**The International Alliance for Peace and Development**

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**Shadow report to the Human Rights Committee**

**Submitted by**

**International Alliance for Peace and Development (IAPD)**

**Executive Summary**

In this report, International Alliance for Peace and Development (IAPD) will be addressing the question of Turkey subjects to review as part of the list of issues procedure.

1. The human rights situation in Turkey has deteriorated in recent years in a frightening way, as violations intensified and perpetrators enjoyed full impunity, and the policy of intimidation was entrenched simply for expressing an opinion or participating in the public sphere.
2. In November and December 2020, social media companies, including Facebook, Twitter and Instagram, were fined 40 million Turkish lira (more than 4 million euros) separately for not appointing a legal representative in Turkey, as required by the amended law on social media. Companies that do not fulfill the legal obligations will face more penalties, which include reducing their bandwidth.
3. In addition, violations are still continuing in Turkey, including suppression of opposition, infringement on freedom of opinion and expression, torture and maltreatment, violation of the freedom of the press, invasion of the rights of journalists, defamation of them, and the issuance of arbitrary decrees and laws under the pretext of protecting national security and the public order of the state.

Following the aforementioned issues IAPD details incidents of gross violations of human rights.

1. **Article 19: The State Party has failed to uphold the rights to the Freedom of Expression and Association**
2. In 2018, High Commissioner Zeid Raad Al-Hussein said that the area of opposition in Turkey has decreased significantly over the past two years, in light of successive declarations of the state of emergency. High Commissioner Zeid pointed to the arrest of at least 29 journalists in April after they were accused of involvement in terrorist acts.
3. According to statistics of the European Court of Human Rights (ECtHR) for the judicial year 2018 indicate that Turkey has violated Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and Article 10 of the European Convention on Human Rights (ECHR) concerning the protection of freedom of opinion and expression during 40 lawsuits. Turkey also topped the list in terms of violating human rights articles through 140 lawsuits.
4. In 2020, about 48 journalists were arrested on various charges, including insulting the Turkish president or publishing false or intelligence news on social media platforms. Thus, Turkey ranks 2nd place in terms of the number of detained journalists in the world. Furthermore, a Turkish court has sentenced the journalist Jan Dundar, who lives in exile in Germany, to a 27-year prison sentence in connection with an investigation he published in 2015, which was documented with photos and videos regarding the delivery of weapons shipments by Turkish intelligence to terrorist groups in Syria. In addition to that, Dundar's wife has been banned from traveling abroad and was forced later to travel abroad illegally. The 14th Istanbul Criminal Court decided to confiscate the Dundar couple's assets.
5. On the other hand, the authorities have also used the criminal law to target those who are discussing the issue of the Covid-19 virus epidemic on the Internet, under the guise of combating "fake news", "incitement" or "spreading fear and panic." The Ministry of Interior's Cybercrime Unit claimed that 1,105 social media users organized a “propaganda campaign for a terrorist organization,” which included “the circulation of provocative posts regarding the Covid-19 virus epidemic” between 11 March and 21 May; 510 people were detained for investigating.

Also, the Turkish president Erdogan said, describing the new president of the Turkish Medical Association as "terrorist", after the association repeated its criticism of the government's response measures to the outbreak of the Covid-19 virus.

1. Moreover, such explicit violations of human rights, in particular the freedom of opinion and expression, harm the Turkish press and journalists in general. In this regard, The ECtHR in Times Newspapers Ltd (Nos 1 and 2) v UK[[1]](#footnote-1) said, "in the context of a defamation case, that, ‘the protection of the right of freedom of expression enjoyed by the press should be balanced against the rights of individuals to protect their reputations". In another case, in Pfeifer v Austria[[2]](#footnote-2) the ECtHR stated, "a person’s reputation, even if that person is criticized in the context of a public debate, forms part of his or her personal identity and psychological integrity and therefore also falls within the scope of his or her “private life". Thus, a limitation to a human right based upon the reputation of others shall not be used to protect the state and its officials from public opinion or criticism[[3]](#footnote-3)
2. Regarding the detention of journalists; even if they published false news on social networks or press statements, freedom of expression extends to the internet[[4]](#footnote-4). Article 19 of the ICCPR[[5]](#footnote-5) protects all forms of expression and the means of their dissemination, including all forms of electronic and internet-based modes of expression[[6]](#footnote-6). On the other hand, the social media platform is one of the internet intermediaries. 23. The term ‘internet intermediaries’ commonly refers to a wide, diverse and rapidly evolving range of service providers that facilitate interactions on the internet between natural and legal persons.[[7]](#footnote-7) It also refers to a company that facilitates the use of the Internet, such companies include internet service providers (ISPs), search engines and social media platforms.[[8]](#footnote-8) Holding intermediaries liable for distributing false information is necessary to ensure the protection of the reputation of others. However, states may impose liability on to social media intermediaries when these intermediaries fail to regulate the content on their platforms[[9]](#footnote-9), in what is known as standards of social media. The ECtHR[[10]](#footnote-10) and Court of Justice of the European Union[[11]](#footnote-11) (CJEU) have devised a framework to determine whether there is a pressing social need to do so. The pertinent factors to consider include: the nature of the intermediary; the nature of the user content; and the steps taken by the intermediary to regulate its user content.
3. In 2018, the United Nations Human Rights Office expressed concern about the undermining of the ability of civil society, the judiciary and the media to carry out their duties, due to the routine renewal of the state of emergency. The Turkish government also tightens the screws on civil society organizations and uses its authority arbitrarily, and is restricting and besieging them by enacting new laws in Parliament. In this context, the Turkish Parliament approved in 2020 a law to consolidate supervision of charitable institutions and NGOs, which restricts the freedoms of civil society institutions. The law allows the Minister of Interior to change the members of associations whom the authorities are investigating on terrorism charges, and the Ministry of the Interior has the right to apply to the judiciary to stop the activities of associations. As well, international organizations will also be subject to this law and the penalties that it imposes. Under this law, civil employees inspect/ search organizations every year and have access to any documents. Also, this law allows provincial governors or the Minister of Interior to stop any online donation campaign to prevent terrorist financing and money laundering, and imposes fines of up to 200,000 Syrian pounds ($ 26,500) on any organization found to be involved in illegal online donation campaigns, compared to current fines that do not exceed 700 liras, which indicates that the accusations of terrorism in Turkey are arbitrary.
4. **Article 7: The State Party has failed to provide protection against the Use of Torture and Inhumane treatment**
5. **Article 9: The State Party has failed to protect the Right to Life Liberty and Security of Persons**
6. Turkey has used torture crimes against citizens to systematically extract confessions. In 2018, about 200 people died under torture. More than 1,855 people were tortured inside Turkish prisons during 2020, of whom 38 died due to illness as a result of poor prison conditions. In addition, the coup attempt provided legitimacy for members of the security services in Turkey to practice widespread human rights violations, including torture and ill-treatment, without specific mechanisms for accountability and legal prosecution.
7. Many human rights defenders are subject to criminal investigations and prosecutions because of their work in human rights. The Turkish authorities carried out large-scale arrests that included the arrest and dismissal of thousands without any legal basis, as well as arrested and detained thousands of Turks for false reasons, between peaceful dissidents and political prisoners, just because they disagreed with some representatives of the ruling party.
8. The Turkish Interior Minister announced that the number of detainees in 2018 amounted to 750,239 people, including more than 52,000 people, on suspicion of belonging to the Fethullah Gülen group. In 2019, the minister also announced the arrest of 511,000 people, 30,821 of whom were arrested, as part of the operations that targeted Fethullah Gülen and the Kurdistan Workers' Party (PKK), since the alleged coup attempt.
9. In 2020, the number of prisoners in Turkey reached about 300 thousand prisoners, 17% of them for political reasons and whose accusations are related to supporting terrorism and extremism, and the number of those accused of participating in the attempted coup has so far reached about 50 thousand people, including former military personnel, civilians, journalists and other groups of opposition groups for Turkish government policies.

Based on all of the aforementioned, it seems that such violations of human rights and international principles may create a situation of chilling effect.

1. **The state party has failed to apply the restrictions of human rights lawfully and that causes a chilling effect**
2. The right to freedom of speech and expression is extended to all rights, the impugned requirement violates Article 19 of ICCPR by causing a “chilling effect” on the freedom of expression of citizens. A chilling effect occurs when an act inhibits full utilization of the freedom of expression. Indeed, mere restriction of the freedom of expression before government creates a chilling effect. In this case, the public is aware that they are convicted and prosecuted by the government at any time if they want to express their opinion.
3. The vagueness in the Turkish laws, in particular anti-terrorism law may lead to arbitrary interference because there is no a certain definition of anti-terrorism or acts that fall under it. Consequently, the authority may consider an act of freedom of expression as an act that falls under umbrella of “the advocacy of national, anti-terrorism, fake news, false intelligence information, racial or religious hatred” term. This may create a “chilling effect”, which occur “if social media platforms, because of the vagueness of a law, fear to exercise a protected conduct, and that will be affected on those who are by-standards. Moreover, U.S Supreme Court has explained that vague laws have a chilling effect on expression, as such laws tend to lead citizens to "steer far wider of the unlawful zone than if the boundaries of the forbidden were clearly marker".[[12]](#footnote-12)
4. On the other hand, the restrictions imposed by Turkey on the right to freedom of speech and expression failed to comply with the three-fold test criteria, article 19(3) of the ICCPR which states clearly that restrictions on freedom of expression must be prescribed by law**[I]**,[[13]](#footnote-13) pursue a legitimate aim**[II]**,[[14]](#footnote-14)and are necessary**[III]**.[[15]](#footnote-15)

**[I] The restrictions imposed by Turkey are not prescribed by law**

1. restriction on the freedom of expression must be provided by law according to article 19(3) of the ICCPR, and it’s practiced by international courts. To be prescribed by law, it has to justify specific requirements;

* It must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly (foreseeable).[[16]](#footnote-16)
* It must protect against arbitrary interference by public authority.[[17]](#footnote-17)

1. Accordingly, the restriction imposed by Turkey against its citizens is not provided by law as it not foreseeable. Furthermore, there is no text in the Turkish law refers to the definition of false news or anti-terrorism comprehensively.

**[II] The restrictions imposed by the state party are not in pursuance of the legitimate aim**

1. the restrictions imposed by Turkey on fundamental human rights are not in pursuance of the legitimate aim of national security and public order.

**National security is inapplicable aim**

1. National security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity.[[18]](#footnote-18) It’s extremely harsh, inappropriate and unjustifiable to consider practicing the fundamental human rights in a good faith and to oblige with job description; such as press in accordance with municipal and international law as a threat to the existence of the Turkish nation.
2. Hence more, national security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order[[19]](#footnote-19). Thus, national security is inapplicable aim in this case.

**Public order is inapplicable aim**

1. The expression “public order” as used in the Covenant may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order[[20]](#footnote-20).
2. For now, peoples' practice of human rights did not threat public order in any mean, as in order to invoke this aim, there must exists an immediate threat to public safety, peace, or order. In addition, there must be a proximate relationship between the restriction and the achievement of public order[[21]](#footnote-21). The state party bears the burden of proving the relationship and the immediate threat to justify its intervention of protecting public order[[22]](#footnote-22), and there is no relation between practicing the rights and the advocacy of national hatred or inciting for the terrorism against the state party. Therefore, it shall be evident that the absence of any relation between the restriction and the achievement of public order.
3. In a case against Iceland[[23]](#footnote-23), the ECtHR suggested that a person should not be held liable for publishing allegations, especially regarding matters of serious public concern, that are based on public opinion, “rumors", "stories" or the statements of others, so long as the nature of factual support for the allegations is clearly stated. However, if we assumed that the the journalist Jan Dundar or the others posted false or intelligence news on social media platforms. Consequently, the journalists in any case are irresponsible about the third party actions[[24]](#footnote-24). Thereby, public order is inapplicable aim.

**[III] The restrictions imposed by the state party are neither necessary nor proportionate in a democratic society**

1. the restrictions imposed by were not necessary in a democratic society because it did not fulfill a pressing social need[[25]](#footnote-25), and the interference was not proportionate to aim being pursued[[26]](#footnote-26).

**Suggested Questions to the State Party**

Following the current state of human rights in Turkey, International Alliance for Peace and Development (IAPD) suggests the following questions to the State Party:

1. What are the measures taken by the state party to protect and promote human rights, especially after its third universal periodic review in January 2020?
2. What are the necessary laws and measures taken by the State party to protect journalists and defenders of human rights and the right to dissemination?
3. What is the role of parliament with regard to enacting laws that oblige the state party to respect human rights, the right to freedom of opinion and expression, and to oppose torture and maltreatment?
4. Within a year of the state party's third universal periodic review, what are the radical steps the state has taken with regard to recommendations submitted to it by member states to curb grave human rights violations?

1. Times Newspapers Ltd (Nos 1 and 2) v UK (App no 3002/03) ECHR 10 March 2009 [46], [48]. [↑](#footnote-ref-1)
2. Pfeifer v Austria (2009) 48 EHRR 8 [35]. [↑](#footnote-ref-2)
3. Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex (1985). Para. 37 [↑](#footnote-ref-3)
4. UNHCR, ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression’ (2011) UN Doc. A/HRC/17/27, Reno v ACLU 521 US 844 (1997) [↑](#footnote-ref-4)
5. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art19 [↑](#footnote-ref-5)
6. UNHRC ‘General Comment 34’ in ‘Article 19: Freedoms of Opinion and Expression’ (2011) UN Doc CCPR/C/GC/34 Para. 12. Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression’ (2011) UN Doc. A/HRC/17/27; Reno v ACLU 521 US 844 (1997) [↑](#footnote-ref-6)
7. Council of Europe\ internet intermediaries (https://www.coe.int/en/web/freedom-expression/internet-intermediaries) [↑](#footnote-ref-7)
8. Rebecca MacKinnon, Elonnai Hickok, Allon Bar, Hae-in Lim, UNESCO. Fostering Freedom Online: The Role of Internet Intermediaries. UNESCO. 2015, p.10-13 [↑](#footnote-ref-8)
9. Delfi June 2015 (n 5) paras 141–143, 162; Google France, Google Inc v Louis Vuitton Malletier SA C-236/08

   (CJEU, 23 March 2010) (‘Google France’) para 120 [↑](#footnote-ref-9)
10. Delfi October 2013 (n 17) para 85; Delfi June 2015 (n 5) paras 142–143; Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v Hungary App no 22947/13 (ECtHR, 2 May 2016) (‘MTE’) paras 68–69; Pihl v Sweden App no 74742/14 (ECtHR, 9 March 2017) (‘Pihl’) paras 27–28; Tamiz v UK App no 3877/14 (ECtHR, 12 October 2017) (‘Tamiz’) paras 85–87.

    [↑](#footnote-ref-10)
11. Google France (n 103) para 114; L’Oreal SA v eBay C-324/09 (CJEU, 12 July 2011) (‘L’Oreal SA’) paras 111–113. [↑](#footnote-ref-11)
12. SÜREK v. TURKEY (No. 1)26682/95 (ECHtR,08/07/1999) [↑](#footnote-ref-12)
13. Hinczewski v Poland App no 34907/05 (ECtHR, 5 October 2010). [↑](#footnote-ref-13)
14. Handyside v the United Kingdom, App no 5493/72 (ECtHR, 7 December 1976); Lingens v Austria, App no 9815/82 (ECtHR, 8 July 1986); Jersild v Denmark, App no 15890/89 (ECtHR, 1994); Zana v Turkey, App no 18954/91 (ECtHR, 25 November 1997). [↑](#footnote-ref-14)
15. Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)Art 19 (3). [↑](#footnote-ref-15)
16. UNHRC ‘General Comment 34’ in ‘Article 19: Freedoms of Opinion and Expression’ (2011) UN Doc CCPR/C/GC/34.Para. 25; de Groot v. The Netherlands communication No. 578/1994, CCPR/C/54/D/578/1994 (HRC); Sunday Times vs. United KingdomApp no. 6538/74(ECtHR 26 April 1979). Para. 49.. [↑](#footnote-ref-16)
17. Malone v. the United Kingdom, App no. 8691/79 (ECtHR 2 August 1984). Para. 67. UNHRC ‘General Comment 34’ in ‘Article 19: Freedoms of Opinion and Expression’ (2011) UN Doc CCPR/C/GC/34. Para. 25. PUCL v Union of India 1976 (2) SCC 128 (India); Kruslin v France (1990) 12 EHRR 547. [↑](#footnote-ref-17)
18. Principle 6, Johannesburg Principles on National Security, Freedom of Expression and Access to Information, U.N. Doc. E/CN.4/1996/39 (1996). [↑](#footnote-ref-18)
19. Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights Annex, UN Doc E/CN.4/1984/4 (1984); Para 30 [↑](#footnote-ref-19)
20. Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4, Annex (1985). Para. 22. [↑](#footnote-ref-20)
21. Clause I(C)(54), Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, U.N. Doc. E/CN.4/1985/4; The Superintendent, Central Prison, Fatehgarh v Ram Manohar Lohia AIR 1960 SC 644 (India); OK Ghosh v EX Joseph AIR 1962 SC 812 (India);Incal v Turkey App No. 22678/93 (ECtHR 9 June 1998). [↑](#footnote-ref-21)
22. M Jaona v. Madagascar, Communication No. 132/1982 6 April 1985(HRC). [↑](#footnote-ref-22)
23. Thorgeirson v. Iceland App No. 13778/88(ECtHR Iceland 25 June 1992) Para. 65 [↑](#footnote-ref-23)
24. ILOAT Judgment No 1849 (1999); (p. 573) 54 Novation. [↑](#footnote-ref-24)
25. Cumpana and Mazare v Romania App No 33348/06 (ECtHR, 17 December 2004), (‘Cumpana v Romania’) ¶88; MGN Ltd v UK (n 3) ¶139; Standard Verlags v Austria (n 3) ¶29; Sunday Times v UK (n 13) ¶ 62; Pedersen and Baadsgaard v Denmark App No 49017/99 (ECtHR, 19 June 2003), (‘Pedersen v Denmark’) ¶63; Chauvy v France (n 14) ¶64; Herrera v Costa Rica (n 5) ¶122 [↑](#footnote-ref-25)
26. Sunday Times v UK (n 13) 62; Ojala v Finland (n 3) ¶43; Ruokanen v Finland (n 39) ¶38; Kasabova v Bulgaria (n 5) ¶54; Herrera v Costa Rica (n 5) ¶122 [↑](#footnote-ref-26)