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Summary

In office for three terms since 2002, and enjoying a strong parliamentary majority, the ruling Justice and Development Party (AKP) has demonstrated a growing intolerance of political opposition, public protest, and critical media over the past three years. Government attempts to limit December 2013 corruption investigations implicating ministers and the prime minister's family have undermined justice and the rule of law in Turkey.¹

While some of the recommendations the government of Turkey accepted in the initial 2010 Universal Period Review have been adopted on paper, the human rights situation in Turkey has in general deteriorated since 2010. For example, recommendations accepted and realized included the creation of a national human rights institution (NHRI) and ratification of the Optional Protocol to the UN Convention against Torture for purposes of establishing a national preventative mechanism. However, in both cases the government has created bodies closely tied to the executive and unable to function effectively or independently as a result.²

Restrictions on freedom of expression, assembly and association, and the right to information, have increased, although the Turkish government stated in the follow up session to the 2010 UPR 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."³ Turkey's criminal justice system is in fundamental need of reform to strengthen its independence and to uphold fair trial rights.

The government declined to accept the UPR recommendation to lift the geographic reservation on the 1951 Refugee Convention, and while revising its asylum law has to yet to establish a fully functioning asylum system. However, as of May 2014 it is hosting an estimated 900,000 Syrians who have fled the war.

Upholding the human rights of Kurds and other minority groups

The government made important initial steps in a peace process with the country's Kurdish minority. 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 could address the root causes of the conflict and help further human rights for all ethnic and religious minority groups

¹ See Emma Sinclair-Webb, 'In Turkey's political context rule of law is the real loser,' published in *Open Democracy*, April 5, 2014: <http://www.hrw.org/news/2014/04/05/turkeys-political-contest-rule-law-real-loser>; Kenneth Roth, May 13, 2014, <http://www.hrw.org/news/2014/05/13/erdogan-s-dangerous-trajectory>, published in *Foreign Policy*

² <http://www.hrw.org/news/2012/06/19/turkey-scrap-flawed-plan-rights-body>

³ See "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,"

Recommendation 23 para. 48, September 15, 2010:

http://lib.ohchr.org/HRBodies/UPR/Documents/Session8/TR/A.HRC.15.13.Add.1_TURKEY_en.pdf (accessed June 3, 2014).

in Turkey. Significantly, the government and the PKK maintained a ceasefire through 2013 and there were no deaths reported on either side.

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, and on broadcasting in Kurdish and other minority languages. The government has pledged to bring down the ten percent election threshold that has kept minority parties out of parliament. However, Turkey has yet to adopt international law relating to the protection of minority rights and national minorities or to lift its reservations to some conventions.

Freedom of Assembly

The government's response to the May-June 2013 Taksim Gezi Park protests in Istanbul and other cities, and in general towards anti-government protests over the past year, has demonstrated its intolerance of the right to peaceful assembly.

In May 2013 police violently dispersed campaigners staging a peaceful sit-in protest against a plan to build on Istanbul's Taksim Gezi Park, triggering weeks of anti-government protests in cities throughout Turkey and repeated clampdown.⁴ In the year following these protests, 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.⁵

While thousands of protesters have stood trial for joining unauthorized demonstrations, to date very few police officers have been held accountable for a widespread pattern of excessive use of force during the Gezi protests. The authorities charged thousands of individuals involved in the protests—in Istanbul, Ankara, Izmir and other cities—with participating in unauthorized demonstrations, resisting the police, and damaging public property. Scores of people face additional terrorism charges in connection with the protests. 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.

Freedom of expression and association, and the right to information

Although at the 2010 UPR review, the Turkish government pledged to align the Penal Code and other laws with international human rights laws upholding freedom of expression, it failed to undertake the comprehensive review of laws and practice this would necessitate. Turkey continues to criminalize non-violent dissenting speech and writings and to restrict access to information by imposing disproportionate and arbitrary restrictions on social media. Criminal defamation laws are regularly applied as politicians frequently win cases against their critics for "insult".

The blocking of Twitter and YouTube in 2014, together with more restrictive steps to control the Internet, came in the wake of the December 2013 corruption scandal. Such restrictive steps support concerns that the government has attempted 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.⁶ The Constitutional Court ruled in April and May 2014 respectively that the blocks on Twitter and YouTube should be lifted.

⁴<http://www.hrw.org/news/2013/06/18/turkey-weekend-police-abuse> and <http://www.hrw.org/news/2013/07/16/turkey-end-incorrect-unlawful-use-teargas>

⁵<http://www.hrw.org/news/2014/05/01/dispatches-why-banning-may-day-taksim-doesn-t-work>

⁶<http://www.hrw.org/news/2014/03/21/dispatches-turkey-shuts-down-twitter>; <http://www.hrw.org/news/2014/03/27/turkey-youtube-block-violates-free-expression>

Turkey has prosecuted scores of journalists over the past four years, placing many in pre-trial detention for extended periods. For example, in one ongoing trial 44 mainly Kurdish journalists and media workers are charged for alleged links to or membership of the Union of Kurdistan Communities (KCK), a body connected with the PKK, and some spent more than two years in pretrial detention. Although the reduction of the maximum period of pretrial detention for terrorism crimes from ten years to five is a step in the right direction, five years pretrial detention still exceeds acceptable human rights norms and moreover this measure has not been implemented consistently. A new law on the National Intelligence Agency includes prison sentences of up to nine years for journalists and editors who publish leaked intelligence, as well as other problematic provisions.⁷

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, scores of media workers, among them highly respected mainstream journalists and commentators writing critically of the government in different media, were fired from their jobs.

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 Fazil Say received a 10-month suspended prison sentence for sending tweets that poked fun at believers and Islam. The case was at appeal at time of writing. In 2013 journalist and writer Sevan Nisanyan 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.

Modest reforms have been made and include, in April 2013, a reform bill—known as "the fourth reform package" following three others since March 2011—amending various laws in response to violations identified by the European Court of Human Rights (ECtHR) in many judgments against Turkey for free speech violations. Positive changes included lifting limits on severe restrictions on publishing or reporting statements by illegal organizations (article 6/2, Anti-Terror Law) and narrowing the scope of the crime of "making terrorist propaganda" (article 7/2, Anti-Terror Law; article 220/8, Turkish Penal Code).⁸

Thousands of individuals have been prosecuted over the past five years on the charge of "membership of an armed organization" (article 314, Turkish Penal Code, and Anti-Terror Law) for activities amounting to nonviolent political association. Demonstrating the government's widespread misuse of terrorism laws to prosecute and incarcerate individuals, hundreds of Kurdish political activists, elected mayors, parliamentarians, officials of the Peace and Democracy Party, students, and lawyers have been in prison for long periods, in some cases for over five years, during their trials for association with the KCK. The human rights defender Muharrem Erbey spent over four years in prison on these charges, before being released in April 2014.

Police III-treatment and Excessive Use of Force

The Taksim Gezi Park protests saw police repeatedly disperse protesters, most of whom were entirely peaceful, with water cannons, rubber bullets, and teargas, resorting to excessive use of force and beatings of detainees. Police also unlawfully shot teargas canisters directly at protesters, leading to scores of protesters receiving serious head injuries as a direct result. The Turkish Medical Association reported that 11 people lost an eye in this way. Fourteen-year-old

⁷<http://www.hrw.org/news/2014/04/29/turkey-spy-agency-law-opens-door-abuse>

⁸<http://www.hrw.org/news/2013/03/25/turkey-strengthen-law-reform-bill>

Berkin Elvan was hit by a teargas canister in June and died in March 2014 after being in a coma for nine months.⁹ There has been no implementation of a July 2013 European Court of Human Rights judgment against Turkey (Abdullah Yaşa and Others v. Turkey) which found that improper firing of teargas by Turkish police directly at protestors, injuring a 13-year-old, had violated human rights standards, and called for stronger safeguards to minimize the risk of death and injury resulting from its use.

Nine demonstrators and one police officer died in the course of demonstrations between June 2013 and May 2014, five of them in June 2013. Ali İsmail Korkmaz, a protester in Eskişehir, died of his head injuries in July after being beaten during a June 2 demonstration. Four police officers and four civilians are on trial for his murder. A police officer is on trial for the fatal shooting in June 2013 of Ethem Sarısülük, a protester in Ankara.

While the Security Directorate's inspectorate launched administrative investigations into the conduct of 164 police officers, 32 of them senior officers, for the policing during the Gezi protests, by June 2014 there was little progress in most criminal investigations concerning police use of excessive force. Meanwhile, investigation and prosecution of demonstrators have proceeded at a much faster pace.

Combatting Impunity

Great obstacles remain in securing justice for victims of abuses by police, military, and state officials. The Turkish government has not honored its pledges taken at its previous UPR in 2010 to take bold steps to combat impunity. While the lifting of the statute of limitations for the prosecution of torture was a positive element in the April 2013 reform bill, prosecution of unlawful killings by state perpetrators is still subject to a 20-year time limit, raising concerns about impunity for abuses committed in the early 1990s. Even in cases where the European Court has found violations of the right to life and lack of an effective investigation (most recently and dramatically Benzer and others v. Turkey, no. 23502/06), prosecutors in Turkey have issued decisions stating that the case cannot be investigated because the statute of limitations has been exceeded.¹⁰

In January 2014, the Ankara military prosecutor issued a decision not to pursue a case against the Turkish Air Force for a December 2011 aerial bombardment killing 34 Kurdish men and boys close to the Iraqi Kurdistan border near Uludere.¹¹

The retrial of a group of young men for the January 2007 murder of journalist Hrant Dink began in September 2013 following the Court of Cassation decision to quash the first verdict on procedural grounds. To date there has been inadequate investigation of evidence of state collusion in Dink's murder.

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. The case was under appeal. While the Ergenekon case represented a milestone in civilian control over the military, it illustrates the serious concerns regarding the proliferation in recent years, and the fairness, of "mass trials" in which multiple defendants are alleged to have been part of terrorist groups. In the Ergenekon case, there are also concerns about the lack of any investigation into the human rights abuses in which a core group of the military suspects were implicated.

Combatting violence against women

In 2012 Turkey took the important step of becoming the first country to sign and ratify the Council of Europe Convention against Domestic Violence and Violence against Women and also amended its own legislation to combat domestic violence

⁹<http://www.hrw.org/news/2014/03/11/dispatches-turkey-justice-berkin-elvan>

¹⁰<http://www.hrw.org/news/2013/11/13/dispatches-european-court-presses-turkey-justice>

¹¹ <http://www.hrw.org/news/2014/01/07/dispatches-impunity-and-cover-turkey>

more effectively. However, there remains a pressing need to address the rights deficit for women in Turkey, with low female labour force participation and an endemic problem of violence in the home. Police and courts still regularly fail to protect even women who have been granted protection orders under the 2012 Law on the Protection of the Family and Prevention of Violence against Women, and the number of women killed by spouses and family members has not decreased and remains high.

International Criminal Court

Despite constitutional amendments made in 2004 that would allow it to ratify the treaty establishing the International Criminal Court (ICC), Turkey still has not made any progress towards acceding to this important human rights instrument. The International Criminal Court is the first permanent international tribunal with jurisdiction over war crimes, crimes against humanity and genocide. As a court of last resort, which only has jurisdiction when national courts are unwilling or unable to prosecute these crimes, it is an essential institution in the effective implementation of international human rights and humanitarian law.

Recommendations

Regarding constitutional restrictions of human rights and fundamental freedoms, the Turkish government should be urged to:

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

Regarding freedom of expression, assembly, and association, and the right to information, the Turkish government should be urged to:

- Conduct a review of all articles of the Turkish Penal Code, the Anti-Terror Law, the new revisions to the Law on the National Intelligence Agency and other laws that are used to restrict the rights to freedom of expression, association, and assembly, and the right to access information, and amend or repeal restrictive provisions.

Regarding reform of the criminal justice system and moves to uphold the right to a fair trial, the Turkish government should be urged to:

- End the misuse of terrorism charges against individuals for whom there is no evidence of violent activities, plotting or logistic help to armed groups;
- Further limit prolonged and arbitrary pretrial detention and speed up trial proceedings;
- Strengthen the independence of judges and prosecutors from the executive;
- End government 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.

Regarding minority rights, LGBT rights, and women's rights, the Turkish government should be urged to:

- Withdraw its reservation to article 27 of the 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.
- Ensure effective implementation of Turkey's 2012 domestic Law on the Protection of the Family and Prevention of Violence against Women and fulfilment of obligations under the Council of Europe Convention *against Domestic Violence and Violence against Women*.

- End discrimination against the Alevi Muslim minority by legally recognizing their meeting houses (cemevi) as places of worship.

Regarding measures to combat torture, ill-treatment, and excessive use of force, and impunity for these crimes, the Turkish government should be urged to:

- In line with obligations under the Optional Protocol to the UN 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 skilled, resourced and empowered, accountable to the public and established with the active participation of civil society groups;
- Establish an effective independent mechanism to carry out prompt, impartial, and thorough investigations into allegations of misconduct by members of the security forces 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 law enforcement officials take place without undue delay, and repeal statutes of limitation for violations of the right to life by state perpetrators.

Regarding ratification of the Rome Statute, the Turkish government should be urged to:

- Turkey should immediately accede to the ICC Statute.