

Mandates of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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Excellency,

We have the honour to address you in our capacities as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 41/18, 34/18, 41/12, 34/5 and 40/16.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged excessive use of force against peaceful demonstrators at the Pride Marches that took place on the campus of the Middle East Technical University (METU) on 10 May 2019, as well as alleged arbitrary arrest, detention and prosecution against them.**

In this regard, we also wish to recall our letter (TUR 12/2018) sent on 18 September 2018 expressing concerns at the indefinite ban on public LGBTI-related gatherings or events by the Government of Ankara adopted on the basis of the Law on Meetings and Demonstrations No. 2911 and the Law on State of Emergency No. 2935. We acknowledge your Excellency's Government reply dated 8 November 2018 which provides that the ban had been decided in the context of the state of emergency imposed in response to terrorist threats.

According to the information received:

In 1996, the METU LGBTI+ Solidarity, was founded. This is the first university-based LGBTI+ society in Turkey and its stated aim is "to secure gender equality, eradicate on-campus LGBTI+ discrimination, and ensure that the university is a safe space for LGBTI+ people." The METU LGBTI+ Solidarity has never been recognised as an official student club by the university administration despite repeated applications to be registered as such.

Since 2011, METU has been hosting peaceful Pride Marches on campus – one of the largest campus marches in Eastern Europe and the Middle East. According to

information at our disposal, the METU administration has been trying to ban LGBTI+ related activities on the campus since 2017.

These attempts fell within the broader context of an indefinite ban on any public LGBTI-related gatherings or events announced on 19 November 2017 by the Governor of Ankara. Despite the lifting of the state of emergency on 18 July 2018, the ban on LGBT-related gatherings was renewed on 3 October 2018 for an indefinite period of time. On 19 April 2019, the Ankara Administrative Appeals Court lifted this ban on the grounds that it was unlawful and restricted the rights and freedoms in unconditional, vague, and disproportionate ways.

Shortly after, the Solidarity Club began organising the 9th METU Pride March and announced that this would take place at 17:30 on 10 May 2019. On 6 May 2019, the university rector reportedly sent an email to all students, graduates, and faculty members, informing them that the Rectorate was prohibiting the event. He referred to the ban on LGBTI events in Ankara, issued by the Ankara Governor's office on 3 October 2018 and warned that the Rectorate would ask the Ankara Police to intervene if the event took place.

On 10 May 2019 at 13:00, police forces reportedly entered the campus, and surrounded the area where the march was planned to start. Participants to the Pride March gathered under a sunshade at 14:00 and raised a rainbow flag. Shortly after, more than 50 police officers in riot gear allegedly surrounded them to form a barricade, forcing students to take down the sunshade and evacuate the area. Observers were not allowed to enter the campus. After the removal of the flag, the police stepped back. According to information at our disposal, at 15:00, hundreds of police officers surrounded students who were sitting around the area, even though they were not holding flags or banners. The crowd dispersed and at 16:30, participants gathered once more, at the highest building on campus. The police reportedly charged the demonstrators without warning, and dispersed the crowd using pepper spray, tear gas and plastic bullets.

In the context of the Pride March, 22 people were arrested on 10 May 2019 and released later that day, including 21 students and one professor. Shortly afterwards, the university opened administrative investigations against the students who participated in the March.

On 5 August 2019, 19 (18 students and one faculty member) of the 22 persons who had been arrested were notified that a criminal case had been opened against them, related to the charges of “participating in an unlawful assembly” and “resisting despite warning” under Article 2911 of Turkish Penal Court.

Their first court hearing took place on 12 November 2019 and a second one is scheduled to take place on 12 March 2020.

While we do not wish to prejudge the accuracy of the information made available to us, we express our serious concern at alleged excessive use of force, arbitrary arrest and detention, and prosecution against individuals exercising their right to freedom of peaceful assembly, association and of expression to uphold the human rights of LGBTI persons. Further to this, we express concern that the human rights defenders appear to be targeted for their defence or belonging to the LGBTI community. Demonstrators acted overwhelmingly peacefully and the demonstration took place more than 20 days after the Ankara Administrative Appeals Court lifted the ban that had been introduced by the Governor of Ankara under the state of emergency. We wish to recall, in this regard, that the Court ruled that the ban was unlawful and restricted rights and freedoms in unconditional, vague, and disproportionate ways. Thus, we are concerned that international standards related to the policing of assemblies, and particularly the fundamental principles of legality, precaution, necessity, non-discrimination, proportionality and accountability, may have been violated. We are especially concerned about the use of pepper spray, tear gas and plastic bullets at close range which carries a significant risk of injury.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the legality, precaution, necessity, non-discrimination and proportionality of the use of force in the context of the 10 May 2019 Pride March in the METU campus. Please provide information about regulations applicable to the use of tear gas, pepper spray, and rubber bullets during demonstrations, and please indicate how these are compatible with international human rights norms and standards. Please also provide detailed information on the instructions the police forces received to disperse the protesters and on investigations and judicial proceedings carried out in relation to the allegations of excessive use of force by the police.
3. Please provide detailed information on the arrests and judicial prosecutions of individuals in relation to their participation in the aforementioned Pride March.
4. Please provide detailed information as to the specific measures that have been put in place to ensure that defenders of the rights of LGBTI people in Turkey can carry out their legitimate work in a safe and enabling environment without fear of persecution and judicial harassment of any

kind, along with specific information as to steps taken to support and promote the rights of LGBTI people and their defenders to peaceful assembly and association in the country, and to freedom of expression and opinion, with no discrimination based on their sexual orientation or gender identity.

5. Please provide further information on measures taken or envisaged by your Excellency's Government to foster, embrace and celebrate a diverse society, inclusive of LGBTI+ people.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, without expressing at this stage an opinion on the facts of the case, we would like to recall articles 2, 17, 19, 21, 22 and 26 of the International Covenant on Civil and Political Rights (ICCPR), to which Turkey is party since 23 September 2003. These rights are of universal nature and apply to everyone, irrespective of their sexual orientation or gender identity.

The principles of equality and non-discrimination are part of the foundations of the rule of law and human rights. Sexual orientation and gender identity are prohibited grounds of discrimination under international law. Under article 1 of the Universal Declaration of Human Rights, ‘[a]ll human beings are born free and equal in dignity and rights’, and ‘[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’ (article 2 of the Declaration). The Human Rights Committee also found that States have a legal obligation to ensure to everyone the rights recognised by the Covenant without discrimination on the basis of sexual orientation or gender identity (CCPR/C/GC/35, paragraph 3).

On the basis of international human rights norms and standards and the work of the United Nations human rights treaty bodies and special procedures, the United Nations High Commissioner for Human Rights has emphasised that States have obligations to, inter alia, protect the rights to freedom of thought and expression, association and peaceful assembly without discrimination on the grounds of sexual orientation or gender identity. To that end, they should review and repeal discriminatory provisions in domestic legislation that have a disproportionate impact on the exercise of these rights by LGBT persons and others advocating for their rights. The High Commissioner for Human Rights has recommended that States repeal laws that impose discriminatory restrictions on freedom of expression, association and assembly and ensure that anti-discrimination legislation includes sexual orientation and gender identity among prohibited grounds (A/HRC/29/23, para. 18 and 79(b)(c)).

We would like to refer to Human Rights Council resolution 22/6, which urges States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights. (OP 10).

We would also like to bring to the attention of your Excellency’s Government that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism urged States to ensure that their counter-terrorism legislation is sufficiently precise to comply with the principle of legality, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds. A/70/371, para 46(c).

Furthermore, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism would like to bring to your Excellency Government's attention that while countering terrorism, violent extremism and other State security offences, States may impose limitations on rights and freedoms but only such "as are determined by law and solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of security, morality, public order and the general welfare in a democratic society". Emergency or not, States must reach the same threshold of legality, legitimacy, necessity and proportionality for each measure taken, and each measure shall be "directed to an actual, clear, present or imminent danger." The measures taken must be the least intrusive possible to achieve their objective. Importantly, the discretion granted to States is not unfettered. Emergency powers must be fine-tailored to an immediate and urgent crisis and not be used as a means to limit legitimate dissent, protest, expression and the work of civil society. That risks violating, inter alia, fair trial and due process guarantees, the prohibition of torture and even the right to life. The principle of non-discrimination must always be respected and special effort must be made to safeguard the rights of vulnerable groups. (A/HRC/37/52, paras. 48-49)

We would like to recall that, in a joint statement on free expression and association, UN and regional human rights experts stated that they "categorically reject arguments that such restrictions to the rights of LGBTI people are necessary to protect public morals, health or the well-being of vulnerable people."¹ The rights to freedom of peaceful assembly and of association are protected in article 20 of the Universal Declaration of Human Rights and in articles 21 and 22 of the ICCPR. We would furthermore wish to recall the Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/41/41 Para. 12) which reaffirms that States not only have a negative obligation to abstain from unduly interfering with the rights of peaceful assembly and of association but also have a positive obligation to facilitate and protect these rights in accordance with international human rights standards. This means ensuring that the rights to freedom of peaceful assembly and of association are enjoyed by everyone, without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (as provided under article 2 (1) of the International Covenant on Civil and Political Rights). The right to peaceful assembly has been reaffirmed by a number of Human Rights Council resolutions as well, including resolutions 15/21, 21/16 and 24/5. Furthermore, in its resolution 24/5, the Human Rights Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to

¹ Joint statement by UN Special Rapporteurs on freedom of opinion and expression, freedom of peaceful assembly and of association, right to health, and human rights defenders African Commission on Human and Peoples' Rights, Special Rapporteur on Human Rights Defenders in Africa, Inter-American Commission on Human Rights and OSCE Representative on Freedom of the Media, "Free expression and association key to eliminating Homophobia and Transphobia" (May 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14602&LangID=E>

promote those rights. This has been reaffirmed in the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association in 2014 (A/HRC/26/29, para 22).

While the right to freedom of peaceful assembly is not an absolute right under international human rights law, and it ‘can be subject to certain restrictions, which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others’ (Human Rights Council resolution 15/21, OP 4); these restrictions should be the exception and not the rule.

We would also like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights, ratified by Turkey on 23 September 2003, which provides that “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

We would like to draw the attention of your Excellency's Government to Principle 3 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed in E/CN.4/1996/39 of 1996, which provides that in time of public emergency which threatens the life of the country and the existence of which is officially and lawfully proclaimed in accordance with both national and international law, a State may impose restrictions on freedom of expression and information but only to the extent strictly required by the exigencies of the situation and only when and for so long as they are not inconsistent with the government's other obligations under international law.

We would also like to draw the attention of your Excellency's Government to Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Officials, which provides that, “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms”, and the Code of Conduct for Law Enforcement Officials, ensuring protesters right to peaceful assembly and without resorting to excessive use of force.

We would also like to refer to the Joint compilation of practical recommendations for the proper management of assemblies of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions A/HRC/31/66, in which was stated that: “The use of force by law enforcement officials should be exceptional, and assemblies should ordinarily be managed with no resort to force. Any use of force must comply with the principles of necessity and proportionality. The necessity requirement restricts the kind and degree of force used to the minimum necessary in the circumstances (the least harmful means available), which is a factual cause and effect assessment. Any force used

should be targeted at individuals using violence or to avert an imminent threat. The proportionality requirement sets a ceiling on the use of force based on the threat posed by the person targeted. This is a value judgment that balances harm and benefit, demanding that the harm that might result from the use of force is proportionate and justifiable in relation to the expected benefit” (paras. 57 and 58). Firearms may be used only against an imminent threat either to protect life or to prevent life-threatening injuries (making the use of force proportionate). In addition, there must be no other feasible option, such as capture or the use of non-lethal force to address the threat to life (making the force necessary) (para. 59). Firearms should never be used simply to disperse an assembly; indiscriminate firing into a crowd is always unlawful (para 60). We would also like to appeal to your Excellency’s Government to ensure that prompt, effective and thorough investigations are conducted into the alleged attacks on protestors following excessive use of force by police and that there is accountability for any violations including through the prosecution of perpetrators. Effective remedy (including compensation) should be guaranteed to the injured individuals.

We would also like to refer to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144, adopted on 9 December 1998), also known as the UN Declaration on Human Rights Defenders. In particular, we would like to draw your attention to article 1, 2, and 5 of the Declaration which state that everyone has the right to meet and assemble peacefully, form join and participate in non-governmental organisations, associations or groups and communicate with non-governmental organisations.

Furthermore, we would like to bring your Excellency’s Government’s attention to its article 17, which provides that in the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.