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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Human rights situations that require the Council's attention

Joint written statement* submitted by Lawyers' Rights Watch Canada, Lawyers for Lawyers, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[2 February 2021]

* Issued as received, in the language(s) of submission only.



Turkey: Continued Deterioration of the Rule of Law and Persecution of Lawyers and Human Rights Defenders

Background

Corrosion of the rule of law in Turkey began prior to an attempted coup of 15 July 2016 but since then has escalated dramatically. Human rights defenders (“defenders”) in Turkey, including lawyers, are facing dire and far-reaching consequences resulting from the deterioration of the rule of law and the determination of the Government of Turkey (“government”) to stifle any meaningful opposition. Since July 2016 the independence of Turkey’s legal system has been destroyed by means of thousands of arbitrary dismissals and arbitrary arrests of judges and prosecutors and intimidation of defence lawyers through arbitrary arrest, prosecution on vague and overbroad charges, incarceration, and reported torture.¹

Currently, Turkey has imprisoned more lawyers than any other country in the world.² It is reported that since July 2016 more than 1,600 lawyers have been prosecuted, more than 615 remanded to pretrial detention, and more than 450 sentenced to prison.³

Arbitrary dismissal and detention of judges, prosecutors, and lawyers

In the days following the attempted coup of 15 July 2016, thousands of prosecutors and judges were arbitrarily dismissed and hundreds of lawyers were arbitrarily detained.⁴

According to a report to the Office of the United Nations High Commissioner for Human Rights:

“On 19 July [2016], the Deputy-head of the High Council for Judges and Prosecutors reportedly indicated that the prosecutors’ office in Ankara had issued a decision to detain 2,740 judges and prosecutors. By the end of July, the Minister of Interior reported that 1,684 judges and prosecutors had been placed in pre-trial detention.”⁵

Turkey circumvented its international law obligations and its own Constitution in a series of State of Emergency decrees beginning 20 July 2016.⁶ Turkey’s government held a 16 April 2017 referendum facilitating amendment of Turkey’s Constitution to enable the President to appoint the members of the High Council of Judges and Prosecutors (HSK) that controls the makeup of the judiciary.⁷ In May 2017 the government appointed new HSK members; all but one are pro-government. Turkey lifted the State of Emergency on 18 July 2018 but

¹ Arrested Lawyers Initiative, “Extradition to Turkey: One-Way Ticket to Torture and Unfair Trial,” February 2018, <https://arrestedlawyers.files.wordpress.com/2018/02/one-way-ticket-to-torture-unfair-trial1.pdf>.

² Arrested Lawyers Initiative, “Bar Associations of Turkey: Turkey has become the largest prisoner of lawyers,” 24 February 2020, <https://arrestedlawyers.org/2020/02/24/turkey-has-become-the-largest-prisoner-of-lawyers>.

³ Arrested Lawyers Initiative, “Report Update: Mass Prosecution of Lawyers in Turkey (2016-2021),” 18 January 2021, <https://arrestedlawyers.org/2021/01/18/report-update-mass-prosecution-of-lawyers-in-turkey-2016-2021>.

⁴ Office of the United Nations (UN) High Commissioner for Human Rights (OHCHR), “Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, January–December 2017,” March 2018, para. 8, 9, https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf.

⁵ Communication, Mandates of the Special Rapporteur on the independence of judges and lawyers and the Working Group on Arbitrary Detention, OL TUR 5/2017, 23 May 2017, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23138>.

⁶ OHCHR, *supra* note 4.

⁷ Platform for Peace and Justice, “A Comprehensive Report on the Abolition of Rule of Law in Turkey 2018,” <http://www.platformpj.org/wp-content/uploads/non-independence-1.pdf>.

passed legislation on 25 July 2018 to codify emergency decrees laws for another three years,⁸ thus facilitating continued arbitrary dismissal of judges, prosecutors, and others.⁹

Overbroad, vague anti-terrorism legislation

Turkey has ratified most United Nations (UN) human rights treaties including the International Covenant on Civil and Political Rights (ICCPR)¹⁰ and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).¹¹

Turkey deploys overbroad, vague legislation in its Penal Code and the Law to Fight Terrorism, (Act No. 3713), “spreading propaganda for an armed terrorist organization,”¹² in illegitimate prosecutions of defenders. Neither the Penal Code nor the Law to Fight Terrorism define an armed terrorist organization or establish criteria for membership. Absent definitions, Turkey’s anti-terrorism laws are used to criminalize lawful activities including the exercise of internationally protected rights.

Turkey’s anti-terrorism laws violate the customary international law principle of legality, a non-derogable right codified by ICCPR Article 15.¹³ In 2017 the UN Working Group on Arbitrary Detention found that the investigation and prosecution of 10 individuals associated with the Turkish newspaper, Cumhuriyet, under Act No. 3713, for “aiding terrorist organizations, in accordance with the organizational aims of these organizations, without being a member,” violated the principle of legality due to the vagueness of the provision.¹⁴

Many individuals have been charged and convicted solely for having downloaded an application known as “ByLock” to their telephones. Turkey’s National Intelligence Organization (Millî İstihbarat Teşkilatı) issued a report erroneously concluding that ByLock was offered exclusively to members of the terrorist organization FETÖ/PDY. In fact, ByLock was publicly available for download from Google Play and Apple and was in service until 19 February 2016. Thus, individuals have been arrested, charged, and convicted for having downloaded an application that was publicly available and legal at the time it was downloaded. This contravenes the principle of legality codified by ICCPR Article 15 that: “No one shall be held guilty...of any act or omission which did not constitute a criminal offence...at the time when it was committed.”

There are also documented cases of torture and ill-treatment¹⁵ by Turkey’s agents including the police.¹⁶

⁸ Lawyers' Rights Watch Canada et al, “Continued Violation of Non-Derogable Rights After Lifting of State of Emergency.” Joint written Statement to the UN Human Rights Council, A/HRC/39/NGO/68, 18 August 2018, <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/39/NGO/68&Lang=E>.

⁹ Human Rights Watch, “Turkey: Normalizing the State of Emergency,” 20 July 2018, <https://www.hrw.org/news/2018/07/20/turkey-normalizing-state-emergency>.

¹⁰ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

¹¹ UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>.

¹² Law to Fight Terrorism, Act No. 3713 as amended, Article 7(2).

¹³ ICCPR, supra note 10; Also see UN Human Rights Committee (HRC), General Comment No. 29, CCPR/C/21/Rev.1/Add.11, 31 August 2001, para 7, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.11&Lang=en.

¹⁴ HRC, Working Group on Arbitrary Detention, Opinion No. 41/2017, A/HRC/WGAD/2017/41, 26 July 2017, para. 101, <https://www.ohchr.org/EN/Issues/Detention/Pages/Opinions78thSession.asp>.

¹⁵ Violating ICCPR, Article 4(2), and UNCAT.

¹⁶ Human Rights Watch, “Turkey: Police, Watchmen Involved in Torture, Ill-Treatment,” 29 July 2020, <https://www.hrw.org/news/2020/07/29/turkey-police-watchmen-involved-torture-ill-treatment>.

The situation of lawyers in Turkey

Historically Turkey has struggled with the independence of lawyers, but the situation rapidly deteriorated after the 2016 attempted coup. Now lawyers in Turkey are frequently subjected to judicial harassment, including mass arrests, criminal prosecutions, threats, surveillance, and lack of fair trials for their clients and themselves. Many lawyers are arrested for representing clients in politically sensitive cases and speaking about violations of their clients' rights. Some lawyers are charged with the same terrorism-related offences with which their clients are accused. This violates the UN Basic Principles on the Role of Lawyers¹⁷ which states that lawyers shall not be identified with their clients or their clients' causes. In September 2020, 60 lawyers were arrested in such circumstances.¹⁸

In September 2020, UN experts expressed dismay about the "preventable" death of lawyer Ebru Timtik who died while on hunger strike demanding fair trial rights in Turkey.¹⁹ The UN experts' called on Turkey to conduct an effective investigation into Ebru Timtik's death, "establish an accountability process for the victim," and "uphold fair trial principles by reopening the cases of arrested human rights lawyers. The experts emphasized that the government "must also take immediate action to release individuals detained and sentenced contrary to international law."²⁰

Turkey has attempted to subvert the independence of local bar associations by amending the law on lawyers²¹ to permit multiple bar associations. There are concerns that this legislation aims to fragment professional bodies and use information about political affiliation for potential persecution of their members. In June 2020, 78 of 80 Turkish bar associations signed a statement opposing the law.²²

Recommendations

Lawyers' Rights Watch Canada requests the Council to urge that Turkey immediately:

1. Review and repeal or amend all legislation and procedures that unlawfully restrict internationally protected rights and implement all recommendations of UN Treaty Bodies and Special Procedures;
2. Unconditionally release and drop charges against all legal professionals and other defenders who have been arbitrarily arrested, illegitimately charged, subjected to unfair trials, or sentenced under State of Emergency decrees or successor legislation or overbroad anti-terrorism laws;
3. Reinstate all legal professionals arbitrarily dismissed under State of Emergency decrees or successor legislation, and compensate them for loss of earnings and other harms;
4. Ensure the independence of all bodies with decision-making powers to appoint, discipline, or dismiss judges or prosecutors;
5. Put an end to torture and ill-treatment;

¹⁷ UN, Basic Principles on the Role of Lawyers, 7 September 1990, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>. The UN General Assembly welcomed the Basic Principles in Resolution 45/166, 18 December 1990, adopted without a vote.

¹⁸ Lawyers for Lawyers, "Joint letter on arrest of 55 lawyers from Ankara," 17 September 2020, <https://lawyersforlawyers.org/joint-letter-on-arrest-55-lawyers-from-ankara>.

¹⁹ UN Human Rights Council, Turkish human rights lawyer dies after hunger strike, 2 September 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26203&LangID=E>.

²⁰ Ibid.

²¹ Attorneyship Law No. 1136, amended July 2020.

²² Human Rights Watch, "The Reform of Bar Associations in 22. Turkey: Questions and Answers", 7 July 2020, <https://www.hrw.org/news/2020/07/07/reform-bar-associations-turkey-questions-and-answers#>.

6. Accept invitations for visits by Special Rapporteurs on the situation of human rights defenders, independence of judges and lawyers, and on the promotion and protection of human rights and fundamental freedoms while countering terrorism.
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