

TABLE OF CONTENTS

INTRODUCTION	1
1. THE NEED FOR GREATER CONSULTATION WITH CIVIL SOCIETY	1
2. THE URGENT NEED FOR INDEPENDENT, RESOURCED AND EFFECTIVE NATIONAL HUMAN RIGHTS INSTITUTIONS	3
3. CONCERNS ABOUT CONTINUED TORTURE AND ILL-TREATMENT AND IMPUNITY	4
4. THE NEED FOR EFFECTIVE INVESTIGATIONS	6
• Investigations regardless of whether or not there are complaints..	7
• Investigations should be comprehensive	8
• Chain of command	8
• Suspension and dismissal.....	9
• Use of “counter-charges”	9
• Demonstrations	10
• Use of evidence alleged to have been extracted under torture.....	10
5. PROBLEMS OF JUDICIAL PROCEEDINGS	11
• Statute of limitations	11
• Delays in judicial proceedings	11
• Use of medical reports in trials and the role of the Forensic Medical Institute	12
• Sentencing.....	13
• Reparations	13
6. THE NEED FOR GREATER SCRUTINY OF PLACES OF DETENTION	14
7. FREEDOM OF EXPRESSION	15
• Constitutional restrictions on the right to freedom of expression	16
• Problems with the new TPC	17
8. MINORITY RIGHTS AND DISCRIMINATION	19
9. HUMAN RIGHTS DEFENDERS	21
10. FREEDOM OF ASSEMBLY	23
11. VIOLENCE AGAINST WOMEN	23

Turkey
Memorandum on AI's recommendations to the government to address human rights violations

INTRODUCTION

Since the government has come to power in 2003, Amnesty International has welcomed the numerous steps that it has taken in order to improve human rights standards in Turkey. The organization is nevertheless concerned about continuing patterns of serious human rights violations.

Amnesty International considers that there has in 2005 been a slowing of the reform process and a failure to build upon previous achievements. While there have been important initiatives in terms of legal change and training for state officials, there is still a crucial lack of mechanisms and institutions that will effectively monitor human rights standards and investigate individual violations in Turkey. Amnesty International considers that, even taking into account the reforms undertaken by the government, people who have been subjected to serious human rights violations do not have any grounds to believe that the courts or authorities will be able to adequately investigate their case and bring those suspected of being responsible to justice. Most obviously – and in clear contradiction of the government's declared "zero-tolerance for torture" policy – the response by the authorities to reports of incidents of torture and ill-treatment and other serious human rights violations perpetrated by members of the security forces has been inadequate.

Amnesty International therefore considers that further action is needed to address the organization's continued concerns and urges the government to take steps in accordance with the recommendations below.

1. THE NEED FOR GREATER CONSULTATION WITH CIVIL SOCIETY

Amnesty International has previously written to the government in detail regarding the new laws that entered into force on 1 June including the Turkish Penal Code (TPC) and Criminal Procedure Code (CPC). These laws contained many positive aspects – most obviously in connection to provisions that should, if implemented, significantly improve the level of protection from violence for women in Turkey. One reason for this positive reform was the fact that the draft of the law was consulted upon with women's organizations and many of their recommendations were taken into account.

However, the law also includes provisions that appear to introduce unnecessary restrictions to fundamental rights. Amnesty International welcomed the decision by the government to delay the entry into force of the TPC from 1 April to 1 June 2005 in order to address some of the objections of journalists' groups to some of these restrictions. Amnesty International wrote to the government in April outlining its concerns about the draft and again once it had seen the proposed changes. However, the final changes to the TPC offered only the most minor of improvements, mainly the removal of possible increased sentences for

certain crimes where carried out by the press. Amnesty International believes that provisions of the new TPC may be used to unnecessarily restrict the right to freedom of expression.

In this connection, and in the light of the positive results obtained through sincere consultation with women's organization, Amnesty International notes complaints from human rights organizations and professional bodies such as the Press Council that their views on the draft legislation were not sufficiently sought or taken into account.

The UN Special Representative on Human Rights Defenders, Hina Jilani observes in her report of her October 2004 mission to Turkey that:

...Nearly all human rights defenders, however, expressed disappointment at not having been consulted about the reform packages. Overall, they feel that so far, consultation initiatives have only been formal and their input not reflected.

Consultation needs to be wider and better conducted to allow for a true dialogue with civil society.¹

Amnesty International notes the counter response of the government that:

The recent comprehensive legislative changes as well as administrative measures have been crafted through a real collaborative process, taking the views of the civil society and academic circles into consideration. A solid case in point is the new Penal Code, the drafting process of which was marked with transparency. The Code was a result of a comprehensive drafting process in which the Council of Europe as well as local and international NGOs were involved.²

The response asserts that the government achieved consultation and collaboration with civil society through bodies such as the Human Rights Advisory Board as well as the District and Provincial Human Rights Boards. Given the public and acrimonious breakdown in relations between the government and the members of the Human Rights Advisory Board³ and the well-documented shortcomings of the District and Provincial Human Rights Boards (see below), such a consultation would be clearly deficient. The complaints of NGOs – including human rights organizations – that their views were not taken into account and the flaws in the legislation when it finally entered into force all strongly indicate that the drafting and consultation process was not comprehensive enough. Amnesty International recognizes the pressure placed upon the government by the European Union to pass some of these new laws as quickly as possible but would **strongly urge that further draft legislative reforms**

¹ E/CN.4/2005/101/Add.3, page 25, para 102, 18 January 2005

² Observations of the Government of Turkey on the Report of Ms. Hina Jilani, Special Representative of the Secretary General on Human Rights Defenders, on her mission to Turkey (E/CN.4/2005/G/29).

³ Human rights organizations alleged that the government had failed to respond to any of the reports of the Board, that the State Minister for Human Rights had not attended any of its meetings and that an effort had been made to make the board ineffective by appointing to it representatives of organizations whose commitment to human rights values was questionable. For further information, see the Turkey entry *Concerns in Europe and Central Asia: July - December 2004* (AI Index: EUR 01/002/2005), March 2005.

are scrutinized thoroughly in the light of Turkey's commitments to international law and standards and fully consulted upon with civil society.

2. THE URGENT NEED FOR INDEPENDENT, RESOURCED AND EFFECTIVE NATIONAL HUMAN RIGHTS INSTITUTIONS

Turkey has an urgent need for effective and independent National Human Rights Institutions which will promote and protect human rights, including through effective investigation of patterns of human rights concerns and individuals' complaints about human rights violations they have suffered, and through making recommendations accordingly.

Present examples of bodies which it is claimed fulfil the function of a National Human Rights Institution include the above-mentioned and ill-fated Human Rights Advisory Board as well as the Provincial and Regional Human Rights Boards attached to the Prime Ministry. The latter bodies have been well-publicized by the government. However, Amnesty International has serious concerns about the operations of these Boards - concerns which are shared by Turkish and international human rights non-governmental organizations⁴. These institutions are not adequate mechanisms to address this need and are not in line with the Paris Principles (see below).

While the Provincial and District Human Rights Boards are involved in positive initiatives in terms of raising awareness of human rights at a local level, their inadequacies are inevitable given their lack of independence, composition, limited powers and apparent reluctance to investigate adequately serious reports of human rights violations. No amount of money given for training to the Boards will resolve this issue if these other factors are not resolved.

The UN Special Representative on Human Rights Defenders has commented extensively on the shortcomings of these Boards, recommending that:
...the Government review the effectiveness and functionality of human rights boards and constructively include human rights NGOs in the assessment of the most effective mechanisms to address human rights violations at the local level".⁵

Amnesty International therefore notes with satisfaction reports that the government is planning to re-examine this system and to develop legislation on National Human Rights Institutions such as a Human Rights Ombudsperson and Human Rights Commissions. Amnesty International considers that such Institutions must conform to the UN Principles relating to the status of national institutions (known as the Paris Principles) otherwise they will be similarly ineffective. The Paris Principles state that, in order to fulfil their vital

⁴ For example, see the Human Rights Watch briefing, *Eradicating Torture in Turkey's Police Stations: Analysis and Recommendations*, 22 September, 2004.

⁵ E/CN.4/2005/101/Add.3, page 25, para 114, 18 January 2005.

functions, national human rights institutions should have precisely defined powers to investigate on their own initiative situations and cases of reported human rights violations. Individual complainants, their lawyers, relatives or others acting on their behalf, including non-governmental organizations, should also be able to bring their complaints directly to such bodies. National Human Rights Institutions should undertake a prompt, thorough, effective and impartial investigation into human rights violations and not be hampered or otherwise inhibited by following the conclusions of a previous investigation. An important part of the work of a National Human Rights Institution should also be to collect and compile statistics and information in order to obtain an accurate picture of human rights violations in the country. Statistics should detail the nature of all complaints, how and when they were investigated, the findings, and follow-up to recommendations. The Paris Principles also state the importance of independence for the National Human Rights Institutions and of the pluralism of their membership.

Amnesty International would like to draw attention to the attached report *Amnesty International's recommendations on national human rights institutions* (AI Index: IOR 40/007/2001) which outlines guidelines based on the organization's experiences with dealing with such institutions in other countries and offers recommendations of best practice so that they may be established with the requisite ingredients for effective and independent functioning. **Amnesty International urges that both the Paris Principles as well as these recommendations are taken into account when the legislation is drafted in order to ensure that the National Human Rights Institutions are effective in practice.**

3. CONCERNS ABOUT CONTINUED TORTURE AND ILL-TREATMENT AND IMPUNITY

Amnesty International has been greatly concerned about the issue of torture and ill-treatment perpetrated by members of the security forces in Turkey for many years and sees this area as the testing ground for the reforms undertaken by the government. No issue more clearly illustrates the uneven impact of the reforms, the problems in their implementation and the need for further steps in order to eliminate the violations.

Amnesty International has warmly welcomed the "zero tolerance for torture" policy articulated by the government and the associated improvements made to detention and other regulations in order to improve the protection from torture and ill-treatment for detainees in police and gendarmerie custody. The organization is also heartened by the steps taken by the government in response to the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to communicate to state officials the prohibition of torture and ill-treatment, such as the circulars issued by the Ministry of the Interior to police stations urging them to respect detainee's rights.

The CPT in the report of its September 2003 visit to Turkey concluded that:

The legislative and regulatory framework necessary to combat effectively torture and other forms of ill-treatment by law enforcement officials has been put in place; the challenge now is to make sure that all of the provisions concerned are given full effect in practice.

Unfortunately, this is a challenge which the government still appears to be failing to meet. Torture and ill-treatment continues to be a widespread problem in Turkey. Amnesty International has raised its concerns regarding the statistics collected by the Human Rights Boards attached to the Prime Ministry but even these confirm that torture and ill-treatment continue to be a serious and widespread problem in Turkey. According to these figures, 158 individuals complained of torture and ill-treatment to the Boards in 2004. This was the highest figure for any type of violation collected by the Boards in that year. Figures collected by independent non-governmental organizations also give a disturbing picture related to continued problems in this area. For example, the Human Rights Association (IHD) stated that it had documented 843 reports of torture and ill-treatment in 2004.

The repeated incidence of torture and ill-treatment in Turkey – despite the government’s programme – shows clearly that further measures are necessary in order to eradicate torture by state agents. The eradication of torture should be seen as the achievement of conditions in which torture and ill-treatment are extremely unlikely; they will occur, if at all, only in isolated cases; and if they do occur, there will be a reaction from the authorities which prevents the perpetrator from repeating the act, which satisfies conditions of justice and reparation, and which condemns the act in such a way that other public officials will be deterred from similar conduct. At the moment, this is far from the case in Turkey. The “zero tolerance for torture” policy appears to be limited to legislative changes (such as increasing the punishment for individuals convicted of torture or allowing access of detainees to lawyers) and training given to police officers.

Amnesty International believes that an effective policy of combating torture would require the following:

- **Legislative and other safeguards including an independent body that will carry out regular and ad hoc unannounced visits to places of detention;**
- **Ratification of the Optional Protocol to the Convention against Torture;**
- **The introduction of video and audio recording of all interviews of suspects in custody;**
- **Meaningful training of police, gendarmerie, judges and prosecutors regarding the legal changes and international standards, which comprises more than the issuing of circulars and directives;**
- **Clear guidelines to law enforcement officials – including a Code of Ethics – that would cover their responsibilities during interrogation and detention;**
- **The existence of clear sanctions for any law enforcement officials who may break such guidelines;**

- **Immediate and urgent impartial investigations into any allegations of violations of human rights by members of the security forces in accordance with the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;**
- **The development of an effective complaints mechanism able to carry out investigations into human rights violations;**
- **The urgent opening of criminal and disciplinary proceedings in relation to such violations with appropriate sanctions against anyone found responsible for these;**
- **The examination of the responsibility of commanding officers where law enforcement officials are alleged to have perpetrated serious human rights violations;**
- **The suspension from duty of officers under investigation for torture and serious ill-treatment and dismissal if found guilty;**
- **Compensation for and rehabilitation of the victims.**

4. THE NEED FOR EFFECTIVE INVESTIGATIONS

One of the most serious obstacles to the successful implementation of the “zero tolerance” policy is the failure to adequately investigate allegations of torture and ill-treatment. Amnesty International believes that most investigations carried out by prosecutors into complaints or allegations of serious human rights violations in Turkey are deficient and, when they do occur, criminal proceedings brought against those accused of perpetrating such acts are often flawed. The result appears to be an apparently overwhelming climate of impunity for state officials that perpetrate human rights violations. Amnesty International considers that the general lack of thoroughness of investigations by prosecutors demonstrates a lack of impartiality.

Amnesty International notes the circular issued by the Ministry of Justice on 20 October 2003 which gave instructions to prosecutors to carry out investigations themselves and to give priority to such investigations. Unfortunately, this does not appear to have had any serious effect on the quality of investigations. Amnesty International is struck by the high proportion of complaints of torture and ill-treatment in which prosecutors have decided to issue “*takipsizlik kararları*” (decisions not to prosecute) after an apparently cursory and brief investigation, which is usually apparently restricted to an examination of the medical report of the detainee. The CPT has raised its concerns about the use of medical reports on their own and has made recommendations to address this shortcoming (see below).

Amnesty International considers that the failure of prosecutors to carry out investigations in accordance with the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is one of the main contributing factors towards impunity in Turkey. It is especially concerning considering that many proposals designed to reduce torture and ill-treatment – such as the 20 October 2003 circular above or the introduction of a “judicial police” under the

authority of the prosecutor responsible for gathering evidence – envisage concentrating greater power in the hands of state prosecutors. Given state prosecutors' failure to adequately investigate the incidents of torture and ill-treatment, the often collegiate way that state prosecutors have been seen to work together with security forces, their apparent resistance to reforms in other areas, such as freedom of expression (see below) as well as the apparent lack of accountability of prosecutors,⁶ Amnesty International believes **that steps should be taken to ensure that investigations into serious human rights violations by security forces such as torture, extrajudicial executions, ill-treatment and deaths in custody are independent and impartial.**

This could be achieved by developing an independent mechanism such as a Police Complaints Commission that would investigate any allegations of torture or ill-treatment perpetrated by members of the police forces. Such a body would have to be well resourced in order to investigate such a large number of complaints and those responsible for carrying out the investigations should be independent from the security forces. After carrying out the initial investigation and gathering evidence such a body would refer the file to the prosecutor with a recommendation regarding further action.

Since the ultimate decision regarding prosecution would be in the hands of the prosecutor and given the concerns regarding the quality of their investigation, Amnesty International would also urge that priority is given to training prosecutors regarding the reforms and especially the standards of investigation into allegations of torture and ill-treatment in accordance with the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The organization also urges the government to implement the recommendations below related to standards of investigations which have been selected from a number of international standards in the light of specific shortcomings regarding investigations in Turkey.

- Investigations regardless of whether or not there are complaints

It is essential that, 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 according to 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 UN Committee against Torture (CAT) has stated that "...the Convention does not require the formal submission of a complaint of torture. It is sufficient for torture only to have been alleged by the victim for the state to be under an obligation promptly and

⁶ The High Board on Prosecutors and Judges has oversight over the activities of prosecutors but Amnesty International is not aware of any steps that the Board has previously taken against prosecutors who have covered up torture. If such examples do exist, the organization would be grateful to receive further details.

impartially to examine the allegation”⁷. The CAT has also been very clear that information supplied by non-governmental organizations should be grounds for opening an investigation⁸.

- Investigations should be comprehensive

Amnesty International would like to draw attention to the following observation and recommendation from the CPT made in its report on its September 2003 visit to Turkey which it considers to be absolutely key to improving investigations by prosecutors:

As regards more particularly public prosecutors and judges, they should be made fully aware not only of the importance of medical reports in the context of combating ill-treatment but also of the limitations of such reports. From the information gathered during the September 2003 visit, it is clear that there is still a tendency for routine medical reports drawn up at the end of police/gendarmerie custody which record “Darp cebir izine rastlanmadı” (no signs of blows or violence found) to be treated as a guarantee that ill-treatment has not occurred. Nothing could be further from the truth.

*Even assuming that the examination on which such a report is based was carried out under satisfactory conditions (which at present is still far from always being the case), it is a well recognised forensic medical fact that the absence of physical marks does not necessarily mean that the person examined has not been ill-treated. Many of the methods of ill-treatment known to have been used in Turkey do not leave visible physical marks, or will not if carried out expertly. It follows that in order to make an accurate assessment of the veracity of allegations of ill-treatment, **it may well be necessary to look beyond the medical reports drawn up during police/gendarmerie custody and to take evidence from all persons concerned and arrange in good time for on-site inspections and/or specialist medical examinations [Amnesty International’s emphasis].***

Amnesty International has encountered numerous examples of situations where the testimony of the security officials in connection with an incident in which they are alleged to have perpetrated a serious human rights violation – especially in relation to killings in disputed circumstances – have become the basis for the prosecutor’s indictment while other evidence such as the statements of witnesses appear to have been ignored. This often means that security officials are charged with a lesser offence instead of the crime with which they had been accused (for example, “ill-treatment” rather than “torture”) and, it has been alleged, is designed to damage the chances of a successful prosecution.

- Chain of command

It is essential that investigations – and any resulting court cases – examine the responsibility of commanding officers where members of the security forces are alleged

⁷ *Blanco Abad v. Spain*, para 8.2.

⁸ *Khaled Ben M’Barek v. Tunisia*, 10 November 1999, paras 2.10, 11.4-11.7.

to have perpetrated serious human rights violations. At the moment, there appears to be a reluctance to indict senior officials. The Special Rapporteur on torture has stated: “If torture has occurred in an official place of detention, the official in charge of that place should be disciplined or punished.”⁹ Establishment of a chain of command is also particularly important where violations are alleged to have been perpetrated outside of official detention settings. The principle of chain-of-command control is set out in the United Nations (UN) Declaration on the Protection of all Persons from Enforced Disappearance: “Each state shall . . . ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehension, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms” (Article 12/2).

- Suspension and dismissal

Amnesty International is particularly concerned that members of the security forces have remained on duty after they have been accused of serious human rights violations and even where cases have been opened against them for torture or serious ill-treatment.

This not only is a problem in that it allows for the possibility that an individual or group of police officers may offend again, but also it may result in intimidation of the witnesses and complainants. The UN Special Rapporteur on torture has stated that “when a detainee or relative or lawyer lodges a torture complaint, an inquiry should always take place and, unless the allegation is manifestly ill-founded, public officials involved should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings.”¹⁰ If found guilty, they should be dismissed from the service and not merely suspended. Amnesty International is concerned that security officials who are being investigated or prosecuted for serious human rights violations, including “disappearances”, extrajudicial executions and torture and serious ill-treatment, have often been posted to other assignments on active service or even promoted. **Police or gendarmerie officers under investigation or being prosecuted for such crimes should not receive rewards such as promotions while they are under investigation, awaiting trial or during the trial lest it appear that the authorities condone their acts.** Such a step would appear entirely consistent with the “zero tolerance for torture” policy.

- Use of “counter-charges”

Amnesty International is especially concerned about the use of “counter-charges” against individuals complaining of ill-treatment perpetrated by security officials during apprehension and during policing of demonstrations. Amnesty International has documented cases where, subsequent to a complaint of ill-treatment from a detained person, prosecutors have hastily ruled that there is no basis for a prosecution of the security officials – despite medical reports that corroborate allegations of ill-treatment – and instead charged the complainant with “resisting a public official by force and violence or threats” or with violation of Law No 2911 on Meetings and Demonstrations. **The government should take effective measures to**

⁹ Report of the Special Rapporteur to the 56th session of the General Assembly, A/56/156, 3 July 2001, para. 39 (j).

¹⁰ *Ibid.*

ensure that people who bring complaints of ill-treatment against police officers are protected against intimidation. Such measures should include the careful scrutiny by the prosecuting authorities of police complaints that detainees have resisted state authority, particularly those which are filed only after complaints of police ill-treatment are brought. Where complaints are filed simultaneously, the complaint against the alleged victim should be suspended until the result of the investigation into the behaviour of the police officers concerned has been completed.

- Demonstrations

This point is particularly important regarding the policing of demonstrations. Amnesty International welcomed the opening of an investigation by the Ministry of the Interior into the use of disproportionate force by police officers on demonstrators in Sarayhane and Bayezit on 6 March 2005 and the subsequent disciplinary sanctions against six police officers and two commanding officers. While such a response is welcome, the organization has repeatedly raised the issue of policing of demonstrations with the government and is aware of many such similar incidents that have taken place in the last year. The only factor that seemed to make this incident extraordinary was that it took place just before the EU Ministerial Troika in Ankara and the footage of police brutality and the inadequacy of policing practices were broadcast on television screens internationally. **Amnesty International insists that all such incidents are investigated fully and asks that police officers should receive further training in the area of policing of demonstrations.** In addition, the organization is greatly concerned at reports that identification of individual police officers involved in the above incidents was made difficult since they were wearing gas masks. **Amnesty International urges that police officers should be clearly identifiable and that their badge numbers should never be obscured while they carry out their duties.**

Amnesty International reminds the Turkish government of its responsibilities under international law, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials which states in Principles 7 and 8: “Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law”, and “Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.” This last observation is key in the light of reported statements by members of the government that such behaviour by police officers was in some way justified as the demonstration “did not have permission”.

- Use of evidence alleged to have been extracted under torture

Regarding use of evidence alleged to have been extracted as a result of torture or ill-treatment, Amnesty International would like to draw attention to Article 15 of the UN Convention against Torture which obliges 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”. The UN Special Rapporteur on torture has further stated that “where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift

to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment.” Amnesty International welcomes Article 148 of the Criminal Procedure Code that prohibits the use of evidence of statements obtained under torture and ill-treatment as well as the recent landmark judgment by the Court of Appeals in the Hüseyin Göklerinoğlu case which overturned his conviction on the basis that it was extracted under torture. **The organization nevertheless considers that a body should be established to review previous convictions based on evidence alleged to have been extracted under torture and, where appropriate, to arrange for prompt retrial.**

5. PROBLEMS OF JUDICIAL PROCEEDINGS

Unfortunately, even where trials are initiated against individual members of the security forces accused of perpetrating serious human rights violations, courts appear to be reluctant to proceed swiftly and to punish defendants with appropriate sanctions if they are found guilty or otherwise are dropped on technical grounds. Amnesty International therefore urges that the following recurring problems in connection with such judicial proceedings be urgently addressed.

- Statute of limitations

The new TPC has, through its introduction of heavier penalties for the crimes of torture, further extended the statute of limitations in such crimes. However, Amnesty International takes little courage from this development given the excessive delays in trials opened as a result of such crimes and the dropping of a large proportion of cases because they have reached the statute of limitations. In some circumstances it appears that the lawyers of the defendants have attempted to delay legal proceedings as long as possible in a frequently successful gambit designed to ensure that charges against their clients are dropped through the case reaching the statute of limitations. Given this situation, Amnesty International draws attention to the fact that the status of torture as a peremptory norm of general international law suggests that **there should be no statute of limitations for the crime of torture. Amnesty International urges the government to address this issue in law immediately.**

- Delays in judicial proceedings

Amnesty International further draws attention to the recommendation of the UN Special Rapporteur on torture after his visit to Turkey that “...prosecutors and judiciary should speed up the trials and appeals of public officials indicted for torture and ill-treatment”. While Law No 4963 (the so-called “seventh harmonization package”) which came into effect in 7 August 2003 introduced an additional article to the previous CPC that stipulated that trials opened as a result of torture or ill-treatment cannot be postponed more than 30 days and should be heard during judicial holidays, no such provision has been carried over into the new CPC. The organization notes the possibility of serious delays in trials related to torture and ill-

treatment¹¹. **The organization considers that there is a need to expedite trials by introducing regulatory time frames for the provision of evidence – such as medical reports from the Forensic Institute – by improving the mechanisms for ensuring more thorough pre-trial preparation of cases by the relevant authorities and by introducing the practice of conducting trial hearings on consecutive days until a verdict is reached, or at least at much closer intervals than is the current practice.**

- Use of medical reports in trials and the role of the Forensic Medical Institute

Some trials of torturers – such as that before Iskenderun Heavy Penal Court in which four police officers were accused of the torture of Nazime Ceren Salmanoğlu and Fatma Denis Polattaş in 1999 – have highlighted problems in the use of independent medical reports as corroboration and drawn attention to fundamental problems in the structure of the Forensic Medical Institute, which is responsible for providing reports that are used in the Turkish domestic courts.¹² Amnesty International considers that these shortcomings need to be addressed immediately by the government. In line with the recommendation of the CPT in relation to the role of medical reports in proving whether or not torture has taken place, **Amnesty International would urge that court decisions as to whether or not torture took place should also not be based on (possibly deficient) medical reports but should “look beyond the medical reports drawn up during police/gendarmerie custody and to take evidence from all persons concerned and arrange in good time for on-site inspections and/or specialist medical examinations”.**

Amnesty International is concerned at the lack of independence of the Forensic Medical Institute and considers that this body must be made independent both functionally and nominally of the Justice Ministry. The UN Special Rapporteur on torture has drawn attention to this fact, stating that: “...the forensic medical services should be under judicial or other independent authority, not under the same governmental authority as the police and the penitentiary system”.¹³ At the moment this is not the case. Amnesty International is additionally concerned by the staffing of the Forensic Medical Institute. For example, Dr Nur Birgen, the individual who was appointed to head the Third Specialization Committee of the Forensic Medical Institute, which is the committee responsible for medical assessments in cases where torture is alleged, is an individual who has received several disciplinary sanctions from the Turkish Medical Association - one of which was for issuing a medical report which covered up signs of torture. This key appointment does not promote confidence in the government’s professed commitment to demonstrate “zero tolerance to torture”.

¹¹ For example, on 24 June 2005, a court in Ceyhan reportedly postponed the trial of a police officer charged with the ill-treatment of Murat Gezici until 5 October 2005.

¹² For example, see the Amnesty International press release *Turkey: Justice denied to tortured teenage girls* (AI Index: EUR 44/018/2005, 22 April 2005).

¹³ Report of the Special Rapporteur to the 56th session of the General Assembly, A/56/156, 3 July 2001, para. 39 (j).

Amnesty International is additionally concerned at the apparent reluctance of courts to accept as evidence medical and psychiatric reports from sources other than the Forensic Medical Institute. In some circumstances, this has led to long and unnecessary delays as courts wait for the confirmation from the Forensic Medical Institute for corroboration of independent, expert reports. **Given the issues cited above, related to the Institute's non-independent status as well as its apparently low capacity, the government should certainly be taking urgent steps to promote the acceptance as evidence by courts of medical and psychiatric reports from high quality university research and teaching hospitals, and where necessary, other accredited organizations.** The UN Special Rapporteur on torture has stated that: "Public forensic medical services should not have a monopoly of expert forensic evidence for judicial purposes." The CPT has – crucially – recommended that specific legal provisions should be adopted which would ensure that "a person taken into police custody has the right to be examined, if he so wishes, by a doctor of his own choice, in addition to any medical examination carried out by a doctor called by the police authorities".

- Sentencing

Amnesty International is also concerned that even when police officers accused of ill-treatment have been convicted by a court, punishments have not always been commensurate with the gravity of the crime. Relatively nominal penalties, which have often been further reduced, have been imposed on police officers whose victims suffered serious injury. Reasons for these reductions in sentences have included the "good conduct" of the defendant in court. Only very rarely do police officers, who are convicted of human rights abuses, receive custodial sentences. If unlawful acts of police violence against detainees are to be deterred, the seriousness of such acts must be reflected in both the criminal and disciplinary measures taken against the offending police officers. The government has previously taken steps to address this concern by introducing a regulation which stipulates that sentences handed down for crimes of torture and ill-treatment may not be converted to a fine or suspended. While this measure was not completely successful in addressing this problem, it is concerning to see that this does not appear to have been carried over into the new CPC. **The UN Special Rapporteur on torture has previously underscored the importance of appropriate sentencing, stating: "Sentences should be commensurate with the gravity of the crime."**

- Reparations

Finally, Amnesty International would like to draw attention to Article 14 of the UN Convention against Torture under which **victims of torture and their dependants are entitled to fair and adequate redress from the state. This should include appropriate medical and psychological care, financial compensation and rehabilitation.** Amnesty International would be glad to receive information as to what provisions the government has introduced to meet this responsibility.

6. THE NEED FOR GREATER SCRUTINY OF PLACES OF DETENTION

The UN Special Rapporteur on torture has stated that “Regular inspection of places of detention, especially when carried out as part of a system of periodic visits, constitutes one of the most effective preventive measures against torture.”¹⁴

Amnesty International welcomes recent steps by the government to allow for greater inspection of places of detention. Article 92 of the new CPC requires State Prosecutors to carry out inspections of places of detention – Amnesty International considers such inspections could be an effective and important measure against torture and ill-treatment if the inspections are carried out on both a regular and an *ad hoc* basis and the subsequent findings and recommendations made public.

Both the Parliamentary Human Rights Commission and the Provincial and Regional Human Rights Boards have both reportedly carried out recent visits to places of detention. While such extra levels of scrutiny are welcome, these bodies are not demonstrably independent or necessarily possessed of the necessary expertise in evaluating places of detention.

At the moment, the only demonstrably independent body which enjoys the right to carry out visits unannounced in Turkey is the European Committee for the Prevention for Torture (CPT) whose findings and recommendations have generated significant change in Turkey regarding detention regulations and an apparently commensurate improvement in patterns of torture and ill-treatment. **Amnesty International urges that this right should be granted to other institutions** and draws attention to the recommendation of the UN Special Rapporteur on torture that:

...official bodies should be set up to carry out inspections, such teams being composed of members of the judiciary, law enforcement officials, defence lawyers and physicians, as well as independent experts and other representatives of civil society. Ombudsmen and national or human rights institutions should be granted access to all places of detention with a view to monitoring the conditions of detention.

Amnesty International therefore calls on the government to sign and ratify the Optional Protocol to the Convention against Torture which would mandate the establishment of a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty in order to prevent torture and ill-treatment. The Protocol would require the maintenance, designation or establishment of one or several independent bodies at a national level which would carry out monitoring of places of detention. This could be a function of one of the National Human Rights Institutions when they are created. Amnesty International would like to draw attention to the

¹⁴ Report of the Special Rapporteur to the 56th session of the General Assembly, A/56/156, 3 July 2001, para. 39 (e).

attached report *Preventing Torture at Home – A Guide to the Establishment of National Preventative Mechanisms* (AI Index: IOR 51/004/2004) which offers guidelines on the structure, powers and operations of such bodies.

However, scrutiny of places of detention should not be limited to official bodies but should be opened to monitoring by non-governmental organizations. As the UN Special Rapporteur on torture has stated:

Independent non-governmental organizations should be authorized to have full access to all places of detention, including police lock-ups, pre-trial detention centres, security service premises, administrative detention areas and prisons, with a view to monitoring the treatment of persons and their conditions of detention.

This view is reinforced by the statement of the UN Special Representative on Human Rights Defenders on Turkey in which she makes clear that "...access to information and to places of detention and prisons must be a right which must be exercised independently by human rights organizations". **Amnesty International considers that the granting of such powers to groups like local Bar Associations and Medical Chambers would be an important step towards improving scrutiny of places of detention and therefore eradicating torture and ill-treatment.** Certainly, development of effective monitoring mechanisms would be mandated by the policy of "zero tolerance for torture".

7. FREEDOM OF EXPRESSION

Amnesty International has previously welcomed some of the changes made to the Turkish Constitution and legislation since 2001 in order to improve standards related to the right to freedom of expression. Amnesty International considers that the amendment to Article 90 of the Constitution by the government – which gives priority to international treaties on fundamental rights and freedoms to which Turkey is a state party over Turkish domestic legislation – is a key development.

However, the organization is nevertheless still aware of numerous cases in which individuals are being prosecuted or have received monetary fines or custodial sentences for the peaceful expression of non-violent opinion. While courts have handed down some landmark judgments which have cited international standards, there are also several examples of important cases where the decisions of the Court of Appeals appear to be in contravention of international standards.¹⁵ Such problems seem to derive from an apparent resistance by prosecutors and members of the judiciary to the reforms. Indeed the UN Special Representative on Human Rights Defenders has drawn attention to the fact that "prosecutors have not actively engaged in the implementation of the reform" and that "Some judges have

¹⁵ For example, the 25 May 2005 decision which insisted on the closure of the largest trade union in Turkey, Eğitim Sen, because it included amongst the aims in its statute that it would work for the right to mother tongue education.

also shown reluctance to implement the reforms” concluding that attitudes on the part of “some within the judiciary is hampering concrete change at the local level”. **Amnesty International therefore fully supports the call of the UN Special Representative on Human Rights Defenders for “monitoring of the implementation of the new laws by the judiciary at the local level, in particular with regard to cases involving freedom of expression”.**

However, the organization notes that the government has previously required that prosecutors receive permission from the Ministry of Justice in order to open cases under the notorious Article 159 of the previous TPC (which criminalizes “insults” to various state entities). Despite such monitoring of cases by the Ministry of Justice, cases in violation of international standards on free speech continued to be opened under Article 159. Therefore, closer monitoring which takes into account Turkey’s obligations under international law need to be implemented. **In this connection, steps should be taken to implement Hina Jilani’s recommendation for “increased training of the judiciary, security forces and governorship on the aims and intents of the new laws”.**

- Constitutional restrictions on the right to freedom of expression

Apart from the failure to implement the new laws in relation to freedom of expression, it is clear that the law in Turkey still places unnecessary and abusive restrictions to this right. **We therefore urge the government to take steps to address these existing legal and constitutional restrictions on the right to freedom of expression as a priority.**

Many of these aspects derive from provisions found in the Constitution on the right to freedom of expression. Although restrictions and prohibitions of violations of fundamental rights and freedoms (Articles 13 and 14 of the Constitution) were reworded to a large extent in 2001, numerous articles of the Turkish Constitution still retain restrictions which are not compatible with Turkey’s obligations under international law.¹⁶ Amnesty International is also concerned that the amendment of Article 26 in 2001 introduced further restrictions to the exercise of the right to freedom of expression: “...for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary”.

¹⁶ Article 14 now reads: “None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the state with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights. No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms embodied in the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution. The sanctions to be applied against those who perpetrate these activities in conflict with these provisions shall be determined by law.”

Such wording can be - and has been in the past - used to penalize peaceful statements, for example, on the Kurdish issue or the role of Islam in politics and society. **Amnesty International urges the Turkish authorities to ensure that the restrictions in the Constitution do not go beyond the margins allowed by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) to which Turkey is a state party.**¹⁷

- Problems with the new TPC

As stated above, Amnesty International considers that the new TPC contains measures which may be significant obstacles to the full enjoyment of the right to freedom of expression in Turkey and appear to be a step back in the reform process. Some provisions – in the use of which the European Court of Human Rights has found Turkey to have been in breach of the ECHR – have apparently been carried over directly from its predecessor. International human rights law on freedom of expression, as set out in the International Covenant on Civil and Political Rights and the ECHR as elaborated in the jurisprudence of the European Court of Human Rights, provides that any limitations on the right to freedom of expression must be narrowly drawn and only such as are necessary in a democratic society for respect of the rights or reputations of others, for the protection of national security or of public order, or of public health or morals, or for the prohibition of war propaganda and advocacy of hatred that constitutes incitement to discrimination, hostility or violence. The restrictions provided for in the new TPC appear to be considerably broader than this and are not limited to those instances which are demonstrably necessary on one of the permissible grounds. As such, the law could be used to penalize individuals exercising their human right to freedom of expression on matters of political opinion.

For example, Section 3 of Part 4 of the new TPC entitled “Crimes against signs of the state’s sovereignty and the honour of its organs” (Articles 299 – 301) could be used to penalize individuals who exercise their right to freedom of expression by expressing political views. In particular, Amnesty International is disturbed that this section of the new TPC criminalizes offences such as “insulting” the President (Article 299), or “denigrating” the Turkish flag or anything carrying its replica and the national anthem (Article 300), Turkishness, the Republic, the Parliament, the government, the judiciary, the military and security forces (Article 301). There is no clear reason provided why, as the law states, such acts should be aggravated and provided with heavier sentences when perpetrated abroad by a citizen of Turkey. Moreover, Section 3 carries over aspects of Article 159 of the previous TPC, which criminalized insults against or denigration of various state institutions. **In the light of the way that this provision has been used to unnecessarily restrict the right to freedom of expression, Amnesty International has called for it to be repealed.**

¹⁷ Namely: they must be prescribed by law and necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.

We recognize that Paragraph (4) of Article 301 states that “any expression of thought which is made with the intention of criticism does not constitute a crime”. However, Amnesty International recalls that a similar amendment was made in August 2002 to this provision in the previous TPC, under Article 159, yet this did not prevent prosecutions of statements by individuals who had exercised their right to freedom of expression. Amnesty International therefore urges the government to repeal this section in order to bring the legislation into line with international standards on freedom of expression.

Some of the articles found within Section 4 of Part 4 of the new TPC (Articles 302 – 308) entitled “Crimes against State Security” also appear to be in contravention of Turkey’s obligations to comply with human rights standards. Amnesty International views with particular concern Article 305 which criminalizes “acts against the fundamental national interest”, especially in the light of the written explanation attached to the draft when the law passed through Parliament. The explanation provided as examples of crimes such acts as “making propaganda for the withdrawal of Turkish soldiers from Cyprus or for the acceptance of a settlement in this issue detrimental to Turkey... or, contrary to historical truths, that the Armenians suffered a genocide after the First World War”. Amnesty International considers that the imposition of a criminal penalty for any such statements – unless they demonstrably amount to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence – would be a clear breach of international standards related to freedom of expression.

Amnesty International is additionally concerned by Section 5 of Part 3 of the new TPC entitled “Laws against the Public Order” (Articles 213 – 222). Amnesty International notes that Article 312 of the previous TPC – which criminalized incitement of people to enmity on the basis of social, regional, ethnic or religious difference – has been carried over into the new TPC as Article 216. In the past, the Turkish state has been found to have been in breach of the right to freedom of expression by the European Court of Human Rights in its use of this provision. While such legislation is necessary to criminalize advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, it has rarely been used as such. In the past, peaceful statements related to religious or minority rights have been prosecuted under this Article – Amnesty International has repeatedly raised its concerns about the use of this provision. Amnesty International urges that particular care be paid in the use of this Article and supports the recent recommendation of the European Commission on Racism and Intolerance which urged the Turkish authorities “to continue their efforts to ensure that Article 312 of the Criminal Code prohibiting incitement to hatred is applied for the purpose of punishing racist statements in compliance with the letter and spirit of this provision [Article 312]”.

Furthermore, Amnesty International notes the concern articulated by human rights organizations and press groups related to Article 220 (8) – which criminalizes the making of propaganda for criminal organizations, as well as Article 226 – which criminalizes obscenity, that these may be used to restrict the right to freedom of expression. Article 318 which criminalizes “alienating the people from the army” also appears to offer possibilities to

restrict the right to freedom of expression in a way not permitted by international standards.

Paragraph 1 of Article 298 of the new TPC introduces sanctions against individuals who may try to prevent prisoners from exercising their full rights. While legislation protecting the rights of prisoners is welcome, this provision is framed in such a way as to suggest that the focus of the law is prisoners who, for example, may engage in a boycott of a prison facility.

Paragraphs 2 and 3 lay down penalties for those who encourage or persuade prisoners to take part in hunger strikes. Amnesty International is concerned that Article 298 may be used to curtail non-violent protests such as boycotts or hunger strikes and thus may violate the right to freedom of expression.

While some changes were made to the draft of the law after its entry into force was delayed, these must be considered insufficient. Most obviously, the possibility of aggravated sentences when the offences are perpetrated through the press was removed in some crimes. However, the problems in the law remained unaddressed. In at least one instance, a change made the TPC even more restrictive. For example, Article 305 of the draft, which criminalized "acts against the fundamental national interest", was altered to explicitly allow for the prosecution of "foreigners" as well as Turkish citizens who engage in such acts.

Amnesty International considers that legal and constitutional guarantees for the right to freedom of expression must be further strengthened so that they are compatible with international legal provisions, such as those of Article 10 of the European Convention of Human Rights. The European Court has interpreted restrictions to Article 10 very narrowly. Amnesty International will closely monitor the implementation of the new TPC but asks for further steps to be taken to amend the law and constitution in order to fully ensure freedom of expression in Turkey.

8. MINORITY RIGHTS AND DISCRIMINATION

Amnesty International continues to be concerned about restrictions on the use of minority languages and calls for such obstacles to be lifted immediately. In particular, Article 42 of the Constitution, in which "No other language than Turkish may be taught in educational and teaching facilities to Turkish citizens as their mother tongue", appears to be contrary to international standards related to minority rights. Such standards include the United Nations Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities which states that all UN member states should take "appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue". While Amnesty International welcomed the amendment of the Law on the Education and Teaching of Foreign Languages in 9 August 2002 to allow for the "learning of different languages and dialects used traditionally by Turkish citizens in their daily lives", the organization notes serious restrictions to this right, for example, the languages may only be taught to adults at private language courses. In addition, Article 42 of the Constitution was used to close the trade union, Eđitim Sen, because it stated in its statute that it would work for the right to mother-tongue

education. This case was a clear violation of the right to freedom of expression and association. **There is the risk that other entities' rights to freedom of expression may be similarly unnecessarily and arbitrarily restricted while Article 42 exists in the Constitution in its present state.**

Similarly, Amnesty International is greatly concerned at cases launched against politicians for speaking in minority languages to audiences and distributing materials in these languages under Article 58 of Law 298 on Elections as well as Law No 2820 on Political Parties. Article 81 of the latter law appears to be particularly problematic stating:

- a) *...Political parties may not put forward the view that there are minorities in the country of the Republic of Turkey based upon difference of national or religious culture or creed or race or language ...*
- c) *Political parties may not use languages other than Turkish in the statute or program or publication, or in congresses or in meetings closed or open to the public or in mass meetings. They cannot distribute placards, signs, cassette or video tapes, brochures or announcements written in languages other than Turkish...*

Article 122 of the draft of the new TPC which forbids discrimination on the basis of "language, race, colour, gender, political thought, philosophical belief, religion, denomination and other reasons" was amended at the last moment so that "sexual orientation" was removed from the draft. Amnesty International is therefore concerned that discrimination on the basis of sexuality was not criminalized in the new TPC. This is coherent with Article 10 of the Constitution which states that "Everybody is equal before the law without making any distinction on the basis of language, race, colour, gender, political thought, philosophical belief, religion, denomination and other reasons." **Amnesty International considers that both these articles should be amended to ensure full equality in law and practice of individuals of different sexual orientation.**

Amnesty International is still seriously concerned about the ban on the wearing of headscarves in higher education in Turkey – it believes that this ban is discriminatory and disproportionate. Despite the amnesty proposed for students excluded from university, the ban has and will continue to result in many people being excluded from university education and in the suspension or dismissal of hundreds of women from university teaching posts as a result of their religious beliefs. **Amnesty International urges the Turkish authorities to take steps to address this issue.**

Amnesty International therefore considers that further steps need to be taken to improve minority rights in Turkey and to prevent discrimination. We urge that the country should sign and ratify international instruments in this area, including the Framework Convention for the Protection of National Minorities. Further it should ratify Protocol No.12 to the ECHR, which provides for a general prohibition of discrimination; and make the declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, empowering the Committee for the Elimination of Racial Discrimination to receive individual communications. The government should also withdraw

its reservations in respect of Article 27 of the International Covenant on Civil and Political Rights and Article 13 of the International Covenant on Economic, Social and Cultural Rights.

9. HUMAN RIGHTS DEFENDERS

Amnesty International welcomes numerous measures taken to lessen pressure on human rights defenders. For example, the new Law on Associations which is less restrictive than its predecessor should offer a significant boost to the development of civil society in Turkey if it is implemented fully. However, human rights defenders in Turkey are still subjected to unnecessary pressures. These range from unsubstantiated allegations by figures in authority which may result in death threats¹⁸, through to difficulty in carrying out their legitimate campaigning activities as well as the opening of a large number of cases against them for often minor transgressions of administrative regulations. While these cases rarely result in imprisonment, more usually in acquittal, a suspended sentence, or a fine, Amnesty International considers that the opening of such cases constitutes a form of “judicial harassment” and also an apparent misuse by prosecutors of the criminal justice system.

Amnesty International has also documented a pattern in which – in response to amended laws – prosecutors have used alternative charges to seek conviction of individuals and criminalization of acts by applying other legislation in place of the laws that have changed. Therefore, while the legal changes are welcome, such reform may not prevent the continued harassment of human rights defenders. **Amnesty International urges the government to undertake an urgent review of all outstanding prosecutions of people for the peaceful exercise of their rights to freedom of expression, association and assembly with a view to ensuring that no one remains under prosecution for acts which are guaranteed under international protection in line with international law or standards.**

Furthermore the government should take steps to closely monitor investigations opened against human rights defenders and take effective action to sanction state officials who abuse the judicial system (and/or the government administrative system) to the detriment of human rights defenders with the intention of harassing them or curtailing their legitimate activities for the defence of human rights. In addition, the government should ensure that state institutions and individual officials refrain from adopting ‘creative’ ways of persecuting human rights defenders by breaching Constitutional provisions or laws protecting human rights defenders, or through an excessively broad interpretation thereof.

Given this pattern of harassment, Amnesty International is especially concerned about a provision introduced in the new CPC. Cases opened against human rights defenders have previously been opened under a variety of laws but a very significant number of these have been opened for “aiding and abetting illegal organizations” (Article 169 of the previous TPC), “insults” to various state institutions (Article 159), “incitement to enmity” (Article 312) and

¹⁸ See, for example, Urgent Action 94/05, AI Index: EUR 44/014/2005, 20 April 2005

"making propaganda for illegal organizations" (Article 7 of the Anti-Terror Law). Amnesty International therefore notes with concern that Article 151 of the new CPC stipulates that lawyers representing defendants accused of certain crimes may be forbidden from representing their clients or visiting them in jail if the lawyers are being investigated or prosecuted under certain articles of the TPC. Among these articles are those which are the successors in the new TPC of the above articles. We consider that such a provision may be used to judicially harass human rights defenders through the opening of apparently groundless cases against them but also that human rights lawyers will therefore be unable to represent their clients through the application of Article 151. Such a provision is contrary to the spirit of the UN Declaration on Human Rights Defenders and may also restrict the right to a fair trial of the clients of lawyers thus barred and may be in contravention of the UN Principles on the Role of Lawyers. **Amnesty International therefore calls for the abolition of this provision.**

Amnesty International considers that greater steps need to be taken to ensure that state officials recognize the legitimacy of work in defence of human rights. The organization considers that one reason that such attitudes continue amongst state officials is the apparently ambivalent attitude towards human rights groups expressed by the government. Amnesty International was disturbed by a statement by the Prime Minister released to the press following his meeting with the organization in February 2004 in which he accused human rights groups of having "double standards" in their treatment of Turkey and acting "ideologically" and was saddened by the apparent disregard for the thousands of Amnesty International members who had campaigned for the Prime Minister after he was sentenced to imprisonment in 1998 when he accused the organization of having been partial in his case and that it had "only made statements". The organization was further distressed to read the Prime Minister's speech to the Parliamentary Assembly of the Council of Europe in which he was reported to have said "...those, with ideological approaches, who say that there is still these type of torture... are people who have connections with terror organizations. I especially want to present this for your information." Amnesty International considers that this statement is in clear contravention of the spirit of the UN Declaration on Human Rights Defenders and would welcome a statement which would publicly recognize the legitimate work of human rights defenders and the contribution that they make to uphold the rule of law.

Amnesty International is aware that the Ministry of the Interior distributed in October 2004 to its officials as a circular the EU Declaration on Human Rights Defenders. However, since this is a document aimed at foreign delegations in second countries, Amnesty International considers that it would have been more appropriate to circulate a copy of the UN Declaration on Human Rights Defenders. **We therefore urge the government to take further action to ensure that state officials at every level of the state apparatus, including law enforcement officials, respect the legitimacy of the work of human rights defenders and allow them to carry out this work without hindrance or harassment.** The UN Special Representative on Human Rights Defenders has made numerous detailed recommendations in her report. **Amnesty International expects the government to incorporate into its programme steps towards implementing these recommendations.**

10. FREEDOM OF ASSEMBLY

Amnesty International welcomes the circular issued last year by Interior Minister Abdulkadir Aksu which was designed to improve the right to assembly. While it did bring some much needed clarity to the legal status of the reading out of press releases, the organization considers that there is still the potential for confusion. The organization notes that – in practice – there are still unnecessary restrictions to the right to freedom of assembly. The UN Special Representative on Human Rights Defenders has noted such restrictions:

...in particular with regard to places where public gatherings can be held – the law imposes a 300-metre distance from any public building or major road crossing. Demonstrations and press releases by nature seek to draw public attention, and restricting them to places away from crowded streets and areas minimizes their ability to reach citizens, and can be seen as defeating the object of the right.

Amnesty International believes that further steps are needed to remove such restrictions to ensure the right to freedom of assembly is fully guaranteed. This is especially important since those who violate these restrictions peacefully may be subjected to disproportionate force by security forces responsible for policing of such demonstrations. **Amnesty International would like to remind the authorities that participation in a demonstration without permission does not justify use of disproportionate force.**

11. VIOLENCE AGAINST WOMEN

Amnesty International has been greatly heartened by the recent steps taken by the government to improve the level of protection that women enjoy from violence in the family. We view the amendments to the Turkish Penal Code as a positive development and welcome the giving of legal recognition to the Directorate on the Status of Women attached to the Prime Ministry. We especially welcome the article of the new Law on Municipalities that requires municipalities to provide shelters for women in towns and cities with populations of more than 50,000 individuals as well as the government's support for the Campaign "No to violence against women" which has been organized together with the United Nations Population Fund.

Judging from other recent legal and constitutional reforms in Turkey, the passing of laws in itself is not enough - implementation of the laws will be key. **Effort is needed to make sure that these reforms are communicated to women in Turkey as well as to prosecutors, governors, judges, police officers and others who may be responsible for implementing the law.** Amnesty International draws particular attention to the Law on the Protection of the Family which was passed in 1997 and which is very rarely implemented. **The organization requests the development of mandatory training programmes for the police, medical personnel, gendarmerie officials, members of the judiciary and other**

professionals who may be a first point of contact for women who have experienced violence. The training should include the recognition of violence, the optimal use of safety procedures – such as under the Law on the Protection of the Family, and guidance on how to deal with victims in the appropriate manner. Disciplinary measures must be taken against those state officials who fail to carry out their legal duty to protect women and prevent violence when clearly required to do so.

Amnesty International is particularly concerned that there should be a greater availability for women in Turkey to resources that may provide advice on and protection from violence. In particular, the organization would like to see further steps taken to ensure the implementation of the Law on Municipalities so that this legal change becomes a meaningful development for women in Turkey. **We therefore urge the government to ensure that adequate funding is available from the central budget for the establishment of shelters and to work with women's organizations to draw up guidelines for local authorities on the implementation of the law based upon universal shelter principles. We further ask the government to emphasize to local authorities the importance of working with women's organizations in setting up or funding shelters.**

Other resources that Amnesty International considers need to be provided are sufficient information and points of access for women to report violence, including hotlines covering all regions of Turkey staffed by sufficiently trained personnel, brochures and posters disseminated at hospitals, primary health care centres and courts, and websites.

At present there is reported to be a direct phone line for women in service in 21 provinces (out of 81) providing psychological, legal and financial counselling for battered women or those who are under threat of violence. The government needs to ensure that this phone line service is extended to cover all regions of Turkey and that it is staffed by sufficiently trained personnel.