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تنفيذ قرار الجمعية العامة ٢٥١/٦٠ المؤرخ ١٥ آذار/مارس ٢٠٠٦، والمعنون "مجلس حقوق الإنسان"

تقرير الفريق العامل المعني بالاحتجاز التعسفي

إضافة

البعثة التي قام بها إلى تركيا*

* يُعمـــم موجـــز تقرير هذه البعثة بجميع اللغات الرسمية. أما التقرير نفسه، المرفق بالموجز والملاحق، فيُعممان باللغة التي قُدما بها فقط.

موجز

قام الفريق العامل المعني بالاحتجاز التعسفي بزيارة تركيا في الفترة من ٩ إلى ٢٠ تشرين الأول/أكتوبر ٢٠٠٦ بدعوة من الحكومة. وفي أثناء الزيارة، اجتمع الفريق العامل بالسلطات المعنية في الهيئتين التنفيذية والقضائية، وبممثلي المجتمع المدني والمنظمات غير الحكومية. وقام بزيارة سبعة سجون، فضلاً عن مراكز للشرطة، ومرافق احتجاز تابعة لإدارة الهجرة، ومستشفى للأمراض النفسية، وقابل على انفراد أكثر من ٢٠٠ محتجز، بعضهم حُددت هويته مسبقاً، ولكن معظمهم اُختير عشوائياً أثناء وجود الفريق في الموقع.

ويقدم التقرير مفاهيم أساسية تتعلق بالمؤسسات والمعايير التي تحكم الحرمان من الحرية في تركيا. ويلاحظ الفريق العامل أن نظام العدالة الجنائية ونظام السجون في تركيا يتسمان بالتنظيم والإدارة والتمويل بشكل جيد. ومنذ بداية عام ١٩٩٠، شهد القانون الذي ينظم الاحتجاز بموجب الإجراءات الجنائية إصلاحات كبيرة توّجت ببدء نفاذ القانون الجنائي وقانون الإجراءات الجنائية الجديدين في حزيران/يونيه ٢٠٠٥. ويبرز التقرير ما أُحرز من تقدم، لا سيما في مجال مكافحة انتزاع الاعترافات، وتقصير مدة الاحتجاز بالشرطة، وتحديد الفترة القصوى للاحتجاز السابق للمحاكمة، وكفالة حق الوصول الفوري إلى محام بالنسبة لجميع الأشخاص المحتجزين في إطار الإجراءات الجنائية. كما يرحب الفريق العامل بالإصلاح الذي شهده قضاء الأحداث.

ومع ذلك، يعرب التقرير عن القلق إزاء مقاضاة ومحاكمة واحتجاز المشتبه بتورطهم في الإرهاب، التي لم تتمكن المبادئ الأساسية لعملية الإصلاح من التأثير عليها. فتعريف الإرهاب فضفاض إلى حد كبير ولا يستوجب أن يكون الإرهابي قد ارتكب جريمة عنيفة وخطيرة. وبالتالي، يمكن استغلال تهمة الإرهاب لتقييد ممارسة الحق في حرية التعبير وتكوين الجمعيات والاجتماع بغير عنف. ومن الناحية الإجرائية، يقيّد القانون الحق في الوصول إلى محام في القضايا المتعلقة بأشخاص يشتبه بتورطهم في الإرهاب. ووجد الفريق العامل العديد من المتهمين بالإرهاب المحتجزين بصفة مؤقتة لفترات طويلة بصورة غير مقبولة، تجاوزت في بعض الأحيان عشر سنوات دون محاكمة. ويواجه المحتجز الذي يُدان بتهم تتعلق بالإرهاب قوانين قاسية للغاية تحكم تنفيذ الحكم والوصول إلى المزايا القانونية، ولا سيما الإفراج المشروط. ويؤكد التقرير أن تعريف الإرهاب بصورة فضفاضة للغاية، والعدد الكبير من الأشخاص المحتجزين بموجب قانون مكافحة الإرهاب، يزيدان من الشعور بالقلق فيما يتعلق بالإجراءات والاحتجاز.

وفيما يتعلق بقضايا الإرهاب وقضايا الإجرام العادية على السواء، ينتقد الفريق العامل عدم تطبيق الحظر المفروض على أخذ الأقوال بالشرطة في غياب المحامي على الأقوال التي أُخذت قبل بدء سريان قانون الإجراءات الجنائية الجديد. كما يعرب عن قلقه إزاء ضعف المحتجزين غير الأتراك واستمرار المشاكل الموجودة في قضاء الأحداث على الرغم من الإصلاحات التي أُدخلت عليه.

كما يناقش التقرير الحرمان من الحرية خارج نطاق نظام العدالة الجنائية. وليس لتركيا ما يكفي من الأسباب القانونية لاحتجاز المهاجرين وملتمسي اللجوء الذين رفضت طلباتهم وينتظرون ترحيلهم، ويُنتهك حقهم في إعادة النظر في هذا الاحتجاز من الناحية القضائية. كما يلاحظ الفريق العامل ضعف الأسس القانونية والرقابة

القضائية فيما يتعلق بالحرمان من الحرية في مستشفيات الأمراض النفسية وغيرها من المؤسسات التي يُحتجز فيها الأشخاص من أجل حمايتهم.

وترد في الفرع الأخير من التقرير التوصيات التي قدمها الفريق العامل إلى الحكومة استناداً إلى ما توصل إليه من نتائج. وتشمل هذه التوصيات تعديل تعريف الإرهاب، وإطلاق سراح الأشخاص المحتجزين بصورة مؤقتة منذ أكثر من عشر سنوات دون محاكمة، وتطبيق الحظر المفروض على أخذ أقوال المتهم بالشرطة في غياب محاميه على جميع القضايا لم يُبت فيها حتى الآن. وثمة توصيات إضافية تتعلق بالعدالة الجنائية وتطبيق الإصلاحات التي أدخلت مؤخراً على قضاء الأحداث تطبيقاً كاملاً. وفيما يتعلق بالاحتجاز خارج نطاق نظام العدالة الجنائية، يطلب الفريق العامل إلى الحكومة اتخاذ تدابير تشريعية وإدارية تكفل أن يكون الاحتجاز مستندا إلى أسس قانونية كافية وخاضعا للمراجعة الدورية من قِبل هيئة قضائية.

Annex

REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION ON ITS MISSION TO TURKEY (9-20 OCTOBER 2006)

CONTENTS

CONTENTS (*continued*)

I. INTRODUCTION

1. The Working Group on Arbitrary Detention, which was established pursuant to Commission on Human Rights resolution 1991/42 and whose mandate was assumed by the Human Rights Council by its decision 1/102, visited Turkey from 9 to 20 October 2006 at the invitation of the Government. The delegation consisted of Ms. Leïla Zerrougui, Chairperson-Rapporteur of the Working Group and head of the delegation, and Ms. Manuela Carmena Castrillo, member of the Working Group. The delegation was accompanied by the Secretary of the Working Group, an official from the Office of the United Nations High Commissioner for Human Rights, and two interpreters.

2. The Working Group would like to express its gratitude to the Government of Turkey, as well as to the United Nations Country Team, which assisted with the logistics of the visit, and to the Turkish civil society representatives with whom it met.

II. PROGRAMME OF THE VISIT

3. The visit included the capital, Ankara, and the cities of Izmir, Istanbul and Diyarbakır. The Working Group visited male and female high- and medium-security prisons holding convicts and remand detainees, a military prison, holding cells of police and gendarmerie stations, including holding cells of anti-terror police departments, "guesthouses" for foreigners awaiting expulsion, a psychiatric hospital and a "rehabilitation centre" for persons with mental, psychological or physical disabilities. A full list of the institutions visited is attached as appendix I to this report.

4. The Working Group met with officials of the Ministry of Foreign Affairs, the Ministry of Justice and the Ministry of the Interior, including representatives of the National Police and Gendarmerie; with representatives of the Directorate for Social Services and Child Protection (SHÇEK); with judges of the Supreme Court and of trial courts; prosecutors, including judges and prosecutors specialized in juvenile justice; and with the Parliamentary Human Rights Commission, the Human Rights Presidency in the Prime Minister's Office, as well as the provincial Human Rights Boards of Izmir and Diyarbakır. The delegation also held meetings with representatives of civil society, including bar associations, and with numerous individual criminal defence lawyers, as well as psychiatrists and social service workers.

III. LEGAL AND INSTITUTIONAL FRAMEWORK

A. Institutional framework

1. Political system

5. Turkey is a unitary republic with a political system based on pluralist democracy. Legislative power is vested in the unicameral parliament, the Turkish Grand National Assembly, whose members are elected through universal suffrage. The executive branch is led by the Prime Minister, who is designated by the President of the Republic and is customarily the leader of the largest party in the Assembly. The Turkish Grand National Assembly elects the President of the Republic, who serves a single seven-year term.

2. The judiciary

6. Judges and prosecutors form a single body of civil servants governed by common rules governing admission to service, career, remuneration, oversight and discipline. During their career, members of this body can and do switch from judicial to prosecutorial service and back. The Ministry of Justice and the Supreme Council of Judges and Prosecutors share responsibility for the administration of the judiciary.

7. The criminal justice system consists of first instance (trial) courts and the Court of Cassation. There are three tiers of trial courts: justices of the peace have jurisdiction over offences carrying a sentence of less than 2 years, criminal courts (consisting of a single judge) adjudicate offences carrying maximum sentences of between 2 and 10 years, and the three-judges serious crime courts have jurisdiction over offences carrying a maximum sentence in excess of 10 years' imprisonment. Defendants accused of offences related to terrorism or organized crime are tried before special chambers of the Serious Crime Courts (referred to as Serious Crime Courts competent to examine crimes under article 250 of the Criminal Procedure Code), which in 2004 replaced the State Security Courts.

8. Requests for review of judgements of all first-instance courts go to the Court of Cassation. The establishment of regional appeals courts is, however, planned for 2007.

9. The Constitutional Court reviews the compatibility with the Constitution of legislation. It has no jurisdiction to receive individual complaints of violation of rights protected by the Constitution.

10. There is also a system of military courts with jurisdiction over military personnel, including men doing the compulsory military service.

3. The prosecution

11. As already noted, prosecutors operate under the same rules governing career, administration, supervision and guarantees of independence as judges. There are prosecutors attached to each judicial body, and in fact a court is defined as consisting of its judges and prosecutors.

4. Law enforcement: the National Police and the Gendarmerie

12. Two agencies exercise preventive policing and law enforcement functions: the National Police and the Gendarmerie. Their functions are identical and competencies are divided between the two agencies on a geographic basis: the National Police operate in cities and towns, while the areas under the Gendarmerie's responsibility are mostly rural (92 per cent of Turkey's territory is under the jurisdiction of the Gendarmerie).

13. The National Police are directly under the authority of the Ministry of the Interior. The Gendarmerie has a dual status: they are part of the Turkish Armed Forces, but are subordinated to the Ministry of the Interior as far as their public order, security and law enforcement functions are concerned.

5. The penitentiary system

14. The prisons (with the exception of military prisons) are administered by the General Directorate for the Penitentiary System, which is under the authority of the Ministry of Justice. Responsibility for the legal aspects of detention in each prison is, however, vested in the local Chief Prosecutor, who delegates a prosecutor to each prison.

15. Since 1997, the prison infrastructure has undergone a substantial renewal: since 1995, 475 new prisons have been established and since 1990, 238 old prisons have been closed. As of 6 October 2006, there were 67,795 detainees in the penitentiary system, corresponding to 91 prisoners per 100,000 inhabitants.

6. Facilities for involuntary holding of persons with disabilities

16. The Directorate for Social Services and Child Protection (SHÇEK) is a government authority charged with taking care of minors in economic or social difficulty. SHÇEK manages institutions receiving both minors and adults with mental disabilities called "rehabilitation centres". While nearly all SHÇEK institutions are open, the rehabilitation centres have some closed wards, i.e. persons accommodated in those wards are in fact deprived of their freedom for their own protection.

17. Psychiatric hospitals also hold "involuntary patients", both in open and in closed wards. A large number of them are chronic patients who live "permanently" in psychiatric hospitals because they cannot be released into life outside an institution and there is no other institution capable of taking care of them.[1] Psychiatric hospitals also have special wards for persons deprived of their liberty within the context of a criminal proceeding.

B. Legal framework of detention within the criminal justice process

1. International human rights treaty obligations

18. Turkey has ratified all seven principal United Nations human rights treaties, including the Convention on the Rights of the Child and, in September 2003, the International Covenant on Civil and Political Rights (ICCPR). Turkey is also a long-standing member of the European Convention on Human Rights and has accepted the competence of the European Court of Human Rights to receive individual complaints. Turkey is a member State of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment as well, and regularly receives visits by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) established under that treaty, most recently in December 2005.

19. In 2004, article 90 of the Constitution was revised, so as to recognize the primacy of ratified international and European conventions over domestic law.

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[1] The Government informed the Working Group that there are "approximately 700 chronic patients who cannot be discharged due to compelling reasons". According to representatives of the Turkish Psychiatric Association whom the Working Group delegation met, their number is around 3,000.

2. The Constitution

20. Article 19 of the Constitution governs deprivation of liberty (its full text is contained in appendix II to this report). It provides, inter alia, that persons suspected of having committed an offence "can be arrested by decision of a judge solely for the purposes of preventing escape, or preventing the destruction or alteration of evidence as well as in similar other circumstances which necessitate detention and are prescribed by law". Arrest without a judicial warrant "shall be resorted to only in cases when a person is caught in the act of committing an offence or in cases where delay is likely to thwart justice". Individuals arrested or detained shall be promptly notified of the grounds for their arrest or detention and the charges against them. The person arrested or detained shall be brought before a judge within 48 hours and within four days in the case of offences committed collectively. These periods may be extended during a state of emergency, under martial law or in time of war. Persons in detention shall have the right to request to be tried within a reasonable time or to be released during investigation or prosecution.

21. "Persons deprived of their liberty under any circumstances", i.e. whether in the context of criminal proceedings or otherwise (article 19 also allows deprivation of liberty in the case of persons of unsound mind, alcoholics or drug addicts, vagrants or persons spreading contagious diseases), "are entitled to apply to the appropriate judicial authority for speedy conclusion of proceedings regarding their situation and for their release if the restriction placed upon them is not lawful".

22. Finally, article 19 provides for a right to compensation for "[d]amages suffered by persons subjected to treatment contrary to the above provisions".

3. Substantive criminal law defining terrorist offences

23. The main piece of anti-terrorism legislation is Law No. 3713 enacted in 1991, as amended by Law No. 5532 of 29 June 2006.

24. Article 1 contains the definition of terrorism:

> "Terrorism is any kind of acts which constitute an offence perpetrated by a person or persons who are members of an organization, through use of force and violence and by employing any of the methods of coercion, intimidation, oppression, suppression or threat for the purpose of altering the fundamentals of the Republic stated in the Constitution, its political, legal, social, secular and economic order, impairing the indivisible integrity of the State with its territory and nation, endangering the existence of the Turkish State and its Republic, weakening or annihilating or seizing the State authority, destroying fundamental rights and freedoms, impairing the internal and external safety of the State, public order or public health."

25. Article 2 defines terrorist offenders as "[a]ny 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 …".

26. Article 3 of Law No. 5532 provides a long list of common offences which shall be considered as terrorist offences if they have been committed for the purposes of terrorism. Article

6 of Law No. 5532 makes various forms of propaganda for a terrorist organization punishable, including "[carrying] posters, banners, placards, pictures, signboards, equipments and materials, [chanting] slogans or [using] audio devices for the purposes of the organization".

4. Criminal procedure

27. Criminal procedure is primarily governed by the new Criminal Procedure Code (CPC) which entered into force on 1 June 2005. Both CPC and the Anti-Terror Law contain provisions derogating from the common criminal procedure law.

Deprivation of liberty by the National Police and the Gendarmerie[2]

28. Deprivation of liberty by the police falls into two categories, preventive and judicial. The police may preventively arrest a person who is about to commit an offence or who is otherwise a risk to others (e.g. because he is intoxicated).

29. Judicial arrest requires a strong suspicion that the person concerned has committed an offence and the issuance of a judicial arrest warrant. However, in case of urgency, when there is no time to seek an arrest warrant or when a suspect is caught in flagrante delicto, the police can carry out the arrest without warrant.

30. At the time of arrest, the person is informed of the reasons for his arrest and of his rights, including the right to contact a relative, the right to legal assistance, the right to remain silent, and the right to challenge the arrest. These rights are spelled out on the "Suspects Rights Form" which the police give the arrested person. In order to take an arrested person into police custody, the police need to obtain a detention order issued by the competent prosecutor.

31. For the purposes of the maximum duration of police custody, CPC distinguishes between "individual offences" and "collective offences", the latter being offences committed by three or more persons. For individual offences police custody may not exceed 24 hours (plus up to 12 hours for the transport of the suspect if the arrest takes place in a location at a considerable distance from the nearest court). The prosecutor can, however, extend police custody to 48 hours in particularly complex cases. For collective offences, the prosecutor can order up to three extensions of the 24 hours of police custody, up to a total maximum of 96 hours. In regions where a state of emergency is in effect, the period of custody of persons apprehended in connection with terrorist offences can be extended up to seven days, at the request of the prosecutor and by decision of the judge (before whom the person concerned must be brought). No region of Turkey is currently under a state of emergency.

32. The arrested person, his family and his lawyer can at any time challenge the police custody. A justice of the peace will decide on such challenges without a hearing.

33. While in police custody the suspect is interrogated by the prosecutor. The police may, however, subject the detainee to questioning before he is interrogated by the prosecutor. The

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[2] In the following, the term "the police" is used to refer to both the National Police and the Gendarmerie.

presence of a lawyer is mandatory if the suspect is a minor or is accused of an offence carrying a maximum sentence of five years or more of imprisonment. If the suspect does not privately hire a lawyer, the local bar association will provide a lawyer.

34. No coercion is allowed during the interrogation. Under article 148 (4) CPC, "statements taken by law enforcement officials in the absence of defence counsel cannot constitute the basis for a judgement unless they are confirmed by the suspect or the accused in front of the court". In a recent judgement, the Court of Cassation stated that this provision, which was introduced by the 2005 CPC, is not to be applied retroactively to statements made before the entry into force of the new CPC.

Detention on remand

35. If the prosecutor intends to keep the suspect in detention beyond the time limits for police custody, he must apply for a judicial order for remand custody. In order to decide on remand custody, the competent justice of the peace must hold a hearing at which the suspect is present and heard.

36. The arrest and detention of a suspect may further be ordered by the justice of the peace upon request of the prosecutor during the course of the investigation, or also ex officio in the course of the trial.

37. At all stages of investigation and trial a suspect or accused person has the right to request his release. The competent judge or the court decides on the question of the continuation of the arrest. A decision rejecting release is subject to appeal.

38. In the course of the investigation, the need for continued remand detention has to be examined every 30 days at the latest by the justice of the peace. The suspect also has the right to request the judge to examine his continued detention. During the trial phase, the competent judge or the court review ex officio the need for continued detention of the accused person at each hearing or in between hearings when the circumstances so require. There should be a hearing at least every 30 days, in which case the judge will review the detention in the presence of the accused. However, if the hearing is adjourned and the 30-day time limit would expire before the next hearing is held, the court will decide on detention on the basis of the case file.

39. Article 102 of CPC establishes the time limits for detention on remand. Persons charged with offences tried before ordinary courts can be held on remand for up to 6 months, which in complex cases can exceptionally be increased up to a maximum of 10 months. Under paragraph 2 of article 102, "[t]he maximum duration of remand detention in cases falling within the competence of Serious Crimes Courts is 2 years. Under compelling circumstances, this period may be extended by motivated decision; however, the extended period cannot exceed 3 years *in total*". Where the offence charged is related to terrorism, the time limits are doubled pursuant to article 252 (2) of CPC. The maximum duration of detention on remand thereby reaches 6 or 10 years, depending on the interpretation of article 102 (2).[3] Under article 12 of Law No. 5320, however, for

[3] As discussed below in paragraph 75, there are different interpretations of the maximum period of remand detention allowed by article 102.

terrorist offences the time limits on remand detention introduced by the new CPC will enter into force only on 1 April 2008.

Access to legal counsel

40. The right to immediate access to legal counsel for all persons in police or remand custody (art. 149 (1), CPC) is a major advance of the new CPC. As far as access to a lawyer during police custody is concerned, see details above under police custody.

41. This right is, however, restricted under the 2006 amendments to the 1991 Anti-Terror Law. Under article 10 (b) of the law (as amended), the judge can decide upon request by the prosecutor that a detainee's access to legal counsel can be delayed by 24 hours. The suspect may not be interrogated during those 24 hours. Article 10 (e) further allows that, if there is evidence that the defence lawyer might be "liaising" between the detainee and a terrorist organization, at the request of the prosecutor and following a decision by a judge, an official can be present during meetings between the suspect and his lawyer, and the judge will be able to examine documents passed between them. Moreover, article 10 (c) establishes that during police custody a terror suspect can be assisted only by one lawyer.

42. Article 59 of the Law on Execution of Sentences and Security Measures (No. 5275 of 2004) also provides that where the lawyer is suspected of being a member of a terrorist organization his interaction with a detainee who is his client can be monitored by the prison authorities.

43. Pursuant to article 101, paragraph 3, of CPC, the assistance of a lawyer is obligatory whenever a defendant is detained on remand.

Legal aid

44. Where a defendant does not have a privately hired lawyer but requests the assistance of a lawyer, he will be assigned legal counsel through the local bar association. The bar association will claim the lawyer's compensation from the Government, and the Government will reclaim the amount from the defendant, unless he can prove that he could not afford the costs of the lawyer.

Criminal trial

45. Under the Code of Criminal Procedure the prosecutor is in charge of the investigation. He is assisted by the police (or Gendarmerie). During the pretrial phase, judicial control over the investigation (e.g. extension of remand detention, authorization of searches or wire-tapping) is entrusted to the territorially competent justice of the peace. When the investigation is concluded the prosecutor will present an indictment to the competent judge in accordance with the seriousness of the offence (a justice of the peace, criminal court, serious crimes court or special serious crimes court depending on the offence). Article 174 provides that courts may return any indictment that is not supported by sufficient evidence. If the indictment is confirmed, the judge will set the date for the first trial hearing. The trial judge will be the same as the judge of the confirmation hearing.

Review of first instance judgements

46. Review of first instance judgements by the Court of Cassation is mostly on the law and not on the assessment of the evidence and the facts. The procedure is written: the Chief Prosecutor will give his advice on the appeal to the Court of Cassation, which will also be communicated to the defence lawyer and the victim's lawyer, who can react in writing. There might be a hearing for oral argument, but the defendant will not be allowed to be present if he is detained on remand.

5. Juvenile justice

47. In 2005, a new Child Protection Law (Law No. 5395) entered into force. This law provides for a new juvenile justice system, i.e. criminal justice affecting persons under 18 years of age. It states as a fundamental principle that the "penalty of imprisonment and measures that restrict liberty shall be the last resort for juveniles". The law establishes sections specialized in minors within the police, special prosecutors for cases involving minors and special courts for trials of minors. Judges appointed to these courts shall be "preferably specialized in juvenile law with training in the fields of child psychology and social services". Moreover, at all stages of criminal proceedings involving minors, an important role is assigned to social workers.

48. Where a minor is charged in relation to an offence committed together with adults, his case is, as a rule, handled separately by the specialized prosecutors and courts. "In case it is considered imperative", however, the adult court dealing with a case also involving a juvenile defendant may decide to join the minor's case to the adult trial. Cases involving terror offences are tried before the special chambers of the Serious Crimes Court, including where the defendant is a minor.

49. Law No. 5395 contains specific provisions aimed at putting into practice the principle that imprisonment shall be the last resort. If the offence charged carries a penalty of two years or less of imprisonment (five years or less in the case of minors below 15), the prosecution can, under certain conditions, be deferred for five years. If the juvenile does not reoffend during those five years, the prosecution will be dropped. At the conclusion of the trial, if the juvenile defendant is found guilty of an offence and would be sentenced to three years or less of imprisonment, the court may decide to suspend the announcement of the sentence and put the minor on probation for up to five years.

50. The law divides minors into three age groups: up to the completion of 12 years of age (no criminal responsibility), between 12 and 15 years completed and from 15 years and 1 day to the completion of 18 years.

51. Before a minor aged 15 or less can be arrested, he has to be given a medical examination in order to assess whether he is capable of understanding the act he is accused of. Moreover, minors in the 12-15 age group can only be arrested and detained on remand if the offence charged carries a minimum sentence of five years or more.

52. Both in police custody and in remand detention, minors have to be held separately from adults. The investigation of offences committed by minors is conducted by the prosecutor. When the prosecutor interrogates a minor, a social worker should be present. Whatever the offence charged, minors can only be interrogated in the presence of their lawyer.

53. The sentences provided in the Criminal Code are reduced for juvenile offenders: for minors from 13 to 15 years of age (at the time of the offence) the sentence is to be halved; for minors from 15 to 18 years of age, the sentence is to be reduced by one third.

6. Deprivation of liberty on grounds of mental health

54. Article 432 of the Turkish Civil Code provides that persons who have mental illness, mental infirmity, habitual drunkenness or substance addiction and thus harm their own family and surroundings can, by order of a court, be placed in a health centre for their protection. Article 433 provides that the same court is competent to order the release of the patient from the mental health institution. Article 436 provides for a right to appeal placement in an institution, and article 437 states that legal aid may be provided when necessary.

7. Administrative detention of foreigners pending expulsion

55. Article 23 of Law No. 5683 of 1950, the Law on Residence of Foreign Citizens, provides that foreigners who have been issued an expulsion decision but cannot be immediately expelled because they lack a passport or for any other reason, shall reside in a location assigned to them by the Ministry of the Interior.

IV. POSITIVE ASPECTS

A. Cooperation of the Government

56. The Working Group enjoyed the full cooperation of the Government. It was able to visit the detention centres it had requested before the visit. In these facilities, the Working Group was able to meet with and interview in accordance with the terms of reference whomever it wanted, detainees identified beforehand to the Government by their name and detainees chosen at random. The Working Group would like to reiterate its gratitude to the Government of Turkey.

B. Well-functioning criminal justice and penitentiary systems

57. The first and most striking observation the Working Group made during its visit to Turkey was that both the criminal justice system and the penitentiary system were well organized, well administered and well funded. In the police stations the Working Group visited, holding cells were clean, registers clear and generally complete, and interrogation rooms designed following a model layout and equipped with a video camera.

58. Courts similarly conveyed the impression that the Government allocates adequate resources to the judiciary and to prosecutorial offices. As a result, delays in criminal proceedings are generally limited and the duration of trials in which the defendant is in custody is generally reasonable. This is evidenced also by the statistics concerning the number of remand detainees among the overall number of persons deprived of liberty, which is just above 50 per cent.[4] While it

[4] According to statistics provided to the Working Group by the Government, at the time of the visit out of the overall prison population of 67,795, 24,646 were serving a final sentence, 8,013 were serving a sentence on the basis of a judgement still pending before the Court of Cassation, and 34,136 were awaiting the first instance judgement.

would of course be desirable for significantly less than half of the prison population to be awaiting judgement, the ratio in Turkey is reasonable by international standards.

59. The administration of the penitentiary institutions also appeared to be professional and well funded. There are fewer prisoners than places in the penitentiary system and conditions of detention in the new prisons, which the Government is building at considerable speed to replace older facilities, are respectful of international standards.

C. Low incarceration rate

60. The Working Group also notes that, with approximately 91 detainees per 100,000 inhabitants, Turkey has a reasonably low incarceration rate.

D. Reform of the criminal procedure law

61. In the course of the past decade the criminal procedure law of Turkey has been undergoing profound changes, which have resulted in considerable strengthening of the safeguards against arbitrary detention. Only a few milestones of this reform process can be mentioned here.

62. In 1999, a constitutional amendment abolished the military judge presiding over State Security Courts, making their composition entirely civilian. In 2003, State Security Courts were abolished altogether and replaced by the special chambers of Serious Crimes Courts.

63. In October 2001, article 19 of the Constitution was amended. The maximum duration of police custody for "offences committed collectively" was reduced to 4 days from the previous 15 days.[5]

64. In January 2002, the Government decided to suspend the state of emergency provisions that contravened article 5 of the European Convention on Human Rights (right to liberty and security of person), which had been in force since 1992 in some areas of the country. In November 2002 the state of emergency itself was lifted.

65. The new CPC introduces for the first time non-derogable limits on the duration of remand detention on charges of offences tried before the Serious Crimes Courts and reduces the maximum duration of remand detention for lesser offences.

66. The suspect's access to a lawyer while in police custody is now much better protected. Moreover, legal aid has been significantly strengthened. Lawyers put at the disposal of suspects by bar associations used to account for only 10 per cent of cases, now it is four times as many. The Working Group has, however, been informed that, because of the high costs of the legal aid system, the Turkish Grand National Assembly is considering legislation that would restrict access to legal aid.

67. Regional appeals courts will be established in 2007.

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[5] The corresponding change to article 11 of the Anti-Terror Law had already been made in 1992 (Law No. 3842).

E. Measures against the use of extorted statements

68. All the interlocutors of the Working Group delegation, both those representing the authorities and those behind bars, stated that the use of torture and ill-treatment by the police had dramatically decreased in the past few years. The Working Group has no doubts that the Government's policy of "zero tolerance" of torture is highly successful. From a widespread practice used by the police to obtain self-incriminating statements from the suspect, torture has become the exceptional misconduct of individual police officers or gendarmes. This was brought about by a number of changes to the legal system, including shorter police custody periods, obligatory medical visits, and changes to the laws and administrative measures aimed at reducing the prospects of impunity for torturers. Most important from the point of view of the Working Group's mandate is article 148 (4) of CPC, providing that "statements taken by law enforcement officials in the absence of defence counsel cannot constitute the basis for a judgement unless they are confirmed by the suspect or the accused before the court". As a result of all these developments, convictions based on extorted statements are much less likely to occur.

F. Juvenile justice

69. The new Child Protection Law that entered into force in 2005 constitutes a significant step in bringing juvenile justice in Turkey into line with the provisions of articles 37 and 40 of the Convention on the Rights of the Child and article 10 (2) (b) ICCPR. The fundamental principle that the "penalty of imprisonment and measures that restrict liberty shall be the last resort for juveniles" is not only enshrined in the law: the provisions allowing prosecution of minors accused of an offence punishable with up to two years of imprisonment to be deferred for five years, and the possibility of putting minors who would be sentenced to less than three years' imprisonment on probation provide the courts with the instruments to put that principle into practice. Equally important is the establishment of specialized police, prosecutors' offices and tribunals to deal with juvenile delinquency. The Working Group remains concerned, however, about several aspects of the juvenile justice system, both regarding the legislation and with respect to its implementation. These are discussed below.

V. ISSUES OF CONCERN

A. Concerns related to detention in the criminal justice context

1. Criminal justice in terrorism cases

70. The Working Group has described above the reform process in the criminal justice system. Many of the reforms of general application, e.g. the ban on statements obtained by the police in the absence of a lawyer, are of great significance to criminal proceedings involving terrorism suspects. Other positive developments, such as the abolition of the State Security Courts and the termination of the state of emergency, are specific to terrorism cases. The Working Group remains concerned, however, that the detention, prosecution and trial of terrorism suspects continue to take place in a "parallel system" to the common justice system in which the reforms encounter difficulties in showing their beneficial effects. The problems arise both from the letter of the laws applicable to such cases and from the practice.

(a) Definition of terrorism and terrorist offender

71. As the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism states in his report on the visit to Turkey in February 2006, "[t]he Anti-Terror Act is drafted in a way that allows for an overly broad application of the term terrorism"[6] and "[s]urprisingly, there is no requirement that [a terrorist offender] must have committed a serious violent crime".[7] The Special Rapporteur also voices his concern about the severe limitations the Anti-Terror Act may put on the freedom of expression, association and assembly.[8] The Working Group fully shares the opinion of the Special Rapporteur in this respect and, in the interest of brevity and to avoid duplication, refers to his more extensive reasoning.

72. In May 2006 the Special Rapporteur provided a legal opinion to the Justice Committee of the Turkish Grand National Assembly concerning certain aspects of a government bill introducing amendments to the Anti-Terror Act.[9] The Special Rapporteur inter alia "expressed concern that the terms relating to the question of incitement were vague and therefore appeared to be incompatible with the requirement of legality as enshrined in article 15 of ICCPR. Consequently, the limitations that resulted in respect of freedom of expression would not be confined to countering terrorism but could be used also in respect of non-violent expression of opinion".[10] The Working Group notes that the amendments introduced by the Turkish legislator in enacting the bill appear to have partially taken some of the concerns expressed by the Special Rapporteur into consideration. In other respects (e.g. the list of other offences which may be considered terrorist offences), however, the Assembly aggravated the problems identified by the Special Rappporteur. The Working Group shares the preoccupations of the Special Rapporteur also in this regard.

(b) Access to legal counsel in proceedings concerning terrorism suspects

73. The Working Group is equally concerned about the restrictions to the right to be assisted by counsel of one's own choosing (art. 14 (3) (b) and (d), ICCPR) contained in the 2006 amendments to the Anti-Terror Law. As set forth above, if there is evidence that the defence lawyer might be "liaising" between the detainee and a terrorist organization, the judge can order that an official be present during meetings between the suspect and his lawyer and will be able to examine documents passed between them.[11] Finally, before trial starts a terror suspect can appoint only one defence counsel. The latter restriction in particular risks constituting heavy-handed interference with defence rights in terrorism cases, which tend to be rather complex (as the Government itself argues when justifying prolonged periods of remand detention; see below) and involve heavy prison sentences.

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[6] A/HRC/4/26/Add.2, para. 14.

[7] Ibid., para. 15.

[8] Ibid., para. 18.

[9] For a summary of this legal opinion, see A/61/267, para. 6.

[10] Ibid.

[11] According to information provided by the Government to the Working Group, this provision has not been applied yet.

(c) Length of remand detention

74. Most disturbing to the Working Group is the situation of the numerous persons accused of terrorism who have spent 7, 8, 10, in some cases 13 years in detention without being found guilty.[12] According to information provided by the administration of the Diyarbakır D-type (high-security) prison, of the 489 detainees at the time of the Working Group's visit, only 59 were convicts; 45 detainees had spent more than 10 years in prison without a final conviction, and 18 of them had been detained for more than 13 years without ever having been judged at first instance, while the others' cases are pending before the Court of Cassation or in retrial. Their trials register a perfunctory hearing every month or two. The Working Group delegation discussed some of these cases with prosecutors involved in them and was told that evidence was still being gathered and analysed. It is not clear to the Working Group what evidence could possibly need to be analysed 13 years after the terrorist crime was committed, no matter how complex the case is. It appears that the problem is compounded by the frequent changes in the judges sitting on the trials.

75. While the new Criminal Procedure Code introduces time limits for the duration of remand detention, in order to be able to maintain these persons in detention for several years more without a judgement, the legislator has decided that for persons accused of terrorist crimes the limits shall enter into force only in April 2008. Article 102 (2) of CPC, the provision establishing the maximum duration of remand detention in cases falling within the competence of Serious Crimes Courts (see paragraph 39 above), appears not to be entirely clear: as explained to the Working Group by the Government, the correct interpretation is that the initial two years can be extended by only one additional year for compelling reasons, reaching a total of three years, which - doubled for proceedings in terrorism cases as provided for in article 252 (2) of CPC - amounts to a maximum six years' detention on remand. The Working Group noted, however, that the judges, prosecutors and lawyers with whom it spoke during the visit understood article 102 (2) to provide that the maximum duration is two years, to be extended (for compelling reasons) by up to three years, thereby reaching a total of five years, which, doubled under article 252 (2), would allow remand detention in terrorism cases for up to 10 years. As the provision will enter into force only in April 2008, there is no judicial interpretation of the norm as yet. The Working Group notes that only the reading the Government has put forward in its correspondence with the Working Group, limiting remand detention to six years for compelling reasons in highly complex cases, would appear to be compatible with the right to trial within a reasonable time or release enshrined in article 9 (3) of ICCPR. The Working Group would therefore recommend that the Government find a way to ensure that this reading prevails once the provision enters into force.

(d) Execution of prison sentences of persons found guilty of terrorism offences

76. The Working Group observed that, both in the law and in the practice, the execution of prison sentences is aggravated in multiple ways in the case of persons convicted of terrorism offences. Disciplinary sanctions are imposed with great frequency against these detainees. The 2006 Anti-Terror Law provides that "those who have been imposed three times the disciplinary penalty of solitary confinement shall not benefit from conditional release, even if such disciplinary

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[12] In the course of its visit, the Working Group received information about similar cases in other high-security prisons it could not visit.

penalties have been lifted" (art. 17 (2)). Prisoners serving an aggravated life sentence as result of the abolition of the death penalty (which the Working Group of course welcomes) cannot benefit from conditional release. As article 17 (4) prescribes, "their heavy lifetime imprisonment penalties last until they are dead".

77. The above concerns regarding detention of persons accused and convicted of terrorism are greatly exacerbated by the fact that, due to the broad definition of terrorism, the number of detainees affected by these provisions and practices is considerable. At the time of the Working Group's visit, there were more than 4,000 persons deprived of liberty on terrorism charges or convictions. These detainees are not necessarily accused of a violent crime. As discussed in the next paragraph, many of them may be held primarily on the basis of extorted confessions. Their situation is, to sum up, a major stain on Turkey's efforts to eliminate arbitrary detention which cannot be justified with reference to the Government's uncontested duty to combat terrorism.

2. Failure to retroactively apply the ban on statements made to the police in the absence of a lawyer

78. As already mentioned, the Working Group is convinced that the Government's policy of "zero tolerance" of torture is being pursued very effectively. Article 148 (4) of CPC, providing that "statements to the security forces signed in the absence of a lawyer cannot count as evidence unless they are repeated in front of a judge", is a cornerstone of that policy. It is therefore disheartening that the authorities (including the Court of Cassation) consider that this provision is not to be applied to currently pending criminal proceedings in which the accused made self-incriminating statements to law enforcement officials without a lawyer before the new CPC entered into force. The article in the old CPC providing that the court may not convict a defendant based solely on his confession to the police is obviously a much weaker safeguard against convictions based on extorted statements.

3. Vulnerability of non-Turkish detainees

79. Foreign detainees, whether deprived of their liberty on remand or serving a sentence, are in a particularly vulnerable situation in most if not all countries. In Turkey, this vulnerability is exacerbated by a scarcity of effective interpreters in the criminal justice system. The Working Group recalls that the right to be enabled to fully follow the proceedings is enshrined in article 14 (3) for all stages of the criminal process, from prompt and detailed information on the charges at the beginning (para. 3 (a)) to free assistance of an interpreter throughout the whole trial (para. 3 (f)).

80. The Working Group is further concerned about a procedural obstacle to contacts between foreign detainees and their families in the home country. According to prison administrators and detainees interviewed by the Working Group, detainees are only allowed to call one number in their home country and the consular representatives of their home country have to certify to the Turkish authorities that this number actually belongs to a family member of the detainee. Many consulates apparently fail to cooperate with this procedure. As a result, detainees from those countries are simply deprived of all possibility of reaching their family by phone.

4. Juvenile justice

81. Although the 2005 Child Protection Law constitutes a very significant step forward, the Working Group remains concerned about some aspects in which the juvenile justice system does not sufficiently take into account the specific vulnerability of minors suspected of an offence. The time limits concerning police custody and remand detention are the same for minors in the 15-18 age group as for adults. Moreover, the provision whereby "in case it is considered imperative" the adult court dealing with a case also involving a juvenile defendant may decide to join the minor's case to the adult trial can in many cases nullify the important guarantee of specialized prosecutors and courts. This is the rule for cases involving terrorism (which, as mentioned above, is overly broadly defined), which are tried before the special chambers of the Serious Crimes Court, also where the defendant is a minor.

82. The massive arrests and detentions of minors following the riots in Diyarbakır from 28 March to 1 April 2006 provide evidence that these concerns are not only of a theoretical nature. More than 200 minors were apprehended during and following the riots, 94 of them were taken into police custody (16 of them in the 12-15 age group), and 60 were remanded into custody on charges, including being members of an armed organization, and remained in detention in a special wing of the Diyarbakır high-security prison three weeks after the incidents. At the time of its visit, the Working Group was relieved to learn that all children arrested in connection with the riots had been released from pretrial detention. According to the report of an inquiry into the events by several bar associations, the families of the children were not informed after the apprehensions and the earliest interview with lawyers took place 12 hours after apprehension.

83. In addition to the concerns raised by some aspects of the legislation, the Working Group is concerned about the delays in the implementation of the new juvenile justice law. At the time of its visit, the Working Group was informed that specialized prosecutors' offices and courts had been established in only nine cities. There is a great shortage of social workers, who play a key role in the juvenile justice system designed by the new law. As a result, their twofold function in the process - assisting the court by carrying out a "social inquiry" into the juvenile offender's circumstances and assisting the minor during the process, particularly during interrogation - is seriously compromised. Moreover, it would appear that the scarcity of social workers is causing delays in the system, contrary to article 10 (2) (b) of ICCPR, which states that "accused juvenile persons shall be … brought as speedily as possible for adjudication".

84. Finally, the Working Group heard the concern expressed that the principles whereby juvenile cases should be adjudicated as speedily as possible and the "penalty of imprisonment and measures that restrict liberty be the last resort for juveniles" have not yet fully been assimilated by the justice system.

B. Concerns related to detention outside the criminal justice context

85. Article 9 (1) of ICCPR provides that "[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law". To ensure the effectiveness of that right, both within the context of criminal proceedings and also outside, where the guarantees of paragraphs 2 and 3 of article 9 do not apply, article 9 (4) prescribes that "[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings

before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful". The Working Group observes considerable shortcomings in the protection of these rights outside the criminal justice system.

1. Detention of foreigners awaiting expulsion

86. Foreigners who are in Turkey without the documents necessary to allow them to stay lawfully in the country can be, and are in great numbers, arrested by the police or the Gendarmerie. After a brief period in police custody they are taken to a so-called "guest house" for foreigners run by the Ministry of the Interior, where they are - in spite of the welcoming name of these institutions - to all effect locked up awaiting expulsion. However, no written decision to this effect is issued to them.

87. Article 23 of the Law on Residence of Foreign Citizens, providing that foreigners who have been issued an expulsion decision but cannot be immediately expelled, shall reside in a location assigned to them by the Ministry of the Interior, does not constitute a sufficient legal basis for this practice. Neither this law, nor any other, provides further details as to the preconditions for, modalities of or maximum duration of assignment to a residence for foreigners awaiting expulsion. As this is not a measure adopted within the criminal process, judges of the peace have no jurisdiction to rule on challenges against such measures. It would appear that administrative tribunals are competent. However, this remedy appears not to be exercised in practice. Challenges to the expulsion decision may have an impact also on the question of detention, but they simply do not constitute the remedy against the fact of deprivation of liberty required by article 9 (4) of ICCPR.

88. It is important to stress that this has nothing to do with the criminal proceedings which can be initiated against a foreigner for illegal entry into Turkey. Such proceedings are not regularly pursued and in case of a guilty finding result in a fine, not deprivation of liberty.

89. Another aggravating aspect is that, according to information provided by the police, not only foreigners who are actually the subject of an expulsion decision are assigned to guest houses (i.e. deprived of their liberty), but also so assigned are many who - in the opinion of the police - are likely to receive an unfavourable outcome in expulsion proceedings initiated against them. This practice violates even article 23 of the Law on Residence of Foreign Citizens.

90. To sum up, there is no remedy for the foreigners awaiting expulsion to challenge their detention, and no control over the detention by a judicial authority. It may be true that in some cases the person to be deported spends only a few days at the guest house. But in others, where there are difficulties obtaining valid travel documents (as appears to be the case for many African migrants), the detention can last months and even more than a year.

2. Deprivation of liberty in psychiatric institutions

91. This situation is in some respects similar to that of persons assigned to stay in a mental institution without their consent. Just as the Working Group does not in any way dispute the right of the Government to regulate the entry of foreigners into Turkey, to expel those who are there without a legal basis, and to detain some of them pending expulsion where it was really necessary, there is no doubt that some persons have to be deprived of their freedom in mental health

institutions in order to prevent them from seriously harming themselves and others. But whenever a Government, also for the most legitimate purposes, decides to deprive someone of his or her freedom, international law provides that it needs to do so on a sound legal basis and to provide an opportunity to challenge the deprivation of liberty before a court.

92. Article 432 of the Civil Code allows the territorially competent civil court to assign persons with mental health problems who "harm their own family and surroundings" to an institution. Article 433 provides that the same court is competent to order the release of the patient from the mental health institution. The provisions apply equally to persons with substance abuse problems.

93. The Working Group has two main concerns in this respect. Firstly, the law should provide more detail both on the substantive criteria and the procedural safeguards for involuntary commitment to mental health institutions, including an automatic periodic review of the necessity of deprivation of liberty. Secondly, in practice in many cases there is no judicial decision providing a legal basis for the assignment. The Council of Europe Committee for the Prevention of Torture found on the occasion of a recent visit that "most involuntary patients in the Adana and Bakirköy hospitals had been hospitalized *without any judicial intervention*".[13] The Working Group shares this impression. According to the procedure currently in use at the Bakirköy Hospital, recently arrived involuntary patients are admitted on the basis of a decision taken by three hospital psychiatrists. In some cases judicial authorization is sought ex post facto after committal, but as there are apparently delays also in the judiciary's examination and decision on the reports of the psychiatrists' committee, most patients' stay in the closed ward takes place without the judicial basis provided for in the law. As the remedy against involuntary hospitalization is (pursuant to article 433 of the Civil Code) a decision by the same judge to review the committal decision, as long as the initial judicial decision has not been taken the remedy is non-existent in practice.

94. The persons deprived of their liberty in psychiatric hospitals (according to information received, approximately 90 per cent of patients are involuntary committals) are entitled to a better legal basis, both with respect to substantive criteria and to procedural safeguards. The psychiatrists running these institutions also need a legal basis for the measures they take which interfere with human rights, including the right not to be arbitrarily detained. To fill the current vacuum, the Turkish Psychiatric Association has proposed to the Minister of Justice a draft Mental Health Law, but there appears to have been little progress in this regard.

3. Other forms of administrative deprivation of liberty

95. In addition to the involuntary committal to psychiatric hospitals, there are a number of other situations to which the Working Group's attention was drawn in which vulnerable persons are taken to institutions where they are de facto deprived of their freedom with little procedural guarantees. This is the case of some of the persons with mental disabilities accommodated in rehabilitation centres, such as the Saray institution outside Ankara that was visited by the Working Group. According to information received from reliable sources, which the Working Group was

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[13] Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 7 to 14 December 2005, p. 30, available at http://www.cpt.coe.int/documents/tur/2006-30-inf-eng.pdf.

not able to verify, this may also be the case with respect to certain institutions for children at risk (of delinquency, prostitution, or sexual abuse) which are not formally classified as places of detention, but are nonetheless guarded by the police.

96. The Working Group recalls that whenever persons are deprived of their freedom, de facto or de jure, there must be a procedure in place for prompt (and thereafter periodic) review of the legality and necessity of the measures taken. In the Working Group's opinion, in Turkey the legal basis and the procedural safeguards accompanying these forms of deprivation of liberty are not always sufficiently well defined.

VI. CONCLUSIONS

97. In the course of the last 15 years Turkey has made impressive progress in the reform of its criminal justice system. This progress is particularly visible in the fight against torture (which, as far as the Working Group's mandate is concerned, is the fight against intimidation of persons in detention and against extorted confessions). But the duration of police custody has also been significantly shortened: limits on the duration of pretrial detention were introduced for the first time in the 2005 CPC, which also guarantees the immediate right of access to a lawyer for all persons detained in the criminal process.

98. The Working Group notes, however, a great reluctance on the part of the authorities to fully extend the beneficial effects of the reforms to persons accused of terrorism, which - due to the overly broad definition of terrorist offences - affects thousands of individuals, many of whom have non-violently challenged the constitutional order of Turkey. In the Working Group's opinion, most of the extraordinary rules and practices and resulting restrictions on the safeguards against arbitrary detention cannot be justified with reference to the duty to defend the country and its population against terrorist threats.

99. The other great challenge Turkey faces is to put in place laws and procedures that will extend the protection against unlawful and unnecessary deprivation of liberty to those detained outside the criminal justice system, whether on the grounds of mental health issues, or because they are minors at risk, or because they are foreigners awaiting expulsion.

VII. RECOMMENDATIONS

100. **On the basis of its findings, the Working Group would like to make the following recommendations to the Government.**

101. **With regard to detention on terrorism charges, the Working Group recommends:**

- **The amendment of the definition of terrorism with a view to limiting the scope thereof, as recommended by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism;**

- **As a matter of urgency, the release of detainees detained for more than 10 years without having been found guilty. Measures should also be taken with regard to those held for more than 10 years on remand, even if they have already been found guilty at first instance. The Government should further ensure that**

article 102 (2), when it enters into force, is understood by judges and prosecutors as limiting remand detention to three years (i.e. six years in terrorism cases under article 252 (2) CPC, the provision doubling the time limits for remand detention of defendants charged with terrorism offences);

- **As a further matter of urgency, that the legislator introduce legislation clarifying that article 148 (4) CPC should be applied in all ongoing proceedings, whether the declaration to the police was made before or after the entry into force of the new CPC;**

- **The lifting of the limitation on the number of defence counsel in terrorism cases.**

102. **With regard to detention in the juvenile justice system, the Working Group recommends:**

- **Increasing efforts to fully implement the principle that deprivation of liberty shall be the last resort for juvenile offenders and to limit periods of remand detention by expediting proceedings in juvenile cases;**

- **Amending the law in order always to provide for the separate trial of defendants who are charged with having committed an offence as minors;**

- **Ensuring that the specialized police departments, prosecutors' offices and courts for juvenile offenders provided for by law are established covering the entire territory of Turkey, and that a sufficient number of social workers are hired to assist those specialized institutions, as provided by law.**

103. **With regard to forms of deprivation of liberty outside the criminal justice process, the Working Group recommends:**

- **As a matter of urgent priority, the enacting of a law creating a framework for the detention of foreigners whose detention is considered necessary to ensure the implementation of migration laws. Even before this legal framework is established, the competent police departments should start issuing decisions to all foreigners assigned to guest houses indicating, inter alia, the remedies available to contest such decisions, which should include judicial review;**

- **Enacting legislation governing involuntary commitment to psychiatric hospitals. To this end, the Government may wish to consult the Working Group's deliberation No. 7 on psychiatric detention;**[14]

[14] E/CN.4/2005/6, paras. 47-58.

- **Reviewing other forms of administrative detention with a view to ensuring (i) that they are actually in accordance with the law and necessary; and (ii) that judicial control is effective;**

- **Opening all places of administrative deprivation of liberty to regular inspection by one or more independent oversight bodies.**

Appendix I

LIST OF FACILITIES HOLDING PERSONS DEPRIVED OF THEIR FREEDOM VISITED BY THE WORKING GROUP

Ankara Sincan Women Closed Penitentiary Institution (Ankara Sincan Kadin kapali Ceza Infaz Kurumu)

Ankara F-Type No. 2 High Security Closed Penitentiary Institution (Ankara 2 No.lu F tipi Yüksek Güvenlikli Kapali Ceza Infaz Kurumu)

Izmir Buca Closed Penitentiary Institution (Izmir Buca Kapali Ceza Infaz Kurumu)

Istanbul Kartal H-Type Closed Penitentiary Institution (Istanbul Kartal H Tipi Kapali Ceza Infaz Kurumu)

Istanbul Pasakapi Women Closed Penitentiary Institution (Istanbul Pasakapi Kadin Kapali Ceza Infaz Kurumu)

Diyarbakır D-Type Closed Penitentiary Institution (Diyarbakır D-Tipi Kapali Ceza Infaz Kurumu)

1st Grade Military Penitentiary and Detention Institution of the Land Forces Command (Mamak Military Prison) (Kara Kuvvetleri Komutanlığı 1. Sınıf Askeri Ceza ve Tutukevi)

Basmane Police Station (Basmane Polis Karakolu)

Istanbul Police Headquarters Anti-Terrorism Department (Istanbul Emniyet Müdürlügü Terörle Mücadele Subesi)

Istanbul Police Headquarters Juvenile Department (Istanbul Emniyet Müdürlügü Çocuk Subesi)

Diyarbakır Police Headquarters (Diyarbakır Emniyet Müdürlügü)

Interrogation Centre of Diyarbakır Provincial Command of Gendarmerie (Il Merkez Jandarma Komutanligi Nezarethanesi)

Guest House for Foreigners in Izmir (Izmir Yabancilar Misafirhanesi)

Istanbul Police Headquarters Foreigners Department and the Guest House for Foreigners in Zeytinburnu (Istanbul Emniyet Müdürlügü Yabancilar Subesi ve Zeytinburnu Yabancilar Misafirhanesi)

Istanbul Bakirkoy Mental Hospital (Istanbul Bakirköy Ruh ve Sinir Hastaliklari Hastanesi)

Diyarbakır Orphanage (Diyarbakır Yetistirme Yurdu)

Ankara Saray Rehabilitation Centre (Saray Rehabilitasyon Merkezi).

Appendix II

ARTICLE 19 OF THE CONSTITUTION

"Everyone has the right to liberty and security of person.

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

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

"Individuals arrested or detained shall be promptly notified, and in all cases in writing, or orally, when the former is not possible, of the grounds for their arrest or detention and the charges against them; in cases of offences committed collectively this notification shall be made, at the latest, before the individual is brought before the judge.

"The person arrested or detained shall be brought before a judge within at latest 48 hours and within at most four days in the case of offences committed collectively, excluding the time taken to send him to the court nearest to the place of seizure. No one can be deprived of his liberty without the decision of a judge after the expiry of the above specified periods. These periods may be extended during a state of emergency, under martial law or in time of war.

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

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

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

"Damages suffered by persons subjected to treatment contrary to the above provisions shall be compensated for according to law, by the State with respect to the general principles of the law on compensation."
