Naciones Unidas A/HRC/23/47/Add.2

Asamblea General

Distr. general
18 de marzo de 2013
Español
Original: inglés

Consejo de Derechos Humanos
23º período de sesiones
Tema 3 de la agenda
Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Informe del Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias, Christof Heyns

Adición

Misión a Turquía*

Resumen

El Relator Especial sobre las ejecuciones extrajudiciales, sumarias o arbitrarias llevó a cabo una visita oficial a Turquía del 26 al 30 de noviembre de 2012. El objetivo de la visita era examinar el estado actual del respeto del derecho a la vida en la legislación y en la práctica en Turquía.

En el presente informe, el Relator Especial presenta sus principales conclusiones y formula recomendaciones para garantizar una mejor protección del derecho a la vida en Turquía. A raíz de una serie de reformas recientes, el nivel de ejecuciones ilegales en Turquía ha disminuido drásticamente en comparación con los años noventa del siglo pasado. Sin embargo, el nivel actual de violaciones del derecho a la vida sigue siendo preocupante. El informe describe las principales esferas en las que persisten importantes problemas y considera que los patrones actuales de homicidios en Turquía obedecen, entre otras cosas, a las consecuencias letales del uso excesivo de la fuerza por las fuerzas de seguridad, así como a los asesinatos de distintos tipos de personas vulnerables, en particular las mujeres. El desafío más importante y urgente es la falta de depuración de responsabilidades en algunos casos de asesinatos cometidos tanto recientemente como en la década de los noventa del siglo pasado.

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho figura en el anexo del resumen y se distribuye únicamente en el idioma en que se presentó.

Anexo

[Inglés únicamente]

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, on his mission to Turkey (26 to 30 November 2012)

Contents

I. Introduction

1. At the invitation of the Government of Turkey, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, conducted an official visit to the country from 26 to 30 November 2012. The objective of the visit was to examine the current level of protection of the right to life in law and in practice in Turkey.

2. The Special Rapporteur wishes to thank the Government for its invitation to visit the country and for having facilitated the smooth conduct of the visit with full respect for his mandate.

3. The Special Rapporteur visited Ankara and Diyarbakir. He had the opportunity to meet with the Human Rights Presidency of the Prime Ministry, the Minister of Justice, high-level officials of the Ministry of Foreign Affairs, Ministry of Justice, Ministry of Interior, Ministry of Family and Social Policies and the Presidents of the Human Rights Inquiry Commission and the Uludere Sub-commission of the Turkish Grand National Assembly (TGNA). He also held meetings at the Court of Cassation and met with a representative of the High Council of Judges and Prosecutors, as well as visited the Sincan prison. In Diyarbakir, he met with the Deputy Governor of Diyarbakir and high-level officials of the Provincial Gendarmerie Command and the Provincial Security Directorate. In addition, he held meetings with the United Nations Resident Coordinator and Country Team, the European Union (EU) delegation in Turkey, the Council of Europe programme office, as well as a wide range of domestic and international non-governmental organizations, academics, judges, lawyers and families of victims. Informal meetings with civil society in Istanbul were also held prior to the start of the official visit.

4. A previous Special Rapporteur on extrajudicial, summary or arbitrary executions undertook an official visit to Turkey in 2001. In her report[1], she put forward a number of recommendations aimed at ensuring a higher level of protection of the right to life in Turkey. The current Special Rapporteur had the opportunity to examine, inter alia, the follow-up to those recommendations.

5. The Special Rapporteur notes that Turkey has recently undertaken a series of reforms and measures to improve the situation of human rights. While significant challenges persist, progress and the ongoing efforts of reform should be acknowledged. Turkey is currently deeply engaged with the European regional human rights system, as well as with the EU, through accession negotiations. Cooperation with United Nations mechanisms has also evolved considerably, with adherence to a significant number of human rights treaties and the extension in March 2001 of a standing invitation to all thematic special procedures mandate holders of the Office of the United Nations High Commissioner for Human Rights (OHCHR). Also noteworthy are the domestic initiatives to incorporate human rights norms at the national level.

6. The level of extrajudicial executions in Turkey has dramatically decreased compared to the situation in the early 1990s. Current instances of violations of the right to life and related practices such as torture and enforced disappearances must be measured on a very different scale.

7. The Special Rapporteur welcomes the abolition of the death penalty in all circumstances in 2004, as well as Turkey's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 27 September 2011.

8. However, the current number of violations of the right to life still raises significant concern, both in terms of recent killings and failure to ensure accountability, including for

[1] E/CN.4/2002/74/Add.1

violations committed in the past. As will be elaborated in this report, there is need to place the security of individuals, as opposed to State security, first.

9. The Special Rapporteur notes that any analysis of Turkey's human rights record should take into account the country's challenges in fighting terrorism. The fight against terrorism was frequently referred to by the various Turkish authorities met as the main challenge to advancing on reforms, including a slower rate of implementation. While fully aware of the consequences of this scourge, the Special Rapporteur stresses the importance of countering it in strict compliance with applicable international human rights standards.[2]

10. This report was completed on 4 March 2013. As per the practice of the mandate on extrajudicial, summary or arbitrary executions, in order to facilitate follow-up with the State with respect to the recommendations, another report will be prepared in two years.

II. Violations of the right to life by State actors

A. Deaths resulting from excessive use of force by security officers

11. Deaths result from excessive use of force by security officers in the context of, inter alia, demonstrations and arrest. The international standards on the use of force by security officers stipulate that lethal force may only be used as a last resort in order to protect life, in line with the principles of necessity and proportionality. The use of lethal force that does not respect these principles constitutes arbitrary deprivation of life and therefore violates the right to life.

12. The Special Rapporteur found that the Turkish legal framework surrounding possible deprivation of life in the context of use of force is in many instances insufficiently precise and may lead to an overly broad interpretation of the conditions under which lethal force is permissible and life may be exceptionally taken.

13. The very narrow understanding under international human rights law of the terms "proportionality" and "necessity" – namely, that life may be taken only in response to an immediate threat to life – should be emphasized in this context. As will be pointed out in this section, these terms, while present in several legal texts, are given a different and more permissive meaning in a number of legal provisions in Turkey.

14. Article 17 of the Turkish Constitution states that everyone has the right to life, but stipulates that "cases such as the act of killing in self-defence, occurrences of death as a result of the use of a weapon permitted by law as a necessary measure during apprehension, the execution of warrants of arrest, the prevention of the escape of lawfully arrested or convicted persons, the quelling of riot or insurrection, or carrying out the orders of authorized bodies during martial law or state of emergency, are outside of the scope of the provision of paragraph 1". Given that the relevant article, or other articles in the Constitution, do not contain explicit provisions forbidding the arbitrary deprivation of life, referring to the non-derogability of the right to life, or outlining the international human rights law understanding of the principles of necessity and proportionality, there is a risk that the interpretation of article 17 is very broad, resulting in an inadequate understanding of the conditions under which life may be taken.

15. Consequently, the Special Rapporteur is of the view that the Constitutional provisions related to the right to life should be reviewed, ideally as part of the current

[2] International concern has been expressed, in particular, about the broad and vague definition of terrorism in Turkey. See, inter alia, A/HRC/20/14/Add.2, paras. 102-103.

Constitutional review process, to reflect the international understanding of the right to life,[3] as described in the previous paragraphs of this section.

16. With regard to the use of force by law enforcement agents, the relevant domestic legal provisions are contained in Law No. 2559 on the Duties and Powers of the Police, as amended in 2007 by Law No. 5681; Law No. 2803 on the Organization, Duties and Powers of the Gendarmerie, and related regulation.

17. These provisions grant the security forces vague and therefore potentially wide powers to use force in response to resistance or escape, which go beyond the powers permitted under international law. Specifically, paragraph 7 (c) of the amended article 16 of the Law on the Duties and Powers of the Police authorizes the use of lethal force for purposes such as capturing a fleeing suspect who poses no risk to life. Although the term proportionality is referred to, the relevant provision stipulates that the force used must be "in proportion to apprehending the subject," rather than to the need to protect life as provided under international human rights law.

18. Moreover, the Law on the Duties and Powers of the Police states that a law enforcement officer is required first to give a stop warning, by calling upon the suspect to freeze and by shooting in the air. The officer is then authorized to use firearms against the suspect for the purposes of apprehension. The procedure and circumstances for giving this warning is ambiguous, and the assessment of the situation is left to the discretion of the individual officer at that instant. Taken together, the omission of the requirement to protect life and the ambiguity of the stop warning procedure result in a dangerously large granting of power to use lethal force, and open the way for unlawful killing. The Special Rapporteur received reports from credible non-governmental sources that more than 50 individuals were killed in 2011 by excessive use of firearms by law enforcement officers, when those individuals allegedly failed to obey stop warnings.[4]

19. The use of so-called "less lethal" weapons, such as pepper spray and tear gas, can also constitute lethal force if they are used in an excessive manner that results in death, of which the Special Rapporteur heard several times. The lawfulness of such use is regulated by the same principles of proportionality and necessity – as understood under international human rights law – as any other weapon employed by law enforcement officials. To the extent that the weapons have been used excessively not to save life, but to maintain public order, these cases may also constitute unlawful killing.

B. Unlawful deaths in counter-terrorism operations

20. The fight against terrorism in Turkey presents a number of significant challenges for compliance with international human rights standards, including in terms of protection of the right to life. In some important respects, the legal system does not meet international standards.

21. The legal framework for counter-terrorism operations contains serious ambiguities, which are similar to those identified in the legal provisions governing the use of force by the police and gendarmerie. In particular, additional article 2 of Law No. 3713 to Fight Terrorism, as amended in 2006, fails to stipulate that the use of lethal force should be a last resort in order to protect life. Instead, the law authorizes officials to use firearms directly and unhesitatingly in cases where alleged terrorists are encountered and they do not obey an

[3] See, inter alia, principles 9 and 10 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

[4] See also Human Rights Association, "Account of the Human Rights Violations in Turkey in 2011."

order to surrender, or where they attempt to use firearms themselves. The disjunctive is of further concern because it may be understood as suggesting that lethal force may be authorized even when unarmed "terrorists" refuse to surrender. Proportionality is mentioned with regard to the objective of rendering the danger ineffective, but without naming the immediate protection of life. In addition, the Special Rapporteur heard of a number of cases where civilians were mistakenly identified as terrorists and killed in counter-terrorism operations. He therefore stresses the need for counter-terrorism operations to develop a thorough method of identification of the alleged terrorists, so as to avoid mistakes and civilian harm.

22. In this context, of great concern are the events that occurred near Ortasu (Roboski) village in the Uludere District of Sirnak Province on 28 December 2011, when Turkish military jets bombed and killed 34 civilians, 17 of whom were reportedly children. The individuals were apparently carrying out smuggling operations over the border with Iraq, possibly for subsistence purposes. They reportedly did not exhibit aggression, and no attempts to engage with them non-lethally were undertaken.

23. The Special Rapporteur notes that a judicial investigation into the incident was launched in Diyarbakir, and a parliamentary inquiry process was initiated under the competences of the Uludere Sub-commission of the TGNA, which is required to issue a report on its findings. However, the Special Rapporteur is concerned that the judicial investigation has not yet made significant progress at the time of drafting this report; he stresses the need to ensure a prompt, effective and impartial investigation into this incident, with the aim of bringing those responsible to justice.

24. With regard to the parliamentary inquiry established on this case, the Special Rapporteur met during his visit with the President of the Uludere Sub-commission of the Human Rights Inquiry Commission of the TGNA; he welcomes the establishment of the parliamentary inquiry body on this case. In parallel, the Special Rapporteur noted a number of serious limitations to the mandate and methods of work of this Sub-commission, which cast doubt on its eventual capacity to fully establish the circumstances of the incident and identify all the perpetrators. In view of the lack of progress with the judicial inquiry, the shortcomings of the parliamentary process are all the more apparent. Specifically, the lack of transparency in the inquiry work is of concern. The Special Rapporteur noted that very limited information is disclosed to the public, who are not aware of the content of the evidence available to the Sub-commission. He was also informed that the content of the evidence used would likewise not be disclosed in the Sub-commission's report. This creates a risk that its final conclusions will not be understood in the context of their rationales, and that there will be no method available to the public to be able to scrutinize the thoroughness and reliability of the findings.

25. The Special Rapporteur was informed and assured at various levels, including by the President of the Sub-commission, that its report would be published by 15 December 2012. At the time of drafting this visit report, he notes with grave concern that not only did that date pass without the production of the said parliamentary report, but the one-year anniversary of the tragic event also passed without further sign of accountability from the Government processes. The Special Rapporteur strongly encourages the Government to take urgent action on this matter, which will constitute a test of Turkey's genuine commitment to human rights and efforts to ensure accountability at all levels.

26. Further, the Sub-commission was not empowered to carry out extensive judicial-type investigations or to sanction perpetrators or offer redress. In this context, the Special Rapporteur stresses once again that, irrespective of the results of the parliamentary inquiry, the high and urgent priority of the Turkish authorities should lie in ensuring prompt, effective and impartial judicial proceedings into the Uludere incident. Where appropriate,

proceedings should include criminal prosecution and sanction that take into account chain-of-command responsibility at the highest level, as well as individual direct action.

27. The Special Rapporteur nevertheless acknowledges information from Government officials that the Turkish Armed Forces make efforts to apprehend alleged terrorist suspects without lethal force whenever possible. Attention was brought to a case earlier in December 2011 at Cudi Mountain in Sirnak province, where the armed forces were apparently successful in obtaining the surrender, without fatalities, of alleged members of the Kurdistan Workers' Party (PKK), operating in a seven-storey-high cave in the mountain. The Special Rapporteur encourages the authorities to apply such methods of non-fatal engagement and opportunity for surrender as much as possible in counter-terrorism operations.

C. Village guard system

28. During the visit, the Special Rapporteur noted that the village guard system in Turkey is operating and accounts for a force of tens of thousands. Officially known as "temporary village guards," and established in the 1980s, village guards are civilian villagers who are armed and paid by the State to participate in military or counter-terrorism operations alongside the regular security forces.

29. Village guards have reportedly been involved in human rights violations. The European Court of Human Rights (ECtHR) found them responsible for violations of the right to life,[5] and expressed concern about their functioning "outside the normal structure of discipline and training applicable to gendarmes and police officers," and thus about the fact that "it was not apparent what safeguards there were against wilful or unintentional abuses of position carried out by the village guards."[6] In 2012, the Council of Europe Commissioner for Human Rights endorsed the conclusions of the ECtHR, and called on Turkey to examine the possibility of abolishing the system of village guards.[7]

30. Following her visit to Turkey in 2001, the Special Rapporteur recommended in her report the abolition of the village guard system. While the size of the force has been reduced, the Government of Turkey has not yet brought an end to the system.

D. Deaths in custody

31. Turkey has registered a significant decrease of deaths in custody due, inter alia, to efforts to improve prison conditions and surveillance. However, the Special Rapporteur received several credible reports that deaths in custody still occur, the majority appearing to occur after torture or ill-treatment. Although Turkey has instituted a zero-tolerance policy on torture, which is commendable, it must be translated into uniform practice. The Special Rapporteur recalls his visit to the Sincan prison and hopes that the impressive conditions witnessed in the part of the prison visited and the oversight procedures described can be achieved in all prisons throughout the country.

32. According to reports from non-governmental organizations, over 40 individuals died in prison and detention in 2011.[8] One human rights organization met with during the visit reported that in 90 per cent of the cases in which it requested surveillance camera footage

[5] See, inter alia, *Acar and others v. Turkey*, ECtHR Chamber Judgement of 24 May 2005.

[6] *Seyfettin Acar and others v. Turkey*, ECtHR Judgement of 6 October 2009, para. 34.

[7] Report by Council of Europe Commissioner for Human Rights following his visit to Turkey from 10 to 14 October 2011 (CommDH(2012)2), p. 29

[8] See Human Rights Association, "Account of the Human Rights Violations in Turkey in 2011."

from the security facility where torture or death was alleged to have taken place, the response was that the cameras were broken or otherwise non-functional for the period in question. There were also instances where the prosecutor or judge did not seek to have such footage made a part of the case.

33. The Special Rapporteur notes the Government's intention to establish a national preventive mechanism under the Optional Protocol to the Convention against Torture. He calls for this to be done without delay.

E. Suspicious suicides of military conscripts and law enforcement officials

34. A number of soldiers and some law enforcement officials were pronounced dead by suicide last year. In some 45 of these cases, information suggests that suicide may have been falsified or forced.

35. Formal investigations were either never brought, or else quickly stalled, in nearly all cases and did not result in the identification of perpetrators or subsequent prosecution. Because investigations were conducted in a closed manner within the police or military's internal justice system, it is impossible for the families and civil society to know whether these are in fact cases of unlawful killing, and to ensure accountability. In some cases, they do not even know whether a full and impartial investigation was conducted. Inadequate access to surveillance camera footage and other evidence compounds the problem.

36. Failures of transparency result in suspicious suicides being neither confirmed nor denied through appropriate legal channels. This trend indicates the need for proper and transparent oversight of the security forces, including the military. In addition to preventive monitoring, this also requires a functional mechanism for complaints, investigation and accountability for those violations that occur.

III. Challenges to respect of the right to life by non-State actors

A. Deaths resulting from attacks by armed groups

37. Unlawful deaths result in Turkey from attacks by various armed groups, including in the form of alleged terrorist attacks. According to data provided by the Turkish National Police during the Special Rapporteur's visit, in the period from January 2008 to November 2012, terrorist-related incidents that occurred in areas under police jurisdiction led to the death of 109 civilians, 45 soldiers, 51 policemen and 74 persons considered as terrorists by the Government. Similar data provided by the General Command of the Gendarmerie indicate for the same period in areas under gendarmerie jurisdiction, the death of 104 civilians, 547 security officers and 1,110 alleged terrorists. The Special Rapporteur heard in particular of the recent bombing in the city of Gaziantep which occurred on 20 August 2012 and reportedly left 10 people dead, including four children.

38. Terrorism poses serious threats to the right to life of law enforcement officials and, in particular, of innocent civilians. The State has a duty to protect its people against such attacks, by taking the necessary measures to prevent their occurrence, bring to justice the established perpetrators, and ensure appropriate compensation to the victims of such attacks and their families. As already stated, this challenge needs to be confronted in strict compliance with applicable international human rights standards.

B. Deaths resulting from violence against women

39. Deaths and threats to the lives of women in Turkey were raised as a serious concern during the visit. The Special Rapporteur received information of deaths of women resulting from domestic violence and, in particular, from so-called honour killings. A non-governmental organization reported that in 2011, over 100 women were killed due to domestic violence. This is in line with data provided during the visit by the Ministry of Interior, which indicate that 107 individuals were killed in domestic intentional homicides within the first nine months of 2012. Of these, 35 were registered as honour killings.

40. Several interlocutors in Turkey stated that a distinction should be made between honour killings and other types of killing of women. According to them, in the case of honour killings, in which the perpetrator evokes honour as the motive for killing, the family assumes the role of the judge and organizes and executes the killing. According to information received, recent trends consist of having a younger member of the family perform the execution, because if punished, the minor would receive a lighter sentence due to age, or of forcing the victim to commit suicide so that there is no identifiable perpetrator.

41. The Special Rapporteur had the impression that the Turkish authorities do recognize the persistence of the challenge of lethal violence against women and the Government has taken a number of measures to combat it. However, there is need to further step up efforts on prevention and accountability.

42. From a prevention point of view, the Special Rapporteur welcomes the ratification by Turkey of the new Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), and its publication in the Official Gazette on 8 March 2012. He commends the adoption of Law No. 6284 on Protection of the Family and Prevention of Violence Against Women which entered into force on 20 March 2012, as well as the efforts to establish a National Action Plan on the fight against domestic violence. He notes the significant number of training and awareness-raising programmes on violence against women undertaken throughout the country.

43. However, further solid efforts need to be undertaken with regard to the effective and swift implementation of the new legal framework. Particular importance should be attached to efforts related to the effective functioning of the protection orders system and the creation of a sufficient number of shelters for women. The Special Rapporteur received information regarding difficulties faced by women who report domestic violence to law enforcement officers. Law enforcement officers sometimes do not pay serious attention to cases of domestic violence, considering such cases as family matters, and attempting to convince the woman to reconcile with her abuser, rather than seek a protection order or pursue other legal options. In addition, victims reportedly face additional obstacles if they do seek protection orders, due to reluctance on the part of judicial professionals, lengthy processes and administrative barriers to issuing the order. Finally, once issued, protection orders are often not properly enforced and monitored, which leaves the victim at a high risk of further abuse.

44. In reply to these findings, the Government informed the Special Rapporteur that in the areas under the responsibility of the gendarmerie, protection orders were issued for 5,897 women in 2012. In addition, the Regulation on the Implementation of Law No. 6284, which entered into force on 18 January 2013, states that reconciliation or intermediary processes cannot be suggested between the victim of the violence and the perpetrator at the time of issuing or executing protective or preventive injunctions. The Special Rapporteur welcomes these strengthened measures, while underlining the need for their effective enforcement.

45. The Special Rapporteur commends the steps taken by Turkey to increase the number and capacity of shelters for women, as reported by Turkey to the Human Rights Committee in 2012.[9] He stresses the need to continue efforts to increase the number of shelters, as well as address the issues of adequate resourcing and support services for women leaving the shelters.

46. Proper accountability mechanisms, in particular in terms of serious and dissuasive punishment for violence against women, constitute another dimension that the authorities should address, in particular in cases of honour killing. The 2005 Penal Code provides for a significant measure in this regard by abolishing the de facto reductions of sentences for perpetrators involved in honour killings with the aim of ensuring that they receive the highest sentences. However, in present practice, honour killings may still receive lighter sentences. In this respect, article 82 of the Penal Code, which regulates crimes punishable by aggravated life imprisonment, refers, in paragraph (k), to "custom killing" (under the term "töre") rather than "honour killing" (under the term "namus"). This has led to uneven legal interpretation of this article, where some courts have found that honour killing does not fall under "custom killing" and therefore is not covered by the provisions of article 82, paragraph (k). The Special Rapporteur notes that this concern has been expressed by various United Nations committees, most recently by the Human Rights Committee.[10] He calls upon the Turkish authorities to take firm steps to ensure that honour killings are consistently interpreted as crimes falling under article 82, paragraph (k), of the Penal Code. He further stresses the importance of taking parallel measures such that all suspected honour killings receive prompt, impartial and effective investigation, as well as appropriately severe sanctions against perpetrators.

C. Killings of lesbian, gay, bisexual and transgender individuals

47. Lesbian, gay, bisexual and transgender (LGBT) individuals are also particularly vulnerable to attacks, including lethal attacks, in Turkey. This occurs in the context of a generally hostile climate towards LGBT individuals, who often face discrimination and intimidation as well as negative stereotyping, including from high-level public figures and law enforcement agents. According to information provided by non-governmental organizations, there were eight murders in 2011 and 12 murders in 2010 that are believed to have been committed on the grounds of the victims' sexual orientation or gender identity.

48. In Turkey, killings of LGBT individuals usually occur either in the context of expression of hate or as part of the phenomenon of honour killings. With regard to hate-related incidents, the Special Rapporteur heard information on the lack of comprehensive specific legislation regarding hate speech and hate crimes, as well as a general absence of language on gender identity and sexual orientation in Turkish legislation, including in the most recent legislative texts. This creates a gap in the legal framework with regard to the protection of LGBT individuals.

49. Another difficulty lies in the attitude of family members of LGBT individuals, who, sometimes due to so-called honour motives, insist that the investigation files in cases of murder are closed as soon as possible. Family members can also perpetrate murders of LGBT individuals in the name of honour. A prominent case concerns Ahmet Yildiz, a 26 year old man believed to have been killed in 2008 by his father who viewed his son's homosexuality as disgraceful to the family. Ahmet Yildiz reportedly addressed the Prosecution Office three times to seek protection against death threats, but his requests were never followed up with a protection order.

[9] See CCPR/C/TUR/1, paras. 68 and 76.
[10] See CCPR/C/TUR/CO/1.

50. There appears to be a trend in Turkey for law enforcement officers and the judiciary to take a lenient attitude towards crimes against LGBT individuals. LGBT individuals are rarely treated seriously when they seek protection, and investigations and prosecution of crimes against them display fundamental shortcomings, leading to impunity of perpetrators. This was also confirmed by reports from other organizations.[11] Problems related to reprisals and lighter sentencing of perpetrators, which have considerable application to the killings of LGBT individuals and failures of accountability for such crimes in Turkey, will be addressed in chapter IV of this report.

D. Right to life of journalists

51. The Special Rapporteur received information on the risks faced by journalists in the performance of their activities. Journalists are often targets of death threats as a consequence of their work. The investigation process into the death threats and killings of journalists suffer from the same challenges of delayed and ineffective investigation.

52. The case of the murder of the Armenian journalist Hrant Dink, killed in January 2007, is a prominent example. Reports indicate that the murder could have been prevented had the security forces acted diligently. In this regard, the ECtHR held that the Turkish State had failed to protect the life of Hrant Dink.[12] With regard to accountability, the court case ended on 17 January 2012, and resulted in the conviction of one person for incitement to murder; and the acquittal of the other defendants. The Special Rapporteur takes note of the information that, following an inquiry by the Presidential State Inspection Board, the family of Hrant Dink requested a new investigation into the possible involvement of various law enforcement officers. He hopes that a prompt, impartial and thorough judicial process will be ensured on this case. He also stresses the importance of ensuring accountability of all involved in death threats and killings of journalists.

IV. Fight against impunity

53. Impunity is the main challenge concerning the right to life in Turkey. Numerous interlocutors echoed the sentiments expressed by one interviewee that, “We have a culture of not punishing.” This challenge needs to be addressed with regard to both the crimes committed in the 1990s and more recent killings.

A. Killings in the 1990s and mass graves[13]

54. The legacy of the 1990s includes thousands of unresolved execution-type killings, deaths in custody and enforced disappearances by suspected State perpetrators, as well as execution-type killings believed to have been committed by the PKK.

55. Only a handful of trials have been conducted regarding this period. There seems to be political reluctance to engage with the issue, and time – in the form of the increasing age of potential suspects and witnesses, deteriorating evidence, and the statute of limitations –

[11] Report by Council of Europe Commissioner for Human Rights following his visit to Turkey from 10 to 14 October 2011 (CommDH(2012)2), 10 January 2012, para. 57.

[12] See *Dink v. Turkey*, ECtHR Chamber Judgement of 14 September 2010.

[13] While the Government commented that the term “mass graves” is misleading, the Special Rapporteur recalls that this term is used by several international and non-governmental organizations. For example, see European Commission, “Turkey: 2012 Progress Report” (SWD(2012) 336 final), 10 October 2012, pp. 20 and 72.

should not be allowed to elapse before accountability for this dark period in the country's history is ensured. Shedding light on the killings of the 1990s and taking all necessary measures to bring to justice all perpetrators should constitute an imperative objective of the current authorities. In addition to investigating reported crimes by alleged terrorists, the State has a responsibility to ensure accountability where those who were entrusted with upholding the law have broken it.

56. The current process of uncovering mass graves raises particular concerns. The majority of the graves are believed to be from the period after 1980 and to contain the remains of individuals forcefully disappeared from detention and of militants of illegal organizations. While some exhumations have taken place recently, concern has been expressed that the method of excavation was inappropriate, such that human remains and other potential evidence was contaminated, lost or destroyed, and that families had little access to the results.

57. The Special Rapporteur stresses the importance of political will to establish truth and justice with regard to these graves, irrespective of who the perpetrators were. This involves acknowledging the existence of the graves, undertaking their exhumation in a comprehensive and systematic way, and ensuring proper, independent and transparent investigation there into, in conformity with the United Nations Model Protocol for a legal investigation of extra-legal, arbitrary and summary executions ("Minnesota Protocol").

B. Effectiveness of investigations and length of proceedings

58. Impunity for more recent killings manifests itself in slow or inadequate investigations and prosecutions into cases where life has been lost. This is widely believed to be the result of a lack of political will to hold in particular State officials accountable. It is exacerbated by a deferential approach to the executive by prosecutors in such cases, shortcomings in the independent and effective functioning of the judiciary, inadequate forensic services and a lack of an independent complaints mechanism regarding the conduct of law enforcement officers. The report of the Special Rapporteur on the independence of judges and lawyers on her visit to Turkey in 2011[14] describes in detail the current challenges faced by the judiciary. The present report will therefore not extensively examine those issues.

59. In the Special Rapporteur's view, there is the need to strengthen the capacity of crime scene investigations and proper collection of evidence. In cases surrounding misuse of authority, such as excessive use of force by the police, lack of impartial investigations and contamination of evidence were mentioned as a particular concern. In many cases, the same forces who may have perpetrated the killing are also responsible for the investigation, or else it is carried out by their colleagues who may be prejudiced. The Special Rapporteur heard about cases in which the crime scene was allegedly primed before the investigation, or in which there was undue delay between the occurrence of a shooting and the official reporting of the incident. He reiterates in this regard that it is a well-established principle that even the perception of bias should not be allowed to arise.

60. The challenges related to proper forensic and autopsy procedures should also be addressed as there are concerns about the impartiality of reports provided by the Government-affiliated Forensic Medicine Institute and about their late delivery.[15] Until recently, all autopsies had to be performed by this Institute, without the possibility of an alternative examination to challenge its findings. The ability to present an alternative

[14] A/HRC/20/19/Add.3.

[15] Similar findings were established by Council of Europe Commissioner for Human Rights in his report following his visit to Turkey from 10 to 14 October 2011 (CommDH(2012)2), 10 January 2012, para. 54.

evidence review, including autopsy reports, should be fully ensured and facilitated in practice. Transparency and efficiency should be ensured for the Forensic Medicine Institute's functions.

61. Delay in judicial proceedings continues to constitute one of Turkey's longstanding challenges and has clear implications for accountability. The Special Rapporteur commends the Government for various steps taken recently with the aim of reducing the length of proceedings, inter alia, through enacting the Third Judicial Reform Package and increasing the number of judges at the Court of Cassation. He calls for continued efforts in this area with the aim to solve this problem entirely.

62. While proceedings are lengthy and ineffective, the application of the statute of limitations for unlawful killing offences further aggravates the climate of impunity. The statute of limitations for investigation of murders in the previous Penal Code (Law No. 765) provides for a lapse of 20 years in principle for crimes committed before 2005. Under the present Turkish Penal Code, the whole investigation of crimes where the sentence is aggravated life imprisonment can run for 30 years. Under articles 76 and 77, respectively, the statute of limitations does not apply to genocide and crimes against humanity. The Special Rapporteur was informed that a similar provision will soon be made for torture-related offences through the Fourth Judicial Reform Package.

63. While this development is commendable, it should go further: the statute of limitations should be lifted at least for all crimes related to violations of the right to life. This is particularly important for those cases of unlawful killings from the early 1990s that will begin to time out under the law applicable at that time which stipulated a 20-year limitation.

C. De facto immunity of public officials

64. A number of civil society representatives and lawyers reported that they were unable to initiate legal proceedings in cases of unlawful killings by public officials because of lack of requisite administrative permission from the relevant Governor, which is allegedly required pursuant to Law No. 4483.

65. The Special Rapporteur was assured by the Government that under this law, such permission is no longer required for prosecutors when they bring cases against law enforcement officers or other public officials. However, many members of the public, including the families of the victims and their advocates, seem to think permission is still required and may neglect to pursue such legal advocacy because they believe permission will not be granted. Moreover, prosecutors continue to indicate the absence of such permission as a reason why prosecutions do not occur. This lack of clarity is worrying as it perpetuates a perception on the lack of accountability for public officials.

66. The low conviction rate of public officials in Turkey is another disincentive to lodge complaints. For instance, the trials surrounding the December 2000 prison operation "Return to Life" – in which 32 people were killed – are still ongoing 12 years later. Only recently have these proceedings advanced as key witnesses are being called for the Bayrampasa prison operation.

67. The foregoing barriers are reinforced by the fact that in many cases where a public official becomes the subject of investigation, that person is allowed to remain on active duty. Furthermore, in some cases officials who have been involved in or are suspected of having been involved in serious human rights violations are promoted, rather than prosecuted or convicted. This serves as a striking further disincentive to people to seek justice through official channels.

68. The creation of an independent complaints mechanism is a crucial element to combat impunity of security officers and other authorities. The Special Rapporteur acknowledges the Government's stated efforts to create such a mechanism, notably in the draft law on a Law Enforcement Monitoring Mechanism, submitted to the TGNA in March 2012. However, he is concerned that the commission to be established under this law will not have organizational, but only functional, independence. Chief Inspectors of the Ministry of Interior, for instance, will be in charge of examining the complaints. The contemplated commission's strong ties to the Government raise concerns regarding its impartiality.

69. A fully independent oversight mechanism for the Turkish Armed Forces and military duties of the Gendarmerie should also be instituted in order to ensure accountability for violations of the right to life at all levels.

D. Reprisals

70. The Special Rapporteur heard that many witnesses, families of victims and human rights organizations are subjected to reprisals and thus dissuaded from pressing charges or continuing with cases, which reinforces the perceived climate of impunity.

71. The main pattern of reprisals reported is the practice of filing countercharges against the relatives of the victim or organization, claiming interference with the investigation or judicial process. Countercharge cases often proceed much more swiftly than the investigation into the victim's original case. This concern has also been raised by, among others, the Council of Europe[16], the EU[17] and civil society organizations.

72. The case of Baran Tursun, who was fatally shot by the police in 2007 while driving, was mentioned in this regard, with reports on the numerous cases launched against his family, including, inter alia, for insulting the court and attempting to influence it. On the other hand, the proceedings against the police officers who killed him raised questions about the thoroughness of the judicial process and the sentences pronounced.

73. Other cases of reprisals involve intimidation and threats of witnesses, who might wish to testify, families and human rights advocates who would push for investigation, prosecutions or trial. The Special Rapporteur received reports of unwillingness on the part of witnesses to participate in legal proceedings due, inter alia, to pressure put on them not to testify or renounce the statements given, other forms of interference with testimonies or fear of personal harm. This is particularly problematic in the context of past violations that went unpunished and in relation to events in the south-east of the country, where individuals may feel uncomfortable coming forward with information or complaints.

74. In this regard, the Special Rapporteur draws attention to the need to strengthen witness and victim protection in Turkey so as to achieve an effective level of protection in practice. The existing programmes were reported to the Special Rapporteur as ineffective, as witnesses do not feel comfortable relying on them. While witness protection has been applied in Turkey in cases of organized crime and terrorism, their application in cases of other crimes, including violations of the right to life, appears to be minimal. Leakage of information, and thus the challenge of ensuring anonymity and confidentiality, was mentioned as a particular concern.

[16] Report by Council of Europe Commissioner for Human Rights, following his visit to Turkey from 10 to 14 October 2011 (CommDH(2012)2), 10 January 2012, paras. 56, 57 and 146.

[17] European Commission, "Turkey: 2012 Progress Report" (SWD(2012) 336 final), 10 October 2012, pp. 20 and 72.

E. Prosecutorial and judicial discretion

75. Prosecutorial and judicial discretion about how to shape the legal proceedings also plays into the absence of accountability for unlawful killings. This takes the form of decisions about which charges to bring, the penalties sought and the sentences delivered, and the acceptance of inappropriate mitigating factors or excuses.

76. Prosecutions for past violations, where they take place, are often conducted for crimes against the State, not crimes against individuals, in line with the undue emphasis on State, as opposed to individual, security mentioned in the introduction of this report. For example, the current prosecution concerning the surviving leaders of the 12 September 1980 military coup, Kenan Evren and Tahsin Sahinkaya, is not for deaths in custody, murder and torture, but for overthrowing the Parliament and constitutional order in a military coup. PKK leader Abdullah Öcalaan was also not prosecuted for murder, but for rising against the State. In such cases, there is no specific accountability for violations of the right to life.

77. There are cases where law enforcement officials, as well as non-State actors, had committed violations of the right to life, but were charged with offences other than killing – for instance, physical assault or another less violent crime –, resulting in very light sentences. Similarly, where it is possible to seek a lighter penalty or sentence for a certain offence, this is sometimes done by the prosecutor from the outset, signalling that the criminal responsibility is not taken seriously.

78. Even in cases where the perpetrator is charged with killing, sentences are sometimes significantly reduced by the judge further to a finding of "unjust provocation" under article 29 of the Turkish Penal Code, whereby the defendant is considered less culpable because he acted under so-called provocation. The application of this principle can be inappropriate, for example, in some cases of honour killings and killings of LGBT individuals, where judges may, on the basis of their own moral convictions, impose a lighter sentence for murder.

79. In other cases, judges apparently reduce the sentence because of the "good conduct" of the defendant during legal proceedings. According to interlocutors, there is a tendency to reduce sentences in particular in cases of violence against women, killings of LGBT individuals or offences perpetrated by law enforcement officials.

80. Following her visit to Turkey in 2011, the Special Rapporteur on the independence of judges and lawyers identified an overly close connection between judges and prosecutors, as well as between the judiciary and the executive, which casts doubt on the independence and impartiality of the judiciary in Turkey.[18] This issue also has clear implications for accountability in the context of the right to life. The Special Rapporteur found it encouraging that several officials interviewed were aware of the persistence of these challenges; he stresses the importance of taking effective measures to address them.

V. Role of human rights mechanisms in upholding the right to life

81. Turkey has undertaken a series of initiatives to establish mechanisms at the domestic level to uphold human rights. While these measures are welcome and may potentially lead to stronger protection of the right to life, the Special Rapporteur stresses that Turkey should prioritize efforts to render these mechanisms fully independent and effectively functional.

[18] See A/HRC/20/19/Add.3, para. 74.

A. Creation of the Turkish Human Rights Institution

82. The process of creating the Turkish Human Rights Institution (THRI) has been followed closely by various international human rights mechanisms. The TGNA ultimately adopted Law No. 6332 on the THRI on 21 June 2012.

83. The creation of a national human rights institution is potentially an important step in strengthening the protection of human rights, including the right to life, in Turkey, in particular in terms of efforts to ensure accountability and redress in cases of violations. However, the Special Rapporteur heard a number of significant criticisms that may hamper the independent and effective functioning of this institution. First, the relevant law stipulates that the THRI is affiliated with the Prime Ministry, which may compromise its independence. Second, article 5 of the law further states that, out of the 11 members, two shall be selected by the President of the Republic, and seven by the Council of Ministers. The large majority of the members – nine out of 11 – are hence directly appointed by Government-affiliated entities. In the Special Rapporteur's view, a more open, transparent and competitive appointment process would help to strengthen the independence of the institution. A third concern relates to the limited inclusion of the comments provided by the civil society in the final version of this law. These elements cast significant doubts on the possibility of ensuring the independence of the future THRI. The Special Rapporteur would like to underline the crucial importance of these elements in the process of ensuring compliance with the Principles relating to the Status of National Institutions (the Paris Principles).[19]

84. The Special Rapporteur stresses the importance of ensuring the institutional independence of the THRI and the impartiality of its individual members, as well as its effective functioning and full discharge of its investigative powers. He also invites the Government of Turkey to consider reviewing the newly adopted law, in order to address the concerns expressed.

B. Creation of the Ombudsman Institution

85. The Ombudsman Institution was established in Turkey, following the adoption of the Law on the Ombudsman Institution on 14 June 2012. According to the law, the Ombudsman Institution is accountable to the Parliament and no one shall issue instructions to it. It shall examine complaints and make recommendations on the functioning of the administration with regard to the rule of law and human rights. At the time of the Special Rapporteur's visit, Mehmet Nihat Omeroglu, former judge of the Court of Cassation, had been appointed as the first Chief Ombudsman of Turkey.

86. In the Special Rapporteur's view, the establishment of the Ombudsman's office is a potentially important addition to the range of institutions available to the public to file human rights complaints against public officials. Winning the trust of the public through the impartial and effective functioning of this institution, and manifesting a genuine commitment to human rights should be a priority of the newly appointed Ombudsman. However, some interlocutors have expressed their scepticism in this regard, noting that Mr. Omeroglu was among the judges in the Court of Cassation who had ruled that the murdered journalist, Hrant Dink, had "insulted Turkishness."

87. The Special Rapporteur is furthermore concerned that the current mandate of the Ombudsman does not cover acts of the Turkish Armed Forces that are solely of a military nature. There is a risk that this shortcoming may lead to partial exclusion of the military

[19] Available at http://www2.ohchr.org/english/law/parisprinciples.htm

from human rights scrutiny and accountability in the future, including with regard to the right to life.

C. Role of other mechanisms

88. The Special Rapporteur draws attention to several other instruments that may have a potentially positive impact on the protection of the right to life in Turkey.

89. One positive development is the September 2010 Constitutional amendment by which the public is granted the right of individual application to the Constitutional Court of Turkey after exhaustion of other remedies, where an individual may claim that any of her or his rights under the European Convention on Human Rights has been violated by the public authorities.

90. Another step that drew the attention of the Special Rapporteur is the recent creation of a Department of Human Rights at the Ministry of Justice, charged with ensuring Turkey's effective implementation of and compliance with the judgements of the ECtHR. The Special Rapporteur welcomes the establishment of this department and hopes that its future activities will include respect of international human rights standards under the United Nations system.

91. Finally, the Special Rapporteur notes that Turkey is not yet a party to the International Convention for the Protection of All Persons from Enforced Disappearance, nor has it acceded to the Rome Statue. Given the important impact that being a party to these instruments would have on the right to life and accountability for violations, the Special Rapporteur invites Turkey to adhere to these treaties.

VI. Conclusions

92. **Turkey has recently undertaken a number of significant measures to strengthen the protection of human rights.**

93. **Regarding the right to life, the level of extrajudicial executions in Turkey has dramatically decreased since the 1990s due, inter alia, to the reforms undertaken since 2000. However, serious concerns remain regarding deaths resulting from excessive use of force by security officers, as well as killings of various vulnerable persons.**

94. **The main and most urgent challenge that Turkey should address is the fight against impunity for both ongoing and past killings. The pressing need lies not only in the pursuit of justice and redress for victims and their families, but also in sending the message to the public that violations of the right to life will not be tolerated. Major efforts should aim at ensuring accountability for killings perpetrated by State actors, as well as the effective and impartial functioning of the justice system in all instances.**

VII. Recommendations

Violations of the right to life by State actors

95. **Turkey should amend article 17 of its Constitution to bring the formulation of the right to life in line with international standards, by providing that no one shall be arbitrarily deprived of his or her life or similar wording to that effect.**

96. **The laws regulating the use of force by law enforcement officers (Law No. 2559 on the Duties and Powers of the Police; Law No. 2803 on the Organization, Duties and**

Powers of the Gendarmerie, and related regulation) should be brought in line with international standards. Both proportionality and necessity are crucial components of these standards. The terms "necessity" and "proportionality" in these texts should reflect their interpretation under international law: lethal use of force may be made only as a last resort to protect life. Regulations on the stop warning procedure and on the proportionate use of less lethal weapons should be promulgated and conform to these standards.

97. **Article 2 of Law No. 3713 to Fight Terrorism should likewise be amended to reflect the international interpretation of the term "proportionality," and should stipulate that lethal force shall only be used as a last resort where there is an imminent threat to life.**

98. **Security officers should receive further training on the principles of necessity and proportionality, including on the appropriate use of methods other than lethal weapons.**

99. **There can be no justification for human rights violations in the name of counter-terrorism measures. Operations to counter terrorism may resort to use of force only when it is necessary and proportionate, as defined under international human rights law. Civilian harm should be minimized and civilians should never be targeted. Injury or killing of civilians should be subjected to prompt and thorough investigation and, where appropriate, accountability.**

100. **An effective, prompt, impartial and transparent criminal investigation into the Uludere/Roboski incident should be undertaken as a matter of great priority. The individuals responsible should be held liable and sanctioned accordingly. Responsibility should include those implicated in the chain of command, irrespective of their position.**

101. **The Uludere Sub-commission at the TGNA should release its overdue final report without delay, as well as ensure full transparency in its work and publish the content of all evidence used for its findings.**

102. **The Government should abolish the village guard system.**

103. **All cases of suicide in the military or security services and deaths in custody should be reported promptly, as well as independently and publicly investigated to establish the actual cause of death. Families and lawyers should have full access to this information and to any other sources of evidence as well as the possibility for cross-check examinations.**

104. **The National Preventive Mechanism should be set up in line with Turkey's obligations under the Optional Protocol to the Convention against Torture.**

105. **It should be ensured that surveillance cameras are fully operational in all security and detention facilities, including at military custody sites, and their footage should be entirely and immediately available when it may provide evidence of abuse.**

106. **There should be an independent channel through which military conscripts can complain of abuse or ill-treatment and these cases should be investigated.**

Right to life and non-State actors

107. **There can be no justification under any circumstances for acts of terrorism. All groups engaged in terrorism should cease such activity with immediate effect.**

108. **Article 82, paragraph k, of the Penal Code should be understood to include honour killings under "custom." Uniform legal interpretation of the provisions of this**

article should be provided to ensure the highest penalty is always applied in cases of honour killings.

109. **Turkey should enact comprehensive and specific legislation on hate crimes in accordance with international standards, in particular, articles 19 and 20 of the International Covenant on Civil and Political Rights.**

110. **To reduce the vulnerable situation of LGBT individuals, Turkish legislation should be reviewed to include language sensitive to gender identity and sexual orientation.**

111. **All complaints of violence and death threats should be promptly registered by the security officers, as well as fully and effectively investigated. Turkey should develop a monitoring system on the registration and investigation of such complaints. Where there is sufficient evidence of violations, the professionals of the judiciary should be seized of the matter and should initiate criminal investigations and prosecutions, irrespective of the willingness or ability of the victim to lodge or maintain a complaint.**

112. **Turkey should prioritize improving the protection orders system. Protection orders should be issued promptly and enforced effectively. There should be a mechanism to regularly monitor their functioning.**

113. **Security officers and the professionals of the judiciary should be investigated and held accountable systematically in cases of failure of due diligence and inaction with regard to the registration of complaints as well as the issuance and enforcement of protection orders.**

114. **Awareness-raising campaigns as well as training of security officials and professionals of the judiciary should continue with regard to the rights of women and gender equality, and should be launched on the rights of LGBT individuals.**

Fight against impunity

115. **An independent body which enjoys wide public support and representation should be established to investigate political killings that are unaccounted for and to make recommendations regarding possible prosecution and other measures to promote transitional justice and a culture of accountability. The process of establishing such a body and determining its mandate should be open, transparent and inclusive. Allegations regarding mass graves and violations that occurred in the 1990s should be considered as falling within the remit of the institution.**

116. **An independent and urgent forensic investigation into identified mass graves in south-east Turkey and other relevant parts of the country should be conducted in accordance with the Minnesota Protocol. Families should be thoroughly involved in this process and have access to victims' remains.**

117. **The statute of limitations should be removed at least for all violations of the right to life.**

118. **Crime scene investigation procedure should be improved and monitored so that violations by State actors are investigated independently without the bias of colleagues or delay in official reporting.**

119. **The Forensic Medicine Institute should be provided with institutional independence, as well as with an increased capacity to conduct forensic and autopsy procedures in a swift, effective, impartial and transparent manner. Parties to a legal proceeding should be able to present alternate evidence reviews. The possibility of**

presenting forensic reports performed by institutions that are not Government-affiliated should be fully ensured and facilitated.

120. **In cases of unlawful killing, the prosecutor should always bring charges for killing and never for a lesser crime instead.**

121. **"Unjust provocation" should not be misused as a mitigating factor in cases which involve alleged morality motives as a cause of killing, in particular in cases of honour killings and killing of LGBT individuals. "Good conduct" during legal proceedings should also not be used to reduce the sentences in such cases.**

122. **Positive developments introduced by the Third Judicial Reform Package should be implemented without delay to address the problem of lengthy judicial proceedings.**

123. **If it is indeed correct to say that law enforcement officials may be tried without administrative authorization, the Government should make this fact more widely known and prosecutors should immediately cease the practice of continuing to require such authorization.**

124. **When a public official is the subject of investigation of a violation of the right to life, he or she should not be allowed to remain on active duty and should not receive promotion.**

125. **Care should be taken to ensure that the Law Enforcement Oversight Commission envisaged by the current draft law has organizational and not merely functional independence, including independence from the Government. A similar monitoring mechanism should be established to examine complaints regarding all acts of the Turkish Armed Forces, as well as the military duties of the Gendarmerie.**

126. **Steps should be taken to reverse and stop the trend of reprisals against those who lodge complaints. Investigation and accountability should be ensured for all cases of threats and coercion against witnesses, families, lawyers and non-governmental organizations. The practice of counter-charges should be ceased when it is used selectively against those who bring complaints.**

127. **A stronger and effectively implemented protection programme should be prioritized to provide witnesses, victims and their families, and other parties that feel threatened with a safe haven.**

Role of human rights instruments

128. **The independence of the THRI should be fully ensured in law and in practice. The legal framework for the THRI should be reviewed to assess the level of its conformity with the Principles relating to the Status of National Institutions (the Paris principles), and be aligned thereto. Consideration should be given to the inclusion of a reference to the THRI in the Constitution.**

129. **Turkey should consider amendments to the Law on the Ombudsman Institution to enable it to examine violations committed in all instances by the Turkish Armed Forces.**

130. **Turkey should consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute.**

131. **Turkey should further engage with the United Nations human rights system. Turkey should envisage engaging with the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.**

132. **Turkey should also prioritize follow-up on the recommendations of the United Nations experts who visited the country, including implementation of the**

recommendations made by the Special Rapporteur on the independence of judges and lawyers, and earlier recommendations by the Special Rapporteur on violence against women, its causes and consequences and the Special Rapporteur on the promotion and protection of human rights while countering terrorism.