



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Consideration of reports submitted by States  
parties under article 19 of the Convention**

**Third periodic report of States parties due in 1997; the  
present report is submitted in response to the list of issues  
(CAT/C/TUR/Q/3) transmitted to the State party pursuant to  
the optional reporting procedure (A/62/44, paras. 23 and 24)**

**Turkey\* \*\***

[30 June 2009]

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- \* The second report submitted by the Government of Turkey is contained in document CAT/C/20/Add.8; for its consideration by the Committee, see documents CAT/C/SR.554 and 557 and *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 44 (A/58/44)*, paras. 177–124.
  - \*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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## Comments of the Turkish Government on the list of issues provided by the Committee against Torture

### Introduction

1. Since its previous report to the Committee Turkey has continued to pursue a comprehensive reform process aimed at the protection and promotion of human rights. A series of legal reforms have been carried out in a short span of time, including a number of amendments to the Constitution and a complete overhaul of basic laws.

2. The most important amendment to the Constitution concerns Article 90, where it is stated that international agreements on fundamental rights and freedoms prevail in case of conflict with the provisions of the national laws on the same matter.

3. Adoption of the new Civil Code, the new Penal Code and the new Criminal Procedure Code with a view to aligning Turkey's legal framework with the European standards and principles has effectively consolidated the constitutional amendments.

4. Within this framework, the fight against torture and ill-treatment has been a priority item on the Government's agenda. Turkey is committed to preventing and eradicating torture and other inhuman or degrading treatment or punishment, while viewing them as acts which can never be justified under any circumstances. The Government has adopted a policy of "zero tolerance for torture" and in line with this policy, it has introduced various legislative amendments. No effort is spared to implement the reforms and amendments.

5. Turkey's resolve in this domain also found its manifestation in its transparent and close cooperation with leading international mechanisms of human rights. Turkey has extensively benefited from its cooperation with the United Nations Committee against Torture (CAT) and the European Committee for the Prevention of Torture (CPT). In September 2005, Turkey signed the Optional Protocol to the Convention against Torture (OPCAT), ratification of which will follow as soon as a domestic monitoring mechanism is put in place. Turkey attaches great importance to its cooperation with the CAT and the CPT and considers their recommendations as useful guidelines.

6. The success of the "zero tolerance policy" in particular and the reforms achieved in relation to the relevant legislation were acknowledged by the CPT itself as early as 2004. The President of the CPT, in her statement at the Meeting of the Committee of Ministers' Deputies, Council of Europe, on 13 October 2004, underlined the following in respect of the achievements in Turkey with regard to fight against torture and ill-treatment:

... the legislative and regulatory framework necessary to combat effectively torture and other forms of ill-treatment ... has been put in place – to be frank, *it would be difficult to find a Council of Europe member State with a more advanced set of provisions in this area ...*

7. Thanks to the clear-cut policy of the Turkish Government, the legislative and regulatory framework necessary to combat effectively torture and other forms of ill-treatment by law enforcement officials is in place. This has been also underlined by CPT during its visit to Turkey from 7 to 14 December 2005. CPT's report, together with Turkey's response, was made public on 6 September 2006 at the request of the Government of the Republic of Turkey. In its report CPT pointed out that "the new Penal and Criminal Procedure Codes, as well as revised version of the Regulation on Apprehension, Detention and Statement Taking (RADST) which entered into force on 1 June 2005, have consolidated improvements which had been made in recent years on matters related to the

CPT's mandate". Furthermore, CPT has stated in its report that "it is more than ever the case that detention by law enforcement agencies is currently governed by a legislative and regulatory framework capable of combating effectively torture and other forms of ill-treatment by law enforcement officials".

8. In addition to certain international/regional mechanisms such as CPT, Turkey's respective achievements are also acknowledged by NGOs. During a visit on 10 June 2004 to the Minister of Foreign Affairs of Turkey, NGO representatives from Amnesty International, Human Rights Watch, the Human Rights Foundation of Turkey and Mazlum-Der of Turkey stated that "Turkey is ahead of some European countries in terms of legal measures against torture."

9. The legal framework, as well as Turkey's zero tolerance policy against torture, is having the desired impact on the ground. In its recent reports CPT has stressed that "the facts found on the ground are encouraging" in this respect and that "the message of zero tolerance of torture and ill-treatment has clearly been received, and efforts to comply with that message were evident".

10. Thanks to these positive developments in the field of prevention of torture and ill-treatment, the progress of Turkey is now being cited as an example by the CPT to third countries. CPT officials not only "greatly [welcomed] the numerous formal statements emanating from the highest levels of the Turkish Government condemning torture and ill-treatment and emphasizing the Government's resolve to combat such methods", but also set this as "an example that other Governments might usefully follow".

11. The Turkish Government is resolved to further the reform process aimed at attaining the highest standards in the field of human rights. With this understanding, another major step has been recorded with the abolishment of the State Security Courts on 30 June 2004, following a Constitutional change in May 2004. The offences falling under the jurisdiction of the State Security Courts are put under the jurisdiction of the new heavy penal courts. The issue is particularly noteworthy since the said Courts were referred to in the list of issues.

12. Furthermore, the Turkish Penal Code (TPC), which was enacted in 1926, has been changed in its entirety. During the preparation of the Code, a legislative review was conducted by the Council of Europe, and the views and recommendations of various circles in Turkey, including academicians, NGOs and bar associations, were taken on board. The new TPC, which was adopted by the Parliament on 26 September 2004, puts a special emphasis on the protection of the individual's fundamental rights and freedoms. The new TPC stipulates that perpetrators of torture shall be sentenced to 3–12 years of imprisonment. Should the act of torture be committed in the form of sexual harassment, the perpetrator shall be sentenced to 10–15 years of imprisonment. The TPC has introduced higher penalties for aggravated forms of torture, giving due account to the gravity of any permanent or other serious consequences of such conduct. Furthermore, the TPC explicitly bans reduction of sentences, should the offence be committed by negligence. Detailed information on articles of the TPC concerning torture is provided in response to question 9.

13. Another significant step forward in the implementation of Turkey's policy against torture and ill-treatment has been the signing of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Turkey on 14 September 2005 during the 2005 World Summit. The ratification process is under way. Once it is ratified, the implementation of this Protocol will also contribute to Turkey's policy of zero tolerance of torture.

14. Turkey's determination in that respect has also found its reflection in her close cooperation with the United Nations special mechanisms in the field of human rights. Accordingly, Turkey has extended a standing invitation to the thematic special procedures.

Visits, recommendations and appeals of the special procedures, including the Special Rapporteur on the question of torture, are given serious consideration. In 2006, the Working Group on Arbitrary Detention as well as the Special Rapporteur on the promotion and protection of human rights while countering terrorism visited Turkey.

15. Please find hereunder the comments of the Turkish Government with regard to the list of issues prepared by the CAT under its new optional reporting procedure for consideration of the implementation of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. Turkey considers that this submission will be regarded by the CAT as its third and fourth periodic report.

## Article 2

- 1. With reference to the previous conclusions and recommendations of the Committee,<sup>1</sup> please provide detailed information on the measures ensuring that detainees, including those held for offences under the jurisdiction of State Security Courts, benefit fully in practice from the available safeguards against ill-treatment and torture, particularly by guaranteeing their right to medical and legal assistance and to contact with their families.**

16. The right to liberty and security of person is safeguarded by the Constitution. Article 19 of the Constitution provides that:

No one shall be deprived of his or her liberty except in the following cases where procedure and conditions are prescribed by law: execution of sentences restricting liberty and the implementation of security measures decided by court order; apprehension or detention of an individual in line with a court ruling or an obligation upon him designated by law; execution of an order for the purpose of the educational supervision of a minor or for bringing him or her before the competent authority; execution of measures taken in conformity with the relevant legal provision for the treatment, education or correction in institutions of a person of unsound mind, an alcoholic or drug addict or vagrant or a person spreading contagious diseases, when such persons constitute a danger to the public, apprehension or detention of a person who enters or attempts to enter illegally into the country or for whom a deportation or extradition order has been issued.

Individuals against whom there is strong evidence of having committed an offence can be arrested by decision of a judge solely for the purposes of preventing escape, or preventing the destruction or alteration of evidence as well as in similar other circumstances which necessitate detention and are prescribed by law. Apprehension of a person without a decision by a judge shall be resorted to only in cases when a person is caught in the act of committing an offence or in cases where delay is likely to thwart the course of justice; the conditions for such acts shall be defined by law.

Individuals arrested or detained shall be promptly notified, and in all cases in writing, or orally, when the former is not possible, of the grounds for their arrest or detention and the charges against them; in cases of offences committed collectively

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<sup>1</sup> Para. 7 (a) of CAT/C/CR/30/5.

this notification shall be made, at the latest, before the individual is brought before a judge.

The person arrested or detained shall be brought before a judge within at latest forty-eight hours and in the case of offences committed collectively within at most four days, excluding the time taken to send the individual to the court nearest to the place of arrest. No one can be deprived of his or her liberty without the decision of a judge after the expiry of the above-specified periods. These periods may be extended during a state of emergency, under martial law or in time of war.

The arrest or detention of a person shall be notified to next of kin immediately.

Persons under detention shall have the right to request trial within a reasonable time or to be released during investigation or prosecution. Release may be made conditional to the presentation of an appropriate guarantee with a view to securing the presence of the person at the trial proceedings and the execution of the court sentence.

Persons deprived of their liberty under any circumstances are entitled to apply to the appropriate judicial authority for speedy conclusion of proceedings regarding their situation and for their release if the restriction placed upon them is not lawful.

Damage suffered by persons subjected to treatment contrary to the above provisions shall be compensated by the State with respect to the general principles of the law on compensation.

17. As regards the **right of detainees to legal assistance**, the provisions of the new Criminal Procedure Code No. 5271 regarding the right to access to lawyer by suspects or accused persons have introduced an effective legal aid system, the positive results of which have become apparent in practice with their implementation.

18. All criminal suspects have, from the outset of detention, the right to access to a lawyer, including free legal assistance, private detainee-lawyer consultations and the possibility of lawyers to be present when statements are taken. Under Article 149 of the Criminal Procedure Code and Article 19 of the Regulation on Apprehension, Detention and Statement-Taking, the suspect or the accused can appoint one or more lawyers at any stage in the investigation and can not be prevented from exercising his right to be accompanied by a lawyer and receive legal assistance at any stage in the investigation (during interview, statement-taking and interrogation) including investigations conducted by law enforcement officials. Under Article 101 (3), the assistance of a lawyer is obligatory when an order for detention on remand is sought against a defendant. Furthermore, as explained in detail in our response to question 20, Article 148 sub-paragraph 4 of the Criminal Procedure Code provides another important safeguard against torture. According to this provision, any statement taken by law enforcement officials shall not constitute a basis for the verdict, unless verified/confirmed by the suspect or accused person before a judge or court.

19. Article 150 of the Criminal Procedure Code and Article 19 of the Regulation on Apprehension, Detention and Statement-Taking provide that if the accused is not in a position to appoint a lawyer, he/she may receive legal counsel free of charge from a lawyer appointed by the bar association. Instruction of a lawyer is mandatory if the suspect is a minor, deaf, mute, person with a disability to an extent that prevents that person from defending himself/herself, or the suspect is accused of an offence carrying a sentence that requires a minimum of five years' imprisonment. In the aforementioned cases, request by the suspect for instruction from a lawyer is not necessary. If the suspect does not privately hire a lawyer, the local bar association will provide a lawyer.

20. In line with the provisions of the said Regulation, persons arrested or detained are to be given the “Form on the Rights of Suspects and Accused Persons”. If the detained person does not wish to exercise the right to appoint a lawyer, it is considered appropriate for him/her to fill out the relevant entry in the Form in his/her own handwriting, stating a phrase such as “I do not want a lawyer”, and to verify this situation with his/her signature. The Form has been translated into 11 languages and the translated texts are to be found in the units concerned. Detained persons are given a copy of the Form. In addition, illiterate persons are orally informed of their rights and this is continuously monitored by superior officers.

21. Thus, Article 149 of the Criminal Procedure Code explicitly prohibits any act preventing or restricting the exercise of the right of access to a lawyer at all stages of the investigation and trial. Therefore, impeding this right entails the criminal liability of any person, including a law enforcement official, who acts as such. Furthermore, the law enforcement officials at the police and gendarmerie headquarters who are entrusted with investigatory functions in order to assist the public prosecutors in conducting judicial investigations are under the direct authority, oversight and supervision of the public prosecutors. Law enforcement officials are under obligation to immediately report any incident of detention to the public prosecutors and conduct all the proceedings in accordance with the instructions of the public prosecutors at all stages of the investigation.

22. Indeed, in its latest report CPT has underlined that “progress continues to be made as regards the implementation in practice of the safeguards against ill-treatment provided for by law (notification of custody, access to a lawyer, etc.)”. In this respect, CPT has stated in its report that “all criminal suspects have, as from the outset of custody, the right of access to a lawyer (including free legal assistance, private detainee-lawyer consultations and the possibility for lawyers to be present when statements are taken). It is further stated in the CPT’s report that “the information gathered during the December 2005 visit confirmed that there had been a significant increase in the number of persons enjoying access to a lawyer whilst in police custody, including in cases where the assistance of a lawyer was not obligatory”.

23. In addition to ensuring that all detainees have access to a lawyer, Turkish authorities have taken further steps regarding the confidentiality, length and venue of the meetings between the detainees and their lawyers. Accordingly, Ministry of the Interior (MoI) issued a circular on 1 August 2003 and in line with the recommendations of the CPT stipulated that at the end of a detainee-lawyer meeting, a record should be drawn up indicating the length of the meeting and whether its confidentiality had been observed, this record being signed by both the lawyer and the detained person. It is also stipulated in the above-mentioned circular that a suitable room should be allocated for meetings between detained persons and their lawyers in all law enforcement units dealing with custody procedures.

24. Furthermore, rules and procedures regarding the penitentiary system are regulated by the Law on the Execution of Sentences and Security Measures (No. 5275) as well as the statutory and regulatory provisions issued as per this law.

25. In accordance with Article 59 of the Law on the Execution of Sentences and Security Measures entitled “Right to Interview with Defense Lawyer and Notary”, the convict has the right to an interview with his/her lawyers, without power of attorney, in the framework of the fulfilment of attorneyship, for three times at most. Interview with the lawyer or notary shall be conducted within working hours except for holidays, upon producing professional IDs, in the venues specially designated for the interview, where the conversation cannot be heard but can be seen for reasons of security.

26. Provided that it conforms with international conventions to which Turkey is party, as well as to the principle of reciprocity, Turkish or foreign convicts against whom



investigation and prosecution procedures are ongoing in other countries who want to file an action at judicial organs in other countries or international institutions, and regarding whom there are files lodged for or against at judicial organs in other countries or international institutions, can have an interview with foreign lawyers, on the condition that such investigation and prosecution are limited to the cases either lodged or intended to be lodged, on the condition that they submit a power of attorney. Foreign lawyers without the necessary power of attorney can visit the convict in the presence of a lawyer registered with Turkish bars.

27. Likewise, application by convicts and detainees to international judicial bodies has been facilitated as per sub-paragraph (e) of Article 84 § 3 of the Statute on Prison Management and Execution of Sentences and Security Measures which provides that “Turkish and foreign convicts who will file or have already filed an action at the European Court of Human Rights (hereinafter ECtHR) can interview with the lawyers authorized in the courts in the Republic of Turkey on the condition of submitting the translated version of the information and documents regarding the investigation, prosecution and the subject-matter of the case, to the highest ranking official in the institution.”

28. Finally, efforts in the field of professional training throughout the police service have been intensified. As a part of the training program during the period 2005–2006, a total of 56,000 law enforcement officials both at the headquarters and at the regional level received training on the provisions of the new Turkish Penal Code and Criminal Procedure Code concerning investigations, with particular focus on the rights of suspects, including the right of access to a lawyer. Trainers at the Ministry of Justice (MoJ) have also made presentations during the training program. In 2005, 175,000 leaflets entitled “Rights to be informed during apprehension” were printed and distributed to all law enforcement officials. In 2005, nine seminars on the theme of “Promotion of Cooperation in Trials” were held in eight provinces with participation from various bar associations. Information regarding further training is provided in response to questions 35–37.

29. As regards the **right to medical assistance**, the Government takes every possible effort necessary for providing health services to convicts and detainees. The Ministry of Health provides free of charge medical services to inmates without health insurance, while medication costs are met by the MoJ. Psychologists and social workers permanently employed at prisons deal with the psychological and social problems of convicts and detainees. The examinations and treatments of the convicts’ and detainees’ health problems are carried out meticulously; convicts and detainees are given priority in benefiting from health rights and services enjoyed by any other person.

30. Regarding medical examinations, according to the Article 10 of the Regulation on Apprehension, Detention and Statement-Taking, in cases when the apprehended person is to be taken into custody or he/she has been apprehended by the use of force, the person’s location is changed for any reason or the detention period is extended, he/she is released or is sent to judicial authorities, the medical condition is to be determined by a doctor.

31. The last paragraph of the same article (Article 10) as amended on 3 January 2004 stipulates that “the doctor and the person examined shall remain alone and that the examination is conducted as part of the doctor-patient relationship. However, the doctor may, on the grounds of concern for his personal safety, request that the examination be conducted under the supervision of law enforcement officials. This request shall be documented and complied with”.

32. An earlier circular issued by the Ministry of Health on 10 October 2003 stipulates that the medical examinations “must be conducted out of the hearing and sight of members of the law enforcement agencies. The person to be examined must be received in a room in which only health personnel are present ...”.

33. In a circular issued on 15 April 2004 addressed to 81 Governorates, the Ministry of Health requested that in order to enable remand and sentenced prisoners applying for forensic medical examinations to be examined in secure conditions, the law enforcement agencies should install secure examination rooms designed to facilitate their work.

34. As for the medical certificates, according to current instructions, a copy of the medical report should be given in a sealed envelope to the law enforcement officials accompanying the detained person. Meanwhile, Article 10 of Regulation on Apprehension, Detention and Statement-Taking provides that medical reports of apprehended/detained persons should be drawn up in four copies and that one of them will be given to the detainee.

35. Furthermore, several provisions of the Law on the Execution Sentences and Security Measures (No. 5275) and the Statute on Prison Management and the Execution of Sentences and Security Measures deal with the convicts' right to health.

36. Article 94 entitled of the above-mentioned Statute entitled "Examination and Treatment Requests of the Convict" provides that "The convict has the right to benefit from examination and treatment possibilities and medical equipment for the protection of his/her physical and psychological health and the diagnosis of his/her diseases. Accordingly, the convict shall first be examined at the health center of prison, and where this is not possible, in the convict wards of State or university hospitals."

37. Article 117 entitled "Examination and Treatment of the Convict" provides that "the regulation of medical conditions of prison, and emergency and routine examination and treatment of the convict shall be carried out by the prison doctor. All examination and treatment results carried out for general purposes or due to illness shall be recorded in the health follow-up form and kept in its file".

38. In order to protect the patient-doctor confidentiality and enable the inmate/patient to freely express all his/her complaints, and unless otherwise requested by the prison doctor, none other than medical personnel shall be present during the examination. Necessary measures shall be taken by the prison management, for security purposes and in a way so as to prevent the conversation in the room being heard. The Ministry of Health and medical institutions of universities are entrusted with providing necessary assistance in respect of the treatment of convicts.

39. As such, in accordance with the current legislation, convicts and detainees are first sent to hospitals in the city, and where this is not possible, to relevant units in the hospitals and university hospitals in other cities. The resident doctor, and if there is none, the doctor on duty at the health care center or the hospital shall decide in which department the examination and treatment of the patient convict or detainee shall be carried out. The prison management does not have any competence concerning this matter.

40. Furthermore, in accordance with Article 9 of the Statute entitled "Institutions where convicts with a Psychiatric Disorder but no Mental Disorder are Kept", the sentences of those who have a psychiatric disorder but no mental disorder stemming from being detained and other reasons, and who are sent back to prisons because their stay at mental hospitals is not deemed necessary, are executed in specially designated sections of prisons. Experts and other medical staff required for prisons for the execution of sentences of those indicated above shall be procured by the Ministry of Health.

41. Article 24 entitled "Psycho-Social Assistance Service" provides that "The Psycho-Social Assistance Service explores and implements protective and improvement programs regarding the psychological and physical health and integrity of the personnel and convicts, and intervenes when necessary with psychological support in the treatment process; assists the convicts' individual development by identifying their individual characteristics, living

conditions and reasons for committing crime; ensures their adaptation to life in prison as well as the social environment; takes measures to prevent re-commitment of the offense by the individual, and, to this end, establishes contact with the families and social milieu with the knowledge of the highest ranking superior of the prison. A psychologist and a social worker are employed at the Service.”

42. Article 60 entitled “Security Measures Regarding Patients with Mental Disorders” provides that “decisions concerning security measures regarding patients with mental disorders shall be submitted to the Office of the Chief Public Prosecutor. This decision shall be recorded in a separate execution book by the Office of the Chief Public Prosecutor. This measure shall be executed in accordance with the rules and procedures stated in Article 57 of Law no. 5237.

43. In the framework of the ongoing reforms, under Article 18 of the Law on the Execution of Sentences and Security Measures (Mo. 5275) private units have been established in Samsun, Elazığ, Manisa and Adana Closed Prisons for the treatment of convicts and detainees who have a psychiatric disorder but no mental disorder, and for the execution of their sentences. These units function with the support of the specialists and psychologists of the Ministry of Health.

44. A rehabilitation center to serve the above-described convicts started functioning at Metris Closed Prison in Istanbul.

45. The Budgetary Laws in Turkey are prepared on a three-year basis and enacted on a yearly basis. The amount allocated for health from budget allocations in 2008 was 65,098,719 TL, and 3,317,695 TL have been spent thus far in 2009.

46. Regarding the **right of detainees to contact their families**, as explained in response to question 16, whenever a suspect or accused person is apprehended, detained, or the detention period is extended, one of his/her relative or a person of his/her choice is informed of the situation, pursuant to Article 95 of the Criminal Procedure Code.

47. Article 126 of the Statute on Prison Management and the Execution of Sentences and Security Measures entitled “Visiting the convict” provides that:

- (1) The convict can be visited once a week by his/her spouse, relatives through kinship and marriage, or his/her custodian or guardian up to the third degree, on the condition of documenting these affinities; and during the acceptance procedures at the institution, s/he can be visited by at most three people, whose names and addresses the convict shall provide and not change except for obligatory situations, for not less than 30 minutes and not more than one hour, during working hours.
- (2) Visits by those not mentioned in the first paragraph can be allowed with a written permission from the office of the chief public prosecutor.
- (3) The spouse, lineal descendants and ancestors, siblings and custodian of the convict sentenced to aggravated lifetime imprisonment can visit him/her on the specified date, time and circumstances, every fortnight, up to an hour a day.
- (4) Rules and procedures concerning the visit shall be arranged by the Statute, taking the structure of the institutions into account.

48. Accordingly, convicts and detainees can be visited by their relatives once a week as stated in the Statute, four times a month, three of which visits shall be closed, and the remaining one open. Likewise, visits to the convict, including by delegations of national and international institutions, are provided for under Articles 83–86 of the Law on the Execution Sentences and Security Measures (No. 5275).

49. Articles 66–69 of the same law regulate respectively the right of the convicts or detainees to use and communicate via the telephone; to benefit from the means of radio, television and the internet; the right to send letters, faxes and telegrammes; and to receive gifts from outside.

50. Those concerned can lodge a complaint with the Office of the Execution Judge, regarding a restriction of any correspondence sent by or to them. They can also appeal the decision of the Execution Judge at the competent Assize Court. Thus, judicial review of the competence of administrative acts with the law is also ensured.

- 2. Also with reference to the previous Committee’s recommendations,<sup>2</sup> please provide detailed information on the measures ensuring that ongoing inspections of prisons and places of detention by judges, prosecutors or other independent bodies (such as prison monitoring boards) take place at regular intervals, and that appropriate action has been taken by the responsible authorities in response to the inspection reports and recommendations.**
- 5. Please provide information on the implementation of the Prison Monitoring Boards, which includes the participation of members of non-governmental organizations in their individual capacity, with a mandate to carry out inspections in penal institutions, and its results.<sup>3</sup>**

[Questions 2 and 5 taken together.]

51. Penitentiary institutions in Turkey are inspected, both on a periodical and ad hoc basis whenever the need arises, by administrative, judicial, NGO, parliamentary and international inspection mechanisms.

52. With a view to preventing torture and ill-treatment, prisons are subject to national and international inspections including by 131 national independent monitoring mechanisms, 141 Offices of the Execution Judge as well as international inspection mechanisms such as CPT.

53. Administrative and judicial inspections of prisons are conducted by the MoJ inspectors, other relevant officials of the General Directorate of Prisons and Detention Houses and public prosecutors. Remediation of any deficiency detected through inspections is monitored by the General Directorate of Prisons and Detention Houses.

54. Article 92 of the Criminal Procedure Code (No. 5271) regulates the inspection and supervision of custody procedures: “As part of their judicial duties, chief public prosecutors or public prosecutors appointed by them shall inspect the lockups where persons taken into custody are accommodated, the interview rooms if any, the situation of persons in custody, the reasons for and duration of custody, and all records and procedures relating to custody; they shall record the outcome in the custody records.”

55. Judicial inspections are also conducted by the Offices of the Execution Judge, established by the Law on the Office of the Execution Judge (No. 4675, dated 6 May 2001). In the event of any problem, convicts and detainees can lodge their complaints with the

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<sup>2</sup> Para. 7 (d) of CAT/C/CR/30/5.

<sup>3</sup> Para. 4 (e) of CAT/C/CR/30/5.

execution judge on matters related to the execution of the penalty or living conditions at the institution, and they can appeal the decision of the execution judge at the assize courts. Thus, all procedures and activities of the agencies are subject to judicial review.

56. Article 5 of the Law on the Execution of Sentences and Security Measures (No. 5275) grants the Chief Public Prosecutors the power to inspect and monitor prisons. Regular as well as unannounced visits conducted by public prosecutors serve as a deterrent factor, thus providing an additional safeguard for all convicts against any misconduct by prison personnel.

57. It should also be underlined that Article 169 of the Criminal Procedure Code makes it compulsory to record all stages of proceedings during the investigation. Article 169 states that during statement-taking or questioning of the suspect, hearing of witness or expert witness, on-site inspection or medical examination, a public prosecutor, or a judge of a court of peace and a clerk of record shall be present. Each proceeding of an investigation is recorded and signed by these authorities. This provision constitutes an effective safeguard against any attempt of misconduct.

#### **Inspections by specialized departments/agencies of the Ministries**

58. A specialized department named “Bureau for Inquiry on Allegations of Human Rights Violations” was established within the Inspection Board of the MoI in March 2004. The allegations of human rights violations received by the central and local branches of the Ministry are referred to the Bureau, which then investigates the allegations. If the Bureau deems it necessary, public inspectors are appointed to conduct the investigation, assisted by the inspection officials of the gendarmerie and the General Directorate of Security. Public inspectors, who receive training on the most recent developments in the field of human rights, are authorized to monitor all police stations and detention houses. The new Bureau was established upon the instruction of the MoI as an additional preventive measure against torture. Further information on the Bureau is provided in response to questions 35–37.

59. A specialized branch named “The Gendarmerie Human Rights Violations Investigation and Evaluation Centre (JIHIDEM)” was established in 26 April 2003 to investigate and evaluate complaints regarding the allegations of human rights violations that occur in the gendarmerie’s area of responsibility, or the ones that occur while the gendarmerie personnel carry out their duties. Individuals may bring complaints to JIHIDEM on human rights violations related to gendarmerie officials. Having received the complaint, the Centre investigates the allegations and, if necessary, initiates judicial and administrative investigations, in accordance with legal procedures. The result of the action taken by the Centre is transmitted to the complainants. In addition, reports on overall activities of the Centre and statistical information are publicized.

60. Groups of inspectors from the central Inspections Department of the Gendarmerie and from the regional and provincial gendarmerie commands inspect all units to determine whether statutory amendments are complied with and whether custody procedures are carried out in a lawful manner. They check on the spot whether the rules governing custody records and access to a lawyer are complied with, whether detained persons’ rights are exercised and whether investigations are conducted in accordance with the law; they identify any shortcomings and take the necessary steps. The MoI has a clear stance on the issue.

#### **Inspections by Provincial and Sub-provincial Human Rights Boards**

61. With a view to protecting and improving human rights situation, Provincial and Sub-provincial Human Rights Boards are responsible for visiting relevant institutions and organizations to monitor human rights practices on-site, examining police stations and

lockup inspection forms and providing recommendations in case of discrepancies, issuing recommendations to improve the physical conditions of lockups and bring them into line with the relevant legislation, carrying out research and examination for the effective implementation of the rights of the accused. Human Rights Boards have almost 14,000 non-governmental members from civil society organizations, trade unions, chambers of professions, academia, human rights experts, local press and political party representatives.

62. In this context, regular visits are conducted to police stations and lockups and observations are submitted to relevant authorities and the Human Rights Presidency. Currently, there are 931 Human Rights Boards in Turkey, 81 of which are in provinces and 850 of which are in districts. The Boards have a civil society-based structure.

63. It is among the primary duties of the Human Rights Boards to visit various public institutions, police stations and lockups, nurseries, rest homes, shelters, medical and education institutions for monitoring human rights practices on-site. These visits, which are of a preventive nature, are conducted mostly without prior notice. It is important to note that 65 per cent of more than 10,000 visits have been conducted without prior notice.

64. The observations and recommendations by Human Rights Boards mostly relate to the poor physical conditions of the places visited, inadequacy of living conditions and lack of qualified personnel. The recommendations by the Boards have been taken into considerations by relevant authorities and concrete results have been obtained.

65. Provincial and Sub-provincial Human Rights Boards have conducted 987 visits at gendarmerie and police lockups between January and March 2008, 491 of which were to gendarmerie lockups and 496 of which were to police lockups. While 744 of them were without prior notice, 243 were with. The visits showed that while 654 lockups were in conformity with the standards, 333 lockups displayed some physical shortcomings.

66. As for inspection by NGOs, monitoring boards operate in 131 places as per the Law on Prison and Lockup Monitoring Boards (No. 4681, 14 June 2001). Members of the monitoring boards are formed by civilians elected unanimously by judicial justice commissions made up of judges and public prosecutors. These boards, in turn, elect a president among themselves. In accordance with Article 7 of the said Law, the monitoring boards have to visit and monitor the prisons at least once every two months. The monitoring boards submit their reports to offices of chief public prosecutors, MoJ, Human Rights Inquiry Commission of the Parliament and the office of the execution judge when there is a complaint which falls under the scope of its duty.

67. With Law No. 5712 (dated 20 November 2007), published in the Official Gazette on 4 December 2007 (26720), the number of monitoring board members, which was five, was rearranged as five principal and three assistant members, introducing the obligation that at least one member of the board be female. Furthermore, with the exception of the issues concerning prison security, it has been provided that the MoJ shall announce, on a yearly basis, the number of reports prepared in the preceding year by monitoring boards, as well as their subjects, recommendations which have or have not been carried out, together with the reasons.

68. Regarding parliamentary supervision, the president or members of the Human Rights Inquiry Commission of the Parliament or research commissions can visit and inspect prisons.

69. As for international inspection, the European Committee for the Prevention of Torture is authorized to conduct periodic and ad hoc visits to all places where persons are deprived of their liberty.

70. Turkey became party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on 1 February 1989, thereby recognizing

the competence of the CPT, the Convention's monitoring body. According to the provisions of the Convention, CPT delegations have unlimited access to places of detention and the right to enter such places without restriction. Since the first one in 1990, the CPT has conducted a total of 22 visits to Turkey. In principle, CPT reports are confidential unless the country in question authorizes their publication. Turkey, for the sake of transparency, has authorized the publication of all CPT reports on Turkey, which are available at the Committee's website (<http://www.cpt.coe.int/en/states/tur.htm>).

71. On the other hand, within the United Nations framework, Turkey honours its treaty obligations as a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this regard, Turkey also signed the Optional Protocol to the Convention against Torture (OPCAT) on 14 September 2005 in New York, during the World Summit, as testimony to its commitment to strengthening its national and international human rights machinery. Turkey aims to ratify the OPCAT, as soon as the National Human Rights Institute that will act as the domestic monitoring mechanism is established.

**3. Pursuant to the recommendation<sup>4</sup> to solve the current problems in prisons generated by the introduction of "F-type prisons" by implementing the recommendations of the CPT and by entering into serious dialogue with those inmates continuing hunger strikes, please provide detailed and practical information on the measures adopted and the results obtained.**

72. Following the introduction of F-Type high security closed prisons on 19 December 2000, some convicts and detainees who were members of terrorist organizations started a death fast and hunger strike, claiming that they were isolated in prisons. As an outcome of the cooperation developed by the General Directorate of Prisons and Detention Houses with the convicts and detainees, as well as their relatives and NGOs, significant improvements have been achieved regarding the matters concerning the prisons which were subject of complaint, as well as putting an end to hunger strikes and death fasts. It would be important to note that, while the F-Type prisons were introduced as a result of recommendations of the Committee for the Prevention of Torture of the Council of Europe (CPT), the conditions reigning in these prisons were improved also in close cooperation with the CPT. Turkey is under the close scrutiny of both the CPT and the ECtHR. Today, hunger strikes and death fasts no longer take place in Turkey. Some of the positive improvements are as follows:

- Circular No. 7/57, dated 7 May 2001 allowed convicts and detainees in F-Type prisons to participate in joint activities in closed and open sports areas, multipurpose halls, libraries, working halls, and ateliers
- Circular No. 2/7, dated 18 January 2002 allowed convicts and detainees who participate in at least one of the joint activities to convene for not more than five hours a week for conversation, in groups of at most 10
- Circular 24/117, dated 10 October 2002 abolished the conditionality for participating in least one of the joint activities, enabling the inmates to have longer conversation periods

<sup>4</sup> Para. 7 (f) of CAT/C/CR/30/5.

- These arrangements were preserved in the Circular No. 45 on “Establishment of Prisons, Transfer Procedures, and Other Provisions”, dated 1 January 2006
- As the F-Type prison system improved with time and the number of personnel increased as well as quality of the training for them, the period of conversation between inmates envisaged in Circular No. 45 was extended from 5 to 10 hours, and the said Circular was reissued on 22 January 2007 as Circular No. 45/1

73. In the context of the restructuring efforts carried out by the General Directorate of Prisons and Detention Houses with a view to improving and assessing instruction-training, socio-cultural and psycho-social activities in prisons, “the standards system” was introduced. Thus, the necessary monitoring system has been established to closely inspect and improve all types of activities and remedy the deficiencies, if any, including those related to social interaction.

74. As a result, the General Directorate of Prisons and Detention Houses, in collaboration with NGOs and other organizations, continues its efforts to offer better qualified execution services and render the rehabilitation of detainees and convicts more efficient. It also makes due efforts to increase participation rates in the activities.

**4. The previous report refers [to the fact] that a draft law on the creation of the “Public Inspector”, which will function as an Ombudsman, has been presented to Parliament.<sup>5</sup> Please, provide detailed information on the mandate, resources, activities, and results of this institution and its compliance with the Paris Principles relating to the status of national institutions for the promotion and protection of human rights (General Assembly resolution 48/134, [annex]), including the relevant statistical data.**

75. The Turkish Parliament adopted the Ombudsman Law, No. 5548 on 28 September 2006. The former President of the Republic of Turkey and some members of the Parliament appealed to the Constitutional Court for the annulment of some articles of the Law.

76. The Constitutional Court immediately decided for the suspension of the execution of the said Law. On 25 December 2008 the Court unanimously decided to abrogate the Law on grounds that it was not in conformity with the Constitution.

77. On the other hand, preparatory work on the legal framework for a National Human Rights Institution is carried out in parallel with the developments related to the Ombudsman Law. Due attention is paid to the Paris Principles in the creation of the National Human Rights Institution. The Government aims to establish this institution as the domestic monitoring mechanism that will enable Turkey to ratify the Optional Protocol to the Convention against Torture (OPCAT).

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<sup>5</sup> Para. 4 (f) of CAT/C/CR/30/5.



**6. Under which conditions [do] human rights defenders have access to places of detention, and to information and statistics on government policies?<sup>6</sup>**

78. Human rights defenders have access to information and statistics under the Law on the Use of the Right to Petition (No. 3071) and the Law on the Right to Access to Information (No. 4982). Information requests in the context of the latter, particularly, are subject to certain legal restrictions. Articles 15–28 provide the legal restrictions concerning the use of this right. Article 20 of the Law, concerning judicial matters, reads as follows:

Information or documents which, if disclosed or disclosed prematurely,

- (a) Can cause the commission of an offense;
- (b) Can endanger the prevention and investigation of offences, or arresting and prosecuting the criminals through legal means;
- (c) Can prevent the fulfillment of trial;
- (d) Can violate the right to fair trial of a person regarding whom legal proceedings are ongoing;

are beyond the scope of this Law.

The Criminal Procedure Code dated 04.04.1929 and numbered 1412, Code of Civil Procedure dated 18.06.1972 and numbered 1086, Code of Administrative Procedure dated 06.01.1982 and numbered 2577, and other private provisions are reserved.

79. On the other hand, as per Article 157 of the Criminal Procedure Code (No. 5271), “Provided that the cases on which the Law has imposed special provisions are reserved, and that the right to defense is not offended, the procedural actions in the investigation phase shall be confidential.” As such, third persons cannot be provided information concerning criminal investigation.

80. Furthermore, the “Human Rights Report of Turkey” prepared by the Human Rights Presidency of the Office of the Prime Minister since 2007, lays out activities by public institutions and organizations in the field of human rights and statistical information concerning the current state of affairs in the same field. These reports are accessible on the Internet.

### **Article 3**

**7. Please provide statistical data on the number of immigrants, asylum-seekers and refugees in Turkey. Please also provide detailed statistical information with regard to expulsions, including the number of appeals to expulsion decision, their outcome and the countries of expulsions.**

81. A total of 11,477 asylum applications were registered in 2008; 3,560 of them were granted temporary asylum. Statistical data regarding the nationality of those accorded asylum is provided in Annex I.

<sup>6</sup> Report on the visit to Turkey of the Special Representative of the Secretary-General on the situation of human rights defenders (E/CN.4/2005/101/Add.3), paras. 115 (c) and 123.

82. From 2005 to date, 19 persons have appealed the decision of expulsion of the MoI. Eleven of these appeals were finalized by the appeal courts endorsing the decision of the MoI.

83. A total of 762,149 illegal migrants were seized during 1995–2008, 300,000 of them in the last five-year period.

84. It is important to note the steady increase in the number of illegal immigrants seized in Turkey. The number of illegal migrants apprehended in a given year is as follows:

Table 1

**Number of illegal migrants apprehended in Turkey, 1995–2008**

| <i>Year</i>  | <i>Number of illegal migrants apprehended</i> |
|--------------|---|
| 1995         | 11 362  |
| 1996         | 18 804  |
| 1997         | 28 439  |
| 1998         | 29 426  |
| 1999         | 47 529  |
| 2000         | 94 514  |
| 2001         | 92 365  |
| 2002         | 82 825  |
| 2003         | 56 219  |
| 2004         | 61 228  |
| 2005         | 57 428  |
| 2006         | 51 983  |
| 2007         | 64 290  |
| 2008         | 65 737  |
| <b>Total</b> | <b>762 149</b>                                |

85. A total of 9,429 illegal migrants were apprehended during the first four months of 2009.

86. The majority of the illegal immigrants seized in 2008 were nationals of Afghanistan, Pakistan, Iraq and Palestine. Information disaggregated by nationality is provided in Annex II.

**8. What changes have been introduced in legislation and practice in order to ensure that the expulsion<sup>7</sup> of irregular aliens is carried out with full respect for the legal guarantees required by international human rights standards, including the Convention?**

87. The process of removal of those whose asylum applications have been rejected are guided by Article 3 of the ECHR which states that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment” and Article 3 of the CAT which

<sup>7</sup> Para. 7 (g) of CAT/C/CR/30/5.

provides that “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

88. As such, procedures regarding both asylum applications and the above-mentioned international conventions are fulfilled in accordance with the provisions of the 1951 Geneva Convention regarding the Status of Refugees and its 1967 Protocol (Turkey is party to both Convention and Protocol, albeit with a geographical limitation).

89. Turkey’s asylum procedures are based on the 1994 Regulation on Asylum prepared in order to reflect the provisions of 1951 Geneva Convention and amended in 2006 in line with EU *acquis* on asylum and migration.

90. Article 6 of the Regulation states that the demands of those who seek asylum in Turkey or seek a residence permit in Turkey in order to seek asylum from another country are assessed according to the 1951 Geneva Convention and its Protocol dated 31 January 1967 and by the Ministry of the Interior (MoI) in compliance with this Regulation.

91. Article 7 of the Regulation provides that “the Ministry of the Interior cooperates with other ministries, governmental bodies and organizations and with international organizations such as the United Nations High Commissioner for Refugees (UNHCR), International Organization for Migration (IOM) and NGOs in the matters relating to the procedures regarding the demands of the foreigners who seek asylum from Turkey or seek residence permit from Turkey in order to seek asylum from another country and procedures regarding sheltering, catering, transport, admission by a third country, voluntary return, supply of the passport and visa”.

92. In compliance with this Regulation, statistics regarding the asylum applications and the foreigners who have been given refugee or asylum-seeker status by the MoI are shared simultaneously with the UNHCR. Meanwhile, Turkey continues the harmonization of its legislation with the EU *acquis* in the field of asylum and migration.

93. Turkey, geographically being on a major migration route, is facing ever-increasing numbers of illegal migrants from its economically and politically unstable east trying to cross its territory towards Europe.

94. The number of illegal migrants apprehended while attempting to cross our territory during 1995–2008 has exceeded 760,000, 300,000 of them in the last five-year period. A total of 9,429 illegal migrants were apprehended during the first four months of 2009.

95. Given the magnitude of the problem, the solutions are beyond the means of a single country: providing shelter, food, medical treatment, as well as bearing the return costs of such a high number of illegal migrants puts a heavy financial burden on the already strained resources of Turkey.

### **Removals**

96. Once the illegal immigrants are apprehended, the procedure for their expulsion is started immediately and their return is facilitated as soon as possible.

97. Removals of foreigners who are illegal migrants in Turkey are carried out in accordance with the law and regulations, and they have to be kept in custody for public order and safety reasons until they are returned. This is in pursuance of to Article 23 of the Law on Foreigners’ Residence and Travel in Turkey, which says that persons who are to be expelled from the country and are not able to leave Turkey because they cannot provide a passport or for other reasons are obliged to stay where the Ministry of the Interior asks them to stay.

98. Removals are carried out pursuant to provisions of Article 18, paragraph 5, of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, regarding return of smuggled migrants which reads: “Each State Party ... shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.”

99. Although Article 33 of the 1951 Geneva Convention does not deal with illegal migrants who have not applied for asylum per se, all illegal migrants are treated with utmost care and the asylum applications of the illegal migrants are processed pursuant to the Convention and 1967 Protocol; the “non-refoulement” principle in article 33 of the Convention is strictly applied along with Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms in the treatment of illegal migrants.

#### **Administrative measures/removal centres**

100. Illegal migrants are held at the removal centres in 23 provinces with a total capacity of 2,520, before they are returned to their home country. Their shelter, food and health requirements are met in these guesthouses. Efforts to improve the physical conditions and capacity of the removal centres continue.

101. During 1999–2008 over 16.5 million US dollars (25,457,442 TRL) were spent for food, shelter, health and transportation of illegal migrants. Additionally, a substantial amount has been donated to support the illegal migrants by the Social Assistance and Solidarity Fund in provinces.

102. The “Twinning Project on Establishing Removal Centres for Illegal Migrants” was approved by the EU Commission on 13 November 2007. The United Kingdom-Netherlands-Greece consortium has been selected as Twinning Partners for the realization of the project. The investment component of the project includes construction of two removal centres in Ankara and Erzurum provinces with a capacity of 750 each. These will host foreigners to be returned until relevant procedures are completed. The twinning component of the project includes training programs for the relevant personnel and preparation of instruction manuals concerning the management of the centres.

103. Ministry of Interior Circular No. 37508 of 19 February 2008 ordered all provinces to establish foreigners’ guesthouses.

104. The old Tunca Guesthouse in Edirne province will be replaced with a new removal centre with a capacity of 700. The Gazi Osman Pasa Migrant Guesthouse in Kırklareli province shall be used until the construction of new centre in Edirne is finished in 2010.

105. Two new removal centres will be built in Aydın and Van provinces by end 2010, each of with a capacity of 700.

106. The old guesthouse in Bitlis province built in 1980 with a capacity of 750 will be renovated by late 2009.

107. Two former correction houses will be converted into removal centres in Burhaniye and Ayvalık Balıkesir provinces by 2010/11.

108. A recent circular issued by the General Directorate of Social Assistance and Solidarity will allow unified channelling of assistance to needy foreigners, including illegal migrants, by the Social Assistance and Solidarity Associations in every Provincial Governorate or District Governorate. The needs of the illegal migrants which cannot be met through the regular budgets of government agencies, including such daily needs as food, clothing etc., and their medication expenses will be met through the Social Assistance and Solidarity Incentive Fund (Law of Social Assistance and Solidarity Incentive No. 3294).

### Access to education

109. Once the illegal immigrants are apprehended, the procedure for their expulsion is started immediately and their return is facilitated as soon as possible. This may not allow children of the illegal migrants to attend school. However, in accordance with the Education and Training Law No. 222 all children between the aged of 6 and 14 are obliged to attend school, which would automatically allow the children of the illegal migrants to attend school.

### Harmonisation with the EU acquis

110. Within the framework of the EU accession process, several steps were taken for harmonisation of the national legislation with the EU acquis. All activities, including asylum and migration, are done in accordance with the National Programme of Turkey for the Adoption of the EU Acquis.

111. The “Migration and Asylum Twinning Project” was implemented from 8 March 2004 to 8 March 2005 with the United Kingdom-Denmark consortium. The “Asylum and Migration Task Force” established on 2 November 2004 prepared the “Turkish National Action Plan for the Adoption of the EU Acquis in the Field of Asylum and Migration” which was endorsed by the Prime Minister on 25 March 2005.

112. The Action Plan foresees legislative changes with regard to asylum, migration and foreign nationals with a view to harmonization with the EU acquis, necessary measures and investment projects to be implemented for improving administrative capacity and infrastructure, among others things, and the establishment of an expert unit on the issues of asylum and migration.

113. The Bureau for the “Development of Asylum and Migration Legislation and Strengthening Administrative Capacity” was established under the Undersecretary of the Ministry of Interior in mid-October 2008. The task of the Bureau is to carry out all necessary activities towards preparing the required legislation and capacity-building for the institutional structure in the sphere of asylum and migration, as well as to coordinate the EU projects.

## Article 4

### **9. Currently, under which specific norms are perpetrators of acts of torture prosecuted, including with regard to military personnel? Please provide detailed statistical information on the prosecution and convictions of perpetrators of acts of torture, including military personnel.**

114. Allegations of torture and ill-treatment are taken seriously and diligently by the judicial authorities at all stages of the investigation and trial process. Public prosecutors immediately initiate investigations concerning allegations of torture and ill-treatment ex officio and conduct them personally in accordance with the new Criminal Procedure Code and the circulars issued by the MoJ. When a claim is supported with concrete evidence (such as witness statements, medical reports, etc.) public prosecutors promptly initiate criminal cases to bring those responsible to justice. If any evidence to support the allegations of torture or ill-treatment is disregarded or neglected by the public prosecutors during an investigation, it is possible to initiate a preliminary inquiry, investigation or prosecution against them under Law No. 2802. Therefore, “checks and balances” do exist in the Turkish criminal justice system.

115. As shown below, in the new Penal Code (No. 5237), the offenses of torture and ill-treatment have been rearranged as “Torture” (Article 94), “Torture aggravated due to its consequences” (Article 95), and “Torment” (Article 96). The definition of torture has been broadened and its penalty has been increased. Articles 94 and 95 provide that the public official who performs torture shall be imprisoned for a term of 3 to 12 years, and if the torture has resulted in death, s/he shall be sentenced to aggravated lifetime imprisonment. The Law also provides that if the offense has been committed with negligence, there will be no reduction in the penalty.

116. Furthermore, in Article 256 of the Law, “exceeding the limit of (legitimate) use of force” has been rearranged as a separate offense.

117. With the arrangements introduced in the Criminal Procedure Code (No. 5271), the role of public prosecutors in criminal investigations has been strengthened.

118. According to the new legislation, those who committed the offense of torture are not covered by amnesty. It was also decided that the compensation due to victims of torture and ill-treatment by public officials would be paid by those officials.

119. In addition to the constitutional safeguard prohibiting torture (Article 17) and relevant articles of international conventions that bear the force of law as provided by Article 90 of the Constitution, perpetrators of acts of torture and ill-treatment are prosecuted in accordance with the following articles of the new Penal Code:

- (a) **Article 94** of the Penal Code entitled “Torture” (No. 5237) provides that:
  - (1) A public official who performs any acts towards a person that is incompatible with human dignity, and which causes that person physical or mental suffering, affect the person’s perception or ability to act on one’s will, or insult him/her shall be imprisoned for a term of three to twelve years;
  - (2) If the offence is committed against:
    - (a) A child, a person who is physically or mentally incapable of defending him/herself;
    - (b) A public official or a lawyer due to his/her service;the perpetrator shall be imprisoned for a term of eight to fifteen years;
  - (3) If the acts take the form of sexual harassment, the perpetrator shall be imprisoned for a term of ten to fifteen years;
  - (4) Those other individuals participating in the commission of this offence shall be punished like the public official;
  - (5) If this crime is committed by way of negligence, there shall not be reduction in the sentence.
- (b) **Article 95** entitled “Aggravated torture due to consequences” provides that:
  - (1) Where the act of torture results in:
    - (a) Permanent impairment of one of the senses or functions of an organ;
    - (b) A permanent speech defect;
    - (c) A permanent scar on the face;
    - (d) A risk for the victim’s life;

or

(e) If the act has been committed against a pregnant woman and has caused her to give birth prematurely;

the penalty determined in accordance with the article above shall be increased by half;

(2) Where the act of torture results in:

(a) An incurable illness or if it has caused the victim to enter a vegetative state;

(b) The loss of one of the senses or functions of an organ;

(c) The loss of speech or the ability to have children;

(d) Permanent disfigurement of the face;

or

(e) If the act has been committed against a pregnant woman and has caused her to miscarry;

the penalty determined in accordance with the article above shall be increased by one;

(3) If the acts of torture results in fracture of victim's bones, the perpetrator shall be imprisoned for a term from eight to fifteen years in proportion to the severity of the damage in respect to vital functions;

(4) Where the acts of torture cause the death of the victim, the penalty shall be strict life imprisonment.

(c) **Article 96** entitled "Tormenting" provides that:

(1) A person who performs any acts which result with the torment of another person is imprisoned for a term of two to five years;

(2) Where the acts falling under the above paragraph are committed against:

(a) A child, a person physically or mentally impaired so that s/he cannot defend her/himself;

or

(b) An ascendant or descendant, an adoptive parent or the spouse;

the perpetrator shall be imprisoned for a term of three to eight years.

(d) **Article 256** entitled "Exceeding the limit concerning the power to use force" provides that "Where a public official who is entitled with the power to use force, exercises, during the performance of his/her duty, use of force against people outside the limits required by his/her duty, the provisions concerning felonious injury shall apply."

120. Please see below the statistical information on the prosecution and convictions of perpetrators of acts of torture:

**2003:** Number of pending cases is 1972; out of 6012 accused, 2470 were convicted. In the same year, 862 decisions of conviction were given, 125 of which were punishment

restricting freedom, 134 fine, 22 punishment restricting freedom and fine, and the remaining 581 being other measures.

**2004:** Number of pending cases is 2227; out of 7272 accused, 2894 were convicted. In the same year, 462 decisions of conviction were given, 99 of which were punishment restricting freedom, 85 fine, 16 punishment restricting freedom and fine, and the remaining 262 being other measures.

**2005:** Number of pending cases is 2041; out of 6499 accused, 3381 were convicted. In the same year, 459 decisions of conviction were given, 62 of which were punishment restricting freedom, 86 fine, 11 punishment restricting freedom and fine, and the remaining 300 being other measures.

**2006:** Number of pending cases is 1334; out of 4110 accused, 1921 were convicted. In the same year, 427 decisions of conviction were given, 104 of which were punishment restricting freedom, 146 fine, 18 punishment restricting freedom and fine, and the remaining 159 being other measures.

**2007:** Number of pending cases is 850; out of 2810 accused, 1357 were convicted. In the same year, 193 decisions of conviction were given, 48 of which were punishment restricting freedom, 79 judicial fine, 3 punishment restricting freedom and fine, 32 imprisonment penalty converted to fine, 4 imprisonment penalty converted to measures, 27 suspension of imprisonment penalty, and the remaining 159 being other measures.

121. Please see Annex III for 2008 statistics on Articles 94, 95 and 256 of the Penal Code.

## Articles 5, 6, 7 and 8

### **10. Please provide information about the measures taken to establish the State party's jurisdiction over acts of torture in cases [where] the alleged offender is present in any territory under its jurisdiction, either to extradite or prosecute him or her, in accordance with the provisions of the Convention.**

122. Relevant articles of the Penal Code that regulate the territorial jurisdiction of Turkey are provided in Annex IV. In particular, it is worth emphasizing that pursuant to Article 13 of the Penal Code, Turkish law shall apply to, inter alia, the offences of genocide, crimes against humanity and torture committed in a foreign country whether or not committed by a citizen or non-citizen of Turkey.

123. Furthermore, Article 18 of Turkish Penal Code entitled "Extradition" provides that:

- (1) A foreigner who has been condemned or for whom prosecution has been initiated on charges of a crime committed or claimed to be committed in a foreign country may be extradited — upon demand — for prosecution purposes or execution of the punishment. However, the extradition demand shall not be accepted, if the act for which extradition is demanded:
  - (a) Does not constitute a crime according to Turkish laws;
  - (b) Is in the nature of a political, military crime or a crime of thought;



- 
- (c) Is a crime against the security of the Turkish State, or against the Turkish State or a Turkish citizen or a legal entity formed in accordance with Turkish laws;
  - (d) Is a crime that falls under the jurisdiction of Turkey;
  - (e) Has been subject to an amnesty or statute of limitation.
- (2) Turkish citizens shall not be extradited due to a crime s/he committed, save the obligations arising from being a party to the International Court of Justice.
  - (3) The extradition demand shall not be accepted if there are strong suspicions that – upon extradition the person in question may face prosecution or punishment on account of his/her race, religion, nationality, membership of a particular social group or political opinion or may be exposed to torture or ill-treatment.
  - (4) The competent assize court shall decide on the extradition demand on the basis of this article as well as provisions of the related international conventions that Turkey is a signatory to. This decision can be appealed.
  - (5) If the extradition demand is deemed to be acceptable by the court, then the execution of such decision shall be left to the discretion of the Council of Ministers.
  - (6) Based on the provisions of international conventions that Turkey is a party to, protective measures can be taken for the person whose extradition is demanded.
  - (7) If the extradition demand is deemed to be acceptable, an arrest warrant may be issued according to the provisions of the Criminal Procedure Code or other protective measures may be applied.
  - (8) In case of extradition, only the punishment ruled for that particular offence can be executed or the person may only be prosecuted on the basis of the crime for which extradition has taken place.

The competent authority concerning extradition decisions is the assize court responsible for the administrative area where the concerned person has taken up residence, that is, a judicial authority. If the extradition demand is deemed acceptable by the court, then the execution of such decision shall be up to the discretion of the Council of Ministers. As per the first paragraph of Article 125 of the Constitution of the Republic of Turkey, judicial remedy can be sought concerning all kinds of acts and procedures of the administration. In this context, the Council of Ministers decision regarding whether the court decision concerning extradition shall be carried out or not is also subject to judicial review.

## Articles 10 and 11

11. **What measures were adopted for the inclusion of prevention of torture<sup>8</sup> in the Human Rights Education Programme of Turkey (1998–2007) and what has been [their] practical outcome to [date]? How [were] the new developments in legislation disseminated to all public authorities and to the public at large? Please indicate the training for public officials, including law enforcement and military personnel. [Do] the military interrogation rules and instructions include the absolute prohibition of torture?**

[Response to question 11 is provided together with responses to questions 35, 36 and 37.]

12. **With regard to the recommendation for intensifying the training of medical personnel with regard to the obligations set out in the Convention, in particular in the detection of signs of torture or ill-treatment and the preparation of forensic reports in accordance with the Istanbul Protocol, please indicate what concrete measures have been adopted, and their results.**

124. As forensic services at the Ministry of Health medical institutions are overwhelmingly provided by doctors who are not forensic experts (due to lack of staff), it goes without saying that these personnel are in need of training. Extensive and systematic training activities in this field take place, although their implementation could be challenging and time-consuming. To this end, Ministry of Health has created a web page accessible through <http://adlitabiplik.saglik.gov.tr/> which aims to inform the medical personnel who provide forensic medicine on developments including the amendments to the Turkish Penal Code and the Criminal Procedure Code; it also aims at creating an information and communication network concerning recent developments in the field and problems in the provision of services. The feedbacks demonstrate that the providers of the service benefit from this site.

125. A major project for intensifying the training of the medical personnel on the Istanbul Protocol is carried out by the Ministry of Health along with the MoJ's Forensic Medicine Institution and the Turkish Medical Association. The project is funded by the European Union and is entitled "Training Programme on the Istanbul Protocol: Enhancing the Knowledge Level of Non-Forensic Expert Physicians, Judges and Prosecutors". The project started in 2007 and is expected to be completed by the end of 2009. It aims at training physicians who are not forensic experts on the Istanbul Protocol with a view to enabling them to properly examine those persons who have possibly been subjected to torture as well as enabling the prosecutors and judges to improve their skills in prosecuting and assessing cases of torture, and thus increasing the efficiency of processes involved in medical examination concerning torture allegations and assessment processes involved in legal proceedings. In this framework, 4000 doctors, 1000 prosecutors and 500 judges currently receive training. Detailed information on the project is provided in the Annex V.

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<sup>8</sup> Para. 7 (j) of CAT/C/CR/30/5.

126. Legislative measures were also adopted in order to detect signs of torture or ill-treatment and the preparation of forensic reports in accordance with the Istanbul Protocol. It is worth noting that in Turkey forensic medicine services are to be provided mainly by the MoJ – Forensic Medicine Institution. However, since the said institution does not have a branch office in every province in Turkey, a significant portion of forensic services are carried out by Ministry of Health medical institutions. Therefore, in order to prevent torture, it is essential that doctors who work at Ministry of Health medical institutions, who also provide forensic medicine services, are trained. Certain standards in service provision are introduced and due arrangements are carried out.

127. Accordingly, matters related to the implementation of forensic medicine services carried out by the Ministry of Health medical institutions have been re-regulated with the new Penal Code, the Criminal Procedure Code (No. 5271), and regulations issued concerning the Criminal Procedure Code (“Regulation on Apprehension, Detention and Statement-Taking” published in the Official Gazette on 1 June 2005, No. 25832 and the “Regulation on Physical Examination, Genetic Investigations, and Physical Identity Fixation in Criminal Procedure”). Amendments undertaken by the Ministry of Health for alignment with the above-mentioned laws were announced with the Circular dated 22 September 2005, numbered B100TSH013003-13292 (2005/143). The said Circular and its annexes can be accessed on the Ministry of Health’s web page at <http://www.adlitabiplik.saglik.gov.tr/>.

128. Amendments on the forensic examination and reporting process as well as the new reporting forms to be filled out are to contribute significantly in the prevention of torture, which is in fact confirmed by feedbacks.

## Articles 12 and 13

- 13. Please provide detailed statistical data<sup>9</sup> disaggregated by crime, region, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, as well as related investigations, prosecutions, and penal and disciplinary sentences. Please also provide information on the number of officers accused of torture that have been suspended from duty during investigation of torture or ill-treatment, including with regard to cases that occurred during the expulsion of aliens.**

129. Statistical data with regard to complaints directed against law enforcement officials, as well as measures taken in respect of these complaints, were already stated in response to question 9. Please note that ethnicity and region are not taken into consideration during the preparation of such data.

<sup>9</sup> Para. 7 (l) of CAT/C/CR/30/5.

**14. Pursuant to the recommendations made by the Committee,<sup>10</sup> please provide detailed information on the measures adopted to guarantee that prompt, impartial and full investigations into the numerous allegations of torture and ill-treatment are carried out, and to ensure in this connection that an efficient and transparent complaint system exists.**

130. Allegations of torture and ill-treatment are taken seriously and diligently by the judicial authorities at all stages of the investigation and trial process. Public prosecutors immediately initiate investigations concerning allegations of torture and ill-treatment ex officio and conduct them personally in accordance with the new Criminal Procedure Code and the circulars issued by the Minister of Justice. When a claim is supported with concrete evidence (such as witness statements, medical reports, etc.) public prosecutors promptly initiate criminal cases to bring those responsible to justice. If any evidence to support the allegations of torture or ill-treatment is disregarded or neglected by the public prosecutors during an investigation, it is possible to initiate a preliminary inquiry, investigation or prosecution against them under Law No. 2802. Therefore, “checks and balances” do exist in the Turkish criminal justice system.

131. The new Penal Code introduced higher penalties for acts of torture and consequently raised the statute of limitations for torture as well. Furthermore, concerning allegations of torture and ill-treatment, the new Criminal Procedure Code brought about new measures in order for investigations to be initiated and conducted personally by public prosecutors in an independent, effective and diligent manner.

132. The duties and powers of public prosecutors with respect to criminal investigation are regulated by Article 160 and the succeeding articles of the Criminal Procedure Code and Articles 17 and 20 of the Law on the Establishment, Duties and Powers of First Instance Judicial Courts and Regional Judicial Courts (No. 5235). As per Article 20 of Law No. 5235, public prosecutors are entrusted with the duty of carrying out procedures concerning judicial duties, attending hearings, and referring to legal remedies.

133. Article 160 of the Criminal Procedure Code entitled “The obligation of the public prosecutor with the knowledge of an offence committed” (No. 5271) stipulates that:

- (1) To clarify whether or not a public law suit should be filed, the public prosecutor takes immediate action with the aim of confirming the impression or information s/he has gotten through denunciation or in any other ways about the commission of an offence.
- (2) In order to investigate the material facts and ensure a fair trial, through the assignment of law enforcement agency under his command, the public prosecutor shall be obliged to collect and place in safe custody the evidence for and against the suspect and protect his rights.

134. Article 161 entitled “Duties and powers of the public prosecutor” provides that:

- (1) The public prosecutor — either directly him/herself or through the judicial police under his/her command — may conduct any inquiry; and may request any information from any public servant in order to reach the end stated in the paragraph above. Where a need emerges to carry out an action out of the jurisdiction of the Court at which s/he performs his/her judicial tasks, the

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<sup>10</sup> Para. 7 (b) in CAT/C/CR/30/5.

public prosecutor shall request the public prosecutor of that other jurisdiction, to carry out the action.

- (2) Judicial police shall be obliged to notify its particular public prosecutor immediately about the incidents that it has taken over, the persons apprehended and the measures applied; and it is obliged to comply with the judicial orders of the particular public prosecutor without any delay.
- (3) The public prosecutor shall give his/her orders to the law enforcement officials in writing; in urgent cases, the orders may be given verbally.
- (4) Other public employees shall as well be obliged to provide the public prosecutor with the information and documents that s/he requested under the scope of the ongoing investigation.
- (5) The public prosecutor shall directly launch an investigation about public officials, who abuse or breach their duties or functions pertaining to their official status or those related with the judiciary requested from them within the context of law, and about law enforcement officials and their senior officers, who abuse or breach their duties concerning the verbal or written orders given by the public prosecutors. The provisions laid down by the Law No. 4483 of 2.12.1999 on the Trial of Civil Servants and Other Public Employees shall apply to governors and district governors.
- (6) Concerning offences committed by district governors, the public prosecutor of the province to which the office of the district governor is attached; and concerning those committed by governors, the public prosecutor of the closest province shall be in charge of conducting an investigation in line with the general provisions provided that the provisions laid down in this Law herein are applicable for apprehensions in flagrante delicto which call for heavy punishment. In such cases, the court that is established in the territory where the investigation had taken place shall be empowered to carry out the prosecution.

135. Moreover, Article 170 of the Criminal Procedure Code provides that when the evidence collected during the investigation phase creates a sufficient suspicion that a crime has been committed, then the public prosecutor shall prepare an indictment. The Article also clarifies the content of the indictment to be prepared. Paragraph four of the same Article states that the indictment shall state the incidents that make up the attributed crime by explaining its link with the evidence available.

136. The Criminal Procedure Code has been amended in a way to make it possible to file an action, in accordance with Articles 170–174, where public prosecutors make an assessment only based on the available evidence and provide the essential grounds that necessitate conviction.

137. It should also be underlined that in accordance with subparagraph (a) of Article 100 of the Criminal Procedure Code, which regulates reasons for arrest, where there is strong reason to believe that the offence of torture and the offence of aggravated torture have been committed, the suspects can be arrested at the request of the public prosecutor and the order of the judge.

138. As regards the independence of public prosecutors in initiating investigations, the authority of the Minister of Justice and governors to order and request preliminary investigations, as was granted by the previous Criminal Procedure Code (Article 148 of law no. 1412), has been abolished.

139. Likewise, Article 14 of the Law on Provincial Administration (No. 5442), which provided that “Where the denouncement and complaints concerning civil servants are made through fabrication and accusation for animosity and absolute defamation and where its outcome has not been established in accordance with the legal proceedings the investigation is subject to, the governor may request the office of the public prosecutor to file a public action concerning those who accuse the civil servants in accordance with Article 148 of the Criminal Procedure Code”, was abolished with Law No. 5728, dated 23 January 2008.

140. Furthermore, as it was not stated in Article 156 of the abolished Code of Criminal Procedure (No. 1412), the new Criminal Procedure Code (No. 5271) clearly stipulates that no other authority than the public prosecutor is authorized to give orders or instructions to law enforcement superiors or officials concerning their judicial duties.

141. No provision exists in Turkish legislation that affords legal protection to law enforcement officials against the offences of torture or ill-treatment. No prior permission is necessary in order to prosecute a law enforcement official or any public official on charges of torture or ill-treatment. The unit with which the public official is affiliated is informed of the ongoing procedures against the official.

142. When the abolished Penal Code (No. 765) was in effect, carrying out a preliminary investigation concerning torture, as an offence committed by public officials, was subject to the provision of an investigation authorization in accordance with the Law on the Trial of Civil Servants and Other Public Officials (No. 4483). In the framework of EU harmonization laws, with Law No. 4778 (dated 2 January 2003), offenses of torture and ill-treatment added in Article 2 of Law No. 4483 were left outside the scope of Law No. 4483, thus ensuring that the preliminary investigation of such offenses would be carried out by the office of the public prosecutor directly, without the need for any other authorization.

143. As regards disciplinary prosecution, in accordance with the last paragraph of Article 131 of the Civil Servants Law (No. 657), the copies of decisions of non-prosecution, non-suit, indictment, written request, and trial issued following the investigation by public prosecutors, military prosecutors, judges or, in accordance with the Law on the Prosecution of Public Officials, by competent bodies, and the copies of final decisions given by the courts concerning the offenses emanating from duty or during the performance of their duty, as well as individual offenses of the personnel who are employed in the institutions stated in Article 4 of the Law on the Establishment of State Personnel Department (No. 160), shall be forwarded to the ministry or any other institution with which the personnel is affiliated.

144. Furthermore, Article 53, paragraph 1/a, of the Penal Code allows the courts to rule on temporary or permanent suspension from duty of public officials who are convicted of offences, including torture, that they have committed wilfully.

145. With a view to ensuring due, effective and accurate implementation of the legislation concerning investigations on allegations of torture and ill-treatment, the MoJ has issued the following circulars and the offices of public prosecutors have been duly notified as such:

(a) Circular No. 2 entitled “Points of importance in conducting investigations, arrangements and completion of investigation documents” states that concerning particular offenses which fall into the jurisdiction of assize courts, those which require investigation by public prosecutors themselves, as stipulated in private laws, and, where there is no obligation, other preliminary investigations concerning important cases, shall be carried out by the public prosecutors themselves and not by law enforcement officials. The Circular highlights that every effort shall be made to finalize investigations promptly, before they become time barred, and that due attention shall be paid to prepare the indictments in

accordance with Article 170 of the Procedure Code (No. 5271), so as to avoid the indictment being returned;

(b) Circular No. 4 entitled “Prevention of human rights violations during investigation” states that:

Where Turkey is sentenced to pay damages in the cases lodged against Turkey at the ECtHR due to public prosecutors not carrying out investigation procedures in line with the principles laid out in laws and Ministry circulars, which lead to violation of human rights, the amount paid by the Treasury to the ECtHR can be charged back from those prosecutors who caused the violation.

Upon finding in any manner that an offense has been committed, an investigation shall be initiated immediately, the evidence shall be identified and secured, the security of the scene of crime shall be ensured, the officials shall immediately arrive at the scene of crime by taking necessary measures to prevent the loss and destruction of evidence, the comparison of the evidence shall be made by examining the scene of crime, the photos and images of the scene of crime shall be ensured in a way to shed light into the investigation, relevant procedures shall be registered in the official records in detail, the accused or suspect’s body shall be examined and samples shall be taken — all of which shall be carried out in accordance with the procedures and rules laid out in the law — and the statements of the suspect, witness, complainant, and victim concerned shall be taken accurately and in line with the procedures.

(c) Circular No. 8 re-emphasizes that bearing in my mind international conventions to which Turkey is party, relevant laws and the decisions of the ECtHR, the investigations concerning allegations of torture and ill-treatment shall be conducted by the Chief Public Prosecutor personally, not by law enforcement officials;

(d) Circular No. 22 entitled “Unidentified events and murders” points out to carry out investigations, to find the perpetrator(s) accurately and effectively with due efforts and diligence up until the exhaustion of the time limit for legal action; as well as carrying out the necessary legal procedures promptly within the framework of the procedures and legal provisions, for those who manifest attitude and behaviour preventing the finalization of investigations in a short period as well as those who cause the investigation become time-barred.

- 15. Please inform the Committee if the statute of limitations for crimes involving torture has been repealed; if not, provide the reasons for not implementing this recommendation and the steps that have been taken in that direction. Expediting the trials and appeals of public officials indicted for torture or ill-treatment and ensuring that members of the security forces under investigation or on trial for torture or ill-treatment are suspended from duty during the investigation and dismissed if they are convicted were also [among] Committee’s recommendations.<sup>11</sup> Please update the Committee with regard to those concerns, including with comparative data specifying trial duration and**

<sup>11</sup> Para. 7 (c) of CAT/C/CR/30/5.

**numbers of [public officials suspended and dismissed in relation to] torture and ill-treatment.**

146. Every legal system establishes certain statutes of limitations depending on the type of the offences committed, and the nature and length of the sentence. The Turkish legal system has also established statutes of limitations for all offences, including the offence of torture.

147. The offences of torture and ill-treatment as stipulated in Articles 94–96 of the new Penal Code are subject to statutory time limits within the framework of Articles 66–72 of the same Law. Notwithstanding, Article 77 of the same Law provides that the systematic performance of torture and tormenting acts committed against a civilian group of the population in line with a plan with political, philosophical, racial or religious motives shall constitute crimes against humanity, where statutory time limits cannot be invoked.

148. As stated earlier, the new Penal Code introduced higher penalties for acts of torture and consequently raised the statute of limitations for torture. The statute of limitations for the offence of torture has been raised to 15 years. Where the acts of torture cause the death of the victim, the penalty for which is strict life imprisonment, the statute of limitations is fixed at 40 years.

149. Abolition of the statute of limitations for the crime of torture may imply the violation of the principle of equality. Whereas a statute of limitations applies for felonious homicides in which injustice is more overwhelming, repealing the statute of limitations for the crime of torture is in contradiction with the principle of justice and equality. Repealing the statute of limitations only for one offence while preserving it for other offences is not deemed consistent with the Constitution and fundamental criminal law principles.

150. In the past, due to the failure to shed light onto events and murders whose perpetrators were unidentified, failure to arrest the perpetrators and failure to manifest due diligence in some investigations, thereby causing the offence to become statute barred without identifying the perpetrator(s), actions were filed against Turkey with the ECtHR, some of which resulted in the conviction of Turkey.

151. In this connection, necessary precautions are and continue to be taken with a view to preserving the feeling that justice has been done, which has an esteemed place in the public consciousness, and ensuring that the dignity of the state is not damaged since it is among the most significant duties of the state to ensure that perpetrator(s) of offences are arrested and brought to justice, have a fair trial, convicted if guilty and sentenced fairly while observing human rights, and to duly execute the sentence. It was with this mindset that the new Penal Code and Criminal Procedure Code were introduced.

152. In addition to the circulars referred to above (please see response to question 14) issued by the MoJ in order to ensure that the investigations concerning allegations of torture are conducted and finalized promptly, Circular No: 9 of the MoJ entitled “Points to take into consideration in the follow-up and implementation of execution procedures” draws attention to the need to manifest due sensitivity in ensuring that final convictions are executed before becoming time barred and informing the relevant law enforcement units with a view to taking out the time-barred documents from search records.

153. Concerning commutation and suspension of penalties for the offence of torture and ill-treatment, as the new Penal Code raised the penalties for torture, it is no longer possible for sentences imposed against public officials convicted of torture or ill-treatment to be suspended or commuted to other forms of penalties. According to Article 50 of the Penal Code, commutations only apply to offences which are punishable by short-term imprisonment of up to one year. Torture is an offence punishable by 3–15 years’



imprisonment and ill-treatment is an offence punishable by 2–5 years' imprisonment. Consequently, penalties for torture and ill-treatment cannot be commuted. According to Article 51 of the Penal Code, suspensions can only be applied to sentences of imprisonment of up to two years. Accordingly, sentences imposed for torture cannot be suspended. Sentences imposed for ill-treatment cannot be suspended if they exceed two years' imprisonment.

154. Finally, the Penal Code allows the courts to rule on temporary or permanent suspension from duty of public officials who are convicted of offences, including torture. Article 53 of the Penal Code stipulates that the exercise of certain rights of the perpetrators of torture can be revoked. The public official who commits the offence of torture can be deprived of holding a public office either permanently or for a certain period of time, or temporarily; the right to vote and to be elected and other political rights; the right to guardianship; rendering any services of guardianship and trustee; being the administrator or inspector of the legal entities of foundations, associations, labor unions, companies, cooperatives and political parties; and exercising any profession or art which is subject to the permission of a professional organization or a public institution or organization, under his own responsibility as a professional or a tradesman's.

**16. Please provide information on the measures taken to guarantee that the detention records of all detainees in police custody are properly kept from the outset of the custody period, including for the times they are removed from their cells, and that such records are made accessible to their families and lawyers.<sup>12</sup> With regard to this guarantee, please indicate the procedure [for accessing] the records and provide statistical data on their access.**

155. The Regulation on Apprehension, Detention and Statement-Taking published in the Official Gazette on 1 June 2005 (No. 25832) regulates the rules and procedures to be observed in the implementation of apprehension, taking into custody, putting under safeguard, and statement-taking procedures by the law enforcement officers during judicial investigations implemented with the knowledge and in accordance with the orders of the public prosecutors, upon the instruction of all judicial law enforcement officers and, where necessary, by the public prosecutors.

156. In accordance with Article 12 of the Regulation, the procedures concerning taking into custody are registered in the Lockup Records. Direct investigation can be initiated by the office of the public prosecutor regarding the personnel who are found to have failed to fulfil these procedures in the supervisions carried out as per Article 26 of the Regulation.

157. The custody units are subject to 24-hour supervision by the public prosecutors. Official records are prepared on the findings of the inspections conducted and these records are kept. In addition, information regarding every person who is taken into custody is submitted to the custody tracking units and follow-up is managed duly. Article 92 of the Criminal Procedure Code (No. 5271) provides that "As part of their judicial duties, chief public prosecutors or public prosecutors appointed by them shall inspect the lockups where persons taken into custody are accommodated, the interview rooms if any, the situation of persons in custody, the reasons for and duration of custody, and all records and procedures relating to custody; they shall record the outcome in the custody records."

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<sup>12</sup> Para. 7(e) in CAT/C/CR/30/5.

158. Any shortcoming detected during the inspection is rectified and judicial procedures are promptly carried out concerning any conduct which constitutes an offence.

159. Article 95 § 1 of the Criminal Procedure Code (No. 5271), provides that “When the suspect or the accused is apprehended, detained or when his/her detention period is extended, his/her relative or a person designated by the person apprehended or taken into custody shall be notified without delay, by the order of the public prosecutor.”

160. In accordance with the relevant legislation, persons taken into custody benefit from legal and medical assistance and their relatives are notified. The Regulation on Apprehension, Detention and Statement-Taking includes clear and binding provisions regarding benefiting from legal and medical assistance. Furthermore, custody and interrogation procedures are recorded digitally.

161. In line with the principle of “confidentiality of investigation”, information regarding custody and arrest is not accessible to everyone. Article 157 of the Criminal Procedure Code, states that “Provided that the cases on which the Law has imposed special provisions are reserved, and that the right to defense is not offended, the procedural actions in the investigation phase shall be confidential.” However, in accordance with the provisions in the Constitution, the Criminal Procedure Code, and the Regulation, the kin of the person arrested must be informed of the arrest or custody. Article 8 of the Regulation provides that:

The arrest, custody, and extension of custody shall be notified upon the order of the public prosecutor to one of the kin or another person chosen by the arrested person:

- (a) Through a person s/he is with, if there is any;
- (b) By telephone, if s/he resides at the venue of offense or arrest and if s/he knows the telephone number of the kin whom s/he shall inform, or if the telephone number can be found otherwise by the law enforcement officer;
- (c) Through the relevant law enforcement officer, if s/he does not know the telephone number of the kin whom s/he shall inform;
- (d) The arrest, custody or extension of the custody period shall be notified to the kin of the person or to another person to be chosen by the arrested person, upon the order of the public prosecutor, by contacting by telephone or at the person’s domicile, if his/her residence is outside the venue of the offense;
- (e) If the person who is arrested or taken into custody is of foreign nationality, the embassy or the consulate of the country of which s/he is a citizen shall be notified of his/her situation, if the person concerned does not object in writing;
- (f) Legal kin of the person shall be immediately notified of the person’s arrest to be placed under safeguard.

162. The family of the person concerned can receive information from the law enforcement officers concerning the measures taken regarding that person as well as his/her her condition.

163. Another issue of concern is having access to legal assistance. In accordance with Article 149 of the Criminal Procedure Code (No. 5271), the suspect or accused can benefit from the assistance of one or more defense lawyers at any stage of the investigation and prosecution.

164. Articles 20–22 of the Regulation regulate in detail the assistance of defense lawyers. Article 20 provides that the suspect or the accused can benefit from the assistance of one or more defense lawyers at any stage of the investigation and prosecution; if s/he has a legal representative, s/he also can select a defense lawyer for the suspect or the accused.

Throughout the investigation, a maximum of three defense lawyers can be present during statement-taking.

165. At every stage of the investigation and prosecution, the right of the defense lawyer to meet with the suspect or the accused, to accompany him/her during statement-taking and interrogation, and to provide legal assistance shall not be prevented or restricted. If the suspect or the accused states that s/he is not in position to select a defense lawyer, a defense lawyer shall be commissioned by the bar upon his/her request.

166. A defense lawyer shall be directly commissioned in cases, without the request of the suspect or the accused, where there are no lawyers present and the suspect or accused has not yet passed the age of 18, or s/he is deaf or mute, or disabled to such an extent as to hinder self-defense. In investigations and prosecutions concerning offences calling for imprisonment for no less than five years, a defense lawyer shall be commissioned without the request of the suspect or the accused.

167. In accordance with Article 21 of the Regulation, the suspect or the accused can at any time meet with the defense lawyer without any power of attorney in a setting where their conversation cannot be heard by others. An appropriate interview room shall be designated in every law enforcement unit for the meeting with the defense lawyer. Moreover, the correspondence of the suspect or the accused with his/her defense lawyer cannot be subject to supervision.

168. Regarding the examination of investigation documents by the defense lawyer, Article 153 of the Criminal Procedure Code (No. 5271) and Article 22 of the Regulation provide that the defense lawyer can examine the content of the case file during the investigation phase and can take a copy of the documents s/he wants, for free. However, the written order of the competent public prosecutor is required for the file at the law enforcement unit. As per the second paragraph of Article 153 of the Criminal Procedure Code, if the examination of the file content or acquisition of a copy of the documents by the defense lawyer endangers the purpose of the investigation, this power can be restricted by a decision by a magistrate's court judge.

169. The statistical information concerning the legal assistance provided to the persons taken into custody by various units of the General Directorate of Security are as follows:

Table 2

**Suspects who interviewed with defense lawyers between 2003 and 2008**

| <i>Year</i> | <i>%</i> |
|-------------|----------|
| 2003        | 34       |
| 2004        | 52       |
| 2005        | 74       |
| 2006        | 87       |
| 2007        | 79       |
| 2008        | 80       |

170. The personnel of the General Command of the Gendarmerie carry out its duties concerning custody in accordance with the above-mentioned laws and regulations.

17. **With reference to the Committee's recommendations,<sup>13</sup> what measures have been taken to ensure that fair and adequate compensation, including financial indemnification, rehabilitation, and medical and psychological treatment are provided to the victims of torture and ill-treatment? Please provide detailed statistical information in this regard, including the number of [cases where] compensation [was] provided to victims and their amounts, as well as on the rehabilitation and treatment that were carried out.**
18. **Please provide information on the measures taken to implement the recommendations contained in paragraph 91 of the report of the visit to Turkey of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism regarding the investigation of allegations of torture and extrajudicial killings and the fight against impunity.<sup>14</sup>**

171. The recommendations of the United Nations Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism regarding the investigation of allegations of torture and extrajudicial killings and the fight against impunity are given serious consideration and implemented to the extent possible. The Government is on the verge of creating an independent national human rights institute which will be able to monitor the human rights situation in the country, with a particular emphasis on the prevention of torture and ill-treatment. The draft law for the establishment of the institute is currently under way and will be presented to the Parliament as soon as it becomes ready. In connection with this development, once the domestic monitoring mechanism is in place, the ratification of OPCAT will not pose a problem for the Government.

172. It should be taken into consideration that with the new Criminal Procedure Code, particular attention is paid to accelerating procedures for cases that concern torture. Evidence obtained under duress or torture is simply not admissible and is prohibited. Any procedure to the contrary falls outside lawful practice. Further explanation on this matter is provided below in response to question 20.

## **Article 14**

19. **What measures are in place in the State party with regard to compensation and rehabilitation of victims of torture? Please provide relevant statistical information.**

[Response to questions 17 and 19.]

173. As indicated in response to question 1, Article 19 of the Constitution stipulates the right to liberty and security of the person. Damage suffered by persons subjected to treatment contrary to provisions of this Article shall be compensated by the State with

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<sup>13</sup> Para. 7 (h) of CAT/C/CR/30/5.

<sup>14</sup> A/HRC/4/26/Add.2 (2006), para. 91.

respect to the general principles of the law on compensation pursuant to the last paragraph of the same Article.

174. Furthermore, victims, including victims of torture and ill-treatment, in accordance with relevant laws, can file actions against perpetrators before civil courts seeking redress for pecuniary and non-pecuniary damages, as well against the State before administrative courts.

175. Article 141 of the Criminal Procedure Code regulates compensation for those who suffer damages during the investigation or prosecution is as follows:

- (1) Persons who suffer damage during the investigation or prosecution of offences may request from the State compensation for material and non-material damages incurred, if:
  - (a) They were unlawfully apprehended or arrested or their period of detention on remand was unlawfully extended;
  - (b) They were not brought before a judge within the statutory custody period;
  - (c) They were arrested without being informed of their statutory rights or after they were informed of their rights their request to exercise those rights was not met;
  - (d) Notwithstanding that they were lawfully arrested, they were not brought before the trial court within a reasonable time and did not receive a judgement within a reasonable time;
  - (e) After they were lawfully apprehended or arrested it was decided not to prosecute them or they were acquitted;
  - (f) They were convicted but the period spent in custody and in detention on remand was longer than the sentence received, or they were necessarily only fined because the law provides only for a fine for the offence committed;
  - (g) They were not informed of the grounds for their apprehension or arrest and of the charges against them either in writing or, if this was not immediately possible, orally;
  - (h) Their relatives were not informed of their apprehension or arrest;
  - (i) The search warrant was implemented in a disproportionate manner;
  - (j) Their belongings or other property were confiscated in the absence of the required conditions, or the necessary measures were not taken for their protection, or their belongings and other property were used for reasons outside the purpose or if they were not returned on time.
- (2) The authorities that give the decisions mentioned in sub-paragraphs (e) and (f) of paragraph one shall notify the interested party that he has the right to file a claim for compensation and this notification shall be included in the decision.

176. Furthermore, in accordance with the Regulation on Probation, Assistance Centers and Protection Boards prepared in line with Article 27 of the Law on Probation, Assistance Centers and Protection Boards (No. 5402, dated 3 July 2005), assistance to victims of crimes are provided in the context of probation services. In Article 12 of the Law entitled

“Duties of the Department Head, Duties during Investigation”, among the duties listed is “to provide consultation in the solution of psycho-social and economic problems encountered by victims of crime and to assist such people”.

177. Article 111 of the Regulation on Probation, Assistance Centers and Protection Boards (No. 26497) entitled “Efforts aimed at victims of crime” provides that:

- (1) Protection boards provide assistance in the solution of social, economic and psychological problems of victims encountered due to crimes.
- (2) The procedures stated in Article 104 of this Regulation shall be carried out regarding the applications lodged at protection boards by victims of crimes.
- (3) Where decided upon by Protection Boards, the psycho-social assistance aimed at victims of crimes shall be carried out concerning such people.
- (4) Projects aimed at victims of crimes shall be prepared as per the third paragraph of Article 110 of this Regulation.
- (5) Appropriate assistance shall be carried out by the Protection Board, irrespective of request by the victims of the crime.

178. According to the Regulation, a final court decision or a letter by the relevant authority during investigation and prosecution is required in order for the victims of crime to benefit from services. Article 104 of the Regulation entitled “Procedures to be carried out during the Reception of Applications Lodged at Protection Boards” provides that the victims of crime shall present the necessary documents.

179. The project entitled “Development of Services Concerning Juveniles and Victims by the Turkish Probation Service” was approved by the Delegation of the European Commission to Turkey and it aims at providing more effective services concerning children and victims on probation. The United Kingdom was chosen as the partner country for the twinning project. The work regarding the project, planned to continue for 21 months, started on 16 January 2009. In the document entitled “Victim Studies Policy”, which was drawn up in the framework of the project, “victim” was defined as “the person, who suffered physically, psychologically and economically because of the crime committed against him/herself and his/her family, and who needs support because of this damage”.

180. Intervention program 1 of the projects entitled “Psycho-Social Support Program for Victims” was implemented between 25 May 2009 and 5 June 2009, in the context of which “Victim Intervention Program 1 – Basic Approaches Handbook” was prepared. While preparing the handbook, the implementation of victim services was explained, and the issue of what kind of assistance would be provided for which victim in the context of “intervention 1” was clarified. In addition to the conditions for benefiting from victim services in the current legislation, this study aimed at enabling the victim to benefit from victim services by going to the police station and filing a petition of complaint, irrespective of the type of crime encountered.

## Article 15

### 20. Please provide information on the implementation of the principle that evidence obtained through torture cannot be invoked as evidence in any proceedings.<sup>15</sup>

181. The sixth and seventh paragraphs of Article 38 of the Constitution of the Republic of Turkey entitled “Principles Relating to Offences and Penalties” provide that “No one shall be compelled to make a statement that may incriminate himself/herself or his/her legal next of kin, or to present such incriminating evidence. Findings obtained through illegal methods shall not be considered evidence.”

182. The new Criminal Procedure Code contains many safeguards for suspects and accused persons against unlawful practices and to ensure the effective exercise of defense rights. In this framework, the Criminal Procedure Code provides for the right to be assisted by a defense counsel and ensures that any statement should be made of the suspect’s free will and that statements extracted through prohibited methods such as torture or ill-treatment shall not be taken as a basis for any judgement.

183. Article 148 of the Criminal Procedure Code entitled “Prohibited methods of statement-taking and questioning” provides that the statements given by the suspect or accused should derive from his own free will. Any physical or psychological intervention that would hamper free will — such as ill-treatment, torture, the administration of medicines or drugs, the infliction of fatigue, deception, the use of compulsion or threat, and the use of certain equipment — is prohibited and no unlawful advantage may be promised to the accused.

184. Article 148 stipulates that statements obtained through prohibited methods mentioned in the above paragraphs shall not be used as evidence notwithstanding that they were given with the person’s consent. The statements taken by the law enforcement forces in the absence of a lawyer shall not be taken as basis for the verdict unless confirmed before the judge or the court by the suspect or the accused. Finally, when there is such need to do so, it is only the Public Prosecutor who shall be empowered to take statements of the suspect for a second time concerning the same case.

185. Furthermore, Article 24 of the Regulation on Apprehension, Detention and Statement Taking entitled “Prohibited methods in statement-taking” provides that:

The statement of the accused must be based on his/her free will. No physical or psychological interference shall be made, such as any misbehavior, torture, administering of drugs, tiring out, deceiving, using force or threats, using certain tools.

No commitment of any interest contrary to law can be made.

The statements given as a result of prohibited methods cannot be considered as evidence even if they are given with consent.

Where the need arises to re-take the statement of a suspect concerning the same event, this can be done only by the public prosecutor.

<sup>15</sup> Para. 4 (d) of CAT/C/CR/30/5.

No one shall be forced to give a statement accusing him/herself or his/her kin as stated in the Law, or shall not be forced to produce evidence to this end.

186. According to the established case-law of the Court of Cassation, acknowledgment is evidence, yet it must be in conformity with law and supported by other evidence. No decision of conviction can be given solely based on the acknowledgment of the suspect or the accused, without any other evidence. A statement obtained without reminding the suspect of his/her legal rights and in the absence of a defense lawyer or attorney cannot be accepted as valid evidence. Likewise, acknowledgment obtained through prohibited methods does not count as evidence.

## Article 16

- 21. Please provide information on the measures taken to implement the recommendations contained in paragraph 79 of the report on the visit to Turkey of the Special Rapporteur on violence against women, its causes and consequences with regard to implementing a zero-tolerance policy towards all forms of violence against women, identifying, prosecuting and adjudicating cases of forced suicide and disguised murders, protecting women at risk of violence, improving the database on violence against women, its causes and consequences and taking suicide prevention measures.<sup>16</sup> What specific measures have been taken with regard to preventing and combating domestic violence?<sup>17</sup>**

### Legal and policy measures

187. In Turkey, the principle of gender equality is inscribed in the Constitution in Articles 10, 41 and 90. Article 10 of the Constitution provides that “All individuals are equal without any discrimination before the law, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such considerations.” With an amendment made in 2004, the following sentence was added to the Constitution: “Men and women have equal rights. The State shall have the obligation to ensure that this equality exists in practice.”

188. In 2001, Article 41 of the Constitution was amended to state that “The family is the foundation of the Turkish society and is based on equality between the spouses.”

189. Following an amendment to the Constitution in 2004, Article 90 provides that international agreements duly put into effect bear the force of law and no appeal to the Constitutional Court can be made with regard to these agreements on the grounds that they are unconstitutional.

190. With the New Turkish Civil Code, which entered into force on 1 January 2002, contemporary provisions which ensure equality between the spouses are regulated. Basic amendments which are introduced in the New Turkish Civil Code are as follows:

- “Spouses carry out the conjugal community together”.
- Representation of the conjugal community shall be given to both spouses.

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<sup>16</sup> A/HRC/4/34/Add.2, 2007), para. 79.

<sup>17</sup> CEDAW, concluding comments (CEDAW/C/TUR/CC/4-5) (2005), paras. 27 and 28.



- Spouses shall choose together the house that they will live in.
- The amendment made in 1997 gives the woman the right to use her own surname (maiden surname) on the condition that her own surname comes before the surname of her husband. This amendment is also included in this new Law.
- The guardianship of the children shall be used by the spouses, together.
- One of the spouses shall not be obliged to obtain the permission from the other in the selection of profession and job.
- According to the Law, “the regime of participation in acquired property” which ensures that the spouses share the properties gained after the marriage in an equal way in case of divorce, has been adopted as the legal property regime.
- The legal age for marriage has been raised to over 17 for both men and women.
- On the question of sharing inheritance, if there is just cause, upon the request of the surviving spouse or other legal heirs the right to residence or usufruct can be granted in lieu of ownership.

191. Family Protection Law No. 4320 entered into force on 17 January 1998. In 2007, an amendment was made in order to eliminate the problems related to the implementation of the Law.

192. With the same Law, the fight against violence against women has gained a wider scope and spouses who live separately, although married, spouses to whom the court has granted a divorce, or spouses who have right to live separately and the children are also protected. Using the expression “guilty partner or other family member” gives the opportunity to rule also concerning the other members of the family who live under the same roof. It is also included in the law that the judge of the family court may direct the perpetrator to “apply to a health center for inspection or treatment, and it is also resolved that the applications to benefit from the law and the procedures for the execution of the law are free of charge”.

193. The Regulation prepared for the implementation of the Law entered into force on 1 March 2008. The Family Protection Law and Regulation on the Implementation of the Family Protection Law include a protection order concerning the application of the criminal/perpetrator to a health centre for medical therapy and examination. The details of the order are regulated in the Regulation and provide information about the aim of the order, responsible institutions, procedures and the therapy process.

194. According to the Municipality Law, which entered into force on 13 July 2005, metropolitan municipalities and municipalities that have a population of over 50,000 shall build guesthouses/shelters for women and children.

195. One of the most important amendments to the new Penal Code Law is that sexual offences are classified under the section “crimes against individuals” instead of “crimes against society”.

196. The Turkish Penal Code provides that in its implementation no discrimination on the basis of race, religion, language, nation, sex, etc. is permissible and no privilege shall be conceded to anybody.

197. The basic form of sexual assault has been defined and proscribed. (Besides, if the sexual assault has been committed against the spouse, investigation and prosecution shall be made upon the complaint of the victim.)

198. Sexual harassment in the workplace is also regulated and the perpetrators of this offence shall be punished.

199. In the Article which regulates the qualified crimes, felonious homicide perpetrated in the name of “honour” shall be punished with the highest punishment.

200. The Penal Code also states that if a person instigates or encourages somebody to commit suicide, or instigates/encourages another person to help another to commit this crime, this person shall be sentenced to prison. The crime of malicious injury is also regulated and is punished (if the crime is committed against an ascendant or descendant, or committed against the spouse or brother/sister, it is recognized as a qualified crime, hence the punishment has been increased). In the Law, the crimes of abduction, deprivation of liberty, torture, torment, and forsaking are regulated and punished. Also, maltreatment of another person living in the same dwelling is also proscribed.

201. In 2005, a Parliamentary Investigation Commission was established to “Investigate the reasons behind honour- and custom-motivated murders and violence against women and children, and identifying the measures to be taken”. The Commission Report put forth the vital tasks to be carried out by social bodies for the prevention of such crimes and changing the sentences, together with the traditional mindset on the issue.

202. Within the framework of this report, a Prime Ministry Circular has been issued to coordinate the activities of the related governmental institutions, universities and the media on the topic of “Measures to be taken for the prevention of violence against women and children, and honour- and custom-motivated crimes.” According to the Circular, the General Directorate on the Status of Women has the coordination task to monitor and follow the protective and preventive measures to be taken by the related institutions listed in the Circular for combating violence against women and honour/custom killings; the Prime Ministry General Directorate on Social Services and Child Protection Agency (SHÇEK) has the coordination task to monitor and follow the protective and preventive measures to be taken by the related institutions for combating violence against children.

203. Within the framework of the Circular, “The Committee for Monitoring Violence Against Women” has been established by the related public agencies and organizations and NGOs with the coordination of the General Directorate on The Status of Women.

204. In accordance with Prime Ministry Circular 2006/17, the MoI gave directives to 81 Governorships with the Circular (2007/6) issued on 11 January 2007 on the tasks to be realized by security forces, municipalities, Provincial Social Services Directorates, Province/District Special Administrations, and Province/District Social Services Departments to eliminate violent acts against women and children and honour/custom killings.

#### **Support and protection for victims**

205. The shelters/guesthouses are the primary services provided to women subjected to violence. The women’s shelters can be opened and run by the General Directorate on Social Services and Child Protection Agency, municipalities, special provincial administrations and NGOs etc.

206. There are 49 shelters in Turkey. SHÇEK runs 25 of them, and the remaining 24 are operated by municipalities, NGOs, district governors’ offices and governors’ offices.

207. Additionally, the project entitled “Shelters for Women Subjected to Violence” is being implemented by the MoI with the technical assistance of the United Nations Population Fund (UNFPA) and financial support from the European Union. Within the scope of the project, which is in the inception phase, it is planned to build and furnish shelters in eight selected provinces and to train the service providers who will provide service for the women subjected to and at risk of violence.

208. The common goal of the above-mentioned bodies is to provide temporary shelter services to women subjected to or at risk of violence, in a violence-free and dignified manner.

209. The 183 Call Line, which operates free of charge and on a 24/7 basis, is another important service. The call line provides legal and psychological counselling and informative assistance services upon request. This service is operated by SHÇEK.

210. Besides providing shelters, women subjected to violence are also provided with legal assistance and physiological counselling.

211. The women's rights commissions (centers) of Bar Associations provide free legal assistance to women subjected to violence. The victims are given legal assistance, especially in case of lack of means to afford the costs associated with court procedures, and provided with a free-of-charge attorney by the bar association.

#### **Data collection**

212. The Turkish Institute of Statistics (TURKSTAT) is the national mechanism in charge of statistical affairs. The administrative data collection is the responsibility of the MoJ and the MoI General Directorate of Security.

213. The National Research on Domestic Violence against Women in Turkey (The Countrywide Qualitative and Quantitative Survey on Causes and Consequences of Violence against Women) started on 3 December 2007. It is a nationwide comprehensive field research, aimed at collecting information on sources and forms of violence against women in Turkey for the purposes of monitoring and combating domestic violence against women. The research outcomes shall be used as data within the scope of TURKSTAT's "Official Statistics Program".

#### **Awareness-raising**

214. The General Directorate on the Status of Women (GDSW) and UNFPA have been co-running the "Stop Violence against Women Campaign" since 25 November 2004. The following activities are being undertaken in the framework of the above-mentioned campaign:

- As a result of the cooperation with the Office of the General Chief of Staff; training materials, CDs and posters containing information on women's human rights, girls' schooling, violence against women and prevention of honour and custom killings have been prepared for the recruits fulfilling their military duties in order to raise awareness among men. Every year, 450,000 conscripts are educated in this context.
- Official cooperation has been established between GDSW and the Association of Turkish Clothing Industrialists, as a result of which men's wear produced by affiliated firms have been put on sale with labels carrying the "Stop Violence against Women" message alongside the routine price tag. On the week of "International Day for the Elimination of Violence against Women, November 25th", posters on stopping violence against women have been produced and displayed in shops and malls.
- A film spot has been produced at the initial stage of the campaign with the participation of celebrities from the arts and sports worlds, and the spots have been screened on national TV channels and in movie theatres. The footballers of the Premier Division have put on banners and T-shirts carrying the "Stop Violence against Women" message.

- Posters on preventing violence against women, and also custom/honour killings, are displayed on the advertisement boards in different parts of the cities as a result of GDSW's collaboration with the Metropolitan Municipalities of Ankara and Istanbul. The posters and brochures are also sent to requesting agencies in order to ensure awareness-raising by means of visual materials.
- A film spot has also been produced with the participation of the Prime Minister, State Minister, Director of Religious Affairs and Director of GDSW in order to create and strengthen public awareness and social sensitivity on the prevention of violence against women so that this important social problem gets the attention it merits. This spot is being broadcast on national and local television channels.

215. GDSW has been implementing the "Combating Domestic Violence against Women Project", with the financial assistance of the European Commission, and technical assistance from UNFPA. The following activities are undertaken in the framework of this project:

- A National Action Plan based on the outcomes of a research project on the causes and consequences of domestic violence to be carried out to strengthen the capacities of all stakeholders shall be prepared; a database model shall be established, and service delivery models and several awareness-raising and in-service training modules shall be developed.
- A stand was put at Ankara Kızılay Underground Station in order to create social awareness and sensitization on the occasion of "International Day on the Elimination of Violence against Women". The organization enabled distribution of informative materials and screening of film spots produced by the project. Other promotional materials developed by the project have also been sent to all governorates and municipalities.
- Two different film spots have been produced in the framework of the Combating Domestic Violence against Women Project that emphasize provisions regulated by Law No: 4320 such as taking the necessary measures against perpetrators upon application by third parties, and provision of State protection to victims of violence. The spots, which also convey the "Violence against women is a crime; do not overlook and do not remain silent!" messages, are being broadcasted on national and local TV channels.

#### **In-service training programs**

216. In addition to the above-mentioned awareness- and sensitivity-raising activities on violence against women, there are also in-service training programs for the public service providers. It is within this framework that a protocol was signed between the GDSW and MoI General Directorate of Security (26 December 2006) under the name "The Role of the Police Forces in the Prevention of Violence against Women and the Applicable Procedures Project", under the provisions of the Prime Ministry Circular (No. 2006/17) on "Measures to Prevent Violent Acts Against Women and Children and Crimes in the Name of Honour and Custom".

217. The training program comprises areas such as violence against women, gender equality, ways of approach to victims of violence, and the effective enforcement of Law No. 4320 on the Protection of the Family, and other relevant legislation. The project aims to train approximately 40.000 staff of the General Directorate of Security that work at the police centers and stations. After the completion of the training, said security staff (police officers) will be able to make risk evaluations for women subjected to violence and will be able to refer these women to Social Services and Child Protection Department, shelters, and other relevant institutions/departments.

218. A similar protocol was signed between the GDSW and Ministry of Health (3 January 2008), under the name “The Role of the Health Personnel in the Prevention of Violence against Women and the Applicable Procedures Project” and training was started in June 2008. With this Protocol, it is targeted to reach 500 trainers and 75,000 health personnel.

219. The Department of Religious Affairs, in cooperation with GDSW, conveys messages on stopping domestic violence through periodic sermons at the mosques and trains its personnel by including women’s human rights within its in-service training program.

#### **National Plans of Action**

220. In accordance with the Prime Ministry Circular No. 2006/17 (July 2006) on “Measures to Prevent Violent Acts Against Women and Children and Crimes in the Name of Honour and Custom”, the “Combating Domestic Violence against Women National Action Plan” has been finalized and rendered effective with the participation of all relevant stakeholders. The objective of the Action Plan is to collaboratively define and implement the necessary measures for the prevention of all forms of violence against women in Turkey. The National Action Plan has been published as a book, and disseminated to all relevant agencies and institutions.

221. Finally, the Special Rapporteur also recommended the creation of a Gender Equality Commission in the National Assembly, mandated to develop legislative proposals to enhance women’s rights and mechanisms for the State to fulfill its constitutional responsibility to implement these rights. A Parliamentary Commission on gender equality was indeed set up. Accordingly, “the Law on the Commission for Equal Opportunity for Men and Women”, No. 5840 was adopted by the Turkish Grand National Assembly on 25 February 2009 and became effective upon its promulgation in the Official Gazette of 24 March 2009, No. 27179. According to the Law No. 5840, the Commission is entrusted with the following tasks:

- To examine the legislative proposals before the Parliament from a gender-equality perspective in view of the Turkish Constitution, international developments and treaty obligations of Turkey, and to submit its views to the Specialized Commissions
- To prepare an annual evaluation report on its activities and progress made towards achieving gender equality in Turkey and submit this report to the Parliament
- To follow the developments on gender equality and women’s rights in other countries and international organizations; to carry out researches abroad in this field, where deemed necessary; to inform the Parliament of these developments

**22. Please provide information on the measures taken to implement the recommendations contained in paragraphs 102 and 103 of the report on the visit to Turkey of the Working Group of Arbitrary Detention with regard to detention in the juvenile justice system as well as to the forms of deprivation of liberty outside the criminal justice process.<sup>18</sup>**

222. As stated earlier, since its previous report to the Committee Turkey has pursued a comprehensive reform process aimed at the protection and promotion of human rights and

<sup>18</sup> A/HRC/4/40/Add.5 (2007).

adopted new laws and regulations to this end. Several articles of the new Criminal Procedure Code (No. 5271), the Law on the Protection of Children (No. 5395), the Regulation on the Rules and Procedures concerning the Implementation of the Law on the Protection of Children (No. 26386) and the Regulation on Apprehension, Detention and Statement-Taking (No. 25832) effectively deal with the recommendations of the Working Group of Arbitrary Detention with regard to detention in the juvenile justice system. Please see Annex VI for the compilation of the relevant articles of the above-mentioned legislation concerning the juvenile justice system.

223. Additionally, Gendarmerie Juvenile Centers have been established in order to combat juvenile crimes committed in the zones of responsibility of the gendarmerie effectively. Moreover, one officer is appointed at each Provincial Gendarmerie Command, District Gendarmerie Command, and Gendarmerie Station Command as Child Protection Procedures Non-Commissioned Officer/Expert. Furthermore, a “Juvenile and Moral Crimes Section Directorship” has been established at the General Command of Gendarmerie Headquarters. Gendarmerie Juvenile Centers also carry out consultation activities on the procedures carried out concerning children.

224. The aim of these measures, excluding the judicial duties related to children within its area of duty and responsibility, is to prevent juvenile crimes, protect child victims of crime and children who commit crimes, determine the measures that can be taken by seeking the factors luring them into crime, and prevent children from being lured into crime and abused.

**23. Please provide detailed information on the resources, activities, and results of the National Task Force to Combat Trafficking in Human Beings since its establishment, as well as of its National Plan of Action, adopted in 2003.**

225. The National Task Force on the Fight Against Human Trafficking (NTF) was set up in October 2002 under the chairmanship of the Ministry of Foreign Affairs as a regular multi-agency platform where human trafficking issues are discussed in partnership for better and efficient coordination and cooperation. (The Ministry of Foreign Affairs is the national coordinator on fight against human trafficking.) NTF aims to develop a comprehensive approach and plays a significant role in policy-making regarding the main pillars of the combat known as the 3Ps: prevention, protection and prosecution.

226. NTF regularly convenes in Ankara, with representatives of ministries, government agencies, law enforcement units and civil society. Municipalities participate in the NTF meetings as well. Representatives of the International Organization for Migration (IOM) and the European Commission Delegation in Turkey attend as observers.

227. The first National Action Plan in the Fight Against Human Trafficking (NAP) was developed by NTF and approved by the Prime Ministry in 2003. NAP listed the objectives and tasked the Ministries in the fight against human trafficking. The NAP objectives have been successfully achieved and remarkable measures in the fight against human trafficking have been taken. These are reflected as well in the 2006 and 2007 Turkey Report on the Fight Against Human Trafficking endorsed by the National Task Force. (The reports are available in English at the website of the Ministry of Foreign Affairs through <http://www.mfa.gov.tr/turkey-on-trafficking-in-human-beings.en.mfa>).

228. A Second National Action Plan (SNAP) has been prepared as an outcome of the “Strengthening Institutions in the Fight against Trafficking in Human Beings” Twinning Project in July 2007. This project has been executed by the MoI (Turkish National Police)

since January 2006 in the context of the EU-Turkey Financial Assistance of 2003 Programme. SNAP is currently at the stage of approval.

229. The overall objective of SNAP consists of the achievement of relevant international standards to help eradicate human trafficking in Turkey, strengthening the relevant institutions working in this field, enhancing harmonization with the EU acquis, the development of a strategy for the fight against human trafficking and implementation of sectoral action plans. Short-, medium- and long-term activities under the responsibility of the relevant institutions are illustrated in the sectoral tables in SNAP, which are:

- Development and Publication of the Strategy and Policy of the Turkish Government in the Fight Against Human Trafficking
- Raising Awareness among the Partners, Politicians and Society
- Development of a Social Approach that has been Prepared in Detail: Victim Support and Assistance, Return and Reintegration Assistance
- Legal and Administrative Corrections
- Cooperation within the Institutions
- Technical Equipment and Quality Conditions/Provisions

**Measures taken by the Turkish Government against human trafficking within the framework of a harmonized, consistent and coordinated approach**

230. Turkey became a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime on 25 March 2003.

231. Article 80 entitled “Human Trafficking” of the fully amended Turkish Penal Code (No. 5237), which came into force on 1 June 2005, sets out the definition of human trafficking in line with the Palermo Protocol and asks for sentences of 8–12 years of imprisonment and judicial fines up to an amount corresponding to 10,000 days of jail time for convicted traffickers.

232. On 19 December 2006 “forced for prostitution” was included in the description of human trafficking in Article 80 of the Turkish Penal Code, thus allowing forced prostitution, the most important dimension of human trafficking, to be punished as a human trafficking offence.

233. Attempt, solicitation and assisting in this crime are punishable under Article 80 as well. The article also includes safety measures (such as confiscation of assets, withdrawal of license, etc.) for the legal entities which commit this offence intentionally.

234. As the upper limit of the penalty of imprisonment stipulated in Article 80 of the Turkish Penal Code for human trafficking offences exceeds 10 years, human trafficking cases are under the jurisdiction of High Criminal Courts.

235. In addition, the Turkish Penal Code, Article 220, entitled “Establishing organizations for the purpose of committing crimes”, also foresees additional penalties for the founders and members of such an organization.

236. In accordance with the amendment of the Turkish Citizenship Law (No. 404) on 4 June 2003, a probation period of three years is required for acquiring Turkish citizenship through marriage. Those who have a job incompatible with the marriage and do not share the same house with the spouse will not be able to acquire Turkish citizenship.

237. In accordance with the Law on Working Permits for Foreigners (No. 4817), which came into force on 6 September 2003, the Ministry of Labour and Social Security became

the single authority for issuing all forms of working permits, thus avoiding any exploitation attempts. This is meant to make it easier to get a work permit and to discourage people from working illegally. The law provides legal protection for foreigners against exploitation in labour markets and extending legal and administrative safeguards to individual services. Employment in domestic services is made possible with this law and the Ministry has prepared a sample contract in Turkish and in the language of the applicants.

238. The transportation permit of the person sentenced for certain crimes, including human trafficking, under the Road Transport Regulation of 25 February 2004, issued in accordance with the Road Transport Law (No. 4925) of 19 July 2003, will not be renewed for three years.

239. Furthermore, according to the Article 4 of the Law on Combating Terrorism (No. 3713), which was amended on 6 June 2006, human trafficking is defined as a terror crime if it is committed within the scope of the terrorist activities of a terrorist group established with the purpose of committing crimes.

240. The new Witness Protection Law (No. 5726) that entered into force in July 2008 provides adequate provisions to guarantee the confidentiality of the identity and security of witnesses. The new law stipulates that a witness will benefit from “witness protection” if a crime is committed by an organization established for the purposes of committing a crime with a penalty lower limit of two years.

241. A third station-type shelter will be opened this year in Antalya in addition to the two shelters that were established in 2004 in Istanbul and in 2005 in Ankara for victims of human trafficking (VoTs).

242. The toll-free 157 Helpline became operational in May 2005. The helpline is reachable from all parts of Turkey and mobile phones and is answered in the Russian, Romanian, English and Turkish languages. The helpline became operational for international calls (+90312 157 11 22) in April 2007. The 157 Helpline proved to be very useful as a tip-off and rescue mechanism.

243. Within the context of the project implemented with the contributions of IOM and aiming at assisting VoTs, informative leaflets are prepared and distributed at our border posts, especially in Istanbul, Ankara, and the Trabzon air and sea ports. The aim is to inform the foreigners visiting Turkey in the tourist season about the 157 helpline. Informative spot TV programs are broadcast.

244. The first public awareness campaign with the title “Have you seen my mother?” was launched on 2 February 2006 with contributions from IOM and coordinated by the Turkish Government. The campaign focused on boosting awareness of the social impact of trafficking and concentrates on mothers who are victims of trafficking. The aim of this campaign was to raise awareness of the human impact of trafficking on children and families, to change the perception of a trafficked person, to address the broader social consequences of human trafficking and to make people think, “What happens to the children of trafficked persons?”

245. In 2008, Turkey launched an extensive awareness-raising campaign for trafficked persons. The first pillar of the campaign, “React Against Human Trafficking, Don’t be Passive” was launched at the national level on 1 July 2008. This nationwide information campaign addresses a wide range of issues to develop sustainable solutions for fighting against this crime efficiently. The second pillar in 2009 will be launched in the beginning of July at the international level. Turkey aims to improve its efforts and possibilities to fight against human trafficking through such awareness-raising campaigns.

246. The entry and exit of VoTs are exempted from any charges or penalties and the “temporary entry restriction to Turkey” is not applied.



247. Late in 2006, the MoI issued Circular Instruction No. 76 of 27 September 2006 on Combating Human Trafficking and distributed the Human Trafficking Combat Manual which includes information on what constitutes the basis for investigating the crime of human trafficking and guidelines for the identification and treatment of victims of trafficking.

248. In 2005 the Gendarmerie General Command distributed 100,000 copies of “Combating Human Trafficking” brochures, 50,000 in Turkish, 25,000 in English and 25,000 in Russian, to police stations throughout Turkey and to cities with a high rate of human trafficking cases.

249. There are ongoing training activities for law enforcement units, judges and public prosecutors concerning the fight against human trafficking.

250. Turkey has undertaken a study for the evaluation of the demand for the various types of exploitation that are particularly stressed in international platforms. The study is completed.

#### **Assistance to victims of human trafficking**

251. The identification of VoTs and provision of necessary support and coordination between the different institutions is undertaken within the framework of the National Referral Mechanism (NRM). Various institutions are included in NRM; in particular the Turkish National Police, MoJ, Ministry of Health, General Command of the Gendarmerie, the 157 Helpline, IOM, NGOs and the victims’ embassies are involved.

252. Within the framework of NRM, potential victims of human trafficking identified during the operations carried out by law enforcement agencies are transferred to the Foreigners Department of the local Security Directorate pursuant to preliminary scanning. The victim identification process is completed through coordination with the Foreigners, Border and Asylum Department of the Turkish National Police following interviews with the victims by specially trained personnel. The victims are accommodated in the shelters operated by national NGOs. Victims are treated sensitively in the interviews, taking into account their serious suffering from the event and even trauma. Legal aid, psychological counselling and medical treatment are ensured to the victims in shelters in Istanbul and Ankara.

253. Under the Council of Ministers Resolution No. 2003/6565 of 5 December 2003, human trafficking victims are provided with free-of-charge medical (physical and mental) treatment at hospitals operated by the Ministry of Health since January 2004.

254. Advocates of the Bar Association extend pro bono legal aid to VoTs.

255. Humanitarian visas and short-term residence permits are issued to victims in order to enable them to stay legally in Turkey during their rehabilitation period.

256. Voluntary return of the victims is provided safely with the cooperation of law enforcement officials, IOM, relevant institutions in the source countries and local NGOs.

#### **EU project**

257. The project “Fight against Human Trafficking in Turkey and Supporting Access to Justice by All Victims of Human Trafficking” has been initiated and implemented by the Turkish Government in cooperation with the IOM Turkey Office. The two-year project has been prepared by IOM and is financed by the European Commission.

258. The main aim of the project is to provide support to Turkish institutions in their fight against human trafficking and to protect the victims of human trafficking at the level envisaged by EU Council Directives and the EU acquis. In this context, the target is to

identify and protect the victims and to ensure their access to justice. The project is composed of six components.

### **International cooperation**

259. Turkey attaches importance to international cooperation in counter-trafficking, and actively participates in and supports activities of various international and regional organizations and initiatives, such as the United Nations, Council of Europe, the Organization for Security and Cooperation in Europe (OSCE) and NATO, as well as the Black Sea Economic Cooperation (BSEC) organisation and the Stability Pact, among other platforms. In addition, Turkey signed bilateral cooperation protocols on the fight against human trafficking with Belarus in 2004, Georgia and Ukraine in 2005 and with Moldova and Kyrgyzstan in 2006.

260. To conclude similar cooperation protocols with appropriate partner countries is part of the strategy foreseen in the SNAP. A number of joint operations have been held within the framework of cooperation between the source countries and MoIs to fight against human trafficking.

261. The conference “Trafficking in Human Beings in the Black Sea Region” was held on 9 and 10 October 2007 aiming to identify ways of improving cooperation between law enforcement and NGOs for the referral of victims of trafficking and to make better use of the judiciary while combating trafficking in human beings. The conference was held within the synergy created by Turkey as the chairman of the Budapest Process and the chairman-in-office of the BSEC.

262. The conference was included under the United Nations Office on Drugs and Crime (UNODC) “Global Initiative to Fight Human Trafficking and Modern-Day Slavery” (UN.GIFT) implemented jointly by UNODC and the United Nations Interregional Crime and Justice Research Institute since March 1999. The conference contributed to the project “Strengthening the Criminal Justice Response to Trafficking in Persons in the Black Sea Region” implemented by BSEC and UNODC. Furthermore, the “Chairman’s Summary” was submitted to the UN.GIFT Vienna Forum which was held in February 2008.

263. An international seminar on improvement of the mutual legal assistance between Turkey and the main source countries for the facilitation of cooperation during the prosecution of human trafficking cases was held in Istanbul on 27 and 28 November 2008 in cooperation with the MoJ and IOM. Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Romania and Ukraine participated in this seminar.

264. In accordance with the distribution of tasks in the National Task Force, the General Directorate on the Status of Women has undertaken the task to raise the awareness of the public and NGOs on human trafficking and to include the NGOs in the fight against trafficking in human beings.

265. Within this framework, the General Directorate on the Status of Women organized two panels in 2003 and 2004 and an international conference, “The Role of NGOs in Determining the Regional Needs and Trends in the Fight against Human Trafficking”, on 22 and 23 June 2006 in Antalya.

266. On 19 November 2008 another international conference, “Approaches Focused on NGOs in the Fight against Human Trafficking – Analysis in the Context of the Alliance of Civilizations”, was held in Ankara by the General Directorate on the Status of Women. The aim of the conference was to prevent human trafficking, to protect and assist the victims, and to increase the contribution and the cooperation of NGOs in these fields. The Governments of Azerbaijan, Bulgaria, Georgia, Moldova, Uzbekistan, Romania and Ukraine and NGO representatives participated in this conference.

267. The first regional Mutual Legal Assistance Seminar was held on 27 and 28 November 2008 in Istanbul by the Turkish MoJ in cooperation with IOM, with the participation of experts from Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Romania and Ukraine. The seminar aimed to promote mutual legal assistance regarding counter-trafficking between Turkey and countries of origin by improving methods for information-sharing and exchange of experience.

268. The workshop “Human Trafficking: Review of the National Referral Mechanism: Report on Victims’ Rights Protection in Turkey – One Year After” was held in Ankara on 29 May 2009 with the cooperation of the Turkish Ministry of Foreign Affairs and the OSCE Office of Democratic Institutions and Human Rights (OSCE/ODIHR). The aim of the workshop was to exchange information and consult on developments in the identification, assistance and rights’ protection of trafficked persons in Turkey, with reference to the OSCE-ODIHR report “Human Trafficking: Victims’ Rights Protection in Turkey”. The report is an analysis of the law and practice (2008) and identifies possible improvements in anti-trafficking responses for the future.

**24. Please provide information<sup>19</sup> on the measures adopted to ensure that human rights defenders and non-governmental organizations are respected, together with their premises and archives, [and] the results of such measures, as well as on complaints received for the violation of such rights and the related investigation.**

269. Freedom of assembly and association, as well as freedom of expression and inviolability of the domicile are safeguarded by the Constitution and other relevant legislation in Turkey. NGOs and human rights defenders duly benefit from these rights.

270. Since the beginning of the reform process, Turkey has pursued close cooperation and constructive dialogue with the civil society. Major contributions of the civil society are reflected through their work within the Human Rights Boards throughout the country.

271. Human Rights Boards bring together representatives of the civil society and public agencies. Each board has approximately 15 of their members from civil society including local administrations, media, trade unions, professional organizations, and politicians and other NGO representatives. A civilian administration official and a public lawyer is also a member. The Board, responsible for the protection and improvement of human rights, carries out its activities with the contribution and participation of NGOs and human rights activists, as their structure requires.

272. The Human Rights Presidency is also cognizant of the significance of human rights activists and NGOs for the promotion and protection of human rights. Based on this point of view, while it works in close collaboration with human rights activists and NGOs, it encourages public institutions to establish contact with human rights activists and NGOs.

273. Please find described below some of the activities the Human Rights Presidency carries out in cooperation with NGOs and/or for the benefit of related NGOs:

- With a letter sent to Governorships by the Human Rights Presidency, signed by the Minister responsible for Human Rights, it was stated that NGO support was crucial and that relevant authorities should preserve their relations with the NGOs taking into account the principles of pluralist democracy, freedom of thought and

<sup>19</sup> Para. 7 (i) of CAT/C/CR/30/5.

expression, and freedom of association, which shape the reforms carried out in the field of human rights, with a view to ensuring that relevant arrangements and procedures are implemented effectively. The said letter also states that the number of members of the Provincial and Sub-provincial Human Rights Boards should be increased and membership for NGOs working in the field of human rights should be facilitated.

- In the context of the project “Support for the Implementation of Human Rights Reforms in Turkey”, financed by EU funds and implemented by the Council of Europe under the coordination of the Human Rights Presidency, with the participation of NGOs and Board members, four round-table meetings were held to discuss human rights issues. Around 200 representatives attended these activities. The topics of the meetings covered freedom of religion and conscience, the role of NGOs in protecting human rights, human rights and combating terrorism, and freedom of expression. In the framework of the project, the “International Symposium on the Implementation of Human Rights” was held with the participation of NGOs.
- The Human Rights Presidency has arranged several thematic meetings in collaboration with NGOs. Particularly in 2008, with the cooperation of NGOs, meetings were held to discuss the significance of public and civil cooperation in the field of human rights, efforts of institutionalization and women’s rights. Similarly, in October 2008, in collaboration with NGOs, a meeting was organized to discuss torture and ill-treatment.

274. Statistical data regarding the petitions submitted to the Human Rights Presidency and Human Rights Boards are made public. Between 2004 and 2007, a total of 5305 petitions were submitted to the Human Rights Presidency/Human Rights Boards, 18 of which concerned violations of freedom of association and 14 concerned the violation of the right to peaceful assembly and demonstration. The Presidency and the Boards assess the petitions and relevant institutions are notified as part of the effort to remedy the violation, or the petitioners are advised on the legal procedures available to them.

**25. According to information before the Committee, some detainees have been held on remand for excessively long periods of time, e.g. for more than 10 years, which constitutes a violation of the Convention. Please provide information on the legal framework for detaining persons on remand [in] the new Criminal Procedure Code adopted in 2005 as well as on the measures taken to release or bring those detainees to trial and prevent such situations in the future.**

275. Article 102 of the Criminal Procedure Code entitled “Period of detention on remand” (No. 5271) provides that:

- (1) In cases which do not fall under the jurisdiction of the heavy criminal court, the maximum period of detention on remand is six months. However, where there are compelling reasons, such period may be extended for a period of four months by citing its justification.
- (2) In cases which fall under the jurisdiction of the heavy criminal court, the maximum period of detention on remand is two years. Where there are compelling reasons, such period may be extended by citing its justification; however, the extended period in total cannot exceed three years.

- (3) The decisions concerning the extension periods foreseen in this article shall be given after consulting the views of the public prosecutor, the accused or the suspect and the defense lawyer.

276. Article 103 entitled “Request by the public prosecutor regarding the withdrawal of the arrest warrant” provides that:

- (1) The public prosecutor may request the magistrate’s court judge to decide for the release of the suspect by putting him/her under judicial supervision. The suspect regarding whom an arrest warrant has been given and the defendant may request the same.
- (2) If the public prosecutor, during investigation, decides that judicial supervision or arrest is no longer necessary, s/he shall ex officio release the suspect. If s/he decides that prosecution is not necessary, the suspect shall be released.

277. Article 104 entitled “Release requests of the suspect or accused” provides that:

- (1) The suspect or accused may request his/her release at every stage of investigation or prosecution.
- (2) The judge or court shall decide on the continuation of detention or release of the suspect or accused. The decision of refusal can be appealed.
- (3) Following the arrival of the case file at the regional court of justice or Court of Appeals, the decision concerning request of release shall be given after the examination to be carried out by the regional court of justice or Court of Appeals or the Joint Criminal Divisions of the Court of Appeals; such decision can also be given ex officio.

278. Article 105 entitled “Procedure” provides that:

- (1) Upon the request filed in as per Articles 103 and 104, the opinion of the public prosecutor, suspect, accused or defendant shall be taken by the relevant authority, and a decision shall be given in three days for the admission or rejection of the request or for judicial supervision. These decisions can be appealed.

279. Article 108 entitled “Assessment of detention” provides that:

- (1) During the investigation phase, while the suspect is in prison and at intervals of no more than thirty days, the district judge dealing with criminal matters shall, at the request of the public prosecutor, assess and decide whether continued detention on remand is necessary, bearing in mind Article 100.
- (2) Within the time-limit mentioned in the foregoing paragraph the suspect may also file a request for assessment of his detention on remand.
- (3) The judge or court shall decide of its own motion at each hearing, or where necessary, between hearings or during the period foreseen in paragraph one, whether the detention on remand of an accused that is imprisoned is necessary or not.

280. Circular No. 2 of the MoJ entitled “Points of importance in conducting investigations, arrangement and completion of investigation documents” emphasizes the following:

- (24) If the suspect is detained, a note bearing the expression “TUTUKLU-İŞ” shall be written on the file containing investigation documents in red, trying to finalize the investigation promptly, drawing up the indictment after prompt

collection of all evidence for and against, writing “TUTUKLU-İŞ” on the upper-right corner of the indictment, as freedom of the person is a matter in question, prioritizing the work concerning the detained, observing the legal time limits with diligence, carrying out necessary examination concerning whether detention shall continue or not in view of Article 108 of the Criminal Procedure Code (No. 5271), within legal time limits, and averting any unjust treatment.

281. Circular No. 3 entitled “Implementation of the Regulation on Apprehension, Detention and Statement-Taking and prevention of human rights violations” highlights the following:

Owing to their significance, the provisions relating to ensuring and protecting individual freedom are emphasized in all human rights-related documents and domestic legal arrangements, particularly the constitutions of many countries. With a view to guaranteeing the right to liberty and security, and that his/her freedom of movement is not restricted by arbitrary arrest, detention and punishment, the Regulation on Apprehension, Detention and Statement-Taking has been introduced, among other legal arrangements.

282. Likewise, the authors of the European Convention on Human Rights (ECHR) have aimed at minimizing the risk of arbitrary detention, guaranteeing certain fundamental rights, and protecting individual freedom from arbitrary restriction in order to subject restriction of liberty to an independent judicial examination and to ensure that the authorities take responsibility for their actions.

283. In certain judgments of the ECtHR, it has been emphasized that the most important aspect of the guarantees enshrined in Article 5 of the ECHR is that, in democracies, they protect individuals from arbitrary detention carried out by authorities, and that any deprivation of liberty should take place not only on the basis of the rules concerning procedures and merits in domestic law, but equally, in accordance with the very purpose of Article 5.

284. Accordingly, in its *Çiçek v. Turkey* judgement (25704/94), it stated that “... In the view of the Court, the absence of holding data recording such matters as the date, time and location of detention, the name of the detainee as well as the reasons for the detention and the name of the person effecting it must be seen as incompatible with the very purpose of Article 5 of the Convention.”

285. As required by their judicial duties and as per Article 92 of the Criminal Procedure Code (No. 5271) as well as the provisions of the Regulation on Apprehension, Detention and Statement-Taking, chief public prosecutors or public prosecutors to be appointed by them should manifest due diligence concerning the following:

- (1) Supervising places where those detained on remand are kept, and if any, statement-taking rooms, the conditions of persons taken into custody, reasons and durations of custody, and all records and proceedings related to custody; registering the outcome in the Registry Book for Those Who Are Taken Into Custody.
- (2) Taking measures promptly, necessary for eliminating the discrepancies found during supervision.
- (3) Carrying out necessary proceedings concerning the authorities who are found to be culpable.
- (4) Filling of the form in the annex to the circular by the offices of the chief public prosecutor in areas where assize courts exist on the basis of the results

of the supervision by central and appendage offices of the chief public prosecutor. The form is to cover a three-month period and is to be submitted to the Human Rights Coordination Higher Board of the Office of the Prime Minister; to the e-mail address of the General Directorate of Criminal Affairs of MoJ, and by post, on the first official working days of January, April, July and October.

- (5) In line with the legislation provisions stated above, observing rules of individual liberty and security.

**26. Please provide information on the review measures available to all persons deprived, de facto or de jure, of their liberty,<sup>20</sup> as well as the possibility that persons who allegedly have been [subjected to torture have to complain.**

286. At all stages of an investigation and trial, a suspect or accused person has the right to request his or her release under Article 108 of the Criminal Procedure Code. The decision by the court on the question of the continuation of the arrest is subject to appeal. In the course of the investigation, the need for continued remand detention is reviewed every 30 days at the latest by the justice of the peace. The suspect also has the right to request that his/her continued detention be reviewed by the judge. During trial, the court reviews ex officio the need for continued detention of the accused person at each hearing or in-between hearings, when circumstances so require.

287. Furthermore, apart from inspections by the MoJ and MoI and by civilian administration authorities, the prisons and custody facilities in Turkey are inspected by Provincial and Sub-provincial Human Rights Boards, Prisons and Detention Houses Supervisory Boards, the Human Rights Inquiry Commission of the Parliament and other relevant authorities. In the framework of international conventions, relevant international organizations also visit the places where those who are deprived of their liberty are kept. Regarding the issue, detailed information has been provided under the response to question 2.

288. As explained earlier, torture and ill-treatment are absolutely prohibited with Article 17 of the Constitution of the Republic of Turkey and defined as offence with Articles 77 and 94–96 of the Turkish Penal Code. As such, acts of torture and ill-treatment are subject to judicial pursuit. Judiciary and law enforcement officers, and primarily the public prosecutors, are obligated to investigate acts of torture and ill-treatment without receiving any related complaint. On the other hand, as per Articles 36 and 40 of the Constitution, individuals also have the right to submit their relevant petitions and complaints to judicial bodies as well as relevant extrajudicial authorities. Moreover, after the exhaustion of domestic legal remedies, there is also the possibility to lodge petitions with the relevant international mechanisms in the framework of international conventions. Detailed information concerning the application mechanisms is provided below.

**Domestic application mechanisms**

289. Extrajudicial domestic mechanisms established with a view to protecting fundamental rights and freedoms are as follows:

<sup>20</sup> See A/HRC/4/40/Add.5 (2007), para. 101.

- **Human Rights Inquiry Commission of the Parliament**, among other human rights-related duties, examines allegations of human rights violations and related applications as it deems necessary and submits them to relevant authorities. Anyone who considers that his/her fundamental rights and freedoms are violated can apply to the Commission. The Commission informs the applicant in at most 60 days concerning the outcome of the application and the proceedings carried out.
- **Petition Commission of the Parliament** also examines the requests and complaints of foreigners residing in Turkey concerning affairs of their own or that concerns the State, on the condition of observing the principle of reciprocity.
- **Human Rights Presidency of the Office of the Prime Minister**, among other human rights-related duties, examines and investigates human rights violations allegations and related applications, assesses the outcome of these examinations and investigations, and coordinates the efforts concerning the measures which can be taken. The Human Rights Presidency examines human rights violations allegations, and where a violation is established, contacts related institutions and ensures the implementation of necessary procedure.
- **Provincial and Sub-provincial Human Rights Boards** throughout Turkey, among other duties, examine and investigate human rights violations allegations and related applications, assess the outcomes of these examinations and investigations, and notify either the offices of the public prosecutor or relevant administrative authorities of the outcome and conduct their follow-up.
- **MoI Bureau for Inquiry on Allegations of Human Rights Violations** was established within the Inspection Board of the MoI in March 2004. The Bureau examines the requests and complaints concerning the human rights violations allegations related to law enforcement officers.
- **The Gendarmerie Human Rights Violations Investigation and Evaluation Center (JİHİDEM)** investigates complaints concerning allegations of human rights violations that occur in the gendarmerie's area of responsibility, ensures judicial and administrative investigation in the legal framework should the claims be substantiated, informs the applicant on the developments and outcome of the proceedings and announces them publicly.
- **Human Rights Bureau of the General Directorate of Prisons and Detention Houses of the MoJ** was established in 2004 and attached to the General Directorate of External Affairs with a view to examining the complaints and allegations regarding human rights issues in prisons. Established in the central organization of the Ministry, the Bureau operates with a view to preventing all kinds of human rights violations at prisons and plays a deterrent role.

The Bureau receives complaints and applications concerning human rights violations from detainees, convicts, their legal representatives and relatives as well as from NGOs and public institutions. Relevant assessments and correspondence are handled by the relevant unit with a diligent and technical endeavor.

In this context, between 1 February 2004 and 11 June 2009, 1535 complaints and applications were submitted from the Human Rights Inquiry Commission of the Parliament, Petition Commission of the Parliament, Office of the Prime Minister – Human Rights Presidency, General Secretariat of the Presidency of the Republic of Turkey, Provincial and Sub-provincial Human Rights Boards, as well as from NGOs such as Human Rights Association, Mazlumder (The Association of Human Rights and Solidarity for Oppressed People), Modern Jurists Association, and Tuyadder (Association of Solidarity with Prisoners' Relatives), concerning health, transfer,



visits, practices in prisons, and similar issues. Necessary assessments have been made concerning the allegations in the applications. Relevant documents and information have been submitted to the respondent institutions.

- **Ministry of Health, General Directorate of Curative Services, Patient Rights Branch** is responsible for the prevention of the violation of patient rights, improving countrywide planning, supervision, and coordination of the implementation of patient rights.
- **Information Access and Evaluation Board** has been established with a view to examining the decisions which dismiss the applications regarding access to information and giving decisions concerning the enjoyment of the right of accessing information by institutions and organizations.
- **Office of the Prime Minister, Communication Center (BİMER)** is a public relations application unit which employs informatics and communication technologies. Within BİMER, “Public Relations Application Offices” were established in Offices of District Governors, Governorships and Ministries. Applications concerning the Freedom of Information Act, Right of Petition Act, Public Officials Ethics Board as well as those concerning human rights violations can be submitted to BİMER.
- **Damage Assessment Commissions** were established in all provinces with a view to providing redress for those who suffered pecuniary damage due to terrorist activities or while combating terrorism. The Commissions are made up of one president and six members. Deputy governors, appointed by the governor, act as the president of the Commission, and members include experts in finance, public works and settlement, agriculture and rural affairs, health, industry and commerce, appointed by the governor, who reside in the same province, as well as a lawyer, appointed by the benchers. The Commission convenes with an absolute majority and decisions are taken with an absolute majority of the total number of members. The decisions of the Commissions can be qualified as friendly settlements, yet they are also liable to judicial review that can extend to the ECtHR.

#### **International application mechanisms**

290. In terms of international complaints mechanisms in the realm of human rights, Turkey has recognized the right of individual petition before the ECtHR and thus accepted the compulsory jurisdiction of the Court. Moreover, individual complaints or communications with regard to the alleged violations of the relevant conventions can be submitted to the Human Rights Committee, the Committee on the Elimination of Discrimination against Women and the Committee against Torture after the exhaustion of the domestic remedies:

- **ECtHR.** Every real person, NGO, or group of individuals that claim to have suffered from the violation of the rights guaranteed by one of the High Contracting Parties can lodge an application at the ECtHR
- **Human Rights Committee.** As a party to the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR OP1), Turkey recognized the power of the Human Rights Committee to accept and examine complaints lodged by those under Turkey’s jurisdiction who claim that their rights set forth in the Convention are violated by Turkey
- **Committee on the Elimination of Discrimination against Women.** As a party to the Optional Protocol to the Convention to the Elimination of All Forms of Discrimination against Women, Turkey recognizes the authority of the Committee

on the Elimination of Discrimination against Women to accept and examine applications to the Committee, lodged by those subject to its jurisdiction, or by groups subject to its jurisdiction, or those lodged on behalf of them, alleging that the violation of any of the rights in the Convention has caused suffering

- **Committee for the Prevention of Torture (CPT).** In accordance with the first paragraph of Article 22 of the Convention against Torture, and Other Cruel, Inhuman, and Degrading Treatment or Punishment, Turkey has declared that it recognizes the competence of the Committee for the Prevention of Torture with a view to accepting and examining the complaints by those subject to its jurisdiction or complaints which are lodged on behalf of those subject to its jurisdiction, who claim to suffer from a violation

**27. Please provide<sup>21</sup> information on the implementation of the “Return to Village Programme” regarding internally displaced persons. What has been the practical outcome of [that] programme?**

291. The root cause of internal displacement in Turkey has been the scourge of terrorism. The Turkish Government attaches great importance to the successful return of the displaced citizens on a voluntary basis. In this regard, the “Return to Village and Rehabilitation Project” (RVRP) was launched in 1994.

292. The RVRP was launched for the families who had to leave their villages in the eastern and south-eastern regions, mainly for security and various other reasons. The project aims at settling the families wishing to return on a voluntary basis to their former places of residence or to other places suitable for settlement. In order to ensure a smooth and effective return, the project takes a holistic approach and aims to establish the necessary social and economic infrastructure and provide sustainable living standards. As for the families who do not wish to return, the project seeks to improve their economic and social conditions at their current places of residence and ease their adjustment to urban life.

293. The RVRP has been implemented in 14 eastern and south-eastern provinces, namely Adiyaman, Ağrı, Batman, Bingöl, Bitlis, Diyarbakır, Elazığ, Hakkari, Mardin, Muş, Siirt, Şırnak, Tunceli, Van.

294. As of October 2008, offices of the Governors in the above-mentioned 14 provinces reported that 151,469 citizens from 25,001 households returned to their former places of residence. So far, the equivalent of approximately €47,019,528 has been spent on the project. (Disbursements from the budgets of ministries such as Education and Health are not included in this figure). The amount was allocated to infrastructure investments on roads, water, electricity and sewer systems; repairing and rebuilding facilities such as schools and health clinics; construction materials for building homes; implementation of social projects and organizing workshops for work and labour.

295. RVRP is implemented in tandem with another project that emanates from the 2004 Law on the Compensation of Losses Resulting from Terrorist Acts and the Measures Taken against Terrorism (Law No. 5233). In a June 2004 judgement (*Doğan v. Turkey*), the ECtHR had decided that villagers should be able to return to their villages evacuated for security reasons during the anti-terror effort of the early 1990s. The 2004 Law on Compensation is a direct result of the Turkish Government’s effort to find a general and efficient remedy to the problem indicated in the ECtHR judgement. Once the Law was

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<sup>21</sup> Para. 7 (m) of CAT/C/CR/30/5.

enacted and the Damage Assessment Commissions were in place, the effective domestic mechanism started working in line with the guidelines provided by the ECtHR.

296. Upon observing this development, the ECtHR evaluated the domestic mechanism as an efficient remedy and in its *İçyer* judgement of January 2006, the ECtHR formally issued this evaluation and asked the applicant to apply to the domestic mechanism created by the Turkish Government. As such, the Court clearly confirmed the efficiency of the Turkish domestic remedy introduced within the context of the implementation of the 2004 Law on the Compensation of Losses Resulting from Terrorist Acts and the Measures Taken against Terrorism.

297. It should be noted that the *İçyer* inadmissibility decision is the first of many such that helped clear a waiting list of at least 1500 similar applications pending before the Court.

298. The domestic remedy introduced by the Turkish authorities in cooperation with the Court on return-to-village applications is a clear demonstration of how the Court and States can operate in synergy to prevent human rights violations and lighten the workload of the Court.

299. The Committee of Ministers of the Council of Europe during its meeting on 17 and 18 September 2008 adopted a final resolution stating that Turkey has taken all necessary measures in relation to the implementation of the *Doğan* case and decided to close the examination of this issue. It is important to note that *Doğan* is a milestone judgement that led to the *İçyer* decision.

300. Until now, 360,000 applications have been submitted to the compensation commissions. Of those, 150,000 were reviewed, 97,000 of which were awarded compensation. As of November 2008, a total of 770 million TL (approximately €335 million) have been paid out to the applicants as just satisfaction.

#### **Towards a National Plan**

301. “The IDP Support Programme”, which was implemented in cooperation with the United Nations Development Programme (UNDP), aimed at providing lasting solutions for the problems faced by citizens who have migrated. In this vein, the “Van Provincial Action Plan” was prepared and implemented as a pilot project, starting in September 2006. Hacettepe University completed and published a comprehensive scientific survey about migration caused by terror and security reasons, entitled “Migration and Internally Displaced Population Study in Turkey – MIDPST” in December 2006.

302. As an indication of Turkey’s commitment to international cooperation, Prof. Walter Kälin, Special Representative of the Secretary-General on the human rights of internally displaced persons, visited Turkey four times in a period of 19 months, in May 2005, February 2006, September 2006 and December 2006. During and after these visits, Prof. Kälin announced that he was pleased with the steps that are being taken and with the overall approach of our Government vis-à-vis the IDPs. He further reiterated his satisfaction for the open-minded efforts of the Turkish Government leading to concrete results, and with regard to these steps and overall approach, named Turkey as an example for all the countries bearing IDPs.

303. As a follow-up to the previous project implemented in cooperation with the UNDP, “A Complementary Project for the Extension and Sustainability of the Pilot Project in Van” commenced in November 2008. The current project, based on the “Van Provincial Action Plan”, will also cover the other 13 provinces within the RVRP. During the course of the project, the inputs from the respective Provincial Action Plans will be merged and a comprehensive Turkish “National Action Plan” for IDPs is expected to be drafted by July–

August 2009. The estimated time period for the completion of the project is one year and once completed, its outcome will provide extensive insight and thus facilitate a more encompassing approach for solving the problems of citizens who have migrated.

**28. According to information before the Committee,<sup>22</sup> conditions in psychiatric facilities, orphanages and rehabilitation centers in the State party can often constitute cruel, inhuman or degrading treatment or punishment. Please provide detailed information on the measures taken to improve such situation, including ending the use of unmodified electroconvulsive treatment (ECT), segregation of children from adults, provision of adequate food and health services, protecting the security of persons detained in those institutions, and adopting international mental health standards. Has an independent inspection and monitoring mechanism been established, including to assess arbitrary detention in those institutions?**

304. Regarding the Electro-Convulsive Treatment (ECT) practices carried out in mental hospitals/clinics, as well as other approaches, which were also brought up during the CPT visits in Turkey in the past years, a study has been initiated by the Ministry of Health in 2006.

305. “Electro-Convulsive Treatment Application Directive”, prepared on 28 November 2006, concerning where and in what circumstances to administer ECT in Turkey was amended on 13 June 2007 and the ECT application guidebook was distributed to 81 governorships and Dean’s Offices of Medical Faculties with a letter from the Ministry of Health dated 25 July 2007, No. 15762. Since the issuance of the ECT Application Directive, ECT practices have been carried out in the framework of the rules stated in the Directive.

306. A total of 28,436 ECTs were administered in 2007, only 26 of which were unanaesthetized (unmodified) ECTs.

307. The services in medical institutions in Turkey are provided within the framework of respect for human rights and the rights of patients. To this end, the Patient’s Rights Regulation published on 1 August 1998, No. 23420 is also taken into account.

308. As everywhere in the world, the patient’s consent is the basis for hospitalization of the patient as well as application of the treatment. However, patients who have psychiatric disorders and can harm themselves and their environment can be transferred to mental hospitals that qualify as regional hospitals in the area of their residence, provided that there is a court order to do so, or that the patients’ custodians so request. If it is decided that these persons, whose situation is reassessed by the doctors at the hospital, are to be hospitalized, procedures for hospitalization are carried out. As there is no possibility of hospitalizing patients without a court order or request by the person him/herself or by his/her custodian, it is not possible to arbitrarily hospitalize patients at psychiatric institutions, which already have a limited bed capacity. An entry document is prepared for every hospitalized patient and the patient or his/her guardian (or custodian) signs the document confirming that s/he accepts all treatment services provided to him/her at the hospital, in accordance with Form No. 60 in the annex to the Regulation on the Management of In-Patient Treatment

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<sup>22</sup> A/HRC/4/40/Add.5 (2007), paras. 91–96.

Institutions (Cabinet Decision, 10 September 1982, No. 8/5819, Official Gazette of 13 January 1983, No. 17927). Upon request, a copy of the document is given to the patient or custodian, while another copy is kept in the patient's file.

309. Furthermore, the supervision of financial and administrative matters as well as medical services of the hospitals run by the Ministry of Health is carried out by the Inspection Board Presidency of the Ministry of Health.

310. Finally, on the basis of the findings of the inspection carried out at the Adana Dr. Ekrem Tok Mental Hospital, an official letter was sent to all Provincial Health Directorates requesting them to undertake the work necessary to improve the physical conditions of the mental health clinics/hospitals, to give priority to rehabilitation services, and to place video cameras for surveillance which would help determine whether or not any ill-treatment takes place.

311. Implementation of the regulations introduced by Ministry of Health has thus far produced effective results in practice and the ECT practices are alleviated and anaesthetized thus do not constitute a problem.

## Other issues

- 29. Please indicate the concrete measures that have been taken to widely disseminate the Convention as well as the Committee's conclusions and recommendations in all appropriate languages in the State party,<sup>23</sup> including through the media and non-governmental organizations. What actions or programmes have been taken in cooperation with non-governmental organizations? Please indicate how civil society organizations have been involved in the preparation of the report.**

312. The Convention against Torture, as well as all other relevant international instruments in the field of fundamental human rights and freedoms, is made available on the websites of the Parliament, Human Rights Presidency, Ministry of Justice and all other concerned institutions. A simple search over the internet will reveal that the mentioned documents are published on numerous websites of NGOs. Human rights education is currently an integral part of the education system and the texts of important international instruments in this field are provided to students.

313. Civil society in Turkey is very active and lively. A number of reports containing a greater number of recommendations are published by these NGOs, which are duly considered in the preparation of these reports.

- 30. Please provide information on the measures to prevent and prohibit the production, trade and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatments.**

314. This Government is not aware of any equipment specifically designed or produced to inflict torture or other cruel, inhuman or degrading treatment in its territories.

<sup>23</sup> Para. 7 (n) of CAT/C/CR/30/5.

**31. Does the State party envisage ratifying the Optional Protocol to the Convention? If so, has the State party taken any steps to set up or designate a national preventive mechanism that would conduct periodic visits to places of deprivation of liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment?**

315. The fight against torture and ill-treatment remains a priority in the reform process in Turkey. As a testimony to its commitment to strengthening its national and international human rights machinery, Turkey signed the Optional Protocol to the Convention against Torture (OPCAT) on 14 September 2005 in New York, during the World Summit.

316. Like many other countries that have signed the Optional Protocol but not yet finalized their ratification processes, Turkey wants to put in place the necessary domestic mechanisms, in particular an independent national preventive mechanism, before ratification. To this end, inter-agency consultations, including contacts with the civil society, continue to take place.

**32. Taking into consideration the relevant resolutions of the Security Council, please provide information on the legislative, administrative and other measures the State party has taken to respond to the threats of terrorism, [and] explain if these measures have affected human rights safeguards in law and practice and how [the State party] has ensured that those measures taken to combat terrorism comply with all its obligations under international law.**

317. Turkey's criminal law and counter-terrorism legal regime have been reformed and redesigned in recent years. In 2002 Turkey lifted the state of emergency from its entire territory. Moreover, the death penalty and the State Security Courts have been abolished. Turkey adopted a new Penal Code and a new Criminal Procedure Code in 2005, and a new Counter-Terrorism Act in 2006.

318. Turkey has ratified 12 of the international counter-terrorism conventions and protocols currently in force and the ratification process for the International Convention for the Suppression of Acts of Nuclear Terrorism is continuing. According to Article 90 of the Turkish Constitution, international agreements duly put into effect carry the force of law. Turkey's criminal legislation incorporates most offences set forth in the international counter-terrorism instruments.

319. Turkey is also a party to numerous initiatives that are aimed at promoting tolerance and dialogue among civilizations within regional forums such as the Council of Europe, the OSCE and the Organization of the Islamic Conference (OIC). In 2005, Turkey and Spain launched an initiative entitled the "Alliance of Civilizations", under the auspices of the Secretary-General of the United Nations, which aims to facilitate harmony and dialogue by emphasizing the common values of different cultures and religions.

320. The new Criminal Procedure Code has provisions on arrests, search and seizure and on special investigative techniques which conform to international norms and standards. Turkey's Criminal Procedure Code and Counter-Terrorism Act set forth a wide array of protection measures for witnesses and collaborators of justice. Turkey's legislation also contains provisions to criminalize incitement to terrorism. The structure of the judiciary allows the prosecutors to develop the expertise needed to deal effectively with counter-terrorism cases.

321. New provisions to counter financing of terrorism entered into force in July 2006, as well as a new anti-money-laundering (AML) law — the Prevention of Laundering Proceeds of Crime Act, No. 5549 — which entered into force in October 2006. Turkey's financial intelligence unit (FIU), Mali Suçları Araştırma Kurulu (MASAK), directly attached to the Ministry of Finance, is a member of the Egmont Group fulfilling all the functions of an FIU that are described in the relevant international norms and standards. Turkey's new AML Act provides a new cash disclosure regime, which is enforced by the Customs Administration.

322. These legislative reforms such as the new Penal Code and the new Criminal Procedure Code enhanced human rights standards in Turkey in accordance with the ratified international conventions.

323. Turkey has upgraded its civil aviation security regulatory framework to allow the effective implementation of the standards set forth in Annex 17 to the Convention on International Civil Aviation.

324. Turkey shares a vast, often mountainous border, spanning 9479 km, with eight neighbouring countries, which makes it difficult to enforce border control against human smuggling networks which are often linked to terrorist organizations. Turkey introduced stiff penalties for human smuggling in 2005.

**33. Please provide detailed information on any difficulties preventing the State party from fully implementing the provisions of the Convention and the Committee's previous recommendations.**

325. Turkey has fully engaged in the process of eradicating torture and other forms of cruel and ill-treatment. In this respect, recommendations provided by the CAT, as well as recommendations provided by other international expert organizations are considered as useful guidelines. With this spirit, Turkey has spared no effort in putting these recommendations into practice. As part of the overall reform process, Turkey, with a strong political will, has enacted major legislative changes. Implementation is an ongoing process. Issuance of circulars on the implementation of legislation and extensive training for law enforcement agencies and members of the judiciary demonstrate the will of the Government to fully implement the legislation.

**34. Please indicate the reasons for the delay in submitting the third periodic report, which [has been] overdue since 31 August 2005.**

326. Turkey is party to seven of the core United Nations human rights conventions. In accordance with its obligations under these conventions, Turkey submits periodic reports on the implementation of each convention. Additionally, Turkey reports regularly to the Council of Europe, including the CPT. The reporting burden Turkey has faced in turn delayed the submission of its third periodic report to CAT.

**General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention**

- 35. Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level that have occurred since the previous periodic report, including any relevant jurisprudential decisions.**
- 36. Please provide detailed relevant information on the new political, administrative and other measures taken to promote and protect human rights at the national level that have occurred since the previous periodic report, including on any national human rights plans or programmes, and the resources allocated to [them], [their] means, objectives and results.**
- 37. Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the previous periodic report in 2003, including the necessary statistical data, as well as on any events that occurred in the State party and are relevant under the Convention.**

[Responses to questions 35, 36 and 37 taken together with question 11.]

#### **Major Human Rights Developments since 2003**

327. Turkey has launched a comprehensive reform process aimed at the promotion and protection of human rights at the national level. As part of this reform process, a series of significant legal reforms have been carried out in a very short period of time.

328. The Constitution has been amended three times since 2001 and eight harmonisation packages were adopted in less than three years to adapt the existing legislation to these constitutional amendments. The most important amendment to the Constitution concerns Article 90, which states that international agreements in the area of fundamental rights and freedoms prevail in case of conflict with the provisions of the national laws on the same matter.

329. The constitutional amendments were fortified by the adoption of laws that are fundamentally important for the protection of human rights. Among such laws are the new Civil Code, the new Penal Code, the new Law on Associations and the new Criminal Procedure Code.

330. The new Penal Code was enacted with a view to aligning its legal framework with the European standards and principles, which also included a more liberal approach to freedom of expression issues. In order to overcome certain difficulties that have been faced in the implementation of Article 301 of the new Penal Code, an amendment was enacted in May 2008 to further strengthen the guarantees and to tie the prosecution to the authorization of the Minister of Justice.

331. These reforms aim at strengthening democracy, promoting respect for human rights and fundamental freedoms, and consolidating the rule of law and the independence of the judiciary.

332. The human rights reforms in Turkey have been widely acclaimed by the international community. Having duly considered the recent developments in Turkey, the



Parliamentary Assembly of the Council of Europe decided in June 2004 to close the monitoring procedure in respect of Turkey. In addition, the European Council on 17 December 2004 announced that Turkey has sufficiently fulfilled the Copenhagen political criteria to open accession negotiations. The resolve of the Government on the continuation of the reform process has been confirmed by the announcement of the “Ninth Harmonisation Package” on 12 April 2006.

333. The “Ninth Harmonisation Package” includes, inter alia, the rapid enactment of the draft laws conveyed to the Parliament, the submission of new draft laws to the Parliament, the acceleration of the ratification processes in respect of the international human rights conventions signed by Turkey, and the restructuring of the Department of Human Rights of the Office of the Prime Minister. A big majority of the issues contained in the Package have already been realized.

334. In this vein, the new Law on Foundations has been enacted by the Turkish Parliament and entered into force as of 27 February 2008. As regards the non-Muslim community foundations, the Law further improves their situations in relation to their international activities, including the receiving of financial and/or material donations and assistance, the registration of their immovable properties, as well as their representation at the Foundation Council, which is the ruling body of the Directorate General for Foundations.

335. To achieve the goals of its human rights policy, Turkey has pursued close and constructive cooperation with international human rights mechanisms. Turkey meticulously examines all reports and recommendations produced by international mechanisms, both intergovernmental organizations and NGOs, and gives them due consideration in the reform process.

336. One of the most important achievements during the reform process has been the abolishment of the death penalty in all circumstances. In 2003, Turkey became party to Protocol No. 6 to the ECHR concerning the abolition of the death penalty. In February 2006, Turkey ratified Protocol No. 13 to the ECHR, concerning the abolition of the death penalty in all circumstances. In March 2006, Turkey ratified another international instrument abolishing the death penalty, namely the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty. The death penalty was abolished in all circumstances by a constitutional amendment in May 2004 and the Eighth Harmonisation Package which was adopted in July 2004.

337. As stated earlier, the fight against torture and ill-treatment has been a priority item on the Government’s agenda. From the outset, the Government has adopted and carried out a “zero tolerance” policy for combating torture. In the implementation of its “zero tolerance” policy, Turkey has extensively benefited from its cooperation with CAT and CPT.

338. Today, Turkey has the legislative and regulatory framework necessary to effectively combat torture. This was also acknowledged by the former President of the CPT, Ms. Silvia Casale, already in October 2004 when she stated that it would be difficult to find a Council of Europe member State with a more advanced set of provisions in combating torture. Furthermore, in September 2005, during the World Summit, Turkey signed the Optional Protocol to the Convention against Torture.

339. In addition to the international mechanisms with which Turkey maintains full cooperation, effective national monitoring mechanisms have been set up to ensure full implementation.

340. Representatives of civil society are involved in the reform process through these national monitoring mechanisms, with which they regularly cooperate. Raising the level of awareness throughout the whole society is vital for the establishment of a sound human rights regime in the country. Therefore, human rights education at all levels has been strongly promoted.

341. In order to minimize implementation problems and to create an institutional culture respectful of human rights, bilateral programs with several countries and joint projects with the Council of Europe and the EU are being carried out.

342. The Provincial and Sub-provincial Human Rights Boards, established in accordance with the Regulation published in Official Gazette No. 24218 on 2 November 2000, have been restructured pursuant to the Regulation published in Official Gazette No. 25298 on 23 November 2003. With the said Regulation, the structure of the Boards, which are mainly composed of public officials, has been rearranged in a way to present a civil society-centered structure. The duties, working rules and procedures have also been rearranged in detail.

343. The Provincial and Sub-provincial Human Rights Boards are entrusted with the task of examining and researching petitions regarding human rights violation claims, assessing their results, submitting the results to offices of public prosecutors or administrative authorities depending on their subject, and continuing the follow-up of results. The Boards also provide information on human rights, carry out awareness-raising training activities, encourage research on the rights of women, children, patients, the disabled and the accused and provide solutions, arrange visits to relevant institutions and organizations for the purpose of observing human rights practices on-site, and make the necessary efforts to prevent all kinds of discrimination.

344. Human Rights Boards have been established, within the framework of promoting and protecting human rights, for facilitating contact and increasing cooperation both at individual and NGO levels. Currently, there are 931 Human Rights Boards in 81 provinces and 850 districts.

345. The Provincial and Sub-provincial Human Rights Boards are composed of public officials, NGOs, vocational chambers and political party representatives, and presided over by civil authorities. The Head of the Board may invite public or private institution representatives or persons to meetings as s/he deems necessary.

346. "Human Rights Counselling and Application Desks" have been formed within every board in provinces and districts throughout the country. In order to deal with the petitions, an official with a degree in law or public relations shall be employed at these desks.

347. The boards convene on the basis of an absolute majority of the total number of members and make decisions with the absolute majority of the participants. The dissenting opinions of the members who object to decisions are recorded in summary under the decision. No other person, institution or organization can uphold, veto, or make changes to the decisions.

#### **Projects implemented in the field of human rights**

348. Several informative and awareness-raising projects have been carried out throughout the country with a view to contributing to full implementation of the reforms undertaken in the field of human rights.

349. One of the main undertakings to this end is the execution of the project entitled "Support for the Implementation of Human Rights Reforms in Turkey". It was financed by the European Union and implemented by the Human Rights Presidency of the Office of the

Prime Ministry in cooperation with the Council of Europe. Within the framework of the project, the members of the Human Rights Boards and the Application and Counselling Desk Officials of the Boards attended 12 different seminars on human rights training. A total of 12,000 education sets including various education materials for the Boards were distributed. Four round-table meetings on human rights issues were held with the participation of NGOs and the members of the Boards. Training seminars and working visits abroad to various national and regional human rights institutions were carried out for public authorities, judges and prosecutors within the activities of the MoJ and the MoI. Besides general human rights issues, the training activities focused on the principle of equality and the prohibition of torture.

350. Furthermore, an information file containing general information on the activities of the Human Rights Presidency and the Provincial and Sub-provincial Human Rights Boards as well as posters, brochures, books, TV spots and documentaries on human rights were prepared and distributed throughout the country. The “International Symposium on the Implementation of Human Rights” was held in Ankara. Several panel discussions were organized throughout the Human Rights Day and Human Rights Week celebrations. Finally, 493 police officers from the Anti-Terror and Operations Divisions received human rights training and carried out working visits to various EU countries.

351. With a view to informing the public on issues such as the principle of equality, prohibition of discrimination, prohibition of torture and raising human rights awareness in general among public officials and the members of the Boards, the following projects were carried out: “Awareness-Raising on Human Rights and Democratic Principles” and “Strengthening the Capacity of Provincial and Sub-Provincial Human Rights Boards: Training of Application and Counselling Desk Officials Project”. Within the framework of these projects, regional meetings and round tables with the participation of the civil society and numerous NGOs and the members of the Boards were held. Thousands of brochures, posters and books on human rights were distributed throughout the country.

352. In addition to the coordination of the above-mentioned projects, the Human Rights Presidency and the Provincial and Sub-provincial Human Rights Boards regularly carry out seminars, symposia, meetings, television programs and related activities on the principle of equality and the prohibition of discrimination, as well as comprehensive awareness-raising and training activities for public officials, NGOs, students and individuals. CDs, brochures, posters, books and booklets are distributed to the Turkish public with a view to contributing to the practical implementation of the reforms.

#### **Human rights training of public officials and human rights-related activities of public institutions**

353. As stated in the Report, Turkey considers that the training of State officials, in particular the law enforcement officials and the members of the judiciary, on human rights to be of vital importance for the promotion and protection of human rights as well as combating torture. Such training is also instrumental for expanding the awareness on and the application of international human rights instruments. Following are recent examples of efforts carried out to this end.

354. Military judges, prosecutors, legal consultants and the members of the military high courts were trained on human rights law, and in particular on the ECHR and the case-law of the ECtHR. As part of a protocol between the MoJ and the Ministry of National Defense, the personnel of military prisons receive in-service training on human rights at the training centre in Ankara.

**MoJ**

355. As for the staff of the MoJ, within the framework of the Joint Initiative of the European Union and the Council of Europe, 8500 judges and prosecutors were trained on the ECHR and the case-law of the ECtHR. In cooperation with the Embassy of the United Kingdom in Ankara, another 4500 judges and prosecutors attended human rights training. As a demonstration of the increased awareness in the realm of human rights, the ECHR and the case-law of the ECtHR were cited in about 750 judgements delivered by the judges and public prosecutors who attended human rights training. The figures are only indicative as these cases were sent to the MoJ by the judges and prosecutors themselves. The Ministry is yet to collect data on the overall number of cases in which ECHR and ECtHR were referred to.

356. Additionally, the MoJ continues to organize seminars and various training activities to increase human rights awareness and understanding among the judges and public prosecutors (see table below):

Table 3

**Training programs for judges and public prosecutors on human rights carried out by the MoJ (October 2007–May 2008)**

| <i>Date</i>                           | <i>Topic</i>   | <i>Venue</i>    | <i>National/<br/>international</i> | <i>Number of<br/>participants</i>                    |
|---------------------------------------|--|-----------------|------------------------------------|--|
| 9–10 Nov. 2007                        | Advanced Training on Human Rights under the project entitled “New approaches in the fight against crime in criminal justice” | Ankara          | National                           | 75 Judges and Public Prosecutors                     |
| 23–26 Sept. 2007                      | Seminars on Strengthening Respect for Women’s Human Rights Project with the support of Istanbul Bilgi University             | Istanbul        | National                           | 15 Judges of Family Courts and 15 public prosecutors |
| 13–14 Dec. 2007                       | Freedom of Expression under the project entitled “New approaches in the fight against crime in criminal justice”             | Istanbul        | National                           | 100 Judges And Public Prosecutors                    |
| 14–15 April 2008                      | Implementation of Human Rights in prisons/Training of Execution Judges on Human Rights                                       | Bursa           | National                           | 110 Judges And Public Prosecutors                    |
| 17–21 March 2008;<br>24–28 March 2008 | Seminar on European Human Rights Law, the Right to Fair Trial And the Right to Property                                      | Justice Academy | International                      | 114 Candidate Judges                                 |

### Human rights training at the Justice Academy

357. In addition to the on-the-job training given to the members of the security forces and judiciary on human rights through various programs, the Justice Academy of Turkey provides training to the candidate judges and prosecutors within a two-phase plan:

(a) The first phase of the training consists of a four-hour conference on the “Reflection of ECtHR Judgements in the Domestic Law”. This program is provided to candidate judges and prosecutors in each training term and covers the concept of human rights law, ECtHR judgements, Turkish Law (Article 90 of the Constitution and other provisions), as well as examples of applications of conventions and ECtHR case-law in the domestic law. The four-hour conference is given by experts in their respective fields;

(b) An international project named “Human Rights Training of Turkish Judge and Prosecutor Candidates and Strengthening the Local Capacity for the Internalization of Human Rights Standards” was launched with a view to presenting the issue in a comprehensive and interactive manner. The project is implemented by the Justice Academy within the framework of the MATRA program. The project is implemented in partnership with the Netherlands Institute of Human Rights, International Office of Utrecht University School of Law, and Human Rights Law Implementation and Research Centre of the İstanbul Bilgi University. The project aims at guaranteeing full implementation of human rights standards in Turkey, strengthening the local capacity to this end, and providing Turkish judges and prosecutors with human rights training, thus strengthening further integration of human rights standards within the justice system. A total of 440 members of the judiciary will be trained in the three-year project term.

358. The basic human rights topics to be covered within the project are as follows:

- Introduction to international human rights law, human rights in customary law, and human rights in Europe
- Internalization of international human rights norms in the Turkish judicial system and their direct implementation in legal practice
- Judicial decision-making theories and implementation of human rights in judicial decision-making process

359. Furthermore, 11 special topics in the field of human rights, stated below, are included in the project:

- Freedom of expression, thought, conscience and religion
- Right to life
- Right to fair trial
- European Union and human rights
- Discrimination against women
- Freedom of assembly and association
- Prohibition of discrimination
- Freedom of family, private life and communication
- Refugee rights and prevention of human trafficking
- International criminal law
- Economic, social and cultural rights

360. In the field of justice and human rights, the following EU-funded projects are undertaken in Turkey:

- Judicial Modernization and Penal Reform
- Developing the Probation Service in Turkey
- Better Access to Justice in Turkey
- Implementation of Human Rights Reforms in Turkey
- Towards good governance, protection and justice for children in Turkey

361. Furthermore, members of the judiciary are regularly given on-the-job training on human rights law. In this context, Turkey cooperates with the EU and the Council of Europe, as well as other international organizations. Training activities conducted in 2008 are stated below:

- A seminar on the prevention of money laundering and financing of terrorism, supported by TAIEX, was organized on 11 and 12 February 2008 in İstanbul. Sixty judges and prosecutors from penal courts attended the seminar.
- The “Workshop on Enhancing International Legal Cooperation related to Terrorism, including the Drafting of Requests for Extradition and Mutual Legal Assistance” was held in Ankara on 1 and 2 April 2008, in cooperation with the Council of Europe, UNODC and the OSCE.
- The “Seminar on Interception of Communications and its Legal Dimensions” was organized under the aegis of TAIEX in İstanbul on 8 May 2008. Forty-five judges and prosecutors from penal courts attended the seminar.
- A seminar on monitoring practices of the EU and Turkey on detention centers was organized on 22 and 23 May 2008 in Ankara in cooperation with TAIEX. Twenty prosecutors attended the seminar.
- A seminar on investigation methods regarding cyber crimes was organized by the MoJ and TAIEX on 26 and 27 May 2008 in Ankara. It was attended by 55 penal court judges and prosecutors, as well as forensic science experts.
- A seminar on freedom of expression was organized with the support of TAIEX on 6 and 7 June 2008 in İzmir. Forty-seven judges and prosecutors attended the seminar.
- A seminar on cyber crime was organized on 17 and 18 June 2008 in İstanbul, in cooperation with TAIEX. It was attended by 60 penal court judges and prosecutors.
- A seminar on drug addiction treatment with regard to probation services was organized by the MoJ and TAIEX on 9 and 10 October 2008 in Ankara, which was attended by 29 judges and prosecutors.
- The “Seminar on Alternative Sanctions with Regard to Probation Services” was organized by the Ministry of Justice and TAIEX in Ankara on 3 and 4 November 2008. Thirty-six judges and prosecutors attended.

#### **Prison reform activities of the MoJ**

362. Turkey began its prison reform activities in 1997. Within this scope, a wide range of reforms in the prison field and in the area of legislation has been achieved, physical structures of the prisons have been improved and substantial modifications have been realized in fields like staff training, allocation of financial resources and inmate rehabilitation. Many prisons have been modernized in terms of both management and environment under the Turkish prison reform activities.

363. In 2005, the Grand National Assembly of Turkey adopted the new Penal Code, Penal Procedure Code, Code on Enforcement of Sentences and Code on Protection of Children. The new laws, which are the outcomes of the ongoing judicial reform process in Turkey, ensure a legal framework for the penal proceedings and implementations. Under this more constructive and humane framework, the approach both to prison staff and to inmates is more modern and professional. These constitute an important part of the reforms achieved in the Turkish penal system and judicial system. Now, the objective is to disseminate this successful experience throughout the country and to ensure full compliance of the Turkish penitentiary system with the international standards.

364. Low capacity and old prisons in small provinces and districts of Turkey have been closed down and replaced with high capacity and modern prisons in accordance with the international standards within the scope of the Turkish Prison Reform. There are currently 387 prisons in Turkey. Ninety of these prisons are of high capacity, while the remaining are small regional prisons. Furthermore, there are Silivri and Maltepe Prison Campuses in İstanbul and Sincan Prison Campus in Ankara and these campuses accommodate a few different types of prisons.

365. At present, the total number of staff working in prisons overall is around 27,500. In-service training and seminars are constantly organized in Ankara, İstanbul, Erzurum and Kahramanmaraş Prison Staff Training Centres for the aforementioned staff actively serving in 24 different fields.

366. The Project on Dissemination of Model Prison Practices and Promotion of the Prison Reform is one of the most important projects currently underway in Turkey which is funded by the European Union and implemented by the Council of Europe. The project is comprised of two main components: The first component covers the establishment of training facilities and vocational training workshops in 90 medium- and high-security prisons and provision of the training materials and tools. The second component covers support activities for the sustainability of reform activities.

367. “Prison Practices and Prison Reform” is a continuation of the reform activities achieved by the “Council of Europe and European Commission Joint Programme on Judicial Modernisation and Penal Reform”, which the MoJ benefited from between June 2004 and April 2007. The project aims at the improvement of the penitentiary system in Turkey in line with the European Prison Rules (EPR) and other international standards.

368. The support to the penal reform component of the project provided technical assistance in the architectural design of new prisons, rehabilitation of old ones and guidelines for prison architecture. Besides, the training capacity of the Prison Staff Training Centres has been strengthened. Concrete tools for the systemization and standardisation such as a “Prison Management Manuel” for prison governors and a “Prison Doctor’s Handbook” for medical staff have been developed. Furthermore, two model prisons (Uşak and Elazığ) in the western and eastern parts of Turkey were selected and not only have been improved, but also the staff have specifically been trained to provide a full range of services to prisoners for rehabilitation and training, complying with international human rights and prison standards.

369. Vocational training workshops and social facilities have been established and tools and instruments have been procured in the aforementioned two prisons to provide vocational training to prisoners. The rate of disciplinary offences has decreased and the need for extra security measures has also diminished by the successful implementation of one of the sex offending behaviour programs, named “Anger Management”, developed as a part of the project, and by the provision of vocational training, as well as the active use of the social facilities. Moreover, the prison management development program has yielded considerable improvements in the prison administration component.

370. In short, within the scope of the project, a total of 150,000 staff working in 90 prisons will be trained on the new European Prison Rules (2006) and other legislation adapted to the international standards. Seminars will be organized for 90 public prosecutors responsible for prisons and enforcement of sentences on the amendments relating to international standards. Ninety commanders of the gendarmerie responsible for the perimeter security of prisons will be trained on their roles, duties and responsibilities. A total of 800 prison administrators selected from 90 prisons will be trained on the content of the Prison Management Manual developed under the project on “Judicial Modernisation and Penal Reform”. All prison doctors, dentists and health officers will be trained. Around 350 teachers will be trained on European standards on education in prison and on good methodologies. Three hundred and fifty psycho-social service staff will be trained on six offending behaviour programmes developed under the project. A total of 270 vocational training workshops will be established in 90 prisons at the rate of three for each prison in cooperation with İŞ-KUR (Turkish Labour and Employment Agency); five computers will be provided for each prison and a computer laboratory will be established; a projection machine, one binding machine and relevant books will be provided for libraries of each prison. The curricula and training methodology developed under the project will first be implemented in the Prisons and Detention Houses Staff Training Centres recently established in Kahramanmaraş and to be established in Denizli; training materials and tools will be provided. A manual will be developed for enforcement judges and monitoring boards and seminars will be organised for members of monitoring boards and 141 enforcement judges.

371. Three separate seminars will be organised for NGOs to inform them about the changes in Turkish prisons. A media campaign will increase public awareness on the developments in the penitentiary system.

#### **MoI, General Directorate of Security**

372. With a view to ensuring that the personnel’s awareness of respect for human rights raises and that they are informed of the international activities carried out in this field, the pre-service education of the personnel of the General Directorate of Security is also supported by seminars, panels, conferences and symposia with the participation of national and foreign experts in the in-service training.

#### **Human rights training**

373. Training on “Human Rights and Public Freedoms” has been offered at the Security Sciences Faculty of the Police Academy since 1991, and at the Police Vocational Training Colleges since 1992.

374. “Human rights” and “public relations” were introduced as compulsory courses in all in-service training programs in 2000. Since 2004, the subjects “human rights”, “community policing”, and “professional ethics for the police” have been included for not less than two class hours in some in-service training courses.

375. Statistical information concerning in-service training courses arranged between 2000 and 2007 at the General Directorate of Security are provided below:

Table 4

#### **Participants in General Directorate of Security in-service training, 2000–2007**

| <i>Year</i> | <i>Participants</i> |                        | <i>Total</i> |
|-------------|---------------------|------------------------|--------------|
|             | <i>Superiors</i>    | <i>Police officers</i> |              |
| 2000        | 4 666               | 9 662                  | 14 328       |



| <i>Year</i>  | <i>Participants</i> |                        | <i>Total</i>   |
|--------------|---------------------|------------------------|----------------|
|              | <i>Superiors</i>    | <i>Police officers</i> |                |
| 2001         | 2 886               | 12 065                 | 14 951         |
| 2002         | 5 557               | 22 002                 | 27 559         |
| 2003         | 6 065               | 13 125                 | 19 190         |
| 2004         | 6 915               | 17 413                 | 24 328         |
| 2005         | 16 297              | 66 835                 | 83 132         |
| 2006         | 9 085               | 81844                  | 90 929         |
| 2007         | 6 682               | 73 180                 | 79 862         |
| <b>Total</b> | <b>58 153</b>       | <b>296 126</b>         | <b>354 279</b> |

376. The Human Rights Department of the General Directorate of Security has been offering a “Human Rights Course” since 2003. Moreover, human rights courses in 12 terms organized by the Department of Anti-Terrorism and Operations were attended by 148 superiors and 394 officials (542 personnel in total).

377. In order to inform all personnel on new legal arrangements and to ease their access to such information, The “Regulation on Apprehension, Detention and Statement-Taking” and the “Regulation on Judicial and Preventive Searches” were compiled in a booklet and published in 80,000 copies. These booklets were distributed to the law enforcement units of 81 Provincial Security Directorates.

378. In 2005, reminder cards entitled “Rights to Be Read out at the Time of Apprehension” were published in 175,000 copies and distributed to all personnel. While the front face of the card lists all the rights of the accused, the back face states a legal reminder for law enforcement officers indicating the legal liability to arise where these rights are not observed.

379. Furthermore, in the context of the “Police and Human Rights After 2000” program, coordinated by the General Directorate of Security, the Council of Europe, the Ministry of Foreign Affairs, and the National Committee for the United Nations Decade for Human Rights Education in the framework of the “Police, Professionalism, and Society” program, information and training materials on police and human rights were translated into Turkish and used in the training in the context of the project (Human Rights and the Police, Discussion Facilities, Protection of Human Rights in International Law, Police in Democratic Societies, Police Practices and Human Rights).

380. In the second phase of the project, a group of 39 trainers was formed within the General Directorate of Security which trained 332 trainer personnel who work in the training institutions and in-service training in the field of human rights.

381. In the third phase of the project, the curricula of Police Vocational Higher Schools and Gendarmerie Vocational Higher Schools were reviewed under the supervision of the Police Academy in line with the opinion of Council of Europe experts under the supervision of the Police.

382. Furthermore, in line with the yearly education plan prepared by the Security General Directorate, in the context of “Basic Improvement Training”, arranged by Police Organization units and provincial security directorates, at least one fifth of the personnel are trained. In these trainings, a “Human Rights” course is given for two hours every term.

383. Nine regional seminars entitled “Developing Cooperation in Criminal Proceedings” were organized in eight provinces in October and November 2005. Each seminar was

attended by 200 participants from the judiciary, bar associations and law enforcement units. The seminars were held in Ankara (2), İstanbul, İzmir, Diyarbakır, Van, Antalya, Bursa, and Trabzon, and were attended by personnel from Security Departments in 55 provinces.

384. Moreover, a book was published covering the seminar topics and the new legislation. The book was printed in 6,000 copies and distributed to Security Department units, public prosecutors, judges, and other authorities.

385. Special in-service training is provided concerning immigrant smuggling and human trafficking, which aims at safely sending back the victims of human trafficking to their countries of origin and carrying out all procedures, including the exit procedures, of illegal immigrants in accordance with human rights regulations. In 2008, special in-service training concerning immigrant smuggling and human trafficking was provided in five terms, with the participation of 176 personnel.

386. The “Information- and Statement-Taking Technique” named “Model Harvest” developed by a project group formed by Turkish Police Organization personnel has come to the fore as the most effective and productive method of information- and statement-taking in connection with the Criminal Procedure Code which came into force in 2005. The model is based entirely on techniques of asking questions. Model Harvest is a tactical approach developed with a view to taking statements properly, based on the free will of the provider.

387. In 2008, 505 personnel received training on Combating against Smuggling and Organized Crime, while 386 personnel were given training with the Distance Education Method (with Smart Class Training, based on audio-visual facilities).

#### **Child-related activities carried out by the General Directorate of Security**

388. The following activities concerning the Juvenile Police were carried out between 1 January 2008 and 15 September 2008.

389. Twenty-five personnel received the Juvenile Protection Course, 16 the Juvenile Justice Course and 19 the Child Trafficking Course. These courses are given to the personnel who previously took the Juvenile Police Basic Training Course and the courses cover expert training regarding their duties and work. Detailed training has been ensured concerning working with children who are suspects of crime in need of protection and victims of sexual abuse. The course outline covers topics such as the legislation concerning education, communication with children, work and procedures to be carried out, and relevant bodies. These expert courses are given twice a year, in two terms.

390. In the context of the project named “Towards Good Governance, Protection and Justice for Children in Turkey”, financed by the EU, 16 personnel including a psychologist, a psychological consultant and a social worker, who will take part in the training prepared for juvenile justice system personnel, were given training concerning interactive training, methods and techniques, in two phases.

391. The training carried out throughout the country ensures that the personnel:

- (a) Examine the child-related legislation, trace the deficiencies in the legislation, and provide information as to what needs to be done;
- (b) Are informed on the juvenile protection system in Turkey and on the types of activities of relevant bodies in this system;
- (c) Provide an opinion as to how to establish cooperation between these bodies and as to the importance of this cooperation for the Security Organization;

(d) Are informed on the psycho-social features and development of children between 0 and 18 years old, including children who are suspected of committing a crime, street children, child drug addicts, and children who are in need of protection;

(e) Develop new opinions as to what kind of services can be provided to such children by the Security Organization and how they can be gained back into the society;

(f) Are informed regarding the roles and functions of the Juvenile Police and how they can be implemented;

(g) Help them develop a change of behavior regarding the relationship between the police and the child as well as to better understand the child;

(h) Are informed regarding the children's psychological state and patterns of behavior in respect of their age groups as well as regarding puberty.

#### **MoI Office of Public Inspection**

392. With Circular No. 2004/70 issued on 5 April 2004, the "Bureau of Inquiry on Allegations of Human Rights Violations" was established within the Inspection Board of the MoI to assess and investigate human rights violation allegations and to communicate with NGOs and real persons. In parallel with the e-state project, the MoI Human Rights website was designed to collect all human rights-related information in one address.

393. The main duties of the said Bureau are to investigate human rights violations allegations concerning the MoI and its bodies, conduct visits without notice to lockups and places where persons whose liberty is restricted are kept, recommend regulatory administrative measures and draw up reports.

394. Concerning the notices and complaints regarding human rights violations which are forwarded to governorships and district governorships as per this Circular, it was ordered that the procedures shall be carried out in accordance with the Regulation on the Establishment, Duties and Work of Provincial and Sub-provincial Human Rights Boards issued on 23 November 2003 in the Official Gazette No. 25298; however, those which are regarded as requiring an inspector's knowledge as well as technical knowledge are to be sent by the governorship to this Bureau.

395. Furthermore, public inspectors were given the power to conduct visits, without prior notice, to police stations, lockups, interrogation rooms and similar places to observe whether they conform to legal standards or not, as well as to examine whether procedures of arresting, taking into custody and interrogation are in line with the legislation. Moreover, the bodies attached to the MoI were also instructed to carry out such supervisions and investigations by their own inspectors.

396. When an inappropriate situation or practice is observed during these supervisions and examinations, criminal proceedings and proceedings required by disciplinary law shall be carried out, compulsory administrative measures shall be recommended to competent authorities, and the Human Rights Presidency of the Office of the Prime Minister shall be informed regularly on the activities of the Bureau.

#### **Information concerning the applications to the Human Rights Bureau and their results**

397. All kinds of information, documents, and images which are forwarded to the Board through Human Rights Inquiry Commission of the Parliament, the Human Rights Presidency of the Office of the Prime Minister, NGOs, and real persons, or those obtained from the media, have been considered as notices and examined duly.

398. The number of applications which were received by the Public Inspection Board is as follows: in 2004, 293; in 2005, 1105; in 2006, 1954; in 2007, 2745; which makes a total of 6097. With a view to collecting all allegations of human rights violations in one center, the web page integrated in the MoI's web portal was designed, and started functioning on 16 April 2004. However, data concerning the year 2008 could not be provided accurately since renewal and improvement studies began for raising individual awareness on human rights by publishing the relevant international and national legislation, starting with Universal Declaration of Human Rights, as well as rights guaranteed in the Constitution.

399. Applications lodged outside the scope of duty of the MoI are forwarded to the e-mail addresses of the relevant units to ensure that those concerned receive a reply.

400. Concerning the principal objectives of the Bureau, which cover allegations regarding law enforcement officers' (police and gendarmerie) disproportionate use of force, and torture and ill-treatment of detainees or during demonstrations, 27, 10, 7, 10, and 13 public inspectors were appointed with the Ministry's approval in 2004, 2005, 2006, 2007, and 2008, respectively. Investigations began and it was ensured that reports concerning those responsible were sent to relevant authorities for legal and administrative procedures to be carried out.

401. The yearly distribution of disciplinary reports drawn up as a result of appointment of civil service inspectors is as follows:

(a) Disciplinary Investigation in 2004: Two security personnel were penalized with "suspension from office for 6 months";

(b) Disciplinary Investigation in 2005: One security personnel received a reprimand, and one was penalized with "suspension from office for 4 months";

(c) Disciplinary Investigation in 2006: No security personnel were penalized;

(d) Disciplinary Investigation in 2007:

- One security personnel was penalized with "suspension from office for 16 months and dismissal from office"
- One security personnel was penalized with "suspension from office for 16 months"
- Eight security personnel were penalized with "suspension from office for 12 months"
- Two security personnel were penalized with "dismissal from office"
- One security personnel was penalized with "change of duty location"
- Four security personnel were penalized with "short-term suspension from office for 4 months"
- Four security personnel were penalized with "deduction in salary for up to 3 days"
- Four security personnel received a reprimand
- One security personnel was penalized with "deduction in salary"
- One security personnel was penalized with "long-term suspension from office for 24 months"
- Three Submission Reports were duly prepared and forwarded to relevant offices of the chief public prosecutor for requisite action

- As a result of the preparation of two Investigation Reports concerning two cases, it was decided that there was no need to carry out proceedings and in line with the Ministry's approval, the file was removed from list of proceedings and the concerned were duly informed
- (e) Disciplinary Investigation in 2008: Disciplinary reports were drawn up concerning the following and forwarded to the disciplinary board:
- Nine security personnel were penalized with "suspension from office for 16 months"
  - Two security personnel were penalized with "suspension from office for 12 months"
  - One security personnel received a reprimand
  - One security personnel was penalized with "deduction in salary for up to 3 days"
  - A Submission Report was duly prepared and forwarded to relevant offices of the chief public prosecutor for requisite action
  - As a result of the preparation of five Investigation Reports, it was decided that there was no need to carry out proceedings and in line with the Ministry's approval, the file was removed from list of proceedings and the concerned were duly informed

#### **Human rights training**

402. As the fight against torture and ill-treatment has been a priority item on the Government's agenda from the outset, the Government has adopted and carried out a policy of "zero tolerance" for combating torture. Within this context, training programs have been carried out with the participation of academics who are experts in their field, with a view to strengthening the existing knowledge and skills of public inspectors, primarily in the field of human rights. The main objective of all these efforts and studies is to enhance the capacity of public inspectors and civilian administration officials to monitor and inspect law enforcement officials (police and gendarmerie) in the fight against torture and ill-treatment, and in the framework of eliminating the obstacles that stand in the way of the punishment of those law enforcement officers who commit human rights violations, to ensure that inspectors perform better and by doing so, take positive steps in the betterment of human rights practices in Turkey. In this sense, there has been a remarkable improvement in relevant practices since 2003.

403. The following have been and are being carried out in collaboration with international organizations to ensure that the inspectors prepare files in line with the reporting methods used by the ECtHR:

(a) "An Independent Police Complaints Commission and Complaints System for the Turkish Police and the Gendarmerie" (No. TR05-IB-JH-01), in the context of the 2005 Turkey-EU Pre-Accession Financial Cooperation, is implemented in cooperation with the United Kingdom. The project was launched in 2006. The project aims at increasing the efficiency of the current mechanisms in place to investigate, follow and finalize the complaints regarding law enforcement officers and ensuring transparency in complaints. In this context, delegations which included the inspectors visited lockups, two police stations and the Anti-Terror Department of Ankara Security Directorate, followed up by several visits conducted to various provinces throughout the country;

(b) With a view to contributing to the improvement of the investigation capacity of public inspectors, another project was launched, in collaboration with the MoI, the

Ministry of Foreign Affairs of Denmark, UNDP, and the Danish Institute of Human Rights. The first component of the project included human rights training to public inspectors as well as training abroad for best practices. The second component of the project included the preparation of a Human Rights Manual and a guidebook for the purpose of establishing a standard practice in inspections and investigations. The final component aims at rendering the web portal more efficient; enabling applications on-line; adding domestic and international legislation as well as statistical information to be obtained from the studies in this field in this web portal; and finally, arranging it in a way to allow distance education for civil and law enforcement officials in this field.

404. With the advanced level seminars held on 11 and 12 September 2007, supervision of custody locations were discussed in light of the views of the European Committee for the Prevention of Torture (CPT). In the seminars held on 18 and 19 October 2007, inspectors and representatives of NGOs discussed the topic of gender. The seminars have been influential in providing information regarding the following:

- (a) System of protection of human rights, with regard to law enforcement officers' practices;
- (b) Recent reforms in Turkey concerning freedom and individual security;
- (c) Torture, inhuman and degrading practices;
- (d) The significance of CPT, its reports related to Turkey and Turkey's replies to these reports;
- (e) International and European standards pertaining to custody conditions and practices;
- (f) Principles of supervision of lockups in the framework of the European Convention against Torture;
- (g) Practices of law enforcement officers (use of excessive force, the right to life);
- (h) Women's rights in the context of police centers and lockups;
- (i) Supervision of assessing complaints with respect to human rights.

405. Furthermore, in collaboration with the Danish Institute for Human Rights, a book is planned for the use of inspectors and civilian administration officials for human rights training. In addition to the publication of the Human Rights Manual, preparatory studies continue in order to provide advanced training to a small number of inspectors which covers experiences of different countries.

#### **Ministry of National Defense**

406. Human rights education remains very important in the training activities of various institutions of the Turkish Armed Forces such as the War Academy, Intelligence School, Information Support School, and Special Forces Command. Moreover, particular importance is attached to human rights education in the refresher training of high-ranking officers.

407. Torture and similar acts are criminalized by the Turkish Penal Code and Military Penal Code and are investigated rigorously by offices of military prosecutors.

408. Many Turkish and foreign officers and civilians participate in the Law of Armed Conflicts Course offered for two terms a year in the Partnership for Peace Training Center. The course covers human rights topics as well. Moreover, training has been provided with Mobile Training Teams in many Asian and Balkan States, including human rights training.

409. Concerning the training of military judges, prosecutors and military prison personnel, since 2002, seminars have been held two or three times a year for a duration of at least one week for military prison personnel. The same training is also included in the vocational development programs for Force Commands. In this framework:

(a) Between May 2007 and October 2008, in cooperation with the British Embassy, training seminars concerning the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ECHR and the judgements of ECtHR, were held for all military judges. Seminars covered the topic of prevention of torture in the context of human rights law;

(b) In 2007, the MoJ Prisons and Detention Houses Directorate General provided a training programme to the personnel for military prisons and detention houses. The issues covered included administration and operation of military prisons and international prison standards. The training, planned as two terms in November 2008, shall continue as planned;

(c) The book entitled “International Prison Standards and Probation Rules” prepared and published by the MoJ was presented for the use of military judges, military prosecutors, legal counselors, administrative personnel, and military prisons and detention houses personnel;

(d) In-service training provided to military judges employed in judicial advisory posts, military courts, and offices of military prosecutors covered human rights, international prison standards and prevention of torture;

(e) In the context of pre-service internship training for candidate military judges who are doing their military judge internship, training is provided at the Turkish Justice Academy on the ECHR, judgements of ECtHR, and impact of human rights-related international conventions on domestic law. On March 2008, 24 military candidate judges were given training at the Turkish Justice Academy on ECHR, judgements of ECtHR, and the impact of human rights-related international conventions on domestic law;

(f) The majority of the military judges were given the opportunity to do master’s and doctoral studies in public law and EU law, particularly on human rights topics, and they were encouraged to choose their thesis topics on human rights issues;

(g) Military judges were also sent abroad for vocational training which covered the law of armed conflict and, in this context, human rights law. In May 2008, one military judge was sent to San Remo for the fifth “International Humanitarian Law and Human Rights Law in Peace Operations” training organized by the International Humanitarian Law Institute. Similar training activities continued in 2009 in National and International Vocational Training Plans, which will continue in the ensuing years.

410. Overall, all public institutions are obliged to provide human rights training to all candidate civil servants. In this framework, candidate civil servants are informed on the principles of equality, prohibition of discrimination and torture.

#### **Modernization programs for detention facilities and interview rooms**

411. Article 147 (h) of the new Criminal Procedure Code envisages the use of technical facilities for recording proceedings of interrogations and statement-taking. In accordance with the legal framework provided by article 147(h) and article 11(g) of the “Regulation on apprehension, detention and statement-taking,” and for the purposes of ensuring the physical integrity of suspects against self-harm, preventing possible violations of human rights, as well as groundless allegations of torture and ill-treatment, which place the law enforcement agencies under suspicion in many instances, modernization programs for detention facilities and interview rooms have been put in place within the limits of available budgetary resources and funds.

412. Audio and video facilities to record the questioning and other treatment of persons in custody and interview rooms of the anti-terror branches of Directorates for Security were installed in 32 provinces in 2007 and 2008, a further 16 anti-terror branches of Directorates for Security will be equipped with the same audio-visual recording systems. Out of 2888 custody and interview rooms in police units, 2341 have been improved through modernization projects. Projects to modernize the remaining 547 are currently underway. As regards the gendarmerie custody and questioning rooms, modernization programs are currently in place, to the extent the available funds and resources permit. Recently, a total of 1392 audio-visual recording facilities have been purchased. Plans are underway to purchase 899 more. Within the framework of the modernization programs, 79 per cent of the gendarmerie custody units have been brought into line with international standards; efforts are underway to bring the remaining 21 per cent into line by the end of 2009.

413. The CPT, in its 2006 visit, welcomed the progress achieved in improving the standards of interrogation/identification facilities and noted with satisfaction that certain facilities previously criticized by the CPT had been brought up to acceptable standards. In this regard, the CPT praised the radical improvements made to the interrogation facilities in the Anti-Terror Department at Van Police Headquarters in particular. The delegation was also impressed by the standard of the interview/statement-taking rooms of the Anti-Terror Department at İstanbul Police Headquarters.

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