

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 40/16, 41/12 and 43/16.

In this connection, we express our serious concern with **Law No. 7262 on Preventing Financing of Proliferation of Weapons of Mass Destruction**, which was adopted on 27 December 2020 and entered into force on 31 December 2020, in view of its conformity with Turkey's obligations under international law, in particular those contained in the International Covenant on Civil and Political Rights (ICCPR), ratified by Turkey on 23 September 2003. We are particularly concerned about possible restrictions on freedom of association, on the activities of human rights defenders and the activities of the civil society in general.

We recommend review and reconsideration of certain aspects of this legislation to ensure its compliance with the Turkish' international human rights obligations. We note that best international practice encourages States to independently review counter-terrorism and emergency law regularly so as to ensure that it remains necessary and international law compliant.

I. Context

The financing of terrorism has long been a concern for States evidenced by negotiation and agreement on the 1999 International Convention for the Suppression of the Financing of Terrorism which was designed to criminalize acts of financing terrorism.¹ In parallel, a number of Security Council resolutions expressly call for the criminalization of terrorism financing from references included in the landmark UNSC Resolution 1373 to the more recent UNSC Resolution 2462, which is the first comprehensive resolution addressing the prevention and suppression of terrorism financing. That resolution also reaffirms that Member States must ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law.²

¹ 189 States are parties to the Convention, including Turkey who ratified it on 28 June 2002. We highlight specifically that, in Resolution 2462, the Security Council “[demanded] that Member States ensure that all measures taken to counter terrorism, including measures taken to counter the financing of terrorism as provided for in this resolution, comply with their obligations under international law, including international humanitarian law, international human rights law and international refugee law”; and paragraph 23 of the Resolution on non-profit organizations.

In parallel, the Financial Action Task Force (FATF) has set forth practices and guidelines aiming at preventing global money laundering and terrorist financing.³ The FATF practice and guidelines supplement and clarify treaty law obligations concerning financing of terrorism. The FATF recommendations, while non-binding,⁴ provide recognized international guidance for the countering of terrorism financing.⁵ Specifically, Recommendation 8 provides guidance to States on the laws and regulations that should be adopted to oversee and protect non-profit organizations (NPOs) that have been identified as being vulnerable to terrorist financing abuse. The FATF recommends in that regard that countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organizations to protect them from terrorist financing abuse, including: (a) by terrorist organizations posing as legitimate entities; (b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and (c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organizations”.⁶ In its interpretive note to recommendation 8, the FATF emphasized that “NPOs play a vital role in the world economy and in many national economies and social systems. Their efforts complement the activity of the governmental and business sectors in providing essential services, comfort and hope to those in need around the world. The FATF recognizes the vital importance of NPOs in providing these important charitable services, as well as the difficulty of providing assistance to those in need, often in high risk areas and conflict zones, and applauds the efforts of NPOs to meet such needs”.⁷

Turkey is a member of the FATF since 1991. With regard to Turkey’s compliance on Recommendation 8, the FATF considered in its report of 2019, that “Turkey’s legal framework lacks specific procedures to periodically review NPO risk, to conduct outreach and guidance to NPO, or to work with NPOs to develop best practices on preventing [terrorism financing] abuse. The primary vehicles for oversight in Turkish law, such as required financial statement and internal audits, are overseen by authorities who are not focused on [terrorism financing] and are aimed primarily at preventing fraud and mismanagement. The framework is ambiguous as to when audits will take place and the auditing that takes place routinely is not based on any assessment of [terrorism financing] risk”.⁸ The FATF thus considers that Turkey is partially compliant to this recommendation. We are concerned that the FATF’s assessment is being misinterpreted and used as a basis to broadly restrict civil society and to punish the work of human rights defenders under the banner of countering terrorism finance.

³ See FATF Recommendations, available at <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>, updated October 2020.

⁴ On the role of “soft law” generally in the counter-terrorism contest, see A/74/335.

⁵ [Security Council Res. 2462](#) (2019), para. 4. We note that mandate of the FATF was extended to include the prevention of terrorism financing in the weeks following 11 September 2001, without any consultation with national parliaments or civil society, A/HRC/40/52, see para. 31.

⁶ FATF Recommendations, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>, updated October 2020, p. 13.

⁷ *Ibid.*, p. 58.

⁸ FATF, Turkey, Mutual Evaluation Report, 2019, <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf>, Dec. 2019, pp. 181-182.

II. Objectives of the law and summary

According to the general objectives described in the draft law dated 16 December 2020,⁹ this legislation has been developed within the scope of the 2019 FATF report, and in view of the importance of ensuring full compliance with the UNSC resolutions¹⁰ on combating the financing of the proliferation of weapons of mass destruction, and strengthening legal and institutional capacity in combating terrorism financing and money laundering.¹¹

It is explained in the draft law that, despite various circulars and decisions of the Council of Ministers which were issued based on the decisions of the UNSC, it was viewed as necessary to create a new legislation that guaranteed effectiveness, coordination, international cooperation and criminal sanctions, due to the increase of international threats and risks related to these weapons.

The Law also aims to establish an asset freezing mechanism for which your Excellency's government states its intention to comply with the UNSC's Resolution 1373 (2001) and the FATF's Recommendation No. 6. In parallel, this legislation amends other related laws, especially Law No. 6415 on the Prevention of the Financing of Terrorism, in order to increase the ability of Turkey to launder the assets of crimes and to fight against the financing of terrorism and to use legal instruments effectively.

The Law is divided in two distinct parts. The first one, which is composed of six articles, relate to general provisions, purpose, scope and definitions and include means and regulations to combat the financing of the proliferation of weapons of mass destruction. This part relies on UNSC resolutions.

The second part of the Law amends six existing laws, notably Law n° 2860/1983 (on Aid Collection), Law n° 6415/2013 (on the Prevention of the Financing of Terrorism), Law n° 5253/2004 (on associations), Law n° 5271/2004 (Criminal Procedure) and Law n° 5549/2006 (the Prevention of Laundering Proceeds of Crime) among others.

The second part of the Law appears to introduce restrictions and provides oversight rules which focus on NGOs, business partnerships, associations, and fundraising. It also grants new powers to the executive branch of the Government, which will be detailed below.

⁹ Presidency of the Grand National Assembly of Turkey, Bill on Preventing the Financing of the Proliferation of Weapons of Mass Destruction, 16 December 2020, Found on <https://www2.tbmm.gov.tr/d27/2/2-3261.pdf>.

¹⁰ The following resolutions are cited: UNSC's 1267 (1999) and subsequent resolutions 1988 (2011), 1989 (2011), 2253 (2015) and the resolution 1373 (2001).

Presidency of the Grand National Assembly of Turkey, Bill on Preventing the Financing of the Proliferation of Weapons of Mass Destruction, 16 December 2020, Found on <https://www2.tbmm.gov.tr/d27/2/2-3261.pdf>, p.4; it is emphasized that Article 7 of its Resolution 1617 (2005), UNSC invites all UN member states to comply with international standards developed by the FATF.

III. Concerns

i. Lack of consultation of civil society actors during expedited adoption of the Law

Firstly, we note that, during the preparation of the Law, it appears that the civil society and other concerned groups were not consulted and their views were not gathered. Moreover, the Law was adopted in expedited manner by the Justice Committee on 19 December 2020; it was then referred to the Grand National Assembly of Turkey Plenary without considering proposed changes. The Law entered into force on 31 December 2020. The Experts note their particular concerns that laws with far-reaching effects on civic space would be adopted in haste and particularly during the pandemic when key stakeholders would be undermined in their participation. In this view, we recall that civil society plays a vital role in channeling discontent and allowing for constructive engagement with States, and in directly undermining the factors leading individuals to be drawn to terrorism and violent extremism.¹² Therefore, we remind the need for rights holders, particularly those directly concerned, should be able to participate in the decision-making process from an early stage, when all options are still open, consistent with the right to participate in public affairs under international law (article 25 of the ICCPR) as well as the best practice guidance from the FAFT in the regulation of the NPO sector. This entails, for example, that public authorities refrain from taking any formal, irreversible decisions prior to the commencement of the process of legislative adoption.¹³

ii. The provisions appear to exceed the scope of the Law and to target CSOs

Furthermore, we are concerned that the second part of the Law appears to set restrictions to NPOs under the cover of the fight against terrorism and financing of proliferation of weapons of mass destructions and that its provisions greatly exceed the aim of preventing financing of terrorism and weapons proliferation.

Various parts of the Law amend the existing legislation related to countering terrorism. In this context, we remind that the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has raised concern with regard to the vagueness of the definition of terrorism in existing Turkish legislation,¹⁴ which, if applied in combination with these new legislative amendments, would further target civil society actors and human rights defenders. In this regard, some provisions would enable the Interior Ministry to target nongovernmental groups' legitimate and lawful activities, which would therefore lead to an infringement of the right to association of their members. Namely, it would also entail granting the Ministry of Interior and judges wider powers to prosecute human rights defenders for terror charges and block their associations' activities for long periods of time. Our profound concerns about this development is further developed in the next section.

¹² A/HRC/40/52, para. 12.

¹³ A/HRC/39/28, para. 70.

¹⁴ See [OL TUR 13/2020](#).

iii. *Powers granted to the Executive and infringements on individuals' rights*

In particular, article 15 of the Law states that, in the case of individuals who have been subjected to investigation namely for crimes within the scope of the Law on the Prevention of Financing of Terrorism, the Minister of Interior shall solely be empowered to suspend temporarily such individuals from office or to suspend the activities of the association. It also appears that the provisions allow for the Government to appoint trustees and replace members of NGO boards and initiate a shutdown of their activities based on inspection reports.¹⁵ In view of these amendments, we are concerned that such a decision from the Ministry of Interior, during an investigation, might infringe on the rights of the individuals concerned, namely with regard to the presumption of innocence and the right to take part in the conduct of public affairs. We also fear that this provision may lead to targeting and suspending activities of associations which are critical of the Government, under the cover of investigation for terrorism related offences. Therefore, we fear that some associations, because they are under investigations and have been seen their activities thus suspended by the Ministry, would be unable to operate for extended periods of time.

Furthermore, article 12 of the Law introduces a permanent deprivation of rights for association members by stipulating that those previously convicted of terrorist crimes or crimes specified in the law cannot take up executive duties in associations even after their sentences have been served.¹⁶ While we acknowledge the need to prevent and deter terrorism-related offenses, and noting our prior concerns about the clarity and specificity of acts defined as 'terrorism' under domestic law, we fear that this measure may also be used as a tool to silence civil society actors and human rights defenders and may lead to a disproportionate infringement on the freedoms to expression and to association. This measure may also lead to an undue and unnecessary stigmatization of these individuals. In this view, we consider that under the guise of addressing terrorism, this labelling sends a clear signal from your Excellency's Government that civil society actors are legitimate targets for attacks and then legitimizes the adoption of further restrictive measures. When civil society actors and human rights defenders are negatively labelled, the stigmatization can extend into the ability to find work and housing and other socioeconomic rights. Family members can also be caught up and face similar stigmatization.¹⁷

We also note that, according to article 4 of the Law, in addition to auditors assigned by the commission formed namely by the Ministry of Interior, Ministry of Treasury and Finance, the Chairman of the Financial Crimes Investigation Board and public officials who have been authorized to conduct audits - when deemed necessary by the Minister of Interior- will also be empowered to perform audits on associations at any time. This Commission may also make a proposal regarding the inclusion of persons or organisations in UNSC lists. However, we note that no criterion has been formulated regarding the qualifications of these persons and that the scope of the audit appears to be vague.¹⁸ We fear that this power may give rise to arbitrary application of the law, inconsistent with your Excellency's legal obligations under international law, specifically with regard to the regulation of terrorism financing. In this context, we

¹⁵ Law n° 7262, article 15.

¹⁶ *Ibidem*.

¹⁷ A/HRC/40/52, para. 62.

¹⁸ Law n° 726, article 4.

recall that financial intelligence units “should be able to obtain and deploy the resources needed to carry out its functions, on an individual or routine basis, free from any undue political, government or industry influence or interference, which might compromise its operational independence”.¹⁹ The Experts note that it is somewhat unclear if the Assessment Commission functions as a financial intelligence unit, and would welcome clarity on this matter from your Excellency's government.

Moreover, it appears that the proceedings identified to impose the freezing of assets are overly simplified and their effects amplified by this law. Courts generally have a certain monitoring prerogative, but it is an *a posteriori* one, the main power for imposing and abolishing the freezing of assets is vested in the Assessment Commission.²⁰ Requests for the revocation of the decision of freezing of assets by the concerned parties are made to the Assessment Commission. The Commission presents its proposal on the requests to the relevant governmental ministers. Decisions made as a result of investigation and prosecution are sent to the Presidency to be submitted to the Assessment Commission.²¹ In this regard, we wish to remind that the measures linked to freezing assets need to guarantee independent oversight and a judicial review of such measures.²²

We also note that articles 7 and 10 appear to restrict fundraising and aid collection, and that the decision to block access to the internet can be decided by a judge, upon request of the Ministry of Interior, without the possibility of a hearing undermining the rights to fair trial, the right to be heard, and the right to have meaningful legal representation in the determination of fundamental rights. In view of this disposition, we raise concerns that this measure, initiated by the executive, infringes on the rights of individual, in particular to have a meaningful process of review and to prepare a defence, as well as to their freedom of expression. We further note that article 10 provides administrative sanctions decided by the Government regarding the collection of aid. On this matter, we wish to recall that “[c]ountries should establish the necessary legal authority and identify domestic competent authorities responsible for implementing and enforcing targeted financial sanctions” and insist in the importance of independent oversight mechanisms and judicial review to minimize arbitrariness and abuses against the civil society.²³

In addition, it appears that this Law has set heavy and - it would appear - disproportionate penalties for those who fail to comply with the inspectors' requests or who fail to present the documents asked during the inspection.²⁴ Article 13 of the Law also sets annual inspections of associations, according to the risk assessments to be made.

On these matters, we wish to emphasize that the use of legislation to create undue and complex burdens on NPOs has the effect of limiting, restricting and

¹⁹ Interpretative Note to recommendation 29, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>, p. 103.

²⁰ See article 9 of Law 6415 defining the Assessment Commission: The Assessment Commission is composed of General Director of Security Affairs in Prime Ministry, Deputy Undersecretary of National Intelligence Organisation, Deputy Undersecretary of the Ministry of Interior, General Director of Criminal Affairs in the Ministry of Justice, General Director of Research and Security Affairs in the Ministry of Foreign Affairs and General Director of Financial Sector Relations and Exchange in the Undersecretariat of Treasury under the chairmanship of the President of MASAK.

²¹ Law n°7262, article 38 which modifies article 7 of Law n° 6415 on the Prevention of the Financing of Terrorism.

²² See FATF Interpretive Note to Recommendation 6, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>, p. 48.

²³ *Ibidem*.

²⁴ See namely article 16 of the Law n° 7262.

controlling civil society.²⁵ The right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association to freely carry out its legitimate activities.²⁶ This includes the freedom “to solicit and receive voluntary financial and other contributions from individuals and institutions”.²⁷ This freedom to solicit and receive financial support is crucial to NPO operations. For example, experts have noted that profound limitations on access to foreign funding severely restrict the existence of NGOs, which are often wholly dependent on such funding, particularly affecting human rights and women’s organizations.²⁸ Additionally, the selection of NPOs for burdensome regulatory obligations based on their prior criticism of the Government pressures NPOs against lawfully exercising their freedom of expression. A lack of an adequate justification for this limitation to the freedom of expression would entail that these measures would be taken in contravention of article 19 of the ICCPR.

We are thus highly concerned that the application of this law could arbitrarily curtail NGO’s activities and have the potential to violate the right to freedom of association in contravention of article 22 of the ICCPR. Indeed, the new set of financial rules, the attributions given to the executive branch, the restrictions affecting NPOs and their members and the high fines imposed in case of infraction could discourage citizens to integrate an existing NGO or form a new one. These regulations could also have a chilling effect on associations’ lawful activities and fundraising.

We outline that civic space is directly affected when overly broad definitions of terrorism and counter-terrorism are used to arrest, detain and prosecute peaceful members of civil society organizations. Similarly, the closure of such organizations, the impossibility to obtain registration or access funding, and an overload of bureaucratic requests, all limit civic space. The mere existence of these measures, and their use against some civil society actors and human rights defenders, is sufficient to not only silence those that are directly targeted, but also to send a message to all civil society actors and human rights defenders that they are at risk should they continue their activities. The result is a weakened civil space infrastructure and limited engagement in sites of most need.²⁹

We further recall in parallel to human rights obligations that FATF Recommendation 8 notes that the measures should be “focused and proportionate” and in-line with a risk-based approach. A “one size fits all” approach to address all NPOs is not appropriate.³⁰ Furthermore, the interpretive note to recommendation 8 stresses the vital role played by NPOs “providing essential services, comfort and hope to those in need around the world,” and that the focused measures adopted by countries to protect NPOs from terrorist financing abuse “should not disrupt or discourage legitimate charitable activities.”³¹ In this sense, assessment proceedings should address not only problems caused by under-regulation of the NPO sector but

²⁵ A/HRC/40/52, Recommendation d, p. 17.

²⁶ [CCPR/C/88/D/1274/2004](#), para. 7.2.

²⁷ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, General Assembly [Res. 36/55](#), 25 Nov. 1981, art. 6(f). See also A/HRC/23/39 and A/61/267.

²⁸ A/HRC/40/52, para. 42.

²⁹ A/HRC/40/52, para. 60.

³⁰ Interpretive Note to Recommendation 8, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>, amended in October 2020, pp. 58 and ff. See also FATF, Best Practices: Combating the Abuse of Non-Profit Organisations (Recommendation 8), paras. 7(b), 22.

³¹ FATF Recommendations, Interpretive Note to Recommendation 8.

also tackle shortcomings linked to over-regulation, a phenomenon negatively affecting civil society globally.³² Additionally, the note that complying with the FATF Recommendations should be implemented in a manner which respects 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.³³

Finally, we respectfully remind your Excellency's Government of the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 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, 72/180 and 73/174. All of these resolutions require that States ensure that any measures taken to combat terrorism or violent extremism, including incitement of and support for terrorist acts, must comply with all of their obligations under international law. We would like to emphasize that any restriction on freedom of expression or information that a Government seeks to justify on grounds of national security or counter terrorism, must have the genuine purpose and the demonstrable effect of protecting a legitimate national security interest.³⁴

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 therefore 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 concerns.
2. Please provide information in details of how the counter-terrorism efforts of your Excellency's Government comply with the United Nations Security Council 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, 72/180 and 73/174, in particular with international human rights law.
3. Please provide information on how the process of implementation for this law is compatible with the obligations for fair trial and due process contained in the ICCPR.
4. Please provide information on the guarantees of freedom of expression and association enjoyed by non-profit organizations in Turkey, in

³² Interpretive Note to Recommendation 8, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>, amended in October 2020, pp. 58 and ff. See also e.g. A/HRC/40/52; <https://www.ohchr.org/Documents/Issues/Terrorism/hrc-impactofsoftlaw.pdf>; Human Security Collective, 'How Can Civil Society Effectively Engage in Counter-Terrorism Processes?' (2017), p. 3; FATF, Best Practices: Combating the Abuse of Non-Profit Organisations (Recommendation 8), paras. 7(b), 22.

³³ Interpretive Note to Recommendation 8, <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf>, amended in October 2020, pp. 58 and ff., pp. 58 and ff.

³⁴ Human Rights Committee, General comment No. 34, Article 19: Freedoms of opinion and expression; [CCPR/C/GC/34](https://www.unhcr.org/refugees/c/34).

particular those linked to the defense of human rights.

5. Please provide information concerning the adoption of this Law and the reasons for the reported lack of consultation with the civil society.
6. Please provide information on judicial review and independent oversight mechanisms to guarantee that the civil society will not be targeted by provisions of this Law.
7. Please provide information on what steps are being taken to ensure that measures taken to combat anti-money laundering and terrorism financing do not infringe upon the rights to freedom of association, opinion, and expression as well as the right to take part in the conduct of public affairs guaranteed under the ICCPR.
8. Please indicate what measures have been taken to ensure that human rights defenders and other civil society actors are able to freely carry out their legitimate activities, including the freedom to solicit and receive financial support from domestic and international sources.
9. Please indicate what remedial measures are taken when measures to combat anti-money laundering and terrorism financing are undertaken without due process of law, or in contravention of domestic legal standards. Specifically, what measures to address financial and reputation harm to individuals negatively affected are undertaken.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Fionnuala Ní Aoláin
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