



HUMAN  
RIGHTS  
WATCH

# TURKEY'S HUMAN RIGHTS ROLLBACK

Recommendations for Reform



# **Turkey's Human Rights Rollback**

## Recommendations for Reform

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# Turkey’s Human Rights Rollback

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# Introduction

Turkey is undergoing a worrying rollback of human rights. In office for twelve years under the leadership of Recep Tayyip Erdoğan—elected president in August 2014—the ruling Justice and Development Party (*Adalet ve Kalkınma Partisi*, AKP) has shown increasing intolerance of political opposition, public protest, and critical media. Over the past nine months, in an effort to stifle corruption investigations, the AKP government has sought to curb the independence of the judiciary and weaken the rule of law. The erosion of human rights through limitations on media freedom, clampdown on protest, and further loss of trust in Turkey’s politicized criminal justice system have deepened political polarization in the country.<sup>1</sup>

The rollback of human rights has taken place against a background of mass anti-government protests last year, and corruption allegations that go to the very heart of the AKP government and emerged out of a simmering conflict within the political establishment between the AKP and its former ally, the influential Gülen movement led by the US-based cleric Fethullah Gülen.

On the positive side of the balance sheet, the government’s negotiations with imprisoned Kurdistan Workers’ Party (*Partiya Karkerên Kurdistan*, PKK) leader Abdullah Öcalan remain on track, offering a unique opportunity for forging a genuine peace process with the Kurds, which is key to progress on human rights in Turkey. At the same time, there is a clear risk that failure to address the larger rollback on rights may unravel the embryonic peace process.

The government’s increasing use of repressive measures, including restrictions on freedom of assembly and expression and interference with online media, came to the attention of the world with the crack down on the Gezi protests in Istanbul and other cities in May-June 2013.

In December 2013, a major corruption scandal came to light when police announced arrests and criminal investigations in cases implicating senior government officials and

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<sup>1</sup> A recent Pew poll demonstrated this: Pew Research Center, “Turks Divided on Erdoğan and the Country’s Direction,” July 2014, <http://www.pewglobal.org/2014/07/30/turks-divided-on-erdogan-and-the-countrys-direction/> (accessed August 16, 2014).

members of their families. The government responded by attempting to limit police powers and increase executive power over the institution that administers the judiciary; by reassigning judges, prosecutors, and police officers, and more recently by arresting police officers involved in the investigations; and by seeking to silence social media and traditional media reporting on the issues.

The corruption investigations and the government's response are seen by many commentators in the context of the AKP's growing political conflict with the Gülen movement, which is influential in the education system in Turkey, parts of the media, the police, the bureaucracy, and the judiciary.<sup>2</sup> In particular, the Gülenist-AKP conflict is deepening the crisis of Turkey's already politicized and faction-ridden judiciary.<sup>3</sup>

Winning successive elections by large majorities, President Erdoğan, Prime Minister Ahmet Davutoğlu, and AKP government ministers appear to take the view that majoritarian power takes precedence over the rule of law.<sup>4</sup> This report argues that they have also used the actions of their political opponents to justify greater executive control of the police and judiciary and cracking down on fundamental freedoms of expression and assembly.

The report outlines some of the areas where the government needs to take urgent steps to reverse this authoritarian drift. It focuses on four areas: human rights steps in the peace process with the PKK; threats to the rule of law; the reinforcement in the present of a culture of impunity, including a pattern of impunity for violence against women; and restrictions on speech and media, and on the rights to assembly and association.

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<sup>2</sup> The political struggle between the government and the Fethullah Gülen movement, which Human Rights Watch takes no position on, had emerged before the corruption scandal broke. See, for example, Seda Sezer, "Feud between Turkey's Erdogan and Influential Cleric Goes Public," Reuters, November 21, 2013, <http://uk.reuters.com/article/2013/11/21/uk-turkey-erdogan-gulen-idUKBRE9AK12020131121> and "More Arrests Amid Turkish Power Struggle," Deutsche Welle, December 20, 2013, <http://www.dw.de/more-arrests-amid-turkish-power-struggle/a-17312969> (both accessed September 14, 2014).

<sup>3</sup> Emma Sinclair-Webb (Human Rights Watch), "In Turkey's political context rule of law is the real loser," commentary, *Open Democracy*, April 5, 2014, <http://www.hrw.org/news/2014/04/05/turkeys-political-contest-rule-law-real-loser>; Kenneth Roth (Human Rights Watch), "Erdoğan's Dangerous Trajectory," commentary, *Foreign Policy*, May 13, 2014, <http://www.hrw.org/news/2014/05/13/Erdoğan-s-dangerous-trajectory>.

<sup>4</sup> Repeated references to democracy as the ballot box, and use of terms such as the "national will," run through Erdoğan's speeches. For examples, see "Striking Remarks from Erdoğan," *Daily Sabah*, January 6, 2014, <http://www.dailysabah.com/politics/2014/01/06/striking-remarks-from-erdogan>, and "Full Text: Turkish PM Erdoğan's Post-election 'Balcony Speech,'" *Hürriyet Daily News*, March 31, 2014, <http://www.hurriyetdailynews.com/full-text-turkish-pm-erdogans-post-election-balcony-speech.aspx?pageID=238&nID=64341&NewsCatID=338> (both accessed September 15, 2014).

## Human Rights and the Peace Process with the PKK

The embryonic Kurdish peace process offers the greatest possibility for improving Turkey's human rights record by correcting the rights deficit for Kurds that lies at the heart of the conflict. If the government could adopt a wider rights-based view of the process, there would also be a potential for it to advance the equality of other minority groups in Turkey, notably the heterodox Muslim Alevis.

The main human rights concerns relate to the protection of Kurdish language and cultural rights; the misuse of terrorism laws to imprison thousands of members and supporters of legal Kurdish parties, students, and journalists for whom there is scant evidence of involvement in violent activities; and accountability for abuses committed in the context of the conflict with the PKK, particularly during the 1990s.

## The Rule of Law

Turkey's criminal justice system has long been politicized and lacked independence. This in turn undermines public trust in court decisions. These serious deficiencies have been repeatedly highlighted in reports by international bodies such as the European Commission, the Council of Europe, and the UN.

Reforms in recent years have tinkered at the edges but left major problems largely unaddressed, including excessive length of proceedings and lack of judicial independence. The recent government interference in the judiciary in response to the major corruption allegations implicating the government has further degraded the criminal justice system.

Genuine reform of the criminal justice system would bring long-lasting benefits for Turkey and the rights of its citizens. There is a pressing need to strengthen its independence from all forms of political pressure and against the domination of factions within the system itself. While the March 2014 abolition of specially authorized courts dealing with terrorism and other crimes against the state is a welcome move, there are concerns about possible political influence over a new system of criminal judges known as "judges of the peace" responsible for detentions, searches, pretrial detention, and other measures at criminal investigation stage.



## Impunity

Significant obstacles remain to securing justice for victims of serious human rights abuses by police, military, and state officials, creating what amounts to a culture of impunity.

For example, recently a prosecutor decided not to prosecute members of the air force or any state official for a December 2012 aerial bombardment near Uludere in southeastern Turkey, which killed 34 Kurdish men and boys. And there has been near total impunity for police violence during the widespread anti-government Gezi protests in Istanbul and other Turkish towns and cities in May and June 2013.

In April 2014, the government introduced a law giving immunity from prosecution to personnel of the National Intelligence Agency (*Milli İstihbarat Teşkilatı*, MİT) unless the agency itself expressly authorizes prosecution. This measure, which is incompatible with Turkey's human rights obligations, creates a risk that intelligence personnel would not be held accountable for serious human rights violations committed in the course of their duties, including torture.

Stronger efforts to combat impunity are also vital to safeguard the Kurdish peace process. Despite thousands of killings and disappearances of Kurds by state officials in the 1990s, only a handful of trials of officials have taken place. A 20-year statute of limitations on the prosecution of killings is a major obstacle since most violations of the right to life occurred in the period 1993-95. These cases will run up against the 20-year deadline unless action is taken immediately.

The government is aware of the potential for statutory limitations to result in impunity for perpetrators and partially addressed this in an April 2013 judicial reform bill which lifted the statute of limitations for the prosecution of the crime of torture. The government needs to follow this up by repealing the statute of limitations for unlawful killings carried out by state perpetrators.

In Turkey, perpetrators of violence against women, most commonly male partners, ex-partners, and family members, often enjoy impunity. The authorities have failed to implement the 2012 Law on the Protection of the Family and Prevention of Violence. In particular, some women have been murdered by their partners or ex-partners while

under police protection orders. Combatting impunity for violence against women should be a priority.

## **Restrictions on Freedom of Expression and Assembly**

The Turkish government has long had a record of unjustified restrictions on media freedom, social media, and the rights to association and assembly. The government has intensified its crackdown in these areas during and in the wake of the 2013 Gezi protests. The government has also sought to suppress discussion of and information about the corruption allegations that came to light in December 2013, including through bans on YouTube and Twitter.

During and since the Gezi protests, the authorities have charged thousands of people in Istanbul, Ankara, Izmir, and other cities with participating in unauthorized demonstrations, resisting the police, and damaging public property and at least 5,500 have been subjected to legal proceedings. In the course of 2013-14, scores of media workers were fired from or forced out of their jobs, among them highly respected mainstream journalists and commentators writing critically about the government.

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## **What Turkey Should Do to Strengthen Respect for Human Rights**

Turkey needs more robust and independent official bodies and oversight mechanisms to monitor and scrutinize the conduct of public officials in the exercise of their public duties. These bodies should promote accountable and transparent governance and make strong recommendations on human rights issues alongside civil society organizations.

To date, there is no indication that either Turkey's national human rights institution, the National Human Rights Council of Turkey, or the Ombudsman Office, both established in 2012, has been willing to play such a role. Neither institution has spoken out forcefully about abuses by state officials or shown a willingness to make recommendations to government or engage in public debate. In terms of its make-up, the National Human Rights Council of

Turkey lacks independence from the executive, is tied to the Office of the Prime Minister, and seven out of eleven members of its board are appointed by the cabinet.<sup>5</sup>

In March 2014, the government issued a document entitled “An action plan to prevent violations of the European Convention on Human Rights.” The document contains many positive provisions and acknowledges that Turkey continues to be the subject of large numbers of adverse rulings by the European Court of Human Rights.<sup>6</sup> The action plan lays out areas where reforms are needed according to articles of the European Convention. These include: upholding the right to life, prohibition of ill-treatment, fair trial rights, and the rights to privacy, freedom of expression, and assembly. The plan ranges from detailed recommendations for legislative changes to registering, in more general terms, areas of concern requiring action.

However, in the face of clear indications that human rights in Turkey are sliding backwards such initiatives remain inadequate without a plan to implement them. The government should take steps to make the plan operational and to prioritize implementation of the recommendations.

Cross-party efforts that began in early 2012 to draft a new constitution to replace the current one drawn up under a military regime, stalled in 2013 after agreement was reached on 60 articles. Key issues of disagreement between the government and the main opposition parties include the definition of citizenship, the separation of powers, equality, non-discrimination, and minority rights. President Erdoğan favors the creation of a presidential system of governance in Turkey in which the president’s political powers would be increased. The AKP has plans to push for a new constitution, incorporating this model of governance if it wins the next general election expected in 2015.<sup>7</sup> The priority is for a constitution that upholds human rights for all.

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<sup>5</sup> “Turkey: Scrap Flawed Plan for Rights Body,” Human Rights Watch news release, June 19, 2012, <http://www.hrw.org/news/2012/06/19/turkey-scrap-flawed-plan-rights-body>.

<sup>6</sup> The plan is a February 24, 2014 decision of the Council of Ministers, “Avrupa İnsan Hakları Sözleşmesi İhlallerinin Önlenmesine İlişkin Eylem Planı” (“Action plan on prevention of ECHR violations”), *Resmî Gazete* (Official Gazette), March 1, 2014, <http://www.resmigazete.gov.tr/eskiler/2014/03/20140301-2-1.pdf>, available in English translation at <http://www.inhak.adalet.gov.tr/eng/announced/actionplan.pdf> (both accessed August 16, 2014).

<sup>7</sup> For a typical statement of this view, see Serdar Karagöz, “It’s either presidential or semi-presidential system for Turkey,” *Daily Sabah* newspaper, August 19, 2014, [http://www.dailysabah.com/columns/serdar\\_karagoz/2014/08/19/its-either-presidential-or-semipresidential-system-for-turkey](http://www.dailysabah.com/columns/serdar_karagoz/2014/08/19/its-either-presidential-or-semipresidential-system-for-turkey) (accessed August 16, 2014).

Comprehensive anti-discrimination legislation has been planned by the government for several years but at this writing no draft had been submitted to the parliament. Human rights NGOs prepared one such draft and the Ministry of Interior another.<sup>8</sup>

## Regional Context and International Implications

While this report focuses on Turkey's domestic human rights issues, developments in the wider region provide strong reasons for the current Turkish government, and for the government that will assume office after the general election, to take bold steps to get back to a reform path.

Turkey currently hosts over one million Syrians who have fled the violent attacks on civilians by the government forces and armed groups in their country. Armed conflict has also escalated in Iraq, creating more displaced people and refugees. Turkey's generous provision of camps and aid to Syrians has rightly been acknowledged and commended by the international community. But the situation is fluid. Adjusting to a refugee crisis on this scale while avoiding social tensions that can result in the host country requires government policies that promote stability, help integrate refugees, and decrease domestic political polarization.

With its economic interests in Iraq and Syria hard hit by the conflicts in those countries, Turkey can ill afford a wider loss of confidence in its economy on the part of international investors of the kind that typically results from a perception at home and abroad that the rule of law is being eroded and human rights are in crisis. Turkey's influence in the Middle East has also waned as protracted conflict has engulfed Syria, and Turkish and international commentators have criticized Ankara for a Sunni Muslim bias in its foreign policy and for waking up late to the threat posed by radical Jihadist groups' use of Turkish soil.<sup>9</sup> The risk the regional turmoil poses for Turkey's own security became all too clear in

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<sup>8</sup> "Ayrımcılığın Önlenmesi ve Ortadan Kaldırılması Kanunu Taslağı" ("Draft law to prevent and eliminate discrimination"), prepared by academics in a 2009 joint project of the Human Rights Joint Platform and the Minority Rights Group, <http://www.ihop.org.tr/dosya/diger/ayrimcilikyasa.pdf> (accessed August 16, 2014).

<sup>9</sup> Turkey's approach on the latter two issues is discussed in International Crisis Group, "The Rising Cost of Turkey's Syrian Quagmire," April 30, 2014, [http://www.crisisgroup.org/~media/Files/europe/turkey-cyprus/turkey/230-the-rising-costs-of-turkey-s-syrian-quagmire](http://www.crisisgroup.org/~/media/Files/europe/turkey-cyprus/turkey/230-the-rising-costs-of-turkey-s-syrian-quagmire) (accessed September 12, 2014); Ayla Albayrak and Joe Parkinson, "Turkey struggles to halt Islamic State Jihadist Highway," *Wall Street Journal*, September 4, 2014, <http://online.wsj.com/articles/turkey-struggles-to-halt-islamic-state-jihadist-highway-1409777884> and Anthony Faiola and Souad Mekhennet, "In Turkey a Late Crackdown on the Islamic State," *Washington Post*, August 12, 2014, [http://www.washingtonpost.com/world/how-turkey-became-the-shopping-mall-for-the-islamic-state/2014/08/12/5eff70bf-a38a-4334-9aa9-ae3fc1714c4b\\_story.html](http://www.washingtonpost.com/world/how-turkey-became-the-shopping-mall-for-the-islamic-state/2014/08/12/5eff70bf-a38a-4334-9aa9-ae3fc1714c4b_story.html) (both accessed

June 2014 when the fighters from the Islamic State of Iraq and Sham (ISIS) took hostage Turkey's Mosul Consul-General and its entire consular staff.

In light of the turmoil in the Middle East, the European Union and the United States both have a strong interest in supporting Turkey's domestic human rights agenda and its stability as a rights-respecting democracy. The accession talks between the EU and Turkey over Turkey's bid for EU membership have stalled in recent years. There was a small advance in November 2013, when the EU agreed to open a new chapter in the negotiations.<sup>10</sup> This new chapter, chapter 22, relates to regional policy and decentralized administration.<sup>11</sup> It is relevant in the context of the Kurdish peace process since one of the main demands of the Kurdish political movement is the devolution of powers from the center to the regions and a system of stronger local government. EU and US engagement with the Turkish government should emphasize that success in the Kurdish peace process is dependent on Turkey's commitment to strengthening confidence in human rights and the rule of law among its entire population.

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September 13, 2014). See also, Cansu Çamlıbel, "Turkey Turns into a Mere Spectator as Region Changes, Former Diplomat Says," *Hürriyet Daily News*, August 19, 2014, <http://www.hurriyetdailynews.com/turkey-turns-into-a-mere-spectator-as-region-changes-former-diplomat-says.aspx?pageID=238&nID=70613&NewsCatID=510> (accessed September 16, 2014).

<sup>10</sup> The chapters are sections of the EU Aquis, the body of EU law that a candidate country must implement before it can join the EU.

<sup>11</sup> Chapter 22 is focused on regional policy and the management of structural funds, and concerns a country's territorial organization, the capacity and framework for national and regional/local administration to program and manage projects that aim to decrease regional and urban-rural disparities. As such, it offers an important means for Turkey to strengthen decentralized administrative capacity. Chapter 22 was opened with Turkey in November 2013. European Commission, "Memo: EU-Turkey: Putting accession talks back on track, new chapter opened," MEMO/13/958, November 5, 2013, [http://europa.eu/rapid/press-release\\_MEMO-13-958\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-958_en.htm) (accessed August 20, 2014).

# Recommendations

## To the Government of Turkey

### *End Constitutional Restrictions on Human Rights*

- Completely revise the 1982 constitution to ensure no provisions impede the enjoyment of fundamental rights and freedoms and rule of law in Turkey.

### *In Order to Support the Kurdish Peace Process, Protect Rights and Uphold the Rights of All Minority Groups*

- End the misuse of terrorism charges (contained in the Turkish Penal Code and Anti-Terror Law) against individuals for whom there is no evidence of violent activities, plotting, or logistic help to illegal armed groups;
- Conduct a full review to identify, with a view to overturning, all flawed terrorism convictions of political activists, students, and others for whom there is no evidence of violent activities, plotting, or logistic help to illegal armed groups;
- Replace Turkish Penal Code article 314 (“membership of an armed organization”) with a narrower offence criminalizing only those who directly participate in violent activities connected to an unlawful armed group;
- Withdraw Turkey’s reservation to article 27 of the International Covenant on Civil and Political Rights (ICCPR) on minority rights. Ratify the Council of Europe Framework Convention for the Protection of National Minorities and other international instruments relating to minority rights, and ensure that they are fully enforced;
- Enact comprehensive anti-discrimination legislation, including a prohibition on discrimination on grounds of ethnicity, sexual orientation, and gender identity, and include the prohibition of such discrimination in constitutional changes;
- Among other measures to uphold the rights of all minority groups, end discrimination against the Alevi Muslim minority by legally recognizing their meeting houses (*cemevi*) as places of worship.

### *Protect Freedom of Expression, Assembly, and Association*

- Conduct a review of all articles of the Turkish Penal Code, the Anti-Terror Law, the Law on Public Assemblies and Demonstrations, new revisions to the Law on the National Intelligence Agency, the Law Regulating Content Published on the Internet and Combatting Crimes Committed Through Such Publication (No. 5651), and other laws that are used to unjustifiably restrict the rights to freedom of expression, association, and assembly, and the right to access to information, and amend or repeal restrictive provisions to bring them in compliance with international standards;
- Halt executive interference with editorial decisions, pressure and intimidation against critical news outlets and journalists;
- End the criminalization of individuals for peaceful participation in unauthorized demonstrations under the Law on Public Assemblies and Demonstrations (law no. 2911);
- Drop cases against Taksim Solidarity representatives and other protestors for exercising their right to free assembly and expression;
- Drop “coup attempt” and other charges against 35 individuals associated with the *Çarşı* football fan group for exercising their right to free assembly and expression during the May-June 2013 Gezi protests;
- End the excessive use and misuse of tear gas while policing protests and hold to account officers who bear responsibility for either conduct.

### *Reform the Criminal Justice System*

- End the misuse of terrorism charges against individuals for whom there is no evidence of violent activities, plotting, or logistic help to illegal armed groups;
- Further limit the maximum time permitted in pretrial detention and speed up trial proceedings;
- Strengthen the independence of judges and prosecutors from the executive and from all forms of political interference;
- End government and other political interference in the criminal justice system and in criminal investigations relating to government-linked corruption

allegations and ensure that public officials can be held accountable for human rights abuses and corruption.

### *End Impunity for Violence against Women*

- Ensure effective implementation of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), including through implementation of Turkey's 2012 domestic Law on the Protection of the Family and Prevention of Violence against Women;
- Ensure the criminal prosecution of perpetrators of domestic violence and violence against women and implementation of sanctions commensurate with the seriousness of the crime;
- The Ministries of Justice, Interior, and the Family and Social Policy should jointly conduct a broad review of cases where women have been the victim of violence while under a protection order to determine how to strengthen enforcement of protection orders;
- Ensure that there are sufficient specialized and safe shelters for victims of domestic violence, with a view to bringing the number of available places in line with recommended number in the Istanbul Convention, and accessible for all women irrespective of age, ethnicity, nationality, sexuality, pregnancy, marital status, or disability.

### *Strengthen Official Human Rights Bodies in Turkey, Implement a Human Rights Action Plan*

- In line with obligations under the Optional Protocol to the United Nations Convention against Torture (OPCAT), establish a fully independent national preventive mechanism for monitoring places of detention;
- Revise the law on the National Human Rights Council of Turkey to ensure adherence to the Paris Principles, to make it an independent body, adequately resourced and empowered, accountable to the public, and established with the active participation of civil society groups;
- Take steps to implement the recommendations in the government's March 2014 "Action plan to prevent violations of the European Convention on Human Rights."



### *Combat Impunity of Public Officials and the Security Forces for Human Rights Abuses*

- Repeal the 20-year statute of limitations for violations of the right to life by those acting as agents or on behalf of the state;
- Ensure that if a trial of alleged state perpetrators on charges relating to unlawful killings and enforced disappearances is held in a court distant from the location in which the crimes were committed, the families of victims represented in the case are provided with financial support to cover all additional expenses incurred due to the location of the trial;
- Repeal new revisions to the Law on the National Intelligence Agency granting immunity from prosecution to intelligence agency officials;
- Revise Law 4483 on the Prosecution of Civil Servants and other public officials to state clearly that civil servants, including police and other law enforcement officers of all ranks, can be prosecuted without administrative authorization where there is credible evidence of criminal wrongdoing or abuse of power;
- Establish an effective independent mechanism to carry out prompt, impartial, and thorough investigations into allegations of misconduct by members of the security forces and law enforcement officials that are capable of leading to prosecution of offenders and holding senior officers responsible for the conduct of junior officers;
- Ensure that criminal investigations and trial hearings of members of the security forces and law enforcement officials take place without undue delay.

### **To the European Union and United States**

- Emphasize in their relations with Turkey the importance of respect for human right and the rule of law and encourage Turkey to implement the recommendations above;
- Acknowledge that respect for human rights and the rule of law in Turkey are a key element of its stability in a regional context and should therefore be a strategic priority for US and EU policy towards the region;
- The Council of the European Union should express a willingness to discuss Chapter 23 of the EU Acquis concerning Justice and Fundamental Rights and, to start with, agree on the conditions that Turkey needs to fulfill to open this chapter and communicate those opening benchmarks to the Turkish government.

# I. Improving Rights to Secure the Kurdish Peace Process

The most important development in Turkey for its potential to further human rights is the peace process with the Kurds. At the start of 2013, the government announced talks with imprisoned Kurdistan Workers' Party (PKK) leader Abdullah Öcalan to end the decades-long armed conflict with the PKK.

Bolder steps to remedy the rights deficit for Turkey's Kurds—the root cause of the conflict—could further human rights for all ethnic and religious minority groups in Turkey. Key human rights concerns relate to the protection of language and cultural rights, the misuse of terrorism laws against members and supporters of legal Kurdish parties, and accountability for abuses committed in the context of the conflict with the PKK, particularly during the 1990s. The latter issue is discussed in the chapter on impunity below.

Significantly, the government and the PKK maintained a suspension of hostilities through 2013 and 2014; there was no consistent resumption of armed hostilities between the military and the armed group. In July 2014, the government set the embryonic peace process on a legal footing with a law passed by the parliament.<sup>12</sup>

## Minority Rights

Over several years there have been important steps to acknowledge Kurdish language and cultural rights, including easing restrictions on mother-tongue education in private schools, though not yet in state schools, on broadcasting in Kurdish and other minority languages, and on election campaigning in Kurdish and other minority languages. As noted above, the government has yet to introduce comprehensive anti-discrimination legislation that could contribute to strengthening minority rights in Turkey.

The government has pledged to lower the so-called 10 percent election threshold that blocks parties who fail to obtain at least 10 percent of the vote, from taking up their seats

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<sup>12</sup> "Terörün Sona Erdirilmesi ve Toplumsal Bütünleşmenin Güçlendirilmesine Dair Kanunu" (Law to end terrorism and strengthen social unification), *Resmî Gazete* (Official Gazette), law no. 6551, July 16, 2014, <http://www.resmigazete.gov.tr/eskiler/2014/07/20140716-1.htm> (accessed August 16, 2014). The name of the law gives no indication that the success of the peace process requires strengthening rights for Kurds.

in parliament. In practice, candidates of minority parties are forced to run as independent candidates who form a party group once elected.

The government has hinted that it will either lower the threshold to five percent or scrap election thresholds and proportional representation altogether in favor of a first-past-the-post system. This would entail deputies standing for parliament in 550 districts and being elected by receiving a majority of the vote in that district (a system similar to that in the UK).<sup>13</sup> Whichever system Turkey adopts, the current threshold is higher than that of any other Council of Europe country and represents an interference with the right to political participation. The government should enact reform to address the threshold in time for the next general election. Other Kurdish demands include lowering the election threshold and ensuring mother-tongue language education at school.

In the context of the peace process, Turkey should take steps to give effect to international standards relating to the protection of minority rights and national minorities and to lift its reservations to articles concerning minority rights in some conventions.<sup>14</sup>

Conceived more broadly in human rights terms, the peace process has the potential to be extended beyond Kurds to advance equality and the rights of all minority groups in Turkey. Notable among these is the heterodox Muslim Alevi minority which still lacks any official recognition or acknowledgement as being a distinct group. One easy but meaningful step to signal official recognition of Alevis would be to ensure that Alevi meeting houses (*cemevi*) are granted status as places of worship.

## Ending Misuse of Anti-Terrorism Laws

Human Rights Watch has extensively documented the problem of arbitrary and abusive terrorism trials of mainly Kurdish political activists, journalists, lawyers, and students and a pattern of violation of fair trial standards.<sup>15</sup> Authorities in Turkey have prosecuted activities such as joining protests, nonviolent political association, and journalistic activities.

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<sup>13</sup> Sena Alkan, "New Electoral System to Ensure More Participation," *Daily Sabah* newspaper, April 23, 2014, <http://www.dailysabah.com/politics/2014/04/23/new-electoral-system-to-ensure-more-participation> (accessed August 16, 2014).

<sup>14</sup> These include Turkey's reservation on article 27 of the ICCPR on minority rights and ratifying instruments such as the Council of Europe Framework Convention for the Protection of National Minorities.

<sup>15</sup> Human Rights Watch, *Protesting as a Terrorist Offense: The Arbitrary Use of Terrorism Laws to Prosecute and Incarcerate Demonstrators in Turkey* (New York: Human Rights Watch, 2010), <http://www.hrw.org/de/reports/2010/11/01/protesting->

Suspects under investigation on terrorism charges are almost automatically placed in pretrial detention, due to the alleged gravity of the charge. Courts, without providing compelling reasoning, have then repeatedly prolonged incarceration of defendants once their trials are underway and pending a verdict.

Until the laws were reformed in March 2014, defendants facing terrorism charges could be placed in pretrial detention for up to ten years. The legal reforms reduced this to five years (bringing it into line with other serious crimes such as murder). Although a step in the right direction, it does not go far enough as five years pretrial detention still exceeds acceptable human rights norm. There is an urgent need to speed up trial proceedings to help remedy this situation and ensure prompt and fair trials as required under international law.<sup>16</sup>

The primary purpose of the March 2014 law reform was the abolition of the system of what were called Specially Authorized Heavy Penal Courts and prosecutors whose remit was terrorism offenses, among other “crimes against the state.”<sup>17</sup> This parallel justice system has long been criticized by human rights groups for the harsh limitations it has imposed on the rights of defendants, a disproportionately high number of whom have been Kurds. There are concerns about the fairness of other mass trials which proliferated in recent years in these courts, including those involving senior members of the military as defendants.<sup>18</sup>

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terrorist-offense-o. See also, “Journalists’ arrests chills free speech,” Human Rights Watch news release, March 5, 2011, <http://www.hrw.org/news/2011/03/04/turkey-journalists-arrests-chills-free-speech> and “Turkey: Arrests expose flawed justice system,” November 1, 2011, <http://www.hrw.org/news/2011/11/01/turkey-arrests-expose-flawed-justice-system>.

<sup>16</sup> The excessive length of criminal proceedings is a persistent problem in Turkey, resulting in regular rulings against the Turkish authorities by the European Court of Human Rights. In March 2012, in the *Ummühan Kaplan v. Turkey* judgment, the court asked Turkey to provide an effective remedy to the problem and agreed to adjourn examination of new cases for a period of one year. For a summary, see European Court of Human Rights, “Factsheet – Pilot Judgments,” ECtHR Press Unit, July 2014, [http://www.echr.coe.int/Documents/FS\\_Pilot\\_judgments\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Pilot_judgments_ENG.pdf) (accessed August 16, 2014), pp. 8.

<sup>17</sup> “Terörle Mücadele Kanunu ve Ceza Muhakemesi Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına dair Kanun” (“Law changing some laws in the Anti-Terror Law and Criminal Procedure Code”), *Resmî Gazete* (Official Gazette), law no. 6526, March 20, 2014, <http://www.resmigazete.gov.tr/eskiler/2014/03/20140306M1-1.htm> (accessed August 16, 2014). The timing and political motivations for the abolition of the special courts is a separate matter, related to government allegations of the political influence of the Fethullah Gülen movement on the courts and discussed further in the section on the criminal justice system below.

<sup>18</sup> The trial of anti-AKP coup plotters (the Ergenekon gang) ended in August 2013 with 259 defendants receiving a range of long sentences and 21 acquitted. Emma Sinclair-Webb (Human Rights Watch), “The Trial that Fell Far Short,” *International Herald Tribune*, August 7, 2013, <http://www.hrw.org/news/2013/08/06/turkish-trial-fell-far-short> (accessed August 16, 2014). The related and ongoing Oda TV case saw journalists prosecuted for coup plotting. In the Sledgehammer case, 230 members of the military were convicted of coup plotting, in the face of evidence some of which may have been planted or falsified. Exceptionally, the execution of their finalized sentences has been suspended and all defendants were released from prison in June 2014 pending a retrial.

Irrespective of the political motivation (the government's fight with the Gülenists discussed in the next chapter) underlying the decision to abolish these courts and prosecutors, their abolition is a positive step.

Since the reforms in March of 2014, more defendants who had been in prolonged pretrial detention on charges relating to so-called terrorism offenses have been released on bail, as should be the norm. In the main trial in Diyarbakir of 175 people charged simply for their association with the Union of Kurdistan Communities (*Koma Civakên Kurdistan*, KCK), a body connected with the PKK, all remaining defendants who had already been in pretrial detention for periods of over five years were released on bail by July 2014. Among those released on bail were elected local Peace and Democracy Party (*Bariş ve Demokrasi Partisi*, BDP) mayors from cities in southeastern Turkey, lawyers, and human rights defenders, such as Muharrem Erbey, as well as other political activists. Courts in Diyarbakir and other cities have also granted bail to defendants in the many other ongoing trials involving KCK association charges, though in some of these cases defendants have yet to be released.

The granting of bail in these cases however does not address the core problems with the "KCK cases," which include the scope of the charges, criminalizing legitimate activity, and the fact that hundreds of individuals are currently serving sentences following a pattern of flawed convictions.

Abolition of the special courts, which goes to the form of prosecution, will not in itself be enough to tackle the misuse of terrorism legislation. The government should completely overhaul the substance of the prosecutions, and revise the Anti-Terror Law and the articles in the Turkish Penal Code concerning the prosecution of terrorism and other "crimes against the state." Narrowing the scope of these laws, whose application the courts have helped to expand hugely in recent years, is essential to prevent further misuse.<sup>19</sup>

The government should also urgently repeal article 314 of the Penal Code criminalizing "membership of an armed organization." Authorities have extensively used this article,

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<sup>19</sup> Various minor amendments to these laws have been made over the past few years. For example, in April 2013, severe restrictions on publishing or reporting statements by illegal organizations (article 6/2, Anti-Terror Law) were lifted and the scope of the crime of "making terrorist propaganda" (article 7/2, Anti-Terror Law; article 220/8, Turkish Penal Code) narrowed. These positive steps ended a swathe of arbitrary prosecutions which had clogged up the courts but not solved the problem of those arbitrary imprisoned under the more serious charge of "membership of an armed organization."

together with related laws, over the past six years to criminalize and imprison thousands of Kurdish political activists and demonstrators (charged with links to the KCK/PKK) against whom there has been scant evidence of involvement in any violent activities that amount to terrorism.<sup>20</sup>

A replacement for this article (and related laws pertaining to acting on behalf of an armed organization and aiding and abetting its activities) should focus on criminalizing those who directly participate in violent activities connected to the group. A change in the law on article 314 should be followed by judicial review of all cases with a view to quashing convictions for those serving sentences and dropping charges against those for whom there is no evidence of activities that meet the new criteria for criminal responsibility.

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<sup>20</sup> Then Minister of Justice Sadullah Ergin provided a September 18, 2013 written response to a parliamentary question by member of parliament Pervin Buldan showing that over the four-year period 2009-2012, over 20,000 individuals had been convicted for an article 314 offence. Minister of Justice Sadullah Ergin, written statement, September 18, 2013, <http://www2.tbmm.gov.tr/d24/7/7-18919sgc.pdf> (accessed August 15, 2014).

## II. Reforming the Criminal Justice System

Aside from important efforts to bring to an end an era in which Kurds were the victims of systematic discrimination by prosecutors and courts, there is an urgent need for reform of Turkey's criminal justice system as a whole. Concerns about human rights violations arising from systemic problems in the administration of justice have been raised over many years by the European Commission, the Council of Europe, the UN Human Rights Committee, and other bodies.<sup>21</sup>

A 2012 report by the Commissioner for Human Rights of the Council of Europe identified a series of concerns contributing to lack of public confidence in the justice system and observed that “[o]ne of the major factors hampering progress seems to have been the established attitudes and practices followed by judges and prosecutors at different levels giving precedence to the protection of the state over the protection of human rights.”<sup>22</sup> This deference to the interests of state was a core finding in 2009-10 studies on the judiciary undertaken by the Turkish think-tank TESEV.<sup>23</sup>

The central challenge is to transform Turkey's justice system from a system used as a tool by the executive against political opponents and open to manipulation by different political interests in the state, to one that is robustly independent and impartial. Earlier studies have not paid enough attention to the way in which the flaws in the justice system leave it open to politicized factions within the justice system itself, operating in their own interests and at odds with respect for the rule of law. Defendants should not have to

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<sup>21</sup>European Commission progress reports on Turkey every year focus heavily on the judiciary and judicial decisions. European Commission, “Turkey 2013 Progress Report,” October 16, 2013, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2013/package/brochures/turkey\\_2013.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/turkey_2013.pdf), UN Human Rights Committee, Concluding Observations on the Initial Report of Turkey (106th session, 2012), CCPR /C/TUR/CO/1, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhshMktQJn68GxgXXTdAYdq%2fuHnlZeSAm6riCmQa6vtlbHKlbogtDJZeptw7i5KBK45f81nqutF%2bjToLw1jBzkZCdXMBj%2ftmhFSUOAEge%2fUQ>, and Special Rapporteur on the independence of judges and lawyers, “Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Turkey (10 to 14 October 2011),” 2012, A/HRC/20/19/Add.3, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/134/03/PDF/G1213403.pdf?OpenElement> (all accessed September 10, 2014).

<sup>22</sup> Thomas Hammarberg, Council of Europe Commissioner for Human Rights, “Report following his visit to Turkey 10-14 October 2011: Administration of justice and protection of human rights in Turkey,” 2012, CommDH(2012)2, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2005423&SecMod e=1&DocId=1842380&Usage=2> (accessed September 8, 2014).

<sup>23</sup> TESEV, Suavi Aydın, Meryem Erdal, Mithat Sancar, Eylem Ümit Atılğan, “Just Expectations: A compilation of TESEV studies on the judiciary in Turkey,” February 2011, <http://www.tesev.org.tr/assets/publications/file/YargiDerleme.pdf> (accessed September 10, 2014).

wonder about how the allegiance and political opinions of the judge might affect their case as they stand in the dock or to see the powerful repeatedly escape justice.

The concern has been thrown into stark relief in Turkey over the past few months by the largest corruption investigations in the country's history. Beginning on December 17, 2013, the first investigations, which triggered mass arrests in Istanbul, involved credible allegations of bribe-taking and forgery of documents in relation to gold-smuggling and a separate investigation into corruption in the construction/real estate sector. Key suspects implicated were a young Iranian businessman, a bank director, four cabinet ministers, and the sons of three of the ministers. The ministers had to resign their posts, though they enjoy parliamentary immunity from prosecution; their sons, the bank director, and the Iranian businessman were placed in pretrial detention. A third investigation began on December 25 and implicated the former prime minister's son Bilal Erdoğan, among 95 others, in a series of offenses including bribe-taking.<sup>24</sup>

Most political commentators situate the corruption scandal in the context of a major political fight and split between Erdoğan's circle within the ruling AKP and their former and long-term ally, the Fethullah Gülen (or Hizmet) movement, led by the US-based cleric Fethullah Gülen.<sup>25</sup> The government claims the Gülen movement, best known for its global network of educational establishments, has over many years exploited its huge influence to set up alternative power structures—a “parallel state”—in Turkey's judiciary, police, and bureaucracy by means of placing its own cadres in key positions.

These claims reached a crescendo after the corruption scandal broke, with Prime Minister Erdoğan and his circle alleging that the corruption investigations were part of a Gülenist “plot” or “coup” to bring him down and that the arrests and investigation were initiated by police and prosecutors loyal to the Gülen movement. Leaked wiretaps of phone calls

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<sup>24</sup> For a detailed account of the central allegations of the gold-smuggling investigation, which continues, see Mehul Srivastava and Isobel Finkel, “Bling for Minister Mastermind greased Secret Turkey Gold Trade,” Bloomberg, June 24, 2014, <http://www.bloomberg.com/news/2014-06-25/turkey-sells-200-tons-of-secret-gold-to-iran.html> (accessed August 16, 2014). A separate investigation into corruption and real estate was dropped in early May 2014. “Turkey dismisses Corruption Case that has Dogged PM Erdogan,” Reuters, May 2, 2014, <http://www.reuters.com/article/2014/05/02/us-turkey-corruption-idUSBREA410NE20140502> (accessed August 16, 2014). The investigation into Bilal Erdoğan and 95 others was dropped in September 2014. “Bilal Erdoğan ve 95 kişi hakkında takipsizlik,” (“Decision of non-prosecution of Bilal Erdoğan and 95 people”), *Haber 7*, September 1, 2014, <http://www.haber7.com/guncel/haber/1196687-bilal-erdogan-ve-95-kisi-hakkinda-takipsizlik> (accessed September 10, 2014).

<sup>25</sup> For the background, see Charlemagne, “A Challenge to Erdogan's Rule,” post to *The Economist* (blog), December 17, 2013, <http://www.economist.com/blogs/charlemagne/2013/12/turkish-politics> (accessed August 16, 2014).



between the Prime Minister, ministers, and their associates circulated on social media and seemed suggestive of other corrupt transactions, cronyism, and government control over parts of the media.

The government response was swift and dramatic: a massive rotation and demotion of police, prosecutors, and judges, an immediate attempt to limit police powers, and a swathe of new legislation affecting the administration of the whole justice system and judicial functions.

The new laws included a February law to restructure the Higher Board of Judges and Prosecutors (*Hâkimler ve Savcılar Yüksek Kurulu*, HSYK), responsible for the administration of the judiciary, to tie it closer to the executive.<sup>26</sup> In April, the Constitutional Court partially quashed key provisions of the law concerning enhanced powers for the Minister of Justice on the grounds that they violated the separation of powers in important respects, threatened judicial independence, and opened the way to political pressure on the judiciary.<sup>27</sup>

Although the government was unable to increase executive control over the HSYK by changing the law to the extent it desired, it was able in practice to change the composition of chambers of the HSYK and to organize the massive countrywide reassignment of judges and prosecutors. Following all these upheavals in the judiciary, an HSYK election on October 12, 2014 will see Turkey's 14,000 judges and prosecutors elect ten regular members of the HSYK.<sup>28</sup>

The above mentioned March law abolishing the Special Heavy Penal Courts also included much tighter restrictions on courts ability to grant wiretap orders to police, a central aspect of the evidence gathered in the corruption investigations and the main source of evidence in most terrorism trials over the past five years.<sup>29</sup> A new law on the National Intelligence

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<sup>26</sup> "Turkey President Should Veto Judiciary Law," Human Rights Watch news release, February 21, 2014, <http://www.hrw.org/news/2014/02/21/turkey-president-should-veto-judiciary-law>.

<sup>27</sup> Reasoned decision of Constitutional Court, *Resmi Gazete* (Official Gazette), Decision 2014/81 E. 2014/57, May 14, 2014. <http://www.resmigazete.gov.tr/eskiler/2014/05/20140514-21.pdf> (accessed August 16, 2014).

<sup>28</sup> For an insight into the upcoming election process, see Mustafa Akyol, "The Next Battle for the Turkish Judiciary," *Al Monitor*, September 2, 2014, <http://www.al-monitor.com/pulse/ar/originals/2014/09/turkey-judiciary-battle-gulen-akp.html> (accessed September 13, 2014).

<sup>29</sup> "Terörle Mücadele Kanunu ve Ceza Muhakemesi Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına dair Kanun" ("Law changing some laws in the Anti-Terror Law and Criminal Procedure Code"), *Resmi Gazete* (Official Gazette), law no. 6526, March 20, 2014, <http://www.resmigazete.gov.tr/eskiler/2014/03/20140306M1-1.htm> (accessed August 16, 2014), article 12.

Agency was passed, including prison sentences of up to nine years for journalists and editors who publish leaked intelligence, as well as other provisions relating to the immunity of its agents that have negative implications for human rights (discussed in the chapter on impunity below).<sup>30</sup>

Exceptionally in the Turkish context, all suspects arrested in connection with the corruption allegations were bailed just a few weeks after their arrest and before the completion of criminal investigations.<sup>31</sup> The ruling party managed to prevent open discussion in parliament of the evidence against the ministers and to thwart the progress of a parliamentary commission investigating the case. By May, new prosecutors assigned to the investigations had issued a decision that there was no case to answer on the construction/real estate corruption file and closed the inquiry.<sup>32</sup>

Erdoğan's promise of a counter operation against the "parallel structure" within the criminal justice system materialized in late July and August when many of the police officers involved in the corruption investigations were themselves arrested on suspicion of coup plotting, illegal wiretapping of hundreds of people, including the prime minister, and blackmail.<sup>33</sup>

To date, in three waves of arrests, 180 police have been detained, with 40 placed in pretrial detention pending completion of criminal investigation, 5 of them on suspicion of attempting a coup (article 312 of the Turkish Penal Code).<sup>34</sup> On September 1, and coinciding with the arrest of the members of the police, the media reported that prosecutors assigned to the corruption investigation against 96 suspects including Bilal

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<sup>30</sup> "Turkey: Spy Agency Law Opens Door to Abuse," Human Rights Watch news release, April 29, 2014, <http://www.hrw.org/news/2014/04/29/turkey-spy-agency-law-opens-door-abuse>.

<sup>31</sup> "No Suspects Left in Jail in Turkey's Corruption Probe," *Hürriyet Daily News*, February 28, 2014, <http://www.hurriyetdailynews.com/no-suspects-left-in-jail-in-turkeys-corruption-probe.aspx?PageID=238&NID=63045&NewsCatID=338> (accessed September 15, 2014).

<sup>32</sup> "TOKİ Soruşturması Kapandı," ("TOKİ Investigation Closed"), *Al Jazeera Türk*, May 2, 2014, <http://www.aljazeera.com.tr/haber/toki-sorusturmasi-kapandi> (accessed August 16, 2014).

<sup>33</sup> "Turkey holds more police officers for spying," *Al Jazeera*, August 5, 2014, <http://www.aljazeera.com/news/middleeast/2014/08/turkey-arrests-dozens-more-police-spying-20148595322973950.html> and "İki operasyonda 42 polis tutuklandı," ("42 police arrested in two operations"), *TRT Haber*, August 16, 2014, <http://www.trthaber.com/haber/gundem/iki-operasyonda-42-polis-tutuklandi-140537.html> (both accessed September 14, 2014).

<sup>34</sup> Detentions of police took place on July 22, August 5, and September 1 and in each case pro-government media and spokesmen termed them "operations against the parallel structure." It is not clear how many police in all will be indicted as the criminal investigations continue.

Erdoğan, had issued a decision that there was no case to answer. The reasoning for closing the case was that the initial investigation had constituted an attempt to bring down the government.<sup>35</sup> The investigation into the gold-smuggling and bribery allegations continues.

While it is beyond the mandate of Human Rights Watch to make judgments as to the political context, there is a clear negative fall-out from the crisis for human rights and the rule of law. The crisis has laid bare the issue of political factions within the police and judiciary and suggestions of alternative power structures using the criminal justice system for their own political ends (the Gülenists), creating a clear perception of bias. Some of the police arrested in late July were reportedly also involved in some controversial earlier trials (such as KCK, Ergenekon, Sledgehammer).<sup>36</sup>

The crisis has also demonstrated that the government feels no hesitancy to intervene in the criminal justice system when its interests are threatened. This has profound implications for the rule of law in Turkey. The worrying course that the government has pursued has been to rotate and demote thousands of police, judges, prosecutors it alleges are “Gülenist,” replacing them with individuals it presumably judges as “loyal.” Rather than focusing on how to overcome the influence of political factionalism within, recent appointments have thus merely reproduced the same model of political patronage. Criminal investigations into police involved in the corruption investigations will similarly fuel concerns about an official cover-up of the corruption allegations.

While the abolition of the Special Heavy Penal Courts and related prosecutors (discussed in the previous chapter) was a welcome, if politically motivated, move to end a discriminatory system of justice, Human Rights Watch has concerns that another judicial reform law passed in June may signal a readiness to introduce a new category of special judges for reasons of maintaining political influence over key judicial decisions.<sup>37</sup>

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<sup>35</sup> For a summary, see Kadri Gürsel, “AKP Pursues Scorched Earth Tactics Against Gülenists,” *Al Monitor*, September 4, 2014, <http://www.al-monitor.com/pulse/originals/2014/09/turkey-akp-gulen-rift-erdogan-judiciary.html#> (accessed September 9, 2014).

<sup>36</sup> Hakkı Özdal “6 soruda ‘emniyete büyük operasyon,’” (“6 questions on the huge operation against the police”) *Radikal* daily online, July 22, 2014, [http://www.radikal.com.tr/turkiye/6\\_soruda\\_emniyete\\_buyuk\\_operasyon-1203282](http://www.radikal.com.tr/turkiye/6_soruda_emniyete_buyuk_operasyon-1203282), (accessed August 16, 2014).

<sup>37</sup> “Türk Ceza Kanunu ile Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun,” (“Law changing some laws in the Turkish Penal Code”), *Resmî Gazete* (Official Gazette), law no. 6545, June 28, 2014, <http://www.resmigazete.gov.tr/eskiler/2014/06/20140628-9.htm> (accessed August 16, 2014), article 48.

The June law introduced a new category of “criminal judges of the peace” (*sulh ceza hakimlikleri*) with special powers to order arrests, house searches, seizure and freezing of assets, to prolong pretrial detention or release suspects at investigation stage, and other measures during criminal investigations.<sup>38</sup>

It is too early to say exactly what the impact of this legal change will be. Much will depend how the judges exercise their powers. It is worrying that among the first appointments are three judges who bailed key suspects in the corruption investigation (the sons of three ministers, the bank director, and the Iranian businessman at the heart of the investigation) and ordered the bank director’s assets to be unfrozen.<sup>39</sup>

Among the first duties of one of these newly appointed judges has been to order the July 22 detention of 100 police officers, which the media termed an anti-Gülenist operation targeting some of those police officers who played a key role in the December corruption investigation.<sup>40</sup>

If Turkey has seen too many political trials in its recent past (including the politicized trials against alleged coup plotters and the KCK trials against Kurds), there is a grave danger that the government’s recent interventions in the criminal justice system will simply pave the way for another series of politicized trials against another perceived enemy, namely the Gülenists. There is a serious danger that politically motivated criminal investigations will once more perpetuate the practice of making individuals’ perceived networks of association central to the criminal investigation rather than restricting the investigation to concrete evidence that they have engaged in criminal activities.

Political influence over the police and judiciary is a major obstacle to the protection of human rights at every level: it compromises the possibility of holding government and public officials accountable; it hinders the investigation of government corruption; and it undermines freedom of expression and press freedom. Similarly, factionalism or the

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<sup>38</sup> Büket Yılmaz and Gülten Üstüntağ, “PM Erdoğan Confesses to Creating ‘Super Judges’ for Anti-Hizmet Plot,” Cihan news agency, July 22, 2014, [http://en.cihan.com.tr/news/PM-Erdogan-confesses-to-creating-super-judges-for-anti-Hizmet-plot\\_9465-CHMTUwOTQ2NS8xMDA1](http://en.cihan.com.tr/news/PM-Erdogan-confesses-to-creating-super-judges-for-anti-Hizmet-plot_9465-CHMTUwOTQ2NS8xMDA1) (accessed August 16, 2014).

<sup>39</sup> Adnan Keskin and Aysun Yazıcı, “112 super yetkili hakim,” (“112 specially authorized judges”), *Taraf* daily newspaper, July 18, 2014, <http://www.taraf.com.tr/haber-112-super-yetkili-hakim-159486/> (accessed August 16, 2014).

<sup>40</sup> Selahattin Günday, “Cemaat’e ‘büyük operasyon,’” (“‘Huge operation’ against the Gulenists”), *Al Jazeera*, July 23, 2014, <http://www.aljazeera.com.tr/al-jazeera-ozel/cemaate-buyuk-operasyon> (accessed August 16, 2014).

perception of factions operating within the police and judiciary are also obstacles to securing public trust in the criminal justice system and any certainty of fair, impartial, and independent judicial decisions. There are strong signals that the government is opting to fight factionalism with factionalism rather than seeking to improve the quality and transparency of investigations and trials and to enhance their adherence to international human rights law and case law.

By contrast, the genuine reform of Turkey's criminal justice system would bring long-lasting benefits for the rights of citizens. Judicial reform packages passed by parliament over the past five years have attempted to improve aspects of the administration and the functioning of the judiciary, but a more concerted action plan is needed with cross-party involvement and cooperation between the Ministries of Justice and Interior. Parliament should establish new independent oversight mechanisms and strengthen existing ones to oversee police, prosecutors, and judges. Such mechanisms should aim to reduce political and factional influence on the judiciary and police by ensuring performance is evaluated on the basis of adherence to professional standards including adherence to international human rights law. Oversight mechanisms should also aim to strengthen judicial independence from the executive.

### III. Tackling Impunity

#### Accountability for Current Human Rights Abuse by State Officials

Turkey's politicized and faction-riven judiciary has contributed greatly to the perpetuation of a culture of impunity for serious human rights violations by police, military, and state officials. As a result, the victims of these abuses face significant obstacles in securing justice.

The most widely criticized recent example was a military prosecutor's decision that there was no case to be brought against members of the Turkish Air Force or any state official for the December 2011 aerial bombardment that targeted and killed 34 Kurdish men and boys near Uludere in southeastern Turkey, close to the Iraqi Kurdistan border.<sup>41</sup> Without initiating a legal process, the military prosecutor decided that no-one had to answer for what was simply an "unavoidable mistake," and a military court upheld the decision. The parliamentary investigation into the incident was inconclusive and cannot be regarded as an attempt to pursue an effective public enquiry into the incident. The families of the victims continue to campaign for justice.

During the May-June 2013 Gezi protests in Istanbul and cities around the country, there was widespread excessive use of force by police against demonstrators and improper firing of teargas canisters directly at protesters, leading to scores of protesters receiving serious head injuries and 11 being blinded.<sup>42</sup> One year on from the Gezi protests, very few police officers have been investigated for excessive use of force or improper firing of teargas.<sup>43</sup> There have been numerous flaws in the trials of police accused of killing three of

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<sup>41</sup> "Impunity and Cover-up in Turkey," Human Rights Watch dispatch, January 7, 2014, <http://www.hrw.org/news/2014/01/07/dispatches-impunity-and-cover-turkey>. Lawyers for the families of victims have applied to the Constitutional Court following the no prosecution decision.

<sup>42</sup> "End Incorrect, Unlawful Use of Teargas," Human Rights Watch news release, July 16, 2013, <http://www.hrw.org/news/2013/07/16/turkey-end-incorrect-unlawful-use-teargas>; Burcu Yeşiladalı et al., *Gezi Park Olayları: İnsan Hakları Hukuku ve Siyasi Söylem Işığında Bir İnceleme (Gezi Park events: Review of Human Rights Law and Political Discourse)* (Istanbul: İstanbul Bilgi Üniversitesi Yayınları, 2013); and Amnesty International, "Gezi Park Protests: Brutal Denial of the Right to Peace Assembly in Turkey," October 2013, <http://www.amnesty.org/es/library/asset/EUR44/022/2013/en/oba8c4cc-b059-4b88-9c52-8fbd652c6766/eur440222013en.pdf> (all accessed August 18, 2014).

<sup>43</sup> "One Year after Turkey's Gezi Protests Activists on Trial," Human Rights Watch news release, June 11, 2014, <http://www.hrw.org/news/2014/06/11/dispatches-one-year-after-turkey-s-gezi-protests-activists-trial> and Amnesty International, "Adding Injustice to Injury: One Year on from the Gezi Protests in Turkey," June 2014, <http://www.amnesty.org/en/library/asset/EUR44/010/2014/en/82acd54b-cb1a-4918-be8c->

the demonstrators who died. The conviction of a police officer in September 2014 for shooting dead an Ankara demonstrator on June 1, 2013 was a rare moment of accountability. But while convicted of “probable intent to kill,” a crime punishable with a 25-year sentence, the court reduced the sentence to 8 years arguing that the defendant had faced “unfair provocation” and had behaved well during his trial. By contrast some demonstrators face possible life imprisonment if convicted.<sup>44</sup>

The report on the protests by the Ombudsman’s office provided weak recommendations and did not recommend prosecution of the police.<sup>45</sup> At the time of writing, the Human Rights Board of Turkey had failed to complete its report on the subject, despite assurances communicated to Human Rights Watch by a member of the board that such a report was being written. It is important that the board publishes its own findings on the conduct of the police during the Gezi protests and subsequent public assemblies if it is to command public confidence as a credible national human rights institution.

Against this backdrop, it is of particular concern that the government has adopted legislation placing the National Intelligence Agency (MİT) and its personnel above the law. The MİT law passed in April 2014 removes from the public prosecutor the authority to initiate direct criminal investigations of the agency’s activities or subject them to judicial scrutiny in the event of allegations of wrongdoing. Only the intelligence agency itself has the right to decide if its activities should be prosecuted.

Such a provision is directly at odds with Turkey’s obligations under the European Convention on Human Rights. Making the MİT itself the arbiter of whether misconduct

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64c528ab1467/eur440102014en.pdf (both accessed August 18, 2014). In the July 3, 2014 communication by the Turkish government to the Committee of Ministers of the Council of Europe concerning the Oya Atman (74552/01) group of cases, the government claimed that after the countrywide Gezi protests, 329 criminal investigations into the police had been launched in 13 provinces, of which 59 had resulted in decisions of non-prosecution, 6 in prosecutions, and the remainder were still pending. Council of Europe, Secretariat of the Committee of Ministers, “Communication from Turkey concerning the Ataman group of cases against Turkey (Application No. 74552/01),” 2014, DH-DD(2014)915, <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2572357&SecMode=1&DocId=2169188&Usage=2> (accessed September 10, 2014).

<sup>44</sup> “Turkish Police Officer Sentenced to Eight Years for Killing Protestor,” Reuters, September 3, 2014, <http://uk.reuters.com/article/2014/09/03/uk-turkey-protests-trial-idUKKBN0GY1SL20140903> and “Turkish Football Fans Face Life Imprisonment for ‘Coup Attempt’ During Gezi Protests,” *Hürriyet Daily News*, September 8, 2014, <http://www.hurriyetdailynews.com/turkish-football-fans-face-life-in-prison-for-coup-attempt-during-gezi-protests.aspx?pageID=238&nID=71428&NewsCatID=339> (both accessed September 9, 2014).

<sup>45</sup> T.C. Kamu Denetçiliği Kurumu (OmbudsmanOffice), Tavsiye Kararı (Recommendation Decision), no. 2013/90, December 3, 2013, <http://www.ombudsman.gov.tr/contents/files/2013-90.pdf> (accessed August 16, 2014).

within the agency should be subject to criminal proceedings prevents the conduct of independent investigations. A similar system, which protects security forces from prosecution without the consent of the local administrative authorities, was repeatedly condemned by the European Court of Human Rights, and found incompatible with the obligation to conduct independent investigations.<sup>46</sup>

The effect of these provisions will be that intelligence personnel who commit serious human rights violations, for example torture, in the course of their duties will effectively be granted immunity from prosecution since the agency is in practice placed above the law. The Constitutional Court indicated in July that it would examine the substance of the April law.<sup>47</sup> When it does so, the Court should quash those parts of the law that grant immunity from prosecution, along with several other provisions relating to prison sentences for journalists publishing leaked intelligence, and overly wide surveillance and data collection powers.<sup>48</sup>

## Accountability for Past Abuses during the Conflict with the PKK

To date, despite a number of ongoing trials, there has been a regrettable lack of progress in the prosecution of the military and state officials for thousands of cases of torture, enforced disappearances, and killings of civilians committed at the height of the conflict between the state and the Kurdistan Workers' Party (PKK) in the early 1990s.<sup>49</sup>

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<sup>46</sup> Law No. 4483 on the Prosecution of Civil Servants is still regularly interpreted by prosecutors as restricting their jurisdiction to investigate allegations against security force members. The provisions bestow the relevant local administrative authorities (the highest among which is the governor) with the power, amongst other things, to decide whether or not to give permission to prosecute, notwithstanding the security forces are under the command of the governor. From 2003 onwards (through legal amendment no. 4778), no permission was required to investigate allegations of torture and ill-treatment, although there are cases of prosecutors continuing to seek permission to investigate excessive use of force and killings and administrative authorities refusing to grant permission. The relevant European Court decisions include *Orhan v. Turkey*, Application no. 25656/94, Judgment June 18, 2002, *Aktaş v. Turkey*, Application no. 24352/94, ECHR 2003-V, *Koku v. Turkey*, Application no. 27305/95, Judgment May 31, 2005, and most recently the L'affaire Tufekçi c, Turquie, Application no. 52494/09, Decision July 22, 2014.

<sup>47</sup> "MİT Yasası'nda flaş gelişme," ("The MİT laws rapid development") CNN Turk, July 7, 2014, <http://www.cnnurk.com/haber/turkiye/mit-yasasinda-flas-gelisme> (accessed September 8, 2014).

<sup>48</sup> "Turkey: Spy Agency Law Opens Door to Abuse," Human Rights Watch news release, April 29, 2014, <http://www.hrw.org/news/2014/04/29/turkey-spy-agency-law-opens-door-abuse>.

<sup>49</sup> Human Rights Watch documented these crimes at the time in two reports: Human Rights Watch, *The Kurds of Turkey: Killings, Disappearances and Torture* (New York: Human Rights Watch, 1993), <http://www.hrw.org/sites/default/files/reports/TURKEY933.PDF> and Human Rights Watch, *Weapons Transfers and Violations of the Laws of War in Turkey* (New York: Human Rights Watch, 1995), <http://www.hrw.org/reports/1995/Turkey.htm>, and most recently in Human Rights Watch, *Time for Justice: Ending Impunity for Killings and Disappearances in 1990s Turkey* (New York: Human Rights Watch, 2012), <http://www.hrw.org/sites/default/files/reports/turkey0912ForUpload.pdf>.



The systemic and widespread nature of these crimes against the civilian population in the southeast and eastern regions of the country would justify their being counted as crimes against humanity, a crime subject to universal jurisdiction.<sup>50</sup> The failure to prosecute should be seen in the broader context of the entrenched culture of impunity for abuses by state officials in Turkey, described above.

One of the biggest threats to the possibility of securing justice for past crimes lies in the existence of a 20-year statute of limitations on the prosecution of killings. The government is fully aware of the potential for statutory limitations to result in impunity for perpetrators and partially addressed this in an April 2013 judicial reform bill with the step of lifting of the statute of limitations for the prosecution of the crime of torture. The government needs to take the further step of repealing the statute of limitations for unlawful killings carried out by state perpetrators.

Given that the highest number of violations of the rights to life occurred in the period from 1993 to 1995, the 20-year period covered by the statute of limitations is almost up. Unless indictments are issued soon there are concerns that the crimes of the 1990s will go unpunished and that the statute of limitations will simply function as another means to protect perpetrators.

In one recent instance demonstrating the problem, a military prosecutor issued an April 2014 decision of non-prosecution for reasons of the statute of limitations in the case of a March 1994 air force bombardment of two villages in Şırnak in which at least 38 civilians died. The prosecutor's decision ignored a November 2013 European Court of Human Rights decision on the same case finding violations of the right to life, lack of an effective investigation and stipulating, through individual measures, the importance of investigation of perpetrators leading to prosecution.<sup>51</sup>

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For a list of the main ongoing trials and investigations, and a map showing where trials are being heard, see the (Turkish-language) website set up by the Istanbul-based think-tank TESEV, <http://failibelli.org/tum-davalar/> (accessed August 16, 2014).

<sup>50</sup> Human Rights Watch, *Time for Justice*, pp. 51-2; İsmail Avcı, "Diyarbakır cezaevindeki işkencelere takipsizlik," *Zaman* newspaper, July 12, 2014, [http://www.zaman.com.tr/gundem\\_diyarbakir-cezaevindeki-iskencelere-takipsizlik\\_2230698.html](http://www.zaman.com.tr/gundem_diyarbakir-cezaevindeki-iskencelere-takipsizlik_2230698.html), and "Legal opinion submitted to the Minister of Justice of Turkey," Human Rights Watch submission, January 2013, <http://www.hrw.org/node/114435> (all accessed August 16, 2014).

<sup>51</sup> For a description of the *Benzer and others v. Turkey case*, no. 23502/06, see "European Court Presses Turkey on Justice," Human Rights Watch dispatch, November 13, 2013, <http://www.hrw.org/news/2013/11/13/dispatches-european-court-presses-turkey-justice>.

Despite the change in the law to repeal the statute of limitations for the crime of torture and the 2010 repeal by referendum of a constitutional provision granting immunity to public officials for crimes committed in the three years after the 1980 coup, there is still resistance to prosecuting torture cases from the past. In June, the Ankara military prosecutor ruled that prosecution of a pattern of systematic torture in Diyarbakir Prison in the period after the 1980 military coup was timed out.<sup>52</sup>

The trials themselves also raise doubts about the prospect of successful prosecutions of past abuses. Invoking vague and unsubstantiated security concerns, authorities regularly transfer cases to courts in western provinces of Turkey, far from southeast Turkey where the abuses occurred.<sup>53</sup> This is a major disadvantage in practical terms and a financial burden for the families of victims, as well as their lawyers. If the authorities are intent on seeing the cases prosecuted in courts thousands of miles away from the localities in which the crimes were committed, they should ensure financial assistance to cover the huge expenses victims' families incur in travelling to hearings.

Victims' families' participation in these trials is of crucial importance to ensure that justice is finally being seen to be done. The trials that are finally happening come years after the crimes were committed and in the face of much resistance to bringing state perpetrators to justice. The European Court of Human Rights has found a pattern of failure to effectively investigate killings in the southeast during the State of Emergency between 1987 and 2002. Human Rights Watch has previously called on the Turkish government to take steps to promote a victim-centered approach to justice in the approach to prosecuting past abuses.<sup>54</sup>

In the peace process, the legacy of state-perpetrated violations, as well as serious abuses committed by the PKK, should not be swept under the carpet. Promoting justice and

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<sup>52</sup> The case had been meticulously prepared and included around 500 testimonies of torture, some documented through medical reports. Lawyers for the victims have appealed the prosecutor's decision: Avcı, "Diyarbakır cezaevindeki işkencelere takipsizlik," ("Decision of non-prosecution of Diyarbakir Prison torture"), *Zaman* newspaper, July 12, 2014, [http://www.zaman.com.tr/gundem\\_diyarbakir-cezaevindeki-iskencelere-takipsizlik\\_2230698.html](http://www.zaman.com.tr/gundem_diyarbakir-cezaevindeki-iskencelere-takipsizlik_2230698.html) (accessed September 13, 2014).

<sup>53</sup> For example, the prosecution of general Mete Sayar and others for six disappearances of four Kurdish and two Syriac villagers in Şırnak was transferred to Ankara from Şırnak by a decision of the Fifth Chamber of the Court of Cassation, although the Şırnak prosecutor and court did not consider there to be compelling security grounds not to hear it in Şırnak and it is likely that the defendants who are at liberty would anyway have participated in the case by video link-up (known as the SEGBIS system and increasingly commonly used in court). For background on the case, see "Turkey: Chance for Justice, 20 years on," Human Rights Watch news release, November 4, 2013, <http://www.hrw.org/news/2013/11/04/turkey-chance-justice-20-years>. Human Rights Watch is following this case and the senior researcher attended two hearings with the next hearing on September 26, 2014.

<sup>54</sup> Human Rights Watch, *Time for Justice*, p. 61.

combatting impunity should be central to the peace process, alongside establishment of mechanisms such as a Truth Commission to examine the wider pattern of abuses by all parties to the conflict.<sup>55</sup>

## Ending Impunity for Violence against Women

In 2012, Turkey took the important step of becoming the first country to sign and ratify the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (commonly known as the Istanbul Convention) and also amended its own legislation to combat domestic violence more effectively. The treaty entered into force on August 1, 2014.<sup>56</sup>

However, there remains a pressing need to address the rights deficit for women in Turkey, where there is low female labor force participation, many women lack economic independence, and the endemic problem of violence in the home persists.<sup>57</sup> The criminal justice system continues to fail to hold abusive men accountable for violence to their partners, ex-partners or family members by means of criminal sanctions.<sup>58</sup>

This is part of a broader failure to effectively implement Turkey's 2012 Law on the Protection of the Family and Prevention of Violence against Women that has been amply reported by women's right groups.<sup>59</sup> The law outlines a series of measures to protect

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<sup>55</sup> Ibid, p. 63.

<sup>56</sup> "European Treaty on Violence Against Women to Take Effect," Human Rights Watch news release, April 24, 2014, <http://www.hrw.org/news/2014/04/24/europe-treaty-violence-against-women-take-effect>.

<sup>57</sup> Figures reported in August 2014 by the Minister of Health cite 12,946 cases of violence against women reported to the health services across the country in 2013. Ministry of Health, "Written response to parliamentary question," no. 23859870, August 2014, <http://www2.tbmm.gov.tr/d24/7/7-32989sgc.pdf>; see also media report on the findings, Önder Yılmaz, "Kadına yönelik şiddetin haritası," ("Map of violence against women"), *Milliyet* daily newspaper, August 13, 2014, <http://www.milliyet.com.tr/kadina-yonelik-siddetin-haritasi-gundem-1924868/> (accessed August 16, 2014).

<sup>58</sup> In *Opuz v. Turkey* (application 33401/02, judgment June 2009), the European Court of Human Rights found local authorities failed to use the required diligence to prevent domestic violence recurring after terminating proceedings without conducting any meaningful investigation. The court found the state both failed in its obligation to prevent inhuman or degrading treatment and violated prohibitions on discrimination since domestic violence is regarded as gender-based violence, a recognized form of discrimination against women.

<sup>59</sup> Women's organization *Mor Çatı* (Purple Roof) that runs a shelter monitored implementation over a year and identified serious failures. Among these were demands from prosecutors for women to submit concrete evidence when asking for a protection order although the law does not require such evidence, lack of penalties for men infringing protection orders, police failure to take women's complaints seriously, and a practice of encouraging them to forgo complaints. The organization noted that the authorities had been unable to provide information on how many women had received protection order. *Mor Çatı*, "Erkek şiddeti azalmıyor, çünkü en önemli yasa hala kâğıt üzerinde!" ("Male violence not declining because the most important law is still not implemented!"), May 23, 2014, <https://www.morcati.org.tr/tr/ana-sayfa/254-erkek-siddeti-azalmiyor-cunku-en-onemli-yasa-hala-kagit-uzerinde> (accessed September 13, 2014).

women such as protection orders that require an abusive man or other family members to maintain a set distance from the woman, the imposition of various sanctions for anyone who violates an order, and the provision of shelter places for the woman. The law also requires that police must regularly monitor the implementation of protection orders. However, reports suggest that police and courts still regularly fail to protect women, even those who have been granted protection orders and a number of women who were granted protection orders have been killed by partners.<sup>60</sup>

In general, the number of women killed by spouses and family members in Turkey remains high. The Platform to Stop Murders of Women (*Kadın Cinayetlerini Durduracağız Platformu*) reported 237 murders of women in 2013, the vast majority of whom had been killed by partners, ex-partners, and family members.<sup>61</sup> These are preventable deaths and frequently follow a history of violence against the woman which the authorities had a duty of due diligence to prevent. While there have been clear improvements over the past decade in the rate of prosecution and conviction of murders of women by partners and family members, the same record of prosecution cannot be said to operate when it comes to other forms of violence against women. Combatting immunity for violence against women should be a priority, especially given the leadership exercised by Turkey over the adoption of the Istanbul Convention.

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<sup>60</sup> The Platform to Stop Murders of Women (*Kadın Cinayetlerini Durduracağız Platformu*) reported that of 237 murders of women in 2013, 25 had requested protection, 18 of whom were actually under protection at the time of death. Kadın Cinayetlerini Durduracağız Platformu, “2013 yılında 237 kadın kardeşimiz öldürüldü” (“237 sisters killed in 2013”), January 1, 2014, <http://kadincinayetleriniurduracagiz.net/veriler/906/2013-yilinda-237-kadin-kardesimiz-olduruldu> (accessed September 13, 2014).

<sup>61</sup> Ibid.

## IV. Protecting Free Expression, Association, and Assembly

The government's erosion of media freedom, continuing readiness to limit freedom of expression, restrictive approach to freedom of assembly, and readiness to prosecute demonstrators while tolerating police violence against them, have been among the developments most damaging to Turkey's democratic credentials and international reputation.

A restrictive media atmosphere, tax and broadcasting watch-dog disciplinary fines applied selectively to anti-government media, criminal defamation cases against journalists, pretrial detention of some journalists on terrorism charges, prosecution of journalists for publishing leaked documents, and blocking orders on social media, impede the ability or likelihood of the media to hold government authorities to account or scrutinize their activities.

In the year following the May-June 2013 Gezi protests in Istanbul and cities around the country, the government has repeatedly demonstrated an unduly restrictive interpretation of the right to assembly, regularly preventing demonstrations and public assembly, including on the May 31 one-year anniversary of the Gezi protests, without providing compelling reasons.<sup>62</sup>

### Government Intolerance towards Critical Speech

In the context of the 2010 United Nations Universal Periodic Review (UPR), the Turkish government stated that “the continuation of enhancements on the freedom of speech and the freedom of media is one of the fundamental aspects of Turkey's human rights reforms.”<sup>63</sup> Turkey also pledged at the 2010 UN UPR review to align the Penal Code and other laws with international human rights laws upholding freedom of expression.

However, Turkey's record today fails to support this optimistic picture of the government's commitment to media freedom and freedom of expression in general.

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<sup>62</sup> “Why banning May Day in Taksim Doesn't Work,” Human Rights Watch dispatch, May 1, 2014, <http://www.hrw.org/news/2014/05/01/dispatches-why-banning-may-day-taksim-doesn-t-work>.

<sup>63</sup> UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Turkey Addendum: Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/15/13/Add.1 (2010), Recommendation 23 para. 48, [http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/TR/A.HRC.15.13.Add.1\\_TURKEY\\_en.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/TR/A.HRC.15.13.Add.1_TURKEY_en.pdf) (accessed August 16, 2014).

While there are some strongly critical media organs in Turkey, seemingly exclusively devoted to writing anti-government stories, large parts of the media, and in particular television channels, follow a pro-government line in their news coverage and do not cover news unfavorable to the government. The space for independent, nonaligned and critical journalism in Turkey has shrunk.

Critical media organs have been subjected to a disproportionate number of steep fines. The regulatory watch-dog Radio and Television Supreme Council (*Radyo ve Televizyon Üst Kurulu*, RTÜK) has suspended broadcasts and imposed unjustifiable and arbitrary fines on TV channels for content critical of the government.<sup>64</sup> In the run up to the presidential elections in August, statistics published reveal that the state broadcasting channel (*Türkiye Radyo ve Televizyon Kurumu*, TRT) was devoting dramatically more airtime to Recep Tayyip Erdoğan’s presidential campaign speeches than to those of the two opposition candidates. Newspapers critical of the government have been subjected to tax inspections on a regular basis, with papers such as *Taraf* receiving huge tax fines, while pro-government newspapers such as *Sabah* are not subjected to similar scrutiny.<sup>65</sup>

In a particularly egregious case, Mehmet Baransu of *Taraf* newspaper and his then editor Murat Şevki Çoban have been prosecuted over a November 2013 news story in *Taraf* publishing details of the records of a top-government National Security Council meeting held in 2004 in which a plan to purge Gülenists was allegedly discussed.<sup>66</sup> Baransu and Çoban are at liberty and a trial has not yet begun but face a possible 52-year prison sentence on charges of revealing secret information.<sup>67</sup>

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<sup>64</sup> For example, lawyer Fikret Duran provided Human Rights Watch with a list of 89 RTUK fines imposed on the Samanyolu Broadcasting Group in May and June 2014 alone. The fines were generally imposed on the group for news broadcasts on the corruption allegations which RTUK judged as violations of privacy. For details of the period April-June 2014, see the independent news website Bianet’s quarterly report on the state of media freedom. Erol Önderoğlu, “BIA Medya Gözlem Raporu – Tam Metin,” (“BIA Media Watch Report – Full Text”) *Bianet*, July 24, 2014, <http://www.bianet.org/bianet/ifade-ozgurlugu/157294-bia-medya-gozlem-raporu-tam-metin> (accessed August 25, 2014).

<sup>65</sup> *Taraf* newspaper reported that it faced three tax inspections over the past eight months and had incurred fines which it argued were selectively applied and not faced by the pro-government media. Hüseyin Özay, “Taraf’a vergi işkencesi tam gaz,” (“Tax torture goes ahead for Taraf”), *Taraf* newspaper, September 3, 2014, <http://www.taraf.com.tr/haber-tarafa-vergi-iskencesi-tam-gaz-162940/> (accessed September 8, 2014).

<sup>66</sup> Mehmet Baransu, “Gülen’i bitirme kararı 2004’te MGK’da alındı,” (“Plan to finish Gulen taken at 2004 NSC”), *Taraf* newspaper, November 28, 2013, <http://www.taraf.com.tr/haber-gulen-i-bitirme-karari-2004-te-mgk-da-alindi-140671/> (accessed August 16, 2014).

<sup>67</sup> There is currently a dispute to be resolved by the Court of Cassation over which court should hear the case. Information about the case supplied to Human Rights Watch by *Taraf* newspaper, June 5, 2014 and by Mehmet Baransu, September 13, 2014.

The mute or biased coverage of the 2013 Taksim Gezi protests in much of Turkey's media highlighted the reluctance of many media companies to report news impartially when it conflicts with government interests. In the course of 2013-14, scores of media workers were fired from their jobs or forced to resign when their newspapers or TV stations became fearful that their reporting, writing, interviewing style, or areas of focus were politically controversial. Among them are highly respected mainstream journalists and commentators writing critically in different media about the government.<sup>68</sup>

Turkey continues to criminalize nonviolent dissenting speech and writings and to restrict access to information by imposing disproportionate and arbitrary restrictions on social media. The above mentioned law on the National Intelligence Agency includes prison sentences of up to nine years for journalists and editors who publish leaked intelligence.<sup>69</sup> Criminal defamation laws are regularly invoked and politicians frequently win cases for “insult” against journalists and media that criticize them.

Conversely, politicians themselves, including Erdoğan, have also put critical commentators and journalists at risk by publicly targeting them in smear campaigns. The *Taraf* newspaper columnist who is also the Turkey correspondent for the *Economist*, Amberin Zaman, was targeted by Erdoğan during the Presidential election campaign, when at an election rally he railed against her as a “shameless woman” who should “know her place,” encouraging the crowd to boo her, because she had remarked in a TV discussion that Islam emphasized the community not the individual.<sup>70</sup> Zaman reported to Human Rights Watch that following the incident she had seen an increase in hate mail and had received death threats but felt that a complaint to the prosecutor would be useless as Erdoğan's words had “constituted a license” to attack her.<sup>71</sup>

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<sup>68</sup> Bianet news service's quarterly report on media freedom states that in the period April-June 2014 186 journalists were fired from their jobs and forced to resign. Erol Önderoğlu, “Medyanın 3 Ayı: 186 Gazeteci İşten Atıldı,” (“In three months 186 journalists fired”), *Bianet*, July 23, 2014, <http://www.bianet.org/bianet/ifade-ozgurlugu/157311-medyanin-3-ayi-186-gazeteci-isten-atildi> (accessed August 25, 2014).

<sup>69</sup> “Turkey: Spy Agency Law Opens Door to Abuse,” Human Rights Watch news release, April 29, 2014, <http://www.hrw.org/news/2014/04/29/turkey-spy-agency-law-opens-door-abuse>.

<sup>70</sup> Newsbook, “Amberin Zaman, Our Correspondent in Turkey,” post to *The Economist* (blog), August 7, 2014, <http://www.economist.com/blogs/newsbook/2014/08/amberin-zaman> (accessed August 16, 2014). Video footage of Erdoğan's words can be found at <http://www.youtube.com/watch?v=0L3JK-X4wfE> (accessed September 10, 2014).

<sup>71</sup> Human Rights Watch interview with Amberin Zaman, journalist, Istanbul, September 9, 2014.

The blocking of Twitter and YouTube in 2014, together with more restrictive steps to control the Internet through new revisions to Turkey's main law regulating content on the Internet (law no. 5651), came in the wake of the December 2013 corruption scandal.<sup>72</sup> A third revision to the Internet Law the parliament passed without consultation on September 10 gave the Telecommunications Directorate (*Telekomünikasyon İletişim Başkanlığı*, TİB) increased powers to block websites for reasons of “national security, the restoration of public order and the prevention of crimes,” and to retain data on internet users' browsing histories.<sup>73</sup>

These restrictions come on the back of concerns over the government's attempts to stifle the circulation of recordings of politically damaging telephone conversations between members of the government, the prime minister, and close associates, which circulated widely on social media.<sup>74</sup> The Constitutional Court ruled in April and May 2014 respectively that the blocks on Twitter and YouTube should be lifted.<sup>75</sup> Twitter has also itself restricted access in Turkey to some anti-government Twitter accounts under pressure from the Turkish authorities.<sup>76</sup>

There was a spate of trials in 2013 against public figures for “insulting the religious sentiments of a part of the population” (under article 216/3 of the Turkish Penal Code), similar to the prosecutions of individuals for “insulting Turkishness” common in the recent past. In 2013 pianist Fazıl Say received a 10-month suspended prison sentence for sending tweets that poked fun at believers and Islam. The case was still on appeal at time of writing.

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<sup>72</sup> On the new internet laws, see “Turkey: Gul Should Veto New Internet Rules,” Human Rights Watch news release, February 6, 2014, <http://www.hrw.org/news/2014/02/06/turkey-gul-should-veto-new-internet-rules>.

<sup>73</sup> “Turkey: Strike Down Abusive Internet Measures,” Human Rights Watch news release, September 15, 2014, <http://www.hrw.org/news/2014/09/15/turkey-strike-down-abusive-internet-measures>.

<sup>74</sup> “Turkey shuts down Twitter,” Human Rights Watch dispatch, March 21, 2014, <http://www.hrw.org/news/2014/03/21/dispatches-turkey-shuts-down-twitter> and “Turkey: Youtube Block Violates Free Expression,” Human Rights Watch news release, March 27, 2014, <http://www.hrw.org/news/2014/03/27/turkey-youtube-block-violates-free-expression>.

<sup>75</sup> Doug Bernard, “Turkish Courts Slam Internet Curbs; Challenge Erdogan's Web Censorship,” *VOA News*, April 2, 2014, <http://www.voanews.com/content/turkey-court-says-twitter-ban-violates-free-speech/1884777.html> (accessed August 16, 2014). Judgment of the Second Section, *Constitutional Court*, Application Nr. 2014/3986, 2014, <http://www.anayasa.gov.tr/en/News/Detail/judgment/2014-3986.pdf> and Judgment of the General Assembly, *Constitutional Court*, Application Nr. 2014/4705, 2014. <http://www.anayasa.gov.tr/en/News/Detail/judgment/2014-4705.pdf> (accessed September 8, 2014).

<sup>76</sup> “Twitter Complies with 44 of 51 Turkish Court Rulings,” *Daily Sabah*, June 18, 2014, <http://www.dailysabah.com/politics/2014/06/18/twitter-complies-with-44-of-51-turkish-court-rulings> (accessed August 16, 2014).



In 2013, journalist and writer Sevan Nişanyan received a 13-month sentence on the same charge. He was later imprisoned after a conviction for alleged building regulation infringements, although there is evidence to suggest that he was targeted for his controversial writings and political views. In May 2014, a teacher, Ertan P, received a 15-month prison sentence on the same charge for tweets and a Twitter account under the name “Allah CC.” The sentence was under appeal at this writing and Ertan P is at liberty.<sup>77</sup>

## Government Intolerance of Public Protest

Since the 2013 Gezi protests, the authorities have charged thousands of people—in Istanbul, Ankara, Izmir and other cities—with participating in unauthorized demonstrations, resisting the police, and damaging public property. At least 5,500 have been put on trial.<sup>78</sup> Scores of people face additional terrorism charges in connection with the protests. In September, the Istanbul prosecutor indicted 35 individuals linked with a football club fan group for allegedly attempting to overthrow the government during the Gezi protests, for which they face possible life imprisonment. The indictment cites tweets, telephone calls, and an effort to occupy the Prime Minister’s Istanbul office as evidence of an attempt to overthrow the government.<sup>79</sup> The first hearing of the trial is on December 16, 2014.

A criminal investigation into the organizers of Taksim Solidarity, a platform of nongovernmental organizations supporting the Gezi Park campaign and sit-in, resulted in five people standing trial in June 2014 on charges of leading a criminal organization in a trial that continues.<sup>80</sup>

The prosecution of large numbers of people involved in the Gezi protests contrasts with the small number of police officers held accountable for widespread excessive use of force

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<sup>77</sup> “Allah CC’ye 15 ay hapis cezası,” (“15 months’ prison for ‘Allah CC’”), *Cumhuriyet* daily newspaper, May 29, 2014, [http://www.cumhuriyet.com.tr/haber/turkiye/76999/\\_Allah\\_CC\\_ye\\_15\\_ay\\_hapis\\_cezasi.html](http://www.cumhuriyet.com.tr/haber/turkiye/76999/_Allah_CC_ye_15_ay_hapis_cezasi.html) (accessed August 16, 2014). Details of the case were confirmed to Human Rights Watch by lawyer Rümet Agit Özer. Human Rights Watch interview with Rümet Agit Öze, lawyer, Istanbul, September 5, 2014.

<sup>78</sup> The International Federation for Human Rights (FIDH), “Turkey: Gezi, One Year On,” April 2014, [http://www.fidh.org/IMG/pdf/turkey\\_avril\\_2014\\_uk\\_web.pdf](http://www.fidh.org/IMG/pdf/turkey_avril_2014_uk_web.pdf) (accessed August 16, 2014).

<sup>79</sup> Selahattin Günday, “Çarşı Liderlerine Darbe Davası,” (“Coup trial against Çarşı leaders”), *Al Jazeera Türk*, September 8, 2014, <http://www.aljazeera.com.tr/al-jazeera-ozel/carsi-liderlerine-darbe-davasi> (accessed September 8, 2014). Detail of indictment was provided to Human Rights Watch by lawyers Mehmet Derviş Yıldız and Nazif Koray Kırca. Human Rights Watch interview with Mehmet Derviş Yıldız and Nazif Koray Kırca, lawyers, Istanbul, September 12, 2014.

<sup>80</sup> “One Year After Turkey’s Gezi Protests Activists on Trial,” Human Rights Watch dispatch, June 11, 2014, <http://www.hrw.org/news/2014/06/11/dispatches-one-year-after-turkey-s-gezi-protests-activists-trial>.

during the Gezi protests. The government should end the criminalization of individuals for peaceful participation in unauthorized demonstrations under the Law on Meetings and Demonstrations (law no. 2911).

## **Acknowledgements**

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Turkey is undergoing a worrying rollback of human rights. The ruling Justice and Development Party (AKP) under Recep Tayyip Erdoğan has shown increasing intolerance of political opposition, public protest, and critical media. Since the beginning of 2014, the government has sought to curb the independence of the judiciary and weaken the rule of law, in an effort to stifle corruption investigations that implicate government ministers and their families. The latest clampdown is part of a wider erosion of human rights including limitations on media freedom, clampdown on protest triggered by the 2013 Gezi demonstrations, and further loss of trust in Turkey's politicized criminal justice system. All of these developments have deepened political polarization in the country.

A peace process with the Kurdish population at present offers the greatest possibility for improving Turkey's human rights record, but it may not be sustainable unless the government takes bold steps to address the major rollback on rights.

*Turkey's Human Rights Rollback* identifies reforms needed to support the Kurdish peace process, strengthen the independence of the criminal justice system, combat violence against women and impunity for serious human rights abuses, and improve Turkey's record on free speech, media freedom, and the rights to assembly and association.

*(above) Members of the Çarşı fan group, supporters of Beşiktaş football club, protest during the Gezi protests on June 8, 2013. In September 2014, an Istanbul prosecutor indicted 35 individuals associated with the group on alleged coup plot charges arising from their participation in the protests.*

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*(front cover) Turkey's new president Tayyip Erdoğan (front) attends a swearing in ceremony in parliament in Ankara on August 28, 2014.*

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