**Written submission from the Journalists and Writers Foundation**

**to the Thematic Report of the UN Special Rapporteur on the Human Rights of Migrants**

**to be submitted to the 44th session of the Human Rights Council, in June 2020**

**The Right to Freedom of Association of Migrants**

1. **Introduction**

The present contribution is respectfully submitted pursuant to the call for submissions from the United Nations Special Rapporteur on the human rights of migrants.

The JournalistsandWriters Foundation (JWF) is a New York based civil society organization dedicated to globally advancing peace, human rights and sustainable development. The Journalists and Writers Foundations held a general consultative status at the United Nations, until April 2017. Since November 14, 2019, the Journalists and Writers Foundation is an accredited NGO with the United Nations Department of Global Communications (UN DGC).

The Journalists and Writers Foundation has extensive experience with the United Nations human rights system, *inter alia*, in interventions before the Human Rights Council (Universal Periodic Review), UN treaty and other bodies, including the Human Rights Committee, CEDAW, the Committee against Torture, the Committee on Enforced Disappearances, the Committee on the Rights of Persons with Disabilities, the Working Group on Arbitrary Detention, the Working Group on Enforced and Involuntary Disappearances, the Special Rapporteur against Torture / other treaty bodies and special procedures of the Human Rights Council.

1. **Legislation or policies that guarantee the right to freedom of association of migrants.**

The Law No. 6356 on Trade Unions and Collective Labor Agreements was published in the Official Gazette on November 7, 2012. The law regulates the procedures and principles regarding the establishment, management, operation, inspection, running and organization of employee and employer's unions and confederations.[[1]](#footnote-1) Law No. 6356 replaced the provisions of the previous Trade Union Law No. 2821 and Collective Bargaining, Strike and Lock-out Law No. 2822.

Law No. 6356 on Trade Unions and Collective Labor Agreements was adopted taking into account several of the standards set forth by the European Union and the International Labor Organization. According to the Government of Turkey, Law No. 6356 also facilitated the establishment of trade union and “the condition for founders of trade unions to have Turkish citizenship is removed.”[[2]](#footnote-2)

1. **Restrictions or limitations in law or in practice on the right to freedom of association of migrants (e.g., legal restrictions on migrants’ ability to join or form organizations, associations or trade unions; practical cultural, linguistic, or discrimination barriers to migrants’ ability to organize).**

A. Legal restrictions on the freedom of association of migrants

The International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families was signed by the Republic of Turkey on January 13, 1999 and entered into force on September 27, 2004. Article 40 of the Convention provides for the right of association of migrant workers, as follows: “*Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests. No restrictions may be placed on the exercise of this right other than those that are prescribed by law and are necessary in a democratic society in the interests of national security, public order (ordre public) or the protection of the rights and freedoms of others*.”

In 2004, at the time of the ratification of this important international instrument, Turkey made a reservation specifically restricting the freedom of association for migrants. The reservation states that, “*The Turkish Law on Trade Unions allows only the Turkish citizens to form trade unions in Turkey.”* This reservation in practice legally restricted the migrants’ ability to join or form organizations, associations or trade unions.

In its initial report on the implementation of the Convention of Migrant Workers, contained in document CMW/C/TUR/1, the Government of Turkey informs that, “*With the Law on Trade Unions and Collective Labor Agreements No. 6356, formation of trade union organs and procedures for the establishment of trade unions are facilitated and the condition for founders of trade unions to have Turkish citizenship is removed. After this development, Turkey is considering [to] withdraw its reservation for Article 40*.”

In paragraphs 71 and 72 of its Concluding Observations, contained in document CMW/C/TUR/CO/1, the Migrant Workers Committee “*welcomed the fact that the 2012 Trade Unions and Collective Labour Agreements Act provides that foreign migrant workers may form associations and trade unions*.” The Committee expressed, however, concern that the State party maintained a reservation to article 40 of the Convention. The Committee recommended that the State party (Turkey) “*Withdraw its reservation to article 40 of the Convention, as the delegation indicated it would during the dialogue with the Committee, given that the Trade Unions Act, which restricted the right to form trade unions in the State party to citizens only, has been repealed*.”

The specific reservation of Turkey on Article 40 of the Convention however, directly related to the right of association of migrants, has not been lifted.[[3]](#footnote-3)

In addition, in its report on the implementation of the Convention of Migrant Workers, contained in document CMW/C/TUR/1, the Government of Turkey informs that “*Migrant workers and members of their families who are non-documented or in an irregular situation do not have the right to become a member of a trade union*.”

In paragraphs 61 and 62 of its Concluding Observations, contained in document CMW/C/TUR/CO/1, the Migrant Workers Committee expressed concern on the information provided by the State party stating that undocumented migrant workers do not have the right to join trade unions. The Committee recommended to the Government of Turkey to“*take all measures necessary, including legislative amendments, to guarantee all migrant workers, including those in an irregular situation, the right to take part in trade union activities and to join freely trade unions, in accordance with article 26 of the Convention*.”[[4]](#footnote-4) The State party (Turkey) has yet to comply with this recommendation.

B. The right to freedom of association in the aftermath of the 2016 attempted coup

Even before July 15, 2016, the legal framework contained numerous incompatibilities with international standards, with associations and foundations across Turkey facing a series of serious restrictions in their activity, as regards advocacy, international contacts, resources and the freedom of assembly.[[5]](#footnote-5) In March 2016, the government even proposed redefining Turkish anti-terrorism laws to include the activities of academics, journalists and NGO advocates, a move that threatened to permanently criminalize freedom of expression, freedom of association and academic freedom for literally anyone critical of the government.[[6]](#footnote-6)

In the aftermath of the attempted coup, thirty-two (32) arbitrary emergency decrees with a sweeping nature were issued during the two-year period of the state of emergency, and the post-coup measures. These emergencies decree-laws target in particular the alleged members or sympathizers of the Hizmet Movement, severely curtailing human rights and liberties, inter alia, on migrant workers. Two of the Decree laws however seem to directly target the freedom of association, including freedom of association of migrant workers in Turkey, as follow:

* Decree 678 of December 19, 2016 (39 articles) restricts the “right to strike” and amends the Law 6356 on Trade Unions and Collective Labor Agreements.[[7]](#footnote-7)

In its Article 35, Decree 678 of December 19, 2016 provides for the following restrictions to the Law 6356 on Trade Unions and Collective Labor Agreements: “The first paragraph of Article 63 of the Collective Bargaining Act has been amended as follows: (1) A legal strike or lockout that has been decided or started; If the general health or national security of the metropolitan municipalities disrupts the urban public transportation services, economic or financial stability in banking services, the Council of Ministers may postpone the strike and lockout for sixty days in this dispute. The delay period begins on the date of publication of the decision.”

* Decree 696 of December 24, 2017 (137 articles) is an omnibus legislation that, *inter alia*, amended the Law on Anti-Terror[[8]](#footnote-8); increases the number of members of the Supreme Courts,[[9]](#footnote-9) and also makes changes that impact the freedom of association. It also contains provisions to confiscate assets of the 29 closed trade unions.

Decree 696 of December 24, 2017 – Changes impacting the freedom of association

**ARTICLE 112-**Law 6356 on Trade Unions and Collective Labor Agreements of 10/18/2012 following additional items are added to the Act.

“ADDITIONAL ARTICLE 2- (1) The government is among the employers' trade unions and the trade unions confederations;

a) Public administrations in the tables (I), (II), (III) and (IV) attached to the Public Financial Management and Control Law No. 5018 dated 10/12/2003 , and institutions with revolving funds, funds established by law and Bail chests, other public institutions and organizations established by special laws, public institutions and organizations that carry out their services with the help of the transfer schemes of the general budget,

b) State-owned enterprises and their subsidiaries (excluding affiliates), together or separately, separate capital of more than 50% of all types of businesses and companies belonging to public institutions and organizations, 24/11/1994 dated and 4046 Privatization Practices Concerning under the Law More than 50% of the capital of public institutions within the scope of privatization or program,

c) special provincial administrations, municipalities and local authority associations of which they are members, municipal affiliates, institutions and businesses with them together or separately, separate companies that own more than 50% of the capital,

Public collective agreements framework agreement protocol can be signed to determine the financial and social rights of workers employed. The provisions of this protocol are binding for the administrations under this article and the trade unions that are members of the confederation within the validity period.”

**ARTICLE 113-** The following provisional article has been added to the Law No. 6356.

“PROVISIONAL ARTICLE 7- (1) Public administrations included in Schedules (I), (II), (III) and (IV) attached to the Law No. 5018, and the institutions with revolving funds attached to them, are attached to the Decree Law No. 375 (I). together with the administrations in the list or separately. More than half of its capital is from private provincial administrations, municipalities and affiliated companies, permanent workers, temporary workers or workers who have been transferred to the status of workers, in accordance with the provisional articles 23 and 24 of the Decree Law; Before the transition, the sub-employer, where the worker works, informs the Social Security Institution from the existing workplace in that line, and the different ones from the current workplace in the workplace, and the different workplaces to be registered in the workplace where the worker works before the transition.

(2) Each of the workplaces covered by the first paragraph is considered an independent workplace for the implementation of this Law.

(3) The workers notified from the newly registered workplaces within the scope of the first paragraph, to the Social Security Institution in accordance with the article 4, with the end of the collective agreement which was finalized by the Supreme Arbitration Board for the subcontractor workers before the transition process in the administrations within the scope of this article. reported.

(4) In the implementation of this article, other provisions of this Law contrary to this article shall not be applied.”

C. Terrorism-related charges for trade union membership

In its Opinion on emergency decree laws Nos 667-676 following the attempted coup of July 15, 2016, adopted at the 109th Plenary Session (December 9-10, 2016), the Venice Commission of the Council of Europe noted the following: “*The criteria used to assess the links of individuals to the Gülenist network have not been made public, at least not officially. The Venice Commission rapporteurs were informed that the dismissals are ordered on the basis of an evaluation of a combination of various criteria, such as, for example, […] being a manager or member of a trade union or association linked to Mr. Gülen*.”[[10]](#footnote-10)

While the criteria to dismiss and prosecute individuals on terrorism-related charges have not been yet made public, on September 3, 2016, the Daily Milliyet newspaper published[[11]](#footnote-11) a non-exhaustive “list of sixteen criteria” used to “guide” the dismissals from state functions and subsequent prosecutions. People “fitting” the criteria below in varying degrees are subjected to official processes and labelled as ‘terrorists’ – followed many times by their detention or arrest. According to the government the aim of preparing such a list was to “discern the guilty from the innocent.” One of the main criteria is the following: Being a member of Hizmet-related trade unions or associations.[[12]](#footnote-12)

The Venice Commission of the Council of Europe has already considered that the dismissals and the classification as members of terrorist organizations, because of trade union membership amounts to the violation of human rights. In its Opinion on emergency decree laws Nos 667-676, the Commission takes the view that, “[…] where a person is dismissed for professing a particular religion, expressing an opinion, belonging to a lawfully existing association or trade-union, or for sending children to a religious school, such action may be seen as an interference with the rights under Articles 9, 10, or 11 of the ECHR, or under Article 2 of Protocol no. 1 thereof, accordingly (and Article 14 in conjunction with these guarantees).”[[13]](#footnote-13)

Prior membership to former Aksiyon-Iş and Cihan-Sen trade unions in particular, is used by the Government of Turkey as “evidence” of terrorist links. The Cihan-Sen confederation had 22,104 members in July 2016, according to government data. A total of 18,015 of these members were under the roof of Aktif-Sen, another union in the confederation. Thousands of teachers have already been arrested and faced prosecution only because they were members of the Aksiyon-İş union.[[14]](#footnote-14)

In Annex 1, attached herewith we submit a copy of a confidential communication of May 2, 2018, signed by Nurcan Önder, director general at the Ministry of Labor acting on behalf of Labor Minister Zehra Zümrüt Selçuk. The communication is addressed to the Istanbul 33rdHigh Criminal Court and conveys the names of 29 trade union members duly registered before the attempted coup to become members of their union of choice under Law No. 6356 on Trade Unions and Collective Labor Agreements. In 2018, in the aftermath of the attempted coup, prior membership (from 2014 – 2016) of the closed trade unions is considered as evidence of terrorism against trade union members.[[15]](#footnote-15) This “evidence”, for prior membership to legally established and operating trade unions, has already used to sentence thousands of teachers and other professionals. In short, measures against trade union members have retroactively equated what have otherwise been legitimate and normal activities with terrorism, thereby effectively criminalizing freedom of expression, association and other important rights.[[16]](#footnote-16)

D. Restrictions on the freedom of association of Turkish migrant workers abroad

In its transnational repression efforts, using an expansive guilt by association approach, everyone with the slightest perception of association with the Hizmet Movement was designated by the Government of Turkey as member of a terrorist organization, in turn aggressively pursuing Turkish migrant workers perceived as affiliated with the Hizmet Movement around the world. They are all at imminent risk of arbitrary arrest and extradition, or abduction and transfer to Turkey. In particular teachers, Turkish migrant workers abroad face abuse, inhumane, and degrading treatment; precarious living, health, financial, economic conditions and other hardships; have their passports cancelled, their children born stateless, and scores face arbitrary deprivation of nationality.

With a view of achieving its goal in returning the dissidents to Turkey, where we all face arrest, prosecution and unfair trial, the Government of Turkey has used a variety of illegal means, including by uploading tens of thousands of requests for detention into INTERPOL, arbitrary deprivation of nationality (including to newborns), cancellation of passports for tens of thousands of individuals outside the country and denial of consular services (refusal to issue or renew passports and other documents). **Without identity or travel documents (sometimes with stripped citizenship), even under UNHCR protection, many individuals at risk, allegedly linked to the Hizmet Movement have become extremely vulnerable and an easier target for abduction and illegal transfer to Turkey – where they risk torture, ill-treatment and a real risk to their lives.**

Using a variety of illegal means the government of Turkey has managed to bring back over one hundred (100) Turkish migrant workers from abroad, based on its own accounts. At least forty (40) victims have been subject to abduction, kidnapped off the streets or from their homes all over the world, sometimes along with their family members, including children. They were subsequently illegally transferred to Turkey in private jets, charter flights or commercial flights. Most, if not all, of the victims unlawfully transferred to Turkey were refugees or registered asylum-seekers and prior have had residence permits. Conclusive evidence points out to the fact that most of them have been subjected to barbaric methods of torture upon “arrival” in Turkey and sometimes also in the sending state. At times they were even tortured *en route* to Turkey.

President **Erdoğan** of Turkey has proudly acknowledged direct responsibility for the abductions and illegal transfers of Turkish migrant workers from abroad. He and his government have also pledged more abductions and illegal transfer by Turkey’s National Intelligence Organization (MİT) all around the globe, including from Albania, Azerbaijan, Bulgaria, Cambodia, Gabon, Georgia, Indonesia, Malaysia, Moldova, Myanmar, Kazakhstan, Kosovo, Pakistan, Saudi Arabia, the Sudan, Turkmenistan, Ukraine and other countries. In September 2018, Turkey’s Presidential Spokesperson İbrahim Kalın clearly stated during a press conference that Turkey will continue abductions and illegal actions abroad, including in the United States, similar to the one in Kosovo (March 29, 2018).

Finally, some of the expulsions, deportations or otherwise illegal transfers of Turkish migrant workers abroad seem to have amounted to collective and mass expulsions.[[17]](#footnote-17) Article 22 of the Migrant Workers Convention and Article 13 of ICCPR aim to prevent arbitrary, collective and mass expulsions. Relevant provisions, which risk to be disregarded, further confirm that migrants residing in the territory of a state party have the right to submit reasons against expulsion and to have the decision reviewed by and to be represented before the competent authority or someone designated by it. A migrant worker must be given full facilities for pursuing his/her remedy against expulsion so that this right will in all the circumstances of his case be an effective one. Pending the eventual review by a higher court, the person concerned shall have the right to seek a stay of the decision of expulsion.

Many of these safeguards however have been completely disregarded by the countries of residence of Turkish migrant workers, upon request and at the behest of the government of the country of the origin, Turkey.

1. **Situation of civil society organizations (CSOs) and individuals working on migration and migrants’ rights and the impact of their work on the enjoyment of human rights of migrants**

Pursuant to Article 121 § 2 of the Constitution, the scope of the Government’s emergency powers is defined in the Law on the State of Emergency of 1983 (the 1983 Law). Articles 9 and 11 of the 1983 law contain a *catalogue,* a *closed* list of measures, which may be taken by the government in situations such as the attempted coup of July 2016. In particular, the 1983 Law does not provide for *permanent dissolution* of legal entities; Article 11(o) only provides for the “*suspension* of the activities of associations for periods not exceeding three months, after considering each individual case.”

According to the Venice Commission of the Council of Europe, “*The emergency decree laws under examination [667 and 676] contain measures which transcend the period of the emergency. Thus, Article 2 of Decree Law no. 667 orders permanent dissolution of over two thousand private institutions: under this Decree Law, 35 health institutions, 934 schools, 109 student dormitories, 104 foundations, 1125 associations, 15 universities and 29 trade unions have been liquidated. Pursuant to Article 2 (2) of this Decree Law, all assets of those legal entities are to be transferred to the State, permanently and without compensation. Articles 3 and 4 of Decree Law no. 667 provide for the dismissal of judges and other public servants, to be implemented by decisions of relevant judicial bodies or administrative entities*.”[[18]](#footnote-18)

Article 2 of Decree Law no. 667 orders liquidation of organizations “which belong to, connect to, or have contact with” the “FETÖ/PDY”. These organizations include private health institutions, private education institutions, private dormitories and lodgings for students, foundations and associations and their commercial enterprises, trade-unions, federations, etc. Under Article 2 (2) all assets of those companies are transferred to the State without any compensation. Decree Law no. 668 orders liquidation of private media outlets.[[19]](#footnote-19) In defiance of constitutional and other legal provisions, 29 trade unions,[[20]](#footnote-20) 1,419 associations and 145 foundations were permanently closed following the attempted coup.

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1. See for more: <http://www.mondaq.com/turkey/x/213386/employee+rights+labour+relations/Law+Of+Trade+Unions+And+Collective+Bargaining+Agreements+Has+Entered+Into+Force> [↑](#footnote-ref-1)
2. See also the initial report on the implementation of the Convention of Migrant Workers, contained in document CMW/C/TUR/1, para 37. Available at: <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CMW%2fC%2fTUR%2f1&Lang=en> [↑](#footnote-ref-2)
3. See for more: <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&clang=_en> [↑](#footnote-ref-3)
4. The Concluding Observations are available here: <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CMW%2fC%2fTUR%2fCO%2f1&Lang=en> [↑](#footnote-ref-4)
5. See also the written submission from the Journalists and Writers Foundation to the report of the High Commissioner for Human Rights, pursuant to Human Rights Council resolution 32/31 on civil society space. Available at <http://jwf.org/jwf/wp-content/uploads/2018/06/Shrinking-Civil-Society-Space-1-1.pdf>. [↑](#footnote-ref-5)
6. The Journalists and Writers Foundation, *Assault on Education in Turkey and Abroad*, p. 58, available at <http://jwf.org/jwf/wp-content/uploads/2018/05/ASSAULT-ON-EDUCATION-In-Turkey-And-Abroad-Long-Version.pdf>. [↑](#footnote-ref-6)
7. Please see OHCHR, “Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East (January – December 2017), March 2018, Para 40.l. The report is available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22853&LangID=E>. [↑](#footnote-ref-7)
8. According to the Information Note on the Decree 696 issued by the Ministry of Justice, “Detainees or convicts who fall within the remit of the Anti-Terror Law – with the exception of juveniles and pregnant women – are required to wear the attires provided them by the administration of the penitentiary institution, when they are being taken out of the institution to attend a hearing. A proportional disciplinary penalty is provided for those acting contrary to the arrangement. With the said arrangement, it is aimed to prevent the terrorist propaganda and to enable judges, public prosecutors who perform judicial duties and experts and witnesses to reach the truth in an independent and impartial manner without being influenced by probable pressures, and therefore it is aimed to secure the public order.” [↑](#footnote-ref-8)
9. Please see OHCHR, “Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East (January – December 2017), March 2018, Para 40.p. [↑](#footnote-ref-9)
10. Venice Commission, Opinion on emergency decree laws Nos 667-676 adopted following the failed coup of 15 July 2016, 109th Plenary Session (December 9-10, 2016), para 103. [↑](#footnote-ref-10)
11. The article is available at: <http://www.milliyet.com.tr/16-kritere-gore-ihrac-gundem-2305561/> [↑](#footnote-ref-11)
12. The other 15 criteria are: Investing money in Bank Asya (a legally operating bank until was closed down by the government in 2016), and in other financial institutions of the so-called “parallel structure”; Using encrypted communication applications such as the ByLock application; Donating to Kimse Yok Mu, once largest Turkish aid organization, in a general consultative status at the United Nations; Being mentioned in reports produced by the police, MIT (The National Intelligence Organization of Turkey) and MASAK (The Financial Crimes Investigation Board of Turkey); Giving support to Hizmet Movement on social media; Attending lectures and meetings of the organization “under the guise of non-governmental organizations;” Being promoted in a short span of time or being assigned to prominent offices exceptionally; Transferring money to the organization under the guise of himmet (alms); Being subject to reliable denunciations, testimonies and confessions; Visiting Hizmet-linked Internet sites regularly; Undertaking the “back-door businesses” of Hizmet-linked corporations and protecting them; Accompanying the people in the judiciary and the police, who are determined to act in favor of the organization; Supporting Hizmet in the last years after having resided in houses of the organization; Being mentioned in the information given by colleagues and friends as Hizmet supporter; Continuing to enroll their children in the organization’s schools and maintaining the organization’s newspaper and magazine subscriptions. [↑](#footnote-ref-12)
13. Venice Commission, Opinion on emergency decree laws Nos 667-676 adopted following the failed coup of 15 July 2016, 109th Plenary Session (December 9-10, 2016), para 112. [↑](#footnote-ref-13)
14. See also: <https://www.nordicmonitor.com/2019/03/turkeys-labor-ministry-secretly-helped-persecution-of-critical-union-members/> [↑](#footnote-ref-14)
15. *Ibid*. [↑](#footnote-ref-15)
16. See for more: <http://jwf.org/jwf/wp-content/uploads/2019/01/JWF-Policy-Brief-Turkish-Governments-Abuse-of-Counter-terrorism-Laws.pdf> [↑](#footnote-ref-16)
17. See for example: <https://turkeypurge.com/report-qatar-deports-45-turkish-nationals-over-gulen-links> or

    <https://turkeypurge.com/15-gulen-sympathizers-held-hostage-at-saudi-hotel-deported-to-turkey> [↑](#footnote-ref-17)
18. Venice Commission, Opinion on emergency decree laws Nos 667-676 adopted following the failed coup of 15 July 2016, 109th Plenary Session (December 9-10, 2016), para 81. [↑](#footnote-ref-18)
19. *Ibid*, para 178. [↑](#footnote-ref-19)
20. These trade unions were affiliated to two Confederations. [↑](#footnote-ref-20)