Regional Seminar

"Post September 11 era and subsequent attempts to suspend human rights and international humanitarian law in the South and East of the Mediterranean"

Ankara, Turkey, 18 -22 September 2003

FIDH in partnership with

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Since 11 September 2001, the "fight against terrorism" has been a tremendous issue on the international agenda. The International Federation for Human Rights (FIDH) has always condemned all acts of international terrorism including September 11 terrorists attacks against the USA and stressed the need to bring their perpetrators to justice, strictly in conformity with the universal norms of human rights. Since the September 11 attacks, however, the fight against terrorism has very often been used by the States as a means to reinforce the security measures, most of the time in disregard with international human rights standards. Although the fight against terrorism is legitimate and necessary, its objective is increasingly diverted by governments in order to exert their power et the expense of their commitments on human rights.

In many Southern and Eastern Mediterranean countries, "terrorism" has since long been used as a pretext for repression, and this trend has accelerated in the past 2 years. In this context and in view of the complexity of the phenomenon of terrorism and the extraordinary range and quantity of developments at the international, regional and national levels since the events of 11 September 2001, the FIDH, with the financial support of the European Union and in partnership with the Human Rights Association of Turkey (IHD) and the Human Rights Foundation of Turkey (TIHV), organised a regional training seminar in Ankara from 18 to 22 September 2003 to tackle the consequent trends and challenges threatening international humanitarian and human rights law in the context of the so-called "war on terror".

The main objectives of the seminar were to propose an exchange of information and experiences between human rights defenders in the region on the issue of terrorism from a human rights perspective, to assess the impact of the international context of the "fight against terrorism" on legislation and practices at national and regional levels (the situation in Turkey will be particularly stressed) and also to assess the enforcement of international and regional mechanisms for the protection of human rights relating to grave breaches of human rights on behalf of the "war on terrorism", with a special focus on the International Criminal Court.
Addressing the root causes of terrorism, an international panel of leading experts on terrorism gathered in Oslo in June 2003 and put forward the following conclusions to be addressed in the context of the analysis of the concept of terrorism: the lack of democracy, civil liberties and the rule of law is found a precondition for many forms of domestic terrorism. Many terrorist insurgencies will not come to an end unless its root causes are addressed and fundamental grievances and rights are provided for. Thus, there is a need to focus on the factors that sustain terrorism if we want to identify possible avenues of prevention, early intervention, or ways of breaking the vicious circle of terrorist revenge and counter-revenge.

In counter-terrorism efforts, it is crucial to uphold democratic principles and maintain moral and ethical standards. Increased repression and coercion are likely to feed terrorism, rather than reducing it.

I. THE INTERNATIONAL FRAMEWORK OF THE "FIGHT AGAINST TERRORISM" IN THE POST-11 SEPTEMBER ERA

"Terrorism" has long been the focus of international attention, resulting in a proliferation of agreements relating to the issue. The United Nations have developed a wide range of international legal instruments that enable the international community to take action to suppress international terrorism. Twelve UN Conventions on Terrorism provide basic legal tools to combat international terrorism - from the seizure of an aircraft to the financing of terrorism. These arrangements include the following UN Conventions in Terrorism: the Convention on Offences and Certain Other Acts Committed on Board Aircraft, the Convention for the Suppression of Unlawful Seizure of Aircraft, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, the Convention against the Taking of Hostages, the Convention on the Physical Protection of Nuclear Material, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism.

A. Incrimination of terrorist acts in international law: problems of definition of "terrorism"

International consensus has never been achieved however, on a precise definition of terrorism. Indeed, till now, there is no accepted general definition of "terrorism". As pointed out by the United Nations Special Rapporteur Ms Kallioupi Koufa in her 2001 progress report submitted to the UN Human Rights Commission, "the definitional problem is the major factor in the controversy regarding terrorism". The controversial issue of terrorism has thus been approached from such different perspectives and in such different contexts that it has been impossible for the international community to get to an acceptable definition.

What is extraordinary is that the resolution 1373 (2001) adopted on 28 September 2001 by the UN Security Council, under Chapter VII of the UN Charter, extensively lists obligations upon States to combat terrorism but fails to define the concept of terrorism or terrorists acts. This omission opens a Pandora's box in delegating to each State the discretion to apply its own definition of terrorism, or, indeed to apply none at all. Certain States have developed a rather far-reaching understanding of the concept of terrorism. In being offered such an opportunity certain States have even prone to apply the terrorist appellation to such acts which constitute exercise protected under international law.

As highlighted by the police Chief of the French national police force, Mr. Jean-François Gayraud, and Judge David Sénat, "resolution 1373 [...] orders universal hunting against terrorism without defining it". Hence, to fulfil their obligations under the resolution 1373, States use definitions of terrorism established under their national legislation. This causes serious problems as some national legislations criminalize acts that are lawful under international law. Furthermore, several national provisions establish definitions of the terrorism offence in vague, nebulous and unclear terms. In this context, some forms of political and/or social opposition and exercise of freedoms of association and expression as well as legitimate and/or lawful acts under international humanitarian law are criminalized. Such situations breach the principle offences nulla crimen sine lege legality of criminal offences) and challenge legitimate forms of exercise of fundamental freedoms.
**Definition of terrorism within the framework of international human rights**

There is no doubt that any State, with regard to international law, has the right and the duty to fight and repress crimes, in particular criminals acts which by nature, objectives or the means used for their commission, are considered or qualified as terrorist acts. The international community must have at its disposal the legal instruments and the necessary means to fight this scourge. Nevertheless, State and the international community have an obligation to act within the rule of law, the respect of principles of criminal law and of international law, in particular of international human rights law. Therefore, the United Nations Commission on Human Rights reaffirmed "that all measures to counter terrorism must be in strict conformity with international law, including international human rights standards".16

**Principles of criminal law as regards the definition of the offences**

Any legal definition of an offence, both at the national and international level, must be in conformity with principles of criminal law and of international human rights law. With regard to criminal law, two critical principles must be retained: the principle of legality of the offences, nullum crimen sine lege, and the principle of subjective responsibility. As regards international human rights law, the qualification of behaviours as "offence" should not criminalize legitimate forms of exercise of fundamental freedoms. The law only prohibit behaviours which harm society.17 Any legal definition of the offence of terrorism, be it a general definition or a definition relating to specific acts, must conform to these principles. In its study on Terrorism and Human Rights, the Inter-American Commission on Human Rights emphasized the importance to "ensure that crimes relating to terrorism are classified and described in precise and unambiguous language that narrowly defines the punishable offence, by providing a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from behaviours that are either not punishable or are punishable by other penalties."18

The principle nullum crimen sine lege means that in order for a behaviour to constitute an offence, such behaviour must be criminalized by law and that definitions of criminal offences must be precise and unambiguous. In its General Comment N°29, the Human Rights Committee specified that the principle of legality in the field of criminal law means that the requirement of both criminal liability and punishment be limited to "clear and precise provisions in the law that was in place and applicable at the time the act or commission took place, except in cases where a late law imposes a lighter penalty".19 This means a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from behaviours that are either not punishable offences or are punishable but not with imprisonment. Ambiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal responsibility of individuals and punishing the criminal behaviour with penalties that exact their toll on the things that are most precious, such as life and liberty.20

The principle nullum crimen sine lege has two corollaries: the restrictive interpretation of criminal law and the prohibition of analogy, on the one hand, and the prohibition of retroactive application of criminal law. Thus, for example, paragraph 2 of the article 22 of the Rome Statute prescribes that the "definition of a crime" shall be strictly constructed and shall not be extended by analogy. If ambiguous, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted. It should be emphasized that it is that principle of legality which was at the basis of the development of elements of crimes envisaged by the Rome Statutes. Therefore, pursuant to the principle of legality, vague, ambiguous or imprecise incriminations could not be admitted, as recalled by the United Nations Special Rapporteur on the Independence of Judges and Lawyers.21 If such definitions criminalize legitimate behaviours under international human rights law or lawful acts under international humanitarian law, they transgress the principle of legality.

As national anti-terrorist legislations have frequently recourse to vague, ambiguous or imprecise definitions, thus the UN Human Rights Committee had to examine and formulate observations with regards to very broad or vague definitions existing in legislations of several States.22

The principle of criminal individual responsibility is one of the fundamental elements of contemporary criminal law. As emphasized by Professor Pierre-Marie Dupuy, subjective responsibility in criminal matters and individuality of penalty are principles of international criminal law and peremptory norms.23

(...) In recent years, a new "technique of incrimination" in anti-terrorist matters appeared according to which international bodies or States draw up officials lists of groups qualified as "terrorist groups". Membership or collaboration with these so-called "terrorist groups" is in itself an offence. This "technique" of incrimination seriously challenges the principle of individual criminal responsibility. As mentioned by the Special Rapporteur...
of the Sub-Commission on terrorism and human rights, Ms Koufa, "[s]ome of the [anti-terrorism] legislation contains no
definition of terrorism, while some contains lists of certain acts.
Some of it includes provisions in which groups are put on an
official terrorist list, frequently with no analysis of the particulars
of the situation or the nature of the group. Those groups and
others espousing similar views but uninvolved with the groups
concerned may face severe consequences. [...] [J]udicial
proceedings to challenge this false labelling or to defend a
person charged with an offence under such anti-terrorism
legislation may leave room for serious negation of a wide range
of procedural rights."24

On the same topic, the European Court of Human Rights
specified that Article 5 of the European Convention of Human
Rights does not legitimate the arrest of a person who is
suspected of planning to commit an offence on the sole ground
that the person belongs to a group of individuals recognized as
dangerous and known for its continuing propensity to crime."25

Definitions that allows criminalization of the legitimate
and/or lawful behaviours under international law

One of the most alarming aspects is that of the establishment of
legal definitions of the terrorist offence or of the terrorist acts
which criminalize legitimate an/or lawful behaviours under
international law, in particular as regards the exercise of rights
and fundamental freedoms. Some domestic legislations conflict
with the exercise of the right to take part in the conduct of public
affairs, the right to strike as well as freedom of expression,
association and information. Some definitions of terrorism
directly criminalize legitimate forms of political, ideological and
social opposition. Other definitions, disregarding the principle
nullum crimen sine lege, are so vague, ambiguous or imprecise
that they allow the criminalization of the legitimate exercise of
political rights, trade-union liberty as well as fundamental
freedoms.

In international law, the exercise of certain rights and
fundamental freedoms can be limited but these limitations or
restrictions must be imposed within a precise framework: The
Human Rights Committee, in its General Comment N°10
specifies that "the exercise of the right to freedom of expression
carries with it special duties and responsibilities and for this
reason certain restrictions on the right are permitted which may
relate either to the interests of other persons or to those of the
community as a whole. However, when a State party imposes
certain restrictions on the exercise of freedoms of expression,
these may not put in jeopardy the right itself. Paragraph 3 lays
down conditions and it is only subject to these conditions that
restrictions may be imposed: they must be "provided by law";
they may only be imposed for one of the purposes set out in
subparagraphs (a) and (b) of paragraph 3 [article 19]; and they
must be justified as being necessary for that State party for one
of those purposes."26 The Human Rights Committee has
pointed out on several occasions that, according to the
International Covenant on Civil and Political Rights, freedom or
expression could only be limited if its exercise undermines the
rights or the reputation of other of compromises national
security or public orders.27 On several occasions, the European
Court of Human Rights has dealt with this issue of the
relationship between freedom of expression and terrorism. The
clear indication to the uses of violence, hostility or hatred
between citizens if one of the criteria retained by the court to
distinguish between the exercise of freedom of expression and
terrorism.28

With regard to the right to freedom of assembly and the right of
association, the Inter-American Commission on Human Rights
has also specified that "any limitation must be established by or
in conformity with laws that are enacted by democratically
elected and constitutionally legitimate bodies and are tired to
the general welfare. Such rights cannot be restricted at the sole
discretion of governmental authorities. Moreover, such
restriction must be in the interest of national security, public
order, or to protect public health or morals or the rights or
freedoms of others, and must be enacted only for reasons of
general interest and in accordance with the purpose for which
such restrictions have been established. The restrictions must
additionally be considered necessary in a "democratic society",
of which the right and freedoms inherent in the human person,
the guarantees applicable to them and the rule of law are
fundamental components. Similarly, while the right to freedom
of assembly and the right of association are not designated to be
non-derogable, any measure taken by States to suspend these
rights must comply strictly with the rules and principles
governing derogation including the principle of necessity and
proportionality."29 The right to strike is also likely to be limited
and restricted.30 The ILO’s Union Freedom Committee
considered that a general restriction of the right to strike is
permissible only in the case of those services that are classified
as essential, which the ILO defines as those suspension could
jeopardize that safety of life of all or part of the public.

(…) The Drafting of a comprehensive convention on
international terrorism, started by the special Committee
created by the General Assembly resolution 51/210 of 1996
and pursued since 7 October 2002 within the Working Group of
the Sixth Committee of the General Assembly31 illustrates the
difficulties to agree upon a universal definition of terrorism. The
work within this Ad Hoc Committee for the elaboration of a Comprehensive Convention on Terrorism aiming at filling the gap left by the sectoral treaties against terrorism was expedited up after the 11 September attacks. But one can also observe that after September 11th, the debates within this Committee on the Draft Convention have intensified. The Ad Hoc Committee met in October 2001, January 2002 and from 31 March to 2 April 2003 at United Nations Headquarters, in New York. As it stands, some provisions of the Draft Convention already challenge existing international law.

The definition of the crime of international terrorism is contentious (see draft articles 2 and 2 bis). Reference herein to ill-defined concepts such as "major economic loss", "the purpose of the conduct, by its nature or context", "serious damage" or the concept of "credible and serious threat" is a great source of disagreement. The use of such indeterminate language to form firm legal obligation may well undermine the principle of legality.

The envisaged scope of the Convention is also subject to dispute (see draft articles 1.2 and 18). The draft extends the applicability of the Convention to non-governmental parties to an internal armed conflict, despite the recognition of such groups under article 3 common to the Geneva Convention (and the International Criminal Court Status). It also includes movements which fight against colonial domination, alien occupation or against racist regimes, notwithstanding the provisions of the 1977 Additional Protocols to the Geneva Conventions. Some States insist on the need to differentiate between terrorism and acts carried out within the exercise of the legitimate right of peoples to resist foreign occupation. Finally, the question of whether official forces of a State can commit terrorist offences arises. Another source of concern in the draft is the possible infringements on the well established principle of non-refoulement by the draft article 15 of the Convention.

B. UN resolution 1373 and its consequences

1. The UN counter-terrorism committee: resolution 1373

In Resolution 1373, the United Nations Security Council created a new international legal obligation for States to cooperate in fighting terrorism and, on the basis of existing international conventions and Chapter VII of the Charter, made those provisions enforceable in all jurisdictions.

All states are required to report to the Counter-Terrorism Committee (CTC), composed of the 15 Council's members, not later than 90 days from the adoption of the resolution on the measures adopted to implement the resolution. The measures include: Prevention of the financing of terrorism, through, inter alia, freezing of the financial assets or economic resources of persons who commit, or attempt to commit, terrorists acts or participate or facilitate the commission of terrorists acts; Establishment of terrorist acts as serious criminal offences in domestic laws and regulations, with commensurably serious punishment; and Taking appropriate measures before granting refugee status to ensure that the asylum seeker has not planned, facilitate, or participated in the commission of terrorist acts.

Since 11 September 2001, High Commissioner Mary Robinson and the late High Commissioner Sergio Vieira de Mello both addressed the Security Council's Counter-Terrorism Committee (CTC) and urged it to take account of human rights in its review of State security measures designed to prevent and punish terrorism. The CTC has so far declined to address human rights concerns directly. However, the Security Council, in resolution 1456 (2003), declared that "States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law."

The late High Commissioner for Human Rights, Sergio Vieira de Mello, addressed the Counter-Terrorism Committee in October 2002, and stated his conviction that "the best - the only - strategy to isolate and defeat terrorism is by respecting human rights, fostering social justice, enhancing democracy and upholding the primacy of the rule of law."

Altogether, the Office of the High Commissioner for Human Rights (OHCHR) has exchanged views with the CTC three times since the CTC's inception in 2001. In September 2002, High Commissioner Mary Robinson submitted a "Note to the Chair of the Counter-Terrorism Committee: A Human Rights Perspective On Counter-Terrorist Measures", in which general principles of law were set out to help guide States in protecting human rights in the context of their efforts to eradicate terrorism. In addition, a briefing was arranged by CTC to the Human Rights Committee in Geneva on 27 March 2003, followed by a briefing of the CTC by a member of the Human Rights Committee on 19 June 2003 in New York. OHCHR now routinely shares with the CTC, on a bi-monthly basis, key actions and findings of UN human rights mechanisms with respect to counter-terrorism measures.

2. Secretary-General's Policy Working Group on Terrorism

In its report issued in August 2002 (A/57/273, S/2002/875), the Secretary-General's Policy Working Group focused on
practical steps that the UN might take and adopted a series of recommendations made by its sub-group on human rights and terrorism, chaired by the Deputy (now Acting) High Commissioner for Human Rights. The report emphasizes that the protection and promotion of human rights under the rule of law is essential in the prevention of terrorism, and states that the struggle against terrorism should be carried out in keeping with international human rights obligations. The report further states, "The various international instruments on human rights include clear limitations on the actions that States may take in the context of the fight against terrorism. States should be made aware of the responsibilities placed upon them by the various human rights instruments and reminded that key provisions of the International Covenant on Civil and Political Rights cannot be derogated from."

The Report of the Secretary-General’s Policy Working Group notes that the struggle against international terrorism will be further enhanced if the most serious crimes committed by terrorists are tried before the International Criminal Court and prosecuted under its Statute (if the relevant national court cannot or will not prosecute). "Since the [Rome Statute] covers the category of crimes against humanity, which includes murder and extermination committed as part of a widespread or systematic attack on any civilian population, certain terrorist acts might therefore be tried under the Statute."

The Report also underlines the importance of the dialogue between the UN High Commissioner for Human Rights and the Counter-Terrorism Committee of the Security Council on the importance of ensuring respect for human rights in the implementation of legislation, policies and practices to combat terrorism.


The resolution, sponsored by Mexico, emphasizes the importance of protecting human rights in counter-terrorism efforts, and calls upon the High Commissioner’s office to take three actions:

- Examine the question of the protection of human rights and fundamental freedoms while countering terrorism, taking into account reliable information from all sources;
- Make general recommendations concerning the obligation of States to promote and protect human rights and fundamental freedoms while taking actions to counter terrorism; and
- Provide assistance and advice to States, upon their request, on the protection of human rights and fundamental freedoms while countering terrorism, as well as to relevant United Nations bodies.

To implement this mandate, OHCHR relies to a great extent on external partners, including Governments as well as regional organizations, national human rights institutions and NGOs. The Office gathers information on developments in different regions in counter-terrorism measures taken by States, supports regional meetings on the issue and makes recommendations for action. It also supports the ongoing exchange of views between OHCHR and the Counter-Terrorism Committee, as well as the work of UN human rights mechanisms. The resolution calls on the Secretary-General, through OHCHR, to submit reports on its implementation to the General Assembly and the Commission on Human Rights. It may further be noted that OHCHR has notified the CTC of the availability of its technical cooperation program, to assist States in the protection of human rights and fundamental freedoms while countering terrorism.

C. Breaches to human rights at the global level

1. Judicial cooperation in the fight against terrorism and human rights

The impact of the "9/11" on judicial co-operation is also remarkable in the European Union. In setting up the European area of Freedom, Security and Justice as required by the Treaty of Amsterdam, the EU was, since 1999, engaged in the implementation of mutual recognition of judicial decisions in criminal matters. "Mutual recognition" implies that judicial decisions issued by a national authority of one Member State shall be executed by the national authorities of other Member States as if they were issued in their own national system. The EU was trying to implement this principle in a first instrument on the freezing of assets when the 11/09 attacks occurred. On 20 September, the European Commission finalised a new proposal which became one of the most important goals of the Action Plan of the EU in the fight against terrorism: the framework-decision on the European arrest warrant. The framework-decision was approved by the EU Council in December 2001 as a result of an incredibly fast and intense negotiation. The European arrest warrant is due to replace the extradition regime from 1 January 2004.

Although it is impossible to determine the influence of September 11 on the result of the negotiations, the governments were very keen to show their political willingness to overcome usual difficulties. While some results of the
European arrest warrant stand in the logical evolution of the work being done in the EU (faster contacts between local authorities, strict deadlines for the requested authorities, ...), the instrument contains two powerful changes.

The first radical change is the partial abolition of the requirement of double criminality. It is also the issue on which the impact of the post-9/11 era is the most visible. For a wide range of forms of criminality, judicial authorities will no longer be able to refuse the arrest and surrender of a person when the person is prosecuted in the “issuing” Member State for having committed an act that is not an offence in the “executing” Member State. This abolition of double criminality is not limited to terrorism but also concerns prosecutions in the sector of criminal organisations, trafficking in human beings, help in unlawful immigration, common murder, cybercriminality, ...

The second change stands in the control the “executing” authority is (or is not) allowed to do regarding the judicial system in the “issuing” Member State. According to the principle of mutual recognition, Member States declare a mutual trust regarding their criminal systems and the conformity with human rights. This mutual trust justifies, in their opinion, a diminution of the grounds for refusing to execute the decision of the issuing authority. What is implied here remains unclear, given the general reference to human rights provisions in the framework decision. It seems however certain that some in the EU interpret this principle as limiting the control of the executing authority to formal aspects of the request.

These evolutions cause a threat on the level of protection of human rights. They extend the impact of the national systems with the widest definition of offences and with the lowest level of protection of the right of the defence and of the sentenced person.

The impact of this evolution is not limited to the 15 Member States. Firstly, they should be examined in the light of the EU enlargement. With harsh criticism on the level of corruption among the judiciary in some of the ten acceding countries, the application of mutual recognition is a major problem. The question is even more worrying with the next enlargement’s steps, especially with regard to Turkey, in the current context. Secondly, the changes within the EU influence, the co-operation with third Member States. Finally, with the increasing emergence of the EU as a laboratory for international co-operation in criminal matters, the EU instruments will be more and more used as models or starting points for work at other regional levels or at the United Nations.

2. Administration of justice: exceptional jurisdiction in the US, "illegal combatants"...

**Historical Context of Detentions at Guantánamo Bay, Cuba**

In the wake of the terrorist attacks of September 11, 2001, the United States planned and carried out a massive military campaign against the Taliban regime then in power in Afghanistan and an organization called Al Qaeda. Congress authorized this military action by granting President Bush authority to “use all necessary and appropriate force against those nations, organizations, or persons he determined” were either involved in the September 11th attacks, aided in their commission, or harboured others who were involved in the attacks.

On September 20, 2001, the President announced the beginning of the “war on terror” and on October 7, 2001, he announced that the United States military had begun air strikes against Al Qaeda camps and Taliban installations. United States ground troops first arrived in Afghanistan on October 20, 2001 and immediately engaged Taliban forces in battle. Following the capture of Kabul and other major cities in November, military operations focused on eliminating bastions of resistance in Kandahar and in Tora Bora caves in early December, 2001. Although the United States has officially recognized a new Government in Afghanistan, these military operations continue up to date as part of the United States larger "war against terrorism."

On November 13, 2001, President Bush signed a Military Order on the Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism ("Military Order"). The Military Order is both sweeping and open-ended. Specifically, it provides for the indefinite detention without trial of foreign nationals named by the President and for their trial by military commissions.

**The Detentions at Guantánamo Bay**

On January 11, 2002, the United States military in Afghanistan began the first airlift of prisoners it captured there to a U.S. military detention facility at Guantánamo Bay, Cuba known as Camp X-Ray. Camp X-Ray was later decommissioned and all prisoners transferred to a more permanent facility, Camp Delta, also situated at Guantánamo Bay. Camp Delta comprises of four units, including a medium-security facility and another for
child captives. The Government recently confirmed that the prison is expanding and the Government has made clear its commitment to rely on the prison "as long as the global war on terrorism is on-going." When construction is complete, the prison will have capacity for 1,100 inmates.

The prisoners are housed in solitary confinement, restricted to their small cells twenty-four hours per day except for 30 minutes exercise three times a week in a separate caged area. The inmates are shackled while outside their cells and the lights are kept on 24 hours a day. The indefinite nature of their detention is taking its toll on the inmates. Since the prison opened there have been 32 attempted suicides, most of which have occurred in the past month. At least 57 of them are reported to have been treated for mental illnesses. A veil of secrecy surrounds the prison and its inmates. The names, nationalities and specific circumstances of the arrests of the prisoners there have not been made public. The only information coming out of Guantánamo is what the United States chooses to release. Apart from some foreign diplomatic missions, the only persons independent of the Government permitted access to the detainees have been personnel from the International Committee of the Red Cross (ICRC). However, they do not have a permanent presence at Guantánamo, their access to the prisoners is restricted and the information they are privy to is not publicly available.

From the information that is available (Information available on 22 september 2003, statement from Steven Watt, CCR New-York, Ankara FIDH Seminar), it is known that presently there are approximately 700 prisoners from some 42 countries, amongst them children as young as 13 and men in their 70's. Although many were captured in the context of the international armed conflict in Afghanistan, others were captured far from the Afghanistan battlefield; six Algerian nationals, for example, were handed over to the U.S. military in Bosnia-Herzegovina and two U.K. residents were transferred there from the Gambia. Many others were captured in Pakistan.

From the beginning of their captivity, senior government officials, including the President himself, without further elaboration, have branded those detained at Guantánamo Bay, including the four prisoners, as "killers" and "terrorists." At the same time, Government officials have indicated that many of them may in fact be entirely innocent of any wrongdoing and that their detention may just be an issue of their having been in the wrong place at the wrong time. Senior military officials have also been reported as stating that one in ten of those persons transferred to Guantánamo have been deemed of no intelligence value.

All the prisoners have been and will continue to be subject to interrogation. Secretary of Defence Rumsfeld has indicated that these interrogations are for law enforcement purposes. Yet, not one has been charged with a criminal offence. None have been afforded access to an attorney or to a court, military or civilian, where they might be in a position to prove their innocence. All have been denied access to members of their family. Some attorneys and family members, both directly and through their Governments, have asked the United States for such access as well as for information on the reasons for their detention. These requests, however, have yielded neither access nor justifiable reasons for their continuing detention. The only line of communication that the prisoners enjoy with the outside world is through letters delivered via the ICRC. However, these letters are delivered only on a sporadic basis and are subject at all times to heavy censorship by the United States military.

In October 2002, the first of the prisoners were released. Since this time a further sixty prisoners, mainly nationals from Afghanistan and Pakistan, have been released. On the July 3, 2003, six of the prisoners, were designated for trial by military commission. The United States asserts the authority to hold the prisoners under these conditions indefinitely and, in any event, at least "for the duration of the conflict." Senior Government officials have repeatedly indicated that even if the prisoners are at some future point tried and acquitted before a military commission, that prisoner "may not necessarily automatically be released." Thus, in defining the prisoners' possible release dates, the United States has used as a controlling factor the United States "war against terrorism" and not the international armed conflict in Afghanistan.

The official position of the United States is that none of the prisoners are prisoners-of-war (POWs). Officials have described the prisoners as either "unlawful combatants" or "enemy combatants" who are not subject to the Geneva Conventions. The President officially announced that although it would apply the Geneva Conventions to the Taliban prisoners, it would not extend them to members of Al Qaeda. In addition, he stated that the Taliban prisoners did not meet the criteria for POWs set forth in the Conventions and that they were therefore not entitled to their protections. The United States maintains that the prisoners are all "enemy combatants" because "at the time of their capture, they were bearing arms against the United States or otherwise acting in support of hostile armed forces" engaged in an ongoing international armed conflict."
As a legal basis for their detention the United States does not place reliance upon the Military Order but rather the President's "powers as Commander-in-Chief and under the laws and usages of war." These powers the United States claims, authorizes it to detain and interrogate the prisoners at Guantánamo without affording them access to attorneys, family or a court, not only until the end of the international armed conflict in Afghanistan, but also until the end of its "war against terrorism."

**The Decisions of United States Courts**

In February 2002, The Center for Constitutional Rights (CCR) filed suit in the United States federal district court in Washington D.C. on behalf of two Australian and two British nationals detained at Guantánamo. Shortly thereafter, a firm of lawyers in D.C. filed on behalf of twelve Kuwaiti nationals. The Government filed motions to dismiss the two cases and in July, 2002, after oral argument, the district court dismissed both of them due to lack of jurisdiction.

On appeal, the District of Columbia Court of Appeals in affirming the decision of the lower court found that as Guantánamo Bay laid outside the sovereign territory of the United States, neither the protections afforded by the constitution, nor international law extended to the foreign nationals held there. Consequently, it found that no court in the United States has jurisdiction over any claims made by the prisoners, whether by way of a habeas petition or otherwise. Significantly, the Court found that this principle applied regardless of whether the United States was at war and irrespective of the legal status of persons detained there, be they "enemy aliens" (nationals of a state with whom the United States is at war) or simply citizens of a friendly nation in time of peace. Following the Court's reasoning United States officials could pluck a Canadian citizen off the streets of Toronto, transport him to Guantánamo Bay and hold him there indefinitely. They could even torture him and yet United States' courts would be powerless to intervene.

**The United States lease of Guantánamo Bay from Cuba**

In its decision, the Court also failed to place any importance on the fact that in terms of the lease of Guantánamo Bay from the Cuban government, the United States exercises "exclusive jurisdiction and control" over the territory, that the lease runs indefinitely, and that it cannot be terminated without the consent of the United States. It also failed to analyse what the term "ultimate sovereignty" meant in the context of the lease. Preliminary research shows that when the lease was drafted, the framers contemplated that the United States would enjoy all rights attendant with sovereignty.

**The Decisions and Opinions of International Tribunals, Courts, UN and Governmental Bodies**

The United States exercises complete power over Guantánamo Bay and has refused to recognize the authority of any international tribunal or foreign court. In 2002, the Inter-American Commission on Human Rights of the OAS, of which the United States is a member, ruled that the prisoners must convene competent tribunals to determine the legal status of the prisoners under its control. It found that some body of law, either humanitarian law or human rights law must apply to the prisoners, and that the way things stood, no law was being applied. The United States, however, maintains that the decisions of the Commission are not binding upon it and has not complied with the request. It also refuses to recognize the authority of the Cuban government within Guantánamo Bay. The Government's position that the prisoners occupy a law-free zone recently prompted the English Court of Appeal to conclude that the prisoners were in a "legal black hole."

In addition the United States has rejected the views of the United Nations High Commissioner for Human Rights, the United Nations Working Group on Arbitrary Detention (The FIDH seized the UN Working Group on Arbitrary Detention on 22 January 2002 regarding the situation of the detainees at Guantánamo Bay, detained as part of the investigation into the September 11 attacks), the European Parliament and the Parliamentary Assembly of the Council of Europe, all of whom disagree with the United States position on the prisoners at Guantánamo.

**Petition for Review to the Supreme Court**

On September 2, 2002 the Center for Constitutional Rights and lawyers for the Kuwaiti nationals filed petitions with the Supreme Court asking that it review the decision of the Court of Appeal. The Supreme Court has discretion whether or not to take the case, a decision that is expected to be made at some point in late October.

**US Citizens "Enemy Combatants"**

Non-US citizens are not the only persons detained by the United States outside the law. Two US citizens, Jose Padilla and Yasser Hamdi, after being designated by the President as "enemy combatants" are also being held by the United States.
would require his treatment as a POW under the Third Geneva Convention. Yet, the US government has unilaterally declared that the Geneva Conventions do not apply to him.

**Conclusion and Implications of the United States’ Position on Guantánamo and the War Against Terrorism**

The United States has created a prison on Guantánamo Bay that operates entirely outside the law. Within the walls of this prison, foreign nationals may be held indefinitely, without charges or evidence of wrong-doing, without access to family, friends or legal counsel, and with no opportunity to establish their innocence. The Government claims that no court in the United States has jurisdiction to review the cause for their detention, and to date, courts in the United States have agreed. As matters stand, the United States has established its own Gulag or Devil's Island. Deprivation of liberty without any form of review or process, as is presently occurring at Guantánamo, violates one of the most fundamental principles under US and international law. By disregarding application of these standards, the US is directly undermining its credibility in this country and abroad, making it increasingly more difficult for it to build the coalitions that are of fundamental importance to world security. By denying to persons within its control these basic protections the United States is not only setting a dangerous precedent for other countries to emulate but placing its own citizens at risk (e.g. service men - parading of American POWs in Iraq and actions of the US in relation to Guantánamo detainees - peace corps volunteers, missionaries, Lori Berenson in Peru, "enemy combatants" in Liberia.).

1. Root Causes of Terrorism, Findings from an international expert meeting in Oslo, 9-11 June 2003.
2. Adopted in Tokyo in 1963, the Convention authorizes the airplane commander to impose reasonable measures to any person who has committed or is about to commit such acts, and requires State parties to take custody of offenders. Developed by the International Civil Organization (ICAO) and ratified by 171 States.
6. Adopted by the General Assembly in New York in 1979, the convention requires parties to make the taking of hostages punishable by appropriate penalties; to prohibit certain activities within their territories; to exchange information; and to carry out criminal or extradition proceedings; Ratified by 96 States.
7. Adopted in Vienna in 1980, the convention obliges parties to ensure the protection of nuclear material during transportation within their territory or on board their ships or aircraft. Developed by IAEA and ratified by 68 States.
8. Adopted in Rome in 1988, the convention obliges parties to either extradite or prosecute alleged offenders who have committed unlawful acts against ships, such as seizing ships by force and placing bombs on board ships. Developed by International Maritime Organization and ratified by 52 States. This is supplemented by the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf adopted by IMO in Rome in 1988 which extends the requirements of the Convention to fixed platforms such as those engaged in the exploitation of offshore oil and gas. Ratified by 48 States.
9. Adopted in Montreal in 1991, the convention seeks to curb the use of unmarked and undetectable plastic explosives. Developed by ICAO and ratified by 67 States.
10. Adopted in New York by the General Assembly in 1997, the convention seeks to deny "safe havens" to persons wanted for terrorist bombings by obligating each State party to prosecute such persons if it does not extradite them to another State that has issues an extradition request. Ratified by 26 States.
11. Adopted by the General Assembly in New York in 1999, the convention obliges States parties either to prosecute or to extradite persons accused of funding terrorist activities, and requires banks to enact measures to identify suspicious transactions. The convention ratified by only four States will enter into force when ratified by 22 States.
14. See above Part I B. "UN Resolution 1373 and its consequences".


22. See Concluding Observations of the Human Rights Committee: Estonia. 03/04/2003. CCPR/C/77/ESR, § 8. The Committee expressed its concern over the broad definition of the crime or terrorism and of membership of a terrorist group as defined in the Criminal Code. Such broad definition could infringe upon article 15 of the ICCPR (principle of legality).


29. Ibid, paragraph 360.


31. UN Doc. A/C.6/57/L.9, paragraph 1 and 2.

32. The work on the drafting of a comprehensive convention on international terrorism had begun at the end of 2000.

33. The paragraph 16 of the General Assembly resolution 56/88 adopted on 12 December 2001 entrusts to the Ad Hoc Committee the task to elaborate a comprehensive convention on international terrorism as a matter of urgency.


35. This is a shortened version of "International instruments and mechanisms to protect human rights in counter-terrorism efforts", a paper presented by E.G. Flynn, from the Office of the United nations High Commissioner for Human Rights, Regional Seminar, September 21, 2003, Ankara.


II. HUMAN RIGHTS IN THE SOUTH AND EAST OF THE MEDITERRANEAN IN THE POST SEPTEMBER 11 ERA

A. Regional cooperation and violations of human rights

At the regional level, some instruments on terrorism such as the Arab Convention for the Suppression of Terrorism (1998), the Organization of African Unity (OUA) Convention on the Prevention and Combating of Terrorism (1999) contravene human rights standards and are open to abuse. The texts adopted or set back to the agenda following September 11, 2001 have in common an extremely broad and sweeping definition of "terrorist" (terrorist is not as such a separate offence in the international field), which suggests that a large number of acts, including legitimate opposition and mobilization of civil society, could fall under the "terrorist" heading.

1. The Arab convention against terrorism

This is the case of the Arab Convention for the Suppression of Terrorism adopted in Cairo on 22 April 1998 by the League of Arab States (the Arab League)\(^\text{39}\), whose aim is to suppress terrorism, but also appears to muzzle political opposition and all those who dare to criticise the current regimes in a pacific manner. Indeed, the vagueness of the definition of "terrorist" corresponding to "any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of any individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty or security in danger, or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardise national resources" is particularly worrying.

Many of the provisions of the Convention do not conform with the obligations of the Arab League member States under the UN Charter and international human rights law. Furthermore, the Convention fails to recognize and maintain many other rights and obligations enshrined in human rights and humanitarian law\(^\text{40}\). "The definition of terrorism is so broad that it tends itself to wide interpretation and abuse. Other terms in the Convention, including "violence", "terrorist purposes", "terrorist elements", and "terrorist groups" are not defined.

In addition to the problem posed by the broad definition of terrorism, some provisions of the Convention could be interpreted to allow for censorship and interference with the freedom of expression on the pretext of security. The Convention further fails to incorporate safeguards for the rights of detainees, including guarantees for the right to be promptly brought before a judge and to be tried within a reasonable time. The text also falls short in respecting the international obligations prohibiting arbitrary detention and torture.

2. The African convention against terrorism

The Organization of African Unity's Convention on the Prevention and Combating of Terrorism was adopted in at the 1999 OUA Summit in Algiers (the Algiers Convention) and entered into force in September 2002. Many African States have signed but not ratified the Convention.

The Algiers Convention acknowledges the close link between countering terrorism and achieving human rights in Africa. Declaring that terrorism constitutes a serious violation of human rights and in particular, the rights to physical integrity, life, freedom and security, and impedes socio-economic development, the Convention bases itself on the premise that of circumstances can ever justify terrorism.

However, this Convention adopted a very broad definition of terrorist acts too and, while invoking numerous international counter-terrorism conventions and measures, makes no reference to international human rights standards. The Algiers Convention indeed provides the following definition in Article 1(3). "Terrorist act" is defined as follows: (a) any act which is a violation of the criminal law of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to: (i) intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or (ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or (iii) create general insurrection in a State. (b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organising or procurement of any person, with the intent to commit any act referred to in paragraph (a)(i)-(iii). This overly broad and vague definition of terrorist acts expands the definition of "terrorism", introducing loosely defined offences, restricts freedom of expression and expands the scope of offences punishable.
3. Extraditions and deportations

Before the September 11 attacks, the rights of migrants and refugees were already at risk in the United States and West European countries. A wide range of migrants' rights abuses were reported including immigration and law enforcements officials abuses, arbitrary detentions, procedural violations in criminal and administrative law proceedings, and in the asylum system, leading to arbitrary and collective expulsions and therefore resulting in the violation of the non-refoulement principle entrusted in article 3 of the UNCAT. Transfers or renditions of detainees in custody, in contravention of the non-refoulement provisions in Article 3 of the UN Convention against Torture (CAT), to third countries where the intelligences services are know to employ torture techniques in the interrogation of prisoners remain of particular concern. Article 3 of the United Nations Convention Against Torture (CAT) provides an absolute prohibition on expelling, returning or extraditing a person to another State where there is a risk of torture. Many countries have merely justified ever more restrictive approaches to immigration management in light of September 11 attacks.

In February 2003, it was reported that the number of people arrested or facing deportation in the US already greatly exceed 765 foreigners - mostly Middle Easterners and South Asians - detained by the Immigration and Naturalization Service as part of the post-September 11 investigation. The figures for detentions and deportations happen to be considerably higher than those offered previously by government officials. The registration program unfairly targets otherwise law-abiding men by requiring them to register at INS offices and then ordering them deported for even minor visa irregularities.

The prohibition of torture is universal and absolute. Article 2 (2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states that "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture." In several instances, the Committee against Torture noted that most allegations of torture relate to individuals who have been accused or convicted of terrorist acts. The Committee has identified a number of measures that commonly contribute to the practice of torture. These include the wide scope of arrest and detention powers granted to the police; overlapping of jurisdiction of various police and security agencies; secret detention; lack of or inadequate legal infrastructure to deal with allegations of torture; the existence of extensive pre-trial detention powers; the use of administrative or preventive detention for prolonged periods of time; the lack of a central registry for detainees; interference with the prosecutor’s powers to investigate allegations of torture and the denial of access to lawyers, family and medical personnel.

B. Opportunist use of the fight against terrorism at the national level: legislations and practices

1. Trends since 11 September in the region: legitimazing practices violating human rights

The UN Special Rapporteurs and Representatives, Independent Experts and Chairpersons of Working Groups, gathered at their annual meeting in Geneva in June 2003, adopted a statement in which, while joining in the global condemnation of terrorism, they voiced "profound concern at the multiplication of policies, legislation and practices increasingly being adopted by many countries in the name of the fight against terrorism, which negatively affect the enjoyment of virtually all human rights: civil, cultural, economic, political and social." They drew attention to the danger inherent in indiscriminate use of the term 'terrorism' and resulting new categories of discrimination. They deplored "the fact that, under the pretext of combating terrorism, human rights defenders are threatened, and vulnerable groups are targeted and discriminated against on the basis of origin and socio-economic status, in particular migrants, refugees and asylum-seekers, indigenous peoples and people fighting for their land rights or against the negative effects of economic globalization policies." They stated their commitment, within their respective mandates, to monitor developments, and called on all concerned parties, including the United Nations, to be vigilant to prevent any abuse of counter-terrorism measures.

Excessive measures have been taken in several parts of the world that suppress or restrict individual rights. Many countries of the region already had very poor human rights records. The trends witnessed since September 11 events include the wider and excessive use of measures and legislations to curb internal opposition, freedom of expression, freedom of religion, minority groups, and the right to a fair trial, amongst others, in the name of anti-terrorism. It should be noted that in several instances, legislative measures have been taken hastily and in the absence of proper consideration and analysis.

Since September 11, UN special mechanisms (such as the Special Rapporteur on the Independence of Judges and
Lawyers, and the Working Group on Arbitrary Detention) and the UN human rights treaty bodies have placed a priority on examining the issue of protecting human rights in the context of counter-terrorism measures.

**Freedom of expression and human rights defenders at risk**

As the United Nations Special Representative on Human Rights Defenders, Ms Hina Jilani, pointed out in her report to the United Nations Human Rights Commission (CHR) in 2002, there is a real danger that, in the wake of the terrorist attacks of 11 September 2001, some Governments may be using the global war on terrorism as a pretext to infringe human rights and to clamp down on human rights defenders. Non-governmental organizations in various regions of the world, have expressed their concern to the Special Representative about the heightened risk to human rights defenders in the increasingly threatening climate - as they see it - since 11 September 2001. There is a danger worldwide that, under the guise of combating terrorism, some Governments may increase their efforts to stifle peaceful dissent and suppress opposition. In the current climate, those who question the legitimacy of some of the post-11 September so-called anti-terrorism measures, or simply anyone who does not socially conform - be they migrants, refugees, asylum-seekers, members of religious or other minorities, or simply people living at the margins of society - may be branded as terrorists and may end up being caught in a web of repression and violence. Peaceful pro-independence activists are being portrayed as disseminators of propaganda likely to harm the State, as a threat to national security, as attempting to overthrow the Government and as aiding and abetting terrorism.

More recently, in her 2003 report to the Commission on Human Rights, the Special Representative expressed particularly concerned at the rapid expansion of policy, legislation and procedures described as "security" or "counter-terrorism" measures, but which can have an effect on, or may be subverted to restrict the work of human rights defenders and sometimes target the defenders themselves. For example, in some instances they have been falsely accused by State authorities or State-owned media of being affiliated with an armed opposition or terrorist group. In addition, the introduction of exceptions to the rule of law, for example through special legislation on security in general or against terrorism in particular, has affected the ability of national judicial systems to protect human rights defenders from arbitrary actions was mentioned amongst as a major concern.

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussain, noted in his report to the CHR in 2002 that several States have responded to the events of 11 September by adopting laws which have negative implications for certain rights, including freedom of expression. To respond to terror by rolling back human rights which in some cases have taken centuries to establish is to play into the hands of the terrorists and to let fear overcome rights.

**Anti-terrorism and the Legitimisation of torture**

In his 2002 report to the Human Rights Commission, the UN Special Rapporteur on Torture concluded that "not only any temptation to resort to torture or similar ill-treatment or to send suspects to countries where they would face such treatment would that be a violation of an absolute and peremptory rule of international law, it would be also responding to a crime against humanity with a further crime under international law.

On 22 November 2001, the Committee against Torture issued a statement reminding States parties of the non-derogable nature of most of the obligations binding them after they ratified the Convention. After condemning utterly the terrorist attacks of 11 September and expressing its "profound condolences to the victims, the Committee highlighted the obligations contained in Article 2, Article 15, prohibiting confessions extorted by torture being admitted in evidence, except against the torturer, and Article 16, prohibiting cruel, inhuman or degrading treatment or punishment. It further stated that such provisions must be observed in all circumstances.

The questioning of the prohibition of the use of torture in countries that had previously vigorously upheld the absolute nature of this prohibition has raised worrying concerns since the September 11 events. This trend enabled the nations allied in the so-called "war against terror" to actively engage in the use of torture, either through their security services or those of states known to have poor human rights records. Of particular concern are allegations made in an article published by the Washington Post on December 26th, 2002, entitled "U.S. Decries Abuse but Defends Interrogations," which claims that techniques of interrogation - including physically and psychologically aggressive techniques - that constitute torture are being used on al-Qaeda and Taliban captives in secret CIA interrogation centres, such as in the Bagram Air Base in Afghanistan and on the island of Diego Garcia, a British-owned island in the Indian Ocean that the US
leases. Some 3,000 suspected al-Qaeda members and their supporters have been detained worldwide since Sept. 11, 2001, with about 625 being held at Guantanamo Bay, Cuba, while thousands have been arrested and held with U.S. assistance in countries known for brutal treatment of prisoners. Further to this, nearly 100 detainees who have not collaborated have reportedly been handed over in "extraordinary surrender" to countries - such as Egypt, Jordan, Morocco, Saudi Arabia and even Syria - previously denounced for their use of torture.

2. Case studies: Morocco, Egypt, Jordan and Turkey

Since the attacks against the United States, there are growing evidence that countries in the Mediterranean region are ignoring or neglecting specific procedural and substantive safeguards. It clearly appears since September 11, that the international situation and terrorism are used as pretexts to infringe upon basic freedoms in Morocco, Egypt, Jordan and Turkey. In these countries Morocco, alike in many other in the region, the antiterrorism discourses is instrumentalized in order to tone down political opposition and human rights activists. Non-violent activities have indeed been considered as terrorism, and excessive measures have been taken to suppress or restrict individual rights, including fair trial, freedom of speech, thoughts and peaceful assembly.

1. Morocco

Morocco submitted its initial report to the UN Counter-Terrorism Committee on the measures adopted to implement the UN resolution 1373 on 27 December 2001. Morocco is party to the following UN human rights treaties which have corresponding treaty bodies: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Committee Against Torture, the International Convention on the Elimination of all forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of the Child.

In its concluding observations adopted in March 2003, the UN Committee on the Elimination of Racial Discrimination (CERD), expressed concerns over the anti-terror legislation, and draws its attention to the statement on racial discrimination and counter-terrorism measures adopted by the Committee on 8 March 2003. FIDH together with the Moroccan Organization for Human Rights (OMDH) unconditionally condemned the criminal actions committed following the heinous attacks of 16 May 2003 and reasserted the rights and duties of the State to fight terrorism and punish those who are guilty. They further deplied the adoption of an alarming anti-terrorism Act and denounced cases of arbitrary detention and arrests, as well as death occurring during imprisonment.

The Act of 28 May 2003 on the fight against terrorism

The Act on fighting terrorism that entered into force on 28 May 2003 contains several provisions likely to encourage grave human rights violations, including torture, as it gives greater power to both the police and the public Prosecutor and cuts basic rights and guarantees of suspects and people in custody. Specific concerns related to this new law on fighting terrorism raises particular concern as they include:

Vague, sweeping incrimination of terrorism as a crime:

Section I of the Act, further to the first part of Book III of the Criminal Code in Chapter One b, states in Article 218-1, that a certain number of offenses constitutes acts of terrorism when "intentionally linked to an individual or collective exercise designed as serious attack on law and order through intimidation, terror or violence". It would be easy to make abusive use of such a vague definition.

Furthermore, much of the Criminal Code is likely to fall within the definition of acts of terrorism. The following violations, for instance, can be listed as acts of terrorism: acts of damage and destruction; degradation and deterioration (paragraph 3); theft and extortion of property (paragraph 5); offenses related to automated data processing systems (paragraph 7); forgery or falsification of checks or other means of payment (paragraph 8).

Incrimination of certain forms of freedom of speech is also included since the law makes provision for a 2 to 6 months prison sentence and a fine of 10,000 to 200,000 dirhams for "any person who defends acts deemed to be terrorist through speeches, loud utterances or threats made in public places or at public meetings, or through written texts or publications, distributed free of charge or sold or displayed in public or at public meetings, or by posters exhibited using audio, video or electronic display facilities".

Since the law was promulgated this has led to the sentencing of several newspaper journalists.

Thus, the Rabat Court of Appeal in August 2003 sentenced three journalists from Oujda to prison (Mohammed El Hard 3
years, Abdelmagid Ben Taher and Mustafa Kachni 1 year) for having published interviews and article inciting acts of terrorism.

Heavier sentences and broader scope for capital punishment:

Section I of the Act, further to the first part of Book III of the Criminal Code in Chapter One b, Article 218-3 paragraph 4 states than "a person found guilty of an act of terrorism can be sentenced to death if the action has caused the death of one or more persons".

Extending the initial period of police custody

Police custody has been extended to a twice renewable 96 hour period, which considerably increases the risks of torture, since torture and ill-treatment are likely to be inflicted while in police custody.

Detention incommunicado

The law authorizes the Public Prosecutor, at the request of the judicial authority, to refuse the suspect any contact with a lawyer during police detention for up to 48 hours starting from the first extension of the period of custody (the duration, thus, can be up to six days).

Interception of communication and phone tapping

The law authorizes the Crown's prosecutor to request an order from the Court of Appeal to have telephones tapped or to intercept, record, copy or seize remote communications.

Searches round-the-clock

House searches and visits are henceforth authorized at any time of the day or the night to "meet the needs of the investigation". Such searches are carried out aggressively and terrorize children and families, especially when carried out in the middle of the night.

Slippage of the terrorism control policy; numerous abductions, acts of torture, death while in custody, arbitrary detention and arbitrary trials

Human rights organizations have emphasized that such practices started at the beginning of this campaign, in May 2002, in other words, one year before the attacks on Casablanca. They have reported an increase of violations since the 16 May 2003 attacks when the fight against terrorism was intensified.

Police questioning, numerous abductions, disappearances

Several cases of abduction were only made public when the suspects were brought to justice or when the were released, several weeks after being arrested.

- Before the attacks:

Three Saudi Arabians - Zouhair Tbiti, Hilal Al Assiri, Abdallah Al Ghamidi - were abducted on 12 May 2002 and were only brought to justice on 10 June 2002;
Hachim Nadiri, Mohamed Nadiri, Mohamed Mafmam were abducted around 15 May 2002 and were only brought to justice a month later;
Abdelwahed bakhrouit was abducted on 25 June 2002 and then released 40 days later;
Abdallah Meski was abducted on 15 July 2002 and released 5 months later;
Saleh Zarli was abducted on 3 September 2002 and was only brought to justice 45 days later;
Kattoubi Lekbir was abducted on 20 September 2002 and was only taken to court on 27 December;
Six Moroccans (Anour El Jabri, Mohamed Oussama Boutafer, Mohame Ben Moujane, Mohamed Tabarak, Mohamed Alami, Bejjaâdir Said) who were "turned in" by the Syrian intelligence services on 17 July 2002 have not yet been taken to court or released.

- Following the attacks of 16 May 2003

Since 16 May 2003 between 2,000 and 5,000 people have been subjected to police interrogation under unclear conditions. According to a statement by the Moroccan Minister of Justice on 6 August 2003, 1,048 people have been brought to justice in 20 courtrooms throughout the Kingdom (According to FIDH Report of international mission of investigation "The Moroccan authorities facing terrorism: flagrant violations of human rights", released in February 2004. 1,700 persons have been brought to justice in the aftermaths of May 2003 attacks in Casablanca).
Mohamed Damir, 31 years old, whose brother was sentenced to death in connection with an islamist group, disappeared after the attacks. By September 2003, his family had still not received any news about him (FIDH Report Morocco, February 2004).

These abductions are carried out by the police forces or the intelligences services (Direction de la Surveillance du Territoire-DST). The security services often do not identify
themselves, mishandle people, cover suspects' eyes and take them away to destination unknown to the families.

**Arbitrary detention**

Targeted individuals are often taken to a DST custodial establishment in Temara, near Rabat, a place of transit for most of condemned Islamists. The "private" establishments has no legal status and does not authorises visits.

The legal detention time is often extended at length, and in some cases the date of the beginning of the detention if falsified which means that people can be arbitrary detained for several weeks.

**Acts of torture**

Ill treatment and torture (blows, electricity, sexual abuse, rape, etc.) have reportedly occurred during the investigative phase, quite routinely especially at the DST in Temara. No investigation has been ordered on reports of torture, although it has been taken up in the press.

**Deaths during detention**

Two people (Abdelkader Bentasser, known as Moulsabat, and Dr. Mohamed Abou Nayt) died under highly unclear conditions after being questioned. Despite official investigations and autopsies, there are still contradictions of all sorts and the exact circumstances of their death is still not clear. Once again, it is most unfortunate that impunity is still the rule when police brutality and police "blunders" of this type occur.

Concerning the case of Mr. Abdelkader Bentasser, on 28 May 2003 the authorities announced that he had died of a chronic illness while his family said he was in good health. At an earlier time, the police had taken his wife in for questioning and had told her that he had escaped. The family asked for his remains but the authorities refused.

Dr. Mohamed Abou Nayt is said to have died on the road near Marakech on 24 June 2003, although at that time he was in police custody. The Minister of Justice told Moroccan Human Rights NGOs on 21 July 2003 that two policemen in the criminal brigade were being charged in this case.

**Arbitrary trials**

As the number of trials increases, charges of terrorism are being hastily judged, without respect for the due process of law required for a fair trial. The following irregularities have been observed: perfunctory examination of files; witnesses not heard during the hearing; defendants' guild judged almost exclusively on statements recorded while in police custody often, apparently, without the defendant being allowed to reread them; heavy sentences, even the death penalty, prescribed on the basis of insufficient investigation and charges or despite the impossibility to hear witnesses for the defence.

**2. Egypt**

Egypt reported for the first time to the UN Counter-Terrorism Committee on the measures adopted to implement the UN resolution 1373 on 21 December 2001. Egypt is party to the following UN human rights treaties which have corresponding treaty bodies; the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Committee Against Torture, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of the Child. Egypt as signed the Rome Status of the International Criminal Court.

**A chronic State of Emergency**

The Emergency Law N° 162 of 1958 has been in force in Egypt since the assassination of President Anwar El Sadat in October 1981. It was renewed by a temporary resolution 560/1981 for one year and it has since then been extended many times. It was due to expire in May 2003, but the bill to extend state of emergency until 2006 was introduced on 23 February in the People's Assembly (Maglis al Sha'b) without prior notice and voted on the same day by a wide majority. The ruling National Democratic Party dominates the 454-seat People's Assembly. Only 30 MPs of the 454-member Assembly, all from opposition parties, among whom are independent members and members of El Tagamu'u (the leftist party), El Wafd and the Moslem Brotherhood, voted against renewing the enabling law. The government has thereby ensured the maintenance of the emergency state for another three years, starting from June 2003. The government obviously wanted to block the expansion of the campaign and to restrict the anti-emergency-state movement organized through the campaign launched by the Committee for the Defence of Democracy (CDD). Moreover, the continuous enforcement of Emergency Law is no longer justifiable in Egypt, as violence has ceased and as no terrorist activities have been witnessed since 1997.
In its concluding observations adopted in November 2002, the Human Rights Committee raised concerns about the fact that the state of emergency proclaimed by Egypt in 1981 is still in effect, meaning that the State party has been in a semi-permanent state of emergency ever since.

The Emergency Law grants broad power to impose restrictions on the freedoms of assembly, move or residence; the power to arrest and detain suspects of those deemed dangerous, and the power to search individuals and places without the need to follow the provisions of the Criminal Procedure Code (y virtue of article 3 of the emergency law). Thousands of dissidents, particularly members of Islamist organizations such as the Muslim Brotherhood, have been detained under the Emergency Law in recent years.

In November 2002, the UN Human Rights Committee voices concern at the effects of the measures adopted in light of the fight against terrorism on the human rights situation in Egypt, particularly in relation to articles 6, 7, 9 and 14 of the Covenant. The UN Human Rights Committee questioned the broad and general definition of terrorism in national law; noted with alarm that military courts and state security courts have jurisdiction to try civilians accused of terrorism without fair trial guarantees; and expresses concern about the incommunicado detention and treatment of Egyptian nationals arrested abroad and returned to Egypt.

Definition of "Terrorism"

In the early 1990s, Egyptian government introduced "anti-terror" decrees, notably Law N°97 of 1992, that gave security and intelligence forces still greater powers of arrest and detention. In its submission to the UN Security Council Counter-Terrorism Committee, the government highlighted Law N°97's extremely broad definition of terrorism, as "any use of force or violence or any threat or intimidation to which the perpetrators resorts in order to carry out an individual or security of society and which is of such a nature as to create harm or create dear in persons or imperil their lives, freedom or security; harm the environment; damage or take possession of communications; prevent or impeded the public authorities in the performance of their work; or towards the application of the Constitution or of laws or regulations."

The Committee considers that the effect of the very broad and general definition of terrorism given in Act No. 97 of 1992 is to increase the number of offences attracting the death penalty in a way that runs counter to the sense of article 6, paragraph 2, of the Covenant.


In Egypt, an exceptional court system exists parallel to the ordinary courts system and operates under the framework of the state of emergency and a series of emergency laws. These special courts include State Security Courts (the Emergency State Security Courts and the Permanents State Security Courts) and Military Courts. Under the Emergency Law, those State Security Court and Supreme State Security Court have been established to hear cases related to crimes committed in violation of ruling made by the President of the Republic or his deputy (by virtue of article 7/1 of the Emergency Law).

Under article 9 of the emergency law, the President or the Prime minister (acting under the authority of the President) may decide to refer to exceptional jurisdictions those accused of crimes punishable under the common law. This is a clear violation of article 40/9 of the Constitution, which states that all citizens are equal and are entitled to be tried by a competent judge and have the right to get fair and impartial trial as asserted by article 14 of the ICCPR. Most politically sensitive criminal cases end up in one of these latter types of courts. For example, in August 2002, 101 civilians suspected of being affiliated to the Muslim Brotherhood, were transferred to the State Security Court in Alexandria. Six of their lawyers were also arrested, while doing their duty. Moreover, article 12 deprives those sentenced by State Security Courts of the right to challenge the rulings made against them, in violation of article 14 of the ICCPR.

The Emergency State Security Courts established under the Emergency Law have jurisdiction to consider not only cases that arise under the emergency law, but also cases punishable under the ordinary Penal Code if they are transferred to them by the President of the Republic of his representatives. Indeed, the president of the republic, in his capacity as military ruler, issued decree no. 1 for the year 1981 to refer some crimes to the State Security emergency courts. This decree is still valid until now. The decree involves a long list of crimes that the general prosecution has to refer to state security emergency prosecution, established according to emergency laws. Most of those crimes cannot be described as terrorist or drug crimes. Some of those crimes include the following: calling by word of mouth or by writing or by any other means for the impediment of any provision of the constitution or laws; possession of written material that calls for or favour the previous actions; deliberate dissemination of news, statements, faulty or ill-motivated rumours or agitating news if the objective thereof is to disturb public order, induce
the detention. It points out that no information was given on the duration of the detention, and access to a lawyer during about the law and practice in matters of detention in custody:

than one month. The Committee regrets the lack of clarity treated, having notably been held incommunicado for more

from the safeguards required to ensure that they are not ill-

and expelled to Egypt have not, while in detention, benefited Egyptian nationals suspected or convicted of terrorism abroad

Furthermore, the Human Rights Committee has noted that executors are high court rulings in the United States. In the Star of the Ottoman Empire (journalist), Ramez Gehad Fathi Abdel Aziz (student) and Mohammed Hassan Hassan (student), Wael Tawfeek (journalist), Ramez Gehad Fathi Abdel Aziz (student) and the total duration of pre-trial detention or the offences involved. The Committee also has concerns over the lack of clarity concerning the safeguards laid down in article 9, paragraph 3, of the Covenant. The Committee also notes the persistent occurrence of cases of arbitrary detention.

The number of detainees under emergency laws has reached an approximate figure of 16 000 citizens. Detention has not been restricted to whom the government calls “terrorists” and “drug dealers”, but was extended to all political groups, where the numbers increase with every political or social conflict in the country.

Over the last months, the Emergency Law has been extensively used for administratively detained people who participated in demonstrations against the war in Iraq. The following incidents reveal that the Egyptian government is still vastly enforcing the Emergency law against political opponents, contrary to the official statements that emphasize that such law would never be enforced but against those who perform terrorist acts: recently, detentions hit a number of citizens protesting the expected American aggression against the Iraqi people and those supporting the struggle of the Palestinians for their legitimate rights to of survival and self determination. As to alleged “terrorists”, several of them have been subject to repeated detention since 1993 until now, i.e. for a continuous decade without ever being brought before a court.

Several people have been detained “preventively” in order to prevent them from participating in the February 15, 2003 demonstration. During the demonstration on Sunday 16 February, 2003 at least 5 more people were arrested and several more were injured. Already, on January 18th, the State Security Police had arrested 11 alleged members of the Egyptian People’s Committee for the Solidarity with the Palestinian Uprising who had demonstrated against the expected American aggression against the Iraqi people and those supporting the struggle of the Palestinians for their legitimate rights to of survival and self determination. As to alleged “terrorists”, several of them have been subject to repeated detention since 1993 until now, i.e. for a continuous decade without ever being brought before a court.

Incommunicado detention

Article N°86 (bis) of the Penal Code, under which the defendants were referred, is of the most dangerous article in the Egyptian Penal Code. This article criminalizes any act aiming at suspending the provisions of the Constitution and laws and preventing the State institutions from exercising their functions, as it does not differentiate whether the case is based on violence and terrorism (which is considered a crime), or not.

Furthermore, the Human Rights Committee has noted that Egyptian nationals suspected or convicted of terrorism abroad and expelled to Egypt have not, while in detention, benefited from the safeguards required to ensure that they are not ill-treated, having notably been held incommunicado for more than one month. The Committee regrets the lack of clarity about the law and practice in matters of detention in custody: the duration of the detention, and access to a lawyer during the detention. It points out that no information was given on
Alexandria under the Emergency Law. Ashraf Ibrahim Marzouq, an engineer, was detained at Tora Prison, in pre-trial detention under case 809 (2003). Mr Marzouq was charged with filming the demonstration and having related publications in his possession. The detainees were reportedly subjected to torture at the State Security office in Lazoughly, Cairo immediately following their arrest.

Five defendants were referred to the High State Security Court (Emergency) on Saturday August 9, 2003 by virtue of Article N°80 (d), paragraph 1 and Article N°86 (bis) of the Egyptian Penal Code. State Security Prosecutor charged them with establishing an illegal group, "The Revolutionary Socialists", which is in contradiction with the law. According to the charge, such a group aims at overturning the governing regime and establishing another one based on extreme communism. The first defendant was accused of possessing publications disseminating advocacy and propaganda for the purposes of the group and contacting with foreign human rights organizations. Mr Ashraf Ibrahim Mohammed is under pre-trial detention after being arrested on April 19, 2003. The arrest occurred after demonstrations took place in Cairo. Recently, he made an open hunger strike calling for his release or judgement before an investigation judge. The rest of the defendants are as followed: Nasser Farouq El Behri (Researcher at the Land Center for Human Rights LCHR), Yehia Fikry Amin Zahra (engineer), Mostafa Muhammed Al Bassyouni (unemployed), Rimon Edward Gindi Morgan (a student).

Anti-terrorism and legitimization of torture

The FIDH is very preoccupied by the widespread use of torture in Egypt, as acknowledged by the UN Committee against Torture (CAT) in November 2002. The CAT expressed various concerns at the persistence of the phenomenon of torture and ill-treatment of detainees by law enforcement officials - leading to numerous cases of deaths in custody, and the absence of measures ensuring effective protection and prompt and impartial investigations. The fact that victims of torture and ill-treatment have no direct access to the courts to prompt and impartial investigations. The fact that victims of torture acts is also a worrying concern. The Egyptian Code of Criminal Procedure does not enable victims to personally litigate before the court of justice: only the general prosecution can litigate against a police officer. The possibility of appeals by victims is also restricted. Moreover, a study by the Human Rights Commission (HRCAP) shows that compensations for victims or of wrongly detention are unfair.

Association Law and Freedom of expression, demonstration and peaceful assembly

Freedom of expression is also restricted under the state of emergency as article 3 of the emergency law gives the military ruler or his deputy the power to monitor the newspapers, booklets and other publications. This law clearly violates freedom of opinion and expression guaranteed y article 45 and 49 of the Egyptian Constitution and article 18 and 19 of the ICCPR.

The difficult conditions in which NGOs carry out their work in Egypt as a result of repressive legislation and the persecution of some NGO activities have raised further concerns since the adoption of a new Law on June 5, 2002. This law maintains the same provisions of the Law on Civil Associations and Institutions adopted in 1999 (Law 153 of 1999), which had been declared unconstitutional by the Constitutional High Court in June 2000. This bill of law gives the administrative body, represented by the Ministry of Social Affairs, broad powers over civil associations. It indeed maintains the same restrictive articles as law N°153 of 1999 related to the necessity of having the consent of the Ministry of Social Affairs to register civil associations; the ban of practising political and unions’ activities without these two activities being defined, which lead to restrictive and arbitrary interpretation as far as NGOs activities are concerned; the compulsory administrative intervention for the constitution of the board of directors of the association; as well as the necessity of getting an authorization to receive funds and an authorization to be affiliated to international associations and organizations. Moreover, whereas article 42 of the Law of
1999 provided that the Ministry of Social Affairs had to go to the court in order to get the dissolution of an association, new article 42 gives the Ministry the power to dissolve an association by an administrative decree, without any judicial decision, as well as to appoint a judicial guard and to proceed to the confiscation of all the documents and monies.

The founding of NGOs is under control of the administrative as certain activities (more than in article 55 of the Constitution) are prohibited under article 11 of the Association Law. Furthermore, the article 17 of the Association Law provides for strict control over the funding of association. FIDH is particularly concerned with this provision as human rights organizations in Egypt have already been sentenced for receiving funds from abroad (as was the case of Dr Saad Eddin Ibrahim) in the past.

3. Jordan

Like in many countries across the region, the Jordanian government has used the September 11, 2001 attacks on the United States as a pretext to enact repressive new laws ostensibly aimed at combating terrorism. The laws have restricted basic freedoms of expression, association and assembly, rights to personal security and the right to a fair trial.

Human rights violations reported in Jordan include extra judicial killings by members of the security forces, police abuse and mistreatment of detainees; allegations of torture; arbitrary arrest and detention; lack of transparent investigations and accountability within the security services; prolonged detention without any charge; lack of due process of law and interference in the judicial process; infringements on citizens' privacy rights; harassment of members of opposition political parties and the press and significant restrictions on freedom of speech, press, peaceful assembly and association.

Jordan submitted its initial report to the UN Counter-Terrorism Committee on the measures adopted to implement the UN resolution 1373 on 29 January 2002. Jordan is party to the following UN human rights treaties which have corresponding treaty bodies: the United Nations Committee Against Torture, the International Covenant on Economic Social and Cultural Rights; the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of all forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of the Child. Jordan is the only State in the region that has ratified the Rome Status of the International Criminal Court.

New Law on Terrorism

On 8 October 2001, the Government of the Hashemite Kingdom of Jordan passed a new law, namely the Provisional Law N° 54 amending the Jordanian Penal Code, by Royal Decree after the Sept. 11 attacks in the US as part of a Jordanian anti-terrorism package. The amendments were indeed introduced after Jordanian officials warned they would not tolerate any so-called efforts to destabilize the country in the aftermath of the U.S. military strikes on Afghanistan. The law not only expanded the definition of "terrorism" by introducing numerous loosely-defined offences but also further restricted freedom of expression and the press, and expanded the scope of offences punishable by death penalty and life imprisonment. The new law promulgated without passing through the Jordanian parliament, were part of an already worrying trend in Jordan. Indeed, the new amendments expanded the article of the Jordanian Penal Code that criminalizes "insulting the dignity of the king." The article already stipulates a prison term of between one and three years and fines of up to 5,000 Jordanian dinars for anyone who insults His Majesty or the Royal family. The amended article now outlaws insulting or attributing false statements to the king in print, in cartoons, or on the Internet.

"Terrorism" was originally defined in Article 47 of the Penal Code as "any act which aims at creating a state of fear and committed by means of explosive devices, inflammable, poisonous and incendiary material, using epidemics or germs, which can cause a public danger". This definition was replaced by a new and broader one under the Law Amending the Penal Code (Article 147-1) so that "terrorism" becomes the "use of the threat to use violence" as an individual or collective act with the purposes of undermining public order or endangering social peace and security in a way that may cause fear and terror and endanger the safety and lives of people. The new provisions also stipulate that "anyone who commits an act which undermines the political regime in Jordan or incites others to do so, and anyone who acts individually or collectively to change the economic, social or fundamental situation of the society" can be sentenced to hard labour. This law also expands the scope of "terrorism" to include acts which cause damage to the environment, public facilities, public and private property, and endangering national resources, obstructing the application of the Constitution and laws, and damage to seizure, or occupation.
of diplomatic missions. Such broad language leaves the wording open to different interpretations and can easily be interpreted so as to facilitate the prosecution of non-violent government critics and increases the scope of the death penalty.

**Incommunicado detention**

The Criminal Code requires that police notify legal authorities within 48 hours of an arrest and that legal authorities file formal charges within 10 days of an arrest; however, the courts routinely grant requests from prosecutors for 15-day extensions as provided by law. This practice generally extends pre-trial detention for protracted periods of time. In cases involving state security, the authorities frequently hold defendants in lengthy pre-trial detention, do not provide defendants with the written charges against them, and do not allow defendants to meet with their lawyers until shortly before trial. Defendants before the State Security Court usually meet with their attorneys only 1 or 2 days before their trial.

Hundreds of people were arrested for political reasons. Dozens were detained for exercising their right to freedom of expression and assembly, including demonstrating in support of the Intifada or in opposition to war on Iraq. Dozens of others were arrested on suspicion of involvement with Islamist groups, or of "terrorist" activity, or of gun-running to support the Intifada.

**Freedom of the press**

In addition, the amendments granted authorities sweeping powers to jail and fine journalists and to shut down publications that violate a host of vaguely defined proscriptions. The amendments stipulate that publications can be temporarily or permanently banned for printing "false or libellous information that can undermine national unity or the country's reputation," "aggravate basic social norms," "sow the seeds of hatred," or "harm the honour or reputation of individuals," among numerous other restrictions. Offending editors, publishers, or reporters face prison sentences of up to six months and fines of 5,000 Jordanian dinars (about US$7,000) for violating these and other bans.

Since the terrorist attacks on New York and Washington, Jordan has cracked down even further on journalists. Article 150 of the Penal Code is the most draconian measure yet. In March 2002, Ms. Toujan al-Faisal, prominent journalist and former parliamentarian, had posted an open letter on the Houston (Texas)-based Arab Times website accusing Prime Minister Ali Abu Ragheb of personally profiting from a new government policy to double auto insurance rates. Under Article 150 of the Jordanian Penal Code, al-Faisal's letter constituted a punishable offence. After her arrest on March 29, Ms. al-Faisal was tried and was convicted by the State Security Court on charges of "tarnishing the Jordanian state", defamation of the judiciary, "uttering words" before another deemed to be "detrimental to his religious feeling", "publishing and broadcasting false information abroad which could be detrimental to the reputation of the state", and inciting "disturbances and killings" on charges including "publishing and broadcasting false information abroad which could be detrimental to the reputation of the state," "uttering words" before another deemed to be "detrimental to his religious feeling," defaming the judiciary, and inciting "disturbances and killings." On May 16, a State Security Court sentenced her with the harshest sentence of 18 months without the right of appeal against this sentence. al-Faisal was held in detention for some 11 days until being released on bail on 27 March and was re-arrested three days later. Toujan al-Faisal was released from jail on June 26, 2002 after a month-long hunger strike.

**Freedom of peaceful assembly**

Since September 11, 2001, virtually no demonstrations have been allowed in Jordan. Scores of people were arrested at the end of September and beginning of October 2001 for holding rallies in the Baqa refugee camp and on the university campuses to commemorate the first anniversary of the Palestinian Intifada and to protest the bombing of Afghanistan. They were held incommunicado without access to their families and lawyers, only to be released without charge several weeks later. It is reported that detainees were denied the right to make telephone calls.

On November 9, 2001 Jordanian authorities refused opposition parties' request to march in protest of "US, British and Zionist aggression Palestine, Iraq and Afghanistan". On November 13, police halted a rally supporting the people of Afghanistan held inside the Professional Association Complex in Shmaysani (Amman). The President of the Professional Associations Council, Abd Al Hadi Falahat informed the media that, conscious of the ban on public demonstrations, the Professional Associations had decided to hold the rally inside the Complex and had not expected the authorities to interfere in a legal internal activity. The President of the Jordanian Bar Association, Salih Armuti, protested that the authorities' interference with the meeting contravened the rights of diplomacy.
professional associations.

**Judicial system and State Security Courts**

The Jordanian judicial system consists of several types of courts. Most criminal cases are brought before civilian courts, which include the Appeals Courts and the Supreme Court. Cases involving sedition, armed insurrection, financial crimes, drug trafficking, and offences against the Royal family are tried in the State Security Court (SSC). Defendants in the State Security Court have the right to appeal their sentences to the Court of Cassation, which is authorized to review issues of both facts and law.

The State Security Court in Jordan, which almost invariably uses military judges and a military prosecutor, does not provide the same guarantees of independence and impartiality provided by the ordinary courts. The Human Rights Committee expressed concerns in 1994 for the State Security Court continues to exercise special jurisdiction and recommended that consideration be given to its abolition. At least 15 death sentences were passed, two of which were commuted to life imprisonment and three to 15 years. There were at least 14 executions, of which at least three were executed following unfair trials.

Cases referred to the SSC concerned both allegations of “terrorist” activity and the publication of materials deemed to be “harmful” to the reputation of the State. Defendants in high-profile cases before the State Security Court claimed to have been subjected to physical and psychological abuse while in detention.

**4. Turkey**

**Preliminary observations**

Although there has been perception of Turkey becoming a more and more security-oriented nation, the terrorist attack against the United States has strengthened Turkey's conviction that the fight against terrorism should be backed internationally\(^97\). Since 1970s, Turkey has been engaged in fighting terrorism. During the last two decades, the Kurdish issue, especially, involved cross-border aspects and became of international concern. One part of the Turkish strategy to deal with this problem was to seek international cooperation in fighting against terrorism. Turkey has played an active role in drafting and adopting various international documents, thus contributing to codification endeavour in view of securing enhanced cooperation in the fight against terrorism\(^98\). As far as the phenomenon of terrorism and the threat of terrorist activities were formally recognized as an international concern, Turkey was indeed the main beneficiary of the new international atmosphere.

Turkey submitted its initial report to the UN Counter-Terrorism Committee on the measures adopted to implement the UN resolution 1373 on 31 December 2001\(^99\). Turkey is party to the following UN human rights treaties which have corresponding treaty bodies: the International Covenant on Economic and Cultural Rights\(^100\); the International Covenant on Civil and Political Rights\(^101\), the United Nations Committee Against Torture\(^102\), the International Convention on the Elimination of all forms of Racial Discrimination\(^103\), the Convention on the Elimination of All Forms of Discrimination against Women\(^104\) and the UN Convention on the Rights of the Child\(^105\). Regarding relevant UN Charter based bodies, it should be noted that the UN Special Rapporteur on Torture carried out a visit to Turkey from 9 to 19 November 1998 and issued a report January 27, 1999\(^106\); the special representative of the UN Secretary-General on Internally Displaced Persons (IDPs), Dr. Francis M. Deng undertook a visit to Turkey between 27 and 31 May 2002 and the UN Special Rapporteur Ms Asma Jahangir on extrajudicial, summary and arbitrary executions visit Turkey between 19 February and March 1, 2001\(^107\). On a regional level, Turkey is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)\(^108\) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment\(^109\).

The EU's decision in 1999 at Helsinki to recognize Turkey as a potential candidate for full-membership had deep ramifications on Turkey's domestic policies during the last three years. Clearly, the Helsinki decision has accelerated the process of democratic consolidation in Turkey and a number of crucial reforms in the political realms have been accomplished since 2001\(^110\). However, the process of democratisation is far from being complete and the theoretical legal reforms still need to be matched in practice. The European Parliament and the European Commission continuously stressed the key role in this process of executive and judicial bodies at different levels, throughout the country, to implement the reforms in line with the spirit in which they have been adopted\(^111\).

Despite these significant legal improvements, Turkish legal system continues to allow restrictions on expression of opinions which are perceived as offensive to the State ideology guaranteed in legal documents. The concept of
"National Security" in Turkey is still used to draw the borders of the political sphere of the authoritarian structures of the Constitution in a way to exclude any political criticism. Many cases before the Criminal Courts and the State Security Courts (DGM) have raised serious concerns with regards to the recognition of the freedom of expression and the recognition of other human rights safeguards in Turkey.

**The 1982 Constitution**

Turkish Constitution of 1982, which has been described by Turkish jurists as a "Constitution of exceptions", was adopted under the military regime under the leadership of National Security Council (MGK) who took over the government on 12 September 1980. The preamble of the Constitution sets the ideological framework vehemently. The paragraph 8 of the Preamble, which is widely quoted by the Public Prosecutors, stipulates that "the Constitution should be read with due loyalty to its determination that no protection shall be afforded to thoughts or opinions contrary to Turkish National Interests, the principles of existence of Turkey as an indivisible entity with its state and territory, Turkish historical and moral values, or the nationalism, principles, reforms and modernism of Atatürk..."

On 3 October 2001, the Grand National assembly of Turkey (Türkiye Büyük Millet Meclisi) adopted a law amending Articles of the Constitution (Law N° 4709)\(^1\). Article 13 and 14 concerning abuse of fundamental rights and freedoms were worded to a large extent. Previous explicit restrictions were removed from article 13\(^2\), but retained in Article 14\(^3\).

**The Turkish Penal Code (Türk Ceza Kanunu)**

The Turkish Penal Code (Law N°. 765, Adopted March 1, 1926) took its spirit from the Italian Penal Code drafted under Mussolini. It has been frequently amended since its introduction on March 1, 1926. Most of the political offenses are defined in the chapter on "Crimes against the Personality of the State" (Articles 125 to 173) and there are few other provisions in this law that restrict the freedom of expression.

Until 1991, most of the political prisoners were charged under Articles 140 (disparage the State abroad), 141 (propaganda and membership of a communist Organization), 142 (separatist propaganda) and 163 TPC (propaganda and membership of a fundamentalist organization). The Law on Fighting Terrorism of April 12, 1991(LFT - N°3713- also called Anti-Terror Law, Adopted April 12, 1991) abolished these provisions. Article 7 LFT foresaw imprisonment for member of terrorist organizations as defined in Article 1LFT (that in a sense replaced Article 141 TPC). Article 8 LFT replaced article 142 TPC.

Most recently some of the provisions most frequently used to limit free expression include Articles 155, 158, 159 and 312 of the Penal Code.

Article 155 states that "Those who, except in circumstances indicated in the aforementioned articles, publish articles inciting people to break the law or harm the security of the country, or make publications or suggestions that make people unwilling to serve in the military or make speeches to that end in public meetings or gathering places, shall be imprisoned between two months to two years and be punished with a heavy fine between twenty-five and 200 million lira. Article 158 states that, "Whoever insults the President of the Republic face-to-face or through cursing shall face a heavy penalty of not more than three years.... Even if the name of the President of the Republic is not directly mentioned, allusion and hint shall be considered as an attack made directly against the President if there is presumptive evidence beyond a reasonable doubt that the attack was made against the President of Turkey. If the crime is committed in any published form, the punishment will increase from one third to one half".

Article 159 of the Turkish Penal Code, one of the most widely-used provision, grants a "moral personality" (manevî sahsiyeti) both to corporate bodies, such as the judiciary and parliament, and to abstract concepts like "Turkishness." Article 159 warns that, "Those who publicly insult or ridicule Turkishness, the Republic, the moral personality of Parliament, the Government, State Ministers, the military or State security forces, or the moral personality of the Judiciary will be punished with a penalty of no less than one year and no more than three years of heavy imprisonment". The Sixth EU harmonization package adopted on June 19, 2003 amends the Turkish Penal Code (TPC), which pertains to expand the contents of freedom of thought and expression. Under the law, the last paragraph in Article 159 of the TPC has been changed to "expressions of thought with the purpose of criticism, which do not include any deliberate words of insult or swearwords, and do not necessitate punishment". This article also includes provisions pertaining to the crime of insult against the moral personality of the state and state officials. Article 1 of the 6th harmonization package (Law N° 4928) amended the first paragraph of Article 159 of Turkish Criminal Code, and changes the minimum punishment from one year to three months. In the last paragraph of the Article, it is regulated that any expression of
ideas, which is not made with intention of insulting, satirizing and cursing, but with intention of criticism does not induce any punishment. While reducing the minimum punishment to three months, and not punishing ideas expressed with the intention of criticism are positive amendments, the first paragraph of the article, which defines the punishment, is maintained, thus freedom of thoughts remains under threat.

Another frequently used article is the Article 312/2, which prohibits ''incit[ing] people to enmity and hatred by pointing to class, racial, religious, confessional, or regional differences.'' Article 312 was amended by Law No. 2370 in October 1981, after the military coup of September 1980, to add paragraph 2. Before the amendment, Article 312 made no mention of "racial, religious, confessional, or regional differences." In addition, Article 312/2 carried a heavier penalty, one to three years of imprisonment, than did Article 312/1 (praising a crime), which had mandated imprisonment from three months to one year. The new version narrowed the use of this article by introducing the condition "that the incitement was done in a form that could endanger public order" (so far this condition had been a reason for an increase of the sentence).

The Turkish Penal Code incriminates expression of thoughts, ideas and opinions in a very vague way. A large number of "though and expression crimes" are regulated under the section "Felonies against the State", and dealt with by the State Security Courts (Devlet Güvenlik Mahkemesi). Offences defined in Articles 125, 131, 146, 147, 148, 149, 156, 168, 171 and 172 of the Turkish Penal Code, according to Article 3 of the Anti-Terror Act of 1991, are "terrorist offences" while the article defines another category of "offences committed for terrorist purposes" according to which offences incriminated under articles 145, 150, 151, 153, 154, 155, 169 and the second paragraph of article 499 of the Turkish Penal Code (TPC).

The 6th EU Package (Law N°4928) also amended Article 169 of the TCK related to the crime of "aiding and abetting terrorist organizations". Article 169 TPC is about to become a provision used against dissident voices. Imprisonment of between 3 and 5 years is sought for all those, who "help or provide shelter to militants of an armed gang" (supporting an illegal organization). In connection with protests against isolation in F-type prisons a large number of demonstrators, members and executives of trade unions or association of civil societies (NGOs) have been charged under this provision, although most of them were acquitted. Article 2 of the Law N°4928 deletes the statement "... and facilitates its actions in any way" from Article 169 of Turkish Criminal Code. While this deletion is a positive development, it is not clear whether people will still be charged because of helping illegal armed organizations, because of giving presentations in panels, giving petitions, writing "education in mother tongue is a basic human right", bringing violations of human rights in the prisons on the agenda, criticizing violations. The practice in trials will demonstrate if this legal change will be matched by any practical improvements.

The Law N°3713 on Fighting Terrorism

The Law 3713 on Fighting Terrorism, the so-called Anti-Terror Law, entered into force on 12 April 1991. The Law introduced the notion of "terror crime" broad enough to include almost all kind of oppositional activities and not necessarily equated to violent methods. In Turkey, the Anti-terror law has indeed been widely used to curb freedom of expression and internal opposition, mostly against people accused of aiding or being members of the PKK or other leftist groups.

The Sixth European Union (EU) harmonization package (Law N°.4928) adopted on July 19, 2003, amending the Anti-Terror Law. The word "pressure" stated in article 1 of the Law 3713 was deleted from the definition of terrorism. Thus, violence and use of force remain the fundamental elements in the definition of terror. Article 20 of the Law N° 4928, amended article 1 of the Anti-Terror Law regarding the "Definition of terror and organization". Its first and second subparagraphs have been amended as follows: "Terror is the criminal acts committed by a person or persons as members of an organization by using force and violence; by method of oppressing, scarifying, deterring, suppressing or threatening, in order to change the features of the Republic as prescribed in the Constitution, the political, legal, social, secular, economic order, to dismantle the indivisible unity of the State with its territory and nation, to endanger the existence of the Turkish State and the Republic, to weaken or destroy or take over the State authority, to destroy fundamental rights and freedoms, to harm the internal and external security of the State, the public order or the public health."

Article 3 termed specific offences from the Penal Code "terrorist offences". Article 5 provides for increased sentences for all "terrorist offences". Journalists have been facing prosecution under Article 6 if they "disclose...
the identity of officials on anti-terrorist duties, or who identify such persons as targets" or those who "print or publish leaflets and declarations of terrorist organizations". The penalties include fines and closure of publication.

The Article 8 of the Anti-Terror law, entitled "propaganda against the indivisibility of the State", was abolished on 20 July 2003. This highly controversial provision of the Anti-Terror Law has been the legal ground for many verdicts against Turkey by the EctHR on the grounds of human rights violations and the restriction of freedom of expression. It stated that, "Written or oral propaganda, along with meetings, demonstrations, and marches that have the goal of destroying the indivisible unity of the state with its territory and nation of the Republic of Turkey cannot be conducted." The reason mentioned by the government to delete this provision was that Turkey did not need this article (article 8) to protect its integrity because article 312 of the Criminal Code already contained similar provisions.

The Seventh EU harmonization package adopted on July 30, 2003, narrowed paragraph 2 of Article 7 of the LFT on support and propaganda for illegal organizations by introducing the condition "in a form that encourages the use of terrorist methods". Indeed, Article 30 of the Law now states that "Those who assist members of organizations constituted in the manner described in the subparagraph above or those who conduct propaganda in such a manner as to encourage resorting to violence or other terrorist means shall be punished, separately from any other crime that their actions might constitute, with imprisonment of between 1 and 5 years and with a heavy fine of between 500 million and 1 billion Turkish liras." Article 30 of the Law amends the second paragraph of the Article 7 of the Anti-Terror Law No. 3713. Under this amendment, those who provide assistance to the terrorist group members or who hold activities encouraging people to commit acts of terrorism or acts of violence shall be sentenced to imprisonment for one year to five years. This article wholly regulates the crimes of thought. The notion of assistance and the list of behaviours or acts that shall be considered assistance are still uncertain. One has to keep in mind the modification to the Article 169 of the TPC made by the 2nd article of the bill. The following provisions in Article 169 TPC were excluded from the text since it was found abstract and obscure: "no matter what the purpose is, facilitating activities." It is understood that after abolishing Article 8 of the Anti-Terror Law and because of the bad reputation of the article 169 TPC, Article 7 of the Anti-Terror Law is chosen as the one to be mostly use as a tool for repression. Under these circumstances and for the above mentioned reasons, these latest arrangements fall short in providing significant democratic improvements. Furthermore, two provisions of the LFT that have remained unchanged although they discriminate political offences are Articles 5 and 17 of the Anti-Terror Law No. 3713. 

**The use of exceptional jurisdictions: State Security Courts and Military courts**

The common denominator of the Constitutional Court, the Court of Appeal, the Military Courts and the State Security Courts in interpreting the limitation of rights is the supreme position accorded to the Turkish nationalism, which implicates a very wide understanding of the notion of national security.

Numerous articles of Turkish Penal Code deal with matters that are considered terrorist crimes under the Anti-Terror Law. Some provisions of the Turkish Penal Code (TPC) were included in the scope of the State Security Court (Devlet Güvenlik Mahkemesi - DGM). Then, political prisoners may find themselves charged either by usual penal and criminal courts, but mostly at the extraordinary State Security Courts.

Concept of the "exceptional courts" includes the courts whose judiciary power is contrary to the principle of natural judge and these courts stay out of the usual courts which use general judiciary power, because of the trialed people by them and the topics of the cases. In other words, the courts that were established: In order to trial/hear specific cases and individuals; In order to work in the specific regions and specific parts of the country; In order to trial only the specific offences, are exceptional courts. These courts violate the principle of the "natural judge", because they have exceptional courts' characteristics.

The concept of the exceptional courts includes all the courts whose aims and rules violate the principles of the fair trial in the comprehensive meaning. If it is necessary to give an example from Turkey, the Martial Law Courts, Military Courts and State Security Courts are the exceptional courts in the narrow interpretation. Most typical example of the exceptional courts in the comprehensive interpretation is the usual courts that are controlled by the political tendencies and work according to political aims. This fact is called "manipulating the judiciary" and it means that the judicial bodies are used as the vehicles to struggle against political oppositions. In respected to the political power, the same fact also provides a
mechanism to defence and to clear of responsibilities. Acquitted by the courts, the suspects of the murders by unidentified assailants or perpetrators of the torture are the remarkable example that shows the usage of the political power in these courts. And these facts also show that these courts are the mechanisms to defend themselves.

In Turkey, the Martial Law Courts and the State Security Courts were established respectively in the period that the democracy and freedoms were put aside.

It is interesting that in spite of the restrictions on the freedoms, the restrictions on the rights of offenders according to the new concept of security and the tendency to refer the emergency judgement methods in all over the world since 11 September, some positive amendments which provide benefit for the freedoms and suspicious people in the structures and the rules of the existing exceptional courts have been made in Turkey. Among these amendments, there is the abolishment of death penalty, the end of the trials of civilians at the military courts, the usable of the rights of accused people under the Law No. 3842 at the State Security Courts. Another problem is that whether these amendments are carried out or not. I will mention about this issue later.

In Turkey, no new exceptional courts have been established since 11th September. There are many exceptional courts that were established in the former periods and they are still working. This might be one of the reasons why there are no any exceptional courts that have been established after 11th September.

There are two main criteria to decide whether existing Courts in Turkey are exceptional courts in the narrow interpretation. The first criterion is whether these courts are appropriate to principle of the “natural judge”. The second one is whether these courts have characteristics in their structures and methods for the fair trial. Prof. Dr. Nurullah Kunter describes the principle of the natural judge as "the trial of a person at the general courts that were established before the event and has no any relation between its establishment and the principal facts of the case" (Kunter, Criminal Procedure Law, pp.145). However, there is no joint idea on the definition and the content of the natural judge's principle. As an example, even they were established before the specific event, it is accepted generally that hearing of some cases in the exceptional courts which normally have to be heard by usual courts in order to realize the correct trial violates the natural judge principle. In this view, it is defended that if a person who has to be judged by usual criminal courts is judged by the State Security Courts, the principle of the natural judge is violated. Because the establishment of the State Security Courts depends on the political reasons, even they had been established before the specific case.

Concerning the exceptional characteristic of the courts, the second criteria is that "if the establishment and the methods of the courts violate the principle of fair trial." Article 6 of the European Convention on Human Rights (Convention) is used to determine if the courts fit the second criterion. As known, Article 6 of the Convention provide that; all individuals have the rights to be trialed by an independent (1), impartial (2) and established according to laws(3) court (4). This provision refers to 4 characteristics of the usual courts. If one of these characteristics violates, the usual courts is considered as the exceptional courts. These characteristics are independence, being impartial, established by the laws and finally being court.

1. The Martial Law Courts:

The Martial Law Courts were established after the Military Coup dated 12 March 1971 under the Martial Law No. 1402 on 15 May 1971. Presided by a military officer with no judicial capacity, these courts were composed of military officers who had judicial capacity. Their authorities were quite extensive. Adopted in 1982, Article 122 of the Constitution was regulated the Martial Law Courts.

Re-established on 29 April 1979, the Martial Law Courts were abolished gradually. In 1987 they were lifted completely. However, the Martial Law Courts are based on articles 122, 143 and 145 of the Constitution and the military courts work as the martial law courts in the periods of martial law.

Even established regionally, these courts have an extensive authority and they can behave as responsible for the judgement anywhere in the country with the allegation that are related to events in the region. These courts clearly violate the principle of the natural judge, since they are given the authorization to trial the past cases and the cases relating with people and events that occur outside of the region or the province. Because of the aims of their establishments, the methods to judge and the characteristics of the judges, these courts were not independent and impartial courts.

2. The State Security Courts

After the abolishment of the Martial Law Courts, the State Security Courts were established to work with independency of the announcement of the Martial Law. Namely establishing these courts aims to do Martial Law Courts' duty. State
Security Courts were established in 1973 according to adopted amendments on 1961 Constitution. In 1975, they were abolished because the Constitutional Court abrogated the relevant law (Constitutional Court's decision 1974/35 E, No. 1975/126K).

After the military coup dated 12 September 1980, the State Security Courts were given constitutional support again according to 1982 Constitution and they were re-established in 1983 under the law no 2845.

Since 1999 (Law n°4388), the State Security Courts are composed of civilian judges and prosecutors.

These courts have applied the urgent judiciary methods under the provisions of their own specific rules (2845). Recently, detention periods for accused people whose cases were judged by the State Security Courts were much longer than in the ordinary courts cases and it was not possible for a suspect to meet his/her lawyer before being heard by the judge.

However, on 15.07.2003, in the frame of the harmonization process Turkey to EU, the new law No. 4928 amended the application mentioned above.

Despite this advancement, the State Security Courts have the characteristics of exceptional courts. Since they were established to protect "security of state" instead of rights and freedoms of the individuals, these courts can not be considered as ordinary courts. Furthermore, these courts still depend on different adjudicating rules which are not applied by the usual courts.

Example of blatant disregards to the right to a fair trial before the State Security Courts in Turkey: The DEP Kurdish Deputies' trial before the Ankara SSC n°1

Leyla Zana, Orhan Doğan, Selim Sadak and Hadip Dicle had been convicted on 8 December 1994 by the Ankara State Security Court of "membership of an armed gang" contrary to Article 168 of the Turkish Penal Code and were sentenced each to a term of 15 years imprisonment. However, on 17 July 2001, the European Court of Human Rights (EchHR) ruled that the said four former parliamentarians had not received a fair trial at the Ankara State Security Court that at the time of the trial included a military judge.119 The EchHR held that the Ankara State Security Court, as composed then, was not "an independent and impartial tribunal."120 Following this ruling, Leyla Zana and her three co-defendants are now being re-tried and hearings have so far been held before the No.1 Ankara State Security Court on 21 February, 28 March, 25 April, 23 May, 20 June, 18 July and 15 August 2003..

The International Federation for Human Rights (FIDH), that observed the 15 August hearing and has closely monitored the previous ones before the Ankara State Security Courts (SCC) remains gravely concerned by the continuing disregards of the principle of independence and impartiality of the court. The trial of the four Kurdish deputies still falls short in providing sufficient guarantees with regards to the right to a fair trial121 in so far as the principles of equality of arms between the prosecution and the defence and the independence and impartiality of the tribunal are concerned. Repeated delays in this trial further give rise to doubts about the effectiveness of the guarantees that the State Security Courts can offer so far.

There still remains a serious amount of disregards for the principle of the equality of arms between the prosecution and the defence, the independence and impartiality of the court, and the presumption of innocence. Equality of arms between the parties before a court is essential and of fundamental importance to the notion of a fair trial under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The principle that there should be equality of arms between the parties before the court is of fundamental importance to the notion of a fair trial under Article 6 of the Convention. Each party in a case is to have a reasonable opportunity of presenting its case to the court under conditions which do not place that party at substantial disadvantage vis-à-vis its opponent.122 The equality of arms principle necessitates that there be parity of conditions for the examination of witnesses. Article 6 further provides that everyone is entitled to a fair and public hearing by "an independent and impartial tribunal established by law". Furthermore, the presumption of innocence and the continued detention of the defendants are of further particular concerns. As a natural and legal consequence of the ruling of the EchHR on 17 July 2001, the present re-trial is to be considered as, and in actual fact is, a completely new process with the aim of remedying the defects that existed in the first trial whereby the defendants were each sentenced to a 15 year term of imprisonment. Therefore, extreme care and caution must be taken to ensure that the trial this time is fair and in conformity with the ECHR and with Turkey's international obligations arising from the said Convention.

The solution is the abolishment of these courts. Likewise the chairperson of the Court of appeals who is the high level
representative of judicial power, Eraslan Özkaya, pointed out in his statement which was made in the opening ceremony of the 2003-2004 Court Year, these courts are contrary to principle of the natural judge and abolishment of them is a necessity.

The European Court of Human Rights (ECRTHR) has pointed out several times that these courts fall short of presenting all the guarantees of a fair. Given this state of affairs, the persistence of the States Security Courts system and the pursuant continuing disregards to the principles of independence and impartiality of the judge are major concerns. Judicial system reform process, and in particular the abolition of the State Security Court, should urgently become a priority for the Turkish government in its bid to join the European Union.

3. The Military Adjudication:

In Turkey, military adjudication is a problem in itself. In Turkey, the Military has its own criminal courts, court of appeals and High Administration Court as well as discipline Courts.

Military adjudication not only violates the principles of the ordinary and just courts but also violates the principle of the "adjudication unity, corporation". Besides the military institutions and military rules, soldiers also established their own judicial institutions and rules on adjudication. The judgements of the military courts are not examined and investigated by the civilian judicial institution at any stage. More importantly, these institutions were able to trial civilians even the periods of peace, not long time ago. Concerning with the military service of the civilians and activities and process that were committed during military service, launched administrative trials are still heard by the high military administration courts. The mentioned trials also include many cases that are related to individuals' civilian rights and obligations. For example, actions for damages which are launched because of the military services or suffered damages during the military service are heard by this court.

The Military Criminal Adjudication

The Military Court Of Appeals

According to 2nd paragraph of the article 156 of the Constitution, "Members of the Military High Court of Appeals shall be appointed by the President of the Republic from among three candidates nominated for each vacant office by the Plenary Assembly of the Military High Court of Appeals from among military judges of the first category, by secret ballot and by an absolute majority of the total number of members." As understood from this provision, all the members of the Court of Appeals are elected by the President of the Republic. Moreover, according to their vocational and military record military judges can be nominated to work in the court of appeal or to become first class military judges.

The Military Courts

The Military Courts was projected by the Article 145 of the Constitution and established under the Law on Establishment and Procedure of the Military Courts (No. 353) that was adopted 25 October 1963. There are two types of members in the military courts: those who belong to military judges and those who belong to military officers. Members who belong to the military officers are not lawyers and they are subjected to the hierarchy. Military judges are appointed by the proposal of the Ministry of National Defence, by the acceptance of the prime minister and by the approval of the President of the Republic (Article 16), according to their vocational and military records' average (Article 11/2). Namely, all the military judges are determined by the executive bodies.

The Discipline Courts

The Discipline Courts were envisaged by the Constitution (article 145/1). Establishment of the discipline courts was regulated by the Law on Establishment and Procedure of the Discipline Courts and Discipline Criminals and the Punishments (477), dated 16.6.1964. These courts have a power on some small offences which is called as "discipline offence" according to Articles from 47 to 62 of the Law no 477. These courts are composed of soldiers. The people who are tried before these courts might be sentenced to 2 months imprisonment. In practice, people who are punished by these courts suffer severe conditions in detention, for discipline.

The High Military Administrative Court of Appeals

The High Military Administrative Court of Appeals was envisaged by the Constitution. Its judiciary methods are regulated by Law No. 1602. According to the paragraph 2 of
the Article 157 of the Constitution, "Members of the High Military Administrative Court of Appeals who are the military judges shall be appointed by the President of the Republic from a list of three candidates nominated for each vacant office by the president and members of the Court, who are also military judges, by secret ballot and by an absolute majority of the total number of such members, from among military judges of the first category; members who are not military judges shall be appointed by the President of the Republic from a list of three candidates nominated for each vacant office by the Chief of the General Staff from among officers holding the rank and qualifications prescribed by law."

Article 7 of the Law on High Military Administrative Court of Appeals (No. 1602) envisages that the candidates from the members of military judges who are the lieutenant colonels and first class military judges at least can be nominated and candidates who do not belong to judges have to be chosen from the general staff officers who has not worked for 3 years in colonelcy and the general staff of the lieutenant colonel who have worked for 2 years.

Anti-terrorism and legitimization of torture

In issuing its concluding observations and recommendations in May 2003, the United Nations Committee Against Torture (CAT)123 raised an important number of areas of major concern, including the use of torture by the police, particularly during police custody; the impunity of public officials responsible for such acts and the existence of status of limitation for acts of torture; the reliance on confessions as main element of convictions; the lack of training of medical personnel and Turkey's failure to execute judgements of the European Court of Human Rights.

In addition, in its alternative report submitted to the CAT at the beginning of May 2003124, the FIDH puts emphasis on the lack of implementation in practice of the legal reforms recently adopted by Turkey in the recent years in order to comply with CAT's obligations and EU standards.

In addition, the FIDH insisted on the necessity for Turkey to modify the definition of torture. In Turkey torture is prohibited not only by the Constitution, the Penal Code and the Code of Criminal Procedure. However, the Turkish Penal Code (TPC) provides a very narrow definition of torture, which was limited to acts committed with the aim of making the victim confess to an offence. On 26 August 1999 the definition of torture was broadened, making acts committed by a civil servant or public employee for any purpose punishable. The old version of Article 243 TPC reads: "Any president of a court or assembly, or any other public servant who tortures a suspect in order to elicit a confession or resorts to cruel, inhuman or degrading treatment shall be sentenced to up to five years' imprisonment and temporary or permanent disqualification from service." In 1999 this was amended to: "A civil servant or other public employee who resorts to torture or cruel, inhuman or degrading treatment in order to make a person confess a crime, to prevent a victim, plaintiff, somebody participating in a trial or a witness from reporting incidents, to prevent them from filing a formal complaint or because they filed a formal complaint or for any other reason, shall be sentenced to a heavy prison penalty of up to eight years and permanent or temporary disqualification from service." A sentence of up to five years' imprisonment and temporary disqualification from holding public office was introduced for ill-treatment or physical harm (Article 245 TPC). According to an important ruling of the Appeal Court, Turkish courts should stick close to the lower limit of sentences for torture. If the lower limit of one year's imprisonment is applied, the judge can postpone the imposition of the sentence and the perpetrator is normally not suspended from duty. In case that the torture results in the (unintentional) death of the victim Article 452 TPC is applied, providing for imprisonment that is to be increased by 1/3 to 1/2. If lasting damages of the health of the victim occur, Article 456 TPC is applied and the sentences also have to be increased by 1/3 up to 1/2.

In its bid to join the EU, Turkey has adopted a series of legal reforms in October 2001 and in the course of 2002 and early 2003, which have the potential to curb the practice of torture in Turkey, including regarding detention practices and related risk of torture. On September 18, 2002 regulations were adopted to make it obligatory for the police to read detainees their rights and inform them, on being taken into custody, of the charge against them. The regulations provide for arrested people to be granted the right to call a relative to inform them of their detention, and the restriction of periods of police or gendarmerie detention to a maximum of four days, to be extended only by court order. In addition, detainees were formally to be guaranteed the right to see a doctor without a security being present. The widespread practice of blindfolding detainees during interrogation was also reported to have been formally abolished in May 2002. However, cases reported since the adoption of such regulations demonstrate that measures have not been applied consistently. The reduction of the length of period police custody within the jurisdiction of State Security Courts to 48 hours neither have entirely solve the risk of torture for those detained offenders.
Repression against Human Rights Defenders

According to the information gathered by the Human Rights Association of Turkey, number of the launched investigations against the people who used their freedom of expression was 166 in 1999, 468 in 2000, 3,473 in 2001 and 2,498 in 2002. Following the 11th September, this numbers increased.

Examples of judicial oppressions against the Human Rights Association in the first seven months of 2003 read as follows:

- Ankara Criminal Court No.1 decided 46 executives of the headquarters 3 months imprisonment and 35,591,400TL fine and after this decision it decided 249,130,000 fines, on 21 May 2003. The sentence was given because of the 33 banned publications which were found at the Headquarters during the search that was made on 25 January 2001. Executives of the association were not informed about launched prosecution against themselves under the reason that they violated the article 526/1 of the Turkish Criminal Code. Executives were not informed about the decision either. The sentence was communicated/given a written notice to them on 21 May. There are two passed away executives among them. It is very thought-provoking that the cases against these executives had not been struck out.

- The headquarters and the Ankara Branch Office of the HRA were raided by the Anti-Terror Branch of Security Directorate and the prosecutor of the State Security Court. Reports and documents concerning with serious human rights violation for 17 years, video tapes, computers, notebook that we wrote our decisions and some photographs were confiscated. Faxes and mails were examined. These documents included the information about thousands of people who forced disappeared, about 3,800 villages that were burned and emptied, thousands of people who were subjected to torture and killed in the extra judicial executions. Namely, these documents were the witnesses of the dark periods that were experienced. Whereas we have never seen that the authorities from the prosecutor's offices examining these documents to gather evidences related to violations of human rights that we called as crime against humanity, for 17 years. They have never examined these documents to investigate and determine these crimes.

- Because of the delay of the notice concerning the chance of the director of the Human Rights Newsletter that was issued by the Headquarters of the HRA, Prosecutor's office on publication affairs ordered 10 billion Turkish Lira's fine. This amount was not paid by the executives and an investigation was launched against HRA's president Hüsnü Öndül and Secretary General Feray Salman. The trial is due to be held on 30 October 2003, at the Ankara Criminal Court No. 3.

- When Osman Baydemir, who was the former deputy president and the former chairman of the Diyarbakir Branch Office of the HRA, gave up his duty in the General Assemble on 21 November 2002, about 200 prosecutions were pending against him (Many of which are still pending).

- 120 prosecutions launched against Mrs Eren Keskin, Vice-President of the Human Rights Association. Some of these cases ended with the decision of acquittal but some of them are still pending.

- The Turkish Grand National Assembly's response concerning with the demand of the non discrimination General Amnesty that Turkish democratic public opinion envisaged in order to being solved Kurdish problem in peaceful and democratic ways was the issuing new Penitence Law. This application has reflected trials against Human Rights Defenders. Under the article 169 of the Turkish criminal Code, the trial launched against our chairman of the Diyarbakir Branch Office of the HRA's president Hüsnü Öndül and Secretary General Feray Salman. The trial is due to be held on 30 October 2003, at the Ankara Criminal Court No.1 against executives members of the Ankara Branch Office the said question was asked. According to amendments on some laws namely EU harmonization packages, prosecutions launched under the article 169 have to be strike out, because of the amendments made to this article. The Chairman of the Izmir Branch Office of the HRA, Mustafa Rollas who appeared before the Izmir State Security Courts was asked the same question although he supposed to participate opening ceremony of this
seminar. Rollas told them that his activities were concerning with defence of human right and he rejected their question. According to his statement, public prosecutor of the state security court took his additional testimony and launched trial against him was changed as under the article 7 of the law on anti-terror. This application is the indicator of failures of the legal amendments which was made because of the harmonisation to EU. Recently the trials against the executives of the HRA under the article 169 of the Turkish Criminal Code has been ended the decision of retrial according to the article 7 of the Anti-terrorism Law.

2. One of the executives of the HRA who is also the chairman of The Bingöl Branch office, Ridvan Kızgin, was threatened by Gendarmerie Central Command in Bingöl Province on 9 July 2003.

3. Chairperson of the Mus Branch office, Sevim Yetkiner was arrested under the suspicion of her attendance as an observer to one of the political prisoners' funeral ceremony who died in the prison on 17 July 2003. After her arrest, a trial was opened on the grounds of Article 169 of the Turkish Criminal Code. She remained in prison for 20 days and after 20 days she was judged at the Erzurum State security Court. She was also asked whether she regretted or not. The trial against Sevim Yetkiner is still pending on.

4. The secretary of the Hakkari Branch Office, Ismail Akbulut was detained in Bitlis Prison because of a press statement, under the suspicion of the helping and abetting an illegal organization on 19 February 2003. After 68 days detention in the prison, he was judged by the Van State security Court No.2. The Court held his acquittal and released him.

5. Siirt Branch office of the HRA was raided by security forces on 15 August 2003. Audio tapes, CDs, hard disks of the computers and diskettes found in office were confiscated.

Pressures against human rights defenders further include obstructions of activities such as the panels, symposiums and seminars, interventions to press releases, bans on competitions and festivals, banned on visual equipments such as posters and confiscation of these materials. Bingöl, Urfa, Siirt and other branches in the region is subjected to this type of pressures.

**Follow up of the State of Emergency’s lifting (November 30, 2002)**

Turkey introduced first martial law then emergency rule (OHAL) in 13 provinces in 1987. About 37’000 have been killed in the 15-year-long conflict and millions uprooted from their homes as Turkish security forces waged a ruthless war on the PKK, the Kurdish paramilitary group, and the local population. Regional Governors of provinces under the State of emergency have been given authority to limit freedom of expression, press and assembly, confiscate publications, carry out warrant less, searches, evacuate villages and remove people from the provinces of which are considered to be a threat to public order. In addition, no judicial review of the Governors’ actions are subject to any judicial review.

State of emergency rule was gradually lifted as fighting between Kurdish separatists and government troops died down. It was lifted in Siirt in November 1999, in Van in June 2000. On 30 July the State of Emergency ended in Tunceli and Hakkari provinces. In 1979, martial law had been announced in these provinces and in 1987 been replaced by the state of emergency. In November 2002, Turkey’s National Security Council - which groups Turkey's top generals and government leaders - has agreed to lift the State of Emergency Rules (OHAL Act number 2935) in the last two remaining provinces of Diyarbakir and Sırnak - both predominately Kurdish provinces in the south-east of the country - after nearly 25 years of emergency rule and martial law. The lifting of the State of emergency rule was among the steps the EU asked the Turkish government to take as a condition for accession talks.

In its session of 29 June 2002, the MGK discussed the establishment of a new administrative body under the name "South-eastern Under-secretary"127 which was met with a considerable reaction by some political parties and the concerned civil democratic institutions. Istanbul branch of the Human Rights Association (HRA) made a press release on 1 July 2002 asserting that the discussions led by the MGK on the establishment of such a body indicated "the maintenance of discriminative practices against the people living in the South-east". The HRA further expressed the doubts that the lifting of State of Emergency would end up in a simple nominal change.

Indeed, on the occasion of this latest investigation mission128, FIDH witnessed very few significant changes in the field for ordinary people despite the lifting of the State of Emergency Rules. The end of the state of emergency should lead to the gradual relaxation of the military hold on Diyarbakir and Sırnak, typified by high troops number, regular checkpoints, curfews and lack of recourse to the courts. However, for the time being, and according to the information collected during the mission, FIDH notes that, amongst other concerns, checkpoints and army barracks have not been withdrawn ten months after the lifting of the emergency rule and local human rights organisations continue to report allegations of grave human rights violations in the South East.
The system of "temporary village guards" is also of a major concern. It was introduced by amendment of the Village Law n° 442 on 4 April 1985 and the system became systematic and permanent in the OHAL region. Armed and paid by the government, village guards became uncontrolled but locally powerful militias. They were found to be responsible for a large number of human rights violations. The Inspection Committee of the Prime Ministry stated in its Susurluk Report in January 1998 that village guards were the part of society that had most intensely been involved in "dirty jobs". In 2002, village guards reportedly committed 11 killings. On May 16, 2003, the Turkish government adopted a new regulation amending the Law n.442 on Village guards and dedicated to "the unlicensed weapons kept by the temporary and voluntary guards. Article 13 of the regulation provides that "the licenses to carry and keep weapons provided to village guards on duty are not subjected to a limitation of time (alinea 2). In addition, "the licenses to carry weapons can be converted as licenses to keep weapons after their duty"(alinea 3). Finally, "in case of death of a village guard, the licenses can be transferred to his heirs, if the application is made before 60 days" (alinea 4).

Finally, besides the infringements on human rights permitted through the de facto remaining State of Emergency in the South-East Turkey, several provisions of the Provincial Administration Law N°5442 (Adopted June 10, 1949) raise major concerns. Indeed, the Provincial Administration Law gives the Governors (who is the head and the highest authority of the administration) the authority to request help from the military forces. According to the subject law, the military units are obliged to satisfy this request. In addition, Article 11 of the Provincial Administration Law states that "the duration of the military forces' stay in the province shall be determined by the governor in coordination with the Military Forces' Commander."

**National Security Concept and related concerns**

The privileged position of the Turkish army in Turkey's domestic politics is still a case of major concern from the EU perspective. Restriction of freedom of expression in Turkey is based on national security concept. Expression of ideas relating to the Kurdish question is almost exclusively prosecuted and suppressed on the grounds that it endangers the indivisible unity of the State with its Nation and Territory. This crucial problem has been reduced to an issue of national security and the debate around the Kurdish issue is criminalized within the category of "terrorist propaganda".

The penultimate organ of the government is the National Security Council (MGK). The MGK is authorized by the 1982 Constitution to make suggestions on any political, social or economic issue as far as the national security is concerned. The range of issues dealt with by the MGK covers every single aspects of the public life in Turkey. This perception of the "nation under stage" and the pursuant instatement of State of emergency in Turkey between 1985 and 2003 (OHAL Law) results in an extremely broad understanding of the concept of national security. The Law N°2945 on National Security Council and the National Security Council General Secretariat defines the concept as "preservation and maintenance of the constitutional order, national existence and integrity of the state, its all interests, including political, social, cultural and economic interests in the international arena, and customary law, against any external and internal threat" (article 2, paragraph (a)).

On July 30, 2003, Article 24 of the seventh EU Harmonization Package amended the Article 4 of the Law No. 2945 on the National Security Council and the National Security Council Secretary General's Office. Article 4, which enables the MGK to interfere in every domain of social life, is being amended as follows: "The National Security Council makes recommendations about issues related to formulation, determination and implementation of the State's national security policy within the framework of the definitions pertaining to national security the State's national security policy as specified in Article 2 and gives opinions in order to ensure necessary coordination. It notifies such recommendations and opinions to the Council of Ministers and full fills other duties entrusted with it by the applicable laws." The definition of the National Security Council as a constitutional organ continues to raise major concern. An increase in the number of civilian members of the National Security Council (Constitutional amendment made on October 3, 2001) does not mean that the situation has been aligned with democratic norms. The components of the National Security Council have different characteristics and therefore there can be no equality between them. Although acknowledging that the restrictions imposed by Article 4 as a result of the seventh harmonization package bring significant improvement and constitute a step towards the democratisation of the country, there are still ambiguities about "national security", "the state's national security policy" and the "definitions" related to that policy, which are specified in Article 2 of the Seventh Package.
52. See UN Document CAT/C/CVII/Misc.7, 22 November 2001
63. See UN Document A/57/18, paras. 514
65. Article 5 of the Law on Fighting terrorism, to amend and complete the measures under Article 66 (paragraph 4) and 80 (paragraph 4) of the Act on the Criminal Proceedings.
66. Article 4 of the Act on fighting terrorism, to complete the provisions of Article 108 (paragraph3 and 4) of the Act on criminal proceedings.
67. Article 4 of the Act on Fighting terrorism, to complete the provisions Article 62 of the Act on Criminal proceedings.
77. Ibid., para 10.
80. See CPIC General Comment 13. Equality before the courts and the right to a fair and public trial hearing by an independent court established by law (Art.14): 13/04/84
81. Ibid, CPIC General Comment 13
84. See FIDH Written statement submitted to the UN Commission on Human Rights, 55th session, 17 March 2003, E/CN.4/2003/NGO/233


97. See The Strategic Importance of Turkey After September 11, Saban Kardas, Ortadogu Teknik Univesite, www.liberal-dt.org.tr


102. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 39/46 of December 1984, entry into force 26 June 1987, ratified on 2 August 1988. Turkey made declarations under Article 21, recognizing CAT's competence to receive inter-State complaints, and Article 22, which permits the CAT to receive individual complaints.


106. E/CN.4/1999/61/Add.1

107. E/CN.4/2002/74/Add.1

108. Turkey ratified ECHR on 18 May 1954.


110. Democratization's process in Turkey since 1980: October 3, 2001. (Constitutional amendments, Law n° 4709); November 2001 (Adoption of the New Civil Code); February 6, 2002 (Law 4714, the Mini-Democracy package); March 2002 (Second Harmonization package); August 3, 2002 (Third Adjustment package), January 24, 2003 (5th Harmonization package); June 19, 2003 (Sixth harmonization package- Law N°. 4928); July 30, 2003 (Seventh Harmonization package). See below for details.

111. See European Union, Representation of the European Commission to Turkey, Statement by Günter Verheugen, Member of the European Commission, "Adoption of the 7th reform package and amnesty provisions by the Turkish Parliament", July 31, 2003.


113. Article 13 of the Turkish Constitution now states: "Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be in conflict with the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular Republic and the principle of proportionality".

114. Article 14 of the Constitution: "None of these rights and freedoms embodied in the constitution shall be exercised with the aim of violating the indivisible integrity of the State with its territory and nation, and endangering the existence of the democratic and secular order of the Turkish Republic based upon human rights. No provision of this Constitution shall be interpreted in a manner that enables the State or individuals to destroy the fundamental rights and freedoms embodied in the Constitution or to stage an activity with the aim of restricting them more extensively than stated in the Constitution. The sanctions to be applied against those who perpetrate these activities in conflict with these provisions shall be determined by law".

115. The Adjustment Law (Package) No 1 (Law No. 4744 of February 6, 2002) mainly changed the prison terms from heavy imprisonment to light imprisonment. The Prime Minister commented at that time: "Under the article, those who openly vilify the laws of the Republic of Turkey or Parliament resolutions will be given prison terms ranging from 15 days to six months. If such a crime is committed in a foreign country by a Turkish citizen, then punishment is increased by 1/3 to ½. In addition, under the new arrangements, the heaviest punishment was reduced from six years to three, and all fines were lifted".


117. This provision would include publication of the name of alleged torturers.

118. In its original form Article 7 reads "Under reservation of provisions in Articles 3 and 4 and Articles 168, 169, 171, 313, 314 and 315 of the Turkish Penal Code, those who found organizations as specified in Article 1 under any name or who organize and lead activities in such organizations shall be punished with imprisonment of between 1 and 3 years, and with a fine of between TL 100 million and 300 million; (2) Those who assist members of organizations constituted in the manner described above or make propaganda in connection with such organizations shall be punished with imprisonment of between 1 and 5 years and with a fine of between TL 50 million and 100 million, even if their offence constitutes a separate crime.".


120. Ibid.

121. Article 6 of the European Convention on Human Rights provides: "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law [...]".


125. "This is a very shortened version of a paper that was presented by Reyhan Yalcindag, Vice-President of the Human Rights Association of Turkey, Ankara regional seminar on September 19, 2003.


130. See May 16, 2003, Resmi Gazete. RG: 25110

131. See above.
Accordingly, the MGK consisting of the President, the Prime Minister, the Chief of the General Staff, Ministers of Defence, Interior and Foreign Affairs, and Commanders of the Turkish Armed Forces and Gendarmerie Force, should determine relevant measures, for instance, to unite the Turkish nation towards "national ideals" in line with "Atatürkist thought" (Article 4, Paragraph (e)).

Article 4 entitled "Responsibilities" reads as follows: "The National Security Council; a) makes recommendations in respect of formulation, determination and implementation of the State's national security policy and gives opinions about ensuring necessary coordination (Law No. 4789 of 15.01.2003); b) determines actions to be taken in order to attain national targets set in line with the State's national security policy and to put the national plans and programs into practice; c) constantly monitors and evaluates the national power factors, which could affect the State's national security policy, and the country's political, social, economic, cultural and technologic condition and related developments and lays down fundamental principles that will reinforce them in line with the national goals; d) defines actions it considers necessary with a view to preservation of the State's existence and independence and national unity and inseparability and public order and security; e) establishes policies aimed to safeguard the constitutional order, to ensure national unity and integrity and to unite the Turkish nation behind Kemalist ideals, principles and reforms as well as national goals and values in order to achieve national goals and defines the strategies and fundamental policies needed in order to resist and eliminate local and international threats to those ideals and goals and gives opinions and defines requirements and measures regarding planning and implementation process; f) makes recommendations about declaring martial law, mobilization or warfare in a state of emergency; g) defines policies, which set forth the obligations and services to be fulfilled by public and private entities and the citizens in respect of national defense, mobilization and other issues during a state of emergency, war and warlike and post-war conditions and to be used for drafting plans about those issues; h) formulates procedures aimed at ensuring that funds required for fiscal, economic, social, cultural and other actions warranted by the State's national security policy and social services and national defense are earmarked from the annual budgets and included in development plans and programs; i) gives opinions about international agreements on issues related to national security, which have been signed or proposed to be signed. The National Security Council shall notify the Council of Ministers of such opinions, actions and policies it has formulated and fulfills other duties entrusted with it by the applicable laws."
APPENDICES

Regional Seminar Documents
Ankara Regional Seminar

“Post 11 September era and attempts to suspend human rights and international humanitarian law in the South and East of the Mediterranean”

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Mohammed Zarie
HRAAP (Egypt)
Ankara, 18-22 September 2003

Press Release
18 September 2003

Human rights activists from Southern and Eastern Mediterranean countries gathered in Ankara to discuss Post September 11 era and attempts to suspend human rights and international humanitarian law in the region.

The International Federation for Human Rights (FIDH) that federates 116 human rights organizations throughout the world is organizing, in partnership with the Human Rights Association (İHD) and the Human Rights Foundation of Turkey (TİHV), a regional seminar in Ankara from 18 to 22 September 2003.

The FIDH received the financial support of the European Commission.

The seminar, designed to tackle the 9/11 subsequent attempts to suspend human rights and international humanitarian law in the South and East of the Mediterranean, is gathering actors from the civil society, policy makers and legal experts coming from the Arab World as well as from Turkey during three days of presentations, workshops and open discussions.

Since 11 September 2001 the fight against terrorism has been a tremendous issue on the international agenda. However, the legitimate and necessary prevention and repression of terrorist acts have been widely used throughout the world to infringe upon public freedoms, in total disrespect of international human rights and humanitarian law. In many Southern and Eastern Mediterranean countries, terrorism has since long been used as a pretext for repression and this trend has accelerated in the past 2 years.

In this respect, the FIDH and its partners believe that the time has come to question the concept of terrorism from a human rights and humanitarian perspective and to evaluate the consequences on human rights and international humanitarian law of the so-called fight against terrorism. This shall be done through an exchange of information and experiences between human rights defenders in the region, through an assessment of the impact of the fight against terrorism on legislations and practices at national and regional levels.

This seminar will be the place for propositions on the monitoring of anti-terrorist policies in regard to inalienable human rights standards. The conclusions and recommendations of the seminar shall be released on Sunday 21 September 2003.
"Post September 11 era and subsequent attempts to suspend human rights and international humanitarian law in the South and East of the Mediterranean" - Ankara, Turkey, 18-22 September 2003

Ankara Declaration

Upon an initiative of the International Federation for Human Rights (FIDH) and in partnership with the Human Rights Association of Turkey (IDH) and the Human Rights Foundation of Turkey (TIHV), a seminar on the ‘Post September 11 era and subsequent attempts to suspend human rights and international humanitarian law in the South and East of the Mediterranean’, was held in Ankara, Turkey on 18-21 September 2003. Participants to the seminar included human rights defenders, lawyers, physicians and international law experts from Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Syria, Tunisia and Turkey.

NGOs from other countries such as USA, Sweden, Yemen, international organizations and NGOs as well as governmental representatives were in attendance at the conference.

Conclusions

Bearing in mind the egregious terrorist attacks of 11 September 2001, the conference participants unequivocally condemn all attacks against civilians as criminal and unjustifiable, wherever and by whomever committed.

However, Participants denounce the use, in the post 11 September 2001 era, of the ‘war against terrorism’ as a pretext for states to suspend, derogate or disregard the application of international human rights law, humanitarian law, including obligations of occupying powers, and refugee law.

Participants note that the lack of a universally accepted definition of “terrorism” allows for broad, vague, nebulous definitions at the regional and national levels. Such vague definitions enable states to criminalize the legitimate exercise of internationally recognized rights, such as freedoms of expression, association, peaceful assembly, right of access to information and the right to take part in public affairs.

Participants deplore all attacks on human rights defenders, including journalists, in the region as well as the targeting of vulnerable groups, including civilians in occupied territories, migrants, refugees, asylum-seekers, and members of minorities.

Meeting in Ankara, and bearing in mind the lack of a satisfactory consideration of the issue, Participants express their particular and deep concern at the ongoing violations of the fundamental rights of the Kurdish population.

Participants also express deep concern at the continuing human rights violations of the Palestinians in the region.

Participants recall that the “counter-terrorism measures” must be conducted in full respect of all human rights and fundamental freedoms and the rule of law.

Participants stress that under international law, the use of force is prohibited under article 2 paragraph 4 of the United Nations Charter except in case of self-defense or when authorized by the UN Security Council under Chapter 7.

Participants are further alarmed by the increasing use and acceptance of torture and other cruel, inhuman and degrading treatment or punishment in the region and, recalling that torture is a crime under international law, emphasize that the prohibition of torture is to be respected in all circumstances.

Participants are alarmed by the increasing state practice of expelling, returning and extraditing persons in violation of the prohibition of torture or other cruel, inhuman or degrading treatment or punishment. Participants are concerned by the development of judicial cooperation agreements which fail to comply with international standards on the inter-state transfer of criminal suspect.

Participants are also concerned by the increasing use of administrative and arbitrary detention in the region, and in other parts of the world, such as in Guantanamo Bay. Participants are extremely concerned that such practices in the circumstances may constitute enforced disappearances, in violation of international law. Recalling that enforced disappearances constitute crimes against humanity under the Rome Statute of the ICC, perpetrators of such crimes must be prosecuted.

Participants are concerned by the increased resort to the use of exceptional jurisdictions in civilian courts and the establishment or the use of military courts for the prosecution of terrorism related cases, in disregard of international standards on the right to a fair trial and due process of law.

Participants also denounce the use and extension of state of emergency laws in some countries in the region in violation of international law as interpreted by United Nations Human Rights Committee General Comment 29, resulting in undue restrictions on human rights.

Recommendations

Participants urge states to comply with their international obligations in the field of human rights, humanitarian and refugee law while countering terrorist activities. Participants emphasize that full realization of human rights can only be achieved through the establishment and strengthening of a democratic society.

In order to prevent the use of torture and other cruel inhuman and degrading treatment and punishment, the participants urge states in the region to ratify as a matter of urgency, where appropriate, the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as well as the Optional Protocol to this Convention. Compliance with these international obligations requires that states pass implementing legislation criminalizing acts of torture and providing adequate compensation and rehabilitation for victims.

Participants urge states to fight against impunity by taking all necessary measures to hold accountable perpetrators, including their accomplices, of violations of international human rights and humanitarian law.

Participants call for the lifting of state of emergency laws in the countries of the region, where such laws fail to comply with international human rights standards for derogation. They remind states that non-derogable rights should be respected in all circumstances.

Participants call for the abolition of exceptional jurisdictions in civilian courts and the use of military courts for the trial of civilians.

Participants call for the closure of secret detention centers in the region and elsewhere in the world.

Participants call for the abolition in all states of the region of the death penalty.

Participants call on the establishment in all the countries of the region of independent national human rights institutions fulfilling all the requirements set out in the Paris Principles.
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Participants call on the establishment in all the countries of the region of independent national human rights institutions fulfilling all the requirements set out in the Paris Principles.

Participants call on the African Commission on Human and Peoples’ Rights and the Council of Europe in fulfilling their respective mandates to pay particular attention to states’ compliance with relevant human rights treaties in their adoption of counter-terrorist measures.

Participants call on states of the African Union to ratify or accede to the Protocol on the Establishment of the African Court on Human and Peoples’ Rights.

Participants urge the States that are members of the Arab League to redraft the Arab Charter on Human Rights, in collaboration with civil society and with the assistance of the office of the UN High Commissioner for Human Rights, in order to meet international human rights standards, as recommended by the Beirut Declaration of June 2003.

As part of this process, States should ensure that the revised Charter incorporates effective reporting and monitoring mechanisms. These mechanisms should immediately conduct a review of counter-terrorist measures adopted in member states.

Participants call upon states that are members of the African Union, League of Arab States and Organization of the Islamic Conference to amend the Organization of African Unity Convention on the Repression and Combating of Terrorism and the Arab Convention on the Suppression of Terrorism and the Convention of the Organization of the Islamic Conference on Combating International Terrorism so that they comply with international human rights standards.

Participants call upon all the States of the region to accede to the Statute of the International Criminal Court, in order to repress and deter genocide, crimes against humanity and war crimes and adopt ICC implementing legislations at the domestic level.

Participants call for the immediate establishment of a universal and general mechanism to monitor anti-terrorist measures adopted by states to analyze and assess their compatibility with relevant international human right instruments and international law.
FIDH represents 116 Human Rights organisations

The International Federation for Human Rights (FIDH) is an international non-governmental organisation dedicated to the worldwide defence of human rights as defined by the Universal Declaration of Human Rights of 1948. Founded in 1922, the FIDH has 116 national affiliates in all regions. To date, the FIDH has undertaken more than a thousand international fact-finding, judicial, mediation or training missions in over one hundred countries.

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