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CIVICUS: World Alliance for Citizen Participation

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1.1 CIVICUS: World Alliance for Citizen Participation is an international movement with members in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizens' freedom of association are threatened.

1.2 The Helsinki Citizens Assembly (hCa) aims to introduce the basic rights and freedoms accepted in international agreements and outlined by universal standards into daily life, promote peaceful processes for the resolution of problems through mutual understanding dialogue and peace, and improve pluralist democratic bodies and civil society initiatives.

1.3 CIVICUS, and hCa are greatly concerned by legislative and extra-legal measures taken by the Republic of Turkey which curb civil society activism and the freedom of association.

1.4 In this document, CIVICUS and hCa outline concerns related to the environment in which civil society activists and human rights defenders operate in the Turkey and discuss threats faced in the exercise of the freedoms of expression, association and assembly.

1.5 CIVICUS and hCa are deeply alarmed by undue and arbitrary restrictions on freedom of expression, independence of the media and access to information.

1.6 CIVICUS and hCa are concerned by ongoing restrictions on the free exercise of the right to freedom of assembly, including unwarranted use of excessive and sometimes fatal force to disperse nonviolent demonstrations.

- In section B, CIVICUS, and hCa highlight concerns related to the freedom of association and restrictions on civil society activities.
- In section C, CIVICUS and hCa express concerns involving harassment and arbitrary detention of human rights defenders.
- In section D, CIVICUS and hCa highlight concerns relating to the freedom of expression, independence of the media and restrictions on access to information.
- In section E, CIVICUS and hCa highlight concerns regarding the freedom of assembly.
- In section F, CIVICUS and hCa make a number of recommendations to address the concerns listed.

2. (B) Restrictions on freedom of association and impediments to civil society activities

2.1 Article 33 of the Constitution of the Republic of Turkey guarantees the right to freedom of association stating that, "Everyone has the right to form associations, or become a member of an association, or withdraw from membership without prior permission."¹ Article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Turkey is a state party, also guarantees the freedom of peaceful association. During its initial review under the 8th Session of the UPR, Turkey committed to a number of recommendations to remove unwarranted legal impediments to freedom of association including eliminating all forms of discrimination in the enjoyment of this right by LGBTI individuals and groups.

¹ Constitution of the Republic of Turkey, file:///Users/apple/Downloads/constitution_en.pdf

However, despite these commitments, the government of Turkey has continued to subvert the right to freedom of association through a combination of legislative restrictions and discriminatory targeting of organizations which advocate on sensitive issues.

2.2 Of critical concern are provisions found under Law on Associations (Law No: 5253) and the Law on Foundations (Law No: 5737) - and their respective regulations including the Regulation on Associations and the Regulation on Foundations - which endow the authorities with broad powers to interfere and arbitrarily dissolve civil society organisations (CSOs). In contravention of international best practice, under article 5 of the Regulation on Associations, all organizations are forced to register with the Ministry of Interior.²

2.3 Once registered, CSOs also face a number of unwarranted bureaucratic obstacles including requirements under article 32 of the Regulation on Associations requiring CSOs to maintain six separate categories of records including all organizational documents and communication. Such requirements patently undermine the right to privacy for CSOs and their constituents. In addition, exorbitant financial penalties up to 500 TRY (approximately 250 USD) and excessive prison sentences up to one year can be imposed by the Department of Associations against a representative of an organization who violates provisions of the law. Since Turkey's previous examination under the UPR, several representatives of CSOs have been issued heavy fines for failing to comply with the law.

2.4 The Law on Collection of Aid (Law No 2860) places a number of unwarranted and debilitating restrictions on the fundraising activities of CSOs.³ According to article 6 of the law, CSOs must secure a government issued permit to conduct fundraising activities outside the jurisdiction of their organizational headquarters. For CSOs operating at the local level, such requirements are severely cumbersome and represent a severe reduction in opportunities to carry out domestic fundraising.

2.5 Article 18 of the Regulation on Associations requires CSOs which receive foreign funding to immediately notify local authorities before using the funds. Article 19 states that CSOs which receive foreign funding must complete a notification form that requires CSOs to explain the subject, duration, total budget and location of the project, a practice that increases bureaucratic red tape and undermines the right to privacy of CSOs. When CSOs receive foreign funding, the notification form also requires CSOs to explain the project's relation to the implementing CSOs' Statute.⁴ Article 30 of the Law on Association prohibits associations from carrying out "activities other than those indicated in the Statute as the objective of the association," putting CSOs at risk of not being able to carry out their planned activities due to subjective interpretation of Article 30 by state officials.

² Dernekler Kanunu, <http://www.dernekler.gov.tr/tr/Mevzuat/kanun/5253-Dernekler-Kanunu.aspx>
Vakıflar Kanunu, <http://www.vgm.gov.tr/icerikdetay.aspx?Id=62>

³ Yardım Toplama Kanunu, <http://www.dernekler.gov.tr/tr/Mevzuat/2860-Sayili-Yardim-Toplama-Kanunu.aspx>

⁴ The notification form (Attachment 4) as indicated by Article 19 of the Regulation on Associations http://www.dernekler.gov.tr/media/templates/dernekler/images/BildirimEkler/EK_4.doc

2.6 Article 3 the Law on Associations and article 5 of the Regulation on Association unduly restrict the exercise of freedom of association for various at risk groups including children, refugees, individuals with mental disabilities and foreign nationals. Under the law, foreign nationals who do not hold a Turkish residence permit are prohibited from being a founding or regular member of an association.⁵ Moreover, international CSOs are prohibited from establishing a branch in Turkey without the explicit permission of the Ministry of Interior. The process of acquiring such permission is reportedly subject to severe politicization, with several outspoken CSOs denied authorization to establish branch offices.⁶

2.7 Since 2010, a number of civil society groups in Turkey have been actively targeted by the authorities in an apparent attempt to prevent them from undertaking their legitimate work and prevent them from advocating on contentious issues such as the promotion of minority and LGBTI rights.⁷ In November 2013, the Governor of Van, a city located in Southeast Turkey, filed a lawsuit petitioning for the dissolution of EKOGENÇ, a CSO which promotes youth participation and greater environmental protections. The petition submitted by the Governor contended that EKOGENÇ 's mandate to support individuals of various "sexual orientations" contravened Article 56 of the Civil Code of Turkey which states that "no association may be formed for an object contrary to the laws and ethics."

2.8 In 2013, a criminal investigation was instituted against the organizers of Taksim Solidarity, a platform of 128 CSOs which advocated for the protection of one of the few remaining green areas in central Istanbul, Taksim Gezi Park.⁸ 26 members of Taksim Solidarity have been charged with "opposing the Law on Meetings and Demonstrations"⁹ and for "forming an organization with the intent of committing an offense" under Article 220/1 of the Penal Code as a result of their peaceful work.

⁵ Sivil Toplama Aktif Katılım: Uluslararası Standartlar, Ulusal Mevzuattaki Engeller, Öneriler, Third Sector Foundation of Turkey, February 2014,

http://www.siviltoplum-kamu.org/usrfiles/files/MevzuatRaporu_TR.pdf

⁶ Sivil Toplum İzleme Raporu 2012, Third Sector Foundation of Turkey,

<http://tusev.org.tr/usrfiles/files/SivilToplumIzlemeRaporu2012.pdf>

⁷ Van Valiliğinden "Homofobik" Karar, Yüksekova Güncel, 27 November 2013,

<http://www.yuksekovaguncel.com/guncel/van-valiliginden-homofobik-karar-h47748.html>

Siyah Pembe Üçgen Kapatılmaz Örgütlenme Özgürlüğü Kampanyası, Civil Society Development Center, 10 February 2011, <http://www.stgm.org.tr/tr/icerik/detay/siyah-pembe-ucgen-kapatilamaz-orgutlenme-ozgurlugu-kampanyasi-2>

Derneğimle Uğraşma Katilleri Yakala, Bawer Çakır, BIA Haber Merkezi, 07 February 2010

<http://bianet.org/bianet/toplumsal-cinsiyet/119896-dernegimle-ugrasma-katilleri-yakala>

⁸ Taksim Dayanışmasına Soruşturma Tepkisi, Radikal, 21 September 2013,

<http://www.radikal.com.tr/turkiye/taksim-dayanismasindan-sorusturma-tepkisi-1151929>

Taksim Dayanışmasından Basına ve Kamuoyuna Duyuru, Taksim Dayanışması, 21 September 2013

<http://taksimdayanisma.org/taksim-dayanismasindan-basina-ve-kamuoyuna-duyuru>

⁹ Örgüt yok diye geri çevirilen Gezi İddianamesi Kabul Edildi, Zaman, 18 March 2014,

http://www.zaman.com.tr/gundem_orgut-yok-diye-geri-cevriilen-gezi-iddianamesi-kabul-edildi_2205581.html

2.9 Authorities have routinely sought to close or use the threat of closure to intimidate and destabilize independent civil society organizations.¹⁰ In 2013 alone, two CSOs were closed and the court rejected all court cases that were filed to dissolve 9 CSOs.¹¹ The vast majority of the organizations targeted were operating in the predominantly Kurdish southern part of Turkey. For example, on 6 March 2013, the Erzincan First Instance Court officially banned the Erzincan Democratic Students Association under questionable charges including “attending Newroz celebrations”, “recruiting terrorists” and “advocating the cause of a terrorist organization.” Moreover, on 11 November 2013, the Attorney General of Batman, a city in the Southeastern Anatolia Region of Turkey, applied to the Batman First Instance Court to ban the Batman Clerics Association. The Attorney General stated that the CSO failed to conform to article 89 of the Civil Code of Turkey for supporting the outlawed Kurdistan Worker’s Party (PKK) and Koma Civaken Kurdistan (KCK).

3. (C) Concerns involving harassment, intimidation and attacks against human rights defenders and civil society activists

3.1 Article 12 of the UN Declaration on Human Rights Defenders mandates States to take necessary measures to ensure protection to human rights defenders. The ICCPR guarantees the freedoms of expression, association and assembly. It is a matter of deep concern that human rights defenders engaged in legitimate activity are being subjected to reprisals by state officials. A number of human rights defenders exposing human rights violations or discussing sensitive topics have been arrested and detained under broad provisions of the Anti-Terror Law and the Penal Code.

3.2 Hundreds of Kurdish political and youth activists, and human rights lawyers remain imprisoned under the draconian the Anti-Terror Law.¹² In May 2014, Mülkiye Demir Kılınç, of the CSO İstanbul Mesopotamia Culture Center (MKM), was sentenced to 25 months in prison on spurious charges of “aiding a terrorist organization”. Kılınç’s arrest stems from claims that she sold leftist literature to an alleged PKK smuggler. If imprisoned, Kılınç faces the risk of being incarcerated along with her six month old twins.¹³

¹⁰ Vakad ve on derneğin kapatma davasına red, BIA Haber Merkez,, 17 May 2013, <http://bianet.org/bianet/kadin/146693-vakad-ve-on-dernegin-kapatilma-davasina-red>

¹¹ 2013 Yılı Türkiye İnsan Hakları Raporu, İnsan Hakları Derneği, http://www.ihd.org.tr/images/2014/hd_hlal%20raporu_.pdf

¹² Türkiye İnsan Hakları Raporu Türkiye İnsan Hakları Vakfı, 2012, http://arsiv1.tihv.org/dosya_arsiv/da674374be00e3ead9c74df09730c7ff.pdf

İHD ve TİHV’in 10- 17 Aralık İnsan Hakları Haftası Basın Açıklaması, Türkiye İnsan Hakları Vakfı ve İnsan Hakları Derneği, 2011, <http://www.ihd.org.tr/index.php/baslamalarinmenu-77/ortak-baslamalarinmenu-80/2606-ihd-ve-tihv-in-10-17-aralik-insan-haklari-haftasi-basin-aciklamasi.html>

¹³ Bu kadarını Foucault bile tahmin edemezdi, Radikal, 20 January 2014, <http://www.radikal.com.tr/turkiye/bu-kadarini-foucault-bile-tahmin-edemezdi-1171576>

Anneleri Cezaevine Girecek Bebekler İçin İmza Kampanyası, Hürriyet, 30 January 2014, <http://www.hurriyet.com.tr/gundem/25702756.asp>

3.3 In 2013, dozens of members Human Rights Association (İHD), an organization which has documented human rights violations for over twenty years were harassed and subjected to judicial persecution under the Anti-Terror Law as a result of its legitimate work. On 24 January 2013, İHD representatives Hasan Anlar, Halil İbrahim Vargün, Filiz Kalaycı and Murat Vargun were sentenced to lengthy prison sentences under article 314/2 of the Penal Code, for “being a member to an armed organization”.¹⁴ Kalaycı received 7 years and 6 months in prison, while Hasan Anlar, Halil İbrahim Vargün, and Murat Vargün were sentenced to 6 years and 3 months. As evidence of their membership to an armed organization, prosecutors presented specious evidence including confiscated Kurdish songs and leftist Kurdish literature from their homes, as well as evidence of their attendance at peaceful assemblies.

3.4 A number of human rights defenders, including women’s rights activists and environmental campaigners have been subjected to stigmatization and slanderous public campaigns by government officials. On 14 June 2013, the Mayor of Ankara, the capital city, publically announced the names of CSOs that received grants from the Open Society Foundation and accused them of cooperating with foreign powers to undermine the government.¹⁵

3.5 On 15 June 2013, Prime Minister Erdogan publicly stated that he would hold prominent actor and activist, Mehmet Ali Alabora, accountable for tweets he made in support of the Gezi Park protests. In July 2013, a criminal investigation was launched against Alabora under article 313 of the Penal Code.

3.6 A number of prominent human rights defenders and activists have also been detained and imprisoned under specious charges of “publicly insulting religious values” under article 216 of the Penal Code. On 23 June 2012, women’s rights activist and co-founder of the Purple Roof Women’s Shelter Canan Arın was taken into custody following her presentation at the opening of the Antalya Bar Association’s Women’s Rights Enforcement Centre. Arın was charged under article 216 of Penal Code in an apparent reprisal for referencing the former President of Turkey, Abdullah Gül, in the context of her training on violence against women. Arın’s sentence was suspended on 30 May 2013 on the condition that she would not commit a similar offense for the next three years.¹⁶

3.7 Moreover, on 18 October 2012, renowned pianist and ardent critic of the government of Prime Minister Recep Tayyip Erdogan, Fazıl Say, was also charged under article 216 of the

¹⁴ İnsan Hakları Derneği 2013 İnsan Hakları İhlalleri Raporu <http://www.ihd.org.tr/index.php/baslamalarinmenu-77/genel-merkez/2627-hd-yoeneticisi-avukatlara-ceza-yadrld.html> <http://bianet.org/bianet/insan-haklari/143860-ihd-li-avukatlara-hapis-cezasi>

¹⁵ The Mayor of Ankara listing down the name of NGOs who received small grants from the Open Society Foundation <http://www.youtube.com/watch?v=DI6-FWZDJdM>

¹⁶ Canan Arın’a Dünyadan 85 Kadın Örgütü Destek Verdi, BİA Haber Merkezi, 27 May 2013, <http://bianet.org/bianet/kadin/146949-canan-arin-a-dunyadan-85-kadin-orgutu-destek-verdi> Peygambere Hakaret Davası Ertelenen Arın: Ne Şiş Yansın Ne Kebap Kararı, Hürriyet, 20 May 2013, <http://www.hurriyet.com.tr/gundem/23399801.asp>

Penal Code for comments he made on Twitter which were deemed offensive to Islam.¹⁷ On 20 September 2013, Fazıl, received a 10-month suspended prison sentence. His case is currently under appeal.

3.8 Article 125 of the Penal Code criminalizes defamation defined as an “act with the intention to harm the honor, reputation or dignity of another person through concrete performance or giving impression of intent.” On 13 March 2014 LGBTI activist Levent Pişkin was charged under Article 125/4 of the Penal Code of Turkey. The Prime Minister Recep Tayyip Erdoğan sued Pişkin for defamation due to his tweet “We expect a statement from Erdoğan saying ‘I am a perfect queer.’ We are not going to learn about queerness from you. Kisses. #LGBTinConstitution”. On 22 May 2014 Pişkin received a pecuniary fine of 1500 TL.¹⁸

4. (D) Concerns regarding freedom of expression and access to information

4.1 Article 26 of the Constitution of Republic of Turkey affirms the right to freedom of expression and thought. Article 21 of the ICCPR, to which Turkey is a state party, also guarantees freedom of expression and opinion. However, despite these protections, the government continues to invoke restrictive and overbroad legislation to arrest and imprison journalists and other government critics. Turkey maintains one of the highest rates of imprisoned journalists in the world.¹⁹ Since 2011, the government has prosecuted 44 predominantly Kurdish journalists on terror-related charges, most of whom were accused of supporting the banned KCK. At least 20 of these journalists were reportedly kept in pre-trial detention for more than two years.²⁰

4.2 Article 6/2 of the Anti-Terror Law allows for prison sentences between one and three years for “printing or publishing of declarations or statements of terrorist organizations.” A number of journalists have been persecuted for working for Kurdish or leftist newspapers under Article 6/2 the law. On 20 December 2011, several journalists including Nevin Erdemir, Semiha Alankuş, Kenan Kırkaya, Mazlum Özdemir, Hüseyin Deniz, and Mehmet Emin Yıldırım were arrested for reportedly supporting the “press and propaganda wing” of the PKK. While the journalists were released on 25 March 2014, the charges against them have not been dropped. In December 2011, journalist Ziya Çiçekçi was found guilty of “printing or publishing declarations of terrorist organizations” under the Anti-Terror law. He was convicted as a result of an article he wrote in the newspaper, Özgür Gündem, which

¹⁷ Turkish Pianist is Accused of Insulting Islam, New York Times, 1 June 2012, http://www.nytimes.com/2012/06/02/world/europe/turkey-charges-pianist-fazil-say-over-twitter-posts.html?_r=2&

¹⁸ İbne Tweeti Davasında Pişkin’e Para Cezası!, 22 May 2014, Kaos GL, <http://www.kaosgl.com/sayfa.php?id=16655>

¹⁹ Ocak 2013 Raporu, Türkiye Gazeteciler Cemiyeti, January 2013, <http://www.tgc.org.tr/basinraporlari.asp>

Worlds Biggest Prison for Journalists, Republican People’s Party Prison Examination and Watch Committee, 2013

http://www.cgd.org.tr/_belgeler/CHP_tutuklu_gazeteci_raporu_ing.pdf

²⁰ Gazeteciler KCK’den Tutuklu Meslektaşları İçin Yürüdü, BIA Haber Merkezi, 20 April 2013, <http://www.bianet.org/bianet/insan-haklari/146021-gazeteciler-kck-den-tutuklu-meslektaşları-icin-yurudu>

referenced one of the founding members of the PKK, Abdullah Ocalan. On 8 February 2013, Ziya Çiçekçi was released pending trial following 14 months of pretrial detention.

4.3 Article 7 of the Anti Terror Law criminalizes “making propaganda for a terrorist organization.” In March 2010, journalist Ziya Çiçekçi was convicted by the Istanbul 17th Special Heavy Penal Court and sentenced to one year six months imprisonment for contravening the law. The conviction was based on two articles published in the pro Kurdish daily *Günlük*. Çiçekçi’s case is currently under the Supreme Court of Appeals.

4.4 A number of provisions of the Penal Code provide authorities with the legal basis to systematically violate the right freedom of expression. Article 301 of the Penal Code criminalizes “denigration of the Turkish nation, the state of the Republic of Turkey, the Turkish Parliament (TBMM), the government of the Republic of Turkey and the legal institutions of the state.” In addition, article 318 of the Penal Code forbids “alienating the public from military service”.

4.5 Article 215 of the Penal Code prohibits “Praising a crime or a person because of the crime they committed.” Article 220 of the Penal Code criminalizes “committing a crime in the name of a terrorist organization”. However, the vague and open-ended interpretation of the law goes beyond the legitimate aim of criminalizing advocacy in support of illegal activities. Prominent human rights advocate and writer Ragıp Zarakolu was arrested in October 2011 under article 220/7 of the Penal Code and released pending trial on April 2012. Zarakolu is facing 15 years in prison due to his alleged membership to the KCK. The charges are based on public speeches he made and articles he published in support of the Kurdish Peace and Democracy Party (BDP).

4.6 In an apparent attempt to control and limit the free flow of information, censorship of internet based informational resources has continue to expand with wide scale restrictions on the social media. After popular demonstrations, on 20 March 2014, Turkey banned access to Twitter service for two weeks.²¹ In June 2013 Prime Minister Erdogan delivered a speech in which he criticized social media “as the worst menace to society”.²² The government’s decision to block Twitter came hours after the Prime Minister vowed to eradicate Twitter.²³ On 3 April 2014, the Constitutional Court ruled that the ban undermined Turkey’s obligations to uphold freedom of speech and ordered the government to unblock it immediately.

²¹ Turkey Bans Twitter, Time, 20 March 2014, <http://time.com/32864/turkey-bans-twitter/>
Turkey’s Twitter Ban Lifted, BBC, 3 April 2014, <http://www.bbc.com/news/blogs-trending-26876227>

²² Social Media and Opposition to blame for protests, says Turkish PM, The Guardian, 3 June 2013
<http://www.theguardian.com/world/2013/jun/02/turkish-protesters-control-istanbul-square>

²³ Turkey Blocks Twitter, after Erdogan vowed ‘eradication’, Hurriyet Daily News, 20 March 2014,
<http://www.hurriyetdailynews.com/turkey-blocks-twitter-after-erdogan-vowed-eradication.aspx?PageID=238&NID=63884&NewsCatID=338>

4.7 On 27 March 2014, just a week after Twitter was banned, a blanket ban on You Tube was imposed to silence and censure independent reporting online.²⁴ The government's decision to ban the popular video-sharing website was apparently precipitated by a number of anonymous leaks of high-level government meetings ahead of local elections scheduled for 30 March 2014. On 24 May 2014 the Constitutional Court ruled that the ban on You Tube violated the right to freedom of expression and Turkey restored access to You Tube after 67 days.²⁵

4.8 In July 2012, a 17-year-old minor was arrested on charges under articles 125/1 and 125/3 of the Penal Code for defaming the Prime Minister on Facebook. On 20 July 2012, after a five-month trial, the Balıkesir Juvenile Court sentenced him to 11 months and 20 days in prison.²⁶

4.9 Over the past four years, but extensively from 2013-2014, scores of media workers have been unjustifiably dismissed or forced to quit in retaliation for their independent reporting.²⁷ Dozens of journalists have been dismissed due to their coverage of the Gezi Park protests. In July 2013, after publishing a column in New York Times titled "In Turkey, Media Bosses Are Undermining Democracy", journalist Yavuz Baydar was fired from the pro-government newspaper Sabah.

5 (E) Concerns regarding freedom of Freedom of Assembly

5.1 Article 34 of the Constitution of the Republic of Turkey protects the right to assembly and demonstration stating that, "Everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission." Furthermore, article 21 of the ICCPR, to which Turkey is a state party, guarantees the right to freedom of peaceful assembly. However, despite these legal guarantees, there are a number of stringent limitations to this right. In addition, the free exercise of the right to peaceful assembly is severely undermined by unwarranted disruptions, arbitrary detention of peaceful protestors and the use of excessive force and sometimes-deadly force by security officials.

5.2 Beginning on 28 May 2013, mass demonstrations were held in opposition to the urban development plan for Istanbul's Taksim Gezi Park. Within weeks the demonstrations had spread across the country and covered a wide scope of pressing human rights concerns, including the government's growing restrictions on the rights to freedom of expression, and assembly. In response to these largely peaceful demonstrations, government security forces used disproportionate, excessive and even deadly force and carried out mass arrests in

²⁴ Turkey keeps Youtube block despite court rulings, Reuters, 10 April 2014, <http://www.reuters.com/article/2014/04/10/us-turkey-youtube-idUSBREA390J320140410>

²⁵ Turkey unblocks Access to Youtube after 67 days, Hurriyet Daily News, 3 June 2014, <http://www.hurriyetdailynews.com/turkey-unblocks-access-to-youtube-after-67-days-.aspx?pageID=238&nID=67348&NewsCatID=339>

²⁶ Facebookta Başbakanın Hakareti Hapis Cezası, Hurriyet, 20 July 2012, <http://www.hurriyet.com.tr/gundem/21031166.asp>

²⁷ Turkish paper fires readers' editor after refusing to publish his columns, The Guardian 24 July 2013 <http://www.theguardian.com/media/greenslade/2013/jul/24/press-freedom-turkey>

blatant disregard of their national and international obligations to protect the right to freedom assembly.

5.3 In 2013, security forces forcefully dispersed a total of 1134 protests, 774 of which were held at Gezi Park.²⁸ In order to disperse peaceful protestors, security forces used water cannons, rubber bullets, and teargas. Since the start of the protests, eight protestors and one police officer have been killed. The Turkish Medical Association further claimed that 11 protestors lost an eye due to the excessive use of rubber bullets and scores of others suffered severe physical damage due to the indiscriminate use of tear gas.²⁹

5.4 Furthermore, on several occasions, peaceful protestors were subject to arbitrary arrest and detention for organising or participating in nonviolent protests in the country. In 2013, 1309 people were investigated in 17 criminal investigations and 1000 people were tried in court on charges including, “damaging public property”, “opposing the Law No 2911: Law on Demonstrations”, “resisting police”, “being a member to an armed organization” and “organizing assemblies in contradiction with the law”.³⁰ According to the Ministry of Interior, within the scope of the Gezi Park protests, 2.5 million people participated in protests which took place in 79 out of a total of 81 cities in Turkey. 4,900 people were detained as result of their participation in these protests.³¹

5.5 A number of pro-peace and human rights activists have also been prosecuted for taking part in peaceful assemblies for alleged links to terrorist organizations. The indictment accepted by an Istanbul court on 24 December 2013 accused a total of 255 protesters of “producing propaganda for a terrorist organization” and “illegal possession of dangerous substances.”³² On 31 May 2014, during peaceful assemblies commemorating the first year anniversary of the Gezi Park protests, Contemporary Lawyers Association (ÇHD) declared that 203 cases of custody were reported to ÇHD Crises Desk.³³

5.6 Turkey’s legal framework governing freedom of assembly also suffers from a number of deficits and inconsistencies which endow authorities with wide discretion to prohibit the free exercise of freedom of assembly. The Law on Meetings and Demonstrations (Law No:

²⁸ İnsan Hakları Derneği 2013 İnsan Hakları İhlalleri Raporu

²⁹ The Health Status of the Demonstrators, Turkish Medical Association 15 July 2013.

<http://www.ttb.org.tr/index.php/Haberler/veriler-3842.html>

Gezi Parkı Raporu: Kadın Sağlıkçılar Taciz Edildi, Turkish Medical Association , 5 May 2013

http://www.ttb.org.tr/siddet/index.php?option=com_content&view=article&id=436:gezi-park-raporu-kadn-salkclar-taciz-edildi&catid=20:genel&Itemid=138

³⁰ İnsan Hakları Derneği 2013 İnsan Hakları İhlalleri Raporu

Gezi Davasında 98 Yıl Hapis İstemi, Radikal, 1 June 2014,

http://www.radikal.com.tr/turkiye/gezi_davasinda_98_yil_hapis_istemi-1194995

³¹ Gezi eylemlerinin bilançosu açıklandı, Radikal, 23 June 2013.

http://www.radikal.com.tr/turkiye/gezi_eylemlerinin_bilancosu_aciklandi-1138770

³² Gezi İddianamesinde neler var?, Radikal, 25 December 2013,

http://www.radikal.com.tr/turkiye/gezi_parki_iddianamesinde_neler_var-1168029

255 Sanıklı Gezi Davası Başladı, BIA Haber Merkezi, 6 Mayıs 2014, 25 December 2013,

<http://www.bianet.org/bianet/insan-haklari/155476-255-sanikli-istanbul-gezi-davasi-basladi>

³³ Official Statement of the Contemporary Lawyers Association from their own Twitter Account, 31 May 2014, <https://twitter.com/CHDistanbul/status/472868191874842624>

2911) is the primary legal document regulating freedom of assembly in Turkey. According to Article 5 of the Regulation on the Implementation of the Law on Meetings and Demonstrations, a committee must be formed in order to plan a demonstration as well as notify state authorities of the time and place of the event within 48 hours.³⁴ Article 24 of the Law on Meetings and Demonstrations further states that meetings and demonstrations which were not previously reported are subject to dispersal including the use of force. According to article 32, persons who fail to head demands to disperse can be sentenced to a period between six months and three years in prison.

5.7 The Regulation on the Implementation of the Law on Meetings and Demonstrations states endows the government with broad and excessive power to ban or postpone a proposed demonstration. Under article 23 of the law, a governor or district governor can ban or postpone an assembly for up to two months in order to protect national security, public order, general health and general morality, other people's rights and freedoms and to prevent a crime. The law further limits the number of venues and the period in which demonstrations can be held and provides grounds for the state to unwarrantedly intervene in peaceful demonstrations. Article 3 of the law also permits a governor to predetermine where an assembly can be held.³⁵

6 (F) Recommendations to the Government of the Republic of Turkey

CIVICUS, and hCa call on the Government of Turkey to create an enabling environment for civil society to operate in accordance with the rights enshrined in the ICCPR and the UN Declaration on Human Rights Defenders. At a minimum, the following conditions should be ensured: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In light of this, the following specific recommendations are made.

6.1 Regarding restrictions on freedom of association:

- Law No 5253 the Law on Associations and Law No 5737 the Law on Foundations – and their respective regulations - should be revised to lift cumbersome bureaucratic requirements and heavy fines and penalties for civil society organizations.
- Law No 5253 the Law on Associations and Law No 5737 the Law on Foundations – and their respective regulations - should be revised to recognize the right to vulnerable and at risk groups of children, refugees, and individuals with mental disability or disorders.
- The principles of “general morality”, “Turkish family structure”, “national security”,

³⁴ Toplantı ve Gösteri Yürüyüşleri Kanunu, http://www.ttb.org.tr/mevzuat/index.php?option=com_content&view=article&id=18:toplanti-ve-gterylerkanunu&Itemid=28

³⁵ Abdullah Yaşa and Others v. Turkey application no. 44827/08 hudoc.echr.coe.int/webservices/content/pdf/003-4437018-5336577

“public order” which are enshrined in the Constitution of the Republic of Turkey, and the concept of “morality” in the Civil Code of Turkey should be defined in accordance to the UN Human Rights Committee General Comment 22. Any such limitations must be framed in the light of universality of human rights and the principle of non-discrimination.

- Authorities should cease the practice of obstructing international CSOs from establishing branches in Turkey under Article 5 of Law No 5253 the Law on Associations. International CSOs should be able to establish branches without being subject to prior permission.
- The Law on the Collection of Aid should either be abolished or amended in a manner that would allow CSOs to freely conduct fundraising activities.
- The Regulation on the Law on Associations should be amended to ensure that the right to privacy of CSOs which receive foreign funding is not violated and CSOs can operate without undergoing cumbersome notification requirements.

6.2 Regarding the arbitrary detention and harassment of civil society activists

- All due process guarantees in accordance with article 14 of the ICCPR should be ensured for all detained persons. All human rights defenders and civil society activists detained for exercising their freedom of assembly, association, or expression should be unconditionally and immediately released. Their cases should be reviewed to prevent further harassment.
- Paragraphs 2 and 3 of Article 216 of the Penal Code should be repealed.
- Civil society members and human rights defenders should be provided a safe and secure environment to carry out their work. All instances of violations of their rights should be independently investigated.
- The definition of terrorism in Article 1 of the Anti-Terror Law should be amended in line with the principles set forth by the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism in order to prevent misuse and wide interpretation of anti-terror laws to unjustly prosecute human rights defenders.

6.3 Regarding restrictions on freedom of expression and access to information, and intimidation, harassment and attacks on journalists

- Article 26 of the Constitution of the Republic of Turkey should be amended to ensure that permissible grounds for restricting the right to freedom of expression are in line with General Comment No 34 on Article 19 of the ICCPR.
- The following articles, which are routinely invoked to prosecute human rights defenders should be repealed in order to ensure freedom of expression in Turkey:

Article 301 of the Penal Code (degrading the Turkish Nation); Article 318 of the Penal Code (alienating the public from military service); Article 215 of the Penal Code (praising a crime or a criminal), Article 125 of the Penal Code (criminal defamation), Article 220/6 of the Penal Code (committing a crime in the name of an organization) and Article 6/2 of the Anti-Terrorism Law (printing or publishing declarations/statements of a terrorist organization).

- Paragraphs 2 and 3 of Article 216 of the Penal Code (Incitement to hatred or hostility) should be repealed to ensure that all persons can express and disseminate their ideas freely.
- Article 7/2 of the Anti-Terrorism Law (making propaganda for a terrorist organization) should be amended to ensure that only advocacy of incitement to violence is prohibited.
- Unfettered access to online information resources should be allowed by removing restrictions on access to certain websites and social media outlets.

6.4 Regarding restrictions on freedom of assembly

- Best practices on freedom of peaceful assembly should be adopted, as put forward by the UN Special Rapporteur on the Right to Peaceful Assembly and Association in his annual report (2012) which calls for simple notification rather than explicit permission to assemble.
- The Law on Meetings and Demonstrations should be amended in line with the OSCE's Guidelines on Freedom of Peaceful Assembly.
- The Optional Protocol to the Convention against Torture should be implemented through the creation of an independent monitoring mechanism to out ad-hoc visits to detention centers where demonstrators are kept under custody.
- An impartial and independent complaint mechanism should be established to combat widespread excessive state violence against peaceful protestors.
- Recourse for judicial review and effective remedy should be provided, including compensation, in cases of unlawful denial of the right to freedom of assembly by state authorities.
- Security forces in charge of crowd control should be equipped with non-lethal weapons and provided training across the board on humane means of crowd control as well as on the UN Basic Principles on the Use of Force and Firearms.

6.5 Regarding access to UN Special Procedures mandate holders

- A standing invitation should be extended to the UN Special Procedures, particularly to the Special Rapporteur on Human Rights Defenders, Special Rapporteur on Freedom of Expression, the Special Rapporteur on Freedom of Peaceful Assembly and Association and the Special Rapporteur on Independence of Lawyers and Judges.