

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; 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 independence of judges and lawyers

REFERENCE:
OL TUR 13/2020

26 August 2020

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Arbitrary Detention; 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 independence of judges and lawyers, pursuant to Human Rights Council resolutions 40/16, 42/22, 34/18, 41/12, 34/5 and 44/8.

In this connection, we express our serious concern with the framework of anti-terrorism laws implemented by Your Excellency's Government and its compatibility with Turkey's international and human rights law obligations. In particular, we express serious concern with Anti-Terror Law No. 3713 ("Anti-Terror Law") and the amendments made to this law and the Penal Code through Law No. 7145, adopted on 31 July 2018. The counter-terrorism legal framework of Your Excellency's Government includes measures that could significantly limit the exercise of fundamental freedoms, including those of opinion, expression, and association. This legal framework could also impact the right to fair trial and prohibition on arbitrary detention. Furthermore, we express our serious concern with the process of normalizing emergency powers into ordinary law through Law No. 7145, given the restrictions and limitations placed by international human rights law on the exercise of exceptional legal powers that profoundly affect the enjoyment of fundamental rights.

We recommend review and reconsideration of certain aspects of this legislation to ensure its compliance with Turkey's international human rights obligations. We note that best international practice encourages States to independently review counter-terrorism and emergency law regularly so as to ensure that it remains necessary and international law compliant.

Concerns about the application of the anti-terrorism legal framework of Your Excellency's Government have been the subject of previous communications sent by Special Procedures. These include the communications sent on 11 December 2017 (ref no. 13/2017); 26 October 2017 (ref no. TUR 11/2017); 22 February 2018 (ref no. TUR

3/2018); 4 May 2018 (ref no. TUR 7/2018); 1 October 2018 (ref no. TUR 14/2018); 22 October 2018 (ref no. 15/2018); 23 April 2020; (ref no. 4/2020).

Overview of international human rights law standards applicable

We would like to reiterate the obligation of Your Excellency's Government to respect and protect individual rights guaranteed under the Universal Declaration of Human Rights (UDHR). Turkey also signed the International Covenant on Civil and Political Rights (ICCPR) on 15 August 2000 and ratified it on 23 September 2003, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), signed by Turkey on 13 October 1972 and ratified on 16 September 2002, and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) signed on 25 January 1998 and ratified on 2 August 1988. Turkey was also an early signatory to the European Convention on Human Rights (4 November 1950), ratifying on 18 May 1954.

We respectfully remind Your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180. All of these resolutions require that States ensure that any measures taken to combat terrorism or violent extremism, including incitement of and support for terrorist acts, must comply with all of their obligations under international law. We would like to emphasize that any restriction on freedom of expression or information that a Government seeks to justify on grounds of national security or counter terrorism, must have the genuine purpose and the demonstrable effect of protecting a legitimate national security interest.¹

Concerns

Background

Turkey's use of counter-terrorism laws and emergency powers is long-standing and extensive.² Turkey has had derogations in place from the European Convention on Human Rights since 1970.³ These derogations have been the source of extensive litigation due to concerns regarding their lawfulness, necessity and proportionality and their effects on fundamental human rights.⁴ The use of complex and permanent

¹ Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression; [CCPR/C/GC/34](#).

² <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations>

³ For example, Turkey invoked article 15 of the European Convention on Human Rights from June 16, 1970, to August 5, 1975; from December 26, 1978, to February 26, 1980; and from September 12, 1980 to May 25, 1987. *See* 30 Y.B. Eur. Conv. on H.R. 19 (1987); 23 Y.B. Eur. Conv. on H.R. 10 (1980); 22 Y.B. Eur. Conv. on H.R. 26 (1979); 21 Y.B. Eur. Conv. on H.R. 18 (1978); 18 Y.B. Eur. Conv. on H.R. 16 (1975); 13 Y.B. Eur. Conv. on H.R. 18 (1970).

⁴ Case law addressing the state of emergency includes; France, Norway, Denmark, Sweden & The Netherlands v. Turkey, App. No. 9940-9944/82, 35 Eur. Comm'n H.R. Dec. & Rep. 143 (1984); Mehmet

emergency powers at different stages of Turkey's history has had a deep-rooted impact on the national legal framework and has shaped the use of contemporary counter-terrorism law and the practice of emergency powers.

In respect of emergency powers, on 20 July 2016, the Turkish Council of Ministers declared a state of emergency through Emergency Declaration Law No. 667. The state of emergency was renewed seven times before lapsing on 18 July 2018. Thirty-six executive decrees were issued during this period to amend the authorizing legislation.⁵ After the state of emergency was lifted on 18 July 2018, many of the national security powers adopted during this period were incorporated into ordinary law through amendments to the Anti-Terror Law and the Turkish Penal Code. Most significantly, Law No. 7145, dated 25 July 2018, codified many of the emergency powers for an additional three-year period. The experts note the multiple findings of the Venice Commission on States of Emergency in respect of Turkey's declaration, use and extension of emergency powers.⁶

Definition of Terrorism

We respectfully remind Your Excellency's Government, that although there is no agreement on a multilateral treaty on terrorism which *inter alia* defines terrorism, States should ensure that counter-terrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity and proportionality. The definition of terrorism in national legislation should be guided by the acts defined in the Suppression Conventions,⁷ the definition found in Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, which were approved by the General Assembly.⁸ We recall the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms

Hasan Altan v. Turkey 13237/17 (May 20, 2018); Sahin Alpay v Turkey (Application No. 16538/17) March 20, 2018; Alparslan Altan v. Turkey (Application No 12778/17) ; Askoy v. Turkey 23 Eur. HR Rep. 553 (Dec. 18, 1996); Sakik and Others v. Turkey [1997] ECHR 95 (Nov. 26, 1997), 58 Reports of Judgments and Decisions 2609; Demir and Other v. Turkey (21380) [1998] ECHR 88 (Sept. 23, 1998); Nuray Sen v. Turkey (Application No. 63129/15 March ; Bilen v. Turkey (2007) ECHR 500; Aisling Reidy et al., *Gross Violations of Human Rights: Invoking the European Convention on Human Rights in the Case of Turkey*, 15 NETH. Q. HUM. RTS. 161, 162 (1997).

⁵ European Commission, Turkey 2019 Report, at pg. 9, available at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

⁶ European Commission for Democracy Through law (Venice Commission) Compilation of Venice Commission Opinions and Reports on States of Emergency 16 April 2020 CDL-P (2020) 0003

⁷ See e.g. the Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention) of 1963; the Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention) (1970); the International Convention on the Taking of Hostages (Hostages Convention) of 1979; the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971; and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 1973; [E/CN.4/2006/98](#) paras. 25-50.

⁸ [S/RES/1566](#); [A/RES/51/210](#).

while countering terrorism, which provides clear guidance to States on appropriate conduct to be proscribed and best practice.⁹ Those elements include:

- a) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages,
- b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act,
- c) Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.¹⁰

We also bring your Excellency's Government attention to the "principle of legal certainty" under article 15(1) of the ICCPR, which requires that criminal laws are sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and what would be the legal consequences of committing such an offence. This principle recognizes and seeks to prevent ill-defined and/or overly broad laws which are open to arbitrary application and abuse. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has called on States to ensure that their counter-terrorism and national security legislation, is sufficiently precise in order to comply with the principle of legal certainty, so as to prevent the possibility that it may be used to target civil society on political or other unjustified grounds.¹¹

In the Experts view, the Anti-Terror Law adopts an overly-broad definition of terrorist acts and terrorist offenders that implicates a range of activities protected by the freedoms of opinion, expression, association, and political participation.

Article 1 defines terrorist conduct to include any act done by one or more persons belonging to an organization with the "aim of changing the characteristics of the Republic" or "weakening or destroying or seizing authority of the State" by means of "pressure, force and violence, terror intimidation, oppression or threat." The broad character of this definition could entail that a range of speech and association activities protected under international human rights law is characterized domestically as 'terrorism'. Such a characterization would permit the arrest and detention of individuals exercising their internationally protected rights, restrictions which would constitute arbitrary deprivations of liberty under international law.

⁹ [A/59/565 \(2004\)](#), para. 164 (d).

¹⁰ [E/CN.4/2006/98](#), para 37

¹¹ [A/70/371](#), para. 46(b).

This definition appears to frame “terrorism” primarily by an organization’s political aims rather than the specific conduct of an offender. The inclusion of the term “pressure”, when aimed at changing a characteristic of the Republic or weakening the authority of the State, as a form of terrorist conduct, goes far beyond the Security Council’s definition of terrorist conduct which requires the specific intent to cause death or serious bodily harm.¹² This broad formulation risks the conflation of domestic protest, dissent, or peaceful defence of human rights with terrorism. The experts note that Turkey was called on to address the vagueness of its definition of a terrorist act during the consideration of Turkey’s initial periodic review to the Human Rights Committee, underscoring the concerns about the compatibility of this provision with the State’s international law obligations.¹³

The definition of a “terrorist offender” under article 2 includes any member of an organization with a terrorist aim, even if he or she does not commit a crime in furtherance of the terrorist aim. This language, amplifies our human rights concerns with article 314/2 of the Turkish Penal code which established the offence of “being a member of an armed terrorist organization”, and has been the subject of past communications to your Excellency’s Government in relation to how it has been directed against human rights defenders and civil society actors.¹⁴

Defining any individual who is deemed a member of a “terrorist organization” as a terrorist offender, regardless of their specific involvement in any criminal conduct, creates an unrestrained definition of a “terrorist offender” that is left open to arbitrary application and abuse. The European Court of Human Rights addressed this issue in its *Iskirik v. Turkey* decision, finding that Turkey’s broad definition of a terrorist offender created an “arbitrary interference with [the] right to freedom of assembly,” since there was no distinction between a peaceful demonstrator and “an individual who had committed offences” within the structure of a terrorist organization.¹⁵ As result of these broad definitions for terrorist conduct and terrorist offenders, the legislation framework appears to profoundly impinge upon the legitimate exercise of the freedoms of expression, association, and opinion, and by application upon the right to personal liberty and freedom from arbitrary arrest and detention.

Rights to Peaceful Assembly, of Opinion and of Expression

We respectfully refer to Turkey’s obligations in regard to the protection of the rights of peaceful assembly, opinion, and expression under the ICCPR. The right to freedom of opinion, enshrined in article 19 (1) is absolute, permitting no restriction. The right to freedom of expression in article 19 (2) is broad, and protects even expression that may be regarded as deeply offensive.¹⁶ Any restriction to the rights to freedom of expression and of peaceful assembly must be made in accordance with the requirements

¹² [UNSCR 1566](#) (2004) para. 3.

¹³ [CCPR/C/TUR/CO/1](#) para. 16.

¹⁴ See for example UA TUR 9/2020

¹⁵ ECHR: *Işıkırık v. Turkey* (Application no. [41226/09](#)), para. 70.

¹⁶ General Comment No 34, para. 11.

of articles 19 (3) and 21. Consequently, any restriction must pursue a legitimate aim, be provided by law, and be necessary and proportionate. Likewise, right of peaceful assembly in article 21 is broad. As highlighted by the Human Rights Committee, “while the notion of an assembly implies there will be more than one participant in the gathering a single protester enjoys comparable protections under the Covenant, for example under article 19. Although the exercise of the right of peaceful assembly is normally understood to pertain to the physical gathering of persons, article 21 protection also extends to remote participation in, and organisation of, assemblies, for example online.”¹⁷ Any restriction to the rights to freedom of expression and of peaceful assembly must be made in accordance with the requirements of articles 19 (3) and 21. We would like to remind your Excellency’s Government that all restrictions of the right to peaceful assembly as protected under article 21 of the ICCPR, need to fulfil the criteria of necessity, proportionality and be based on law. We strongly urge your Excellency’s Government to ensure that all laws and state of emergency measure are compatible with Turkey’s obligation to uphold the right to freedom of assembly. The State has the burden of proof to demonstrate that any restriction of the freedom of expression and of peaceful assembly are compatible with the Covenant.¹⁸

We express concern that Turkey’s anti-terrorism legal framework creates significant risk of unnecessary and arbitrary curtailment of the freedoms of expression, assembly, and opinion. Although the Turkish Constitution explicitly protects the right to peaceful assembly, the formalities, conditions and procedures applied to the exercise of this right are highly regulated within national and local laws. During the state of emergency, Law No. 2935 gave the Government the authority to prohibit, postpone, or impose temporal, geographical, or other restrictions on assemblies and demonstrations. Law No. 7145 subsequently incorporated many of these powers into ordinary law, such as by providing provincial governors the power to reorganize or limit the gatherings of people to certain times or places, and removed the need for the General Assembly to agree to prolong these powers every four months, as was required by the state of emergency law.¹⁹ We underscore the human rights challenges that follow from normalizing emergency powers in the ordinary law, thereby creating *de facto* permanent emergencies in national legal systems.²⁰ Long-term *de facto* emergencies can have nefarious consequences for the integrity of the rule of law, such as substantial expansions of executive powers limiting democratic and judicial control of exceptional powers, the undermining of accountability, and a potentially disproportionate effect on minorities and vulnerable groups.²¹ We urge Your Excellency’s Government to review the above mentioned laws to ensure that they are compatible with article 21 of the ICCPR.

Turkey’s Penal Code and anti-terrorism legislation include a number of provisions that criminalize broad categories of speech through ambiguous or broadly defined provisions. These include expressions that denigrate the Turkish nation (art. 301),

¹⁷ General Comment No. 37, para. 13.

¹⁸ See e.g. General Comment No. 34, paras. 27 and 35.

¹⁹ Article 3, Law No. 2935

²⁰ A/HRC/37/52 para(s) 30-39.

²¹ A/HRC/37/52

denigrate the religious values of a section of the population (art. 216 (3)), or insults the President (art. 299). Moreover, article 7 (2) of the Anti-Terror Law prescribes one to five years' imprisonment for those who make "propaganda of a terrorist organization by justifying or praising or inciting the terrorist organizations." Article 6 (2) criminalizes the "printing or publishing of declarations or statements of terrorist organizations."

We recall that the requirement of legality under article 19 (3) "sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution"²² The aforementioned provisions include excessively broad language which makes them amenable to abuse or arbitrary application.

Second, and related to the first, we express concern relating to the necessity and proportionality of the criminalization of these categories of speech. The requirement of proportionality entails that restrictions must be "appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected".²³

Broadly or vaguely worded restrictions to the freedom of expression are not only incompatible with the requirement of legality, but risk that the scope of the restrictions are broader than necessary to achieve the legal objective. Consequently, the criminalization of such offences as praising, glorifying, or justifying terrorism entails a disproportionate interference with freedom of expression.²⁴ The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism underscores that terms such as "praising", "glorifying", or "justifying" remain overly broad and ambiguous.²⁵ These terrorism offences are insufficiently precise which could lead to practices of arbitrary application and enable domestic legal overreach in conflict with international human rights obligations. Precision is essential in the use of counter-terrorism powers, and ambiguity must be remedied to ensure adherence to international human rights obligations.

These broad categories of speech-based offenses, particularly when considered in combination with the broad definition of terrorist organizations, unnecessarily and disproportionately limit the exercise of the freedom of expression, including the work of journalists and human rights defenders. In this regard, we recall that the media plays a crucial role in informing the public about acts of terrorism and its capacity to operate should not be unduly restricted and that journalists should not be penalized for carrying out their legitimate activities.²⁶ Lastly, and further adding to our concerns in relation to the proportionality of the restrictions, is the severity of the punishment. In this regard, we

²² General Comment no. 34 para. 25.

²³ General Comment no 34 para 34

²⁴ [CCPR/C/GC/34](#), para. 46.

²⁵ General Comment No. 34 para 46

²⁶ General Comment No. 34 para 46

refer to article 7 (2) of the Anti-Terror Law, which provides for imprisonment of one to five years.

We remind Your Excellency's Government of the recommendations of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression following his 2016 visit to Turkey,²⁷ and recommend the urgent review and revision of the law to ensure it is in compliance with Turkey's international law obligations.

Arbitrary Detention

We would like to respectfully refer to Turkey's human rights obligations related to judicial guarantees and deprivation of liberty under articles 6, 7, 8, 9 10 and 11 of the UDHR and articles 9, 10, 14, and 15 of the ICCPR. In particular, articles 9, 10, and 11 of the UDHR stipulate that all individuals have the right to be free from arbitrary arrest, are entitled to a fair and public hearing by an independent and impartial tribunal, and should be presumed innocent until proven guilty at a trial with all the guarantees necessary for his or her defense. Similarly, article 9 (1) of the ICCPR establishes that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as established by law. Article 9 (2) and (3) specify that anyone who is arrested shall be informed, at the time of the arrest, of the reasons for such arrest and be brought promptly before a judge for the purpose of legal assessment and challenge of the detention. We also underscore that article 9 (4) of the ICCPR affirms the right to challenge the legality of one's detention, and we note that this right applies to everyone, including persons who are arrested/detained for a terrorism-based offence.²⁸ We would like to stress that detention can be considered arbitrary when based on vague or imprecise legislation, on discriminatory grounds, or when it is imposed without a legal process or through one that is in clear violation of international fair trial standards.²⁹ We remind Your Excellency's Government that the prohibition on arbitrary detention is absolute in international law and no derogations are permitted.³⁰

Article 13 of Law No. 7145 extends the period during which suspects of terrorism-related crimes can be held in police custody for up to 12 days without charge. Initial police custody is set between two to four days but it can be extended twice if the person is taken before a judge. Suspects can also be repeatedly detained under the same investigation. In the COVID-19 pandemic context, extended detention prior to trial may increase health risks.³¹ Law No. 7145 reduces the frequency with which a judge must review pre-trial detention with the accused or his lawyer present. The court is required to

²⁷ [A/HRC/35/22/Add.3](#), para. 76.

²⁸ See United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring proceedings before a court.

²⁹ CCPR/C/GC/35, paras 17 and 22. *See also*, WGAD Opinions No. 41/2017; No. 42/2018; No. 43/2018; On fair trial rights see e.g. WGAD Opinions, Nos. 2/2020; 29/2020; 41/2017; 38/2017;43/2018; 84/2018; 53/2019.

³⁰ Human Rights Committee, General Comment No. 35. UN Doc. CCPR/C/GC/35 at para 66.

³¹ Working Group on Arbitrary Detention Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies

review a case file every 30 days, but the presence of the individual is only required every 90 days. The infrequency of an in-person review increases the risk of detainee abuse.

Right to a Fair Trial and Right to Counsel

We respectfully refer to Turkey's obligations with regard to the right to fair trial and right to counsel under article 14 of the ICCPR. When confronting the challenge of terrorism, the Human Rights Committee has stressed the importance of developing and maintaining effective, fair, humane, transparent and accountable criminal justice systems which provide access to a fair and public hearing and access to independent and adequate legal representation in accordance with obligations under international law.³² Article 14 (1) of the ICCPR requires that all persons are entitled to a "fair and public hearing" before a tribunal that is "competent, independent, and impartial". Article 14 (3) of the ICCPR lists, among the procedural guarantees available to persons charged with a criminal offence, the right to have adequate time and facilities to communicate freely with counsel of choice and to effectively prepare their defense (article 14 (3)(b) and (d)). In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14(3)(b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. S/he should also be able "to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter".³³ Lawyers should also be able to advise and to represent persons charged with a criminal offence "in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter."³⁴ In that context, in her 2015 thematic report the UN Special Rapporteur on the Independence of Judges and Lawyers called on governments "to refrain from criminally convicting or disbaring lawyers for the purposes of silencing them, preventing them from criticizing public policies or obstructing them in their legal representation of specific clients."³⁵

The right of access to counsel is also protected by UN principles and guidelines, namely the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,³⁶ the UN Basic Principles on the Role of Lawyers,³⁷ and the

³² Human Rights Committee, General Comment No. 32, CCPR/C/GC/32. *See also*, WGAD Opinions No. 41/2017; No. 42/2018; No. 43/2018; On fair trial rights see e.g. WGAD Opinions, Nos. 2/2020; 29/2020; 41/2017; 38/2017;43/2018; 84/2018; 53/2019.

³³ CCPR/C/GC/32 [para. 34](#).

³⁴ Report of the United Nations Secretary General on the protection of human rights and fundamental freedoms while countering terrorism. Para 73 (a)

³⁵ A/HRC/26/32, para 68

³⁶ Adopted by GA Res. 43/173 (Dec. 9, 1988).

³⁷ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba (Aug. 27–Sep. 7, 1990).

UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.³⁸ The right of access to counsel in the context of counter-terrorism must be reasserted.³⁹

The Basic Principles on the Role of Lawyers require Governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics (principle 16). The former UN Special Rapporteur on the Independence of Judges and Lawyers called on Governments “to refrain from criminally convicting or disbaring lawyers for the purposes of silencing them, preventing them from criticizing public policies or obstructing them in their legal representation of specific clients.”⁴⁰

We express serious concern with the authority granted under the anti-terrorism legal framework to interfere with an individual’s right to counsel as protected by article 14 (3) of the ICCPR. These forms of interference include: (a) severe limitations to client-lawyer privileged communications; (b) limitations imposed on lawyer’s access to their clients; (c) the barring of lawyers from representing terrorism-related cases; and (d) the use of terrorism charges against lawyers.

Decree Law 676/6 amended article 59 (5) of Law on the Execution of Penalties and Security Measures and stipulated that meetings between clients and lawyers for terrorism-related offenses can be strictly limited in duration and subject to public officials’ presence or recording. The Human Rights Committee has previously found that laws requiring the presence of a third party during client-lawyer meetings violates the right to counsel under article 14 (3).⁴¹ The UN Basic Principles on the Role of Lawyers provide that access to counsel may be delayed for no more than 48 hours after the time of arrest or detention.⁴² The European Court of Human Rights (ECHR) and the Council of

³⁸ Adopted by G.A. Res. 67/187 (Dec. 20, 2012).

³⁹ See CTITF Working Group on Protecting Human Rights while Countering Terrorism, Basic Human Rights Reference Guide: Detention in the Context of Countering Terrorism, United Nations Counter-Terrorism Implementation Task Force (Oct. 2014) (“All persons deprived of liberty have the right to prompt and effective access to legal counsel.”); CTITF Working Group on Protecting Human Rights while Countering Terrorism, Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism, United Nations Counter-Terrorism Implementation Task Force (Oct. 2014) (“All persons have the right to representation by competent and independent legal counsel of their choosing, or to self-representation. The right to representation by legal counsel applies to all stages of a criminal process, including the pre-trial phase. Any restrictions on the right to communicate privately and confidentially with legal counsel must be for legitimate purposes, must be proportional, and may never undermine the overall right to a fair hearing.”); A/HRC/10/21, para. 54 (g) (“[T]he persons accused of having engaged in terrorist activities shall have a right to enjoy the necessary guarantees of a fair trial, access to legal counsel and representation.”); United Nations Office on Drugs and Crime, Handbook on Criminal Justice Responses to Terrorism, Criminal Justice Handbook Series (2009) (“The arrested/detained person must have access to legal counsel and must be able to communicate with counsel in full confidentiality”).

⁴⁰ [A/HRC/26/32](#), para. 68.

⁴¹ *Nazira Sirageva v Uzbekistan*, No 907/2000 (12 December 1999).

⁴² UN Basic Principles on the Role of Lawyers, Principle 7.

Europe do not permit "undue delay" of access to counsel, which is measured against the particular experiences of an accused or detained person rather than a defined period of time.⁴³ Under article 154 (2) of the Criminal Procedure Code, prosecutors also have the authority to restrict lawyers from meeting with clients for the first twenty-four hours of their police custody and article 149 (2) allows for limiting the number of lawyers permitted to represent a client in court in a terrorism case to three lawyers. These measures create significant barriers to lawyer's ability to provide meaningful representation for those accused of terrorism-related offenses and therefore infringes upon the accused's right to a fair trial. We also raise our concerns that articles 15(3) and (4) will be used to target lawyers who attempt to defend persons accused of terrorism. The UN Basic Principles on the Role of Lawyers⁴⁴ has set forth obligations related to the role of lawyers as a component of the right to a fair trial. These principles have been widely accepted and are regularly cited by regional courts.⁴⁵ Among them, principles 10, 16, 18, and 19 are particularly relevant to the intimidation and sanction of lawyers and we commend their relevance to your Excellency's Government. We note that these Principles do not include any clause explicitly suggesting derogability in the context of emergency. Such use would implicate the prohibition of discrimination under principle 10; arbitrary administrative, economic, or other sanctions under principle 16; and undue disqualification of a lawyer under principle 19 of the UN Basic Principles on the Role of Lawyers. The use of counter-terrorism laws against lawyers could create significant pressure on and undue interference with the legal representation of those accused of terrorism-offenses which could seriously undermine their right to counsel.

Articles 15 (3) and 15 (4) could also be used to target lawyers who attempt to defend those accused of terrorism offenses including human rights lawyers. Lawyers can seemingly be banned from representing clients related to terrorism offenses if they themselves face criminal investigations or prosecutions for terrorism offenses. These restrictions and sanctions could undermine the prohibition of discrimination under principle 10; arbitrary administrative, economic, or other sanctions under principle 16; and undue disqualification of a lawyer under principle 19 of the UN Basic Principles on the Role of Lawyers.

In addition to these broader principles, the UN Basic Principles on the Role of Lawyers also include principles that apply specifically to the management and independence of professional legal associations. These include the right of lawyers to form and join self-governing and independent professional associations under principle 24, cooperation between professional associations and governments in furtherance of access to counsel for the public under principle 25, the professional association's responsibility to establish codes of conduct for lawyers in accordance with national law under principle 26, and the lawyer's right to fair disciplinary proceedings based in those

⁴³ Eur. Consult. Ass., Directive 2013/48/EU of the European Parliament and of the Council, Doc. No. OJ L 294 (2013), see also Murray v. United Kingdom, ([41/1994/488/570](#)), 8 February 1996, para. 70.

⁴⁴ Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Role of Lawyers* (Sept. 7, 1990).

⁴⁵ See, e.g., Valle Jaramillo et al. v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 192, ¶ 89 (Nov. 27, 2008); Kyprianou v. Cyprus, 2005-XIII Eur. Ct. H.R. 47, ¶ 58.

codes of conduct before an independent committee or court under principles 28 and 29.⁴⁶ The Council of Europe has also stated that “[b]ar associations or other professional lawyers’ associations should be self-governing bodies, independent of the authorities and the public.”⁴⁷

We express concern that Turkey’s anti-terrorism legal framework may grant the Government excessive authority over the judiciary, thus undermining or threatening its independence.⁴⁸ Law No. 7145 gives the Government the authority to dismiss any public official, judge, or prosecutor “assessed to have been members of or active in union with or been in contact with terrorist organizations or structures, entities or groups that the National Security Council has decided are engaged in activities against the nation.” The role of a security entity in making such determinations without judicial oversight and review is troubling for the experts. This broad-based authority to dismiss key judicial officers undermines the independence and impartiality of the judiciary. This measure closely mirrors the dismissal discretion granted during the state of emergency.⁴⁹ We are deeply concerned about the possibility of dismissal and prosecution of prosecutors or judges when their decisions are deemed as an activity against national security, as it seriously undermines the independence and impartiality of those trying and hearing terrorism-related cases. Such conditions also erode the broader need for a rule-of-law State which is the essential basis for addressing conditions conducive to terrorism. States are urged to comply with international human rights law while countering terrorism, including by providing judicial guarantees to those facing charges of terrorism.⁵⁰

Additionally, the Anti-Terror Law undermines the right of the accused to present his or her defense. Under article 14 of the Anti-Terror Law, the identity of witnesses providing information against the accused is not required to be disclosed. As a result, the accused is denied his or her right, as provided by article 14 (3)(e) of the ICCPR, to confront the witnesses testifying against him. This is a fundamental abrogation of due process rights, and one which is inconsistent with a human rights-based approach to countering terrorism.

Concluding Remarks

We express concern that Turkey’s anti-terror legal framework in its current form does not conform to international counter-terrorism nor human rights standards. We recommend that the Anti-Terror Law—as well as other provisions that may lead to practices that violate the rights to freedom of expression, freedom of association, freedom of peaceful assembly, and the right to freedom from arbitrary detention—be reviewed in order to ensure their compatibility with Turkey’s international legal obligations. In this regard, we remind that the duty to respect under article 2 (1) of the ICCPR entails the

⁴⁶ Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Role of Lawyers*, art. 24-29 (Sept. 7, 1990).

⁴⁷ Recommendation No. R (2000) 21 on the freedom of exercise of the profession of lawyer, principle V(2), available at <https://rm.coe.int/1680502fe8>.

⁴⁸ *Basic Principles on the Independence of the Judiciary*, para. 1.

⁴⁹ OHCHR, *supra* note **Error! Bookmark not defined.**, para. 9.

⁵⁰ A/RES/74/147, OPs 9, 10, 11.

obligation to take legislative measures necessary to comply with the State's obligations under the Covenant.⁵¹ Furthermore, all persons subjected to charges of terrorism should be granted all procedural guarantees set out in article 14 of the ICCPR, including the right to have access to, and communicate with, a counsel of their own choosing. We note that in the context of the COVID-19 pandemic the prolonged pre-trial detention of those persons, including human rights defenders and civil society actors, charged with terrorism, should be urgently reviewed.⁵² We note that compliance with international human rights law is an indispensable part of a successful medium- and long-term strategy to combat terrorism.

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 therefore 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 concerns.
2. Please provide information in details of how the counter-terrorism efforts of Your Excellency's Government comply with the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35/34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, in particular with international human rights law.
3. Please provide further information of how the definition of terrorism in the Anti-Terror Law No. 3713 is narrowly construed so as to guarantee that measures taken pursuant to it do not unduly interfere with human rights while complying with the principle of legality.
4. Please explain how the Anti-Terror Law No. 3713 (and any changes made to it since the date of this communication) is compatible with the obligations of Your Excellency's Government under articles 2, 9, 19, 21, and 22 of the International Covenant on Civil and Political Rights.
5. Please explain how the anti-terrorism legal framework of Your Excellency's Government ensures that the accused's right to counsel and right to fair trial under article 14 of the International Covenant on Civil and Political Rights is respected in practice.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 48 hours. They will

⁵¹ General Comment no. 31 para. 6.

⁵² UNITED NATIONS SPECIAL PROCEDURES AND COVID-19 WORKING DOCUMENT COVERING INFORMATION AS OF 28 APRIL 2020 - https://www.ohchr.org/Documents/HRBodies/SP/COVID19_and_SP_28_April_2020.pdf

also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Fionnuala Ní Aoláin
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers