

Human Rights Watch Briefing Paper

A Human Rights Agenda for the Next Phase of Turkey's E.U. Accession Process

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Introduction

The process of Turkey's accession to the E.U. has, since 1999, emerged as the most important catalyst of reform in Turkey. The E.U.'s progress report for 2001 made it clear that Turkey was lagging behind in its efforts to meet the E.U. accession conditions of "democracy, the rule of law, human rights and respect for and protection of minorities." In 2002, the Turkish government seemed to get serious about meeting the criteria and enacted significant reforms in February and August which, among other things, abolished the death penalty, provided detainees with greater access to lawyers, and lifted restrictions on broadcasting in minority languages, including Kurdish.

These bold steps were welcome, but they omitted a key reform contained in the Accession Partnership that had been recommended by a series of intergovernmental expert bodies on torture after their visits to Turkey: abolition of incommunicado detention. The reforms also came late, leaving Turkey no time to demonstrate a record of implementation prior to the E.U.'s December 2002 summit which was to determine whether to give Turkey a date for membership negotiations to begin. At the December summit, the E.U. postponed its decision on membership negotiations until December 2004, citing the need for further human rights progress.

The newly elected Turkish government, led by the Justice and Development Party (AKP), has committed to proceeding with human rights reform, regardless of the E.U. process. The government's prompt action to enact further reform in January 2003 suggests that it intends to avoid repeating the mistake of previous governments by waiting until the eve of the 2004 E.U. summit to rush reforms through. This approach is well advised, as the list of needed reforms remains long. The following is a summary of the priority areas Human Rights Watch encourages the government of Turkey to begin to begin work on early in 2003, in order to establish unassailable reformist credentials by December 2004.

Combating torture

Torture remains a serious and systemic human rights problem in Turkey. In just the two months since the new government was appointed, Human Rights Watch has gathered information of ten cases of alleged torture, including cases involving child victims.

As the U.N. Committee against Torture, the U.N. Special Rapporteur on torture and the European Committee for the Prevention of Torture (CPT) have indicated, the most important step Turkey could take to curb torture would be to ensure that all detainees have access to legal counsel from the first moments of detention. Currently, in Turkey detainees held for common criminal offences have the right to see a lawyer as soon as police detain them, but this is delayed for detainees held for offences under the jurisdiction of State Security Courts.

The present government committed itself to removing the special provisions for State Security Court detainees when it submitted the Law Amending Some Laws (Law No 4778, 11 January 2003) to parliament. In the preamble to the grounds for the 11 January law, Prime Minister Gül correctly stated that new legislation was necessary to meet the requirements of the Accession Partnership of the 4 December 2000. Article 4.1 of the Accession Partnership calls on Turkey to “undertake all necessary measures to reinforce the fight against torture ... and align legal procedures concerning pre-trial detention with the provisions of the European Convention on Human Rights and with the recommendations of the Committee for the Prevention of Torture.” In paragraph 61 of the report on its 16-24 July 2000 visit to Turkey (CPT/Inf (2001) 25), the CPT urged that “all persons deprived of their liberty by the law enforcement agencies, including persons suspected of offences falling under the jurisdiction of the State Security Courts, be granted as from the outset of their custody the right of access to a lawyer.”

Unfortunately, notwithstanding the government’s apparent intent to follow the CPT’s recommendation and fulfil its Accession Partnership commitment, the Law Amending Some Laws of 11 January 2003 appears to have been misdrafted, and as a consequence, the Criminal Procedure Code still denies State Security Court detainees access to legal counsel for the first forty-eight hours.

- *The government of Turkey should promptly pass legislation to abolish Article 31 paragraph 1 of the Law Amending Some Articles of the Criminal Procedure Code (1992, No 3842), which denies detainees held for offences under the jurisdiction of State Security Courts the right to legal counsel for the first forty-eight hours.*

Providing such safeguards in law could be a major contribution to combating torture, but it will count for little unless it is scrupulously implemented. To illustrate, in May 2002, the Turkish government adopted an important anti-torture regulation forbidding blindfolding of detainees in police custody. Human Rights Watch warmly applauds this overdue step, but regrettably, we have gathered information regarding a number of cases of alleged torture involving blindfolding since May 2002. Our inquiries indicate that the new regulation appears to be unknown to lawyers in Turkey, and also to police and gendarmes, who still commonly blindfold their detainees.

- *The government should fully implement the prohibition against blindfolding detainees adopted in May 2002, including by informing the police, gendarmes, and lawyers of the new rule.*

- *To ensure that its new safeguards are put into practice, the Turkish government should establish systems for rigorous monitoring of police stations and gendarmeries, including by independent councils consisting of members of the public. Police officers and gendarmes must be sharply disciplined and/or prosecuted whenever they deny detainees access to legal counsel; induce detainees to sign away their right to see a lawyer; fail to inform detainees of their rights; interfere with medical examinations; fail to inform relatives when people are detained; fail to register detainees on arrival; or fail to take detained children directly to the prosecutor as regulations require.*

Halting the harassment and obstruction of civil society, including human rights defenders

The past year has brought substantial changes to the Law on Associations. The most significant is that associations are now to be supervised by civil authorities rather than the local police. But the Law on Associations remains cumbersome and restrictive, imposing such onerous responsibilities as informing the local governor of their membership, publications, and meetings. Moreover, the law threatens severe penalties for breach of such requirements. For example, associations commonly face expensive and time-consuming litigation because the authorities claim that they did not notify the governor of a change of address. Of sixty-four ongoing trials faced by the Istanbul branch of the Human Rights Association (HRA) in August 2002 for carrying out their legitimate activities as human rights defenders, thirty-eight were brought under the Law on Associations.

Human rights organizations in particular face constant litigation, as well as other forms of harassment. On 5 November 2002 Istanbul State Security Court sentenced Kiraz Biçici, the new president of Istanbul HRA, to forty-five months' imprisonment for "supporting the PKK" in a statement she made to a television company concerning the violent transfers of prisoners into the new cell-based F-type prisons in December 2000. Ankara HRA branch president Lutfi Demirkapi and eleven others are still on trial at Ankara State Security Court, facing possible seven-and-a-half-year sentences under the Anti-Terror Law, simply because they issued a press statement critical of the Justice Ministry's handling of the crisis in the F-type prisons. In June 2002, Dr. Alp Ayan and Mehmet Barindik of the Izmir Torture Survivors' Treatment Center of the Turkish Human Rights Foundation were sentenced to a year's imprisonment under article 159 of the criminal code for making a press statement critical of the Justice Ministry's handling of the crisis over the F-type prisons. The sentence is currently pending on appeal at the Supreme Court.

Police and local governors very frequently prohibit or disperse meetings and peaceful demonstrations by human rights organizations. Police often obstruct their research activities, particularly in rural areas.

- *The Turkish government should Reform the Law on Associations to eliminate cumbersome and restrictive provisions imposed on civil society.*

- *The sentences imposed on Kiraz Biçici, Dr Alp Ayan, and Mehmet Barindik should be quashed. All proceedings against human rights defenders for their non-violent expression should be dropped. The Turkish government should do all in its power to affirm 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 Turkish citizens.*

Guaranteeing and enforcing the rights of freedom of expression, conscience, and association

In 2002 minor legislative improvements were achieved in the field of freedom of expression in Turkey. Moreover, in a few cases that would certainly have proceeded to conviction in earlier years, courts acquitted those prosecuted for their non-violent expression. Nevertheless, both the government and the judiciary seemed to be conflicted about freedom of expression. They have yet to summon the courage systematically and steadfastly to implement the requirements of article 10 of the European Human Rights Convention in either legislation or jurisprudence.

The February 2002 reform package altered the wording of criminal code article 312. Under the revised text, incitement can only be punished if it presents "a possible threat to public order." Prosecutions under article 312 for non-violent expression are still proceeding, however. The February 2002 package also reduced the prison sentences for criminal code article 159 from a maximum of six years to three years. The August 2002 reform improved the wording of article 159 (insulting organs of the state) by emphasizing that straightforward criticism should not be punished, but still failed to eliminate the risk of imprisonment under that provision for the expression of non-violent opinion. As an illustration, as recently as November 2002, Diyarbakir Primary Court No. 3 launched an article 159 prosecution of Diyarbakir Human Rights Foundation representative, the lawyer Sezgin Tanrikulu, Eren Keskin, and Sociologist Pinar Selek, in connection with speeches they made in December 2001 concerning the F-type prison transfers.

Turkish citizens are still imprisoned for expressing their non-violent opinions. Ahmet Ünlü was arrested in January 2002 to serve a previously imposed two-year-and-seven-month prison sentence for "incitement to religious hatred" under criminal code article 312 for comments he made describing the 1999 earthquake as a "heavenly warning" to a society that had departed from Islamic principles. In February 2002, publisher Mehmet Kutlular was released after serving a two-year prison sentence under criminal code article 312 for making similar observations about the 1999 earthquake. In May 2002, former parliamentary deputy Hasan Mezarci was released after serving three months in prison under Law 5816 for "insulting Mustafa Kemal Atatürk," founder of the Turkish Republic. In June Dr. Fikret Baskaya was released after serving a sixteen-month sentence for "separatist propaganda" under article 8 of the Anti-Terror Law, for a 1999

newspaper article about the trial of Kurdistan Workers' Party (PKK) leader Abdullah Öcalan. It was his third term of imprisonment for his writings.

- *The Turkish Criminal Code and other laws and regulations still contain hundreds of provisions that threaten citizens with imprisonment for the expression of their non-violent opinions, or inhibit their rights of freedom of expression and association. The new government should work together with bar associations and other interested parties to prepare comprehensive revision of the law in accordance with the European Human Rights Convention.*

- *Even prior to any legislative reform, the courts should immediately fulfill their responsibility to adhere to the principles of the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights in their judgments relating to the non-violent expression of opinion. Existing training in the convention should be maintained and extended, but leadership in implementation is needed from prominent Turkish jurists.*

The August 2002 recognition of the right to broadcast and teach minority languages (principally, Kurdish) was a courageous move by the previous government. It is unfortunate that the implementing regulations drawn up since then look like an attempt to snatch the rights back. The 18 December 2002 regulation states that broadcasting in minority languages may only be on the state channels—four hours per week on radio and two hours per week on television—and the radio program must be followed by a mandatory complete translation in Turkish. According to the regulation, minority language instruction may only be conducted on weekends or holidays for students between twelve and eighteen years of age who have completed primary education.

- *The Turkish government should lift all discriminatory restrictions on the broadcasting and teaching of minority languages, as required by the Accession Partnership, which required the removal of “any provisions forbidding the use by Turkish citizens of their mother tongue in TV/radio broadcasting.”*

Another significant persistent infringement on free expression in Turkey is the ban imposed by state educational institutions on women wearing the headscarf for religious reasons. Thousands of female students are still denied access to high school and university education because they wear the headscarf. Teachers and doctors are also dismissed if they choose to wear the headscarf on duty.

Choosing to wear or not to wear a particular form of dress is a manifestation of the right to freedom of thought, conscience, and religion. As such, the Turkish government's imposition of a headscarf ban should be considered in breach of articles 9, 10, and 14 of the European Convention on Human Rights. These articles protect freedom of religion and freedom of expression, and safeguard against discrimination; and pursuant to Article 90 of the Turkish Constitution, they supersede conflicting domestic law. The headscarf ban also breaches articles 18 and 19 of the International Covenant on Civil and Political Rights, which provide similar protections for free expression, as well as article 13 of the International Covenant on Economic, Social and Cultural Rights, which

safeguards access to education. Turkey has signed both covenants, but ratifications are still pending.

The right to freedom of thought, conscience, and religion may only be restricted by law in order to protect public order, safety, health and morals, and the fundamental rights and freedoms of others. Having examined the context of the ban in universities, Human Rights Watch sees no such justification for restricting students' right to wear the headscarf. Nor are there grounds for imposing an indiscriminate ban on headcovering by public officials and civil servants, which can only be justified in very limited circumstances when wearing the headscarf would clearly impede such officials in the performance of their duties.

- *The Turkish authorities should lift the ban on the wearing of headscarves or other religious head-covering by students, and lift such dress restrictions on civil servants except in such circumstances as would clearly impede the performance of their duties.*

Developing a comprehensive plan for return of the displaced in accordance with international standards

The E.U. Accession Partnership required Turkey to “improve the situation in the south-east, with a view to enhancing economic, social and cultural opportunities for all citizens.” Drawing attention to the situation of the displaced, arguably the most pressing problem in the south-east, the E.U.’s 2002 Regular Report contrasts the estimated 378,000-1,000,000 displaced with the mere 37,000 who, according to official figures, have been able to return. Human Rights Watch’s recent report, *Displaced and Disregarded, Turkey’s Failing Village Return Program* (October 2002), documents the poverty and overcrowding of displaced villagers living in the cities, and the financial and official obstacles that prevent them from returning. Chief among these obstacles is the continuing insecurity in rural areas caused not so much by continuing political violence (which has diminished “to zero” according to some government sources) but by the threat of violence or persecution from the security forces: gendarmes and village guards. In many cases, village guards have occupied vacated land and consider themselves entitled to use force to assert their tenancy. Since July 2002, at least six returning villagers have been shot dead by village guards.

The government’s Return to Village and Rehabilitation Program offers no serious technical, financial, or political support to returning villagers. Worse, to participate in the program at least some villagers have been required to relinquish their legal rights to seek compensation for their displacement.

Successive governments have refused to involve intergovernmental organizations with a legitimate interest in development and displacement that are already working in Turkey—the World Bank, the United Nations High Commissioner for Refugees (UNHCR), and the United Nations Development Program (UNDP)—in the implementation of the current return program. Local non-governmental organizations

have not only been kept out of the loop, but also have been persecuted for expressing an interest.

The state of emergency was finally lifted in November 2002 - a welcome contribution to stability in the region that has been under emergency or martial law since 1978. Conditions are now ripe for the Turkish government to take the next step to develop a comprehensive and effective return program and to enlist the international community to support it.

The new Turkish government should begin the process of developing a comprehensive and effective return program that comports with international standards. Specifically, it should host a forum on return involving representatives of the internally displaced themselves, as well as concerned nongovernmental organizations and relevant international organizations, including the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Program, the United Nations Special Representative of the Secretary-General on Internal Displacement, the International Committee of the Red Cross, the Council of Europe, the Organization for Security and Cooperation in Europe (OSCE), the World Bank, and relevant bilateral donor agencies. The forum should propose a return program that will ensure that internally displaced persons can return to their homes in safety and dignity and can resume their livelihoods. Any return program should be consistent with the U.N. Guiding Principles on Internal Displacement and respect the rights of internally displaced persons.

Improving prison conditions in F-type prisons

Tension continues in the new F-type prisons, where prisoners remanded or sentenced for offenses under state security court jurisdiction are held. The inmates are held in one- and three-person cells, with minimal provision for association. Some prisoners continue to their hunger-strike in protest against the loss of life during the prisoners' original violent transfers to F-type prisons in December 2000, the strict regime in F-type prisons, and the restricted opportunities for association with other prisoners. More than seventy hunger-striking prisoners and their relatives have died since the beginning of the crisis—the latest was Özlem Türk, who died on January 11, 2003.

In 2002, the Justice Ministry introduced a program of out-of-cell activities and announced a weekly period of five hours' association in F-type prisons. Despite these positive steps, most prisoners in F-type prisons are not leaving their cells to participate in association sessions or activity programs, and most are still living in potentially harmful conditions of small-group isolation. This is partly due to factors beyond the prison authorities' control. For example, some prisoners are reluctant to engage in the program of out-of-cell activities while others are on death-fast. In at least one case, however, the authorities appear to have impeded implementation of the prison reforms. A group of prisoners at Bolu F-type prison who were willing to participate in these activities informed the Istanbul branch of the HRA that they were not permitted to do so, and were also denied their weekly association. Prisoners are reporting health problems associated

with small group isolation, including sensory loss, skin complaints, tinnitus, stomach disorders, and severe mental disturbance.

F-type prisons have been marked by reports of brutality, arbitrary treatment, isolation and death since their establishment. Their physical design was originally developed to implement a system of intense isolation. The new government must require the Justice Ministry to make special efforts to implement a humane regime in accordance with the recommendations of the CPT and the U.N. Standard Minimum Rules for the Treatment of Prisoners.

- *The government should ensure full implementation of the program of out-of-cell activities and weekly association periods throughout F-type prisons in a way that will give prisoners genuine relief from the difficult circumstances imposed by the architecture of these facilities.*

- *The Turkish government should build public confidence and improve the effectiveness of Prison Monitoring Councils that visit F-type prisons by making their reports public.*

In connection with the isolation of high-security prisoners, Human Rights Watch is concerned about Abdullah Öcalan, serving a life sentence at Imrali island in the Marmara Sea. At the time of writing, he has not been permitted visits by either his family or legal counsel for eight weeks. A recent positive development is the decision of Mr. Mehmet Elkatmis, chairman of the Turkish Parliamentary Human Rights Monitoring Committee, to make a visit to examine the conditions under which Abdullah Öcalan is being held.

- *Visits by family and legal counsel to Abdullah Öcalan at the prison at Imrali should be promptly resumed.*

Guaranteeing the rights of refugees.

Under Turkey's geographical reservation to the 1951 Convention Relating to the Status of Refugees, non-European asylum seekers are required to register with the police, who carry out an assessment to determine whether they are asylum seekers. There is then a convoluted process of assessment and refugee status determination involving UNHCR, the Ministry of Foreign Affairs and the Ministry of the Interior. Aspects of this procedure – such as a very short deadline for registering an asylum claim, fees for doing so in some areas, and the absence of independent legal advice – mean that it cannot be described as a fair and accurate refugee determination. Those who are eventually recognized by UNHCR as refugees are referred for resettlement to a third country, as there is no provision for the integration and settlement of non-European refugees in Turkey.

Each year police capture thousands of migrants who are being smuggled across the country, including many refugees entering the country from Iran and northern Iraq. The Turkish security forces summarily return the vast majority of these migrants to the

countries from which they have come, without sufficient guarantees against refoulement of the refugees among them. In 2002, the police directorate declared that it had captured 346,948 illegal immigrants in the past seven years, and that in the same period, 11,867 were recognized as refugees and resettled to a third country.

Transit through Turkey for asylum seekers and migrants is extremely hazardous. In 2002, more than sixty migrants and asylum seekers died transiting Turkey, some of them children. Some were shot or blown up by mines at the border; others died of exposure or were drowned crossing rivers or leaving the coasts of Turkey in unsafe vessels.

- *As it committed to do in its 2001 National Plan for Accession to the E.U., the government should lift its geographical restriction on the application of the 1951 Convention Relating to the Status of Refugees.*

- *The government should uphold the principle of non-refoulement and should establish without delay an independent advisory committee, composed of independent experts, representatives of 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, and to training of border guards and police on the subject of refugee protection.*

During the 1991 Gulf War, faced with a potential influx of Iraqi Kurds fleeing northwards, Turkey closed her borders and held the refugees in the border area in circumstances under which hundreds died of exposure and disease. Turkey has indicated that, in the event of a conflict in Iraq, it will try to contain fleeing populations within thirteen camps it has reportedly constructed in Northern Iraq. The scale of the potential humanitarian crisis may mean that refugees are at risk of violence, disease, or food and water shortages if confined to northern Iraq, and may have no other choice but to move into Turkey. The five camps already established within Turkey's borders are an important gesture of the government's readiness for such an eventuality.

- *The Turkish government should make clear its commitment to open its borders and protect refugees in the event of war in Iraq.*

Guaranteeing the right of conscientious objection

Turkey retains compulsory military service for all adult males and makes no provision for conscientious objection. The U.N., Council of Europe, and OSCE have all recognized the right to conscientious objection. Recommendation No. R (87) 8 of the Committee of Ministers to Member States of the Council of Europe Regarding Conscientious Objection to Compulsory Military Service of 9 April 1987 states that, "Anyone liable to conscription for military service who, for compelling reasons of

conscience, refuses to be involved in the use of arms, shall have the right to be released from the obligation to perform such service.... Such persons may be liable to perform alternative service.” At the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (since renamed OSCE) in 1990, the participating States of the Conference, which included Turkey, noted that the U.N. Commission on Human Rights had recognized the right of everyone to have conscientious objection to military service and agreed to consider introducing, where this had not yet been done, various forms of alternative civilian service in the public interest and of a non-punitive nature.

In October 2002, conscientious objector Mehmet Bal was arrested, beaten, and imprisoned at Adana Military Prison, when he declined to put on a uniform after being summoned for military service. He was released later that month but remains at risk of further prosecution for his refusal to carry out military service

- *The Turkish government should abolish article 155 of the Turkish Criminal Code, which imposes up to two years’ imprisonment for “undermining the institution of military service.”*
- *The Turkish government should establish an option for alternative civilian service, which is not of punitive length, for conscientious objectors.*