**Interface between International Human Rights and International Humanitarian Law in Counter-Terrorism Regulation**

**(The situation of Human Rights in Turkey)**

 **Submitted to:** Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

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* **Preamble**

**Maat for Peace, Development and Human Rights (Egypt)** considers the promotion and protection of human rights, as well as the rule of international humanitarian law, very crucial to all governments worldwide, which requires firm intervention by all countries of the world to take proactive measures to combat terrorism, in light of complying with their obligations under international law, especially human rights law, refugee law and international humanitarian law, as well as considering the competence of the relevant international and regional human rights monitoring bodies. Although **Maat** commends the efforts made to fight terrorism at both the regional and international levels, it would like to attract the attention towards the interrelationship between terrorism, counter-terrorism and the empowerment of human rights, which requires developing firmer and clearer frameworks through which the lines between these three terms can be delineated, in order to ensure adherence to international humanitarian law so that human rights can be promoted and protected.

Accordingly, **Maat** **for Peace** submits this report in order to clarify the interconnection between the rules of human rights and international humanitarian law, in the context of fighting terrorism. In this report, **Maat** points out the consequence of this interrelation between anti-terrorism legislation, and the consequent undermining of some basic rights and freedoms, which is exploited by some security authorities to undermine freedom of opinion and expression and silence opposition and critics of government policies. At last, this report attempts to highlight the key role that civil society organizations play in countering terrorism, and concludes with recommendations that would enhance the efforts made to combat terrorism around the world.

* **The interrelationship between human rights norms and international humanitarian law while countering terrorism**

The phenomenon of terrorism is as old as human history; however, there is no agreed-upon definition of terrorism, both at the academic and international levels. This is due to the different cultural structures, ideological factors, and explanatory theory related to the term. In other words, what is considered a terrorist act from the point of view of a particular country or a particular society does not have to be a terrorist act from the point of view of another country or another society. So, it can be defined idiomatically as an underlying method or theory, whose owners aim to achieve certain goals through an organized group or party by using violence and intimidation.[[1]](#footnote-1) It is worth noting that the first document included a definition of terrorism was the Geneva Convention for the Suppression and Punishment of Terrorism of 1973. It defined terrorism as: “all criminal acts directed against a State and intended or calculated to provoke a state of terror in the minds of particular persons or a group of persons or the general public.” The agreement specified the types of anti-state acts that are considered terrorist acts, such as attacking public officials or heads of state and their families or destroying public facilities.[[2]](#footnote-2)

In a related context, and with the recent increase of terrorist acts, there became an urgent need to reconcile the fight against terrorism with the obligation to promote human rights, in light of international humanitarian law. As terrorism, its actions, methods and practices in all its forms and manifestations may undermine human rights and fundamental freedoms. Moreover, it may pose a direct threat to governments, or governments may use it as an excuse to silence opposition and critics of their policies. Terrorism impacts on political and civil rights are most reflected in violating the right to life and physical integrity, through reprisals undertaken by terrorist armed groups against civilians, all of this in addition to the impact of terrorism on all kinds of economic, social and political rights. Accordingly, another problem emerged, which is reconciling taking the necessary measures to combat terrorism and the commitment to enabling the human rights of citizens, in light of the international commitment to combat terrorism in accordance with the requirements of international humanitarian law, which permits the use of force and violence in limited cases, namely for members of the Armed forces, in accordance with the principle of discrimination, which discriminates, in all circumstances, between combatants and non-combatants and between military and civilian targets.[[3]](#footnote-3)

In the same context, the impact of terrorism on human rights norms is considered to be a dual effect, and it does not only reflected by the violent actions of terrorist groups against individuals and institutions, but also may be reflected in other indirect ways through leveraging governments to adopt policies and measures that go beyond what the rules of international law can permit, such as repressive and illegal measures that violate the rights of citizens and accused, which of course contributes to undermining human rights and fundamental freedoms. Most United Nations and Security Council resolutions have stressed the importance of awareness and balance between anti-terrorism policies in light of respecting human rights, in order to prevent the violation of human rights in some countries under the pretexts of fighting terrorism. Therefore, **Maat for Peace** calls on all states to put in place UN General Assembly Resolution 60/158/2005, which sets out the basic framework for protecting human rights and fundamental freedoms while countering terrorism, in addition to the need to fully align with the principles of human rights as justified in the Universal Declaration of Human Rights, the two International Covenants, and all international instruments relevant to human rights.

* **Violation of human rights while countering terrorism by the security authorities**

The State of **Qatar** has consistently denied any role in supporting and financing terrorist and extremist groups, while hosting militant leaders of the blacklisted Muslim Brotherhood – designated as a terrorist organization- and providing them with amenities, finance, and media platforms so that they can promote hate speech and extremism, which is a clear contradiction to the Laws. In July 2017, the Emir of Qatar, Sheikh Tamim bin Hamad Al Thani, issued a decree to amend the anti-terrorism law passed in 2004. The amendment includes putting a clear definition for terrorists and introducing the system of two national lists of individuals and terrorist entities. This decree is issued few days after signing an agreement on "combating the financing of terrorism" between the United States and Qatar. The decree aims to refute the accusation of Arab countries to Doha of supporting terrorism. Besides, the decree that constitutes an amendment to the anti-terrorism law and dates back to 2004, does not clarify any details about the criteria for defining terrorism nor the procedures of blacklisting any persons or organizations. Accordingly, **Maat for Peace, Development and Human Rights** calls on the Qatari government to make local anti-terrorism legislation compatible with international standards, especially with regard to defining terrorism and the duration of detention and pre-trial detention.

In **Turkey**, the authorities are still continuing their systematic and arbitrary campaign against the Turkish people, including the repression of fundamental freedoms and rights under the umbrella of the anti-terrorism law that was passed in 2018 after the continuation of the state of emergency in the country for two years in the wake of July 2016 attempted coup. Turkey continues to shut down thousands of different educational, health and services institutions under the pretext of receiving finance from terrorist organizations, in addition to blocking hundreds of thousands of opposition websites. Additionally, many workers in the field of human rights and press have been prosecuted and arrested over alleged terrorism charges. It is noteworthy that terrorism-related charges are punished with harsh and sometimes extreme penalties, such as life imprisonment, according to the new anti-terror law.

The terrorism law allows the Turkish security services to enjoy wide powers outside the legislative and judicial control that are used to crackdown demonstrations and protests and constrict the formation of social associations and civil society activities, in addition to arresting opinion activists and opposition groups over alleged links to terrorist organizations. A number of deaths cases have been registered in Turkish prisons. Although the Turkish authorities claim that suicide was the cause of their deaths, it turned out that most of them were exposed to severe torture; both physically and psychologically, all this in light of the impunity for the perpetrators of these crimes.

The Turkish anti-terror law violates all international covenants and treaties signed by Turkey that guarantee the protection of the basic rights of Turkish citizens in addition to the Turkish constitution. Not only governors have been extended the power to prohibit the entry and exit of specific persons into and from specific places in a city for 15 days, they have also been given the authority to declare curfews and ban vehicles to go out in traffic without a time limit at certain places and times. This merely signifies the authority to declare a curfew on one’s own[[4]](#footnote-4), which violates Article 23 of the Turkish Constitution, which grants individuals freedom of residence and movement.[[5]](#footnote-5)

On the other hand, the authority to perform preventive search has been extended to the gendarmerie and police officers without a judge’s ruling to that effect in military locations, in violation to Article 20 of the Turkish Constitution, which protects the privacy of private and family life in Turkey. The law, moreover, states that the period of detention can be extended to a total of 12 days through 4-day extensions by a judge’s ruling, which violates Article 19 of the Turkish Constitution, which calls for non-extension of a maximum period of no more than four days.[[6]](#footnote-6)

The law also increases the time period for pre-trial detention reviews to take place from 30 to 90 days, and the law also gives the Turkish government the authority to continue the practice of arbitrary dismissal of judges and other public sector employees believed to be linked to terrorist organizations, which undermine judicial independence and politicize the court.

Also, the fact that the law contains broad and vague terms puts everyone who opposes the authorities at risk of prosecution without any evidence of criminal acts[[7]](#footnote-7), which is a violation of articles 19, 23 and 34 of the Turkish constitution, which stipulates the need to guarantee personal freedom and security and the right to a fair trial to Turkish citizens[[8]](#footnote-8). In this context, the law allows the imposition of restrictions on freedom of movement and the right to peaceful assembly in Turkish legislation by amending Article 6/2 of the Law of gatherings and Demonstrations, in a way that restricts rights and freedoms[[9]](#footnote-9). This law caused many violations to human rights, including the following:

**Restricting the freedom of journalists:**

 The Turkish government passed a decision on December 1, 2019 to cancel the press cards of 685 journalists for allegedly posing a threat to Turkish national security[[10]](#footnote-10). It also stormed the home of female journalist and human rights defender, "Nurkan Besal" on October 19 in the southeastern province of Diyarbakir. It is north mentioning that storming of the citizens' houses without judicial permission is done according to the terrorism law.[[11]](#footnote-11)

This comes in conjunction with the politicization of the judiciary and its exploitation as a tool to prosecute opposition, human rights activists and journalists, over alleged terrorism-related charges. A Turkish court issued on December 29, 2019 a decision to imprison six journalists and an accountant working for the Turkish "Suzgo" opposition newspaper over terrorism-related charges and provide assistance to the Fethullah Gülen movement. Among the convicts were the two prominent writers, Amine Kulasan and Najati Dugro, who were sentenced to 3 years in prison, while the rest of journalists handed down sentences ranging from two to three years. On November 12, 2019, journalist and novelist Ahmed Altan was re-arrested over terrorism-related charges[[12]](#footnote-12), clearly indicating that the Turkish judiciary is being used as a tool to abuse opposition. It is worth noting that there are more than 120 journalists locked inside the Turkish prisons, most of whom are accused of terrorism- related charges[[13]](#footnote-13). In this context, Gaziantep Province banned all kinds of demonstrations and gatherings throughout the province for 15 days on December 1, 2019[[14]](#footnote-14), under the pretext of maintaining public security.

As to **arbitrary arrests**, on January 18, 2020[[15]](#footnote-15), the Turkish government issued a decision to arrest 176 soldiers on suspicion of providing support for the service movement. This, in addition to the arbitrary arrests of Kurdish mayors, including Azim Yacan, mayor of Ipekyolu in the southeastern province of Van, along with his deputy, Shahzadeh Kurt, on charges of belonging to the PKK, on ​​November 8, 2019.[[16]](#footnote-16)

In this context, on June 5, 2020, the Turkish government arrested three opposition MPs after the parliament dropped their membership, from the Republican People's Party and the People's Democratic Party, which are parties opposed to the policies of the ruling party in Turkey. This comes against the background of these MPs criticizing the policies of the Turkish president in Parliament, which led to their dismissal and detention[[17]](#footnote-17). According to the Turkish Ministry of Justice, the number of prisoners or detainees held for terrorism-related charges reached 48,924, out of 246,426 prisoners. And in addition to the very long prison terms for terrorism-related charges, the Turkish constitution loose and vague articles are constantly used by the Turkish authorities to restrict freedoms, shutdown newspapers and magazines, and arbitrarily arrest dissidents.[[18]](#footnote-18)

* **The role of civil society organizations in combating terrorism**

Civil society organizations play a major role in combating terrorism, and various international documents have emphasized the importance of the role played by civil society in countering complex and multidimensional terrorist challenges, as these organizations play an important consultative and educational role, by developing various political and specialized strategies to counter-terrorism. These are roles that governments may not be able to play, as civil society organizations have the ability to study terrorism and security issues and confront government officials with appropriate methods and tools. Besides, these organizations can take positive steps to approach governments through some influential officials, and these institutions can also play a positive advisory role to replace countering-terrorism programs that did not prove any success, as well as the ability to perform extremely important communication functions and tasks, as well as its ability to play a fundamental role in developing beliefs and ideas necessary for an effective and permanent communication system, which can reduce distances, bridge the gap and reduce existing conflicts by providing an appropriate and safe environment for clarifying beliefs, discussing differences and benefiting from personal experiences.[[19]](#footnote-19)

In a related context, civil society can play a very important research and support role. Initially, it is important for civil society to condemn all types of violence against civilians, whatever the reasons are. Here, civil society organizations must write open messages, statements and letters to armed groups, condemning terrorist methods, and affirming the trends, the ethical issues, and the applications of human rights balances. Civil society activities and organizations are also important in dealing with the media and directing public opinion towards the phenomenon of terrorism, and its danger to society as a whole.[[20]](#footnote-20)

* **Recommendations**
* The necessity to follow the diplomacy of "prevention is better than cure", by digging out the roots of terrorism and combating it with pre-emptive plans and measures, which requires activating the elements of sustainable development through the development of medium and long-term development plans by governments to work to eliminate basic and fundamental causes of terrorism.
* The growing interest in education and culture, and working hard to raise the culture and awareness of peoples; which is the key reason behind a large percentage of extremism and terrorism, as terrorist groups exploit the ignorance of its followers, which requires governments to take advantage of their media and cultural platforms in order to draw a clearer, and more informed picture of the collective mind of their peoples.
* The need to pressure the Turkish authorities to amend the Turkish law and its broad terms that do not protect against arbitrary interference, especially articles 6 and 7 of the Turkish Anti-Terror Law, and articles 215 and 216 of the Turkish Criminal Code.
* The international community needs to pressure the Turkish government to respect the provisions of the International Covenant on Civil and Political Rights and to abide by its provisions; especially what is stated in the second paragraph of Article 19, which stipulates the right to freedom of expression in any form, whether written or printed, in artistic form or by any other means, and the tight to receive or transfer it to individuals.
* The Qatari government must stop supporting and supporting terrorist groups, and amend the terrorism law to bring it in line with international agreements and covenants
1. عصام سليمان، الحرب على الارهاب و القانون الدولي الانساني، جريدة الدفاع الوطنى اللبنانى. <https://cutt.us/bVPrF> [↑](#footnote-ref-1)
2. المكتبة الرقمية العالمية، اتفاقية لمنع الإرهاب والمعاقبة عليه. <https://cutt.us/JdUxz> [↑](#footnote-ref-2)
3. الجمعية العامة للأمم المتحدة، تعزيز حقوق الإنسان وحمايتها: مسائل حقوق الإنسان، بما فى ذلك النهج البديلة لتحسين التمتع الفعلى بحقوق الإنسان والحريات الأساسية. <https://cutt.us/rR3X3> [↑](#footnote-ref-3)
4. Kanun No. 7145 . <http://bit.ly/2TM3SIs> [↑](#footnote-ref-4)
5. Turkey's Constitution of 1982with Amendments through2017 . <http://bit.ly/3auBu3l> [↑](#footnote-ref-5)
6. IHD’s VIEWS REGARDING LAW NO. 7145 REGULATING PERMANENT STATE OF EMERGENCY . <http://bit.ly/2Rf0jc2> [↑](#footnote-ref-6)
7. مرجع سبق ذكره [↑](#footnote-ref-7)
8. مرجع سبق ذكره [↑](#footnote-ref-8)
9. مرجع سبق ذكره [↑](#footnote-ref-9)
10. تركيا تلغي تراخيص 685 صحافياً لـ"تهديدهم الأمن القومي" ، العربية نت ، <http://bit.ly/37jafHc> [↑](#footnote-ref-10)
11. **بالأسماء.. صحافيون ومعارضون اختفوا بظروف غامضة في تركيا** ، العربية ، <http://bit.ly/30PXDVx> [↑](#footnote-ref-11)
12. ماعت" تطالب السلطات التركية بالإفراج الفوري عن الصحفيين ، الأهرام ، <http://bit.ly/2NZdrAj> [↑](#footnote-ref-12)
13. الاتحاد الأوروبي يندد بإعادة اعتقال الصحافي التركي أحمد ألتان ، فرنسا 24 ، <http://bit.ly/2NKOyYJ> [↑](#footnote-ref-13)
14. حظر التظاهر 15 يومًا في محافظة غازي عنتاب التركية ، تركيا الأن ، <http://bit.ly/36th0G8> [↑](#footnote-ref-14)
15. أردوغان يواصل انتهاكاته.. حملة للقبض على ضباط بالجيش بتهمة الانتماء للمعارضة ، <http://bit.ly/30PZVnB> [↑](#footnote-ref-15)
16. السلطات التركية تعتقل رئيس بلدية ونائبته بتهمة الانتماء لحزب العمال الكردستاني ، مورنت كارلو الدولية ، <http://bit.ly/2sN3XR4> [↑](#footnote-ref-16)
17. تركيا اعتقال 3 نواب معارضين بعد إسقاط عضويتهم، العربية نت ، يونيو 2020 ، <https://bit.ly/3eqOCbl> [↑](#footnote-ref-17)
18. مركز بروكسل الدولي للبحوث: انتهاكات أردوغان لحقوق الإنسان مريعة، حفريات، 6 فبراير 2020. <https://cutt.us/ZYAPJ> [↑](#footnote-ref-18)
19. دور منظمات المجتمع المدني في مکافحة ‌الإرهاب، المركز العربى الأوروبى لحقوق الإنسان، 17 ديسمبر 2018. <https://cutt.us/mKAsH> [↑](#footnote-ref-19)
20. نفس المصدر السابق ذكره [↑](#footnote-ref-20)