



# TURKEY

## AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 21<sup>ST</sup> SESSION OF THE UPR WORKING GROUP, JANUARY-FEBRUARY 2015

### FOLLOW UP TO THE PREVIOUS REVIEW

#### Freedom of expression

At its first Universal Periodic Review (UPR) in 2010, Turkey accepted a number of recommendations on the right to freedom of expression, including to guarantee this right for journalists, writers and editors, and to adjust national legislation in line with international human rights standards.<sup>1</sup> However, respect for the right to freedom of expression in Turkey has deteriorated since its 2010 UPR. Despite a number of legislative amendments to provisions frequently used to curtail freedom of expression, restrictive laws remain on the statute and are used to prosecute activists, journalists and others who criticise the government or who speak out on politically sensitive issues. Prosecutions are also brought under anti-terrorism laws and articles of the Penal Code that undermine the right to freedom of expression.

Self-censorship in the mainstream media has increasingly become a barrier to media freedom as editors and media owners seek to maintain good relations with the government with whom they have strong business links. Journalists report that their work has been censored or that they have been forced out of their jobs to prevent criticism of the government.<sup>2</sup>

Social media and other internet-based media have also come under increasing pressure. In February 2014, the government passed amendments to the already restrictive Internet Law which increased the powers of the authorities to block or remove content.<sup>3</sup> The arbitrary blocking of Twitter and YouTube Internet sites in March 2014 followed these changes. Both blocking orders were subsequently lifted following rulings by the Constitutional Court.

#### Torture and other ill-treatment

A number of states raised concerns regarding torture and other ill-treatment, including impunity for the perpetrators of such treatment, and these recommendations were accepted by Turkey.<sup>4</sup> Amnesty International welcomes that since the last UPR, there have been fewer reports of torture or other ill-treatment in official places of detention. However, outside official places of detention ill-treatment by law enforcement officials has increased, particularly during or following street protests where excessive use of force by police officers against demonstrators has become routine. Excessive and arbitrary use of force against demonstrators was particularly widespread during the Gezi Park protests across Turkey in 2013.<sup>5</sup> Excessive use of force by police against demonstrators has since been replicated at other demonstrations with little or no indication that the authorities have attempted to bring policing in line with international human rights

<sup>1</sup> A/HRC/15/3, paragraphs 100.71 (Chile), 100.73 (Japan), 101.5-101.6 (Switzerland), 102.20 (Netherlands), and 102.24 (Ireland).

<sup>2</sup> See also Amnesty International report: *Turkey: Adding injustice to injury: One year on from the Gezi Park protests in Turkey*, 10 June 2014, page 30 (<http://www.amnesty.org/en/library/info/EUR44/010/2014/en>)

<sup>3</sup> See also Amnesty International public statements: *President Gül: Veto restrictive internet law changes*, 12 February 2014 (<http://www.amnesty.org/en/library/info/EUR44/002/2014/en>) and *Amnesty International welcomes Internet law changes recommended by President*, 27 February 2014 (<http://www.amnesty.org/en/library/info/EUR44/004/2014/en>).

<sup>4</sup> A/HRC/15/3, paragraphs 100-44-100.49 (Switzerland, Denmark, Czech Republic, USA, Germany, Ireland) and 100.70 (Germany).

<sup>5</sup> See also Amnesty International report: *Turkey: Gezi Park protests: Brutal denial of the right to peaceful assembly in Turkey*, 2 October 2013 (<http://www.amnesty.org/en/library/info/EUR44/022/2013/en>).

standards on the use of force or even the Ministry of Interior's own regulations. Administrative and criminal investigations into alleged abuses by law enforcement officials have been characteristically flawed, resulting in near total impunity for police abuses.<sup>6</sup>

### **Independence and impartiality of the judiciary**

Turkey accepted a recommendation to ensure the independence of the judiciary;<sup>7</sup> however, legal changes brought in by the government, notably those made to the Higher Council of Judges and Prosecutors, increasing the powers of the Minister of Justice, and the transfer to new posts of thousands of police officers and scores of prosecutors and judges have had a damaging impact on the independence and impartiality of the judiciary.<sup>8</sup> The increased politicization of the judiciary threatens the right to a fair trial, and the increased number of prosecutions to punish the exercise of the right to freedom of expression further entrench the impunity for human rights abuses enjoyed by law enforcement officials.

### **Human rights of lesbian, gay, bisexual, transgender and intersex people**

Turkey agreed to guarantee non-discrimination on the basis of sexual orientation and gender identity, and to ensure the enjoyment by lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals of their human rights.<sup>9</sup> Despite these commitments, the government has failed to table Constitutional amendments or domestic legislation to prohibit discrimination on grounds of sexual orientation or gender identity. The absence of such legislation presents a serious barrier to the enjoyment by LGBTI persons of their human rights.

## **THE NATIONAL HUMAN RIGHTS FRAMEWORK**

The promised overhaul of the Constitution has yet to be completed, leaving the current Constitution out of line with Turkey's international human rights obligations. Moreover, despite a series of legislative amendments, provisions in the Penal Code remain a barrier to free expression in letter and in practice.

As agreed in its first UPR,<sup>10</sup> Turkey ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in September 2012; however, nearly two years later it remains unimplemented. Turkey has yet to ratify the Optional Protocol to the Covenant on Economic, Social and Cultural Rights and the Convention for the Protection of All Persons from Enforced Disappearance.

The Ombudsman Institution, with the first Ombudsman appointed in November 2012, is a useful if under-utilised addition to Turkey's human rights framework. However, the National Human Rights Institution, also established in June 2012, continues to lack guarantees of independence and resources and has so far proved to be ineffective and irrelevant. The proposed Equality and Non-Discrimination Institution and an Independent Police Complaints Mechanism have not been introduced.

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<sup>6</sup> See also Amnesty International report: *Turkey: Adding injustice to injury: One year on from the Gezi Park protests in Turkey*, 10 June 2014, pages 7-13. (<http://www.amnesty.org/en/library/info/EUR44/010/2014/en>)

<sup>7</sup> A/HRC/15/13, paragraphs 100.66 (Australia).

<sup>8</sup> See also Amnesty International public statement: *Turkey: Independence and impartiality of the judiciary under threat*, 24 February 2014 (<http://www.amnesty.org/en/library/info/EUR44/003/2014/en>).

<sup>9</sup> A/HRC/15/13, paragraphs 100.33 (Norway) and 102.11 (Canada).

<sup>10</sup> A/HRC/15/13, paragraphs 100.1-100.5 (Brazil, Chile, Uruguay, Belarus, Denmark, Czech Republic).

# THE HUMAN RIGHTS SITUATION ON THE GROUND

## Freedom of conscience, expression, association and assembly

Turkey continues to repeatedly prosecute and imprison conscientious objectors despite rulings by the European Court of Human Rights which has found Turkey's refusal to recognize the right to conscientious objection a violation of Article 9 of the European Convention on Human Rights.<sup>11</sup>

Hundreds of abusive criminal prosecutions are brought every year against political activists, human rights defenders, journalists, lawyers and others under articles of the Penal Code and anti-terrorism provisions. Such cases are generally instigated against individuals who criticize the state or express opinions contrary to official positions on politically sensitive issues.

During 2014 there have been a number of unprecedented attacks on free expression in the realm of social media. Changes to the Internet Law threaten the rights to freedom of expression and privacy.<sup>12</sup> However, even these draconian amendments could not justify the subsequent blocking orders against Twitter and Facebook which remained in force despite court orders to end the blocking. The blocking orders were finally reversed following rulings from the Constitutional Court.<sup>13</sup> Criminal cases have also been brought against social media users in violation of their right to freedom of expression.<sup>14</sup>

The authorities brutally crushed anti-government "Gezi Park protests" taking place across Turkey in May, June and July 2013. Since then, there has been no improvement in the respect by the authorities of the right to take part in peaceful assemblies and the police continue to use excessive and arbitrary force to prevent or disperse demonstrations. Thousands of people have been prosecuted for taking part in Gezi Park protests or other demonstrations.<sup>15</sup>

## Torture and impunity

There has been a downward trend in reports of torture or other ill-treatment in official places of detention since Turkey's first UPR. However, ill-treatment by law enforcement officials outside of official places of detention has increased, particularly during or following street protests where excessive use of force by police officers against demonstrators has become routine; this was particularly widespread during the Gezi Park protests across Turkey in 2013.<sup>16</sup> Excessive use of force by police against demonstrators has been replicated at demonstrations since this time with little or no indication that the authorities have brought policing in line with international human rights standards on the use of force or the Ministry of Interior's own regulations. Administrative and criminal investigations into alleged abuses by law enforcement officials have been characteristically flawed, resulting in near total impunity for such abuses.<sup>17</sup>

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<sup>11</sup> See also Amnesty International public statement: *Right to conscientious objection still not guaranteed in Europe*, 14 May 2013 (<http://www.amnesty.org/en/library/asset/EUR01/012/2013/en>).

<sup>12</sup> See also Amnesty International public statements: *President Gül: Veto restrictive internet law changes*, 12 February 2014 (<http://www.amnesty.org/en/library/info/EUR44/002/2014/en>) and *Amnesty International welcomes Internet law changes recommended by President*, 27 February 2014 (<http://www.amnesty.org/en/library/info/EUR44/004/2014/en>). The damaging changes were mitigated somewhat by changes recommended by the President. See: <http://www.amnesty.org/en/library/info/EUR44/002/2014/en> and <http://www.amnesty.org/en/library/info/EUR44/004/2014/en>

<sup>13</sup> See Amnesty International: *Turkey: Pre-election Twitter shutdown brings internet freedom to a new low* <http://www.amnesty.org/en/for-media/press-releases/turkey-pre-election-twitter-shutdown-brings-internet-freedom-new-low-2014-0>. See also Amnesty International: *Turkey: Move to block YouTube ahead of elections points to growing censorship* <http://www.amnesty.org/en/for-media/press-releases/turkey-move-block-youtube-ahead-elections-points-growing-censorship-2014-03>

<sup>14</sup> See Amnesty International: *Turkey: Gezi Park Protest Twitter trial* <http://www.amnesty.org/en/for-media/press-releases/turkey-gezi-park-protest-twitter-trial-2014-04-17>.

<sup>15</sup> See also Amnesty International reports: *Turkey: Gezi Park protests: Brutal denial of the right to peaceful assembly in Turkey*, 2 October 2013 (<http://www.amnesty.org/en/library/info/EUR44/022/2013/en>) and *Turkey: Adding injustice to injury: One year on from the Gezi Park protests in Turkey*, 10 June 2014 (<http://www.amnesty.org/en/library/info/EUR44/010/2014/en>)

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

### **Independence and impartiality of the judiciary**

Legal changes brought by the government, notably those made to the Higher Council of Judges and Prosecutors (HCJP) and transfers to new posts of thousands of police officers and scores of prosecutors and judges have had a damaging impact on the independence and impartiality of the judiciary.<sup>18</sup> While the Constitutional Court ruled that the most damaging amendments to the HCJP, including the increased powers of appointment granted to the Minister of Justice, were unconstitutional, the appointments had already been made by the time the Constitutional Court issued its judgment. The appointments have not been rescinded following the ruling. The increased politicization of the judiciary threatens a number of rights which were already at risk in Turkey, including the right to a fair trial, the right to freedom of expression, and the prospect of more prosecutions targeting people expressing dissenting opinions further undermine these rights. The politicisation also risks further entrenching the impunity for human rights abuses enjoyed by law enforcement officials.

### **Human rights of lesbian, gay, bisexual, transgender and intersex people**

The government has failed to bring forward Constitutional amendments or new domestic legislation to prohibit discrimination on grounds of sexual orientation or gender identity. The absence of such legislation presents a serious barrier to the enjoyment by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons of their human rights. Marginalized through the absence of protections from discrimination in law and their lack of access to justice, LGBTI individuals face a heightened risk of hostile treatment by state officials. This, in addition to the prevalence of homophobic and transphobic views, leads to some members of the LGBTI community being routinely and in some instances systematically subjected to various forms of harassment by state officials. For transgender individuals, their often greater visibility means that state officials find more opportunities to harass them and to prevent their access to services. Gay men are at risk of violence, including sexual violence, within the armed forces.

### **Forced evictions**

The authorities have conducted urban transformation projects in ways which have resulted in forced evictions and the violation of the right to adequate housing, as set out in the International Covenant on Economic, Social and Cultural Rights to which Turkey is a party. Local authorities have failed to conduct genuine consultations with affected residents or to give them adequate notice of evictions. Urban transformation projects have been carried out in areas where some of Turkey's poorest and most marginalized groups live. The residents have not been offered adequate compensation or affordable alternative housing. This has driven them further into poverty, forced them into even more sub-standard housing and left others homeless.

### **Syrian refugees**

The Turkish authorities continue to make considerable efforts to accommodate Syrian refugees in the face of an international failure to meet the needs of these refugees.<sup>19</sup> While the provision of services to refugees in government-run camps is reported to be good, the living conditions are dire for many of the Syrian refugees who are not accommodated in camps, without provision for basic needs or access to employment. At least 80 percent of the more than one million Syrian refugees in Turkey live outside of the camps.

## **RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW**

### **Amnesty International calls on the government of Turkey to:**

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<sup>18</sup> See also Amnesty International public statement: *Turkey: Independence and impartiality of the judiciary under threat*, 24 February 2014 (<http://www.amnesty.org/en/library/info/EUR44/003/2014/en>)

<sup>19</sup> See Amnesty International: *An international failure: The Syrian refugee crisis* (<http://www.amnesty.org/en/library/info/ACT34/001/2013/en>)

In the space of 12 months, 1.8 million people fled the armed conflict in Syria. This briefing provides an overview of the conditions of refugees from Syria in the main host countries: Lebanon, Jordan, Turkey, Iraq and Egypt. It then focuses on the difficulties and human rights violations faced by refugees from Syria in their attempts to reach the EU

#### *Freedom of conscience, expression, association and assembly*

- Adopt laws that recognize and guarantee the right to conscientious objection to military service ensuring that any genuinely civilian alternative is not punitive in length;
- Amend Article 26 of the Constitution to ensure that the permissible grounds for restricting the right to freedom of expression are consistent with international human rights standards;
- Ensure that the application of all articles of the Penal Code and the Anti-Terrorism Law are in line with international standards on the rights to freedom of expression, association and assembly, and to demonstrate that any restrictions on the exercise of these rights, on grounds such as national security or public order, are necessary and proportional;
- Repeal provisions of the Penal Code which directly and unfairly limit the right to freedom of expression, including Article 301 (Denigrating the Turkish Nation), Article 318 (Alienating the public from military service); Article 215 (Praising a crime or a criminal); and Article 125 (Criminal defamation);
- Bring the Internet Law in line with international and European standards, including the case law of the European Court of Human Rights on the rights to freedom of expression and privacy;
- Conduct a thorough review of the Law on Meetings and Demonstrations to explicitly recognise the right to peaceful spontaneous assembly, to remove excessive temporal and geographic restrictions on the holding of public assemblies, and to simplify notification requirements for planned demonstrations;
- Remove provisions of the Law on Meetings and Demonstrations that criminalize peaceful participation in demonstrations, in particular Article 28/1 which criminalizes "participation in an unlawful demonstration", Article 32/1, which criminalizes "failure to disperse from an unlawful demonstration", and Article 34/1, which criminalizes "provoking others to participate in an unlawful demonstration".

#### *Torture and other ill-treatment and impunity*

- Instruct the police to employ mediation and negotiation when policing demonstrations to de-escalate conflicts before resorting to the use of force;
- In situations where force is unavoidable, instruct the police to secure the safety of others, to restrict such force to the minimum amount necessary, in compliance with the UN Code of Conduct for the Law Enforcement Officials;
- Implement the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment through the creation of a national preventive tasked with carrying out regular and ad-hoc unannounced visits to all places of detention;
- Establish a truly independent and effective police complaints mechanism, with no structural or organizational connection to the police, adequately staffed and headed by professionals of acknowledged competency, impartiality, expertise, independence and integrity, who are not members of the law enforcement agencies, and with its own corps of independent expert investigators.

#### *Independence and impartiality of the judiciary*

- Take steps to ensure the independence and impartiality of the judiciary and to ensure that all judges in the higher courts receive training on international human rights standards;
- Request the Council of Europe Venice Commission to provide an opinion on any further legislative changes affecting judicial institutions.

*Human rights of lesbian, gay, bisexual, transgender and intersex persons*

- Extend non-discrimination provisions in the Constitution and domestic law to include the grounds of sexual orientation and gender identity;
- Introduce comprehensive non-discrimination legislation.