

TESEV DEMOCRATIZATION PROGRAM

Making of a New Constitution in Turkey *Monitoring Report*

February 2012-June 2012

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[2]

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**Türkiye Ekonomik ve
Sosyal Etüdler Vakfı**
*Turkish Economic and
Social Studies Foundation*

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Introduction

This report is the second monitoring report of the Monitoring the Constitutional Process project, which was launched by TESEV Democratization Program in order to monitor and document the new constitution process. The first monitoring report covered the period from October 2011 to January 2012 and assessed the contribution of political actors, civil society and media to the efforts in the Parliament around the new constitution. The second monitoring report covers February to June 2012. The report consists of two parts. In addition to positive and negative developments that occurred in the constitution-making process during the given period, the first part provides an evaluation of the role, contribution and performance of political actors, civil society and the media in the making of the new constitution. This period includes the establishment of the Constitutional Reconciliation Commission (henceforth referred to as the Commission) under the Parliament, which gathered contributions from citizens and social groups and proceeded to convene in May 2012 to begin drafting the articles of the constitution.

The second part of the report **classifies and reviews the views of civil society institutions across the country that submitted their written suggestions and opinions to the Constitutional Reconciliation Commission until April 2012**; the absence of these contributions was significant during the period at hand. The Commission did not share with the public or analyze these contributions either

during the process or after input and suggestions from citizens and civil society were collected. Therefore, in this process that started out with the promise of making “**the constitution of the people**”, the extent to which the public’s views and recommendations have had an impact on constitution-making and the ongoing effort of drafting the articles remains unknown.

The constitution debate that is echoed in public opinion is carried out along the lines of **habitual party lines and limitations**, while the public is not taken as a reference point for discussions. Looking at the subject headings the Commission has been working on, it becomes apparent that public opinion and the views of citizens are not reflected in the discussion, which creates the impression that the Parliament is merely instrumentalizing the public in the process of making the new constitution. This situation may lead to **a lack of trust** in society concerning the process, which in turn might render the process unsuccessful.

As seen in the second part that includes the report’s findings and assessment, the attitude embraced by political parties regarding the subject matter discussed so far does not exactly reflect the society’s attitude. The only way for the new constitution to be truly new is for the suggestions discussed in the second part, which express the desire for **more freedom and democracy**, to be reflected in the principles of the new constitution and ultimately be included in its articles.

I. Evaluating the New Constitution Process (February-June, 2012)

POLITICAL ACTORS

The process of writing the new constitution, launched by the Commission on May 1st 2012, is moving forward, if not with the desired pace and level of participation. Some significant points regarding the situation of the political actors within this process, the Commission itself chief among them, could be summarized as follows:

- (1) The Commission has deviated, albeit partially, from the working methods announced to the public right after its establishment.¹ While Article 11 of the publicized Working Methods mentions a writing process of 4 stages, the Commission seems to have started working on the text right away.² Had the Commission observed the sequence in the article and established the principles first -and of course publicized them- it could have been possible to prevent the slowdown in the current drafting process, as well as the occasional ruptures. If it has been decided to change

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this methodology, this could have also been publicized, alongside its justification.

- (2) Another noteworthy point of deviation we raise regarding the Commission's work in so far as it is reflected in public opinion is that the Commission takes more into account the "red lines" announced by political parties than it does public demands. In the first phase of the work for the new constitution that went on until April 30, the Commission received a large number of suggestions from individuals, social organizations and various platforms. While the content of these recommendations that represent the different political segments in Turkey were of a nature that would transcend "the red lines" of political parties, the Commission appears to give more weight to the "red lines" of political parties. In this context, we would like to stress the need for the Commission to form a working method that will prioritize public opinion and demands, rather than limiting itself with "red lines" of political parties, which cannot be said to be extensively espoused by the public.
- (3) It is also obvious that the process of making and writing the new constitution is not solely under the responsibility of the

1 "Working Methods of the Constitutional Reconciliation Commission" (in Turkish) <https://yenianayasa.tbmm.gov.tr/calismaesaslari.aspx>

2 Article 11.- Timeframe and stages The Commission aims to finish its work by the end of 2012. The stages of the Commission's work include the following phases:
1st Stage: Participation, data gathering and evaluation.
2nd Stage: Determination of principles and forming of the text.
3rd Stage: Submission of the text to the public followed by a public debate.
4th Stage: Revision of the draft in accordance with public opinion and putting it into a bill.

No party has so far started working towards revising, improving and debating its principles in consideration of the new constitution. The only indicator that parties and their leadership are heeding the new constitution process is limited to having appointed Commission members and stating at every opportunity that they “would not leave the table”.

Commission. Political parties, at least the ones present in the Parliament, do not seem to be engaged in any work to assess the suggestions received by the Commission and reconsider their own policies and positions accordingly. Similarly, no party has so far started working towards revising, improving and debating its principles in consideration of the new constitution. The only indicator that parties and their leadership are heeding the new constitution process is limited to having appointed Commission members and stating at every opportunity that they “would not leave the table” – a situation that is strengthening the public’s negative perception of the process.

- (4) The Commission, at the current stage of its work towards the new constitution, was successful in formulating the text of the first article, which pertains to “human dignity.” This could be assessed as a significant and promising step of process-management for the future.³ However, the recommendation that underlined the absolute necessity to include sexual

orientation in the text of the Article on equality, proposed by BDP as far as publicly known, is understood to have created an impasse. The appositeness of this proposal may be assessed from a number of different angles: The first point to note would be that defining equality beyond the narrow positivistic (legalistic) approach and expressing equality in absolute terms, rather than equality before the law as has been done in previous constitutions, would be well-advised. Once this is established, it should be stated that discrimination based on social class, status, race, language, religion and gender etc. will be rejected within the concept of equality, and whether the term sexual orientation needs to be added to the text should be the subject of a separate, levelheaded discussion. Let us immediately note that none of the European Council (and European Union) member states have such an explicit phrasing in their constitutions. On the other hand, it also bears reminding that in newer examples of constitutions such as the 1996 South African or the 2008 Ecuadorian Constitutions, sexual orientation is explicitly mentioned in the context of the conceptualization of equality. We could say that since sexual orientation is included through judicial decisions if not constitutional texts in countries that represent advanced stages of universal democratic standards –Europe chief among them–, explicitly mentioning it in Turkey’s new constitution will be beneficial in terms of avoiding problems that might arise in the future with individual appeals to the European Court of Human Rights (ECHR) or the Constitutional Court.

³ The first article under the subject of “Basic Rights and Freedoms” that the Commission came to an agreement on is as follows: “Human honor and dignity have immunity. Human honor and dignity are the basis of human rights and constitutional order. The State respects human honor and dignity and anyone’s right to enhance their material and spiritual existence, safeguards these rights and abolishes all barriers standing before them.”

Still, the positive and promising aspects of the working process regarding discussions around sexual orientation are noteworthy. The Commission first announced that an article had been drafted, then followed by BDP's insistence, as well as the ensuing public debate, announced that the article had been suspended and was to be revised. That a chance for discussion was created following such an interaction and that the Commission enabled this are positive indications in terms of the new constitution reflecting the public's wishes.

- (5) Another significant matter that needs to be mentioned at this stage is the debate instigated by the "presidential system" proposal. It has come from outside the Commission; from Prime Minister Erdoğan himself and spokespeople for the ruling party. This has not been appropriate in terms of the progress of the Commission's work in the fashion and timetable set by the Commission itself. The debate has inflamed a discussion that has already been brought to the agenda many times in the recent past. Instead, it should have come to the Commission's agenda when it is turn for the discussion of the regulations concerning the state's basic organization. Just like the issue of political parties affecting the Commission with their red lines, which are harsher compared to the public, this is another matter that may have a negative impact on the work towards the new constitution. At this stage, it is sufficient to underline the following point, to be discussed in detail in due time: It is not clear whether those who keep bringing up the presidential system debate are demanding the American presidential system, which is based on the complete separation of powers, the French semi-presidential system or the version in the

We would like to strongly emphasize the need to debate which political system would be more appropriate, with the precondition that a decentralized structure will be established in which legislative power is gradually distributed between the central parliament and regional, provincial and lower level assemblies.

1982 Constitution, where the president, to be elected directly by the people, does not sever his ties to the political party he belongs to. We would like to strongly emphasize the need to debate which one of these three formats would be more appropriate, with the precondition that a decentralized structure will be established in which legislative power is gradually distributed between the central parliament and regional, provincial and lower level assemblies.

The above brings us back to the aptness of the "principles first" diagnosis we point to in Sections 1 and 2. For instance, if the principal decision on whether governance will be centralized or decentralized can be taken before the articles are written, no time has to be wasted on these discussions.

- (6) An important shortfall is that jurisprudence for the new constitution process is still not clear. Rules on matters like how the process of adopting the constitution is going to proceed or how the quorum will be determined are yet not clear or pronounced.

As it stands, despite NGOs and members of the Commission who have been trying with all their goodwill to make a contribution, political will and the faith in a new constitution in the realpolitik space (including both the government and the opposition) appears to be weak. Without a doubt, Justice and Development Party

(JDP) has the biggest share of the responsibility in terms of creating this lack of faith. For both the general public and at the NGO level, current issues and the public divide create a strong conviction that a new constitution will not be achieved. This situation hinders the establishment of social and political attitude based on reconciliation towards a common will.

Looking ahead at the next stage of the process, we see the need for a dual effort in order to achieve a constitution that may be attributed to the public or truly supported by it. The first is for the government, with support from the opposition, to try and keep the agenda focused on the constitution. The second is for the Commission to open to discussion every opinion coming from various facets of society for every article they try to draft, and to do so in a transparent manner.

In conclusion, we would like to draw attention to a negative effect that might potentially transpire in this process of creating a new constitution: political actors and especially the leadership of political parties should not intervene in a way that will prevent the Commission's work to advance in line with the guidance of the demands from public organizations and platforms. Despite the challenge, the Commission should in any case be able to insulate itself from the atmosphere of current political arguments and avoid taking any hard stances that arise within this atmosphere but have no real public resonance. In other words, the Commission should take constitution writing from the level of party politics to a higher political ground.

CIVIL SOCIETY

The Commission, which started its work on October 19, 2011, has met with **42** political parties, universities and various institutions (Subcommission Number 1), **39** professional

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associations and unions (Subcommission Number 2), and civil society organizations comprised of **79** associations, foundations and platforms (Subcommission Number 3) under three separate "sub-commissions" as of May 4, 2012.

During the same period, through its official website on the new constitution, e-mail and regular mail, the Constitutional Reconciliation Commission has received input from about **64000 people**. 440 of these were civil society organizations.

Some of the contribution to the new constitution has been by way of various institutions conveying the opinions of a wide population group. For instance, following the September 12 Referendum, the "New Constitution Platform" gathered citizen opinion with local NGOs in Turkey's various cities; 49740 people in 81 provinces participated via survey in Memur-Sen's study titled "From the Field to the New Constitution: Perceptions, Expectations and Demands"; 100 NGOs and 100 experts working in various provinces partook in the "New Constitution Report" prepared by the Federation of the Civil Servant Associations; Turkish Union of Chambers and Commodity Exchanges (TOBB) and Economic Policy Research Foundation of Turkey (TEPAV) have organized "Turkey is Speaking" meetings

in various provinces that were attended by the public, giving people an opportunity to directly voice their opinions on the new constitution.

In addition to the above, the Constitution Reconciliation Commission, under the chairmanship of Cemil Çiçek, has visited umbrella organizations of working classes, such as the Confederation of Turkish Craftsmen and Tradesmen (TESK), Confederation of Turkish Real Trade Unions (HAK-İŞ), Confederation of Public Workers' Unions (KESK), Confederation of Turkish Public Workers Unions (KAMU-SEN), Confederation of Public Servants Trade Unions (MEMUR-SEN) and the Confederation of Progressive Trade Unions of Turkey (DISK).

A look at the public segments and the organizational affiliations that have given their opinion to the Commission shows a rather wide spectrum. Those providing input are diverse in that they include "socio-economic" organizations as well as "socio-cultural" ones, civil organizations and public institutions. Pretty much every segment and cluster of society has submitted its views, including labor unions, employers' associations, universities, bar associations, trade chambers, religious Sunni Muslim segments, Alevis, institutions representing Christian and Jewish identities, women, LGBT groups, groups with ecological concerns, people with disabilities and groups along secular-modern and nationalist political lines.

Below are some significant points concerning the situation of wide segments of society and civil society organizations, which have been made a part of the process from the beginning:

- (1) A striking factor is that the above-mentioned range of participation does not include organizations (other than KADEP) that work on the issue of Kurdish identity, the most crucial question in Turkey. On the

other hand, meeting lists feature NGOs that could be said to be in ideological kinship with AK Party and CHP. An optimistic reading of the absence of NGOs focusing on Kurdish identity in the Commission's meetings would suggest that these NGOs consider themselves as already having "representation" in the parliament, while a pessimistic reading would suggest that the Kurdish political movement has little expectation from the constitution process.

- (2) Even so, it could be said that considerable contribution from various segments of the public has been made to the work on the constitution, whose center of gravity has shifted towards the Commission. However, another noteworthy factor is that this exchange has mostly been confined to the Commission and the relevant organizations providing their viewpoints. The Commission has surely achieved some accumulation, but the public has not been informed in detail on all of these meetings and contributions from institutions.

For these reasons, the extent to which Commission members, who have started writing the constitution's articles, have been referring to this accumulation in their discussions is unclear, whereas having this important resource to set out from, the Commission could have made a list of demands or produced a text of key principles and results.

- (3) It has become apparent that the "red lines" of political parties, or to put it more accurately and bluntly, their "loyalty to their political positions and fears", prevent the contributions from the public from being heard, or these contributions are easily rejected once they are filtered through political positions. For instance, especially in the first article, MHP's apprehension that

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“if the human dignity phrase is included in the constitution, then the ‘right to education in the mother tongue’ would also certainly be voiced in the new constitution within the frame of ‘human dignity’” was stated in the corollary and dispelled with a limitation. In other words, a conceptualization such as “human dignity”, which is inherently “meaningful”, has been problematized as a concept with a “political label.”

Organizations that study public opinion (such as New Constitution Platform, YAP and Economic Policy Research Foundation of Turkey, TEPAV) find that even though these kinds of “red lines” have become relative and insignificant in society, political parties act on their commitment to their positions and their fears, which shows that the level of maturity reached by the public does not yet have an exact counterpart in political discourse.

Similarly, during the drafting of the articles on “Basic Rights and Freedoms”, fears on “general morality” have interfered, making

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the inclusion of sexual orientation a problem. Even though this conceptualization was an issue, this was overcome by an agreement on the clause that reads “Everyone is equal before the law. No person, family or group can be conceded privileges”. This serves as a clue that the problems of particular “identities” could be solved in the new constitution without singling them out/naming them.

(4) In addition to these discussions that are directly relevant to the new constitution and have “managed to enter” public agenda, the “general political climate” where a polarized political culture is dominant, has overshadowed debates on the constitution. Even though the constitution has entered the broad agenda of a rather wide segment of society thanks in part to civil society institutions, (in terms of improved living conditions, respect, living together with others and their freedoms, etc), because of issues such as Uludere or abortion that become radicalized very quickly and manipulate the public agenda, constitution debates have never really been in a position to set the agenda.

In the present, as the writing process is going on, it seems that the discontinuity in the writing of the constitution will only be mounted if agenda items like “Uludere”, “abortion” or such come up, since they instrumentalize the political, cultural and ideological polarization and tensions. The fact that the extent to which views gathered from the various organized and un-organized segments of the public have softened (or failed to soften) the red lines in the Commission remains unknown is a factor that will deepen these issues.

(5) The last point that needs to be made, as discussed in detail in Part 2, is that looking

at the suggestions coming from civil society, it becomes apparent that groups that stand out as activists lack the necessary skills and talent when it comes to intervening with politicians and decision-makers.

THE MEDIA

(1) The first fact catching our eye when looking at the media organs we monitored during the March-June 2012 period is a sharp increase in May in the number of both columns and news reports on the work towards the new constitution. News reports and columns, which we have observed to be neither too interested nor completely nonchalant in the new constitution process, could be said to have a mostly non-partisan attitude. While *Hürriyet*, one of Turkey's most widely circulated newspapers, featured a total of 13 news reports and columns on the new constitution process in March, and 8 in April, this number went up to 32 in May, with 16 news reports and the remaining 16 columns. The same numerical increase can be seen in media organs like *Milliyet* and *Radikal*, which have featured both negative and positive news and opinion pieces on the new constitution process. Media organs such as *Sabah*, *Star*, *Yeni Şafak* and *Zaman*, known for their proximity to AK Party and generally featuring positive news and opinion on the new constitution process, had a similar quantitative increase in May compared to March and April. The chief reason for this is that the Commission started the writing process in May and the media was informed with the initial facts during this time. The most important reason for the low numbers in March and April, on the other hand, is members abiding by the principal decision that no

one other than Cemil Çiçek, president of the Commission, would speak to the media in the name of the Commission.

- (2) Just like in the previous period, the majority of the news covered by the media in the March-June period was about the activities of the Reconciliation Commission and the speeches and attendances of its chair, Cemil Çiçek. Civil society's opinions and input regarding the constitution process found relatively very little space in the media. The frequent coverage of the discussions within the Commission on LGBT rights following the beginning of the writing process can be said to be more about the curiosity invoked in the audience by news on homosexuals and homosexuality, rather than the media's interest in the new constitution process.
- (3) The mostly non-partisan nature of the news published around this time, as well as the relatively limited negative coverage compared to the previous period, could be linked to the fact that, defying expectations, the Commission's work gained momentum and continuity and there was no substantial tension between members of MHP and BDP. That being said, in this period, as in the previous one, the dominant approach in news and opinion in the media was mostly "reflective" rather than informative and enriching to the discussion. The media has failed and/or abstained from setting up new debates that would carry the process forward. Along the same line, most news on the new constitution process has been focused on the Commission, not featuring the public actors of the process, which means that the media has laid the ground for the Commission to be the main actor rather than the society.

In conclusion, it is of great importance for the process to run smoothly that the media contributes to the process more constructively, while the Commission, through the media, provides an account of the content and significance of the articles written.

- (4) If the media's and generally the public's contribution to the process of making the new constitution is deemed important by political actors and the Commission, which is how it should be, the Commission needs to come up with an official roadmap and method in terms of informing the public opinion. Up until this point, information such as which articles have been drafted

and what stage the actual text is in is unavailable, and the only briefings have been the "in front of the door" remarks. Instead, the Commission needs to inform public opinion through periodical and official statements, and news, assessments and discussions should be built on this formal information. Otherwise, the media will continue its current trend of covering conflict and disagreement.

In conclusion, it is of great importance for the process to run smoothly that the media contributes to the process more constructively, while the Commission, through the media, provides an account of the content and significance of the articles written.

II. Observations and Evaluations on Civil Society's Proposals for a New Constitution

This section classifies and analyzes the contents of the 114 draft proposals and opinion pieces submitted by civil society organizations (CSO) to the Constitutional Reconciliation Commission. The Commission reneged on its decision to post all documents submitted by civil society organizations on the Parliament website, and hence only those submissions that were turned in before a certain date were publicly available. Thus, in order to compile, organize and analyze all of the submissions made, the list of organizations that were referenced to in the proceedings of the Commission meetings have been contacted to collect the remaining, unpublished proposals. Ultimately, the report may have overlooked some contributions by civil society organizations to the Commission. Original copies of the draft proposals, analyzed in this report, may be found on the TESEV Democratization Program's "Turkey Constitution Watch" website.⁴ Finally, individual contributions submitted to the Commission were unavailable to the authors of this report and hence are not included in the analysis.

Another issue that merits attention is the division of civil society organizations' proposals into headings or categories. The Commission reviewed the proposals under 33 headings and the list of these headings was obtained on 6 April 2012. Crucially, the

headings adopted by the Commission are not only insufficient and problematic, they also testify to how the spirit of the 1980 Constitution lurks over the Commission's work. Even so, this report uses the Commission's headings and organizes its analysis accordingly.

1. THE CONSTITUTION MAKING PROCESS

Observations:

Civil society organizations' proposals on the constitution making process fall into five categories. To begin with, none of the organizations that submitted their draft proposals advised against the writing of a new constitution. All of the organizations supported a representative and pluralistic constitution making exercise. Yet, some of the organizations were not clear on exactly how a truly representative constitution, which reflects all views in any given society, was to be formulated. Instead, a considerable part of civil society organizations assumed that their submission of draft proposals to the Commission alone would deem the constitution making process representative. Civil society organizations do not dwell on the issue of how individual participation in the constitution making process. Though the terms "negotiation" and "reconciliation" are used exhaustively in the draft proposals of civil society organizations, there is little clarity on what reconciliation might mean in practice.

⁴ "Civil Society Draft Constitutions and Proposals" <http://anayasaizleme.org/yenianayasaonerileri/>.

This heading also features discussions on the authority of the enactment of the constitution, the legislative license of the current Parliament to enact a new constitution, and on the necessity of assembling a ‘Constituent Assembly’, formed with the sole purpose of drafting a new constitution. Civil society organizations are unanimous that the ultimate decision to enact a new constitution falls to the public. Most believe that the current Parliament has the license to draw up a new constitution. In other words, civil society organizations are generally of the opinion that the 2011 general elections was clearly an election to establish a constitution-making parliament. Therefore, discussions on whether a ‘Constituent Assembly’ is necessary lose their precedence.

Civil society organizations propose several legal changes to facilitate the enactment process of the new constitution. One suggestion is to add a new clause to Article 175 of the 1982 Constitution to define the process. Another is to invoke the power of an established body, the Constitutional Court, to audit an open/public constitution making exercise. Some civil society organizations suggest unconventional paths to the legitimization of a new constitution beyond the maxims of legal positivism.

The quality of the constitution may also be addressed under this heading. CSOs convey their opinions on whether the new constitution ought to be a short Charter or a longer and detailed written constitution; however, they provide no further detail on how the type of the

new constitution will be determined. Almost half of the CSOs declared that the acting Constitution is either too long or too detailed and suggested to overcome the ambiguities in the current Constitution by making the new one shorter and simpler: a Charter that sets out some basic tenets only.

One final noteworthy suggestion is to reverse the negative perception that several legal obstacles curtail wider representation in the making of the new constitution.

Evaluations:

- (1) The legitimacy of a civilian constitution is secured first and foremost by **social consent**, not by political approval or legal confirmation. In this context, the idea of a new and legitimate constitution, widely representative of the views in a society, encourages members of that society to consider what sort of a political system they want. Consequently, political legitimacy is secured when only the will of the people determines the political will. Only a new constitution drafted by legitimate political authority acting on behalf of the people will have legitimacy before law. Ultimately, constitution making by public consent necessitates the participation of individuals in the drafting process. Individuals may choose to participate either via civil society organizations or directly. The most fundamental problem with individual participation through interest groups is that most CSOs have already submitted draft proposals that do not sufficiently represent their membership’s views.

In short, we want to emphasize the following: The drafting of a new constitution crucially demands that all of the proposals and views submitted to the Commission are considered and analyzed

The drafting of a new constitution crucially demands that all of the proposals and views submitted to the Commission are considered and analyzed pedantically to clearly reveal the demands of all citizens.

pedantically to clearly reveal the demands of all citizens.

- (2) We concur with the view that the current Parliament has legitimate authority to provide political and legal assistance to the public throughout a widely representative and democratic constitution making process, which rests on **public consent** and culminates in a public vote to enact the new constitution. The legitimacy and authority of the current Parliament will however be prone to doubt if the Parliament abuses its legitimate authority to disregard the views of the public and to enact a constitution for and in the name of the public.
- (3) Taking the acting Constitution as a key point of reference for the new constitution – or legally defining the new constitution making process with the laws set out in the current Constitution – will ultimately raise doubts about the ingenuity of the **new constitution**. Constrained by the oversight of the Constitutional Court and by the transfer of unamendable articles from the old to the new constitution, the product of this constitution making exercise will not resemble an original civilian constitution, but merely result in the eighteenth revised edition of the 1982 Constitution. It is advisable therefore to add a clause to the new constitution that sets out the rules for enacting the new constitution and states that a public referendum will be held to pass the new constitution, irrespective of the results of the parliamentary vote; or for the current Parliament to draft and pass a bill to legally define the terms of making a new constitution.
- (4) A view often presented in the submissions of CSOs is that the new constitution ought to be a short and easily intelligible text, written in a plain language. Though this

Ideally, a short and concise constitution will be sufficient if it seeks not to protect the state from its citizens, but to recognize individuals and the society as key decision makers.

widely-held view seems at first to suggest a revised format for the new constitution, it is in fact related to the substantial debate on whether to choose a Charter or a longer written constitution. Those proposals in favor of a Charter do not offer further details on its possible form and content. Some groups, on the other hand, favor a longer constitution that clearly defines and safeguards each right or freedom they demand on a constitutional level. Ideally, a short and concise constitution will be sufficient if it seeks not to protect the state from its citizens, but to **recognize individuals and the society as key decision makers**. This will also prevent the emergence of certain artificial distinctions between constitutional and legal rights and will therefore eliminate the need to codify each right and liberty in a constitutional document.

- (5) Several judicial and criminal investigations carried out in sync with the new constitution making process have created psychological and social tensions and anxieties across Turkey and have thus contributed negatively to the reconciliation agenda. It could be argued that particularly central to the establishment of this negative atmosphere was the inability to collect opinions and proposals from civil society organizations, representing Turkey's Kurdish population. It is therefore apparent that the set of laws and regulations, particularly the Anti-Terrorism Law, that limit freedom of speech and representation **urgently need to be amended**. Despite CSOs' persistent calls to introduce legislative changes to overcome

violations of freedom of speech and representation, positive steps have not yet been taken since the official start of constitution making process in October 2011.

2. CORE PRINCIPLES/VALUES

Observations:

Civil society organizations and groups agree on four core principles that the new constitution ought to rest on:

Pluralism, Equality and Freedom: CSOs rally in support of the principles of pluralism and freedom because these two principles, if vested into the new constitution, provide constitutional guarantees against some social groups' intolerance of and discrimination other social groups. Some differences in terminology withstanding, a majority of CSOs describe their ideal constitution as a "pluralistic, egalitarian, constitution based on human rights and freedoms- that respects human dignity and the principles of universal law". Within this context CSOs underline that pluralism should not emphasize any ethnic or cultural identity in the new constitution.

Apparently within these three points of consensus, there is a shared social demand for equality and for equality to be guaranteed constitutionally, as well as affirming freedom. In other words, particularly organized groups hold the principles of equality and freedom as mutually inclusive and fundamental to a new constitution.

Non-ideological Content: Producing a non-ideological piece of writing or discourse is not possible, from a broad sociological viewpoint. However, as a reaction to the tradition of étatism and tutelage, embedded in the current 1982 Constitution, CSOs advocate for "a constitution that does not promote any culture, faith or ideology".

It is observed that different social groups present similar ideas or concerns with different motivations. For example, there is accord between the religious Muslim community to refrain from "a faith-like fixation on laicism"; Alevis and non-Muslim minorities to abolish strong presence of the "Sunni Directorate of Religious Affairs"; and the Kurdish community to scratch the "Turkish nationalist ideology" that defines the current Constitution. These different groups express in a variety of ways their common desire to rid the new constitution off of the abovementioned problems and to guarantee against the reaffirmation of yet another totalitarian state ideology, culture or religion, or broadly speaking of Kemalism.

A Human Centered Constitution: as opposed to a state-centered one: CSOs emphasize the need for a human centered constitution to replace 1982 Constitution's state-centrism. A strong consensus is built in support of a constitutional framework that elevates the individual rather than the state. Subsequently, these conceding parties aspire to a new constitution that upholds the rule of law and the separation of powers to protect the individual and abrogate tutelary rule and prohibitionism. The term "individual" in the CSOs' draft constitutions do not simply refer to the good of men or the majority but also involve women, young people, the nature and all other different identities and convictions.

A Constitution for Today and Tomorrow: A majority of the CSOs support a new constitution that is constantly open to renewal and change. In other words, a radical break from the past and the preceding Constitution is to be avoided and at the same time the yoke of the past should not burden the new constitution.

Evaluations:

- (1) CSOs endorsement of the integration of equality and freedom into the new

constitution reflecting the increased level of social maturity and parallel sociological and political trends in the world that indicate that the new constitution absolutely must be libertarian and egalitarian. **The principles of freedom and equality** ought to apply to all individuals, cultural groups, and genders before the state and to the relationship between humans and the nature.

- (2) The demand for a non-ideological constitution is concretely a call to reverse the philosophy of the current Constitution that established an arbitrarily uniform, exclusionary and repressive system. This shared concern with the ideological concentration of the current Constitution emerges from a common reaction to the clauses in the 1982 Constitution on Atatürkist nationalism. It is reflection of disapproval from the majority of the CSOs that Atatürk has become a source of reference for the problematic ideological concentration of the constitution. In other words, recognizing Atatürk as a historically and politically significant figure has to be divorced from referring to him as the basis of a politico-ideological system. Certainly, CSOs' calls for a civilian, human-centered constitution that may respond to the social dynamics of today and tomorrow indicate how Turkey's society increasingly accepts **universal**, as opposed to local, values.
- (3) Almost all of the CSO proposals feature a fundamental shift in the perceptions of individual-state and individual-law relations. A new and refreshing perception will not only be human-centered but it will also accept the nature as an **entity**. The definition of the individual – within the context of the new constitution – ought to involve a broader reference to an **entity with rights** so that a non-human entity

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such as nature is recognized. Collective identities, such as cultural or faith based identities, also ought to be recognized as part of the definition of the individual or entity. By implication, the constitutional references to “public good” or “social good” ought to be replaced with definitive references, such as “women’s good”, “youth’s good”, “nature’s benefit”, etc.

- (4) A change in historical consciousness is observed. Two complementary trends emerge: one that values and recognizes the variety of cultures in Turkey and another that accents a **connection to the future**. At this point, it is important to remember that the new constitution will be drafted for today’s citizens as well as the citizens of tomorrow.
- (5) Accordingly, the foremost expectation of society from the new constitution is to build a **new political system** in which individuals with different identities, positions and worldviews feel equally safe. This expectation must form the crux of the new constitution. More specifically, this expectation or demand should be communicated to the public and quoted in the rationale of the new constitution.

3. PREAMBLE

Observations:

Suggestions on the Preamble can be grouped into two categories: The first is whether the new constitution should or should not begin

with a Preamble; the second is proposals on the references in the Preamble.

- (1) CSOs that have identified problems with the current Preamble express that the clause is simply too long. One submission advocates the removal of the Preamble from the new constitution.
- (2) Suggestions on the Preamble assert that this section ought to be non-identity based, non-ideological, nonpartisan, and to elucidate the constitutional commitment to “universal values”, “pluralism”, “social peace”, “geography and history” and “human dignity”.

Patriotic – nationalist organizations underline in their submissions the need to preserve references to “Turkish nationalism” of the unamendable clauses of the 1982 Constitution’s Preamble. Very few (such as KAMU-SEN) clearly state that the 1982 Constitution cannot and must not change.

However, those organizations that suggest changes to the Preamble oppose the content of the first three clauses of the 1982 Constitution and disapprove the presence of an official state ideology and an exclusionary tone, based on Atatürkism. Finally, a group of CSOs look for ways in which a new Preamble may be composed, as an introductory contract.

Evaluations:

- (1) Most of the CSOs agree that the new constitution ought to have a Preamble. Some CSOs attached the disclaimer, “if there will be a Preamble”, to their suggestions. Thus, the debate on how to compose a Preamble should not rest on an assumption that a Preamble is obligatory.
- (2) The general trend suggests holding a **broader public debate** on the entirety of the constitution and not specifying the content of the Preamble within the confines of political parties.
- (3) CSOs offer two fundamental approaches for the Preamble: It should be a short introductory text that refers to the founding principles of the Republic according to some organizations. In fact, all suggestions to the Preamble, including those that demand reference to founding Republican principles, envisage a constitution that begins by citing its allegiance to **universal values**, particularly to a nonpartisan state that is non-partial towards any ideology or conviction. In this context, the Preamble is expected to commit to a peaceful society, geography and history, and to respecting human dignity. All of these expectations correspond to universal values. On the other hand, even those CSOs that propose to include references to the founding principles of the Republic in the new constitution agree with other organizations that the terms of the Preamble ought to be inclusive of all forms of diversity.
- (4) Another point of contestation regarding the Preamble is whether the new constitution should contain such an introductory section. The decision to include a Preamble concerns the later interpretation of Preamble clauses during constitutional

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review. Turkey's experience with constitutional oversight is problematic and a cause for concern since in the past, many anti-democratic rulings have been made based on the courts' interpretations of Preamble clauses. If the Preamble of a new constitution contains references to universally accepted principles of human rights and freedoms, then their interpretation in the future will not present similar challenges to **democratic constitutional oversight**. However, if a new Preamble is drafted whereby the exclusionary and limiting nature of Republican founding principles are retained, then anti-democratic rulings will most likely emerge in the future. A Preamble that affirms the new constitution's commitment to democracy and freedoms may also help to overcome some of Turkey's pressing social conflicts and political tensions.

- (5) Generally, civil society organizations propose to frame the new constitution's core principles as pluralism, representative democracy, and respect for human dignity; to guarantee individuals' freedom of expression; to base the new constitution on fundamental principles of freedom, equality and justice; to constitutionally secure a platform for differences to peacefully coexist; and to ensure the institution of social justice. These proposals will inevitably require a **reconstruction of the "state"** in Turkey.

4. STATE

a. The Characteristics and the Form of the State

Observations:

Some of the CSOs propose to preserve the first three articles on the characteristics and form

of the state of Turkey in the 1982 Constitution.⁵ A fraction of those organizations that hold the abovementioned view also opposes the idea of drafting a new constitution however they are in the minority.

Proposals on the form of the state in the new constitution employ widely accepted terms of reference: State governed by rule of law, welfare state, laic/secular state, unitary state are examples to such familiar references.

Almost all of the draft proposals, submitted by CSOs, discuss secularism and offer their respective versions of laïcité. The most vocal proponents of a redefinition of constitutional secularism, which secures freedom of religion and conscience, are non-Muslim minority groups – actively involved in the constitution making process – and the Sunni majority groups who have been aggrieved by authoritarian laicism in Turkey.

Evaluations:

The contributing CSOs echo a large segment of society in the demand to use already established terms to define the form of the state of Turkey in the new constitution; however, civil society proposals do not address the scope and definitions of these concepts concretely. For instance, does the term "state governed by rule of law" refer to a

- 5 ARTICLE 1 - The Turkish State is a Republic. ARTICLE 2 - The Republic of Turkey is a democratic, secular and social State governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble. ARTICLE 3 - The Turkish State, with its territory and nation, is an indivisible entity. Its language is Turkish. Its flag, the form of which is prescribed by the relevant law, is composed of a white crescent and star on a red background. Its national anthem is the "Independence March". Its capital is Ankara.

The contributing CSOs echo a large segment of society in the demand to use already established terms to define the form of the state of Turkey in the new constitution; however, civil society proposals do not address the scope and definitions of these concepts concretely.

state that governs according to the existing law of the land or to universal laws? Most crucial to the debate on the “**state governed by rule of law**” is the fact that a state cannot operate only to compliance to a set of laws made by an organ whose only mandate is lawmaking. Ideally, state organs mandated to make laws ought to secure rights and freedoms first and act according to universal principles.

The issue of **welfare state** is dealt with in CSOs’ proposals as a set of programs or policies to protect and care for their respective constituents. Functioning of a welfare state depends on the distribution of sufficient public funds for welfare provision. There is a need to realize a just distribution of welfare among social groups, as well as individuals in order to ascertain justice in income.. A welfare state then has a dual function of first providing social and income security to all citizens and secondly of distributing welfare evenly across social groups so as to secure income equality for disadvantaged groups.

The proposals address **laicism** as a principle that prohibits the misuse of secularism as a restricting and prohibitive force, while also serving as a fundamental bulwark against the invasion of individuals’ lifestyles and spirituality. Demands on state secularism converge around the principle of a state that does not govern according to religious laws. However, those organizations in favor of a

redefinition of the principle of laicism seek to reconstruct laicism with an understanding that respects and upholds freedom of religion and conscience. So far, high courts in Turkey interpreted laicism principle in ways that violated basic rights, galvanized political crises and divided the public opinion – as the cases of the headscarf ban and political party closures have demonstrated. This interpretation of the laicism principle by high courts has caused political crises and social polarization especially due to the headscarf ban and closure of political parties. The authoritarian interpretation of this principle has been internalized by a certain segment of society and reinforced on social life with reference to the constitution. The new constitution begs for a broad public discussion to specify the definition and content of the principle of laicism. The sphere of freedom of religion and conscience, the role of the Presidency of Religious Affairs, the question of elective courses on religions in the public schooling system, and the freedom to work and study are all important issues that must be addressed in the new constitution, with references to definitions of secularism accepted by EU member states and international treaties.

The demand for a **unitary state** expresses a deep-seated concern or fear of losing territorial integrity. Yet, some CSO proposals indicate that a unitary state is not the only means to protect integrity. Similarly some CSOs distance themselves from decentralization trends that prevail in most proposals on the grounds that it would jeopardize the unitary state, again out of a fear of losing integrity. It is apparent that a public debate on whether or not territorial integrity and decentralization are mutually exclusive is necessary to advance this item or issue on the new constitution agenda.

According to a majority of contributing CSOs, the unamendable clauses of the 1982 Constitution, which lay down **the official language, the national flag, and the national anthem**, ought to be maintained in the new constitution, though these are not necessarily unamendable. As such, it could be inferred that there is social consensus on the location of the capital city, the official language and the choice of the national flag. The reviewed proposals suggest constitutional provisions on languages other than Turkish and yet they accept Turkish as the official language of the state.

b. The Responsibilities of the State

Observations:

This subheading attracted little interest and feedback. Proposals on the roles of the state were attached to suggestions on the characteristics of the state. As such, issues of individual security, foreign security and defense, education, employment, healthcare, housing and environmental protection come to the foreground under this subheading. Below is a summary of the existent proposals:

- (1) A few CSOs propose to amend Article 65 of the current Constitution by removing the precondition to secure “sufficiency of available funds” for the state to provide its services. Particularly Confederation of Unions for the Rights of Public Servants (HAK-SEN), Turkish Pharmacists Union and labor unions and professional associations such as Turkish Health and Social Services Workers Union (Türk Sağlık-Sen), Confederation of United Public Servants and Workers Unions (Birleşik Kamu-İş), Turkish Sugar Production Industry Workers Union (Şeker-İş) and Turkish Industry and

Business Association (TÜSİAD) defend the removal of this precondition in Article 65 since it goes against the most basic conceptualization of social state. There are also demands to introduce specific welfare burden for the state in the areas of education and healthcare.

- (2) There are also a few CSOs that oppose a departure from the official nationalist discourse in the constitution. While most ultranationalist or nationalist organizations avoid commenting on this particular aspect of the new constitution, Confederation of Turkish Public Workers Unions (KAMU-SEN) propagates the continuation of the unitary structure of the state and nationalist Ulku Ocakları defends a pan-Turkic position.
- (3) The majority position is to favor a smaller state and a broader space for the exercise of freedoms. Demands to expand freedoms reflect the work that rights based and civilian organizations have been carrying out; CSOs demand the new constitution to respect the nature and citizens, to recognize and protect the right to education, linguistic rights and freedoms, to espouse pluralism against discrimination, and to secure children’s and human rights.
- (4) The state’s responsibilities towards disadvantaged groups are particularly emphasized by CSOs.

Evaluations:

- (1) **Disadvantaged groups** are identified as being positioned unfavorably in economic, social and biological terms compared to others. Accordingly, the demand entails the protection of employees that are economically and socially disadvantaged

vis à vis their employers; children that are socially and biologically disadvantaged vis à vis adults; persons with disabilities that have biological disadvantages vis à vis able-bodied persons, women that are socioculturally disadvantaged vis à vis men be guaranteed by the state.

- (2) **Multilingual public education, public education of religion and the preschool education** are some of the emergent issues of this subheading. Generally, CSOs suggest building a structure that facilitates a representative policymaking process that involves the central and local administrations and communities rather than centralist decision making.

5. SOVEREIGNTY

Observations and Evaluations:

The demands on how to frame sovereignty in the new constitution show how the public does not wish to transfer their right to sovereignty to intermediary (public) institutions. Considering how grim the consequences have been for the society when constitutionally established institutions have exercised sovereignty on behalf of the public, the lack of trust for intermediary institutions understandable. The National Security Council (MGK), the judicial bureaucracy, the Presidency of Religious Affairs, the Higher Education Council and professional associations with public status have at times

used their sovereignty against the public that has granted it to them, constituting a shift in public perception of sovereignty.

To sum up, the CSOs accept sovereignty as a **uniform and indivisible principle** of any constitution; however they also propose to identify the ways in which different institutions can exercise sovereignty. Consequently, the inclination is towards the principle of the separation of powers to be preserved in the new constitution both as a unifying principle and also as an identification of the independent functions of sovereignty that all of the separate powers have. The judiciary, the executive and the legislature ought to continue to work **without intervening in one another's respective spheres of jurisdiction and monitor one another**, however the legislature/ the **parliament** ought to be recognized as the highest representation of people's sovereignty and should therefore act as the ultimate oversight mechanism.

The overwhelming majority of CSOs are in consensus about appointing the parliament with the highest decision-making powers.

Proposals on the sovereignty clause also allude to the exercise of power both **locally and centrally**.

6. CITIZENSHIP

Observations:

Only a minority of CSOs proposes to either retain the current definition of constitutional citizenship as is or with minor changes to the new constitution. Conversely, there are quite a few CSOs that demand to redefine constitutional citizenship and render the term free from partiality and bias. Three policy positions can be discerned in the analysis of the CSO proposals on constitutional citizenship:

Multilingual public education, public education of religion and the preschool education are some of the emergent issues. Generally, CSOs suggest building a structure that facilitates a representative policymaking process that involves the central and local administrations and communities rather than centralist decision making.

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- (1) The first position defends maintaining the established definition of citizenship, as outlined in the 1982 Constitution. CSOs who hold this position claim that the definition of citizenship found in Article 66 is sufficient and appropriate and needs not to be amended so they support the transfer of this exact definition to the new constitution. They argue that the ethnic reference “Turk” in the definition of citizenship cannot be removed from the constitution simply because its removal would hinder Turkey’s ability to maintain a shared national identity. Ultranationalists and conservatives in positions of power also seek to somehow preserve the formulation of citizenship around the exclusionary ethnic identification of “Turk”. Ultranationalist organizations that submitted suggestions on how to define citizenship repeat similar arguments that imply their fear of change. Two CSOs do stand out however in their unconventional suggestions: The Nationalist Turkish Students Union proposes not to define citizenship by referring to a particular ethnicity and the Association for Supporting Contemporary Life (ÇYDD), which is widely recognized as a n Ataturkist and modernist association, suggests using the term “citizen of the Republic of Turkey” instead of “Turk” or “Turkish”.
- (2) CSOs that propose to partially amend the definition of citizenship in the current Constitution suggest preserving the use of the term, Turk, and clarifying the meaning and significance of this term in the new constitution. Some of these suggestions include attempts to formulate the provision using the term “Turk” alongside **“the Republic of Turkey”** and **“the state of Turkey”**.

Proposals on the sovereignty clause also allude to the exercise of power both locally and centrally.

- (3) Those CSOs in favor of a new definition of constitutional citizenship defend framing the idea of citizenship in Turkey around more abstract principles and thus move away from associating a specific ethnicity (Turk) with citizenship. Most of the CSOs’ proposals cite the concept of **“constitutional citizenship”** to mean first **the removal of all ethnic, religious, sexual, linguistic and cultural orientations** from the idea of citizenship and second, **the recognition and protection of differences** in Turkey’s society via a new notion of citizenship.

Proponents of the concept “constitutional citizenship” can be divided into the following groups:

- a. Organizations that demand a broad formulation of constitutional citizenship without offering any specific wording to that formulation;
- b. Those who endorse the use of the term **“citizens of the Republic of Turkey”** to define citizenship in the new constitution;
- c. Those who prefer to use the term **“from/of Turkey”** to refer to citizens;
- d. Organizations that propose to write **“citizens of Turkey”** in the new constitution.

Evaluations:

Article 54 of the 1961 Constitution and Article 66 of the 1982 Constitution define citizenship in the same way: “Everyone bound to the Turkish state through the bond of citizenship is a Turk.” Civil society organizations and large segments

of the society have for long been critical of and opposed to this definition because the reference to an ethnic identity forces a diverse society into a single ethnic/national identity.

Many alternative definitions of citizenship may be adopted in the new constitution. Below are a few options:

- (1) A new constitution **may exclude an independent reference to citizenship**. The USA, Canada, France, Australia, Denmark and Albania are a few of the countries that do not have a codified and constitutional definition of citizenship. Instead, these constitutions refer to the “citizen” as a subject with rights. Accordingly, these constitutions contain statements such as “citizens have freedom of speech”, “citizens are granted with freedom of movement”, etc.
- (2) **Turkey’s new constitution may contain a statement that broadly regulates citizenship without defining it**. Such a statement might read, “In acquiring, practicing and leaving citizenship, no individual can be discriminated against on the basis of religion, language, race, gender, ethnicity or on any other basis”.

In view of the two options above, it would be more appropriate not to include a precise definition of citizenship in the new constitution and instead to specify that the

right to citizenship is constitutional; that the terms of acquiring and leaving citizenship are codified; and that no individual may be stripped of his or her right to citizenship, deported or prevented from entering the country arbitrarily.

- (3) If a definition of citizenship must be given in the new constitution then the terms employed therein must be **nonpartisan and inclusionary**. Most CSOs prefer the term **“citizens of the Republic of Turkey”** so the new constitution might be drafted to include this term in a definition of citizenship.

A nonpartisan and inclusionary definition of citizenship without ethnic connotations in practice means replacing the words, “Turkish nation” plastered across many articles of the current Constitution with the words, **“citizens of the Republic of Turkey”**. The latter phrase is better suited to the spirit of constitutionalism because any constitution reflects an **accord** among the members of a body of citizens. That way, Turkey may move towards adopting a notion of citizenship that recognizes social diversity and enables citizens to preserve and develop their selfhoods and livelihoods.

7. EQUALITY AND POSITIVE DISCRIMINATION

a. Equality (and Discrimination)

Observations:

Most of the proposals listed under equality and discrimination come from civil society organizations and groups that have been subject to discrimination on the basis of their religion, sectarian or confessional identity and ethnicity due to the state’s uniformist

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tendency. Their collective demand is to write a new constitution that rests on equality and the principle of non-discrimination to replace the martial constitutions of the past.

In all of the proposals that address this subheading, civil society organizations underlined their anticipation for the new constitution to be free from a dominant ideology and to construct a non-partisan state that does not force a single (imagined) identity on all citizens. The present Constitution already recognizes the principle of equality before law and that the state is responsible to ensure quality before law through measures such as positive discrimination and none of the CSOs that submit their proposals suggest removing or receding from this constitutional provision.

Civil society organizations also propose the following on equality and non-discrimination:

- (1) The classical formulation on non-discrimination in the 1982 Constitution, which prohibits discrimination based on language, religion, gender, ethnicity, color, political orientation, thinking or conviction, is generally accepted, however a majority of CSOs also advocate the expansion of the definition and the penalization of discriminatory acts. The definition, according to some CSOs' proposals, ought to prohibit discrimination based on disability, sexual orientation, age (children, young people or the elderly), marital status and pregnancy too.
- (2) One way to expand the principle of non-discrimination in the new constitution according to some CSOs is to introduce "temporary, positive and compulsory measures" to alleviate the burden of care and traditional familial roles on women. These measures are proposed to be very

advanced and specialized in healthcare provision to women. Another critical issue is making the social and physical environment accessible for the equal and full participation of persons with disabilities and CSOs vehemently propose to constitutionally guarantee non-discrimination and equality for persons with disabilities.

- (3) CSOs have advised to consider and integrate into the new constitution the "new generation of rights", in tandem with a new rights discourse and new provisions in international human rights law and constitutions of other societies. Some of these new generation rights are equal opportunities and treatment, active enjoyment of rights, protection from poverty and exclusion, the right to property and shelter, the state's responsibility to secure a sustainable future by implementing environmental/ecological policies; access to welfare as safeguarded by the state; protection from violation of social rights via legislation governing the private sector; and the ability to monitor the relationship between the private sector and capital, goods and real estate ownership for possible misconduct and discrimination.
- (4) There are quite a few organizations that propose to ban hate speech, while they maintain that all forms of expression ought to be free and tolerable so long as it does not perpetuate violence. While serious concerns about hate speech are shared by many organizations, particularly Christian minority organizations demand "preventive", "instructive", "detering", and "regulatory" laws and penalties on hate speech. Minorities also mark as acts of discrimination their difficulty to access

education, places of religious worship and religious services in the frame of access to public resources.

- (5) Another important trend in the CSO proposals on discrimination is that most if not all organizations rally in support of equal rights and non-discrimination for groups other than their own as well. Individuals and groups that have been subjected to discrimination for various reasons in the past demonstrate a heightened sense of awareness towards non-discrimination today. Best practices, which reveal Turkey's potential for achieving social peace, come from organizations such as the Federation of Alevi Foundations that supports anti-discrimination measures to solve the headscarf issue and to prevent anti-Semitism or from the Capital City Women's Platform, which advocates for anti-discrimination based on headscarf and at the same time demands constitutionally securing the right of women both to wear and not to wear headscarves.

Evaluations:

We first need to discuss how to understand and qualify the term equality in the context of the current debates on equality and positive discrimination in the new constitution.

(1) Views on how to interpret "equality":

The principle of equality in the new constitution is directly linked to the ban on **discrimination**. Therefore, we believe that a constitutional provision that seeks to establish equality and positive discrimination cannot simply read, "Every individual is equal before law". A majority of CSOs suggest that the new constitution has to minimally include the same reference to non-discrimination that is found in

the current Constitution, which prohibits discrimination based on language, religion, gender, ethnicity, color, political orientation, thinking or conviction.

Nevertheless, the choice of the word, "gender" narrows the term to a physiological definition and does not correspond to the more comprehensive scope that constitutions of countries like South Africa and Ecuador establish with the use of the term **sexual orientation**. Though few proposals from CSOs specifically address this issue, there is also no evidence that CSOs object to including "sexual orientation" in the non-discrimination clause.

Moreover, the fact that the so called established democracies in Europe and North America have not introduced constitutional anti-discrimination provisions that cover sexual orientation demonstrates how discrimination based on sexual orientation has been overcome in legal and political life. Considering how prejudice and acts of discrimination based on sexual orientation are rampant and acceptable in Turkey, this report concludes that expanding the definition of non-discrimination to include sexual orientation will advance human rights and equality and that further consensus ought to be built on this issue.

(2) Evaluations on the characteristics of "equality":

What needs to be established here is whether the new constitution will refer to the equality of individuals before law by using the word, "**kanun**" (**legislation**) or "**hukuk**" (**law**) in Turkish. There is a fundamental difference between the meanings of these two words. Choosing to use the word "kanun" will mean that constitutional equality rests only on national legislation whereas the word "hukuk" will ensure that equality will rest on a broader

conceptualization of law, which includes universal norms, international and supranational laws. In this respect, the report highlights that formulating the principle of equality before law by the more contemporary and holistic reference of “hukuk önünde eşitlik”(equality before the law) will be a step forward for Turkey’s new constitution.

b. Positive discrimination⁶

Observations:

Civil society proposals on the new constitution clearly state that positive discrimination will apply to the following groups: women, persons living in poverty, the elderly, persons with disabilities, children, young people, widows and children of veterans or martyrs of war or on service. Positive discrimination measures are also demanded for groups that have been targets of discrimination during the Republican era.

CSOs which represent specific interest groups or causes also demand positive discrimination for persons with disabilities, women, LGBTT individuals, for languages and cultures that face the threat of extinction, for non-Sunni religious communities to congregate and to train their religious servicemen, and for girls and children in poverty to get equal opportunities to access education.

Evaluations:

The principle of equality before law is a relatively new principle. A concept that is even younger is that for establishing equality before law, a norms system is insufficient and that the state must assume responsibility and actively engage in securing individuals’ equality before law. This novel concept was born when human societies were unable to overcome class struggles and conventional forms of discrimination against women (perhaps the most fundamental problem in the history of civilization), even after the social, economic and cultural dynamics that have created class and gender roles changed. Since the end of World War 2, social and economic rights continue to warrant measures for equality and protection against discrimination on the basis of class or status. The same is not true for discrimination based on gender, that is, there is not as clear a consensus on constitutionally and politically guaranteeing gender equality as there is on social equality.

The following conclusions can be drawn from CSOs proposals and the broader public debate on framing positive discrimination in Turkey’s new constitution:

- (1) Generally, the principle of equality is treated in law either in a formal (procedural) or a substantive way. The principle of equality before law is formal – that is, this principle deals with the process or the procedure of law and everyone being subject to the same rules under the same circumstances. Having said that, the procedural treatment of equality does not guarantee the delivery of equality to some financially, socially and biologically disadvantaged groups. Therefore, some CSOs claim that the new constitution must go beyond including a formal reference to equality and to vest equality through

⁶ This section of the report uses the term “positive discrimination” as it is colloquialized by civil society organizations in their draft constitutions and proposals. We wish to hereby acknowledge that by positive discrimination some CSOs refer to compensatory rights, others to protective rights and only a fraction of CSOs refer to concessions. Though we do not endorse or agree with the conceptualization of positive discrimination offered by CSO draft constitutions and suggestions, we nevertheless choose to reflect their usage of the term. (Authors’ Note)

When CSOs propose to create equal opportunities for all groups in society through a new constitution, they are not in effect asking for concessions for certain disadvantaged groups and hence not seeking measures that may be labeled as “positive discrimination”. Thus demands in this sphere might more accurately be discussed under three categories, namely positive discrimination, compensatory rights and protective rights.

mechanisms of substantive law - though the commonly used term of reference is positive discrimination - in the new constitution.

In other words, CSOs that call for positive discrimination are essentially demanding the elimination of inequality between advantaged and disadvantaged groups through the new constitution. Thus when CSOs propose to create equal opportunities for all groups in society through a new constitution, they are not in effect asking for concessions for certain disadvantaged groups and hence not seeking measures that may be labeled as “positive discrimination”. Thus demands in this sphere might more accurately be discussed under three categories, namely **positive discrimination, compensatory rights and protective rights.**

Compensatory rights are provided to vulnerable or disadvantaged groups that have been victims of discrimination in the past who should be granted certain rights in compensation for their past aggravation. Compensatory rights are by their nature time-limited and will expire after a predetermined date.

Protective rights are granted to groups according to their status. For example, protective rights shield tenants from their

landlords in cases of possible violations of their tenancy terms or protect consumers from potential harms that may be inflicted by producers and retailers, workers from employers or protect other vulnerable groups, such as children, persons with disabilities and the elderly from persons or groups that are physically, biologically or socially more advantaged. Again, rights that protect women from possible violations perpetrated by men or that provide security to minorities against the majority are not considered as privileges because these protective rights are the only means to secure equality between unequal parties.

Positive discrimination refers to **concessionary rights** that certain groups have over other groups, without there being inequality between the groups concerned. For instance, imposing a 50% quota for men to be represented on the board of an NGO that has an 80% concentration of women in its membership is positive discrimination. Conversely, introducing a 50% quota for women in a parliament that represents a society where women constitute 50% of the population is not positive discrimination.

- (2) In the CSO proposals submitted to the Constitution Reconciliation Commission, a powerful trend towards preserving the **gender equality** framework in the 1982 Constitution may be detected. It is worth pointing out that the 1982 Constitution lacked a provision on positive discrimination until 2004, when such a provision was added to the Constitution as part of a series of fundamental changes in legislation in the frame of the EU accession reforms agenda. Interestingly, further legislative changes were introduced to

strengthen the positive discrimination clause of the current Constitution in 2010, at a time when the government was being criticized for the gradual deceleration of the EU accession process. Hence, the 2004 and 2010 amendments to the 1982 Constitution laid a comprehensive constitutional basis for positive discrimination. Yet some social organizations and platforms propose to place - as instruments of positive discrimination in the new constitution - implicit or explicit “quotas” in economic, political and social life. Proposals to introduce quotas via the new constitution are indeed positive since they aim to encourage Turkey’s democratization process to advance to the level enjoyed by older, more established democracies and to fulfill its legal obligations, according to international treaties. Then again, the imposition of quotas, which are instruments open to political manipulation, through a constitutional provision may also constrain or shrink the political space. This concern is fair; however, considering the body of evidence that shows women’s status in the society deteriorating, the argument in favor of quotas is stronger and seems necessary. That is, to increase the presence of women in the labor market and politics, introducing a quota to achieve at least one woman for every three men in work life and in the parliament is a demand that cannot be overlooked.

8. SUPREMACY OF THE CONSTITUTION

Observation:

CSO draft proposals seek to establish the supremacy of the constitution by rendering it the highest legal norm in positive law and to make its rule binding for all institutions in the

The demands of CSOs to establish supremacy of the constitution ought to be realized by following the precondition that the new constitution is structured to facilitate the protection of rights and liberties.

country and to recognize the constitutional guarantees on rights and liberties as norms that cannot be restricted by statutory law or practice.

Evaluations:

A critical reading of the CSO proposals reveals that while establishing the supremacy of constitution may be appropriate from a legal perspective, **declaring that a constitution is supreme**, regardless of the norms it contains, does not necessarily guarantee the protection of rights and liberties.

As a matter of fact, the supremacy of the current 1982 Constitution is recognized and yet the very same Constitution presents the greatest obstacle to the exercise of rights and freedoms. Therefore, the demands of CSOs to establish supremacy of the constitution ought to be realized by following **the precondition that the new constitution is structured to facilitate the protection of rights and liberties**.

9. INTERNATIONAL RELATIONS AND TREATIES

Observations:

Whatever their political position, all civil society organizations that have contributed their views on the issue of international relations and treaties in the new constitution have tackled the question of **how the relationship between constitutional law and international law will be defined and organized**. In other words, CSOs want to identify the hierarchy between international

Many of these demands belong to organizations that believe international law will provide guarantees towards the peaceful resolution of current problems of basic human rights, democratization, the Kurdish question, labor rights and children's rights.

laws and constitutional provisions. Other issues of international relations and foreign policy are not treated with the same urgency that the above question is by the contributing CSOs.⁷

The proposals that were analyzed in this Report overwhelming support recognizing international laws above the provisions of a new constitution. Nuances do exist however on the question of whether this principle will be applied forcefully or lightly. A few CSOs wish to enforce the principle with some limitations, which will favor the norms of the national constitution in some cases. In general, though, civil society organizations view international law as inherently superior to national laws and the constitution.

This report offers the following observations on this issue:

- (1) A majority of the CSOs drafts convey that the superiority of international law ought to be strengthened by translating

international laws on human rights and liberties into domestic law. Many of these demands belong to organizations that believe **international law will provide guarantees** towards the peaceful resolution of current problems of basic human rights, democratization, the Kurdish question, labor rights and children's rights.

Presumably, Turkey's civil society is not convinced that domestic laws will provide sufficient protection from rights violations so they seek the guarantor function of international law and institutions. In short, Turkey's civil society organizations claim that no significant improvement in rights and liberties can be achieved with national legislation being left on its own. This is a conclusion that Turkey's current political elite must reflect on.

- (2) In only a few of the proposals, a nationalist tendency may be detected, as far as the universal norm of international law's superiority to domestic law is concerned. Some CSOs argue that although they accept this universal norm in principle, they also suggest "nationalist" or "statist" measures such as proposing to bring some international treaties before the Constitutional Court. These CSOs are in the minority, though.

- (3) CSOs and groups that single out a particular issue or concern on their mandate highlight the need for reform in treating the pertinent international law as superior to domestic law. Accordingly, for instance, organizations that represent the Armenian community or the Assyrian community in Turkey emphasize the importance of applying international laws that address issues that concern their community, whereas DİSK and other labor unions support the application of

⁷ This issue will be explored in detail in the forthcoming Monitoring Report. In this context, a study on Turkey's reservations and affirmations on relevant international treaty provisions under the headings of "Education, science, culture, art and sports, human rights, labor and social security, radio and television broadcasting, people's status, protection of the environment, foreign military forces, military bases and defense cooperation, prevention of war and disarmament". The study that aims to draw attention to Turkey position vis à vis internationally recognized rights will be published in December as the third report in the scope of the Monitoring the Constitutional Process Project.

international labor rights (such as ILO treaties) to domestic law and practice. These demands beg the answer to a larger question of which pieces of international legislation will be referenced to in Turkey's new constitution. Some proposals, for example, suggest that the new constitution must contain references to the **Universal Declaration of Human Rights**, the **UN Twin Covenants**, International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, the **European Social Charter** (revised in 1996) and to the **Council of Europe's European Charter of Local Self-Government**, which is expected to provide international guarantees on the right to Kurdish education.

- (4) Civil society organizations from different ideological/political positions and with various bases of membership agree that it is time to **transform the state's absolute sovereignty over the legal sphere** in Turkey. For instance, a leading business association, TUSIAD, claims in its policy report on the new constitution that the Constitutional Court must take into consideration international law as well as Turkey's domestic laws and constitutional norms in its rulings.

Evaluations:

How should international law in general and specific international treaties, conventions and agreements in particular be addressed in the new constitution? Civil society organizations' demands raise the following points of discussion on this question:

- (1) To begin with, is it valid to differentiate between domestic and international law? This rhetorical question is important particularly because a **dualist approach**,

which regards the differentiation between domestic and international law as practical and necessary, dominates contemporary legal thinking. This deeply embedded dualist approach sees domestic laws fundamentally as products of sovereign nation-states. An alternative monist approach argues that differentiating between domestic and international law is superfluous and impractical because the validity of those norm systems that constitute domestic laws comes from the inviolable principles of international law. In other words, **the monist approach** rejects the maxims offered by the dualist approach that "sovereign nation states act according to their domestic laws and only domestic laws can govern the internal affairs of states" and that "independent states are only bound by the principle of non-interference in the internal affairs of other sovereign states and by the terms of other agreements they are signatories to". **In the global world, the dualist approach is rapidly losing its influence and the monist approach is gaining further ground.**

- (2) Turkey signed on 24 July 1923 the Treaty of Lausanne, which declares in Article 37 that Turkey cannot enact any domestic legal norms that may violate Articles 38 to 44 of the Lausanne Treaty. By implication, the Lausanne Treaty is an international agreement that is superior to Turkey's domestic law. The bigger question on the issue of the treatment of international laws

Civil society organizations from different ideological/political positions and with various bases of membership agree that it is time to transform the state's absolute sovereignty over the legal sphere in Turkey.

in Turkey's constitution is **how to constitutionalize international agreements that have not specifically mandated its parties (Turkey) to treat its provisions as superior to national laws.** Formulating an answer to this question requires certain distinctions:

- (a) Peremptory norms, or **jus cogens**, from which no derogation is possible and all other types of norms or laws. Peremptory norms cannot be violated by any state on any basis, regardless of whether the prevailing legal approach in that state is monist or dualist. However, we must add that the monist approach is more consistent in its recognition of **jus cogens**.
- (b) Between two types of international agreements: Some international agreements are bi-lateral and others are multi-lateral. Turkey's past constitutions and the current 1982 Constitution state that "International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional." According to the current constitutional treatment of international law, since no appeal can be made to the Constitutional Court to promulgate an international agreement, it is under the jurisdiction of the national constitution but superior to national laws. This statement provides the minimum basis on which the new constitution must establish its recognition of international laws.
- (3) **International agreements, especially multilateral agreements that cover fundamental rights and freedoms have a normative significance as well.** An amendment made in 2004 to Article 90 of the 1982 Constitution declares, "in the case

of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail". This means that international agreements on fundamental rights and freedoms are superior to domestic laws and their provisions must come into force if and when they are in conflict with domestic laws.

In practice, however, international legislation on fundamental rights and freedoms is not held above domestic laws in Turkey, so the new constitution must take the necessary measures to prevent future violations of this constitutional norm. **Three provisions ought to be added to the new constitution:**

- No provisions that violate international agreements and rulings of international and supranational legal entities on human rights and liberties shall be put into force.
 - International agreements and rulings of international and supranational legal entities on human rights and liberties form "international human rights law", which is a system of norms directly binding on the legislature, the executive and the judiciary, without the need to write laws to enforce their terms separately.
 - Constitutional oversight of domestic laws determines first and foremost whether the piece of domestic legislation under review is in line with international law.
- (4) The last point concerning the significance of international law to Turkey's new constitution is that regardless of whether Turkey is a signatory to or has reservations on specific international agreements;

international human rights law and norms must be inseparable from the constitutional norms in Turkey's new constitution. This precondition must be stated clearly in the Preamble. Thus, Turkey's new constitution will declare its allegiance not only to the Lausanne Treaty but more pertinently to international human rights law and that international human rights legislation is superior to the constitution and to domestic law in the country.

10. RIGHTS AND LIBERTIES

Observations:

Civil society concentrates most ardently on the issue of rights and liberties in its contributions to the constitution making process. Draft proposals and demands of CSOs feature the following points as to how the new constitution ought to address rights and liberties:

- (1) The state must not be given precedence over the individual and that "freedoms must be the rule, restrictions of those freedoms must be the exception".
- (2) The constitution must not be "regulatory", "interventionist", and "restrictive".
- (3) When domestic laws contradict international agreements, **international norms** – which are assumed to be more egalitarian – must be enforced.
- (4) Having drawn valuable lessons from a burdensome past, **state of emergency rule** must never again authorize restrictions on basic human rights.
- (5) The constitution must clearly state that **public officers who perpetrate rights violations** will face legal and disciplinary action.
- (6) **Statutory time limitations** cannot apply to prosecutions on genocide and crimes against humanity.
- (7) **The right to establish associations**, without the requirement to obtain permits and the **right to organize non-violent meetings, marches and demonstrations** must be secured.
- (8) The new constitution must include in its coverage of rights and liberties a section on **labor rights**. (This demand is voiced primarily by unions)
- (9) The new constitution must ban **drudgery, child labor, forced labor, compulsory labor, and slavery**.
- (10) **The ban** in the current Constitution on **public servants' entry into politics** must be lifted.
- (11) **The restrictions on membership in political parties** must be removed and the closing down of political parties must either be made more difficult or unconstitutional.
- (12) The new constitution must include provisions that to facilitate **the reconciliation of work and family life for women**.
- (13) Private and public employers must be required to provide **childcare** in their establishments (This is a rarely voiced demand, however it is an important contribution to constitutionally securing women's rights).
- (14) As a new and progressive proposal, the new constitution should respect **ecological needs**.
- (15) **On the issue of the right to education in the mother tongue, two main and several secondary views are presented.**

First of the two main views supports the removal of all constitutional limitations on language rights and the provision of free public education in the mother tongue. A subordinate view suggests that various mother tongues may be taught as elective courses in public schools.

As is the case with freedom of religion and conscience – explained in the section below – almost all of the CSOs support the full delivery of linguistic/mother tongue rights via the new constitution. It could be stated that the society expects the rights to mother tongue to be constitutionally safeguarded.

Organizations, which represent linguistic minorities and vulnerable groups, as well as rights-based organizations that work on broader human rights issues collectively advocate the rights of all individuals to speak in their mother tongue in public, to utilize public services offered in their mother tongue, to broadcast in their mother tongue, to register and use their first and last names in their mother tongue, and to restore the original names of towns and provinces which have been assigned Turkish names by the state.

A small fraction of the CSOs argue that the public debate on the right to mother tongue is a pretext to “legitimize other (divisibility) demands and ambitions”.

(16) CSOs demand the norms and provisions on **freedom of religion and conscience** in international agreements and conventions to be applied to Turkey’s new constitution. Without exception, all communities of faith in Turkey demand the new constitution to guarantee their right to provide their children religious education. There is also consensus on the need to

recognize the right to study and teach religion without being subjected to or producing hate speech, the right to train clergy (and for clergymen to be private citizens with full rights), the right to provide religious services, the right to worship and to manage and sustain their respective places of worship for all religious groups in Turkey.

The view, “public funds must be available to all religious groups and congregations in Turkey and no one religious community must be discriminated against” is often presented by non-Sunni Muslim individuals and groups but also finds some support among Sunni Muslims that deny a state-centric form of religious belief and practice. Christian minorities in Turkey are of the view that the Lausanne Treaty must come into effect to resolve issues of religious freedom.

The right to access public services in any form of dress is also a point often raised by organizations representing communities of faith in Turkey. It is widely and strongly recommended discrimination against women in headscarves should be prohibited and rights of women in headscarf should not be violated or withheld due to their choice of dress.

Compulsory courses in public education on the culture of religions and morality are also widely discussed in CSOs proposals. Basically, most CSOs propose to remove the constitutional requirement for public education to provide such courses or to amend their curricula so that the courses’ content does not discriminate against or favor a particular religion, congregation or moral viewpoint or be offered as an elective per family requests. Still many more CSOs advise against having compulsory religious

education in public schools and propose to allow parents to teach their children the religion of their choice without the involvement of the state.

A final important demand is to remove derogatory references to religious minorities in encyclopedias, history books and other relevant literary school material.

(17) The right to access, participate in and contribute to **cultural life** is enumerated among new generation rights to be included in the new constitution by several CSOs.

(18) The view that no individual can be forced to disclose details of **sexual orientation** or identity is shared by many rights-based organizations and supported as a universal right that must be covered in the new constitution.

(19) Another important issue, though not widely referenced, is that the right to **seek asylum** must be secured in the new constitution and asylum seekers must not be returned to their countries of origin.

Evaluations:

How **the state's relationship with rights and liberties** will be formulated in the new constitution forms the basis of civil society's proposals under this subheading. Almost all proposal documents by CSOs evaluated associate problems with rights and freedoms in Turkey not with the conflict between social groups, economic discrepancies or discord between different identities, but rather with the legal tradition, jurisprudence and practice of the state in Turkey. Hence, the problem of rights and liberties in Turkey stems most decisively from the relationship between the state and the society.

We infer from their statements and proposals that civil society organizations do not aim to introduce as many provisions on rights and liberties to the new constitution as possible; they instead **seek to eliminate the restrictions, limitations and violations imposed by the state** on basic rights and freedoms. In other words, civil society organizations demand constitutional guarantees for all possible forms of human rights and freedoms first and foremost in the form of protection from future interventions by the state in Turkey on individual rights and liberties. By implication, conflicts that may arise between individuals and groups in the exercise of rights and liberties do not represent significant problems for Turkey's civil society or CSOs regard these problems as secondary.

Proposals on rights and liberties seek to remove all barriers to **an individual's free self-expression, to individual's ability to protect his/her physical and immaterial assets, and to ability to develop towards his/her full potential**. In other words, proposals center around the freedom of expression and yet they treat this freedom as an individual and collective freedom and regard expression not just as spoken or written content but also as actions.

Turkey's public opinion associates with the concept of "freedom of expression" the acts of free speech and thinking. However, freedom of speech and thinking are only a part of the freedom of expression concept. **In fact, freedom of expression entails the indivisible sum of individual and collective acts of free thinking, expression and action.**

This fact ought to be acknowledged and **freedom of expression ought to be constitutionally guaranteed accordingly as a fundamental principle of freedom of thought, expression and action.**

Freedom of expression ought to be constitutionally guaranteed as a fundamental principle of freedom of thought, expression and action.

The following conclusions may be drawn based on the philosophical framework presented in the CSO proposals:

- (1) Proposals on **state-individual relations** reveal that the state is conceptualized as an instrument that serves the individual. What is expected from a human-centered constitution is a state structure that encourages individuals to freely express themselves to the fullest possible extent. Furthermore, civil society organizations demand a non-interventionist and non-restrictive constitution, again testifying to the abovementioned assumption on freedom of expression.

When international and supranational law contradicts domestic law, civil society organizations demand that rights and liberties recognized in international conventions and treaties have legal precedence. This demand indicates a shared need in Turkey's civil society for international safeguarding mechanisms to secure individual rights and freedoms. In other words, CSOs find it legitimate to **restrict state authority through universal norms**. Upon a closer look, it may appear contradictory for civil society, while demonstrating weak support for Turkey's engagement with supranational bodies (i.e. the European Union) to at the same time seek a constitutional warranty to hold universal norms superior to domestic laws. However, actually civil society proposals show that CSOs believe the power and sovereignty of international law is sufficient to protect rights and liberties in

Turkey, without necessarily delegating authority or sovereignty to a supranational or international governance mechanism.

Apparently, civil society organizations prioritize the protection of rights and liberties in the imposition of penalties too. The proposals on how to penalize public officers who commit human rights violations and the suggestions to abolish the statutory time limit on cases of genocide and crimes against humanity certainly indicate a social consensus to change the dominant thinking in the criminal justice system from protecting the state to protecting individuals and groups.

- (2) **Proposals on social rights** apply most prominently to economic life and call for non-interference by the state into professional and labor life in Turkey. **State regulation on markets** is viewed as a supportive function. Furthermore, CSOs suggest building a new system where key economic actors decide on the fundamental principles of economic life. In addition, CSOs demand constitutional protection against drudgery and child labor, indicating the expectation that the state should be responsible to guarantee the protection of basic rights in economic life in Turkey. A new perspective is provided by some NGOs, which suggest that work and familial responsibilities ought to be balanced by constitutional provisions in favor of women. By extension, compulsory childcare services in the private and public sector is proposed as a measure to help gender equality and also protect rights of children. As a whole, civil society proposals on this particular issue indicate how Turkey's public seeks to ensure that being in employment does not constrain one's physical and spiritual existence.

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- (3) **Proposals on political rights** show that participation of individuals in political life by way of political parties carries the greatest significance since the majority of CSOs demand the lifting of bans on public servants' entry into politics via party membership and the prevention of the shutting down of political parties.
- (4) **Proposals on linguistic rights** demonstrate some variety, however they all seem to converge on constitutionally recognizing the freedom of persons to exercise their rights to mother tongue. A minority of CSOs however add the precautionary note that recognizing this freedom may engender a variety of political problems. It is important to note however that CSOs place their cautionary remarks on the possible political implications of raising the demand for mother tongue rights, not their exercise by individuals and groups. Most of those CSOs who voice their concerns are worried about separatism or losing Turkey's territorial integrity. Consequently, if the demand for the freedom to exercise the right to mother tongue is communicated in a tone that does not convey the threat of separatism, then overcoming social, psychological and bureaucratic obstacles to fulfill mother tongue rights will be easier. The most basic way to warrant such an easy transition is to ensure that there is social consensus on accepting Turkish as the primary official and scientific language, as well as the primary language of a shared culture. Truly, when the public debate on mother tongue rights is observed, the argument that there is a broad social consensus on the issue is acceptable. **In that case, the issue of mother tongue rights may be divorced from arbitrary categories such as teaching in mother tongue or mother**

As a whole, civil society proposals on social rights indicate how Turkey's public seeks to ensure that being in employment does not constrain one's physical and spiritual existence.

tongue education and may instead be addressed in the constitution holistically.

Proposals to resolve the issue of mother tongue rights range from very modest to very ambitious. The modest proposal is to remove the constitutional ban on mother tongue education. The ambitious proposal is to constitutionally guarantee the public recognition and development of different languages in Turkey, including the public provision of education in all mother tongues available. In the proposals submitted to the Commission, we observe an overall support for the bare minimum solution of removing the constitutional ban on mother tongue rights but also a noteworthy backing for a more ambitious solution. If the issue does not fall prey to short term political rivalries, it is close to a solution socially speaking.

- (5) The suggestions of civil society organizations on how to constitutionally establish **freedom of religion and conscience** also conceptualize this freedom as a form of free expression. Individuals are free by default in the privacy of their lives and property so we assume that the CSOs that propose their views on freedom of religion and conscience refer to the exercise of these rights in the public sphere. In this context, the demand for the recognition of freedom of religion and conscience alludes first to the right of individuals to freely and completely express their faith and second to the state's responsibility to observe impartiality towards all religions and

conscientious choices, and third to the state's responsibility to provide equal treatment to all communities of faith.

Consequently, the principle of **laicism** then becomes not a corrective tool to be employed by the state over the sphere of religion, but a functional principle that secures the freedom of expression of all religious communities in the country along the lines of a democratic secularism principle. Under this subheading in the new constitution, the relationship between the state and religion is to be defined by egalitarian and impartial state policies in the teaching of religion and religious services. In short, CSOs present a secular perspective of religion-state relations. Basically, CSOs propose that religion – state relations in Turkey ought to be structured to **enable the different communities of faith in the country to enjoy the freedom of choice and equal access both in the teaching of religion and in the provision of religious services.**

Another important point here is one about the exercise of economic rights. Economic opportunities and lack thereof cannot be considered as legitimate excuses to curtail the enjoyment of freedom of expression and religion. Whereas in determining minimum wages or setting the ceiling for welfare benefits, **the availability of public funds** is a binding factor, the same argument must not apply to the state's provision of demands for freedom of expression, including religious freedom or mother tongue rights.

- (6) In the sphere of rights and liberties, the demands of CSOs for **cultural rights, rights on gender equality and sexual orientation and asylum rights** may be considered as a whole since all of these

separate demands in fact refer to individuals' freedom of self-expression and right to self-preservation. Indeed, since the social and individual experience of every human being is holistic and indivisible, therefore the dividing of rights and liberties into the categories listed above seems to contradict with the reality. As a result, even though such categories are meaningful to help understand and communicate the different types of rights, they should not be restricted based on such a classification.

- (7) Article 42 of the 1982 Constitution has been a source of contention, particularly because its provision on **educational rights** has been used to restrict headscarved women's access to education. Thus, not surprisingly many civil society organizations and platforms address the headscarf issue in their draft proposals, either as an issue of equality and positive discrimination or as a basic rights and liberties matter, and suggest that the new constitution must not include any provisions that may in the future lead to further curtailment of the freedoms of women with headscarves. Arguably, the political conjecture today provides a temporary solution to some of the problems associated with the headscarf issue, however, should the current political conjecture change, existing legal and constitutional mechanisms may continue to violate the rights of women wearing headscarves. To secure the rights of these women, the new constitution ought to clearly express in the clause on the right to education that the education rights are safeguarded for all and no individual's right to education can be violated because of their choice of attire or dress.

(8) Another pressing problem in the area of education concerns the so-called **“Religious Culture and Moral Education”** courses, which are introduced to formal education as compulsory courses based on the decisions of past legislatures and executives and with references to Article 24 of the 1982 Constitution on freedom of religion and conscience. The current regulation and practices must be replaced with a practice that is in line with national and international legislation on rights and liberties in education and with Article 90 of the 1982 Turkish Constitution that binds Turkey to abide by relevant international law. CSOs recommend the following to resolve the problem of Religious Culture and Moral Education courses: **Compulsory formal education on “culture of religions and morality” is provided universally so long as the course content and teaching is designed and implemented according to human rights and liberties principles, standards and norms to “encourage children to develop their abilities to engage in pluralistic and critical thinking”**; in addition, **“elective” courses on specific religious or moral convictions are introduced to formal education according to the demands of citizens of Turkey**. Since an amendment to Article 90 of the 1982 Constitution was added in 2004 to further enhance Turkey’s harmonization with international law, Religious Culture and Moral Education courses may now be revised according to international human rights legislation, especially to the **European Convention on Human Rights (ECHR)**. Article 2 of ECHR’s Protocol 1 declares that **states have the responsibility to provide religious education in line with the religion/faith/conscientious choices of the individuals**

and families benefiting from education, and this statement is being recommended by an overwhelming number of CSOs as the guiding principle to govern the right to religious education in the new constitution.

11. THE PROTECTION OF RIGHTS AND LIBERTIES

Observations:

The majority of CSOs recommend that the new constitution rest on libertarian values and adopt a broader framework of rights and liberties, which responds to similar trends in the world and includes the right to conscientious objection, the right to seek asylum, the right to food security.

In addition, CSOs demand that the new constitution does not contain general provisions that may present obstacles to the full exercise of rights and liberties; and that the new constitution refers to **universal principles for special constraints**.

Evaluations:

Based on the proposals, it can be inferred that Turkey’s civil society aims to define rights and liberties in the constitution more broadly to **include not only the freedoms that individuals are born to but also freedoms that are acquired later and/or by choice**. The realm of individual rights and liberties is believed to be off limits to the state. The sole responsibility of the state, with all its organs, is to respect without discrimination and take the necessary measures to protect rights and liberties of all individuals.

The state must also protect individuals against **inciting and provoking violence and hatred, racism, and hate speech**.

12. OBLIGATIONS TO THE STATE

Observations:

Many contributions by CSOs denounce the current Constitution for narrowing down citizens' obligations to the state to "service to the homeland" and "tax payments" and for including provisions that obstruct citizens' exercise of rights and liberties. CSOs claim that the new constitution must instead concentrate on how to further the free exercise by citizens of rights and liberties while at the same time regulating citizens' duties and obligations.

Evaluation:

CSOs demands under the subheading of "citizens' obligations" address the obligation to serve the homeland and to pay taxes. The concept of "citizen's obligations" in the context of the relationship between the state and the citizen refers to practices that effectively constrain citizens' rights and liberties. In a more contemporary sense, however, obligation to the homeland concerns the relationship between the citizen (the individual) and the society, rather than the state. **In other words, an individual has obligations towards the society, not the state.**

Establishing the limits of an individual's obligations towards a society should depend on the contributions that particular individual ought to make to secure the rights and liberties of all other members of the society. For instance, the obligation to pay taxes should be rationalized as a shared practice that all individuals engage in to create a pool of public funds that will then be utilized for the collective enjoyment of rights and liberties.

Similarly, the duty of service to the homeland may be conceptualized as the justification of an obligation that every individual has to

contribute to domestic and foreign security. Hence, the obligations of citizens must be defined in the new constitution with reference to the rights and liberties of all members of the society and the state must be defined as a facilitating body in the relationship between the individual and the society.

By extension, the majority of proposals advocate when individuals carry out their obligations of "serving the society", they ought to also have **the freedom to exercise conscientious objection** on moral, religious or other grounds and to demand alternative ways to fulfill their obligations.

Some CSOs underline that citizens cannot be enforced to complete a period of **compulsory military service** as part of their duties to the state. At the same time, CSOs convey that abolishing compulsory military service does not necessarily obstruct the potential to build alternative mechanisms for domestic and foreign defense and security. A diverse set of organizations agree that providing individuals with alternative ways (such as community service) to serve their homeland is a viable option.

13. LEGISLATURE – EXECUTIVE – JUDICIARY

Observations:

Not a large number of proposals were submitted by CSOs on the structuring and governance of the state and the governance of the relationships between judiciary, executive and legislature. That there are very few proposals on such a significant issue may imply that CSOs are not well informed or interested in different aspects of governance. Whilst it is not possible to speak of broad consensus save for certain specific topics based on the content that was available, this report draws the

following three discussion points from the proposals:

- (1) Whether a parliamentary system, a semi-presidential system or a presidential system will govern a new era of legislature-executive relations.
- (2) The questions of decentralization, governing-from-below and of the level of autonomy that local governments will have in a new public administration structure.
- (3) The issue of judicial independence and impartiality.

Systems of Government

Over 100 institutions submitted their views on the system of government. Only two organizations clearly propose a presidential system and no organization claims it would support a semi-presidential system. A substantial majority of CSOs prefer in the continuation of a parliamentary system and to elect the president through direct national elections, however, they propose to reduce the powers of the president down to a symbolic level that is better suited to a parliamentary system.

The Legislature

An overwhelming majority of organizations, which claim to represent Turkey's general public, choose to continue with the classical parliamentary system. Following from that, CSOs underline the need to put into effect parliamentary control mechanisms that ensure the effective implementation of the measures and procedures for the creation and realization of auditable, transparent and accountable governance. CSOs also suggest effectively contributing to parliamentary oversight and monitoring.

The Executive

The proposals on how to draft the clauses on the executive body in the new constitution

focus most decisively on the issue of the **presidency**. Since most of the contributing CSOs demand a parliamentary system, they propose to minimize the authority of the president down to a symbolic role and accordingly to rethink where to vest the authority to elect, appoint and make key executive decisions.

CSOs' suggestions and proposals on presidential elections fall into two groups: The first group brings together demands to elect the president through general elections and the second group contains proposals to elect the president through parliamentary vote.

Furthermore, CSOs propose that the nomination requirements for presidential candidates ought to be simplified.

CSOs suggest that in order to appoint the cabinet, the president ought to yield the authority to form the government to the chair of the party that has won the largest number of seats in the parliament.

There are some CSOs that propose to limit or to remove the cabinet's authority to issue executive orders and to restrict the issuance of executive orders to states of emergency.

There are also proposals to place the Office of the Chief of Staff under the jurisdiction of the Ministry of Defense.

The Judiciary

Proposals under this subsection mainly come from organizations that have commissioned academics and experts to prepare reports on the issue of the judiciary in the new constitution. These reports and expert analysis offer the following recommendations:

To achieve judicial independence and impartiality by introducing the pertinent legal and administrative measures; to

implement judicial reform so as to construct a fair, fast, efficient, reliable and accountable judicial system; and to ensure the sustenance of this system by constitutional approval and support;

To ensure that the new constitution does not contain any regulation, procedure or provision that escaped judicial oversight and that no decision or action of the executive is granted exemption from judicial oversight;

To overcome the duality in jurisdiction caused by the existence of both military and civilian courts;

To recognize the lengthy detention periods and the fact that detainment has become a punitive measure, and to resolve this problem accordingly;

To introduce a constitutional ban on the establishment of courts with special authority.

(On the issue of) High Courts, civil society organizations propose:

To establish the right to bring the decisions of the High Elections Board before the Constitutional Court;

To authorize the State Council to file objections to decisions of the Court of Accounts;

To ensure that rights and freedoms of individuals are more rigorously protected by expanding the scope of rights violations eligible for individual appeal to the Constitutional Court;

To authorize the Constitutional Court to rule on the compliance of domestic laws to international conventions and treaties;

As an additional measure to strengthen the oversight of the new constitution, to grant individuals, vocational chambers, and certain other entities the right to bring an action for the annulment of a statute/law before the Constitution Court;

To compose the Supreme Court appointed members of the Constitutional Court and appointed members of the Penal Council of the Court of Appeals. Some CSOs propose to maintain the provisions of the current Constitution in electing members of the Constitutional Court while other CSOs suggest revising the election procedures to increase the democratic credibility of the Court.

(On the issue of) the Military Judiciary, civil society organizations propose:

To end the duality of the existent judiciary composed of military and civilian courts, and to abolish the Military Court of Appeals by transferring its authority to the Court of Appeals;

To abolish the High Military Administrative Court and to transfer its powers to the State Council.

(On the issue of) the High Council of Judges and Prosecutors (*Hakim ve Savcılar Yüksek Kurulu*, HSYK), civil society organizations propose:

Among the suggestions submitted to the Commission, some proposals are in concurrence with the constitutional changes introduced in 2010 to amend the structure and functions of HSYK. A fraction of the proposals suggest that the High Council ought to be broken down into two separate organs – as was the norm in the 1961 Constitution: the High Council of Judges and the High Council of

Prosecutors. Consensus is reached regardless on the view that the Minister of Justice and members of the ministerial bureaucracy must not be represented on the council or if they will, then they ought to serve nominally without decision making powers.

Unitary State / Decentralization and Local Administrations

A significant number of proposals, submitted by organized civil society groups or other social actors propose that the new constitution must underline the unitary nature of the state. There is however no clarity on how the unitary state will be qualified and what it will entail.

Interestingly, those organizations that rally for a constitution that recognizes a unitary state also support measures to strengthen local governments, “to meet contemporary needs and challenges”. A majority of the organizations whose proposals are reviewed in this report recommend empowering local governments through restructuring public administration system.

Three points are worth underlining here:

- (a) Most civil society organizations agree that most crucial to reforming public administration is the expansion of administrative autonomy of local governments. Either implicitly and explicitly contributing CSOs make it clear that their support for a constitutional reference to a unitary state does not contradict with their support for strengthening local governments.
- (b) A few organizations propose to introduce administrative and political autonomy for local governments but they remain silent on the issue of whether they demand a federal system.

- (c) To fully achieve autonomous local governments, civil society organizations suggest to strengthen local administrations by ending or minimizing the guardianship of central administration over local governments and to subsequently facilitate the realization of democratic demands in the periphery.

Evaluations:

Legislature

In Turkey’s political life, the supremacy of the Parliament is idealized, particularly by politically conservative and nationalist groups as the supreme embodiment of the “national will”. And yet, the 1982 Constitution grants authority without responsibility to the president and further whoever holds the office will be “elected by the public directly”. This contradiction generated the debate on whether Turkey should adopt a presidential system.

The present constitutional system in Turkey governs the legislature-executive relations with a version of semi-presidentialism, since the system neither qualifies as a parliamentary system due to the concentration of executive authority in the presidency while it should have been structured more as a ceremonial post nor as a textbook case of presidentialism with a clear separation of powers. As a result, within the context of the public debate on the new constitution, some circles allude to semi-presidentialism as their system of choice. At

Within the context of the public debate on the new constitution, some circles allude to semi-presidentialism as their system of choice. At the same time however the CSOs that demand a semi-presidential system are not in the majority, thus suggesting inadequate social support for this system.

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Unitary State / Decentralization and Local Administrations

It is widely acknowledged that the Kurdish question is one of the main precursors of the new constitution making process and that demands for “democratic autonomy” are embedded in proposals for a peaceful resolution to this pressing question. Moreover and notwithstanding the democratic autonomy demands that are being raised in the context of the Kurdish question, another issue that has dominated public debate the past 40 years is the question of public administration reform. The central feature of this debate concerns “strengthening local governments”, which is a policy option now considered by many political organizations and their members, regardless of their politico-ideological positions. Even so, few steps have yet been taken to **eliminate the centralization of public administration and to enact a public administration reform that empowers local governments**. Ultimately, public administration reform by way of stronger local governance became a staple of political polemic and calls for stronger local government are treated with suspicion and often associated with the preservation of the unitary state against Kurdish demands for democratic autonomy.

The 1982 Constitution does not refer to a “unitary state”. The public demands for underlining the unitary nature of the state of Turkey stem from Constitutional Court rulings establishing irrevocably the Republic of Turkey is a unitary state.

There is a considerable number of CSOs that agree on developing autonomous local governments in Turkey’s public administration structure, however, many also voice their concerns on whether autonomy may jeopardize the unitary nature of the state. Nevertheless, it is important to advocate for new regulations that will fortify the capacity of local governments to govern autonomously and against regulations that will strengthen centralization.

The indivisibility and territorial integrity of the state of Turkey are safeguarded by international agreements and the constitution. Therefore, the statement in the 1982 Constitution which reads, “the Turkish state, with its territory and nation, is an indivisible entity” is unnecessary. If such an affirmation must be given in the new constitution, then the statement may simply read, “The territory of the state of Turkey is an indivisible entity”. More crucially, the new constitution must include a provision that declares “the state of Turkey is a Republic that rests on autonomy of local governments” and must not contain any references to “**administrative tutelage/guardianship**” which is an offshoot of the September 12 military coup.

The Presidency and the Executive

CSOs recommend to harmonize the roles and responsibilities of the presidency with the principles of a parliamentary system, and do not contend with the election of the president by the general public.

That CSOs propose to place the Office of the Chief of Staff under the jurisdiction of the

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Ministry of Interior demonstrates how limiting the role of the armed forces to foreign security and defense and the principle of political non-interference by the military have been internalized by the society.

The Judiciary

Evaluating CSOs' proposals on the judiciary yields the following points of discussion:

- (1) Discussions and suggestions on the HSYK and the Constitutional Court;
- (2) The principle of "ordinary jurisdiction", first enacted in the 1961 Constitution;
- (3) Problems of duality in Turkey's judicial system, including the existence of military courts alongside civilian courts.

Recommendations to found two separate organs, **the High Council of Judges and the High Council of Prosecutors** – as was the case in the 1961 Constitution – and to exclude Ministry of Justice bureaucrats from the **High Council of Judges** especially, are in line with the recommendations of the Council of Europe Venice Commission's Turkey report and must therefore be taken into consideration. The same is true for civil society's recommendations on electing members of the Constitutional Court, particularly the suggestion **to increase the number of officials elected by the parliament**.

The problem of **lengthy detentions**, which were alluded to frequently in the CSO proposals, testify to how these impending violations of the right to fair trial have pushed Turkey on top of the list of countries that have recorded the highest rate of violations of the ECHR in 2011. Current problems with long detention periods may be overcome with the help of a preventive/deterrence system and a constitutional norm that sets a fairer relationship between crime and punishment.

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Usually **courts with special authority** are associated with the problems caused by unfair detention terms and periods. Some CSOs aim to abolish courts with special powers in the new constitution while others suggest amending the principle of **ordinary jurisdiction** so that all types of courts assigned to try their corresponding cases follow the rule of law at all times.

Another important point about judicial independence and impartiality is that the duality in the current system of jurisdiction must be overcome. Many CSOs agree that ending this duality is critical. CSOs recommend that military courts will be abolished and military jurisprudence must be interpreted as military disciplinary procedures and rules; all offending members of the security sector institutions must be tried in civilian criminal courts and appeals on military disciplinary action must be made to the Court of Appeals.

14. FINANCIAL AND ECONOMIC PROVISIONS

Observations and Evaluation:

CSOs' proposals on economic and financial policies and the state's role in the economy also focus on the rights and liberties of individuals and groups. CSOs propose the financial and economic provisions of the new constitution to be:

- (1) Open and accountable
- (2) Human-centered
- (3) Based on free competition and equality of individuals

- (4) Designed to establish, protect and sustain a dignified life for all individuals
- (5) Supportive of the freedom of association
- (6) Safe for small-scale private property ownership
- (7) Conducive to the participation of citizens to policymaking at the highest level and at all times,
- (8) Designed to change the corporatist structures of chambers and business interest groups.

Court of Accounts

In the new constitution, civil society organizations aim to authorize the Court of Accounts to independently audit all state institutions, particularly the Turkish Armed Forces on their defense spending and to make the results of independent audits publicly available.

Citizens must at all-time be able to monitor public spending via a legislature and this monitoring exercise must not be scheduled to take place only once a year, as set out by the Law on the Budget, but year-round audits must be available for citizens via the Court of Accounts. A strong consensus exists on this particular view or suggestion.

Minimum Wages or Wage-Setting

Basically, all CSOs support fair wages and income security for all.

Taxation

CSOs concede that equality in taxation is the first step to establishing social and economic equality.

Economic and Social Council

Proposals highlight the need to restructure the Economic and Social Council to develop a

sustainable economic policy that takes into account all sections of the society and the environment.

Nationalization and Privatization

CSOs' calls to heed the common good in privatization and nationalization moves indicates that there are still concerns about the potential for nepotism and unfair economic gain made through these moves so a new constitution is expected to provide guarantees against corrupt practices.

The Budget and Account Setting

One final outcome of our evaluation is that the national budget ought to be open and accessible to the public via the parliament at all times. As a principle, the state is expected to ensure that money, credit, capital, goods and services sectors operate well and in order and to develop commerce, to minimize/eliminate the informal economy, to distribute income equally and to take legal action against monopolies and cartels so as to protect consumers. We conclude that civil society organizations expect the annual budget to nationalize if and when the above conditions are met.

15. AMENDING AND PROTECTING THE CONSTITUTION

Observations and Evaluation:

CSOs generally tend to prefer a constitution that is amendable however amending the constitution ought to require obtaining a qualified majority. Considering the strong public demand for a democratic, pluralistic, libertarian constitution that achieves social and national integrity, once enacted, this new constitution ought to be amended according to stringent criteria.

None of the CSOs that submitted proposals and suggestions to the Commission assign a

protective role to a bureaucratic body (the military, administrative offices or the judiciary) over the constitution. Therefore we can easily claim that civil society organizations rely on **the dynamics of a democratic system** with the protection of the new constitution.

16. CONSTITUTIONALLY PROTECTED LAWS

Observations and Evaluation:

The so-called “laws of the Revolution” in the 1982 Constitution refer to the founding principles and ideology of the Republic and serve as judicial and administrative tools to defend the Republican ideology, when necessary. Civil society organizations therefore emphatically support the removal of these laws from the new constitution.

More specifically, civil society organizations aim to repudiate these laws so that they are **no longer in use in contemporary legal practice**. Therefore, not only can the new constitution be free of any references to these laws but also they can be removed from force legally. CSOs do not object to the idea of maintaining the “laws of the Revolution” as **historical documents** therefore drafting a bill to announce the abeyance of these laws and the recognition of Revolutionary laws as historically significant documents may be a politically and socially viable and satisfactory solution.

17. PUBLIC INSTITUTIONS SET UP BY THE CONSTITUTION/ INDEPENDENT PUBLIC INSTITUTIONS

Observations:

This section looks at civil society proposals on the higher/supreme councils and boards.

Almost all of the CSOs have provided their feedback and suggestions on two institutions:

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the **Higher Education Council (Yükseköğretim Kurulu, YÖK)** and the **Presidency of Religious Affairs (Diyanet İşleri Başkanlığı)**. **Chambers of Commerce** and the **Radio and Television Supreme Council (Radyo ve Televizyon Üst Kurulu (RTÜK))** also mentioned, by only a fraction of the contributing CSOs.

Another institution that attracts attention and generates scores of evaluations from CSOs is the office of the **Ombudsman**.

Broadly, CSOs proposals tend to suggest granting autonomy to, **democratizing and pluralizing** the constitutionally established public institutions, i.e. the higher boards and councils. Pluralism in this context is to be realized through the **representation of different social groups or communities**.

Granting autonomy to these higher councils and boards does however go hand in hand with CSOs demands to use these organizations to oversee elected officials and the realm of politics. Oddly though, CSOs do not suggest tasking these higher councils or boards to oversee bureaucracy or the realm of the state.

Consensually, CSOs propose to abrogate some of these higher boards and councils and to reestablish others through law – not through the new constitution. That way, the new constitution will not contain references to bureaucratic institutions.

YÖK and the military high courts are among those institutions that CSOs propose to

abolish. The Supreme Military Council, the State Auditing Commission, RTÜK, semi-public vocational organizations and chambers, and a handful of other central and local administrative bodies are to be established in separate pieces of law and references to these organizations are to be excluded from the new constitution.

Regarding the **Presidency of Religious Affairs**, CSOs either propose to restructure this body to serve all religions and confessions/sects or to allow other religious or confessional groups to also establish their respective directorates. Some CSOs argue that the Presidency violates the principle of secularism and instrumentalizes religion and hence they recommend abolishing the Presidency. Another suggestion is to grant the Presidency with autonomy and **define the terms of its autonomy in a new law**. An unconventional proposal from one CSO suggests to turn the Presidency into an independent foundation and to encourage other religious and confessional communities to establish similar foundations, all of which may be financed by a “voluntary faith tax”.

Ideas to reform the **Presidency** are most frequently voiced by religious minority groups. Religious minorities, including Alevis, strongly oppose the present system, which favors Sunni Muslims in the state provision of religious education and services. Sunni groups that promote the separation of religion and state are also against the **Presidency** since they hold

that **secularism** can only be obtained by complete impartiality of the state towards all faith groups.

The debate on whether the **Presidency** of Religious Affairs is or ought to be constitutional also revolves around the presently unequal distribution of public funds to different houses of worship and that some places of worship are not even recognized by the state to merit transfers of funds.

Evaluation:

Civil society organizations argue against including references in the new constitution to bureaucratic institutions and higher councils because they seek to avoid building or maintaining constitutionally established public bodies that will try or continue to act above the sovereignty of the people. Therefore, a new constitution designed to be a Charter for democracy and freedoms ought not to establish bureaucratic organizations but those bureaucratic organizations that are deemed necessary by the people ought to be founded separately by law.

Perhaps based on practical observations and experience, civil society organizations concentrate only on the ways in which the auditing functions of the existing **higher councils and boards** may be improved and do not allude to other possible functions, such as standard setting or quality assurance, of such public bodies. Democratizing constitutionally established higher councils requires facilitating the **participation** of individuals and civil society organizations; it is therefore surprising that CSOs do not offer concrete suggestions on how to build democratic and **transparent governance structures** for such public institutions or how to involve citizens in their governance. A lack of thinking on these governance issues does not mean that CSOs do

A new constitution designed to be a Charter for democracy and freedoms ought not to establish bureaucratic organizations, but those bureaucratic organizations that are deemed necessary by the people ought to be founded separately by law.

not seek to democratically govern such institutions. Though sometimes not articulated so directly and in the form of clear demands, CSOs nevertheless highlight the need for greater participation, transparency, accountability, higher service and quality standards when proposing their ideas on how to address the issue of higher councils on the new constitution.

18. POLITICAL PARTIES AND ELECTIONS

Observations:

How political parties and elections will feature in the new constitution is one area where consensus among CSOs is most common. These common demands are as follows:

- (1) Lowering the threshold on parliamentary elections.
- (2) Utilizing the political tools (referendum, recall, draft bills submitted by CSOs, a public draft bill, a public veto) that enable citizens to participate in governance semi-directly.
- (3) Democratizing the legislation on the procedures to establish and run political parties.
- (4) Complicating the legal procedures that lead to the prohibition of political parties.
- (5) Simplifying the procedures for membership in political parties and for running for a seat in the parliamentary elections (removing some of the age, military service for male candidates, and profession requirements)
- (6) Democratizing the governance of political parties (reversing the tradition of strong and hegemonic leadership, holding primaries before general elections, recognizing and expanding membership rights, etc.).

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- (7) Distributing public funds to political parties evenly.
- (8) Facilitating or strengthening the oversight of public financing of political parties and campaigns.
- (9) Aligning the legislation on political parties and political life in Turkey with universal laws, the rulings of European Court of Human Rights and the advice and references of Venice Commission Reports.

Evaluation:

Suggestions on political parties and elections will be evaluated with references to Turkey's EU membership goal and universal norms. Some of the articles on the current Constitution need to be amended, according to CSOs, as part of measures to expand the influence of the public over the political system. Indeed, CSOs demands to democratize the procedures of political parties, to limit the hegemony of party leadership, **easing the conditions for membership to political parties and running for the parliament demonstrate the growing consensus on the need to increase the participation of individuals and groups.**

Additionally, the demands to lower or remove the electoral threshold indicate a shared understanding of the significance of parliamentary representation, particularly of vulnerable and disadvantaged groups.

We also observe that CSOs place great emphasis on developing a fair and transparent political system by introducing new rules for overseeing the transfer of public funds to political parties and by establishing a transparent and accountable system of political party financing.

Clearly, Turkey's society is deeply concerned about the present state of political party and elections systems.

Central to most proposals are also the demand to reflect the will of the people to the legislative process, i.e. to allow constituents to recall the seat of their member of parliament, to call for a public referendum on and to stop bills from passing from parliament. Besides, civil society organizations regard direct participation in politics as an everyday activity so they promote the idea of constant public oversight over politics and politicians.

19. SCIENCE – TECHNOLOGY – CULTURE- ARTS – SPORTS – YOUTH

Observations and Evaluation:

Very few suggestions have been submitted under this heading. A large section of the few suggestions available represent personal or ideological and biased views of their host organizations. Statements on science, technology, and culture and the arts that are available to the Report authors often serve to amplify the ideological positioning of the organizations that submitted those statements. That the issues of culture and education are not addressed more substantially and with sufficient references to children, young people and adults is a grave failure for Turkey's civil society.

One of the leading cultural and artistic organizations in Turkey, Istanbul Culture and

Arts Foundation (IKSV) sums up the issue well in its statement on cultural and artistic rights in the new constitution: **“The right to participate in, access and contribute to cultural life”**. The issue should indeed be tackled as the recognition and acceptance of a fundamental right. The section above on “Rights and Liberties” develops the point made here.

In education and in science, culture and the arts, if “one of the primary roles of the state is to protect the rights of all citizens, without favoring or discriminating against individuals or groups of a particular gender, race, religion, confession, linguistic or ethnic identity, and to combat all forms of institutional or social discrimination”, then most contemporary social problems in Turkey, including those about education and cultural rights, will be resolved.

One final conclusion the Report authors draw is that in this issue area, civil society organizations have not yet grasped the significance of human capital development.

20. ECOLOGY

Observations and Evaluation:

Ecological Constitution Initiative, one of the most effective organizations working on ecological issues in the constitution underline the **“right of nature”** as a fundamental right that ought to be recognized in the constitution and offers concrete proposals on how to adopt a new approach to govern the state's and society's relationship with nature.

ANNEX 1

A List of Civil Society Organizations and Groups/Initiatives, which Submitted Draft Proposals to the Constitutional Reconciliation Commission, that TESEV Democratization Program was able to Reach:

December 10th Movement (10 Aralık Hareketi)	Wise Men Center for Strategic Studies (Bilge Adamlar Stratejik Araştırmalar Merkezi, BİLGESAM)
Abant Platform	Confederation of United Public Servants and Workers Unions (Birleşik Kamu-İş Konfederasyonu)
ADAM Social Sciences Research Center (ADAM Sosyal Bilimler Araştırma Merkezi)	Bodrum Democratic Thinking Platform (Bodrum Demokratik Düşünce Platformu)
Adnan Menderes University (Adnan Menderes Üniversitesi)	Bosphorus Lawyers Association (Boğaziçi Avukatlar Derneği)
Toros University (Toros Üniversitesi)	Cem Foundation (Cem Foundation on behalf of the Honorary Presidency of the Federation of Alevi Foundations and Alevi İslam Religious Services Directorate)
Anatolian Culture and Research Association (AKADER), Jineps Newspaper, Platform for Democratic Georgians, School of the Laz (Laz Mektebi) and other organizations	Progressive Journalists Association (Çağdaş Gazeteciler Derneği)
Alevi Bektashi Federation (Alevi Bektaşî Federasyonu, ABF)	The Association for Supporting Contemporary Life (Çağdaş Yaşamı Destekleme Derneği, ÇYDD)
The Federation of Alevi Foundations (Alevi Vakıfları Federasyonu, AVF)	Democratic Constitutional Movement (Demokratik Anayasa Hareketi)
Anatolian Lions Business Association (Anadolu Aslanları İşadamları Derneği, ASKON)	Confederation of Democratic Unions (Demokratik Sendikalar Konfederasyonu, DESK)
I Have a Say on the Constitution (Anayasa İçin Sözüm Var)	Democratic Society Congress and Kurdish Political Parties (Demokratik Toplum Kongresi ve Kürt Siyasi Partileri)
Constitution Women's Platform (Anayasa Kadın Platformu)	Union of Denizli Bar Associations (Denizli Barolar Birliği)
Ankara Young Businessmen Association (Ankara Genç İş Adamları Derneği, ANGIAD)	Confederation of Progressive Workers Union of Turkey (Devrimci İşçi Sendikaları Konfederasyonu, DİSK)
Ankara Strategy Institute (Ankara Strateji Enstitüsü)	Diyarbakır Bar Association (Diyarbakır Barosu)
The Union of Independent Public Servants (Bağımsız Kamu Görevlileri Sendikaları, BASK)	World Ahlul Bayt Foundation (Dünya Ehli Beyt Vakfı)
Balıkesir Bar Association (Balıkesir Barosu)	Education Reform Initiative (Eğitim Reformu Girişimi, ERG)
Baking and Insurance Professionals Union (Banka ve Sigorta İşçileri Sendikası, BASİSEN)	Ecological Constitution Initiative (Ekolojik Anayasa Girişimi)
The Peace Assembly (Barış Meclisi)	
Capital City Women's Platform (Başkent Kadın Platformu)	

Foundation to Promote Elazığ Culture (Elazığ Kültür ve Tanıtma Vakfı)	Confederation of Public Employees' Trade Unions (Kamu Emekçileri Sendikaları Konfederasyonu, KESK)
Enderun Education Foundation (Enderun Eğitim Vakfı)	Turkish Confederation of Public Workers' Unions (Türkiye Kamu Çalışanları Sendikaları Konfederasyonu, KAMU-SEN)
Platform to Monitor and Prevent Discrimination Against People with Disabilities (Engelli Ayrımcılığını İzleme ve Önleme Platformu)	Graduates of Karadeniz Technical University (Karadeniz Teknik Üniversitesi Mezunları)
The Armenian Community (Ermeni Cemaati)	Kayseri Bar Association Management (Kayseri Barosu Başkanlığı)
Foundation of Journalists and Writers (Gazeteciler ve Yazarlar Vakfı)	Maghreb Institute (Mağrib Enstitüsü)
Giresun Chamber of Trade and Industry (Giresun Ticaret ve Sanayi Odası)	Local Administrations' Employers' Union (Mahalli İdareler İşverenleri Sendikası)
Union of Local Administrations in Southeastern Anatolia (Güneydoğu Anadolu Bölgesi Belediyeler Birliği)	Marmara Group Strategic and Social Research Foundation (Marmara Grubu Stratejik ve Sosyal Araştırmalar Vakfı)
Confederation of Turkish Real Trade Unions (HAK-İŞ Konfederasyonu)	Confederation of Public Servants Unions (Memur Sendikaları Konfederasyonu, MEMURSEN)
Confederation of Unions for the Rights of Public Servants (Kamu Çalışanları Hak Sendikaları Konfederasyonu, HAK-SEN)	National Turkish Students' Union (Milli Türk Talebe Birliği)
Association of Law and Life (Hukuk ve Hayat Derneği)	Muğla Bar Association (Muğla Barosu)
Foundation of Lawyers Union (Hukukçular Birliği Vakfı)	Independent Industrialists and Businessmen Association (Müstakil Sanayici ve İş Adamları Derneği, MÜSİAD)
Human Rights Presidency (İnsan Hakları Başkanlığı)	Platform to campaign for the law on hate crimes (Nefret Suçları Yasa Kampanyası Platformu)
Human Rights Association (İnsan Hakları Derneği, İHD)	Okan University (Okan Üniversitesi)
Human Rights Joint Platform (İnsan Hakları Ortak Platformu, İHOP)	ÖNDER (Alumni Association of İmam Hatip Schools)
Association of Human Rights and Solidarity for Oppressed People (İnsan Hakları ve Mazlumlara İçin Dayanışma Derneği, MAZLUMDER)	Libertarian Constitution Platform (Özgürlükçü Anayasa Platformu)
İstanbul Culture and Arts Foundation (İstanbul Kültür Sanat Vakfı, İKSV)	Parliament Reporters' Association (Parlamento Muhabirleri Derneği)
İstanbul Policy Center (İstanbul Politikalar Merkezi, IPC)	The Patriarchates and the Chief Rabbinate (Patrikhaneler ve Hahambaşılık)
İstanbul Şehir University Faculty of Law (İstanbul Şehir Üniversitesi Hukuk Fakültesi)	Civil Society Academy (Sivil Toplum Akademisi)
İstanbul Chamber of Industry (İstanbul Ticaret Odası)	Civil Society Development Center (Sivil Toplum Geliştirme Merkezi)
İzmir Law Center (İzmir Hukuk Merkezi)	Social Policies, Gender Identity and Sexual Orientation Studies Association (Sosyal Politikalar, Cinsiyet Kimliği ve Cinsel Yönelim Çalışmaları Derneği, SPOD)
Federation of Kafkas Associations (Kafkas Dernekleri Federasyonu)	Institute for Strategic Thinking (Stratejik Düşünce Enstitüsü, SDE)

NGOs Representing the Assyrian Community in Turkey (Süryani Sivil Toplum Kuruluşları)	Turkish Confederation of Employer Associations (Türkiye İşverenler Sendikası Konfederasyonu, TİSK)
Federation of Martyrs Families (Şehit Aileleri Federasyonu, ŞAF)	Women Entrepreneurs Association of Turkey (Türkiye Kadın Girişimciler Derneği, KAGİDER)
Community Volunteers Foundation (Toplum Gönüllüleri Vakfı, TOG)	Catholic Episcopacy Council of Turkey (Türkiye Katolik Episkoposlar Kurulu)
Social, Economic and Political Research Foundation (Toplumsal Ekonomik Siyasal Araştırmalar Vakfı, TESAV)	Turkey Federation of the Visually Impaired (Türkiye Körler Federasyonu)
Turkish Dentists' Union (Türk Diş Hekimleri Birliği)	Turkish junior National Assemblies (Türkiye küçük Millet Meclisleri, TkMM)
Turkish Pharmacists Union (Türk Eczacılar Birliği)	Turkish Health and Social Services Workers Union (Türkiye Sağlık ve Sosyal Hizmet Kolu Kamu Görevlileri Sendikası, Türk Sağlık-Sen)
Giresun Branch of the Turkish Union of Teachers and Public Professionals in Education (Türk Eğitim Sen Giresun)	The Association of Capital Market Intermediary Associations of Turkey (Türkiye Sermaye Piyasası Aracı Kuruluşları Birliği)
Turkish Law Institution (Türk Hukuk Kurumu)	Turkish Sugar Production Industry Workers Union (Türkiye Şeker Sanayii İşçileri Sendikası, ŞEKER-İŞ)
Union of Turkish Veterinarians (Türk Veteriner Hekimleri Birliği)	Foundation for Economic and Social Research on Turkey and the Turkish World (Türkiye ve Türk Dünyası İktisadi ve Sosyal Araştırmalar Vakfı, TİSAV)
The Banks Association of Turkey (Türkiye Bankalar Birliği)	Turkey Publishers Union (Türkiye Yayıncılar Birliği)
Union of Turkish Bar Associations (Türkiye Barolar Birliği)	International Children's Center (Uluslararası Çocuk Merkezi)
Municipalities Union of Turkey (Türkiye Belediyeler Birliği)	Hope Foundation (Umut Vakfı)
Turkey Children's Summit (Türkiye Çocuk Zirvesi)	Ülkü Ocakları Education and Culture Foundation (Ülkü Ocakları Eğitim ve Kültür Vakfı)
Turkish Economic and Social Studies Foundation (Türkiye Ekonomik ve Sosyal Etüdler Vakfı, TESEV)	Conscientious Objection Platform (Vicdani Ret Platformu)
Turkish Foundation for Combating Soil Erosion, for Reforestation and the Protection of Natural Habitats (Türkiye Erozyonla Mücadele, Ağaçlandırma ve Doğal Varlıkları Koruma Vakfı, TEMA)	Association for Public Servants in the Judiciary (Yargı Çalışanları Derneği)
Confederation of Turkish Craftsmen and Tradesmen (Türkiye Esnaf ve Sanatkarlar Konfederasyonu, TESK)	The Association of Judges and Prosecutors (Yargıçlar ve Savcılar Birliği, YARSAV)
Professional Association of Owners of Scientific and Literary Publications (Türkiye İlim ve Edebiyat Eserleri Sahipleri Meslek Birliği, İLESAM)	New Constitution Platform (Yeni Anayasa Platformu)
Human Rights Foundation of Turkey (Türkiye İnsan Hakları Vakfı, TİHV)	Green Party (Yeşiller Partisi)
Turkish Industry and Business Association (Türkiye İş Adamları Derneği, TÜSİAD)	
Confederation of Turkish Workers Unions (Türkiye İşçi Sendikaları Konfederasyonu, Türk-İş)	



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The full texts of draft constitutions and suggestions of the civil society organizations listed in the report can be accessed on the Turkey Constitution Watch website: <http://turkeyconstitutionwatch.org/civil-society-suggestions/>

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