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Summary record of the 3rd meeting

Held at the Palais Wilson, Geneva, on Tuesday, 3 May 2011, at 10 a.m.

Chairperson: Mr. Pillay

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The meeting was called to order at 10.05 a.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant

Initial report of Turkey (E/C.12/TUR/1; E/C.12/TUR/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Turkey took places at the Committee table.*

Articles 1 to 5 of the Covenant

2. **Mr. Onaner** (Turkey), introducing his country's initial report (E/C.12/TUR/1), said that Turkey had signed and ratified the Covenant as part of its efforts to become a party to all core universal human rights treaties. Since 2001, Turkey had been pursuing a comprehensive and active human rights reform process aimed at improving the protection and promotion of human rights. A series of legal reforms had been carried out, including a number of constitutional amendments.

3. Article 90 of the Turkish Constitution had been amended in 2004 to state that international conventions on fundamental rights and freedoms prevailed in case of conflict with the provisions of national laws on the same matter.

4. The new Civil Code, the new Penal Code and the new Criminal Procedure Code had been adopted with a view to aligning the legal framework of Turkey with European standards and principles and had consolidated the constitutional amendments.

5. The reform process had led to substantial progress with regard to the fight against torture, gender equality, freedom of religion, freedom of expression, freedom of association and assembly, and other cultural and social rights, as well as the abolition of the death penalty.

6. Constitutional amendments in 2010 had eliminated several of the shortcomings referred to in judgements of the European Court of Human Rights, and had permitted the implementation of several recommendations made by regional and international monitoring bodies. Those amendments included: the inclusion of positive discrimination as a constitutional right for persons requiring social protection such as children, the elderly and the disabled, as well as for women in order to achieve de facto equality between men and women; constitutional guarantees for the right of children to have access to adequate protection and care; broadening of the scope of freedom of organization and union rights; definition of the right of petition as a constitutional right; elimination of the constitutional obstacle that prevented the establishment of an ombudsman's office; and introduction of the right to make individual applications to the Constitutional Court with regard to the fundamental rights and freedoms enshrined in the Constitution.

7. Civil society representatives had been involved in the reform process through national monitoring mechanisms, and human rights education had been promoted at all levels. To overcome possible challenges in implementing the legislative reforms and to create an institutional culture that respected human rights, bilateral programmes with several countries and joint projects with the Council of Europe and the European Union were being carried out.

8. The Law against Terrorism had been amended in July 2010 to remove minors from its remit. Under the amendments, children who attended illegal meetings and demonstrations or distributed propaganda material for outlawed organizations could not be tried on charges of terrorism in assize courts. Moreover, the penalties applied to children

accused of terrorism-related offences, such as being members of a terrorist organization or disseminating propaganda material for terrorists, had been reduced.

9. To further improve the enjoyment of economic, social and cultural rights by all, and to pursue the reform process aimed at attaining the highest human rights standards, requests for visits, recommendations and appeals of the special procedures of the Human Rights Council, including the Special Rapporteur on torture, were given serious consideration by the Turkish Government.

10. **Mr. Sadi** (Country Rapporteur) said that the ratification of the Covenant and other core international instruments by Turkey had taken place only relatively recently, which gave the impression that Turkey had hesitated to join the international community in ratifying such instruments. He asked for the thoughts of the delegation on that point.

11. Turkey had made numerous reservations to international conventions and he believed that its policy in that regard should be reviewed, as reservations sent the wrong message about the commitment of the State party to international instruments. In addition, the establishment of an ombudsman's office seemed uncertain and the draft bill on the human rights institution had not yet been ratified. The stalling of progress on those two issues suggested that Turkey was reluctant to move in the same direction as the international community on issues of human rights.

12. He had been surprised at the high number of judgments against Turkey handed down by the European Court of Human Rights on issues such as torture and hoped that the situation was improving.

13. It was disturbing that Turkey was going ahead with the construction of a nuclear plant near to a fault line; the damage to the Fukushima nuclear power plant in Japan following the earthquake in March 2011 should be taken as a warning against such construction. He wondered whether the Turkish Government had carefully reviewed the plan in the light of the events in Japan.

14. **Mr. Riedel** requested a copy of the text of the draft bill on the human rights institution in order to assess the extent to which it covered economic, social and cultural rights.

15. He also requested specific information on how cases relating to economic, social and cultural rights were dealt with at the national level by the courts and in the labour, education and health sectors.

16. **Mr. Kedzia** asked for further information on the status of the Covenant in the national legal order and requested confirmation that international treaties to which Turkey was a party prevailed over the Turkish Constitution.

17. He welcomed the withdrawal by Turkey of its reservations to the Convention on the Elimination of All Forms of Discrimination against Women and asked whether it was considering withdrawing its reservations to the International Covenant on Economic, Social and Cultural Rights, in particular to its article 13.

18. He requested clarification of the meaning of the reservation that Turkey would implement the provisions of the Covenant only to the States with which it had diplomatic relations. He also requested information on whether the ombudsman's office and the human rights institution that Turkey planned to establish would be independent from the Government. Would they apply for accreditation to the International Coordinating Committee of National Human Rights Institutions under the Paris Principles?

19. Lastly, he asked whether Turkey was considering ratification of Protocol No. 12 to the European Convention on Human Rights.

20. **Mr. Texier** asked why there was no comprehensive law on non-discrimination in Turkey. Noting that unemployment figures for Kurdish women were much higher than the national average, owing to a lack of access to education, and that health indicators and maternal mortality figures showed discrepancies between mainly Kurdish areas and the rest of Turkey, he asked what specific measures were being taken or would be taken to combat discrimination against Kurds. He also asked whether asylum-seekers and refugees had the same access to all levels of education as the rest of the Turkish population.

21. Lastly, he enquired whether Turkey was planning to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and whether the country's constitutional legal system and general policy presented any obstacles to such ratification.

22. **Mr. Kerdoun** said he would like to be given specific examples of instances in which the Covenant had been invoked by the Turkish courts, and to be informed of the reasons for the lack of civil society participation in the preparation of the initial report.

23. As to migration, he asked whether the Government had examined the possibility of establishing a system for the protection of Turkish migrants living outside Turkey.

24. **Mr. Atangana** raised the issue of jurisprudence invoked before Turkish courts and asked whether Turkey was considering withdrawing its reservations to the Covenant. He also requested more information on a series of reforms, announced by the Turkish delegation at the fifteenth session of the Human Rights Council, aimed at further strengthening the judicial system, including, in particular, the introduction of intermediary courts of appeal in civil and administrative justice.

25. **Ms. Shin** asked why the submission of the initial report had been delayed by several years and called on the Turkish delegation to ensure that future periodic reports were submitted in a timely fashion. She asked whether Turkish judges and lawyers received training relating to the Covenant and what form any such training took. She also requested information on the current status of the draft bill on a national human rights institution. The fact that Turkey only recognized non-Muslim minorities was a serious problem. According to the Government's written replies (E/C.12/TUR/Q/1/Add.1, para. 41), there had been no complaints regarding the violation of the non-discrimination principle on the basis of language and race in 2007. She enquired whether the Human Rights Presidency and provincial and district commissions on human rights accepted complaints concerning discrimination based on language and race and, if so, whether any cases had ever been brought by members of the Kurdish community resident in the State party. Further clarification was required concerning that matter. With regard to article 3 of the Covenant, she requested further information on the positive effects of Government policies and action plans aimed at combating violence against women and promoting gender equality and the way in which the impact of such policies and plans was assessed. Timely assessment was required in the case of medium-term plans in order to allow for changes to be made. She enquired whether consultations were conducted with civil society, and in particular with women's organizations, with regard to the effectiveness of plans and whether there were temporary special measures in place to promote gender equality.

26. **Ms. Barahona Riera** said she wished to know more about the education component of the existing programmes and action plans on gender equality which were designed to increase the rate of participation of women, both in the labour market and in public and private sector decision-making processes. She also noted that there was no framework law on equal opportunities for men and women. Such legislation would enable civil society to insist on greater gender equality, and she asked whether there were any plans to introduce such a law. Furthermore, she enquired about the State budget allocated to efforts to achieve gender equality and wondered whether measures such as the provision of childcare, equal

wages and labour inspection were being taken to incorporate women into the formal labour market.

27. **Mr. Schrijver** asked whether it was explicitly stated in the Turkish Constitution that provisions of international human rights treaties ratified by Turkey could be directly invoked before national courts. He also enquired if there were ongoing discussions concerning ratification of the Optional Protocol to the Covenant by Turkey in the year ahead. Finally, he asked to what extent Turkey's foreign policy was driven by human rights and development considerations.

28. **Mr. Ribeiro Leão** requested further information regarding the situation of minorities, foreigners and refugees in Turkey.

29. **Mr. Onaner** (Turkey) said that Turkey well understood the importance of being party to international human rights instruments, even though it had acceded to them at a relatively late stage. Turkey had been implementing human rights reforms since 2001 and had ratified eight of the main human rights treaties. He could not give any date for ratification of the Optional Protocol, but assured the Committee that Turkey was examining the matter.

30. In answer to questions concerning Turkey's reservations to the Covenant, reservations to international conventions were reviewed on a regular basis in order that they might be withdrawn when possible. Although he was not in a position to make a definite statement with regard to the withdrawal of the reservations relating to the Covenant, the lifting of the reservation concerning the Convention on the Elimination of All Forms of Discrimination against Women was an example of Turkey's willingness to withdraw reservations which were not considered to be indispensable.

31. The large number of European Court of Human Rights judgments involving Turkey was proof that Turkish citizens who were not satisfied with rulings handed down by the national courts could seek satisfaction at the European Court.

32. One of Turkey's main human rights objectives was the establishment of an ombudsman mechanism. Thanks to amendments to the Constitution, and in particular to article 74, previously existing obstacles concerning the constitutionality of such a mechanism had been removed and the right of petition, the right of knowledge acquisition and appeal to public auditor (the title of revised article 74) formed a constitutional basis for a public auditing system.

33. Regarding a national human rights institution, the first draft plan for the establishment of such an institution had been submitted to all the relevant bodies in Turkey several years previously. Turkey's priority was to establish a national human rights institution in the near future that complied fully with the Paris Principles and it was concerns related to that compliance, as well as to other issues, that had delayed the process. The Ministry of Foreign Affairs was working with other bodies to achieve that aim.

34. The Constitution prohibited discrimination on many grounds, as detailed in paragraph 9 of the initial report (E/C.12/TUR/1). As a result, the lack of specific domestic legislation prohibiting discrimination in no way diminished the Government's ability to protect all persons resident in his country from discriminatory acts. The term "minorities" was applicable only to Turkish citizens belonging to non-Muslim minorities, as explained in paragraphs 29 to 35 of the report. It was therefore not necessary to identify Turkish citizens of different ethnic origins or who spoke different languages as minorities in order to ensure the full protection of all their human rights; that protection was guaranteed under the Constitution. That was the case for all groups, including Turkish citizens of Kurdish origin, many of whom did not, in fact, identify themselves as members of a minority. While

there were currently no plans to amend the definition of the term “minorities”, the Government was fully committed to guaranteeing all the human rights of all its citizens.

35. The main aim of the country’s current development projects, including the building of a dam and a nuclear power plant, was to improve the economic rights of the residents of the relevant regions and the country as a whole. Nonetheless, efforts were being made to ensure that residents’ other rights were not adversely affected by the projects. The action plan that had been implemented to that end had not, however, been altogether successful and some residents of the region where the dam was being built had been expropriated. Those affected had the right to bring their cases before the courts. They would doubtless obtain satisfaction, given that the courts had gained a great deal of experience from the many similar cases that Turkish citizens had brought before the European Court of Human Rights. No decision had yet been made on the construction of a nuclear plant. Any such plans would take into consideration the lessons learned from the recent disaster in Japan, particularly as Turkey was in an area with a significant earthquake risk.

36. The Government was aware of the importance of being party to international human rights instruments and their optional protocols, including Protocol No. 12 to the European Convention on Human Rights. It was taking steps to ratify as many such instruments as possible in the near future.

37. As indicated in paragraph 6 of the written replies (E/C.12/TUR/Q/1/Add.1), the Government regularly reviewed its reservations to international conventions with a view to withdrawing them when possible. Its recent withdrawal of its reservations to and declaration regarding the Convention on the Elimination of All Forms of Discrimination against Women constituted a good example of that practice.

38. Since no data were gathered on domestic court decisions that made reference to international instruments, it had proved difficult to find examples of that practice. Many of the examples that had been found were Supreme Court decisions invoking the European Convention on Human Rights. The Ministry of Justice was aware of the need to raise awareness among judicial staff of the international human rights instruments to which Turkey was a party, particularly the Covenant.

39. The most recent version of the draft text concerning the national human rights institution would be forwarded to the Committee as soon as possible.

40. The Government recognized the need to encourage families to ensure that all girls went to school. It was focusing its awareness-raising campaigns on areas with a high population of citizens of Kurdish origin, since they had traditionally prioritized boys’ education over that of girls. Education for all was a priority for the Government, which was currently broadcasting a nightly message on all public and private television channels stressing the need for girls to attend school.

41. Migrants and refugees, including those with only minimal documentation, enjoyed access to many rights and services in Turkey. The Government attached great importance to education and the integration of Turkish migrants abroad. It ensured that those who emigrated were aware of their rights in their host countries and were able to defend them if necessary.

42. The constitutional reform of September 2010 included several significant judicial reforms. Further information would be provided once the relevant legislation had been adopted.

43. Turning to the issue of gender equality in governmental posts, he noted that his superior, one of the deputy undersecretaries in the Ministry of Foreign Affairs, was a woman. While there were still not enough female members of Parliament, the number of female candidates standing in the forthcoming elections was higher than in the past.

44. NGO participation in the preparation of the initial report in 2008 had been insufficient. The Government had learned a great deal from its broad consultations with civil society in the universal periodic review process and had undertaken to ensure that equally in-depth consultations would take place in the preparation of all future reports.

45. Specific figures on the budget of the General Directorate on the Status of Women were not available. However, one of the reasons the Directorate had been given responsibility for organizing the 2011 Global Summit of Women in Istanbul was that its resources were greater than those of the Ministry of Foreign Affairs. That suggested that the Government's budget allocation to the Directorate was adequate.

46. The Ministry of Foreign Affairs was currently striving to give the human rights dimension greater priority in all foreign policy decisions and actions. All Turkish ambassadors gathered for an annual conference in Turkey. At the 2011 conference, for the first time, a specific session had been conducted on human rights. At its conclusion, the Minister for Foreign Affairs had stated that Turkey's pursuit of economic growth must be accompanied by strenuous efforts to meet its obligation to attain the highest possible level of human rights.

47. **Mr. Sadi** (Country Rapporteur) said that the delegation's response on the protection of the rights of minorities in Turkey was incomplete: rather than focusing on protection of the rights of Turkish citizens in general, the delegation should say what was being done to ensure rights relating to the culture, language, schools and heritage of minority groups.

48. **Mr. Kedzia** agreed with Mr. Sadi that the issue of the protection of minorities in Turkey merited further discussion.

49. Also, in relation to article 90 of the Turkish Constitution, he would welcome clarification on the status of compliance with the relevant international treaties to which Turkey was a party. While the Turkish delegation had addressed the general question of its Government's reservations to the Covenant, he would welcome more information on their substance and impact.

50. **Ms. Shin** enquired whether Turkey's national action plans on gender equality and violence against women were being assessed regularly to evaluate their effect and whether civil society and women's organizations in particular were consulted in that regard.

51. **Mr. Schrijver** said that it would be useful for the Committee to be provided with the full text of article 90 of the Turkish Constitution and any other relevant provisions on the applicability of human rights treaties in the domestic sphere so that the Committee could carefully examine whether citizens could in fact invoke provisions of human rights treaties.

52. **Ms. Barahona Riera** said that the budgetary allocations for the General Directorate on the Status of Women and for the national plans of action for gender equality and combating domestic violence against women were still unclear and specific figures should be provided.

53. She wished to know what measures the State party was taking to promote gender equality and increase the very low rate of women's participation in the job market and in political positions, especially at higher levels, and said that legal measures could be used to redress that situation, for example, through a quota system. She also wished to know what steps were being taken to ensure equal pay, and to incorporate women into the social security system, particularly since so many women were employed in the informal sector.

54. **Mr. Riedel** asked how the constitutional provisions on the rights and freedoms mentioned in paragraphs 19 and 20 of the initial report were being implemented and requested details on any court cases in Turkey in which the Covenant had been invoked.

55. **Mr. Texier** said it was not enough to state that the low employment rate of Kurdish women could be explained by a lack of education. Kurdish women must be afforded the same access to education as all other Turkish citizens, and in their own language.

Articles 6 to 9 of the Covenant

56. **Mr. Texier**, referring to the issue of forced labour, said it seemed that Turkey's Political Parties Law was not in keeping with International Labour Organization (ILO) standards and Convention No. 105 concerning the Abolition of Forced Labour (No. 105) since forced labour could be imposed in Turkey in the context of prison sentences handed down for political reasons. The application of that penalty for holding strikes which were deemed illegal merited legislative review. Indeed, restrictions on the right to strike in Turkey were excessive. Also of concern and running counter to ILO standards was the fact that journalists could be imprisoned for expressing political opinions.

57. He wished to know what measures were being taken to curb the growing unemployment rate, particularly among women, and to help encourage women's participation in the workforce.

58. He wondered what was being done to address the particularly high incidence of unemployment among young people, and how many persons under 16 years of age were working in Turkey in the light of the mention in paragraph 151 of the initial report of a minimum wage for persons in that age bracket, noting that, normally, young people that age should still be in school. Also in relation to the minimum wage, he wished to know whether workers were guaranteed decent working and living conditions, including for their families.

59. **Mr. Kedzia** expressed concern about the State party's inadequate explanation in paragraph 90 of its initial report that the "shift to the unregistered economy" by the female labour force in Turkey was a consequence of globalization. He wondered what impact that shift had on insurance and other aspects, and what steps were being taken to counter that trend.

60. He would welcome more information on the implementation of the Development Programme for 2007–2010 under which it was envisaged that the ratio of women in the workforce would reach 29.6 per cent by 2013. He wished to know whether all social partners had agreed on the text of the draft bill on Amendments of some Provisions of the Trade Unions Act No. 2821 (initial report, para. 221), which was now before Parliament.

61. On the right to strike, he noted that while the State party maintained that its Constitution placed the right to strike on an equal footing with lockouts, in the case of a strike, the Constitution stated that trade unions were liable for any material damage caused at the workplace, whereas there did not seem to be any consequences for employers in the event of a lockout. In that regard, he wished to know whether there were any specific limitations on lockouts by employers, for example to limit the unfair labour practice of hiring permanent replacements for those participating in a strike. He would welcome more information on the impact of lockouts on the right to strike, and data to illustrate the implementation of the right to strike and lockouts.

62. **Ms. Shin** drew attention to the continuing decline in Turkey's employment rate and the State party's mention of the fact that its employment statistics did not take into account women working in the informal sector. In that respect, she wished to know what criteria were used for the collection of its employment data, noting that employment rates should cover all sectors, including the informal sector. She also asked what proportion of companies in Turkey complied with the quotas set for recruiting persons with disabilities as against paying the relevant fines instead.

63. Also, while there were criminal law provisions to prevent sexual harassment in the workplace, she wished to know whether any sexual harassment lawsuits had been brought before a criminal court or referred to labour law.

64. **Mr. Ribeiro Leão** wondered what the status of economic, social and cultural rights was in the context of war or a humanitarian crisis, and requested clarification on what “general or partial mobilization” referred to in the statement that “it shall not be permissible to call a strike or order a lockout in time of war or during a general or partial mobilization” (initial report, para. 235).

65. **Mr. Sadi** (Country Rapporteur) wondered how the State party explained the fact that the economic growth being experienced had not led to parallel job creation. He would also welcome more information on the issue of the restrictive nature of work permits for foreigners and why foreigners could not join trade unions, for example. He also wished to know whether the Government had a policy in place for the repatriation of Turkish citizens working abroad and for encouraging the return or curbing the exodus of Turkish workers.

66. **Mr. Onaner** (Turkey), replying to the Committee’s questions on article 90 of Turkey’s Constitution, said that his Government carefully examined all the international agreements that it ratified to ensure the constitutionality of international texts. His Government’s reservations to international agreements were not intended to affect implementation of their provisions domestically or to detract from their main objectives, but to avoid consequences such as the politicization of a particular article by other countries. Although article 90 did not directly state that individuals could invoke international agreements, it entitled the courts to refer to such agreements in their decisions. The full text of that article would be provided to the Committee in Turkish and in English.

The meeting rose at 1 p.m.