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The Arbitrary Use of Terrorism Laws to Prosecute and Incarcerate Demonstrators in Turkey

In Turkey, many hundreds of people currently face prosecution, or are serving substantial sentences for terrorism convictions. Their crime was to engage in peaceful protest, or to throw stones or burn a tire at a protest. Legal amendments since 2005, along with case law since 2008, have allowed courts in Turkey to convict demonstrators under the harshest terrorism laws, by invoking two articles of the Turkish Penal Code in combination with the Anti-Terror Law. In July 2010, as this report was being finalized, the government passed legal amendments to improve the treatment of child demonstrators; but this report focuses mainly on adult demonstrators, whose treatment remains harsh, disproportionate and ultimately violates several human rights norms.

The vast majority of demonstrators currently being prosecuted under terrorism laws is Kurdish, and the laws are usually invoked in the mainly Kurdish-populated areas of southeast Turkey, or in Adana and Mersin and other cities with large Kurdish populations. People whose writings and commentary on the Kurdish question in Turkey support positions perceived to be similar to those of the outlawed armed Kurdistan Workers Party (PKK) have long faced particularly harsh punishment under Turkish law. Now the courts are applying the same or even harsher punishments to regular people who take to the streets to demonstrate support for opinions the authorities perceive to be similar to those of the PKK. While many of the prosecutions discussed in this report involve allegations of stone-throwing or tire-burning at demonstrations, the governments increasingly harsh punishment of Kurdish demonstrators does not appear to be a response to demonstrators violent acts, but rather to their perceived ideological support for the PKK. The present laws fall foul of the standards required by human rights law and the rule of law that criminal offenses must be defined precisely and in a foreseeable manner (the requirement of legality). Their application in the manner documented in this report amounts to an arbitrary use of criminal law in violation of international human rights standards and the rule of law. The laws also offend against international law as they criminalize the legitimate exercise of freedom of opinion, expression, and assembly. The imposition of aggravated punishment under the Anti-Terror Law because an individual expresses a political opinion, as opposed to the gravity of the unlawful activity, violates international human rights law.

Official statistics are not available for the number of adults and children convicted under terrorism laws and sentenced to prison for participating in demonstrations, but Human Rights Watch estimates that the figure runs into many hundreds. Anecdotal evidence from interviews with lawyers suggests that the numbers have been increasing in the past two years, since an important legal decision on the issue in 2008.

Turkeys Kurdish citizens have frequently protested publicly to express frustrations with the governments policies towards their culture, status, and rights, and, in recent years, the imprisonment of Abdullah calan, the PKK leader. For instance, on July 14, 2008, and from October 18 to 21, 2008, protests were held in various cities in Turkey against calans prison conditions and alleged ill-treatment. Protests are also held every year on February 15, the day in 1999 that Turkish authorities captured calan in Kenya and brought him to Turkey. The festival of Newroz/Nevruz (Kurdish and Turkish spellings in common usage in Turkey), the Kurdish New Year, on March 21, often elicits demonstrations as well as cultural celebrations. Protests took place prior to Turkeys March 29, 2009 municipal elections. There are also fairly frequent localized protests in cities throughout southeast Turkey and in mainly Kurdish-populated districts of cities such as Adana. These typically involve groups of youths and children, who shout pro-calan and PKK slogans, burn tires in the street, and respond to police orders to disperse by throwing stones.

In the past, courts in Turkey convicted these protestors under laws governing public order or of making propaganda for a terrorist organization (Article 7/2, Anti-Terror Law). Yet in recent years, criminal justice officials have deemed Kurdish protestors demonstrating against Turkeys policies towards the Kurds to be committing crimes on behalf of the PKK without being a member of that organization (Article 220/6, Turkish Penal Code). As a result, they are prosecuted as if they were actually fighting the government as armed members of the PKK (Article 314/2, Turkish Penal Code). These serious charges, on top of more usual charges under the Law on Demonstrations and Public Assemblies, could result in sentences of 28 years in prison, or more, if there are repeated offenses. To date, the majority of adults convicted under these laws have received prison terms of between seven and 15 years. Prior to a July 2010 legal amendment, child protestors typically received prison sentences of between four and five years, though in 2010, at least several children were sentenced to seven-and-a-half years in prison.

Law enforcement authorities and the courts allege that the PKK and its representatives are organizing the demonstrations as part of a wider policy to promote civil unrest, and even uprising, among Kurds in towns and cities throughout Turkey. By way of evidence the government and courts point to the PKKs decrees issued at various congresses, and the fact that senior PKK representatives use sympathetic media outlets to issue appeals to the Kurdish population to take to the streets in protest. Hence, the template for individual indictments includes an abstract overview of PKK history and policies, followed by a statement of the alleged specific criminal activities of the defendant. In none of the cases examined by Human Rights Watch had prosecutors submitted evidence to establish that the individual defendant either heard the PKKs appeal or had been directly instructed or motivated by the PKK to participate in the demonstration, much less that the individual had any other specific link with the PKK or committed a crime under its orders.

The Turkish courts consider it no obstacle to conviction that the prosecution has failed to provide evidence of the defendants specific intent to support or aid

the illegal activities of the PKK. The General Penal Board of the Court of Cassation has held that it is sufficient to show that sympathetic media outlets broadcast the PKKs appeals/speeches by the PKK leadership calling on the Kurdish population to protest or raise their voices on various issues. Then the defendant, by joining the demonstration, is assumed to have acted directly under PKK orders. Yet even at extremely local demonstrations not announced in the media beforehand, protestors are routinely charged with acting under the orders of the PKK. In some cases, courts have held that the PKKs appeal to participate in demonstrations is a continuous generic one, and therefore a specific instance of appeal to the population need not be proved.

This legal framework makes no distinction between an armed PKK combatant and a civilian demonstrator. In fact, demonstrators may be punished more harshly, because while combatants who turn themselves in may receive partial amnesty under the Effective Repentance provision in the Turkish Penal Code, there is no such provision to reduce the sentences of peaceful demonstrators who have never taken up arms. As a result, peaceful demonstrators with no clear PKK affiliation may be punished more harshly than PKK members who have actually served as guerrilla fighters.

On July 22, 2010, after civil society groups campaigned extensively against the prosecution of children under terrorism laws, the Turkish parliament adopted several amendments to limit the applicability of such laws to child demonstrators. Law no. 6008, published in the *Official Gazette* on July 25, 2010, states that all children will henceforth stand trial in juvenile courts, or adult courts acting as juvenile courts; child demonstrators who commit propaganda crimes or resist dispersal by the police will not be charged with committing crimes on behalf of a terrorist organization and hence membership in a terrorist organization and children will not face aggravated penalties, and may benefit from sentence postponements and similar measures for public order offenses.

The amendments also reduce penalties for both children and adults for forcibly resisting police dispersal and offering armed resistance, including with stones, during demonstrations under the Law on Demonstrations and Public Meetings.^[1] Yet the new law omits any provision to prevent children from being charged with making propaganda for a terrorist organization (either under Article 7/2 of the Anti-Terror Law or Article 220/8 of the Turkish Penal Code).

After the law entered into force, courts in Adana, Diyarbakir, and Van, among other places, immediately released children who were serving prison sentences or being held in pretrial detention on terrorism-related charges. In the coming months the Court of Cassation is expected to overturn all convictions of child demonstrators meted out by the adult Special Heavy Penal Courts. The Special Heavy Penal Court will issue decisions of non-jurisdiction for the cases against children and transfer the cases to the juvenile courts. Retrials will take place in juvenile courts and, according to the new law, in most cases where children were convicted of committing a crime on behalf of an organization (Article 220/6, Turkish Penal Code) and membership in an armed organization, (Article 314/2, Turkish Penal Code) the juvenile courts must drop these charges. Most children convicted of other offenses (such as propaganda for a terrorist organization, Article 7/2, Anti-Terror Law) are likely to benefit from sentence postponements. Since this report was finalized during the judicial recess when no retrials had yet begun, from Fall 2010 it will be important to monitor how the law is applied to new and ongoing cases, as well as to cases in which there is already a confirmed sentence.

Since its foundation, the Republic of Turkey has pursued variously assimilationist and repressive policies towards minority groups, especially one of the largest ones, the Kurds. Today, Turkey is home to an estimated 12 to 20 million Kurds, though there is no official tally because the government does not recognize the Kurds as a distinct group and population censuses have not collected information about ethnicity for many years. The problems of Kurds today have been compounded by decades of poverty, discrimination, and underdevelopment, and 25 years of displacement and armed conflict. While in the past, Kurdish language and cultural expressions were strictly prohibited, those restrictions have eased. Yet laws and regulations still curtail Kurdish-language education in schools and the use of languages other than Turkish in public life, and restrict the rights to political representation and participation.

In 2009, President Abdullah Gül and the Justice and Development Party (AKP) government emphasized the pressing need to solve the Kurdish problem and committed to taking concrete steps to a resolution. In May 2009, President Gül commented: Call it terrorism, call it the southeast, call it the Kurdish problem: this is Turkey's number one problem. It must be solved we must not miss this opportunity. On July 29, 2009, Interior Minister Beir Atalay indicated that a solution would be achieved by broadening and strengthening our citizens democratic rights and ensuring that each of our citizens, wherever they live, feel themselves to be equal and free individuals of the state. The government named the project the democratic opening, though it is also known in the press as the Kurdish opening. The government signaled the formal start of the process when it presented a plan to parliament on November 13, 2009. Among other reforms, Minister Atalay said the government would set up a commission to combat discrimination and end obstacles to all-day broadcasting by private television channels in languages other than Turkish. The latter step was achieved with a regulation introduced on the same day as Minister Atalay's announcement.

The first blow to the government's plan came in December 2009, when the Constitutional Court banned the pro-Kurdish Democratic Society Party (DTP), accusing it of separatist activity.

Then in May 2010, PKK escalated its deadly attacks on military and police targets, continuing through the summer. (In mid-August 2010, the organization declared an end to such attacks during the month of Ramadan.)

Over the following months there were no developments indicating that the government was pursuing an opening and there were also further serious setbacks to the process. In June 2010, 151 officials of the now-banned DTP and its successor, the Peace and Democracy Party (BDP), were indicted for membership in an alleged Turkey Assembly of the Union of Kurdistan Communities (KCK), a body connected with the PKK. Those due to stand trial in October 2010 include eight serving and four former elected mayors of municipalities in the southeast; at the time of writing this report, seven of the serving mayors had been held in pretrial detention for eight months. Prior to being formally indicted, 53 of the other Kurdish party officials, lawyers and activists among the 151 people facing trial had been held for over a year in pretrial detention for alleged KCK/PKK connections following a clampdown on legal Kurdish political activity beginning in April 2009 right before the government announced its democratic opening.

Also in June 2010, eight PKK members based in PKK camps in northern Iraq and 22 civilians from the Mahmur camp in Iraq run by the Office of the United Nations High Commissioner for Refugees (UNHCR), who had returned to Turkey apparently in response to the government's democratic opening, were put on trial for membership in the PKK, making propaganda for the PKK, and committing crimes on behalf of the PKK.

Despite the adverse climate that had developed by June 2010, Prime Minister Erdoğan repeatedly restated his commitment to pursue the democratic opening.^[2] In 2009, the government did lift restrictions on broadcasting in Kurdish, and in July 2010, it ended the prosecution of all children in adult courts and adopted amendments to limit the application of the most serious terrorism laws to child demonstrators. However, by August 2010, the government had taken no other concrete steps to implement its plan. If the government is truly committed to bringing about a democratic opening, one important measure will be to put an end to the arbitrary use of terrorism laws against demonstrators.

In this report, Human Rights Watch examines the use of terrorism laws to prosecute adults who protested peacefully, or who threw stones, burned tires and committed other minor acts of violence. While people who commit such offenses may legitimately be prosecuted and sanctioned, there is no evidence that the vast majority of these defendants committed any act that would typically or reasonably be considered terrorism. The terrorism charges brought against these protestors are extremely vague and imprecise and do not correspond to the nature or gravity of the acts committed. As such, they fail the test of legality, and their application amounts to an arbitrary use of criminal law, and a violation of human rights and the rule of law.

Furthermore, it is contrary to the requirements of a fair trial under international law for a state to impute motives to individuals and then prosecute them solely for these assumed motives in this case, for the Turkish government to assume that demonstrators are acting under orders of the PKK - without showing any evidence of this. It is a violation of the right to freedom of assembly for the government to infer that demonstrators have criminal intent solely because they participated in a peaceful protest. The reality is that in many of these cases, the demonstrators are doing nothing more than exercising their right to freely express their views, a right that is protected under international law as one of the foundations of a democratic society.

Human Rights Watch calls on the Turkish government, as a matter of urgent priority and as part of its stated commitment to uphold the human rights of Kurdish citizens of Turkey, to amend the laws that have resulted in the punitive application of terrorism charges against demonstrators, notably by repealing Articles 220/6 and 220/7 of the Turkish Penal Code (committing a crime on behalf of an organization without being a member of that organization, and knowingly and willingly aiding and abetting an organization), which are punishable under Articles 314/2 and 314/3 of the Turkish Penal Code (membership in an armed organization), and Article 2/2 of the Anti-Terror Law, which includes a similar provision: A person who is not a member of a terrorist organization but, commits a crime on behalf of the organization, is also deemed to be a terrorist offender and is punished as a member of the organization.

This report is based on the examination of 50 cases of the prosecution of adult and child demonstrators in the Diyarbakr and Adana courts. We have focused on these two provinces because most of the recent prosecutions of demonstrators occurred in these regions.

Terrorism offenses and organized crime fall under the jurisdiction of Heavy Penal Courts, which are authorized under Article 250 of the Criminal Procedure Code (henceforth Special Heavy Penal Courts, except where referring to a specific court, such as Diyarbakr Heavy Penal Court No. 4). Crimes committed in Diyarbakr and in the surrounding provinces of Urfa, Mardin, Batman, Makk, Siirt, and Bingl are dealt with by the Diyarbakr Heavy Penal Courts. The cases in this report before the Special Heavy Penal Courts in Adana mainly concern crimes committed in the city of Adana, though the courts also have a remit over crimes committed in surrounding provinces, such as Mersin, el, Gaziantep, and Hatay.

The report draws on interviews with defense lawyers, prosecutors, heads of bar associations, police officers, families of prosecuted demonstrators, defendants free from prison on bail, and representatives of childrens rights and human rights groups.

This report examines 18 cases against 26 individuals in greater detail to demonstrate the current practice of the courts and reveal problems in their application of the laws.

The report does not deal in any detail with the much broader matter of comprehensively extending the limited juvenile justice system in Turkey. In July 2010, the Turkish government amended laws to end the practice of prosecuting children under the age of 18 in Special Heavy Penal Courts and to ensure that in future, all children will stand trial in juvenile courts. The amendments also stopped prosecutors from applying the most serious terrorism laws to child demonstrators. While these are very welcome steps, further reforms to terrorism laws are needed to remedy the injustices described in this report.

The research was carried out between January 2009 and March 2010. Interviews with children released from prison pending trial were carried out in Adana in May and June 2009. All interviews were conducted in Turkish.

In this report child and children are used to refer to anyone under the age of 18, consistent with usage in international law. The names of all children are abbreviated to their initials to protect their privacy. This follows the practice of NGOs and childrens rights groups in Turkey. All adults are referred to by their full names and not by pseudonyms.

The cases in this report are up-to-date as of July 2010.

For the past 25 years, the Turkish military and the Kurdistan Workers Party (PKK) have been locked in conflict in the southeast and eastern provinces of the country. The fighting has killed an estimated 44,000 people: soldiers, PKK members, and civilians.^[3] During the 1990s, human rights groups documented gross violations of human rights by both the Turkish security forces and the PKK. There were thousands of enforced disappearances and unresolved killings suspected to have been carried out by state perpetrators. A state policy of burning down villages, ostensibly to prevent them from being used as PKK bases, led to the displacement of 950,000 to 1.2 million people.^[4] State agents conducted torture on a mass scale, and both state forces and the PKK attacked civilians.^[5]

For many years, much of the southeast and eastern regions were governed by emergency laws, which severely curtailed the rights to assembly, association, and expression. Fighting lessened after the 1999 capture of PKK leader Abdullah calan and the PKKs announcement of a ceasefire. Yet violence escalated again at various times from 2004 to mid-2010, typically taking the form of armed clashes between the military and the PKK in remote mountainous regions away from population centers. The PKK, or groups affiliated with it, have occasionally launched attacks on civilian targets in cities and holiday resorts. Most recently, since May 2010, the PKK has carried out a series of deadly attacks on military and police targets.

Over the last decade, the Justice and Development Party government (which has served two terms between November 2002 and the present), and the coalition government that preceded it, undertook important reforms to advance fundamental rights and freedoms. However, the conflict has had a profound impact on the way legislation has been drafted in this era, and has also influenced the way courts have interpreted laws. The lawmakers who amended the Penal Code and Anti-Terror Law, and the courts, most notably the Court of Cassation, have focused primarily on measures to enhance security, often at the expense of human rights.^[6] The pattern of prosecutions and convictions addressed in this report is a direct legacy of the conflict: vague and overly broad laws, and harsh, potentially discriminatory, implementation of those laws by Turkeys Court of Cassation.

While the previous AKP government (November 2002-July 2007) introduced many legal reforms, countless laws continue to affect Kurds and other minority groups disproportionately, restricting their right to use their mother tongue in public life, to organize politically on the basis of their ethnic or religious identities, and to enjoy other cultural rights.^[7] Until recently, Turkish government and state officials viewed the Kurdish question solely as about the PKK, a problem of security and territorial integrity. They did not focus on or attempt to address the roots of the problem. The history of minority rights in Turkey and of Kurdish rights in particular has been extensively surveyed elsewhere, and the following section gives only a brief overview.

Turkey is a heterogeneous country, made up of religious and ethnic minority groups including Kurds, Laz, erkes, Roma, Alevi, Syriacs, Arabs, Greeks, Armenians, Jews and others, alongside the Turkish majority. The Republic of Turkey has a well-documented history of variously assimilationist and repressive policies toward minority ethnic and religious groups.^[8] The government has denied minority groups a full spectrum of rights, including cultural recognition, linguistic rights, and political inclusion on the basis of ethnic or religious identity, except for three groups (Greeks, Armenians, and Jews) recognized as minorities by the 1923 Treaty of Lausanne. Throughout the 87-year history of the republic, the state has refused to officially recognize any other group as a minority.^[9] The numerically largest groups to be denied recognition were Kurds and heterodox Muslim Alevis.

Throughout the history of the Republic of Turkey, Turkish citizenship and identity has been equated with membership in the Turkish and Sunni Muslim majority, and citizens have been expected to bury other ethnic or religious affiliations and associations.^[10] The education system in Turkey has emphasized a single Turkish identity for all citizens and omitted any mention of minority groups other than those originally recognized in 1923. People who have called for the recognition of minority rights have often faced criminal prosecution for offenses against the integrity of the state, and their written expression has been censored. Even today, people are prosecuted for non-violently expressing opinions on the Kurdish issue, discussing Kurdish history, and criticizing the state policy on minority rights and more generally discussing the recent history of minority groups.

Under the influence of the Turkish left and the Iraqi Kurdish national movement, Kurdish nationalism in Turkey began to develop in the late 1960s, and became highly visible in the 1970s with a burgeoning number of cultural and political groupings. Following the September 12, 1980 military coup, all Kurdish nationalist cultural and political groupings were banned, along with leftist and rightist groups. This left the field open to the Kurdistan Workers Party (PKK) an underground group with a Marxist-Leninist orientation at that time that launched an armed struggle against the Turkish state in 1984. From that time onwards, the Turkish military has fought the PKK, which throughout the 1980s and 90s sought to build a separate Kurdish state. The PKK no longer advocates a separate state. Now the group, still armed, fights for cultural and political rights for Kurds in Turkey.^[11]

In Turkeys recent history, restrictive state policies resulted in a harsh clampdown on the civil, political, economic, social, and cultural rights of the civilian

population in the southeast. At the height of the conflict with the PKK, this translated into serious violations of human rights and humanitarian law. Countless judgments by the European Court of Human Rights found Turkey responsible for extrajudicial executions, enforced disappearances, torture, and the destruction of property in the southeast provinces.^[12]

The failure to resolve the Kurdish question has been one of the main obstacles to fostering a political order in Turkey that exhibits and adheres to the hallmarks of democracy, rule of law, and respect for human rights propounded by human rights instruments such as the European Convention on Human Rights. The European Commission has repeatedly commented in its regular reports on the need for Turkey to sign international conventions on the protection of minority rights, as well as to amend its national laws. For years, successive Turkish governments have missed many opportunities to tackle these issues.

In 2009, the Turkish government indicated that it was committed to addressing the failures of the past. Prime Minister Recep Tayyip Erdoğan and President Abdullah Gül emphasized the pressing need to solve the Kurdish problem and committed themselves to taking concrete steps to do so. In May 2009, President Gül commented: Call it terrorism, call it the southeast, call it the Kurdish problem: this is Turkey's number one problem. It must be solved we must not miss this opportunity.^[13] On July 29, 2009, Interior Minister Beir Atalay announced that the government had begun to work on a plan to solve an issue that we all know is vital for Turkey's future, emphasizing the need for broadening and strengthening our citizens' democratic rights and ensuring that each of our citizens, wherever he or she lives, feel themselves to be equal and free individuals of the state. Atalay promised a wide-ranging consultation process to solve what he described as not only our party's or our government's problem, but a problem of the whole society.^[14] The government named the project the democratic opening, though it also became known in the press as the Kurdish opening.

On November 13, 2009, the government brought the Kurdish issue to the parliament for discussion. Minister Atalay promised various reforms, such as establishing a commission to combat discrimination, lifting obstacles to all-day broadcasting by private channels in languages other than Turkish, and creating a new constitution.^[15] Prime Minister Erdoğan described the process as a new beginning for Turkey.

The first sign of a backlash against the initiative came in December 2009, when the Constitutional Court banned the pro-Kurdish Democratic Society Party (DTP) on grounds that it promoted separatism.^[16] Over the following months there were no developments indicating that the government was pursuing an opening and there were also some serious setbacks to the process.

In May 2010, the PKK escalated its deadly attacks on military and police targets, in a campaign that continued through the summer. (In mid-August 2010, the organization declared an end to such attacks during the month of Ramadan.)

In June 2010, the authorities clamped down on legal Kurdish political activity, and the Diyarbakir prosecutors' office indicted a large group of politically active Kurds after a long investigation.^[17] For more than a year, officials and activists in the DTP and its successor, the Peace and Democracy Party (BDP), and lawyers perceived to be close to the parties, had been held in pretrial detention. In June, 151 people—including eight democratically elected serving mayors and four former mayors of municipalities in the southeast—were indicted for membership in an alleged Turkey Assembly of the Union of Kurdistan Communities (KCK), a body connected with the PKK. They are to stand trial in October 2010.^[18] Seven of the serving mayors remain in pretrial detention at the writing of this report. The Diyarbakir prosecutors' move to demonstrate links between the DTP and its successor the BDP, with 20 members of parliament, and the armed PKK, clearly threatens current prospects of solving the Kurdish problem by democratic means.

Also in June 2010, eight PKK members based in PKK camps in northern Iraq and 22 civilians from the Iraqi Mahmur camp run by the Office of the United Nations High Commissioner for Refugees (UNHCR), who had returned to Turkey apparently in response to the government's democratic opening, were put on trial for membership in the PKK, making propaganda for the PKK, and committing crimes on behalf of the PKK.

Despite the adverse climate that had developed, Prime Minister Erdoğan repeatedly restated his commitment to resolving the Kurdish question.^[19] In 2009, the government had lifted restrictions on broadcasting in Kurdish, and in July 2010, the government ended the prosecution of children in adult courts and limited the application of the most serious terrorism laws to child demonstrators. Yet by August 2010, more than a year after the interior minister had first promised a democratic opening, the government had taken no other concrete steps to implement its plan.

If the government is serious about reform, among many other concrete steps needed, it must end the arbitrary use of terrorism laws against demonstrators, as permitted by a combination of the Turkish Penal Code, the Anti-Terror Law, and recent case law.

The past few years have seen increasing numbers of protests by Kurds frustrated with government policies towards their culture, status, and rights, and towards Abdullah Öcalan, the imprisoned leader of the armed Kurdistan Workers Party (PKK). For example, on July 14, 2008, and from October 18 to 21, 2008, protests were held in various cities in Turkey against the alleged ill-treatment of Öcalan and his prison conditions.^[20] Civic, cultural and political occasions regularly spur demonstrations in Kurdish neighbourhoods, villages and towns. Protests are held every year to mark the anniversary of Öcalan's capture by Turkish authorities on February 15, 1999 in Kenya and his transfer to prison in Turkey.^[21] The festival of Newroz/Nevruz, the Kurdish New Year, on March 21, elicits demonstrations as well as cultural celebrations.^[22] Protests took place prior to Turkey's March 29, 2009 municipal elections. Spontaneous local protests also take place fairly frequently in cities throughout southeast Turkey and in mainly Kurdish-populated districts of cities such as Adana. Protests typically involve groups of youths and children, who shout pro-Öcalan and PKK slogans, burn tires in the street, and respond to police orders to disperse by throwing stones.

The majority of protestors, however, are in fact over 18, and are ordinary citizens making their living as storeowners, tradesmen or laborers. Others include students, mothers running homes, or may be unemployed. Interviews conducted with demonstrators by Human Rights Watch in Adana revealed that all interviewed were from families that had been forcibly displaced from villages in southeast Turkey in the early 1990s, had lost their farming-based livelihoods, and had been compelled to start anew with few possibilities for employment. In Diyarbakir and the other cities of the southeast, many demonstrators also share this background.

As the tendency to protest Kurdish issues has increased in recent years, so has the Turkish government's drive to prosecute protestors. In the past five years, lawmakers revised the Turkish Penal Code and the Anti-Terror Law to more broadly cover protest. Judicial precedents have established an even broader basis for the prosecution of protestors. Now, Kurdish demonstrators routinely face prosecution and long prison terms. Kurdish party officials and others who make speeches on the Kurdish question or some journalists writing on it and in particular expressing opinions that are ideologically similar, or perceived to be similar, to opinions of the PKK, may also face prosecution under the same combination of laws. Although the statistical picture is incomplete, research by Human Rights Watch indicates that many hundreds of individuals are currently being prosecuted under harsh anti-terror laws merely for participating in demonstrations on Kurdish issues or for speeches and writings.

Our focus in this report is on demonstrators rather than on the individuals prosecuted for speeches and writings. A clear pattern has emerged: Police arrest demonstrators on the grounds that they have taken part in unauthorized demonstrations, accusing them of shouting pro-PKK slogans, waving pro-PKK banners, and resisting police dispersal by throwing stones. Police and prosecutors also identify statements from the websites and satellite TV broadcasts of news outlets sympathetic to the PKK to demonstrate that the PKK has issued appeals to the people to participate in demonstrations centered on particular themes on particular days. The demonstrators are then charged and sentenced as though they are armed members of the PKK. Up until now, a significant proportion of the demonstrators treated in this manner have been children, typically aged 15 to 17, but some as young as 12. Legal amendments passed in July 2010 improved their situation, mandating that they be tried in juvenile courts only, and exempting them from prosecution as armed militants for most offenses. Human rights groups will closely monitor the implementation of the new law in the coming months.

Violations of and limitations on freedom of expression in Turkey have been well-documented^[23] Yet in the past, most of those who faced prosecution for

making critical statements on the Kurdish question, on minority rights, and on Turkish state policies, have been more or less prominent individuals mayors and other political officials, writers, publishers, journalists, and other public figures or publishing houses and media outlets. In contrast, this report focuses on ordinary citizens who join demonstrations and face prosecution for shouting slogans or holding up banners, and for exercising their right to assembly; their cases rarely garner public attention or press coverage. And while civil society groups in Turkey have campaigned against the prosecution of child demonstrators, there has been much less attention paid to adult demonstrators and the legal changes that in the past several years have fostered a disturbing new pattern of convictions.

Law enforcement officials, public prosecutors, and courts claim that these demonstrations are organized by the PKK and its representatives as part of a wider policy to promote civil disobedience and even uprising among Kurds. Police officers interviewed by Human Rights Watch stated that recently more children were participating in demonstrations, and expressed their belief that these children as well as adults were being organized by representatives of the PKK, down to details such as where they stand in the demonstrations.^[24] Similarly, in a 2009 statement to the Committee on the Rights of the Child, the Turkish government wrote that the PKK and groups linked to it have stressed the necessity of spreading violence, mass riots and protests to cities and urban areas by using particularly women and children and have exploited the youth either by force or by money or through false promises in order to create mass violence.^[25] Yet most of the demonstrators facing prosecution are over 18 years old, and Human Rights Watch has seen police reports that regularly blame adult demonstrators for directing resistance to the police.

Public prosecutors seem to share this view of Kurdish protestors motivations for demonstrating. Indeed, most indictments state that the demonstrations are part of a PKK policy of protest. The indictments detail the formalization of the PKK policy in a series of decrees the organization issued at various congresses, and state that senior representatives of the PKK use sympathetic media channels to issue their calls to Kurdish supporters to take to the streets in protest. Individual indictments thus include an abstract overview of elements of the history of the PKK and its policies, followed by a statement of the alleged specific criminal activities of the defendant. Typically, prosecutors submit no evidence that would establish that the individual defendant either heard the PKKs appeal or was directly instructed or motivated to participate in the demonstration by the PKK, much less evidence that the defendant had any specific link to the PKK or committed a crime under its orders.

The Turkish courts do not view the prosecutions failure to provide evidence of the defendants specific intent to support or aid the illegal activities of the PKK as any obstacle to conviction. The General Penal Board of the Court of Cassation has held that it is sufficient to show that sympathetic media outlets broadcast PKK appeals, speeches by the PKK leadership to the Kurdish people. Then the court assumes that any demonstrator went out to protest in direct response to the PKKs appeals, under PKK orders whether or not that particular demonstrator ever heard them. Even in cases involving extremely local demonstrations that no media outlet announces beforehand, protestors are routinely charged with acting under the orders of the PKK. Courts in Adana, for example, have justified convicting child defendants of committing a crime on behalf of the PKK by claiming that the PKKs appeal to participate in demonstrations is a continuous one, and therefore does not require a specific address about a particular occasion.

This legal framework makes no distinction between an armed PKK fighter and a civilian demonstrator. In fact, a loophole can lead to harsher punishments for demonstrators than for fighters: the Effective Repentance law (Article 221, Turkish Penal Code) provides for a partial amnesty for onetime fighters who turn themselves in, but there is no such provision for peaceful demonstrators who have never taken up arms. As a result, such demonstrators can be sentenced to prison terms for membership in a terrorist organization without the possibility of a reduced sentence or dropped charges available to others who have actually taken up arms on behalf of the PKK. These serious charges, added to charges under the Law on Demonstrations and Public Assemblies, could result in prison sentences for protestors of 28 years or even higher. To date, the majority of adults prosecuted under these laws have received prison terms of between seven and 15 years, since courts dealing with these cases have generally not opted to apply sentences at the upper end of the sentence range. Child protestors have typically received prison sentences of between four and five years, though in 2010, at least several children were sentenced to seven-and-a-half-year prison terms.

The laws are discussed in full in the next chapter, followed by a discussion of the case law.

In 2004, when the Justice and Development Party (AKP) government began to revise the Turkish Penal Code, many observers hoped for broad legal change as part of Turkey's bid for full European Union membership and more importantly to benefit all citizens of Turkey. Yet in 2005, when the new Penal Code was passed into law, it contained important improvements in some areas (for example, in the provisions relating to the prosecution of violence against women, and the definition of the crime of torture and its prosecution). Yet in other areas, the new code fell short of expectations: restrictions on freedom of expression remained, and crimes deemed terrorist offenses were vaguely worded and lacked the clarity required in criminal law. Then in 2006, lawmakers passed amendments to the Anti-Terror Law that broadened its applicability, with particularly serious consequences for juveniles. And in 2008, the highest chamber of Turkey's court of appeal (the Court of Cassation) issued a precedent ruling which pointed the way to the harsh and arbitrary application of vaguely worded provisions in the 2005 Penal Code to those involved in demonstrations.

Below, we review the application of two articles of the new Penal Code (Articles 220 and 314) to demonstrators on Kurdish issues, and also consider the impact of the new Anti-Terror Law of 2006 and the case law that since 2008 has allowed demonstrators to be sentenced to long prison terms as terrorists for activities such as shouting slogans, making victory signs, holding up banners, and throwing stones. We also review July 2010 amendments to the Anti-Terror Law that have ameliorated the situation of child demonstrators, but have not improved the prospects of adults, or addressed the problems in the Penal Code.

Domestic and international nongovernmental organizations have frequently criticized Turkey's laws on terrorism offenses. Courts have too often deemed nonviolent expression to be terrorist propaganda or to constitute aiding and abetting a terrorist organization. Courts have deemed individuals to be members of armed organizations on notoriously vague grounds. It was therefore particularly regrettable to discover that the legal reforms introduced with the 2004 revision of the Turkish Penal Code, which went into effect on June 1, 2005, did not sufficiently remedy the situation. Our focus here is the laws that have established a basis for the problematic prosecution of demonstrators and for the high criminal sentences available and imposed in such cases. Defendants are also charged under previously existing laws, such as being in violation of the Law on Demonstrations and Public Meetings (Law no. 2911), which outlines more standard offenses related to demonstrations, such as resistance to police dispersal, and the grounds on which demonstrations can be restricted and therefore deemed unauthorized.

The 2005 Penal Code introduced Article 220, entitled, Forming Organized Groups with the Intention of Committing Crime (See translation, appendix 1). This article has been most commonly used to punish criminal gangs, as a separate article, discussed below, criminalizes membership in armed political organizations. However, courts have also applied Article 220 to those deemed to be associated with armed political organizations.

This article also introduced a provision allowing individuals to be treated as if they are members of an armed organization even if they are not. Paragraph 6 of Article 220 states:

Thus, individuals who commit crimes on behalf of armed organizations such as the PKK can be prosecuted as if they were fighters, and sentenced accordingly.

Similarly, Article 220/7 states:

While Article 220/7 has not recently been applied to pro-Kurdish demonstrators, it has in some cases been applied to leftist demonstrators who have been punished as members of armed organizations for knowingly and willingly aiding them without providing any material assistance.^[26] This undefined and vague charge currently in use against leftist demonstrators deserves a separate study.

Article 220/6-7 of the Penal Code connects with Article 2/2 of the Anti-Terror Law, which includes a similar provision:

Finally article 220/8 penalizes propaganda, and its use frequently constitutes a restriction on free expression:

When a defendant is convicted of committing a crime on behalf of an armed political organization, Article 314 of the Penal Code provides the punishment, stipulating substantially higher penalties than if the person were prosecuted for a crime committed on behalf of an organized criminal gang.

Article 314/2 applies to any person who establishes or becomes a member of an armed political organization (see translation, appendix 1). Article 314/3 states vaguely:

This paragraph, and Anti-Terror Law Article 2/2 (above) provide the legal basis for linking the offenses proscribed by Article 220 (e.g., 220/6, participation in political demonstrations) with the harsh punishments provided for in Article 314.

The charge of membership in an armed political organization under Article 314/2 of the Penal Code carries a five-to-10-year prison sentence. Then the Anti-Terror Law bears on the case, and its Article 5 provides that the sentence automatically increases by one-half, because the crime is also a terrorism offense. Any crime committed on behalf of the PKK falls under Article 5 of the Anti-Terror Law because the PKK is a terrorist organization under Turkish law.

To date, adult demonstrators convicted under Articles 220 and 314 have typically been sentenced to between seven and 15 years in prison after discretionary reductions are applied.^[28] In addition to the charge of membership in an armed organization for committing a crime on behalf of an organization, the defendant also faces other charges for being in violation of the Law on Demonstrations and Public Meetings.^[29] The combination of charges, in theory, means that a defendant could face 28 years imprisonment or more, and an even higher sentence if there are multiple violations, and the court were to opt to sentence at the upper end of the range.^[30]

In July 2006, the Turkish parliament passed a series of amendments to the 1991 Anti-Terror Law. Of relevance here is the amendment to Article 7/2 concerning the crime of making propaganda for a terrorist organization, so it could be applied more directly to demonstrators and others committing an offense by means of a speech, in writing or over a broadcast (see Appendix 1 for a full translation of article 7). This provision is widely used in Turkey today to restrict nonviolent expression on the Kurdish issue, as well as to prosecute nonviolent expression by individuals associated with legal leftist organizations that share ideological ground with illegal armed leftist groups. The widespread use of Article 7/2 to restrict leftist nonviolent expression merits a separate study, but the cases included in this report demonstrate that this charge of making propaganda is now invariably used against Kurdish demonstrators, along with the more serious charge of committing a crime on behalf of the PKK.^[31]

Revisions to the Anti-Terror Law in 2006 had particularly serious implications for children. Under the 2006 amendments, children between 15 and 17 years of age charged with a terrorist offense forfeited the right to be tried in juvenile courts (Article 9, Anti-Terror Law). Instead, they were now to be tried in Special Heavy Penal Courts established under Article 250 of the Criminal Procedure Code, which have a special remit to deal with terrorism and organized crime cases.^[32]

The provisions discussed above build a complicated and interlinked set of legal norms applicable to demonstrators, and potentially also to anyone else deemed to have committed a crime on behalf of an illegal organization. They do not, however, explain how participation in a demonstration, without any further action, can be sufficient to warrant the charge of committing a crime on behalf of the PKK, and, by extension, of membership in the PKK. To understand how Turkish courts today are able to apply these laws to demonstrators, it is necessary to review the reasoning of the General Criminal Board of the Court of Cassation in a 2008 precedent-setting decision.^[33] In the Felat zer case, the Court of Cassation held that by the sole fact of joining protests, demonstrators were committing crimes on behalf of the PKK. The court reasoned that because the PKK regularly issues appeals through sympathetic media outlets to the Kurdish people to join protests, any demonstrator attending a protest must be acting under PKK orders. This ruling led other courts to apply the vaguely worded laws discussed above to demonstrators.

The zer case involved a demonstrator who was convicted of violent activities during mass protests that took place in the city of Diyarbakr on March 28 to 31, 2006, as well as for his conduct during two other demonstrations which he participated in at around the same time. The March 2006 protests merit a brief account here because they prompted the legal changes that have resulted in the prosecution of and severe penalties for demonstrators that are the subject of this report. Following the March 2006 demonstrations, the government also quickly introduced revisions to the Anti-Terror Law.

On March 24, 2006, the military killed 14 members of the PKK in the enyayla region, a rural area between Diyarbakr, Bingl, and Mu. The PKK subsequently made unsubstantiated claims that the group had been attacked by some form of chemical weaponry, leaving their bodies burnt and unrecognizable. After autopsies in Malatya, the bodies of four of the militants were released to their families in Diyarbakir, amid public outrage about the alleged use of chemical weaponry. On March 28, a funeral ceremony for the four took place in Diyarbakr. A satellite news channel sympathetic to the PKK had reportedly encouraged popular participation in the funeral.^[34] At any rate, the crowd assembled for the funeral grew large, and after the funeral prayers, clashes erupted between demonstrators and the police, and spread to different neighbourhoods. The protests assumed a scale not previously encountered in many years, and went on for days. In the course of the demonstrations, 10 individuals were killed, eight of them by bullets suspected to have been fired by the security forces. Local human rights groups and the Diyarbakr Bar Association believe that the use of excessive force to police the demonstrations exacerbated tensions and caused the demonstrations to continue longer.^[35]

Hundreds of demonstrators and members of the security forces were reportedly injured during the protests. Hundreds of people many of them children were detained. Many of the detainees, including many children, reported ill-treatment in police custody. These claims were documented at the time by local human rights NGOs, the Diyarbakr Bar Association, and Amnesty International.^[36] To date, not a single allegation of ill-treatment or use of excessive force by police has resulted in a disciplinary sanction against a police officer, far less any criminal prosecution. In all but one case, the separate investigations into the fatal shootings have still not been concluded after more than four years.^[37]

After the demonstrations, hundreds of adults and children were tried for terrorism offenses, as well as for damaging public property, for various violations of the Law on Demonstrations and Public Assemblies (resisting dispersal, joining unauthorized demonstrations, etc.), and also for looting. The courts generally convicted the demonstrators of an offense under Article 7/2 of the Anti-Terror Law (making propaganda for a terrorist organization), violating the Law on Demonstrations and Public Assemblies, and, where there was enough evidence, damaging public property (Articles 151-52, Turkish Penal Code).

In March 2006, as Diyarbakr erupted in protest, Felat zer was working there as a barber. zer was accused of involvement in violent acts at the March 28 protest and two other demonstrations around that time. The main evidence cited against zer in the reasoned verdict of the court consisted of video footage of him at various demonstrations: zer carrying an empty coffin and shouting slogans at the funeral of a PKK member on February 26, 2006; zer at the front of a group of protestors at a Newroz demonstration, gesticulating to the others with his hands, which the court determined amounted to directing the resistance to the police; and zer shouting slogans among a group of people burning tires during the March 28 Diyarbakr protests, and partly covering his face with a red scarf to conceal his identity. There was apparently no video evidence of zer actually throwing stones or resorting to violence himself, only a photograph of him with a stone in his hand, and evidence that he had been among a group that violently resisted the police. On the basis of this evidence, on September 29, 2006, Diyarbakr Heavy Penal Court No. 4 convicted zer of resisting dispersal by the police in violation of the Law on Public Meetings and Demonstrations, and of making propaganda for the PKK (Article 7/2, Anti-Terror Law).

zers lawyer and the prosecutor both lodged an appeal against the sentence with the Ninth Penal Chamber of the Court of Cassation.^[38]

In a February 21, 2007 ruling, the Ninth Chamber held that the Diyarbakr Heavy Penal Court should have tried and convicted zer under different articles of

the Penal Code, and that zer had in fact committed a crime on behalf of the PKK and could have been punished as a member of the armed organization (Articles 220/6 and 314/2-3, Turkish Penal Code). The Ninth Chamber reasoned that the PKK had ordered all the demonstrations zer had participated in, and that he was therefore acting under the PKK's orders.

The Diyarbakir court retried zer, but rejected the view of the Ninth Chamber of the Court of Cassation that zer should have been charged with committing a crime on behalf of the PKK. Arguing that the defendant had not aided the organization directly, on May 31, 2007, the Diyarbakir court returned the same verdict as it had in September 2006 that zer had violated the Law on Demonstrations and Public Meetings and had made propaganda for the PKK.

The Diyarbakir court had reasoned:

Because of the disagreement between the local Diyarbakir court and the Ninth Penal Chamber of the Court of Cassation, the case was referred to the General Penal Board of the Court of Cassation. The decision of the board produced the definitive judgement on the matter and established the case law that is binding on courts hearing comparable cases.

The General Penal Board agreed with the Ninth Chamber that individuals who join mass demonstrations for which there had been an appeal to participate by an armed group are acting under the orders of the armed group. The court reasoned that:

In determining that demonstrators were responding to PKK orders to protest, the General Penal Board described at length PKK policies to promote a campaign of civil unrest (in Kurdish, *serhildan*) among the general Kurdish population. The board said that the PKK had organized university students, parents of schoolchildren, and civil society groups to petition for Kurdish-language education, and had also organized campaigns to appeal for a general amnesty for PKK members, a ceasefire, and the release from prison of Abdullah calan.^[41] After the General Penal Board's decision in the zer case, many subsequent indictments against those charged with membership in an armed organization and committing a crime on behalf of an organization, have referred to these PKK resolutions as though they prove that various defendants have acted under PKK orders.

The Diyarbakir court had reasoned that a person could not be convicted of committing a crime on behalf of the PKK, unless the organization directly ordered that individual to act, rather than issuing a generalized appeal to an undefined collective. Yet the General Penal Board held the opposite, that a generalized appeal was sufficient to prove the crime. Subsequent to the General Penal Board's ruling, indictments have typically included statements from the PKK and its leadership aired on sympathetic news websites and television channels as evidence of such appeals, without attempting to prove a link between individual demonstrators and such material, much less the PKK itself.

Ultimately, on December 16, 2008, the Diyarbakir court convicted Felat zer in a second retrial of committing a crime on behalf of the PKK, and also of membership in an armed organization, making propaganda for the PKK, and three counts of violating the Law on Demonstrations and Public Assemblies (Law no. 2911) for using force or violence or threats or attacks or resistance during the dispersal of a demonstration (Article 32/c, Law no. 2911).^[42] zer was sentenced to 14 years and seven months in prison. The Court of Cassation upheld the sentence on all counts but one on November 11, 2009.^[43]

The Diyarbakir Bar Association has criticized the use of Article 220 of the Turkish Penal Code that has emerged since the zer precedent, noting the extremely vague and wide definitions in the law that have opened the way to such an interpretation by the Court of Cassation. The bar association concluded that the article violates the principles of legality and legal certainty because it is too broad and vague to meet requirements in criminal law for precision and clarity. Suggesting that the article also violates the fair trial principle and the principle of proportionality between crime and punishment, the bar association recommended that Article 220 be amended, commenting:

A combination of vague language in the Penal Code (Article 220/6-7) and the Anti-Terror Law (Article 2/2) and the harsh ruling in the zer case has resulted in a new pattern of prosecutions and convictions, which we show in Chapters 5 to 7 of this report.^[45]

The prosecution of children under terrorism laws rose over the period 2006 to 2010, with a significant rise in the number of prosecutions in 2008 (the last available official statistics). In 2006, legal proceedings under the Anti-Terror Law against 299 children were initiated in that year; in 2007 the figure rose to 438 children, and in 2008 this rose to legal proceedings initiated against 571 children.

Of these 571 children, 306 were charged with membership in an armed organization, an offense in the penal code that is also simultaneously punishable under the Anti-Terror Law. It is probable that the other 265 children were prosecuted primarily under article 7/2 of the Anti-Terror Law (propaganda for a terrorist organization).

In response to the rising number of prosecutions revealed in these figures, throughout 2009, local civil society groups campaigned extensively against the treatment of children (whom the press dubbed the children who throw stones) under the Anti-Terror Law (though it was not the Anti-Terror Law alone that led to their extensive convictions and harsh sentencing). A signature-based campaign called Those Who Call for Justice for Children (ocuk iin Adalet arclar) was a leading force, and those involved advocated concertedly and regularly across parties, launching a huge media campaign to press for the repeal of relevant articles of the Anti-Terror Law and an end to the use of terrorism laws and articles of the Law on Demonstrations and Public Meetings against children.^[46]

In 2009, the United Nations Committee on the Rights of the Child expressed concern that 2006 amendments to the Anti-Terror Law allow for the prosecution of children above 15 years as adults in Special Heavy Penal Courts.^[47] The committee expressed particular concern over reports indicating the application of the ATA [Anti-Terror Act, i.e. Anti-Terror Law] on grounds such as the presence or participation in demonstrations and public gatherings.

The committee made a number of recommendations, including that the Turkish government amend the Anti-Terror Law to ensure that children are not tried as adults in Special Heavy Penal Courts and that they be guaranteed the protection of juvenile justice standards in ordinary courts. The committee also called on Turkey to ensure that children are only detained as a measure of last resort and for the shortest possible time period, and to afford children a number of other procedural protections.^[48]

The government started and then stopped its efforts to change laws and practices related to children. In September 2009, following enormous public pressure, and just before the Committee on the Rights of the Child was to publish its conclusions, the government announced that it would repeal several provisions of the Anti-Terror Law and ensure that all those under 18 years of age would again be tried in juvenile courts.^[49] Children who received sentences of less than two years would be eligible to receive a suspended sentence and those aged 15 to 17 could benefit from greater discretionary sentence reductions.^[50] Yet the government shelved the amendments in December 2009, most likely in reaction to the death of seven soldiers in a December 8 PKK attack in Tokat province.

In June 2010, Minister of Justice Sadullah Ergin stated that there were 206 children in prison in Turkey convicted of, or standing trial for, terrorist offenses, and that there was a total of 2,506 children in prison for all offenses.^[51] However, the campaign for change continued, in March 2010 the government revived the plan, and on July 22, 2010, the Turkish parliament adopted several amendments to ensure that in future children will only stand trial in the juvenile justice system.

The positive aspects of the Law Amending the Anti-Terror Law and other Laws (Law no. 6008), published in the *Official Gazette* on July 25, 2010, include the following provisions: all children will henceforth stand trial in juvenile courts, or adult courts acting as juvenile courts; child demonstrators who commit propaganda crimes or resist police dispersal will not be charged with committing crimes on behalf of a terrorist organization (Article 2/2, Anti-Terror Law); and children will not face aggravated penalties and may benefit from sentence postponements and similar measures for public order offenses. The

amendments also reduce penalties for both children and adults under the Law on Demonstrations and Public Meetings for forcibly resisting police dispersal and offering armed resistance, including with stones, during demonstrations.[\[52\]](#)

Yet the new law omits any provision to prevent children from being charged with terrorism propaganda offenses (either under Article 7/2 of the Anti-Terror Law or Article 220/8 of the Turkish Penal Code).

The new law also failed to state directly that Turkish Penal Code Articles 220/6-7 (committing a crime on behalf of an organization and aiding and abetting an organization knowingly and willingly) used in conjunction with Article 314 (membership in an armed organization) would not be applied to children. Instead, the amendment focused on the non-applicability of Article 2/2 of the Anti-Terror Law in cases of children who had committed propaganda crimes or had resisted police dispersal. As stated earlier, Article 2/2 of the Anti-Terror Law states: A person who is not a member of a terrorist organization, but commits a crime on behalf of an organization, is also deemed to be a terrorist offender and is punished as a member of the organization.[\[53\]](#) This article connects directly with Turkish Penal Code Article 220/6 (A person who commits a crime on behalf of the organization although he is not a member of the organization shall also be punished as though a member of the organization). The non-applicability of Anti-Terror Law Article 2/2 to most child demonstrators would thus appear to block the courts from applying Turkish Penal Code Articles 220/6-7 and 314/2-3 to children. To reduce the possibility of any ambiguity on this point, it would have been preferable for the new law to state directly that 220/6 (committing a crime on behalf of an organization) and 220/7 (aiding and abetting an illegal organization), both punishable as membership in an armed organization, are no longer applicable to children.

It should also be noted that under the new law, child protestors accused of using explosive substances, including Molotov cocktails, may still be charged with committing a crime on behalf of a terrorist organization. Only the implementation will reveal whether courts continue to press this charge.

Overall it will be very important in the months ahead to monitor the implementation of the July 2010 legal amendments to make sure that they have closed the door on the prosecution of child demonstrators as members of armed organizations simply on the basis of their participation or actions during public gatherings.

In the days after the amendments had entered into force on July 25, courts in Adana, Diyarbakir, and Van, among other places, immediately released children from prison who were serving sentences or in pretrial detention on terrorism-related charges. In the coming months the Court of Cassation is expected to overturn all convictions of child demonstrators meted out by the adult special Heavy Penal Courts. Special Heavy Penal Courts will issue decisions of non-jurisdiction for the cases against children and transfer the cases to the juvenile courts. The children will be retried in juvenile courts (in childrens heavy penal courts in provinces where such courts exist) and on the basis of the legal amendments passed as law no. 6008 adjustments will be made to the charges on which they stand trial. In most cases, charges of committing a crime on behalf of an organization (Article 220/6, Turkish Penal Code) used in conjunction with membership in an armed organization (Article 314/2, Turkish Penal Code) will be dropped. Most children convicted of other offenses (such as propaganda for a terrorist organization, Article 7/2, Anti-Terror Law) are likely to benefit from sentence postponements. Since this report was finalized during the judicial recess when no retrials had yet begun, from Fall 2010 it will be important to monitor how the law is applied to new and ongoing cases, as well as to cases in which there is already a confirmed sentence.

Of relevance to adult demonstrators as well as children was a provision in the July amendments which reduced penalties for all those who violate articles of the Law on Demonstrations and Public Meetings by forcibly resisting police dispersal or offering armed resistance, including with stones.[\[54\]](#) While this report does not deal in detail with articles of the Law on Demonstrations and Public Meetings, the amendments to that law may result in lower overall sentences for adult demonstrators.

The most important failing of the July legal amendment was the failure to amend or repeal the extremely punitive laws on committing a crime on behalf of an organization (article 220/6) and with it the equally vague knowingly and willingly aiding and abetting an illegal organization (article 220/7). These can still be applied to all adult demonstrators. The greatest failing of the new legal amendment is the fact that the most problematic and vaguely drawn law which, following the case-law, has resulted in long prison sentences for hundreds of adult and child demonstrators remains in place and will continue to be widely applied to anyone aged 18 and over.

In 2009, nongovernmental organizations attempted to collect their own statistical data on cases of child demonstrators prosecuted under terrorism laws, which provided a fairly clear picture of the pattern of convictions of children in the courts of Adana and Diyarbakir. It is worth reviewing their research here, as nongovernmental organizations will continue to monitor how the implementation of the July amendments changes the situation of child demonstrators.

In November 2009, the Adana branch of the Human Rights Association reported that it had identified 106 children convicted of terrorism offenses in the period between June 2008 and October 2009 in the Adana courts (92 of these convictions were in 2009). Of these 106 children, 104 had been convicted of committing a crime on behalf of an organization (Article 220/6, Turkish Penal Code) and therefore membership in an armed organization (Article 314/2, Turkish Penal Code). Eighty-three had also been convicted of making propaganda for a terrorist organization (Article 7/2, Anti-Terror Law). After reductions on account of their ages, these children received prison sentences ranging between four and five years. Just two children among the 106 were convicted only of making propaganda for a terrorist organization.[\[55\]](#)

Of the group of 106 children, 12 children were 13 or 14 years old, and all had stood trial in the Special Heavy Penal Courts, although Turkish law stipulates that children under 15 years of age must be tried in a childrens heavy penal court. There is no such court in Adana, and no arrangement was made to transfer the trials to a juvenile heavy penal court in another city. All but one of the 12 children under age 15 received a prison sentence of more than four years. These convictions are currently before the Court of Cassation and should be quashed following the July 2010 changes in the law.

In January 2010, lawyers on behalf of the Adana branch of the Human Rights Association and the civil society initiative Those Who Call for Justice for Children (ocuk iin adalet arclar), were able to identify 11 ongoing Adana trials in which 60 children were being prosecuted under these laws. However, this figure did not necessarily represent all cases against children in the Adana courts. [\[56\]](#)

According to an unpublished October 2009 report by the Diyarbakir coordinator of the Justice for Children Initiative (ocuk in Adalet Giriimi), 159 children ages 15 to 17 were being tried in ongoing proceedings in the Special Heavy Penal Courts in Diyarbakir, and 15 children ages 12 to 14 were being tried in the juvenile heavy penal court for terrorism offenses. At the time of the reports completion, in the cases of 93 children, lower courts had passed verdicts, with convictions in 56 cases.[\[57\]](#) The total number of 267 cases examined concerned trials spanning the period 2008 to September 2009. The report stated that the number of case files examined did not represent the total number of such cases over that period as there had been difficulties accessing all files.

Human Rights Watch has no recent figures on the number of prosecutions in the Istanbul, Izmir, Ankara, Van, and Malatya courts.

The Ministry of Justice has not released statistics on the number of trials opened in 2009 and early 2010 under Articles 220 and 314 of the Turkish Penal Code, although all lawyers interviewed in the course of the research for this report indicated that they had witnessed a significant rise in the past two years in the number of prosecutions of demonstrators under these articles.

Nongovernmental organizations have made no known attempts to compile data on the number of prosecutions and convictions of adult demonstrators under the same laws that affected children. However, based on information received from lawyers and a survey of case files, the number of prosecutions and convictions would appear to be much higher.

Even if the figures were available, it would not be possible to tally the number of cases in which Article 220/6 and 220/7 are used in conjunction with Article 314 in any year, because the numbers are not disaggregated. Since Article 220 is most commonly used against those prosecuted for membership in organized

crime, it is not possible to determine how many cases were initiated against demonstrators. In any case, this report focuses on the increase in prosecutions since the zer case, which became binding law for lower courts in March 2008.

Demonstrators face harsh punishments not because they are violent but because the Turkish authorities believe the act of protest on Kurdish issues entails ideological support for the PKK. Prosecutors and courts have focused on the number of demonstrations an individual has attended as an important factor in determining whether he or she has been acting on behalf of an armed organization. We consider here cases in which the defendant committed no violent act and in which the content of slogans cannot be argued to amount to incitement to violence. Instead, in these cases, court records establish that the defendant joined demonstrations on more than one occasion and expressed an outlook ideologically similar to that promoted by an illegal organization. One judge who has written on the use of terrorism laws in the wake of the General Penal Boards ruling in the zer case has summarized the approach of courts as follows:

Veysi Kaya attended public demonstrations on three occasions between August 2005 and February 2007.

Photographic evidence presented at trial established that Kaya was present at a demonstration in Diyarbakr on August 11, 2005, protesting Prime Minister Recep Tayyip Erdoans visit to the city. He had also attended a demonstration against the prison conditions of PKK leader Abdullah calan on January 16, 2006, and a protest on February 14, 2007, the eve of the anniversary of calans capture by the Turkish intelligence services in 1999.^[59]

Kaya was detained a few days after the third demonstration and charged with three separate counts of making propaganda for the PKK (Article 220/8, Turkish Penal Code), one for each demonstration attended. There was no evidence that he had participated in any violent action. He was held in pre-trial detention.

On the basis of photographic evidence showing that at two demonstrations, Kaya had carried banners supporting calan, and on two occasions, he had been seen shouting pro-calan slogans, Diyarbakr Special Heavy Penal Court No. 4 on April 25, 2006 convicted him of three counts of making propaganda for a terrorist organization or its aims (Article 220/8, Turkish Penal Code). The banners the defendant carried included the words, calan is the only interlocutor Democratic Peoples Initiative (carried on August 11, 2005), and Mr. calan is our political representative (carried on February 14, 2006). Based on video footage, Kaya was determined to have shouted the following slogans: Long live leader calan (on January 16, 2006), and We are with you, chairman, with our souls and our blood on February 14, 2006). For each of these three separate incidents, the Diyarbakr court sentenced him to a one-year prison term, which was in each case reduced to 10 months, so that his total prison sentence added up to 30 months. The court also stripped him of political rights (such as the right to be elected to public office, to serve on the boards of foundations, associations, trade unions, or political parties) for the duration of his prison sentence, as is the custom for terrorism offenses (Article 53/1, Turkish Penal Code).^[60] The court released Kaya from detention pending the result of his appeal.

Following his conviction, the defendants lawyers lodged an appeal against the decision with the Court of Cassation. On November 4, 2008, following the decision in the zer case, the Ninth Penal Chamber of the Court of Cassation quashed the conviction, arguing that on the basis of the evidence Veysi Kaya should not have been convicted of propaganda crimes but rather for the more serious offense of membership in an armed organization (Article 314/2, Turkish Penal Code) because he had commit[ed] a crime on behalf of an illegal organization, while not a member of that organization (Article 220/6, Turkish Penal Code) punishable with a five- to 10-year prison sentence. The Ninth Penal Chamber determined that Veysi Kaya should be retried under those articles as well as on propaganda charges, reasoning that he had acted on the information and under the wishes of the organization by carrying banners praising the organization and shouting slogans when joining a press conference organized on three separate dates in response to the appeal for action following the organizations strategy and issued by media channels belonging to the organization.^[61]

At the time of writing, the retrial of Veysi Kaya on these more serious charges was pending in the Diyarbakr court. However, given the developing practice of Turkish courts after the zer decision, it is almost certain that Kaya will be convicted and receive a substantially higher prison sentence.

The case of Dicle University student Murat Ikrk was one of the first examples of a confirmed sentence in conformity with the decision in the zer case.^[62]

Murat Ikrk, a 23-year-old fourth-year student in the Philosophy Department at Diyarbakrs Dicle University, was arrested and placed in pre-trial detention on the basis of video evidence showing him present for just eight seconds during an unauthorized demonstration that took place on March 5, 2007, on the university campus.

The video evidence shows him stopping briefly beside some masked demonstrators and clapping, before walking off. Prosecutors asserted that this protest, which included a boycott of classes, was one of a number of demonstrations the PKK ordered through sympathetic news outlets against the alleged poisoning of imprisoned PKK leader Abdullah calan. After identifying Murat Ikrk at this protest, the police then discovered from film archives that he had also been part of a mass funeral procession accompanying the coffins of PKK members on March 28, 2006, which subsequently spiralled into violent protests over several days (see above). Video footage revealed that Ikrk had raised two fingers in a victory sign during the 2006 funeral procession.^[63] A subsequent expertise report could not confirm an allegation that he had also shouted a slogan. No warrant had been issued for Murat Ikrks arrest after the March 2006 protest, or after another protest on December 21, 2006 that Ikrk attended, according to video footage. At the December demonstration later excluded from the case by the court Ikrk had been among a group, the Dicle University Students Association (DO-Der). At that demonstration, he was filmed clapping and holding one side of a banner calling for peace and a ceasefire in the ongoing conflict between the PKK and the military.

Murat Ikrk was remanded to pre-trial detention for the duration of his trial. On November 30, 2007, Diyarbakr Heavy Penal Court No. 5 convicted him of committing crimes on behalf of the PKK, punished as equivalent to membership in the PKK (Articles 220/6 and 314/2-3, Turkish Penal Code) and on two counts of making propaganda for the PKK (Article 7/2, Anti-Terror Law) and sentenced him to a prison term of six years and three months for the former crime and to two sentences of 10 months for the latter propaganda crime.

On January 29, 2009, the Court of Cassation upheld the six-year-and-three-month sentence. The Court of Cassation ordered a retrial on the count of making propaganda for the PKK on procedural grounds. If convicted on that count, Ikrk is likely to receive at least an additional 10-month sentence. Ikrk has been in prison for almost three years and has approximately four years left to serve. For his main sentence, he has no remaining right of appeal left in Turkey, and his lawyers have applied to the European Court of Human Rights in Strasbourg.

In a number of similar cases currently pending before the Court of Cassation or ongoing in the lower courts, the sole evidence against the defendant is his or her mere presence at a demonstration and alleged sympathy with the aims of the demonstration. In light of the Court of Cassations recent decisions, the convictions are likely to be upheld on appeal.

Another Dicle University student, Mehmet Kocakaya, was detained along with other students on April 6, 2009, when he participated in a student protest against the fatal police shooting of a fellow student. Mahsum Karaolan and another man, Mustafa Da, had been killed during an April 4, 2009 march to Abdullah calans home village of merli (Kurdish name: Amara) in Urfa province to mark the anniversary of the imprisoned PKK leaders birth and to protest his prison conditions and allegedly insufficient care for his health problems. Kocakaya was charged with membership in the PKK, on the grounds of having committed a crime on behalf of the organization, as well as making propaganda for a terrorist organization, and he was detained pending trial.^[64] The prosecutor stated in the indictment that the student protest was organized in response to an appeal the PKK issued through the Roja Ciwan website, in which the PKK called on the youth of Kurdistan to continue the march to freedom of Mustafa Da and Mahsum Karaolan, who were executed on their way to Amara to celebrate the leaders birthday and ... to stand up more strongly for the will of the people in North Kurdistan and in all parts of Kurdistan ... The indictment named Kocakaya as part of a group that organized a boycott of classes that day at the campus, made the other students leave the building, shouted slogans on the campus, and incited the other students to get involved in illegal activities. He reportedly also tried to escape apprehension by the police. The sole evidence against Kocakaya is video footage of him shouting slogans such as Long live Chairman Apo, and The martyrs dont die! Mehmet Kocakaya

was remanded to prison for the duration of his trial. He was released on bail on April 13, 2010, after receiving a seven-year-11-month prison sentence, which he has appealed. Three of four fellow students from the university who stood trial with Kocakaya also received prison sentences and remain in prison pending the outcome of their appeals.^[65]

On February 25, 2010, Diyarbakr Heavy Penal Court No. 4 convicted three more Dicle University students to sentences ranging from six years and three months to seven years and six months in prison for their roles in a boycott of classes on October 15, 2008, and in a sit-in at which they read out a public statement demanding mother tongue (Kurdish language) education. The prosecutor determined that the PKK had issued appeals for popular protests on the issue of mother tongue education on Roj TV and on websites such as Rojaciwan (on September 12, 2008) and Kurdistan-Post (on September 19, 2008).^[66]

The indictment states that a group made up of a crowd supporting the organization had gathered at around 10 a.m. on the university campus and shouted slogans such as The right to mother tongue language cannot be prevented! The PKK is the people and here are the people! No life without the leader! Dont sleep, Amed [Diyarbakr], protect your honor! They had carried yellow, red and green cardboard banners with slogans in Kurdish relating to mother tongue education: Our language is our existence! We want our mother tongue language! Freedom of language is freedom of the people! The prosecutor judged the words they carried, the slogans the group shouted, the choice of colors on the cardboard banners as amounting to propaganda for the illegal PKK terrorist organization on the campus.

Later, the indictment charges, a group of 20 to 30 people supporting the organization entered classes in university buildings and banged on professors lecterns (*kursu*), shouting slogans such as, Dicle, dont sleep, protect your honor! and forcing the students to leave the classrooms.^[67]

The Diyarbakr court determined that two students Hasan Yaiz and zgr Gvenhad hindered the education of other students (Article 112/1-b, Turkish Penal Code) in the frame of the organizations [the PKKs] activities (Article 5, Anti-Terror Law), and also committed a crime on behalf of the PKK, punishable as membership in the PKK. The court handed them each seven- year- six-month prison sentences (after discretionary reductions). The court ruled that Nurettin Salhan had committed a crime on behalf of the PKK for reading out the public statement.^[68]

Mehmet Kocakaya (see previous case) and zgr Gven were among a group of Dicle University students in prison in Diyarbakr that wrote a letter to the press in March 2010 describing their situation:

In early 2010, Diyarbakr courts issued a series of verdicts convicting individuals at their very first trial hearing of membership in the PKK and for committing a crime on behalf of the PKK because they merely shouted a slogan or held up a banner. The cases in question all concern public gatherings on December 6, 2009, in the towns of Kurtalan, Eruh and Siirt, all in the southeastern province of Siirt, for the reading of a public statement protesting the prison conditions of Abdullah calan. Scores of people were reportedly prosecuted for their participation in demonstrations in the three towns on the same day, which the police and prosecutor argued came in response to an appeal the PKK issued through sympathetic media outlets. While Diyarbakr Heavy Penal Court No. 6 heard some of the cases, resulting in acquittals, Diyarbakr Heavy Penal Court No. 4 heard some cases, resulting in convictions at the very first hearing. Here we present three such cases.

Perhaps the most striking example is the case of Vesile Tadik.

The public prosecutors indictment of Vesile Tadik, a 49-year-old mother of six, asserts that on December 6, 2009, she joined a group that gathered outside the district Democratic Society Party (DTP) building in the town of Kurtalan, in Siirt province. The group reportedly walked to the clock tower in the town where DTP district head Fikret ren read out a public statement protesting the prison conditions and treatment in prison of Abdullah calan, before the group dispersed without incident. Individuals in the crowd reportedly shouted pro-calan slogans (such as Long live chairman calan!), and Vesile Tadik was caught on a police camera holding up a pro-calan banner. The indictment describes the scene as follows:

The court reasoned that PKK statements to sympathetic media outlets (four broadcasts on Roj TV on four different dates) amounted to a call to the population to demonstrate, and that the gathering had therefore been ordered by the PKK. It is striking to note that the public prosecutor did not choose to charge anyone with the reading out of a public statement and organizing the demonstration, and in fact, Vesile Tadiks lawyer argues that the public gathering was a legal one, for which the local DTP had secured permission.

On the strength of a photograph of Vesile Tadik holding up a banner that read, The approach to calan is the approach to peace, she was convicted at her first court hearing on March 9, 2010, of making propaganda for a terrorist organization (Article 7/2, Anti-Terror Law) and of membership in an armed organization (Article 314/2, Turkish Penal Code) for having committed a crime on behalf of the PKK (Article 220/6) to a prison sentence of seven years and one month (after discretionary reductions). The slogan itself contained no incitement to violence and falls within the boundaries of free expression.

The court also ignored the fact that Vesile Tadik is illiterate, and speaks Kurdish but not Turkish, forcing her to rely on an interpreter in court. She explained through her interpreter that she had not been able to read the banner in Turkish. In view of this, her level of education, and her general circumstances, the prosecutor argued that she should be acquitted. The court disagreed. The case is on appeal.^[71]

Diyarbakr Heavy Penal Court No. 4 also convicted Medeni Aydn of making propaganda for a terrorist organization (Article 7/2, Anti-Terror Law) and of membership in the PKK (Article 314/2, Turkish Penal Code) and of committing a crime on behalf of the PKK (Article 220/6, Turkish Penal Code). Medeni Aydn, like Vesile Tadik, received a seven-year-and-one-month prison sentence (after discretionary reductions) at his first trial hearing on March 16, 2010. His crime was shouting the slogan Long live Chairman Apo! and clapping at a December 6, 2009 demonstration at which a press statement was read out in front of an assembled crowd in the town of Eruh, in Siirt province.

As was the case with Vesile Tadik, Medeni Aydn was not detained at the demonstration itself, but a few days later, on December 11, when he was brought before the Eruh prosecutor to testify. The prosecutor and court decided that the crime of shouting the slogan, Long live chairman Apo! was serious enough to justify remanding Aydn to prison pending trial. He remains in prison pending appeal for shouting a slogan that the court should have judged as falling within the boundaries of free speech.

On March 16, 2010, Diyarbakr Heavy Penal Court No. 4 also convicted Selahattin Erden, a 40-year-old father with 15 children from two wives, of making propaganda for a terrorist organization and of membership in the PKK for having committed a crime on behalf of the PKK to a seven-year-and-one-month prison sentence. He too was placed in pre-trial detention and remains in prison pending his appeal. Selahattin Erdens crime at the Eruh demonstration on December 6, 2009 was to have held one edge of a banner reading, Either free leadership and free identity, or resistance and revenge to the end! Diyarbakr Heavy Penal Court No. 6 acquitted Hayrettin Tein, who held up the other corner of the same banner, of committing a crime on behalf of the PKK. The court instead sentenced him to the much lesser offense of making propaganda for a terrorist organization (Article 7/2 Anti-Terror Law), for which he received a 10-month sentence but was released from prison pending appeal.^[72]

Rihan Yldz, a 56-year-old mother of five, was sentenced at her first hearing on March 11, 2010, to nine years and seven months in prison for membership in a terrorist organization (Article 314/2, Turkish Penal Code) for committing a crime on behalf of the PKK (Article 220/6, Turkish Penal Code) and for four counts of making propaganda for the PKK (Article 7/2, Anti-Terror Law).^[73] Arrested on December 21, 2009, and remanded to prison the next day, she remains in a Diyarbakir E-type prison pending the result of her appeal.

Rihan Yldz joined four different Diyarbakir protests at which public statements were read out. The evidence against her consisted of video footage showing her shouting pro-calan and pro-PKK slogans and clapping at the demonstrations, and at two demonstrations, carrying a banner. The demonstrations she joined took place on September 30, 2007 (protesting calans prison conditions and health problems); on March 26, 2008 (protesting fatal shootings by the

police during Newroz in Van, Hakkari, and maki; on August 19, 2009 (calling for a peaceful solution to the Kurdish problem); and September 11, 2009 (protesting the arrests of Kurdish Democratic Society Party officials and activists, for membership in the Union of Kurdistan Communities (KCK/TM), a body connected with the PKK). At the last demonstration, video footage showed that she had walked at the front of the group, holding a banner with the slogan, Don't touch my party; don't touch my political choice; this operation will finish you, referring to the arrests of party officials and warning the authorities against the clampdown. Prosecutors asserted that she shouted slogans including, Long live chairman Apo! Oh leader, we are with you, with our blood and souls! and The PKK is the people, the people are here! The ambassador for peace is on maki [the island where calan is imprisoned][74]. During her trial hearing, the court identified her as having carried a banner reading Close down maki prison, at the demonstration on September 30, 2007, and identified other similar slogans, which the video footage showed she had shouted along with others.

The prosecutor argued in the indictment that two of the demonstrations were organized in response to PKK appeals made through media outlets (Roj TV and the Rojaciwan website), and hence were ordered by the PKK.

At her trial hearing, Rihan Yildiz was not fluent enough in Turkish to follow the proceedings, and relied on an interpreter who spoke Kurdish. She stated, My son died when he was in the organization [PKK], I joined demonstrations for an end to the crying of soldiers mothers and the mothers of members of the organization; my aim is peace. Her lawyer argued that she was illiterate and that she and her much older husband had health problems and called for her acquittal and release from prison. In passing the nine-year-and-seven-month prison sentence, the court determined that she should remain in prison. The case was on appeal at the time of this writing.

The majority of cases examined by Human Rights Watch involved allegations of or evidence that defendants had violently resisted the police or refused orders to disperse. In most cases this resistance took the form of stone-throwing, or much more rarely, throwing Molotov cocktails. Prosecutors often present video evidence to support these charges, but numerous convictions have also been made based solely on a police statement that the defendant was seen resisting orders to disperse.

In the cases examined so far, the prosecutor accused the defendant of committing a crime on behalf of the PKK, and therefore of membership in the PKK solely on the basis of the defendant's participation in one or more demonstrations. In some, but not all, of these cases, the number of demonstrations the defendant was alleged to have attended was considered relevant to the determination of guilt. Where the defendant is accused of stone-throwing or other violence, the charge of committing a crime on behalf of the PKK, and therefore, of membership in the PKK, need not be proven by evidence of participation in multiple demonstrations. Defendants face the same charges for participation in a single demonstration.

Feyzi Aslan, Fatma Gkhan and Tufan Yldrm all took part in a Diyarbakr demonstration on March 26, 2008. Tufan Yldrm was accused of making a victory sign and shouting slogans during the demonstration; Fatma Gkhan was accused of covering her face with a scarf (*pou*) to conceal her identity, and of having been among a group shouting slogans; all three defendants were accused of having thrown stones at the police.

The authorities claim that the PKK used sympathetic press outlets to broadcast appeals for the demonstration to protest the harsh policing of earlier unauthorized Nevruz/Newroz demonstrations in the towns of Siirt, Van, Hakkari, and Yksekov. [75] The indictment points to PKK statements the Frat News Agency and the Roja Ciwan website broadcast encouraging participation in demonstrations.

On March 10, 2009, Diyarbakr Heavy Penal Court No. 4 convicted the three defendants as follows: Tufan Yldrm and Fatma Gkhan received prison sentences of 11 years and three months for membership in the PKK, (Article 314/2, Turkish Penal Code) for committing a crime on behalf of the PKK, (Article 220/6, Turkish Penal Code) for making propaganda for the PKK, (Article 7/2, Anti-Terror Law) and for violating the Law on Public Meetings and Demonstrations by violently resisting dispersal (Article 32/3, law no. 2911), and Feyzi Aslan received a prison sentence of 10 years and five months for membership in the PKK, for committing a crime on behalf of the PKK, and for violating the Law on Assemblies and Demonstrations. [76] The case is currently on appeal.

H.A., who was 15 at the time of the incident, and whose full name is withheld in this report, joined in a demonstration in the town of Silopi in maki province on October 19, 2008, organized by the local branch of the Democratic Society Party (DTP), at which the DTP provincial chair spoke. The demonstration was organized under the slogan, Neither the Justice and Development Party, nor Ergenekon, the solution is a democratic republic [77]

The prosecutor argued that this slogan did not reflect the real motivation for the demonstration and that the PKK was behind it. He argued that two days before the demonstration, the Frat News Agency had broadcast news about the alleged ill-treatment of calan in prison, and the PKK military wing had issued a statement to the prime minister threatening to respond to any such attacks on calan in the future. The prosecutor also pointed to an October 17, 2008 broadcast by Roj TV calling on the Kurdish population to demonstrate and to close workplaces and boycott school classes to protest Prime Minister Erdoan's October 20 visit to the southeast.

For these reasons, the prosecutor accused H.A. of acting under PKK orders when he joined the Silopi demonstration and therefore charged him with membership in the PKK, (Article 314/2, Turkish Penal Code) for committing a crime on behalf of the PKK, (Article 220/6, Turkish Penal Code) along with making propaganda for the PKK, (Article 7/2, Anti-Terror Law) and violently resisting dispersal.

Video evidence showed that H.A. had held the corner of a banner that showed calan's picture and a PKK flag while raising his right hand in a victory sign, had partially hidden his face with a scarf, and had thrown stones at the police. The 15-year-old defendant admitted his actions, but argued that he was not a PKK member, had not joined the demonstration with the intention of making propaganda for the PKK, and had not acted under the organizations' instructions. Instead, H.A. stated that he had joined in the incidents with the ignorance that comes with group psychology, and regretted it.

H.A. was convicted, and, after benefiting from reductions on the basis of his age, sentenced to a prison term of seven years and six months. He was released on bail pending the decision on appeal. [78] Following the July 2010 amendments, his sentence should be quashed by the Court of Cassation. Any retrial will take place in a juvenile court and any prison sentence should be postponed or otherwise suspended.

B.S., who was 15 years old at time of incident, and whose name has been withheld, participated in a demonstration on October 9, 2009, in Batman, on the eleventh anniversary of Abdullah calan's expulsion from Syria in 1998. She was apprehended by police at the demonstration and the prosecutors' indictment described how defendant B.S., wearing a black-and-white scarf (*pou*) with the aim of hiding her face, had been active among a group throwing stones and Molotov cocktails. The evidence against her was based on video footage in which she was identified, though there was no video evidence of her actually throwing stones or Molotov cocktails.

Diyarbakr Heavy Penal Court No. 4 sentenced B.S. to seven years and six months in prison at her first court hearing on December 29, 2009. [79] The court refused her bail pending appeal.

Two lawyers who visited her in the Diyarbakr prison said that she and another young girl prisoner had asked hopefully whether the lawyers had come to get them out of there and whether they could go home yet. [80] Following the July 2010 amendments, B.S. was released from prison. [81] Her sentence will be quashed by the Court of Cassation and any retrial will take place in a juvenile court.

There are hundreds of cases of adults and children similar to the five discussed above.

Human Rights Watch spoke to several prosecutors about the laws and the case law that make such convictions possible. One prosecutor expressed deep concern that the drafting of Article 220 represented a systemic error, which could only be rectified by rewriting the law:

Referring in particular to children prosecuted under these laws, he commented: Those who are caught by the police during demonstrations and are put on trial are not experienced, actually. The same children who throw stones and Molotov cocktails at the police are often those who will also agree to play football with them! He was opposed to the imprisonment of children, which he felt tended to radicalize them:

These views were not shared by another prosecutor interviewed by Human Rights Watch. The second prosecutor pointed to the special conditions prevailing in Turkey, which have seen over 35,000 killed due to terrorism. He was unwilling to criticize the existing laws or the case law of the Court of Cassation, but suggested that it was important to attempt to draw distinctions between the kinds of demonstrations that take place. Thus, in his view, March 21 Newroz/Nevruz celebrations constitute a more legitimate grounds for a public gathering, while February 15, the anniversary of the return of calan to Turkey, is not legitimate. He argued that prosecutors should think along these lines.^[83]

In the cases discussed above, the verdicts depend on video footage showing the role of the individuals in demonstrations. In other cases examined by Human Rights Watch, the evidence against the defendants consisted solely of police reports alleging participation in criminal acts during demonstrations without any corroboration. On the basis of such statements, courts have authorized pretrial detention, and these police reports have often been the main evidence put forward at trial. In many of these cases, the police identification of the defendant(s) at the time of the demonstration, and months later in court, seems highly questionable, given the difficulties of identifying individuals in the middle of large demonstrations. Without corroborating evidence, these statements raise concerns about possible abuse. Human Rights Watch has concerns that in these cases there is a risk that the police may write up records claiming to have seen an individual actively participating in a demonstration and throwing stones there, simply because they have apprehended that individual and need to justify detaining the person after the fact.

In the case of 21-year-old Murat Baran, apprehended for participating in a February 15, 2009 demonstration in Mersin, the police and prosecutor determined that the fact that the individual had half a lemon in his hand was evidence that he had intentionally participated in the demonstration. The police argued that it was common knowledge that demonstrators apply lemon to their faces and eyes to counteract the effects of tear gas. The court agreed, and made no efforts to summon witnesses who might have testified in court as to whether they had seen Murat Baran participate in the demonstration. The individual thus got a nine-year-and-nine-month prison sentence (after discretionary reductions) for membership in the PKK, (Article 314/2, Turkish Penal Code) for committing a crime on behalf of an organization, (Article 220/6, Turkish Penal Code) for making propaganda for a terrorist organization, (Article 7/2, Anti-Terror Law) and for resisting the police. The only evidence produced was the half lemon in his hand.^[84] Murat Baran has been in detention for the duration of his trial and is likely to remain in prison pending the result of his appeal.

The case of Murat Baran is among the most concerning. However, there have also been other examples of individuals detained and placed in pretrial detention in the absence of camera images or witness testimonies asserting that they participated in a demonstration. In one such case, police officers reportedly detained six children between the ages of 13 and 16 in Bingöl on the grounds that they were sweating and their hands were dusty and sooty, suggesting that they had lit a fire during the protest.^[85] Three of the six were placed in pretrial detention on this basis, to be later released at their first trial hearing.

Abdulcelil Kara was seen in video stills standing apparently silently in the crowd during the March 28, 2006 Diyarbakır protests. In court, Kara claimed that he had been on his way to the hospital from the café where he worked to collect the results of some medical tests. A police report states that Kara was among those who threw stones at the police. One police witness in court identified Kara. Another stated that he could not positively identify Kara, but that the content of the police report at the time had been correct. On this basis, Kara, who was released on bail during his trial, received a prison sentence of six years and three months. This case is currently on appeal.^[86]

In a similar case, five suspects, including Salih Zbek and Seyithan Akbal, both aged 60, were detained at a protest against Prime Minister Erdoğan's visit to Diyarbakır on October 20, 2008, and were placed in pretrial detention. The only evidence against Salih Zbek and Seyithan Akbal is a police report alleging that they were witnessed directing a group of protestors that violently resisted police dispersal. The police report claims the men's hands smelt of a burning substance, which they conclude was because the men had burnt car tires, and according to the police, there were traces on the men's hands that showed they had thrown stones. Video footage shows the two men present in the demonstration, but not throwing stones or offering violent resistance. The indictment describes the actions of the defendants in absolutely identical terms, with each accused of taking a position at the front of the demonstration. On October 6, 2009, all five suspects were convicted. Salih Zbek and Seyithan Akbal were both sentenced to 11 years and three months in prison. Salih Zbek is still in prison; Akbal was released on bail at an earlier hearing. Lawyers have appealed the convictions.^[87]

Ramazan Ugn and Dris Zen were allegedly part of a group that burned car tires and shouted slogans in support of the PKK and Abdullah Calan during a demonstration in Cizre on March 20, 2008, the night before the March 21 festival of Newroz/Nevruz. A police report represents the sole evidence for the prosecution of the two men.^[88]

Medical reports show that Dris Zen suffered a dislocated shoulder, for which he received medical treatment, including a plaster cast, in the hospital.^[89] He alleges that his injuries were the result of excessive use of force by the police officers who apprehended him, and complained to the prosecutor and in court. So far, there is no evidence of any investigation into that complaint.

After spending almost two years in prison through the duration of their trial, Ugn and Zen were convicted at their twelfth trial hearing of membership in the PKK (Article 314/2, Turkish Penal Code) on the basis of having committed a crime on behalf of the PKK, (Article 220/6, Turkish Penal Code) in response to an appeal to protest by the armed group; with making propaganda for the PKK, (Article 7/2, Anti-Terror Law) and with violating the Law on Demonstrations and Public Assemblies. Ugn received an 11-year-and-three-month prison sentence (after discretionary reductions), and Zen, a nine-year-and-seven-month prison sentence (after discretionary reductions).^[90] The case is on appeal and the two will remain in prison pending the results of their appeal.

* * *

Media outlets do not even announce some of the smaller and more local demonstrations, yet the charge of acting under orders of the PKK is included in all such cases. Courts in Adana in particular have justified convicting child defendants for the most severe charges by claiming that the PKK's appeal to participate in demonstrations is a continuous one, seeming to suggest that no specific address to the local population is needed.

M., who was 15 at time of incident, and whose name has been withheld, and S., who was age 16 at time of incident, and whose name has been withheld, were apprehended by police at a March 8, 2009 demonstration in a neighborhood of Adana. According to the prosecutors' indictment, a group of approximately 50 to 60 people had shouted pro-Calan slogans, assembled barricades in the road with trash cans, and resisted police dispersal by throwing stones. The police apprehended the two defendants, whom they alleged were among the group. They were remanded to pre-trial detention and on June 2, 2009, Adana Heavy Penal Court No. 6 convicted them at their first court hearing to prison sentences of four years and nine months under Turkish Penal Code Articles 220/6 and 314/2-3 (committing a crime on behalf of the PKK and membership in the PKK) and for making propaganda for a terrorist organization (Article 7/2, Anti-Terror Law).^[91] The two defendants were not released on bail. Information about their possible release following the July 2010 legal amendment was not available at the time of writing.

In this case there is nothing in the indictment to suggest that the PKK made a particular appeal to demonstrators to participate in this demonstration. After giving a summary of the history of the PKK, naming its various wings and organizational bodies, the indictment identifies a generalized appeal to youth to participate in protests:

While the Court of Cassation decision in the Zer case and subsequent rulings by local courts had pointed to direct appeals by the PKK to the population to join a particular demonstration, the Adana court interpreted this requirement of showing an appeal by the PKK more loosely, suggesting that the

organization issued a perpetual summons to protest, and so prosecutors need demonstrate no specific appeal to the population to join a particular demonstration. In presenting his case in the court on the day of the verdict, the prosecutor stated that, the defendants complied with the *perpetual appeal* to action of the armed terrorist organization PKK in joining a 100-person group at 16:30 on the day of the crime [emphasis added].[\[93\]](#)

Human Rights Watch has come across two cases in which a judge openly challenged the use of Article 220/6 and 220/7 of the Turkish Penal Code, and called on the Constitutional Court to amend the provisions. The same Diyarbakr-based judge issued a dissenting opinion in each case, criticizing the decision of the panel to convict individual demonstrators of membership in the PKK on the basis of having committed a crime on behalf of the organization.

One such case involved Mehmet Fidan, an adult who was apprehended on February 14, 2008 in the town of Dil in Mardin province after joining an unauthorized demonstration on the anniversary of calans capture nine years earlier. The indictment and decision view the event as organized in response to a PKK appeal to demonstrate broadcast on Roj TV on February 3 and 5, 2008, and also by the Frat News Agency on February 5, 2008. Mehmet Fidan is said to have been among the group, setting up barricades, burning tires, and throwing stones at the police.[\[94\]](#) As such, the case resembles scores of others. Mehmet Fidan received a prison sentence of 10 years and five months for membership in the PKK (Article 314/2, in conjunction with Article 220/6, Turkish Penal Code) and for violently resisting police dispersal of the demonstration. The dissenting judge argued for his acquittal, raising many of the points that critics of the law have raised.

Arguing that the first article of the Penal Code provides for the protection of rights and freedoms, the public good and the social peace, and advocates preventing crime, the judge focused on the need to deter support for the PKK, and argued that provisions such as Article 314 (membership of an armed organization) applied by means of Article 220 (committing a crime on behalf of an organization) would only radicalize Kurds and encourage their support for the organization. He argued that the current application of the law, whereby individuals could be imprisoned simply for showing their sympathy for the PKK, ironically resulted in ensuring that they acquired the mindset necessary for membership in the organization. He viewed it as counterproductive to try protestors in the Special Heavy Penal Courts, and suggested that this does more to encourage popular support for the PKK than to prevent it. Suggesting that it is highly problematic for the state to punish individuals as members of the PKK, when they had never joined the PKKs mountain cadres or undergone military and political training, this judge recommended that lawmakers amend Article 220/6 and 220/7 of the Turkish Penal Code.

The dissenting judge argued that some provisions of the Penal Code are intended to strengthen the social peace and prevent crime, including the Effective Repentance law. While a person who spent eight years in the mountains as an armed member of the PKK would typically get a five-year prison sentence, if that person turned him or herself in, he or she would not have to serve any prison time at all under the terms of the effective repentance law (Article 221, Turkish Penal Code). In contrast, if the person had never taken up arms against the Turkish state as a member of the PKK, but had merely been a peaceful demonstrator without any direct link to the PKK, that person could face a five-year sentence for membership in the PKK, without the prospect of reducing or eliminating the prison time that the repentance law provides. Repeated participation in demonstrations and multiple offenses could add years to the sentence.

The judge noted that prosecutors have failed to provide evidence that protestors ever heard or read the PKKs appeals to action.

For this reason, the judge recommended an application to the Constitutional Court for the cancellation of Article 220/6.

The dissenting judge argued that Mehmet Fidan ought to be acquitted.[\[95\]](#)

Turkey is party to a number of human rights treaties, including the International Covenant on Civil and Political Rights,[\[96\]](#) the European Convention on Human Rights,[\[97\]](#) and the United Nations Convention on the Rights of the Child,[\[98\]](#) which by virtue of Article 90 of the Turkish Constitution, have the force of law in Turkey.[\[99\]](#) These treaties guarantee freedom of expression and association, the rights to liberty and security, and due process rights with respect to detention and the criminal law, all of which Turkey is violating by its harsh practice of routinely detaining and prosecuting demonstrators on terrorism charges. Though these treaties have the force of law in Turkey, no authority either the police, prosecutors or the courts is taking these legally binding human rights obligations into account when confronting legitimate, public action in opposition to the states policies on treatment of the Kurdish minority.

Freedom of assembly is often a particular manifestation of freedom of expression, and in the cases examined in this report, freedom of assembly in southeast Turkey is clearly linked with Kurdish political and cultural expression. Any regulation of, interferences with or restrictions on the exercise of the right to assembly must also therefore fully respect the right to freedom of expression, and other rights, such as the right to liberty and security. Every time police intervene to disperse an assembly, arrest those at protests and seek to prosecute individuals for the act of participating in a demonstration, this constitutes an interference with the right to assembly and expression. Such interferences are only permissible under international law if they have a proper legal basis, are necessary in a democratic society for a legitimate purpose, and are proportionate.[\[100\]](#)

The European Court of Human Rights has made clear on numerous occasions:

The cases documented in this report raise serious concerns about restrictions on freedom of expression, association and assembly, discrimination against those who demonstrate on the Kurdish issue, and disproportionate charges and sanctions. Participants in demonstrations on the Kurdish question routinely receive dramatically higher sentences than others, not because of their conduct during demonstrations, but because of their presumed motives for protesting and the political message they are assumed to express. In this regard, the Court has also emphasized that:

In the Courts view, where demonstrators do not engage in acts of violence, it is important for public authorities and officials to show a degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance.[\[103\]](#)

Clearly in cases such as those documented in this report, the imposition of higher sentences because of political views imputed to the accused is an unjustified restriction on freedom of assembly and expression and a violation of Turkey's human rights obligations. In practice, in many of these cases, the demonstrators are doing nothing more than exercising their right to freely express their views. The government cannot deem such conduct, which in itself is not an offense, to be a crime merely by imputing a motive to participants (assuming that they are acting under orders of the PKK). To infer criminal intent from mere participation in a peaceful protest is a clear violation of the right to freedom of assembly.

Individuals who commit offenses such as throwing stones and burning tires may legitimately be prosecuted and sanctioned under criminal law. However, the use of an expansive interpretation of the law to render acts that are no more than an exercise of freedom of speech, or low-level acts of violence, as terrorism offenses, and sanction them as such, offends international human rights law.

Human rights law and the rule of law require that criminal law be foreseeable and predictable, obligating states to define precisely all criminal offenses.[\[104\]](#) This obligation finds articulation in several provisions of human rights treaty law legally binding on Turkey, and is a general principle of criminal law.[\[105\]](#) The European Court of Human Rights explained:

The use of anti-terrorism laws against demonstrators in Turkey clearly offends the principles of clarity and legality required by international law in general, and by the European Convention on Human Rights in specific.

There is no evidence that the vast majority of the defendants considered in this report committed any act that would typically or reasonably be considered terrorism. The terrorism charges that are brought against these protestors are wholly disproportionate and do not correspond to the nature or gravity of the

acts committed. The evidence leveled against such demonstrators varies widely in substance, raising further fair trial and due process concerns.

Human Rights Watch calls on the Turkish government as a matter of urgency to amend or repeal the laws that in combination create a legal basis for these abuses of Turkey's international legal obligations.

In his first report to the UN Commission on Human Rights, Martin Scheinin, the UN special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, directly addressed the need for laws to adhere to the principle of legal certainty and to be clearly and precisely drawn. He reminded states that for activities to be prescribed by law, the prohibition must be framed in such a way that: the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and the law is formulated with sufficient precision so that the individual can regulate his or her conduct. Furthermore, that in the prohibition of terrorist conduct, it is important for States to ensure that prescriptions to that effect are accessible, formulated with precision, applicable to counter-terrorism alone, non-discriminatory, and non-retroactive.^[107]

Following his 2006 visit to Turkey, Scheinin expressed particular concern about the definition of terrorist crimes in Turkish law. Relating his comments to the definition of terrorism in Article 1 of the Anti-Terror Law, he recommended that the definition of terrorist crimes should be brought in line with international norms and standards, notably the principle of legality as required by article 15 of the International Covenant on Civil and Political Rights (ICCPR), including *defining more precisely what crimes constitute acts of terrorism and confining them to acts of deadly or otherwise grave violence against persons* or the taking of hostages [emphasis added].^[108]

Turkish Penal Code Articles 220/6 and 220/7 (committing a crime on behalf of an organization and knowingly and willingly aiding and abetting an organization) are striking examples of legal provisions that are so vaguely worded and lacking in clarity about what is prohibited as to offer an individual no indication of how to regulate or limit conduct. The special rapporteur also stated in relation to Turkey: Only full definitional clarity with regard to what acts constitute terrorist crimes can ensure that the crimes of membership, aiding and abetting and what certain authorities referred to as crimes of opinion are not abused for other purposes than fighting terrorism.^[109] As the cases examined below demonstrate, the application of Turkish Penal Code Article 220/6 and 314/3, in conjunction with Article 314/2 (membership in an armed organization), directly bear out the concerns raised by the special rapporteur.

While the case of Felat zer included evidence that zer was among a group engaged in violent resistance to the police, it is important to note that the reasoning of the General Penal Board of the Court of Cassation did not focus on the matter of whether zer had engaged in violent resistance to the police or had endangered lives through violent actions. Rather, the board focused on the matter of whether demonstrations had been organized or ordered by the PKK, as evidenced by the organizations statements. As such, the General Penal Board was not primarily interested in individual actions within demonstrations, and the pattern of convictions to date suggests that evidence of violent activities only contributes to the application of additional charges (such as damaging public property, or violently resisting dispersal) on top of the standard charge of committing a crime on behalf of an organization, indicating the charge of membership in an armed organization.

Subsequent cases have followed this line of reasoning. Thus, the courts have focused on participation in a demonstration allegedly called by the PKK, rather than on violent conduct. In fact, as the cases documented in this report show, a number of convictions involve only nonviolent expressions of opinion that arguably do not amount to incitement to violence but rather are within the boundaries of protected expression.

Following the positive changes to the law introduced by the Turkish government in July 2010, Human Rights Watch continues to have two areas of concern about the treatment of child demonstrators on apprehension. The first concern is that the new law does not end the possibility that some children detained following demonstrations will be placed in pre-trial prison detention for extended periods. The second area of concern is the failure of the authorities to investigate the reports that child demonstrators have been ill-treated following apprehension by members of the security forces.

In the majority of cases of child demonstrators Human Rights Watch reviewed, the defendants were remanded into custody pending trial. Given the lengthy processes of Turkish courts, this pre-trial period could be as long as one year. Local human rights and childrens rights groups interviewed for this report frequently raised concerns that the detention of child demonstrators removes them from family socialization and may deprive them of the possibility of continuing their education. Some expressed concern that many children might become radicalized in prison and in the long-term profoundly alienated from their families and the broader society.

Under the United Nations Convention on the Rights of the Child, children should be arrested, detained, or imprisoned only as a measure of last resort and for the shortest appropriate period of time.^[110] The best interest of the child must be a primary consideration.^[111] In its 2001 review of Turkey, the United Nations Committee on the Rights of the Child expressed concern about childrens long periods of pre-trial detention and the poor conditions of imprisonment and the fact that insufficient education, rehabilitation and reintegration programs are provided during the detention period.^[112] It reminded Turkey that pre-trial detention should be used only as a measure of last resort, should be as short as possible and should be no longer than the period prescribed by law. Alternative measures to pre-trial detention should be used whenever possible.

The Committee reiterated these concerns in September 2009, urging Turkey to:

In numerous cases against Turkey, the European Court of Human Rights has held that pre-trial detention of children is too lengthy, finding violations of the right to release pending trial. For example, in the case of *Selcuk v. Turkey*, the court concluded having regard particularly to the fact that the applicant was a minor at the time, the Court finds that the authorities have failed to convincingly demonstrate the need for the applicants detention on remand for more than four months.^[114] In the case of *Nart v. Turkey*, especially having regard to the fact that the applicant was a minor at the time the Court ruled that 48 days was too long a period of pre-trial detention.^[115]

A review of ongoing legal proceedings against child demonstrators reveals that prolonged pretrial detention was being widely used in 2009. A sample of ongoing cases in Diyarbakr and Adana courts revealed that children (several of them on trial in the Diyarbakr courts as young as 13 and 14) were typically placed in pretrial detention for periods of five months, but in a significant number of cases, they were detained for periods of over a year. For example, Human Rights Watch examined the cases against 40 children on trial for participating in a February 16, 2008 demonstration in Cizre, and they were held in pre-trial detention for a period of over one year.^[116]

The prison population in Turkey is known to have increased significantly over the past few years, with a high percentage of remand prisoners, making overcrowding very common.^[117] A report on an April 2009 visit to the childrens dormitory of Diyarbakr Prison by the Turkish Medical Association raised serious concerns about prison conditions.^[118]

Because we focus here primarily on laws, in the course of the research for this report there was no attempt to undertake a wider study of the treatment of children or adults in places of detention. However, a representative of Human Rights Watch and representatives of the coalition of domestic NGOs calling themselves the Justice for Children Initiative interviewed a sample of 10 child demonstrators in Adana following their release from prison. Given the seriousness of the reported irregularities in the handling of child suspects, including allegations that they were ill-treated, a summary of the findings from the sample interviewed in Adana is included here.

In May-June 2009 interviews with 10 children who had been released from pre-trial detention in Adana and were facing continuing legal proceedings in the Adana courts, Human Rights Watch heard allegations of ill-treatment in every case.^[120] Both boys and girls reported ill-treatment typically being roughed up, slapped or beaten as they were apprehended by members of the Rapid Deployment Force (evik Kuvvet). The boys also reported being beaten, slapped, threatened, and sworn at by gendarmes and prison guards upon their arrival at the Krkler E-type adult male prison, where boys were routinely held, separately from adult men for periods of about a week before being transferred to Pozant Childrens Prison. The boys also gave consistent reports of doctors

slapping and verbally abusing them in Krkler E-type prison. As a result, many had felt completely unable to report ill-treatment by gendarmes and prison guards on arrival at the prison. For the most part, the boys had not seen lawyers while in the E-type prison, and therefore any complaints of ill-treatment were generally lodged much later, often at a first court hearing. (The girls were transferred to a womens prison and Human Rights Watch heard no reports of ill-treatment at the prison from them.) The findings of Human Rights Watch support the wider investigation into the ill-treatment of child demonstrators undertaken in 2009 by the Adana branch of the Human Rights Association. The association documented many reports of ill-treatment of child demonstrators at different stages of their detention. All the children Human Rights Watch interviewed complained of sleep disorders, weight loss, and difficulty in resuming their old lives following their release from prison.

All of the children Human Rights Watch interviewed in Adana reported irregularities in the handling of their cases. The key problems identified included:

- i) Child suspects were routinely held at the Anti-Terror Branch of the Security Directorate for periods of several hours before transferring them to the Childrens Branch of the Security Directorate. During this time, children were frequently interviewed by police officers without the presence of a prosecutor or lawyer. Both these practices contravene Turkey's domestic law.
- ii) Children were not informed of their rights as detainees, or of their right to have a family member informed of their detention; their families were not promptly informed of their detention and in some cases, were erroneously told the children were not in detention.
- iii) In the case of children the medical examination (compulsory for anyone held in police custody) at the Forensic Institute in Adana was routinely undertaken superficially and with the door open and within earshot of the police.
- iv) Children in Adana had no access to lawyers until they were brought before a prosecutor for interrogation. Meetings with lawyers were hastily conducted outside the prosecutors room in the courthouse, if at all, and therefore in a manner that barely meets their right under Turkish law to benefit from legal counsel.

After this report was researched, other reports emerged of ill-treatment of child detainees in Adana. Adana lawyers lodged complaints of serious ill-treatment of children in Ceyhan M-type prison. The children, H.Y., U.D., A.A., K.F., T., H., and M.D.,^[121] were transferred on January 22, 2010, from Pozant Boys Prison to Ceyhan M-type prison. They reported to their lawyer that prison guards subjected them to prolonged beating with batons when they requested that they all be transferred together to a particular ward that held adult male political prisoners. In fact, they could not have legally been transferred to the adult ward because of their age, but their request reportedly triggered a dispute, and ill-treatment by the prison guards. They also reported to their lawyer that guards poured buckets of cold water over them. Their lawyer reported to Human Rights Watch that at the time of his meeting with the children, they bore visible signs of having been beaten. One child had sustained a head injury, which was bandaged.^[122]

Cruel, inhuman, and degrading treatment or punishment of any detainee is strictly prohibited under international law. The Convention on the Rights of the Child explicitly reiterates this universal prohibition in respect of children. International guidelines on the detention of juveniles also require that a parent or guardian be notified immediately when a child is apprehended.^[123] In 2009, the United Nations Committee on the Rights of the Child called on Turkey to:

1) Laws used to penalize demonstrators:

Turkish Penal Code Articles 220/6 in combination with 314/2 and 314/3

Forming organized groups with the intention of committing a crime

ARTICLE 220-(1) Those who establish or direct an organization for the purpose of committing crimes shall be sentenced to imprisonment of two to six years if the structure of the organization, number of members, equipment and supplies are sufficient to commit the intended crimes. However, at least three members are required for the group to be deemed an organization.

- (2) Those who become members of the organization established to commit crimes shall be sentenced to imprisonment of 1 to 3 years.
- (3) If the organization is armed, the sentenced stated above will be increased from one fourth to one half.
- (4) If crimes are committed within the framework of the organizations activities, these crimes will also be punished.
- (5) The heads of the organization shall also be sentenced as the perpetrators of all crimes committed within the framework of the activities of the organization.
- (6) The person who commits a crime on behalf of the organization, although he or she is not a member of the organization, shall be punished as a member of the organization.
- (7) A person who aids and abets the organization knowingly and intentionally, although he or she does not belong to the hierarchical structure of the organization, shall be punished as a member of the organization.
- (8) A person who makes propaganda for the organization or its objectives shall be sentenced to imprisonment of one to three years. If the said crime is committed through the media and press, the sentence will be increased by half.

Armed organization

ARTICLE 314-(1) Any person(s) who forms an armed organization to commit the offenses listed in the fourth and fifth sections of this chapter [Section Four: crimes against state security; Section Five: crimes against the constitutional order and its functioning], and commands this group, is punished with imprisonment of 10 to 15 years.

- (2) Members of the organization defined in the first paragraph are sentenced to imprisonment of five to 10 years.
- (3) Other provisions relating to the offense of forming an organization for the purpose of committing crimes are treated [punished] in the same way as this offense.

Anti-Terror Law (no. 3713, as amended in July 2006)

Article 2 [not amended].

- (1) Any member of an organization founded to attain the aims defined in Article 1 who commits a crime in furtherance of these aims, individually or in concert with others, or any member of such an organization, even if he or she does not commit such a crime, shall be deemed to be a terrorist offender.
- (2) A person who is not a member of a terrorist organization, but who commits a crime on behalf of an organization, is also deemed to be a terrorist offender and is punished as a member of the organization.

Article 7-

(1) Those who establish, administer or become members of a terrorist organization to commit crimes for the purposes stipulated in Article 1, using force, violence, pressure, fear, intimidation, oppression or threat, shall be punished in accordance with Article 314 of the TPC. Those who organise the activities of the organization shall also be punished as the administrators of the organizations.

(2) A person who makes propaganda for a terrorist organization shall be punished with a prison sentence of one to five years. Where such a crime is committed through the press or media, the penalty shall be increased by half. In addition, a judicial fine of 1,000 to 10,000 days shall be imposed on the owners of such press and media organs. The upper threshold of this punishment shall be 5,000 days for their chief editors. The acts and behaviour stated below shall also be punished according to the provisions of this paragraph:

a) Completely or partially concealing ones face for the purpose of concealing ones identity during assemblies and demonstrations that become propaganda for a terrorist organization

b) Carrying the emblem or the signs of a terrorist organization, shouting slogans or broadcasting them through sound systems [loudspeakers] in a way to demonstrate that a person is a member or supporter of the organization, or wearing uniforms on which there emblems and signs belonging to a terrorist organization

Where the crimes stipulated in paragraph two are committed at the buildings, premises, offices or extensions of associations, foundations, political parties, professional or workers' institutions or their affiliates, or at educational institutions or students' dormitories or their extensions, the punishments mentioned in this paragraph shall be doubled.

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[1]For full law, Terrle mcadele kanunu ile bazi kanunlarda deiiklik yapilmasina dair kanun (Law amending the Anti-Terror Law and other laws) (Law no. 6008), see *Resmi Gazete* (Official Gazette), July 25, 2010, <http://rega.basbakanlik.gov.tr/main.aspx?home=http://rega.basbakanlik.gov.tr/eskiler/2010/07/20100725.htm&main=http://rega.basbakanlik.gov.tr/eskiler/2010/07/20100725.htm> (accessed July 26, 2010).

[2]See, for example, speech to the AKP group meeting in parliament: <http://www.beyazgazete.com/video/2010/06/18/erdogan-acilim-bitmedi-ayni-kararililikla-devam-cnnturk.html> (accessed August 23, 2009).

[3]In July 2008, the general chief of staff discussed the number of fatalities over 24 years in a speech to the press: see http://www.tsk.tr/10_ARSIV/10_1_Basin_Yayin_Faaliyetleri/10_1_7_Konusmalar/2008/org_ilkerbasbug_iletisim_16092008.html (accessed April 29, 2010). The official figures were stated as follows: 6,482 soldiers; 32,000 PKK members; 5,660 civilians killed. Nongovernment organizations have expressed doubt about the accuracy of these official figures, and in particular, the number of PKK deaths, which they believe may include a significant number of civilians misidentified as PKK members.

[4]See the December 2006 study by Hacettepe Universitys Institute of Population Studies, <http://www.hips.hacettepe.edu.tr/tygona/TGYONA-AnaRapor.pdf> (accessed April 30, 2010).

[5]See, for example, annual reports of the Human Rights Foundation of Turkey, <http://www.tihv.org.tr/index.php?turkiye-insan-haklari-raporu>; The Kurds of Turkey: Killings, Disappearances and Torture (Human Rights Watch, March 1993); Turkey: Extrajudicial Executions, Amnesty International 1990, http://ob.nubati.net/wiki/Extra-judicial_Executions; Listen to the Saturday Mothers, Amnesty International , 1998: see, <http://www.amnesty.org/en/library/asset/EUR44/017/1998/en/3ccea6b6-d9a5-11dd-af2b-b1f6023af0c5/eur440171998en.html>; and reports on internal displacement of Kurds including Turkey: Displaced and Disregarded: Turkeys Failing Village Return Program, Human Rights Watch, October 2002, see, <http://www.hrw.org/en/node/78636> (all accessed April 29, 2010).

[6]The UN special rapporteur on the protection and promotion of human rights in the course of countering terrorism criticized elements of the Anti-Terror Law in follow-up statements to his November 2005 visit to Turkey. A/HRC/4/26/Add.2: <http://daccess.un.org/doc/UNDOC/GEN/G06/149/42/PDF/G0614942.pdf?OpenElement>, November 16, 2006 (accessed September 8, 2009).

[7]In April 2010 the Election Law (Law 5980, published in Official Gazette, April 10, 2010) was amended so that it is no longer a criminal offense for parties conducting election campaigns to use languages other than Turkish. However, article 81 of the Political Parties Law still prohibits languages other than Turkish.

[8]During the early history of the republic, the government forcibly crushed a number of armed insurrections against the central authority of the state in majority Kurdish-populated areas of the country. A nascent Kurdish nationalism colored some of these uprisings; some also carried religious overtones against the new secular order; in others, residents of peripheral areas resisted incorporation into a centralizing and homogenizing new state. The state authorities denied the very existence of Kurds, including their cultural or linguistic identities. During the conflict with the PKK, officials began to acknowledge the Kurds as an ethnic group. The literature on the issues includes: Robert Olson, *The emergence of Kurdish nationalism and the Sheikh Said rebellion* (Austin: University of Texas Press, 1989); Martin van Bruinessen, *Agha, Shaikh and State: The Social and Political Structures of Kurdistan* (London: Zed Books, 1992); Hamit Bozarslan, *La Question Kurde: Etats et minorits au Moyen-Orient* (Paris, 1997).

[9]Baskin Oran, *Trkiye'de Aznlklar, Kavramlar, Teori, Lozan, Mevzuat, tihat, Uygulama* (Istanbul, 2004).

[10]Kemal Kirii, Disaggregating Turkish Citizenship and Immigration Practices, *Middle Eastern*

Studies, vol. 363, (2000), s.122. Martin van Bruinessen, Race, culture, nation and identity politics in Turkey:

some comments, http://www.let.uu.nl/~Martin.vanBruinessen/personal/publications/Identity_politics_in_Turkey.pdf.

[11] Aliza Marcus, *Blood and Belief: The PKK and the Kurdish Fight for Independence* (New York: New York University Press, 2007).

[12] See e.g. *Akdivar and Others v. Turkey*, Judgment of September 16, 1996, Reports of Judgments and Decisions 1996-IV; *Avsar v. Turkey*, judgment of July 10, 2001, Reports 2001- VII; *Bilgin v. Turkey*, Judgment of July 17, 2001, Reports 2001- VIII; *akc v. Turkey* [GC], no. 23657/94, ECHR 1999-IV; *Ergi v. Turkey*, Judgment of July 28, 1998, Reports 1998-IV; *Ertak v. Turkey*, no. 20764/92, ECHR 2000-V; *Gle v. Turkey*, Judgment of July 27, 1998, Reports 1998-IV; *Ihan v. Turkey*, [GC] no. 22277/93, ECHR 2000-VII; *Kaya v. Turkey*, Judgment of February 19, 1998, Reports of Judgments and Decisions 1998-I, p. 324; *Kl v. Turkey*, Judgment of March 20, 2000, Reports of Judgments and Decisions 2000-III; *Mahmut Kaya v. Turkey*, no. 22535/93, ECHR 2000-III; *Kurt v. Turkey*, Judgment of May 25, 1998, Reports 1998-III; *Seluk and Asker v. Turkey*, Judgment of April 24, 1998; Reports of Judgments and Decisions; 1998-II, *Tanikulu v. Turkey* [GC], no. 23763/94, ECHR 1999-IV.

[13] ster terr, ister Gneydou, ister Krt meselesi deyin. Bu, Trkiye'nin birinci meselesidir. Mutlaka halledilmeli," <http://www.ntv.com.tr/id/24964940/> (accessed November 21, 2009).

[14] "Konunun Trkiye'nin gelececi asndan ne kadar hayati olduunu hepimiz biliyoruz", "Krt meselesi olarak adlandrlan meselenin de vatandalarmzn demokratik haklarlnn geniletilmesi ve pekitirilmesiyle, nerede yaarsa yaasn her vatandamzn kendisini devletin eit ve hr ferdi olarak hissetmesini salamakla zlebileceine biz inanyoruz. Bu nedenle zm srecinin yn demokratiklemedir. Bu konuda daha nce yaptklarımız bundan sonra yapacaklarımız da bir gstergesidir. Demokratikleme admlarn toplumun tm kesimleriyle birlikte atmak istiyoruz. Bu mesele sadece partimizin ya da hkmetimizin deil tm toplumun meselesidir. For further details of the speech, see *Radikal* newspaper, July 30, 2009, <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetay&ArticleID=947208&Date=30.07.2009&CategoryID=77> (accessed August 14, 2009).

[15] For details of the November 13, 2009 parliamentary debate, see the press reports of the government and oppositions speeches to parliament, including <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetay&ArticleID=964199&Date=13.11.2009&CategoryID=78> (accessed November 13, 2009).

[16] See Human Rights Watch press release and Q and A on the closure of the DTP: <http://www.hrw.org/en/news/2009/12/11/turkey-kurdish-party-banned> (accessed July 1, 2010).

[17] See Human Rights Watch press release, <http://www.hrw.org/en/news/2010/01/12/turkey-rights-defender-arrested> (accessed July 1, 2010).

[18] Indictment accepted by Diyarbakir Heavy Penal Court No. 6, June 18, 2010.

[19] See, for example, speech to the AKP group meeting in parliament: <http://www.beyazgazete.com/video/2010/06/18/erdogan-acilim-bitmedi-ayni-kararlilikla-devam-cnnturk.html> (accessed August 23, 2009).

[20] For an account of some of the protests held in cities in the southeast, as well as in cities such as Istanbul and Mersin, see the news report in *zgr Politika* daily newspaper, July 15, 2008, <http://www.yeniozgurpolitika.org/yazdir.php?hid=34988> (accessed July 8, 2009).

[21] February 15 is the anniversary of imprisoned PKK leader Abdullah calans 1999 capture by Turkish security forces in Kenya and return to Turkey and is marked annually with unauthorized protests in cities in the southeast and in other parts of Turkey among some PKK sympathizers and calan supporters.

[22] Newroz (Kurdish)/ Nevruz (Turkish) is the traditional festival of New Year in the Persian calendar, which marks the arrival of spring at the March 21 equinox and is celebrated especially by the Kurdish community in Turkey.

[23] For example, see the quarterly reports issued by the online news service Bianet as BIA Monitoring reports; 216 Defendants Celebrated World Press Freedom Day Behind Bars, Bianet online news service, May 9, 2010, <http://www.bianet.org/english/freedom-of-expression/121859-216-defendants-celebrated-world-press-freedom-day-behind-bars> (accessed May 19, 2010). See also the weekly bulletins and reports of the Initiative for Freedom of Expression, <http://www.antenna-tr.org/sites.aspx?SiteID=48> (accessed May 19, 2010).

[24] Human Rights Watch researcher in conversation with police officers employed at the Anti-Terror and Security Branches of the Diyarbakir Security Directorate and in the Anti-Terror Branch of the Mersin Security Directorate, Ankara, February 26-27, 2009, at a European Commission TAIEX training workshop on the use of force in policing.

[25] Written replies by the Government of Turkey to the list of issues (crc/c/opac/tur/q/1) to be taken up in connection with the consideration of the initial report of Turkey under article 8, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (crc/c/opac/tur/1): CRC/C/OPAC/TUR/Q/1/Add.1, September 2, 2009.

[26] See Ankara Heavy Penal Court No. 11, reasoned verdict, dossier 2007/366; decision 2008/251, October 22, 2008. The case concerns a group who joined two authorized Ankara demonstrations on December 17, 2005 and February 19, 2006 that were attended by a broad coalition of trade unionists and activists. The defendants in this trial were accused of knowingly and willingly aiding and abetting an illegal organization (the armed Marxist Leninist Communist Party: MLKP). These charges were based primarily on evidence that they had shouted slogans at the demonstration, had carried banners with slogans, and had publications sympathetic to the outlawed organization in their possession. Documentation provided to Human Rights Watch by lawyer Rahan Ayta Sala.

[28] Turkish Penal Code Articles 61 and 62 on sentencing outline the criteria for judges to apply discretionary reductions in sentencing, which are in most cases reductions of one fifth.

[29] For example, an adult demonstrator who is prosecuted for committing a crime on behalf of the PKK, may be sentenced to 7.5 years in prison (which becomes six years and three months after discretionary reductions), plus an additional year for making propaganda for the PKK, (which becomes 10 months after discretionary reductions). The total sentence to be served would be 8.5 years (which becomes seven years and one month with reductions). The demonstrator may be sentenced on more than one count of making propaganda if he or she has attended more than one demonstration, increasing the sentence by one year (10 months after reductions) for each count. On top of this, many demonstrators are sentenced to further prison time for violating the Law on Demonstrations and Public Meetings (Law no. 2911). A demonstrator may receive a five-year sentence (which becomes four years and two months after discretionary reductions) for armed resistance to police dispersal (Article 33/c, Law no. 2911). The three charges together would bring the sentence up to 13 years (11 years and three months, with reductions). Had the demonstrator resisted police dispersal on more than one occasion, he would receive separate sentences on each count, increasing the sentence.

[30] The possible 28-year total prison sentence consists of the following components: a 10-year sentence for membership in an armed organization on the basis of having committed a crime on behalf of the organization under Articles 314/2, 314/3, and 220/6 of the Turkish Penal Code (increased by one-half to 15 years, on the basis of Article 5 of the Anti-Terror Law providing for aggravated sentences); a five-year sentence for making propaganda for a terrorist organization under Article 7/2 of the Anti-Terror Law; and an eight-year sentence for having forcibly resisted dispersal of a demonstration by the police under Article 33/c of the Law on Demonstrations and Public Assemblies. This leaves out other possible charges, such as damaging property, (Articles 151/1 and 152/1a, Turkish Penal Code), which would increase the sentence by up to three years, damaging public property (Article 152/1a, Turkish Penal Code), which could increase it up to six years, and resisting a public official (article 265/1, Turkish Penal Code), which would increase the sentence by up to three years.

[31] Because this report chooses to highlight the application of the offense of committing a crime on behalf of an organization, with its much more severe penalty, we have chosen not to focus here on prosecutions under article 7/2 of the Anti-Terror Law.

[32] However, under the 2006 amendments, those under 15 years of age were able to receive a suspended or delayed sentence, which was not applicable to children ages 15-17 and adults convicted under the Anti-Terror Law (article 13).

[33] General Penal Board decision (no. 2007/9-282; Decision no. 2008/44, March 4, 2008): copy in possession of Human Rights Watch.

[34] <http://hurasiv.hurriyet.com.tr/goster/haber.aspx?id=4160330&tarih=2006-02-28> (accessed September 12, 2009).

[35] See the report on the incidents by the Diyarbakir branch of the human rights group Mazlum Der; http://www.mazlumder.org/haber_detay.asp?haberID=94; by the Diyarbakir Bar Association; <http://ortakpayda.org/makale.asp?foo=read&feox=326>; by the Human Rights Association; http://www.ihd.org.tr/index.php?option=com_content&view=article&id=106:28-mart-2006-darbakir-olaylarina-k-celeme-raporu&catid=34:el-raporlar&Itemid=90. See also the report by Democratic Society Party (DTP) members of parliament, dated April 14, 2006, <http://ortakpayda.org/boxes.asp?foo=read&feox=62&ronin=4>. For an assessment of the incidents blaming the PKK by a department of the Ministry of Interior, and including a selection of critical commentary from newspaper columnists, see http://www.arem.gov.tr/rapor/basin/teror_son_donem_olaylar.htm (all accessed September 8, 2009).

[36] See the reports by Mazlum Der and the Human Rights Association discussed in the previous footnote. The Diyarbakir Bar Association report summarizes it as follows:

Ten civilians died as a result of excessive use of force by law enforcement officials, over 500 individuals were injured, over 500 workplaces were damaged. 203 children aged 12 to 18, and 364 adults, were detained on the grounds of having participated in violent protests. 396 suspects were placed in pretrial prison detention after testifying before the Diyarbakir prosecutor and the courts. From their testimonies and doctors reports it was established that during apprehension, law enforcement officials used disproportionate force against them, and that during transfer and in places of detention, they were subjected to ill-treatment and torture in violation of the laws., <http://ortakpayda.org/makale.asp?foo=read&feox=326>. See statement by Amnesty International, <http://asiapacific.amnesty.org/library/Index/ENGEUR440052006?open&of=ENG-TUR>, April 12, 2006, and also a brief account by Amnesty International of children reporting ill-treatment and torture by the police: Europe and Central Asia: Concerns in Europe & Central Asia bulletin: January/June 2006, entry on Turkey, <http://www.amnesty.org/en/library/asset/EUR01/017/2006/en/20f477d6-d3fa-11dd-8743-d305bea2b2c7/eur010172006en.pdf>, pp.84-6 (all accessed September 8, 2009).

[37] In January 2010, three police officers were indicted in the fatal shooting of 17-year-old Mahsun Mzrak, who died after police shot a tear-gas cannister at him, which embedded in his skull. Information supplied to Human Rights Watch by lawyer Bar Yavuz, March 2010.

[38] The ninth chamber deals with crimes against the state, and crimes punishable under anti-terrorism legislation, among other areas.

[39] Kanaatimizce, 5237 sayı TCY'nin 220/6. maddesi ile amalanın husus, taeron olarak rgt adna su ileyen kiilerin hem iledikleri utan hem de adna su iledikleri rgtn yesi olmak suundan dolay cezalandırmaların salamaktır. Szgelimi, rgt adna bombalama, adam ıdrme, yol kesme gibi sular ileyen kiiler rgt adna su ilemi olup, bu kiilerin aynca rgt yesi olarak cezalandırmalar doaldır. Buna karlık rgtn soyut ve genel ars zerine bir terr rgt mensubunun cenazesine veya nevrız kutlamalarına katılma ve slogan atarak rgt propagandas yapılması halinde bu sularn rgt adna ilendiini sylemek mümkün deildir. rgt adna su ilendiinin sylenbilmesi iin rgtn eylem arsnn muhatab belirsiz bir topluluğa deil, dorudan doruya fiili icra edecek kiıye ıneltılmi olmas gerekir. Diyarbakır Heavy Penal Court No. 4 decision, May 31, 2007, cited in General Penal Board decision (no. 2007/9-282; Decision no. 2008/44, March 4, 2008).

[40] ... rgtn genel ars, rgte ait yayın organların yayınlar ve arlar ile somutlam olup bu arların belirli bir kiıye yapılmı olmasna gerek bulunmuyor. rgtn bilgisi ve istemi dorultusunda gerekletirilen bu eylemlerin rgt adna gerekletirildiı sabittir. rgt adna gerekletirilen bu eylemlere katılan sanın eylemi, dier sularn yanında 5237 sayı TCKnn 314/3 ve 220/6 maddeleri yollamasıyla 314/2 maddesine de ayrıklı oluturur...: Ibid. For a discussion of this case and extracts from the ruling, see a recent study of the Anti-Terror Law by a judge serving at the Diyarbakır Heavy Penal Court No. 4: Mehmet Tatan, *Terle Mcadele Kanunu*, (The Anti-Terror Law) (Ankara: Adalet Yaynevi, April 2009).

[41] Listed at length in General Penal Board decision (no. 2007/9-282; Decision no. 2008/44, March 4, 2008).

[42] See Diyarbakır Heavy Penal Court No. 4, reasoned decision (no. 2008/252; Decision no. 2008/475).

[43] The Ninth Penal Chamber of the Court of Cassation decision no. 2009/11316, November 11, 2009. The court quashed one count (out of three) against zer under Article 32/c of the Law on Demonstrations and Public Assemblies. A retrial on that one count is underway, but the final sentence will only be altered by 18 months. Information supplied by lawyer Baran Pamuk, Diyarbakır, March 6, 2010.

[44] Mehmet Emin Aktar, head of the Diyarbakır Bar, General assessment no. 2009/136 (Diyarbakır Barosu Başkan Mehmet Emin Aktar, Genel Değerlendirme [no 2009/136], Diyarbakır Barosu), unpublished document by the Diyarbakır Bar, February 2, 2009. In early 2010, the heads of the Diyarbakır, Van, and Sırnak bar associations also submitted an unpublished and undated opinion to the government delineating how to change the relevant laws applied to children, titled çocuk hakları alanında yapılması gereken yasal deilik ve dzenlemeye ilikin ortak grmız: copy supplied to Human Rights Watch. For the first critical commentary on the zer decision by Diyarbakır lawyer Tahir Eli, Yargın Krt sorunu zm (The Court of Cassations solution to the Kurdish problem), Radikal newspaper, November 2, 2008, <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalEklrDetay&ArticleID=906290&Date=02.11.2008&CategoryID=42>

(accessed December 10, 2008).

[45] In one typical case that reflects the lower sentencing of the past, Yılmaz Aslan and Osman Akın were accused of having burned tires and shouted pro-calın slogans during a demonstration in Ceylanpınar, Urfa, on April 3, 2006 (Diyarbakır Heavy Penal Court No. 6, Decision no. 2007/464, December 11, 2007, in the possession of Human Rights Watch). They were charged under the Anti-Terror Law with making propaganda for a terrorist organization, (Article 7/2) and were sentenced to six months and 20 days in prison. They were at liberty during their trial proceedings, and their case is still on appeal. Aslan and Akın were accused of conduct identical to that of many of the demonstrators whose cases are examined in this report, yet their sentence was substantially less than would be the case today.

In another example, demonstrator Hasan Bayram was accused of shouting pro-calın and pro-PKK slogans and being part of a group throwing stones at the police during a January 11, 2006 public assembly in Diyarbakır. The occasion for the public assembly was the reading of a statement protesting a disciplinary punishment reportedly meted out to Abdullah calın in prison. After the statement was read, the assembled crowd reportedly resisted dispersal and threw stones at the police. Bayram was caught on the police cameras. He received a 10-month prison sentence for making propaganda for a terrorist organization (Article 7/2 Anti-Terror Law) (Decision of the Diyarbakır Heavy Penal Court No. 4; Decision no. 2006/193, September 29, 2006, in the possession of Human Rights Watch).

[46] A coalition of NGOs called the Justice for Children Initiative (ocuk iin Adalet Gırımı) should also be mentioned for its efforts to raise the issues publicly, via the media and advocacy efforts.

[47] See Concluding Observations on Turkey of the Committee on the Rights of the Child, 52nd session, September 14, 2009, <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-OPAC-TUR-CO1.pdf> (accessed March 21, 2010).

[48] Ibid.

[49] 'Ta atan ocuklara' yeni form! (New formula for the stone-throwing children), *Radikal* daily newspaper, September 30, 2009, <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetay&ArticleID=956902&CategoryID=77> (accessed October 27, 2009).

[50] See draft law, <http://www2.tbmm.gov.tr/d23/1/1-0775.pdf> (accessed April 30, 2010). As of April 2010, the draft remained with the Parliamentary Justice Commission.

[51] See press report <http://www.stargazete.com/politika/-tas-atan-cocuklar-duzenlemesi-alt-komisyonunda-haber-270184.htm> (accessed June 22, 2010).

[52] For full law, *Terrle mcadele kanunu ile bazi kanunlarda deiiklik yapilmasina dair kanun* (Law amending the Anti-Terror Law and other laws) (Law no. 6008), see *Resmi Gazete (Official Gazette)*, July 25, 2010, <http://rega.basbakanlik.gov.tr/main.aspx?home=http://rega.basbakanlik.gov.tr/eskiler/2010/07/20100725.htm&main=http://rega.basbakanlik.gov.tr/eskiler/2010/07/20100725.htm> (accessed July 26, 2010).

[54] The most significant change is to Article 33/c of the Law on Demonstrations and Public Assemblies, which reduces the penalty from five to eight years to one to three years. See fn. no. 37 above. For new law, see *Terrle mcadele kanunu ile bazi kanunlarda deiiklik yapilmasina dair kanun* (Law amending the Anti-Terror Law and other laws) (Law no. 6008), see *Resmi Gazete (Official Gazette)*, July 25, 2010, <http://rega.basbakanlik.gov.tr/main.aspx?home=http://rega.basbakanlik.gov.tr/eskiler/2010/07/20100725.htm&main=http://rega.basbakanlik.gov.tr/eskiler/2010/07/20100725.htm> (accessed July 26, 2010).

[55] Latest tables detailing cases supplied to Human Rights Watch by Ethem Akaln, Adana Human Rights Association, November 2, 2009.

[56] Table of cases provided to Human Rights Watch by the Adana branch of the Human Rights Association, March 2010.

[57] Unpublished report supplied to Human Rights Watch by lawyer Kezban Ylmaz, Diyarbakir coordinator of the Justice for Children Initiative and board member of the Diyarbakir branch of the Human Rights Association. The figures in this report update and provide greater detail than an earlier report published on the website of the Human Rights Association: see http://www.ihd.org.tr/index.php?option=com_content&view=article&id=1487:2008-yili-kanunla-ihtilafa-dusen-cocuklar-raporu&catid=34:el-raporlar&Itemid=90, May 2009 (accessed June 12, 2009).

[58] Mehmet Tatan, *Terrle Mcadele Kanunu*, (The Anti-Terror Law) (Ankara: Adalet Yaynevi, April 2009), p. 81-2.

[59] In cities such as Diyarbakir, assembling evidence towards securing the prosecution of demonstrators involves the Anti-Terror and Security Branches of the police, which routinely examine police video footage of demonstrations to identify repeat offenders. Courts also rely heavily on the services of lip-reading experts to determine the exact content of slogans shouted by demonstrators on police video footage of demonstrations.

[60] Deprivation of normal political rights enjoyed by citizens is applied to most individuals convicted of terrorism offenses (according to Article 53, Turkish Penal Code), and we have not repeated this elsewhere in the report since it applies in all the cases examined.

[61] Tm dosya kapsamna gre, sann rgtn stratejisi dorultusunda rgte ait yayn organlar tarafndan yaplan eylem ars zerine ayr tarihte dzenlenen basn aklanmasna katlp slogan atmak, rgt ven dviz tamak suretiyle rgtn bilgisi ve istemi dorultusunda gerekletirdii eylemlerin 5237 sayı TCK. nun 314/3 ve 220/6. maddesi yollamas ile 314/2. maddesinde tanmlanan suu oluturduu anladndan bu sutan zamanam sresi iinde almas mmkn grlmtr. Decision of the Ninth Criminal Chamber of the Court of Cassation, no. 2007/9184, Decision 2008/11733, November 4, 2008 (Yargtay lam, T.C. Yargtay 9. Ceza Dairesi, esas 2007/9184, karar 2008/11733, 4 Kasım 2008).

[62] A copy of all documents relating to Murat Ikrks case is on file with Human Rights Watch.

[63] Copies of video footage showing Murat Ikrk at both the March 5, 2007 and the March 28, 2006 demonstrations are on file with Human Rights Watch.

[64] Diyarbakir Heavy Penal Court No. 5 indictment, dossier no. 2009/790, dated May 14, 2009, police report and other case documents supplied to Human Rights Watch by lawyer Rehan Bataray.

[65] Diyarbakir Heavy Penal Court No. 5 indictment, dossier no. 2009/790, dated May 14, 2009, police report, verdict, and other case documents supplied to Human Rights Watch by Mehmet Kocakayas lawyer Rehan Bataray. Mahsum Akba, Yolda Frat, dris Baran, and Ceylan Saybak are the other students tried for participation in the same demonstration. The latter three remain in prison. A second trial of four students who participated in the same protest continues in Diyarbakir Heavy Penal Court No. 6. The students on trial for participation in the same demonstration are Cihan Bahadr, Abdullah Nas, Talat Uar, and Sinan Kaplan. All four were remanded to prison where they have remained for the duration of their trial.

[66] Diyarbakir Heavy Penal Court No. 4 indictment; 2008/1612, dated December 17, 2008.

[67] See <http://www.gundem-online.net/haber.asp?haberid=87650> (accessed March 4, 2010).

[68] Diyarbakir Heavy Penal Court No. 4, record of sixth hearing, February 25, 2010. The indictment against the three also includes evidence of their participation in other demonstrations on various dates. They were acquitted of most of the other charges. There is not space here to go into details that are not related to the charges over the mother tongue language protest on October 15, 2008, which forms the main evidence against them. Two other students were also tried but acquitted of any involvement in the October 15 protest.

[69] See Oral allar, Hapisteki Dicle niversitesi renciler (The Dicle University students in prison), *Radikal* daily newspaper, March 7, 2010, http://www.radikal.com.tr/Default.aspx?aType=RadikalYazarYazisi&ArticleID=984213&Yazar=ORAL_ALILAR&Date=07.03.2010&CategoryID=98 (accessed March 23, 2010). Five of the signatories are women students held in Diyarbakir E-type prison.

[70] Diyarbakir Heavy Penal Court No.4, indictment; 2009/1742, dated December 28, 2009.

[71] Diyarbakir Heavy Penal Court No. 4, trial hearing record, March 9, 2010.

[72] Information supplied to Human Rights Watch by Siirt lawyer akir Demir, March 23, 2010.

[73] Diyarbakir Heavy Penal Court No. 5, record of hearing 2010/78, March 11, 2010. Information supplied to Human Rights Watch by Diyarbakir lawyer Serkan Akba.

[74] Diyarbakir Heavy Penal Court No. 5, indictment; no. 2010/80, January 11, 2010.

[75] Cases demonstrating excessive use of force and two fatal shootings by the police during the unauthorized Nevruz/Newroz demonstrations in Van on March 22, 2008, were documented in the December 2008 Human Rights Watch report, *Closing Ranks Against Accountability: Barriers to Tackling Police Violence in Turkey*, see, <http://www.hrw.org/en/reports/2008/12/05/closing-ranks-against-accountability-0>.

[76] Diyarbakir Heavy Penal Court No. 4, reasoned decision (2008/192, March 10, 2009. Case documents on file with Human Rights Watch. These are the

prison terms they will actually serve if approved by the Court of Cassation, minus time already spent in pre-trial detention.

[77]Ne AKP ne Ergenekon zm demokratik cumhuriyet: the slogan refers to the perceived polarization between the government and opposition forces characterized by the Ergenekon trial the ongoing trial of former senior military and gendarmerie figures, special police units, journalists, academics, and others, for allegedly fomenting conditions for a military coup to unseat the government.

[78]See Diyarbakr Heavy Penal Court No. 4, no. 2008/1586; Decision no. 2009/179, March 23, 2009. On file with Human Rights Watch.

[79]Diyarbakr Heavy Penal Court No. 4, reasoned decision, 2009/579, December 29, 2009. After reductions based on her age and conduct during the trial, B.S. received a prison sentence of four years and two months for committing a crime on behalf of the PKK (Article 220/6, Turkish Penal Code) punishable as membership in the PKK, (Article 314/2, Turkish Penal Code) and two years, nine months and 20 days in prison under Article 33/c of the Law on Demonstrations and Public Assemblies, and six months and 20 days in prison for making propaganda for a terrorist organization, under Article 7/2 of the Anti-Terror Law.

[80]Reported to Human Rights Watch by lawyer Emin Aktar, head of the Diyarbakir Bar Association, March 5, 2010.

[81]See press report, http://www.gazeteport.com.tr/GUNCEL/NEWS/GP_733226 (accessed July 27, 2010).

[82]Human Rights Watch interview with Prosecutor A, who works in a Special Heavy Penal Court (name and location withheld at request of prosecutor), March 2009.

[83]Human Rights Watch interview with Prosecutor B working in a Special Heavy Penal Court (name and location withheld at request of prosecutor), March 2009.

[84]Information supplied by lawyer Tugay Bek, Adana. See Adana Heavy Penal Court No. 6 indictment; 2009/190, April 7, 2009; and record of court hearing, 2009/93, February 15, 2010.

See press coverage of the case, <http://www.milliyet.com.tr/Guncel/HaberDetay.aspx?aType=HaberDetay&ArticleID=1208008&Date=09.03.2010&Kategori=guncel&b=Elinde%20yarim%20limon%20var%20diye%209%20yil%20ceza%20aldi> (accessed March 23, 2010).

[85]See for example, press report, Mademki terlemisin demek ki eylemcisin (Since youre sweating you must be a demonstrator!), *Sabah* newspaper, March 2, 2010, see http://www.sabah.com.tr/Yasam/2010/03/02/mademki_terlemisin_demek_ki_eylemcisin (accessed March 5, 2010).

[86]See Diyarbakr Heavy Penal court No. 5; no. 2006/201; Decision no. 2008/115, April 8, 2008. On file with Human Rights Watch.

[87]Diyarbakr Heavy Penal Court No. 6, record of verdict hearing, 2008/589, October 6, 2009. Indictment, police reports, and court records on file with Human Rights Watch.

[88]Human Rights Watch representative attended the fourth trial hearing against dris zen and Ramazan Ugn at Diyarbakr Heavy Penal Court No. 6, February 24, 2009.

[89]Medical reports for dris zen from Cizre State Hospital dated March 20 and 24, 2008, in possession of Human Rights Watch. Several police officers also obtained medical reports documenting superficial injuries.

[90]Diyarbakir Heavy Penal Court No. 6 indictment, case no. 2008/836, June 18, 2008. Record of twelfth hearing of Diyarbakir Heavy Penal Court No.6 (dossier no. 2008/354), February 23 2010. Copies of documents, including court hearing records, statements to prosecutor, police reports, and medical reports in the possession of Human Rights Watch.

[91]Human Rights Watch did not document other cases in 2009 in which courts handed down verdicts at first hearings. In several cases mentioned earlier in this report, the Diyarbakr courts did convict defendants at their first hearings in February and March 2010.

[92]Adana Public Prosecutors Office, indictment, 2009/194.

[93]Adana Heavy Penal Court No. 6, Decision no. 2009/95, June 2, 2009: Yaplan yarglama sonunda sanklarn silahlı terror rgt PKKnin srekli eylem arsna uyarak su tarihinde saat 16:30 da 100 kiilik grubun katld.

[94]Sank Mehmet FDANin yollara barikat kuran, lastik yakan, polislere ta atan grubun iersinde yer aldı; see Diyarbakr Heavy Penal Court No. 4, Decision no. 2009/171; Decision: 2009/495, August 18, 2009, p.5. Copy of decision in possession of Human Rights Watch.

[95]Diyarbakr Heavy Penal Court No. 4, decision no. 2009/171; decision: 2009/495, August 18, 2009. Human Rights Watch is in the possession of a copy of the reasoned decision. On September 3, 2009, the same judge issued a dissenting opinion in a second case bearing similarities to that of Mehmet Fidan, arguing again that there was not clear and convincing evidence that the two defendants convicted by the court and sentenced to prison terms of 10 years and five months and 11 years and three months for joining a Cizre demonstration had committed a crime on behalf of the PKK. Again the judge concluded that the defendants should have been acquitted. The case reference is Diyarbakr Heavy Penal Court No. 6, no. 2009/78. Record of hearing at which verdict was issued on file with Human Rights Watch.

[97] European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 1950, 213 U.N.T.S. 222, *entered into force* September 3, 1953, ratified by Turkey on May 18, 1954.

[98] **Convention on the Rights of the Child (CRC)**, U.N. Doc. A/44/49 (1989), **entered into force September 2, 1990 ratified by Turkey on April 4, 1995.**

[99]Article 90 of the Constitution of the Republic of Turkey, 1982, provides International agreements duly put into effect bear the force of law.

[100]Article 21 of the ICCPR provides that: The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. Article 15 of the CRC provides similar protection with respect to the right of children to assemble. Article 11 of the ECHR provides that: Everyone has the right to freedom of peaceful assembly and to freedom of association with others . 2 No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. Article 19 of the ICCPR, Article 10 of the ECHR, and Article 13 of the CRC provide similar guarantees related to freedom of expression.

[101] *Galstyan v. Armenia*, Judgment of November 15, 2007, Series No. 26986/03, paras. 114 115; *Ashughyan v. Armenia*, Judgment of July 17, 2008, Series

[102] *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria*, Series Nos. 29221/95 and 29225/95, para. 97, ECHR 2001-IX.

[103] See e.g. *Oya Ataman v. Turkey*, Series No.74552/01, paras.38-42, ECHR 2006; *Nurettin Aldemir and Others v. Turkey*, Series Nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02, para. 46, December 18, 2007; *Saya and Others v. Turkey*, Series No. 4327/02, para.46, October 7, 2008.

[104] This principle of legal certainty is referred to by the Latin phrase *nullum crimen, nulla poena sine lege*, meaning that any offense or penalty must be clearly provided for in law.

[105] See Article 15 of the ICCPR and Manfred Nowak. UN Covenant on Civil and Political Rights. CCPR Commentary (2nd rev. ed.). Kehl am Rhein: Engel, 2005, pp.358 362; Article 7 of the ECHR and Article 40 of the CRC.

[106] See e.g. *S.W. v. the United Kingdom* and *C.R. v. the United Kingdom*, Judgments of November 22, 1995 , Series A Nos. 335-B and 335-C, paras. 34-36, and paras. 32-34, respectively; *K.H.W. v Germany*, Series No. 37201/97, para. 45, ECHR 2001-II.

[107] See Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, E/CN.4/2006/98, http://www.coe.int/t/e/legal_affairs/legal_co-operation/fight_against_terrorism/3_CODEXTER/Working_Documents/2006/Sheinin%20E-CN.4-2006-98.pdf (accessed September 8, 2009), December 28, 2005.

[108] The special rapporteur raised the following general concern: The Anti-Terror Act is drafted in a way that allows for an overly broad application of the term terrorism. Article 1, paragraph 1, defines terrorism mainly with regard to its aims. It appears to criminalize the aims as such since it does not require any act to have been committed in pursuing the listed aims, which include the aim to change the political, legal, social, secular and economic system of Turkey and the aim of weakening the authority of the State. The clause is therefore not restricted to tactics employed in the furtherance of these aims that amount to deadly or otherwise grave violence against persons. Instead, the provision is applicable to any kind of act that entails pressure, force and violence, terror, intimidation, oppression or threat [emphasis added]. A/HRC/4/26/Add.2, <http://daccessdds.un.org/doc/UNDOC/GEN/G06/149/42/PDF/G0614942.pdf?OpenElement>, November 16, 2006 (accessed September 8, 2009).

[109] Ibid.

[110] CRC, art. 37.

[111] CRC, art 3.

[112] See Concluding observations of the Committee on the Rights of the Child Turkey, 27th session, CRC/C/15/Add.152, 9 July 2001, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G01/432/64/PDF/G0143264.pdf?OpenElement> (accessed December 21, 2009).

[113] Concluding Observations on Turkey of the Committee on the Rights of the Child, 52nd session, September 14, 2009, <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-OPAC-TUR-CO1.pdf> (accessed March 21, 2010).

[114] *Seluk v. Turkey*, no. 21768/02, para. 36, Judgment of January 10, 2006.

[115] *Nart v Turkey*, Judgment of May 6 2008, Series No. 20817/04, para. 34.

[116] Cases on file with Human Rights Watch.

[117] The prison population has doubled in four years. The head of the Prison Directorate in the Ministry of Justice has underscored the difficulty he faces in explaining to European delegations the extremely high proportion of remand prisoners in Turkey (at the end of May 2009 running at 61,000 remand prisoners and remand prisoners with convictions not finalized and/or under appeal out of a total prison population of 111,000 prisoners),

<http://www.haber7.com/haber/20090613/Kalaman-Ceaevleri-tika-basa-doldu.php> and http://www.dunyabulteni.net/news_detail.php?id=79951 (accessed November 13, 2009).

[118] See the report To be a remand and convicted prisoner as a child; to be a child as a remand and convicted prisoner Observation report on Children in the Diyarbakır E-Type Closed Prison, 20-21 April 2009 (ocukken Tutuklu ve Hkml Olmak Tutuklu ve Hkml ocuk OlmakDiyarbakır E Tipi Kapal Ceza Ve nfaz Kurumunda Alkonulan ocuklar zleme Raporu,20-21 Nisan 2009, Trk Tabipleri Birlii), Turkish Medical Association,

<http://www.ttb.org.tr/index.php/haberler/basinaciklamalari/1599-diyarbakir> (accessed August 8, 2009).

[119] The issues relating to the treatment of juvenile suspects and defendants merit separate and much fuller consideration in their own right. Since the focus of this report has been the application of anti-terror laws to demonstrators and the urgent need to revise those laws, we do not attempt here to widen the discussion.

[120] Of the children interviewed, three were girls and the rest boys: S., N.K., A.B., .C., B.O., H.D., .., E.A., M., B., B.E. (names withheld). Eight children and members of their families were interviewed separately on June 8-9, 2009, by a representative of Human Right Watch and three representatives of the Justice for Children Initiative (comprising a childrens rights activist and trained social worker with experience working with juvenile offenders, a second childrens rights activist and specialist on child development, and a psychologist). The children were interviewed in private. Two children were interviewed separately by a representative of Human Rights Watch on a separate occasion. Full interviews with the children and their families and withheld identities of children on record with Human Rights Watch.

[121] In order to protect the minors involved, Human Rights Watch identifies children only by their initials The full identities of the children are known to Human Rights Watch.

[122] Following the childrens complaints of ill-treatment to the Ceyhan public prosecutor, the prosecutor opened an investigation (investigation no. 2010/583). Information reported to Human Rights Watch by Adana lawyer Tugay Bek, March 2010.

[123] The Beijing Rules, para. 10; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 16(3).

Government Should Reform Laws That Treat Demonstrators as Armed Militants

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