



BRIEFING NOTE ON
ENFORCED
DISAPPEARANCES
IN TURKEY



1. INTRODUCTION

Enforced disappearance¹ is a crime against humanity², committed by State actors or with the tacit approval of the State. It breaches multiple human rights, including the right to life, the right to security of the person, the right to protection under the law, the right not to be arbitrarily deprived of one's liberty, and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.



THE RIGHTS VIOLATIONS CAN VARY DEPENDING ON THE CIRCUMSTANCES OF EACH CASE OF ENFORCED DISAPPEARANCE,



however the continued perpetration of the crime is typical in all cases.

The victims of this enforced disappearance include both the missing and their relatives, who have to endure not knowing the fate or the whereabouts of their loved ones. Enforced disappearance is a tactic used by authoritarian regimes to spread terror and create a climate of fearful subjugation among the population, with total impunity for the perpetrators.

The International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED) was adopted in 2006, following three decades of efforts by the relatives of the disappeared. It came into force in 2010. The Convention legally binds all parties to protect against enforced disappearances, investigate anyone suspected of committing an enforced disappearance and inform those connected to the missing. Despite a long history of State-sponsored abductions and enforced disappearances,

1. Article 2 ICCPED provides: 'For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.'

2. Article 7.1, Rome Statute of the International Criminal Court.

TURKEY IS NOT A PARTY TO THE ICCPD AND THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT.

However, this serious crime is prohibited under other international treaties by which Turkey is bound, including the European Convention for Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR).

In addition to these international conventions,

ARTICLE 77 OF THE TURKISH CRIMINAL CODE (TCK) PROHIBITS VOLUNTARY MANSLAUGHTER, MALICIOUS INJURY, TORTURE, AND DEPRIVATION OF LIBERTY,

all of which fall within the definition of enforced disappearance as a crime against humanity when it is committed systematically.

2. SEEKING THE TRUTH FOR JUSTICE

Enforced disappearances in custody, unidentified murders and abductions have long been used in Turkey.

HUMAN RIGHTS DEFENDERS AND THE RELATIVES OF THE MISSING ARE FIGHTING AGAINST IMPUNITY AND STRUGGLING FOR THE TRUTH TO BE DISCLOSED.

The State has an obligation to protect and guarantee human rights, to conduct effective investigations into gross human rights violations and to ensure effective remedies and reparation. Revealing the truth about the history of past human rights violations and bringing the perpetrators to justice can safeguard against the reoccurrence of these violations and help restore the rule of law.

THERE SHOULD ALSO BE GUARANTEES FOR THE HUMAN RIGHTS DEFENDERS AND RELATIVES OF THE MISSING IN THE QUEST FOR JUSTICE³.

3. 2006 OHCHR Study (E/CN.4/2006/91), accessed at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/106/56/PDF/G0610656.pdf?OpenElement>

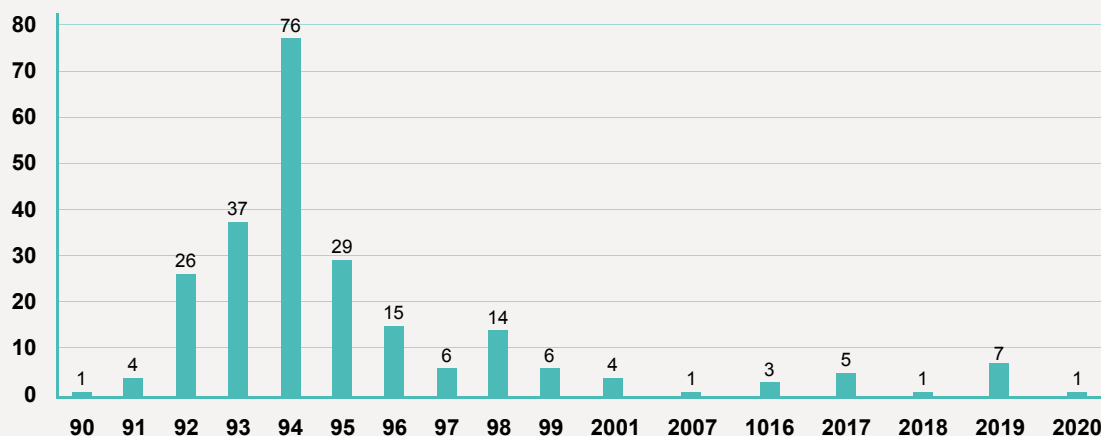
It can be hard to prove that enforced disappearances are being practised systematically.

THOSE WHO KNOW ABOUT THE MISSING MAY NOT SPEAK OUT FOR FEAR OF REPRISALS.

However, various sources do show that disappearances are widespread. According to a statistical study carried out by the Memory Centre (**Hafıza Merkezi**) using the database of the Human Rights Association (**İnsan Hakları Derneği, İHD**),

AT LEAST 1,352 PEOPLE have disappeared since the **military coup in 1980**. The yearly figure peaked at **532 in 1994**⁴.

The number of cases transmitted to the Human Rights Committee by the Working Group on Enforced or Involuntary Disappearances (WGEID) between 1980 and 21 May 2021 also provides insight into the situation.⁵



Graph showing the number of cases of enforced disappearance in Turkey and by year according to the cases transmitted by the Working Group between 1980 and 21 May 2021

4. <https://hakikatadalethafiza.org/turkiyede-zorla-kaybetmeler/>

5. Source: A/HRC/48/57: Enforced or involuntary disappearances Report of the Working Group on Enforced or Involuntary Disappearances, p.51 accessed at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/215/21/PDF/G2121521.pdf?OpenElement>

ACCORDING TO THE HUMAN RIGHTS FOUNDATION OF TURKEY (TIHV)⁶, IN 2021, 16 PEOPLE WERE ABDUCTED AND THERE WAS ONE ATTEMPTED ABDUCTION.

Civil servant, **Yusuf Bilge Tunç** was abducted on 6 August 2019; his whereabouts are still unknown. At least three people were abducted in the first five months of 2022 alone. Additionally, there has been an alarming increase in recent years in the informal detention of university students, journalists and political activists, with the use of threats and ill-treatment to coerce them into becoming informants. Based on applications filed with the IHD, at least 190 individuals were subjected to this practice.

ACCORDING TO A STUDY BY IHD, THE REMAINS OF AT LEAST 4,201 INDIVIDUALS LIE IN THE 348 MASS GRAVES, WHICH HAVE BEEN IDENTIFIED TO DATE.⁷

Meanwhile, the Turkish State is reported to be destroying these memory spaces by opening them to construction, turning them into dumping sites or building highways on them. A recent example is in the Newala Qesaba ('Butcher's Stream' in Kurdish) part of Siirt province in eastern Turkey⁸, which is said to be a mass grave for the unidentified bodies.

DURING THE FIRST EXHUMATION IN 1989, THE REMAINS OF EIGHT PEOPLE WERE FOUND,

before the immediate stoppage of the exhumation was ordered by the Governor. No more exhumation work has been carried out at the site since.⁹

6. <https://tihv.org.tr/basin-aciklamalari/26-haziran-2022-turkiyede-iskence-gercegi/>

7. IHD Map of Mass Graves accessible at <https://map.ihddiyarbakir.org/map.aspx>

8. <https://www.ihddiyarbakir.org/tr/post/24581/uluslararasi-qozaltinda-kayiplara-karsi-mucad>

9. <https://bianet.org/english/human-rights/259868-villas-being-built-in-newala-qesaba-a-site-of-mass-graves-in-eastern-turkey>

SATURDAY MOTHERS DEMANDING TO KNOW THE FATE OF THEIR LOVED ONES SINCE 1995

Twenty-seven years ago, a group known as the Saturday Mothers / Saturday People began peaceful weekly vigils every Saturday at noon in Galatasaray, Istanbul. They have since faced State repression, including police violence and judicial harassment. They are seeking justice, condemning impunity and pressing for the whereabouts and fate of their loved ones to be revealed.

ON THEIR 700TH VIGIL, THEY WERE ARRESTED AND HAVE SINCE BEEN DENIED ACCESS TO THE SQUARE.

Their trial began on 25 March 2021. On the 900th vigil on 25 June 2022, they tried to end the four-year unlawful ban on the vigils by meeting in Galatasaray Square, which has now become a symbolic memory space for the country. However, they once again came up against an arbitrary, unlawful crackdown on their peaceful dissent by the Turkish authorities. Sixteen human rights defenders and relatives of the missing were detained. They were released later the same day.¹⁰

ECTHR RULINGS

Article 2 ECHR (the right to life, requiring State parties to undertake both negative and positive obligations to protect the lives of their citizens), Article 3 ECHR (the freedom from torture and inhuman and degrading treatment) and Article 5 ECHR (the right to security and liberty) are among the human rights violated in enforced disappearances. In 1998, Turkey was the first respondent State to appear before the European Court of Human Rights (ECtHR) in a case of enforced disappearance. In its rulings on cases against Turkey, the ECtHR has identified violations of these rights by Turkey,

WHICH HAS FAILED TO MEET ITS OBLIGATIONS TO PROTECT LIVES AND TO CONDUCT AN EFFECTIVE INVESTIGATION, DUE TO THE LACK OF INDEPENDENCE OF INVESTIGATORY AUTHORITIES,

lack of public scrutiny and failure to allow the participation of the next of kin.¹¹

The high number of incidents and cases brought before the ECtHR against Turkey, particularly during the 1980s and 1990s, indicates that the practice of enforced disappearances to curtail political opposition constitutes a systematic human rights issue in the country.

10. <https://twitter.com/CmrtesiAnneleri/status/1542176219751501825?cxt=HHwWqsC-9bvG9OYqAAAA>

11. See *Çelik and others v. Turkey*, *Özdemir v. Turkey*, *Tunç v. Turkey*, *Ak v. Turkey*, *Osmanoğlu v. Turkey*, *Benzer and Others v. Turkey*, *Oğur v. Turkey*, *Saygı v. Turkey*



RECENT CASES

Since the failed coup of 2016, the characteristics of enforced disappearances have changed.

WHEREAS IN THE 1990s, THERE WAS A HIGHER RATE OF MISSING PERSONS, WHOSE FATE REMAINS UNKNOWN, IN MORE RECENT INSTANCES, THE MISSING OFTEN RESURFACE.

Their exact numbers are unknown, as they and their families drop complaints due to fear of reprisals¹². In the 2020 report¹³ of the Ankara Bar Association Human Rights Centre, enforced disappearances are identified as a structural problem based on its preliminary assessment of applications concerning allegations of enforced disappearances. In the applications, it is alleged that the individuals were abducted to the knowledge and with the authorisation of public officials. Abductees, whose whereabouts were later discovered, were denied the right to talk to a lawyer or to be examined by an independent physician and were only allowed to meet their families in rooms with cameras.



EXTRATERRITORIAL ABDUCTIONS AND FORCED RETURNS

In its 2021 report to the Human Rights Council,¹⁴

THE WGEID LISTS TURKEY AMONG THE COUNTRIES THAT CONTINUE TO JUSTIFY EXTRATERRITORIAL ABDUCTIONS AND FORCED RETURNS ON THE PRETEXT OF COMBATTING TERRORISM AND PROTECTING NATIONAL SECURITY.

The WGEID had **85** outstanding cases in Turkey at the end of its May 2020 - May 2021 reporting period.

12. <https://www.solidaritywithothers.com/post/online-event-sheds-light-on-turkey-s-enforced-disappearances>

13. http://www.ankarabarasu.org.tr/upload/HD/Donem65/2020/diger/20200213_ihmrapor.pdf

14. A/HRC/48/57

3. RECOMMENDATIONS:

The OMCT urges of the Government of the Republic of Turkey to :

- Ratify and accede to the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED);
- Criminalise enforced disappearance in the Turkish Penal Code and make it a punishable offence;
- Provide that enforced disappearance constitutes a crime against humanity when practised in a widespread or systematic manner;
- Prohibit secret detention;
- Conduct effective, independent and prompt criminal investigations to bring perpetrators to justice and to search for all persons who are alleged or suspected to be victims of enforced disappearance;
- Develop and implement procedures for handling cases, including the protection of relatives and witnesses;
- Ensure that enforced disappearance is not subject to a statute of limitations;
- Take concrete action against any claim of impunity in cases involving public officials;
- Open mass graves in cooperation with human rights and other relevant non-governmental organisations;
- Establish a DNA bank for investigations on enforced disappearances;
- Ensure that prosecutors take action ex-officio and identify all of those suspected of committing enforced disappearance;
- Change legislation that prevents specific categories of detainees from seeing their lawyers in the first 24 hours of detention.