



TURKEY: FOLLOW-UP PROCEDURE TO THE FORTY-FIFTH SESSION OF THE COMMITTEE AGAINST TORTURE

Amnesty International welcomed the Concluding Observations made by the Committee against Torture (the Committee) to Turkey in November 2010 (UNdoc.CAT/C/TUR/CO/3) and submits this letter for the Committee's consideration to illustrate ongoing areas of concern related to the priorities for follow-up. This follow-up focuses on Paragraph 7, 8, 10 and 13 of the Concluding Observations.

INTRODUCTION

With the exception of Turkey's September 2011 ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, very little progress has been made with regard to combating torture and impunity. Excessive use of force by law enforcement officials at demonstrations remains routine and on occasions apparently sanctioned by public statements from the highest level of government. In the vast majority of cases, investigations into allegations of human rights abuses are not effective and the chances of bringing law enforcement officials to justice remain remote.

PARAGRAPH 7: TORTURE AND IMPUNITY

Amnesty International is concerned that, following a successful appeal by the 19 officials convicted in the case of Engin Çeber on two grounds, a new trial began in February 2012 raising the possibility that the statute of limitations will be applied in the case and those responsible for the death in custody will not be brought to justice. The Supreme Court of Appeals unanimously overturned the June 2010 landmark conviction of 19 officials in September 2011 on two procedural grounds:

Firstly, due to inaccuracies in the written verdict. The name of Engin Çeber's sister, who participated in the proceedings as an injured party (*mudahil*), did not appear and the date of the verdict was wrongly entered as 3 June 2010 instead of 1 June 2010.

Secondly, due to a conflict of interest on the part of the defence lawyers some of the accused officials were represented by the same lawyer. The Supreme Court of Appeals deemed this to be in violation of the law on legal representation which states that 'a lawyer cannot agree to represent two defendants whose legal representation could put each other's defence in jeopardy'. The court referred to Article 6 of the European Convention on Human Rights on right to fair trial and argued that this situation could have jeopardized the defendants' right to defence. Lawyers told Amnesty International that they were not aware of any other judgment of the Supreme Court of Appeals overturning a decision on this ground.

Amnesty International had referred to the investigation, and prosecution in its submission to the Committee's forty-fifth session as being in sharp contrast with many other cases of torture,

where a prompt and thorough investigation had led to a successful conviction. Following the overturning of the conviction, the retrial appears to be following the pattern of ineffective prosecutions against public officials accused of torture. Amnesty International is concerned about unnecessary delays, including a two-month delay in publishing the Supreme Court of Appeals decision, another two-month delay in convening the new trial and subsequently a two-month postponement for the next hearing. The delays mean that there is an increasing risk that the statute of limitations will be applied in the case violating the Çeber family's right to effective remedy. A 15-year statute of limitations is applied for torture with lesser offences carrying a statute of limitations of five or ten years.

PARAGRAPH 8: ABSENCE OF EFFECTIVE, PROMPT AND INDEPENDENT INVESTIGATIONS INTO COMPLAINTS

No progress has been made in ensuring effective, prompt and independent investigations into complaints. Where criminal prosecutions are brought against public officials accused of torture or other ill-treatment, delayed court proceedings and the suspended sentences allowing the officials to escape prison sentences and return to their duties prevent access to justice.

In December 2011, a court in Isparta failed to issue a custodial sentence to a police officer who was filmed in 2009 catching and then repeatedly striking a child demonstrator in the head with the butt of his rifle. S.T., aged 14, suffered a fractured skull and remained in intensive care for six days following the attack. The court reduced the punishment on the grounds that the injury was accidental and due to the "conditions in the area". The officer was issued with a six-month suspended sentence and allowed to continue with his police duties.

Despite the Committee's recommendation and the declared plans of the Ministry of Interior, Amnesty International is concerned that an effective and independent police complaints mechanism has still not been established and no further proposals for its establishment have been made public.

PARAGRAPH 10: EXTRAJUDICIAL KILLINGS

Amnesty International is gravely concerned regarding the investigation into the bombing of civilians by a Turkish warplane in the district of Uludere/Qileban in the south-eastern province of Şırnak.

On the night of 28 December 2011 a Turkish warplane carried out a bombing in the district of Uludere/Qileban resulting in the death of 34 civilians, 18 of whom were children. The authorities at first claimed to have struck armed Kurdistan Workers' Party (PKK) members. The authorities later admitted that civilian smugglers were hit after entering Turkey from neighbouring Iraq.

Amnesty International welcomes the fact that financial compensation has been arranged for the families of those who died in the attack. However, the organization is gravely concerned regarding other developments since the announcement of the investigation, which raise doubts about whether it is thorough and impartial and will be effective in identifying what happened and those responsible.

Statements by witnesses to the bombing provided to civil society delegations including opposition political parties, bar associations and a commission of human rights organizations have indicated that soldiers knew that local people involved in smuggling were present at the scene. Witness statements indicated that soldiers were aware of and tolerated smuggling activities carried out habitually by villagers and also knew that on the day of the bombing

villagers engaged in smuggling activities were at the scene. Witness statements also indicate that the villagers who had crossed the border from Iraq were prevented by soldiers from re-entering the village of Ortasu/Roboski, requiring them to remain in the area that was subsequently bombed.

Human rights organizations seeking to investigate the incident reported that delegates were denied permission to visit the scene of the bombing by soldiers citing “security concerns”. Governments may not prevent representatives of civil society organizations with a mandate to monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law have been committed. Amnesty International sought clarification from the authorities as to why the delegates were denied access but received no reply.

The conduct of the investigation by prosecutors also increases concerns that the full circumstances of the bombing will not be revealed.

The prosecutors reportedly did not take witness statements until more than a month after the bombing took place.

Additionally, according to reports, prosecutors failed to conduct an investigation of the scene, citing “the anger of local residents assembled in the area and the risk of terrorist activity at the location”. Such a justification is reminiscent of the failure to conduct a prompt crime scene investigation following the death of Ceylan Önkol, a girl killed while grazing cattle near her home, allegedly by a mortar fired by the Turkish armed forces in 2009. Amnesty International notes that in this case the criminal investigation has not yet been concluded, more than two years after the death of Ceylan Önkol.

Amnesty International is also concerned at reports that prosecutors have relied on military units to provide evidence from the scene of the bombing, threatening the independence of the investigation.

Amnesty International also sought clarification from the authorities as to why a “secrecy decision” has been applied to the investigation thus rendering it closed to both public scrutiny and to lawyers acting on behalf of the victims’ families but received no reply from the authorities.

PARAGRAPH 13: EXCESSIVE USE OF FORCE BY LAW ENFORCEMENT OFFICERS AND THE USE OF COUNTER-CHARGES TO INTIMIDATE PERSONS REPORTING TORTURE AND ILL- TREATMENT

The convictions in October 2011 of three transgender activists in Ankara for ‘resisting the police’ and ‘insulting the police’ following an incident in June 2010, when the activists were apprehended by the police, raise serious concern regarding counter charges issued when complaints are made against the police. The convictions relate to an incident that took place on 19 June 2010 in which police officers apprehended the activists while they were traveling by car in Ankara. After being ordered to stop the car, the activists allege that they were dragged from the car before being further ill-treated by police and arbitrarily detained. It followed a similar incident in May of 2010 when two of the three activists were apprehended and allegedly ill-treated by police. Criminal complaints were lodged by the activists in both cases but the prosecutors decided not to open a case.