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Dear Ms Majodina

104TH SESSION OF THE HUMAN RIGHTS COMMITTEE – PRE-SESSIONAL MEETING ON TURKEY

I am writing with a view to the pre-sessional meeting of the country report task force on Turkey during the forthcoming 104th session of the Human Rights Committee from 12 to 30 March 2012.

Please find below a brief update of recent developments pertaining to Amnesty International's main concerns in relation to the state party's implementation of the International Covenant on Civil and Political Rights (ICCPR). Further information can be found in the enclosed entry from the Annual Report 2011 (covering events from January to December 2010) and the organization's publications referred to below.

Discrimination against lesbian, gay, bisexual and transgender people (Articles 2 and 26)

Amnesty International is concerned that the Turkish authorities continue to fail to address ongoing discrimination on the grounds of sexual orientation and gender identity in both law and practice. LGBT rights activists face harassment by the authorities and multiple violations of their rights under the ICCPR. For example, in November 2011 three transgender women, all members of the Ankara based LGBT rights group Pembe Hayat (Pink Life) were convicted of "insulting police officers" and "resisting the police". The charges were brought following their alleging that they had been arbitrarily arrested and ill-treated by police officers. No police officers were prosecuted in relation to the incident.¹

- For further cases and details of Amnesty International's concerns see the enclosed report: *Turkey: 'Not an illness nor a crime': Lesbian, gay, bisexual and transgender people in Turkey demand equality*, AI Index: EUR 44/001/2011, 21 June 2011, <http://www.amnesty.org/en/library/info/EUR44/001/2011/en>.

Right to life and prohibition of torture and other ill-treatment (Articles 6 and 7)

The organization remains concerned at the failure of the state party to comply with its obligations under Articles 6 and 7 of the Covenant. Investigations into alleged human rights abuses, including killings and deaths in custody, often remain ineffective. In cases where criminal cases have been opened, the chances of bringing those responsible to justice often remain remote. Counter charges continue to be used as a tactic against those alleging human rights abuses by state officials.

¹ See *Turkey: Activists alleging police ill-treatment convicted for 'insulting police'*, AI Index: EUR 44/014/2011, 10 November 2011, <http://www.amnesty.org/en/library/info/EUR44/014/2011/en>.

In June 2011, Colonel Ali Öz and seven other military personnel were convicted of negligence for their failure to relay information regarding the plot to kill journalist and human rights defender Hrant Dink which could have prevented the murder in 2007. Ogün Samast was also convicted of the murder by a children's court in July. However, it remained in doubt whether the full circumstances around the killing, including the issue of collusion by state officials would be investigated.²

No public investigation was carried out following the August death of a family of seven in the Kurdistan region of northern Iraq, reportedly as a result of bombing by a Turkish warplane. Attacks by Turkish airplanes targeting bases of the Kurdistan Workers' Party (PKK) in the area had been taking place at the time.³

An investigation into the circumstances of the death of Ceylan Önkol had not been completed at the time of writing, more than two years after the event. The young teenager died while grazing cattle close to her home in the Lice district of south-eastern Turkey. Witness statements suggested that her death may have been due to a mortar fired from a nearby military barracks.

A decision in a landmark case in Turkish legal history convicting prison guards and other state officials following the October 2008 death in custody of Engin Ceber was overturned by the Supreme Court of Appeals. The decision was issued on procedural grounds. The case will now be returned to the local court for a retrial, which is likely to be a lengthy process, prolonging the distress for the Çeber family.⁴

On 14 December 2011 the police officer charged in relation to the 2007 fatal shooting of Nigerian asylum-seeker Festus Okey was convicted for "causing death through negligence" and sentenced to a reduced prison term of four years and two months. The investigation into the circumstances of Festus Okey's death in custody and the trial of the police officer were marred by flaws and long delays.⁵ The presiding judge rejected applications from lawyers representing relatives to intervene in the case as an injured party in accordance with Turkish law. Concerned at the delays in the case, several migrants' rights NGOs and over 100 individuals attempted to intervene in the trial as a third party in order to represent the interests of Festus Okey, but these requests were systematically rejected by the court. A large number of individuals saw proceedings started against them following their attempts to intervene in the trial on charges of "attempting to influence the fairness of the trial" and "insult". It is expected that the judgment will now be appealed.

Allegations of torture and ill-treatment in and during transfer to police stations and prisons persist. Amnesty International has also received reports that police routinely used excessive force during demonstrations, notably during protests ahead of and following the June 2011 parliamentary elections. In many cases demonstrations became violent following efforts by police to disperse demonstrators including with pepper gas, pressurised water and plastic bullets. In many instances media documented law enforcement officials beating demonstrators with batons.

In September 2011 Turkey ratified the Optional Protocol to the Convention against Torture (OPCAT), paving the way for independent monitoring of places of detention. Turkey has one year from ratification to establish a national preventive mechanism (NPM) that complies with the requirements of the OPCAT. The proposed process for establishing the NPM, as well as details regarding its proposed structure and powers, remain unclear as of December 2011. To the extent that the government has proposed to establish a Human Rights Board to perform some or all of the NPM functions, the draft law for the Board raises questions about its independence and capacity to carry out unannounced and unrestricted visits to all places of detention.

² See *Turkey urged to pursue further prosecutions in Hrant Dink murder case*, 26 July 2011, <http://www.amnesty.org/en/news-and-updates/turkey-urged-pursue-further-prosecutions-hrant-dink-murder-case-2011-07-26>.

³ See *Turkey/Iraq: Investigation needed into killing of civilians in the Kurdistan region of Iraq*, AI Index: REG 01/003/2011, 26 August 2011, <http://www.amnesty.org/en/library/info/REG01/003/2011/en>.

⁴ See *Turkey: Supreme Court of Appeals overturns historic verdict in death in custody case*, AI Index: EUR 44/018/2011, 16 December 2011, <http://www.amnesty.org/en/library/info/EUR44/018/2011/en>.

⁵ See *Turkey: Police officer convicted of causing 'negligent death' of asylum seeker in 2007*, AI Index: EUR 44/016/2011, 14 December 2011, <http://www.amnesty.org/en/library/info/EUR44/016/2011/en>.

- For further details and case examples see the enclosed report:
Turkey: Briefing to the Committee against Torture, AI Index: EUR 44/023/2010, 18 October 2010, <http://www.amnesty.org/en/library/info/EUR44/023/2010/en>.

Liberty and security of person and right to a fair trial (Articles 9 and 14)

Thousands of prosecutions were brought during the year under anti-terrorism offences, the vast majority of which did not allege the accused to have planned or carried out acts of violence but instead involved allegations of support for or membership in a terrorist organisation. Many of those prosecuted were political activists, among them journalists, lawyers, academics and writers. Prosecutions routinely involved prolonged pre-trial detention, lack of evidence linking the accused to anything other than legitimate exercise of freedoms of expression, association, or assembly or other Covenant rights, and the use of secret witness testimonies that could not be challenged in court.

Amnesty International has long held concerns regarding Turkey's anti-terrorism legislation and its application. The definition of terrorism in this law is overly broad, vague and lacks the level of legal certainty required by international human rights law. Fundamentally, it defines terrorism by its political aims rather than properly-defined criminal activity in pursuit of those aims. Provisions criminalising membership of organizations designated by the government as "terrorist" have also led to abuses. Persons can be found guilty of membership of a terrorist organization without being a member of the organization if found to have committed a crime "in the name of such an organization".⁶ The Special Rapporteur on the independence of judges and lawyers also raised concerns, among other things about the lack of procedural guarantees in anti-terrorism legislation following her mission to Turkey in October 2011.⁷

Prosecutions of children under anti-terrorism laws, including for participation in demonstrations, continued despite 2010 legislative amendments which were supposed to prevent child demonstrators being prosecuted under this legislation. While the numbers of children prosecuted were far fewer than in previous years, some were still held in adult police custody before transfer to the children's department. Children were held in pre-charge detention for up to four days (the maximum allowed under anti-terrorism laws) and children continued to be held in prolonged pre-trial detention for periods ranging from several months to over a year. Many provinces still do not have any Children's Courts.

- For further information see the enclosed report:
Turkey: All children have rights: End unfair prosecutions of children under anti-terrorism legislation in Turkey, AI Index: EUR 44/011/2010, 17 June 2010, <http://www.amnesty.org/en/library/info/EUR44/011/2010/en>.

See also the *Briefing to the Committee against Torture* referred to above.

Refugees and asylum seekers (Article 13)

Amnesty International is concerned that access to the temporary asylum procedure continues to be arbitrarily denied either at the frontier or after being detained for irregular entry to Turkey, as the result of a combination of problems with the current legislation and in the implementation of existing law. The authorities have not yet brought the planned legislation guaranteeing basic rights for refugees and asylum-seekers before parliament. From May 2011 onwards, thousands of Syrian nationals fled to Turkey seeking protection from violence and human rights abuses in the country. They were accommodated in camps by the Turkish authorities but their access to the outside world, including

⁶ See *Turkey: KCK arrests deepen freedom of expression concerns*, AI Index: EUR 44/015/2011, 10 November 2011, <http://www.amnesty.org/en/library/info/EUR44/015/2011/en>.

⁷ See Preliminary observations by the Special Rapporteur on the independence of judges and lawyers: Visit to Turkey (10-14 October), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11495&LangID=E>.

reporting on the human rights situation in Syria and obtaining information on the temporary asylum procedure in Turkey from the UNHCR and civil society organizations was barred by Turkish authorities.⁸

Forced evictions (Article 17)

In addition to the overall lack of adequate housing available, forced evictions by municipal authorities in the context of urban regeneration projects violated the rights of tenants to consultation, compensation and provision of alternative housing. Many of those affected were among the poorest and most at-risk groups including persons previously forcibly displaced from villages in south-eastern Turkey.⁹ In May 2011 the Committee on Economic Social and Cultural Rights expressed concerns regarding such projects in their concluding observations on Turkey.¹⁰

Conscientious objectors (Article 18)

No progress was made in recognizing the right to conscientious objection to military service in domestic law or to comply with the 2006 *Ulke vs Turkey* decision of the European Court of Human Rights by preventing the repeated prosecution of conscientious objectors for their refusal to perform military service. Those making public statements in support of the right to conscientious objection continued to be prosecuted. For example, conscientious objector İnan Suver remained in prison for most of 2011 due to multiple convictions for his refusal to perform military service. He was released on 9 December 2011 following the suspension of his sentence on grounds that in the light of the recent government statements for a reform of military service, continuation of İnan Suver's prison sentence might lead to irreversible consequences that could not be remedied. However, the decision also stated that if no legal change was introduced in a reasonable time, İnan Suver would have to continue to serve the remaining prison sentence¹¹. In November 2011 the European Court of Human Rights found Turkey's refusal to grant a civilian alternative to military service to violate the right to freedom of thought, conscience and religion in the case of *Erçep vs Turkey*.¹²

Freedom of expression (Article 19)

A large number of prosecutions continue to be brought threatening individuals' right to freedom of expression. Journalists and Kurdish political activists were particularly at risk of prosecutions based solely on the exercise of protected freedom of expression, especially regarding criticism of the armed forces and critical speech regarding the Kurdish issue. In addition to prosecutions being brought under articles of the Penal Code that directly and unfairly limit freedom of expression such as Article 318 "alienating the public from the institution of military service", a vast number of cases threatening freedom of expression have been brought under anti-terrorism legislation.

In November 2011, 44 people, including publisher Ragıp Zarakolu and Professor Büşra Ersanlı were arrested on the grounds of their alleged membership of the PKK-linked Kurdistan Communities Union (KCK)¹³. The detention of these two individuals raise particular concerns since the reason for their arrest appears to be solely due to speeches made to the Politics Academy of the Peace and Democracy

⁸ See *Stranded: Refugees in Turkey Denied Protection*, AI Index EUR 44/001/2009, 21 April 2009, <http://www.amnesty.org/en/library/info/EUR44/001/2009>.

⁹ See for example *Turkey urged to halt heavy-handed evictions in Istanbul*, 18 July 2011, <http://www.amnesty.org/en/news-and-updates/turkey-urged-halt-heavy-handed-evictions-istanbul-2011-07-18>; *Urgent Action Turkey: Families facing forced eviction in Turkey*, AI Index: EUR 44/007/2011, 15 July 2011, <http://www.amnesty.org/en/library/info/EUR44/007/2011/en>

¹⁰ See Concluding observations of the Committee on Economic, Social and Cultural Rights (E/C.12/TUR/CO/1), 12 July 2011, paragraphs 26 and 27.

¹¹ See *Urgent Action Turkey: Further information: Health concerns remain for conscientious objector İnan S.*, AI Index: EUR 44/017/2011, 19 December 2011, <http://www.amnesty.org/en/library/info/EUR44/017/2011/en>.

¹² See *Turkey still failing to respect the right to conscientious objection*, AI Index: 44/019/2011, 16 December 2011, <http://www.amnesty.org/en/library/info/EUR44/019/2011/en>.

¹³ See *Turkey: KCK arrests deepen freedom of expression concerns*, AI Index: EUR 44/015/2011, 10 November 2011, <http://www.amnesty.org/en/library/info/EUR44/015/2011/en>.

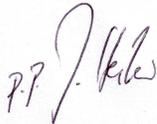
Party (BDP), a recognized political party. Büşra Ersanlı was also asked about notes she had made at various academic meetings she participated in and Ragıp Zarakolu regarding various unpublished manuscripts of which he was the writer or editor. Ragıp Zarakolu has been repeatedly prosecuted in Turkey in cases that violated his right to freedom of expression, including under Article 301 of the Penal Code for “denigrating Turkishness”. Amnesty International is concerned that although no concrete evidence linking Ragıp Zarakolu or Büşra Ersanlı to KCK or to any terrorism related offences was presented, they were charged and remanded in pre-trial detention.

Halil Savda faces an ongoing risk of imprisonment for freely expressing his support for conscientious objectors. He has been arrested and ill-treated on multiple occasions since 2004 for refusing to perform military service, and has been detained for around 17 months in total during that time. He has written articles, given interviews in a number of newspapers and made speeches at protests and meetings against compulsory military service. Halil Savda currently faces three separate charges under Article 318 of the Turkish Penal Code, which criminalizes “alienating the public from military service” and, in November 2010, was sentenced to 100 days in prison for his peaceful activities, and may be forced to begin serving this sentence at any time.¹⁴

Furthermore, threats of violence against prominent outspoken individuals also continued. In June 2011, for example, death threats were made against Baskın Oran and Etyen Mahçupyan, both journalists at the bilingual Armenian Turkish *Agos* newspaper. Similar threats had been made since 2004 for which no one had been brought to justice.¹⁵

We hope this information will be useful for the preparation of the list of issues and would be grateful if you could make it available to all members of the country report task force on Turkey.

Yours sincerely



Tania Baldwin-Pask
International Advocacy Programme

Enclosed

- *Turkey: 'Not an illness nor a crime': Lesbian, gay, bisexual and transgender people in Turkey demand equality*, AI Index: EUR 44/001/2011, 21 June 2011, <http://www.amnesty.org/en/library/info/EUR44/001/2011/en>.
- *Turkey: Briefing to the Committee against Torture*, AI Index: EUR 44/023/2010, 18 October 2010, <http://www.amnesty.org/en/library/info/EUR44/023/2010/en>.
- *Turkey: All children have rights: End unfair prosecutions of children under anti-terrorism legislation in Turkey*, AI Index: EUR 44/011/2010, 17 June 2010, <http://www.amnesty.org/en/library/info/EUR44/011/2010/en>.
- Amnesty International, Annual Report 2011 – Turkey (covering events from January to December 2010), <http://www.amnesty.org/en/region/turkey/report-2011>.

¹⁴ See *Turkey: Human rights defender Halil Savda faces imprisonment again in Turkey*, AI Index; EUR 44/002/2011, 14 March 2011, <http://www.amnesty.org/en/library/info/EUR44/002/2011/en>.

¹⁵ See *Turkey urged to pursue further prosecutions in Hrant Dink murder case*, 26 July 2011, <http://www.amnesty.org/en/news-and-updates/turkey-urged-pursue-further-prosecutions-hrant-dink-murder-case-2011-07-26>.