

**Submission to the UN Universal Periodic Review
of the Republic of Turkey**

*For consideration by the Office of the UN High Commissioner for Human Rights for the 35th
session
Of the UPR Working Group in 2020*

**LONDON LEGAL GROUP¹
TURKEY HUMAN RIGHTS LITIGATION SUPPORT PROJECT²**

¹ London Legal Group (LLG), is a network of lawyers established in January 2012 in order to provide advice on and actively participate in legal and advocacy activities before international courts and institutions, including the European court of Human Rights (ECtHR), United Nations Human Rights Council and Treaty and Charter bodies, and the Organisation for Security and Co-operation in Europe (OSCE).

² The Turkey Human Rights Litigation Support Project was established in collaboration with the Law Faculty of Middlesex University, London in January 2018. The Project provides expertise and support to bring effective legal action to address the emerging human rights crisis in Turkey. Consisting of a group of academics, human rights lawyers, and researchers, the project supports Turkish litigators, human rights defenders and civil society organisations. A key aim of the project is to encourage the use of strategic litigation as a tool to counter the on-going trend of systemic human rights violations arising from decisions and policies adopted since the state of emergency.

I. Introduction³

1. This submission outlines the London Legal Group and the Turkey Human Rights Litigation Support Project's concerns in relation to the human rights situation in Turkey. Turkey's Second Universal Periodic Review (UPR) took place in January 2015. Despite accepting all recommendations made in the previous two UPR cycles, Turkey has failed to implement suggested recommendations such as the adoption of legal reform processes to further promote and protect human rights, comprehensive reform of legislation aimed at guaranteeing the rule of law, full independence of the judiciary, and equality of all its citizens (in particular minorities), the combatting of impunity through rapid, impartial, effective and in depth inquiries for all past or present allegations of human rights violations committed by security forces, and finally, the strengthening of internal mechanisms for the implementation of OP-CAT.
2. The effect of the current security situation in the east and southeast of Turkey, resulting from the continuing conflict between the Turkish state and the Kurdistan Worker's Party (PKK) and its affiliated groups is a defining element of the human rights situation in Turkey. Part I of this submission focuses on this situation which has seriously deteriorated since renewed violence in 2015 and includes discussion of unlawful killings, enforced disappearances, violations of freedom of speech, freedom of assembly and association, violation of the right to a fair trial, arbitrary detention and abuse of the use of force by state agents. Part II addresses the related issue of continuing discrimination against the Kurdish population.
3. Part III highlights violations in the context of the State of Emergency (SoE) adopted in the wake of the failed coup attempt in 2016. The declaration of a SoE in 2016 granted the Government authority to issue decrees without any judicial oversight and effectively bypass usual legislative safeguards. These decrees have had the effect of seriously limiting, and in some cases totally waiving, numerous fundamental rights and freedoms. While the SoE was lifted in July 2018, many of the legislative measures adopted have been transferred into permanent anti-terrorism legislation, serving to both perpetuate serious limitations on the enjoyment of rights and freedoms and undermine the principles of judicial independence and the rule of law.

³ These submissions have been edited post-submission in order to correct typographic errors.

4. Particular focus is paid to an increase in reported cases of arbitrary detention, torture and ill-treatment, further erosion of the independence of the judiciary, the active persecution of legal professionals and the lack of effective investigation and ongoing impunity with regard to these violations.

II. The situation in the east and southeast of Turkey

5. In October 2012, the Government of Turkey embarked on peace talks with the jailed leader of the PKK, Abdullah Ocalan, to end a conflict that started in 1984. In March 2013, an agreement was reached, and Ocalan announced a ceasefire ordering militants to withdraw from Turkish soil.⁴ In July 2015, however, further peace talks collapsed resulting in the resumption of hostilities following which the security situation has considerably worsened.
6. In response to alleged activity by the PKK in the region, including the setting up of barricades and the digging of trenches in residential areas between July 2015 and March 2016, the Government adopted a series of strict security measures which have had a particularly strong impact on the civilian population. Turkish security forces have reportedly regularly launched operations inside close-knit Kurdish neighbourhoods in south-eastern towns.⁵ In addition, between the 16th August 2015 and 18th March 2016 there were 63 officially confirmed, open-ended and round-the-clock curfews imposed in at least 22 districts of 7 cities in south-eastern Turkey.⁶

⁴ David Cutler, *Timeline: Kurdish militant group PKK's three-decade war with Turkey*, Reuters, WORLD NEWS, 25 April 2013, <<https://www.reuters.com/article/us-turkey-kurds-dates/timeline-kurdish-militant-group-pkks-three-decade-war-with-turkey-idUSBRE93O0RL20130425>> (Accessed 21 May 2019)

⁵ Office of the United Nations High Commissioner for Human Rights, Report on the Human Rights Situation in South-East Turkey – July 2015 to December 2016, February 2017

⁶ For detailed descriptions of the events occurred during the curfews, see, e.g. Report on the Human Rights Situation in South-East Turkey – July 2015 to December 2016, February 2017, Office of the United Nations High Commissioner for Human Rights, https://www.ohchr.org/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf; Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, Office of the United Nations High Commissioner for Human Rights, March 2018, https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf; Nils Muižnieks, Council of Europe: Commissioner for Human Rights, *Memorandum on the Human Rights Implications of Anti-Terrorism Operations in South-Eastern Turkey*, 2 December 2016, CommDH(2016)39, available at: <https://www.refworld.org/docid/58c68e9f4.html>; Council of Europe-Venice Commission, Opinion On The Legal Framework Governing Curfews, 13 June 2016 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)010-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)010-e).

7. Approximately 2,000 people were reportedly killed during the curfews in the context of government conducted security operations.⁷ The curfews also affected at least 1,809,000 individuals who have suffered from myriad violations of their fundamental rights and freedoms, including the rights to: liberty and security; education; privacy, home, family or correspondence; reservation of property; freedom of assembly and association; and most importantly, the rights to life, health and the prohibition of torture.⁸
8. Of particular concern is the fact that there have been no effective and independent investigations into these violations. The subsequent demolition of buildings after the operations has destroyed evidence and largely prevented basic identification and tracing of mortal remains.⁹ The Government has also limited access to the “special security-zone,” impeding the ability of NGO, rights-groups, UN envoys and journalists to investigate and document potential abuses, ensuring that any alleged misconduct by security forces evades national and international scrutiny.¹⁰

III. Discrimination against the Kurdish population

9. Kurds still face various forms of discrimination. A large number of Kurds live in the poorest and most remote provinces, often in poor economic and social conditions and members belonging to the Kurdish community are discriminated against in the labour market. The unemployment rate of Kurdish women in particular remains very high.¹¹ Kurds are also prevented from accessing education in their mother tongue in the public-school system,¹² and face restrictions on their right to broadcast in their own languages.

⁷ Office of the United Nations High Commissioner for Human Rights, Report on the Human Rights Situation in South-East Turkey – July 2015 to December 2016, February 2017

⁸ Truth Justice Memory Center, Activity Report 2015-2016. Available at https://hakikatadalethafiza.org/wp-content/uploads/2017/11/HAFIZA-MERKEZI_FAALIYET-RAPORU-ENG-BASKI-SON.pdf

⁹ Office of the United Nations High Commissioner for Human Rights, Report on the Human Rights Situation in South-East Turkey – July 2015 to December 2016, February 2017

¹⁰ Human Rights Watch, Turkey: State blocks probes of Southeast killings, 11 July 2016. Available at: <https://www.hrw.org/news/2016/07/11/turkey-state-blocks-probes-southeast-killings>

¹¹ UN Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined fourth to sixth periodic reports of Turkey*, 11 January 2016

¹² UN Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined fourth to sixth periodic reports of Turkey*, 11 January 2016. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/003/50/PDF/G1600350.pdf?OpenElement>

10. Other discriminatory practices include the imposition of severe restrictions on the right to peaceful expression, resulting from the continuing harassment and persecution of Kurdish writers, publishers, broadcasters, intellectuals and others who express dissenting opinions or Kurdish sympathies. In 2016, the U.N Committee on the Elimination of Racial Discrimination highlighted that in the context of the fight against terrorism, the enforcement of anti-terrorism legislation and security-oriented policies have resulted in racial profiling of members of the Kurdish community. Such legislation has been applied to curtail the exercise of the right to freedom of expression and association and led to the unwarranted arrest, detention and prosecution of Kurds.¹³

A. Political participation

11. The requirement that any given political party must secure 10% of the entire national vote in order to secure representation in Parliament presents a severe obstacle to political participation by Kurds. The situation has been compounded by measures adopted under the SoE, which have severely restricted their right to organise a political campaign or to share critical contents on social media. The pro-Kurdish opposition People's Democratic Party (HDP) has been particularly marginalised. Many of its lawmakers have been arrested, including its two co-chairs, on the grounds of alleged support for terrorist activities. Ten of them have been stripped of their seats on the same grounds.¹⁴

12. The removal of municipal executives and elected representatives mainly in Kurdish provinces and their replacement with Government appointed trustees has further deprived Kurdish voters of political representation at the local level, seriously damaging local democracy.¹⁵ On 1 September 2016, the Government issued Emergency Decree Law No. 674 that allowed for the replacement of locally elected officials with trustees appointed by the Minister of Internal Affairs (in the greater cities

¹³ UN Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined fourth to sixth periodic reports of Turkey*, 11 January 2016. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/003/50/PDF/G1600350.pdf?OpenElement>

¹⁴ European Commission 'Turkey Progress Report 2018' Available at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-turkey-report.pdf>

¹⁵ European Commission 'Turkey Progress Report 2019' Available at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>

and provincial municipalities) or the Governor (in other municipalities), where a mayor, deputy mayor or member of municipal council *“is suspended from duty or detained or banned from public service or his/her position is terminated due to the offences of aiding and abetting terrorism and terrorist organizations.”*

13. In total, 99 mayors and co-mayors have been dismissed and replaced with trustees. The vast majority were elected members of, or had a close relationship to the HDP or to the Democratic Regions Party (DBP), the regional affiliate of the HDP. Both parties largely represent Kurdish voters, and the HDP itself represents almost 6 million voters in Turkey.¹⁶ According to an HDP report, as of 4th November 2018, 53 of HDP’s locally elected mayors were in pre-trial detention.¹⁷ The mayors who were suspended from their duty were charged with “terrorism” and 40 of them were still in prison as of 28 February 2019.¹⁸
14. In conflict with international human rights standards, Turkish law defines terrorism offences in excessively wide terms readily susceptible to abuse, for example “criminalising any message that merely coincides with the perceived interests of a terrorist organization.”¹⁹ Recommendations from the 2015 UPR session expressly addressed the Anti-Terror Law No 3713 and requested its revision or abolishment to ensure better compliance with Turkey’s international obligations and European Union standards.²⁰ The Government however has since introduced a new anti-terror law which codifies many of the SoE decree laws and practices. The validity period of most of the measures taken under the SoE was extended for three more years, which has rightfully been perceived as “normalising the state of emergency.” The new legislation includes restrictions on the freedom of movement and assembly based on broadly

¹⁶ Heinrich Boll Stiftung, Turkey’s Newest Party-Understanding the HDP, 28 October 2015. Available at <https://tr.boell.org/en/2015/10/28/turkeys-newest-party-understanding-hdp>

¹⁷ Diken, 6 bin HDP’li cezaevinde 96 belediyede kayyim var, 4 November 2018. Available at: <http://www.diken.com.tr/alti-bin-hdpli-cezaevinde-96-belediyede-kayyim-var/>

¹⁸ Amerikanin Sesi, HDP’den Kayyum Raporu, 28 February 2019. Available at <https://www.amerikaninsesi.com/a/hdp-den-kayyum-raporu/4808368.html>

¹⁹ The UN Special Rapporteur on Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, Mission to Turkey, 16 November 2006, p 2. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/149/42/PDF/G0614942.pdf?OpenElement>

and PACE, The functioning of democratic institutions in Turkey, 23 May 2016. Available at: <http://website-pace.net/documents/19895/2436341/20160523-TurkishInstitutions-EN.pdf/cc4c76b9-1602-4d77-9038-e79aec4f9484>

²⁰UPR Database of Recommendations. Available at: <https://www.upr-info.org/database/>

defined public order grounds, allows police to re-arrest a suspect multiple times and further detain them for the same offence and grants powers of detention for up to twelve days without charge on terrorism or other such crimes against the State apparatus.²¹ Crucially, the legislation provides the President and bodies under his control the ambit to arbitrarily dismiss judges and other public officials.²²

15. Moreover after the local election on 31 March 2019, some elected mayors from the HDP have been prevented by the country's High Election Board (YSK) from taking office in light of their previous dismissal from public service under SoE decree-laws, despite the fact that their candidacies were initially validated by the YSK. They have since been replaced by runner-up candidates, whom are all the governing Justice and Development Party (AKP) members.²³

IV. Violations in the context of the State of Emergency

16. Following the failed coup attempt, the Government instigated an unprecedented crackdown, "purging" state organs and civil society of those allegedly connected to the "Gülen movement" and more broadly supporters of the opposition who are vocally critical of the government. Caught in this crackdown are human rights defenders (including lawyers), journalists and NGO members who have sought to expose human rights violations.²⁴ Under the SoE, as of March 2019, around 96,885 individuals were arrested, more than 500,650 were investigated, and over 150,348 people were dismissed from their positions – including academics, state officials and military personnel, as well as 4464 judges and prosecutors.²⁵ Moreover, 1,719 human rights,

²¹ Provisional Article 19 of the Anti-Terror Law No. 3713

²² Human Rights Watch, Turkey: Normalising the State of Emergency, 20 July 2018. Available at: <https://www.hrw.org/news/2018/07/20/turkey-normalizing-state-emergency>

²³ Reuters, Pro-Kurdish elected mayors stripped of mandates in Turkey over dismissals – party, 11 April 2019. Available at: <https://uk.reuters.com/article/turkey-election-kurds/pro-kurdish-elected-mayors-stripped-of-mandates-in-turkey-over-dismissals-party-idUKL8N21T4AF>. Kurdistan 24, Erdogan's AKP to demand re-run of Istanbul elections: official, 14 April 2019. Available at: <https://www.kurdistan24.net/en/news/ebac6a57-8a1e-4706-b312-a97e65a91071>

²⁴ Amnesty International, Turkey: NGOs unite to defend civil society from destruction, 27 February 2019. Available at: <https://www.amnesty.org/en/latest/news/2019/02/turkey-ngos-unite-to-defend-civil-society-from-destruction/>

²⁵ <https://turkeypurge.com/>

humanitarian, and lawyers' associations, foundations and NGOs were permanently closed by the Government.²⁶

A. Torture and ill-treatment

17. The crackdown was accompanied by increased reports of arbitrary detention and the systematic use of torture and ill-treatment by police agents and security forces. The use of brutal interrogation techniques, which include severe beatings, electrical shocks, exposure to icy water, sleep deprivation, threats, insults, and sexual assault aimed at extracting forced confessions or coercing detainees to incriminate others have also been reported.²⁷
18. According to the European Commission's 2019 Progress Report on Turkey, *"allegations of torture and ill treatment remain a serious concern. The repeated extensions of the state of emergency led to profound human rights violations, and the Government failed to take steps to investigate, prosecute, and punish members of the security forces and other officials accused of human rights abuses. The removal of crucial safeguards by means of emergency decrees has increased the risk of impunity for perpetrators of such crimes, and has led to allegations of an increase in the number of cases of torture and ill-treatment in custody. Changes to the anti-terror legislation introduced a maximum pre-trial detention period of up to 12 days, in contravention of the relevant ECtHR case law (maximum of up to four days). There are concerns that changes in legislation allowing suspects to be brought back from prisons to police stations after being arrested have led to more cases of ill-treatment or torture."*²⁸
19. The most recent and serious allegations of torture were reported in Sanliurfa and Ankara provinces. Following a conflict between the police and the members of the PKK in Halfeti, Sanliurfa on 18 May 2019, at least 54 people, including children, were

²⁶ Office of the United Nations High Commissioner for Human Rights, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, March 2018, https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf.

²⁷ Amnesty International, The aftermath of the failed Turkey coup: Torture, beating and rape. 12 January 2018. Available at <https://www.amnesty.org.uk/aftermath-failed-turkey-coup-torture-beatings-and-rape>

²⁸ European Commission 'Turkey Progress Report 2019' Available at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>

detained and subjected to torture including severe beatings and electric shocks.²⁹ According to a report prepared by the Human Rights Association women among the detainees were also reportedly subjected to sexual abuse.³⁰

20. On 20 May 2019 in Ankara, Turkish authorities arrested 249 past and present foreign ministry personnel in 42 cities, over alleged cheating in recruitment exams linked to the Gülen movement.³¹ A hundred individuals were arrested and brought into custody in Ankara Police Station.

21. On Sunday 26 May, Omer Faruk Gergerlioglu, a HDP deputy and human right activist, posted on Twitter: *"There are claims of acts of heavy torture including inserting a truncheon into someone's anus on former Foreign Ministry staff who are currently under detention at the Ankara Police Department's financial crimes department."*³²

The Ankara Bar Association confirmed the arrests and held meetings with six detainees. On 28 May, the Bar Association announced that 5 of the 6 detainees' interviews had disclosed serious and detailed allegations of torture, including acts of rape, committed by law enforcement officers.³³ The 5 victims stated that they were brought to a room for interrogations where they were psychologically abused, threatened with sexual assault, handcuffed, beaten, stripped and later tortured in a dark room. Three of them reported being completely undressed during the torture

²⁹ Bianet, The Detained Woman Began Her Meeting With Lawyer in Tears, 30 May 2019. Available at <https://bianet.org/english/human-rights/208970-the-detained-woman-began-her-meeting-with-lawyer-in-tears>

³⁰ Bianet, Torture in Urfa Not Documented, 25 June 2019. Available at <https://bianet.org/english/human-rights/209720-ihd-torture-in-urfa-not-documented>

³¹ Reuters, Turkish lawyers' group says foreign ministry staff tortured in custody, 28 May 2018. Available at: <https://uk.reuters.com/article/uk-turkey-security-torture/turkish-lawyers-group-says-foreign-ministry-staff-tortured-in-custody-idUKKCN1SY27E>; Report Torture, Ankara Bar Association interviews former diplomats subjected to torture: report, 28 May 2019. Available at: <http://reporttorture.com/ankara-bar-association-interviews-former-diplomats-subjected-to-torture-report/>; Euronews, 'Eski Dışişleri Bakanlığı çalışanlarına gözetiminde işkence' iddiası TBMM gündeminde, 28 May 2019. Available at: <https://tr.euronews.com/2019/05/28/eski-disisleri-bakanligi-calisanlarina-gozaltinda-iskence-iddiasi-tbmm-gundeminde>; Ahval, Pro-Kurdish HDPP lawmakers says detained foreign ministry staff being tortured, 27 May 2019. Available at: <https://ahvalnews.com/arrests/pro-kurdish-hdp-lawmaker-says-detained-foreign-ministry-staff-being-tortured>; The Washington Post, Lawyers say detainees tortured in Turkish police custody, 29 May 2019. Available at: https://www.washingtonpost.com/world/europe/lawyers-say-detainees-tortured-in-turkish-police-custody/2019/05/29/76f52422-81ef-11e9-b585-e36b16a531aa_story.html?utm_term=.818816e01b78

³² <https://twitter.com/gergerliogluof/status/1132736930398068746>

³³ Ankara Bar Association, Avukat hakları merkezi, cezaevi kurulu ve insan hakları merkezi, Ankara il emniyet müdürlüğü mali suçlar soruşturma bürosundaki işkence iddialarına dair rapordur, 28 May 2019. Available at: http://www.ankarabarasu.org.tr/HaberDuyuru.aspx?BASIN_ACIKLAMASI&=3099

while the two others stated they were half naked.³⁴ Acts of sodomy with police batons and truncheons were reported.³⁵ About a total of 20 individuals are said to have been severely tortured and raped in this incident.

22. Allegations of torture have also been reported outside of detention facilities. The Human Rights Foundation of Turkey stated that during the 11 first months of 2018, it received 2,719 complaints of abuse by security forces, with 175 of them occurring outside detention facilities and 2,260 during demonstrations. In one such instance, a group of students were violently beaten by police officers in Kadiköy district at an education protest in June 2018.³⁶

B. Increased executive influence over the judiciary

23. A key component of the rule of law is the functioning of a competent, independent and impartial judiciary. Both principles, crucial to the protection of human rights, are enshrined in the Turkish Constitution.³⁷ The independence of the judiciary and its ability to deliver an effective remedy has remained a longstanding issue in Turkey,³⁸ however, the situation has worsened in light of legislative measures adopted in the wake of the failed coup attempt. Of crucial concern are a series of constitutional amendments and the mass dismissal of a number of judges which together have served to increase executive influence over the judiciary.

24. During the SoE a number of legislative measures adopted have further undermined the effective functioning of the judiciary. These measures have since been adopted by parliament also, thereby perpetuating and entrenching the situation. For example, Law no 6749 allows for the dismissal of members of the judiciary if they are found to

³⁴ Turkey Purge, Ankara Bar Association documents torture on dismissed diplomats in prison, 28 May 2019. Available at: <https://turkeypurge.com/ankara-bar-association-documents-torture-on-dismissed-diplomats-in-prison/>; Report Torture, Ankara Bar Association interviews former diplomats subjected to torture: report, 28 May 2019. Available at: <http://reporttorture.com/ankara-bar-association-interviews-former-diplomats-subjected-to-torture-report/>

³⁵ Stockholm Center for Freedom, Ex-diplomats subjected to severe torture, says deputy, 28 May 2019. Available at : <https://stockholmcf.org/ex-diplomats-subjected-to-severe-torture-says-deputy/>; IPA News, Former diplomats sexually abused with batons and tortured: Bar Association, 28 May 2019. Available at: <https://ipa.news/2019/05/28/former-diplomats-sexually-abused-with-batons-and-tortured-bar-association/>;

³⁶ Amnesty International, *Turkey: Authorities must immediately investigate torture allegations of student protesters*, 11 June 2018. Available at <https://www.amnesty.org/en/documents/eur44/8567/2018/en/>

³⁷ Articles 2, 138 and 139 of the Turkish Constitution

³⁸ International Commission of Jurists, *Turkey: the Judicial System in Peril*, 2016. Available at <https://www.icj.org/wp-content/uploads/2016/07/Turkey-Judiciary-in-Peril-Publications-Reports-Fact-Findings-Mission-Reports-2016-ENG.pdf>

be “a member of, or have relation, connection or contact with terrorist organisations or structures/entities, organizations or groups established by the National Security Council as engaging in activities against the national security of the State.”³⁹

25. Constitutional amendments adopted in 2017 modified the composition of the body responsible for the government of judges and prosecutors – the Council of Judges and Prosecutors. Six of thirteen members are now appointed by the President of the Republic – including the Minister of Justice (who also acts as president of the Council) and the Under-Secretary of the Ministry of Justice. The additional seven members are appointed by the National Assembly. This composition calls into question the impartiality of the body.
26. Under the SoE, 30 percent of judges and prosecutors were summarily dismissed.⁴⁰ Based on vague grounds of association with terrorist organisations, the processes by which these dismissals took place have been strongly criticised for their failure to meet required standards of due process and impartiality. Judges of the Constitutional Court have been dismissed where terrorist links said to have been found by a majority of the Constitutional Court, similarly judges of the Court of Cassation may be dismissed by an absolute majority of the Boards of the Presidency of the same Court. Judges of the Court of Accounts may be dismissed by a commission set up by the President and Vice President of that Court.⁴¹ The remainder of dismissals have been authorised by the Plenary Session of the Council of Judges and Prosecutors.⁴²
27. Constitutional Court Judges Alparslan Altan and Erdal Tercan were dismissed in 2016 and charged and convicted for the crime of “being a member of an armed terrorist organization.” In the case of Alparslan Altan, the European Court of Human Rights found that the legal basis for his dismissal “*deprived [him] of the judicial protection afforded by Turkish law to members of the judiciary [...] negat[ing] the procedural*

³⁹ European Commission for Democracy Through Law (Venice Commission) ‘Opinion No. 865/2016: Emergency Decree Laws of July-September 2016 Nos 667-674’ (10 November 2016) CDL-REF(2016)061

⁴⁰ International Commission of Jurists, *Justice Suspended: Access to Justice and the State of Emergency in Turkey*, 2018. Available at <https://www.icj.org/wp-content/uploads/2018/12/Turkey-Access-to-justice-Publications-Reports-2018-ENG.pdf>.

⁴¹ International Commission of Jurists, *Justice Suspended: Access to Justice and the State of Emergency in Turkey*, 2018. Available at <https://www.icj.org/wp-content/uploads/2018/12/Turkey-Access-to-justice-Publications-Reports-2018-ENG.pdf>.

⁴² Formerly known as the “High Council of Judges and Prosecutors.”

safeguards which members of the judiciary are afforded in order to protect them from interference by the executive.”⁴³

28. The High Council of Judges and Prosecutors has also dismissed 4,279 judges and prosecutors as an “exceptional measure” because “retaining in office members of the judiciary who are linked to FETÖ/PDY [...] conflicts first and foremost with the independence and impartiality of the judiciary.”⁴⁴ The Council of State, responsible for dealing with appeals of decisions of the High Council of Judges and Prosecutors, has overwhelmingly rejected objection and reconsideration requests.⁴⁵ By March 2018, 3,786 out of 3,953 were rejected.⁴⁶
29. The collective result of these dismissals, often accompanied by arbitrary detention and prosecutions is a “chilling effect on the willingness of judges to act independently and impartially in proceedings involving the State.”⁴⁷
30. On 17 May 2019, the European Court of Human Rights gave notice to the Government of Turkey in the case of Altun v Turkey and the adjoined 545 applications concerning the provisional detention of members of the legal service suspended from their duties, detained and charged with “membership of the organisation FETÖ/PDY.”

C. The targeting and persecution of legal professionals

31. Further eroding the rule of law, the Government has adopted a sustained practice of targeting members of the legal profession both through the adoption of legislation/practices that interfere with their ability to perform their roles⁴⁸ and through their persistent subjection to intimidation, arbitrary arrest, detention and ill treatment.⁴⁹
32. The Government has restricted their access to case files and indictments, and limited lawyer/client visits. Furthermore, they have committed breaches of legal professional

⁴³ *Alparslan v Turkey*, App no. 12778/17, European Court of Human Rights, 16 April 2019.

⁴⁴ Press Release of the High Council of Judges and Prosecutors of 15 November 2016. in English, available at http://www.judiciaryofturkey.gov.tr/pdfiler/hsyk_karar440.PDF

⁴⁵ By March 2018, 3,786 out of 3,953 were rejected.

⁴⁶ International Commission of Jurists, *Justice Suspended: Access to Justice and the State of Emergency in Turkey*, 2018. Available at <https://www.icj.org/wp-content/uploads/2018/12/Turkey-Access-to-justice-Publications-Reports-2018-ENG.pdf>.

⁴⁷ *State of emergency: proportionality issues concerning derogations under article 15 of the European Convention on Human Rights*, PACE report, Doc. No. 14506, 27 February 2018

⁴⁸ Human Rights Watch, World Report 2019. Available at: <https://www.hrw.org/world-report/2019/country-chapters/turkey>

⁴⁹ *Ibid.*

confidences including by observing and recording confidential meetings with clients.⁵⁰ As stated recently by a lawyer interviewed for a report on the situation of lawyers in Turkey, “[a]s a lawyer you meet your client in prison, and you have no possibility of confidential communication since there’s a prison guard present, a microphone and a camera.”⁵¹

33. Since the 2016 coup attempt, the overly broad and vague language used in anti-terror laws has been used to illegitimately investigate, prosecute and/or convict upwards of 402,000 individuals as of January 2019. Among those individuals, lawyers were specifically targeted. 1,546 lawyers have been prosecuted under these provisions, 598 arrested and 274 convicted and sentenced to long-term prison sentences ranging from 2 to 18 years.⁵² The Office for the High Commissioner of Human Rights, amongst other bodies, has “identified a pattern of persecution of lawyers representing individuals accused of terrorism offences.”⁵³ Targeted lawyers (and many other members of civil society) have been charged with terror related offences such as membership of a terrorist organisation, forming and leading a terrorist organisation and aiding and abetting a terrorist organisation under Articles 314 and 220 of the Turkish Penal Code. The overly broad language used in these articles and their arbitrary application⁵⁴ has been used to silence and intimidate lawyers lawfully exercising their right to freedom of expression, among other fundamental human rights.⁵⁵ For instance, 20 lawyers from from Halkın Hukuk Bürosu (HHB, the Peoples’ Law Office) and Çağdaş Hukukçular

⁵⁰ The Law Society of England and Wales, Bar Human Rights Committee of England and Wales, International Bar Association Human Rights Institute, *Joint Submission to the Special Rapporteur on the Independence of Judges and Lawyers concerning International Law Breaches Concerning the Independence of Legal Profession in Turkey*, 18 September 2018, Available at <http://www.barhumanrights.org.uk/wp-content/uploads/2018/09/bhrc-ibahri-lsew-joint-submission-turkey-final2.pdf>

⁵¹ Human Rights Watch, *Lawyers on Trials; Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey*, April 2019. Available at https://www.hrw.org/sites/default/files/report_pdf/turkey0419_web.pdf.

⁵² The Arrested Lawyers Initiative, *New Report: Incarceration of Turkish Lawyers: Unjust Arrests and Convictions (2016-2018)*, 1 April 2019. Available at <https://arrestedlawyers.files.wordpress.com/2019/04/report9.pdf>

⁵³ UN Office of the 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*, March 2018. Available at: <https://www.refworld.org/docid/5ab146c14.html>

⁵⁴ European Commission for Democracy Through Law, *Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey*, Adopted at 106th Plenary Session, Venice, 11-12 March 2016, Opinion No. 831/2015, 15 March 2016, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)002-e), accessed 29 March 2019; Council of Europe Commissioner for Human Rights, *Third party intervention by the Council of Europe Commissioner for Human Rights*, 10 October 2017, <https://rm.coe.int/third-party-intervention-10-cases-v-turkey-on-freedom-of-expression-an/168075f48f>, accessed 29 March 2019.

⁵⁵ OHCHR, *Report on the impact of the state of emergency on human rights in Turkey*, fn no. 13.

Derneği (ÇHD, the Progressive Lawyers Association) were arbitrarily arrested 2017 and sentenced to long-term imprisonment for being members of or leading members of the Revolutionary People's Liberation Party-Front (DHKP-C) a prescribed terrorist organization by Turkey.⁵⁶

D. Lack of effective investigation and impunity

34. The legislative framework in Turkey actively contributes to impunity regarding the alleged actions of state agents involved in serious human rights violations including: extrajudicial killings, torture and ill-treatment, enforced disappearances and unlawful destruction of property.
35. Several decrees issued under the SoE are considered to have created a situation of systematic impunity. Among the most problematic, is Law No. 6722⁵⁷ which requires the prior permission of political authorities to start investigations into public officials suspected of having committed crimes in the course of counterterrorism operations. The law grants quasi immunity to soldiers and state officials acting in the course of such operations, thus rendering investigations into crimes committed by the involved security forces more difficult, if not impossible.⁵⁸ In addition to failure to initiate investigations – judges further refuse to pursue them when an investigation is underway. By way of illustration, a judge recently acquitted a police officer who was being charged with torturing four villagers in Van. Although the scene was recorded by the police station's cameras and clearly disclosed the perpetrator's identity, the judge refused to consider the video footage claiming that the recordings were not clear enough.⁵⁹
36. In March 2015, the power of governors has also been strengthened and they are now empowered to assume some of the authority of prosecutors, including the ability to

⁵⁶ Bianet, *14 Detained Attorneys of Gülmen, Özakça on Hunger Strike Arrested*, 21 September 2017, <https://bianet.org/english/law/190006-14-detained-attorneys-of-gulmen-ozakca-on-hunger-strike-arrested>.

⁵⁷ <http://www.resmigazete.gov.tr/eskiler/2016/07/20160714-1.htm>

⁵⁸ Office of the United Nations High Commissioner for Human Rights, *Report on the Human Rights Situation in South-East Turkey – July 2015 to December 2016*, February 2017

⁵⁹ IPA News, Turkish Judge rules Police's own video footage not good enough to confirm police torture allegation, 25 April 2019. Available at: <https://ipa.news/2019/04/25/turkish-judge-rules-polices-own-video-footage-not-good-enough-to-confirm-police-torture-allegations/>

authorize police officers to look for perpetrators of crimes.⁶⁰ This extended authority given is rather alarming as most of the abuses or offences committed by law enforcement officers are committed during the first hours of detention. The subsequent loosening of control of judicial authorities is further aggravated by the dismissals of judges and prosecutors following the coup attempt of 15 July 2016.⁶¹

37. The situation of impunity in relation to enforced disappearance is particularly alarming. Of concern is the fact that enforced disappearance is not considered as an autonomous crime but is rather dependant on the commission and prosecution of a linked crime, such as torture, murder or arbitrary detention. As criminal investigations and judicial proceedings focus on the commission of autonomous crimes, enforced disappearance is only considered as a feature of the “parent crime”. This means that if the required legal standards of the crime, in the event of which the enforced disappearance occurred, are not met, either the accused will be acquitted for both the autonomous crime and the enforced disappearance, or the case will be terminated, even though the act of enforced disappearance itself is plain and obvious. Charges against state officials are thus more likely to be dropped. The Working Group on Enforced or Involuntary Disappearances have highlighted that in 14 cases involving the enforced disappearance of 80 persons only 2 cases resulted in convictions in Turkey.⁶²

38. The context in which these crimes are being investigated is worthy of note. The extension of police custody without the requirement of a judicial order under the SoE allows police officers to conduct interrogations without any warrant or judicial control, for up to 48 hours, during which abuses are the most likely to occur. Furthermore, the mass dismissal of judges and targeted harassment of lawyers also makes it tremendously difficult for effective prosecutions to be conducted. The chances of effective proceedings being brought when it comes to enforced disappearance therefore are, under these circumstances, even thinner.

⁶⁰ Law No. 6638, the Law on Amending the Police Powers and Duties Law, the Law on the Gendarmerie's Organization, Duties and Authorities, and Some [Other] Laws. See https://www.loc.gov/law/help/counterterrorism/turkey.php#_ftnref49

⁶¹ Since 15 July 2016, 4463 judges and prosecutors have been dismissed. See <https://turkeypurge.com/>

⁶² Human Rights Council, Report on the Working Group on Enforced or Involuntary Disappearances on its mission to Turkey, A/HRC/33/51/Add.1, 30.

39. No significant signs of progress in conducting effective investigations and prosecutions has been observed despite previous recommendations. The lack of effective prosecutions for crimes committed by state agents generates distrust amongst victims in the justice system who may be less likely to lodge complaints against law enforcement officers given the prevailing climate of impunity. In this way the cycle perpetuates.

V. Conclusion

40. The human rights situation in Turkey since 2015 has largely worsened. Both the deteriorating security situation in the southeast and east of Turkey, and the normalisation of restrictive measures adopted in the wake of the failed coup attempt have served to severely restrict fundamental rights and freedoms and undermine the rule of law.

41. Torture and abuse of force by state officials in the southeast and east of Turkey remains prevalent and no steps have been taken by the Government to prevent such behaviour and hold those responsible accountable. Attempts to cover misconduct and abuse of security forces and reports of authorities destroying evidence of abuse (through the use of extensive curfews in the south east) contributes to a culture of impunity. Relatedly, Kurdish minority groups are persistently discriminated against particularly in relation to their enjoyment of political rights.

42. The purge of those critical of the government continues with ongoing dismissals, and censorship. The subsequent extension of measures adopted under the SoE via their adoption into ordinary legislation is particularly concerning. Reliance on vague and poorly defined terrorist offences to prosecute lawyers, judges and those critical of the government goes to undermine core principles of the rule of law.

VI. Recommendations

43. Observation of the principles of necessity and proportionality in relation to all measures taken in the fight against terrorism.

44. End the practice of the use of extensive round-the-clock curfews and allow journalists and other observers such as national and international human rights organisations access to security zones so that they or any other individual can document and report facts occurring in such zones.

45. Conduct effective and independent investigations regarding allegations of misconduct occurring during security operations.
46. Cease the adoption of measures in policy and practice that undermine the Kurdish identity, language and culture.
47. Respect the rights of all political parties to exercise their freedom to participate in the political process.
48. End the practice of replacing elected mayors with government appointed trustees.
49. Amend Turkey's Anti-Terror Law to comply with international law principles. This includes amending the definition of terrorism so as to prevent arbitrary use of terrorism allegations.
50. Ensure the protection of lawyers, judges, prosecutors or any other judicial functions so that they may perform their roles without fear of reprisal.
51. Amend legislation to ensure that the appointment of the judiciary respects the key principles of independence and impartiality and work towards a better implementation of the rules of law and respects the principle of independence of Justice.
52. Reinstate and respect detainee's fundamental rights, including their right to a lawyer.
53. Amend the legislation on enforced disappearance, list it as an autonomous crime and bring inline with international standards.
54. Undertake action to stop fostering the impunity of state agents and security forces accused of violations of human rights and abuse of force. Conduct prompt and impartial prosecutions in line with international standards.