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Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; the Independent Expert on human rights and international solidarity; the Special Rapporteur on the right to privacy and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL TUR 5/2024
(Please use this reference in your reply)

7 October 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Independent Expert on human rights and international solidarity; Special Rapporteur on the right to privacy and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 49/10, 54/14, 52/9, 50/17, 52/4, 53/5, 55/3 and 52/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **alleged measures of systematic repression against persons ostensibly affiliated with the Gülen Movement through the misuse of counter-terrorism legislation, and the concomitant impact on civil society, human rights defenders, political dissidents, and journalists.** These measures include: (i) mass arrests, detentions, and judicial control orders; (ii) transnational renditions; (iii) the expansion of terrorist "grey lists"; and (iv) the misuse of surveillance powers.

Concerns regarding the alleged persecution of actual and suspected persons affiliated with the Gülen Movement were raised by several Special Procedures mandate holders in the following communications: UA TUR 13/2021, AL TUR 8/2021, AL TUR 20/2020, AL TUR 18/2020, AL TUR 5/2020, AL TUR 10/2019, UA TUR 6/2019, AL TUR 2/2019, AL TUR 6/2018, UA TUR 7/2018, AL TUR 5/2018, UA TUR 1/2018, UA TUR 7/2017, UA TUR 6/2017, OL TUR 5/2017, AL TUR 4/2017, UA TUR 8/2016, UA TUR 6/2016.

We acknowledge the replies of your Excellency's Government to these communications and the expression of intent on the part of your Excellency's Government to continue to uphold human rights and maintain cooperation with international organizations. However, we regret having to reiterate that concerns related to the continuous misuse of counter-terrorism laws to repress people for their suspected affiliation with the Gülen Movement prevail.

According to the information received:

Following the attempted *coup d'État* on 15 July 2016, for which the Gülen Movement was attributed responsibility by the Turkish Government, it is reported that people associated with the movement have been repressed, surveilled, and arbitrarily detained. It is alleged that law enforcement activities targeting Gülen Movement members and affiliates have intensified in terms of scale, violence, and scope in recent years.

Mass arrests, detentions, and control orders

It is estimated that over 8,892 people were detained, 1,595 people were charged with terrorism offences, and 1,891 judicial control orders were imposed between 4 June 2023 and 3 June 2024 on the basis of charges relating to their suspected affiliation with the Gülen Movement.

Arrest of children, teachers, and relatives

Among those deprived of their liberty were 16 children and 34 adults arrested in Istanbul on 7 May 2024. The warrants for the arrests and police raids on the detainees' homes were reportedly issued by the Istanbul Chief Public Prosecutor's Office on the basis that the children are students of the Gülen Movement who receive financial and material support from their family, teachers, and friends.

The child detainees were kept in custody for 16 hours for the purpose of police interrogation and were denied access to legal counsel. They were deprived of food, subjected to psychological pressure, experienced physical torture, and were restricted from communicating with the outside world and the other detainees. In particular, some children were threatened with physical beatings that would "make [them] vomit blood".

The adult detainees were kept in custody for four days and experienced similar conditions of detention. In particular, the detainees did not receive adequate medical attention relating to pre-existing health-conditions including Parkinson's disease, high-blood pressure, and diabetes. Moreover, some detainees were prevented from providing maternal care or breastfeeding to their infant children. Many of the adults were charged under counter-terrorism legislation for having provided financial aid and material support to their children who were alleged to be students of the Gülen Movement. In several cases, the provision of support included conduct that was unrelated to the Gülen Movement such as assisting with rent, teaching English, or inviting students to their homes. It is estimated that since 18 October 2022, at least 2,500 detentions have been carried out on the suspicion that individuals have provided material support to persons considered to be affiliated with the Gülen Movement.

Operation Kıskaç 21-22-23

Between 14 July and 22 July 2024, 183 arrests occurred during a coordinated police operation across Türkiye codenamed "Kıskaç 21-22-23". Many of the

arrests were carried out due to the suspicion of the individuals' association with the Movement rather than a specific violation of the Turkish Penal Code. Among these arrests were 12 women detained on 17 July 2024 on the basis that their religious teachings were a pretext for Gülen Movement activities. On 17 July 2024, 14 detention warrants were issued against former soldiers on the basis that they had served in the military during the attempted coup d'état on 15 July 2016. The warrants were reportedly issued without evidence that established a personal or continued connection between the former soldiers and the Movement.

Following the completion of "Kıskaç 21-22-23", a representative of the Ministry of Interior shared his view on the social media platform "X" that Gülen Movement members are "traitors and the most notorious terrorists who must be eliminated".

The "Morning Readings" Group

On 5 June 2024, a large-scale security operation coordinated between the Malatya Provincial Security Directorate, the Malatya Chief Public Prosecutor's Office, and the National Intelligence Organization targeted members of the Morning Readings group on suspicion of their affiliation with the Gülen Movement.

The Morning Readings group operates as a forum for reading and discussing religious texts. The group broadcasts a daily program on various social media sites that enables participants to share their perspective and read prayers. The group also shares announcements, content, and facilitates interaction between community members on various social media platforms.

The investigation of the group was reportedly initiated on the basis of an informant letter sent to the Malatya Chief Public Prosecutor's Office. The letter included a flash drive that contained screenshots of the Morning Readings discussion group. Although it is not apparent that the flash drive contained material that constitutes illegal conduct or establishes a connection to the Gülen Movement, phone-tapping and other surveillance measures were implemented on its basis.

Police raids were carried out on 5 June 2024 in Malatya, Istanbul, Ankara, Izmir, Bursa and Elziğ. Videos released to the media by the Malatya Provincial Security Directorate capture footage of police officers using a high degree of force when intercepting vehicles and arresting suspects.

Several of the detainees were interrogated on 7 June 2024 at the Malatya Police Department's Anti-Smuggling and Organised Crime Branch Directorate regarding the information contained in the informant letter, the contents of the flash drive, the wiretap recordings, their social media communications, their role in the Morning Readings group, and the association between the Morning Readings group and the Gülen Movement. It is reported that several arrest warrants were then issued by the Malatya Magistrate's Court on suspicion that

the suspects committed the crime of "establishing or managing an armed terrorist organization" under article 100/3-a of the Turkish Penal Code.

Transnational renditions

We reiterate the concerns expressed in communication TUR 5/2020 that the Government of Türkiye continues to engage in a systemic practice of State sponsored extraterritorial abductions and forced returns of Turkish nationals associated with the Gülen Movement. In some cases, people subjected to this practice were forcibly disappeared. We note further reports that the Government of Türkiye has signed bilateral security co-operation agreements with multiple States that contain broad and vague references to combatting terrorism and transnational crime. It is claimed that the agreements have been drafted to permit the expulsion or abduction of anyone deemed to be a "security risk" from third countries.

Furthermore, there are additional reports that a standard practice of handing over Gülen sympathizers is being developed through the cooperation of Turkish and foreign State authorities, including at least 10 countries (TUR 5/2020). Cases are also reported of enforced disappearances involving extended periods of secret or incommunicado detention prior to deportation. During these periods, some of these individuals appear to have been subjected to coercion, torture and cruel, inhuman or degrading treatment in order to obtain their consent to return to Türkiye and to extract confessions that serve as a basis for criminal proceedings (TUR 5/2020). According to victim testimonies, the most common forms of torture include the deprivation of food and sleep, beatings, waterboarding, electric shocks and threats to family members.

The Reward Commission and terrorist 'grey lists'

The Government of Türkiye has listed political dissidents, judges, lawyers, human rights defenders, and journalists as "terrorists" on publicly available websites that publicise monetary rewards for their apprehension. It is our understanding that these listings occur where there are not reasonable grounds for that designation. Many of the listings are deliberate measures to endanger political activists and to deter the exercise of fundamental rights and freedoms by them and others.

Indeed, the identity, photographs, and associated organisations of people labelled "terrorists" are available on the website of the Minister of Interior and the General Directorate of Security. The listings are also disseminated through the official account of the Ministry of Interior on the social networking platform "X". A Rewards Commission was established within the Ministry of Interior in 2015 under the "Regulation on Rewards to be given to those who assist in the apprehension of perpetrators of crimes covered by the Anti-Terrorism Law" to supplement article 19 of the Anti-Terrorism Law No. 3713 (1991) which provides that:

"[A] monetary reward may be given to those who assist in the discovery of a crime covered by this Law, or in the seizure of evidence, or in the apprehension

of the perpetrators of the crime, or who report their location or identity, provided that they have not participated in the commission of the crime."

The quantum of the monetary reward available is contingent on the categorization of the terrorist. The grey list, which is the lowest designation, provides for an award not exceeding 500,000 TL. It is reported that human rights activists, journalists, judges, and political dissidents are commonly registered on the "grey list" in the absence of supporting evidence and without the opportunity to make submissions prior to the designation, or to appeal the designation. It is reported that many people listed as "terrorist" on the "grey list" fear persecution and have been physically harmed as a result of the listing.

Misuse of surveillance powers

We echo the concerns expressed in TUR 3/2024 and by the European Court of Human Rights in its judgment in the case *Yüksel Yalçınkaya v. Türkiye* (No. 15669/20) regarding information that the Milli İstihbarat Teşkilatı ("MİT") used its powers under article 3 of Law No. 6532 (2014) ("MİT Law") in 2016 to access the main server of the encrypted messaging application "ByLock" for the purpose of gathering information on the Gülen Movement.[1] The data obtained included the Internet Protocol ("IP") address of each user that connected to the ByLock server and 15 million decrypted user-to-user messages.

The management of the data was not secure, police personnel removed and fabricated data entries, and the IP addresses wrongly attributed engagement with the ByLock application due to a widely used internet management system that operates through proxy IP addresses. The log data also contains several anomalies such as illogical session events, significant message delivery delays, and issues with the message content records.

The analysis of the ByLock data, which was shared by the MİT to the Ankara Chief Public Prosecutor's Office, instigated several thousand police investigations and arrests under various provisions of the Anti-Terror Law No. 3713 relating to "suspicion of association" with the Gülen Movement. The prosecution has not adduced evidence of the user's communications on the ByLock application in the majority of cases, and the judiciary has a limited ability to request access to the data under article 11 of the MİT law. A document containing raw and incomplete data titled "ByLock Inquiry Module Minute" or "ByLock Determination or Evaluation Minute" is produced to the Court on request, and such documents are not particularized to the defendant and are incomprehensible without expert evidence.

[1] Article 3 permits the MIT to "[r]eceive information, documents, data and records from public institutions and organizations, professional organizations in the nature of public institutions, institutions and organizations within the scope of the Banking Law dated 19/10/2005 and numbered 5411, other legal entities and organizations without legal personality, make use of their archives, electronic data processing centers and communication infrastructure and establish contact with them. Those who are requested within this scope cannot refrain from fulfilling the request by citing the provisions of their own legislation as justification."

Furthermore, the prosecution reportedly maintains its claim that ByLock was developed to fulfil the communication needs of the Gülen Movement, and thus evidence of the application having merely been downloaded is sufficient to establish "suspicion of association" with the Movement. This view was affirmed by the Turkish Court of Cassation and the Turkish Constitutional Court. The decisions have permitted first instance courts to convict thousands of persons on the basis of ByLock data.

While we do not wish to prejudge the accuracy of the above allegations, we express our serious concerns regarding Türkiye's compliance with its obligations under international human rights law. We reiterate the general concerns raised in communication OL TUR 13/2020 that the Anti-Terror Law No. 3713 and the Turkish Penal Code are drafted with overly broad language that permits their systematic misapplication towards political dissidents, journalists, and people who are affiliated, or suspected to be affiliated, with the Gülen Movement. Moreover, we maintain our concern that the designation of the Gülen Movement as a terrorist organization does not appear to meet the requirements of due process or satisfy the criteria outlined in the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/16/51, para. 28). We further note that there appears to be an observable trend in Türkiye where individuals and groups who have been linked to the Gülen Movement experience significant risks to their safety, arbitrary detention, and invasions of their privacy. The concerns relating to the facts alleged in this communication specifically are categorised into four parts below: (A) mass arrests, detentions, and judicial control orders; (B) transnational renditions; (C) the use of terrorist "grey lists"; and (D) the misuse of surveillance powers.

A. Mass arrests, detentions and judicial control orders

We note with concern that the Working Group on Arbitrary Detention has adopted 24 opinions[2] related to the Gülen Movement since 2016 and has identified that such individuals are routinely detained on the basis of their engagement in ordinary, legitimate activities, without any specification as to how such activities amounted to criminal acts or established links with the Gülen Movement. It is within this context that we reiterate Türkiye's human rights obligations relating to judicial guarantees and the deprivation of liberty under articles 6, 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights (UDHR) and articles 9, 10, 14, and 15 read alone and in conjunction with article 2(3) of the International Covenant on Civil and Political Rights (ICCPR, ratified by Türkiye on 23 September 2003).

[2] Ali Ünal, A/HRC/WGAD/2023/3; Muhammet Şentürk, A/HRC/WGAD/2023/29; Alettin Duman, Tamer Tibik, A/HRC/WGAD/2022/8 ; Osman Karaca, A/HRC/WGAD/2020/84; Ahmet Dinçer Sakaoğlu, A/HRC/WGAD/2020/67; Levent Kart, A/HRC/WGAD/2020/66; Nermin Yasar, A/HRC/WGAD/2020/74; Arif Komiş, Ülkü Komiş and four minors, A/HRC/WGAD/2020/51; Kahraman Demirez, Mustafa Erdem, Hasan Hüseyin Günakan, Yusuf Karabina, Osman Karakaya and Cihan Özkan, A/HRC/WGAD/2020/47; Faruk Serdar Köse, A/HRC/WGAD/2020/30; Akif Oruc, A/HRC/WGAD/2020/29; Abdulmatip Kurt, A/HRC/WGAD/2020/2; Ercan Demir, A/HRC/WGAD/2019/79; Melike Göksan, Mehmet Fatih Göksan, A/HRC/WGAD/2019/53; Mustafa Ceyhan, A/HRC/WGAD/2019/10; Hamza Yaman, A/HRC/WGAD/2018/78; Muharrem Gençtürk, A/HRC/WGAD/2018/44; Ahmet Caliskan, A/HRC/WGAD/2018/43; Mestan Yayman, A/HRC/WGAD/2018/42; Mesut Kaçmaz, Meral Kaçmaz and two minors, A/HRC/WGAD/2018/11; 10 individuals associated with the newspaper *Cumhuriyet*, A/HRC/WGAD/2017/41; Kursat Çevik, A/HRC/WGAD/2017/38; Rebii Metin Görgeç, A/HRC/WGAD/2017/1.

In particular, article 9(1) of the ICCPR establishes that no one shall be deprived of his or her liberty except on such grounds and in accordance with such procedure as established by law. Articles 9(2) and 9(3) specify that anyone who is arrested shall be informed, at the time of the arrest, of the reasons for such arrest and be brought promptly before a judge for the purpose of legal assessment and challenge of the detention. We also underscore that article 9(4) of the ICCPR affirms the right to challenge the legality of one's detention, and we note that this right applies to everyone, including persons who are arrested or detained for a terrorism-based offence. We would like to stress that detention can be considered arbitrary when based on vague or imprecise legislation, on discriminatory grounds, or when it is imposed without a legal process or through one that is in clear violation of international fair trial standards. We remind your Excellency's Government that the prohibition on arbitrary detention is absolute in international law and that no derogations are permitted, including when purporting to counter terrorism. It is our concern that the legitimate activities of students, teachers, and parents have been criminalized on the basis of an unsubstantiated suspicion that such individuals are connected to the Gülen Movement. The high quantity of arrests and the tenuous evidence connecting individuals to terrorism indicates that your Excellency's Government may be in violation of international law.

We are particularly concerned by reports that children have been detained under the counter-terrorism laws and subjected to serious mistreatment while in detention. The fundamental rights of the child, as enshrined under international human rights law, include an interrelated set of rights and freedoms applicable to all persons, as well as additional measures of protection owed to children due to their status and particular vulnerabilities (ICCPR articles 10 and 24). These rights and freedoms include: the inherent right to life, freedom from torture or other cruel, inhuman or degrading treatment or punishment, and freedom from arbitrary deprivation of liberty. We emphasise that, under the Convention on the Rights of the Child (CRC, articles 6 and 37, ratified by Türkiye on 9 December 1994), the "arrest, detention or imprisonment of a child … shall be used only as a measure of last resort and for the shortest appropriate period of time" and that "[n]either capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age". Crucially, article 19 of the CRC requires States to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, and maltreatment or exploitation." Furthermore, article 40(3) of the CRC requires States to seek "[w]henever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected." This includes efforts to apply diversionary and non-custodial measures in a manner that promotes the child's sense of dignity and worth, taking into account their age and capacity for constructive societal reintegration.

B. Transnational renditions

With respect to the allegations of transnational repression, we recall that State-sponsored extraterritorial abductions and the forcible return without legal process of individuals from third countries may result in serious violations of the individuals' rights to liberty, personal security, integrity and fair trial and may also amount to enforced disappearance. The rights concerned are provided by the UDHR (articles 3,

5, 9 and 14), the ICCPR (articles 7, 9, 13, 14, 16, 18, 19 and 22 read alone and in conjunction with article 2(3), the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, in particular article 3, ratified by Türkiye on 2 August 1988), as well as the Declaration on the Protection of All Persons against Enforced Disappearance (articles 2, 3, 6, 7, 8, 13, 14 and 20).

We stress that the principle of legal certainty requires any bilateral agreements which may result in a substantial interference with human rights to be publicly accessible. Secret agreements are *prima facie* in contravention of a State's obligation to maintain legal certainty under international human rights law.).[3] Furthermore, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has emphasised that cooperation agreements in the counter-terrorism arena are not a human rights free zone: the fundamental obligations of human rights law unilaterally and consentingly entered into by States, in addition to those established by custom, apply in a State's bilateral relations (TUR 5/2020). The principle of *non-refoulement* prohibits all States from returning (by any means) a person to another State where there is a real risk of arbitrary deprivation of life, torture or cruel, inhuman or degrading treatment, enforced disappearance, arbitrary detention, flagrant denial of justice, persecution, or other serious violations of international human rights law.[4]

We further emphasise that the failure to acknowledge the deprivation of liberty by State agents constitutes an enforced disappearance even if it is of a short duration. In this regard, we note that article 7 of the Declaration on the Protection of all Persons Against Enforced Disappearance stipulates that "no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances." Moreover, we reiterate that compliance with the procedural safeguards mandated under international human rights law upon arrest and during the first hours of the deprivation of liberty are essential to prevent possible violations of human rights. These safeguards include immediate registration, judicial oversight of the detention, notifying family members of the detention, and enabling the detainee to access legal counsel (ICCPR, article 9; Declaration on the Protection of all Persons against Enforced Disappearance, articles 9-10).

The implications of extraterritorial rendition, torture, and arbitrary detention in the name of countering terrorism for the protection of human rights have been closely examined by Special Procedures.[5] Victims and their families have the right to an effective remedy, which should at minimum, guarantee the cessation of violations, restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition (ICCPR, article 2(3); general comment No. 31, para. 16). We are profoundly concerned at the apparent lack of independent and effective investigations by Turkish authorities

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[3] E/CN.4/2006/98, para. 46.

[4] See authorities cited in paras. 27-52 of https://www.ohchr.org/sites/default/files/documents/issues/terrorism/sr/court-submissions/202408-Amicus-SRCT-Thailand-en.pdf.

[5] "Guantánamo Bay, 14 years on – Rights experts urge the US to end impunity and close the detention facility", https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16935&LangID=E; "UN experts deeply concerned by 'new practice' of State-sponsored abductions" <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23736&LangID=E>.

into the alleged abuses resulting from extraterritorial abductions and the forcible return of Turkish nationals.

C. The use of terrorist "grey lists"

We raise our concerns regarding the procedure used by your Excellency's Government to list people or entities on terrorist "grey lists" and the allegations that human rights defenders, political dissidents, lawyers, and activists are deliberately included on the "grey list" despite an absence of reasonable grounds for that designation. The listings occur in the absence of due process, including notice, an opportunity to be heard, the right to appeal and judicial oversight. The significant harm faced by individuals registered on the list is amplified by the monetary incentive for their apprehension. The rewards offered to the general public will foreseeably result in, if not encourage, false accusations and the commission of illegal acts and contribute to the "hit man" economy that has harmed human rights defenders in Türkiye and abroad.

We emphasise that the designation of terrorists must follow a transparent process to maintain standards of evidence, the burden of proof, and the presumption of innocence. We remind your Excellency's Government of the Human Rights Principles Applicable to Watchlisting (see annex).

D. The misuse of surveillance powers

We are further concerned that the MİT Law is being misused to target activists, human rights defenders, and Gülen Movement members who are exercising rights guaranteed by international human rights law.

In particular, we are concerned that article 3 restricts privacy beyond what is necessary and proportionate to confront legitimate security threats. The inclusion of all legal and non-legal entities in the scope of the law, and the inability for those entities to invoke domestic law as a reason for non-compliance with the MİT's request, also fails to provide sufficient safeguards to the right to privacy. Article 17 of the ICCPR requires that "[n]o one shall be subjected to arbitrary or unlawful interference with [their] privacy, family, home or correspondence, nor to unlawful attacks on [their] honour and reputation." International human rights law stipulates further conditions which must be satisfied for an interference to be lawful. Firstly, the interference may only take place in accordance with established law (general comment No. 16, para. 3), which specifies in detail the precise circumstances in which such interferences may be permitted (infra, para. 8). Secondly, any interference with the right to privacy must be "reasonable." The term "reasonable" has been interpreted by the Human Rights Committee to mean that it "must be proportionate to the end sought and be necessary in the circumstances of any given case" (*Toonen v Australia* (1994), para. 8.3).[6] Article 17 has been interpreted so as to require the existence of a legitimate aim in order to justify any necessary and proportionate restrictions on the right to privacy.[7]

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6 Human Rights Committee, CCPR/C/50/D/488/1992 (1994).

7 See, e.g. Human Rights Committee, *Van Hulst v Netherlands*, UN Doc. CCPR/C/82/D/903/1999 (2004), paras. 7.6-7.10. Similarly, under the equivalent right in the European Convention on Human Rights, see *Weber and Saravia v Germany* (App. No. 54934/00), Decision of 29 June 2006, paras. 103-137.

We further emphasise that a fundamental requirement for any measures derogating from the ICCPR, as set forth in article 4(1), is that such measures are limited to the extent strictly required by the exigencies of the situation. The MİT Law was adopted in 2014 and as such was not a response to the public emergency declared following the coup in 2016. In any event, the power under the Law to compel the disclosure of any information held by any organization would be clearly excessive even in a public emergency of the kind declared following the 2016 coup and is not rationally related to any legitimate emergency security need.

Furthermore, the absence of a framework for judicial authorisation and review amplifies our concern that MİT's powers are used to first identify, and then target, political dissidents, journalists, and human rights defenders. Article 11 of the MİT Law, which restricts judicial authorities from accessing the "information, documents, data, analyses, and records of an intelligence nature", diminishes the prospects of a fair trial for people prosecuted on the basis of MİT intelligence, as well as effective remedies before the courts for violations of other relevant human rights, including privacy and freedom from arbitrary detention.

Additionally, article 6 prevents the accountability of the MİT for the misuse of its powers through the availability of complete impunity.[8] The provision is contrary to the rule of law and the right to an effective remedy for violations of human rights (ICCPR, article 2) and is indicative of a culture that promotes the unfettered misuse of surveillance powers. Moreover, article 6 heightens our concern that the executive has excessive authority over the judiciary, and thus, may undermine or threaten its independence. We reiterate that the right to a fair and public hearing by an independent and impartial court is provided for in international human rights standards, and that a competent and independent court is one of the guarantees of a fair trial.

We raise further concerns regarding the probative value of the ByLock data. It is our understanding that several arrests are premised on the mere fact that the accused has previously downloaded ByLock, without any determination of whether the user has engaged in illegal activity. The finding that a person: (i) is a member of the Gülen Movement; and (ii) has engaged in an illegal activity, cannot reasonably be supported by IP address data. In at least 24 opinions issued between June 2017 and April 2024[9] on allegations of arbitrary detentions in Türkiye, the UN Working Group on Arbitrary Detention (WGAD) concluded that the detention of the individuals had no legal basis and deplored the widespread practice of "guilt-by association". Furthermore, we raise our concerns regarding the alleged tampering of data, the absence of security protections to guarantee the data's integrity, and the erroneous inclusion of thousands of people in the data analysis due to an internet management system that conceals user's IP address through proxy IP locations. Additionally, the inability for defendants to contest the evidence that sustains the prosecution case obstructs their ability to defend

[8] Article 6 provides that "[p]ublic prosecutors shall notify the Undersecretariat of MIT when they receive any denunciation or complaint regarding the duties and activities of MIT and its members or when they learn of such a situation. If the Undersecretariat of MIT states or certifies that the matter is related to the duties and activities of MİT, no further judicial action shall be taken and no protection measures shall be applied."

[9] Demir, A/HRC/WGAD/2019/79; Melike Göksan, Mehmet Fatih Göksan, A/HRC/WGAD/2019/53; Mustafa Ceyhan, A/HRC/WGAD/2019/10; Hamza Yaman, A/HRC/WGAD/2018/78; Muharrem Gençtürk, A/HRC/WGAD/2018/44; Ahmet Caliskan, A/HRC/WGAD/2018/43; Mestan Yayman, A/HRC/WGAD/2018/42; Mesut Kaçmaz, Meral Kaçmaz and two minors, A/HRC/WGAD/2018/11; 10 individuals associated with the newspaper *Cumhuriyet*, A/HRC/WGAD/2017/41; Kursat Çevik, A/HRC/WGAD/2017/38; Rebii Metin Görgeç, A/HRC/WGAD/2017/1.

themselves and raises doubts regarding the independence and impartiality of the judiciary given the high rate of convictions in the absence of verified and particularized evidence.

In this regard, we support the analysis that the European Court of Human Rights (ECtHR) reached in *Yüksel Yalçınkaya v. Türkiye* (No. 15669/20) that a conviction for membership of an armed terrorist organisation on the mere basis that the accused had downloaded ByLock is a violation of the requirement of legal certainty/non-retroactivity and the right to a fair trial. As regards legal certainty, the ECtHR found that the Turkish courts had simply equated the use of ByLock with knowingly and willingly being a member of an armed terrorist organisation, irrespective of the content of the messages, the identity of the persons with whom the exchanges had been made, or establishing all requirements of the offence (including intent). Such an expansive interpretation of the law created an almost automatic presumption of guilt based on ByLock use alone, making it nearly impossible for a defendant to exonerate themselves, therefore extending the offence to the defendant's detriment in a manner which he could not have foreseen. The ECtHR held that the right to fair trial was breached because a lack of safeguards concerning ByLock evidence, including as to its reliability and data integrity, prevented the defendant from having a genuine opportunity to effectively challenge the evidence against him and present his case.

Having noted the existence of 8,000 analogous pending cases, and an estimated increase of such cases to 100,000, the ECtHR compelled the Government of Türkiye to address the issue at an institutional level. We raise the concern that your Excellency's Government has not complied with this measure and has, in fact, amplified the number of pending cases through a repeated misuse of data-surveillance powers. We express our regret that a senior official reportedly stated in an address to Parliament that it was "impossible [for Türkiye] to either respect the decisions of institutions aligned with terrorist organisations or to heed what [the ECtHR] say." We advise the Turkish judiciary to order retrials in all cases in which ByLock evidence was relied upon, and to urgently implement safeguards to address the existing disparities in cases relying on ByLock data procured by MİT.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please explain what measures are in place to safeguard the independence of the judiciary and its impartiality in cases relating to counter-terrorism legislation.

3. Please specify the number of people detained for offences related to their affiliation with the Gülen Movement from 2023-2024, including how

many people are detained pending charge, detained pending trial, and imprisoned following conviction.

4. Please provide information about the circumstances of detention of the individuals arrested during the July 2024 operation, including the legal and procedural safeguards granted to them from the outset of their detention, particularly their right to access a lawyer.

5. Please explain what measures have been taken to ensure that journalists, media workers and human rights defenders in Türkiye can exercise their legitimate right to freedom of expression, association and their peaceful and legitimate activities without fear of reprisals, judicial prosecution or criminalization of any kind.

6. Please clarify what laws and procedures are in place to ensure your Excellency's Government does not seek to forcibly return any person to Türkiye in violation of international human rights law.

7. Please provide information on the existing agreements with other States which are being used to facilitate the arrest of suspected members of the Gülen Movement and their extradition to Türkiye, and whether they have been made public.

8. Please explain the process, evidence procedures and standards that must be satisfied before a person is registered as a "terrorist" on the public watchlist. Additionally, please indicate what avenues of administrative and judicial appeal are available to individuals placed on that list.

9. Please indicate how the surveillance powers under the MİT Law, and their use, including to obtain ByLock data, are consistent with the human rights to privacy, fair trial, legality and non-retroactivity, and an effective remedy.

10. Please provide information about any measures taken, or foreseen, by your Excellency's Government to review the counter-terrorism normative framework in Türkiye to ensure its compliance with the State's obligations under international human rights law, and as recommended in OL TUR 13.2020.

11. Please provide information on all measures and efforts taken or planned to be taken to investigate the allegations of torture and other ill-treatment in a prompt, impartial and effective manner, and to ensure that any public officials involved in such acts are prosecuted.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Ben Saul
Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Gabriella Citroni
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Gina Romero
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Cecilia M. Bailliet
Independent Expert on human rights and international solidarity

Ana Brian Nougrères
Special Rapporteur on the right to privacy

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the principles and international standards applicable to this communication.

Respect for human rights while countering terrorism

Although no universal treaty generally defines “terrorism”, States should ensure that counter-terrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the international counter-terrorism instruments,[10] the General Assembly’s Declaration on Measures to Eliminate International Terrorism (1994), and Security Council resolution 1566 (2004).[11] Based on these authoritative sources, the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism[12] provides clear, “best practice” guidance, by identifying conduct that is genuinely terrorist in nature and precisely defining the elements.

We also bring your Excellency’s Government’s attention to the principle of legal certainty under article 15(1) of the ICCPR which requires that criminal laws are sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and the legal consequences of committing such an offence. This principle recognizes and seeks to prevent ill-defined and/or overly broad laws which are open to arbitrary application and abuse, to target civil society on political or other unjustified grounds.[13]

We respectfully refer your Excellency’s Government to the many resolutions of the United Nations General Assembly, Security Council and Human Rights Council reaffirming that any measures taken to combat terrorism and violent extremism must comply with the obligations of States under international law, in particular international human rights law, refugee law and international humanitarian law.[14] Counter-terrorism measures must conform to fundamental requirements of legality, proportionality, necessity and non-discrimination. The wholesale adoption of security and counter-terrorism regulations without due regard for these principles can have exceptionally deleterious effects on the protection of fundamental rights, particularly for minorities, historically marginalized communities, and civil society.

We remind your Excellency’s Government that States must ensure that measures to combat terrorism and preserve national security do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights.[15]

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[10] See https://treaties.un.org/Pages/DB.aspx?path=DB/studies/page2_en.xml.
[11] A/RES/49/49, annex, para. 3.
[12] A/HRC/16/51, para. 28.
[13] A/70/371, para. 46(b).
[14] Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); Human Rights Council resolution 35/34; and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, among others.
[15] See A/HRC/RES/22/6, para. 10(a).

Principles Applicable to Watchlisting

We respectfully refer your Excellency's Government of the Human Rights Principles Applicable to Watchlisting,[16] which require: (i) a fair and accountable legal process that offers a reasonable and legally-based opportunity for listed persons to administratively and judicially challenge the basis of their inclusion on the list; (ii) a person's inclusion on the list to be a necessary and proportionate response to an actual, distinct, and measurable terrorism threat that is consistent with the definition of terrorism found in the international counter-terrorism conventions and United Nations Security Council resolution 1566 (2004); (iii) consideration of the human rights implications that arise from watchlisting, including for freedoms of movement, association, expression and religion, the rights to privacy, property, health, due process and family life, and social and economic rights, including the right to work; and (iv) non-discrimination based on any protected attribute under international human rights law, which relevantly include political opinion and religious belief.

Freedom of thought, conscience and religion

We emphasise that article 18 of the ICCPR provides that: "[e]veryone 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." General Comment No. 22 of the Human Rights Committee emphasises that article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to *manifest* religion or belief. The article is interpreted to unconditionally protect freedom of thought and conscience, and the freedom to have or adopt a religion or belief of one's choice. The Committee further reiterated that "article 18(3) permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others." The Committee observed that article 18(3) is to be strictly interpreted and that restrictions are not allowed on unspecified grounds even if circumstances where they would be permitted as restrictions to other rights protected in the ICCPR.

Freedom of opinion and expression

Article 19 of the ICCPR guarantees the right to freedom of opinion and the right to freedom of expression, which includes the right "to seek, receive and impart information and ideas of all kinds, either orally, in writing or in print, in the form of art, or through any other media". This right applies online as well as offline and protects the freedom of the press as one of its core elements. Any restriction to the right to freedom of expression must be "provided by law" and meet the criteria established by international human rights standards. Under these standards, limitations must conform to the strict test of necessity and proportionality, must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated.

[16] https://www.ohchr.org/sites/default/files/Documents/Issues/Terrorism/ApplicablWatchlisting.docx.

In its general comment No. 34, the Human Rights Committee stated that States parties to the ICCPR are required to guarantee the right to freedom of expression, including "political discourse, commentary on one's own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse" (CCPR/C/GC/34, para. 11). The Committee further asserts that States Parties to the ICCPR "shall put in place effective measures to protect against attacks aimed at silencing those who exercise their right to freedom of expression" (para. 23). Recognizing how journalists and those engaged in collecting and analysing information on the human rights situation and publishing human rights-related reports are frequently subjected to threats, intimidation and attacks because of their activities, the Committee stresses that "all such attacks should be vigorously investigated in a timely fashion, and the perpetrators prosecuted, and the victims be in receipt of appropriate forms of redress" (para. 23).

In her report on "Journalists in Exile" (A/HRC/56/53), the Special Rapporteur on freedom of opinion and expression analysed in detail the phenomenon of journalists in exile, outline their challenges and needs and called on States to refrain from committing, co-opting or condoning acts of transnational repression, online or offline, and ensure that all acts of transnational repression on their territory are investigated and prosecuted promptly, fully and effectively. The Special Rapporteur urged States to further ensure that all journalists in their jurisdiction, regardless of their legal status, are protected from violence, threats and harassment, to establish clear legal pathways for journalists at risk to leave their countries if necessary and to reside abroad with the right to work until they can return home safely. This report also called on States to adopt new laws or review and revise national laws, including foreign State immunity laws, with the purpose of enabling individuals affected by transnational repression to seek legal remedies in national courts and allowing for the prosecution of the perpetrators and facilitators of this repression.

We also refer to Human Rights Council resolution 51/9, on the safety of journalists, which condemns unequivocally all attacks, reprisals and violence against journalists and media workers, including extraterritorial targeting, and calls upon States to "establish prevention mechanisms, such as an early warning and rapid response mechanism, and to give journalists and media workers, when threatened, immediate access to authorities that are competent and adequately resourced to provide effective protective measures" as well as "to ensure accountability through the conduct of impartial, prompt, thorough, independent and effective investigations into all alleged cases of violence, threats and attacks against journalists and media workers falling within their jurisdiction" and "to develop and implement strategies for combating impunity for attacks and violence against journalists".

Freedoms of peaceful assembly and association

We also recall article 21 of the ICCPR, which recognises that the right to freedom of peaceful assembly should be enjoyed by everyone, as provided for by article 2 of the ICCPR and resolutions 15/21, 21/16 and 24/5 of the Human Rights Council. In its resolution 24/5, the Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely,

online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs and human rights defenders.[17]

We also recall that article 22 of the ICCPR protects the right to freedom of association, which guarantees the rights of everyone to associate with others and to pursue common interests. Freedom of association is closely linked to the rights to freedom of expression and peaceful assembly; it is of fundamental importance to the functioning of democratic societies and can only be limited through necessary and proportionate restrictions that serve a legitimate public purpose that is consistent with international standards. The Human Rights Committee has further affirmed that recognition of the right of peaceful assembly imposes a corresponding obligation on States parties to respect and ensure its exercise without discrimination.[18]

Right to privacy

Furthermore, we would like to refer your Excellency's Government to article 17 of the ICCPR, which provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on honour and reputation, and that everyone has the right to protection of the law against such interference or attacks. Further, in its general comment No. 16 in relation to article 17, the Human Rights Committee asserted that surveillance, whether electronic or otherwise, should ordinarily be prohibited.

Due process and fair trial guarantees

We also wish to bring to the attention of your Excellency's Government article 14 of the ICCPR, which enshrines the right to a fair trial and due process. In particular, article 14 (1) of the ICCPR sets out a general guarantee of equality before courts and tribunals and the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law. In addition, article 14 (3) of the ICCPR guarantees the right of any individual charged with a criminal offence to have adequate time and facilities for the preparation of their defence, to communicate with counsel of their own choosing, and to be tried without undue delay.

Human Rights Defenders

We would also like to refer your Excellency's Government to the fundamental principles set forth in 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 (the UN Declaration on Human Rights Defenders). In particular, we refer to articles 1 and 2 of the Declaration, which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels, and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. We also wish to refer to articles 5(a), 6(c), 9 and 12, which state that everyone has the right, individually and in association with others, to meet or assemble peacefully for the purpose of promoting and protecting human rights; to study,

[17] A/HRC/26/29, para. 22.
[18] CCPR/C/GC/37, para. 8.

discuss, form or hold opinions on the observance of all human rights and fundamental freedoms; to draw public attention to these matters; to benefit from an effective remedy and be protected in the event of the violation of these rights; and to participate in peaceful activities against violations of human rights and fundamental freedoms. We would also like to refer to Human Rights Council Resolution 13/13, which urges States to put an end to and take concrete steps to prevent threats, harassment, violence and attacks by States and non-State actors against all those engaged in the promotion and protection of human rights and fundamental freedoms.

Arbitrary detention

Article 9 of the ICCPR prohibits arbitrary detention. Specifically, it establishes that no one shall be deprived of his or her liberty (unless it is in accordance with appropriate laws), and that anyone who is arrested shall be brought promptly before a judge or officer authorized by law to exercise judicial power, and that anyone arrested shall be entitled to trial within a reasonable time. Pre-trial detention should thus be the exception rather than the rule (general comment No. 35, para. 38). A person may only be deprived of liberty in accordance with national laws and procedural safeguards governing detention (including in relation to arrest and search warrants), and where the detention is not otherwise arbitrary. In this respect, deprivation of liberty resulting from the exercise of the rights or freedoms guaranteed by the ICCPR is considered arbitrary (general comment No. 35, para. 17).

Torture or inhuman or degrading treatment or punishment

The prohibition on torture and cruel, inhuman or degrading treatment or punishment is absolute and non-derogable (UDHR article 5; ICCPR article 7 and 2 (3); Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) articles 1, 2, 15 and 16). States parties to the CAT must establish all acts of torture as offences under domestic law (article 4), exercise jurisdiction over said offences (article 5), receive complaints and examine them promptly and impartially (article 13), and investigate those allegations promptly and impartially (article 12). At no time shall torture be used to extract information or a confession (article 1), and any statement which has been obtained via such methods shall be excluded from any proceedings except against a person accused of torture as evidence that the statement was made (article 15). Victims are to be protected from reprisals or intimidation during said investigations (article 13) and they have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible (article 14). States party to the CAT have overarching obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment via effective legislative, administrative, judicial and other measures (articles 2 and 16), to educate and train relevant personnel on the prohibition (article 10) and to keep all rules, instructions, methods and practices relating to interrogation, custody and treatment under systematic review (article 11).

The standards of conditions and treatment of persons deprived of their liberty are contained in the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), which establish that all prisoners shall be treated with dignity and no prisoner shall be subjected to torture or other cruel, inhuman or degrading

treatment or punishment.[19] Prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment (General Assembly Resolution 79/209, para. 18); prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 of the ICCPR (general comment No. 20, para. 6). Furthermore, under CAT there is an obligation to prevent acts of torture and ill-treatment (article 2), to promptly and impartially investigate allegations (article 12), and to prosecute those responsible (articles 4 and 5).

Absolute prohibition of enforced disappearances

Enforced disappearance is prohibited under both international human rights and humanitarian law, and such a prohibition, along with the corresponding obligation to investigate enforced disappearance, has attained the status of jus cogens. According to the UN Declaration on the Protection of all Persons from Enforced Disappearance, States shall not practice, permit or tolerate enforced disappearances (article 2) and that no circumstances whatsoever, including the state of war can justify enforced disappearances (article 7).

The Declaration also proclaims that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction. In particular, the Working Group on Enforced or Involuntary Disappearances recalls that the Declaration sets out the necessary protection by the State, in particular articles 9, 10, 11 and 12, which relate to the rights to a prompt and effective judicial remedy to determine the whereabouts of persons deprived of their liberty; to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons. Article 13 also stipulates that steps shall be taken to ensure that all involved in the investigation, including the complainant, relatives, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.

Enforced disappearance, which, under certain circumstances, may amount to a crime against humanity, entails violations of articles 6, 7, 9, 10 and 16, read alone and in conjunction with article 2(3), of the ICCPR with regard to the disappeared person and of article 7, read alone and in conjunction with article 2(3), of the ICCPR with regard to family members.

We would also like to bring to your attention the thematic study of the Working Group on Enforced or Involuntary Disappearances on “Enforced Disappearances in the Context of Transnational Transfers” (A/HRC/48/57), which analysed, *inter alia*, covert extraterritorial operations, including so-called extraordinary renditions. Irrespective of the nature of the procedure, in most cases the documented circumstances resulted in the violation of the non-refoulement obligations of the host State, including as enshrined in article 8 of the Declaration on the Protection of All Persons from Enforced

[19] See further A/HRC/55/52.

Disappearance. Such covert operations, often in cooperation with law enforcement and security agencies from host States, often result in arbitrary arrests, enforced disappearance, torture and other forms of ill-treatment aimed at obtaining their consent to voluntary return and extracting confessions that would inform criminal prosecution upon arrival in their country of origin. In some cases, such acts of transnational renditions appeared to directly contravene judicial orders against illegal deportation.