

TURKEY

Amnesty International's recommendations to the government

1 End torture, "disappearance", extrajudicial executions and the impunity of those responsible

- **Incommunicado detention:** Incommunicado detention occurs when detainees are deprived of access to lawyers, family and friends, and doctors. The UN Special Rapporteur on torture has stated quite categorically that incommunicado detention should be abolished. Turkey's Law on the State Security Courts permits four days' incommunicado detention. The detention period may be extended by court order, but during the extended period the law grants the detainee access to a lawyer. The law and the widespread practice of denying access to a lawyer in the extended detention period also violate the right to prompt access to a lawyer, which is a major safeguard against torture and unfair trial. The European Court of Human Rights has acknowledged that the failure to grant access to counsel during the first 48 hours after arrest was a violation of Article 6 of the European Convention.¹ The UN Special Rapporteur on torture has recommended that anyone who has been arrested "should be given access to legal counsel no later than 24 hours after the arrest."² Amnesty International recommends that incommunicado detention should be abolished and clear guidelines should be introduced to ensure that all detainees have in practice immediate access to legal counsel.
- **Opening detention records for scrutiny by families of detainees and by lawyers:** Relatives and lawyers should be able to find out immediately where a detainee is held and under which authority. However, Amnesty International has often received appeals from alarmed families or lawyers who believed that a person had been taken into the custody of security officials, but the authorities denied the detention. In some of the cases it could be established after intervention from human rights organizations that the person was indeed detained; in other cases the person remains missing. Scrupulous record-keeping of all detentions is important, not only to establish responsibility for any violations committed during custody but, more urgently, in order to prevent "disappearances". Rule 7 (1) of the UN Standard Minimum Rules for the Treatment of Prisoners requires that all detainees should be registered in a "bound registration book with numbered pages". In Turkey, a standardized pattern of registration form provided for in the Regulation on Apprehension, Police Custody and Interrogation, issued jointly by the Justice and Interior Ministries on 1 October 1998, would be an important innovation if presented in the form of a bound ledger with numbered pages, but this is not mentioned in the regulation.

¹ *Murray v. United Kingdom*, (41/1994/488/570), 8 February 1996.

² Report of the UN Special Rapporteur on torture, UN Doc. E/CN.4/1990/17, 18 December 1989, para. 272, see also UN Doc. E/CN.4/1995/34, 12 January 1995, para. 926.

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- **No secret or unofficial detention:** As Article 10(1) of the UN Declaration on the Protection of All Persons from Enforced Disappearance states: “Any person deprived of liberty shall be held in an officially recognized place of detention”.
 - Concrete steps to promote accountability by police and to end torture include ending the practice of **blindfolding** in police custody. The practice of blindfolding was condemned by the UN Committee against Torture in its report on Turkey under the Convention against Torture in November 1993. However, in Turkey the Regulation on Apprehension, Police Custody and Interrogation does not prohibit blindfolding, and the practice continues as a matter of routine. Almost all detainees are blindfolded while giving their statement. This can be considered a form of ill-treatment in itself, and makes the reliable identification of officers responsible for abuses more difficult.
 - All officials involved in the custody, interrogation and medical care of detainees and prisoners should be informed that **rape and sexual abuse** are acts of torture or ill-treatment. Forcibly subjecting female detainees to so-called “virginity tests” is a form of gender-based violence constituting torture or cruel, inhuman or degrading treatment. Accountability mechanisms to ensure that this will not be tolerated should be put in place.
 - **Investigation of complaints:** Turkish authorities should ensure that complaints and reports of torture or ill-treatment, “disappearance” and extrajudicial execution are promptly and effectively investigated. Even in the absence of an express complaint, an investigation should be undertaken wherever there is reasonable ground to believe that torture or ill-treatment might have occurred. (Article 12 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to which Turkey is a state party). The investigators should be competent, impartial and independent of the suspected perpetrators and the agency they serve. They should have access to, or be empowered to commission investigations by impartial and independent medical or other experts. The methods used to carry out such investigations should meet the highest professional standards, and the findings should be made public.
 - Detainees should have immediate access to independent, impartial and competent medical experts. Independent medical or psychiatric reports should be admissible to the investigation. Appropriate equipment for the medical investigation of different forms of torture and ill-treatment should be provided. Medical examinations should be conducted in private under the control of the medical expert and outside the presence of security or other government officials. In the case of rape and other forms of sexual abuse the examining health personnel should be of the same sex as the victim unless otherwise requested by the latter.
 - Alleged victims, witnesses, those conducting the investigation and their families should be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in human rights violations should be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

- **Prosecution:** Those responsible for human rights violations, including those who order it, should be brought to justice. As recommended by the Special Rapporteur on torture after his visit to Turkey, “prosecutors and judiciary should speed up the trials and appeals of public officials indicted for torture and ill-treatment. Sentences should be commensurate with the gravity of the crime.”³
- Police officers or gendarmes under investigation or trial for ill-treatment, torture, “disappearance” or extrajudicial executions should be suspended from active duty and if convicted they should be dismissed from the force.
- The **Law on Prosecution of Civil Servants** should be amended in order to ensure that any decision as to whether or not to prosecute a government officer for ill-treatment, torture, “disappearance” or extrajudicial execution, or for abuses of authority which might lead to such human rights violations, is taken exclusively by judicial authorities.
- **Statements elicited under torture:** Article 15 of the United Nations Convention against Torture obliges the states parties to “ensure that any statement which is established to have been made as a result of torture should not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” For concluded trials, a body should be established to review the convictions based on evidence alleged to have been extracted under torture and, where appropriate, to arrange for prompt retrial.
- The Ministry of Justice should compile a **list of complaints, prosecutions, convictions and sentences** relating to torture and other human rights violations, and adopt standard reporting forms for forensic medical reports.
- **Compensation and rehabilitation:** Under Article 14 of the UN Convention against Torture victims of torture and their dependants are entitled to obtain fair and adequate redress from the state. This should include appropriate medical and psychological care, financial compensation and rehabilitation.
- **Training:** It should be made clear during the training of all officials involved in the custody, interrogation and medical care of detainees and prisoners that torture is a criminal act. They should be instructed that they have the right and duty to refuse to obey any order to torture.

2 Ensure Freedom of Expression

- All prisoners of conscience should be immediately and unconditionally released and their civil and political rights reinstated. Amnesty International welcomes the conditional and temporary release of certain prisoners in 1999, but considers this an insufficient step.
- Article 312 and Article 159 of the Turkish Penal Code and Article 8 of the Anti-Terror Law should be amended or repealed as soon as possible in order to prevent them being used to restrict freedom of expression.

³ E/CN.4/1999/61/Add.1, 27 January 1999.

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- A thorough review of Turkish law and the constitution should be conducted in order to lift any restrictions on the right to peacefully express opinions, form associations and assemble in public and in order to prevent the law being interpreted in such a way as to extend such restrictions.

3 End repression against Human Rights Defenders

- Human rights defenders should be allowed to pursue unhindered their lawful role of monitoring and reporting human rights matters as set out in the UN Human Rights Defenders Resolution of 9 December 1998.
- Charges against human rights defenders for peacefully expressing their views or for carrying out their role of monitoring and reporting human rights abuses should be dropped.
- Branches of human rights organizations that have been legally closed like the Human Rights Association IHD branch in Diyarbakır (closed since May 1997) and Malatya (closed since February 2000) as well as the branches of the Islamic-oriented human rights organization Mazlum Der in Malatya (closed since May 1999) and Urfa (closed since December 1998) should be allowed to reopen immediately.
- Effective action should be taken to ensure all public servants, including the security forces, recognize the legitimacy of the work of human rights defenders and abstain from making unsubstantiated allegations against human rights defenders. Statements of this nature must be publicly countered and appropriate measures applied to sanction those responsible.
- Integrated programs should be adopted for the protection of human rights defenders that include thorough criminal investigations into attacks and threats against human rights defenders, preventative measures such as education for security force agents on the rights of human rights defenders to carry out legitimate activities, as well as security measures to assist with immediate safety issues. Such programs should ensure that all measures to protect human rights defenders are adopted in consultation with members of human rights organizations.

4 Death penalty and executions

- The existing moratorium on executions should be continued.
- The death penalty should be fully abolished from all laws. As an intermediate measure the number of offences punishable by death should be reduced.
- Turkey should sign and ratify Protocol No. 6 to the European Convention of Human Rights.