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Human rights situations that require the Council's attention

Written statement* submitted by the International Association of Democratic Lawyers (IADL), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[12 February 2013]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Arrests of lawyers in Turkey

The International Association of Democratic Lawyers, (IADL) submits this statement to bring to the attention of the Human Rights Council, IADL's grave concern over the arrest of lawyers in Turkey. IADL was made aware that at 4:00 am on January 18, 2013 the offices and homes of many lawyers in the Progressive Lawyers Association (CHD) were raided by the public prosecutors' office. Many leaders of the CHD have been arrested and detained. The searches were carried out without attendance of representatives of the bar, in violation of explicit provision of Turkish law.

The CHD is an affiliate of IADL and a well-established lawyers association. Founded in 1974 CHD's principal aims include the establishment of a legal system which is based on liberation of humanity, and promotion of democracy, and to prevent violations of fundamental rights, right to life and human dignity".

The raids on these offices were part of a coordinated attack in seven provinces aimed at the Revolutionary People's Liberation Party/Front (DHKP/C). Although this organization is listed as a terrorist group in Turkey and in the EU, CHD lawyers have represented many defendants in many cases related with social issues, including persons charged with affiliation with "terrorist" organizations. CHD is well known and respected for this work by jurist community in Turkey.

This is not the first time Turkish Authorities have arrested lawyers for their representation of dissident voices. In November 2011, the Turkish Authorities arrested many other lawyers. At that time seventy (70) people were taken into custody, forty seven (47) of whom were lawyers, with 26 lawyers remain in custody. Those police operations were reportedly carried in the context of the Kurdish Communities Union or KCK trial.

By arresting these lawyers the Turkish State not only prevents them from exercising their professional duties but also denies their clients the right to be represented by a lawyer of their choice. Both acts are a violation of human rights, under the European Convention of Human Rights Art. 6, Para 2, c, as well as the UN Basic Principles on the Role of Lawyers, Article 1." Furthermore Article 18 of the basic principles state that Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

IADL requests the Human Rights Council to examine these cases of arrests of lawyers who were arrested because they were performing their professional duties. IADL requests Turkey be requested to release these lawyers.

IADL's position is based on the following principles of the rights of lawyers to vigorously defend their clients without consequence.

1. Absolute privilege attaches to any statements made by judges, witnesses and advocates during the course of judicial or quasi-judicial proceedings. The principle and the immunity it provides from both civil and criminal proceedings has been of primary importance to the integrity of common law legal systems for over three hundred years. The parameters of the doctrine of absolute privilege, which have remained constant, were enunciated in 1772 by Lord Mansfield in *R v. Skinner*. "Neither party, witness, counsel, jury, or Judge, can be put to answer, civilly or criminally, for words spoken in office."

2. The Basic Principles for the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offender, adopted in Havana, Cuba between August 27 to September 7, 1990, (Principles) provides norms of international law concerning the rights, responsibilities, and protections for lawyers. Some of those Principles are as follows:

(a) Article 14: Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

(b) Article 15: Lawyers shall always loyally respect the interests of their clients.

(c) Article 16: Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

(d) Article 17: Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

(e) Article 18: Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

(f) Article 20: Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

(g) Article 22: Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

(h) Article 23: Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

3. These same principles are recognized by the United Nations in General Assembly Resolution 53/144 entitled the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

4. Turkey has also ratified the International Covenant on Civil and Political Rights which provides in part:

(a) Article 2 (1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(b) Article 9 (1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

(c) Article 18 (1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

(d) Article 19 (1) and (2) Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive, and impart information and ideas of all kinds...

IADL has observed over the years that the government of Turkey has decided to address dissenting and opposition forces with repression and claims of terrorism. By making this choice, there is a greater need for lawyers and advocates to assure the people are not illegally prosecuted for exercising their rights to free expression and association. By arresting legal counsel the government of Turkey appears to be trying to deprive dissenting and opposition voices their right to fair trials.

Based on the foregoing, IADL requests the Human Rights Council to raise this matter to the Government of Turkey and request the immediate release of those detained and for an investigation into the violations of law on which these arrests were based.
