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在打击恐怖主义的同时增进和保护人权及  
基本自由问题特别报告员的报告

增 编

对土耳其的访问 \*

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\* 本内容提要以所有正式语文分发。报告本身附载于内容提要，只按原本分发。

## 内容提要

应政府之邀，在打击恐怖主义的同时增进和保护人权及基本自由问题特别报告员于 2006 年 2 月 16 日至 23 日对土耳其作了一次访问。访问的主要目的是就反恐领域的倡议以及这种措施对人权发生何种影响的问题收集第一手资料，并开始与政府的合作进程。特别报告员非常感谢土耳其政府向他提供的充分合作。他承认过去几年里在尊重人权方面取得了长足的进展，但认为挑战仍然存在，特别是，现行立法对恐怖主义的定义过泛，涉及到恐怖主义的起诉量过大，结社和言论自由受到限制，违法不究等等。他强调，尊重社会、经济和文化权利是防止恐怖主义一个重要手段。他还赞扬有些积极做法，如近年来实行的对恐怖和反恐行动受害者作赔偿的计划和恐怖嫌疑人的保障。他建议了一些措施，以确保法律和实际的反恐措施充分符合国际人权法。

**Annex**

**REPORT OF THE SPECIAL RAPPORTEUR ON THE PROMOTION AND  
PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS  
WHILE COUNTERING TERRORISM ON HIS MISSION TO TURKEY  
(16 to 23 February 2006)**

**CONTENTS**

	<i>Paragraphs</i>	<i>Page</i>
Introduction .....	1 - 6	4
I. MAIN FINDINGS .....	7 - 74	6
A. General political and legal background .....	7 - 10	6
B. Priority issues .....	11 - 70	7
1. The definition of terrorism and related issues .....	11 - 25	7
2. Freedom of expression, association and assembly .....	26 - 33	10
3. Measures to support victims and the right to return .....	34 - 58	12
4. Furthering economic, social and cultural rights as a means of preventing terrorism .....	59 - 70	16
C. Other issues relevant to the mandate .....	71 - 74	19
1. International cooperation in the field of counter-terrorism .....	71 - 72	19
2. Impact of recommendations of international organizations .....	73	20
3. Turkey and extraordinary renditions .....	74	20
II. CONCLUSIONS AND RECOMMENDATIONS .....	75 - 93	20
A. Conclusions .....	75 - 89	20
B. Recommendations .....	90 - 93	23
Appendix .....		27

## Introduction

1. Pursuant to his mandate, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism visited Turkey from 16 to 23 February 2006 at the invitation of the Government.
2. Following initiatives by previous Governments, since 2001 the current AKP (Justice and Development Party) Government has undertaken crucial reform steps in several sectors, including many areas relating to the promotion and protection of human rights. Significant progress has been achieved with regard to the eradication of torture, the liberalization of legislation related to the right to communicate in private and in public in the language of one's choice, and to improved legal safeguards in judicial proceedings. However, challenges remain concerning impunity for human rights violations in the context of counter-terrorism, effective and practical access to education and mass communication in other languages than Turkish, remnants of authoritarian rule in respect of non-governmental organizations and freedom of expression, and the rights of women, including lower enrolment of girls in education, violence against women and honour killings, and low participation of women in public life.
3. The mission to Turkey was the Special Rapporteur's first country visit since he accepted appointment as mandate-holder on 8 August 2005. Its main purposes were to gather first-hand information about past, current and future initiatives in the area of countering terrorism and how such measures affect the protection and promotion of human rights, and to begin a process of cooperation with the Government. The Special Rapporteur is very grateful to the Government of Turkey for offering him this opportunity to examine with it the current status of and recent developments regarding measures against terrorism. He appreciated its full cooperation and was able to have a frank and open dialogue with the Government, which showed its awareness of the challenges ahead. He was able to meet all those he wanted to meet without any limitations or constraints, including non-governmental organizations, as well as detained persons charged with or convicted for terrorist offences. He is grateful to those who provided their insight into current developments. He hopes that his recommendations will be useful to all those within Government, the Parliament, the judiciary, and civil society who strive to promote and protect human rights while countering terrorism and will provide ground for further fruitful exchanges and progress. The Special Rapporteur would also like to thank the Office of the United Nations Resident Coordinator and his staff for their support in facilitating the visit.
4. During his visit, the Special Rapporteur visited Ankara and Diyarbakir Province. In Ankara, the Special Rapporteur met with representatives of the following institutions: the Ministry of the Interior, the Ministry of Justice, the Ministry of Defence, the National Security Council, the Human Rights Presidency of the Prime Minister's Office, the Parliamentary Human Rights Investigation Committee, and representatives of the Directorate of General Security of the Turkish National Police, the Jandarma General Command, the Coast Guard Command, the Prosecutor General and the National Intelligence Agency (MIT). In Diyarbakir, he had discussions with the Governor, the provincial Human Rights Advisory Board, the Prosecutor General, the provincial Commander of the Jandarma, the provincial Loss Assessment Commission, judges of the Aggravated Felony Court and the Director of Security of the police forces in Diyarbakir. He also met with various national and local civil society actors, such as the Human Rights Platform (which includes the Human Rights Foundation, the Human Rights Association, Mazlum Der, Amnesty International Turkey and the Helsinki Citizens' Assembly),

the Human Rights Agenda Association and the Contemporary Law Society and Professor Baskin Oran in Ankara. In Diyarbakir, he held meetings with local branches of several non-governmental organizations and the Diyarbakir Bar Association. The Special Rapporteur also met with individuals affected by counter-terrorism measures, as well as suspects charged with or convicted of offences related to terrorism in the F-type prison in Ankara and the D-type pretrial detention facility/prison in Diyarbakir. In addition, he visited the detention facilities of the Jandarma and the counter-terrorism branch of the Security Directorate in Diyarbakir. The Special Rapporteur had the occasion briefly to observe a trial at Ankara Aggravated Felony Court. In Ankara, he had consultations with the local offices of the United Nations Development Programme (UNDP), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), United Nations Population Fund (UNFPA), the World Food Programme (WFP), the Food and Agriculture Organization of the United Nations (FAO) and the Delegation of the European Commission.

5. The commitment which Turkey has shown to reform while still grappling with terrorist acts and problems of human rights violations, as well as the welcome extended by the Government of Turkey, all contributed as motivations for the mission. The Special Rapporteur acknowledges the high pace of reform pursued by the Government of Turkey since 2001, and credits those who assumed leadership on the platform of human rights and democratic principles. He commends the efforts the Government and Parliament have undertaken to reform the legislative framework and the law enforcement and criminal justice systems, and to compensate victims of terrorism and counter-terrorism measures. He regrets the recent violent incidents in the South-East. He expresses his concern about the draft amendments to the Anti-Terror Act tabled after the country visit in late April, which appear to reverse some of the earlier achievements and reforms. He hopes that this draft law will be widely debated and discussed, including by civil society. The Special Rapporteur continues to offer his services for consultations on the proposed amendments.

6. Since this is his first mission report, the Special Rapporteur wishes to outline some premises that underlie the structure and content of the report. First, he wishes to underline that it is not his task to make risk estimates about security threats. He concentrates on assessing how Governments react to the risks they perceive and whether their reaction complies with international human rights norms. He has found that the "Kurdish question" is very much at the centre of the Government's counter-terrorism strategy and work and, therefore, he will deal with it as well, although he would like to stress that there are also other terrorist risks, of which the Istanbul bombings of November 2003 as well as the large number of persons suspected of being linked to Hizbollah were and are a reminder. As stressed by the Special Rapporteur in his report submitted to the Commission on Human Rights (E/CN.4/2006/98, para. 64), "the comprehensive remit of his mandate also includes issues such as sustainable strategies to prevent acts of terrorism, inter alia through addressing the 'root causes' of terrorism - or, more appropriately, 'conditions conducive to terrorism'<sup>1</sup> - and calling for effective protection to the human rights of victims of terrorism and their families". Such strategies must, in the view of the Special Rapporteur, also be examined from a gender perspective. During his mission to Turkey, special emphasis was placed on the issue of equal access of girls and boys to education.

## I. MAIN FINDINGS

### A. General political and legal background

7. The Turkish Republic has undergone dramatic changes over the last years. In particular with regard to human rights, many crucial reform steps have been undertaken. The 1980s and 1990s were characterized by internal strife and acts of terrorism, mainly resulting from the fight between the PKK (the Kurdistan Workers' Party) since it launched its armed struggle in 1984, and the security forces. Apart from the PKK, particularly the Revolutionary People's Liberation Party/Front (DHKP-C) and Hizbollah have resorted to acts of deadly or otherwise grave violence against persons, including civilians. The years from 1999 onwards have been marked by a general trend of decreasing violence and tension in the South-Eastern and Eastern parts of the country, notwithstanding instances where violence has resurfaced. Turkey's commitment to reforms since 2001 has led to a decrease in human rights violations in the whole country, but also in the South-East, which, however, remains an area of concern in terms of several aspects related to the mandate of the Special Rapporteur on the promotion and protection of human rights while countering terrorism.

8. The violence coincides with a difficult socio-economic situation in the East and South-East. Literacy, employment rates, and per capita income are all significantly lower in the East and South-East than in other parts of Turkey. This situation is part of a complex chain of developments, where problems pertaining to the economic, social and cultural rights of the population are in a sense both a cause and a consequence of the violence in the region. The Special Rapporteur wishes to underscore that terrorism can never be justified, or seen as a direct outcome of poverty and want. However, social marginalization and discrimination may provide fertile soil for movements that may seem to provide prospects for change even through the unacceptable use or propagation of violence and terror.

9. In the past, Turkey's counter-terrorism measures entailed serious breaches of human rights. Torture and ill-treatment, incommunicado detention and numerous deaths in custody have been recorded over the years. The independence of the judiciary with regards to trials relating to terrorism and counter-terrorism, particularly in the former State Security Courts, has also been questioned. The steps toward improvement, which Turkey has taken and is taking in this respect, are therefore also highly relevant to the mandate of the Special Rapporteur.

10. Turkey is a party to a number of major human rights treaties.<sup>2</sup> The current Constitution was adopted by referendum in 1982, and has been criticized for bearing the hallmarks of the authors of the 1980 military coup. It has been amended on a number of occasions (in 1987, 1993, 1995, 1999, 2001, 2002 and 2004). The latest reform packages in particular liberalized many provisions related to human rights. In 2004 article 90 of the Constitution was revised, so as to recognize the primacy of ratified international and European conventions over domestic law. Article 143 on State Security Courts was annulled as well. Also with regard to other crucial pieces of legislation, such as the Penal Code, the Code of Criminal Procedure, the Act on Enforcement of Sentences and other provisions related to its judicial system, Turkey has carried out an extensive revision during the last years. The reform packages reflect a determination to put Turkey's legislation in line with its human rights commitments. These revisions have entailed a considerable improvement of the legal safeguards for criminal suspects, including persons charged with crimes related to terrorism, and many of the safeguards also are important

for the eradication of torture and ill-treatment of detainees and criminal suspects. It is regrettable that some of the previous legal provisions seem to reappear in the amendments to the Anti-Terror Act that were tabled by the Government in April 2006.

## **B. Priority issues**

### **1. The definition of terrorism and related issues<sup>3</sup>**

#### **Anti-Terror Act of 1991**

11. The main piece of legislation concerning terrorism is Act No. 3713, the Act to Fight Terrorism (Anti-Terror Act), of 1991. The act contains in its part One definitions of terrorism, terrorist organizations, and terrorist crimes, including acts related to the publication of names or details of terrorism investigations, as well as aiding and abetting terrorist acts. It also contains a provision for banning organizations connected to terrorism and seizing their property. Part Two relates to the criminal procedures for acts under the act, and part Three contains provisions concerning the execution of sentences for convictions based on the act.

12. Some provisions of this law were repealed by the Constitutional Court in 1992, and important changes were made to it in the seventh reform package in 2003. Law No. 4928 of 19 July 2003 repealed article 8 of the Anti-Terror Act, which prohibited written and spoken propaganda, meetings, assemblies and demonstrations aimed at undermining the territorial integrity of the Republic or the indivisible unity of the nation. It also contained some transitional provisions.

13. Article 7 of the Anti-Terror Act, which concerns aiding and abetting terrorist organizations as well as distributing propaganda on behalf of such organizations, was also amended with a reference to the incitement to violence. Additionally, the reforms of the Turkish Penal Code, the Code of Criminal Procedure, and the Law on the Enforcement of Sentences have brought about changes, which bring criminal proceedings in terrorism cases closer to those of other criminal cases. The Special Rapporteur also observed that, in prosecutions and trials related to terrorist crimes, whereas some acts concern serious crimes, which have resulted in loss of lives and in bodily injury, a fairly large proportion of prosecutions and trials concern aiding and abetting organizations considered terrorist, or crimes related to alleged propaganda for terrorist organizations.

14. The Anti-Terror Act is drafted in a way that allows for an overly broad application of the term terrorism. Article 1, paragraph 1, defines “terrorism” mainly with regard to its aims. It appears to criminalize the aims as such since it does not require any act to have been committed in pursuing the listed aims, which include the aim to change the “political, legal, social, secular and economic system” of Turkey and the aim of “weakening ... the authority of the State”. The clause is therefore not restricted to tactics employed in the furtherance of these aims that amount to deadly or otherwise grave violence against persons. Instead, the provision is applicable to any kind of act that entails “pressure, force and violence, terror, intimidation, oppression *or* threat” (emphasis added).

15. Article 2 of the act, in turn, defines who is a terrorist offender. Surprisingly, there is no requirement that the person must have committed a serious violent crime. Rather, a “terrorist offender” is “any member of an organization, founded to attain the aims defined in article 1, who commits a crime in furtherance of these aims ... or any member of such an organization, even if he does not commit such a crime” (para. 1) and also persons who commit (any) crime in the name of such an organization, without being a member (para. 2).

16. The last part of the quotation from article 2, paragraph 1, and the linking of organizations to terrorism because of their aims (and not their tactics), results in a situation where the latter part of article 1, paragraph 1, referring in broad terms to the means employed, loses any significance. Organizations are linked to terrorism because of their aims, and mere membership in such an organization makes a person a “terrorist offender”.

17. The Special Rapporteur received information from the authorities and the judiciary concerning the number of prosecutions related to terrorism. For instance, in 2004, there were 763 cases pending in the courts regarding article 7, and 129 cases regarding article 8. For the crimes enlisted in various provisions in the Penal Code, and referred to in the Anti-Terror Act, there were 2,200 cases. In Diyarbakir Serious Felony Courts, the caseload for one year for the seven provinces in its jurisdiction was said to be 1,200. Although figures as to how common it is that organizations would be banned and their assets frozen under article 7 of the Anti-Terror Act were difficult to obtain, such a procedure is possible in the Serious Felony Courts. One source even cited a figure of 500 organizations having been closed due to connections with terrorism. Also, journalists and publishers continue to be prosecuted under articles related to terrorism. In the view of the Special Rapporteur, this large caseload related to terrorism may be a sign of the notion of terrorism having lost its distinctive force.

18. The Special Rapporteur therefore voiced his concern in his discussions about prosecution for acts related to freedom of expression, association and assembly in relation to the notion of terrorism. There are elements both in the Anti-Terror Act and in the Penal Code which may put severe limitations on the legitimate expression of opinions critical of the Government or State institutions, on the forming of organizations for legitimate purposes, and on the freedom of peaceful assembly.

### **Criminal procedures for suspects of terrorist crimes**

19. In many States, special procedures are in place with regard to terrorism-related charges. The Special Rapporteur assesses such modifications of ordinary criminal, civil or administrative procedures against the background of international norms in the areas of the right to a fair trial, the right to life and the right to physical and mental integrity, as well as the right to liberty and security of the person. Many safeguards of suspects of terrorist crimes have been introduced in recent years, but some of them might be weakened again by the envisaged draft amendments tabled by the Government in April 2006.

20. The Special Rapporteur learned that the family of a detainee must be informed immediately of the detention and of the whereabouts of the detainee. An obligatory medical examination takes place at the beginning of every detention period and at the end of it. Suspects of terrorist crimes must also have access to a lawyer, and where a possible prison sentence may exceed five years, the appointment of a lawyer is mandatory. Interviewed remand prisoners in

the D-type prison in Diyarbakir did not have complaints as to the access to counsel. Some lawyers did, however voice the concern that in some instances of crimes related to terrorism, the possibility for the defence to gain access to documents related to prosecutions is in practice restricted.

21. The provisions concerning detention pending a decision of arrest by a judge are included in the Criminal Procedure Code. For terrorist offences, the normally allowed detention period of 24 hours, stipulated in article 91 (1), is extended to 48 hours by article 251 (5). The detention period may, according to article 91 (3) be increased up to four days if several suspects are alleged to be involved, by decision of the Prosecutor. The Prosecutor can prolong the detention period by one day at a time. The suspect or his/her family members have the right to challenge the decision before a judge. In regions governed by Emergency Rule, this four-day period can be prolonged up to seven days for terrorist offences. A hearing and a decision by a judge are necessary in these situations.

22. Part Two of the Anti-Terror Act contains procedural provisions related to terrorist crimes. Many of these provisions have been overturned and replaced by other laws, namely the Penal Code, the Code on Criminal Procedure, and the Law on the Enforcement of Sentences.

### **Court proceedings in terrorism cases**

23. In the Anti-Terror Act, the State Security Courts are assigned as the specialized courts to deal with criminal cases related to terrorism. The independence and objectivity of these courts were put into question in recent years by the European Court of Human Rights and many other human rights bodies. As part of the reform packages, the State Security Courts were abolished through the annulment of article 143 in the Constitution on State Security Courts and so-called Serious Felony Courts were introduced. The Special Rapporteur was informed during his mission that Serious Felony Courts do not deal with terrorism cases alone, but also other types of serious crimes. However, some of them specialize in terrorist cases, some in other serious crimes (such as organized crime).

24. The Serious Felony Courts have now been in operation since 2005. The judges serving at these courts are not military judges anymore. However, several of the Special Rapporteur's interlocutors stressed that the same persons often remained in office who had been judges at the State Security Courts.<sup>4</sup> Judges indicated that the Serious Felony Courts now are in closer contact with the general courts.

### **Reform of the Anti-Terror Act**

25. Many former provisions of the Anti-Terror Act have been included in the new Penal Code and the Criminal Procedure Code. In the Special Rapporteur's view it is not clear whether a separate law on terrorism is needed in Turkey. Many interlocutors found that there are enough tools to address terrorism in the current general legislation. However, others insisted that terrorism poses a specific threat that needs to be addressed through special legislation. The

Special Rapporteur was informed that a reform of the law is under way, but was not able to learn about the envisaged changes in any detail.

## **2. Freedom of expression, association and assembly**

### **Proscription of organizations**

26. Proscribing organizations which resort to violence and/or commit terrorist acts is part of counter-terrorism measures in many States. Also Turkish authorities referred commonly to organizations they called “terrorist, unlawful or prohibited”. The Special Rapporteur was informed that there are between 30 and 50 terrorist organizations active in Turkey. The authorities group them in four categories: (a) ideological terrorist organization, e.g. DHKP/C, the Communist Party of Turkey (Marxist-Leninist) (TKP/ML) and the Marxist Leninist Communist Party of Turkey (MLKP); (b) separatist terrorist organizations, namely PKK/Kongra-Gel (People’s Congress of Kurdistan); (c) fundamentalist religious organizations (e.g. Hizbollah); and (d) international terrorist organizations which also target Turkey (Al-Qaeda). Out of the first category, four are considered to propagate and use violence, DHKP/C (former Dev-Sol) being cited as the one responsible for numerous losses of lives. In Diyarbakir, criminal cases related to terrorism were brought mainly in relation to the activities of PKK and Hizbollah (e.g. in the D-type prison in Diyarbakir there are 512 inmates, of whom 258 are allegedly Hizbollah members, 224 allegedly associated with PKK and 30 “ordinary criminals”).

27. Despite repeated inquiries, the procedure, the criteria, the responsible bodies, and the consequences of being categorized as a terrorist organization remained unclear. Many officials indicated that it is “common knowledge” which groups are terrorist and which are not. A number of interlocutors referred to a list of terrorist organizations, claiming that its authors were the Ministry of the Interior, the National Intelligence Service, the National Security Council and the Jandarma. However, none of the above bodies confirmed that such a list existed and judicial authorities did underline that such a listing would not be binding in a court of law. An organization may also be banned under the provisions in the Anti-Terror Act for providing assistance to terrorists, and have its assets frozen. Such procedures would be brought to a Serious Felony Court.

### **Other challenges to the freedom of expression, association and assembly by counter-terrorism measures**

28. Whereas considerable progress has been achieved in the area of freedom of expression, association and assembly in the last years, the Special Rapporteur notes the challenges remaining in this field. For instance, despite the repealing of article 8 of the Anti-Terror Act (propaganda against the indivisible unity of the State), there are provisions in the new Penal Code providing for similar criminalization. A provision in the Penal Code, previously article 159, concerning disrespecting the State and State institutions and threatening the indivisible unity of the Turkish Republic, reappears in the new Penal Code as article 301 (the minimum sentence has been reduced from one year to six months). Similarly, article 312 (now art. 216) in the Penal Code, related to the incitement to hatred amongst peoples, has in the past been used to prosecute persons and organizations for claiming the existence and addressing concerns of ethnic groups. Although such acts no longer specifically refer to the notion of terrorism, there are substantive

links to the Anti-Terror Act. The draft amendments to the Anti-Terror Act tabled by the Government in late April 2006 would bring back some of the previously abolished provisions into the realm of criminal law.

29. Prosecutions against journalists, writers and publishers who publish information related to investigations linked to alleged terrorist crimes or who write material referring to the situation of various ethnic groups in Turkey also run a significant risk of being prosecuted. Non-governmental organizations and activists have also often been investigated and indicted on charges related to their work on behalf of ethnic groups. Both individuals and organizations continue to face multiple prosecutions under charges which may clearly infringe human rights standards. Whilst many trials end in acquittals, the mere initiation of criminal proceedings against particular non-governmental organizations may constitute harassment and intimidation, and restrict the right to freedom of expression and association.

30. Closure of organizations may also happen in the context of the Act on Associations, which entered into force in November 2004. Article 5 prohibits associations whose purpose is to “create forms of discrimination on the grounds of race, religion, sect or region or create minorities on these grounds, and destroy the unitary structure of the Republic of Turkey”. In the view of the Special Rapporteur this is too broad and vague a formulation. Also, the March 2005 regulation detailing the implementing rules for this law imposes restrictions on the registration of associations whose name and/or objectives are considered to be contrary to the Turkish Constitution. This is of particular concern in relation to constitutional articles referring to the integrity of the State or the interpretation of the principle of secularism. The Special Rapporteur is concerned that this may mean that associations whose objective includes promoting a certain cultural identity or a particular religion will still not be able to register.

31. However, it is laudable that article 6 of the Act on Associations, which prohibited associations from using any language other than Turkish, orally or in writing, including at private meetings of members, has now been amended. The requirement that Turkish be used is now confined to written communications with the authorities.

32. Although constitutional and legislative amendments make it more difficult than previously to ban political parties, bans on parties representing the interests of the Kurdish community are still in place.

33. The rules concerning freedom of assembly have been loosened in the legislative reforms of recent years. However, the provisions concerning propaganda for terrorism mean that organizers of demonstrations continue to face a thin line between peaceful expression of opinions and of crimes in support of terrorism. The Special Rapporteur is concerned that any escalation of tension and violence may lead to a situation where peaceful demonstrations will again be seen as a threat to national security and as support for terrorism.

### **3. Measures to support victims and the right to return**

#### **Displacement and measures taken to address its consequences**

34. According to the Ministry of the Interior's strategy paper "Measures on the issue of internationally displaced persons (IDPs) and the return to village and rehabilitation project in Turkey" of August 2005, the violent acts of the past have directly affected 14 provinces in East and South-East Anatolia. The Government estimates that 360,000 persons were displaced within the country. Gender-disaggregated data was not available concerning the displaced persons. Other sources refer to higher numbers. Displacement was mostly confined to Turkey, but the situation has also led to refugee movements into neighbouring countries and to other parts of Europe.

35. Interlocutors both within Government and from the non-governmental sector voiced concern over the numerous obstacles for IDPs in the enjoyment of their economic and social rights. Many work in the informal sector or are unemployed, which means that they are often excluded from social security, which in turn excludes them from most forms of health care, although IDPs frequently have increased health-care needs, e.g. because of malnutrition. These circumstances render IDPs particularly vulnerable to child labour. Access to education is a problem for many IDP children. Non-governmental actors underlined the grave psychological consequences of the violence and displacement: many IDPs still suffer from post-traumatic stress syndrome and depression, and do not receive adequate treatment.

36. Obstacles to return still remain, such as the precarious and reportedly deteriorating security situation in the region, exacerbated by landmines in roads to and from villages. According to non-governmental sources, in 2005, 373 persons lost their lives. There has also been an increase in extrajudicial killings/murders by unknown perpetrators. In 2005, there were 43 extrajudicial killings and 56 were injured. A further 48 persons died because of bombs and explosives, and 72 were injured.

37. Also, socio-economic factors prevent many people from returning, including the lack of employment opportunities in the South-East and inadequate infrastructure in the villages (electricity, water and sewage systems, the collapse of previous sources of revenues). This in turn affects the right to education, health, housing, freedom of movement, and property.

38. A further issue complicating the return of internally displaced persons is the institution of village guards, who are appointed for the purpose of assisting the law enforcement authorities in countering terrorist and violent acts pursuant to article 74 of the Village Law No. 442. In accordance with article 16 of the Provisional Village Guards Regulation, village guards are under the instruction and command of the Commander of the Jandarma Headquarters, to which they are affiliated. According to many reports, the village guards hamper the right to return either because they occupy houses and farms of IDPs, or because of the distrust the institution as such nurtures among IDPs. The Special Rapporteur was assured by government authorities that the village guard system is being phased out. The 58,750 village guards active in December 2001, had been reduced to 57,246 by December 2005, which shows that the pace of implementing the phasing-out is quite slow. A clear plan with benchmarks and time limits needs to be established to follow up the policy.

39. Another vulnerable group of victims of past violence and tensions are refugees. The Special Rapporteur wishes to remind the Government that repatriation should be a viable option also for this segment of the population of the South-East and East. It did not become clear to the Special Rapporteur to what extent repatriating refugees could benefit from measures addressing IDPs. A particular issue of concern is a group of about 14,000 refugees in Iraq, out of whom 9,000 reside at Makhmoor Camp. It appears that the Turkish authorities view the population in Makhmoor Camp with suspicion; they are suspected of links to terrorist organizations. The level of return of refugees from Iraq remains extremely low: according to the Office of the United Nations High Commissioner for Refugees in 2004 only 15 Turkish nationals returned and in 2005 only 21.

### **The Compensation Act**

40. The Act on the Compensation of Losses Resulting from Terrorist Acts and Measures Taken to Fight Against Terror (Law No. 5233; subsequently, Compensation Act) and the application of it was an important theme during the Special Rapporteur's mission, in that it provides one of the few examples of systematically addressing the issue of compensation to victims of terrorism.

#### *Implementation of the law*

41. The Special Rapporteur commends the inclusion of victims of counter-terrorism measures in the scope of the beneficiaries of the Compensation Act. However, there have been complaints about inconsistent implementation of the Act: official statistics show that, with 181,147 applications filed under the Compensation Act in the whole country, by April 2006, 18,612 cases had been concluded. Among the concluded cases, there were 11,123 rejections. In Diyarbakir Province, where a large number of cases has been decided since autumn 2005, there were many fewer rejections and the sums awarded were more than double the average, which suggests that better use of the potential of the act might have been made than other provinces. However, there were also indications that the sums awarded in different provinces varied widely and that some provinces paid out larger sums than Diyarbakir. The above demonstrates the lack of consistency in implementing the act, which means that the chances of victims in different parts of the country of receiving compensation are unequal. Such inconsistent implementation not only carries the risk of discriminating against certain applicants, it also means that IDPs might perceive the process as being biased. Similarly, the Special Rapporteur received allegations of inconsistencies with regard to the admissibility of claims.<sup>5</sup> A related issue of concern is that there is no appeal for decisions of inadmissibility.

#### *Composition of the loss assessment commissions and the appeal process*

42. The loss assessment commissions are chaired by Deputy Governors and mainly consist of officials from government authorities (six out of seven members). The members may include representatives of the Ministry of the Interior, whose officers may have been involved in the acts for which compensation is being awarded. The only non-governmental representative is an attorney appointed by the local bar association. The Commissions work in the premises of the

Governor, which reinforces the impression that they are part of the executive. The loss assessment commissions as such do not have an appeal instance.

43. However, in cases of disagreement, a case can be brought before the administrative court, and appeals can be made to the Council of State. These legal proceedings constitute an entirely new process, which - as officials admit - is extremely slow and few people want to wait so long for the money to be paid out. If an applicant accepts an offer from the loss assessment commission for compensation, this means that no other remedies can be pursued.

#### *Compensation*

44. The mechanism under the Compensation Act offers pecuniary compensation, including for damage to the life and body of the person.<sup>6</sup> An innovative aspect is that article 7 (c) provides for compensation for the time during which displaced persons were unable to access their homes and lands (including lost revenues). The act does not foresee any compensation for the “moral damages”, contrary to the jurisprudence of the European Court on Human Rights.<sup>7</sup> Many victims may feel that this means that the State does not acknowledge the trauma experienced by them. Whereas the Special Rapporteur is aware of the fact that, in legal terms, the compensation procedure in no way precludes criminal liability, some of his interlocutors voiced the concern that the ultimate aim of the Compensation Act is to “replace” the process of bringing to justice the State actors who committed human rights violations while evacuating or even destroying villages and settlements.

#### *Access to loss assessment commissions*

45. Reports indicate that some vulnerable groups who do not have constant access to sources of information through broadcast and print media risk being omitted by the compensation process. This may include women, single mothers, children, the elderly and handicapped, if information on the act and how to file claims is not widely available and conscious efforts are not made to reach out to such groups.

### **Combating impunity**

#### *Extrajudicial killings*

46. Incidents in Kiziltepe in 2004, in which 12-year-old Umut Kaymaz and his father Ahmet Kaymaz were killed by security forces, and the bombing of a bookstore in Semdinli in 2005, which also led to loss of human life, were raised by several interlocutors. In both cases, there were indications that members of the security forces were involved in the killings. Initially, the security forces in the Semdinli case attributed the incident to PKK. However, independent investigations found that the bomb was thrown by a member of the security forces. Interlocutors also expressed concern that the members of the security forces implicated in both the Kiziltepe and Semdinli incidents were not suspended from duty and not placed in pretrial detention.

47. According to non-governmental sources, in 2005 the number of extrajudicial killings/murders by unknown perpetrators increased to 43. However, it appears that systematic investigation procedures for such incidents are not in place, although the right to life enshrined in

human rights law clearly places a duty upon the State to promptly investigate and bring to justice perpetrators of such acts.

### *Torture*

48. After the Government's announcement of a zero-tolerance policy towards torture in 2003, many steps have been taken to prevent torture and also to improve the bringing to justice of perpetrators. The pattern of a decrease in torture was acknowledged by all of the interlocutors. Safeguards which have a preventive effect on torture include the duty to inform the family of detainees of detention, medical examinations before and after detention, access to counsel, and human rights training of Jandarma and police officers.

49. However, it is clear that the past widespread use of torture during detention and criminal investigations is still not addressed in a consistent manner. The prisoners whom the Special Rapporteur interviewed in pretrial detention centres and prisons in Ankara and Diyarbakir said that they had been tortured and ill-treated during the time of their pretrial detention in the 1990s and that their indictments or convictions were based on statements obtained by torture. None of them were aware that investigations had been undertaken into these allegations or that the perpetrators had been brought to justice.

50. Government statistics concerning investigations of torture and ill-treatment by security forces indicate that only very few cases of torture and ill-treatment have actually led to trials and convictions: in 2004, of the 1,831 cases concluded, 99 led to imprisonment, 85 to fines and 1,631 to acquittals.

51. There are also still reports of torture and ill-treatment. The Human Rights Association received 331 complaints related to torture in the first three months of 2005, a slight decrease as compared to the same period in 2004. Attorneys of terrorism suspects also noted that today they would not fear that their clients would routinely be tortured. The Special Rapporteur is concerned at the consequences of the proposed amendments to the Anti-Terror Act, tabled by the Government in late April 2006, since they would weaken several existing safeguards.

52. In many of his discussions, the Special Rapporteur received indications that a body called JITEM, allegedly the counter-terrorism and intelligence unit of the Jandarma, used to be a major perpetrator of torture and ill-treatment. The officers affiliated with JITEM are said to have carried out operations which were then attributed to PKK. Whereas, in reaction to the Special Rapporteur's questions, authorities remained ambiguous about the existence or mandate of JITEM, in a simultaneous court case in Diyarbakir, the court decided to have a case involving torture and ill-treatment transferred from an ordinary court to a military court, arguing that the case involved JITEM officers and spelling out the name of the entity.

### *Investigation mechanisms*

53. Numerous investigative bodies for human rights violations have been established in Turkey. The Special Rapporteur visited the office of the Jandarma investigation unit JIHIDEM

(Gendarmerie Human Rights Violations Investigation and Examination Centre), the Parliamentary Human Rights Investigation Committee, the Human Rights Presidency under the Prime Ministry in Ankara, and the provincial Human Rights Board in Diyarbakir.

54. JIHIDEM was established in 2003. The public can complain about actions taken by the Jandarma on a 24-hour hotline, and also via the Internet. All telephone calls are recorded, and an investigation is initiated with regard to all cases which come to the attention of the JIHIDEM. According to the JIHIDEM website, the total number of complaints received is relatively low, 162 since the establishment of the unit, and only 1 per cent of all complaints were found to be well-founded. Many civil society actors also doubted that the public knew about the body and that the public would trust a unit within the Jandarma to conduct independent investigations.

55. The Parliamentary Human Rights Investigation Committee both investigates complaints and carries out missions and investigations at its own initiative. It consists of Parliamentarians and is composed in accordance with representation in Parliament. It publishes its reports on its website.

56. The Prime Ministry's Human Rights Presidency forms the umbrella for the Human Rights Boards that have been created at province (81) and district (850) levels. Its main tasks are to be an interface between the State bodies and private entities in respect of human rights related issues, to monitor the human rights situation and to examine and investigate allegations of human rights violations.

57. The Special Rapporteur attended a meeting of the local Human Rights Board in Diyarbakir, where the members, in a remarkably frank exchange, expressed their own scepticism towards the board's possibilities to function as an independent and effective human rights mechanism. The close relationship between the board and the Governorship and the limited mandate of the Human Rights Board were raised as problems. In 2005 the Human Rights Association the Diyarbakir Advisory Board received 46 (out of which 21 were directly from individuals) and decided upon 1 complaint.

58. NGOs also drew the attention of the Special Rapporteur to the fact that, whereas Prison Monitoring Boards have been established, their reports and findings are not made public.

#### **4. Furthering economic, social and cultural rights as a means of preventing terrorism**

59. As was confirmed by many of the interlocutors with whom the Special Rapporteur met, the ultimate aim of measures to prevent terrorism must be to ensure that every individual in Turkish society can fully enjoy his/her human rights, including economic, social and cultural rights. This would support an atmosphere of inclusion, mutual respect and tolerance between different groups in society. The criteria against which the Special Rapporteur assesses counter-terrorism measures are international human rights standards, including non-discrimination and economic, social and cultural rights as enshrined in the International Covenant on Economic, Social and Cultural Rights.

### **Economic and social rights of the population in the East and South-East**

60. Welcoming the fact that Turkey ratified the Covenant in 2003, the Special Rapporteur considers that the promotion of the economic, social and cultural rights of the population in the East and South-East is necessary for improving the socio-economic situation in a sustainable way. He also acknowledges that the socio-economic problems in the region result, inter alia, from a long history of tensions and violence. Statistical data (see annex) and the reports and statements of many of his interlocutors, however, show that considerable disparities still exist between the East/South-East and the rest of the country in terms of several key social and economic indicators. He is concerned that these indicators point to discrimination in terms of economic, social and cultural rights of the population in the region. In addition, the Special Rapporteur has received information that there are significant “grey zones” in parts of the South-East’s economy and that illegal activities such as smuggling are major sources of income in some districts, coinciding with a lack of legal sources of income.

61. According to media reports, the Prime Minister, at the “Great meeting for the 21st century’s cities” of his party in April 2006, stated that the eastern part of Turkey remained less developed compared to other regions in Turkey especially in health and transportation, stressing at the same time that the Government had made numerous efforts to address these disparities.<sup>8</sup> The Governor of Diyarbakir indicated that due to terrorism, economic development has been slow in recent years and that the unemployment rate in Diyarbakir is 5 per cent above the Turkish average. He also underlined that economic progress and increased investment are needed to achieve real improvement of the situation.

#### *Access to education*

62. The Special Rapporteur considers the right to education a key right for ensuring inclusion and non-discrimination amongst all groups of the population. He particularly noted the disparities in enrolment between girls and boys, where the differences are particularly pronounced in the East and South-East. The Governor of Diyarbakir Province stressed that problems in the area of education are now openly recognized and discussed. Action has been taken by the Government, such as campaigns aiming at improving enrolment in primary education, in particular of girls (first eight school years) - now at 96 per cent in Turkey overall and 92 per cent in Diyarbakir city. For secondary education it is about 30 per cent less. Similarly, significant differences exist in the level of school enrolment for boys and for girls, with that of girls being markedly lower.

63. The Ministry of Education reported on different programmes that address the particular situation concerning education in the South-East. However, it was also pointed out that school attendance is low also in many urban settlements, particularly Istanbul. Special schemes are in place to encourage school enrolment, particularly in the South-East and East and the low rate of enrolment of girls has also been addressed in the “Let’s go to school, girls!” campaign.<sup>9</sup>

### **Cultural and linguistic rights**

64. Turkey has ratified several relevant international instruments in recent years (the Committee on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights). However, it entered a reservation limiting the application of article 27 of the International Covenant on Civil and Political Rights, in accordance with the relevant provisions and rules of the Constitution and the Treaty of Lausanne of 24 July 1923. A reservation in respect of article 13 of ICESCR declares that it must be applied in conformity with the Constitution. It has not ratified the Council of Europe Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages and the UNESCO Convention against Discrimination in Education. It has nonetheless taken important steps to bring legislation into conformity with international and European human rights standards<sup>10</sup> (for more details, see the European Commission against Racism and Intolerance report of June 2004).

#### *The Kurdish population*

65. In a speech in August 2005, the Prime Minister stressed the need to resolve, through democratic means, “the Kurdish issue” and referred to the concept of supra- and sub-identities as a means of redefining Turkish identity. However, no concrete measures to follow up on this encouraging statement have ensued. Kurds continue to experience what many of them perceive as severe restrictions of their cultural and linguistic rights.

#### *Broadcasting*

66. In spite of repeated commitments to the contrary (third Harmonization Package, adopted on 3 August 2002, followed by the seventh Package, 30 July 2003), access to media in the Kurdish language is still severely restricted.

67. The Law on the Establishment of Radio and Television Enterprises and their Broadcasts (Law No. 3984 of 20 April 1994) sets out the criteria for radio and television broadcasts in other languages than Turkish in its article 4/2, as amended by Law No. 4756 of 21 May 2002 and Law No. 4771 of 9 August 2002. Such broadcasts shall not contradict the fundamental principles of the Turkish Republic enshrined in the Constitution and the indivisible integrity of the State with its territory and nation. The principles and procedures for these broadcasts and the supervision of these broadcasts shall be determined through a regulation to be issued by the Supreme Council of Radio and TV (RTÜK). This regulation limits transmissions in other languages to 60 minutes per day and 5 hours per week for radio stations, and 45 minutes per day and 4 hours per week for television. Turkish subtitles are obligatory. Themes of the broadcasts are also strictly limited, and no programmes aimed at children are allowed.

68. At the time of the mission, licenses for Kurdish-language broadcasts had been applied for by three private broadcasting companies. The licenses were granted in March 2006, after 18 months of waiting.

### *Teaching in Kurdish*

69. No system is in place to ensure that children of non-Turkish mother tongue can adequately follow classes taught in Turkish. Whereas private Kurdish-language courses opened in the towns of Batman, Sanliurfa, Diyarbakir and Van in January 2004 (following Law No. 625 on opening private courses to teach languages and dialects traditionally used by Turkish citizens in their daily lives), they all closed down in 2005 due to “financial difficulties”. Unofficially, the reasons are said to have been obstacles stemming from the stringent requirements laid down by the licensing decree and other forms of administrative controls. Also, article 42 of the Constitution continues to prohibit the teaching of non-Turkish mother tongues in State schools. The Special Rapporteur observes that this prohibition, if mechanically applied, can effectively block access to schooling of children with a mother tongue other than Turkish. At least initial immersion in the mother tongue might be necessary to create the basis for learning and preventing school dropout, which is said to be more widespread among Kurdish children than among others.

### *Use of the Kurdish language*

70. There are some laudable efforts on the part of authorities to overcome barriers in their dealings with non-Turkish speakers, such as employing health-care professionals who speak local languages at health centres in South-East and East Anatolia. Also, parents are now permitted by law to give their children Kurdish first names, even though a circular prohibits them from choosing names including the letters Q, W or X, which exist in the Kurdish language but not in the Turkish alphabet. A number of persons have allegedly been convicted for listening to Kurdish music in private (ECRI, June 2004 report, para. 78). Shops may use all languages but Kurdish in their names. The prohibition on speaking a language other than Turkish at public political meetings is maintained in the Political Parties Act and criminal proceedings are still brought on that basis. In the view of the Special Rapporteur, the remaining restrictions are incompatible with international human rights standards, including article 19 of the International Covenant on Civil and Political Rights.

## **C. Other issues relevant to the mandate**

### **1. International cooperation in the field of counter-terrorism**

71. Representatives of numerous government bodies raised the issue of enhanced international cooperation in the field of counter-terrorism and the need for a definition of terrorism at the international level. The Government sees measures against terrorism as a priority issue in order to protect human rights. These representatives also voiced concern that extradition requests made by Turkey to other countries concerning suspects of terrorist crimes in many cases had not been answered. The Special Rapporteur underlines that all countries should uphold the international law principle of extradition or prosecution for international crimes and that perpetrators of crimes, especially of grave crimes, should be brought to justice. At the same time States have the duty to uphold the rights to fair trial and freedom from torture and inhuman treatment of suspects and detainees. Improvements in the human rights situation in Turkey and

consistent work on the eradication of torture and ill-treatment as well as the independent functioning of the judiciary will enhance international cooperation in the field of counter-terrorism.

72. The Special Rapporteur also underlines the importance that Turkey itself rigorously uphold the principle of non-refoulement when being asked to extradite persons who have allegedly committed terrorist acts.

## **2. Impact of recommendations of international organizations**

73. The Special Rapporteur has consistently stressed the need for mainstreaming human rights into all counter-terrorism measures. All standard-setting, policy recommendations and citations of best practices should respect the human rights obligations which States have undertaken. It is therefore with concern that the Special Rapporteur received indications during his mission that Turkey may be receiving mixed messages concerning the necessity to respect human rights while countering terrorism. In addition, according to some of the Special Rapporteur's interlocutors, a number of European Union member States had asked Turkey to reform its Anti-Terror Act, taking inspiration from their own existing or proposed laws. The accession process of the European Union is of particular importance to Turkey and the Special Rapporteur considers it important that, in the accession process, security-related issues are closely linked to the political criteria, including the respect for human rights. The Special Rapporteur particularly urges the European Union and its member States to speak with one voice on the issue of the need to respect human rights while countering terrorism.

## **3. Turkey and extraordinary renditions**

74. The Special Rapporteur asked Government authorities whether they were aware of any use of Turkish airports or airspace by other States for transporting suspects of terrorism without resorting to formal extradition procedures. The authorities denied any knowledge of such arrangements, and assured the Special Rapporteur that Turkey would only allow for transfers falling under formal extradition procedures.

# **II. CONCLUSIONS AND RECOMMENDATIONS**

## **A. Conclusions**

75. In recent years, Turkey has carried out important reforms with regard to its legal and judicial system, which strengthen the judicial safeguards and protection also for suspects of terrorist acts. In particular, the Special Rapporteur commends the changes made to the Anti-Terror Act in 2003. They clearly narrow the scope of the application of the law, which has previously been used widely to prosecute and convict political opponents, or those who advocate for or debate about the cultural rights of various ethnic groups. The Special Rapporteur notes the commitment to implementing these reforms, including through training and regular updating of information in the judiciary, the prosecution and the law enforcement authorities. The Special Rapporteur commends Turkey for improvements relating to criminal procedures, which to a large extent removed the differences in treatment for persons suspected of terrorist crimes and other crimes. However, he views with regret the amendments tabled by the Government in late April 2006, which appear to be reintroducing some of the controversial provisions.

76. The Special Rapporteur notes the fairly broad and vague scope of the acts defined under the Anti-Terror Act, recognizing at the same time that its application has been somewhat restricted. The breadth of the definitions gives rise to concern as to the principle of legality enshrined in article 15 of the International Covenant on Civil and Political Rights. He underlines that any definition of terrorism, as it may entail serious restrictions upon human rights and fundamental freedoms, must be precisely defined, narrow in scope and only be related to crimes of a level of severity which entails a threat to life or serious bodily harm to persons (for more detailed information on the definition of terrorism see also E/CN.4/2006/98, paragraphs 26-50). He also underscores that a very broad use of the term “terrorism” may in itself render ineffective measures to counter serious terrorist acts.

77. Turkey is renewing its anti-terror legislation. There are many competing interests around the reform, including pressure for widening the scope of the application and for giving the authorities wider powers, inter alia concerning detention. There is a risk that the reform will be guided by the need to react to the most recent unrest and violence in the country, which is not conducive to sustainable reform of the legislation.

78. The difficulty in obtaining precise information concerning the proscription of organizations raises concerns as to the specificity and transparency of the law with regard to the proscription of organizations. It also raises concerns about the objectivity and accountability of actions taken in the process of proscribing an organization and legal safeguards and remedies available to such organizations.

79. The Special Rapporteur considers the adoption of the Compensation Act an extremely positive step, and wishes to commend its existence and the fact that it includes among its beneficiaries also victims of counter-terrorism operations by the State. He recommends this law as a best practice to be studied by other countries, bearing in mind that the law itself, but particularly its implementation leave room for further improvements.

80. The procedure under the Compensation Act is non-judicial. Neither the composition of the Loss Assessment Commissions nor the procedures of awarding compensation fulfil the requirement of judicial independence and objectivity. It is also disconnected from bringing the perpetrators to justice or conducting investigations into alleged crimes and human rights violations. Therefore, the Compensation Act must be complemented by effective, thorough and impartial investigations into crimes and human rights violations in the context of terrorism and counter-terrorism, in order for full-fledged rehabilitation and restitution to be in place.

81. The Special Rapporteur shares the assessment of the Special Representative of the Secretary-General on the human rights of internally displaced persons, who found that the “Measures on the issue of internally displaced persons and the return to village and rehabilitation project in Turkey”, adopted by the Council of Ministers on 17 August 2005, are an important step towards concrete improvement of the fate of IDPs in Turkey. The Special Rapporteur recalls, however, that many IDPs suffer from severe limitations on their enjoyment of economic and social rights. Given the complexity of the challenges faced by accommodating needs of victims and IDPs, the Special Rapporteur is of the opinion that it would be useful, on the basis of

the observations of how the Compensation Act has functioned so far, to consider certain changes, such as ensuring the independence of the loss assessment commissions and representation of civil society, rendering the criteria for implementation of the Act and rules on admissibility uniform throughout the country and putting in place an appeal mechanism. Distributing information to marginalized groups who might otherwise not have access to the procedure should be facilitated, as well as access of all to the commissions, e.g. through the provision of legal aid. The scope of the Compensation Act should be extended to cover refugees.

82. The Special Rapporteur fears, in particular that, if violent incidents continue in the South-East, tensions between communities might grow. In this regard he is worried about the allegations that new stereotypes are appearing about specific ethnic groups/IDPs as being associated with crime and delinquency, which might put the long-term process of achieving reconciliation and stability at risk.

83. Fully aware that extrajudicial killings have also happened in the context of unjustifiable terrorist acts, the Special Rapporteur wishes to point to the authorities' responsibility to promptly, objectively and thoroughly investigate all cases involving the security forces.

84. As noted above, torture and ill-treatment and deaths in custody were a serious problem in Turkey, often related to investigations of alleged terrorist acts during the violence in the South-East in the 1980s and 1990s. The Special Rapporteur commends the many steps taken by Turkey to eradicate torture and ill-treatment by the authorities, to improve access of detainees and prisoners on remand to their lawyers and families, to ensure legal aid for criminal suspects, and to introduce medical examinations for all detainees at the beginning and end of their detention periods. These are measures which led to important improvements in the human rights situation as a whole in Turkey, but also strengthen the legitimacy and effectiveness of the Government's measures to counter terrorism.

85. The Special Rapporteur notes that a broad range of mechanisms to monitor and address human rights issues have been established. He did not, however, find convincing evidence that sufficient independent investigation mechanisms were in place to effectively address human rights abuses of the past and abuses occurring today.

86. Socio-economic disparities continue to exist in spite of laudable efforts by the Government to address some of the most pressing issues. Such efforts are related to facilitating public and private investment, but also to direct measures to secure access to education and health care.

87. The Special Rapporteur notes that counter-terrorism measures taken by the authorities have often not been effective, which demonstrates the need to go beyond an exclusive focus on "hard" security. He also notes the low representation of women in most sectors of Turkish society. Greater participation of women is important for more balanced decision-making, but also as a signal of equality and inclusion. Whereas improving the security situation is crucial for further progress, human rights must be seen as an end in itself. The population of the South-East may perceive all measures falling short of non-discrimination and real entitlement as insufficient for creating stability. Therefore, determination to strengthen the economic, social and cultural rights of the population of the East and South-East is necessary in order to complement the law-enforcement and judicial measures related to counter-terrorism.

88. While equality between women and men and non-discrimination on the basis of gender is an end in itself, improvements in respect of equality between women and men can also serve to prevent terrorism. It is important to gather more data on the effect of terrorism and counter-terrorism measures upon women and children, to plan actions and community services in a way which takes special account of the needs of women and children, and to involve women in the planning and implementation of policies.

89. Whereas considerable progress has been achieved in the legislative field in terms of ratification of international instruments and removing controversial provisions from the domestic legislation, significant gaps remain in some areas for example, immersion in the mother tongue, the use of letters existing only in Kurdish, etc.

## **B. Recommendations**

90. **Regarding the definition of terrorism:**

(a) **The definition of terrorist crimes should be brought in line with international norms and standards, notably the principle of legality as required by article 15 of ICCPR, including defining more precisely what crimes constitute acts of terrorism and confining them to acts of deadly or otherwise grave violence against persons or the taking of hostages (for more on the definition of terrorism see also E/CN.4/2006/98, paragraphs 26-50);**

(b) **The need for a separate definition of “terrorism”, beyond acts that in themselves constitute terrorist crimes, should be reconsidered;**

(c) **International conventions for the elimination of terrorism should be carefully taken into account when drafting new legislation against terrorism;**

(d) **With regard to possible legislative amendments, the Special Rapporteur offers to engage in further dialogue before and during discussions at the Parliament. He emphasizes that, in a democracy, draft legislation touching upon questions of fundamental rights and freedoms should be discussed openly and transparently and that civil society should be fully involved in these debates at all stages;**

(e) **If a need exists to classify some organizations linked to terrorist crimes as terrorist organizations, with adverse legal consequences, the procedure for such designation should be transparent and objective, and organizations should be able to appeal to an independent judicial body; and**

(f) **The Special Rapporteur is of the opinion that only full clarity with regard to the definition of acts that constitute terrorist crimes can ensure that the crimes of membership, aiding and abetting and what certain authorities referred to as “crimes of opinion” are not abused for purposes other than fighting terrorism.**

91. **Regarding the investigation of allegations of torture and extrajudicial killings and the fight against impunity:**

(a) The Special Rapporteur recommends the creation of an independent and impartial investigation mechanism with the power to investigate promptly allegations of torture or other ill-treatment. It is crucial that such a mechanism be located outside the institution that is alleged to have committed the acts of torture under investigation;

(b) The Special Rapporteur recommends that a rapid procedure be established through which persons convicted of or charged with terrorist crimes can obtain a retrial, an amnesty or a pardon, in cases where the evidence used against them does not meet the current standard of zero tolerance in respect of torture;

(c) The Special Rapporteur trusts that impartial, thorough, transparent and prompt investigations and fair trials are carried out in relation to the incidents in Semdinli and Kiziltepe. The objectivity, impartiality and thoroughness in conducting such investigations are necessary prerequisites for the public to enjoy confidence in such proceedings; and

(d) He encourages Turkey to ratify the Optional Protocol to the Convention against Torture. In order to combat any remnants of impunity and to strengthen the international protection of human rights he also recommends Turkey to ratify the Rome Statute of the International Criminal Court.

92. Regarding the victims of terrorism and prevention of terrorism:

(a) Whereas the adoption of the Act on Compensation of Victims of Terrorism is a very laudable step in the right direction, the Special Rapporteur would like to remind the Government that it is confined to material compensation and falls short of full restitution and rehabilitation. Hence, measures should be taken to address rehabilitative and other needs of victims of violence related to terrorism and counter-terrorism;

(b) One means of providing restitution is through ensuring a safe environment conducive to enable persons who so wish to return to their previous villages. In this context, the Special Rapporteur recommends that the process of phasing out the village guards be accelerated and clearly articulated;

(c) The Special Rapporteur is of the opinion that, in the long run, full respect for economic, social and cultural rights helps to eliminate the risk that individuals make the morally inexcusable decision to resort to acts of terrorism; and

(d) In order for all inhabitants of Turkey to fully enjoy their human rights without discrimination and to feel fully included in society, persons belonging to different cultural and linguistic groups, including the Kurdish population, should enjoy protection of their cultural, linguistic and religious rights, including the possibility to freely use their language in public and private. In particular, effective access to education for the Kurdish population should be enhanced through, at least, initial immersion in their mother tongue.

93. Regarding international cooperation, the Special Rapporteur requests relevant international organizations to provide, in a coordinated manner, assistance in the follow-up to the above recommendations.

## Notes

<sup>1</sup> For a more detailed discussion of the need for a “long-term component addressing conditions conducive to exploitation by terrorists to create or increase their power base” see the report of the Secretary-General, “Uniting against terrorism: recommendations for a global counter-terrorism strategy” (A/60/825, section B II, paras. 20-37).

<sup>2</sup> Convention Against Torture (CAT), International Covenant on Civil and Political Rights (ICCPR), Convention on Discrimination Against Women (CEDAW), International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Economic, Social and Cultural Rights (ICERD), Convention on the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of the Child (CRC). It has ratified the Optional Protocol to CEDAW, the Optional Protocol to ICCPR, the Optional Protocol to CRC on the involvement of children in armed conflict, and the Optional Protocol to CRC on the sale of children, child prostitution and child pornography. It has signed the Optional Protocol to CAT (OPCAT), but not yet ratified it.

<sup>3</sup> It should be noted that Turkey has ratified the European Convention on the Prevention of Terrorism and is therefore bound by its article 1 which states that “For the purposes of this Convention, ‘terrorist offence’ means any of the offences within the scope of and as defined in one of the treaties listed in the Appendix.”

<sup>4</sup> According to the Government, as of 7 April 2006, 67 judges and 61 prosecutors had been authorized at the Serious Felony Courts. When the State Security Courts were abolished, 41 judges and 24 prosecutors were transferred to Serious Felony Courts. Judges at the Serious Felony Courts in Diyarbakir informed the Special Rapporteur that out of 12 judges in the 3 courts handling terrorist cases, 8 judges were new and only 4 remained from the old State Security Courts.

<sup>5</sup> In a report by the Turkish Economic and Social Studies Foundation (TESEV), it is noted that, by the end of September 2005 in Hakkari, 783 out of 1,043 petitions had been found inadmissible. Whereas most of them were found inadmissible because they came from former security personnel who had received compensation through other revenues, 285 were found inadmissible for “lack of information and documentation”.

<sup>6</sup> Art. 7 (b): remedy for damages resulting from harms such as “injury, physical disability and death and the expenses made for medical treatment and funerals”.

<sup>7</sup> Rights see e.g. case of *Tanrikulu v. Turkey*, 8 July 1999, appl. No. 3763/94.

<sup>8</sup> See <http://www.zaman.com/?bl=politics&alt=&hn=31574>.

<sup>9</sup> Financial support is provided to mothers whose children attend primary school. The sums are 22 YTL per month for a girl and 18 YTL for a boy. For secondary education, the figures are 48 YTL for girls and 32 YTL for boys. In recent years, 2,500 classrooms were built in different parts of the country, 70 per cent of them in the South-East. Bussing children to school has also been an important improvement, with bus transport provided to 60,000 to 70,000 students, and US\$ 280 million has been spent to provide buses, school lunches and improve the overall quality of schools.

<sup>10</sup> Articles 13 and 14 of the Constitution on the restriction of fundamental rights and freedoms have been amended in October 2001 to bring them more closely into line with the provisions of the ECHR. Article 26 on freedom of expression no longer prohibits the use of a language other than Turkish to express and disseminate ideas. The provision of article 28 on the freedom of the press to the effect that nothing may be published in a language prohibited by law has been repealed. ECRI found that these amendments lift a major obstacle to the expression of the ethnic and cultural identities of everyone living in Turkey. Article 28-2 of the Constitution, which prohibited the publication of documents written in certain languages prohibited by law has been repealed. Publishers can no longer be prosecuted for using a language other than Turkish in the written press. Article 42 of the Constitution nevertheless still provides that no language other than Turkish may be taught to Turkish citizens as their mother tongue in educational and training establishments.

Article 122-1 of the new Criminal Code of 2004 provides that a six-month to one-year sentence and a fine shall be meted out to anyone who discriminates on the grounds of language, race, colour, religion or sect in the following areas: the sale or transfer of goods or services, employment, the provision of food, access to services which are available to the public and the exercise of an economic activity.

Labour Code (amended in June 2003) article 5 provides for the prohibition of discrimination on grounds including language, race, religion and membership of a religious group. National or ethnic origin as such is not mentioned as a ground for discrimination, but the list of grounds is not exhaustive. The prohibition of discrimination applies to labour relations, excluding recruitment. Article 5 also provides for the burden of proof to be shared in respect of the end of a contract or reprisals against a person reporting discrimination. Article 18 of the Labour Code prohibits dismissal on discriminatory grounds and applies in the event of racial discrimination. The penalty for discrimination may take pecuniary form or involve reinstatement in the company. ECRI considers that these new provisions constitute a step forward in the fight against discrimination in employment. However, they are limited in scope and do not cover all the forms of discrimination that may arise in this area, particularly in recruitment.

**Appendix**

**Table: Social and economic disparities**

	South-East and East	Turkey average
Infant mortality in 2000	Hakkari: 55 Diyarbakir: 57 Kars: 65 Erzurum: 65 Ardahan: 77	Other major cities (including Istanbul, Antalya: between 30-40)
Human Development Index 1997	South-East: 0.612 East: 0.612	Turkey overall: 0.720
Access to education - entry into primary education (boys/girls)	Ankara: 37.107/34.971 Diyarbakir: 24.279/21.718 Hakkari: 4.170/3.592	714.521/660.088
- completing primary education (boys/girls)	Ankara: 35.546/32.931 Diyarbakir: 24.211/15.738 Hakkari: 3.424/1.657	622.053/514.395

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