansforhumanrights.org/press/press-releases/turkish-president-signs-bill-that-criminalizes-emergency-medical-care.html#sthash.uzqtSnQQ.dpuf>; <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14076&LangID=E>

²⁷ See the release of 1 February 2014 on Prisoner's Right to Release on Health Grounds:

<http://humanrightspracticeinturkey.com/2014/02/01/21/>

²⁸ See ECtHR judgement of *Gülşay Çetin v. Turkey*, no. 44084/10, 05 March 2013