

JULY 2019

Submission to the Universal Periodic Review on Turkey

Turkey has been experiencing a deepening human rights crisis in the country over the past four years with a dramatic erosion of its rule of law and democracy framework. In this context, Turkey has not progressed with implementing recommendations accepted in the previous Universal Periodic Reviews (UPR).

Turkey's presidential system of government, agreed in a 2017 referendum, lacks sufficient checks and balances against abuse of executive power, greatly diminishes the powers of parliament and consolidates presidential control over most judicial appointments. President Erdogan was re-elected president in June 2018 and his Justice and Development Party (AKP) retains control of parliament through a coalition.

The 2017 referendum and the June 2018 election campaign both took place under a state of emergency imposed after the July 2016 attempted military coup and in a climate of heavy media censorship and repression of perceived government opponents and critics that persists at the time of writing. Many journalists as well as former parliamentarians remain jailed.

Freedom of Expression, Association, and Assembly

Despite accepting a recommendation during its 2015 UPR to “guarantee the right to freedom of expression, online and offline, to fully ensure that journalists can pursue their profession without harassment and fear of reprisals, and review its legislation to bring it in line with international human rights standards”, Turkey remains the world leader in jailing journalists. An estimated 142 journalists and media workers are in pretrial detention or serving sentences for terrorism offenses at time of writing. Hundreds more are on trial but at liberty. Most media lack independence and promote the government's political line.

Courts consistently convict journalists in politically motivated trials based on evidence consisting of little more than their legitimate writing and reporting, which does not advocate violence alongside unsupported allegations of connections to terrorist organizations or the 2016 coup attempt.

In July 2019, the top court of appeal overturned life sentences without parole that had been imposed on writers Ahmet Altan, Mehmet Altan and Nazlı Ilıcak, on coup-related charges. However, Ahmet Altan and Nazlı Ilıcak remain jailed at the time of writing and pending their retrial. Six journalists and executives from the daily *Cumhuriyet*

newspaper, who were convicted on terrorism charges are currently in prison serving sentences while six other journalists are currently appealing their sentences. Convictions in 2018 of six journalists and columnists from the shuttered *Zaman* newspaper for terrorist organization membership were upheld in the lower court of appeal and are now pending appeal before the top court. Journalists Mustafa Ünal and Mümtazer Türköne are among those convicted and are in prison pending appeal.

Journalists working for Kurdish media in Turkey continue to be arrested, jailed and prosecuted, a form of serious harassment that obstructs critical reporting from the southeast of the country. Nedim Turfent, a reporter with the now closed DIHA news agency, received an eight-year-nine-month prison sentence on charges of being a member of a terrorist organization. The case is on appeal. Turfent has been in prison since May 2016.

The authorities continue to block of websites and order the removal of online content while thousands of people in Turkey face criminal investigations and prosecutions for their social media posts. There has been a dramatic rise in the number of prosecutions and convictions of people on charges of “insulting the president” since President Erdogan’s first election as president in 2014. Wikipedia remains blocked in Turkey.

Opposition politicians, trade unionists, lawyers and people the Erdogan government views as critics and opponents from across the political spectrum are liable to arbitrary prosecution for exercising their right to peaceful expression of dissenting opinion.

In 2018 there was an increase in arbitrary bans on public assemblies, particularly evident after the end of emergency rule in July when governors assumed greater powers to restrict assemblies.

In August 2018, the Interior Minister banned the long-running peaceful weekly vigil at a central location in Istanbul by the Saturday Mothers, relatives of victims of enforced disappearances seeking accountability. In September 2018, police detained hundreds of construction workers who protested poor work and living conditions on the building site of the third airport in Istanbul. Courts ordered 37 people, including trade union officials, to pretrial detention. All were released at their first trial hearing in December 2018 in which 61 workers were accused of multiple offenses such as staging an unauthorized protest and resisting dispersal. Their trial continues.

Recommendations

- End the arbitrary and prolonged detention of journalists and writers, and prosecutions which target them on the basis of their writings and the media they work for rather than credible evidence that they have committed criminal activities;

- End arbitrary and disproportionate restrictions on the right to peaceful assembly, including for workers protesting against work conditions and against restrictions on the right to association;
- Conduct a review of all articles of the Turkish Penal Code, the Anti-Terror Law, the Law on the National Intelligence Agency and other laws that are used to restrict the rights to freedom of expression, association, and assembly, and the right to access information, and amend or repeal restrictive provisions.

Human Rights Defenders

The past three years have seen a pattern of harassment of human rights defenders and civic activists.

Amnesty International Turkey's honorary chair Taner Kılıç spent over 13 months in pretrial detention after being detained on suspicion of being a member of terrorist organization. He remains on trial on bogus terrorism membership charges, together with eight other prominent defenders from Turkey and two foreign nationals working on human rights arrested in July 2017 and later bailed.

Osman Kavala, a businessman and well-known figure in civil society in Turkey, has been held in pretrial detention since November 2017. In June 2019, Kavala and 15 others stood trial on charges of attempting to overthrow the government, accused without any credible evidence of organizing and financing the 2013 Gezi Park mass protests which began in Istanbul and spread throughout Turkey.

A related media smear campaign, and public comments by Turkey's president, also targeted US-based philanthropist George Soros. Soros's Open Society Foundation announced in November 2018 that it would dissolve its Turkish foundation and cease operations in the country.

Amidst an increasingly restrictive environment for all forms of public assembly and protest, in November 2017 and throughout 2018 the Ankara governor imposed a ban on all public events by lesbian, gay, bisexual and transgender (LGBT) rights groups. In 2019 the blanket ban in Ankara was replaced by a series of individual bans on LGBT events in the city. The annual Pride march in June 2019 was banned in Istanbul for the fifth year running and similar bans were imposed on Pride marches in other cities. The Turkish authorities are showing an increasingly repressive approach to the peaceful activities of LGBT groups.

Recommendations

- End the harassment and targeting of human rights defenders and civic activists through arbitrary detention, prosecution, restriction of legitimate peaceful activities and forced closure of associations and foundations;
- Enact comprehensive anti-discrimination legislation, including a prohibition on

discrimination on grounds of ethnicity, sexual orientation and gender identity.

Torture and Ill-treatment in Custody, abductions

In 2015, Turkey accepted all but one of the nine recommendations it received to put an end to torture and ill-treatment in the country and combat impunity. However, a rise in allegations of torture, ill-treatment and cruel and inhuman or degrading treatment in police custody and prison over the past four years has set back Turkey's earlier progress in this area. Those targeted include Kurds, leftists and alleged followers of Fethullah Gulen whom the government accuses of masterminding the July 2016 coup attempt. Most striking is the lack of any meaningful investigation into such allegations and a pervasive culture of impunity for members of the security forces and public officials implicated. Following the July 2016 coup attempt, the UN Special Rapporteur on Torture undertook a December 2016 visit to Turkey and issued a report and a follow-up statement in February 2018 expressing "serious concerns about the rising allegations of torture and other ill-treatment in Turkish police custody since the end of his official visit to the country in December 2016". The European Committee for the Prevention of Torture has also conducted two visits to Turkey since the coup attempt though the Turkish government has not given permission for reports from either visit to be published.

There have been no effective investigations into at least two dozen abductions that occurred in 2017 and again in early 2019 of men mostly under investigation for Gulenist links. Many have been abducted from the streets of cities including Ankara. The authorities have not conducted effective probes into the cases despite the availability of security camera footage and eye-witness testimonies stating that the men were detained by individuals claiming to be state agents. Human Rights Watch believes there is credible evidence that these men were abducted and held at undisclosed places of detention in circumstances that amount to enforced disappearance.

The Turkish authorities continued to seek the extradition from countries around the world of alleged supporters of Fethullah Gülen. Without adhering to legal due process, security services in countries including Kosovo and Moldova have cooperated with Turkish agents over the past three years to apprehend and transfer Turkish citizens to Turkey where they are detained and prosecuted. One man forcibly returned to Turkey from Kazakhstan in July 2018 lodged a formal complaint that on arrival in Ankara he was immediately hooded, handcuffed and transferred to an unknown place of detention near the airport where he was interrogated and tortured for 108 days before being jailed. There has been no investigation into the allegation.

Recommendations

- In line with obligations under the Optional Protocol to the UN Convention against Torture (OPCAT) and the Paris Principles, revise the law on Turkey's Human Rights and Equality Institution to ensure that it is a fully independent, resourced,

- empowered and publicly accountable body, over which the Presidency and the executive do not have influence or power to appoint those who run it; and that it is capable of acting as a national preventive mechanism for monitoring places of detention and investigating all other allegations of human rights violations and reporting its findings regularly and transparently;
- Establish an effective independent mechanism (either within a revised and independent version of Turkey's Ombudsman Institution or separately) to carry out prompt, impartial, and thorough investigations into allegations of misconduct by members of the security forces that are capable of leading to the prosecution of offenders and holding senior officers responsible for the conduct of junior officers;
 - Ensure that effective and thorough criminal investigations and trial hearings of law enforcement officials take place promptly, and repeal statutes of limitation for violations of the right to life by state actors.

Ratification of the Rome Statute

Regarding ratification of the Rome Statute, the Turkish government should be urged to:

- Ratify the Rome Statute and implement the statute in national legislation, including by incorporating provisions to cooperate promptly and fully with the International Criminal Court and to investigate and prosecute genocide, crimes against humanity and war crimes before its national courts in accordance with international law.

Erosion of the rule of law, abusive prosecutions, politicized trials

Turkey's rejected the recommendation made during its 2015 UPR to "Amend or revoke legislation, such as the "Anti-Terror Law" and the "Law on Meetings and Demonstrations", ensuring their provisions cannot be misused". Consequently, terrorism charges continue to be very widely used in Turkey against people the authorities view as critics and opponents. Those prosecuted and convicted include journalists, civil servants, teachers, academics, trade unionists and politicians as well as police officers and military personnel. Many terrorism trials in Turkey lack compelling evidence of criminal activity or acts that would reasonably be deemed terrorism, and the practice of holding individuals charged with terrorism offenses in prolonged pretrial detention raised concerns its use has become a form of summary punishment.

Human rights lawyers are among over 1,500 lawyers on trial on terrorism charges at time of writing. Their cases underscore the dramatic erosion of defendants' rights and due process in Turkey. In March 2019 an Istanbul court convicted 18 lawyers to sentences ranging up to 18 years nine months for links with or membership of an armed leftist group, mainly on the basis of their work as lawyers who defended individuals charged with the same offense. Their case is on appeal.

Distinct from the trials against individuals mentioned above are the ongoing trials of military personnel and others for involvement in the July 2016 attempted coup in which 250 people died. As of June 2019, 3,239 defendants had been convicted in 261 trials, with 28 trials continuing, according to media reports. While the government has a duty and obligation to bring perpetrators of the violent events of July 15 to justice, allegations of torture and violations of fair trial have deeply marred the process.

Recommendations

- End the misuse of terrorism charges against individuals for whom there is no evidence of violent activities, incitement to violence, plotting or logistical help to armed groups;
- Limit the use of pretrial detention to cases where there are compelling and credible grounds to hold people in detention pending trial and implement European Court of Human Rights decisions which have repeatedly found violations of the right to liberty and fair trial;
- Strengthen the independence of judges and prosecutors from the executive, including by removing political influence over the Board of Judges and Prosecutors;
- End executive interference in the criminal justice system and in criminal investigations and ensure that public officials can be held accountable for human rights abuses and corruption.

Kurdish Conflict and Crackdown on Opposition

With the 2015 breakdown of a peace process to end the decades' long conflict between the Turkish state and the armed Kurdistan Workers' Party (PKK/KCK) in southeast Turkey, armed clashes resumed.

The government has continued to adopt repressive measures against elected parliamentarians, mayors and municipalities from pro-Kurdish parties, notably the Peoples' Democratic Party (HDP) which obtained 67 parliamentary seats (11.9 percent of the vote) in the June 2018 general election. Nine former HDP parliamentarians remain in prolonged pretrial detention or convicted on politically motivated terrorism charges. Among them is former party co-leader and presidential candidate Selahattin Demirtaş. Turkey has failed to implement a November 2018 European Court of Human Rights decision calling for Demirtaş's release on the grounds that Turkey's repeated prolonging of the pre-trial detention violated his rights and had the "ulterior purpose of stifling pluralism and limiting freedom of political debate, which is at the very core of the concept of a democratic society."

Recommendations

- Withdraw its reservation to article 27 of the ICCPR on minority rights. Ratify the Council of Europe Framework Convention for the Protection of National Minorities and other international instruments relating to minority rights, and ensure that they are fully enforced;
- Enact comprehensive anti-discrimination legislation, including a prohibition on

discrimination on grounds of ethnicity, sexual orientation and gender identity.

Women's Rights

Following its July 2016 review of Turkey, the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) made many recommendations to the government to address gender inequality and remove obstacles for women and girls to access education, employment, justice, and reproductive health. It noted particular obstacles for Kurdish women and women and girl refugees and asylum seekers. The Committee called on the authorities to ensure full access in state hospitals to legal abortion services which many currently do not offer. It also noted concerns about changes to the ministry responsible for women, and the increasing emphasis on women's role in the family rather than women's rights and gender equality.

Despite the Turkish government's ratification of the Council of Europe Convention on Violence against Women and Domestic Violence (Istanbul Convention), and Turkey's acceptance of over a dozen recommendations to strengthen legislation to protect women against violence, violence against women remains a serious concern, including deaths due to domestic violence and so-called "honor" killings.

Recommendations

- Take concrete and comprehensive steps to ensure effective implementation of the Council of Europe Convention against Domestic Violence and Violence against Women;
- Implement the recommendations of the UN CEDAW committee.

Refugees and Migrants

Turkey continues to host the world's largest number of refugees, around 3.5 million from Syria. Turkey also hosts refugees and asylum seekers from Afghanistan, Iraq and other countries. A migration deal with the EU which offers aid in exchange for preventing onward migration to the EU has contributed to Turkey's long-standing policy of closing the Syrian border. Border guards have intercepted and deported thousands of newly arrived Syrians over the past few years and sometimes shot and killed those trying to cross. Since November 2017 ten provinces have suspended registration of Syrian asylum seekers who manage to enter Turkey. There remains high rates of child labor and large numbers of child refugees and asylum seekers not attending school. In September 2018, Turkey assumed full responsibility for deciding refugee claims but maintains a geographical limitation to the 1951 Refugee Convention. This means the authorities do not grant full refugee status and related rights to non-European nationals found to need protection.

Recommendations

- Turkey should immediately re-open its border with Syria to asylum seekers and swiftly register them for its temporary protection scheme;

- Turkey should lift its geographical limitation to the UN Refugee Convention.