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Briefing

TURKEY POST-REFERENDUM: INSTITUTIONS AND HUMAN RIGHTS

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Non-state Institutions: Civil Society & the Media in Turkey

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Introduction

Chairman Wicker, Co-Chairman Smith, Co-Chairmen McGovern and Hultgren, and members of the Helsinki and Lantos Commissions, it is an honor to join you today.

I'll be speaking today about non-state institutions in Turkey. At Freedom House, and on the project I direct, Nations in Transit, we use a “thick” definition of democracy, as opposed to a “thin” or minimalist definition. A thick definition means we consider democracy to be not just elections. It is the product of intermeshed but functionally independent institutions: both elected and non-elected state institutions, like national and local governments and judiciaries, and non-state institutions, like the media and civil society.

Today I will, focus on the non-state institutions of media and civil society, and how they have been subordinated to the agenda of the Justice and Development Party or AKP, and particularly President Recep Tayyip Erdoğan, in Turkey over the last several years.

The Media

The crackdown on the press in Turkey has received intense international attention for several years, and for good reason. Turkey's media was vulnerable since long before the AKP won its first parliamentary majority in 2002. This was both on the legal side, with weak protections & overbroad legislation, especially concerning antiterror legislation, and on the financial side, with media owners dependent on government contracts and vulnerable to pressure.

The AKP and Erdoğan took full advantage of these vulnerabilities. By the time the Gezi Park protests started in May 2013, they had consolidated their control over the mainstream media. Most mainstream

outlets had been transferred to more supportive owners and become ardently progovernment. The country's most influential media company was forced to sell two of its most important assets to a government-friendly owner in order to settle politically motivated tax investigations. When social media and internet organizing revealed themselves as surprisingly powerful tools in protests in 2011 and 2013, the government moved first to control and then to co-opt these tools as well.

Many journalists were also imprisoned, mostly those working for left-wing and Kurdish nationalist publications. The Committee to Protect Journalists recorded 40 journalists in prison in Turkey in December 2013. Taking all these factors into account, Freedom House downgraded Turkey to "Not Free" in *Freedom of the Press 2014*.

Yet for all that alarm bells were ringing at that time, the deterioration since 2013 has still been extraordinary. After the AKP fell out with its former allies in the Gülen movement in December 2013, the crackdown widened to include the movement's affiliated outlets, which were once reliably pro-AKP. The government took over a series of Gülen-affiliated outlets and began using the Gülen movement as a pretext to attack other journalists. Foreign journalists started to have press credentials denied, be harassed by security services, or even to be deported from the country.

What had been already a remarkably severe crackdown on the press took on a scorched earth quality after the July 15, 2016 coup attempt. Using the powers granted by the post-coup state of emergency—which is still in effect—the government has closed and expropriated the assets of more than 150 media outlets, including TV stations, news agencies, magazines, newspapers, publishing houses, and radio stations. Two more newspapers were closed in a new emergency order this weekend. CPJ as of December counted 81 journalists in prison, while local monitor P24 puts the number at 141. The impact has been the total evisceration of the media sector, as dozens of well known journalists are in prison or in exile, and those who continue to work fear every day that they could be targeted.

What remains of the media that is not under government control is either crippled and self-censoring, or marginal and unable to cultivate a broader audience. The Doğan Group's flagships, the newspaper *Hürriyet* and the TV channel CNNTürk, are self-censored by editors who fear any controversy could land them or their owner in more legal trouble. The country's oldest newspaper *Cumhuriyet* is still open, but its former editor Can Dündar is in exile and its current editor and ten other staff members are in jail. Far-left and hard-nationalist minor outlets like *Evrensel* and *Aydınlık* have grown in influence as journalists

and readers have been driven out from the mainstream, but the resources and the ideological positions of outlets like these mean they are in no way able to replace the reach of mainstream media.

This denuded landscape leaves enormous swathes of stories uncovered, or covered only within the framework preferred by the government: things like official, especially high-level, corruption; the state of the economy; the war with the PKK; Islamist radicalization and recruitment; and of course, the coup attempt and the purge themselves.

Civil Society and Freedom of Association

The situation for civil society is also dire in Turkey. The formal civil society sector, meaning NGOs, think tanks, and professional activist groups, has suffered from the same stifling legal environment affecting the media, and now is caught in the deterioration caused by the war with the Kurdistan Workers' Party (PKK), the collapse of the Gülen-AKP alliance, and the coup attempt. As has been the case throughout Turkey's history, the gravest threats have been against leftist and Kurdish groups, and against human rights groups and activists working in defense of the rights of ethnic, religious, and sexual minorities. Tahir Elçi, the chairman of the Diyarbakır Bar Association and one of Turkey's most prominent human rights defenders, was murdered in public in Diyarbakır in November 2015 under unclear circumstances that still lack proper investigation. At the time he was killed, he was facing charges for disseminating "terrorist propaganda" by criticizing the conduct of the war against the PKK. In 2016 and well before the coup attempt, the President of the Human Rights Foundation of Turkey, Şebnem Korur Fincancı, was detained along with the Turkish representative of Reporters sans Frontières Erol Önderoğlu and several dozen others for participating in a solidarity campaign with a Kurdish nationalist newspaper. Their trial has not concluded.

Like with the media, the government has been using the coup attempt as a pretext to purge the civic sector. More than one thousand associations have been closed by emergency orders after the coup attempt, many of them obscure and completely non-political groups. Among the closed organizations were two prominent lawyers' groups that handled human rights cases, the Progressive Lawyers' Association and Liberal Lawyers' Association. Four hundred and eleven lawyers are currently under arrest. The conservative Islamic human rights organization MazlumDer has ousted its longtime leader, Ahmet Faruk Unsal, over disagreements on whether to report on state violations of human rights in the southeast or only on the PKK's crimes, and a new, more progovernment leader is now in charge.

In addition, several prominent human rights defenders have been directly targeted recently, either in relation to the coup attempt or to the fighting with the PKK in the southeast. Orhan Kemal Cengiz, a well known human rights lawyer who also acted as the lawyer for *Zaman* after its closure in 2016, is under indictment along with dozens of journalists for supposedly being a member of the Gülen movement, which the government has designated a terrorist organization. The indictment gives as evidence of his crime only the fact that he wrote columns for a Gülen-affiliated publication. Muhammed Erbey, the former chair of the Diyarbakır branch of the Human Rights Association (IHD), was sentenced in March to six years in prison for being a member of an illegal organization. Raci Bilici, the current chair of the IHD, was detained for a week in March and is under investigation for relations with the PKK. The Cizre representative of the Human Rights Foundation of Turkey, Dr. Serdar Kuni, has been convicted of aiding an armed group for performing his duties as a physician during the fighting in that city last year.

Conclusion

What, then, does the presidential referendum mean for Turkey's non-state institutions of the media and civil society? In a direct legal sense, not much. The vulnerabilities of media and civil society before the referendum -- in the constitution, in legislation, and through the post-coup attempt state of emergency that remains in effect -- are the same as before. The constitution did not address fundamental rights in these ways. But there is very little in terms of domestic law and its traditional application that has constrained the Turkish state in its ability to circumscribe fundamental freedoms.

In the indirect legal sense, however, the referendum means a lot. The weakening of the independence of the judiciary undermines the rule of law, which leaves the media and civil society, like ordinary citizens, more vulnerable to arbitrary abuses of power. As we have been seeing under the state of emergency, when there is no check on executive authority, media and civil society will suffer gravely.

The political ramifications of the referendum are even greater. To return to the original distinction I made at the beginning of my remarks between thick and thin democracy, President Erdoğan and his supporters have an extremely "thin" conception of democracy. They define democracy as voting and nothing else, even to the point of disregarding the conditions under which voting occurs, or if there are consistent rules of the game for voting. Erdoğan and those who support him do not see media and civil society as independent institutions that should be respected and protected. They see them either as threats, or as means to strengthen their control of the state and the society. With such a thin definition of democracy now in full ascendance in Turkey, the future for media and civil society is grim.