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

Written statement* submitted by Maat for Peace, Development and Human Rights Association, a non- governmental organization 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.

[03 June 2019]

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Restrictions imposed on freedom of expression in Turkey

Laws are the authorities' tool to restrict freedom of expression

Article (26) of the Turkish Constitution guarantees the right to freedom of opinion and expression and the international obligations, Turkey abides by, provide for that right including the International Covenant on Civil and Political Rights (ICCPR)¹ and the European Convention on Human Rights,² however, Turkey has a long record of restricting and criminalizing the freedom of expression. These restrictions are imposed not only on the traditional media, but also on the internet and social media platforms by issuing the Law No. 5651 on the use of the internet.

According to the International Law,³ any law related to the freedom of opinion and expression shall be worded in a precise manner, not include any restriction on the practice of that right and protect journalists and media personnel from arbitrary interference; based on that, Maat believes that articles 6 and 7 of the Turkish Anti-Terrorism Law⁴ and Articles 215 and 216 of the Turkish Criminal Code⁵ should be amended; because they include general terms that do not protect from arbitrary interference.

Indeed, the majority of the ECtHR's judgments concerning Turkey involve individuals convicted for disseminating propaganda on behalf of a terrorist organization (under Articles 6 and 7 of the Anti-Terrorism Law); publishing content or books or disseminating public messages that incite hatred or hostility, or glorify crime or criminals (Article 312 of the former Criminal Code and Articles 215 and 216 of the current Criminal Code).⁶

On the international judicial side, Maat for Peace, Development, and Human Rights has conducted a statistic clarifies, generally, the extent of the Turkish violations of human rights and, particularly, the right of freedom of opinion and expression as follows:

The European Court of Human Rights, since it was established, has considered 66,251 cases of human rights violations; and Turkey ranks first in the number of cases for one country, representing 16% of all cases against Member States; whereas the percentage represents 10638 cases against Turkey, the European Court found a violation by the State in 7255 cases by 68%.⁷ Regarding the cases of the right of freedom of opinion and expression, Turkey also ranks first in the European Court with 1,300 cases; the Court found a violation of Article 10 (on the right of freedom of opinion and expression) in 1072 cases by 82%.⁸

These repressive practices, following the failed coup attempt in 2016, were multiplied enormously until they reached the dictatorial level and turned Turkey into a police state; whereas the state of emergency allows Mr. Erdogan and his cabinet to issue sweeping decrees without parliamentary oversight or review by the constitutional court, giving him an almost untrammelled grip on power. So far, the decrees have allowed Mr. Erdogan to jail more than 50,000 people accused of plotting a failed coup, fire or suspend more than 140,000 additional

¹ The International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966 UNGA, and in force from 23 March 1976) art 19.

² European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) (ECHR) art 10.

³ The Sunday Times v United Kingdom App No. 6538/74 (ECtHR 26 April 1979). Para. 45; Sürek v Turkey App No. 26682/95 (ECtHR 8 July 1999). Para. 44; Herrera Ulloa v Costa Rica Petition No 107 (IACtHR July 2, 2004). Para. 120; Mukong v. Cameroon communication No. 458/1991, UN DocCCPR/C/51/D/458/1991 (HRC), Para. 9.7.

⁴ LAW ON FIGHT AGAINST TERRORISM OF TURKEY Act Nr. 3713 (1991, as amended: 1995, 1999, 2003, 2006, 2010). Available online at: file:///Users/AbdallahMagdi/Downloads/Turkey_anti_terr_1991_am2010_en.pdf

⁵ Turkish Criminal Code, Law Nr. 5237, Passed On 26.09.2004, (Official Gazette No. 25611 dated 12.10.2004). Available online at: <https://www.wipo.int/edocs/lexdocs/laws/en/tr/tr171en.pdf>

⁶ TURKEY: FREEDOM OF EXPRESSION IN JEOPARDY, by Yaman Akdeniz and Kerem Tabarkak. Available online at: <https://goo.gl/d3gU5n>

⁷ إحصائية لفریق مؤسسة ماعت للسلام والتنمية وحقوق الإنسان، المصدر متوفر على <https://goo.gl/GTUqGs>

⁸ Ibid.

people, block websites, close communication networks, close down civil society organizations and news outlets, and restrict and monitor all social media.⁹

The Violations Committed Against Journalists and Activists

Turkey ranks first worldwide in the imprisonment of journalists,¹⁰ whereas 68 journalists jailed in 2018 in Turkey.¹¹ Human rights reports has stated that “the pursuit of journalists launched by the government of President Recep Tayyip Erdogan against its critics in the media reached its peak since the failed coup of July 2016”.¹² 600 journalists have been pursued from 2011 till 19th March 2019, these reports have documented that 134 journalists were detained, and 77 of them were sentenced to more than 10 years in prison and fine.¹³

The repressive practices practiced by the Turkish authorities have included a lot of writers, academics, critical voices and opposition, The list includes 80 writers, and 19 academics who have been subject to investigation including Ahmet Altan, Ahmet Şık, Aslı Erdoğan, Kadri Gürsel, Murat Belge, Necmiye Alpay, Özgür Mumcu and Hamide Yiğit have published works in Turkey and/or other countries.¹⁴

Under the state of emergency, 200 of media and publishing organizations, including news agencies, newspapers, periodicals, radio, television and distribution companies have been closed. Only 25 of these decrees, later, have been canceled; whereas 175 publishing organizations are since 31st December 2017, still closed.¹⁵

Closing and blocking websites

According to Article 19 of the International Covenant on Civil and Political Rights, the right of freedom of opinion and expression is extended to the Internet; whereas no restrictions shall be imposed on web sites, blogs or other information dissemination platforms on the Internet, electronic means or any other mean.¹⁶

The Turkish authorities violates all of its international obligations; whereas the restrictions imposed on the Internet in Turkey has reached a dictatorial level. After the outbreak of protests because of the dismissal of 28 mayors in the Kurdish southeast, the Turkish authorities has imposed restrictions on the Internet access of about 12 million of inhabitants of the region.¹⁷ In addition, the Turkish courts have blocked 17 websites including Medyascope, Yarına Bakış, Yeni Hayat Gazetesi, Can Erzincan TV, Gazeteport, Haberdar and 24 Karşı Gazete and dokuz8habe during the coverage of the incidences.¹⁸

Regarding social media, the situation is more dangerous; whereas Twitter, Facebook and YouTube are regularly blocked after a terrorist attack. Also Wikipedia has been blocked

⁹ Patrick Kingsley, "Erdogan Says He Will Extend His Sweeping Rule Over Turkey," New York Times, May 21, 2017, https://www.nytimes.com/2017/05/21/world/europe/turkey-Erdogan-state-of-emergency.html?_r=0. See also, Turkey Purge, <https://turkeypurge.com/>.

¹⁰ The Spectator Index, March 9, 2019. Available online at: <https://goo.gl/pwt3Xh>

¹¹ Hundreds of journalists jailed globally becomes the new normal, December 13, 2018. Available online at: <https://goo.gl/mDm27x>

¹² Massive purge, rsf. Available online at: <https://rsf.org/en/turkey>

¹³ “Freedom of the Press in Turkey: Far Worse Than You Think”, March 14, 2019. Available online at: <https://stockholmcf.org/updated-list/>

¹⁴ TURKEY: FREEDOM OF EXPRESSION IN JEOPARDY, by Yaman Akdeniz and Kerem Tabarkak. Available online at: <https://goo.gl/d3gU5n>

¹⁵ See, IHOP, Status Report on the State of Emergency (31 December 2017). http://www.ihop.org.tr/wp-content/uploads/2018/01/OHALdurumraporu_31122017.pdf.

¹⁶ See, CCPR/C/GC/34, Para. 39

¹⁷ Bilge Yesil and Efe Kerem Sozeri, “Turkey’s Internet Policy after the Coup Attempt,” June 28, 2016. Available online at: http://globalnetpolicy.org/wp-content/uploads/2017/02/Turkey1_v6-1.pdf

¹⁸ “Arrested for “praising the coup”?,” IFEX, July 25, 2016. Available online at: https://www.ifex.org/turkey/2016/07/25/coup_aftermath/

permanently for publishing articles about Turkey's involvement in the Syrian war.¹⁹ On 19th December 2016, Twitter, Facebook, WhatsApp and YouTube were blocked for more than 10 hours after the assassination of the Russian Ambassador Andrei Karlov.²⁰ And a Turkish judge, later on, has ordered the banning of more than 100 URLs related to the assassination²¹ including Netherlands Broadcasting Corporation website (NOS).²²

The Turkish authorities have suppressed the independent reports and new shar in social media; whereas 65% of the total locally suppressed content by a government on Twitter worldwide is by the Turkish authorities.²³

RedHack has hacked more than 57,000 e-mail messages of Berat Albayrak, Erdogan son-in-law, revealing a huge governmental complain aims to manipulate social media, distort prominent opposition figures, weaken the position of the opposition, and suppress the electronic opposition.²⁴

The emails sent to Berat Albayrak have discussed, according to a report published by The Daily Dot, “to set up a team of professional graphic designers, coders, and former army officials who received training in psychological warfare.” Another mail has suggested to detect drug abuse habits for some celebrities who joined the resistance at the Gezi Park or expressed support for the protests; and narcotics police raided houses of 55 celebrities, movie stars, and directors. Pro-government newspapers spread their photos widely on social media. An angry mob led by a member of the Justice and Development Party, using social media, has attacked Hürriyet’s headquarters for criticizing President Erdogan’s security policy.²⁵

Regarding artificial intelligence and application, Tens of thousands of Turkish citizens were arbitrarily detained in November 2017 merely because the authorities claimed their use of the coded communications application Bylock.²⁶

Ten activists, month later, including İdil Eser, Gönel Korshon, Uzm Dalkiran, Fili Aku, Elekenor Austin, Nalan Erkim, their German coach Peter Staudner and a Swedish citizen named Ali Garvey have been arrested in a pre-trial detention. Also, Najat Tassanour and Sehimis Ozbikli have been arrested and, later on, released on bai.²⁷

Censorship of the Internet

The International Law states that “no one who provides Internet services such as access, search, transfer or store data should be liable for content on the Internet of which they are not the author, unless they have either adopted that content as their own or refused to obey a court order to remove that content.”²⁸

¹⁹ Efe Kerem Sozeri, “Turkey Blocks News Sites, Twitter, Facebook After Deadly Attack,” June 28, 2016 <http://www.vocativ.com/334890/turkey-blocks-news-sites-twitter-facebook-after-deadly-attack/>

²⁰ “Turkey blocks access to Facebook, Twitter and WhatsApp following ambassador’s assassination,” The Telegraph, December 20, 2016, <https://goo.gl/8L219v>

²¹ Ankara First Judgeship of Peace decision dated December 20, 2016, <https://goo.gl/Bbsgw4>

²² Turkey Blocks, “News site of Dutch Broadcast Foundation NOS blocked in Turkey,” December 21, 2016. <https://goo.gl/pTueX2>

²³ Twitter, “Turkey,” Transparency Report. <https://goo.gl/J5hggb>

²⁴ Efe Kerem Sozeri, “RedHack leaks reveal the rise of Turkey’s pro-government Twitter trolls,” The Daily Dot, September 30, 2016. <https://goo.gl/fWtj6m>

²⁵ Efe Kerem Sozeri, “RedHack leaks reveal the rise of Turkey’s pro-government Twitter trolls,” The Daily Dot, September 30, 2016. <https://goo.gl/xaXg7j>

²⁶ Owen Bowcott, “Turks detained for using encrypted app ‘had human rights breached’,” The Guardian, September 11, 2017. <https://goo.gl/NZ4pbX>

²⁷ “Eyes of the world on Turkey as show trial of human rights activists begins,” Amnesty International, October 25, 2017, <https://goo.gl/6saBRf>

²⁸ The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on

However, the Law No. 5651 has been amended to impose more censorship,²⁹ whereas it provides that every Internet service provider shall join the Association of Access Providers in order to obtain an "Activity Certificate" to work legally in the country. Also, every Internet service provider shall obey BTK orders of banning in a period of no more than 4 hours; otherwise a fine up to 300,000 TL (US \$ 80,000) shall be paid. Also, an extra fine of 50,000 TL (US \$ 13,000) shall be paid in case of not taking procedures that prevent alternative means to access a target website such as the agents' websites.³⁰

Recommendations

- To amend the Turkish law and its broad terms that do not protect against arbitrary interference, in particular Articles 6 and 7 of the Turkish Anti-Terrorism Law, and Articles 215 and 216 of the Turkish Criminal Code.
- To release all journalists and activists detained arbitrarily, and to immediately stop the harassment practiced against journalists and activists by the Turkish government.
- To amend laws on Internet monitoring, stop negative practices by the Turkish government to discredit opponents, and give space for Turkish citizens to express their opinions on social media platforms.
- To stop punishing activists for content they have not created, and to amend the laws on the penalty of Internet and search services providers.

Freedom of Expression and Access to Information, Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda (3 March 2017) FOM.GAL/3/17, Para. 1(d).

²⁹ World Intellectual Property Organization, "Law No.5651 on Regulating Broadcasting in the Internet and Fighting Against Crimes Committed through Internet Broadcasting," May 4, 2007. <https://wipolex.wipo.int/en/legislation/details/11035>

³⁰ For further information on this section, see Representative on Freedom of the Media, "Briefing on Proposed Amendments to Law No. 5651," Organization for Security and Co-operation in Europe, January 2014, <http://bit.ly/1X3Z4az>; Center for Internet and Society, Stanford Law School, "WILMAP: Turkey," accessed November 6, 2014, <http://stanford.io/1YcN8EX>