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

January – December 2017

March 2018

UNITED NATIONS HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Contents

I. Executive summary

1. The present report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) provides an overview of key human rights concerns in Turkey in the period between January and December 2017, with a focus on the consequences of the state of emergency on the enjoyment of human rights. The findings of OHCHR point to a constantly deteriorating human rights situation, exacerbated by the erosion of the rule of law.

2. OHCHR recognizes the complex situation that Turkey has been facing by addressing the 15 July 2016 attempted coup and dealing with a number of terrorist attacks. However, OHCHR is seriously concerned at the adverse effects on the enjoyment of human rights of numerous measures taken following the declaration of the state of emergency.

3. On 21 July 2016, the Government of Turkey notified the United Nations Secretary-General of its derogation from several of its obligations under the International Covenant on Civil and Political Rights.[1] In April 2017, the referendum on 18 constitutional amendments extended the President's executive powers into both the legislative and the judiciary branches.

4. In the time between the imposition of the state of emergency on 21 July 2016 and the finalization of this report, 22 emergency decrees were promulgated, bypassing parliamentary scrutiny and circumventing the Constitutional Court's appeal procedure. Many of the decrees contain provisions that fall short of basic human rights safeguards and Turkey's obligations under international law.

5. OHCHR notes with concern that the emergency decrees foster impunity and lack of accountability by affording legal, administrative, criminal and financial immunity to administrative authorities acting within the framework of the decrees. It is also of concern that, according to the decision of the Constitutional Court of 4 November 2016, the decrees are not subject to judicial review.

6. OHCHR notes that several decrees regulate various matters unrelated to the state of emergency, for instance the closure of civil society organizations and medical centres, which seems to indicate that they are being used to limit various legitimate activities.

7. Credible information gathered by OHCHR indicates interference of the executive with the work of the judiciary and curtailment of parliamentary oversight over the executive branch of Government; arbitrary mass dismissals of civil servants and private sector employees; arbitrary closure of civil society organizations, including prominent human rights non-governmental organizations (NGOs) and media; arbitrary detention of people arrested under state of emergency measures; the use of torture and ill-treatment during pre-trial detention; restrictions of the rights to freedoms of expression and of movement; arbitrary expropriation of private property; and methods of collective punishment targeting family members of individuals suspected of offences under the state of emergency.

8. Following the coup attempt, at least 152,000 civil servants were dismissed, and some were also arrested, for alleged connections with the coup, including 107,944 individuals named in lists attached to emergency decrees.[2] Massive

[1] International Covenant on Civil and Political Rights, derogation from obligations contained in articles 2, 3, 9, 10, 12, 13, 14, 17, 19, 21, 22, 25, 26 and 27.

[2] Decree 667, available at http://www.resmigazete.gov.tr/eskiler/2016/07/20160723-8.htm; Decree 668, available at http://www.resmigazete.gov.tr/eskiler/2016/07/20160727M2-1.pdf;

dismissals of teachers and academics, accused of links to Gülen movement,[3] have significantly affected the education sector and thereby the right to education. Over 4,200 judges and prosecutors were dismissed through executive orders of the High Council of Judges and Prosecutors while the Constitutional Court dismissed two judges. An additional 22,474 people lost their jobs due to closure of private institutions, such as foundations, trade unions and media outlets.

9. Some 570 lawyers were arrested, 1,480 faced some kind of prosecution, and 79 were sentenced to long-term imprisonment. Moreover, approximately 34 bar associations were shut down on the ground of alleged affiliation to a terrorist organization. OHCHR also identified a pattern of persecution of lawyers representing individuals accused of terrorism offences.

10. According to the Ministry of Interior, by the end of December 2017, 159,506 individuals had been arrested in relation to the emergency decrees.

11. OHCHR also received reports on the arrest and detention of approximately 300 journalists on the grounds that their publications contained apologist sentiments regarding terrorism or other "verbal act offences", or for "membership" in terrorist organizations.

12. On the basis of numerous interviews and credible reports, OHCHR identified a particularly alarming pattern of detaining women just before or immediately after giving birth. OHCHR estimates that approximately 600 women with young children were being held in detention in Turkey as of December 2017. In almost all cases, they were arrested as "associates" of their husbands - who were the Government's primary suspects for connection to terrorist organizations - without separate evidence supporting charges against them.

13. The state of emergency has led to considerable limitations of the civic space. The Government permanently closed 1,719 organizations - human rights, humanitarian, lawyers' associations, foundations, NGOs. Moreover, through emergency decrees, it liquidated some 166 media outlets, including publishing houses, newspapers and magazines, news agencies, television stations and radios. The closing down of media outlets was accompanied by the confiscation of all their assets without compensation. Over 100,000 websites were reportedly blocked in 2017, including a high number of pro-Kurdish websites and satellite TVs. The climate of fear and judicial harassment has compelled many media and human rights NGOs to self-censorship.

14. Reports from civil society sources to OHCHR indicated that in July 2016 alone, 50,000 passports were cancelled in the aftermath of the coup attempt. The actual number could be much higher considering that the emergency decrees authorize the confiscation of passports of all individuals under investigation or prosecution as well as those of their spouses.

15. OHCHR also continued receiving allegations specific to South-East region, confirming patterns of human rights violations highlighted in its report on the

Decree 669, available at http://www.resmigazete.gov.tr/eskiler/2016/07/20160731-5.htm; Decree 670, available at http://www.resmigazete.gov.tr/eskiler/2016/08/20160817-17.htm;Decree 673, available at http://www.resmigazete.gov.tr/eskiler/2016/09/20160901M2-1.pdf; Decree 677, available at http://www.resmigazete.gov.tr/eskiler/2016/10/20161029-4.htm

[3]Since 11 December 2015, the Gülen movement is classified by Turkey as a terrorist organization under the assigned names Gülenist Terror Organization (Fethullahçı Terör Örgütü, FETÖ) or Parallel State Organisation (Paralel Devlet Yapılanması, PDY). In the declaration of the state of emergency, Turkish Government stated that "Fethullah Terrorist Organization (FETÖ) has staged a coup attempt in Turkey on 15 July 2016." This report uses the terms of "FETÖ" and "Gülen or Gülenist network or movement".

human rights situation in South-East Turkey: July 2015 to December 2016,[4] published in March 2017. This included killings; torture; violence against women; excessive use of force; destruction of housing and cultural heritage; prevention of access to emergency medical care, safe water and livelihoods; and severe restrictions of the right to freedom of expression. Credible NGO sources indicate that in the first quarter of 2017, the total number of violations in South-East Turkey amounted to 7,907 and included 263 incidents of torture in detention. Turkey has not implemented the recommendations contained in the above-mentioned OHCHR report, notably the call for credible criminal investigations into the civilian deaths that occurred in the context of the 2015-2016 security operations led by the Government of Turkey.

16. At the time of finalizing this report, the nationwide state of emergency remained in force, having been renewed for a fifth three-month period in October 2017. OHCHR notes with concern that the routine extensions of the state of emergency may lead to an enduring system of governing characterized by a large number of arbitrary decisions that profoundly affect the lives of many individuals and families. This situation may therefore have long-lasting implications on the institutional and socio-economic fabric of Turkey.

II. Introduction

A. Background and scope of the report

17. On 11 May 2016, the United Nations High Commissioner for Human Rights requested the Government of Turkey to grant his Office full and unhindered access to South-East Turkey, to independently and thoroughly verify allegations of human rights violations and abuses and violations of international humanitarian law, and to establish facts accurately. While the Government invited the High Commissioner to visit Turkey, it has not formally replied to his request to deploy a team.

18. In June 2016, in the absence of access being granted to South-East Turkey and the High Commissioner not willing to request access to the rest of the country unless the initial request was acceded to, the High Commissioner initiated human rights monitoring based at the headquarters of OHCHR in Geneva. [5]

19. On 10 March 2017, as a result of this monitoring, the High Commissioner issued a "Report on the human rights situation in South-East Turkey: July 2015 to December 2016",[6] which focused primarily on human rights and humanitarian consequences of security operations conducted by the Government of Turkey in the South-East. The present report includes an update on the situation in South-East Turkey but primarily examines the human rights situation in the entire territory of the Republic of Turkey as a consequence of the state of emergency.

[4] OHCHR, Report on the human rights situation in South-East Turkey: July 2015 to December 2016, March 2017, available at http://www.ohchr.org/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf

[5] In accordance with his mandate under United Nations General Assembly resolution 48/141, which *inter alia* mandates the High Commissioner to "play an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations".

[6] OHCHR, Report on the human rights situation in South-East Turkey: July 2015 to December 2016, March 2017, available at http://www.ohchr.org/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf

20. Indeed, since the introduction of the nationwide state of emergency following the July 2016 coup attempt, OHCHR has noted a sharp increase in reports of serious human rights violations. United Nations human rights mechanisms, including special procedures of the Human Rights Council and treaty bodies, have regularly raised their concerns with the Government of Turkey through confidential communications,[7] public statements[8] and concluding observations.[9] Similar concerns were raised by the human rights mechanisms of the Council of Europe,[10] a large number of international NGOs,[11] as well as Turkish civil society and independent media.

21. In July 2016, the High Commissioner called upon the Government of Turkey to respond to the attempted coup by reinforcing the protection of human rights, strengthening democratic institutions and checks and balances, and respecting judicial independence. This request remains most pertinent in the light of the measures adopted under the state of emergency and their negative effects on the enjoyment of human rights.[12]

B. Methodology

22. This report is based on information received, verified, corroborated and analyzed by OHCHR staff members based in Geneva, in accordance with the standard human rights monitoring methodology of the Office.

23. OHCHR has exercised due diligence to corroborate the validity of information received. Methods of information gathering, verification and corroboration included interviews with victims, witnesses and relatives of victims; analysis

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[7] United Nations General Assembly, Human Rights Council, Communications report of Special Procedures: Communications sent, 1 March to 31 May 2017; Replies received, 1 May to 31 July 2017, 31 August 2017, 36th session, A/HRC/36/25; General Assembly, Human Rights Council, Communications report of Special Procedures: Communications sent, 1 December 2016 to 28 February 2017; Replies received, 1 February to 30 April 2017, 24 May 2017, 35th session, A/HRC/35/44, UN General Assembly, Human Rights Council, Communications report of Special Procedures: Communications sent, 1 June to 30 November 2016; Replies received, 1 August 2016 to 31 January 2017, 17 February 2017, 34th session, A/HRC/34/75

[8] *Turkey: UN experts call for dropping of terror charges against leading human rights defenders*, press release available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22390&LangID=E, 13 November 2017; *Ahead of referendum, UN experts warn Turkey about impact of purge on economic, social and cultural rights*, press release available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21497&LangID=E, 13 April 2017

[9] Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined fourth to sixth periodic reports of Turkey*, 11 January 2016, 88th session, CERD/C/TUR/CO/4-6; Committee against Torture, *Concluding observations on the fourth periodic reports of Turkey*, 2 June 2016, 57th session, CAT/C/TUR/CO/4; Committee on the Elimination of Discrimination against Women, *Concluding observations on the seventh periodic report of Turkey*, 25 July 2016, 64th session, CEDAW/C/TUR/CO/7.

[10] Council of Europe – Venice Commission, *Turkey: Opinion on Decrees Laws Nos, 667-676 adopted following the failed coup of 15 July 2016*, 12 December 2016, Opinion no. 865/2016, CDL-AD(2016)037; Council of Europe – Venice Commission, *Turkey: Opinion on the suspension of the second paragraph of Article 83 of the Constitution (Parliamentary Inviolability)*, 14 October 2016, Opinion no. 858/2016, CDL-AD(2016)027; Council of Europe – Commissioner for Human Rights, *Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey*, 7 October 2016, CommDH(2016)35

[11] Including the International Commission of Jurists, Amnesty International, Human Rights Watch, Transparency International, and Minority Rights International.

[12] http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20282&LangID=E

of information provided by the Government of Turkey or the State news agency; reviews of official records of the Government; review of open source documents; satellite images provided by UNITAR's Operational Satellite Applications Programme (UNOSAT); open source or confidential video, photographic and audio materials; information provided by Turkish and international NGOs; and other relevant and reliable materials.

24. The team interviewed 104 individuals (57 men and 47 women) - victims, witnesses and other sources - who reported first-hand information about alleged violations affecting 340 victims. OHCHR conducted interviews with individuals residing in Turkey, but also in France, Germany, Switzerland, the United Kingdom and other countries, since a large number of alleged victims of violations have left Turkey in search of temporary residence or political asylum. In addition, OHCHR reviewed a representative sample of approximately 100 written submissions, covering the cases of about 500 alleged individual victims (out of approximately 3,000 submissions addressed to OHCHR), which are reflected in the report.

25. Despite the challenges due to protection risks faced by sources, OHCHR was able to gather, verify and analyse a substantial body of information, allowing it to conclude it has reasonable grounds to believe the information presented in the report is veracious. Therefore, while this report does not provide an exhaustive account of the human rights situation in Turkey at the time of writing, it illustrates patterns of human rights violations that occurred between January and December 2017.

C. Protection concerns for individuals cooperating with OHCHR

26. OHCHR is committed to the protection of its sources and ensures the preservation of their confidentiality. It therefore does not disclose any information that may lead to the identification of sources.

27. On two separate occasions, in January and March 2017, individuals whose reports were available in the public domain and were referenced in OHCHR's communications with the Government in December 2016 and March 2017, reportedly suffered acts of reprisals for having made that information available. In both cases, based on the timeline analysis and interviews with the individuals concerned, OHCHR was able to establish the link between its use of the information in its communications with the Government and the subsequent reprisals against the sources of that information.

28. In order to prevent, or at least mitigate, future acts of intimidation, harassment or reprisals - which are prohibited under international law[13] - OHCHR has for the purpose of this report decided to no longer identify any sources related to its work on the human rights situation in Turkey, regardless of whether they consented to being acknowledged as a source of information or not, or whether

[13] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 13); Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (article 15); International Convention for the Protection of All Persons from Enforced Disappearance (articles 12 (1) and (4)); Optional Protocol to the Convention on the Rights of the Child on a communications procedure (article 4); Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (article 13); Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women article 11; General Assembly Resolution 53/144; .Resolution adopted by the Human Rights Council on 29 September 2017 on Cooperation with the United Nations, its representatives and mechanisms in the field of human rights, A/HRC/RES/36/2; Human Rights Council – Report of the Secretary-General, *Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*, 15 September 2017, 36th session, A/HRC/36/31; OHCHR, *Guidelines against Intimidation or Reprisals ("San José Guidelines")*, 30 July 2015, 27th meeting of chairpersons of the human rights treaty bodies, HRI/MC/2015/6.

the information was available in the public domain or not. This decision will be reviewed periodically, in accordance with the evolution of the treatment by the Government of Turkey of human rights defenders and other individuals cooperating with OHCHR.

D. Applicable legal framework

29. The international legal obligations which the Republic of Turkey voluntarily accepted by ratifying international human rights treaties are the basis for the assessment of events and patterns described in this report. Turkey is a State party to the nine core international human rights treaties,[14] in addition to regional human rights treaties to which it is bound as a Member State of the Council of Europe.

30. The international norms are complemented by a number of standard-setting tools, which provide detailed guidance about more general rules. In the preparation of this report, OHCHR relied on the following United Nations standards: The Code of Conduct of Law Enforcement Officials;[15] the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;[16] the Standard Minimum Rules for the Treatment of Prisoners;[17] the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders;[18] the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;[19] the Basic Principles on the Independence of the Judiciary;[20] the Basic Principles on the Role of Lawyers;[21] and the Guidelines on the Role of Prosecutors.[22]

III. Human rights in the context of the state of emergency

A. Effects of the Constitutional amendments on the separation of powers

31. The referendum on 18 constitutional amendments, held in April 2017,[23] granted increased powers to the executive, as it allowed the President of the Republic of Turkey to extend his executive powers into both the legislative branch and the judiciary. It gave him the authority to enact laws bypassing the Parliament, as well as the power to control appointments and oversight procedures within the judiciary.

32. On 13 March 2017, the European Commission for Democracy through Law (hereinafter the Venice Commission) assessed that the proposed changes would result in a system where the separation of powers and the independence of the judiciary are not assured, thus introducing a “presidential regime which

[14] For the list of the international human rights treaties ratified by Turkey, see http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=179&Lang=EN

[15] Adopted by General Assembly resolution 34/169 of 17 December 1979

[16] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

[17] A/RES/70/75

[18] A/C.3/65/L.5

[19] Adopted by General Assembly resolution 43/173 of 9 December 1988

[20] Endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

[21] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

[22] Ibid.

[23] According to the Official Gazette published on 27 April 2017, the referendum yielded 51.41 per cent of "Yes" votes and 48.59% of “No” votes, with a voters’ turn-out of 87.45 per cent.

lacks the necessary checks and balances required to safeguard against becoming an authoritarian one".[24]

33. Whilst before April 2017, emergency decrees were issued by the Council of Ministers, the amendments to the Constitution conferred to the President the exclusive power to declare a state of emergency[25] and to issue presidential decrees having the force of law "on the matters necessitated by the state of emergency".

34. OHCHR is concerned that the new appointment system for the members of the Council of Judges and Prosecutors (formerly High Council of Judges and Prosecutors), introduced through amendments to the Constitution, does not abide by international standards, such as the Basic Principles on the Independence of the Judiciary. In particular, under the amended Constitution, the President appoints four members - that is almost a third of the members of the Council of Judges and Prosecutors, - whose regular number has decreased from 22 to 13 as a result of the amendments. Because of the Council's key role of overseeing the appointment, promotion and dismissal of judges and public prosecutors, the President's control over it effectively extends to the whole judiciary branch. The United Nations Human Rights Committee has noted that a situation where the executive is able to control or direct the judiciary is incompatible with the notion of an independent tribunal.[26]

35. Several organizations, including the Limited Referendum Observation Mission of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE), as well as the Parliamentary Assembly of the Council of Europe (PACE)[27] and the Turkish Bar Association,[28] denounced a last-minute decision taken by Turkey's electoral board[29] on the day of the referendum to allow unstamped ballots to be counted as valid, in contravention of the Turkish electoral law. OSCE noted that "lack of equal opportunities, one-sided media coverage and limitations on fundamental freedoms" had affected considerably the right to political participation.[30]

36. OHCHR notes that the timing of the referendum was itself a cause of concern since the state of emergency, declared on 21 July 2016, had led to restrictions

[24] Council of Europe – Venice Commission, Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January and to be submitted to a national referendum on 16 April 2017, 13 March 2017, Opinion no. 875/2017, CDL-AD(2017)005.
[25] Article 119 of the Turkish Constitution on "Emergency Situation Management" was amended so that the President, and not the Council of Ministers, has the power to declare a state of emergency and to issue presidential decrees having the force of law "on the matters necessitated by the state of emergency".
[26] Human Rights Committee, General Comment No. 32: Article 14, Right to equality before courts and tribunals and to fair trial, 23 August 2007, 90th session, CCPR/C/GC/32
[27] Parliamentary Assembly – Bureau of the Assembly, *Observation of the referendum on the constitutional amendments in Turkey (16 April 2017)*, 29 May 2017, Doc. 14327, available at http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23746&lang=en
[28] Union of Turkish Bar Associations, *April 2017 Public Opinion*, 17 April 2017, available at http://www.barobirlik.org.tr/Detay76487.tbb
[29] Supreme Electoral Council (YSK).
[30] OSCE Office for Democratic Institutions and Human Rights and Parliamentary Assembly of the Council of Europe – International Referendum Observation Mission, *Statement of Preliminary Findings and Conclusions: Republic of Turkey, Constitutional Referendum, 16 April 2017*, 17 April 2017, available at http://www.osce.org/odihr/elections/turkey/311721?download=true; OSCE Office for Democratic Institutions and Human Rights, *Republic of Turkey: Constitutional Referendum 16 April 2017*, 22 June 2017, available at http://www.osce.org/odihr/elections/turkey/324816

of fundamental freedoms[31] which did not provide for the safe and free environment essential for the holding of a referendum or any other election.

B. Effects of presidential decrees enacted during the state of emergency

"What happened to my family was an enormous injustice. My wife, my brothers and sisters and several of our relatives were dismissed from their jobs because someone denounced me as a [Fethullah Gullen supporter] even though we'd had nothing to do with the coup, we'd never used ByLock, and neither of us was even arrested. … We no longer feel safe here but we cannot leave because our passports were cancelled. We are stunned, sitting at home in silence and wondering how to pay the bills and feed our children."

Account of a dismissed civil servant provided to OHCHR

37. Further to the attempted coup of 15 July 2016, the Turkish authorities announced a three-month state of emergency, which was endorsed by Parliament on 21 July 2016, with the purpose "*to take required measures in the most speedy and effective manner in the fight against FETÖ terrorist organization in order to save our nation from this ferocious terror network and return to normalcy as soon as possible*." The declaration emphasized that the purpose was "*not to restrict fundamental freedoms of our citizens*".[32]

38. The nationwide state of emergency was renewed for a fifth three-month period in October 2017. A total of 22 presidential decrees were adopted since July 2016 until 31 December 2017, granting Turkish authorities wide-ranging powers that have led to significant restrictions on human rights and to human rights violations.

39. While some emergency decrees[33] pursued the pattern of dismissal of public servants, and closure of institutions and organizations deemed to be a threat to national security, others have de facto amended hundreds of existing laws and decrees, substantially modifying the legal and administrative structures of the State.

40. The non-exhaustive list below illustrates the broad spectrum of the measures adopted in a large number of areas in virtue of the emergency decrees, all of which have human rights implications:

    a) Decree 667 of 23 July 2016 (12 articles) orders the permanent dissolution of over 2,000 private institutions, and grants relevant ministries the authority to close institutions not listed in Annexes of Decrees "found to be members of structure/entities, organizations or groups, or terrorist organizations, found to pose a threat to national security, or whose connection or contact with them have been found to exist." The Decree also grants commissions established under the authority of Ministries and Chiefs of Departments to prepare lists of public officials to be dismissed due to their connections to terrorist

[31] The emergency decrees caused severe interference with the exercise of democratic freedoms, such as the liquidation of several private media outlets and the ban on assemblies during the period that coincided with the parliamentary debate on amendments

[32] Declaration of State of Emergency in Turkey (English translation) (Council of Europe), available at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069538b; Turkey: Notification Under Article 4(3), Transmittal of the Secretary General, 21 July 2016, available at https://treaties.un.org/doc/Publication/CN/2016/CN.580.2016-Eng.pdf

[33] Decrees 692 and 693.

organizations (Article 4); provides for the cancellation of passports of dismissed individuals; and extends the period of custody for up to 30 days.

b) Decree 668 of 24 November 2016 (40 articles) restricts access to a lawyer for suspects under detention for up to five days; authorizes searches in domiciles and workplaces under an order of the public prosecutor, as well as searches and seizures at lawyers' offices, without order of a judge or written order by a public prosecutor. It also contains as annexes the lists of 131 media outlets declared closed and of 1,684 individuals dismissed from the Armed Forces.

c) Decree 669 of 24 November 2016 (40 articles) establishes the University of National Defence, and includes a list of 193 persons dismissed from the Armed Forces and 1,196 from the Gendarmerie.

d) Decree 670 of 17 October 2016 (12 articles) incorporates specific measures concerning sharing of personal data and management of seized property. It also contains as annexes lists of dismissed individuals, including 2,360 staff members from the Ministry of Interior.

e) Decree 671 of 24 November (35 articles) enables high school graduates to become police officers without taking any exams, and authorizes the massive release of convicts imprisoned in closed, semi-open and open prisons.

f) Decree 672 of 24 October 2016 (four articles) dismisses through annexes 50,875 public officials, stating they "shall not be re-admitted to the organization in which they previously took office and shall be evicted from publicly-owned housing within 15 days".

g) Decree 673 of 24 October 2016 (12 articles) reopens 54 private education institutions closed by Decree 667; cancels 158 Government-funded stipends; and states that confiscation of passports may also concern spouses of individuals dismissed.

h) Decree 674 of 24 November 2016 (53 articles) introduces amendments to the Municipality Law, allowing the Government to replace the elected mayors or deputy mayors who have been dismissed or arrested for membership of, or aiding and abetting a terrorist organization, mandating the Ministry of Interior and Governors to appoint trustees.

i) Decree 675 of 24 November 2016 (19 articles) removes the time limit for concluding an investigation for suspended public officials; and announces the dismissal of 10,131 public officials.

j) Decree 676 of 24 November 2016 (92 articles) amends provisions of the Criminal Procedure Code, for instance, incorporating limitations of access to a lawyer for convicts. It also grants the President the power to appoint the rectors of universities.

k) Decree 677 of 19 December 2016 (10 articles) closes 375 associations and states that institutions closed under state of emergency cannot claim any compensation.

l) Decree 678 of 19 December 2016 (39 articles) restricts the "right to strike" and amends the Law 6356 on Trade Unions and Collective Labour Agreements.

m) Decree 680 of 6 February 2017 (87 articles) amends the Law on Police Duties and Responsibilities by granting broad control over internet; and gives the authorities the power to revoke citizenship of individuals under investigation who remain abroad.

n) Decree 690 of 29 February 2017 (77 articles) is an omnibus legislation which, for instance, bans certain television programmes; and amends the

Population Services Law regarding the procedure to register divorces, among other matters.

o) Decree 694 of 25 August 2017 (205 articles) amends a large number of various important laws, including the Law of the Judges and Public Prosecutors, the Law of Civil Procedure, the Military Law, the Law of the personnel of the Turkish Armed Forces, the Law of the State Intelligence Services and National Intelligence Organization, the Security Organization Law, the Law on the Foreigners and International Protection; the Turkish Commercial Code, the Law on Higher Education, Student Dormitories and cafeterias, among other laws.

p) Decree 696 of 24 December 2017 (137 articles) is also an omnibus legislation that, inter alia, amends the Law on Anti-Terror[34]; increases the number of members of the Supreme Courts.

41. OHCHR notes that, as stated by the United Nations Human Rights Committee, any measures adopted under a state of emergency, must be limited to the extent strictly required by the exigencies of the situation.[35] The Turkish Constitution actually provides that measures implemented in a state of emergency must not "violate obligations under international law", and that even under a state of emergency, certain fundamental rights must be respected. According to the State of Emergency Law of 1983, the scope of such Decrees should be limited to the original emergency purpose.[36]

42. OHCHR notes that the sheer number, frequency and the lack of connection of several decrees to any national threat, seem to indicate the arbitrary nature of some measures, and point to the use of emergency powers to stifle any form of criticism or dissent vis-à-vis the Government.

1. Subject matter and scope of presidential decrees

43. The presidential decrees adopted since July 2016 have broadened the scope of the original emergency to include measures against individuals who "belong to, connect to, or have contact with the Fetullahist Terrorist Organization" (Decree 668, of 27 July 2016) and public personnel who have "membership in, affiliation or connection with the Fetullahist Terrorist Organization", as well as the spouses and children of such persons (Decree 670, of 17 August 2016). Decree 671 amended Law 5651, denying employment in the Turkish Telecommunications Authority to individuals who "are members, are affiliated, linked or connected with terrorist organizations or their structures".

44. The decrees broadly refer to "link or connection" with "terrorist organizations", without describing the nature of such links, giving large discretion of interpretation to the authorities responsible for their execution. Many individuals arrested in relation to measures foreseen by the decrees, who

[34] According to the Information Note on the Decree 696 issued by the Ministry of Justice, "Detainees or convicts who fall within the remit of the Anti-Terror Law – with the exception of juveniles and pregnant women – are required to wear the attires provided them by the administration of the penitentiary institution, when they are being taken out of the institution to attend a hearing. A proportional disciplinary penalty is provided for those acting contrary to the arrangement. With the said arrangement, it is aimed to prevent the terrorist propaganda and to enable judges, public prosecutors who perform judicial duties and experts and witnesses to reach the truth in an independent and impartial manner without being influenced by probable pressures, and therefore it is aimed to secure the public order."

[35] Human Rights Committee, General Comment 29, States of Emergency (article 4), CCPR/C/21/Rev.1/Add.11, para 4.

[36] English translation available at http://www.legislationline.org/documents/action/popup/id/6974

OHCHR interviewed, were not provided with evidence against them and were unaware of investigations against them.

45. OHCHR notes with concern that Decree 696 of 24 December 2017 allows impunity and lack of accountability by affording full legal, administrative, criminal and financial immunity to "people who took decisions, executed these measures and decisions, participated in any legal and administrative measures in order to suppress the coup attempt and the terror acts which took place on 15/7/2016 and its follow-up events."

46. OHCHR further notes that several decrees[37] constitute omnibus legislation and regulate various matters which seem unrelated to any threat to national security, such as lifting the elections of rectors in universities, dismissing public officials, closing civil society organizations, schools, universities, and media. The Venice Commission noted that "such information supports the perception that the measures allowed by the Decrees are actually designed and/or used to address (also) more general problems facing the Turkish authorities as they see it, not necessarily having a link to the management of the state of emergency." [38]

47. Article 148 of the Constitution - which sets out the duties and powers of the Constitutional Court - explicitly states that decree laws issued during a state of emergency shall not be brought before the Constitutional Court alleging their unconstitutionality as to form or substance. It is of particular concern that, according to a decision of the Constitutional Court of 4 November 2016, emergency decrees are not subject to judicial review.[39]

2. Interference with the independence of the judiciary

"I saw on TV that there was a new list of judges suspended. Someone called from my department and said that he had received a list from HYSK and I understood that I had been suspended. I saw on TV that they were interrogating judges. I did not go to work that day and from then on I also decided to hide. I did not believe that anything would be done according to the established procedures."

Former judge interviewed by OHCHR

48. Based on credible reports from a variety of sources, OHCHR documented increased executive control over, and interference with the judiciary and prosecution service; the arrest, dismissal and arbitrary transfer of judges and prosecutors to other courts; and recurring instances of threats against lawyers.

49. Article 3 of Decree 667 of 29 October 2016 gave to appellate supreme judicial instances (the Constitutional Court, the Court of Cassation and the Supreme Administrative Court) the power to dismiss their members allegedly linked to Gülenist network. As a result, a large number of judges and prosecutors were dismissed, arrested and detained since the failed coup attempt; 4,240 Judges and prosecutors were dismissed through executive orders of the High Council

[37] Decrees 687, 690, 694 and 696.

[38] Council of Europe – Venice Commission, *Opinion on the Provisions of the Emergency Decree Law No. 674 of 1 September 2016*, 9 October 2017, Opinion no. 888/2017, CDL-AD(2017)021.

[39] At its plenary meeting on 12 October 2016, the Constitutional Court dismissed the request for the annulment of certain provisions of the Decree Laws no. 668 and 669 issued during the state of emergency, invoking lack of jurisdiction, http://www.constitutionalcourt.gov.tr/inlinepages/press/PressReleases/detail/33.html

of Judges and Prosecutors, and the Constitutional Court dismissed two of its judges.

50. Sources interviewed by OHCHR indicated that the collective dismissals and suspensions of judges from lower instances courts through lists issued by the High Council of Judges and Prosecutors have been largely arbitrary, and that appropriate procedures were not followed, including respect for the fundamental principle of presumption of innocence, the provision of specific evidence, and individual reasoning of the case, or the ability to present a defence.[40] According to Turkish Law 2802, members of the judiciary can be arrested only when caught *in flagrante delicto* of committing an aggravated felony.

51. OHCHR recalls that judges represent a special category of public servants, whose independence is guaranteed under international law.[41] Therefore, any dismissals within the judiciary should be subjected to particularly exacting scrutiny, even in times of a serious public emergency. Such dismissals not only affect human rights of the individual judges concerned, but they may weaken the judiciary as a whole and affect its effectiveness.

52. OHCHR notes that the jurisdiction and practice of the Peace Judgeship Courts,[42] established by Law 6545 in June 2014, give rise to numerous concerns. These courts have been using the emergency decrees to issue detention orders, including decisions to detain journalists and human rights defenders, to impose media bans, to appoint trustees for the takeover of media companies, or to block internet. The courts were created following claims by the Government that the investigations that were ongoing into corruption cases involving high level public officials and businessmen were part of an attempted coup by the judiciary. However, under the Law on Criminal Procedure, the Peace Judgeship Courts were given broader powers, such as to issue search and seizure warrants (including permitting 'wire-taps' for the interception of communications) and arrest and detention warrants.

53. The decisions of Peace Judgeship Courts can only be appealed to another judgeship of peace.[43] The United Nations Special Rapporteur Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression observed that "the system of horizontal appeal falls short of international standards[44] and deprives individuals of due process and fair trial guarantees."

54. According to the Venice Commission, "there are numerous instances where peace judges did not sufficiently reason decisions which have a drastic impact on human rights of individuals. Their heavy workload does not leave them sufficient time to provide sufficiently individualised reasoning, notably in cases of detention and when shutting down Internet sites." [45]

[40] See Basic Principles on the Independence of the Judiciary.

[41] Basic Principles on the Independence of the Judiciary; Basic Principles on the Role of Lawyers; and Guidelines on the Role of Prosecutors.

[42] The Peace Judgeship Courts were established by "Law on Amendments to Turkish Penal Code and Certain Laws" No.6545. In accordance with the amendments, they are tasked to decide upon protective measures. Such protective measures include arrest, pre-trial detention, search, seizure, taking under custody, physical examination of the suspect and taking samples from the body of the suspects.

[43] Such an appeal is called "opposition" according to Article 268 of the Criminal Procedure Code.

[44] A/HRC/35/22/Add.3, para. 68

[45] Venice Commission, Opinion on the Duties, Competencies and Functioning of the Criminal Peace Judgeships, March 2017, CDL-AD(2017)004, para. 105.

55. OHCHR emphasizes the risks of executive control over the judiciary and its institutions with regard to the rule of law and democratic guarantees.[46]

56. In total, some 570 lawyers were arrested, 1,480 faced some kind of prosecution, 79 were sentenced to long-term imprisonment, and approximately 34 bar associations shut down on the ground of alleged affiliation to a terrorist organization.[47] In addition, OHCHR observed a pattern of persecution of lawyers representing individuals accused of terrorism offences, being associated with their clients' cause (or alleged cause) while discharging their official functions, and consequently prosecuted for the same or related crime attributed to their client.[48]

57. The risks faced by criminal defence lawyers is reportedly so high that it is extremely difficult for suspects arrested during the state of emergency to find a lawyer. Some lawyers still willing to defend suspects of terrorism demand fees that are unaffordable for the majority of suspects. This constitutes an obstacle to the enjoyment of the right to fair trial and access to justice.

3. Arbitrary dismissals of civil servants and private sector employees

"The University was closed. They blamed it as if it was affiliated to the Gülen movement. I don't know why they did this. So I started to look for a job. My insurance was affiliated with the XXX University so no other university wanted to give me a job. Around 500 staff including academics were working in that university. Out of four members of my department, three are arrested. In September 2016, they arrested 60 colleagues. My life was in danger, so I decided to go abroad."

University teacher interviewed by OHCHR

58. OHCHR has assessed as arbitrary the nature of massive dismissals of civil servants and private sector employees that occurred on broad grounds of "link or connection with terrorist organizations", without describing the nature of such links. Moreover, most of these dismissals were executed on the basis of lists published as annexes to decrees, without individual notification and judicial review or the possibility thereof.

59. These dismissals have affected a wide range of professionals, members of the armed forces, police officers, medical personnel, teachers and academics, and people working at all levels of the central and local governments. OHCHR stresses the short and long-term impact of these mass dismissals on society as they concern sectors which are essential for the good functioning of institutions and society, such as security, justice, health and education.

60. Besides constituting violations of the right to work, the dismissals affected various other human rights protected by international treaties to which Turkey is a party, including the rights to an adequate standard of living, to adequate housing, to health, to freedom of movement, and to an effective remedy.

61. Following the coup attempt, and until December 2017, at least 152,000 civil servants were dismissed, including 107,944 individuals named in lists attached to emergency decrees.[49] A large number of sources consulted by OHCHR

[46] Basic Principles on the Independence of the Judiciary, United Nations Congress on the Prevention of Crime and Treatment of Offenders, 26 August to 6 September 1985, endorsed by General Assembly resolutions 40/32 and 40/146.

[47] International Bar Association's Human Rights Institute (IBAHRI) statement, https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=33739fd3-43dd-420a-8b88-474915fabfb7

[48] United Nations Basic Principles on the Role of Lawyers, paras 16 and 18.

[49] Decree 667, available at http://www.resmigazete.gov.tr/eskiler/2016/07/20160723-8.htm; Decree 668, available at http://www.resmigazete.gov.tr/eskiler/2016/07/20160727M2-1.pdf;

affirmed that people affected included about 60,000 security, military and police officials; some 33,000 teachers; around 6,000 academics; and approximately 6,000 health sector personnel, all alleged by the authorities to be Gülen supporters. The Venice Commission concluded that "such method of purging the State apparatus creates a strong appearance of arbitrariness".[50]

62. On 24 December 2017, Decree 695[51] ordered the dismissals of 2,756 public officials,[52] as well as the closure of 17 institutions, two newspapers and one health centre.

63. According to Decree 667, issued in July 2016, "those who are considered to be a member of, or have relation, connection or contact with terrorist organizations or structure/entities, organizations or groups, established by the National Security Council as engaging in activities against the national security of the State, shall be dismissed from public service".[53]

64. An additional 22,474 people lost their jobs due to the closure of private institutions for alleged support to Gülenist network, especially academics, teachers and other staff working in private education institutions.[54]

65. However, the decrees do not establish clear criteria used to assess links of the dismissed individuals to the Gülenist network. As a result, dismissals have been ordered on the basis of a combination of various elements, such as making monetary contributions to the Asya bank[55] and other companies of the "Parallel State Organization", being a member of a trade union or association linked to the Gülenist network, or using the messenger application ByLock and other encrypted messaging programmes. The dismissals may also be based on reports by the police or secret service about some individuals, analysis of social media contacts, donations, websites visited, or sending children to schools associated with the Gülenist network. Information received from colleagues or neighbours, or subscription to Gülenist periodicals could also be used as criteria for dismissals. The Commissioner for Human Rights of the Council of Europe noted that "the persons in question were not provided with evidence against them and were unable to defend themselves in an adversarial manner in many cases." [56]

Decree 669, available at http://www.resmigazete.gov.tr/eskiler/2016/07/20160731-5.htm; Decree 670, available at http://www.resmigazete.gov.tr/eskiler/2016/08/20160817-17.htm;Decree 673, available at http://www.resmigazete.gov.tr/eskiler/2016/09/20160901M2-1.pdf; Decree 677, available at http://www.resmigazete.gov.tr/eskiler/2016/10/20161029-4.htm

[50] Council of Europe – Press Release, Turkey had good reasons to declare the state of emergency but went too far with the emergency measures: Venice Commission, 9 December 2016, DC191(2016), available at https://wcd.coe.int/ViewDoc.jsp?p=&id=2449431&Site=DC&BackColorInternet=F5CA75&BackColorIntranet=F5CA75&BackColorLogged=A9BACE&direct=true

[51] Decree 695, available at http://www.resmigazete.gov.tr/eskiler/2017/12/20171224-20.htm

[52] The dismissed officials included 637 military officers, 350 gendarmerie personnel, 392 teachers, 105 academics, 341 imams and other religious officers, 169 personnel from municipalities, and 245 staff members of the Ministry of Justice.

[53] Decree 667, article 4.

[54] Anadolu Agency, *Democracy Triumphs in Turkey: FETO's Coup Attempt in Turkey, A Timeline,* 15 July 2016, available at http://aa.com.tr/uploads/TempUserFiles/FETO_coup_ENG.pdf,

[55] The prosecutors consider holding an account or making transactions with Bank Asya as an evidence of connection to a terrorist organization, since Asya Bank was closed by the Government for its alleged links with the Gülen movement.

[56] Council of Europe – Commissioner for Human Rights, *Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey*, 7 October 2016, CommDH(2016)35, paras 23-24 and 26.

66. Furthermore, the massive scale of dismissals gives rise to serious concerns pertaining to the standards of due process, which are non-derogable under a state of emergency. The Venice Commission observed that measures taken by the Government in the framework of the state of emergency went beyond what is permitted by the Turkish Constitution and by international law. It further underlined that the Government had dismissed individuals through ad hominem legislation through lists appended to emergency decrees.

67. The Venice Commission further noted that such measures adopted "on the basis of the emergency decree laws, without individualized decisions, and without the possibility of timely judicial review, are unacceptable in light of the demands of international human rights law, and extremely dangerous."[57]

68. OHCHR observed that dismissals were accompanied by additional sanctions applied to physical persons dismissed by decrees or through procedures established by decrees. These include a life-long ban from working in the public sector and in private security companies, which violates the right to work.[58] It also includes the systematic confiscation of assets and cancellation of passports, which prevents people from leaving the country, thereby constituting a violation of the freedom of movement.[59]

69. The Parliamentary Assembly of the Council of Europe stated it was "dismayed by the social consequences of the measures applied in the framework of the state of emergency (…)", and feared that these measures amounted to the "civilian death" of those concerned. It concluded "this will have a dramatic and detrimental long-term effect on Turkish society, which will need to find the means and mechanisms to overcome this trauma." [60]

70. Indeed, the dismissals eventually affected a range of human rights by depriving people of their means of living and supporting their families. Dismissed people lost their income and social benefits, including access to medical insurance and retirement benefits.[61] OHCHR is concerned that dismissals have severely jeopardized the right to an adequate standard of living and the right to adequate housing of many people.[62] Various decrees specifically stipulate that dismissed public servants "shall be evicted from publicly-owned houses or houses owned by a foundation in which they live within fifteen days".[63] Since the stated purpose of the emergency regime was to restore the normal functioning of the democratic institutions, it is unclear how measures such as the eviction of families of civil servants from publicly-owned housing may contribute to this goal.

71. OHCHR is concerned that the stigma of having been assessed as having links with a terrorist organization could compromise people's opportunities to find

[57] Venice Commission, Opinion on the measures provided in the recent emergency decree laws with respect to freedom of media, March 2017, CDL-AD(2017)007, para. 92.
[58] This violates the right to work as protected by article 6 of the International Covenant on Economic, Social and Cultural Rights: "The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right."
[59] This may amount to a violation of the right to freedom of movement protected by article 12 of the International Covenant on Civil and Political Rights.
[60] Parliamentary Assembly of the Council of Europe (PACE), Resolution 2156, 25 April 2017.
[61] International Covenant on Economic, Social and Cultural Rights, articles 12 (right to health) and 9 (right to social security).
[62] International Covenant on Economic, Social and Cultural Rights, article 11; General Comment n°4: The right to adequate housing (article 11 (1)); General Comment n°7: The right to adequate housing: forced evictions (article11 (1)).
[63] Decree 667, Article 3 (1); Decree 668, Article 2 (2); Decree 669 Article 2 (2).

employment. Individuals interviewed by OHCHR often reported being stigmatized by neighbours as well as "loss of honour". [64] The Commissioner for Human Rights of the Council of Europe expressed grave concerns about the publication of lists of names annexed to Decrees, stating: "It is beyond doubt that these persons will have to bear the stigma of having been assessed as having links with a terrorist organization."[65]

72. OHCHR observed a pattern of application of punitive measures not prescribed by the Penal Code that have targeted not just the primary "suspects" (such as civil servants or human rights activists) but also people associated with them, particularly their family members (including children, siblings, parents and other relatives), as well as friends, neighbours, work associates and even social media contacts they did not necessarily know. This raises concerns that the Government may be applying the illegal standard of guilt by association or collective guilt, which violates principles of individual legal responsibility, fairness and legal certainty.[66]

73. Credible sources indicated that failure to set out clear criteria for the dismissals and the absence of individualized evidence has facilitated arbitrary dismissals on the grounds of score-settling, political affiliations or even personal conflicts.[67]

74. In January 2016, a group of 1,128 academics from 89 Turkish universities, along with 355 international academics, released a petition calling on the Government of Turkey to "put an end to violence inflicted against its citizens" in the South-East. By December 2017, 380 academics who had signed the petition had been dismissed from their universities and barred from public service. The trials of these academics started on 5 December 2017. At least 146 academics from public and private universities in Istanbul would face individual and separate trial hearings for "spreading terrorist propaganda on behalf of PKK."[68]

75. OHCHR received credible reports that a number of police officers who refused to participate in arbitrary arrests, torture and other repressive acts under the state of emergency were dismissed and/or arrested on charges of supporting terrorism.

76. OHCHR notes that during the thirty-sixth session of the Human Rights Council, in September 2017, the Permanent Representative of Turkey to the United Nations Office at Geneva indicated that "Effective domestic remedies are in place for reviewing measures", and added that: "Through the administrative boards of review, more than 35,000 public employees have been

[64] International Covenant on Civil and Political Rights, article 17(1): "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation."

[65] Council of Europe – Commissioner for Human Rights, Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, 7 October 2016, CommDH(2016)35, paragraph 33.

[66] Council of Europe – Commissioner for Human Rights, Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, 7 October 2016, CommDH(2016)35, paragraph 41: "A series of measures of particular concern to the Commissioner are those which target directly or are liable to affect family members of suspects in an automatic fashion … [including] evictions, termination of lease agreements and freezing of assets of the said suspects … the possibility for annulling passports of spouses of suspects who are themselves not under investigation. … The Commissioner is worried that such measures will inevitably fuel the impression of 'guilt by association'…"

[67] Amnesty International, *Turkey: No end in sight – Purged public sector workers denied a future in Turkey*, 22 May 2017, available at https://www.amnesty.org/en/documents/eur44/6272/2017/en/, page 9.

[68] The Kurdistan Workers' Party or PKK (abbreviated from Kurdish: Partiya Karkerên Kurdistanê)

reinstated to date. Nearly 350 institutions have also been reopened." OHCHR would appreciate receiving further information in this regard, including the updated number of reinstated civil servants.

4. Torture and ill-treatment

"They took me to the police station, terrorism unit …They called the prosecutor and told him on the phone, "we have got a wife of a terrorist". … Then the police officer started threatening to take off my clothes and that they would show me to the detained men soldiers. He put his hands under my t-shirt and started to take it off. … I was numb, silent."

Wife of a man suspected of being part of the Gülenist network, interviewed by OHCHR

77. OHCHR documented the use of different forms of torture and ill-treatment in custody, including severe beatings, threats of sexual assault and actual sexual assault, electric shocks and waterboarding. Based on accounts collected by OHCHR, the acts of torture and ill-treatment generally appeared to aim at extracting confessions or forcing detainees to denounce other individuals. It was also reported that many of the detainees retracted forced confessions during subsequent court appearances.

78. On the basis of numerous interviews and reports, OHCHR documented the emergence of a pattern of detaining women just before, during or immediately after giving birth. In almost all cases, the women were arrested as associates of their husbands, who were the Government's primary suspects for connection to terrorist organizations, without separate evidence supporting charges against them.

79. OHCHR found that perpetrators of ill-treatment and torture included members of the police, gendarmerie, military police and security forces.

80. Thousands of uncensored images of torture of alleged coup suspects in degrading circumstances were circulated widely in Turkish media and social networks after the coup, along with statements inciting violence against opponents of the Government. OHCHR received reports of individuals detained and ill-treated without charge by anti-terrorism police units and security forces in unconventional places of detention such as sports centres and hospitals.

81. The United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment visited Turkey in November 2016 and found that torture was widespread following the failed coup, particularly at the time of arrest and subsequent detention. He further found that the number of investigations reportedly carried out into allegations of torture was "grossly disproportionate to the alleged frequency of violations."[69]

82. According to the Ministry of Interior, by the end of December 2017, 159,506 individuals had been taken into custody; out of those, some 55,000 were eventually arrested.[70] Human Rights Watch estimates that between October 2016 and October 2017, "over 150,000 people passed through police custody

[69] Preliminary observations and recommendations of the United Nations Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Nils Melzer on the official visit to Turkey, 27 November to 2 December 2016.

[70] Andalou Agency, 17 December 2017, available at http://aa.com.tr/tr/politika/icisleri-bakani-soylu-15-temmuz-2016-tarihinden-itibaren-47-bin-523-kisi-tutuklandi/1007102

accused of terrorist offences, membership of armed groups, or involvement in the attempted coup of July 2016."[71]

83. OHCHR also notes with concern the adverse effects of the emergency measures on fundamental safeguards against torture and ill-treatment:[72]

a) *Timely and unrestricted access to a lawyer of one's choice* is crucial in the context of the prohibition of torture and the right to liberty. Decree 667 significantly erodes detainees' right to confidential legal advice. It provides that oral consultations between the detainees and their lawyers may be recorded for security reasons, and that the documents they exchange may be seized; the timing of such consultations may be regulated, and the lawyer may be replaced, at the request of the prosecution. Furthermore, Decree 676 introduced amendments to the Criminal Procedure Code to allow the detention of individuals accused of crimes within the scope of the Anti-Terror Law without access to a lawyer for 24 hours.[73] Under Article 6 of Decree 676, meetings between lawyers and clients may be recorded, observed and/or interrupted by a public official where there is a threat to national security and the client has been convicted for a terror crime. Access to a lawyer may also be restricted for six months by a magistrates' court. In addition, Article 1 of Decree 676 states that individuals accused of terrorism may not have more than three lawyers representing them during court hearings.

b) *The right to be brought before a magistrate or judge within a reasonable period of time*. Decree 667 - the first to be issued following the attempted coup - increased the amount of time a detainee could be held without charge from four to 30 days. The maximum period in custody without bringing the suspect before a judge was then reduced from 30 to seven days with a possible extension to 14 days (Decree 684 article 10). Detention of an individual for 14 days without judicial oversight would constitute a violation of Turkey's human rights obligations.[74]

c) *Access to a doctor and medical examination*. OHCHR received credible reports that medical checks conducted by the designated doctors on detainees held in police custody were often done in the presence of police officers, violating the confidentiality of patients and impeding adequate documentation of possible torture or ill-treatment.

d) *Right to visits and notifying a family member or third party*. Access of family members to detainees was restricted by Decree 667 which provides that detainees may only be visited by their closest relatives, and are only permitted to use a telephone for 10 minutes every 15 days.[75] These limitations may violate the right to private and family life.[76] Other practices involve unnecessary placement in high-security prisons far from the detainee' s place of residence, with the right to only one family visit per month.

e) *Independent oversight*. OHCHR was informed that all prison monitoring boards which were operating at the provincial level were closed down by emergency decree (Decree 673 article 5), and it is not clear whether they were

[71] Human Rights Watch, *In Custody: Police Torture and Abductions in Turkey*, October 2017, available at https://www.hrw.org/sites/default/files/report_pdf/turkey1017_web_0.pdf

[72] Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), both ratified by Turkey.

[73] Decree 676, article 3.

[74] OHCHR notes that in the case of *Aksoy (Eroğlu) v Turkey* (European Court of Human Rights, App no. 59741/00), the European Court of Human Rights stated that detention during 14 days without judicial review, even during a legitimate state of emergency, violated the State's human rights obligations.

[75] Decree 667, article 6.

[76] International Covenant on Civil and Political Rights, article 17; European Convention on Human Rights, article 8.

reopened. OHCHR notes that independent monitoring of places of detention constitutes an international obligation voluntary accepted by Turkey upon its ratification of the Committee against Torture (CAT) and the Optional Protocol to the Convention against Torture (OPCAT). Independent visits have a crucial impact on the prevention of torture and ill-treatment of persons deprived of their liberty.

f) *Excessive use of pre-trial detention.* OHCHR is concerned about the prolonged and frequent use of pre-trial detention, which violates the principle of presumption of innocence[77] and puts additional strain on the already vastly overcrowded penitentiary system. OHCHR recalls that pre-trial detention should be imposed only in exceptional situations, where the existence of security risks is convincingly demonstrated, for a very limited lapse of time. Moreover, it should be subject to periodic and independent judicial supervision.[78]

84. OHCHR welcomes the statement of the Minister of Justice of Turkey indicating that "Turkey's policy of zero tolerance for torture continues all the same under the state of emergency … Each and every one of the allegations concerning torture and ill-treatment are, beyond any doubt, investigated by independent and impartial authorities of the judiciary."[79] OHCHR would appreciate receiving detailed information on the number of allegations of torture received, investigations carried out into these allegations, and their outcome.

Situation of women in detention

85. OHCHR estimates that approximately 600 women with young children were being held in detention in Turkey as of December 2017, including about 100 women who were pregnant or had just given birth.

86. OHCHR documented at least 50 cases of women who had given birth just prior to or just after being detained or arrested. OHCHR received a report concerning a woman who was sexually assaulted by a police officer during arrest. Moreover, NGOs brought to the attention of OHCHR at least six cases of women who were detained while they were visiting their spouses in prison. They were either detained together with their children or violently separated from them.

87. OHCHR has received reports of medical doctors and nurses fighting to prevent the police from handcuffing women in hospitals during or immediately after giving birth. It received a report concerning the detention of a woman who was shackled by her legs immediately after her miscarriage. OHCHR also collected evidence of a woman who gave birth by caesarean section and was arrested hours later at high risk to her and baby's health.

88. OHCHR received credible reports that babies were held in inadequate conditions with their mothers, a situation which may constitute ill-treatment. A relative of a woman imprisoned in South-East Turkey told OHCHR: "My daughter has been jailed for a year on a made-up charge of support to terrorism.

[77] Human Rights Committee, General Comment No. 29: Article 4, Derogations during a State of Emergency, 31 August 2001, 72nd session, CCPR/C/21/Rev.1/Add.11, paragraph 16; Human Rights Committee, General Comment No. 32: Article 14, Right to equality before courts and tribunals and to fair trial, 27 August 2007, CCPR/C/GC/32, paragraph 30; Human Rights Committee, Concluding Observations: Italy, 24 April 2006, CCPR/C/ITA/CO/5, paragraph 14.

[78] International Covenant on Civil and Political Rights, article 9.

[79] Republic of Turkey, Ministry of Justice, Department of Human Rights, *The Turkish Legislation And Practice as Regards Torture and Ill-Treatment*, 29 December 2017, available at https://web.archive.org/web/20171229053127/http://www.humanrights.justice.gov.tr/announcement/2017/december/the-turkish-legislation.html

With her is her 13 month-old infant who has anaemia and a lung disease that requires him to spend a lot of time in fresh air, which is impossible in prison." In another case, the mother of a prematurely born baby was removed from hospital after giving birth and taken to a prison 660 kilometres away, despite medical reports that the health of her baby, who could not be moved from the hospital incubator, was at risk unless breastfed by the mother.

89. Mothers and children exposed to such practices face serious risks of health complications, stunting and even death. Their situation may amount to torture, cruel, inhuman or degrading treatment. Due to stress, many women report being mentally unwell and unable to breastfeed or to look after their children who are imprisoned with them. OHCHR recalls that, according to the Bangkok Rules,[80] the State should ensure that children held with their imprisoned mothers are never treated as prisoners, and that the environment in which children are detained is as close as possible to conditions outside prisons.[81] A comprehensive individual assessment for each child should be made considering the best interests of the child,[82] and non-custodial measures should be preferred for pregnant women and those with dependent children.

5. Violations of the rights to freedoms of expression and movement

"The lists of journalists to be arrested were online and my name was in those lists. In July 2016, 42 journalists' houses were raided and they raided my house. Some of the names were put on social media and the list of 42 journalists was with the prosecutor, I was told. I asked my neighbour and she told me that in the morning at 6am., they broke inside my home and raided it. After that, in the afternoon, the second group of police came again and started searching. I saw photos of cases of torture in the Anadolu news Agency and after this I decided not to go back to Turkey. Some of the journalists were detained because of the tweets, some because of their books…"

Journalist in exile, interviewed by OHCHR

90. OHCHR received reports on the arrest and detention of approximately 300 journalists on the alleged grounds that their publications contained apologist sentiments about terrorism or other similar "verbal act offences", or for "membership" of armed organizations. OHCHR documented cases of collective arrests of journalists, who remained unaware about the specific reasons for their arrests and continuing detention.

91. For example, 11 journalists and staff of the newspaper Cumhuriyet were brought to trial in July 2017 on charges that included assisting a terrorist group. The charges stemmed from the publication by Cumhuriyet of information about the Government of Turkey allegedly supplying weapons to Islamist militants in the Syrian Arab Republic. The evidence produced by the authorities against the journalists consisted of public source materials such as newspaper clippings and social media posts, as well as the surveillance records of their journalistic work. While seven journalists were released on bail, chief executive Akın Atalay, Editor-in-chief Murat Sabuncu, investigative journalist Ahmet Şık, and accountant Emre İper, remained deprived of their liberty as of December 2017. The United Nations Working Group on arbitrary detention

[80] United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 6 October 2010, A/C.3/65/L.5.
[81] United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 6 October 2010, A/C.3/65/L.5, Rule 49 and Rule 51(2).
[82] Convention on the Rights of the Child, article 6.

found their lengthy detention to be arbitrary and motivated by the Government's effort to censor their work.[83]

92. OHCHR received numerous accounts explaining that the climate of fear and judicial harassment has compelled many media and human rights NGOs to self-censorship. In the aftermath of the declaration of the state of emergency, the Government announced the permanent closure of 1,719 human rights, humanitarian, lawyers' associations, foundations, NGOs, many of which were operating in the South-East.[84]

93. Following his visit to Turkey in November 2016, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression stated that "state of emergency cannot justify the adoption of disproportionate and arbitrary measures representing a severe blow to freedom of expression, media freedom and access to information in Turkey".[85] In January 2018, Freedom House categorized Turkey as 'Not Free' in their yearly global review of political rights and civil liberties due to the effects of the "referendum that centralized power in the presidency", "all of which have left citizens hesitant to express their views on sensitive topics."[86]

94. Through Decrees 668, 675, 677 and 683, the Government announced its decision to liquidate 166 media outlets, including publishing houses, newspapers and magazines, news agencies, TV stations and radios. Media outlets were closed on the grounds that they "belong to, connect to, or have contact with" "FETÖ/PDY" (Decree 668 article 2). The closing down of media outlets was accompanied by the confiscation of all their assets, without compensation (based on Decree 668, articles 2 and 3, and other subsequent Decrees).

95. Over 100,000 websites were reportedly blocked in Turkey in 2017, including a high number of websites and satellite TVs in Kurdish. Wikipedia was blocked due to a content criticizing the involvement of the Government of Turkey in the conflict in the Syrian Arab Republic.[87] Turkey was reportedly the country that submitted the highest number of requests to Twitter to censor individual accounts.[88]

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[83] Opinion adopted by the Working Group on Arbitrary Detention at its seventy-eighth session, 19-28 April 2017, Opinion No. 41/2017 concerning 10 individuals associated with the newspaper Cumhuriyet (Turkey), A/HRC/WGAD/2017/41

[84] Decree 667 of 23 July 2016.

[85] General Assembly, Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey, 21 June 2017, A/HRC/35/22/Add.3, paragraph 76.

[86] Freedom House, *Democracy in Crisis: Freedom in the World 2018*, January 2018, available at https://freedomhouse.org/sites/default/files/FH_FITW_Report_2018_Final_SinglePage.pdf, p. 18: "Turkey's status declined from Partly Free to Not Free due to a deeply flawed referendum that centralized power in the presidency, the mass replacement of elected mayors with government appointees, arbitrary prosecutions of rights activists and other perceived enemies of the state, and continued purges of state employees, all of which have left citizens hesitant to express their views on sensitive topics."

[87] Reuters, *Turkey blocks access to Wikipedia*, 29 April 2017, available at https://www.reuters.com/article/us-turkey-security-internet-wikipedia/turkey-blocks-access-to-wikipedia-idUSKBN17V06Q ; The Guardian, *Turkey blocks Wikipedia under law designed to protect internet security*, 29 April 2017, available at https://www.theguardian.com/world/2017/apr/29/turkey-blocks-wikipedia-under-law-designed-to-protect-national-security; BBC News, *Turkish authorities block Wikipedia without giving reason*, 29 April 2017, available at http://www.bbc.com/news/world-europe-39754909

[88] Human Rights Watch, *World Report 2017: Turkey*, available at https://www.hrw.org/world-report/2017/country-chapters/turkey

96. Decree 680 introduced several permanent changes to Law 6112 on radio and television; in particular it granted the regulatory authority (the Radio and Television Supreme Council) the right to suspend broadcasting temporarily. The Supreme Council also has the power to cancel altogether the license of a media outlet found to have violated the publication ban order for the fourth time within a year (new article 7, as amended by Decree 680 article 17). The Decree also formulated some new "principle" of coverage of terrorist attacks, using vague language, stating that such coverage should not "produce results serving the interests of terrorism" (Decree 680 article 18).

Refusal to issue travel documents and revocation of citizenship

97. Decree 667 (article 5) of 23 July 2016 provides for the cancellation of passports of individuals who are dismissed, subject to administrative action, and of those under criminal investigation or prosecution on the grounds of membership or connection or contact with terrorist organizations. Decree 673 (article 10) stipulates that the passports of spouses of individuals dismissed from their jobs may be confiscated in the name of preventing "detriment … [to] general safety".

98. The total number of passports cancelled during the state of emergency is not known. Reports from civil society sources indicate that 50,000 passports were cancelled during the sole month of July 2016, in the aftermath of the coup attempt. As of the time of reporting, the number may have surpassed 100,000 considering that several emergency decrees authorize cancellation of passports concerning those under investigation or prosecution as well as their spouses.

99. OHCHR has documented cases of children separated from their parents who were prevented from legally obtaining a valid travel document in order to join their parents abroad or to seek safety with exiled relatives. In many cases, parents were reportedly compelled to illegally smuggle their children out of Turkey.

100. On 5 June 2017, a notice was published in the Official Gazette with the names of 130 individuals residing abroad, summoning them to return to Turkey and present themselves for criminal investigations. Decree 680 (article 75) stipulates that "failure of named individuals to present themselves before the Turkish authorities will result in the revocation of their citizenship". OHCHR is concerned that these measures may lead to the arbitrary deprivation of nationality and to cases of statelessness.[89]

C. Commission of Inquiry for State of Emergency Practices

"There are lists and you have to prove your innocence without knowing what you have done and without a lawyer. You are expecting to prove your innocence under those conditions (…) that is the reason I don't want to go back. I don't trust that system. There is no fair trial."

Female academic, interview by OHCHR

[89] Individuals facing administrative or judicial investigation or prosecution over charges of "crimes against the Government," "armed rebellion against the Government," "armed attack and assassination of the President", or "membership in an armed terror organization", will be summoned by a prosecutors to testify. If they cannot be reached and are understood to be abroad, the Public Prosecutor will refer the case to the Ministry of Justice within one month. The Ministry will subsequently issue a "return home" notice in the Official Gazette for those who are believed to be overseas. If they do not respond to the call within three months, their citizenship will be revoked by a Cabinet decision upon a proposal from the Ministry of Justice.

101. Decree 685 of 23 January 2017 established a Commission of Inquiry for State of Emergency Practices for a term of two years. This commission is tasked with reviewing and deciding on complaints about measures taken under the state of emergency and related decrees. More specifically, it is mandated to "carry out an assessment of, and render a decision on" state of emergency measures that fall into one or more of four listed categories: 1) dismissal or discharge from public service, profession or organization; 2) dismissal from studentship; 3) closure of associations, foundations, trade unions; media outlets; schools and higher education institutions and publishing houses; 4) annulment of ranks of retired personnel.[90]

102. The Commission is composed of seven members, five of whom were appointed directly by the Government, and two by the Government-dominated High Council of Judges and Prosecutors.[91] They were appointed on 16 May 2017, and the Commission established its Procedures and Principles, and began receiving complaints in July 2017. However, as of 31 December 2017, it had not issued any decision.

103. In June 2017, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression raised concern about "the narrow scope of the mandate of the Commission and its lack of independence and impartiality."[92] The fact that the Commission tasked with reviewing the lawfulness of emergency measures is largely appointed by the very same authorities that adopted such measures raises questions as to its independence and impartiality.

104. Furthermore, Decree 685 requires that applicants should submit their complaints through the same institution they last served or through the Governor's office. The receiving institutions will then forward the file to the Commission.[93] OHCHR notes that institutions which have dismissed the applicants cannot be considered as impartial and independent; and, therefore, appear to be inadequate channels to handle and process their complaints.

105. In addition, according to its Procedures and Principles, the Commission is primarily tasked with conducting an examination in relation to applicants' potential membership in terror organizations while not providing them an opportunity to testify or present witnesses. A confidentiality clause restricts members of the Commission from providing confidential information to the applicants.[94]

106. OHCHR is concerned that there is no requirement for the decisions of the Commission to be supported with evidence, reasoned and/or published. As

[90] Decree 685, article 2.

[91] According to Decree 685, articles 1-2: "The Commission shall be composed of seven members. Three members shall be assigned by the Prime Minister from among public officials; one member shall be assigned by the Minister of Justice from among judges and prosecutors who hold office in the central organization of the Ministry of Justice and in related and affiliated institutions; one member shall be assigned by the Minister of Interior from among personnel holding the title of governor; and two members shall be assigned by the High Council of Judges and Prosecutors from among rapporteur judges who hold office in the Court of Cassation or in the Council of State."

[92] General Assembly, Human Rights Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey, 21 June 2017, A/HRC/35/22/Add.3, para. 30.

[93] Decree 685, article 7: "The applications to the Commission shall be lodged through the Governor's Office. Those, who are dismissed or discharged from public service, profession or organization in which they hold office, may also submit to the last institution in which they hold office".

[94] Decree 685, article 6(1).

pointed out by the Venice Commission, it is of great concern that the Commission will conduct its examinations on the sole basis of documents in the case-file, seemingly without participation of the person concerned.[95] It is estimated that the Commission would receive around 100,000 applications in a period of two years.[96] With only seven members, it would be difficult for it to issue reasoned and individualized decisions in each case.

107. Furthermore, it is of great concern that, regardless of the outcome of the work of the Commission, civil servants will not be reinstated in the same institutions they used to serve before dismissal,[97] and that no compensation is foreseen for the material loss following dismissals or closure of institutions in the context of the emergency measures.[98]

108. OHCHR concludes that the Commission of Inquiry for State Emergency Practices cannot be considered as an independent body that will guarantee full respect of due process. It regrets the lack of appropriate remedies to address thousands of dismissals of employees, liquidation of thousands of private entities, including health and education institutions, as well as trade unions.

IV. Update on the situation in South-East Turkey

"I cannot even speak over the sound of explosions and bullets. People are struggling from thirst and starvation, babies and children too. Do not remain silent… do not let children die!"

A teacher from Diyarbakır, charged with 31 other people who publicly expressed support for her, with "promoting a terrorist organization propaganda" for calling upon the Turkish people to speak up about the suffering of children during military operations in South-East.

109. OHCHR continued to receive information on numerous human rights violations and abuses perpetrated during the period under review in South-East Turkey in the context of the security operations conducted by the Government of Turkey. The NGO Human Rights Association published statistics of violations that reportedly occurred in the first quarter of 2017 in the eastern and south-eastern Anatolia Region. According to it, the total number of violations amounted to 7,907, included 263 incidents of torture in detention, and over 100 incidents of criminalization of individuals for exercising their right to freedom of expression.[99]

110. Incidents between security forces and members of armed groups continued to be reported all over the South-East. According to the Ministry of Defence of Turkey, 10,657 "terrorists were neutralized" from 23 July 2015 and 11 June 2017 in the context of security operations.[100] Given the lack of clarity concerning the term "neutralized", OHCHR requests detailed information concerning the fate of these individuals.

111. In addition, OHCHR received credible reports on the following alleged incidents:

i) In February 2017, official round the clock curfews were imposed on nine villages, including Kuruköy, in the Omerli, Nusaybin and Artuklu districts of

[95] Council of Europe – Venice Commission, Turkey: Opinion on the Measures Provided in the Emergency Decree Laws with Respect to Freedom of the Media, 13 March 2017, Opinion no. 872/2016, CDL-AD(2017)007, para. 86.

[96] On the assumption that no further emergency decrees are issued after this point in time.

[97] Decree 685, article 10.

[98] Decree 676, article 6.

[99] http://ihd.org.tr/en/index.php/2017/05/10/report-on-violations-of-rights-in-the-first-3-months-of-2017-in-eastern-and-southeastern-anatolia-region/

[100] http://www.hurriyetdailynews.com/10657-pkk-militants-neutralized-in-last-two-years-turkish-defense-minister--114213

Mardin province. Subsequently, security operations took place in areas home to, in large part, to Kurdish residents and targeted citizens of Kurdish origin of all ages for their perceived affiliation to the PKK. During the operations conducted in these nine villages, security forces reportedly killed at least three individuals, sexually assaulted women, and committed other acts of torture. They beat, threatened at gunpoint, and fired at several civilians, blocked the transfer of several wounded to the hospital, deprived residents of food, safe drinking water and sanitation, raided and burned houses, placed residents under surveillance, prevented all access to the villages, including by outside observers wanting to monitor the situation, and blocked communication of residents with the outside world by cutting telephone and internet lines.

ii) On 31 August 2017, an armed drone belonging to the Turkish Army reportedly bombed four unarmed people as they were picnicking near the village of Tale (Ogul), Hakkari province. As a result of this attack, one man was killed and three others were wounded. Two of the latter were subsequently arrested after release from hospital. The Government accused the victims of being affiliated with PKK. Following media criticism of this incident, the Minister of Interior reportedly admitted that "mistakes could happen"[101]; however, no investigations have been initiated into this incident.

112. The UNOSAT analysis of successive imagery between November 2016 and June 2017 revealed ongoing operations of demolitions in Suriçi. According to the analysis of this imagery, a total of 792 buildings were razed in the eastern parts between 8 November 2016 and 28 May 2017, and 10 buildings were razed between 28 May and 7 June 2017. The buildings appeared to have been previously intact. The razed area includes some 30-40 hectares out of around 140 hectares that constitute Suriçi.

113. OHCHR notes with concern that Turkey has not implemented the recommendations contained in its first report, notably its call to carry out credible criminal investigations into civilian deaths that occurred in 2015-2016 in the context of security operations conducted by the Government of Turkey in the South-East.[102]

114. As indicated in the first OHCHR report,[103] Decree 674 of 1 September 2016 permitted the Central Government to appoint "trustees" in lieu of elected mayors, deputy mayors or members of municipal councils suspended on charges of terrorism.[104] Since September 2016, 87 out of 105 mayors were imprisoned, including 35 women and 52 men. All are of Kurdish origin. As of December 2017, the Ministry of Interior had appointed 94 trustees (only men) in 105 municipalities in South-East Turkey.

115. OHCHR echoes the concern of the Commissioner for Human Rights of the Council of Europe that these replacements of mayors and deputy mayors pose "fundamental problems vis-à-vis principles of local democracy and is likely to create resentment in the local populations concerned, as it can be perceived as

[101] BBC Turkey, *The armed UAI debate: What happened in Hakkari?*, 9 September 2017, available at http://www.bbc.com/turkce/haberler-turkiye-41211984

[102] OHCHR, Report on the human rights situation in South-East Turkey: July 2015 to December 2016, March 2017, available at http://www.ohchr.org/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf, paras. 85-100

[103] OHCHR, Report on the human rights situation in South-East Turkey: July 2015 to December 2016, March 2017, para. 72.

[104] The decree allows the Minister of Interior to appoint "trustees" in metropolitan municipalities, whereas provincial governors appoint "trustees" for second tier municipalities, known as district municipalities.

a collective sanction."[105] The Venice Commission called upon the Turkish authorities to provide adequate rules and a legal framework for the reinstatement of suspended/dismissed local representatives in the event that the terrorism-related charges do not lead to a criminal conviction.

V. Conclusions and recommendations

116. **The prolonged state of emergency has led to a continued erosion of the rule of law and deterioration of the human rights situation in Turkey.**

117. **In September 2017, the High Commissioner urged the Government not to renew the state of emergency and to allow adequate administrative and judicial oversight over all related procedures, including by ensuring that the Commission of Inquiry for State of Emergency Practices be fully functional and independent. [106]**

118. **OHCHR reiterates that any measures restricting the rights that have been subjected to a derogation should be limited to the extent strictly required by the exigencies of the situation, meaning that they must be proportional and limited to what is necessary in terms of duration, geographic coverage and material scope. OHCHR recalls that the tests of necessity and proportionality are not suspended during a period of derogation linked with a state of emergency. OHCHR stresses that even during states of emergency, there are non-derogable rights which must be upheld at all times in order for Turkey to comply with its legal obligations under international human rights law.**

119. **Allegations of human rights violations and abuses in South-East Turkey are massive and serious, and require efficient and prompt investigations at the national level and independent verification from international observers. The High Commissioner calls for a full and unfettered access to be able to directly, independently and objectively assess the human rights situation there.**

120. **OHCHR acknowledges the leading and exemplary role of Turkey in hosting the largest refugee population; Turkey's contribution to United Nations peacekeeping operations; its support to the United Nations reform agenda; and its acceptance of obligations under the United Nations human rights treaties.**

121. **However, OHCHR notes with concern that the deterioration of the domestic human rights situation and the shrinking of the political and civic space require immediate steps for Turkey to be compliant with its obligations under international human rights law.**

122. **OHCHR makes the following recommendations to the Government of Turkey:**

    a) **Promptly end the state of emergency and restore the normal functioning of institutions and the rule of law;**

[105] Council of Europe – Commissioner for Human Rights, Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, 7 October 2016, CommDH(2016)35, para 45.

[106] OHCHR, Opening Statement by Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights, *Darker and more dangerous: High Commissioner updates the Human Rights Council on human rights issues in 40 countries*, 1 September 2017, 36th session, available at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041&LangID=E

b) Conduct necessary reforms to ensure the independence of the legislative and judicial branches of power;

c) Revise and repeal all legislation that is not compliant with Turkey's international human rights obligations, including the emergency decrees ;

d) Enforce the proclaimed policy of zero tolerance for torture, including by ensuring independent investigations of all allegations, effective prosecution, training of staff, and independent monitoring visits to all places of deprivation of liberty;

e) End the practice of detaining pregnant and postpartum women, and consider using non-custodial measures for sentenced pregnant women and those with young children;

f) Reverse the ban imposed on dismissed civil servants from rejoining the public service; ensure that all individuals who were dismissed from civil service and the private sector, or lost their jobs due to the closure of private entities, have the right to have their cases reviewed by an independent judicial and administrative body in accordance with international standards; and to compensation for the material and moral damage caused by their arbitrary dismissal;

g) Ensure that any restriction on the right to freedom of expression during the state of emergency is strictly proportionate to the exigency of the situation; take all the necessary measures to ensure an enabling environment for independent media and civil society organizations to operate safely and freely; immediately release journalists, writers, judges and academics who are detained pursuant to counter-terrorism legislation and emergency decrees; and ensure an independent individualized review of their cases;

h) Rescind passport cancellation orders and deprivation of citizenship procedures, and enable full freedom of movement;

i) Regarding South-East Turkey, renew efforts to secure a peaceful end to the situation; and to ensure that every loss of life that occurred in the course of security operations is duly investigated, and that perpetrators of unlawful killings and other human rights violations and abuses are brought to justice.

123. **In accordance with its mandate, OHCHR stands ready to provide advice and technical assistance to support Turkey's efforts to fulfil its human rights obligations.**