



Universal Periodic Review

Third Cycle - Turkey

Submission of Human Rights Association

18 July 2014

1. Although the CSOs in Turkey take the UPR mechanism as an important tool to contribute in the HR atmosphere and democracy in the country, the response of Turkey to the UPR falls short to meet the expectations. Turkey doesn't submit mid-term reports; have a mechanism to monitor the results of its responses to recommendations and ensure the participation of stakeholders. For the 2nd cycle, the MFA organised a meeting with the participation of limited organisations. For the 3rd cycle, they only released an announcement on their web site to bring together the opinions and recommendations of the stakeholders through e-mail. The call was not disseminated as required.
2. CSOs are continuing their efforts to contribute to the UPR mechanism and İHD submitted its report for the 2nd cycle on 2 topics: a. Kurdish Question; b. Prisons. Unfortunately, the peace process was ended by the government in 2015. And the condition in prisons is not getting better since then.
3. İHD is monitoring and reporting all aspects of the Kurdish Question since its foundation. İHD also takes part in efforts for the solution of the problem at different levels. İHD is also working in the field of prisons. With its prisons committee and network of lawyers, İHD monitors all the violations in the prisons, releases reports for more than 3 decades. İHD would love to take the opportunity to draw an updated picture of both areas and submit its recommendations.

Kurdish Question and Peace Process

4. İHD welcomed the efforts of the government and PKK in opening up talks for peace to end the armed conflict. İHD also welcomed the “Wisemen Commission” created by the government in 2013. However, İHD was concerned about the lack of comprehensive approach enhanced with legal guarantee to carry Turkey for a real peace process and accompanying human rights protection measures.
5. Following the assassination of 2 officers allegedly by PKK in 2015 in Ceylanpınar district, the government ended the peace process.¹ The re-start of the armed conflicts on 24 July 2015 resulted in armed clashes in city centres and imposition of curfews in the Kurdish region. According to the HRFT, between August 2015 and July 2019, there have been at least 369 curfews in 11 cities and at least 51 districts. At least 500 thousand persons had to be internally

¹ All defendants in this case were acquitted and the real perpetrators who assassinated the officers and who planned the attack were not unveiled.

displaced following the destruction of the city centres. More than 300 civilians were killed during the operations and clashes.

6. Following the coup attempt in 2016, government declared State of Emergency (SoE) throughout the country on 21 July 2016. SoE was prolonged six times until 19 July 2018. A total of 32 SoE decree laws were issued and hastily brought up on the agenda of the Parliament and were passed into laws and incorporated into the legislation. Decree laws introduced amendments into more than 300 laws, mostly irrelevant to the SoE, including them into the legislation and rendering them permanent.²
7. In addition to the annulment of the legislative immunity of the MPs in 2016, The SoE increased the pressure on pro-Kurdish political parties HDP and DBP. 13 HDP MPs including Co-Chairs were incarcerated. 94 mayors from DBP were dismissed from duty. 135 Kurdish politicians including 84 mayors and co-mayors were imprisoned. At least 135 HDP executives were also arrested or imprisoned.³
8. The tendency continued after the local election on 31 March 2019. The Supreme Electoral Council violated the right to vote and be elected by ruling that those dismissed from public posts through SoE decree laws could not be mayors, provincial council members even if they won the elections in spite of the fact that it was the same SEC that confirmed the candidacy of the same persons.⁴
9. Law No. 7145 on “Amendments to Some Laws and Decree Laws” prescribing that significant practices implemented during the SoE would remain in force for at least another three years was adopted by the Parliament on 25 July 2018, SoE was rendered permanent with all its consequences.
10. Many rights were violated through the permanent SoE Law. These include but not limited to right to liberty and personal security, freedom of residence and movement, presumption of innocence, right to fair trial, principle of equality and the prohibition of discrimination, freedom of thought and opinion, freedom of expression, freedom of association, respect for the privacy of private and family life, academic freedom, right to work. İHD is of the opinion that if a country passes unconstitutional laws and acts as if these are constitutional rules, there can be no discussions about rule of law in that country.⁵
11. Violations of the right to freedom of expression hit record high figures during the SoE. According to the official statistics provided by the Ministry of Justice, while criminal charges were brought against 4,187 individuals under Article 299 of TPC, i.e. insulting the president, in 2016, this figure went up to 6,033 persons in 2017. While in 2016, 482 lawsuits were lodged under Article 301 of the TPC for insulting Turkishness, this figure went up to 753 in 2017. Number of cases launched for propaganda of an illegal organization was 17,322 in 2016 which went up to 24,585 in 2017.

² For details of the SoE practices please see İHOP’s report: <http://www.ihop.org.tr/en/2018/04/25/updated-situation-report-state-of-emergency-in-turkey-21-july-2016-20-march-2018/>

³ Congress of Local and Regional Authorities clearly identified in its fact-finding mission report on the situation of local elected representatives in turkey that most of the arrests of local elected representatives were made on the basis of accusations of terrorism. according to the report, “the rapporteurs are concerned at the extensive interpretation of the anti-terror law, which falls short of Council of Europe standards and leads to the criminalisation and prosecution of local elected representatives, as well as journalists and human rights defenders.” For details see full report: <https://rm.coe.int/16806fbf0d>

⁴ For details see: https://insanhaklaridernegi.info/en/wp-content/uploads/2019/06/31-March-Elections-Report_IHD_May-2019.pdf

⁵ For details see: <https://ihd.org.tr/en/?p=1891>

12. Although the court cases and indictments which were plots prepared by the members of the so-called Gülenist movement within the judiciary were closed and those members were dismissed from duty and/or imprisoned, the cases opened by the very same persons under so-called KCK trials are still on-going.
13. Armed conflict and security measures taken by the government have a negative impact on democracy and human rights in Turkey. Therefore, the solution of the Kurdish Question and establishment of a new and openly discussed peace process will contribute on the expansion of the democratic space in Turkey.

Recommendations for the Re-initiation of Peace Process

14. A fully new, civil and democratic constitution protecting fundamental rights and freedoms should be prepared.
15. A new, transparent and participatory peace process based on the latest “Dolmabahçe Agreement” should be immediately re-initiated.⁶
16. Abdullah Öcalan should be allowed to benefit from his legal rights, to see his legal representatives and relatives; and the dialogue ended in 2015 should be re-started.
17. Constitutional citizenship should be defined in the new constitution.
18. All the NGOs working in the field of Kurdish culture and closed down with governmental decrees during the SoE should be re-opened.
19. With regard to the UN Twin Covenants, the principle of decentralisation should be included in the new constitution.
20. Education in mother tongue should be under the guarantee of the constitution.
21. Effective investigation and prosecution procedures should be implemented for the enforced disappearances, killings by the unidentified assailants, mass murders and extra-judicial killings, crimes committed during the SoE. Lapse of time should not be implemented for such crimes.
22. All the obstacles against the freedom of expression and freedom of association allegedly used to fight against terrorism should be lifted immediately after reviewing all legal regulations. In this context, articles 125, 216, 220, 265, 299, 301, 314 of TPC should be immediately amended. Provisions in the Law on Misdemeanour preventing freedom of expression should be abolished.
23. Anti-Terror Law should completely be annulled. At least the articles 6 and 7 should be lifted or amended in accordance with the international standards.
24. Law on Meetings and Demonstrations should completely be repealed. At least the articles 22, 23, 24 and following articles restricting the right of peaceful assembly should be amended in accordance with the international standards.
25. Provisions in the Law on Criminal Procedures concerning protection of private life, wiretapping, technical surveillance and contradicting fundamental rights and freedoms should be amended. The practice of secret witnesses in court cases should be stopped. Arrests for catalogue crimes accusations should not be a common practice.
26. In accordance with the right to associate, Law on Political Parties should be amended, obstacles against organisational democracy within political parties should be suspended.

⁶ The joint public appearance of the government and pro-Kurdish lawmakers at the Dolmabahçe Palace (the Prime Minister’s office in Istanbul) on 28 February 2015 subsequently became known as the Dolmabahçe Agreement.

27. Legal regulations and amendments to allow HR institutions and CSOs to monitor the elections should be made.
28. Law on Population Registration and Surname Law should be amended to allow people to choose the names and surname they want.
29. Dwellers of evacuated villages and other residential areas should be substantially compensated. Necessary social and economic measures should be taken for the returns to the villages.
30. Temporary and voluntary village guards should be discharged; for the sake of social peace village guards should be disarmed immediately.
31. Necessary legal regulation should be prepared for the clearance of land mines; Turkey should fully implement the Ottawa Treaty.
32. Mass graves should be opened with respect to the international treaties and in collaboration with CSOs. Turkey should become a party to International Convention for the Protection of All Persons from Enforced Disappearance.
33. Amendments in the Law on National Education and changes in curricula should be made in accordance with pluralism principle. The letters w, x and q should be added to the alphabet by making necessary changes in the Law on Acceptance and Application of Turkish Alphabet.
34. Hate speech should be prohibited; a law on hate crimes should enact. An Anti-Discrimination and Equality Committee should be constituted in line with international standards and UN Paris Principles.
35. By making necessary amendments in Law on Duties and Powers of the Police, use of fire arms by the police should be restricted.
36. Permanent SoE law “Amendments to Some Laws and Decree Laws” should be annulled immediately.
37. Turkey should stop constructing new “security” dams one of which will destroy the old Kurdish settlement of Hasankeyf, military outpost and walls on the border.
38. The word Türk (Turkish) in the names of professional chambers, laws, associations for public welfare should be changed into Türkiye (Turkey).

Human Rights Violations in Prisons

39. On 20 November 2018, The Minister of Justice announced that there were more than 260 thousand persons incarcerated in 385 prisons. For the same period, the total capacity of the prisons was approximately 214 thousand.
40. The protection of human rights in prisons is under risk, as there are no independent monitoring mechanisms in line with the OPCAT. İHD receives complaints about arbitrary violation of many rights and freedoms, mostly for medical neglect, ill-treatment, disciplinary investigations, involuntary transfers.
41. In 2018, İHD received 1423⁷ applications for neglecting health. Main issues referred in these applications are: even for emergency cases seeing a physician once a week, long waiting periods for transfers to the hospitals, despite heavy health conditions transfers with patrol wagon, [enforced] handcuffed examination in the hospital, ill-treatment and misconduct of duty during transfers, presence of the gendarmerie in waiting and examination rooms, delay in examination reports, lack of information for treatment, lack of expert physicians, etc.

⁷ <https://www.ihd.org.tr/ihd-2018-yillik-insan-haklari-raporu/>

42. İHD's updated prisoners list with poor health condition⁸ includes 1334 prisoners suffering from several diseases, including 458 heavily sick prisoners. These heavily sick prisoners are not permanently or temporarily released relying on the relevant legislation.
43. Due to the strict approach of the Forensic Medicine Institute and the criterion on the "treat against public security" added to Art. 16 of the Law No. 1575, it becomes almost impossible for the prisoners who have cancer, stroke and other serious illnesses that need permanent medical treatment, to get discharged or benefit from the "conditional release".
44. The prisoners with serious illnesses come to İstanbul to get medical report from FM Institute which takes months to receive. During their visits to the FM Institute, these patients are kept in vehicles, with their hands cuffed, with no food or water for hours. It is observed that most of patient prisoners are sent back to the previous prisons by their own will.
45. The patient prisoners are temporarily put in the prisoners' wards in the hospitals. These wards are located in basements without adequate light and fresh air. The prisoners are handcuffed to beds. Medical treatments of the patient prisoners transferred from prisons to the hospitals turn into torture.
46. 1149 prisoners applied to İHD for ill-treatment and torture allegations. Naked body search, enforced military style counting, provocation of the guards, beatings, insults and threats are common practices. No investigations upon complaints; but counter investigations against prisoners for resisting, insulting officers. Examination of the prisoners after physical attacks aren't made in line with İstanbul Protocol and no medical reports certifying beatings are prepared.
47. During the disciplinary investigations, the prisoners aren't allowed to testify in their mother tongue and aren't given time to see their lawyers. Having prepared without legal advice, their objections to the decisions were mostly rejected. According to the Anti-Terror Law, the prisoners who receives 3 solitary confinements as disciplinary punishment are not allowed to benefit from conditional release even if the punishments are suspended.
48. Human Rights and Equality Institution of Turkey [TİHEK] is national prevention mechanism against torture. But the institution itself wasn't founded in accordance with the Paris Principles and isn't independent. İHD's applications concerning torture and ill-treatment allegations in prisons are rejected regularly on the grounds that İHD is not the direct victim of the incidents.
49. The prisoners -particularly political prisoners- are incarcerated in the most far prisons to the cities where their relatives dwelled. The demands for transfer to the closer prisons are rejected.
50. The right to communication is restricted in the prisons. Letters of the prisoners to the MPs, governmental organisations and NGOs aren't sent for "targeting officers", "disseminating false information", "making propaganda of an illegal organisation", etc. Penal or disciplinary investigations are launched against prisoners for the expressions they used in the letters.
51. There is degrading treatment against the visitors; they are insulted and threatened to be arrested. They face body searches, their underwear is checked and sometimes undressed. Metal detectors are calibrated to sense the smallest materials like hair pins and lawyers are forced even to take out the bras. The ones who manage to pass the sensitive doors face with physical body search. Lawyers are also exposed to degrading, humiliating treatments and body searches.
52. Children are in prisons in every part of Turkey, thousands of kilometres away from their families because of the scarcity of prisons and discipline penalties without communicating people from outside for several months.

⁸ <https://www.ihd.org.tr/bu-ulkenin-hapishanelerinde-binlerce-hasta-ve-olumun-sinirinda-insan-yatiyor/>

Recommendations for Improvements in Penal System & Prisons

53. Turkey should set up an independent a separate Prevention Mechanism as proposed by the OPCAT and equipped with all necessary human and financial sources.
54. A new penal system based on Mandela Rules respecting all rights of the prisoners should be constituted.
55. Existing legislation should be amended in order to cover all prisoners whose health status is under serious risk without any criteria like “treat against public security”. Reports of certified hospitals for prisoners should also be accepted beside the FM Institute.
56. Provisions allowing prisoners to spend 10 hours a week for social activities should be implemented effectively without any exception.
57. Although it was not started to be implemented, the Governmental Decree No 696 regulating wearing uniforms during transfers for hearings, hospitals, etc. should be lifted.
58. 1848 prisoners continue their formal, organised education. With the Governmental Decree No 677, prisoners convicted under Anti-Terror Law aren’t allowed to take their exams in schools or prisons. The aforesaid regulations should be immediately annulled.
59. Under Article 16/4 of the Law on Execution of Sentences, the sentences of pregnant women or women with babies younger than 6 months have to be reprieved. There are 37 such babies and 35 pregnant women in the prisons. The relevant legal provision should be effectively implemented.
60. According to the Article 16/6, execution of sentences of prisoners who cannot continue their lives in prisons due to heavy illnesses or disability can be suspended until recovery if and only if they are not a “threat to public security”. Prisoners convicted in connection with an illegal organisation aren’t allowed to benefit from their legal right. The paragraph of the article should be annulled.
61. The Article 25/1-i should also be abolished. The article regulates that the execution of the sentences of the prisoners sentenced to life imprisonment cannot be suspended by any means. Relying on the ECtHR’s Öcalan, Gurban and Kaytan decisions, conditional release or release should be regulated for all prisoners.
62. Even the prisoners do not fall under the conditions defined in the Article 115, the prison administration arbitrarily put prisoners in single cells. The provision should be repealed. Un-convicted prisoners should be kept in cells at least for 3 persons.
63. Article 17 of the Anti-Terror Law restricting conditional release should be repealed immediately.
64. Children Prisons should be closed permanently. The legislation enables the imprisonment of children on trial should be abolished. Children, regardless of what crime they have committed, should not be isolated from, but brought back to the society.