



**Consejo Económico
y Social**

Distr.
GENERAL

E/CN.4/2005/101/Add.3
18 de enero de 2005

ESPAÑOL
Original: INGLÉS

COMISIÓN DE DERECHOS HUMANOS
61º período de sesiones
Tema 17 b) del programa provisional

PROMOCIÓN Y PROTECCIÓN DE LOS DERECHOS HUMANOS

DEFENSORES DE LOS DERECHOS HUMANOS

**Informe presentado por la Sra. Hina Jilani, Representante Especial
del Secretario General sobre la situación de los defensores
de los derechos humanos**

Adición

MISIÓN A TURQUÍA*

* El resumen de este informe se distribuye en todos los idiomas oficiales. El informe, que figura en el anexo al resumen, se distribuye únicamente en el idioma en que se presentó.

Resumen

La Representante Especial llevó a cabo una visita a Turquía del 11 al 20 de octubre de 2004, en la que se reunió con altos cargos del Gobierno, así como con una amplia representación de defensores de derechos humanos y representantes de organizaciones intergubernamentales internacionales y de Estados. El objetivo de la visita era el de evaluar la situación y la función de los defensores de los derechos humanos en Turquía.

En la sección I, la Representante Especial describe el marco jurídico e institucional en que desarrollan su labor los defensores de los derechos humanos en Turquía. Acoge con satisfacción la amplia reforma emprendida por el Gobierno, especialmente en la esfera de la libertad de expresión, reunión y asociación. Destaca la necesidad de profundizar en este proceso y de ampliarlo a las leyes que rigen las fundaciones y los sindicatos. Asimismo acoge con satisfacción la formulación de políticas nacionales y la creación de instituciones para promover y proteger los derechos humanos en el país, aunque observa que siguen echándose en falta iniciativas para garantizar su adecuado funcionamiento.

En la sección II, la Representante Especial examina la capacidad de los defensores de los derechos humanos en Turquía y los obstáculos que todavía existen para el desarrollo de sus actividades. Celebra la importante mejora de su situación, aunque observa que, pese a los cambios en el marco jurídico, los defensores siguen encontrando obstáculos a su labor, en particular respecto de la divulgación de problemas de derechos humanos, la creación de organizaciones no gubernamentales (ONG) y el acceso a la información y la financiación. La Representante Especial expresa su preocupación por el número de inculpaciones y multas onerosas a las que tienen que hacer frente los defensores de los derechos humanos y por la mentalidad de algunas autoridades turcas, muchas de las cuales siguen percibiendo a los defensores como adversarios.

Por último, la Representante Especial señala la necesidad de formular estrategias para seguir aplicando las medidas de reforma y así velar por que los derechos garantizados de la ley puedan ser ejercidos cabalmente en el plano local.

El informe concluye celebrando la mejora de la situación de los defensores de los derechos humanos en los últimos cuatro años y observa que el proceso de reforma tiene muchas posibilidades de provocar un cambio en la situación de dichos defensores, así como en las ideas sobre las organizaciones de derechos humanos en el país. Sin embargo, las transformaciones seguirían estando incompletas sin una cabal aplicación de las reformas en todos los niveles de gobierno. Por ello, el informe concluye con una serie de recomendaciones a fin de velar por la aplicación de la reforma en el plano local y con ello acabar con los obstáculos a las actividades de los defensores de los derechos humanos.

Annex

**REPORT OF THE SPECIAL REPRESENTATIVE OF
THE SECRETARY-GENERAL ON HUMAN RIGHTS
DEFENDERS ON HER VISIT TO TURKEY**

(11-20 OCTOBER 2004)

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 3	4
I. THE HUMAN RIGHTS DEFENDERS' ENVIRONMENT: AN ERA OF REFORMS	4 - 53	4
A. General background on human rights defenders in Turkey	5 - 7	4
B. International legal framework	8	5
C. National legal framework	9 - 33	5
1. Constitutional amendments	11	6
2. Legislative reforms	12 - 33	6
D. National institutions supporting human rights defenders	34 - 53	9
1. New attitudes	35 - 38	9
2. New initiatives	39 - 46	10
3. Persistent gaps	47 - 53	11
II. PERSISTENT OBSTACLES TO THE WORK OF HUMAN RIGHTS DEFENDERS	54 - 103	13
A. Capacity of the defenders' community	54 - 58	13
B. Improvements in the situation of defenders	59 - 61	14
C. Persistent obstacles	62 - 78	14
D. New forms of harassment	79 - 87	17
E. Lack of reform implementation at the local level	88 - 97	19
F. Pockets of resistance	98 - 103	21
III. MOST AFFECTED GROUPS OF DEFENDERS	104 - 106	22
IV. CONCLUSIONS AND RECOMMENDATIONS	107 - 123	22
Appendix: List of meetings		27

Introduction

1. Pursuant to Commission on Human Rights resolutions 2000/61 and 2003/64 the Special Representative of the Secretary-General on human rights defenders conducted an official visit to Turkey from 11 to 20 October 2004. The Special Representative would like to thank the Government of Turkey for extending this invitation and its full support during the visit.

2. The Special Representative also wishes to acknowledge the cooperation extended to her by the Ministry of Foreign Affairs in the preparation of her visit and throughout its duration. She commends the Turkish Government for its transparency and the availability of almost all government officials with whom meetings were requested. She welcomed the opportunity to meet with the Deputy Prime Minister and Foreign Affairs Minister, the Minister of Interior, the President of the Constitutional Court, the Deputy President of the Court of Cassation, the Chief Prosecutor of the Court of Cassation and other senior members of Government and Parliament.

3. Apart from Ankara, the Special Representative visited Diyarbakir, Istanbul and Izmir, where she met Governors, regional Chiefs of Security, Chiefs Prosecutors and Mayors. She wishes to express her appreciation at the warm welcome with which she was received by local authorities of each province. She is grateful to the Office of the United Nations Resident Coordinator and his staff for their invaluable support in the preparation and during the conduct of her visit. She also extends her gratitude to the wide spectrum of members of civil society who met with her, shared their experience and provided her with extremely useful information for her work. She also wishes to extend her thanks to representatives of the international community who made themselves available for discussion.

I. THE HUMAN RIGHTS DEFENDERS' ENVIRONMENT: AN ERA OF REFORMS

4. The Special Representative notes that her visit took place at a significant time when Turkey is entering a new phase of its progress in democracy, with an emphasis on reform particularly in the area of human rights. This movement towards reform has greatly strengthened the prospects for change in areas critical for the promotion and protection of human rights and for the creation of conditions necessary to sustain the pace of institutional development in the country.

A. General background on human rights defenders in Turkey

5. During the 1990s, the political tensions and resulting conflict in the south-eastern region of Turkey created a difficult environment for human rights defenders. The policies and methods adopted by the State to confront the armed movement of the Kurdish Worker's Party (PKK)¹ have been a prolonged and serious concern for the civil society in Turkey. During the conflict, individuals and organizations working at unveiling human rights abuses experienced multiple obstacles and serious hostility to their work. Human rights defenders who denounced the dramatic effects of conflict on the situation of human rights in the south-east and questioned State policies were frequently perceived as a threat to the State and as PKK supporters. As a result, representatives of non-governmental organizations (NGOs), lawyers, doctors, journalists

and many others suffered from serious human rights abuses, including arbitrary detention, ill-treatment and torture, threats, but also disappearances and extrajudicial killings. Those working at monitoring the situation in the south-east, a region under state of emergency from 1987 to 2002, appear to have been disproportionately affected due to the excessive powers vested in the regional authorities by the emergency laws.

6. One of the main independent human rights organizations in Turkey, the Human Rights Association founded in 1986 by a group of lawyers and human rights activists active in denouncing human rights violations in Turkey, reports having faced constant harassment in the 1990s. From 1991 to 1998, the NGO indicated that 12 of its representatives lost their lives because of their human rights activities. Other representatives were threatened, imprisoned, prosecuted and tortured. Its offices were repeatedly raided, vandalized and arbitrarily shut down.

7. The end of the conflict in that region and Turkey's commitment to reforms in 2001 has brought about a promising change in the relationship between State institutions and the human rights community in the country. A general decrease in human rights violations and the comprehensive scale of legislative changes are acknowledged by defenders to have resulted in a significant easing of the environment in which they operate.

B. International legal framework

8. Along with internal reforms, Turkey has recently ratified a number of international human rights instruments, notably: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in September 2003, and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts in May 2004. Turkey has also signed the two optional protocols to the International Covenant on Civil and Political Rights in 2004. As concerns Council of Europe instruments, it has in particular signed Protocol No. 13 to the European Convention on Human Rights concerning the Abolition of the Death Penalty in All Circumstances. Turkey has yet to accede to the Rome Statute of the International Criminal Court.

C. National legal framework

9. The activities of human rights organizations in Turkey are regulated by a multitude of laws and regulations. Apart from provisions contained in the Constitution, these include: Law No. 2908 on Associations, Law No. 2762 on Foundations, the Civil Code, the Turkish Penal Code (TPC), the Press Law, Law No. 2911 on Meetings and Demonstrations, the Law on the Gathering of Donations, the Law on Police Duties and Competencies, and public order legislation. In the past, these laws which contained provision conflicting with rights guaranteed in the International Covenant on Civil and Political Rights and enshrined in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms were used to curtail human rights defenders' freedom of expression, assembly and association, mostly for reasons of national security.

10. Since 2001 however, the last two Governments have launched a series of impressive constitutional and legislative reforms. In many instances, changes addressed important shortcomings in the domain of human rights protection. The number, scope and pace of reforms have made it difficult to monitor all developments. Nonetheless, the Special Representative would like to examine changes most relevant to the situation of human rights defenders.

1. Constitutional amendments

11. On 3 October 2001, the preamble and 33 articles of the old Constitution, a text heavily criticized for its restrictions of fundamental freedoms, were amended liberalizing provisions concerning freedom of expression (art. 26), association (art. 33) and assembly (art. 34) and abolishing death penalty. Another package of constitutional reforms adopted in May 2004 revised article 90 and recognized the supremacy of ratified international and European conventions over domestic law.

2. Legislative reforms

12. Nine legislative packages were also passed in the last three years and new civil, penal and criminal procedure codes were adopted. The reforms include key measures on fundamental freedoms, of particular relevance to the framework in which human rights defenders operate.

Freedom of expression

13. In the past, civil, criminal and electoral laws and the laws governing associations, the press and the electronic media contained restrictions on freedoms of expression and information that were used to obstruct human rights activities, in particular the issuing of press releases, reporting on human rights abuses, or raising awareness on the human rights situation in the country.

14. Several articles of the Turkish Penal Code frequently used to prosecute defenders have now been amended. In particular, the first reform package reduced the maximum sentence provided by article 159 of the Penal Code for “insulting the State and State institutions and threats to the indivisible unity of the Turkish Republic” from six to three years. The seventh reform package reduced its minimum sentence from one year to six months and narrowed its scope by excluding opinions intended only to criticize but not to “insult” and “deride” institutions. In the seventh reform package, article 169 (“aiding and abetting terrorist organizations”) was narrowed by removing the provision that included in its scope “actions which facilitated the operation of terrorist organizations in any manner whatsoever”. Lastly, article 312/2 that criminalized “incitement to enmity and hatred” was amended, abolishing fines and establishing the “endangering of public order” as an essential element of the crime.

15. The legislative reforms also addressed restrictions to freedom of expression within the Anti-Terror Law. In particular, the seventh package strengthened the amendments made by the first package to article 7 of this law concerning “aiding and abetting a terrorist organization” by inserting a restriction to “incitement to resorting to violence or other terrorist means”. Article 8 of the Anti-Terror Law concerning “propaganda against the indivisible unity of the State” was repealed as part of the sixth reform package.

16. In January 2003, the requirement to submit all declarations and press releases for inspection by the highest local civilian authority 24 hours before their publication was repealed. Declarations and publications can still be seized by the highest local civilian authority in some cases, but must be forwarded to a court of first instance within 24 hours, which must hand down a decision within 48 hours.

17. The fourth reform package amended article 15 of the Press Law to protect owners of periodicals, editors and writers from being forced to reveal their sources and scientific and artistic works were excluded from the scope of article 426 of the law, which bans publications on the grounds of moral principles. On 9 June 2004, a new press law (Law No. 5187) was passed. In 2004, State television and radio channels began broadcasts in languages other than Turkish, thereby implementing the August 2002 law.

18. While welcoming these extensive reforms, defenders have expressed concerns that amendments to the law remain insufficient to guarantee the freedom of expression they need to conduct their activities. In particular, changes to article 159 reduced sentences for “insulting or belittling” State bodies, but retained the offence of criticizing “Turkishness, the Republic, the Grand National Assembly or the moral personage of the Government or the military security forces of the State or the moral personage of the judiciary”. Similarly, defenders apprehend that the amendment of 9 August 2002, which limits the scope of punishable offences to situations with intent to insult, may still be interpreted in such a way as to restrict freedom of expression. These apprehensions find justification when viewed in the light of actions such as the criminal prosecution of the head of the Elazığ branch of the HRA on 8 December 2003 under the amended article 159, for a speech given on 26 May 2003 during a panel on “Human Rights in Turkey”.

19. Concern was also expressed regarding restrictions to freedom of expression introduced in article 26 of the Constitution in 2001 “for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State ...” by defenders who indicated that such wording had been used in the past to penalize peaceful expression of opinion or dissenting views.

Freedom of assembly

20. Existing restrictions on peaceful assembly formerly used to obstruct expression of public protest have been eased. The October 2002 regulation on the implementation of the Law on Public Meetings and Demonstration Marches confirmed a reduction from 72 to 48 hours in the time required to request permission to hold a demonstration. The seventh reform package limited the ability of governors to ban or postpone meetings to cases where there is a “clear and imminent threat of a criminal offence being committed”.

21. The Special Representative welcomes such liberalization but notes that the law retains certain restrictions, in particular with regard to places where public gatherings can be held - the law imposes a 300-metre distance from any public building or major road crossing. Demonstrations and press releases by nature seek to draw public attention, and restricting them to places away from crowded streets and areas minimizes their ability to reach citizens, and can be seen as defeating the object of the right.

Freedom of association

22. Crucial to the work of human rights defenders is the new law to regulate freedom of association that will replace the existing restrictive regime, which seriously impeded the creation and operation of human rights organizations. Several important changes in the new legislation should facilitate the establishment and development of associations and ensure that they are no longer seen as a threat.

23. In particular, the Special Representative notes that article 5 of the current law has been repealed and replaced by article 30 which broadens the scope of authorized objectives for NGOs to include “cultural” aims such as the defence of minorities.

24. Restrictions on founders and members of associations have been relaxed. NGO statutes have been simplified and a standard statute model is being developed.

25. The possibility for State authorities to interfere in NGO operations has also been limited. Security forces will only be allowed to enter the premises of an organization with a warrant. In case of irregularities, governors would first have to issue a written warning, providing NGOs with an opportunity to rectify the situation before sanctions can be taken. The list of infringements leading to a penalty has been reduced.

26. The new law also liberalizes international cooperation. Permission for meetings with foreigners will no longer be required, and procedures for national NGOs to establish branches abroad or international NGOs to open branches in Turkey have been simplified. Receiving funding from abroad would only be submitted prior to notification to relevant authorities. Some of these provisions, however, resulted in the veto opposed by the president on grounds of unconstitutionality.

27. The Special Representative, nevertheless, welcomes these changes as a remarkable step towards improving the situation of human rights organizations and hopes that the legislative reforms will be accompanied by a change in the perception of human rights defenders as adversaries that, she noted, still persists at certain levels of Government.

28. It must also be noted that the new law on association only applies to NGOs formed as associations. Foundations and religious congregations continue to be regulated by very restrictive statutes and to be supervised by the Directorate-General for Foundations. A number of human rights organizations including the Human Rights Foundation of Turkey, an organization working on torture, have been formed as foundations. One of the problems with the current legislation regulating foundations is that considerable financial resources are required to set up a foundation and that there are limitations on fundraising.

29. At the time of her visit, the new law had not yet been passed and associations were still regulated by the restrictive regime of Law No. 2908. She welcomes reports that since then Parliament has adopted it.

Counter-terrorism legislation

30. Apart from restrictions on their rights to express and organize, defenders suffered particularly from the use of anti-terrorism legislation. The Anti-Terror Law was amended to exclude non-violent actions from the scope of its application. The Special Representative welcomes the abolition as part of the constitutional package of 2004 of security courts, which had been used to prosecute human rights defenders.

Trade union legislation

31. Legislation regulating trade unions dates back to the 1980s, lacks conformity to international standards and has not been revised. While the right to form and participate in collective action is legally recognized, the restrictive regime applied to trade unions in other aspects dilutes the efficiency of this right. It was brought to the Special Representative's attention that candidates must have worked for at least 10 years in their sector before they qualify for office in a trade union. Individuals wishing to join a union must register their membership with a notary at a high fee. Trade unions which, contrary to associations now supervised by the Department of Association, continue to fall under the oversight of the security forces, must secure official authorization to organize meetings or demonstrations and allow the police to attend and record their discussions.

32. The right to strike, while officially recognized, is limited in practice. General strikes and sympathy strikes and go-slows are forbidden and strikes are banned in numerous sectors especially in the public service (public transport, health services, and teachers). The right to collective bargaining is also limited, with only very few unions allowed to participate in collective negotiations.

33. The Special Representative welcomes the commitment of the Government to change, expressed in the scope and pace of the reform. However, as pointed out above, in certain areas relevant to the work of human rights defenders reforms have relaxed but not removed restrictions. Further improvements are thus still necessary to complete the reform process.

D. National institutions supporting human rights defenders

34. Along with the reform process, the Government displayed a serious commitment to addressing human rights issues in its policies. As part of the reform process, it has started developing national institutions to protect human rights. Existing judicial institutions, benefiting from the constitutional and legal reforms, have started working as guardians of fundamental freedoms.

1. New attitudes

35. Following the revision of the Constitution in October 2001, the Constitutional Court (established in 1962 to assess the constitutionality of legislation), has been empowered to examine challenges to the constitutionality of the 600 laws passed in the wake of the 1980 coup d'état, which will strengthen the Constitutional Court's protection of individual

liberties. Additionally, the Special Representative was informed that international treaties ratified by Turkey, in particular concerning human rights, are now directly applicable into Turkish law and shall prevail in a conflict with domestic legislation.

36. Traditionally, due to the absence of an appeals level in the Turkish judiciary system, the Court of Cassation which represents the Turkish Supreme Court of Appeals performed the role of a court of appeal. In 2004, however, appeals courts were established by law to review cases on their merits.

37. The Special Representative was informed that the Court of Cassation has started to play a very positive role as the guardian of fundamental freedoms by issuing decisions referring to international human rights standards. The Izmir branch of the Human Rights Foundation of Turkey reported to the Special Representative that in September 2004, the Court had quashed a sentence passed against them under article 159 of the Penal Code for “insulting the Ministry of Justice” on the basis of not taking into account amendments made to the article, which required the “intent” to insult. The Deputy-President of the Cassation Court and many defenders have expressed hope that this new attitude by the Court will eventually result in subordinate courts also using these standards in their assessment of the legality of proceedings initiated in the courts. The Special Representative finds that this prospect has a special significance for the disturbing issue of the use of judicial proceedings as a means to harass, intimidate and punish defenders for their activities in defence of human rights.

38. The Special Representative met with the Chair of the Human Rights Parliamentary Commission created in 1990. The Commission, which functions as a monitoring mechanism, is composed of 24 members reflecting the distribution of seats in Parliament. It conducts on-site visits to detentions centres and prisons, receives and investigates individual applications concerning alleged violations of human rights, and issues reports that are forwarded to the relevant institutions or Government offices for action. Defenders have reported that this institution has been open to dialogue with NGOs.

2. New initiatives

39. In 2001, the Human Rights Presidency was established by the Government in the Prime Minister’s office with the mission to oversee human rights issues including the implementation of efforts in this field and to coordinate with relevant private and public structures working on human rights.

40. The Deputy Prime Minister/Minister of Foreign Affairs, in charge of human rights in the Government, chairs the Human Rights High Council, which brings together the undersecretaries of the Prime Ministry, the Minister of Justice, of the Interior, of National Education, and Health. The Council oversees the reports of the Human Rights Advisory Council, a subordinate body which consists of high-level government officials and representatives of NGOs, including the Bar Association and the Medical Association. The Advisory Council drafts recommendations regarding human rights policy and its implementation for consideration by the Government.

41. During her meetings, the Special Representative was informed that in 2003, the Human Rights Presidency had conducted an awareness campaign about human rights and existing mechanisms to report abuses. Posters were printed to encourage the population to resort to the provincial and human rights boards, a questionnaire was developed for people to report abuses, which can be submitted through complaint boxes or on line.
42. Human Rights Boards also referred to as Human Rights Councils have been established since 2001 at the provincial and district levels to conduct investigations of allegations of human rights abuses and transmit their findings to competent authorities for relevant administrative or legal action. They are also in charge of human rights education at the local level. The Boards are chaired by the governor or deputy governor and their membership includes representatives of public offices including the mayor, representatives of the Provincial General Assembly, local representatives of political parties represented in the Grand National Assembly, university rectors, a lawyer identified by the governor, a representative from the trade and industry chamber and one from a trade union, both identified by the governorship, a representative of the media identified by the governorship, the chairman from the Mukhtar's association, a representative of the school-parent union identified by the governor, the local bar association and medical chamber, and at least three NGOs identified by the governorship.
43. According to official sources, 931 boards have been established. Every board has an application desk in charge of reviewing applications for proper follow-up. Boards have monthly meetings and report to the Human Rights Presidency on a quarterly basis.
44. The supervision of associations was transferred from the security services to a newly created Department of Associations within the Ministry of Interior. Defenders universally acknowledged that this represents a positive development to the old regime, where the police and security services were responsible for the administration of associations and NGOs.
45. In July 2003, the newly established Justice Academy started to train candidate and serving judges and prosecutors. A particular focus was given to international law and human rights, and manual and handbooks on human rights were distributed. Training is also being provided to staff from the Ministry of Justice, lawyers and notaries.
46. The Special Representative was also informed that the subject of human rights has been included in the training of the police at the local level. In Izmir, police training manuals contain a chapter on human rights and in Bingöl, the chief of police has developed leaflets to raise awareness about human rights violations and the role of the police in combating them.

3. Persistent gaps

47. Despite these promising initiatives, the Special Representative noted that some of these institutions have not started to function in practice and others present serious shortcomings. In some regions, human rights boards still have to be officially established while others have not yet convened meetings or done so only sporadically. Human rights defenders have expressed great reluctance to participate in these boards and questioned the principle of having a State body looking into violations committed by State agents. In particular, they have questioned their independence and composition.

48. After careful review of these boards, the Special Representative finds that despite reforms to exclude the security forces, composition and the selection process of these boards remain problematic. Board members consist for the most part of representatives of the State or political parties in power, while the rest are selected at the discretion of the governor. In many instances, NGOs invited to participate have little human rights knowledge or experience, and there are apprehensions that selection is largely based on political affiliation or on considerations other than commitment and relevance to human rights. While there may be some benefit in including other sectors of the civil society besides human rights NGOs, the fundamental purpose of these boards is to focus on human rights issues and address complaints of violations. The expertise, experience and relevance of members of these boards will ultimately determine the quality of their work and success in achieving the purpose of their establishment. At the present, this expectation seems to be far from realistic.

49. The modus operandi of the boards is also problematic. Boards are chaired by governors who control the agenda of meetings. Cases reviewed are decided upon by a majority vote, which in light of the composition of the boards, leaves NGOs and human rights experts with only little say. Additionally, boards are dependent on the governorship to provide them with offices and secretarial support as they have no budget of their own.

50. As a result of their lack of independence and, for some, of a human rights-based approach, many Turkish human rights NGOs, including the Human Rights Association and the Human Rights Federation of Turkey, still decline participating in the boards. In several cases, defenders also questioned the genuineness of the State's desire to have them participate in the process. NGOs indicated that often the Governorship had invited them on the Boards while at the same time, initiating prosecutions against them. For instance, in 2002, the Izmir branch of the Human Rights Association received an invitation from the Governor to participate in the boards. The same week, the police raided the organization's office and confiscated their files and computers.

51. In her meetings, the Special Representative learnt that despite having been in existence for three years, most boards have received only few cases. The Deputy Governor of Bingöl reported that only four or five complaints had been received so far. Contrary to statements made by some officials, the Special Representative does not believe that this reflects the absence of human rights problems but rather a lack of trust in or awareness of the system. She also notes that a number of the cases reported to these boards are not cases of human rights abuses but rather cases for city council mediations.

52. Another limitation to the positive steps taken by the Government in the field of human rights is that the transfer of the supervision of associations away from the security forces is not yet complete. In some areas, associations temporarily remain under the control of the security services, notably in Istanbul and Ankara. In areas where the transfer has already taken place, officials responsible for supervising and inspecting associations under the previous arrangement have been transferred to the new Department of Association. A change of structure has undeniably taken place; however, renewed efforts are required to ensure that the mindset of those working in the Department follows the spirit of the reform.

53. Despite encouraging initiatives, the Special Representative notes that as of yet, no independent national human rights body exists to monitor human rights nationally and to conduct independent investigations. While the Parliamentary Human Rights Commission accomplishes commendable work, by nature, it cannot be considered an independent human rights body. Besides its composition, its authority is limited as it cannot table legislation, is not consulted on draft bills and does not have its own powers of investigation. She also notes that the law concerning the creation of an ombudsperson as an independent and impartial mediator between civil society and the authorities drafted in 2001 has not yet been passed.

II. PERSISTENT OBSTACLES TO THE WORK OF HUMAN RIGHTS DEFENDERS

A. Capacity of the defenders' community

54. In the course of her visit, the Special Representative met with a host of civil society representatives remarkable for their number and enthusiasm. The Special Representative was impressed to see how vibrant the human rights movement has been in Turkey despite difficult circumstances. NGOs have managed to document cases, raise issues within and outside the country and to create national networks of human rights defenders through the creation of temporary platforms to address specific issues. Many Turkish human rights organizations are members of recognized international human rights or NGOs or work in cooperation with them. Such cooperation has allowed them to access international human rights bodies, including the United Nations Commission on Human Rights.

55. The Special Representative is encouraged by the existence of a genuine and active human rights community in Turkey, which is actively implanted throughout the country including NGOs branches at the municipal level.

56. A majority of human rights defenders in Turkey work within organizations - associations, foundations, professional boards, or trade unions. A few act individually or as members of platforms that are loose, temporary, issue-oriented structures. Defenders overwhelmingly come from civil society, while only a few are civil servants, most of them teachers. Turkish defenders come from varied backgrounds, including lawyers, human rights activists, physicians, trade unionists, students, journalists, writers, artists, academics, which leads to a diverse movement covering a wide range of issues.

57. Defenders work on a vast array of issues with NGOs, mostly on the protection of civil rights including freedom of expression, fair trial, torture and ill-treatment, and democratic rights. A number of organizations also work on economic, social and cultural rights, in particular minority rights, language rights, education and labour rights. Women's issues are also well represented in civil society. A full list of all the NGOs the Special Representative has met can be found in the appendix to the present report.

Polarization

58. In the course of her dialogue with both authorities and human rights defenders, the Special Representative observed the existence of an extremely polarized environment. It was pointed out to her that in the 1980s and 1990s, many organizations were active in denouncing abuses

perpetrated in the course of countering the violence in the south-eastern region and in calling for the respect of all human rights including that of the Kurdish population, a position that the Kurdish armed groups also claimed as a part of their agenda. As such, and despite their peaceful activities, defenders were perceived by many as siding with the armed groups and thus heavily targeted. The effects of such a polarized environment are long lasting and their impact continues to be felt today. Mutual distrust remains extremely high and most organizations, while acknowledging changes, continue to express extreme caution and question the genuineness of the Government's efforts.

B. Improvements in the situation of defenders

59. Defenders have acknowledged that their situation has notably improved since the end of the armed conflict and welcomed the relaxing effect of the legislative reforms. The complete lifting of the state of emergency in the south-eastern region in 2002 has also had a positive impact on their situation. The last report of an attempted killing dates back to 1998, when the director of the Human Rights Association, Arkin Birdal was shot at. Attacks, torture, ill-treatment and assaults against defenders have also abated.

60. In the past two years, raids against organizations, closure of offices and seizing of materials have decreased. The last report of raids dates back to December 2003 against the Van and Hakkari branches of the Human Rights Association. The practice of closing down offices, common in the 1990s, has apparently stopped.

61. Generally, defenders have reported that their personal safety has improved but insisted that they continue to suffer from obstacles and reprisals, noting a shift from overt targeting through killings, assaults and torture to more insidious targeting by legal action, defamation and fines.

C. Persistent obstacles

1. Difficulties to publicize human rights concerns and surveillance and policing of demonstrations

62. In its comments on the report, the Government referred to three circulars issued by the Ministry of Interior with instructions to the concerned authorities regarding activities of the civil society for the promotion and protection of human rights.² The Special Representative has noted the instructions and guidelines in these circulars and sees these as important and positive measures, indicating that the Government is committed to rectifying the practices adopted by the security forces and other State agencies that may impede NGO activities or peaceful civil action for the promotion and protection of human rights. However, from the reports she has received the Special Representative concludes that compliance with the instructions issued by the Ministry is still erratic and not implemented to an extent that prevents the occurrence of violations.

63. Defenders and organizations reported that their phones continue to be tapped, their premises watched and their members followed. Several members of the Human Rights Association in Istanbul who had organized a private picnic over their cell phones last June

reported that the police arrived at the picnic location, asking for their authorization to hold a meeting. Human rights defenders have reported that security forces have initiated cases against them based on information gathered through surveillance. In his meeting with the Special Representative, the Security Chief of Istanbul did not deny that intelligence was gathered but pointed out that it is carried out through legal procedures.

64. Defenders also reported that press conferences and public gatherings are invariably attended by numerous police officers recording or photographing participants. Heavy police presence results in deterring attendance of the population at human rights events and intimidates defenders.

65. In practice, press releases, reports or demonstrations publicizing human rights concerns still encounter obstacles. In December 2003 for instance, posters published and distributed by the Human Rights Association to commemorate Human Rights Day were confiscated by the public prosecutor in Van on the basis that some of the posters contained Kurdish, that their being displayed would damage the indivisible integrity of the State, and that the association was in this way trying to create minorities in the Turkish Republic on the basis of race, religion, sect and regional difference. Posters were then also confiscated in Hakkari, Adıyaman and Mardin.

66. The policing of demonstrations in Turkey remains an area of concern for defenders. Cases where the police outnumber defenders are numerous and reports of use of excessive force against protesters, in particular students and trade unions, continue. Defenders also indicated that those who report ill-treatment during demonstrations are often charged with “resisting arrest by force” (art. 258) to legitimize adverse action. While the authorities stated that force is only used when demonstrators become violent or act in breach of public order, the Special Representative emphasizes that it is the responsibility of the State to show restraint in its methods of crowd control.

67. Due to continuing restrictions on authorized locations for demonstrations, many protests are considered illegal. As a result, many defenders are arrested for participating in unlawful gatherings.

2. Administrative hurdles

68. The old association law was still being applied at the time of the visit. Under its regime, defenders continued to encounter numerous administrative hurdles in setting up and operating organizations. While legal requirements to form an association appear straightforward - seven persons (real or legal), a name, a logo, a statute, and an application - in practice defenders face a cumbersome administrative process which can result in legal proceedings for minor administrative irregularities in their applications. In 2003, a case was initiated by the public prosecutor against the Human Rights Agenda in Izmir, a new human rights association, because some articles in its proposed statute were not in the right order and the indicated membership fee was monthly rather than yearly.

69. Organizations continue to report difficulties in opening provincial branches. In particular, Mazlum Der reported not being authorized to use a local member's legal practice as the contact address for their branch and having to open a separate office, resulting in additional costs.

70. The ability to form an organization and be a member continues to be restricted, excluding members of certain public services and individuals convicted of certain offences. The requirements to check the criminal records of each member for previous convictions and have certification of their address and identity cards have proven particularly cumbersome for larger associations with numerous members and branches. Moreover, in 2003, information thereby gathered continued to be used as the basis for legal proceedings against NGO members.

3. Monitoring of NGO activities

71. Defenders' activities continue to be closely monitored by State authorities. While the provisions requiring Government Commissioners to take notes and record information at general assemblies have been repealed in the new association law, the practice continues. On 3 October 2004, a Government Commissioner attempted to enter a meeting of the Ankara branch of the Human Rights Association with recording devices. Defenders also reported that security forces are often present at private meetings and sometimes outnumber NGO members. Many organizations reported that security forces often request the identification cards of people in attendance and record their identity.

72. The Human Rights Federation of Turkey reported that in June 2003 two plain clothes police officers demanded to observe a seminar for forensic practitioners on the Istanbul Protocol, organized jointly with the Turkish Medical Association and the Association of Forensic Science Practitioners, on the basis of spreading propaganda for illegal organizations. The organizers refused and wrote a complaint to the Governor of Izmir. As a result, an investigation was opened against practitioners attending the seminar, on the basis that during the training propaganda on behalf of PKK/KADEK had been carried out, the spiritual personality of the State had been insulted, and the security forces had been slandered.

4. NGO aims

73. By law, NGOs can only conduct activities foreseen in their statute. Nearly all defenders have reported encountering obstacles in carrying out some of their activities because the police or the Department of Association decided they were outside of their mandate. In particular, a case was lodged against Gök Der, a migrants' organization, on the grounds of publishing a report on forced displacement. Defenders reported that under these provisions, organizations working on different human rights issues need to create platforms to join in each others' actions. The new law maintains such oversight by the Department of Associations.

74. The Special Representative was also informed that civil servants organizations such as teachers' trade unions were forbidden to engage in "political" activities. It is reported that this provision has been interpreted broadly to prevent civil servants to engage in civil actions. In one instance, this ban applied to civil servants wanting to participate in demonstrations against the war in Iraq, in another case it applied to teachers voicing demands on the length of maternity leave.

5. Lack of access

75. Many defenders have reported a lack of access to places of detentions and prisons. For example, the Human Rights Federation of Turkey in Izmir was denied access to a prison to monitor a riot. Lawyers have reported being submitted to minute and at times humiliating body searches when visiting their clients, especially female lawyers. Defenders also reported being denied access to official information, in particular statistics concerning human rights.

76. Authorities indicated that detention centres and prisons are now monitored by the Reform Monitoring Committee. The Special Representative notes however that access must also be granted to independent NGOs.

6. International cooperation and funding

77. Under the current legislation, holding meetings with representatives of foreign organizations, including the United Nations, requires a specific permission. On several occasions, defenders indicated that they could be prosecuted for having met with the Special Representative. The Diyarbakir Bar Association reported that a case had been lodged in August 2004 against a writers' organization for meeting with experts from the European Union. Similarly, Turkish defenders invited abroad still need to notify authorities and provide extensive details about the event, inviting organization and invitee.

78. At the time of the visit, fundraising continued to be tightly regulated by a regime of authorizations. In July 2003, the General Directorate of Foundations filed a case against the Human Rights Federation of Turkey and its board members for violating law No. 2860 for having collected donations via the Internet, translating and distributing its reports to international human rights observers, and meeting and providing information to the United Nations Special Rapporteur on extrajudicial summary or arbitrary executions, the Council of Europe's Commissioner for Human Rights and other human rights observers without permission. After over a year and a half of proceedings, the case was dropped on 9 March 2004 because the representative of the Directorate failed to appear. Despite this welcomed outcome, such proceedings against organizations have a serious negative impact on the human rights organizations.

D. New forms of harassment

1. Legal proceedings

79. Since the end of the conflict, a new form of harassment has emerged. Defenders all reported facing massive numbers of trials and investigations under various laws and regulations. The Human Rights Association reported that while 300 cases had been opened against the organization and its staff in the first 14 years of its existence, in the last 3 years there had been over 450 cases. An even greater number of investigations are reported to have been initiated by prosecutors against the organization and its branches without resulting in prosecution.

80. Executive members of NGOs, personally liable, also face a multitude of repeated proceedings. The head of the Diyarbakir branch of Human Rights Association reported that 56 cases were filed against the former president of the branch. A physician and member of the Human Rights Federation of Turkey reported 60 cases against him. The deputy chair of the Human Rights Association and head of a legal aid project indicated that she has faced at least 87 cases.

81. Most cases were filed based on articles of the Penal Code relating to freedom of expression in connection with unauthorized press statements. They contain charges such as insulting the State or the police, promoting separatism, or supporting a terrorist organizations. Others relate to releasing reports on cases of torture, minorities and internally displaced persons. Writing and publishing articles on human rights has also generated prosecution. For example, Eren Keskin and Erdal Tas, the chief editors of the daily *Yeni Gundem* were both charged under article 159 with insulting the armed forces for statements published in the newspaper regarding victims of torture.

82. Public use of Kurdish or promoting the cultural rights of Kurds has also provided the basis for many proceedings. On 26 February 2003, 21 members of Giyav, a migration organization, were tried under article 169 for “aiding and harbouring an illegal organization” in connection to statements such as “Kurdish mother tongue”. In another case, despite the legislative amendments, Egitim Sen was charged on 15 September 2004 in connection with education in Kurdish.

83. Other legal proceedings have included charges of misconduct against lawyers under article 240 of the Penal Code. On 27 November 2001, 27 lawyers representing political opponents who had physically interposed themselves between their clients and the gendarmes who were attacking them in the courtroom were charged for inciting the accused to resistance. Three lawyers from the Diyarbakir Bar Association were also indicted in June 2003 on charges of “misconduct” and “abusing legal responsibility” in connection with their work in the cases of villagers whose houses had been burnt during the conflict. Proceedings against civil servants and members of trade unions have also been frequent. In one case, teachers faced investigation for taking part in a demonstration in Ankara, against the war in Iraq on the basis that they had not requested permission to leave the province.

84. Some proceedings have resulted in prison sentences. A physician, member of the Human Rights Federation of Turkey, was sentenced to 18 months for statements on F-type prisons. Most proceedings end in acquittals or fines. Regardless of their outcome, such an abusive use of prosecution results in diverting the time and financial and human resources of human rights defenders away from their activities. Defenders reported that they devoted considerable time and efforts to countering such attacks and confessed difficulty in keeping track of all pending cases.

2. Heavy fines

85. The number of cases leading to prison sentences have decreased, but defenders are regularly fined. Instead of abrogating offences, a number of reforms have replaced prison sentences by fines. The President of the Izmir Human Rights Association stated that he

receives notifications of fines for various irregularities every week. Additionally, a number of courts commute prison sentences against defenders into fines. For instance, the one-year sentence against the President of Gök Der was converted into a fine of over US\$ 2,000 on the basis of her “good conduct” during the proceedings.

86. Recurrent and heavy financial penalties bear some serious long-term consequences for the financial health of both the individuals and the organizations concerned. Some NGOs have faced further proceedings for not being able to pay their fines. While in most countries, organizations acquire legal personality to shield their board members from direct responsibility, under article 70 of the Civil Code, in Turkey all members of an association are personally liable for the payment of fines.

3. Professional sanctions

87. Defenders have also faced professional sanctions as reprisals for their work. Teachers have reported that union members are denied promotion because of their union activities. The public worker’s organization KESK mentioned that some unionized workers had been sent into “internal exile” by being “lent” by their employers to another firm. In one instance, Financi Sebnem, a professor at the Istanbul University Medical Faculty (Forensic Science Branch) was removed from her chair at the University and subsequently from her position within the National Forensic Institute as a reprisal against her activities regarding torture. In another case, a lawyer was imposed disciplinary measures by the Turkish Bar Union after having been convicted for a criminal offence in connection with her human rights work.

E. Lack of reform implementation at the local level

88. While legislative reforms should have resulted in a decrease in proceedings against defenders, the number of initiated and pending cases remains high. While at the central level, the Government is pursuing a policy of reform to relax the environment in which defenders work, it appears that the spirit of the reform has not trickled down to all levels in charge of putting it in practice.

1. Using alternative legal provisions

89. It generally appears that prosecutors have not actively engaged in the implementation of the reform. Proceedings against defenders have continued, in spite of amendments to the legislation. Some prosecutors have used alternative articles or qualifications to circumvent amended laws and perpetuated a restrictive environment for human rights defenders on the ground. For instance, on 11 February 2004, members of the Human Right Foundation of Turkey were charged under article 536 of the Penal Code (hanging posters on municipal billboards without permission) for hanging posters in Kurdish on Human Rights Day. Their posters had been confiscated months after the provision banning the use of Kurdish in NGO activities had been repealed.

2. Problems in the interpretations of new provisions

90. In practice, the implementation and interpretation of amended articles 159 and 312 of the Turkish Penal Code and of article 7 of the Anti-Terror Law have not been uniform. Heavy penalties, including imprisonment of journalists, authors and publishers who criticize State institutions and policies or publish the statements of certain political groups continue to be reported, publications and printing equipment confiscated, and heavy fines imposed on publishers and printers in some regions.

91. For instance, in March 2002, the Ankara public prosecutor indicted Filiz Kalaci, a lawyer, on charges of insulting the Ministry of Justice for having made statements in *Cumhuriyet*, a newspaper advocating for a reform of the D-type prison, despite amendments to article 159 that clearly aimed at excluding statements merely critical of government policies or State institutions. While the Special Representative welcomes the acquittal of Mr. Kalaci in May 2003, she notes that the decision of the prosecutor to press charges against him despite the reform attest to the need for a change of mindset.

92. Some judges have also shown reluctance to implement the reforms. In June 2002, Alp Ayan and Mehmet Barindik were sentenced to one year's imprisonment under article 159 for making a press statement concerning F-type prisons. The Court of Cassation, in view of the new amendments to article 159, abrogated the decisions of the Izmir court in August 2002. On 19 June 2003, the case returned to the Izmir heavy penal court. While the prosecutor demanded the release of the defendants on the grounds that under the amended article the statements pronounced were not beyond criticism, the Izmir court decided to reiterate its original decision and condemned both men to a one-year sentence. This attitude on the part of some within the judiciary is hampering concrete change at the local level.

3. Need for strong signals

93. The interpretation and implementation of the amended legislation should be pursued in a consistent and systematic manner in order to ensure the actual enjoyment of rights on the ground.

94. Central authorities need to develop tactics for their reforms to be implemented locally and send strong signals to State actors at local level to ensure that the framework established within the new laws becomes a reality on the ground. Where necessary, the interpretation of the law within the spirit of the reform should be made clear through circulars to ensure that the spirit of the reform is adhered to and rights are exercised on the ground. Judges and prosecutors should be trained on the new laws and amended articles in order to ensure that legislation is applied as it was meant by the legislators.

95. Efforts to hold perpetrators of violations accountable are needed. So far impunity for violations committed by State agents, in particular against human rights defenders, remains high. While administrative authorizations to prosecute security officers have been removed (except for allegations of extrajudicial killings) and despite efforts undertaken in a few provinces, the indictment, trial and sentencing of State agents for misconduct remains low.

96. The Special Representative notes that in certain provinces, notably in Izmir, efforts have been made to investigate allegations of misconduct by State agents and disciplinary proceedings have been started. However, the Izmir Bar Association reports that out of the 115 cases of reported allegations of torture that they monitor, only 36 were finalized. Out of 154 police tried, 9 were sentenced, 6 of which having their sentence postponed, while 145 were acquitted. Whereas steps to ensure administrative accountability are welcomed, criminal and civil proceedings in cases of human rights abuses are needed to ensure full accountability.

97. This situation results in a mixed message from the Government. On the one hand, the Government refers to “zero tolerance” for torture and encourages the respect for human rights; however, no serious measures have been taken on the ground to ensure criminal accountability of perpetrators and their removal from office.

F. Pockets of resistance

98. The Special Representative is encouraged by the genuine efforts of the Government of Turkey to move forward with its reforms in the field of human rights. Nevertheless, she also observed the existence of pockets of resistance within the State.

99. Overall, authorities continue to consider human rights defenders with great hostility. High-level officials have continued to publicly denigrate the work of human rights organizations. All but one of the security chiefs, a number of governorship representatives and prosecutors, during their meeting with the Special Representative, linked human rights defenders to terrorist activities and organizations. Referring to the Human Rights Association, the Deputy Governor of Bingöl stated that the real purpose of this organization was not to help people but to trouble them. Some security chiefs referred to the infiltration of human rights organizations by the PKK. Others bluntly asserted that well-recognized human rights groups had engaged in illegal terrorist activities such as hiding weapons. It must be noted, however, that defenders and human rights organizations have never proven to be actually engaging in violent activities nor been sentenced for terrorist acts.

100. At best, human rights defenders were perceived as “ideological” organizations “prejudiced” against the State that exaggerate human rights problems and are not willing to acknowledge progress. Security forces and public prosecutors, among others, have displayed greater reluctance to consider human rights defenders as a positive force within society, and many within the State apparatus continue to see them as a potential threat from which the State needs to be protected.

101. The Special Representative was equally surprised to observe that overall, Turkish authorities even at the highest level view the role of civil society as providing tools for the State to further its policies. Organizations working on issues supported by the Government, such as some women’s organizations, have reported encountering fewer difficulties. One organization working on honour killing in Diyarbakir even reported receiving help from the local police. In contrast, NGOs critical of Government policies see their activities hindered. While the Special Representative encourages the development of a dialogue between civil society and the Government, she emphasizes that human rights defenders have a specific and independent function to perform, which cannot amount to their participation in State bodies or the implementation of projects and policies sponsored by the Government.

102. Defenders have acknowledged being increasingly invited to participate in State consultations or bodies. Nearly all human rights defenders, however, expressed disappointment at not having been consulted about the reform packages. Overall, they feel that so far, consultation initiatives have only been formal and their input not reflected. Consultation needs to be wider and better conducted to allow for a true dialogue with civil society. Continued harassment by State authorities results in reluctance from defenders to fully embrace constructive cooperation with the State.

103. The media also continue to depict defenders with defiance in their reports. The Special Representative notes that the media play a crucial role in informing collective perceptions of human rights defenders and situations. Where reports continue to depict human rights defenders as a threat, their harassment will continue to be regarded as legitimate by the population.

III. MOST AFFECTED GROUPS OF DEFENDERS

104. While all human rights defenders have suffered in Turkey, the State has shown particular sensitivity to a number of specific issues. Defenders working on minority issues have been disproportionately exposed to harassment by the Government in the context of violence in the south-east. Authorities have often failed to distinguish between human rights defenders advocating peacefully for the respect of the recognized social and cultural rights of those who may share a regional or ethnic identity with the armed groups, which may have used such discourse for their own political purpose.

105. Defenders working on social and economic rights, especially within trade unions, have also suffered disproportionately as the Government has kept a tight hand on those considered as “leftists”. Human rights defenders advocating for labour rights reforms reported greater targeting than those working on other issues.

106. Democracy rights activists advocating for greater liberties such as freedom of expression and assembly have also encountered difficulties in carrying out their activities. In particular, defenders who continue to formulate criticisms and advocate for further change despite the reforms undertaken, for example physicians dealing with torture cases, have faced fierce attacks by the Government. The Special Representative observes that the Government remains resistant to public questioning of its policies, especially on any disagreements or differences of opinion expressed by civil society in relation to any of the reforms undertaken or proposed. She notes however that it is the role of human rights defenders to monitor the effective changes produced on the ground by reforms, and to voice concerns where implementation seems to be incomplete or fails to produce positive change.

IV. CONCLUSIONS AND RECOMMENDATIONS

107. The Special Representative welcomes the reform process in which the Government has engaged. She was deeply impressed by the depth and the pace of legal reforms in the field of freedom of expression, assembly, and association. These changes have contributed to relaxing the environment in which human rights defenders operate. She sees the new draft law on associations as a positive step toward strengthening work in favour of human rights and welcomes its recent adoption.

108. She welcomes the government initiatives and policies to develop a culture of human rights within the State and create mechanisms for the protection of human rights. In particular, she welcomes the creation of a Department of Associations and hopes an independent national human rights commission will be created soon. She is also encouraged by the positive role the country's highest courts have started to play as guardians of fundamental freedoms.

109. She is pleased to observe that the situation of human rights defenders, notably their physical safety, has improved remarkably in the last four years. There are no more reports on killings, assaults and torture of defenders, and imprisonment and arrests have abated.

110. She believes that the reform process has a strong potential to change the situation of human rights defenders and perceptions about human rights organizations within the country. She notes, however, that transformations will remain incomplete without full implementation of reforms at all levels of governance.

111. In this respect, the Special Representative calls on the Government to continue reviewing its laws to ensure full compliance with international human rights standards. In particular, she calls on the Government to:

- (a) Further review its laws to ensure that freedom of expression is fully guaranteed;
- (b) Review its interpretation of national security to exclude all activities in the defence of human rights;
- (c) Review laws regulating trade unions and collective bargaining to ensure that defenders can freely engage in the defence of social and labour rights;
- (d) Further reforms in the area of cultural and religious rights to ensure that defenders can work on cultural issues and freedom of belief unimpeded;
- (e) Revise the law so that civil servants can freely engage in civil actions and trade union activities;
- (f) Further review regulation to ensure that freedom of assembly is fully guaranteed.

112. While she recognizes that the new law on freedom of association represents an impressive move towards establishing an environment conducive to activities in the defence of human rights, she encourages the Government to ensure that:

- (a) Administrative procedures to set up an NGO are simplified;
- (b) Administrative irregularities do not result in criminal charges or heavy fines;
- (c) Human rights organizations can receive funding from within Turkey and abroad and participate in national and international networks of actions in all fields of human rights without undue restrictions;

(d) Provisions granting a government body the authority to review and interpret the scope of the statute of an NGO are revised;

(e) Provisions regarding the personal liability of NGO board members are removed.

113. She encourages the Government to further its efforts in view of creating a real culture of human rights within the State and recommends that the staff of the Department of Association and Directorate for Foundations be trained on the new law on association and relevant instruments of international law, in particular the Declaration on Human Rights Defenders.

114. The Special Representative believes that human rights boards can prove a fruitful initiative and an important avenue for communication and dialogue between Government and NGOs, if more attention is paid to reforming their structure. She thus recommends that the Government review the effectiveness and functionality of human rights boards and constructively include human rights NGOs in the assessment of the most effective mechanisms to address human rights violations at the local level.

115. The Special Representative expresses her deep concern at continuing practices of harassment of human rights defenders, and urges the Government to put an end to practices stigmatizing human rights defenders, in particular:

(a) To put an end to monitoring, surveillance and gathering intelligence on human rights defenders and organizations;

(b) To refrain from public statements questioning the legitimacy and aims of human rights organizations;

(c) To ensure full access for defenders to places of detention, and to information and statistics on government policies;

(d) To ensure that defenders can engage in international cooperation without facing reprisal.

116. The Special Representative is deeply disturbed by the continued perception of human rights defenders as potential threats to the State. She calls on State officials and the media to refrain from stigmatizing human rights defenders as “enemies” in their public speeches and broadcast.

117. The Special Representative believes that a dialogue between Government and human rights organizations is critical to transforming the environment of mutual suspicion. In this respect, she calls on both Government and NGOs to engage in a constructive dialogue and on the media to inculcate a better understanding for the work of human rights defenders so that respect for human rights is supported by all within Turkish society. She encourages the Government to ensure that:

(a) Defenders are involved in all initiatives pertaining to human rights so that these gain credibility and effectiveness;

(b) Serious consultations are carried out on new legislations and initiatives for the promotion and protection of human rights.

118. She encourages the Government to show increased tolerance for criticism and see civil society as a partner in the ongoing transformation process. As such, she encourages the State to make use of NGO reports to assess the impact of State policies with regard to human rights, and to engage in constructive debates on how to best address remaining problems to ensure full implementation of the reform process.

119. She urges the Government to ensure the speedy implementation of the reforms and to communicate its strong will to achieve results from the reform process to all levels of governance. In particular, she calls for:

(a) Issuing circulars giving instructions on how to interpret and apply the law in practice;

(b) Monitoring of the implementation of the new laws by the judiciary at the local level, in particular with regard to cases involving freedom of expression;

(c) Increased training of the judiciary, security forces and governorship on the aims and intent of the new laws;

(d) Increased tolerance to criticism, in particular in the areas of democratic reforms, fundamental freedoms, social rights and minority rights.

120. The Special Representative recognizes efforts to hold internal investigations on human rights abuses. She remains concerned, however, at the high level of impunity for human rights violations. She thus calls on the Government of Turkey to take all necessary measures to ensure full accountability for human rights violations. In particular, the Special Representative calls for the suspension of agents suspected of misconduct and for the immediate and permanent removal from their posts of those who have been found guilty.

121. The Special Representative expresses grave concern with the large number of prosecutions filed against human rights defenders and their organizations.

122. In view of the ongoing reforms, she calls on the judiciary, in particular prosecutors, to exercise their discretion and show restraint in initiating cases against human rights defenders and organizations, in order to decrease the number of unjustifiable cases against human rights defenders.

123. She urges the Government to ensure that harassment of human rights defenders is not perpetuated by new means, in particular:

(a) She recommends that all cases pending against human rights defenders be reviewed and that the possibility of withdrawing pending prosecutions to ease the situation of human rights defenders be explored;

(b) She calls on the Government to ensure that prosecutions are no longer initiated against human rights defenders for actions in the defence of human rights;

(c) She recommends training the judiciary, security forces and regional State authorities to detect human rights activities and distinguish the promotion of internationally recognized rights from illegal activities. In particular, she suggests training on the Declaration on Human Rights Defenders to ensure full understanding of the activities and rights of those working in the defence of human rights to overcome old perceptions and resistance against them.³

Notes

¹ In its comments on the draft report, the Government of Turkey asked the Special Representative to characterize the PKK with additional language. However, for the purpose of this report on the situation of human rights defenders, and given the context in which the reference to PKK is made, the Special Representative does not find it either necessary or relevant to make any characterizations in the report.

² Ministry of Interior circular issued on 17 August 2004 instructs governors and security personnel at the local levels to take all administrative measures for the prevention of disproportionate use of force and for implementation of training programmes for police and gendarmerie. It also issues directions for taking necessary administrative and disciplinary action against members of the security force responsible for the use of disproportionate force. Circular No. 2004/100 of 11 May 2004 contains instructions to discontinue recording, photographing or filming by security forces of demonstrations or general assemblies and meetings of NGOs held in “accordance with the Law on Associations” as well as press conferences, seminars unless there is serious and concrete information indicating the possible commitment of a criminal act during such events, in which case written approval to record such events is needed from the competent authority. It further clarifies that no documents, “except those referred in the Law of Association and the Law on Meetings and Demonstration Marches”, are required to hold meetings or demonstrations. Circular No. 2004/139 of 18 October 2004 instructs district governors to follow the European Union Guidelines on Human Rights Defenders, to facilitate human rights activities, to use the guidelines to train security personnel and other relevant administrative authorities and encourages efforts to establish regular dialogue with NGOs.

³ In its comments on the report the Government informed the Special Representative that intensive training programmes are carried out by the Ministry of Justice, sometimes in cooperation with foreign institutions. Nine thousand judges and public prosecutors attended seminars in 2004, organized jointly by the Ministry of Justice, the Council of Europe, and the European Union, in nine different regions. She regrets that despite her efforts she did not have the opportunity to meet with the Minister of Justice so that she could learn and have more extensive discussions about this initiative in order to make conclusions regarding their efficacy or impact.

List of meetings

OFFICIALS

Central level

Government and Parliament

Deputy Prime Minister, Minister of Foreign Affairs, H.E. Abdullah Gül
Deputy Director-General for the Council of Europe and Human Rights, Erdogan İşcan

Minister of Interior, H.E. Abdulkadir Aksu
Chief of Department of Associations, Dr. Şentürk Uzun

Human Rights Department Chief, Vahit Bıçak, Prime Ministry office
Chair of the Parliamentary Commission on Human Rights, Mr. Mehmet Elkatmis

Judiciary

President of the Constitutional Court
Vice-President of the Court of Cassation, Mr. Mater Kaban
Chief Prosecutor of the Court of Cassation, Mr. Nuri Ok

Provinces

Bingöl

Deputy Governor
Security Director, Mehmet Gülnaz

Diyarbakir

Governor, Efsan Ala
Security Chief, Orhan Okur
Mayor, Osman Baydemir
Chief Prosecutor, Huseyin Canan

Istanbul

Governor, Mr. Muammer Guler
Security Director, Mr. Celalettin Cerrah
Mayor, Mr. Kadri Topbas
Chief Prosecutor, Mr. Aykut Cengiz Engin

Izmir

Governor, Mr. Yusuf Ziya Goksu

Security Director, Halil Tatas

Mayor, Mr. Aziz Kocaoglu

Chief Prosecutor, Mr. Emin Ozler

INTERNATIONAL ORGANIZATIONS

ILO

Gulay Aslantepe, Director

FAO

Mr. Nadir Doumandji, Representative

UNDP

Mr. Jakob Simonsen, UN Resident Coordinator

Ms. Sarah Poole, UNDP Deputy Resident Representative

UNFPA

Ms. Anne Birgitte Albrechtsen, Representative

UNHCR

Ms. Gesche Karrenbrock, Representative

UNIDO

Mr. Celal Armangil, National Director

UNICEF

Mr. Edmond McLoughney, Representative

UNRC SO

Ms. Halide Caylan

WFP

Ms. Eveleyn Togbe, Emergency Coordinator

WHO

Mr. Mehmet Kontas, Liaison Officer

DIPLOMATIC COMMUNITY

Austria

Mr. Christian Steiner (Minister)

Estonia

Mr. Mart Volmer (Ambassador)

France

Ms. Elizabet Barsaq (Deputy Head of Mission)

Germany

Mr. Harold Schindler (Deputy Counsellor)

Greece

Mr. Efthymios Pantzopoulos

Italy

Mr. Enrico Valvo (First Secretary)

Netherlands

Mr. Eric Boer (Counsellor)

Poland

Ms. Patricia Ozcan (intern)

Slovakia

(name not indicated)

Sweden

Ms. Anne Dismorr (Ambassador)

United Kingdom of Great Britain and Northern Ireland

Mr. Chris Bradley (Secondary Secretary)

United States of America

Mr. Philip Kaplan (Second Secretary)

European Union

Ms. Donata Maccelli (Political Officer)

Mr. Martin Dawson (First Secretary)

CIVIL SOCIETY

General human rights organizations

Amnesty International Turkey, Ankara

Göç Der, Diyarbakir

Human Rights Association, Ankara

Human Rights Association branches, Bingöl, Muş, Diyarbakir, Izmir and Istanbul

Human Rights Foundation of Turkey, Ankara

Human Right Foundation of Turkey branches, Diyarbakir, Izmir, and Istanbul

Mazlum Der, Ankara

TUHAD (prisoners' association), Diyarbakir

Trade unions

Eğitimsen (public teachers' union), Diyarbakir

Hak Is, Ankara

KESK (public worker's union), Istanbul

Türk Is, Ankara

Lawyers' organizations

Turkish Bar Association, Ankara

Bar Associations in Diyarbakir, Izmir, Istanbul

Contemporary Law Association, Ankara

Journalists' organizations

Turkish Press Association, Istanbul

Contemporary Journalist Association, Ankara

Physicians' organizations

Turkish Medical Association, Istanbul Chamber
Turkish Medical Association, Diyarbakir Chamber

Women's rights organizations

KADER, Support for Women Candidates, Istanbul
KAMER, Women Centre, Diyarbakir
Mor Cati, Women's shelter, Istanbul
Peace Mothers Initiative, Diyarbakir
Selis, Diyarbakir

Gay and lesbian organizations

Kaos GL, Ankara
Humanly Existence Platform, Ankara

Platforms and initiatives

Anti-War Platform, Ankara
Initiative for Freedom of Expression, Istanbul

Other organizations

Mesopotamia Cultural Centre, Istanbul

Individuals

Baskin Oran, Ankara Faculty of Political Sciences
Prof. Sebnem Fincanci, Istanbul University Medical Faculty, Forensic Science Branch
Ohran Kemal Cengiz, Lawyer, Izmir
