

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	292
Land:	Tyrkiet
Kilde:	Amnesty International
Titel:	All Children Have Rights. End Unfair Prosecutions of Children under Anti-Terrorism Legislation in Turkey
Udgivet:	1. juni 2010
Optaget på baggrundsmaterialet:	25. juni 2010

ALL CHILDREN HAVE RIGHTS

END UNFAIR PROSECUTIONS
OF CHILDREN UNDER
ANTI-TERRORISM
LEGISLATION IN TURKEY

AMNESTY
INTERNATIONAL



Amnesty International is a global movement of 2.8 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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Amnesty International Publications

First published in 2010 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2010

Index: EUR 44/011/2010
Original language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

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ABSTRACT

Since 2006, thousands of children in Turkey, some as young as 12, have been prosecuted under anti-terrorism legislation solely for their alleged participation in demonstrations focused on issues of concern to members of the Kurdish community. While Amnesty International recognizes the obligation of the Turkish authorities to maintain order and to prevent damage to property during the sometimes violent demonstrations, Amnesty International is gravely concerned at the systematic violation of the rights of the child committed during the arrest, detention and trial of these children.¹ While arrests and prosecutions continue, Amnesty International is also concerned that proposed amendments to the Anti-Terrorism Law² aimed at improving the situation for children prosecuted as a result of their participation in demonstrations will not prevent further violations occurring.

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Article 40.1 Convention on the Rights of the Child

INTRODUCTION

At the end of March 2008 celebrations of the traditional Newroz/Nevruz (New Year) festival were refused permission to go ahead by authorities in south-eastern Turkey. Following the decisions taken by the authorities to prohibit the celebrations which are mainly observed by the Kurdish community in Turkey, clashes between the police and demonstrators ensued when celebrations took place without permission and people took to the streets to protest the refusal by the authorities. In their efforts to disperse the demonstrators, police used excessive force including the use of live ammunition resulting in the deaths of three protestors.

Far from being an isolated incident, the violent confrontations are only one such example of clashes between police and demonstrators taking place in south-eastern Turkey where the majority of the population are Kurdish.

Following the violent demonstrations that took place in towns and cities centering on Diyarbakır in March 2006, in which 10 demonstrators and onlookers were killed, four of them children, the authorities have increasingly sought to prosecute the protestors, the majority of them children, under anti-terrorism legislation. Many of the prosecutions relate to demonstrations that took place in the south-eastern province of Diyarbakır and the southern province of Adana, where a large number of those alleged to have taken part in the protests are children of families forcibly displaced from the villages of south-eastern Turkey. In addition to the Newroz/Nevruz protests, other demonstrators also protested the alleged ill-treatment of imprisoned Kurdistan Workers' Party (PKK) leader Abdullah Öcalan and protests occurring during the Turkish Prime Minister's visit to the region. As of April 2010, demonstrations in the region continued, resulting in further arrests and prosecutions of children.

Common features of many of the demonstrations are: that they are unofficial or that they are denied permission to proceed by the authorities; that in many cases clashes occur between demonstrators and law enforcement officials; that police use disproportionate force in dispersing the demonstrators; and that demonstrators in addition to shouting slogans have on occasion thrown stones and Molotov cocktails. The authorities claim that the demonstrations are organized by the banned PKK, and that the slogans shouted are in support of the PKK, providing this as a justification for the prosecution of demonstrators, including children, for membership of a terrorist organization, making propaganda for a terrorist organization in addition to breaking the Law on Meetings and Demonstrations³ (see page 16).

Children who spoke to Amnesty International universally reported being ill-treated at the time of their arrest, either at the time of the demonstration or when being arrested by the police following the event on suspicion of having participated in demonstrations. Some of the children also stated that they were ill-treated while being transferred to police custody and while being detained in police stations.

All the children that Amnesty International spoke to stated that they were first detained in adult police custody in the Anti-Terror Branch rather than in the Children's Branch of the Security Directorate. Some of the children were held under the laws allowing extended pre-charge detention for crimes committed collectively.⁴ Lawyers also told Amnesty International

that children had been held incommunicado for the first 24 hours of their detention according to provisions applicable for persons suspected of terrorism-related offences.⁵ In many cases legal protections for children in pre-charge detention were not followed. The anti-terrorism legislation that the children are charged under is vague and overly broad in its wording and arbitrary in its application by judges and prosecutors. Once charged, children in many cases are remanded in custody, with pre-trial detention periods ranging from several months to over a year. In some cases children have been held alongside adult detainees, while in all cases the prison regime does not differ significantly from that of adult remand prisons, in particular, failing to take account of the children's need to continue their education. Prosecutions are often based on insufficient evidence and do not take account of legal protections for children within the justice system, such as the necessity to obtain psychological reports on the children from social workers. By law, children over 15 years of age charged with terrorism-related offences are tried in adult courts. However, Amnesty International's research shows that children even as young as 12 have been tried in adult courts in contravention of national law. In the vast majority of cases prosecutions have resulted in convictions with custodial sentences ranging from months to many years in prison.

While comprehensive statistics regarding the number of children prosecuted under anti-terrorism legislation following demonstrations is not available, official statistics show that prosecutions were initiated against 513 children under Article 314 of the Penal Code which criminalizes leadership or membership of an armed organization in 2006-7 and against 737 children under the Anti-Terrorism Law during the same period. Following a parliamentary question tabled by a Member of Parliament Sevaahir Bayındır in May 2009, the Justice Ministry in a written answer in December 2009⁶ stated that from 2006-8 prosecutions were initiated against 1,308 children under the Anti-Terrorism Law and 719 children under Article 314 of the Penal Code. The figures also show a year on year increase in the numbers of children prosecuted and a dramatic increase in the number of children under 15 years of age being prosecuted in 2008.⁷ The Human Rights Association (İHD) recorded that in Diyarbakır alone 279 children were tried in 2008 including 63 children at the Diyarbakır Children's Heavy Penal Court which tries children between 12 and 15 years of age.⁸ Justice for Children Initiative reported that in Adana during 2008, at least 193 children were tried in the adult Heavy Penal Courts under anti-terrorism legislation.⁹

While a large majority of persons accused of participating in the demonstrations are children, and this report focuses in particular on the violations of the human rights of children during arrest, detention and prosecution following the demonstrations, and cites Turkey's obligations under the International Convention on the Rights of the Child, many young adults have also been prosecuted as a result of their alleged participation in the demonstrations in a manner that violates their human rights. In addition to the protections contained in the Convention on the Rights of the Child, the state's response to the demonstrations violate among other standards, the International Covenant on Civil and Political Rights, the European Convention on Human Rights, the Convention Against Torture, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials. Unless specifically stated, Amnesty International's concerns and recommendations stated in this report relate to all persons including children.

In producing this report, Amnesty International conducted field research in Adana, Diyarbakır and Istanbul in April and May 2009 and March 2010 and spoke with children prosecuted

under anti-terrorism legislation, their families, lawyers representing the children, human rights non-governmental organizations (NGOs) and law enforcement officials. Amnesty International raised its concerns with the authorities regarding the prosecutions in July 2009; however, no response was received from them.¹⁰ Throughout this document, individuals are referred to by their initials following requests from their families that they remain anonymous. As a result, while the names of the children and other young persons are known to Amnesty International they have not been included in this report.

Despite a public outcry at the violations of the children's rights, coverage in the print and television media and documentation of and campaigns against the violations by civil society organizations in Turkey¹¹, the abuses detailed in this document continue in 2010. The Committee on the Rights of the Child (CRC) adopted Concluding Observations on Turkey with regard to ending the violations of the rights of children under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict in September 2009.¹² In October 2009 the government submitted draft amendments to the Anti-Terrorism Law that only partially address the concerns regarding the rights of the child raised by the CRC, Amnesty International and civil society more broadly. However, as of April 2010, amendments had not been passed by parliament and no further amendments that comprehensively address the scope of the violations in connection with the prosecutions had been tabled.

H.A., DİYARBAKIR

H.A. was arrested by the police in July 2008 close to where a press statement was being read out by the pro-Kurdish Democratic Society Party (DTP)¹³ in Diyarbakır. At the time he was 15 years old. He told Amnesty International that there was a protest taking place at the same location and that it was very close to where he worked during the summer months when he was not at school. He gave Amnesty International the following account of his treatment: He said that he was apprehended by the police in a park on suspicion of taking part in the protest. Describing the circumstances of his apprehension, he told Amnesty International that he could see police officers blocking the exit to the park and that he tried to exit via a different point. However, he said that he was caught by one police officer and the officer held on to his arm and beat him with a baton. He tried to escape from the police but was beaten by another officer. There were four or five police officers beating him with batons. They put him into a police vehicle along with three other children who were arrested at the same time. During the time that H.A. was in the police vehicle the police officers continued to beat him. H.A. was taken out of the vehicle by the police at the hospital where he was examined by doctors and a medical report prepared. H.A. reported that there were signs of injury on his body but that these were not recorded by the doctors at the hospital. After the examination H.A. was taken to the Anti-Terror Branch of the Security Directorate where he was threatened and sworn at by police officers who questioned him regarding the demonstration. He told Amnesty International that no lawyer was present during the one and a half hours he spent in detention at the Anti-Terror Branch. After this time he was taken to the Children's Branch of the Security Directorate. He told Amnesty International that he was held there for four days and three nights. His statement was then taken by the prosecutor. At the time of the statement being taken a legal aid lawyer was present but no social worker was present.

H.A. was charged with breaking the Law on Meetings and Demonstrations, being a member of a terrorist organization and making propaganda for a terrorist organization. Evidence later presented in the indictment included photographic evidence showing that H.A. was present at the scene of the demonstration. He was remanded in custody to the E-type prison in Diyarbakır. He told Amnesty International that during the nearly 10 months he was held in pre-trial detention he was required to wash his own clothes, to wash the cell where he was being held and to wash the dishes after he had eaten. He reported that the prison conditions were unhygienic and that it was infested with rats and cockroaches and that the cell was overcrowded with more children being held there than available beds. He also told Amnesty International that he was not able to take part in the social activities available to other children on remand who were not charged with "political" offences took part in.

H.A. complained that he could not receive some letters sent to him by his family. H.A. also reported to Amnesty International that on occasions when he was transferred to the courthouse to give statements, he was made to stand in the holding area of the court with handcuffs next to adult prisoners and that he received no food during the day. H.A. was tried at an adult Special Heavy Penal Court with jurisdiction for terrorism-related offences. In April 2009 he was convicted of breaking the Law on Meetings and Demonstrations, and of membership of a terrorist organization and sentenced to six years and 11 months in prison. The decision was appealed by his lawyers and as of April 2010 the case was pending at the Supreme Court of Appeals.

DISPROPORTIONATE USE OF FORCE DURING DEMONSTRATIONS AND ILL-TREATMENT AT THE TIME OF ARREST

[No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment [...]].

Convention on the Rights of the Child, Article 37(a)

"A police officer caught me by the arm and beat me with a baton. I tried to escape but another officer caught me and beat me too. After that four or five officers beat me with batons and punched and kicked me."

H.A. (see p.8)

Amnesty International is concerned about reports that the use of excessive force and other ill-treatment by police officers on arrest in the context of the demonstrations is routine and systematic.

Torture and other cruel, inhuman or degrading treatment or punishment are absolutely prohibited - at all times in all circumstances - under international law. In addition to the Convention on the Rights of the Child, torture is prohibited under the Convention against Torture, the International Covenant on Civil and Political Rights (Article 7) and the European Convention on Human Rights (Article 3) to which Turkey is a party.

International human rights standards regulate the use of force and firearms by police officers. The UN Code of Conduct for Law Enforcement Officials, spells out how force should be used. Article 3 of this Code states: *Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.*¹⁴

The UN Basic Principles for the Use of Force and Firearms elaborate on this principle, with detailed guidance as to the use of force and firearms.¹⁵ Principle 4 of the Basic Principles stipulates that law enforcement officials shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result. Principle 9 states that:

Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

While the Code of Conduct and the Basic Principles are not legally binding as such, and while some of their provisions are clearly guidelines rather than legal obligations, they are frequently referred to as authority by the European Court of Human Rights, other regional courts and other human rights bodies, and their core provisions on the use of force are an elaboration of legal rules applicable to states by way of their treaty obligations with regard to the right to life. In particular, Article 3 of the Code of Conduct and Principle 9 of the Basic

Principles reflect binding international law.¹⁶

The policing of the demonstrations described above runs completely contrary to international standards prohibiting excessive use of force and other ill-treatment. In many of the larger demonstrations police were filmed using disproportionate force to clear demonstrators and using batons to beat protestors. In some cases police fired on protestors with live ammunition resulting in the loss of life. In protests following the authorities' refusal to allow Newroz/Nevruz celebrations to go ahead, at the end of March 2008 three people were killed after police opened fire using plastic bullets and live ammunition.¹⁷ In October 2008 one protestor was killed in the eastern city of Doğubeyazıt in protests following reports that PKK leader Abdullah Öcalan was ill-treated in prison. Scores of others were injured in the protests, many of them children.¹⁸

Children interviewed by Amnesty International also gave credible and consistent accounts of being ill-treated by police when they were arrested, either at the time of the protest or on being arrested following the protest on suspicion of having participated in the demonstrations. It was reported that police officers kicked and punched the children at the time of the arrest and during transfer to Security directorates.

Of the children that Amnesty International spoke to, the experience of O.S. from Adana was typical (see page 15). He told Amnesty International that he was stopped by police while walking towards his home after school one day in October 2008 when a demonstration was taking place close to his home. O.S. said that police officers felt his waist and said to him "you are sweaty, you have come from the protest" and caught hold of him. O.S. told Amnesty International that when he showed the police officers his school identity card, they ripped this up, as they did his notebook that he was carrying. O.S. also told Amnesty International that the police officers beat him repeatedly before transferring him to the Anti-Terror Branch of the Adana Security Directorate.

İ.Ü., 18 at the time of his arrest, was apprehended by police officers during March 2008 Newroz/Nevruz demonstrations in Cizre. He told prosecutors that he was caught by the arm by one police officer who twisted his arm behind his back in order to put handcuffs on him. As a result of the actions of the police officer, İ.Ü.'s shoulder was dislocated. İ.Ü. said that he was taken to hospital in Cizre by police officers before being taken to police custody. Official medical records confirm that İ.Ü.'s shoulder was dislocated and that he was brought to the hospital by police officers. After being held in pre-charge detention for four days, İ.Ü. was charged with making propaganda for a terrorist organization and committing a crime in the name of a terrorist organization and remanded in custody. He remained in custody until February 2010 when İ.Ü. was convicted and sentenced to nine years seven months in prison on the basis of his participation in the demonstration.

IMPUNITY FOR ALLEGED CASES OF ILL-TREATMENT BY LAW ENFORCEMENT OFFICIALS

“The credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions.”

Committee for the Prevention of Torture (CPT), General Report 14, 2004, para. 25

Lawyers reported to Amnesty International that children’s injuries sustained during their apprehension are dismissed by police officers as having been sustained as a result of their resisting arrest. When taken to be examined by doctors before being taken to the Security Directorate police officers remain present during the examination. Amnesty International has been told that this has resulted in children not explaining the extent of their injuries or alleging police ill-treatment. In the cases of the children interviewed by Amnesty International no complaints were brought against police officers due to the well-founded belief that effective investigations would not be launched by the judicial authorities and that law enforcement officials would not be brought to justice. Statements subsequently made by children to prosecutors alleging ill-treatment by police officers were not investigated. Families interviewed in Diyarbakır also told Amnesty International that they feared that counter-charges would be opened against children or the family if they made a criminal complaint against police officers for ill-treatment (see page 16). Indeed, despite widespread accounts of excessive force and other ill-treatment by law enforcement officials, no police officer has been brought to justice in relation to their conduct at the demonstrations.

Even in cases where abuses by law enforcement officials were well documented, police officers were not brought to justice. In one such case of impunity, Amnesty International issued an urgent call for action following the alleged ill-treatment on arrest of a 15-year-old boy, C.E., during Newroz/Nevruz demonstrations in March 2008 in the south-eastern city of Hakkari. Despite television footage showing plain-clothes officers apparently injuring the boy’s arm while he was under their control and not resisting arrest, no police officer was charged in relation to the ill-treatment. An initial refusal by the authorities to allow an investigation to be opened against the police officers was overturned following an appeal by lawyers acting on behalf of C.E. However, in September 2009 the state prosecutor acting in the case issued a decision that there were no charges to answer and a criminal case was not opened against the police officers. In addition, counter-charges were issued against the family of C.E. under the Donations Law¹⁹ on the grounds that they illegally received financial donations to pay for the boy’s medical treatment. As a result of his alleged participation in the demonstration, C.E. was charged with membership of a terrorist organization and making propaganda for a terrorist organization. As of April 2010 the case was pending at an adult Special Heavy Penal Court.

In another striking case where there is prima facie evidence of ill-treatment, a law enforcement officer was caught on film catching a child, S.T., and striking his head with a rifle butt, causing the child to be hospitalized. The incident which occurred in Hakkari on 23 April 2009, Turkey’s national children’s day, was widely reported in the press forcing the Governor of Hakkari to issue a statement of regret at the injury sustained.²⁰ Following the publicity regarding the case a criminal case was opened against the police officer alleged to have carried out the abuse. However, due to a ruling that the trial should be held outside the area where the alleged offence was committed due to security reasons, as of April 2010 court

proceedings against the police officer had not commenced. A lawyer representing the family of S.T. told Amnesty International that he feared that transferring the case to another city, where the families' lawyers would not be able to participate in the court proceedings for reasons of cost, would deny the family the right as the "injured party" to intervene via its lawyer in the case, bringing their evidence and cross examination to bear on the proceedings.

Likewise, following the violent protests that took place in Diyarbakır in March 2006 and in which hundreds of cases of ill-treatment were reported²¹, in addition to 10 deaths, to date, no charges were brought against police officers for their alleged ill-treatment. Only in January 2010, some four years after the events occurred, were criminal charges brought against three police officers relating to the killing of one child during the demonstrations.²²

PRE-CHARGE DETENTION, TAKING OF STATEMENTS AND ILL-TREATMENT

The normal pre-charge detention period allowed in Turkish law is 24 hours as defined under Article 91 of the Code of Criminal Procedure. The Article also allows for this period to be extended by the public prosecutor for 24 hour periods up to a maximum of four days where offences are alleged to have been carried out collectively and extra time is necessary to collect evidence. Article 95 of the Code of Criminal Procedure also requires that the next of kin to the person in custody is notified. In the case of children, the law requires that the authorities inform the child's parent or guardian in addition to the Bar Association with a view to the child being accompanied by a close relative during their period in detention.²³

Article 37(b) of the Convention on the Rights of the Child, to which Turkey is a party, requires that: "The arrest, detention [...] of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time." It also requires that "[...] every child deprived of their liberty shall be separated from adults unless it is considered in the child's best interest not to do so [...]". The Child Protection Law (no. 5395), which was brought into force to implement the Convention on the Rights of the Child, also requires that a child should be deprived of his liberty only as a measure of last resort (Article 4.i) and only detained in facilities designed for the detention of children and where such facilities are not available, in an area separate to that where adults are held (Article 16.2).

The law additionally requires that a child who is accused of a criminal offence have their statement taken by a prosecutor, allows for the presence of a social worker in addition to a lawyer during questioning and the taking of statements, and allows for any further measures required to protect the child to be proposed by the prosecutor to the judge (Article 15). Article 18 of the Child Protection Law also requires that chains, handcuffs and similar items not be used to restrain a child.

Amnesty International is concerned that the above basic protections of the rights of the child in international and domestic law are not applied in the case of children detained and/or prosecuted for their alleged participation in the demonstrations.

It was universally reported to Amnesty International by children previously held in detention, families and lawyers representing the children, and on some occasions substantiated by official documents prepared at such institutions, that children are held in unofficial detention in adult detention facilities, namely the Anti-Terror Branch of the Security Directorate, even where facilities for the detention of children in the Children's Branch of the

Security Directorate are available. Periods of detention before transfer to the Children's Branch remained unrecorded in the official record of detention, allowing for pre-charge detention periods to be longer than those stipulated by law. According to information received by Amnesty International, children are routinely held for several hours at the Anti-Terror Branch of Security Directorates and unofficial detentions of up to one day were frequently reported in Diyarbakır and Adana. Officials from the Adana Security Directorate confirmed to Amnesty International that children were brought to the Anti-Terror Branch of the Security Directorate but stated that children were transferred to the Children's Branch promptly once their age was confirmed. However, children in Adana who were arrested by police from their houses, and therefore after their identities had already been established, in the days following demonstrations, also reported to Amnesty International that they were taken to the Anti-Terror Branch of the Security Directorate.

In Diyarbakır, lawyers told Amnesty International that extended pre-charge detention periods beyond the normal 24-hour duration were granted routinely and without reasonable justification for the extension. Detention periods of four days were recorded in official documents seen by Amnesty International. Lawyers also reported that on occasions children were held incommunicado without access to lawyers for the first 24 hours of their detention.²⁴ It was also reported that unofficial extensions to the detention period beyond the maximum four days were created through children being made to wait at the courthouse for up to a day before the prosecutor took the statement from the child. It was alleged that in many cases when statements were taken from the children, neither a lawyer nor a social worker was present when the statement was taken.

Amnesty International also received reports that in Adana, families were not informed of the fact that their children were being detained. Children interviewed in Adana also told Amnesty International that they were not able to meet with lawyers or social workers during the duration of their pre-charge detention in police custody.

Amnesty International received consistent reports of widespread police ill-treatment of children in custody, especially in Adana (such as the case of O.S., see page 15) where reports suggested frequent use of violence against children in police detention. Reports of police intimidation and threats against children made by police officers were also consistently reported in Diyarbakır, although allegations of violence towards children in police custody were not commonly reported.

Amnesty International is also concerned at reports that police officers routinely questioned children apprehended for their alleged participation in demonstrations while in unofficial detention at the Anti-Terror Branch of the Security Directorate, and that in some cases children have, through verbal threats and other forms of intimidation, been allegedly pressured into signing documents prepared by police regarding the child's presence at and conduct during demonstrations. Amnesty International is concerned that such compulsion represents a breach of the Convention on the Rights of the Child.²⁵ Such documents have later been used as evidence in the prosecution of children for their alleged participation in the demonstrations. Allegations that admissions by children that they participated in demonstrations were obtained through intimidation, force or ill-treatment have not been investigated by the authorities.

O. S., ADANA

O.S. told Amnesty International that he was apprehended by police while walking home from school at a place close to his house where a demonstration was taking place in October 2008. He gave the following account of his arrest by the police: "I was on my way home from school, with another child from school. By the time we had arrived back to our neighbourhood from the school we were sweaty. A police officer came up to me and grabbed me. He felt my stomach and he said that I was sweaty and that I had come from the demonstration. I had a notebook in my hands, they ripped it up. I showed them my school identity card and they ripped this up too. I didn't know what to say, I couldn't speak. I said that I hadn't done anything. They hit me without showing any mercy."

O.S. told Amnesty International that he was taken to the Anti-Terror Branch of the Security Directorate and that he and two other children were told to sit down by police officers there and that they kicked him from behind. He told Amnesty International that he was held there for one day before being taken to the Children's Branch of the Security Directorate and that there he was beaten again by police officers who turned off the camera used to record the detention area before making him remove his clothes and beating him. O.S. told Amnesty International that he did not have any contact with a lawyer or social worker during the day he was held at the Anti-Terror Branch or the Children's Branch of the Security Directorate. He was taken to the doctors to examine him before he was taken to the prosecutor for his statement to be taken. He showed the doctors his injured leg which was swollen from the beatings that he had received by police officers. O.S. told Amnesty International that he was then taken to the prosecutor to give his statement and that then he was brought to court where the judge remanded him in custody to await trial for membership of a terrorist organization.

O.S. gave Amnesty International the following account of his transfer to prison. "From the court they took us directly to Kürkçüler adult prison. When we arrived they prepared our files, they took us outside while they were doing this. They took us to a booth and removed our tops. There were two of us side by side. Then they started to beat us. I told them not to beat me too much as my leg was injured but they beat me even more. My leg was broken. They beat me on my stomach, they beat me all over. I couldn't stand it and fell to the floor. They hit me with a stick or a club on my stomach. I couldn't stand the pain. I fainted. When I woke up I was in the hospital."

O.S. told Amnesty International that he stayed in the hospital for one day before being taken to another hospital where they put his leg in plaster and then taken back to Kürkçüler adult prison. O.S. told Amnesty International that he was held at Kürkçüler adult prison for one month before being transferred to Pozantı Children's prison where he was held for two months before being released pending the outcome of the trial. A lawyer representing O.S. told Amnesty International that the family did not make a criminal complaint regarding his treatment in police and prison custody due to the fact that they feared reprisals by the authorities, including the issuing of counter-charges against them.

The indictment prepared by prosecutors contained information as recorded by police on the events during the demonstration, namely that around 40 individuals were involved in a demonstration, that barricades were made stopping the traffic and that the persons involved in the demonstration shouted slogans in support of the PKK and threw stones at police before running away through the back streets of the district. The indictment states that the police caught O.S. on a side street. In March 2009 the Special Heavy Penal Court, an adult court with jurisdiction for terrorism-related offences, convicted O.S. to four years and two months in prison for membership of a terrorist organization. An appeal against the verdict was lodged by the lawyer of O.S. and was pending at the Supreme Court of Appeals as of April 2010.

PROSECUTIONS OF CHILDREN UNDER ANTI-TERRORISM LEGISLATION

THE USE OF UNFAIR ANTI-TERRORISM LEGISLATION

Amnesty International is concerned that children are being prosecuted under anti-terrorism legislation solely on the basis of their alleged participation in demonstrations. This stems from a vague and overly broad definition of terrorism in Turkish law, articles within the Turkish Penal Code allowing persons “who have acted on behalf of a (terrorist) organization” to be charged as members of a terrorist organization without being members of the organization and arbitrary application of the law by judges and prosecutors. Amnesty International regrets that government amendments to the Anti-Terrorism Law, proposed in October 2009 and still pending as of April 2010 in their current form, would not alter in any way the definition of the “terrorist crimes” under which children are prosecuted.

Amnesty International has long expressed concerns that the definition of terrorism in Turkish law is overly broad, vague and fails to meet the level of legal certainty required in criminal law.²⁶ Similar concerns have been expressed by the UN’s *Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*.²⁷

In the Anti-Terrorism Law, Article 1 defines terrorism mainly in terms of its aims – not its tactics - including “any kind of act” aimed at “changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat”. As the *Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism* noted, the law is not restricted to criminalizing tactics employed in furtherance of these aims that amount to deadly or otherwise grave violence against persons. Instead the provision is applicable to any kind of act that entails “pressure, force, violence, terror, intimidation, oppression or threat”.²⁸

Article 2 of the Anti-Terrorism Law also allows persons to be charged as members of a terrorist organization without their having committed a serious violent crime, if the organization of which they are a member supports the aims defined in Article 1 of the law. Under Turkish law persons who are not members of any organization may nonetheless be charged with being a member of a terrorist organization if they have committed a crime ‘in the name of such an organization’.

Children alleged to have participated in the demonstrations are frequently prosecuted under the Anti-Terrorism Law, specifically Article 7/2 which criminalizes making propaganda for a terrorist organization²⁹, and under Article 314 of the Penal Code via Article 220/6 of the Penal Code that criminalizes those who commit crimes in the name of a terrorist organization additionally, as if they were members of the organization. In a lesser number of cases Article 220/7 of the Penal Code is applied which states: “persons knowingly and willingly assisting the organization but not within the hierarchical structure of the organization are punished as members of the organization”. This application of the law followed a ruling of the Supreme Court of Appeals (case number 2007/9282). The Court considered that the tactics of the

PKK were to make use of civil disobedience. In this context the Court ruled that in demonstrations publicized by media organizations regarded by the Turkish state to be associated with the PKK, such as *Roj TV* and *Fırat News Agency*, those that participate in demonstrations could be said to be acting on behalf of a terrorist organization.³⁰

Children, who have been prosecuted in connection with their participation in the demonstrations, have frequently faced multiple charges for the same act including making propaganda for a terrorist organization, membership of a terrorist organization and, in addition, violation of the Law on Meetings and Demonstrations.

A PATTERN OF UNFAIR TRIALS

CHILDREN TRIED IN ADULT COURTS

Under the Convention on the Rights of the Child, which applies to everyone under 18, states are required to establish laws, procedures, authorities and institutions specifically applicable to children accused of infringing the penal law. The UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), adopted by the UN General Assembly in November 1985, stipulate in particular that proceedings for children should be conducive to the best interests of the child and shall be conducted in an atmosphere of understanding allowing them to participate and to express themselves freely, and that the well-being of the child should be the guiding factor in the consideration of the case.

Amnesty International is concerned that by law, children aged 15-17 are tried in Special Heavy Penal courts under the same procedures as adults for terrorism-related offences. Article 9 of the Anti-Terrorism Law stipulates that children aged 15 and above are tried in Special Heavy Penal Courts for prosecutions brought under anti-terrorism legislation. Amnesty International is also concerned that children as young as 12 are tried in Special Heavy Penal Courts, in violation of national law, due to Children's Courts not existing in provinces where many of the children are tried, including notably, Adana and Van. The courts follow the same procedures as for the prosecution of adults save for the fact that the hearings are closed to the public.

Children's Heavy Penal Courts have a panel of three judges. According to Article 28 of the Child Protection Law, both prosecutors and judges working in these courts are required to be experts in children's law and to have received training in child psychology. Lawyers told Amnesty International that Children's Courts did have a better record of implementing the protections contained within the Child Protection Law.

The fact that Children's Courts required by statute have not been created and the existence of laws stipulating that children accused of various offences should instead be prosecuted in adult courts have been longstanding violations of the rights of the child in Turkey. In 2001 the CRC expressed concern on these issues and recommended Turkey take action to ensure that all children be tried in Children's Courts.³¹

The case of Ö.U., 13 at the time of his alleged participation in the demonstration in March 2008 on which his prosecution was based, is illustrative of the many children in Adana who have been prosecuted in Special Heavy Penal Courts. In February 2009 he was convicted of making propaganda for a terrorist organization and of membership of a terrorist organization and sentenced to a six-month prison sentence, suspended for three years.

Amnesty International is also concerned that children below the age of 15 have been tried in adult courts where it was alleged that they had committed the crime together with adults (or children over the age of 15) in violation of explicit provision within Article 17 of the Child Protection Law that requires that children alleged to have committed crimes together with adults are tried separately. An example of this practice is the prosecution of E.A., aged 14 at the time of his alleged participation in Newroz/Nevruz demonstrations in 2008. He was prosecuted in a Special Heavy Penal Court in Diyarbakır, where a Children's Court also exists, due to the fact that the alleged crime was committed with the participation of other children over the age of 15. Official court records confirm that an application by the lawyer representing E.A. for the case to be heard in a Children's Court was rejected by the judge. As of April 2010 the case continued to be heard. E.A. is accused of making propaganda for a terrorist organization.

GOVERNMENT AMENDMENT WOULD BE INEFFECTIVE

A pending government amendment to Article 9 of the Anti-Terrorism Law aims to ensure that children aged 15 -17 would not be tried in adult courts. However, Amnesty International is concerned that such an amendment, on its own, would be ineffective due to the fact that Children's Courts, established under the Child Protection Law, in 1995, do not exist in some of the provinces where children are prosecuted for their participation in the demonstrations, most notably in Adana and Van, provinces where, after Diyarbakır, the greatest number of prosecutions take place. The government has not announced the creation of more Children's Courts.

TERRORISM CHARGES ARE UNSUBSTANTIATED

Central to the allegation that children -- through their participation in the demonstrations -- were acting in the name of a terrorist organization is the fact that demonstrations were announced through media alleged to be linked to the PKK, such as Roj TV via satellite television or internet. Striking beyond even the simple fact that such a link could be cited in law as evidence of guilt of terrorist crimes is the lack of any evidence within the prosecutions that the children had received notification of the demonstrations via such media sources or even had access to internet or satellite television. Statements made to Amnesty International by prosecuted children who witnessed and/or participated in demonstrations, but did not have prior knowledge of them, were both consistent and credible.

Furthermore, many of the demonstrations that resulted in prosecutions followed press statements read out in public by the Democratic Society Party (DTP), then a legal political party. The prosecution of H.A. in Diyarbakır (see page 9) is one such example of a prosecution.

Evidence that children took part in violent acts during the demonstrations is substantiated in many cases through recordings and photographs taken during demonstrations. Such footage rarely shows individual children to have participated in violent acts but rather claims to provide evidence that those individual children were part of a group from which stones were thrown or slogans in support of the PKK shouted. The case of B.S., Batman (see page 20), is an example of such a prosecution.

In many cases photographic evidence is not provided but police witness statements and (disputed) records of the events represent the only evidence of a child's participation. The case of O.S., Adana (see page 14), is one example of such a prosecution. In the case of U.E,

aged 13, in Adana, the indictment produced by state prosecutor states clearly that recordings of the demonstration are not clear and not useful as evidence. U.E. was held in pre-trial detention for more than six months. Despite this, (disputed) police witness statements were adjudged sufficient to convict U.E. to five months for making propaganda for a terrorist organization and three years, one month and 15 days for membership of a terrorist organization.

While the Child Protection Law requires statements to be taken from children by prosecutors rather than police officers, according to official documents seen by Amnesty International, Anti-Terror Branch police routinely interrogate children in unofficial pre-charge detention in adult detention facilities in the absence of a lawyer or social worker. This is in violation of international standards on the right to fair trial. Despite the prohibition of the collection of evidence, such records are frequently adopted into indictments and then cited in reasoned judgments as evidence. In the case of V.A. in Diyarbakır, official documents show that V.A. stated to prosecutors that police records signed by him were obtained by the use of threats and intimidation by police officers at the Anti-Terror Branch of the Security Directorate. However, the records formed part of the indictment against V.A. and no investigation into the conduct of police officers was launched.

In a minority of cases, prosecutions are brought on the basis of secret witness statements which cannot be cross-examined in court. The prosecution of M.Ü., aged 23 at the time of the alleged offence, and others in Diyarbakır, is one such example of a prosecution where the participation of defendants was based solely on secret witness statements. In the case of M.Ü., he was acquitted of the charge of membership of a terrorist organization but convicted of the charge of making propaganda for a terrorist organization for which he received a 10-month suspended sentence.

Amnesty International is concerned that children have been prosecuted and convicted under procedures which do not meet international standards on the right to fair trial. Such procedures include: violations in taking statements during unofficial detention, denial of prompt legal assistance, and failure to investigate claims of undue pressure on children to make statements in the absence of a lawyer or social worker. Moreover, there are concerns about the legislation on which the prosecutions are based: that it lacks legal certainty, and its application by courts is arbitrary. Amnesty International is also concerned that due to deficiencies in corroborative evidence provided to the courts and on which convictions are based there is likelihood that children who have not participated in the demonstrations have been prosecuted and convicted under anti-terrorism legislation. Finally, but not least, Amnesty International is concerned that children are tried in adult Special Heavy Penal Courts.

A FAILURE TO IMPLEMENT PROTECTIONS ON THE RIGHTS OF THE CHILD BY COURTS

SOCIAL ANALYSIS REPORTS

Children prosecuted for their alleged participation in demonstrations told Amnesty International that they did not understand the nature of the crime that they had been charged with and that they were not able to understand the court proceedings (see for example, the case of B.S., page 20).

Amnesty International is concerned at reports that the provisions in the Child Protection Law for children on trial, such as the facility to have a “social analysis report” (*sosyal inceleme raporu*) prepared by social workers to establish whether the child was aware that his actions constituted a crime, were routinely rejected. Lawyers told Amnesty International that while in trials of children aged 15 and above, courts routinely rejected the opportunity to examine such a report, in trials of children aged below 15 such reports were not properly prepared and their findings were not taken on board by courts when requested by lawyers.

Amnesty International is concerned that the failure to conduct effective social analysis reports or to allow the participation of social workers in trial hearings may violate the child's right to a fair trial. In this context, the European Court of Human Rights has ruled that Turkey denied a child defendant the right to effective participation in trial proceedings where no social worker was present. The Court ruled that the right to effective participation includes not only the right to be present but also to be able to follow the proceedings and to have a broad understanding of the nature of the trial process and the significance of the proceedings and any sentence imposed.³²

SENTENCING

Article 3 of the Convention on the Rights of the Child states that the best interests of the child must be the primary consideration in all decisions concerning him/her. The Beijing Rules also require that any reaction to juvenile offenders shall always be in proportion to the circumstances of the offender and the offence.³³

While sentencing varies widely following conviction of terrorism offences, in the cases of children prosecuted following their alleged participation in demonstrations, it has tended to range from periods of under a year in prison to sentences of up to eight years in prison.

A proposed amendment to the Anti-Terrorism Law would also allow children's sentences for terrorism-related convictions to be reduced in severity. As it currently stands, Article 13 of the Anti-Terrorism Law requires that prison sentences issued following convictions under the law cannot be commuted to a fine or suspended except for children below the age of 15. Amnesty International understands that according to procedure established following previous legal amendments, should this amendment be passed it would affect cases pending on appeal at the Supreme Court of Appeals in addition to cases where no verdict has been issued. However, given the practice of judges not applying available protections in law relating to the prosecution of children for their participation in the demonstrations, Amnesty International is concerned that such an amendment may not be applied by courts in practice.

B.S., BATMAN

Fifteen-year-old B.S. was arrested on 9 October 2009 in Batman in the vicinity of a demonstration organized by the Democratic Society Party, coinciding with the anniversary of the arrest of PKK leader Abdullah Öcalan. Lawyers representing B.S. told Amnesty International that she was threatened and sworn at by law enforcement officers.

Official documents show that police officers from the Anti-Terror Branch of the Security Directorate took a statement from B.S. about her participation in the demonstration. B.S. says that she confessed to participating in the demonstration as a result of pressure by the officers. B.S. was held in pre-charge detention for two days during which time she was not able to meet with a lawyer or social worker.

After being charged with breaking the Law on Meetings and Demonstrations, making propaganda for a terrorist organization and membership of a terrorist organization, B.S. was remanded in custody to await trial. During her time in pre-trial detention she has been held with one other girl and had no contact with any other prisoners during her 7 months in detention. She has not been able to participate in any social or leisure activities during her time in prison. A lawyer acting on behalf of B.S. told Amnesty International that during her time in detention she has developed psychological problems as a result of her incarceration and that she has not been able to receive effective psychological support.

In evidence she provided at the final court hearing on 29 December 2009, B.S. refuted the allegations and stated that she does not know what 'propaganda' means. When asked why her evidence in court was completely different to her initial statements, B.S. made the following statement: "On the day of the event, I was on my way to my aunt's house, when I noticed a crowd from a distance. I was curious so I went towards the crowd. Before I could join the crowd, police attacked it. They thought I was in the crowd and caught me as well. I was not in any way part of the crowd, but after they caught me, police officers insulted me, they beat me, they pressurized me. This is why I accepted whatever they said. They forced me to state that I was part of the group, that I threw stones at the police armoured vehicle, that I chanted 'long live Apo'[a reference to PKK leader, Abdullah Öcalan], that I covered my face with a 'puşi'[middle eastern style scarf or *keffiyeh*]. I did not do any of these things, I am innocent. I was very frightened of the police which is why I admitted to the charges in front of the prosecutor and the judge [when she was charged] but I am innocent." B.S. also stated in court that her admission to being on pictures from security cameras was due to the pressure from the police and that the individual on the photos was not her.

On 29 December 2009, she was convicted for membership of a terrorist organization, making propaganda for a terrorist organization and refusal to disperse from an armed meeting and a demonstration and sentenced to seven years and six months in prison. Her appeal against her conviction was pending as of April 2010, and she remained in detention pending the outcome of the appeal.

PRE-TRIAL DETENTION

The Convention on the Rights of the Child requires that children are only detained as a last resort and for the shortest period possible. In this context the detention of children in pre-trial detention should be confined to exceptional circumstances. The CRC has described the extended pre-trial detention of children for months or years to be a “grave violation” of the Convention.³⁴ State parties to the Convention on the Rights of the Child are required to provide for alternatives to the use of pre-charge detention in addition to other measures to ensure it is used as little as possible. The ECHR also offers protection against protracted pre-trial detention. Article 5.3 states: “Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled **to trial within a reasonable time or to release pending trial** [AI emphasis]. Release may be conditioned by guarantees to appear for trial.”

In cases where the pre-charge detention of children is unavoidable, it should be for the shortest period possible with a maximum duration specified in law.³⁵ Moreover, children held in pre-trial detention should have the right to challenge the legality of their detention at a court or other competent and independent authority, have access to healthcare, the right to maintain contact with their family and the right to education and leisure activities. Children must be held separately from adults unless it is considered in the best interests of the child for them not to be.³⁶

Despite these clear standards in international law, and the fact that Turkey’s Child Protection Law also specifies that any deprivation of a child’s liberty should be a last resort, children are routinely held in extended pre-trial detention following charges being brought under anti-terrorism legislation, Amnesty International is concerned about reports that the rights of children have been routinely violated while held in pre-trial detention.

PRE-TRIAL DETENTION IS ROUTINE

Despite the fact that both international and national law demands that pre-trial detention must be the last resort, Amnesty International’s research shows that extended pre-trial detention is used routinely for children prosecuted following their alleged participation in the demonstrations. Alternatives to detention are not considered by courts when remanding children in custody. Detention periods have ranged from several months to over one year in duration. No maximum period of pre-trial detention for children is set in law and little justification for the detention is given by judges for the order to remand children in detention. Likewise, permission from the court to extend the pre-trial detention is routinely granted without substantive examination.

Amnesty International is also concerned that lawyers were frequently not able to effectively challenge the lawfulness of the detention of the children due to “secrecy decisions” which block the disclosure of the evidence ahead of the indictment being released. The measure, which is commonly enforced in prosecutions which are reported in the media, is enacted by the judge following an application from the prosecutor under Article 153 of the Code of Criminal Procedure on the grounds that release of the documents would “jeopardise the aims of the investigation”.

While periods of pre-trial detention vary considerably, for children in Diyarbakır, periods of two to three months were frequently reported. In Adana, reported pre-trial detention periods

were commonly in excess of six months. Considerably shorter periods of children's pre-trial detention in Turkey have been found to be in violation of Article 5.3 of the ECHR by the European Court of Human Rights.³⁷

In the majority of cases children were held in pre-trial detention until such time as they had given evidence in court before being released. Lawyers reported that during this period judges renew the order for children to be held in detention without substantive examination of the reasons for detention or consideration of alternatives to pre-trial detention. In a number of cases in Diyarbakır children reported that while being held in pre-trial detention they were not transferred to the courthouse to participate in trial hearings. It was alleged that the lack of diesel for transport vehicles was given as a justification. Such examples further weaken the justification given by courts that children be held in pre-trial detention to ensure their attendance at court hearings and give credibility to the claim that pre-trial detention of children is used as a de facto punishment.

TORTURE AND OTHER ILL-TREATMENT

Of particular concern are the reports of repeated and routine torture and ill-treatment of children on arrival at Kürkçüler adult prison in Adana. According to reports received from children who had been detained at the prison, lawyers representing the children and human rights defenders, ill-treatment has routinely taken place on arrival at the adult prison, especially in cases where children refused to remove their clothes as part of the admission procedure.

According to the reports, boys were routinely held at Kürkçüler adult prison before being transferred to Pozantı Children's prison on the justification that the prison was closer to the centre of Adana. Children told Amnesty International that they were held at the prison for periods of up to 10 or 15 days before being transferred to Pozantı Children's prison. During this time they were held with any other children who were held at the prison. Human rights defenders in Adana told Amnesty International that some children were held in pre-charge detention at Kürkçüler adult prison in solitary confinement when there were no other children being held in the prison at that time.

Consistent reports of ill-treatment at Kürkçüler adult prison include sustained periods of beating, with kicks and punches being inflicted on the child. Some reports indicate that sticks or other items were used to beat children. In cases such as O.S. (see page 14) the alleged ill-treatment resulted in serious injury. However, in this and other cases no official complaint was made and no investigation was launched into the ill-treatment.

Physical ill-treatment has also been reported at another of Adana's prisons where children are held. Lawyers acting on behalf of seven children held at the Ceyhan M –type Prison allege that in January 2010 the seven children were beaten with batons and taken out of their prison ward by prison officers before being beaten again by prison guards. It is alleged that one of the children was dragged along the floor by a prison guard before all seven of the children were again beaten with batons by the prison guards. Reportedly, during the ill-treatment the prison guards also swore at and otherwise threatened the children. It is alleged that one of the children was beaten with a wooden mop handle resulting in a bleeding wound on his head and causing him to lose consciousness. The lawyers reported that all seven children had bruises and marks of baton injuries on their bodies which could be seen three days after the ill-treatment took place. Following a criminal complaint made by lawyers,

prosecutors began an investigation of the incident. As of April 2010 the investigation was continuing.

Many of the children prosecuted following their alleged participation in demonstrations in Diyarbakır were detained at the Diyarbakır E-type Prison, an adult prison with a separate section for children. At this prison too, allegations of prison guards making threats and verbally insulting children were frequently made. In a minority of cases children reported physical abuse by prison guards while being held at the prison.

It was widely reported both in Adana and in Diyarbakır that handcuffs were used to restrain children on transfer from the remand prison to the court to attend hearings and on transfer from one prison to another. Such a practice is in direct violation of Turkey's Child Protection Law which forbids the use of such items during transfer. Some children also alleged that the handcuffs were applied too tightly in a manner that caused pain and left marks for days.

CHILDREN HELD WITH ADULTS

In a small number of cases it was reported that children were held in pre-trial detention together with adult prisoners. In the majority of cases this was attributed to suitable facilities for the detention of children being unavailable; eventually they were transferred to children's detention facilities. Amnesty International received reports that boys in Batman and at times girls in Adana and Diyarbakır were held in pre-trial detention with adult remand prisoners. It was also widely reported that children were held together with adult prisoners following transfer from the prison to the courthouse for hours at a time while waiting for their hearing to take place and to be transferred back to prison after their hearing had ended.

CONDITIONS OF DETENTION

The failure to institute independent monitoring mechanisms of places of detention in Turkey prevented prison conditions from being monitored effectively by civil society organizations. The Human Rights Board of the Diyarbakır Governorship (part of the Ministry of Interior, but in cooperation with civil society organizations) was able to make a visit to Diyarbakır E-type Prison. However, the visit was not unannounced and was realized only after months of negotiations with the prison authorities and it was alleged that the prison conditions had been improved immediately prior to the visit taking place. Despite this, the report contained damning findings regarding the conditions of detention at the prison.³⁸ The Turkish Medical Association was also able to gain access to the Diyarbakır E-type Prison.³⁹ In addition to this, lawyers representing children were able to access prisons to meet with their clients and provide information on the detention conditions there. Amnesty International interviewed children who had been held in pre-trial detention. They universally reported being held in prison conditions which were unhygienic, unhealthy and that they were not able to access education, health services and adequately partake in leisure activities.

HEALTH

It was reported by children and by the Diyarbakır Human Rights Board that access to medical treatment was severely restricted at the E-type prison. Children interviewed by representatives of the Board stated that there was no prison doctor and that a doctor could be seen at most once per week and that medical conditions were not treated after the children had been examined by doctors.

Amnesty International is also concerned at reports that children held in prison frequently

developed psychological problems as a result of their detention in prison and that they did not receive adequate psychological support while in pre-trial detention (for example, see the case of B.S., see page 20).

Children interviewed by Amnesty International in Diyarbakır also stated that the prison conditions in which they were held at the E-type prison were dirty and unhealthy. The children complained that the cleaning of the prison wards where they were held was the responsibility of the children, that bed sheets were not cleaned and on occasions there were not enough beds for the children to sleep in. Children in Diyarbakır told Amnesty International that they had to wash dishes and clothes in unsanitary conditions and that the E-type prison where they were held was infested with rats and cockroaches. In both Adana and Diyarbakır, children complained that hot water was not regularly available. In Diyarbakır children stated to Amnesty International that children remanded for “political” offences were given less access to hot water than children accused of general crimes. In both Adana and Diyarbakır children previously held in pre-trial detention and their families stated that the prison authorities did not allow children to receive washed clothes from their families and that as a result children wore soiled clothing.

EDUCATION AND LEISURE

In both Adana and Diyarbakır, children reported to Amnesty International that they were not given access to education for the duration of their time in pre-trial detention. In many cases children told Amnesty international that being held in pre-trial detention for several months caused them to miss a whole year of school as they were not allowed to return to their classes after missing lessons. It was reported that allocated leisure time was insufficient. According to one report, sports activities in the Diyarbakır E-type prison were limited to two hours per week and that the children were prevented from taking part in sports activities with child detainees imprisoned for general crimes.⁴⁰

RECOMMENDATIONS

Amnesty International calls on the Turkish authorities to:

Respect and protect the rights of children in conformity with its obligations under the Convention on the Rights of the Child and ensure any measures taken are in the best interests of the child

Prevention

Take steps to secure the right to peaceful assembly;

- Issue guidance to local authorities indicating that demonstrations should not be denied permission to go ahead, unless consistent with legitimate limitations to the right to freedom of peaceful assembly;
- Local authorities should engage in dialogue with families and civil society organizations to ensure that demonstrations are able to proceed and do not result in violence.

Amend anti-terrorism legislation

Prevent unfair prosecutions under anti-terrorism legislation by bringing the definition of terrorism in Turkish law into line with international standards and norms, notably the principles of legality and legal certainty;

As a first step to achieving this:

- Amend Turkish Penal Code Articles 220/6 and 220/7 that allow persons to be convicted of membership of a “terrorist” organization on the basis that they have committed crimes in the name of the organization or have knowingly and willingly assisted such an organization;
- Amend Article 7/2 of the Anti-Terrorism Law ensuring distinction is made between supporting political aims which are shared by a “terrorist” organization with promoting that organization including its violent methods and actions;
- Send guidance to judges and prosecutors on the interpretation of such laws used to prosecute participation in demonstrations, ensuring that they are in line with international standards on freedom of expression and assembly.

Preventative mechanisms to combat human rights violations by state officials

- Ensure the installation and functioning of video and audio recording equipment in police stations and interview rooms;
- Ratify the Optional Protocol to the Convention against Torture, and implement the Protocol through the creation of an independent monitoring mechanism to carry out regular and ad-hoc unannounced visits to all places of detention;
- Carry out effective and impartial investigations into all cases of alleged ill-treatment by state officials; and bring suspects of such violations to justice;
- Provide all state officials involved in prosecutions of children with training on the

Convention of the Rights of the Child, other relevant international standards and national law standards relating to the protection of children.

Policing of Demonstrations

Ensure that police only use such force as is consistent with international human rights standards;

- Ensure that law enforcement officers apply non-violent means before resorting to proportionate use of force and firearms, which should be used only if other means remain ineffective;
- Ensure that law enforcement officers use firearms only when less dangerous means are not effective and only to the minimal extent necessary, in order to protect themselves or others against an imminent threat of death or serious injury;
- Ensure that law enforcement officials respect the absolute prohibition of torture and other ill-treatment, including excessive use of force;
- Investigate promptly, thoroughly, independently and impartially allegations of torture and other ill-treatment against demonstrators.

Pre-charge detention

Ensure that children are detained only as a last resort and for the shortest period possible; where there is no alternative, ensure that the manner of detention takes into account the needs of their age;

- Carry out a review of legislation, policies and practices to ensure that the routine detention of children who are accused of violating the law is ended;
- End the practice of unofficial detention and interrogation of children at the Anti-Terror Branch of Security Directorates;
- Ensure that children are provided with immediate legal assistance upon apprehension and during questioning.

Ensure that children are not held in adult detention facilities;

- When detention is unavoidable, ensure that specialist facilities are available for the detention of children;
- In cases where there is doubt that arrested persons are below the age of 18, such persons should be held separately from adult prisoners until it has been established that they are indeed adults;
- Inform the child's family without delay regarding where the child is being detained and allow them to have contact with the child.

Trial Proceedings

Ensure that fair trial standards are upheld;

Ensure that children are not tried according to the same procedures as adults;

- Establish Children's Courts in all provinces across Turkey as required under the Child Protection Law in Turkey;
- Provide existing Children's Courts with regional jurisdiction until such a time as Children's Courts exist in all provinces;
- Amend anti-terrorism legislation to ensure that children are not tried as adults in Special Heavy Penal Courts;
- Ensure a re-trial for children convicted following trial in Special Heavy Penal Courts.

Implement legal protections regarding the taking of statements

- Ensure that any statements taken from children are always taken by prosecutors in the presence of a lawyer and social worker;
- Ensure that prosecutors and the courts investigate all allegations that evidence has been obtained by torture or other ill-treatment or under duress;
- Ensure that any evidence elicited as a result of torture or other ill-treatment is excluded at trial in compliance with Article 148(1) of the Turkish Criminal Procedure Code.

Make use of social analysis reports

- Ensure that social analysis reports are prepared for all children up to the age of 17 inclusive;
- Send guidance to judges and prosecutors regarding the effective application of such reports by courts.

Pre-trial detention

Ensure that children are held in pre-trial detention only in exceptional circumstances;

- Make a commitment to reducing the number of children in pre-trial detention;
- Ensure that all other alternatives are considered before remanding children in custody;
- In situations where pre-trial detention is unavoidable, expedite cases to ensure that the detention is for the shortest period possible.

Ensure that every child deprived of liberty is treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age;

- Ensure that children are held separately from adults in all circumstances and in facilities

designed for children;

- Overhaul detention facilities and adopt practices to ensure that standards of hygiene are maintained;
- Ensure that detained children have access to the same rights as their peers, particularly with regard to healthcare, education and leisure;
- Enforce the prohibition of the use of handcuffs during the transfer of children.

ENDNOTES

¹ While the majority of those arrested and prosecuted for their alleged participation in the demonstrations have been children, adults have also been prosecuted. This report focuses in particular on violations of the human rights of children.

² Terörle Mücadele Kanunu, (Law no. 3713; published in the *Official Gazette*, 12 April 1991)

³ Toplantı ve Gösteri Yürüyüşleri Kanunu, (Law no. 2911; published in the *Official Gazette*, 8 October 1983)

⁴ Article 91/3 of the Code of Criminal Procedure allows an extension of the pre-charge detention period of up to four days where crimes have been committed collectively, where there is difficulty collecting evidence or where there are a large number of suspects.

⁵ Article 10.b of the Anti-Terrorism Law allows for suspects of crimes under the law to have their right to access a lawyer restricted for the first 24 hours of their detention. During this time statements cannot be taken from the suspect.

⁶ Written answer submitted by the Justice Ministry in response to a written parliamentary question by Member of Parliament for Şırnak, Sevaahir Bayındır. 8 December 2009, full text available at <http://www2.tbmm.gov.tr/d23/7/7-9281c.pdf>

⁷ The Justice Ministry statistics show that in 2006, 299 prosecutions were initiated against children, 438 in 2007 and 571 in 2008 under the Anti-Terrorism Law. The same statistics also show that the number of children prosecuted under this law aged below 15 was six in 2006, seven in 2007 and 86 in 2008.

⁸ Human Rights Association *2008 Yılı Kanunla İhtilafa Düsen Çocuklar Raporu*, May 2009 available at http://www.ihd.org.tr/index.php?option=com_content&view=article&id=1487:2008-yili-kanunla-ihtilafa-dusen-cocuklar-raporu&catid=34:el-raporlar&Itemid=90

⁹ Justice for Children Initiative *Çocuklar Terör Suçu ile Yargılanamaz*, April 2009 available at <http://www.ihop.org.tr/dosya/cocukadalet/opactr.pdf>

¹⁰ 18 August 2009, letters to President Abdullah Gül, Prime Minister Recep Tayyip Erdoğan, Minister for EU Negotiations Egemen Bağış, Chair of the Parliamentary Human Rights Commission Zafer Üskül, Minister of Interior Beşir Atalay and Minister of Foreign Affairs Ahmet Davutoğlu.

¹¹ In particular, through the Justice for Children Initiative, a collective of lawyers, activists and NGOs. See www.cocuklaraadalet.com

¹² Full text of the Committee's Concluding Observations are available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/459/13/PDF/G0945913.pdf?OpenElement>

¹³ At the time of the demonstration, The Democratic Society Party was a legal political party with representatives in the Parliament. The party was closed in December 2009, see Amnesty International, *Turkey: Constitutional Court rules in favour of closure of pro-Kurdish Democratic Society Party* AI Index: EUR 44/007/2009 available at <http://www.amnesty.org/en/library/info/EUR44/007/2009/en>

¹⁴ General Assembly Resolution 34/169 of 17 December 1979.

¹⁵ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

¹⁶ See report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc A/61/311, 5 September 2006, para. 35; see also Nigel Rodley, *The Treatment of Prisoners under International Law*, 3rd ed, pp. 257-8.

¹⁷ Amnesty International press release: *Turkey: Respect the rights and safety of demonstrators*, 30 April 2008, AI Index: PRE01/132/2008

¹⁸ Amnesty International press release: *Turkey: One dead scores, injured as police break up demonstrations*, 22 October 2008, AI Index: PRE01/254/2008.

¹⁹ Yardım Toplama Kanunu (Law no. 2860; published in the published in the *Official Gazette* on 23 June 1983)

²⁰ 23 April 2009, *Bianet, Hakkari'de Polisten Çocuğa Dipçik!*, available at <http://www.bianet.org/bianet/insan-haklari/114042-hakkaride-polisten-cocuga-dipcik>

²¹ Amnesty International, *Turkey: The Entrenched Culture of Impunity Must End*, AI Index: EUR 44/008/2007

²² See *Zaman*, "3 polis, 14 yaşındaki Mahsun'un ölümünden dolayı yargılanmaya başladı" 14 January 2010, available at <http://www.zaman.com.tr/wap.do?method=getSondakikaDetay&haberno=940331&sirano=1&sayfa=>

²³ Article 31 of Child Protection Law (no. 5395)

²⁴ Article 10.b of the Anti-Terrorism Law allows for suspects of crimes under the law to have their right to access legal assistance restricted for the first 24 hours of their detention. During this time statements cannot be taken from the suspect.

²⁵ The Committee on the Rights of the Child, in its General Comment 10 paras. 56-7 stated: "In line with article 14 (3) (g) of ICCPR, CRC requires that a child be not compelled to give testimony or to confess or acknowledge guilt. This means in the first place - and self-evidently - that torture, cruel, inhuman or degrading treatment in order to extract an admission or a confession constitutes a grave violation of the rights of the child (art. 37 (a) of CRC) and is wholly unacceptable. No such admission or confession can be admissible as evidence (article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). There are many other less violent ways to coerce or to lead the child to a confession or a self-incriminatory testimony. The term "compelled" should be interpreted in a broad manner and not be limited to physical force or other clear violations of human rights. The age of the child, the child's development, the length of the interrogation, the child's lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment may lead him/her to a confession that is not true."

²⁶ See for example, Amnesty International, *Turkey: Briefing on the wide-ranging, arbitrary and restrictive draft revisions to the Law to Fight Terrorism*, EUR 44/009/2006, 11 June 2006

²⁷ *Mission to Turkey: Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism* (16 to 23 February 2006) A/HRC/4/26/Add.2 , at paras 11 -18 and 76 available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/149/42/PDF/G0614942.pdf?OpenElement>

²⁸ See *Mission to Turkey: Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, paras. 11 -18

²⁹ In this context prosecutions brought under Article 7/2 of the Anti-Terrorism Law are based on the allegation that the accused shouted or was part of a group who shouted slogans in support of the PKK. However, the prosecutions fail to differentiate between slogans which support the political aims of the organization with promoting the organization's violent methods and actions.

³⁰ Both *Roj TV* and *Firat News Agency* are banned by the Turkish authorities and operate from abroad.

³¹ Concluding Observations of the Committee on the Rights of the Child, Turkey, CRC/C/15/Add.152, 9 July 2001, available at <http://daccessddsny.un.org/doc/UNDOC/GEN/G01/432/64/PDF/G0143264.pdf?OpenElement>

³² *Güveç vs. Turkey*. Application no. 70337/01. Judgment of 20 January 2008, paras. 123-4.

³³ Beijing Rules 5.1 states: The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

³⁴ CRC General Comment 10 para. 80 states: The Committee notes with concern that, in many countries, children languish in pretrial detention for months or even years, which constitutes a grave violation of article 37 (b) of CRC. An effective package of alternatives must be available (see chapter IV, section B, above), for the States parties to realize their obligation under article 37 (b) of CRC to use deprivation of liberty only as a measure of last resort. The use of these alternatives must be carefully structured to reduce the use of pretrial detention as well, rather than "widening the net" of sanctioned children. In addition, the States parties should take adequate legislative and other measures to reduce the use of pretrial detention. Use of pretrial detention as a punishment violates the presumption of innocence. The law should clearly state the conditions that are required to determine whether to place or keep a child in pretrial detention, in particular to ensure his/her appearance at the court proceedings, and whether he/she is an immediate danger to himself/herself or others. The duration of pretrial detention should be limited by law and be subject to regular review.

³⁵ CRC General Comment 10 para. 80

³⁶ CRC General Comment 10 paras. 82-89

³⁷ See *Selçuk vs. Turkey*. Application no. 21768/02, *Nart vs. Turkey*. Application no. 20817/04 cited in *Güveç vs. Turkey*. Application no. 70337/01, Judgment of 20 January 2008. para. 109.

³⁸ Diyarbakır Human Rights Board, *Diyarbakır E Tipi Cezaevinde Tutuklu Ve Hükümlü Bulunan Çocukların Maruz Kaldıkları Hak İhlallerini Yerinde Araştırma-İnceleme Raporu*, April 2009 The report listed among other issues, neglect and lack of access to medical treatment.

³⁹ See Turkish Medical Association, *Çocukken Tutuklu ve Hükümlü Olmak, Tutuklu ve Hükümlü Çocuk Olmak*, available at <http://www.ttb.org.tr/index.php/haberler/basinaciklamalari/1599-Diyarbakir>

⁴⁰ Turkish Medical Association, *Çocukken Tutuklu ve Hükümlü Olmak, Tutuklu ve Hükümlü Çocuk Olmak*, available at <http://www.ttb.org.tr/index.php/haberler/basinaciklamalari/1599-DiyarbakirDiyarbakir>



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ALL CHILDREN HAVE RIGHTS

END UNFAIR PROSECUTIONS OF CHILDREN UNDER ANTI-TERRORISM LEGISLATION IN TURKEY

Thousands of children in Turkey, some as young as 12, have been prosecuted under anti-terrorism legislation, solely for their alleged participation in demonstrations considered by the government to be in support of terrorism. The demonstrations are focused on issues of concern to members of the Kurdish community, and often involve clashes with the police. The majority of arrests and prosecutions following the demonstrations are of children.

The report gives the children's first-hand accounts of being ill-treated on arrest and while being held in police custody. Despite widespread accounts of excessive use of force and other ill-treatment, no police officer has been brought to justice. Children are detained in adult police custody in the Anti-Terror branch rather than the Children's branch of police stations. There, they are often subjected to unofficial interrogation in the absence of lawyers or social workers. Once charged, children are frequently remanded in custody for months before the trial verdict. Prosecutions are often based on insubstantial evidence or statements taken from the children under pressure. Most cases end in convictions with prison sentences, some for many years.

The Turkish authorities are obliged under international and domestic law to protect the rights of children, during their arrest, detention and trial. However, these rights are systematically violated. The arrests and prosecutions continue.

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Index: EUR 44/011/2010
June 2010

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