

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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(Please use this reference in your reply)

12 May 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Working Group on Arbitrary Detention; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolutions 52/9, 51/8, 50/17, 52/4, 44/8 and 49/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a wide-scale police operation that was carried out in 21 Turkish provinces on 25 April 2023 to arrest and detain over 120 individuals on suspicion of terrorism and their alleged ties to the Kurdistan Workers Party.

The arrested individuals include well-known journalists, lawyers, politicians, human rights defenders, academics, and activists.

According to the information received:

On 25 April 2023, pursuant to a search and detention decision of the Diyarbakir 3rd criminal Judgeship of Peace, the police in 21 provinces raided the homes and arrested many persons, including journalists, lawyers, human rights defenders, academics and politicians, as part of an "anti-terrorism" operation that was conducted in the context of an investigation carried out by the Diyarbakir Chief Public Prosecutors office. The operation targeted 21 provinces namely: Mardin, Siirt, Bingöl, Van, Şırnak, Batman, Antep, Urfa, Bursa, İstanbul, İzmir, Mersin, Muş, Bitlis, Hakkâri, Osmaniye, Sivas, Malatya, Adıyaman, Ankara and Diyarbakir.

During the raids, over 120 persons were allegedly arrested, some accounts speak of around 150 persons and the Diyarbakir Bar Association announced that there are detention orders against at least 216 persons. Most of the individuals were arrested based on allegations of "terrorism" for their alleged ties to the Kurdistan Workers Party (PKK). Among the detainees were at least 22 lawyers and 10 journalists. Allegedly the charges brought against the detainees were unclear and lacked precision. The detainees were unable to contact their lawyers due to a 24-hours visitation ban related to the confidentiality of the investigation.

During the operation the police allegedly confiscated protected client files of the lawyers as well as records concerning legal aid applications to human rights lawyers and organisations. The police also confiscated the digital archive of a Kurdish publishing house. As several people demonstrated against the raids and mass detention in the city of Diyarbakir, the protests were reportedly dispersed by law enforcement officials.

On the day of the operation, on 25 April, the Minister of Interior posted a message on social media. Alongside a staged video of the operation the Minister stated that 128 suspects were in custody during the operation, which was directed at “those who finance, act as lawyers on behalf of the terrorist organization and provide personnel to the terrorist organization.”

While we do not wish to prejudge the accuracy of these allegations, the reported arrests and detentions of over 120 individuals raise strong concerns about the state of civic space in Türkiye, just a few weeks before the Presidential elections of 14 May 2023. We express our grave concern about the alleged mass arrest and detention of opposition members and critical voices, including lawyers, journalists, human rights defenders and academics. The wide-scale and timing of the operation raise serious concerns that the operation may be politically motivated and may seriously undermine free and fair elections.

We express our concern about the alleged arbitrary nature of the operation and the apparent lack of respect for fundamental legal and procedural safeguards against torture and other forms of ill-treatment, including the right to access a lawyer.

In relation to legal representation, we are concerned about the allegedly restricted access to lawyers, the reported breaches of the right to legal counsel of one’s choosing and the right to confer with a lawyer – all of which are key elements of due process. We are also concerned about alleged pressure due to which some lawyers do not take up human rights defenders’ cases.

The legal profession and its free exercise are an essential element of the rule of law, the protection of human rights and the functioning of an independent judicial system. The free exercise of the legal profession contributes to ensuring access to justice, oversight of state power, protection of due process and judicial guarantees. According to international standards, States must guarantee that those who practice law can do so free from intimidation, obstacles, harassment or interference.

Moreover, we are alarmed by the disturbing and intimidating message that the operation sends, which negatively impacts the overall freedom of peaceful assembly and of association, freedom of expression, including media freedom as well as the right to participate in public affairs in Türkiye. We are particularly concerned about the chilling effect the operations will have on individuals, including journalists, media workers and human rights defenders, who wish to express themselves, demonstrate peacefully, and participate in public and political life in Türkiye, ahead of the elections.

We would like to urge your Excellency’s Government to uphold fundamental rights in Türkiye, including the freedom of expression and freedom of peaceful assembly and of association, and to ensure restrictions to these rights are applied strictly and narrowly, in full respect of international human rights laws and standards.

We further reiterate our concerns, as conveyed previously to your Excellency's Government by Special Procedures mandate holders (OL TUR 13.2020), related to the anti-terrorism legal framework in Türkiye, which appears to create significant risk of unnecessary and arbitrary curtailment of the freedoms of expression, assembly, and the participation in public affairs. We are specifically concerned by the overly-broad definition of terrorist acts under the Turkish Anti-Terror Law, implicating a range of activities protected by the freedoms of opinion and expression, association, and political participation, as well as the unrestrained definition of a "terrorist offender" that is left open to arbitrary application and abuse, notably against human rights defenders, journalists and civil society actors. We also remain alarmed by the use of counter-terrorism laws against lawyers, which creates significant pressure on and undue interference with the legal representation of those accused of terrorism-offenses including the right of persons to properly mount a defence to all charges which could seriously undermine their right to meaningful legal representation. In this regard, we call upon your Excellency's Government to urgently review the law to ensure its compliance with the State's international law obligations and grant all persons accused of terrorism related charges with full procedural safeguards as set out in article 14 of the International Covenant on Civil and Political Rights (ICCPR), including the right to have immediate access to, and communicate with, a counsel of their own choosing.

We express our deep concern in relation to the allegation of "countering terrorism finance" and highlight that the Financial Action Task Force (FATF) has set forth international practices and guidelines aimed at preventing global money laundering and terrorist financing. The FATF recommendations, while non-binding, provide recognized international guidance for the countering of terrorism financing. Recommendation 1 states that "countries should apply a risk-based approach (RBA) to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified". Recommendation 8 provides guidance to States on the laws and regulations that should be adopted to oversee and protect NPOs that have been identified as being vulnerable to terrorist financing concerns. Such measures must be "focused and proportionate"; "a 'one size fits all' approach to address all NPOs is not appropriate." FATF has reaffirmed that State compliance with Recommendation 8 and the other FATF Recommendations "should not contravene a country's obligations under the Charter of the United Nations and international human rights law to promote universal respect for, and observance of, fundamental human rights and freedoms, such as freedom of expression, religion or belief and freedom of peaceful assembly and of association." We are concerned that these arrests appear to contravene a "risk-based" approach to countering terrorism finance and appear to demonstrate a misuse of countering terrorism finance laws and practice to disproportionality target civil society.

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 legal and factual grounds for the police operation, as well as the arrest, detention and charges brought against the individuals targeted by the operation. Please explain how these measures comply with articles 19, 21 and 22 of the ICCPR.
3. Please provide information about the circumstances of detention of the individuals arrested during the operation, including the legal and procedural safeguards granted to them from the outset of their detention, particularly their right to access a lawyer. Please explain how these circumstances comply with article 9 and 14 of the ICCPR.
4. Please provide information about the measures the Government has taken to ensure a safe and enabling environment in the run-up to the Presidential elections, including by respecting fundamental participatory rights, including the freedom of expression, freedom of peaceful assembly and of association, and the right to public and political participation.
5. Please explain how freedom of expression and media freedom is upheld in Türkiye, especially in the context of elections, and what measures have been taken to ensure that journalists, media workers and human rights defenders in Türkiye can exercise their legitimate right to freedom of expression and their peaceful and legitimate activities without fear of reprisals, judicial prosecution or criminalization of any kind.
6. Please provide information about any measures taken, or foreseen, by your Excellency's Government to review the anti-terror normative framework in Türkiye to ensure its compliance with the State's obligations under international human rights law, and as recommended in OL TUR 13.2020.
7. Please address how any countering terrorism finance measures are compatible with the principle of legal certainty, and if any risk assessments have been carried out in line with FATF Recommendation.
8. Please describe the measures the Government is taking to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, including through prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

We would appreciate receiving a response within **60 days**. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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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and expression

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Vice-Chair of the Working Group on Arbitrary Detention

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Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with above alleged facts and concerns, we would like to refer to articles 9, 14, 19, 21 and 22 of the International Covenant for Civil and Political Rights (ICCPR), ratified by Türkiye on 23 September 2003, which guarantee the right to not be subjected to arbitrary arrest or detention, the right to a fair trial, the right to freedom of opinion and expression, the right to freedom of peaceful assembly and freedom of association.

In particular, article 9 of the ICCPR provides that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as are established by law. As per the jurisprudence of the Working Group on Arbitrary Detention and General Comment No. 35,¹ any detention due to the peaceful exercise of rights, including the rights to freedom of expression and freedom of association, is arbitrary.

We would like to remind your Excellency's Government that any restrictions to the exercise of these rights must be provided by law and be necessary and proportionate to the legitimate aim. As the Human Rights Committee observed in Comment No. 27 (CCPR/C/GC/27), restrictive measures must "be appropriate to achieve their protective function" and "be the least intrusive instrument amongst those which might achieve the desired result" (paragraph 14), while "the principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law" (paragraph 15).

We also wish to bring to the attention of your Excellency's Government article 14 of the ICCPR, which enshrines the right to a fair trial and due process. In particular, article 14 (1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 (3) of the ICCPR guarantees the right of any individual charged with a criminal offence to have adequate time and facilities for the preparation of their defence, to communicate with counsel of their own choosing, and to be tried without undue delay.

We would like to recall that article 19 of the ICCPR guarantees the right to opinion and expression. In the General Comment 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of opinion and expression, including inter alia 'political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism', subject only to admissible restrictions as well as the prohibition of propaganda for hatred and incitement to hatred, violence and discrimination.

¹ CCPR/C/GC/35, para. 17.

Restrictions on the right to freedom of expression must be compatible with the requirements set out in article 19 (3), that is, they must be provided by law, pursue a legitimate aim, and be necessary and proportionate. The State has the burden of proof to demonstrate that any such restrictions are compatible with the Covenant. In her report A/HRC/50/29, the Special Rapporteur for the right to freedom of opinion and expression expressed her concern about the criminalization of journalists including through laws that prohibit the criticism of state institutions or officials, negatively impacting media freedom and damaging democratic discourse and public participation.

We further would like to recall that articles 21 and 22 of the ICCPR guarantee the rights of peaceful assembly and of association, and note that “no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”

We want to bring the attention of your Excellency's Government to Security Council's 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 which require that any measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with States' obligations under international law, in particular international human rights law, refugee law and international humanitarian law. Counter-terrorism measures must conform to fundamental assumptions of legality, proportionality, necessity and non-discrimination. Wholesale adoption of security and counter-terrorism regulations without due regard for these principles can have exceptionally deleterious effects on the protection of fundamental rights, particularly for minorities, historically marginalized communities and civil society.

We would like to further bring your Excellency's Government's attention to the "principle of legal certainty" under international law (ICCPR article 15(1); ECHR article 7(1)), which requires that criminal laws are sufficiently precise so it is clear what types of behaviour and conduct constitute a criminal offence and what would be the consequence of committing such an offence. This principle recognizes that ill-defined or overly broad laws 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 highlighted the dangers of overly broad definitions of terrorism in domestic law that fall short of international treaty obligations (A/73/361, para. 34). In this connection, we would like to recall the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which provides clear guidance to States on appropriate conduct to be proscribed and best practice (A/59/565, para. 164 (d)), which include the following elements ([E/CN.4/2006/98](#), para 37):

- 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.

Finally, we would like to bring the attention of the Government to paragraphs 75(a) to (i) of the 2018 report of the Special Rapporteur on the Protection and Promotion of Human Rights and Fundamental Freedoms while Countering terrorism's (A/HRC/40/52) on the impact of terrorism measures on civic space and human rights defenders, journalists and the media. We want to stress that counter-terrorism legislation should not be misused against individuals peacefully exercising their rights to freedom of expression, peaceful assembly and association. These rights are protected under the Universal Declaration. The non-violent exercise of these rights cannot be a criminal offence. Any restriction on expression or information that a government seeks to justify on the grounds of national security and counter-terrorism must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest (CCPR/C/GC/34), and respect the principles of legality, necessity and proportionality.

We would also like to refer to the report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, recalling that all States governed by the rule of law have an obligation to eliminate obstacles that impair or restrict access to justice (A/HRC/47/24, para. 2). He further indicated that “[a]ccess to justice, the rights to freedom of peaceful assembly and association, and the strengthening of civic space are inextricably linked” (A/HRC/47/24, para. 20) and highlighted that “barriers to access to justice should never be placed as deterrence measures undermining the essence of other rights” (A/HRC/47/24, para. 22).

Furthermore, as some of the victims are human rights defenders, we deem appropriate to remind you of the important and legitimate role that human rights defenders play and the protection they are entitled to by international law. We wish to highlight in particular the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms also known as the Declaration on Human Rights Defenders, and which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has the primary responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 5 (b) and (c), which provides for the right of all persons to form, join and participate in non-governmental organizations, associations and groups; and to communicate with non-governmental or intergovernmental organizations;

- article 6 point a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

Specifically, we would like to draw your attention to the General Assembly Resolution 68/181, which urges States to acknowledge publicly the important and legitimate role of women human rights defenders in the promotion and protection of human rights, democracy, the rule of law and development as an essential component of ensuring their protection, including by publicly condemning violence and discrimination against them (OP7). We invite you to refer to the Human Rights Council resolution 31/32 as well, in which States expressed particular concern about systemic and structural discrimination and violence faced by women human rights defenders. States should take all necessary measures to ensure the protection of women human rights defenders and to integrate a gender perspective into their efforts to create a safe and enabling environment for the defence of human rights. This should include the establishment of comprehensive, sustainable and gender-sensitive public policies and programmes that support and protect women defenders. Such policies and programmes should be developed with the participation of women defenders themselves (OP5, 19 and 20).

Finally, we would also like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana (Cuba), 27 August-7 September 1990).

Principle 16 requires 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 18 provides that lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions. This principle must be read in conjunction with principle 16 (c), referred to above, which requires national authorities to adopt all appropriate measures to ensure that lawyers are not subject to, or threatened with prosecution or any other administrative, economic or disciplinary sanctions for actions undertaken in good faith in the exercise of their professional duties and responsibilities.