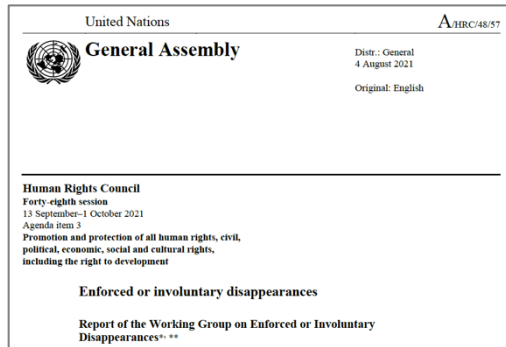




The United Nations strongly condemns the increasing tendency of the Turkish government to resort to transnational transfers



The report of the UN Working Group on Enforced and Involuntary Disappearances (WGEID) contained in document A/HRC/48/57,¹ was presented during the 48th session of the UN Human Rights Council, held from September 13 – October 1, 2021, in Geneva, Switzerland. The report focuses in particular on enforced disappearances in the context of transnational transfers,² which encompass extraterritorial abductions and forced returns, including expulsions, often undertaken in undercover operations in cooperation

between two or more States, on the pretext of combating terrorism and protecting national security.

The Working Group on Enforced or Involuntary Disappearances firmly criticizes the conclusion of bilateral security cooperation agreements with the Government of Turkey, which often contain broad and vague references to combating terrorism and transnational crime, in order to facilitate transnational transfer operations.³ In almost all the instances reported to the Working Group, the arrests seem to have been carried out without any legal basis; the arresting officers did not identify themselves; no arrest warrants were presented; no explanations were provided to clarify or justify the arrests; the persons were taken by force from their home or in the street; and in a number of cases, they were blindfolded, hooded and handcuffed.⁴

In several of the cases examined by the Working Group in the report, the targeted individuals remained forcibly disappeared for a period of between 24 hours and three weeks in secret detention prior to deportation.⁵ During that period, they were reportedly often subjected to torture and other forms of ill-treatment aimed at obtaining their consent to voluntary return and at extracting confessions that would inform criminal prosecution upon arrival in their country of origin. At that stage, they were reportedly often denied access to medical care and legal representation and were unable to challenge the lawfulness of detention before a competent court, effectively placing them

¹ Source: <https://undocs.org/en/A/HRC/48/57>

² Chapter 6, page 14 of the report.

³ Paragraph 43 of the report.

⁴ Paragraph 44 of the report. For example, A/HRC/WGEID/114/1, para 145. See also “*Opinion No. 11/2018 of the Working Group on Arbitrary Detention in the case of Meral Kaçmaz, Mesut Kaçmaz and their minor children.*” Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/139/81/PDF/G1813981.pdf?OpenElement>

⁵ For example, Mustafa Ceyhan and Mehmet Gelen illegally transferred from Azerbaijan to Turkey. See Allegation Letter to Azerbaijan” Ref. AL AZE 1/2019, available at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24375>.

See the case of Osman Karaca transmitted to Cambodia through urgent action under Article 30 of the UN Committee on Enforced Disappearances. See also Opinion of the Working Group on Arbitrary Detention in the matter of Osman Karaca:

https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session89/A_HRC_WGAD_2020_84.pdf



outside the protection of the law.⁶ Their family members were unaware of their fate and whereabouts.⁷

Information received by the Working Group indicates that civilian or military intelligence services sometimes use unmarked aircraft for these operations. However, credible reports suggest that commercial airlines have also been used for such transfers, in contravention of their corporate responsibility to prevent human right abuses.⁸

According to the Working Group, most of the abducted individuals are reported to have been indicted upon arrival in the host State (including Turkey) and remanded in pretrial custody pursuant to counter-terrorism legislation and emergency decrees. In some cases received by the Working Group, the whereabouts and state of health of a number of individuals were unknown for several months until the search by their relatives or public pressure prompted the authorities to acknowledge their detention.⁹ In other cases, many individuals are reported to have been placed under residential surveillance at a designated location, where law enforcement agencies have been holding individuals in detention for up to six months without revealing the place of detention, depriving them of access to legal representation and family members, particularly if they are suspected of terrorism-related crimes.¹⁰

In many cases recorded by the Working Group the transfers appear to have taken place shortly after the entry into force of cooperation agreements with the Government of Turkey, which would seem to indicate that both the agreements and the capture of those individuals were part of a somewhat premeditated strategy. In addition to the agreements, it appears that in some cases, the authorities orchestrating the transfers have revoked the citizenship or annulled the passport of targeted individuals with the aim of facilitating expeditious arrests abroad.¹¹ In this regard, the

⁶ See for example WGAD Decision on the Arbitrary Detention of Kahraman Demirez, Mustafa Erdem, Hasan Hüseyin Günakan, Yusuf Karabina, Osman Karakaya and Cihan Özkan. Available here: https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_47_Advance_Edit_ed_Version.pdf See, also AL KSV 1/2018, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23776>; and UA KSV 2/2018, available at

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23954>; AL KSV 1/2018

⁷ Paragraph 45 of the report. See for example the case of Selahaddin Gülen (A/HRC/WGEID/124/1, para. 59), available at: <https://www.ohchr.org/en/issues/disappearances/pages/sessions.aspx>.

⁸ See for example the *Allegation Letter to Gabon*, Ref. AL GAB 2/2018. Cases of Msrs. Osman Özpınar, Ibrahim Akbaş and Adnan Demirönel, their spouses and children (Turkish Airlines). See also the case of Harun Çelik, Ref. UA ALB 1/2020 and UA ALB 2/2020 (Air Albania).

⁹ See for example AL TUR 5/2020. Allegation letter to the Government of Turkey on the abduction of Turkish nationals from Afghanistan, Albania, Azerbaijan, Afghanistan, Cambodia, Gabon, Kosovo, Kazakhstan, Lebanon and Pakistan among others. Available here:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25209>

¹⁰ See for example the case of Selahaddin Gülen (see A/HRC/WGEID/124/1, para. 59). Abducted in Nairobi, Kenya on May 3, 2021, he “reappeared” in Ankara 26 days later (May 31, 2021) in handcuffs between two Turkish flags. Orhan İnandı, abducted in Kyrgyzstan on May 31, 2021 “reappeared” in Ankara after 35 days of being unaccounted for, on July 5, 2021, paraded before cameras between the same two Turkish flags.

¹¹ See for example the case of Muaz Türkyılmaz. Allegation letter to the Government of Panama (UA PAN 2/2020), available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25697>.



Working Group has also noted that deprivation of nationality for the sole purpose of facilitating expulsion or removal goes against international law.¹² Further allegations were received by the Working Group of intimidation and harassment of the individuals' relatives because of their activism and calls for truth and justice.¹³

The Working Group reiterates in its report to the Human Rights Council that, however it is qualified, the practice of States resorting to the deprivation of liberty of individuals and refusing to acknowledge it or to disclose the fate or whereabouts of the individual concerned, for whatever purpose or duration and in whatever context, constitutes an enforced disappearance,¹⁴ in violation of *jus cogens* norms of international human rights law.¹⁵

The Working Group underlines that procedural safeguards upon arrest and during the first hours of deprivation of liberty are essential to prevent possible violations, including torture.¹⁶ It is also a matter of concern that bilateral security cooperation agreements seem to have been used by several States in order to bypass the conditions and safeguards provided under regular extradition and deportation processes, often in violation of non-refoulement obligations.¹⁷ The Working Group also echoes the recommendation cautioning States against the imprecise or vague use of reference to “*terrorism threats*” as a basis to deny individuals their fundamental *non-derogable* rights.¹⁸

The Working Group further regrets that the aforementioned cases reported to and examined by the Working Group are all characterized by the disregard for the rule of law and legal safeguards aimed at protecting rights and the lack of accountability for the alleged violations.¹⁹ As illustrated by the responses of some Governments with respect to the allegations of arbitrary arrest, detention and

¹² For example, International Law Commission, draft articles on the expulsion of aliens, *Yearbook of the International Law Commission 2014*, vol. II (Part Two), para. 35, art. 8, and A/HRC/25/28, para. 26.

¹³ Zehra Türkmen for example, spouse of Gökhan Türkmen, began serving her 6 years imprisonment sentence over terrorism-related offences on October 1, 2020. A math teacher by profession, Zehra Türkmen is believed to have been instrumental in the “reappearance” of Gökhan Türkmen on November 5, 2019, nine months after his disappearance. Gökhan Türkmen was abducted on February 6, 2019, in Antalya, and “reappeared” on Nov. 5, 2019.

¹⁴ A/HRC/7/2, para. 26, and *Yrusta and Del Valle Yrusta v. Argentina* (CED/C/10/D/1/2013), para. 10.3.

¹⁵ Inter-American Court of Human Rights, *Gelman v. Uruguay*, Judgment of 24 Feb. 2011 (Merits and Reparations).

¹⁶ For example, A/HRC/45/13/Add.2, para. 17, and A/HRC/33/51/Add.1, para. 54.

¹⁷ Inter-American Juridical Committee, Legal opinion on the decision of the Supreme Court of the United States of America, CJI/res. II-15/92.

¹⁸ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (contained in document A/73/361), para. 34. Available at <https://undocs.org/en/A/73/361>

¹⁹ For example, “*Follow-up to the recommendations made by the Working Group on Enforced or Involuntary Disappearances in its report on its visit to Turkey from 14 to 18 March 2016*”. Document A/HRC/45/13/Add.4, paras. 7–8 and 17. “*The Working Group is particularly alarmed by allegations of enforced disappearances reported to have been perpetrated under the pretext of combatting terrorism against actual or perceived members of Gulen/Hizmet movement, classified by the Government of Turkey as ‘Gülenist Terror Organization (Fethullahçı Terör Örgütü, FETÖ)’ or ‘Parallel State Organisation (Paralel Devlet Yapılanması, PDY)’.* Distressing reports of abductions by state agents in broad daylight, followed by months of torture and ill-treatment in clandestine detention sites aimed at extracting confessions for future prosecutions should be investigated as a matter of urgency.”



enforced disappearance, it appears that, in most cases no effective investigation has been conducted and no one has been held accountable for the reported human rights violations.²⁰

The Working Group on Enforced or Involuntary Disappearances recommends that States:

1. Cease justifying enforced disappearances on the grounds of protecting national security, combating terrorism and tackling extremism;
2. Review and repeal laws and agreements that contravene the international human rights obligations of States regarding involuntary transfers of individuals;
3. Recognize, in law and in practice, that a failure by State agents to acknowledge deprivation of liberty and a refusal to acknowledge detention constitute an enforced disappearance, even if it is of a short duration;
4. Ensure that any inter-State agreements or arrangements which may result in substantial interference with human rights be made publicly accessible so as to allow individuals to take cognizance of the terms of such agreements and to regulate their conduct accordingly;
5. Ensure that such agreements and their implementation are in full compliance with the human rights obligations of States, including the principle of non-refoulement;
6. Fully implement procedural safeguards and guarantees upon arrest and during the first hours of deprivation of liberty with the aim of preventing enforced disappearance and other human rights violations. These safeguards should include immediate registration and judicial oversight of the detention, notification of family members as soon as an individual is deprived of liberty, the availability of a defense lawyer of one's choice, and lawyer-client privilege;
7. Strengthen and fully comply with oversight and procedural safeguards prior to extradition, deportation, expulsion and return processes;
8. Consistently carry out comprehensive individual assessments to determine whether individuals may face risks to their rights upon return to their countries of origin and to ascertain what those risks may be;
9. Conduct independent and effective investigations into possible violations, hold perpetrators accountable and provide victims and their families with the right to an effective remedy;

Background on enforced disappearances in the context of transnational transfers by Turkey

In the late hours of July 15, 2016²¹ a small faction of the Turkish Armed Forces (TSK) that called themselves the “Peace at Home Council” attempted to overthrow the Government of Turkey by seizing control of several key places in Ankara, Istanbul and other locations. Forces loyal to the

²⁰ For example, A/HRC/45/13/Add.4, para 17 and p. 37. “The Working Group further observes that the entrenched culture of impunity for human rights violations perpetrated by state agents continues to be a main obstacle to holding officials accountable in Turkey. While there are various factors that foster a culture of impunity in the criminal justice system, the lack of judicial independence and impartiality are reported to have been most critical ones. In addition, the recent tendency to incriminate actual or perceived supporters of the Hizmet/Gülen movement by the country's leadership is presumed to have curtailed independent and effective investigations into enforced disappearances. Dismally low prosecution and conviction rates appear to be a further testament to these systemic deficiencies.”

²¹ The events related to the attempted coup began at 7:29 p.m. in the evening of July 15, 2016



government were able to defeat the coup plotters and the attempted coup was thwarted within approximately 12 hours. According to official sources at least 246 people were killed and more than 2,000 were injured during the attempt.²² As the attempted coup was still ongoing, the government accused the Hizmet Movement for orchestrating it and its real or perceived members or sympathizers for membership of a terrorist organization, attempting to overthrow the government.

An unprecedented crackdown on human rights and fundamental freedoms targeting citizens from all walks of life, in particular the education, media, military and justice sectors is still ongoing, with measures introduced under the umbrella of the state of emergency and post-state of emergency severely limiting individual rights and liberties. According to the Turkish Ministry of Justice, by the end of February 2021, 622,646 individuals were investigated for ties to the Hizmet Movement; 301,932 were detained and 96,782 conditionally released under judicial control.²³ From July 2016 to December 2017 only, the Turkish authorities also revoked 234,419 passports,²⁴ with the overall number of cancelled passports by September 2021 estimated to be over 650,000.

Almost immediately following the attempted coup of July 2016, the Government of Turkey also began a global purge that mirrors its domestic crackdown, targeting individuals with perceived ties to the Hizmet Movement on the basis of guilt by association, mainly teachers, academics, doctors and businessmen living abroad for many years. According to the Turkish authorities, the Turkish government has been able to abduct and illegally transfer to Turkey 139 victims from 33 countries.²⁵

All abductions follow the same patterns: (i) The victims are mostly subject to Interpol red or other notices (including diffusions) and prior extradition requests; (ii) Almost all victims are refugees or asylum seekers; (iii) The victims are abducted by local law enforcement agencies and held in detention for a short period before being secretly transferred to Turkish custody; (iv) They are then immediately taken to Turkey on Turkish aircraft, including private jets, charter flights or commercial flights; (v) The victims are targeted for their alleged links to the Hizmet Movement; (vi) With few exceptions the victims are all kept in secret detention facilities operated by the Turkish Intelligence. This is also the most difficult and dangerous period for the lives of the victims, where they are also subject to different forms of torture for prolonged periods of time.

The unprecedented aggressive campaign of transnational transfers by the Government of Turkey has also had significant repercussions in other countries. In Kosovo for example, the former head of the intelligence agency and two high-level police officials are currently facing trial for the

²² Committee against Torture, *Concluding observations on the fourth periodic report of Turkey*, Addendum Information received from Turkey on follow-up to the concluding observations (CAT/C/TUR/CO/4/Add.1), November 8, 2016, para 61.

²³ See for more: <https://www.aa.com.tr/tr/turkiye/icisleri-bakani-soylu-garaya-giden-hdpli-vekili-acikladi/2151784>.

²⁴ According to official data (Turkish Interior Ministry): 55,665 were jailed, 234,419 passports revoked since coup attempt, available at: <https://turkeypurge.com/turkish-interior-minister-55665-jailed-234419-passports-revoked-since-coup-attempt>.

²⁵ See for more: <https://www.aa.com.tr/tr/turkiye/icisleri-bakani-soylu-garaya-giden-hdpli-vekili-acikladi/2151784>.

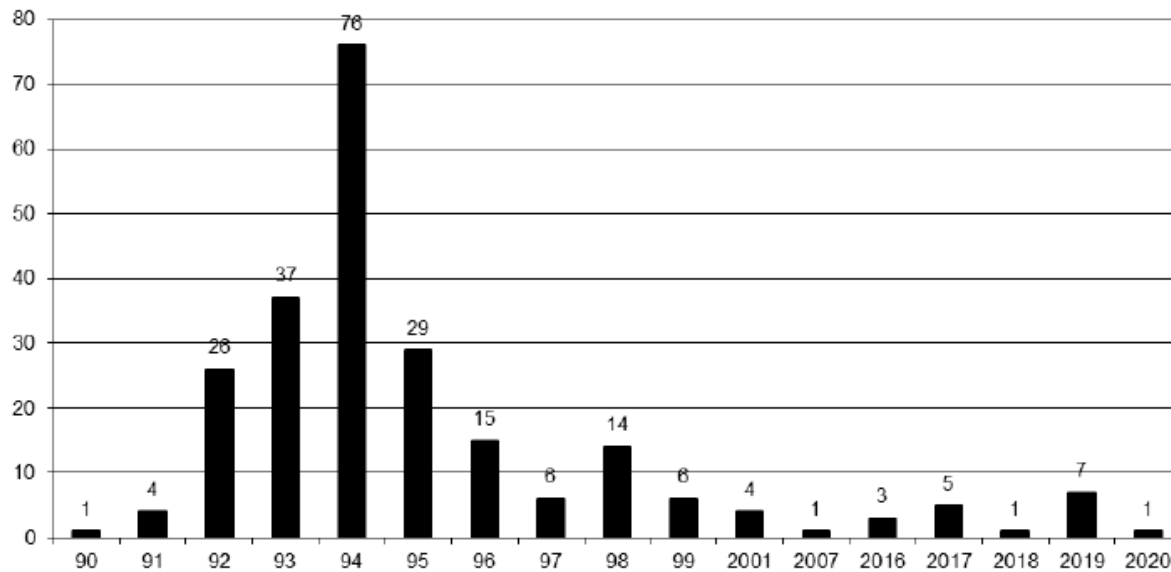


March 2018 renditions.²⁶ Following a similar set of renditions, the former head of Moldovan intelligence, the Information and Security Service (SIS), received a suspended sentence for the controversial rendition to Turkey of a group of Turkish teachers.²⁷

The Working Group reiterates its concern about the continued justification of extraterritorial abductions and forced returns under the pretext of combating terrorism and protecting national security.²⁸ In this regard, the Working Group urges the Government of Turkey to prevent and terminate enforced disappearances, as stipulated in article 2 of the Declaration on the Protection of All Persons from Enforced Disappearance. The Working Group recalls that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

According to the number of cases transmitted to the Working Group from Turkey, there was no single case transmitted to the WGEID between 2008-2015 (see below). Three cases of enforced disappearances were transmitted in 2016 (following the attempted coup), five in 2017, one in 2018, seven in 2019 and one in 2020. These allegations of enforced disappearances do not reflect abductions carried out by the Government of Turkey in the context of transnational transfers, and the summary below fully supports the claim that they are used as a tool to target perceived members of Hizmet Movement.

Table 1: Cases Transmitted to the WGEID from Turkey: 1990 – 2020



Source: <https://undocs.org/en/A/HRC/48/57>

²⁶ <https://balkaninsight.com/2021/02/25/kosovo-indicts-ex-intelligence-chief-over-deportation-of-gulenists/>.

²⁷ <https://balkaninsight.com/2020/09/09/moldovan-ex-secret-services-director-sentenced-for-turkey-renditions/>.

²⁸ A/HRC/45/13, para. 46.