

Communication

Submitted to the Office
of the Prosecutor of the
International Criminal Court

concerning the situation in Türkiye, other countries
and State Parties

Summary and Overall Conclusion



Summary

This communication concerning the situation in Türkiye provides information that there is a reasonable basis to believe that Crimes against Humanity under the jurisdiction of the ICC have been and are being committed. The Office of the Prosecutor is requested to start investigations under Article 15 Rome Statute.

Türkiye did not ratify the Rome Statute. However, an important number of acts are documented for which the ICC's **territorial, temporal and material jurisdiction** is established. Indeed, the commission of these Crimes at least started in a country that ratified the Rome Statute. The ICC's jurisprudence is clear that, in such a situation, the ICC has territorial jurisdiction. The principles regarding this are explained in Part 0 (Preliminary Observations) and applied in Part III (Individual crimes falling under the Jurisdiction of the ICC).

Attention must be paid to the **gravity requirement** for the crimes brought to the attention of the Office of the Prosecutor. The Rome Statute stipulates that the Prosecutor can decide not to start an investigation if the Crimes against Humanity do not reach a certain level of gravity. The gravity does not need to be proven, instead the lack of gravity requires evidence. In other words: the Office of the Prosecutor bears the burden of proof for the lack of gravity.

In the present case, this gravity threshold has been reached. The crimes that can be taken in account in the communication current case to assess the gravity requirement relate to more than 200,000 persons. The crimes cover a broad geographical scope and a long period of time. Moreover, there is complete disrespect for the binding and non-binding decisions of international authorities and jurisdictions such as the European Court of Human Rights, the crimes are executed with cruelty and new-born children are also targeted. The crimes must be considered as deliberate disdain for the non-refoulement principle and they clearly challenge the international legal order. Therefore, it would not be reasonable to state that the gravity requirement is not met.

The **Crimes against Humanity** that have been committed are Torture, Enforced Disappearances, Imprisonment in Violation of Fundamental Rules of International Law and Persecution.

Türkiye has a long history of brutal Torture. For the targeted period, statistical information, provided by the Turkish government itself, indicates that on average, on a yearly basis, 1,422 cases of Torture were brought before the Turkish judicial authorities in the period 2013-2018, yet only one percent of these cases (on average 13 out of 1,422 per year) led to the perpetrator's imprisonment. The statistical information provided by the Turkish Human Rights Association indicates that this organisation received on average 1,460 complaints per year related to Torture in the period 2003-2021. Several credible international reports confirm the frequent use of Torture. Recently - on 30 November 2022 - the UN Human Rights Committee confirmed extensive Torture has

resulted in the death of the victim in the Acikkölu case.

In the communication, 463 individual statements are submitted, relating to 800 identified or identifiable persons (Annex 2 to this communication). These statements describe in detail how Torture has been inflicted on a large and consistent scale. The groups targeted for Torture are the alleged members of the Gülen movement and the Kurdish movement. The most frequent act of Torture that is mentioned in these cases is severe beating, but waterboarding, being handcuffed tightly for extended periods, being forced to stay in the same position for extended periods, being subjected to electroshocks, sexual harassment, the threat of being killed, sleep deprivation and humiliation are also recurrently mentioned. These acts correspond to the definition of Torture in the Rome Statute.

There is a reasonable basis to believe that these acts of Torture actually occurred. Numerous reports by international organisations and human rights organisations confirm this. Even more so, such acts of Torture persist to this day. In this regard, in the first week of February 2022, a large number (approximately 300 persons) were detained. The Human Rights committee of the Ankara Bar Association made a report on the acts of torture that occurred during the detention of these persons. Tremendous pressure was exerted on the Bar Association not to publish its report. Until today (end of 2022), although its publication was announced, it has never been materialised.

Under Annex 4 to this communication, 59 cases of (extraterritorial and domestic) **Enforced Disappearance**, relating to 109 persons are documented. Enforced Disappearances are not a new phenomenon. These acts correspond to the definition of Enforced Disappearance in the Rome Statute and there is a reasonable basis to believe that they actually occurred. The Turkish authorities' involvement in the domestic Enforced Disappearances has always been denied. However, the description of these disappearances in Part I.2 clearly indicates otherwise. A completely different attitude is noticed as far as extra-territorial Enforced Disappearances are concerned: alleged members of the Gülen movement have been abducted abroad and brought illegally to Türkiye. The government does not deny its involvement in these cases. On the contrary, is proud of it and overtly celebrates such Crimes against Humanity. In the recent case of Mr. Inandi, the President boastfully gave a press conference with an image of the abducted person, who clearly had signs of torture, shown next to him. This person later on had to undergo surgery to be able to use one of his arms again. Eighteen cases of Enforced Disappearance fall directly under the jurisdiction of the Court and are documented in detail in Part III of the communication.

The third Crime against Humanity documented in the present communication is **Imprisonment in Violation of Fundamental Rules of International Law**. According to official statistics, investigations into alleged membership of a terrorist organisation were launched against 2,217,000 persons in the period 2015-2021. 560,000 persons were put on trial and 374,000 persons were convicted of whom 270,000 persons for membership of a terrorist organisation. In this context, in a large number of judgments the European Court of Human Rights came to the conclusion that detention and/or imprisonment

were executed in violation of the ECHR. The UN Working Group on Arbitrary Detention came to the same conclusion in 16 other cases. In the communication 1,789 collective actions of Imprisonment in Violation of Fundamental Rules of International Law relating to 51,205 persons are documented in Annexes 5.1, 5.2, 5.3 and 5.4 to this communication.

The acts correspond to the definition of Imprisonment in Violation of Fundamental Rules of International Law in the Rome Statute and there is a reasonable basis to believe they actually occurred. Many proofs demonstrate the absurdity of the “investigations” which are taking place. For instance, on 18 October 2022, a country-wide operation was launched in 59 of the 81 provinces whereby a detention order was issued against 742 persons. In total 259 persons were arrested and 459 persons were released by a judicial control decision. The main accusation was the alleged humanitarian help these persons had given (food, money, advice, etc.) to persons that had been released from prison. In some cases they were asked: “you were found to have recently visited deceased persons at their graves. Explain why you visited them.” This question was the consequence of the accusation made by the prosecutor: “By praying for the deceased and attending their apparently normal funerals, one helps the organisation that is attempting to overthrow the Constitutional order, the state and even the government.” Another recent example of the arbitrariness of prosecutions is the arrest of Dr Fincanci, a reputed independent expert on Torture and more specifically on helping victims of Torture and also director of the TTB (Turkish Medical Association). After (and because) she criticised the use of chemical weapons by the Turkish army, she was apprehended and finally placed in custody because some bullets were allegedly found in her house as well as a book that linked her to terrorism and more specifically to the PKK. That is how the arrest was justified in the press. After some days, it became apparent that the book was a poetry book written by the Kurdish female poet Bejan Matur, openly sold without any issue by D&R books which belongs to the family of President Erdoğan, but which has now been completely removed from their website. The cases of the writer Mr Altan, of HDP leader Mr Demirtas, activist Mr Kavala are also well-known examples of completely arbitrary detentions that were qualified by the European Court as detentions with the only purpose to silence persons and organisations defending human rights.

The fourth Crime against Humanity documented in the present Communication is the crime of **Persecution**. In addition to the crimes of Torture, Enforced Disappearance and Imprisonment in Violation of Fundamental Rules of International Law that were committed in a discriminatory manner based on political grounds, severe deprivations of fundamental rights were also committed in the same discriminatory manner. The following must be mentioned as a deprivation of fundamental rights: 1) the dismissal of civil servants and persons working in private institutions, and further negative consequences subsequently being added to these dismissals, 2) the closure and takeover of schools and violation of the right of employment of the personnel working in these schools in Türkiye and abroad and 3) the withdrawal of passports and denial of consular services such as a refusal to issue IDs or passports, even to new-born children, in Türkiye and abroad. Based on official statistical information, 129,410 public servants were dismissed; 19,962 teachers had their teaching licences cancelled. The aggravating

measures (the fact that a person was dismissed or persecuted is mentioned in his/her social security file) make it very difficult for these persons to find new employment and annuls his/her rights in the social security system such as the right to healthcare. It is no exaggeration to qualify the totality of the measures as these persons' "social death". Outside Türkiye, 162 schools were closed because of their links with the Gülen movement, affecting 7,852 personnel. Of these, 83 schools were located in a Party State, affecting 3,074 personnel. In total 234,419 passports were withdrawn in the context of the arbitrary investigations against the alleged members of the Gülen movement. Of these, 155,000 relate to persons against whom no judicial action was launched, such as, for instance, the spouses of the persons against whom an investigation or persecution was launched. Outside Türkiye, passports were cancelled or consular services were refused in a discriminatory manner in 46 states of which 25 Party States. These acts relate to 4,084 persons, many of whom were children. The facts concerning 1,255 of these persons were committed in Party States.

The crimes described are only Crimes against Humanity under the jurisdiction of the ICC if they are committed as part of a **Widespread or Systematic Attack directed against any Civilian Population**. This requirement is indicated as the conducts' compliance with the contextual elements or "the chapeau". The first stage of the assessment of the existence of an attack entails (1) the establishment of the existence of an operation or course of conduct involving, notably, the multiple commission of acts referred to in article 7(1) Rome Statute; (2) the indication that the operation or course of conduct was directed against a civilian population; and (3) the assessment that the operation or course of conduct took place pursuant to or in furtherance of a State or organisational policy. The second stage pertains to the characterisation of the attack, in particular ascertainment as to whether it was widespread or systematic. In Part II, the steps for the first and second stage of the reasoning are explained for the crimes of Torture, Enforced Disappearance, Imprisonment in Violation of Fundamental Rules of International Law and Persecution, separately and for these crimes considered as a whole.

The conclusion is that the documented Crimes against Humanity must indeed be considered as part of an attack directed against a civilian population and consequently fall under the material jurisdiction of the Court: there is a reasonable basis to believe that the contextual requirements as foreseen in the Rome Statute are fulfilled. Without going into more detail in this summary, the multiplicity of the acts, the persons targeted (alleged members of the Gülen movement and the Kurdish movement and more generally opponents of the Erdoğan regime), the planned nature of the acts, the use of public resources, declarations of high(est) officials of the Turkish Republic, official publications/announcements and the non-accidental repetition of similar criminal conduct, aiming to produce the same effects, are strong and convincing indications for this conclusion.

In Part III, **the specific acts that can be brought under the jurisdiction of the Court** to define the individual criminal responsibility of the perpetrator(s) are described in detail:

17 cases of Enforced Disappearance in which the victims were abducted from Kenya, Cambodia, Gabon, Albania, Bulgaria, Moldova, Mongolia and Switzerland and brought to Türkiye;¹

The closure of 73 schools in 13 Party States (Mali, Niger, Tunisia, Chad, Afghanistan, Venezuela, D.R. Congo, Gabon, Senegal, Jordan, Zambia, Liberia, and Congo-Brazzaville), related to the dismissal of 522 Turkish teachers and their families - in total more than 1,000 persons²;

Withdrawal of passports, non-extension of passports and non-issuance of ID cards (even for new-born children) in 29 Party States (Afghanistan, Austria, Bangladesh, Belgium, Bosnia Herzegovina, Cambodia, Canada, Denmark, France, Georgia, Germany, Guinea, Liberia, Lithuania, Luxembourg, Madagascar, Mali, Mongolia, Nigeria, North Macedonia, Peru, Poland, Romania, Switzerland, Tanzania The Netherlands, Tunisia, Uganda and United Kingdom) relating to 206 persons.

For each case, the facts are documented, the **admissibility requirements** are analysed and in Part III.20 the **complementarity requirement** is assessed for each case.

The Rome Statute states that the **“Interests of Justice”** must be taken into account to decide whether an investigation must be started. Under this umbrella, the interests of the victims are an important element. This Communication is made under the explicit mandate of some of the victims. Another – negative – aspect is the evaluation of whether the persons who are the most responsible for the crimes could be brought to trial. At this stage of the procedure, an indication of the persons who are individually responsible for the Crimes is not yet at stake and, in any case, falls under the responsibility of the Prosecutor. However, as explained in Part III.21, there is no reason to believe that the persons who are the most responsible for the crimes could not be brought to trial.

The Communication presented to the Office of the Prosecutor is based on extensive, detailed and scrupulously evaluated research. Hundreds of persons have testified on their suffering. The acts exude a reprehensible and arrogant air of impunity which aggravates the suffering of the thousands and thousands of innocent victims. Starting investigations into the situation in Türkiye seems to be the only way to bring justice to these victims.

¹ The cases in Mongolia and Switzerland were attempts that did not succeed.

² Only the Turkish teachers (who all were dismissed and had to leave the country) are taken into account, although also the domestic personnel were affected by the decisions.

OVERALL CONCLUSION

- 1 This Communication provides extensive information and indications that there is a reasonable basis to believe that the Crimes against Humanity of Torture, Enforced Disappearance, Imprisonment in Violation of Fundamental Rules of International Law and Persecution were committed on the territory of both Party States and Non-Party States but for which the ICC would be competent.

These crimes are part of a widespread and systematic attack against a civilian population that can be defined as opponents of the current Turkish regime, whereby the alleged members of the Gülen movement seem to be the primary target.

The admissibility requirements have been scrupulously examined and seem to be fulfilled. An investigation into these allegation seems to be of the utmost importance in light of the numerous victims who have expressed their suffering (notably in the hundreds of testimonies attached to the present communication). Eighteen cases that fall under the jurisdiction of the ICC have been documented. These cases relate to more than 1.000 victims.

- 2 Particular to the present situation is that the existence of the crimes is not denied by the actors involved (in particular by Türkiye) nor is the responsibility for the crimes hidden. This facilitates the investigation into these crimes but on the other hand demonstrates that there exists a strong feeling of impunity which leads to perpetrators who persevere in committing crimes that destroy the lives of thousands of people. The fact that the ECtHR and reputed International Institutions, of which Türkiye is a member state, clearly condemn these crimes has not altered the criminal behaviour of the perpetrators. Only an intervention by the ICC will be effective.
- 3 The ICC was precisely created to fight impunity in case where the national jurisdictions were not capable or did not want to investigate the facts at hand and eventually punish those who commit the worst crimes possible. This is the situation explained in this Communication and extensively supported by tangible and divers convincing indications.

For all these reasons, we respectfully request the Office of the Prosecutor to start investigations under Article 15 Rome Statute concerning the situation in Türkiye and other countries, Party States.

- 4 The crimes committed, the openly disrespect of the decisions of (inter)national courts and institutions, the violation of the non-refoulement principle, the openly admitted responsibility for Crimes against Humanity, are the concern of the international community. The ICC can put an end to this unlawful situation which has been on-going for (too) many years.