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增进和保护人权：人权维护者

2005年3月23日土耳其常驻联合国日内瓦办事处代表团

致联合国人权事务高级专员的信

谨随函附上我国政府就人权维护者处境问题秘书长代表希娜·吉拉尼女士 2004 年 10 月 11 日至 20 日访问土耳其的报告(E/CN.4/2005/101/Add.3 和有关更正)所提出的意见。

敬请将所附意见 \* 作为人权委员会第六十一届会议的正式文件分发。

常驻代表  
大使  
蒂尔凯库尔·库尔特泰金(签名)

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\* 附件不译，原文照发。

Annex**Observations of the Government of Turkey on the Report of Ms. Hina Jilani, Special Representative of the Secretary General on Human Rights Defenders, on Her Mission to Turkey From 11 to 20 October 2004**

1. Upon the invitation of the Government of Turkey, Ms. Hina Jilani, Special Representative of the Secretary General on Human Rights Defenders visited the country from 11 to 20 October 2004. Turkey is among the states which have extended a standing invitation to thematic procedures of the Commission on Human Rights (CHR) and is strongly committed to cooperating with these procedures.<sup>2</sup> Ms. Jilani's visit to Turkey was another example of such cooperation. Like other mandate holders who visited Turkey, the Special Representative enjoyed the full cooperation of the Turkish authorities, which is noted with satisfaction in the report.

2. Ms. Jilani's report on her mission to Turkey (E/CN.4/2005/101/Add.3 and the relevant Corrigendum) was carefully examined by the relevant Turkish authorities with a view to benefiting from its findings and conclusions. With this document the Government of Turkey would like to offer its observations on the report.

3. In line with its strong commitment to the cause of human rights and democracy, the Turkish Government regards human rights defenders as an essential element of a vibrant civil society and spares no effort to create favourable conditions for their effective functioning. The entry into force of the new Law on Associations on 23 November 2004, as well as the Circular of the Ministry of the Interior dated 18 October 2004 on human rights defenders<sup>3</sup> are only some of the recent concrete manifestations of this understanding. Thanks to these sincere efforts, there exists, as noted in paragraph 55 of the report, "*a genuine and active human rights community in Turkey which is actively implanted throughout the country including NGOs branches at the municipal level*".

4. At the outset, it should be noted that there are encouraging findings in the report, not only on the situation of human rights defenders in Turkey, but also on the remarkable changes recorded recently to attain the highest possible standards in the field of human rights. It is particularly heartening to read the assessment of the Special Representative that the number, scope and pace of reforms have made it difficult to monitor all developments. The Special Representative stresses that she is encouraged by the genuine efforts of the Turkish Government to move forward with its reforms in the field of human rights (paragraph 98).

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<sup>2</sup> So far, since 1999, Special Rapporteur on torture, Special Rapporteur on freedom of religion or belief, Representative of the Secretary General on internally displaced persons, Special Rapporteur on education, Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, Special Rapporteur on extrajudicial and arbitrary executions and lately Special Representative of the Secretary General on human rights defenders visited Turkey. A visit by the Working Group on Arbitrary Detention to Turkey in 2005 is envisaged. Turkey also takes immediate action to look into the cases that are communicated to her by the Special Mechanisms.

<sup>3</sup> The Circular entrusts the provincial and district governorships with the task of ensuring that the public institutions act according to the letter and spirit of the EU Guidelines and provide all facilities in their relations with individuals and NGOs endeavouring to promote human rights, including NGOs active in areas such as the prevention of torture and maltreatment, enhancement of the social status of women and elimination of gender-based discrimination.

5. Despite the foregoing, the Government respectfully disagrees with some of the points in the report with the following reasons.

5.1. One important issue in this context is the characterization of the PKK terrorist organization. The report makes a number of references to the PKK, without referring to its activities of terrorist nature and thus giving the impression that it stands as a mere political party. The Government, in its preliminary comments offered to the Special Representative, recalled that the PKK and its aliases “Kurdistan Freedom and Democracy Congress” (KADEK) and the “Kurdistan Peoples Congress” (KONGRA-GEL) had been declared as terrorist groups by the European Union and the USA, and should be referred to as such. The Special Representative, however, responded in a footnote by stating that “*she does not find it either necessary or relevant to make any characterizations*”. The Government, nevertheless, would like to put it once again on the record that the PKK and its successor organizations are among the most dangerous terrorist organizations in the world, which are responsible for the death of over 30,000 Turkish citizens, particularly of Kurdish origin, and that the omission of the characterization of the PKK without referring to its terrorist character is neither understandable nor acceptable.

5.2. Another point of disagreement relates to references made to the so-called “armed conflict” in Turkey. Given the internationally acknowledged terrorist nature of the PKK, Turkey’s struggle against the PKK should *not* be portrayed as an armed conflict, since it is nothing, but a “fight against terrorism”.

5.3. One of the major steps taken towards creating more favourable conditions under which human rights defenders will operate is the enactment of the new Law on Associations which was adopted on 17 July 2004 and entered into force on 23 November 2004.<sup>4</sup> Although the report refers to and welcomes the adoption of the new law, it nevertheless cites in several paragraphs<sup>5</sup> numerous cases of shortcomings which occurred due to the provisions of the previous Law. The legal grounds leading to unfavorable cases mentioned in the report have already been rectified by the new legislation. This significant aspect should have received a wider coverage in the report. Therefore, the Government deems it unfair that this important fact did not find its explicit expression.

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<sup>4</sup> To cite just a few changes brought by this major legislative change, the new law foresees, inter alia, that every legal and real person may establish associations without prior permission; there shall be no restrictions on the international activities and cooperation of the associations; prior notification to the relevant administrative authority shall be sufficient for obtaining financial aid or aid given in kind from abroad; associations shall purchase real property upon the decision of their relevant bodies; security forces shall neither enter the premises of the associations nor confiscate their property without a decision by the competent court or a written order by the highest administrative authority on grounds of the maintenance of public order or the prevention of the commitment of crime, where such written orders shall later be submitted to the approval of the competent judge within 24 hours.

<sup>5</sup> Paragraphs 67, 68, 69, 70, 71, 72, 73, 74, 77, 78.

5.4. Contrary to many encouraging words used to appraise the efforts of the Government, the Special Representative, who expresses her deep concerns at the allegedly continuing practices of harassment of human rights defenders, argues that all defenders have suffered in Turkey and urges the Government to ensure that harassment of human rights defenders is not perpetuated by new means. The language used here by the Special Representative unfortunately overlooks the existing collaboration between the Government and the human rights defenders. We believe that the functions of the Human Rights Advisory Council<sup>6</sup>, which is referred to in paragraph 40, as well as its composition are proofs against this oversight. The composition of the Human Rights Boards<sup>7</sup>, established in all provinces and districts throughout the country, also refutes the erroneous judgement, if not an honest mistake.

5.5. It is understood from paragraph 61 that the human rights defenders, with whom the Special Representative met in Turkey, argued that although their personal safety had improved, they were being targeted by legal action and fines. In paragraph 108 though, the Special Representative stresses that she is encouraged by the positive role that the country's highest Courts have started to play as guardians of fundamental freedoms, and again in paragraph 34, she underlines that existing judicial institutions, benefiting from the constitutional and legal reforms, have started working as guardians of fundamental freedoms.

5.6. Paragraphs 66 and 67 argue that the policing of demonstration remains an area of concern for defenders, that cases where police officers outnumber demonstrators are numerous, and that reports of use of excessive force against protestors, in particular students and trade unions, continue, and, last but not least, that due to continuing restrictions on authorized locations for demonstrations, many protests are considered illegal. In the view of the above assessment, the Special Representative emphasizes that it is the responsibility of the State to show restraint in its methods of crowd control.

Regarding peaceful demonstrations as an inherent attribute of a pluralistic society, the Government, through the Ministry of the Interior, already issued a Circular on 17 August 2004 on the prevention and punishment of disproportionate use of force by security forces. The Circular was addressed to all provincial governorates and all the relevant branches of the Ministry.

6. The Government has also noted the recommendations contained in the report with a view to benefiting from them. Nevertheless, the Government deems it necessary to put the following clarifications on record to indicate that a majority of the recommendations have already been taken into consideration and put into practice with concrete actions well before the visit of the Special Representative. The lack of sufficient recognition in some fields could be attributed to the sheer number of reforms adopted.

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<sup>6</sup> The Human Rights Advisory Council drafts recommendations for the consideration of the Government with regard to human rights policy and matters related to its implementation. The composition of the Council ensures active participation by the NGOs in the decision-making process. The majority of its members are civil society representatives, including the Bar Association and the Medical Association. The Council convenes regularly and produces concrete proposals. The Human Rights Presidency of the Prime Ministry serves as the secretariat of the Council.

<sup>7</sup> The Boards are entrusted with investigating complaints and allegations of human rights abuses, and thereafter transmitting their findings to competent authorities for administrative and/or legal action. They also conduct programmes for human rights education at the local level. Representatives of academic institutions, bar associations, medical chambers, trade and industry unions, NGOs, media as well as local administrations participate in the work of the Councils.

6.1. Paragraph 108 emphasizes the Special Representative's satisfaction with the Governmental initiatives and policies to develop a culture of human rights. It is also noteworthy that, as part of these efforts, the idea of establishing the institution of ombudsman in Turkey is under consideration. A draft law on the establishment of the institution of ombudsman is expected to be soon submitted to the Parliament for enactment.

6.2. Paragraphs 110 and 111 refer to the need for the full implementation of reforms at all levels of governance. In this respect, the Special Representative calls on the Government to continue reviewing its laws to ensure full compliance with international human rights standards. The Government regards the reform process as a continuous practice and believes that there is always room for improvement in the field of human rights.

6.3. In paragraph 112-a, the Special Representative encourages the Government to ensure the simplification of administrative steps to set up an NGO. With the introduction of the new Law on Associations, this has already been done by allowing every legal and real person to establish associations without prior permission.

6.4. In paragraph 112-c, and again in paragraph 115-d, the Special Representative encourages the Government to ensure that human rights organizations can receive funding from within Turkey and abroad, participate in national and international networks of actions in all fields of human rights without undue restrictions, and engage in international cooperation without facing reprisal. According to the new changes introduced by the Law on Associations, which were partly mentioned in paragraph 26 of the report, no restrictions shall be imposed on international activities and cooperation of the associations and they are not required to obtain prior permission to hold meetings with representatives of foreign organizations. Associations are no longer obliged to notify the Governor's Office prior to sending representatives abroad or inviting foreign persons, and notification of the relevant administrative authority shall be sufficient for obtaining financial or in-kind aid from abroad.

6.5. The Special Representative, as put forth in paragraph 114, believes that Human Rights Boards can prove to be a fruitful initiative and important avenues for communication and dialogue between the Government and NGOs if more attention is paid with regards to reforming their structure. It should be reminded that the structure of the Human Rights Boards had already been changed in 2003 by removing the seats of law enforcement agencies, constituting a clear move towards ensuring their civilian nature.

6.6. In paragraph 115-a, the Special Representative urges the Government to put an end to the monitoring on human rights defenders and organizations. The Ministry of the Interior issued a Circular on 11 May 2004 which stipulates that general assembly meetings of NGOs held in accordance with the Law on Associations, meetings and demonstration marches falling under the scope of the Law on Meetings and Demonstration Marches as well as other activities of NGOs which are not covered by the said Laws, such as press conferences, seminars and panels, shall not be recorded, photographed or filmed by law enforcement agencies.

6.7. The Turkish Government does not regard human rights defenders "as potential threats to the Turkish State", as argued in paragraph 116. It rather views them as essential elements of a vibrant civil society, with which cooperation and constant dialogue are necessary to attain perfection in human rights standards. As mentioned above, the compositions of the Human

Rights Advisory Council and of provincial or district Human Rights Boards, which bring state officials with civil society representatives, constitute a manifestation of this understanding.

6.8. In paragraph 117, the Special Representative encourages the Government to ensure that defenders are involved in all initiatives pertaining to human rights, so that they could gain credibility and effectiveness; and that serious consultations are carried out on new legislations and initiatives for the promotion and protection of human rights. The recent comprehensive legislative changes as well as administrative measures have been crafted through a real collaborative process, taking the views of the civil society and academic circles into consideration. A solid case in point is the new Penal Code, the drafting process of which was marked with transparency. The Code was a result of a comprehensive drafting process in which the Council of Europe as well as local and international NGOs were involved.

6.9. In paragraph 119-a, the Special Representative calls for issuing circulars giving instructions on how to interpret and apply the law in practice. The Government will certainly continue to issue circulars regarding the implementation of new laws when need be, as numerous circulars have already been issued well before the visit of the Special Representative.

6.10. In paragraph 119-b, the Special Representative calls for monitoring the implementation of the new laws by the judiciary at the local level in particular with regard to cases involving freedom of expression. The independent judiciary has already started to deliver rulings in line with the spirit and wording of the new laws. In that context, the Government would like to reiterate its satisfaction with the Special Representative's acknowledgment of the positive role that the country's highest Courts have started to play as guardians of fundamental freedoms.

6.11. In paragraph 119-c, and again in paragraph 123-c, the Special Representative points out to the need to train the judiciary, security forces and governorship personnel on the aims and the intent of the new laws and on the UN Declaration on human rights defenders. Acknowledging the importance of training, the Government has already undertaken various training programs for the aforementioned, including programs organized in cooperation with other states and international organisations, the Council of Europe and the European Union in particular. Meanwhile, the above-mentioned Circular of the Ministry of the Interior dated 18 October 2004 on human rights defenders stipulates that the issues outlined in the EU Guidelines on Human Rights Defenders be included in the curricula for the staff of the Gendarmerie General Command, the General Directorate of Security, the Coast Guard Command, the Head Department of Education and Governorships.

6.12. In paragraph 120, as well as in paragraphs 95, 96 and 97, the Special Representative, though recognizing the efforts to hold internal investigation on human rights abuses, remains concerned by "the high level of impunity for human rights violations" and thus calls on the Government to take all necessary measures to ensure full accountability for those violations. While the Government is resolute to combat against impunity at all levels, it would have been more appropriate should concrete cases of alleged practices of impunity have been cited. Recognizing the importance of combating impunity in all human rights violations, a considerable number of legislation has been introduced in the last years to ensure that perpetrators are brought to justice. The judicial review is functioning effectively in Turkey. In case of appeals, the decisions of the judiciary are reexamined by the higher judicial bodies. Moreover, Turkey has recognised the right to individual petition to as well as the compulsory jurisdiction of the

European Court of Human Rights (ECtHR). After the exhaustion of the domestic remedies individuals or groups of individuals have the right to apply to the ECtHR.

6.13. In Paragraphs 121, 122 and 123, the Special Representative recommends that all cases pending against human rights defenders be reviewed and the possibility of withdrawing pending prosecutions against human rights defenders be explored to ease their situation. The Special Representative further calls on the Government to ensure that prosecutions are no longer launched against human rights defenders for action in the defence of human rights, and on the members of the judiciary, in particular prosecutors, to exercise their discretion and show restraint in initiating cases against human rights defenders and organizations.

In response to these calls and recommendations, the Government would like to quote Article 138 of the Constitution: "Judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, law, and their personal conviction conforming to the law. No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions." Meanwhile, it is a fundamental principle of the rule of law that non-compliance with existing laws be brought to justice. Human rights defenders are not immune from this principle. Therefore, activities of NGOs should certainly be within the parameters of the legislation and actions breaching the law will be referred to judicial authorities.

7. In conclusion, it should be underlined that Turkey is truly committed to the cause of democracy and human rights. The Government is resolute to carry on the reform process, and regards the representatives of civil society, including human rights defenders, as essential elements and partners in its drive to attain the highest democratic standards. The Government has been and will be open to constructive and sincere criticisms levelled against certain imperfections in the democratisation process. With this understanding, Turkey stands ready to maintain the ongoing dialogue and cooperation with the Special Representative.

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