

Submission to the United Nations High Commissioner for Human Rights (OHCHR), Special Rapporteur on the Rights to Freedom of Peaceful Assembly, and of Association for his report to be presented at the 47th session of the Human Rights Council

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1. What has the Government in your country done to ensure the right to an effective remedy, access to justice, and accountability for violations and abuses of the rights to freedom of peaceful assembly and association (FoAA), both in law and in practice? Please specify instances of the impact that the lack of effective remedy and accountability has had in the closure of civic space and the impact that effective remedy and accountability have had on the opening of civic space and the broader enjoyment of FoAA.

- Freedom of peaceful assembly has been under heavy pressure in Turkey since the failed coup attempt in July 2016. Besides the termination of the state of emergency (OHAL) declared from the 21st of July 2016 to the 18th of July 2018, and the normalization calls from NGOs and opposition political parties this pressure still rises in Turkey. During the two years of the state of emergency, the right to freedom of peaceful assembly and association have been severely violated by the discourse of the Government. Taking advantage of the state of emergency, the regime has revealed an attitude against the failed coup attempt by enacting temporary laws and regulations under vague terms and expressions. A total of 597 783 individuals were dealt with on suspicion of being terrorists where 94 975 of them imprisoned. 2671 institutions were shut down, including state institutions. 125 678 public servants were dismissed from their jobs.¹ While there were many doubts about how the coup attempt was and whether it was indeed a coup attempt, the Government has criminated Mr. Gülen and his sympathizers responsible for

¹ <https://assedel.org/balance-of-ohal-assedel/>

the attempt. Turkish Government has not taken any initiative for an international investigation, as Mr. Gülen has proposed, and preferred to blame Gülen and his sympathizers with ambiguous expressions and vague terms. Under OHAL conditions, people have feared to 'become a terrorist' and the Government has benefited from this state of fear. Fear has been a beneficial tool to enhance power, suppress any criticism, and silence the opposition political parties and NGOs.

- The most recent example of the attempt to limit to freedom of peaceful assembly and association is the 31st of December 2020, dated "KİTLE İMHA SİLAHLARININ YAYILMASININ FİNANSMANININ. ÖNLENMESİNE İLİŞKİN KANUN" (BILL ON PREVENTING THE FINANCING OF THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION)². This law contains the new standards against the financing of the proliferation of weapons of mass destruction that The Financial Action Task Force (FATF) issued in October.³ However, the Government also included new regulations to control the NGOs among the new FATF regulations in the form of a bag bill. These regulations allow the president to freeze the assets of NGOs based on "reasonable doubt.". Reasonable doubt does not have a definition of written law; therefore, it is hard to defend against it. With the same bag bill, the board members of NGO's can be removed by the president if they have an investigation going on. In Turkey's context, prosecutors often start investigations against the people who use their freedom of speech and freedom of assembly and association. Therefore, it gives ground for the Government to suppress NGOs that can peacefully use their rights. Further, the Government is now able to inspect NGOs annually, which could take months and limit NGOs' capacity. In total, 694 NGO's supported the "Sivil Toplum Susturulamaz" (Civil Society Cannot Be Silenced) campaign⁴ against the bag bill. Three political parties in the parliament opposed the bill with the arguments of "against the constitution" (CHP), "sign of the oppressive regime" (HDP), and "insincere" by İYİ Parti⁵. Despite all efforts, the bag bill entered into force on the last day of 2020.

² <https://www.resmigazete.gov.tr/eskiler/2020/12/20201231M5-19.htm>

³ <https://www.whitecase.com/publications/alert/new-standards-against-the-financing-proliferation-weapons-mass-destruction>

⁴ <https://demos.org.tr/kitle-imha-kanunu-karsisinda-baris-orgutleri-ne-dusunuyor/>

⁵ <https://www.dw.com/tr/520-stkdan-yeni-yasa-teklifine-kar%C5%9F%C4%B1-ortak-bildiri/a-56052504>

2. Some groups face particular obstacles to their rights to FoAA and are at even greater risk of violations of such rights due to intersecting forms of discrimination (including but not exhaustively women and girls, persons with disabilities, indigenous groups, LGBT persons, children, etc.) How has this translated into further gaps in access to justice and accountability? What are their specific situations, views and needs to ensure that these groups have access to justice and accountability?

- There is no doubt that the most intensive harm regarding the violation of personal rights and freedoms stem from torture. Nils Melzer, the UN special rapporteur on torture, stated that the allegations of torture and ill-treatment have gone up in police custody. It is fair to say that the most pressurized and vulnerable groups are the ones that are accused to be terrorists. This narration of terrorism is often used to justify the ill-treatment of state organs. In the recent example of two Kurdish peasants tortured and thrown out of the helicopter on the 11th of September by Turkish soldiers, Süleyman Soyulu, Minister of the Interior, has attempted to justify the torture and the throwing of the helicopter. One of the peasants, Osman Şiban, was seriously injured, and the other Servet Turgut lost his life.⁶ They are accused of being members of PKK. In another example, A. G. has been kidnapped by MIT (National Intelligence Service), has been tortured intensively for 20 days to extract information because he was thought to be a ‘high-rank’ Gülen sympathizer.
- However, in the recent examples, we observe that more and more different groups who have exercised their freedom of association and assembly rights were labeled as terrorists and exposed to ill-treatment and torture. Between 4-5 January 2021, at least 45 students of Boğaziçi (Bosphorus) University who have exercised their right to protest the appointed rector interned with excessive force. Some students have claimed that they had been harassed and tortured, some LGBTQ+ students have reported that they have been threatened by rape and verbally harassed. No investigation has been conducted to date.
- The problem with this form of treatment is that they are state-sponsored.⁷ The police officers are often getaway, and authorities avoid addressing the ill-treatment. In the recent example of stripped search against 30 female students accused of being terrorists due to their alleged relationship with the Gülen Movement in the city of Uşak, the government party, group deputy chairman Özlem Zengin, has denied the inhumane treatments, despite

⁶ <https://assedel.org/state-sponsored-torture-in-turkey/>

⁷ <https://assedel.org/state-sponsored-torture-in-turkey/>

the numerous victim statements. Furthermore, the opposition parliamentarian and human rights activist Ömer Faruk Gergerlioğlu has brought these cases to the National Assembly's agenda and was accused of terrorizing the assembly.⁸ Even political parties do not enjoy their freedom of assembly and association under the current regime. On the 15th of January 2021 vice president of Gelecek Partisi has been beaten in front of his house until his face was left in the blood. The Minister of Interior, Mr. Süleyman Soylu, has justified the assault by commenting on a 'reactional assault.' As explained in these examples, the discourse that the ruling parties created makes it inaccessible for any kind of opposing group to use their freedom of assembly and association. In some cases, the state itself is the perpetrator who protects the perpetrators and encourages them. The problem of access to freedom of assembly and association is very structural. Even in the constitution, it is protected, during the post-state of the emergency era, it is still very limited in practice.

3. How do you think the work of the Special Rapporteur can contribute to greater accountability for violations of the rights to FoAA, and how can he concretely contribute to ensuring effective access to justice of persons exercising these fundamental freedoms?

- Even though non-governmental organizations are independent of their nature, their efforts should be recognized internationally. It is proven that if international and public pressure is present, the Government is more hesitant to act.
- Special Rapporteur must acknowledge the toxic discourse created by the Government to suppress any opposition. Mainly, Turkey's claims of terrorism and national security concerns should be disregarded as this discourse justifies the oppressive regime to keep their pressure. Turkey is not a country that has problems with its national security.

4. a) Can you name measures and policies taken by a State or the UN that you think have been especially effective to ensure access to justice and accountability in the context of FoAA? Do you have any examples of good practices or strategies put forward by civil society to overcome the restrictions that individuals and organizations face in trying to access justice and accountability for violations of their rights to FoAA?

⁸ <https://artigercek.com/haberler/ciplak-arama-iktidar-utanmazligi>

b) Can you share an inspiring story of how legal practitioners contributed to the enjoyment of someone's right to FoAA or the access to justice and accountability of someone exercising their right to FoAA?

In your opinion, which measures and policies would have to be adopted to remove existing obstacles in access to justice and accountability for violations of the right to freedom of peaceful assembly? For example, how could protection of this in the context of law enforcement be increased, specifically regarding deprivation of liberty and use of force? Please specify if such measures exist in law but are not being applied.

In your opinion, which measures could be taken to help legal practitioners to be able to better support you or those exercising their right to freedom of peaceful assembly? - In the context of exercising your freedom of assembly (for example, as a protester or as an organizer) have you sought the services of lawyers before, during, or after assemblies?

- o If the answer is no, please provide details regarding the reasons (for example possible barriers in legislation or economic reasons).*
- o If the answer is yes, please provide details if you sought such services to be able to exercise your rights, or as a consequence of exercising such rights (for example, to notify authorities of a protestor in case of arrest during a protest).*

- The 1982 Constitution has granted freedom of assembly, Article 34 "everybody has the right to assembly and protest unarmed and peacefully, without any prior permission." This article grants more extensive rights than European Convention on Human Rights, which is binding on Turkey.⁹ However, the Constitutional Court does limit the scope of the right to FoAA. If the requirements of "lawful" stand, "legitimate aim," "essentials of a democratic society," and "proportionality" principles are applied, then the FoAA can be limited. Even though the precedents on that matter help ensure the application of right and aims proportionality, in practice, the application of the right is limited. Even the structure of the Constitutional Court has been politically debated.¹⁰ In the status quo, 13 of 15 members of the Constitutional Court have been directly or indirectly appointed by the president, who already makes it a highly politicized institution without any structural change anyway. With the president's absolute power and lack of constitutional review,

⁹ <https://anayasa.gov.tr/media/4436/4.pdf>

¹⁰ <https://www.boldmedya.com/2020/10/16/mhp-anayasa-mahkemesi-icin-dugmeye-basti-3-hedef-var/>

both in legislation and execution, the rights do not necessarily have their shield function against state violence for the people.

5. Are there existing barriers, in law and in practice, for lawyers to be able to protect those exercising their right to freedom of peaceful assembly in your country? Are lawyers able to participate in peaceful assemblies as monitors? If the answer is yes, are they being targeted for their work? Please provide details.

- Since the July 2016 coup attempt, Turkey has faced mass arrests and trials on terrorism allegations where lawyers have had a critical role in protecting the rights of their accused clients in police custody and defendants in court. They were the ones who were defending the rule of law and human rights. However, authorities have targeted these lawyers for doing their jobs. "A civic group, the Arrested Lawyers Initiative, reported in April 2019 that 1,546 lawyers had been prosecuted, with 274 among them have convicted in first-instance courts of membership of a terrorist organization, and 598 having been held in pretrial detention for varying periods."¹¹ Due to excessive pressure on lawyers, many terror defendants could not find lawyers because of the lawyers' workload and the fear of detaining. "Lawyers can find themselves barred from acting for a client-facing a terrorism investigation for up to two years if they are under investigation for terrorism, and courts can restrict named lawyers from accessing investigation files of individuals in police custody on suspicion of terrorism offenses."¹² Many of the lawyers whose clients are under terror investigations have become less effective due to the ignorance of the authorities on basic principles such as equality of arms and presumption of innocence. Courts even do not respond to their petitions. 'Besides, under the state of emergency, the Government closed down many lawyer organizations that were focusing on human rights cases and supporting the rights of defendants in terrorism cases, namely the Contemporary Lawyers Association, the Free Lawyers Association, and the Mesopotamian Lawyers Association. Scores of other lawyers' associations, such as the

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<https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey#>

¹²

<https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey#>

Ankara-based Law and Life Association (Hukuk ve Hayat Derneği), were closed under the first state of the emergency decree in July 2016 accused of having Gülenist affiliations."¹³ The problem is that no law can help the defendants, protect their fundamental rights, and their targeted lawyers who are supposed to invoke the rights for people to ensure justice. The importance of lawyers in criminal procedure is self-evident. However, the criminalization of the lawyers causes the defendants more vulnerable.

6. In your opinion, which measures, and policies would have to be adopted to remove existing obstacles in access to justice and accountability for violations of the right to freedom of association? In particular, to increase protection in the context of appealing and reviewing decisions or inaction by the authorities or any requirements laid down in legislation, with respect to their registration, charter requirements, activities, prohibition and dissolution or penalties.

- In Turkey, the problem seems to be a structural one. The laws currently are not ensuring fundamental human rights. The courts do not proceed with just procedures. The defendants do not have access to qualified legal support. The lawyers are not protected by law. The Government abuses its power to consolidate its people. Ill-treatment is not prohibited or monitored, but encouraged. The NGOs are under the surveillance of the Government. The ones who want to invoke their fundamental rights are targeted and labeled as terrorists. Even political parties are criminalized and left to make politics in a restricted discourse. The fear of criminalization and assault is present and real. Freedom of assembly and association can be easily related to terrorism.
- The solution to the problem can only be achieved if the targeted people stand to invoke their rights. However, in a country dominated by fear, people who want to seek their rights should be encouraged. The support of international authorities such as the United Nations and the European Union can make this encouragement possible. Unless intervened, a regime with its illegal practices may have the opportunity to gain strength.

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¹³ Idib.