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Vol. 12, No. 10 (D) – September 2000

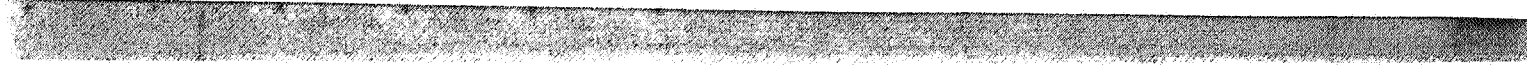
The Commission and the Turkish authorities would be wrong to settle for incremental improvements on the assumption that time is on their side. Turkey's own citizens are paying the price for delay. Moreover, there is no guarantee that the present window of opportunity will remain open. The illegal armed political organizations and their lawless counterparts in the deep state, both nourished by instability, have repeatedly destroyed similar opportunities during the 1990s. Thoroughgoing human rights reform is undoubtedly the most effective way of cutting the ground from under them and setting Turkey firmly on the path to E.U. membership.

HUMAN RIGHTS AND THE EUROPEAN UNION ACCESSION PARTNERSHIP

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TURKEY

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INTRODUCTION

At its summit in Helsinki in December 1999, the European Union (E.U.) recognized Turkey as a candidate for membership in the union, subject to the understanding that actual negotiations for membership will not commence until Turkey meets the political criteria for E.U. membership established in Copenhagen in 1993. As is E.U. practice with all applicant states, the European Commission is in the process of preparing an Accession Partnership document, identifying the steps necessary for Turkey to meet the Copenhagen criteria, which include "stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities."

Once adopted by the Commission and the E.U. Council of Ministers in late 2000, the Accession Partnership document, which will also include economic and institutional requirements, will become the E.U.'s formal list of tasks that Turkey must complete in order to accede to the union. Turkey will then produce a national program for accession that mirrors the Accession Partnership, and progress will be monitored by means of the annual 'Regular Report from the European Commission on progress towards accession' on the basis of the Copenhagen criteria, as is done for all applicant states.

Turkey's history of gross and widespread human rights violations has been thoroughly documented by non-governmental organizations, including Human Rights Watch, and by international governmental organizations including the United Nations (U.N.) and the Council of Europe. As a consequence of Turkey's persistent failure to follow the recommendations of such bodies, serious violations persist today.

In the past, fellow governments in Europe have sometimes been reluctant to press too strongly for reform, fearing that Turkey might disengage from dialogue altogether. This patience (also motivated, in some cases, by commercial and security interests) has been exploited by successive Turkish governments unable or unwilling to stand up to the ruthless and conservative forces deep within the state. Meanwhile the Turkish public has been left unprotected against torture and repression. The preparation of the Accession Partnership is a unique opportunity to motivate significant lasting reform in Turkey.

While Human Rights Watch does not oppose or support Turkey's E.U. candidacy, it has consistently urged E.U. member state governments to use all diplomatic channels, including the accession process, to encourage the Turkish government to protect human rights. For that purpose, we have prepared this briefing to summarize the main patterns of human rights violations in Turkey and suggest a number of remedial steps that could be included in the Accession Partnership document.

This briefing does not entail an exhaustive list of problems and needed reform, but rather the minimum that should be addressed through the accession process. The briefing's recommendations are nonetheless detailed and specific. Human Rights Watch believes that the Accession Partnership will not achieve its aim unless it defines its goals in fine detail. The Turkish state has shown itself to be adept at improvising half-way measures and empty initiatives in order to placate critics. In September 1999, for example, the temporary release of Akin Birdal, imprisoned for a speech he gave while president of the Turkish Human Rights Association, and the partial amnesty of journalists in the same month, were clearly maneuvers to avoid official embarrassment at the E.U. Helsinki Summit in December. Akin Birdal was rearrested in early 2000, and prosecutions of journalists continue. If the benchmarks established for the accession process are completely unambiguous and measurable, the E.U. will not be constantly obliged to give credit and advantage for insubstantial gestures.

At the same time, detailed recommendations can give the Turkish government confidence that it will receive credit from the E.U. when due. Suspicions have been voiced in Turkey that E.U. member states have used human rights as an excuse for resisting Turkey's membership, while the "real" reasons could be traced to various political considerations, including Turkey's sometimes strained relations with E.U. member Greece, and xenophobic fears about including a populous, predominantly Muslim country in a border-free Europe. These suspicions, justified or not, seriously undermine the efficacy of any human rights agenda in the E.U. accession process. Therefore, a transparent

process based on clear and objectively measurable benchmarks is essential. It will signal to the people of Turkey that the E.U.'s human rights goal posts are to be taken seriously, but will not be moving perpetually out of reach.

Each fall, the E.U. Commission publishes a regular report on the progress of each applicant state toward accession and the European Council reviews the accession process on the basis of this report. The E.U.'s 1998 and 1999 regular reports on Turkey accurately identify the main problem areas, and correctly point to the woeful lack of progress since 1997. The first real indication from the Turkish side of their state of readiness for the Accession Partnership appeared in the February 28, 2000 *Report on the Political Criteria of the Special Committee on Turkey-E.U. Relations* (hereinafter, the *Report*) prepared by the Special Committee on Turkey-E.U. relations attached to the Turkish Prime Minister's office. Human Rights Watch has also examined an undated document entitled *Calendar for Democracy, the Rule of Law and Human Rights* (herein after the *Calendar*) produced by the Secretariat of the High Coordinating Council for Human Rights of the office of the Prime Minister in mid-2000, after publication of the *Report*.

These two documents contain a large number of proposals for constitutional, legal and administrative reform in the direction of extending freedoms and protecting fundamental rights. They include measures for reshaping the National Security Council, abolishing the death penalty, redrafting laws in order to ensure freedom of expression, establishing judicial police, abolishing incommunicado police detention and combating domestic violence. The documents also proposed signature and ratification of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). That Turkey went on to sign both covenants on August 15, 2000 was encouraging, and it is to be hoped that ratification - without extensive reservations - will soon follow. As a general expression of readiness to consider change, then, these proposals give cause for optimism.

The omissions, on the other hand, and the lack of precision as to the final shape of such reforms, leave room for concern. Most obviously, these documents do not remove the remaining obstacles to the use of minority languages in all spheres of daily life and to the free expression of ethnic identity. The *Report* refers briefly to the problems with language, but understates them, referring to "basic freedoms granted, shortcomings in practice." It restates the official concept of "constitutional citizenship" according to which "everyone living in Turkey and feeling Turkish is a Turk," but does not address the situation of those who do not feel Turkish, except to say that such matters "can be met on the basis of individual rights." The *Calendar* ignores the language issue entirely.

The *Report* and the *Calendar* contain no reference to a number of safeguards against torture that have been specifically recommended by intergovernmental mechanisms (including a prohibition on blindfolding and independent prison/police station visiting schemes); no detailed suggestions as to how children are to be protected from torture; no proposals for immediate release of people imprisoned for the peaceful exercise of their rights of expression; no proposals to resolve the problems surrounding the wearing of the Islamic head scarf in, for example, institutions of higher education and parliament; no provisions for investigation of "disappearances" and extrajudicial executions in the southeast and no arrangements for lifting Turkey's geographical reservation to the 1951 Convention Relating to the Status of Refugees.

The time line for reform indicated in the *Calendar* gives further cause for disquiet. The European Commission will articulate its Accession Partnership proposals in the form of short-term and medium-term measures. Short-term measures are expected to be effected within a year, while medium-term measures are for introduction within approximately three years. Many of the measures outlined in this briefing should be enacted now. Reform on torture and freedom of expression is long overdue. The dramatic reduction in attacks by illegal armed groups offers an unprecedented window of opportunity, which should be used to enact measures to build confidence and end the repression that such violent groups have used to excuse their own abuses. The current Turkish government has been frittering this opportunity away. It is extremely disheartening to find that, according to the *Calendar*, necessary draft changes to the Criminal Code will only be ready for submission to parliament by the end of 2001, and the end of 2002 in the case of the Anti-Terror Law. Prisoners held for expressing non-violent opinions should not be left to languish in jail, captive to Turkey's timetable for accession.

The *Calendar* puts a similar leisurely time line on the abolition of incommunicado detention, suggesting submission of draft changes to the Criminal Procedure Code at the end of 2001. In January 2000, Mehmet Ali Irmakcelik, then State Minister with responsibility for Human Rights, included abolition of incommunicado detention among his "short term goals,"¹ foreseeable in the European Commission's one-year short-term time frame. The schedule of the *Calendar* therefore shows some slippage from this prior public undertaking.

Human Rights Watch considers that the proposals in this briefing, many of which protect fundamental liberties and all long overdue, deserve to be tackled within the first year. The Accession Partnership is itself due to emerge already a full year into Turkey's E.U. candidacy—a year which, so far at least, the Turkish government has not used to great effect.

This Human Rights Watch briefing contains no recommendations on the constitutionally assigned role of the Turkish armed forces, which is not strictly a human rights issue. Nonetheless, it is clear that the structure and operation of the National Security Council, its role in ousting Prime Minister Necmettin Erbakan in 1997, the pronouncements of the Office of the Chief of General Staff on education, broadcasting and language, the armed forces' extensive industrial holdings and the fact that the armed forces are not subject to the Defense Ministry, are all highly anomalous. The armed forces and other conservative elements within the state that have had overriding political influence for the past twenty years must bear considerable responsibility for the sorry human rights situation, and for the recent succession of humiliating judgments against Turkey at the European Court of Human Rights. There is unlikely to be much improvement while these forces remain in the driver's seat and therefore the Accession Partnership's proposals in this respect will be significant for the human rights situation.

In some areas, the Turkish government may question the imposition of standards that are not yet met by some existing members of the European Union. The right to a non-punitive alternative to military service proposed in this report, for example, is not yet fully in place in Greece. In such areas, the E.U. should work for consistency among member and applicant states in conformity with international standards, rather than settle for a lower common denominator.

The recommendations on torture contained in this report are particularly extensive and include some measures that are not applied in some other E.U. candidate states, or indeed some member states. These are made necessary by the persistence and severity of the problem in Turkey.

The following discussion of Human Rights Watch's recommendations for the Accession Partnership addresses nine key areas of needed reform: preventing torture, safeguarding freedom of expression and the right of conscientious objection, ensuring language and minority rights, combating restrictions on the head scarf, improving prison conditions, lifting the death penalty, ending repression of civil society, contributing to stability in the southeast, and protecting refugees. Each recommendation is followed by an indication of how the Turkish government's *Calendar* and *Report* deal with that issue.

PREVENTING TORTURE

The persistence of torture in Turkey is an indisputable matter of record. Throughout the last two decades Turkish and international non-governmental organizations have documented thousands of cases from all parts of the country—a terrible toll of lasting physical and psychological damage inflicted on Turkish citizens by police officers and gendarmes whose proper duty was to protect them. One Turkish government after another has denied the extent of torture and refused to take any measures to combat it. During the 1990s the European Committee for the Prevention of Torture (CPT) began making visits to Turkey. The CPT is authorized under the European Convention for the Prevention of

¹ *Milliyet* (Nationhood), January 6, 2000.

Torture to visit detention sites and document conditions it observes. Its reports to states are generally confidential unless the state concerned authorizes publication, but such publication has become the dominant norm. Nonetheless, Turkish governments headed by politicians still in positions of authority today, has withheld permission for the publication of the CPT's early reports on Turkey. In 1992, apparently impatient at government inaction, the CPT took the unusual step of issuing a statement confirming that it had found evidence of widespread torture.² After three more years of government inertia, and scores more deaths in custody as a result of torture, the CPT made another public statement in 1996.³ In 1999, the Turkish government finally granted permission for the publication of one of the CPT's reports.

The first and only really practical step to combat torture made by any Turkish government since the 1980 military coup was the shortening of police detention periods in 1997.

The present Turkish government's record on torture has been unexceptional. In August 1999 punishments for officers convicted of torture were increased. In June 1999 Prime Minister Ecevit issued a circular urging police and gendarmes not to commit torture and to abide by the October 1997 Regulation on Apprehension, Custody and Interrogation, which outlawed the use of force during interrogation and emphasized detainees' rights to remain silent, to be cautioned of their rights, to inform relatives, and to receive legal counsel. The Regulation also tightened record keeping. For this four-page circular Prime Minister Ecevit and his government were widely commended at home and abroad. The praise would have been well deserved if the circular had been followed by determined legislative and administrative efforts to eradicate torture. One year later, however, the circular has begun to look like just another gesture mainly intended to gain time and postpone necessary action.

Incommunicado detention

The truth is that this government cannot claim to be truly committed to ending torture while it continues to permit detainees to be held incommunicado in police stations.⁴ Incommunicado police detention provides an opportunity for torture to take place without witnesses and permits torturers to obscure or minimize medical evidence of abuse. Experience worldwide has shown that when detainees are left in secret custody, interrogators are almost inevitably tempted to use force or coercion to extract information or incriminating statements. Many judgments of the European Court of Human Rights have emphasized the importance of access by lawyers from an early point following arrest. Most recently, in *Averill v UK*,⁵ the court found that "a refusal to allow an accused under caution to consult a lawyer during the first 24 hours of police questioning must still be considered incompatible with the rights guaranteed to him by Article 6 [of the European Convention on Human Rights]."⁶

Intergovernmental bodies have examined the situation in Turkey and are unanimous that incommunicado detention is the key to the problem of torture. The U.N. Special Rapporteur on Torture, in the report on his 1998 visit to Turkey, put at the top of his recommendations the need to "amend legislation to ensure that no one is held without prompt access to a lawyer."⁷ In the report on its 1997 visit to Turkey, the European Committee for the Prevention of Torture recommended that "all persons deprived of their liberty by the law enforcement agencies—irrespective of the offence of which they are suspected—be granted, as from the outset of their custody, the right of access to an independent

² CPT/Inf (93) 1 [EN], December 15, 1992.

³ CPT/Inf (96) 34 [EN], December 6, 1996.

⁴ Incommunicado detention refers to detention without the right to communicate with anyone other than those holding a detainee in custody or investigating their case.

⁵ European Court of Human Rights, *Averill v. UK*, (No. 36408/97), Judgment, Strasbourg, June 6, 2000.

⁶ Article 6.3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms states: "Everyone charged with a criminal offence has the following minimum rights: a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; b. to have adequate time and facilities for the preparation of his defence; c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require."

⁷ E/CN.4/1999/61, 113 (a).

lawyer."⁸ The U.N. Committee against Torture, in its 1993 report on Turkey,⁹ also recommended that detainees have early access to legal counsel.

Until 1997 all detainees, including those held for common criminal offences, could be held in incommunicado detention and they almost invariably were. The maximum police detention without judicial supervision was fifteen days, doubled in provinces under state of emergency. As a result of changes in the Criminal Procedure Code enacted in March 1997 common criminal detainees can be held in police custody only up to seven days and they are supposed to be provided with access to legal counsel throughout the police detention period. Those detained for offences tried in State Security Courts, however, are still held incommunicado for the first four days, after which they may have access to a lawyer. Moreover, their police detention may be extended on the order of a judge to seven days, rising to ten days in provinces under state of emergency.¹⁰

The 1997 reform has resulted in only limited improvement. The main benefit is that the shortened unsupervised police detention period gives torturers less space to maneuver. Nevertheless, State Security Court detainees are still frequently subjected to torture and denied the right of access to legal counsel even after the four-day period has elapsed. Since 1997, it has also become more common for detainees to be interrogated in unofficial places of detention—vacant lots, construction sites or in open land outside cities. Lawyers are supposed to have access to their clients after the fourth day of custody, but they are usually only permitted a brief encounter with their client in the presence of police officers, and it is almost unknown for lawyers to be present during subsequent interrogation of their clients.

Much less evidence is available as to how common criminal detainees have benefited from the changes, but the evidence that exists is not reassuring. Lawyers working for the duty lawyer service of the Istanbul Bar Association have told Human Rights Watch that detainees are often told that it will be to their advantage if they waive their right to legal counsel. This allegation was confirmed this year in a series of reports published by the Turkish Parliamentary Human Rights Commission, based on visits to police stations and prisons. During a visit to Erzincan Police Headquarters in March 2000 the Parliamentary Commission examined detention records. Entries for all but two of those detained in the previous two years indicated that they "did not request a lawyer." At Erzurum's Şehit Fatih Bodur Police Centre, 269 of 270 detainees in the preceding twelve months were recorded as not having requested a lawyer. At Tunceli Police Headquarters, the Parliamentary Commission noted that police station records had been kept in an organized fashion since 1998, but that entries for *all* detainees read "did not request a lawyer." People who had been detained in these units for common criminal offences gave the Parliamentary Commission detailed and credible accounts of torture.

The CPT's findings confirm this picture. A report on its 1997 investigation in Turkey states: "The information gathered during the October 1997 visit showed that this new right of access to a lawyer was as yet under used. The delegation did not meet a single detained person who had experience of the right's application, and the Head of the Anti-Terror Department at Istanbul Police Headquarters indicated that no one in the custody of his department had ever sought to make use of it."¹¹

Police officers show considerable creativity in avoiding the inconvenience of having their territory haunted by lawyers and other representatives of the outside world. The Turkish Criminal Procedure Code in its current form assists them by presenting many opportunities for evading safeguards. Lawyers have told Human Rights Watch that common criminal detainees accused of theft have been threatened that if they demand to see a lawyer, a link could be constructed between their offence and an illegal political organization, thereby increasing the seriousness of the charge and ruling

⁸ CPT/Inf (99) 2 [EN], 23 February 1999, paragraph 19.

⁹ United Nations Committee against Torture, "Report on Turkey under Article 20," November 9, 1993 (A/48/44/Add.1).

¹⁰ The judge who orders the extension of detention periods in Turkey customarily does so on the basis of a paper file and does not personally question the detainee, but the *Calendar* promises that the new Criminal Procedure Code will require that the judge and prosecutor see the detainee in person before deciding on extension of police detention.

¹¹ CPT/Inf (99) 2 [EN], 23 February 1999, paragraph 17.

out access to a lawyer. The fact that offences under the Law on Organized Crime come within the jurisdiction of State Security Courts gives the police another tool to keep lawyers out. In a large-scale operation in Istanbul in November 1999 eighty-eight members of the Science Research Foundation, an organization that examines science from the point of view of devout Islam, were detained at Istanbul Police Headquarters. There was no suggestion even in the indictment against the detainees that this organization was involved in violent activities, but because they were being interrogated under the Law on Organized Crime, the police were able quite legally to hold the detainees incommunicado for four days. In fact the detainees were held for six days without access to legal counsel, and many alleged that they had been subjected to torture, including blindfolding, deprivation of sleep, deprivation of access to toilet facilities, hanging by the arms, and electric shocks.

In view of the recommendations of both the U.N. Committee against Torture and the CPT, and the jurisprudence at the European Court of Human Rights, and in view of the well established pattern of widespread torture in Turkish police stations, Human Rights Watch believes that the Accession Partnership must require that detainees have the right to have a lawyer present from the earliest possible moments of detention.

Accession Partnership Recommendation:

- **The Turkish Criminal Procedure Code should be amended to ensure that all detainees, irrespective of the offense in connection with which they are held, have the right to legal counsel throughout police detention and the right to presence of counsel during interrogation. Both the *Calendar* and the *Report* recommend a change along these lines, but the *Calendar* schedules the draft of this change for the end of 2001.**

Blindfolding

Blindfolding prisoners in police custody is routine practice. Almost every single former detainee interviewed by Human Rights Watch reported that they were blindfolded during police interrogation and while signing their statement. Blindfolding not only encourages torture by making positive identification of offending officers impossible, but also induces disorientation which could itself be counted as a form of ill-treatment. In November 1993 the United Nations Committee against Torture commented that blindfolding should be "expressly prohibited."¹² In his 1998 report on Turkey the U.N. Special Rapporteur on Torture said that "the practice of blindfolding detainees in police custody should be absolutely forbidden."¹³ To the best of our knowledge, no Turkish government has publicly condemned blindfolding, nor have Turkish courts punished any police officer for using a blindfold. Blindfolding may, of course, die out once the right of access to legal counsel is generally recognized and respected, but Human Rights Watch believes that this pernicious abuse should be specifically addressed.

Accession Partnership Recommendation:

- **The Interior and Justice Ministers should publicly condemn the practice of blindfolding and instruct all police and gendarmerie units accordingly. A provision prohibiting blindfolding should be added to the 1997 Regulation on Apprehension, Police Custody and Interrogation. Police authorities and prosecutors should be instructed to pursue any reports of blindfolding and seek appropriate administrative or judicial penalties.¹⁴ No reference is made to blindfolding in the *Report* or the *Calendar*.**

¹² United Nations Committee Against Torture, "Report on Turkey under Article 20," 9 November 1993 (A/48/44/Add.1).

¹³ E/CN.4/1999/61, 113 (j).

¹⁴ The Turkish Penal Code (TPC) provides heavy penalties for ill-treatment and torture: Article 243 provides for one to eight years' imprisonment and permanent or dismissal from service for security officers who "subject others to torture or cruel, inhuman or degrading treatment." Article 245 imposes up to five years' imprisonment for security officers who "ill treat or physically give harm to the others." Article 450/3 provides for the death penalty for any person who intentionally tortures their victim to death and Article 452 provides for 15 years' imprisonment for unintentional killing by wounding or beating.

Prosecutors have recently been more willing to initiate proceedings when allegations of torture are backed up with medical reports, but generally overlook detainees' complaints that they were blindfolded, punched, slapped or kicked. Even when faced with very strong evidence that torture has taken place, courts are still reluctant to convict and impose appropriate sentences on security officers (see Amnesty International, *The duty to supervise, investigate and prosecute*, EUR 44/24/99, April 1999).

Sexual abuse and rape in police custody

Almost all detainees, male as well as female, report some level of sexual abuse or sexually insulting behavior in detention. In several cases male detainees' allegations of anal rape with objects have been corroborated by medical evidence. The European Court of Human Rights, in *Aydin v Turkey*¹⁵ found that in 1993 gendarmes had tortured a female detainee plaintiff by raping her in custody at Derik Gendarmerie in Mardin province. The presence of a lawyer during interrogations would be an important safeguard against such abuses, but for women, the presence of a female police officer would afford some additional protection. An amendment to the Regulation on Apprehension, Custody and Interrogation adopted in August 1999 provided for women detainees to be searched only by female police officers. However, this measure offers female detainees little reassurance if, after a polite search, they can then be taken to the privacy of a police station and sexually humiliated.

Accession Partnership Recommendation:

- **Ensure that police station staff at all times include at least one female police officer who will be present during the interrogation or movement of women detainees. This measure is not specified in the *Report* or the *Calendar*, although they both refer to "researching ways in which the human rights of women can be better protected."**

Failure to register detainees and notify their kin

Relatively minor infringements of detention procedures facilitate horrific patterns of violation in Turkey. The proliferation of "disappearances" in the mid-1990s can be directly related to the appalling standard of record keeping in police stations and gendarmeries, and the security forces' systematic failure to notify families of detentions. Investigations carried out by the European Court of Human Rights, the European Committee for the Prevention of Torture and the recent Turkish Parliamentary Human Rights Commission have uncovered disorganized and apparently forged records, and in at least one security force unit, no records at all. The Parliamentary Human Rights Commission's inquiries suggest that there has been some improvement in this respect, but additional progress is needed.

The anxiety inflicted on families by security forces' refusal to notify them of detentions should not be underestimated. News that a relative has been detained throws any household in Turkey into a state of panic in which they desperately try to establish the whereabouts of the detainee while police stations misleadingly deny for hours or days that they are holding the detainee. It is common knowledge that any person in police custody is likely to be subjected, at the very least, to insulting behavior, physical hardship and ill-treatment, but added to this is the fear that the relative may die in custody or "disappear." These fears are amply justified. In the past decade the most conservative count of reports of "disappearance" totals more than 140. More than 450 people have died in police custody, apparently as a result of torture in the two decades since the 1980 military coup. The Accession Partnership should include steps to curb the administrative practices that facilitate such violations.

Accession Partnership Recommendations:

- **The Turkish government should establish and enforce a requirement that all police units must register every detainee in a bound ledger with numbered pages at the first moment that they are brought into a recognized place of detention. Such records must be open to inspection by lawyers, family members and other interested persons. Prosecutors and police authorities must be instructed to investigate and apply appropriate administrative or judicial sanctions wherever security force officers have failed to keep proper records. Such measures are not specified in the *Report* or the *Calendar*.**
- **Detainees' relatives or other interested persons must be notified immediately following detention. In exceptional cases where this might conflict with the interest of justice, the decision to withhold such**

¹⁵ European Court of Human Rights, No. 23178/94, September 25, 1997.

information should only be taken by a prosecutor or judge who has seen the prisoner and case file, and a detailed record should be made of the reasons for this decision. Prosecutors and police authorities must be instructed to investigate and apply appropriate administrative or judicial sanctions wherever security force officers have failed to give proper notification of a detention. Such measures are not specified in the *Report* or the *Calendar*.

- The Regulation on Apprehension, Police Custody and Interrogation should be amended to indicate possible administrative and judicial sanctions applicable to any officer who fails to comply with its provisions, and the Turkish authorities should undertake steps to ensure that such sanctions are imposed in appropriate cases.¹⁶ Internal disciplinary procedures should not be used as a substitute for judicial sanctions, and should be transparent and subject to public monitoring. This measure is not specified in the *Report* or the *Calendar*.

Suppression of medical evidence of ill-treatment and torture

Although all detainees are required to undergo a medical examination at the end of police custody, this safeguard against torture has been persistently evaded. A large body of evidence shows that police officers pressure detainees to conceal their injuries from medical personnel, intrude on examinations, destroy medical certificates, and "shop around" hospitals and health centers until they receive a medical certificate with which they are satisfied. The Regulation on Apprehension, Custody and Interrogation contains detailed instructions on how such medical checks should be carried out. Article 10 provides that "the doctor's report is written in four copies. One is kept at the detention center, the second is given to the person when he leaves the detention center, the third one is included in the investigation file, the fourth one is kept at the health unit." Notwithstanding this provision, there remains some confusion about the number of reports to be issued. A 1997 Health Ministry circular directs that doctors should issue only three reports. In cases recently followed by Human Rights Watch, detainees were not given a copy of their medical report, and doctors who testified to the Parliamentary Human Rights Commission stated that they were issuing reports in only three copies.

The Regulation also states: "Where there is no restriction with regard to the investigation and security considerations, the doctor and the person will be left alone during the examination." Experience indicates that police officers frequently abuse such discretion to intrude on medical examinations.

Accession Partnership Recommendations:

- The 1997 Health Ministry circular should be amended to require that doctors issue four reports, and give one of these to the detainee. Public prosecutors should be instructed to investigate detention conduct and procedures, whenever a detainee is brought before them without a medical report in their possession. These measures are not specified in the *Report* or the *Calendar*, but both recommend overhauling the operation of the Forensic Medicine Institute and improving medical reporting. The *Calendar* states that standardized reporting forms are soon to be issued.
- Where it is unsafe for a doctor to be left alone with a detainee in order to carry out a health check, the public prosecutor should be summoned in order to supervise the procedure. This measure is not specified in the *Report* or the *Calendar*.

¹⁶ Article 240 of the Turkish Penal Code provides that "A civil servant who abuses his position shall be imprisoned for up to three years." Article 181 provides that "A civil servant who deprives a person of their liberty by abusing his duty as a public officer or contravening the relevant procedures and conditions shall be punished by a sentence of imprisonment of from one year to three years." These measures could usefully have been applied to many of the abuses of detention procedure described in this document. To Human Rights Watch's knowledge, these articles of the penal code remain virtually unused.

Torture and ill-treatment of children and juveniles

During the 1990s Human Rights Watch reported many cases of ill-treatment and torture of children. The Turkish Parliamentary Human Rights Commission investigations have shown that the practice persists apparently undiminished. In March 2000 the Parliamentary Human Rights Commission interviewed a number of juveniles at the Bakirkoy Prison for Women and Children. Two of their reports¹⁷ give the text of interviews with juveniles who had been held at various police stations in Istanbul and who described being stripped naked and subjected to electric shocks, hosing with cold water under pressure, beating with a truncheon, *falaka* and being forced to stand for hours in a chest-high barrel of water. One 14-year-old described being interrogated under torture for eight days at Kadikoy Yeldegirimeni Police Station, and he told the Commission where they could find pickaxe handles used for beating the soles of detainees' feet. When the Commission later went to the police station, the instruments were found just as the youngster had indicated. The long period of unsupervised police detention alone was in breach of the Turkish Criminal Procedure Code, quite apart from the abusive treatment and failure to summon a lawyer from the Bar's duty lawyer service.¹⁸

The Interior Ministry's failure to eradicate the torture of children is unforgivable and means that under present circumstances police officers cannot be trusted to hold juveniles in custody without constant supervision.

Accession Partnership Recommendation:

- Until safeguards against ill-treatment in police stations can be shown to be effective, the Criminal Procedure Code should be amended so that any juvenile detained can be questioned only in the presence of his lawyer and an independent prosecutor. A prosecutor should be charged with the close supervision of the detention of any child or juvenile to ensure their well being. Any police officer found to have held a child or juvenile in custody without immediately notifying the prosecutor, or to have interrogated a child or juvenile other than in the presence of a prosecutor, or who fails to summon a lawyer should be subject to heavy administrative and judicial penalties. These measures are not specified in the *Report* or the *Calendar*.

Suppression of complaints of ill-treatment and torture

In recent years, prosecutors have been more ready to open legal proceedings against police officers and gendarmes for ill-treatment or torture, though regrettably, conviction and appropriate sentencing remains rare. One important obstacle was a law dating from 1913 that gave local governors—who oversee police affairs—the right to block prosecutions. In December 1999 this law was abolished and replaced by another—the Law on the Prosecution of Civil Servants and other Administrative Officials—which speeds up the decision process, but still gives the governor's office the ultimate say. Moreover, this law contains alarming new provisions that instruct prosecutors receiving complaints to desist from any action and convey the case file to the governor's office. This law is not a reform, as has been claimed by the Turkish government, but a scandalous breach of the principle of judicial independence, which is already being used to obstruct the course of justice. On January 3, 2000, the Ankara governor ruled that no legal proceedings should be taken in respect of a complaint against 155 gendarmes for offences of torture, sexual assault and the murder of ten prisoners at Ulucanlar Prison in Ankara in September 1999. Lawyers on behalf of victims and relatives appealed against this decision to the Ankara District Administrative Court, which overturned the governor's decision on May 17, 2000. The file was returned to the local prosecutor who, at the time of writing, had made no decision whether or not to proceed with a prosecution. The new law, which in this case delayed the judicial process for four months, appears to serve no purpose other than to protect torturers.

¹⁷ *Bakirkoy Kadin ve Cocuk Tutukevi Raporu 1998 ve 2000* (Bakirkoy Women's and Children's Prison Report 1998 and 2000), TBMM İnsan Haklarını İnceleme Komisyonu Yayınları (Human Rights Monitoring Commission Publications), May 2000 and *Soruşturma ve Kovuşturma İstanbul Raporu 2000*, (Investigation and Prosecution Report for Istanbul 2000), TBMM İnsan Haklarını İnceleme Komisyonu Yayınları, May 2000.

¹⁸ The August 1999 amendments to the Regulation on Apprehension, Custody and Interrogation required that legal counsel should always be summoned for children.

Accession Partnership Recommendation:

- Abolish the Law on the Prosecution of Civil Servants and other Administrative Officials or amend it to ensure that it cannot be used to delay or suppress complaints against police officers, gendarmes or soldiers for offences of ill-treatment, torture, abuse of detention procedures, death in custody, extrajudicial execution or "disappearance." This measure is not specified in the *Report* or the *Calendar*.

Police officers and gendarmes subject to investigation and prosecution for ill-treatment, torture and unlawful killing are not customarily suspended from duties, and there are even examples of officers still serving after their conviction for ill-treatment. In January 1996 a group of young people—the youngest fourteen years of age—were tortured at Manisa Police Headquarters, near Izmir. Detainees reported being stripped naked, hosed with cold water, and subjected to electric shocks to their bodies including their sexual organs. Male detainees were subjected to squeezing of the testicles and sexual assault with a truncheon; female detainees were threatened with rape. Their allegations were supported by medical evidence and the testimony of a member of parliament who intruded into the interrogation room. In response to a parliamentary question the Interior Minister confirmed that a police superintendent accused of torturing the juveniles was not only on active duty with the Anti-Terror Branch in 1999 and 2000, but had even used these duties as a pretext for non-appearance at hearings in his trial on charges of torture.¹⁹

Accession Partnership Recommendation:

- Any prison officer, police officer, gendarme or member of the security forces subject to investigation or prosecution for ill-treatment or torture should be immediately suspended from duties which might bring them into contact with prisoners. Officers subject to investigation or prosecution for unlawful killing should be suspended from active duty. Any officer convicted of ill-treatment, torture or unlawful killing should be immediately dismissed. This measure is not specified in the *Report* or the *Calendar*.

Suppression of CPT reports

Judging from the experience of recent years, the above safeguards will quite simply be ineffective unless they are backed up by proper supervision of detention sites. Proper supervision should include international, judicial and administrative supervision, and the scrutiny of independent civil society bodies.

The CPT and the U.N. Special Rapporteur on torture put the existence of torture beyond debate, and penetrated for the first time into territory in which police officers had frequently boasted that they had wholly unchecked power. The CPT has made eight visits to Turkey. In 1999 the Turkish government authorized the publication of the report of the 1997 visit²⁰ together with the government's own interim reports.²¹ The publication of the other reports is now long overdue. A period of delay in publication to avoid embarrassment while remedial measures are taken might be excusable, but suppression for a full decade by a longstanding member of the Council of Europe sets a poor example for other countries who have recently signed the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.²²

Accession Partnership Recommendation:

- The Turkish government should give permission for the publication of all outstanding CPT visit reports. This measure is not specified in the *Report* or the *Calendar*.

¹⁹ "Torture suspect participates in police operations," *Cumhuriyet* (Republic), August 19, 2000.

²⁰ CPT/Inf (99) 2.

²¹ CPT/Inf (99) 3 and CPT/Inf (99) 18.

²² Turkey was admitted to the Council of Europe on April 13, 1950, and signed and ratified the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1988.

Ineffective state supervision of places of detention

Prosecutors and provincial governors have always had a formal responsibility to supervise police stations and gendarmeries, but seem largely to have neglected this duty. In June 1999 Prime Minister Ecevit's circular instructed these officials to carry out impromptu visits and to take urgent measures to remedy any shortcomings discovered, including dealing with offending officials. Reports of such inspections were to be submitted by the Justice and Interior Ministries every three months to the Human Rights High Coordinating Council of the office of the Prime Minister. No public information has emerged from this process. The only public confirmation that it is even taking place appeared in comments made by prosecutors and police interviewed in the course of the Parliamentary Human Rights Commission's investigations.

Accession Partnership Recommendation:

- **The Human Rights High Coordinating Council of the office of the Prime Minister should ensure periodic public disclosure of the findings of internal supervision of police stations carried out by the Justice and Interior Ministries. This measure is not specified in the *Report* or the *Calendar*.**

Lack of monitoring of police detention by civil society

Supervision by professional colleagues is valuable but unlikely to be really effective unless it is backed up with supervision by independent bodies. The first example of independent domestic monitoring has already been frequently referred to in this briefing: the publication this year of the findings of the Parliamentary Human Rights Commission, which has been visiting prisons and police stations since 1998. These six reports unfold an appalling catalogue of torture, deceit, and official negligence that is a cause for shame on the part of the offending officials. On the other hand, the reports themselves should be a source of hope and pride for Turkish society. They are a testament to the determination, organization, expertise and humane concern of the parliamentary delegates who participated, and the chairperson Dr. Sema Piskinsut. The reports are even handed and avoid demonizing the police. Where standards are met, this is explicitly acknowledged. Considerable space is also given to a visit to a project in Istanbul for the care of street children, funded entirely by a voluntary police foundation and staffed by police officers.

The Parliamentary Commission's reports are also a demonstration of what independent supervision can achieve. The Commission not only asked probing questions and produced a wealth of information, but when it found clear medical evidence of recent torture it initiated a prosecution (and documented its own frustration at the way the judicial system buried the case).

The reports give a fascinating insight into the workings of a closed world. On the basis of leads given by young people interviewed at Bakirkoy Women and Children's prison, the Commission went to Kucukkoy Police Station, located an apparatus used to suspend detainees by the arms, photographed it, and handed the photographs over as evidence for judicial proceedings. At the same police station the Commission was told that a room with a locked door was "an unused storage room" to which the key had been lost. The Commission members broke a panel of the door and peered through to find "all of the walls, including the door, were covered with yellow sponge, in order to give sound insulation Almost all of the children who had told the Commission that they had been tortured at this police station, had described this room covered in yellow foam."²³ There were other "lost keys" and soundproofed interrogation rooms in other police stations and provinces.

The Commission's reports strongly highlight the value of monitoring by bodies independent of the state institutions responsible for detention and law enforcement. Civil society supervision of state institutions is a new development for Turkey, but police station visiting schemes are already operating in many other parts of the world, including Australia, Hungary, Malawi, the Netherlands, Nepal, South Africa and the United Kingdom. The Special Rapporteur on Torture, in his report on a 1998 visit to Turkey, recommended that "a system permitting an independent body, consisting of

²³ *Sorusturma ve Kovusturma Istanbul Raporu 2000*, (Investigation and Prosecution Report for Istanbul 2000), TBMM İnsan Haklarını İnceleme Komisyonu Yayınları, May 2000, p35.

respected members of the community, representatives of legal and medical professional organizations and persons nominated by human rights organizations, to visit and report publicly on any place of deprivation of liberty, should be set up as soon as possible."²⁴

Accession Partnership Recommendation:

- The Turkish government should announce a schedule for the prompt establishment of a nation-wide system of visiting boards, comprised of local persons trusted for their independence and commitment to human rights, who could visit police stations and gendarmeries in order to talk to prisoners and inspect facilities. Such boards should report publicly on their work and findings. This measure is not specified in the *Report* or the *Calendar*, though both propose increasing the "technological" (i.e. electronic) monitoring of places of detention.

SAFEGUARDING FREEDOM OF EXPRESSION AND THE RIGHT OF CONSCIENTIOUS OBJECTION

One Turkish government after another, trapped and embarrassed by its commitment to freedom of expression under the European Convention on the one hand, and the influence of repressive elements within the state and armed forces on the other, has made superficial amendments to legislation and issued partial amnesties. Throughout the 1990s, ministers always had in reserve a draft reform, which would never become law but could be pulled from the drawer at any time to rebut criticism. Meanwhile Turkish citizens have continued to serve prison sentences—long sentences in some cases—for expressing their non-violent opinions.

The current government, apparently caught in the same cleft stick, has made no legislative change to expand freedom of expression since the E.U.'s December 1999 Helsinki Summit and courts have continued to hand down convictions to politicians and writers for "incitement" under Article 312 of the Turkish Penal Code. The most recent and notorious case was the widely publicized July 5 confirmation of a one-year sentence imposed on former Prime Minister Necmettin Erbakan for a speech he made in March 1994. The same week the Supreme Court confirmed a twelve month sentence imposed on Hasan Celal Guzel, former Education Minister and leader of the Rebirth Party, for a speech he made in Kayseri in 1998 in which he strongly criticized the head scarf ban (see below). He was only released in May after serving a sentence for which he was arrested just five days after the E.U. summit in December 1999. Necmettin Erbakan and Hasan Celal Guzel will both begin serving their sentences later this year.

Turkish courts show an eccentric understanding of what constitutes "incitement". The former mayor of Istanbul Recep Tayyip Erdogan was stripped of political rights and sentenced to a year's imprisonment for reading lines from a poem that not only contained no advocacy of violence or hatred, but was written by a celebrated republican poet and had actually been approved by the Ministry of Education for use in schools. In fact, in common with some other prosecutions under Article 312, the conviction of Recep Tayyip Erdogan appeared to be no more than straightforward political manipulation.

Currently serving a sentence under Article 312 in Ankara's Ulucanlar Prison is the former president of the Turkish Human Rights Association, Akin Birdal. He was imprisoned in June 1999, for a speech he made three years earlier calling for "peace and understanding." His release on health grounds in September 1999 was widely viewed as a maneuver to avoid official embarrassment during the Istanbul OSCE Summit in November and the E.U. Helsinki Summit in December. He returned to prison in March 2000.

²⁴ E/CN.4/1999/61, 113 (I).

More insidious than the substantial prison sentences are the bans on participation in politics or civil society that are triggered by convictions under Article 312. Under Article 4 of the Law on Associations, Akin Birdal was forced to resign not only his leadership of the Turkish Human Rights Association but also his membership. Under Article 81 of the Law on Political Parties, because of his conviction he may not stand for any political office nor join any political party during his lifetime, and the same bans apply to Necmettin Erbakan and Hasan Celal Guzel.

For politicians, a conviction under Article 312 effectively means the end of public life and is therefore a powerful curb on the discussion of ideas that are unwelcome to the state. As a consequence, politicians at odds with the official line on the role of ethnicity, religion or the military in politics must remain silent or be prepared to be removed from their political life.

Turkish politicians and officials have conducted a public but inconclusive debate on freedom of expression. Minister of Justice Hikmet Sami Turk has urged amendment of Article 312 so that only statements presenting a clear and present danger to the state or public order would be outlawed. Deputy Prime Minister Devlet Bahceli, on the other hand, has expressed the view that Article 312 is a useful and legitimate tool as it stands. The Chief State Prosecutor has made the extraordinary claim that Article 312 is fully consonant with the European Convention on Human Rights,²⁵ despite a string of judgments to the contrary at the European Court of Human Rights (including *Ozturk v Turkey*, September 28, 1999 and *Incal v Turkey*, June 9, 1998). The views of the military appear to be intimidating the government and blocking progress. The Minister of Justice has explicitly acknowledged that the Chief of General Staff's opposition to amendment of Article 312 was a factor in his deliberations about the future of the article.²⁶

The public argument about Article 312 ignores the raft of additional laws that would still inhibit freedom of expression even if 312 were eliminated. In the mid-1990s, most prisoners of opinion were held under Article 8 of the Anti-Terror Law. As this provision became discredited, prosecutors began to show a preference for Article 312. Now that the government has been criticized for recent imprisonments under Article 312, indictments under Article 8 are once again beginning to appear. A prosecution seeking imprisonment for up to three years opened at Ankara State Security Court in March 2000 against Ahmet Turan Demir, chair of the People's Democracy Party (HADEP), in connection with a speech he made at a Peace Festival in 1999. Prosecutions of non-violent expressions of opinion, and indeed cases of imprisonment, have also continued under Article 155 of the Turkish Penal Code, which outlaws criticism of military service, and Articles 158 and 159, which deal with insulting the president and the organs of state.

There are a host of other laws that restrict rights to demonstrate, to publish, and to broadcast. Confiscations of newspapers, books, and pamphlets are the daily business of press prosecutors, local governors and the Supreme Board of Radio and Television. This last body has been so punitive in closing radio and television stations on grounds of "inciting racial hatred" or "threatening the unity of the state" that even the Prime Minister was prompted to comment, "I, too, have a lot of difficulty understanding the Board's criteria and standards."²⁷ In fact, a comprehensive weeding out of offending articles of the Turkish Penal Code would be a laborious, politically difficult, and lengthy process. Perhaps there is an alternative solution that, given the necessary political will, could be pursued more swiftly. Turkey is a party to the European Convention on Human Rights, which binds the government to uphold the convention. Moreover, Article 90 of the Turkish constitution states that the terms of such conventions supervene domestic law. Pending amendment of the letter of the law, courts and the executive could be reminded that their judgments and administrative acts are constrained by the Convention and the jurisprudence of the European Court of Human Rights.

Accession Partnership Recommendations:

- The Justice Minister, in his capacity as president of the High Council of Judges and Prosecutors, should immediately issue a circular explaining to prosecutors and judges that sentences imposed for the expression

²⁵ *Milliyet*, (Nationhood) March 22, 2000.

²⁶ "Justice Minister Turk: 'Abolishment of Article 312 is out of the question.'" *Anatolian News Agency*, March 16, 2000.

²⁷ *Turkish Daily News*, February 20, 2000.

of non-violent opinion—no matter how unpalatable that opinion may be—are in contravention of Article 10 of the European Convention on Human Rights, which supersedes domestic law under the Turkish Constitution. Both the *Report* and the *Calendar* contain the vague statement that "The provisions of related legislation, including particularly the Turkish Penal Code, the Anti-Terrorism Law and the Political Parties Law that restrict freedom of thought and expression and allow flexible interpretation by the administration should be redrafted in line with the principles of the Republic that protect the integrity of the country." On prosecutions of journalists, both documents state that in reviewing the Press Law and the penal code, "The basic objective . . . should be to achieve changes which will prevent the conviction of journalists and writers for their writings and publications that do not encourage violence, crime or terrorism, do not involve open insults and do not intend to disturb or weaken the unitary character of the State, and in this context a general amnesty should be declared for journalists and writers who are currently in prison and have not committed offences of the above-named types." The introduction to the *Calendar* states: "In the steps which are to be taken, it has been considered necessary to give the state authority, as is the case in several E.U. nations, to limit by law the freedom of expression where a present and/or open danger/threat is posed." Both formulations are open to an interpretation that would violate the European Convention and would fail to achieve the immediate progress that a circular from the Minister of Justice, referring to the Convention and jurisprudence at the European Court of Human Rights, might give.

- **The Law on the Organization and Broadcasts of Radio and Television Stations should be revised to reflect that it is constrained by Article 10 of the European Convention on Human Rights in its decision making.** The *Report* states that amendments abolishing restrictive provisions should be made to Law 3984 on the Organization and Broadcasts of Radio and Television stations, and, "in this context, the independence of radio and television organizations should be strengthened and the composition and powers of the Radio and Television Supreme Board should be reviewed." The *Calendar* includes similar language, scheduling a draft for the end of 2002.
- **The Justice Ministry and other ministries should further establish a training program to ensure that all relevant parties within the judicial system and the executive understand their obligations under Article 10 to uphold freedom of expression, and the government should also establish a follow-up program to ensure that those trained are implementing the principles in the training program.** The European Union, in possible collaboration with the Council of Europe, could be instrumental in providing the funding and expertise for such training. The *Report* and the *Calendar* both propose seeking E.U. funding for the training of judges.
- **The Turkish government should take any necessary measures to secure the release of all prisoners held for the expression of non-violent opinion, including the four Kurdish former deputies Hatip Dicle, Orhan Dogan, Selim Sadak and Leyla Zana, restore political rights to all former prisoners of opinion, and put a halt to all legal proceedings currently in process against Turkish citizens for the expression of their non-violent opinions.** These measures are not specified in the *Report* or the *Calendar*, though both propose an amnesty for imprisoned journalists and writers who "have not advocated violence, offered open insult, or attempted to divide the unitary state." The *Calendar* suggests that a draft law will be ready by 2002.

A new draft penal code became public in 1997. It is currently being revised by the government, but the pending revised draft is not yet available. The 1997 draft contained elements both positive and negative from the point of view of freedom of expression. Article 289, which deals with incitement to racial or religious hatred, virtually restates the terms of the existing troublesome Article 312 while substantially increasing the penalty. The commentary to the article, which provides that statements of this kind can only be considered an offence if they threaten public order, is an important safeguard, but this must be strengthened by comprehensive training of judges and prosecutors on the application of Article 10 of the European Convention and other instruments dealing with freedom of expression.

Article 425 of the draft penal code would also provide for up to three years' imprisonment for insulting the president. Article 426 would provide for imprisonment for insulting ministers or members of the armed forces, as well

as government institutions, such as the Turkish parliament, the Turkish state, the Council of Ministers, or the armed forces. Articles 425 and 471 similarly would criminalize insults to the Turkish and foreign flags. The European Court of Human Rights expressed the following view about prosecutions on such grounds:

The limits of permissible criticism are wider with regard to the government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion. Furthermore, the dominant position which the government occupies makes it necessary for it to display restraint in resorting to criminal proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media.²⁸

Accession Partnership Recommendation:

- The Turkish government should work closely with the Council of Europe to ensure that the new Criminal Code and Criminal Procedure Code are fully compatible with the European Convention on Human Rights and jurisprudence of the European Court of Human Rights. The *Report* states that "National legislation should be brought into line with international conventions ratified under Article 90 of the Constitution and legislative measures should be adopted concerning the binding nature of judgments passed as a result of exercising the individual right of application which was granted under the European Convention on Human Rights." The *Calendar* contains similar language.

Imprisonment of conscientious objectors

Article 377 of the draft penal code, which would impose imprisonment for up to two years for "alienating the people from the institution of military service" is a restatement of Article 155 of the existing penal code, which has been the basis for several prosecutions and the repeated imprisonment of one conscientious objector, Osman Murat Ülke.²⁹ These articles are closely linked with the right of conscientious objection. Turkey has compulsory military service for all adult males and makes no provision for conscientious objection.

Accession Partnership Recommendation:

- Article 155 of the Turkish Penal Code should be abolished and Article 377 of the draft penal code should be revised in line with international standards. An option for civilian service, which is not of punitive length, should be established for conscientious objectors. This measure is not specified in the *Report* or the *Calendar*.

ENSURING LANGUAGE RIGHTS

The commonly held view is that a minority is a self-identifying group with a national or ethnic, cultural, religious and linguistic identity.³⁰ The Turkish government uses an idiosyncratic definition of the term "minority," which causes

²⁸European Court of Human Rights, *Castells v. Spain*, No. 11798/85, April 23, 1992.

²⁹ See Amnesty International Report - Turkey : Osman Murat Ülke - Conscientious Objector Imprisoned for Life, May 1998, AI Index: EUR 44/22/98.

³⁰ The Report On the Linguistic Rights of Persons Belonging to National Minorities In the OSCE Area, issued by the OSCE's High Commissioner on National Minorities, emphasizes language as a distinctive feature of minority identity: "For most minorities, language, as much as if not more than any other attribute of identity (such as common religion or history), serves as a means of unity of the group and source of self-identification of the individual. The enjoyment and preservation of the minority culture turns upon the freedom to transmit ideas, customs, and other indicia of culture in the original language of the minority." See also *United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, Proposal concerning a definition of the term "minority" submitted by Mr. Jules Deschenes*, U.N. Doc E/CN.4/Sub.2/1985/31 & Corr. 1.

mutual frustration whenever the question of rights concerning language and culture arises in international fora. The Turkish Foreign Ministry website³¹ summarizes its distinctive official interpretation as follows:

The status of minorities in Turkey has been internationally certified by the 1923 Treaty of Lausanne, according to which there are only non-Muslim minorities in Turkey. It is wrong, according to this definition, to refer to our citizens of Kurdish descent as a "Kurdish minority."

Besides, Turkey is a unitary state and "Turkish citizenship" is an all embracing juridical concept encompassing all our citizens, granting them equal rights and obligations. According to this definition, "Turkishness" is a legal status binding all its citizens to the Turkish state. Thus, "constitutional citizenship" is one of the most basic principles upon which the Turkish Republic is founded. All constitutions of the Turkish Republic to date have envisaged equal rights and opportunities for and have ruled out discrimination among Turkish citizens.

It is clear, however, that the E.U.'s Copenhagen criterion of "respect for and protection of minorities" should be applied not only to the Jewish, Greek and Armenian minorities defined by the Treaty of Lausanne, but also to the Assyrians, Kurds, Laz, Roma and many other minorities that make up Turkey's cultural fabric. Interestingly, the Treaty of Lausanne, which the Turkish Foreign Ministry uses to rather artificially limit the interpretation of the term "minority," actually makes generous provision for use of non-Turkish languages. Article 39.4 states: "No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings."

There has been considerable liberalization in the area of language during the past decade. In 1991 a law that prohibited speech and printing in languages not officially recognized was abolished, and there are now several newspapers and magazines published in minority languages (though those produced in Kurdish are frequently the object of confiscation or police raids for suspected separatism). In March this year the Supreme Court ruled, in a test case concerning a child that had been given a Kurdish name, that children could legally be given names of non-Turkish origin.

Broadcasting and education, however, remain contentious. The 1994 Law on the Television and Radio Organizations and their Broadcasts mandates the exclusive use of Turkish except in certain circumstances.³² On the basis of this law, licences are not being issued for television or radio channels to broadcast in Kurdish. Surprisingly, the armed forces run *Dicle Sesi* (Voice of the Tigris), the one radio channel that does broadcast in two Kurdish dialects—a pragmatic acknowledgment that many who live in the southeast are unable to understand Turkish.³³

A language is not only a medium of expression, but a form of expression in itself, and as such is protected by Article 10 of the European Human Rights Convention and Article 19 of the ICCPR. Both instruments require that protected rights must be applied without discrimination. Article 27 of the ICCPR requires that "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."³⁴

³¹ www.mfa.gov.tr/grupa/ac/acl/faq.htm#bm1.

³² Article 4t states: "Radio and television broadcasts will be made in Turkish; however, for the purpose of teaching or of imparting news, those foreign languages that have made a contribution to the development of universal cultural and scientific works can be used."

³³ In an August 1997 interview in *Yeni Yuzyil* (New Century) the then State Minister Dr. Salih Yildirim stated that one third of those living in the southeastern provinces did not speak Turkish, a figure that rose to fifty percent among women.

³⁴ Article 9 of the Council of Europe's Framework Convention for the Protection of National Minorities states: "In the legal framework of sound radio and television broadcasting, [State Parties] shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media." Turkey has not signed the Framework Convention, but the Council of Europe Parliamentary Assembly has urged it to do

Accession Partnership Recommendation:

- The Turkish government should abolish the language restrictions on television and radio broadcasting contained in the Law on the Organization and Broadcasts of Television and Radio. This measure is not specified in the *Report* or the *Calendar*.

Turkish is the official—though not exclusive—language of instruction, according to Article 42.9 of the Constitution. The 1983 Foreign Language Education and Teaching Law regulates the teaching of foreign languages "taking into consideration the view of the National Security Council." In short, the National Security Council decides which foreign languages may be taught in Turkey. English, French, German, Russian, Italian, Spanish, Arabic, Japanese and Chinese may be taught, but Laz, Kurdish and Roma may not.³⁵ One test case was brought when the Istanbul-based Kurdish Culture and Research Foundation (Kurt-Kav) attempted to open a private course to teach Kurdish. The course was closed down in 1998. The foundation's board members were prosecuted in Istanbul State Security Court for "incitement to hatred" under Article 312, but they were acquitted earlier this year.

Article 3 of the U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities adopted by General Assembly resolution 47/135 of 18 December 1992 urges that "states should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue."

Article 29 of the U.N. Convention on the Rights of the Child states: "the education of the child shall be directed to . . . the development of respect for the child's . . . own cultural identity, language and values."

Article 8 of The Hague Recommendations Regarding the Education Rights of National Minorities, issued by the OSCE's High Commissioner on National Minorities states: "In accordance with international law, persons belonging to national minorities, like others, have the right to establish and manage their own private educational institutions in conformity with domestic law. These institutions may include schools teaching in the minority language."

Accession Partnership Recommendation:

- As a minimum gesture toward the respect and protection of its language minorities, the Turkish government should lift all obstacles to the foundation of private language courses in minority languages. Such measures should include repeal of Article 42.9 of the Constitution, which states that "no other language than Turkish may be taught to Turkish citizens as their mother tongue." This measure is not specified in the *Report* or the *Calendar*.

In the current atmosphere in Turkey, a full and free public debate on the language issue is impossible. The Istanbul governor banned a May conference on multiculturalism and democracy organized by the Mesopotamian Culture Center. The Secretary of the Diyarbakir branch of the teachers' union Egitim-Sen Hasan Kaçan is currently being prosecuted under Article 312 of the Turkish Penal Code for urging the right to mother-tongue education on Medya TV in

so. Council of Europe Parliamentary Assembly, Recommendation 1377 (1998). The Convention is in force in most Council of Europe and E.U. member states. Among E.U. member states, Greece, Luxembourg, the Netherlands, and Portugal have signed but not ratified the convention; Belgium and France have neither signed nor ratified it. All other E.U. member states have signed and ratified the convention; and with the exception of Latvia, Poland, and Turkey, the Convention is in force in all E.U. applicant states.

Article 8 of the Oslo Recommendations Regarding the Linguistic Rights of National Minorities, issued by the High Commissioner on National Minorities at the OSCE states: "Persons belonging to national minorities have the right to establish and maintain their own minority language media. State regulation of the broadcast media shall be based on objective and non-discriminatory criteria and shall not be used to restrict enjoyment of minority rights."

³⁵ The right of minorities recognized under the Treaty of Lausanne to education in their mother tongue is respected.

December. On March 28, the newspaper *Radikal* quoted the Prime Minister's view that Kurdish is a dialect of Turkish and not a language.

Such actions and statements, which hardly accord with the Copenhagen criterion of "respect for and protection of minorities," are motivated in part by a genuine fear that any acknowledgement that Turkish society is other than monolithic will bring down the whole edifice of the republic and destroy the work of eighty years. However, international human rights standards relating to minorities implicitly and explicitly reject the view that stability can be achieved through the suppression of linguistic and cultural differences. The Council of Europe Framework Convention on the Protection of national Minorities states: "The protection of national minorities is essential to stability, democratic security and peace in this continent.... A pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity." In its November 1999 report on Turkey, the Council of Europe's European Commission against Racism and Intolerance said that "a more open attitude towards cultural and linguistic plurality within Turkey might contribute to resolving some of the problems faced by the country today by allowing more space for a non-violent public as well as private expression of cultural and ethnic identity."³⁶

COMBATING RESTRICTIONS ON THE HEADSCARF

A campaign to restrict the wearing of head scarves for religious reasons in educational settings or on state premises has continued unabated, strongly supported by the Office of the Chief of General Staff. This campaign, waged in the name of secularism, has resulted in thousands of devout Muslim women being temporarily or permanently denied access to education, while others have been suspended or discharged from employment in teaching or health care.

On February 10, the Minister of Education announced that more than 300 primary and secondary school teachers had been dismissed by the ministry for defying the dress code by wearing a head scarf to work. Regarding the dismissals, the minister declared, "This is a crime, the punishment of which is dismissal from civil service. Everybody must comply with this rule. If they don't, they have no place among us."³⁷ On May 31, 2000, Istanbul Fatih Primary Court sentenced Nuray Canan Bezirgan to six months' imprisonment for "obstructing the education of others" because she wore a head scarf during an examination at the Health Services Vocational Institute of Istanbul University. The sentence was later converted to a fine, but she faces several similar charges that will result in her imprisonment if convicted.

Arrangements are being put in place to exclude the openly devout from state privileges. In a reply to a parliamentary question in July, Deputy Prime Minister Devlet Bahçeli confirmed that a circular issued by the State Planning Organization bars any civil servants or family members wearing a head scarf from entering the organization's rest and recreation facilities.³⁸ A Regulation on Army Hostels, Clubs and Social Facilities, published in the Official Gazette on August 20, 2000, lists those who may not be admitted: "Those wearing beards, cloaks, turbans, skullcaps, headscarves or similar uncontemporary garb, other than men of advanced age who have grown a modest beard in accordance with their religious beliefs and elderly mothers who wear a scarf which leaves their face open."

Even elected representatives are subject to the ban. A recent confrontation took place on May 2, 1999, when Merve Kavakçı, elected the previous month as a Fazilet deputy, entered the Grand National Assembly wearing a head scarf. There was pandemonium as other deputies beat on desktops and called for her to get out. Prime Minister Bülent Ecevit denounced Ms. Kavakçı in very strong terms and called a recess. Media close to the state interpreted Ms. Kavakçı's act as a political attack on democracy and secularism. The incident triggered a move for closure of Fazilet

³⁶ European Commission Against Racism and Intolerance, Report on Turkey, November 9, 1999.

³⁷ *Turkish Daily News*, February 11, 2000.

³⁸ *Milliyet* (Nationhood), July 15, 2000

by the Constitutional Court; the case is still under consideration. In the wake of the incident it emerged that following an earlier marriage to an American, Merve Kavakçı had accepted U.S. citizenship without asking prior permission from the Turkish authorities. The Turkish Council of Ministers seized on this technical breach of Turkish law to withdraw her citizenship, and she is no longer able to represent her constituency in parliament.

Women who wear head scarves say that they adopt this dress as a sincere expression of their religious beliefs. The decision to wear (or not to wear³⁹) dress such as head-covering in public is a form of personal and religious expression protected by various instruments, including Articles 9 and 10 of the European Convention on Human Rights, and can only be limited where interests of the individual are outweighed by the state's legitimate concerns regarding, for example, public order, health or morality. In Turkey the wearing of the head scarf by students or elected representatives has not presented a threat to public order, health or morality, and it is difficult to imagine circumstances in which it might.

The head scarf issue has not been tested in the European Court of Human Rights either with respect to educational institutions or the workplace. However, the Turkish educational establishment is using the considerable prestige and authority of the Council of Europe to justify the ban. An evaluation of legal issues relating to the ban, believed to have been prepared by the Council for Higher Education (YÖK) and circulated to university rectors, as well as a statement by the Turkish Prime Minister's Office's High Coordinating Council for Human Rights, refer to and summarize an admissibility decision in the case of Lamiye Bulut.⁴⁰

Ms. Bulut finished studies in the faculty of education at Ankara Gazi University in 1980 and applied for her diploma in 1984. This was refused because the photograph she supplied to be attached to the diploma showed her wearing a head scarf. After unsuccessful appeals to Ankara Administrative Court and the Council of State, Ms. Bulut exercised her right of personal petition to the Council of Europe, claiming a breach of (among others) Article 9. At that time, individual petitions did not go straight to the European Court of Human Rights but were examined by the European Commission of Human Rights. The grounds for the Commission's 1993 decision against Ms. Bulut were that in applying to a secular university, she had effectively accepted the conditions of a secular university in which religious requirements could not be expected to be safeguarded unconditionally, that the diploma was not intended to be shown to the general public (and would therefore not expose her bareheaded to public view), and that in a country with a majority Muslim population such as Turkey, permitting such a visible token of religion might result in non-Muslim students being put under pressure. There is no question that women expelled from educational institutions feel let down by this decision. Since November 1998, Zehra Ergül has been prevented from entering Istanbul University to complete her final year at the art history and archeology department of the faculty of literature. She told Human Rights Watch that in practice students did not have the choice of a secular or religious university, since there were no religious universities in Turkey.⁴¹

The admissibility decision referred to by the Turkish authorities was made seven years ago by the European Commission of Human Rights, which has now been effectively replaced by the full-time European Court of Human Rights. To Human Rights Watch's knowledge, at least two new applications have been made to the European Court of Human Rights by women excluded from their studies, but no decisions have yet been reached in these cases.

Article 2(1) of the ICCPR specifically requires state parties to respect and ensure rights to all "without distinction of any kind" including religious and political or other opinion. Article 13 of the ICESCR sets forth the right to education, and article 2(2) mandates that state parties undertake to guarantee nondiscrimination in the exercise of all of the rights identified in the covenant, specifically including "religion" and "political or other opinion" as

³⁹ Human Rights Watch has also condemned the policy, enforced in several countries, of forced veiling and other restrictions on women's attire.

⁴⁰ European Court of Human Rights, Admissibility decision on application No. 18783/91, May 3, 1993.

⁴¹ The head scarf ban is applied even in expensive private universities, with the exception of Ankara Bilkent University.

impermissible bases for distinctions. Article 13 (1)(c) of the ICESCR states: "Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means...." These provisions require that access to higher education should be based upon a student's ability to study at an advanced level, and not their religious orientation.

Accession Partnership Recommendations:

- The Turkish authorities should lift the ban on the wearing of head scarves or other religious head-covering by students in higher education, and should be encouraged to reconsider the dress restriction imposed on civil servants. There can be no grounds for dress restrictions imposed on elected representatives in the Turkish parliament. This measure is not specified in the *Report* or the *Calendar*.
- In 1999 the U.N. Special Rapporteur on religious discrimination visited Turkey. The government of Turkey and the E.U. should seek ways to ensure that his findings and recommendations, which are not expected to be made public until early 2001, are considered when preparing the accession partnership. This measure is not specified in the *Report* or the *Calendar*.

IMPROVING PRISON CONDITIONS

Warders under Justice Ministry authority provide the internal security for all prisons in Turkey, but the external perimeter of prisons is guarded by gendarmes under the authority of the Interior Ministry. These gendarmes, trained for counter-insurgency in southeastern Turkey, are sometimes called in to quell unrest, and they use this as an opportunity to settle accounts with prisoners accused of links with illegal armed groups that may be fighting security forces elsewhere in the country. Since 1995, twenty-six prisoners have been killed in Turkish prisons as a result of gendarmes being sent in to "restore order," a duty they customarily carry out with extreme brutality. Ten of these prisoners were killed in an intervention by gendarmes at Ulucanlar Prison in September 1999. All of those killed were prisoners remanded or convicted for offenses under the wide-ranging Anti-Terror Law. Prisoners also frequently report being beaten or otherwise abused during trips from prison to court or for medical treatment. Again, these transfer duties are carried out by gendarmes.

Accession Partnership Recommendation:

- Gendarmes should be immediately removed from prison guard duties and replaced by staff under the authority of the Ministry of Justice. This measure is not specified in the *Report* or the *Calendar*.

Small group isolation

Unrest among prisoners held for offenses under the Anti-Terror Law has often arisen when they have been alarmed by developments that suggested they were going to be put under a regime of small group isolation. The Justice Ministry is currently trying to move away from its traditional system of large wards of eighty or more prisoners, which have proved difficult to manage, to a cell or room system. New cell-based "F-Type" prisons are under construction, and existing prisons are being remodeled. Human Rights Watch does not oppose the move to cell based prisons *per se*, but we are concerned that unless accompanied by productive activities and substantial out-of-cell time, the new prisons may impose a harsh isolation regime that violates international standards. These concerns stem from the fact that the Ministry of Justice has already begun to apply small group isolation in parts of the prison system, including at Kartal Special Closed Prison in the Soganlik district of Istanbul.

While construction work on the new prisons continues, the Ministry of Justice has remained inexplicably silent on how it intends to run the new facilities. Yet this information is vital, as it will determine whether the planned changes represent progress or a serious regression for the Turkish prison system. Speaking about the plan to institute an individual cell system, the European Committee for the Prevention of Torture stated in a recent report to the Turkish government:

It is imperative for moves toward smaller living units for prisoners in Turkey to be accompanied by measures to ensure that prisoners spend a reasonable part of the day engaged in purposeful activities outside their living unit. Indeed, the effects of the current almost total absence of any organized program of activities for prisoners would be felt even more keenly in smaller living units. In the absence of a significant improvement in activities for prisoners, the introduction of smaller living units will almost certainly cause more problems than it solves.⁴²

The CPT asked for detailed information about the planned regime, but unfortunately the Turkish government has so far failed to reply to the committee's request. On May 24, 2000 Human Rights Watch issued a report on conditions at Kartal Special Type Prison, and the planned F-type cell-based prisons, entitled *Small Group Isolation in Turkish Prisons: An Avoidable Disaster*.⁴³

Accession Partnership Recommendation:

- The Justice Ministry should put an end to the regime of intense isolation at Kartal Special Closed Prison and publicly announce plans for the future management of prisons that are consistent with international standards and promise a healthy environment for prisoners. Such plans should include a schedule for the establishment of a system of independent monitoring such as that discussed above as a measure to curb torture. This measure is not specified in the *Report* or the *Calendar* but both propose seeking E.U. funding in order to accelerate the move from the ward system to the cell or room system.

Lack of civil society monitoring of prison conditions

Turkish prisons are visited regularly by the local prosecutor, and are inspected by the Justice Ministry every two years. Human Rights Watch shares the view of the CPT that this should be supplemented by supervision by a body independent of state institutions. In its report on a visit to Turkey in October 1997, published in 1999, the CPT said that it "attaches particular importance to regular visits to all prison establishments by an independent body (for example, a visiting committee or a judge with responsibility for carrying out inspections) with authority to receive—and, if necessary, take action on—prisoners' complaints and to visit the premises."

Accession Partnership Recommendation:

- The Turkish government should announce a schedule for the establishment of a nationwide system of visiting boards, comprised of local persons trusted for their independence and commitment to human rights, who could visit prisons in order to talk to prisoners, inspect facilities. Such boards should report publicly on their work and findings. This measure is not specified in the *Report* or the *Calendar*.

LIFTING THE DEATH PENALTY

Turkey has carried out no executions since 1984, and can therefore be included in the list of *de facto* abolitionist states. However, it has yet to sign the Sixth Protocol to the European Convention on Human Rights, and courts continue to hand down death sentences. Fifty-seven death sentences that have been confirmed on appeal are currently pending at the final parliamentary stage.

Prime Minister Ecevit has made clear his personal opposition to the death penalty, and Minister of Justice Hikmet Sami Turk has said that "Turkey, as a member of the Council of Europe and a candidate for full E.U. membership, should make the appropriate amendments to its judicial system. The abolition of the death penalty should be debated within this framework Turkey should harmonize its own judicial system with the trends in the European system. And the tendency in Europe is against the death penalty."⁴⁴

⁴² CPT/Inf (99) 2 [EN]; February 23, 1999.

⁴³ Available on our website at www.hrw.org.

⁴⁴ *Turkish Daily News*, December 30, 1999.

Human Rights Watch is optimistic that Turkey is now ready to abolish the death penalty—an important milestone for human rights in that country and a step toward abolition worldwide.

Accession Partnership Recommendation:

- Pending full de jure abolition of the death penalty in Turkish law, the Turkish government should sign the sixth optional protocol to the European Convention on Human Rights and thereby firmly commit itself not to carry out any further executions. This measure is specified in both the *Report* and the *Calendar*, and the latter schedules the abolitionist penal code for submission to parliament at the end of 2001. If the government's intention is to abolish the death penalty, there is no reason why signature of the sixth optional protocol should wait.

ENDING REPRESSION OF CIVIL SOCIETY

Article 18 of the U.N. Declaration on Human Rights Defenders⁴⁵ states: "Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized."

The alternative voice raised by civil society is not yet fully accepted as legitimate in Turkey. Criticizing the authorities or questioning the state's monolithic view of society is often viewed as a form of disloyalty bordering on treason. Organizations viewed as troublesome can expect to be harassed, raided or closed down, and their members risk prosecution or worse.⁴⁶ Members of the Turkish Human Rights Association's (HRA) fifty-nine branches have been detained, tortured, imprisoned and subjected to death threats and eleven Association officials have been murdered by unknown assailants, in some cases in circumstances that suggest security force involvement.

Politicians and other public figures have frequently cast groundless aspersions on human rights organizations. Particularly in the tense years of confrontation with armed organizations such as the PKK (Workers' Party of Kurdistan), such statements were irresponsible and dangerous. In May 1998, following the leak of uncorroborated and false allegations by the prosecution service, Akin Birdal, then President of the Turkish Human Rights Association, was shot six times in the chest, shoulder, and legs at the HRA headquarters. Bleeding profusely, he had lost almost all his blood by the time he reached the hospital; it is said that only the immediate attention of a doctor on the HRA staff saved his life.

Immediately after the shooting the Prime Minister of the day Mesut Yilmaz reportedly claimed that the attack was "an internal settling of accounts, like a misunderstanding between those in the same camp It is clear they [the HRA] were connected to the PKK."⁴⁷ The allegation was unfounded. In fact, shortly afterward, inquiries led police to the ultranationalist Turkish Revenge Brigade. Sixteen alleged members or supporters of this group, including a retired army major, a serving gendarmerie officer, and the two men thought to have carried out the shooting, are currently on

⁴⁵ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144, (adopted by the General Assembly, March 8, 1999).

⁴⁶ There have been recent heartening signs of improvement in this area. In September 1999, Mehmet Ali Irtemcelik, then state minister responsible for human rights, made a public statement that seemed to promise a change of approach, when he expressed a wish to "strike a sound and honest communication" with nongovernmental organizations dealing with human rights. He subsequently organized a meeting to obtain the views of a range of such groups.

⁴⁷ *Milliyet* newspaper, 14 May 1998.

trial, accused of "attempted murder" and of "forming an armed gang to commit crime for social and political objectives."

Accession Partnership Recommendation:

- The Turkish government should make a public statement affirming the role of civil society in general, and the valuable contribution of human rights organizations. The government should make clear that although the criticisms made by such organizations may be uncomfortable for those in authority, such organizations are a legitimate and necessary component of an effective system for protection of the rights and welfare of the Turkish people. The *Report* and the *Calendar* contain the welcome recommendation that "the constructive function of non-governmental organizations in raising human rights awareness should be encouraged and there should be closer cooperation and communication with them," but these documents make no explicit provisions for public government acknowledgement of the positive role of human rights organizations.

The Diyarbakir and Van branches of the HRA and the Malatya branch of the Association of Human Rights and Solidarity for Oppressed Peoples (Mazlum-Der) are currently closed. The Diyarbakir branch of the HRA was originally closed by the local governor using powers under the Law on Associations, as is still the case with Mazlum-Der's Malatya branch. Diyarbakir HRA challenged the closure in the courts and won. On April 19, 2000 the court overturned the closure order, and after some delay the branch was permitted to reopen. Their first activity was to be a signature campaign against the new generation of F-type prisons (see above). The local governor refused permission for publications and meetings associated with the campaign and, in response, the branch issued a critical press statement. The branch was then closed for three months on the orders of the Emergency Region Governor, whose administrative acts cannot be challenged in the courts. Thirty minutes after the branch re-opened on August 12, 2000, the Emergency Region Governor closed it once again. The recently opened Van branch of the HRA was also closed by the Emergency Region Governor, because they too were planning a campaign relating to the F-type prisons.

Accession Partnership Recommendation:

- The Turkish government should reopen the Van and Diyarbakir branches of the Human Rights Association and the Malatya branch of Mazlum-Der. This measure is not specified by the *Report* or the *Calendar*, but both contain the following—not altogether reassuring—statement: "Measures should be adopted to prevent the exercise of pressure on managers and members of non-governmental organizations concerned with human rights; the security of the headquarters and branch offices of these organizations should be ensured, the legal actions for closure should be consistent and measures should be taken for compliance with court judgments concerning such actions."

Non-governmental organizations must negotiate a formidable succession of legal obstacles to their activities. Although civil society has bloomed in Turkey during the 1990s, any organization that incurs official displeasure may be subjected to a storm of litigation.

Revision or abolition of the Law on Associations, with its cumbersome and restrictive rules for non-governmental organizations, is vital to the establishment of freedom of association. Human Rights Watch recognizes that this law was drawn up with the recent memory of abuse of the right of association by armed groups in the 1970s and that provisions relating, for example, to the storage of firearms on association premises are fully justified. However, heavy restrictions on membership and requirements to submit all publications and public meetings for approval by the local governor make the Law on Associations an alarmingly repressive piece of legislation. Further, associations are required to pay the fees and travelling expenses for an indefinite number of government agents to attend their meetings and record proceedings on paper, audiotape or video. Local governors frequently exercise their considerable discretion to halt meetings, suppress publications and posters, and close down associations.

If the government is truly determined to improve its human rights performance, it must remove the restrictions from those independent human rights organizations that are best placed to document progress. Government officials must also speak up publicly to challenge the campaign of misinformation about such organizations that has been waged for so long by the military, the media, and others.

Accession Partnership Recommendation:

- The Law on Associations should be thoroughly overhauled so that it forms a basis for the healthy development of civil society rather than an obstacle. In revising this law, careful attention should be given to the standards developed in the jurisprudence of the European Court of Human Rights on those articles of the European Convention on Human Rights that deal with freedom of thought, expression, assembly and association. The *Report* and the *Calendar* do not contain this specific recommendation, but both provide for constitutional recognition of the role of non-governmental organizations and state that "In line with the requirements of democratic society, the necessary amendments should be made in the framework of collective freedoms, especially the legislation concerning freedom of association, freedoms of assembly and demonstration and trade union freedoms." The *Calendar* schedules the preparation of draft laws on such topics by the end of 2002.

CONTRIBUTING TO STABILITY IN THE SOUTHEAST

The capture of the PKK's leader Abdullah Ocalan and the PKK's announcement that it was to abandon armed activities in Turkey have much reduced the armed turbulence in the southeastern provinces. Some units of the PKK have continued sporadic attacks and there have been clashes between security forces and PKK groups withdrawing to Northern Iraq. The illegal armed organization TIKKO (Workers and Peasants' Army of Turkey) is also continuing its activities. Nevertheless, the number of clashes has diminished considerably. The Anatolia News Agency reported on May 25, 2000 that armed incidents had decreased from 3,300 in 1994, 1,436 in 1995, 488 in 1999 and 18 in the first five months of 2000.

But normality has not returned to the region. A state of emergency continues in six provinces—Diyarbakir, Hakkari, Sirnak, Siirt, Tunceli, and Van. More than 60,000 villagers are still armed and paid by the state as village guards. Over 300,000 people remain internally displaced.

As the violence that provoked the emergency subsides, cross-party pressure for ending the emergency has increased. Under the State of Emergency Law of 1983 and supplementary decrees, the Emergency Region Governor has sweeping powers to move populations, confiscate publications and limit the right of assembly. Maximum police detention periods can be extended from seven to ten days within the emergency region. The Governor's extraordinary powers are still regularly exercised. For example, in May this year, the Emergency Region Governor banned the distribution of twelve journals. Rights to compensation for acts carried out by the Emergency Region Governor are limited, and there is no judicial review of actions carried out under the Governor's authority.

The government's village guard system has been a human rights disaster. The system was established in the mid-1980s, ostensibly so that village guards could defend their own villages. In fact they have been used in a wide range of security operations, including incursions into Northern Iraq. In theory membership in the village guard corps was voluntary, but in practice, it was a test of loyalty that made villagers choose to serve and risk being killed by the PKK, or refuse and put themselves under suspicion of supporting the PKK. The village guard corps was never given a proper chain of command and responsibility, and most village guards on duty have no insignia by which they can be identified. In some districts of the southeast, local tribal loyalties have combined with the village guard system to produce a series of private and heavily armed fiefdoms. Human Rights Watch has received many reports of village guards being involved in "disappearances," extrajudicial executions and torture. The April 1995 report of the Turkish Parliament's Commission on Unsolved Political Killings confirmed that village guards were involved in a wide range of lawless activities, including killing and extortion, and called for their abolition.

Accession Partnership Recommendation:

- The Turkish government should proceed as soon as possible, without any further delay, to disarm and dissolve the village guard system. This measure is not specified in the *Report* or the *Calendar*.

Internal displacement

According to the Turkish Parliament's Commission on Migration, 401,328 villagers have been displaced since 1984.⁴⁸ Many other observers claim a much higher figure. The population of Diyarbakir, the regional capital, increased by 600,000 during the 1990s. In most cases, these villagers were not evacuated in an orderly fashion, resettled, or compensated. Rather, they were driven from their homes by security forces who left burned houses and destroyed crops and livestock in their wake. A large number of petitions have been filed with the European Court of Human Rights in respect of village destruction, and three important judgments have already been reached against Turkey.⁴⁹

The findings of the European Commission on Human Rights in the *Mentes* case eloquently describe the officially sanctioned lawlessness that broke out all over southeast Turkey in the 1990s: "The Commission considered that the burning of the first three applicants' homes constituted an act of violence and deliberate destruction in utter disregard of the safety and welfare of the applicants and their children who were left without shelter and assistance and in circumstances which caused them anguish and suffering. It noted in particular the traumatic circumstances in which the applicants were prevented from saving their personal belongings and the dire personal situation in which they subsequently found themselves, being deprived of their own homes in their village and the livelihood which they had been able to derive from their gardens and fields."⁵⁰

All displaced villagers interviewed by Human Rights Watch have spoken of their wish to return to their homes. The Turkish government has taken at least two initiatives for return, both of which were extremely problematic, as described in Human Rights Watch's 1996 report *Turkey's Failed Policy to Aid the Forcibly Displaced in the Southeast*.⁵¹

There remain two principle obstacles to return. First, it is not clear that villagers can safely go home. Quite apart from the risk of activities by remnant PKK elements, the security forces do not seem fully to have abandoned their former abuses. The most recent case of village destruction known to Human Rights Watch was in 1998; but as recently as February 17, 2000 the newspaper *Ozgur Bakis* (Free View) reported that Savet village, near Beytusebab in Sirnak province, had been raided by security forces who threatened the community with forcible evacuation. On February 26 the same newspaper reported that Kenik village, near Kozluk in Batman province, had been subjected to similar threats.

Second, the government lacks a clear will to return all displaced villagers to their original homes and is still pressing forward with its projects for "central villages" (*köykent*) into which some villagers would be permanently resettled on government land in communities under the eye of the security forces.⁵²

In any event, returns to villages have been slow. The US State Department's annual human rights report for 1999 quotes a government figure for total number of returnees of 26,481. Even calculated on the basis of the Parliamentary Commission's conservative estimate for the number of displaced this represents an achievement of only 6.59%.

Principle 28 of the U.N. Guiding Principles on Internal Displacement⁵³ speaks of governments' duty "to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country." The principles also emphasize that the displaced persons should participate in the planning and management of their return, that they should not be discriminated against as a result of having been displaced. The principles also require

⁴⁸ Turkish Daily News, June 7, 1998.

⁴⁹ European Court of Human Rights, *Mentes and others*, November 28, 1996; *Akdivar and others*, December 18, 1996; *Selçuk and Asker*, April 24, 1998.

⁵⁰ European Court of Human Rights, *Mentes and others*, November 28, 1996, paragraph 76.

⁵¹ June 1996, Vol. 8, No. 9 (D).

⁵² It appears that resettlement into central villages may be conditional on security checks. In May 1999 Human Rights Watch was informed that villagers had been told that they would not be admitted to the "central village" of Konalga village, near Van, unless they agreed to join the village guard corps.

⁵³ E/CN.4/1998/53/Add.2, 11 February 1998.

that governments should facilitate the assistance of "international humanitarian organizations and other appropriate actors" in the return or resettlement process.

Accession Partnership Recommendation:

- The Turkish government should commence a program that will create the necessary security conditions to allow villagers to return to their original homes and property, or place of former habitual residence, throughout the southeast, in safety and security and with full human rights guarantees. The program of return should be fully resourced and access to those resources should not be conditional on service in the village guard corps. Villagers should be fully compensated for their displacement and the destruction of their houses, goods and livestock. In preparing the return program, the Turkish government should consult bodies and persons with experience in this field, including the Special Representative of the Secretary-General of the United Nations on Internally Displaced Persons, the U.N. High Commissioner for Refugees, and the World Bank, and make public the recommendations of such bodies. These measures are not specified in the *Report* or the *Calendar*.

Failure to investigate "disappearances" and extrajudicial executions committed during the 1990s

The program of village destruction was carried out in a context of widespread security force abuses that have not yet been acknowledged by the government. During operations in the rural southeast, torture was the standard tool of intelligence gathering, and anyone who came under suspicion of illegal activities was at risk of extrajudicial execution or "disappearance".

Human Rights Watch has repeatedly urged the Turkish government to institute investigatory commissions into these violations, in accordance with the U.N. Principles on the Effective Prevention and Investigation of Extra-legal Arbitrary and Summary Executions and the U.N. Declaration on the Protection of All Persons from Enforced Disappearance. Human Rights Watch shares the general optimism that the nightmare in the southeast is drawing to an end, but it is a chapter that cannot be closed until there has been a comprehensive and public examination of the violations committed by the security forces and illegal armed organizations, punishment of those responsible, and compensation of the victims. At one remove, a form of truth commission is already in session in Strasbourg as a succession of complaints for torture, extrajudicial execution, "disappearance" and house destruction—currently more than 2,500—are heard at the European Court of Human Rights. This coming to terms with the past should be taking place in the full view of Turkish public opinion and with the active involvement of Turkish institutions.

Accession Partnership Recommendation:

- The Turkish government should institute a full commission of inquiry into the human rights violations committed during the course of the fifteen year conflict with the PKK. The members of the commission should be expert and independent persons, known for their commitment to human rights. The commission should provide protection for witnesses, and should be empowered, without prejudice to the rights of the accused, to require members of the security forces to give evidence and reveal documentary and other evidence. Where violations are established to have taken place, those responsible should be brought to justice, and the victims compensated. These measures are not specified in the *Report* or the *Calendar*.

PROTECTING REFUGEES

Turkey retains a geographic limitation to its ratification of the 1951 U.N. Convention on the Status of Refugees ("Refugee Convention"), which means that only those fleeing as a consequence of "events occurring in Europe"⁵⁴ can be given refugee status. Regardless of any geographical limitation under the Refugee Convention, Turkey must still abide by the principle of *non-refoulement* (that no one may be returned to a country in which he may face persecution),

⁵⁴ Refugee Convention, Article 1 B(1). For details of Turkey's reservation, see <http://www.unhcr.ch/refworld/refworld/legal/instrume/asylum/51engsp.htm>.

which is binding in all cases.⁵⁵ The non-refoulement obligation is one of the few articles in the Refugee convention to which reservations cannot be made.⁵⁶ Furthermore, Turkey is party to other human rights instruments which also prohibit *refoulement* of persons to countries where they are at risk of torture, cruel, inhuman or degrading treatment.

For more than a decade, the United Nations High Commissioner for Refugees (UNHCR) conducted refugee status determination of non-Europeans (mostly Iranians and Iraqis) independent of the government. UNHCR attempted to resettle in third countries those whom it determined to be refugees.

In November 1994, Turkey passed regulations on the treatment of asylum seekers. The regulations give the Turkish government the task of status determination of non-Europeans and lay down procedures to determine this status in accordance with the refugee definition in the Refugee Convention. Those who pass the test are referred to UNHCR for resettlement to a third country. The system as it currently stands is extremely hazardous for non-European refugees and various stages of the process put them at risk of *refoulement*.

First, asylum seekers who fail to access the procedures because they are apprehended at the borders and summarily deported are still at profound risk. Turkish officials on the Iran border have the discretion to summarily send back any foreigner apprehended in the two-kilometer zone separating Iran and Turkey.⁵⁷ Of the tens of thousands of illegal aliens apprehended inside Turkey in recent years none was reported to have been apprised of their right to seek asylum in Turkey prior to expulsion. Recently arrived asylum seekers have been ill-treated in police custody, or even killed by security forces as they tried to cross the border.

Second, the 1994 regulations impose a number of preconditions for filing asylum applications, which are in practice difficult and sometimes impossible for asylum seekers to meet. These include time limits of a few days for registration, and presentation of valid identity documents. Applicants who do not meet the preconditions are liable to deportation. Since 1995, at least 570 such Iranian and Iraqi applicants in the process of being considered or recognized as refugees by UNHCR have been forcibly returned.⁵⁸ In July 2000, the European Court of Human Rights condemned Turkey for attempting to deport an Iranian refugee without examining the merits of her asylum claim on the ground that she had failed to register with the police within five days of her arrival.⁵⁹ UNHCR has indicated that this problem has been temporarily brought under control through the Turkish authorities' "regularization" of asylum seekers who entered the country illegally and failed to meet the preconditions, but who were subsequently recognized as refugees by UNHCR or are under consideration by UNHCR for refugee status.

Non-refoulement also requires that the host country institute effective procedures for determining which asylum applicants are entitled to protection. The Turkish government's system for examining asylum applications does not contain the minimum safeguards required by international law for fair and accurate refugee determination. Local police officers record the substance of claims with the assistance of interpreters who are often incompetent, and case decisions are made by officials of Interior and Foreign Affairs' Ministries who lack expertise and independence. There are no provisions for oral hearings or legal assistance. Applicants are not provided with a written notification of the reasons for their denial and appeal rights are ineffective or inaccessible.

Moreover if, at the end of this unsatisfactory process, an applicant is recognized by the Turkish authorities to fit the Convention's definition of refugee, they will not be classified as a refugee, but only as an "asylum-seeker." "Asylum seeker" status does not carry a guarantee against *refoulement*, but only qualification for a temporary residence permit so that the person can submit his or her case for consideration by UNHCR with a view to resettlement in another

⁵⁵ Article 33.

⁵⁶ Article 42.

⁵⁷ US Committee for Refugees, World Refugee Survey 1999.

⁵⁸ Figures collected from the US Committee for Refugees' World Refugee Survey for the years 1996 to 2000.

⁵⁹ *Hoda Jabari v. Turkey*, European Court of Human Rights, No. 40035/98, July 11, 2000.

country. The asylum regulations authorize, in direct violation of the principle of *non-refoulement*, deportation of recognized "asylum seekers" who after "reasonable time" have not been resettled to a third country.

The 1994 Asylum Regulation only permits assessment of protection claims on the basis of the Refugee Convention and does not provide for separate procedures in line with Turkey's obligations under the U.N. Convention Against Torture (CAT) or the European Human Rights Convention. Turkish domestic courts have also neglected to invoke the provisions of these Conventions in hearings concerning threatened deportation.

Above and beyond the protection afforded by the Refugee Convention, Article 3 of CAT explicitly prohibits the forcible return of people to countries where they risk being tortured, and applies to any persons who, for whatever reason, are in danger of being subjected to torture in their country of origin.

The European Court of Human Rights case law has also established that expulsion of an alien by a State Party may give rise to an issue under Article 3 of the European Human Rights Convention, where that alien, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country.⁶⁰ In this context, the Committee of Ministers of the Council of Europe has explicitly required governments of member states to ensure that an effective remedy "be provided for any asylum seeker, whose request for refugee status is rejected and who is subject to expulsion to a country about which that person presents an arguable claim that he or she would be subjected to torture or inhuman or degrading treatment or punishment."⁶¹

In its October 1999 Regular Report on Turkey, the E.U. Commission stated that the geographical reservation renders the asylum machinery "largely . . . ineffective." The report goes on to recommend that "a department specifically intended to handle asylum cases also needs to be set up. It would also have to be able to gather and evaluate figures on the number and origin of asylum seekers and on the reasons for refusal of asylum." By maintaining this anachronistic geographical limitation, Turkey puts itself at odds with the contemporary norm of refugee protection. This is particularly inappropriate since Turkey is a member of UNHCR's Executive Committee, which has urged State Parties to the Refugee Convention to "review such reservations with a view to their withdrawal."⁶²

Accession Partnership Recommendation:

- The Turkish Government should remove the geographical restriction on the application of the Refugee Convention, and should be reminded of its obligation to uphold the principle of *non-refoulement* regardless of the geographical restriction. It should also establish without delay an independent advisory committee, composed of independent experts and representatives of the UNHCR and relevant non-governmental organizations, in order comprehensively to review refugee protection in Turkey and make recommendations on how the government could better discharge its international obligations toward refugees. Particular urgency should be given to amendments to asylum laws and refugee status determination procedures in order to ensure that they do not result in *refoulement*. These measures are not specified in the *Report* or the *Calendar*.

⁶⁰ Soering v. UK, 7 July 1989; Cruz Varas and Others v. Sweden, 20 March 1991; Vilvarajah and Others v. UK, 30 October 1991; and Chahal v. UK, 15 November 1996.

⁶¹ Recommendation No. R(98)13 of the Committee of Ministers to Member States on the Right of Rejected Asylum Seekers to an Effective Remedy Against Decisions on Expulsion in the Context of Article 3 of the European Convention on Human Rights (Adopted by the Committee of Ministers on 18 September 1998 at the 641st meeting of the Ministers' Deputies).

⁶² UNHCR Executive Committee, General Conclusion on International Protection, No. 81n, 1997.

CONCLUSION

There is a gap between the E.U. Commission's 1999 conclusion that "there are serious shortcomings in terms of human rights and protection of minorities,"⁶³ and the *Calendar's* more optimistic assessment that there are "some omissions, problems and limitations." Both parties should bridge that gap—not with a diplomatic form of words but with a detailed program of work. The *Report* and *Calendar* are written in an energetic and open tone that is not matched by their substantive content. There are many valuable proposals, but the program is insufficiently specific, omits several fundamental issues, and is based on a timescale so generous that it looks like procrastination.

The Commission and the Turkish authorities would be wrong to settle for incremental improvements on the assumption that time is on their side. Turkey's own citizens are paying the price for delay. Moreover, there is no guarantee that the present window of opportunity will remain open. The illegal armed political organizations and their lawless counterparts in the deep state, both nourished by instability, have repeatedly destroyed similar opportunities during the 1990s. Thoroughgoing human rights reform is undoubtedly the most effective way of cutting the ground from under them and setting Turkey firmly on the path to E.U. membership.

⁶³ 1999 Regular Report from the Commission on Turkey's Progress Towards Accession, October 1999.

ACKNOWLEDGMENTS

This report is based on statements received from and interviews with victims of human rights violations or their relatives, as well as newspapers sources and official documents. Human Rights Watch would like to thank all those who provided information and advice, including Bulent Peker of the Turkish Human Rights Foundation and Omer Eksi of Mazlum-Der (the Association of Human Rights and Solidarity for Oppressed Peoples).

This report was written by Jonathan Sugden, and edited by Elizabeth Andersen, advocacy director of the Europe and Central Asia division of Human Rights Watch and Mike McClintock, deputy Program Director of Human Rights Watch. Valuable comments and suggestions were also given by Dinah PoKempner, deputy general counsel to Human Rights Watch and Rachel Reilly, Refugee Policy Director of Human Rights Watch. Invaluable production assistance was provided by Elizabeth Eagen, Patrick Minges, and Fitzroy Hepkins.

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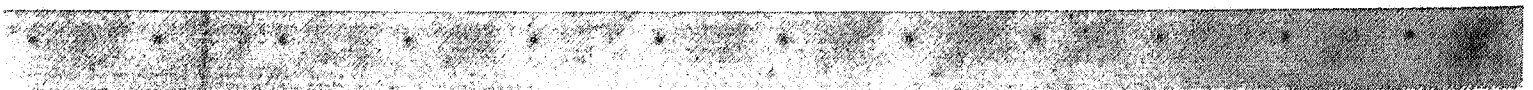
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