

## I. EXECUTIVE SUMMARY

1. Turkey abolished the death penalty for all offenses in 2004, but high-ranking authorities in Turkey have recently made statements suggesting that the country may be at risk of reinstating the death penalty. The discourse around reinstating capital punishment routinely draws on the death penalty as a counter-terrorism measure, yet amendments to broaden the definition of terrorism since the 2016 attempted coup mean that human rights defenders, journalists, Kurdish ethnic minorities, and other opposition figures would be at the highest risk of being sentenced to death if Turkish authorities reinstate the death penalty.

## II. BACKGROUND AND FRAMEWORK

### A. 2015 Universal Periodic Review of Turkey

2. Because Turkey abolished the death penalty in 2004, prior to the advent of the Universal Periodic Review mechanism, Turkey has not received any UPR recommendations relevant to the death penalty. Nonetheless, Turkish political leaders have recently stated that the government is considering reinstating the death penalty, especially as a punishment for terrorism. For this reason, Turkey's regard for civil rights in counter-terrorism measures is particularly intertwined with the potential for human rights violations related to reinstatement of capital punishment.

*1. Ensure respect for freedom of expression and the rights of journalists in the context of counter-terrorism measures*

### **Status of Implementation: Accepted, Not Implemented**

3. Turkey accepted a recommendation made by the United States of America to “[s]trengthen protection of the freedom of expression by allowing discourse and greater access to information, both online and offline, and ensure the penal code and anti-terror laws are consistent with international obligations.”<sup>1</sup> During the interactive dialogue, Turkey stated that “freedom of expression and the media were considered an indispensable part of democratic order [...] [a] complete pluralism existed in Turkey in respect of media organizations.”<sup>2</sup> Turkey also asserted that “[t]he offence of creating propaganda for terrorist organizations had been redefined and amended to reflect more concrete criteria for conviction.”<sup>3</sup>
4. Turkey supported recommendations made by France to “[r]eform the law on counter-terrorism in order to prevent imprisonment of journalists”<sup>4</sup> and by the Netherlands to “[e]xercise restraint using anti-terrorism legislation in legal procedures against journalists and ensure the proportionality of measures that limit access to the internet.”<sup>5</sup> During the interactive dialogue, Turkey responded that “the reasons for the detention of persons who were referred to as ‘detained journalists’ were not related to their journalistic activities,”

rather, “on charges such as being a member of an armed terrorist organization, attempting to overthrow the constitutional order, voluntary manslaughter and embezzlement.”<sup>6</sup>

5. Turkey has stated that it has already implemented these recommendations and that its judicial system does not discriminate against any individuals for their professions, but Turkish officials regularly arrest journalists and other human rights defenders on charges of creating and disseminating anti-government “terrorist propaganda.”<sup>7</sup>

*2. Amend relevant legislation regarding anti-terrorism measures and demonstrations*

**Status of Implementation: Not Accepted, Not Implemented**

6. Turkey noted a recommendation made by Cyprus to “[a]mend or revoke legislation, such as the “Anti-Terror Law” and the “Law on Meetings and Demonstrations,” ensuring their provisions cannot be misused.”<sup>8</sup> Turkey has enacted stricter and more severe anti-terrorism and anti-demonstration legislation since its last UPR in 2015.<sup>9</sup>

**B. Domestic Legal Framework**

*1. Legal framework relevant to the death penalty*

7. Turkey abolished the death penalty in the Turkish Penal Code through two separate laws. On August 3, 2002, the Turkish parliament passed Law No. 4771 abolishing the death penalty for peacetime offenses and replacing capital punishment with life imprisonment for related offenses.<sup>14</sup> Law No. 5218 of July 14, 2004 abolished the death penalty for all offenses.<sup>15</sup> Turkey has not carried out any executions since 1984.<sup>16</sup>
8. In March 2006, Turkey ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights. Also in 2006, Turkey ratified Protocol 13 on the European Convention on Human Rights, which prohibits the death penalty in all circumstances without reservations or derogations.<sup>27</sup>
9. Calls to reinstate the death penalty can be traced back to the July 2016 attempted coup when the Deputy of the ruling Justice and Development Party (AKP) claimed that the government would introduce a bill calling for the execution of rebel soldiers involved in the coup.<sup>10</sup> The context of this call to use capital punishment against political opponents demonstrates a likelihood that a reinstated death penalty would be used to stifle political dissent.
10. In July 2016, President Erdogan stated that he would approve any legislation brought forth by the government to restore the death penalty.<sup>11</sup> Far-right leader of the Great Unity Party Mustafa Destici announced in August 2016 that a proposal to reinstate the death penalty would be introduced to Turkey’s parliament in October of that year.<sup>12</sup>
11. While speaking at a rally in March 2019, President Erdogan told a crowd that “we have done wrong by removing the death penalty. It offends me to feed those in prison, those

who martyred 251 of our citizens, police officers and soldiers on the night of July 15, 2016 coup attempt, even though they are serving life sentences.”<sup>13</sup>

12. Reinstating the death penalty would require a constitutional amendment which must be passed by 360 of the 600 members of Parliament.<sup>17</sup> After announcing snap parliamentary and presidential elections in 2018, President Erdogan seized sweeping executive powers and established a parliamentary coalition (composed of the AKP and the Nationalist Movement Party) of 344 seats.<sup>18</sup>

## 2. *Legal framework relevant to anti-terrorism measures*

13. Article 1 of Turkey’s Law on Fighting Terrorism (Law no. 3713), passed in 1991 and amended in 2010, provides an overly broad definition of terrorism as “any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat.”<sup>19</sup>
14. In 2016, the Turkish Parliament adopted an amendment to Article 220 of the Penal Code to establish a penalties for terrorism under a broad definition:

“[a] person who makes propaganda for an organization in a manner which would legitimize or praise the terror organization’s methods including force, violence or threats or in a manner which would incite use of these methods shall be sentenced to a penalty of imprisonment for a term of one to three years. If the said crime is committed through the press or broadcasting the penalty to be given shall be increased by half.”<sup>20</sup>

By labeling certain types of speech as terrorism, this amendment leaves human rights defenders and journalists at a heightened risk of being convicted on terrorism charges. Reinstating the death penalty within the context of fighting terrorism would consequently target these individuals.

15. Shortly after Turkey’s two-year state of emergency ended in July 2018, Parliament adopted a law granting local governors broader authority to pursue counter-terrorism measures, such as the ability to ban public gatherings, longer pre-trial detention periods, and more oversight to dismiss public officials believed to have links to terrorist organizations.<sup>21</sup>

### III. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

16. Reinstatement of the death penalty would violate Turkey's international human rights obligations under Article 6 of the International Covenant on Civil and Political Rights and under the Second Optional Protocol to the ICCPR. It would also exacerbate ethnic discrimination and restrictions on freedom of opinion and expression.

#### **Right or area 9. Racial discrimination**

17. Members of the Kurdish ethnic minority in Turkey, which comprises approximately 15-20% of the country's population, have historically faced discrimination.<sup>22</sup> For example, the Office of the High Commissioner for Human Rights issued a report on the human rights situation in South-East Turkey<sup>23</sup> in 2017, in which it expressed concern that "[a]s of the end of December 2016, most of the independent and Kurdish language media outlets were shut down."<sup>24</sup>
18. The Committee on the Elimination of Racial Discrimination has expressed its concern that "the enforcement of anti-terrorism legislation and security-oriented policies have reportedly resulted in racial profiling of members of the Kurdish community. Such legislation has been applied to curtail the exercise of the right to freedom of [...] expression and association and led to the unwarranted arrest, detention and prosecution of Kurds."<sup>25</sup>
19. In this context, it is reasonable to expect that reinstatement of the death penalty will disproportionately target Kurdish people and other ethnic minorities.

#### **Right or area 12.4. Death penalty**

20. As a State Party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, Turkey has committed to abolish the death penalty within its jurisdiction and to ensure that no one within its jurisdiction is executed.<sup>26</sup> The Second Optional Protocol does not have a mechanism by which State Parties may withdraw from the Protocol.
21. In light of statements by Turkish elected officials, as described in paragraphs 9–11 above, Turkey is at risk of reinstatement of the death penalty, in violation of the right to life.

#### **Right or area 14.3. Freedom of opinion and expression**

22. Since the attempted coup in 2016, the Turkish Government has used terrorism charges as a pretext for restricting the human rights of journalists and human rights defenders. The Office of the United Nations High Commissioner on Human Rights' *Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East*<sup>28</sup> expressed concern about reports it received "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.”<sup>29</sup>

23. Reinstating the death penalty would give the Turkish Government license to further suppress political opponents, critics, and journalists under the pretext of counter-terrorism efforts. Turkey’s broad definition of terrorism, as discussed above in paragraph 14, allows officials to charge journalists, human rights defenders, and other opponents of the ruling political party with acts of terrorism. Many of these “acts of terrorism,” such as the creation of “terrorist propaganda” by journalists, do not include the act of intentional killing. The United Nations Working Group on Arbitrary Detention has recognized that the detention of these journalists is “motivated by the Government’s effort to censor their work.”<sup>30</sup>

#### IV. RECOMMENDATIONS

2. The Advocates for Human Rights and the World Coalition Against the Death Penalty respectfully suggest the following recommendations for the Government of Turkey:
- Respect its obligations under the Second Optional Protocol to the International Covenant on Civil and Political Rights and cease all statements suggesting that Turkish authorities are considering reinstating the death penalty.
  - Ensure that all lawmakers are familiar with the text of the Second Optional Protocol to the ICCPR and the fact that the Protocol does not authorize a State Party to withdraw from the Protocol.
  - Amend provisions in the Penal Code relevant to counter-terrorism to ensure that they exclude from the definition of terrorist and terrorism any speech or other expression that amounts to opposition to or criticism of Turkish authorities.

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<sup>1</sup> *Report of the Working Group on the Universal Periodic Review: Turkey* (April 13, 2015), U.N. Doc. A/HRC/29/15, ¶ 148.117 Strengthen protection of the freedom of expression by allowing discourse and greater access to information, both online and offline, and ensure the penal code and anti-terror laws are consistent with international obligations (United States of America).

Also available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/076/33/PDF/G1507633.pdf?OpenElement>.

<sup>2</sup> *Report of the Working Group on the Universal Periodic Review: Turkey* (April 13, 2015), U.N. Doc. A/HRC/29/15, ¶ 98. Also available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/076/33/PDF/G1507633.pdf?OpenElement>.

<sup>3</sup> *Report of the Working Group on the Universal Periodic Review: Turkey* (April 13, 2015), U.N. Doc. A/HRC/29/15, ¶ 98. Also available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/076/33/PDF/G1507633.pdf?OpenElement>.

<sup>4</sup> *Report of the Working Group on the Universal Periodic Review: Turkey* (April 13, 2015), U.N. Doc. A/HRC/29/15, ¶ 150.22 Reform the law on counter-terrorism in order to prevent imprisonment of journalists (France). Also available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/076/33/PDF/G1507633.pdf?OpenElement>.

<sup>5</sup> *Report of the Working Group on the Universal Periodic Review: Turkey* (April 13, 2015), U.N. Doc. A/HRC/29/15, ¶ 150.52 Exercise restraint using anti-terrorism legislation in legal procedures against journalists and ensure the proportionality of measures that limit access to the internet (Netherlands). Also available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/076/33/PDF/G1507633.pdf?OpenElement>.

<sup>6</sup> *Report of the Working Group on the Universal Periodic Review: Turkey* (April 13, 2015), U.N. Doc. A/HRC/29/15, ¶ 99. Also available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/076/33/PDF/G1507633.pdf?OpenElement>.

<sup>7</sup> *Seven Turkish journalists jailed for ‘terrorist propaganda,’* Alarabiya, May 22, 2019, <http://english.alarabiya.net/en/media/print/2019/05/22/Seven-Turkish-journalists-jailed-for-terrorist-propaganda-.html>.

<sup>8</sup> *Report of the Working Group on the Universal Periodic Review: Turkey* (April 13, 2015), U.N. Doc. A/HRC/29/15, ¶ 151.15 Amend or revoke legislation, such as the “Anti-Terror Law” and the “Law on Meetings and Demonstrations”, ensuring their provisions cannot be misused (Cyprus). Also available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/076/33/PDF/G1507633.pdf?OpenElement>.

<sup>9</sup> Turkey Parliament Approves New Anti-Terror Law, Al-Jazeera, Jul. 25, 2018, <https://www.aljazeera.com/news/2018/07/turkey-parliament-approves-anti-terror-law-180725152308059.html>.

<sup>10</sup> Adam Lusher, Turkey Coup: Erdogan Government could Restore Death Penalty, Deputy Leader Warns, Independent, Jul. 16, 2016, <https://www.independent.co.uk/news/world/europe/turkey-coup-erdogan-government-death-penalty-restore-attempted-istanbul-ankara-latest-dead-a7140391.html>.

<sup>11</sup> Tuvan Gumrukcu, Defiant Erdogan Attacks EU, Backs Restoring Death Penalty, Reuters, Jul. 16, 2017, <https://uk.reuters.com/article/uk-turkey-security-anniversary/defiant-erdogan-attacks-eu-backs-restoring-death-penalty-idUKKBN1A10EM>.

<sup>12</sup> Death Penalty Debate Rekindled in Turkey, Ahval News, Aug. 6, 2018, <https://ahvalnews.com/death-penalty/death-penalty-debate-rekindled-turkey>.

<sup>13</sup> *Turkey’s Erdoğan says removing death penalty was ‘wrong’*, Hurriyet Daily News, Mar. 19, 2019, <http://www.hurriyetdailynews.com/turkeys-erdogan-says-removing-death-penalty-was-wrong-142019>.

<sup>14</sup> PENAL CODE act 4771 (Turkey)

<sup>15</sup> PENAL CODE act 5218 (Turkey)

<sup>16</sup> Ceylan Ozbudak, *Turkey’s Death Penalty Politics*, Al Arabiya, Dec. 14, 2013, <https://english.alarabiya.net/en/views/news/world/2013/12/14/Turkey-s-death-penalty-politics.html>.

<sup>17</sup> *Turkey’s Powerful New Executive Presidency*, Reuters, Jun. 22, 2018, <https://www.reuters.com/article/us-turkey-election-factbox/turkeys-powerful-new-executive-presidency-idUSKBN1J11O1>.

<sup>18</sup> Kemal Kirisci, *How to Read Turkey’s Election Results*, Brookings, Jun. 25, 2018, <https://www.brookings.edu/blog/order-from-chaos/2018/06/25/how-to-read-turkeys-election-results/>.

<sup>19</sup> LAW ON FIGHT AGAINST TERRORISM IN TURKEY art. 1 (Turkey)

<sup>20</sup> PENAL CODE art. 220 (Turkey)

<sup>21</sup> *Turkish Parliament Passes Security Law to Replace Emergency Rule*, Reuters, July 25, 2018, <https://www.reuters.com/article/us-turkey-security/turkish-parliament-to-vote-on-security-law-to-replace-emergency-rule-idUSKBN1KF0P9>.

<sup>22</sup> *Who are the Kurds?*, BBC, Oct. 31, 2017, <https://www.bbc.com/news/world-middle-east-29702440> P 12.

<sup>23</sup> UN Office of the High Commissioner of Human Rights, *Report on the human rights situation in South-East Turkey* (February 2017). Also available online at [https://www.ohchr.org/Documents/Countries/TR/OHCHR\\_South-East\\_TurkeyReport\\_10March2017.pdf](https://www.ohchr.org/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf).

<sup>24</sup> UN Office of the High Commissioner of Human Rights, *Report on the human rights situation in South-East Turkey* (February 2017). Also available online at [https://www.ohchr.org/Documents/Countries/TR/OHCHR\\_South-East\\_TurkeyReport\\_10March2017.pdf](https://www.ohchr.org/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf) P65.

<sup>25</sup> *Concluding observations on the combined fourth to sixth periodic reports of Turkey* (January 11, 2016), U.N. Doc CERD/C/TUR/CO/4-6 P 29.

<sup>26</sup> UN General Assembly, Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, 1989, Art. 1.

<sup>27</sup> Council of Europe, Protocol 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty in All Circumstances, 2002, Art. 1-2.

<sup>28</sup> UN Office of the High Commissioner of Human Rights, *Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East* (March 2018).

Also available online at [https://www.ohchr.org/Documents/Countries/TR/2018-03-19\\_Second\\_OHCHR\\_Turkey\\_Report.pdf](https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf).

<sup>29</sup> UN Office of the High Commissioner of Human Rights, *Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East* (March 2018).

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<sup>30</sup> UN Office of the High Commissioner of Human Rights, *Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East* (March 2018),

P91. Also available online at [https://www.ohchr.org/Documents/Countries/TR/2018-03-19\\_Second\\_OHCHR\\_Turkey\\_Report.pdf](https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf).