

A. Introduction

1. The information contained in this submission is based on evidence gathered by the submitting organisations, all of which are either professional bodies representing lawyers in their respective jurisdictions or voluntary associations of lawyers (see Annex).¹ Our shared interest is the independence of the legal profession, including the judiciary, the right to a fair trial, and the rule of law.

2. The independence of the legal profession is an essential guarantee for the protection of human rights of all individuals and necessary for effective access to justice.² The widespread and systematic persecution of members of the legal profession in Turkey, which has continued unabated since the failed 2016 coup, requires urgent attention.

3. In the previous two UPR cycles, in 2010 and 2015, Turkey committed to strengthen the independence of the judiciary and accepted all recommendations made in that respect. However, these recommendations have not been effectively implemented. This joint submission addresses the following issues arising since Turkey's second UPR:

Constitutional and legislative framework:

- (i) threats to judicial and prosecutorial independence; and
- (ii) dismissals and arrests of judges and prosecutors; lack of an effective remedy.

Administration of justice, including impunity and the rule of law:

- (iii) interference with lawyers' professional duties; and
- (iv) arbitrary arrest, detention, and prosecution of lawyers, and closure of Bar associations and Law Societies.

B. The Human Rights Situation in Turkey since the 2nd UPR Cycle

4. Prior to the failed coup in Turkey in July 2016, there were already concerns about human rights violations against lawyers and judges.³ Between July 2015 and December 2016, many people were reportedly killed in security operations carried out in southeast Turkey.⁴ In September 2015, 500 lawyers were denied access to Cizre in the region where human rights violations had been committed. This group included Tahir Elçi, president of the Diyarbakır Bar Association, who was killed on 28 November 2015. His death has not been adequately investigated despite a detailed reconstruction of the scene carried out by UK NGO Forensic Architects in February 2019. Its report implicates Turkish security forces in his death, but prosecutors in Diyarbakır have refused to include members of those forces as suspects in the investigation.⁵ Lawyers denouncing the human rights violations or representing individuals in politically sensitive cases were unlawfully investigated, arrested, detained, prosecuted, and imprisoned, as well as publicly vilified by government officials and pro-government media as being terrorists.⁶

5. After the failed coup on 15 July 2016, for which President Erdoğan and his government have held the Gülenist movement responsible, the situation has deteriorated significantly. Numerous legislative and constitutional amendments have given the government of Turkey unprecedented control over the judiciary and prosecutorial authorities, thereby undermining judicial and prosecutorial independence, as well as the rule of law. These amendments have been used to harass and persecute legal professionals, not only to suppress dissenting voices but also to restrict and criminalise work carried out by lawyers in the exercise of their professional duties.⁷

6. Within 24 hours of the attempted coup, 2,740 judges and prosecutors were suspended for alleged links to the Gülenist movement.⁸ On 21 July 2016, the Turkish government declared a state of emergency pursuant to Article 120 of the Constitution and State of Emergency Law No 2935. It notified the UN Secretary-General of its derogation from several legally binding obligations under the ICCPR. It also notified the Council of Europe of its intentions to derogate from certain obligations under the European Convention on Human Rights (ECHR).⁹ It further adopted 32 emergency decree laws, in practice using the state of emergency to bypass the Turkish Parliament's power to legislate.

7. On 16 April 2017, a constitutional referendum was held on an eighteen-article constitutional amendment package. There was a lack of impartial information provided to the public regarding these amendments,¹⁰ which were approved and have since eroded the separation of powers and the rule of law. For example, the changes introduced¹¹ abolish the position of Prime Minister and provide the current and future Presidents¹² with increased powers over the legislature and judiciary.¹³

8. On 18 July 2018, after almost two years and seven extensions, the state of emergency was lifted. On 9 August 2018, Turkey notified the UN Secretary-General of the end of the state of emergency and the termination of the derogations.¹⁴ However, the Government simultaneously introduced a new law¹⁵ which consolidates harmful interference by the executive into lawyers' professional activities (see part iii below). This has been criticised as creating a 'permanent state of emergency'.¹⁶

Constitutional and Legislative Framework

i. Threats to Judicial and Prosecutorial Independence

9. The Turkish Constitution establishes the rule of law (Article 2), the right to a fair trial (Article 36), and judicial independence (Article 138). Law No 1136 of 1969 (Code of Lawyers or Attorney Law), as amended in 2001, classifies the legal profession as an independent public service and liberal profession (Article 1). The Presidents of all Turkish bar associations, as well as the President of the Union of Turkish Bar

Associations, have a duty to defend the independence of the legal profession (Articles 97.6 and 123.6).¹⁷

10. In 2010 and 2014, Law No 5982 and Law No 6524 had, respectively, amended Article 159 of the Constitution and four laws regulating the judiciary (including Law No 6087),¹⁸ giving the Minister of Justice authority to determine the composition of the Council for Judges and Prosecutors (HSK) and conduct disciplinary investigations against its members.¹⁹ The HSK decides on the admission of judges and prosecutors, appointments, transfers, promotion, and disciplinary proceedings.²⁰ The Constitutional Court deemed that executive influence unconstitutional²¹ and these legislative amendments were strongly criticised by the Venice Commission.²²

11. Nonetheless, between July 2016 and July 2018 (during the state of emergency) the erosion of judicial and prosecutorial independence increased significantly through the adoption of emergency decree laws, which were subsequently enacted by Parliament.²³ For example, Law No 6749 codifies emergency decree law 667 of 22 July 2016.²⁴ It allows for the dismissal of any member of the judiciary, including the Constitutional Court, who is 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”.²⁵ Moreover, Law No 6755, enacting emergency decree law 668 of 27 July 2016,²⁶ provides for the establishment of a National Defence Commission composed of two military judges appointed by the Minister of National Defence. In 2016, this Commission decided on the dismissal of 185 military judges.²⁷

12. In 2017, as part of the constitutional amendments, the number of Constitutional Court judges was reduced from 17 to 15. Twelve of those 15 judges can now be appointed by the President. Two Constitutional Court judges were dismissed and detained after the failed coup. In March 2019, one of them was sentenced to 11 years and three months in prison. In April 2019, the other was sentenced to 10 years and six months in prison. The European Court of Human Rights (ECtHR) held, in a case regarding one of these judges, that there had been a violation of Article 5 § 1 (right to liberty and security) ECHR because of the unlawfulness of the applicant's pre-trial detention, and a violation of Article 5 § 1 due to a lack of reasonable suspicion at the time of the applicant's pre-trial detention.²⁸

13. Additionally, the number of HSK members was reduced from 22 to 13, seven of whom are elected by Parliament and six appointed by the President. Judges and prosecutors no longer elect any members of the HSK.

14. As also recently concluded by the Council of Europe Human Rights Commissioner after her visit to Turkey, these constitutional and legislative amendments erode judicial and prosecutorial independence²⁹ and violate fundamental rights and freedoms, including the right to a fair trial (Article 14 ICCPR and 6 ECHR), thereby eliminating safeguards against other human rights abuses. They also do not correspond

with the UN Basic Principles on the Independence of the Judiciary (Principles 1, 2, 4, 8, 18, and 20) and the UN Guidelines on the Role of Prosecutors (Principles 2(a), 4, 8, 21, and 22).

ii. Dismissals and Arrests of Judges and Prosecutors; Lack of an Effective Remedy

15. As of April 2019, 4260 judges and prosecutors had been dismissed.³⁰ Many judges and prosecutors have also been arrested and are in pre-trial detention or serving prison sentences after conviction.³¹ The number of convicted judges and prosecutors on terrorism charges reached 634 as of 26 April 2019.³² Approximately 500 administrative personnel of the Supreme Court, Council of State, Court of Accounts, and Council of Judges and Prosecutors were also dismissed and only eight reinstated.³³

16. The HSK decides on dismissals of prosecutors and most judges, apart from judges of the Constitutional Court, Council of State, Court of Appeal, and Court of Accounts (these judges can be dismissed by relevant bodies within those same institutions).³⁴ The Council of State (the supreme administrative court) has jurisdiction to hear appeals.³⁵ Given the executive influence on the HSK and the courts and their lack of independence, lawyers, prosecutors, and judges are denied an effective appeal mechanism. This has allowed for their dismissals to go unchecked, without adequate accountability.

17. In view of the lack of due process and an effective remedy to appeal decisions of dismissal made by the Inquiry Commission for State of Emergency Measures³⁶ and judgments of some domestic courts, Turkish citizens filed 57,039 petitions to the ECtHR in 2017. More than 25,000 of these (out of a total of 30,063 dismissed in total) were dismissed by the ECtHR as being ‘manifestly ill-founded’ because of a failure to exhaust domestic remedies.³⁷ The ECtHR has rejected three applications regarding dismissals of judges and civil servants in 2016 and 2017 for non-exhaustion of domestic remedies: the cases of judge *Mercan* (Nov. 2016)³⁸ teachers *Zihni* (Nov 2016),³⁹ *Catal* (March 2017),⁴⁰ and *Koksäl* (June 2017).⁴¹ The ECtHR has yet to decide that the right of individual petition to the Turkish Constitutional Court is ineffective. This leaves Turkish citizens without an effective domestic remedy or any possibility to obtain redress at the ECtHR.⁴² Even in cases where the ECtHR has rendered judgment against Turkey, finding a violation of rights established in the ECHR, there is a lack of implementation by Turkey of such judgments.⁴³

Administration of Justice, Including Impunity and the Rule of Law

iii. Interference with Lawyers’ Professional Duties

18. Prior to the state of emergency, lawyers were already hindered in carrying out their professional activities and this interference has subsequently increased, for example

through: (i) lack of access to case files, including indictments; (ii) restrictions on access to clients; and (iii) breaches of professional confidentiality between lawyers and their clients.

19. Derogations of fair trial rights, established in Article 14 of the ICCPR and Art. 6 of the ECHR, are only possible in a state of emergency with strict limitations.⁴⁴ Restrictions of such rights in any event must be based in law, necessary, and proportionate to further a legitimate aim, in accordance with the State's obligations under applicable international human rights instruments.⁴⁵ Derogation and restrictions can in no circumstances undermine the overall right to a fair hearing.⁴⁶

20. Regarding lack of access to case files, emergency decree law 668 – codified by Law No 6755 – stipulates that the prosecutor may restrict a defence lawyer's right to examine the case file or make copies of it, in cases where an investigation may be compromised or the case relates to a matter of national security, as decided by the prosecutor (Article 3, para 1, sub para L).⁴⁷ Prior to the state of emergency, any such restriction could only be imposed by a judge.⁴⁸

21. Regarding restrictions on access to clients, emergency decree law 668 (Article 3.m) restricted the right of a suspect in custody to consult with a lawyer for up to five days;⁴⁹ a measure that existed before the state of emergency in relation to terrorism related charges and organised crime. This was later reduced to 24 hours by emergency decree law 684 of 23 January 2017.⁵⁰ However, in practice, the police restricts visits from lawyers with clients often for longer periods of time.⁵¹

22. On 25 July 2018,⁵² Law No. 7145 was introduced which extends detention in police custody up to 12 days (three periods of four days each).⁵³ Additionally, emergency decree law 676 of 29 October 2016 – codified by Law No 7070 – authorises investigating judges to restrict access to a lawyer for 24 hours for individuals accused of crimes included in the Anti-Terrorism Law,⁵⁴ both during investigation and prosecution.⁵⁵ The inability to access a lawyer from the moment of arrest increases the risk of torture and ill-treatment. There have been several reports of lawyers having been tortured by police after arrest.⁵⁶

23. Moreover, emergency decree law 667 of 23 July 2016 – codified by Law No 6749 – allows for restriction of the duration of consultations between lawyers and clients in pre-trial detention upon the prosecutor's order (Article 6d). Authorities can prohibit a lawyer from meeting a client if the lawyer is accused of transmitting information to a terrorist or criminal organisation.⁵⁷ For example, in November 2016, lawyer Levent Piskin was accused of passing information from Selahattin Demirtaş (member of Parliament in detention) to a German magazine. Mr. Pişkin was arrested on 14 November 2016 and released after two days.⁵⁸

24. Emergency decree law 667 also includes restrictions on the right to be represented by a lawyer of one's own choosing. The prosecution can request the

replacement of a defence lawyer with another lawyer, appointed by a local Bar Association,⁵⁹ upon a mere suspicion that consultations between a lawyer and client may be used to facilitate terrorist or criminal activities.⁶⁰ According to reports from lawyers from different Bar associations across the country, during police detention suspects are assigned lawyers appointed by the relevant Bar association from a list of sometimes inexperienced and underpaid legal aid lawyers.⁶¹

25. Emergency decree law 676 – codified by Law No 7070 – amended the Code of Criminal Procedure so that lawyers who are themselves facing investigations for forming organised groups with the intention of committing a crime or forming an armed organisation (Articles 220 and 314 of the Criminal Code, respectively) are prohibited for up to two years from representing clients in terrorism-related cases.⁶² Previously, lawyers could only be prohibited from representing a client if there was a pending prosecution against them. It has been reported that, in practice, at least 189 lawyers were not allowed to represent individuals alleged to have taken part in the attempted coup.⁶³ Moreover, decree Law No 694 (Article 148), codified by Law No 7078, established that a verdict can be announced in the absence of a defence lawyer.⁶⁴

26. Regarding violations of professional confidentiality, emergency decree law 667 – codified by Law No 6749 – restricts the confidentiality of communications between lawyers and their clients in pre-trial detention. Such communications can be recorded for security reasons and documents seized by authorities.⁶⁵ Moreover, emergency decree law 676 allows authorities to record, observe, and interrupt meetings between lawyers and clients, if there may be a threat to national security and in terrorism-related cases.⁶⁶

27. Emergency decree law 668 – codified by Law No 6755 – also grants prosecutors the authority to order searches of private premises and lawyers' offices, as well as inspection of computers, databases, and software (without the order of a judge in urgent cases).⁶⁷

28. There have also been reports of lawyers, arrested in Turkey after the failed coup, who have been made to testify against their clients, violating the principle of lawyer-client confidentiality and making it impossible for them to continue to act as their legal representatives.⁶⁸

29. The decrees and legislation mentioned above have been used in Turkey to interfere with lawyers' professional duties, thereby undermining the right to legal representation and other fair trial rights. Restrictions on access to case files (including indictments), access to a lawyer of one's own choosing, as well as breaches of professional confidentiality, constitute violations of the right to a fair trial (Articles 14.1, 14.3 (b)(d) and (e) ICCPR; Articles 6.1, 6.3(b)(c) and (d) ECHR; Principles 1, 7, 8, 21, and 22 of the UN Basic Principles on the Role of Lawyers), insofar as they fail the necessity and proportionality test, and undermine the overall right to a fair hearing.⁶⁹

iv. Arbitrary Arrest, Detention, and Prosecution of Lawyers, and Closure of Bar Associations

30. Since the failed coup, approximately 599 lawyers have been arrested and detained (pre-trial detention), 1546 lawyers prosecuted, and 311 lawyers convicted and sentenced to a total of 1,967 years in prison.⁷⁰

31. Contrary to Principle 18 of the UN Basic Principles on the Role of Lawyers, and as noted in the OHCHR's report on Turkey,⁷¹ lawyers are identified with their clients and clients' causes and prosecuted for alleged breaches of the Anti-Terrorism law No 3713 – Law to Fight Terrorism - without sufficient evidence. Lawyers have also been prosecuted for other alleged offences, such as establishing, commanding, or being a member of an armed organisation (Article 314 of the Criminal Code), as well as establishing organisations for the purpose of committing crimes (Article 220 of the Criminal Code) with a lack of evidence.⁷²

32. Those charged with terrorism-related offences, including lawyers, face a reversed burden of proof, in violation of the presumption of innocence. The Court of Cassation has decided that the mere use of a certain bank account or secure messaging app constitutes evidence of membership of, as well as aiding and abetting, a terrorist organisation.⁷³ There have also been reports that lists prepared by the Ministry of Justice's National Judiciary Informatics System (UYAP) and Turkey's National Intelligence Organisation (MİT) - of individuals using such a bank account or messaging app - have been used to arrest lawyers, judges, and prosecutors.⁷⁴

33. There also have been mass trials of lawyers, for example, before the Istanbul 2nd Peace Criminal Judgeship, Decision No: 2017/6020 (322 lawyers) and Istanbul 8th Peace Criminal Judgeship, Decision No: 2017/3838 (110 lawyers).

34. Lawyers' representation of certain clients, visiting them in prison, making statements to the press, tweeting about ECtHR cases, contacting international organisations, and criticising state practices have all been used as a basis for convicting lawyers. The use of criminal law and anti-terrorism legislation to criminalise lawyers' legitimate professional activities undermines the rule of law. Specifically, the use of vaguely defined offences to arrest and prosecute lawyers, politically motivated prosecutions with a lack of evidence, and trials before courts lacking independence and impartiality.

35. Article 15 of the ICCPR, a non-derogable provision, establishes the principle of legality which requires laws to be sufficiently accessible to the public at the time of the alleged offence and sufficiently precisely worded so that individuals can regulate their behaviour accordingly. This principle also prevents laws from being applied arbitrarily.⁷⁵ Article 314 of the Penal Code and other laws that vaguely or broadly define offences violate the principle of legality.⁷⁶

36. With regard to tweets and press statements by lawyers, as well as other means of expression, the ECtHR has ruled that an impermissible restriction of a lawyers' right to freedom of expression would not only result in a breach of article 10 of the ECHR (right to freedom of expression), but could also give rise to a breach of article 6 of the ECHR (right to a fair trial), because of the impact this may have on any trial in which that lawyer carries out his or her professional functions.⁷⁷ Obstacles to lawyers' freedom of expression, therefore, have far-reaching consequences to the right to a fair trial.

37. State practices that criminalise the professional duties of lawyers violate internationally-protected rights of lawyers and their clients and negatively affect access to justice. They have a 'chilling effect' on the availability of legal representation in certain cases. Very few lawyers are now willing to represent clients in human rights cases because of the risks they and their families face. Some have fled Turkey, leaving family, home, and profession behind. This not only severely impacts the lawyers in question, but also restricts access to justice for all citizens in Turkey.⁷⁸

38. The following are only a few examples of arrest, detention, and prosecution of lawyers, where the undersigned organisations believe that international fair trial standards were not complied with:

- *Ahmet Bal and Mehmet Şimşek*: a few days after the attempted coup, on 21 July 2016, arrest warrants were issued for alleged membership of the Gülenist movement against 45 members of Konya Bar Association, including lawyers Ahmet Bal and Mehmet Şimşek. Messrs. Bal and Şimşek were arrested, along with 20 other lawyers, on 13 October 2016. On 2 August 2017, the 20 lawyers were convicted by the 6th High Penal Court of Konya and given sentences ranging from 10 years and six months to two years imprisonment.⁷⁹ Messrs. Bal and Şimşek were sentenced to nine years imprisonment.
- *Ali Aksoy*: a lawyer with the Izmir Bar Association who was arrested on 21 July 2016 and prosecuted for a statement to the press in 2014 where he highlighted irregularities in criminal proceedings against his client and the conduct of a law enforcement official. He was sentenced to three years' imprisonment for targeting a public agent by the 2nd High Penal Court of Izmir. Mr. Aksoy was also prosecuted for alleged membership of a terrorist organisation and was sentenced on 17 July 2018 to 19 years and nine months imprisonment by the 13th High Penal Court of Izmir.
- *Can Tombul, Sezin Uçar, Özlem Gümüştas*: lawyers and members of the Law Bureau of the Oppressed (EHB). Messrs. Uçar and Gümüştas were arrested for attending the autopsy of a client who died in Syria and providing legal support to the family. Messrs. Uçar and Gümüştas, representing a former co-chair of the Peoples' Democratic Party, were arrested on 25 October 2017, just before the hearing of the Suruç Massacre case. Mr. Tombul was arrested on 31 July 2018 after the hearing of Messrs. Uçar and Gümüştas. Sezin Uçar and Özlem Gümüştas were released on 25 September 2018 after

one-year pre-trial detention, but Can Tombul remains imprisoned. Their cases are ongoing.

- *Ramazan Demir and Ayşe Acinikli*: lawyers and members of ÖHD (Association of Lawyers for Freedom; shut down on 22 November 2016 by emergency decree No. 677), were arrested on 16 March 2016 together with 10 other lawyers. The lawyers were released a few days later, but Mr Demir and Mrs Acinikli were rearrested on 6 April 2016 and in pre-trial detention until 7 September 2016. They were charged with being a member of a terrorist organisation and terrorist propaganda for activities for TUAD (an association of prisoners' relatives in South-East Turkey), visiting detained clients (who are themselves accused of terrorism), and allegedly transmitting information between prisoners on trial for PKK-membership to PKK-members outside prison. In Mr. Demir's case the allegations were also linked to him bringing cases about human rights violations to the ECtHR and being in contact with international organisations.⁸⁰ On 15 November and 10 December 2018, following Mr Demir's attendance at hearings before the ECtHR on 13 November 2018 on behalf of his clients, the Ministry of Justice wrote to the Public Prosecutor and the Istanbul Bar Association to request that a disciplinary investigation be opened against him. The Istanbul Bar Association opened an investigation on 3 January 2019, which could lead to Mr. Demir's disbarment.⁸¹
- *Selçuk Kozağaçlı*: lawyer and president of CHD (shut down 22 November 2016 by emergency decree No. 677) was arrested on 8 November 2017 for allegedly being a member of a terrorist organisation (Criminal Code Article 314), together with other lawyers. On 14 September 2018, all 17 detained lawyers were released but a day later, the re-arrest of 12 of the 17 was ordered. By 16-17 September 2018, six lawyers including Selçuk Kozağaçlı had been rearrested.⁸² Kozağaçlı was sentenced to 11 years and 3 months imprisonment. Seventeen former CHD members were arrested (17 September 2017), charged and convicted under Article 314, and some under Article 220 of the Criminal Code, and sentenced to prison for between 3 years, 1 month and 15 days, and 18 years and 9 months. On 20 March 2019, a newly appointed court announced the verdict and sentenced them 3 years up to 18 years 9 months in absence of defendants and their lawyers.⁸³

39. The UN Human Rights Committee has ruled that arrest or detention as punishment for the legitimate exercise of the rights guaranteed by the ICCPR is arbitrary.⁸⁴ Arrest or detention are also considered arbitrary when there has been total or partial non-observance of the international norms relating to the right to a fair trial, established in the ICCPR, and the violation is of such gravity as to give the deprivation of liberty an arbitrary character.⁸⁵ Arrest or detention that lacks any legal basis, in violation of the principle of legality, is also arbitrary.⁸⁶

40. Since the failed coup, Bar Associations in Turkey have also been targeted through: (i) direct interference with their independence, (ii) interference with admissions to the Bar, (iii) persecution of presidents and board members of Bar Associations, and (iv) persecution of members of Bar Associations.

41. On 15 July 2018, Presidential Decree No 5⁸⁷ created a State supervisory board (acting on orders of the President) in charge of monitoring, overseeing, and investigating public institutions, including Bar Associations and the Union of Turkish Bar Associations (UTBA) (Law No 1136, Articles 76, 109, paragraph 2). According to this decree, this supervisory board can request access to documents, including confidential material, from public institutions.⁸⁸ Its president has disciplinary powers and can dismiss officials working in public institutions.⁸⁹

42. Bar Associations, and the UTBA,⁹⁰ have accepted applications for admission from law graduates and academics linked – without credible evidence - by state authorities with terrorist organisations. However, the Ministry of Justice has refused to issue licences because emergency decree laws prevent these persons from being hired in positions of public service, which includes admission to the Bar. Under Turkish law, lawyers are regarded as discharging public service work. The Ministry of Justice has relied on this to argue that dismissals and life-time bans on working in public service also extend to lawyers.⁹¹

43. The UTBA obtained a two-thirds majority in its governing Board to force the Ministry of Justice to issue the licences,⁹² but the latter challenged the UTBA Governing Board's decision before administrative courts.⁹³ Cases are still ongoing, for example, regarding two academics.⁹⁴ In the case of the former, the Ankara 2nd Administrative Court ordered that the refusal of the Ministry to issue a licence to practice had a legal basis and that, according to a decree law, he cannot obtain a licence to practice because of the trial against him.

44. As of June 2019, at least 14 presidents and former presidents of 12 provincial Bar Associations had been either arrested or detained for allegedly being Gülenists.⁹⁵ In October 2017, an arrest warrant was issued against eight members of the Mersin and Van Bar Associations.⁹⁶ The former Presidents of Konya, Trabzon, Siirt, Erzurum, Manisa Bar Associations, were unseated or forced to resign, arrested and convicted under Article 314§2 of the Turkish Criminal Code. They were sentenced to between two and 14 years.

45. Emergency decree laws have closed down 34 lawyers' associations in 20 different provinces, including Çağdaş Hukukçular Derneği (Contemporary Lawyers Association), Özgürlükçü Hukukçular Derneği (Association of Lawyers for Freedom) and Mezopotamya Hukukçular Derneği (Mesopotamia Lawyers Association), representing victims of torture and ill-treatment and people affected by the curfews in southeast Anatolia. In addition, state authorities have confiscated their assets without justification or compensation. Fiscal and administrative investigations that were initiated to monitor the work of these organisations remain open.

46. The arrests and detentions of lawyers and other members of the legal profession constitute violations of the right to liberty and security of the person (Article 9 ICCPR and Article 6 ECHR), as well as Principles 16 (non-interference) and 18 (non-

identification) of the UN Basic Principles on the Role of Lawyers, and the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders). In some cases, the right to freedom of expression (Article 19 ICCPR, Article 10 ECHR, and Principle 23 of the UN Basic Principles on the Role of Lawyers) and the prohibition on torture (Article 7 ICCPR and Article 3 ECHR) have also been violated. In cases of the closure of Bar Associations, the right to freedom of association (Article 22 ICCPR, Article 11 ECHR, and Principle 24 of the UN Basic Principles on the Role of Lawyers) has been violated.

47. The targeted attack against lawyers and other members of the legal profession in Turkey has systemic negative consequences for the administration of justice, access to justice, and the rule of law. It is unacceptable that lawyers should be prevented from carrying out their work and face criminal prosecution or be associated with terrorist organisations simply for fulfilling their professional obligations to defend accused individuals. The undersigned organisations believe that many lawyers are being targeted precisely *because* they defend and uphold the rule of law.

C. Lack of Implementation of Previous Recommendations

48. The following recommendations made during the second UPR cycle are especially relevant to this submission and were all *supported* by Turkey as part of the recommendations it considered as already implemented or in the process of implementation:⁹⁷

- Guarantee an independent and impartial judiciary, including by refraining from undue interference by the executive (A/HRC/29/15 149.22, 149.23, 149.24 149.25, 149.26, 149.28, and 149.29 – supported)
- Consult with civil society, the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe and the Venice Commission on any judicial reform (A/HRC/29/15, 148.107 - supported)

49. The lack of implementation of these recommendations and others has had a detrimental impact on human rights in the country. We reiterate the need for the implementation of these previous recommendations. In addition, we recommend the following measures for the Turkish government to implement.

D. Recommendations for 3rd UPR Cycle

- 1. Introduce measures that will guarantee the independence of the judiciary and the prosecution services, in accordance with the UN Basic Principles on the Independence of the Judiciary and the UN Guidelines on the Role of Prosecutors;**
- 2. Amend legislative, constitutional, and other provisions that allow the Turkish government to appoint a large number of members of the HSK and the Constitutional Court to ensure the separation of powers;**
- 3. Introduce measures that will guarantee that all applications against dismissal decisions regarding members of the legal profession are considered in a fair and public hearing in a reasonable time by a competent, independent and impartial tribunal established by law as provided for in Article 14.1 of the ICCPR and Article 6.1 of the ECHR;**
- 4. Introduce measures that will ensure that lawyers can effectively perform their professional functions in accordance with the guarantees provided for in Article 14 of the ICCPR, Articles 5 and 6 of the ECHR, and the UN Basic Principles on the Role of Lawyers, specifically by:**
 - Repealing legislation and other provisions which hinder professional confidentiality, timely access to a lawyer of one's choice, prompt and detailed notice of the nature and cause of charges, access to the case file, the examination of witnesses, adequate time and facilities to prepare a defence, and which extend detention periods without access to a lawyer;**
- 5. Amend the anti-terrorism legislation (including the Anti-Terrorism Law adopted on 25 July 2018), and provisions in the Criminal Code, including Articles 314 and 220, as recommended by the Council of Europe,⁹⁸ the European Court of Human Rights, and the European Union, to align these with international standards and define offences sufficiently precisely so that arbitrary application of these laws is prevented;**
- 6. Introduce measures that will ensure that lawyers are not identified with their clients or clients' causes and can perform their duties without intimidation, hindrance, harassment, or improper interference, in accordance with the UN Basic Principles on the Role of Lawyers;**
- 7. Immediately end the arbitrary and systematic arrest, detention, and prosecution of lawyers, judges, and prosecutors; drop the charges against those arbitrarily accused, and release those who are detained, unless credible evidence is presented in proceedings that comply with international fair trial standards;**
- 8. Introduce measures that will ensure the independent and prompt investigation and prosecution of all cases of torture and ill-treatment of lawyers, judges, and**

prosecutors committed by law enforcement officers, in accordance with applicable international standards;

- 9. Implement decisions rendered by the European Court of Human Rights regarding members of the legal profession, including judges, as well as judgments rendered in cases where fair trial rights such as access to clients and professional confidentiality have been violated;**
- 10. Immediately comply with recommendations for the release of individuals made by the UN Working Group on Arbitrary Detention and other UN bodies;**
- 11. Immediately end the interference with bar associations and the arbitrary arrest and prosecution of their officials and members; and**
- 12. Ensure that lawyers are entitled to form and join independent professional associations, as protected by Principle 24 of the UN Basic Principles on the Role of Lawyers.**

We can provide technical assistance, as needed, to facilitate Turkey's compliance with these recommendations, in particular with the review of legislation to bring it into conformity with international and regional human rights standards.

¹ The Law Society of England and Wales; International Bar Association's Human Rights Institute; Bar Human Rights Committee of England & Wales; Conseil National des Barreaux; European Association of Lawyers for Democracy and World Human Rights; Lawyers for Lawyers; Lawyers' Rights Watch Canada; Norwegian Bar Association, Human Rights Committee; International Observatory of Endangered Lawyers; Paris Bar Human Rights Institute; German Bar Association, Human Rights Committee; Geneva Bar Association, Human Rights Commission; Abogacía Española – Consejo General; UIA – International Association of Lawyers.

² UN Basic Principles on the Role of Lawyers, preamble.

³ Turkey, L4L, LRWC, the Law Society and FTW file joint UPR submission, <https://lawyersforlawyers.org/en/turkey-l4l-lrwc-the-law-society-and-ftw-file-joint-upr-submission/>. See the Second UPR cycle, Report of the Working Group on the Universal Periodic Review* (2015) UN Doc A/HRC/29/15, recommendations 148.105 (Slovakia), 148.106 (USA), 149.22 (Luxemburg), 149.23 (Denmark), 149.24 (Switzerland), 149.25 (Namibia), 149.26 (Uruguay), 149.28 (Australia), and 149.29 (Austria). For the first cycle, Report of the Working Group on the Universal Periodic Review-Turkey (2010) UN Doc A/HRC/15/13, recommendation 100.66 (Australia).

⁴ OHCHR 'Report on the human rights situation in South-East Turkey - July 2015 to December 2016' (February 2017) para. 2 <www.ohchr.org/documents/countries/tr/ohchr_south-east_turkeyreport_10march2017.pdf>.

⁵ See the report prepared by Goldsmiths research group Forensic Architecture, 'CGI crime scene reconstruction opens new leads in Kurdish activist killing' (8 February 2019), <<https://www.opendemocracy.net/en/cgi-crime-scene-reconstruction-opens-new-leads-in-tahir-elci-killing/>>

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