



## Submission on Turkey to UN Committee against Torture

October 2010

On the occasion of the 2010 review of Turkey by the UN Committee against Torture, this submission outlines a number of concerns regarding Turkey's compliance with the Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment (UNCAT). The submission summarizes and updates the main findings of Human Rights Watch's December 2008 report, "Closing Ranks against Accountability: Barriers to Tackling Police Violence in Turkey," includes recommendations for combating torture, ill-treatment and impunity, and engages with questions posed to the State Party in the Committee's list of issues.

### **Mechanisms to Prevent Torture and Ill-treatment (Articles 2, 11, 16)**

Despite a decrease in allegations and documented incidents of torture in formal places of detention over the past ten years, violence by Turkish law enforcement officials against members of the public remains widespread. The decrease in detention periods, the introduction of more effective procedures for recording detention and for statement-taking, and the use of CCTV cameras in police stations has contributed to the reduced risk of ill-treatment in formal places of detention. There are still credible reports of ill-treatment in custody, including of deaths in disputed circumstances, however, and it is still not possible for domestic or international non-governmental human rights organizations to conduct independent visits on a regular or *ad hoc* basis to places of detention in Turkey.

In the context of efforts to combat impunity for torture and ill-treatment, Human Rights Watch welcomes Turkey's commitment to ratify the Optional Protocol to the UN CAT, which provides for the setting up of an independent national preventative mechanism for monitoring places of detention. However, we have concerns that the draft law on the establishment of a national human rights institution (, which the government earlier this year made available to civil society organizations), does not conform with the Paris Principles, because it fails to ensure that the body is sufficiently independent, empowered and accountable to the public.

*The Turkish government should be urged to:*

- Revise the draft law on the establishment of a national human rights institution to bring it into conformity with the Paris Principles, in consultation with civil society organizations.

- Pending ratification of the Optional Protocol, permit representatives of NGOs, lawyers, medical professionals, and members of local bar associations to conduct independent visits to places of detention.

### **Police Ill-treatment in Public Places**

The tightening of procedures in custody has unfortunately been accompanied by an increase in police ill-treatment outside formal sites of detention. Human Rights Watch's research in 2008 discovered an alarming pattern of police abuse occurring in locations where there is least chance of formal monitoring, supervision or observation of officers.

Situations where individuals are still at risk of ill-treatment include during apprehension in the street, while being escorted to a formal place of detention in a vehicle, or during demonstrations where police routinely resort to disproportionate force (including the use of tear gas and pepper spray) against demonstrators or single out individuals for ill-treatment. Insufficient attention has been paid to improving safeguards in these areas, and to holding officers to account for abuse.

Recent cases, captured on video, include:

- Police rounding up and beating students with batons, as they were demonstrating against the university entrance system in Ankara on April 11, 2010. Ten students were charged with resisting the police and placed in pre-trial detention.
- Police use of water cannon, tear gas, and batons in a repeated, indiscriminate and disproportionate manner to break up a December 2009 demonstration by workers from the formerly state-owned tobacco and liquor industry, TEKEL-İş, protesting the erosion of their rights following privatization.
- Police violently breaking up Ankara demonstrations in support of TEKEL-İş workers on April 1 and 2, 2010. The public sector workers trade unions confederation KESK has filed a complaint with the public prosecutor, alleging excessive use of force and violation by both the police and the government of the right to assembly.
- In southeast Turkey, and especially in the town of Hakkari, there have been several recorded instances over the past two years of individual or small groups of police officers assaulting or using excessive force against children during demonstrations. In one such case police officers in plain clothes were filmed apprehending 16-year-old H.K., following an April 13, 2010 demonstration in Hakkari, roughing him up and then dragging him away in an apparently semi-conscious state. The boy's mother is seen screaming and trying unsuccessfully to intervene. The youth's cheek bone and nose were broken by blows to his face. (H.K.'s full name withheld because he is under 18.)

The June 2007 revisions to the Law on the Powers and Duties of the Police may have contributed to the problem. The revisions widened the police's stop and search and ID check powers without the safeguard of judicial scrutiny. Human Rights Watch documented a number of cases where individuals alleged

police ill-treatment in the course of routine identity checks carried out according to article 4/A of the revised law (for illustrative cases see Chapter VI of “Closing Ranks against Accountability.”)

*The Turkish government should be urged to:*

- Introduce mandatory reporting by police for stops and searches and ID checks under the Law on the Powers and Duties of the Police. Police should be required by law to provide any individual stopped with a form setting out the name and identity number of the officer carrying out the stop and search, the reason for the stop and search, and the outcome.
- Introduce strict monitoring of when pepper gas and teargas are used in public order policing and ensure that the police are trained appropriately in the use of such substances for crowd control and in other policing. Initiate prompt, independent and thorough enquiries into reported misuse of pepper gas and teargas (in particular reported use in confined spaces) and excessive or arbitrary use.

### **The Use of Counter-charges to Deter Complaints (Article 13)**

As several of the cases above illustrate, it has become a routine occurrence for those who complain of police ill-treatment to be the subject of counter-charges by police and find themselves in court for “using violence or threats against a public official to prevent them from carrying out a duty” (article 265/1, Turkish Penal Code) even before a prosecutor’s investigation into their own complaint of ill-treatment by the police has even been concluded. Ministry of Justice statistics from 2007 reveal that there are a huge number of on-going prosecutions under this law.

This practice deters those who allege abuse by police from making and pursuing complaints against the police, undermining accountability for such abuse. One victim of severe beating by police officers (he had to undergo surgery for the removal of ruptured spleen) was rapidly charged for resisting the police while the prosecutor delayed initiating a prosecution against the police for two years. He expressed a sentiment often voiced by those Human Rights Watch interviewed: “It’s their word against yours, isn’t it, and who do you think a judge would believe?”

### **Impunity (Articles 12, 13)**

At the core of the persistence of the problem of police torture and ill-treatment is the prevailing culture of impunity: prosecutors often fail to investigate abuses effectively or in a timely manner, and prosecutors’ investigations by definition lack independence because the prosecutor is reliant upon a police unit’s compliance with an investigation into one or several of its own officers.

In 2009, during follow up research on the progress of cases documented in Human Rights Watch’s 2008 report, one prosecutor indicated to HRW that prosecutors lacked sufficient authority to investigate evidence of violations by the police committed in the course of demonstrations.

The prosecutor cited a case where he had not been able to secure the cooperation of the police as he attempted to carry out an investigation. He showed a letter from the police denying knowledge of which

unit had been present at a particular location where police officers had been filmed viciously beating a teenage boy during a demonstration. The prosecutor indicated that he was unwilling to pursue the investigation up the chain of command (by examining, for example, senior officers' professed failure to be able to locate the whereabouts of units under their command at a particular time as amounting to negligence, or as failure to cooperate with a criminal investigation).

Human Rights Watch has documented many investigations where prosecutors' requests for police cooperation on the collection and preservation of evidence have been frustrated. For example, CCTV footage from police stations has often been reported as "not available," or cameras inside a police station or in public places are reported as having been "out of order" at the time of an incident under investigation.

The enclosed Human Rights Watch's 2008 report "Closing Ranks against Accountability" also documents several cases of extremely slow investigation, where the prosecutor had failed to take the initiative to conduct an effective investigation although the 2005 Criminal Procedure Code clearly provides him or her with the authority to do so. The delayed investigation into the March 2008 death following custody of Mehmet Deniz, in Erciș, Van province is illustrative.

*The Turkish government should be urged to:*

- Ensure that video and audio recording in police stations of all interviews with suspects in custody, and of all locations in police stations, is operational at all times, cannot be tampered with or erased, and is promptly and routinely made available to public prosecutors for purposes of investigation of allegations of human rights violations in custody.
- Ensure that all physical evidence is left *in situ* until the arrival of the prosecutor. Prosecutors should immediately proceed to ensure that evidence is complete, and has not been tampered with or been lost. Courts should treat the possibility that evidence has been spoiled as a central factor in a trial, rather than as a peripheral matter of negligence. Ensure that prosecutors investigate the possible responsibility of commanding officers where law enforcement officials are alleged to have perpetrated serious human rights violations. Commanding officers who know or should have known of such acts, and who fail to take action to prevent and punish them, should be included in prosecutors' investigation and, where appropriate, face sanctions.

### **Delays in Trials and Insufficient Sanctions for Police Abuse (Articles 4, 12)**

Where police officials are prosecuted, trial proceedings are generally very protracted, and officers generally receive very lenient sentences, have their sentences postponed, or are acquitted. Internal disciplinary sanctions are rarely applied. Officers sometimes ignore court summons to appear as witnesses or defendants, yet are rarely sanctioned as a result.

Follow up research on the cases documented in the December 2008 report by Human Rights Watch has shown that a significant proportion of investigations remain indefinitely stalled or trial proceedings have proceeded very slowly. In some cases Human Rights Watch documented prosecutions against police

were initiated years after the reported incident, with months elapsing between hearings, severely limiting the likelihood of an effective trial.

*The Turkish government should be urged to:*

- Ensure hearings take place without undue delay by introducing regulatory timeframes for the provision of evidence; an improved and sustainable regulatory framework for trial hearings; and by improving the mechanisms for thorough pretrial preparation.
- Ensure sanctions are imposed against law enforcement officials who flout summonses to appear in court as witnesses or defendants.
- In cases where courts decide to hold closed hearings for reasons of “public security,” courts should state clearly what those security concerns are and why it is defensible to withhold information about the trial. Human rights violations committed by members of the security forces and public officials are clearly a matter of great public interest and there should be compelling reasons to restrict information about such cases.
- Ensure that, alongside criminal sanctions, effective and meaningful disciplinary sanctions are imposed on law enforcement officials who commit serious human rights violations.
- Commanding officers who know or should have known of such acts, and who fail to take action to prevent and punish them should also face disciplinary sanctions.
- Suspend from active duty officers under investigation for torture and other ill-treatment and ensure their dismissal if convicted.

### **The Need for an Independent Police Complaints Mechanism (Article 2, 12, 13)**

Given the frequent ineffectiveness of prosecutors’ investigations, Human Rights Watch has recommended to the Turkish government the creation of an independent police complaints authority. This body should be empowered to conduct prompt, thorough and impartial investigations into allegations of police misconduct capable of leading to the identification and prosecution of offenders. The Turkish government has plans to set up such a body, but it will be important that it meets the above criteria and to monitor its effectiveness.

In establishing a new mechanism it is also important to draw lessons from the experience of existing official mechanisms to investigate police (detailed at some length in the State Party’s report) which have not been successful in eradicating the problem of police abuse. At present either the National Security Directorate inspectorate or the Ministry of Interior inspectorate may be charged with investigation of allegations of abuses by the police. However, the process by which this happens and by which inspectorate takes a lead in the investigation are unclear, and it is unclear whether either inspectorate is sufficiently empowered to conduct a thorough investigation or deal with situations in which police units provide incomplete evidence, or where it has been contaminated or simply not made available. Furthermore, there has been no public transparency about the results of investigations undertaken by either inspectorate, and inspectors’ reports or ministerial statements about their activities are not published.

## **Commentary on Turkey's State Report to the Committee**

*References are to the paragraphs in Turkey's State report (CAT/C/TUR/3, 26)*

*Paragraph 17-21:* Although all criminal suspects have, "from the outset of detention, the right to access to a lawyer," in practice this does not happen. Unless they are a juvenile or a member of a protected group (with a disability), only those who face a sentence of five years and up are entitled to free legal assistance from the outset of detention. The impact of this is that those suspected of lesser crimes (such as theft) frequently do not benefit from legal aid because they cannot afford it. Some of those suspected of ordinary petty crime are at risk of ill-treatment on apprehension and in custody but the first time they have access to a lawyer is when they appear in court, many months after their arrest and imprisonment. It falls upon the prosecutor and the court to determine whether such suspects may have been ill-treated by the police.

Human Rights Watch research in Adana in May-June 2009 has determined that in practice juveniles apprehended for participation in demonstrations, and facing charges under terrorism legislation, did not have access to lawyers from the outset of detention, although this is required by law. Their meetings with lawyers took place many hours after their apprehension and generally not even while they were held in police custody but instead outside the office of the prosecutor at the Adana courthouse.

Additionally they were held in the Adana Anti-Terror Branch of the Security Directorate for hours before being transferred to the Adana Children's Branch of the Security Directorate where they should have been taken at the outset. In all the cases documented (10 cases), juveniles reported some degree of police ill-treatment (see Human Rights Watch report "Turkey: When Protesting Becomes a Terrorist Offence; The arbitrary use of terrorism laws to prosecute and incarcerate demonstrators," November 1, 2010).

*Paragraph 29-45:* The Council of Europe Committee for the Prevention of Torture has repeatedly called for an overhaul of the health care system in prisons in Turkey. Domestic human rights organizations such as the Human Rights Association and Human Rights Foundation of Turkey, as well as the Contemporary Lawyers' Association, have documented many cases of terminally-ill inmates and inmates suffering from health conditions that should precipitate a suspension of their prison sentence and treatment in more appropriate facilities or the possibility of spending their last days cared for by family members at home.

Detainees still commonly report that during medical examinations members of the security forces have been present in the doctor's examination room during the examination, and that in such circumstances doctors do not conduct a thorough examination. Human Rights Watch draws the Committee's attention to the substantial work on the medical documentation of torture allegations by the Human Rights Foundation of Turkey and in particular their important findings based on training doctors in this area.

*Paragraph 51, 61-71:* Contrary to the statement by the State Party, there is currently no provision in law in Turkey for non-government organizations to monitor or conduct *ad hoc* or pre-arranged visits to

places of detention. The only way in which non-government organizations may participate in such visits is in their capacity as members of provincial human rights boards which do conduct visits. The human rights NGOs with the most relevant experience for monitoring detention conditions in Turkey have not joined these boards on the grounds that they lack independence and are still presided over by the deputy governor of the province. There is no provision in law for organizations such as Human Rights Watch or Amnesty International to visit places of detention in Turkey.

*Paragraph 66:* Participation of relevant non-governmental human rights organizations in the Prison Monitoring Boards is also lacking.

*Paragraph 78:* Human rights defenders do not have access to places of detention unless they join provincial human rights boards or prison monitoring boards which lack independence from the local authorities and judicial establishment.

*Paragraph 114:* Human Rights Watch notes that there is no known case to date in which the Higher Council of Judges and Prosecutors has attempted to apply a disciplinary sanction against a prosecutor for failure to investigate torture, ill-treatment or other human rights abuses. As such, Law 2802 (the Law on Judges and Prosecutors) does not constitute an effective means by which to sanction prosecutors who fail to conduct effective investigations into human rights violations.

*Paragraph 120:* Human rights organizations have for many years raised concerns about the difficulty of interpreting statistics provided by the Ministry of Justice on prosecutions, convictions and acquittals for the crimes of torture and ill-treatment. The figures provided here are again confusing.

*Paragraph 146:* Human Rights Watch continues to press for the repeal of the statute of limitations for the crime of torture.

*Paragraph 153:* The pattern of prosecution shows that prosecutors often opt not to apply article 94 (“torture”), but choose to apply other articles of the Penal Code such as article 86, “intentional injury.” When “intentional injury” is committed by a public official it carries an increased sentence—the standard range of one to three years is increased by half again to range from 1.5 to 4.5 years. (The Turkish Penal Code also penalizes excessive use of force by public officials, article 256, typically applicable in situations such as intervention against demonstrators, and applies the same penalty system as for the provision on “intentional injury”).

The serious concern about article 86 lies in the fact that a public official sentenced to the lowest penalty of a 1.5-year prison sentence under this article would be able to benefit from a suspended sentence applicable to all prison terms of two years and under (article 51, Turkish Penal Code). This opens the possibility that some public officials, even if convicted, may escape prison terms for torture or ill-treatment. In the past the few who were convicted also often benefited from suspended sentences.

## **Case examples**

In the year in which Turkey is being reviewed by the UN Committee against Torture, there have been some indications that some prosecutors are investigating and initiating prosecutions against police for ill-treatment, torture and shootings more swiftly than in previous years. However, it is likely that this is mostly occurring in relation to high-profile cases where there has been significant press coverage or where human rights groups have issued statements.

For example, in two cases of excessive use of force by the police and gendarmerie, Human Rights Watch identified in a press release of April 20, 2010 (“Turkey: Combat Police Killings and violence: New wave of shootings and ill-treatment”), there were rapid investigations and officers accused of shootings were prosecuted.

### **The Engin Çeber case**

In one landmark ruling in June 2010, the trial of prison guards, gendarmes, police officers and a doctor in connection with the October 2008 death of Engin Çeber, and torture of three political activists arrested with him in Istanbul, ended with 19 convictions in all. Nine guards, including a senior prison official, and police officers received lengthy prison sentences. Engin Çeber collapsed in Metris Prison and died in hospital, an autopsy recording that he had suffered a brain hemorrhage after being repeatedly beaten.

Perhaps the most significant aspect of the Çeber case was the fact that the court took the unprecedented step of probing chain of command responsibility in this case, resulting in a senior guard being sentenced to life imprisonment for the conduct of officers under his control. Human Rights Watch strongly hopes that this precedent ruling (currently under appeal) will provide a model for courts in Turkey in how to handle other cases of torture and death in custody.

The prosecutor’s investigation into the Çeber case was conducted speedily and effectively, with all witnesses interviewed soon after the incident, and with certain witness protection measures adopted. The Justice and Development Party government demonstrated clear political will that the investigation should happen. Within days of the Çeber’s death, a delegation from the CPT visited Turkey (it was reportedly a pre-planned visit unconnected with the case) and subsequent to the CPT’s visit the then Minister of Justice issued an unprecedented public apology to the family of Engin Çeber. The government was also aware that the European Commission’s regular report on Turkey would be published one month later. The role of the press and the lawyers acting for Çeber’s family in keeping the case in the public eye throughout the trial proceedings should also be mentioned. There was unprecedented press coverage, helped by the fact that the death occurred in an Istanbul prison and not in a remote part of the country.

The verdict in the Çeber case remains the exception, and the problem of impunity in Turkey is a formidable one. In cases where the Ankara authorities do not push for investigation and where there is not press coverage, the chance of an ineffective investigation is much reduced.

### **The Muammer Öz case**

A much more typical example of the police not receiving a sanction commensurate with the gravity of the crime can be found in the case of the ill-treatment of Muammer Öz. The case illustrates many of the other impunity concerns identified in this submission.



Muammer Öz was with a family group at the seafront in Istanbul, one afternoon in July 2007 when they were approached by two uniformed police officers who asked for his brother's ID. When Muammer Öz, a lawyer, challenged the grounds for the police request, he was manhandled, punched, and sprayed with pepper gas. He was beaten further and threatened while being taken to a police station in a police vehicle. A medical report documented a broken nose, later requiring an operation. Two police officers were tried for excessive use of force, defamation, and intentional injury of Muammer Öz, but Öz himself was put on trial for "using violence or threats against a public official to prevent them from carrying out a duty", an offense carrying a prison sentence of between six months and three years. Öz's case moved to trial much faster than that of his alleged attackers.

Throughout their trial the two police officers remained on active duty, though rotated to posts in other regions of the country. In January 2010, they were convicted of excessive use of force, and intentional injury, for which they received a one-year-five-month prison sentence, and of insulting Oz, for which they received a five-month-25-day prison term. Both these sentences were suspended, and the officers have thus effectively escaped any sanction. One of the police officers was simultaneously on trial for a shooting resulting in paralysis of a youth in the same district of Istanbul. In June 2010 the police officer was acquitted while the youth who he had shot received a prison sentence for violently resisting the officer.

The trial against Muammer Öz for violently resisting the police is continuing.