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The Permanent Mission of the Republic of Turkey to the United Nations Office at Geneva and other international organisations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to transmit herewith the responses of the Government of Turkey to the questionnaire of the Durban Review Conference.

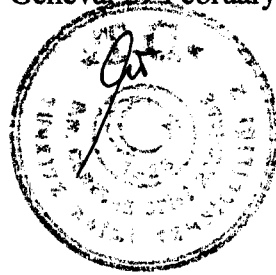
The Permanent Mission of the Republic of Turkey avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 29 February 2008

ONCOE REGISTRY

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Recipients : ADU



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## Questionnaire for the Durban Review Conference Responses of the Republic of Turkey

### Questions 1, 3 and 6

The fight against racial discrimination in all its forms and manifestations is among the priority objectives of the human rights policy of Turkey. Remarkable progress has been achieved in this direction and the ongoing reform process has been the main instrument in reinforcing the legal framework to promote and protect human rights. Achievements of the reform process, including measures against discrimination in general and racial discrimination in particular, also contributed to the implementation of the Durban Declaration and Plan of Action.

According to the Constitution of the Republic of Turkey, all individuals are equal without any discrimination before the law, irrespective of language, race, colour, gender, political opinion, philosophical belief, religion and sect, or any such considerations.

Within the ongoing reform process, Turkey reviews its policies and legislation so as to make them more effective in strengthening democracy, promoting respect for human rights and fundamental freedoms and consolidating the rule of law.

The Constitution was amended three times since 2001 and 8 harmonization packages were adopted as part of the comprehensive reform and democratization process. The resolve of the Government on the continuation of the reform process has been confirmed by the announcement of the "9th Harmonization Package" on 12 April 2006. A great majority of the issues in the package have already been realized.

The constitutional amendments were fortified by the adoption of laws that are fundamentally important for the protection of human rights. Among such laws are the new Civil Code, the new Criminal Code, the new Law on Associations and the new Code of Criminal Procedure.

The previous Criminal Code did not include a general provision on prohibiting discrimination. The new Turkish Criminal Code (No: 5237), which entered into force on 1 June 2005, defines "discrimination" as an offence and penalizes acts of discrimination based, *inter alia*, on race. Relevant provisions of the Criminal Code are as follows:

#### *Article 3*

*(2) In application of the Criminal Code, no discrimination shall be made between persons in respect of race, language, religion, sect, nationality, colour, gender, political or other opinion, philosophical belief, national or social background, birth, economic and other social status and no one shall be granted any privileges.*

#### *Article 122*

*A person practicing discrimination on grounds of language, race, colour, gender, disability, political opinion, philosophical belief, religion, sect or similar reasons and who*

- a) prevents sale or transfer of a movable or immovable property or execution of a service or prevents others from benefiting a service, or employs / does not employ a person on grounds of the above mentioned reasons,*
  - b) does not provide food or refuses to provide a service meant to be provided for the public,*
  - c) prevents a person from undertaking a regular economic activity*
- shall be sentenced to imprisonment for a term of six months to one year or a judicial fine.*

#### *Article 216*

*(1) A person who openly incites groups of the population to breed enmity or hatred towards one another based on social class, race, religion, sect or regional difference in a manner which might constitute a clear and imminent danger to the public order shall be sentenced to imprisonment for a term of one to three years.*

*(2) A person who openly denigrates part of the population on grounds of social class, race, religion, sect, gender or regional differences shall be sentenced to imprisonment for a term of six months to one year.*

*(3) A person who openly denigrates the religious values of a part of the population shall be sentenced to imprisonment for a term of six months to one year in case the act is likely to distort public peace.*

The definition and criminalization of genocide and the crimes against humanity, which include acts against members of a racial group, is an important new element introduced by the new Criminal Code into the Turkish criminal justice system:

*Article 76*

*(1) The commission of any of the following acts against members of any national, ethnic, racial or religious group with intent to destroy it in whole or in part through the execution of a plan shall constitute genocide:*

- a) Deliberate killing.*
- b) Causing serious bodily or mental harm to members of the group.*
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.*
- d) Imposing measures intended to prevent births within the group.*
- e) Forcibly transferring children of the group to another group.*

*(2) The perpetrator of the offence of genocide shall be sentenced to aggravated life imprisonment. However, for the deliberate homicide and deliberate wounding committed under genocide, the rule of real concurrence of crimes shall be applied in accordance with the number of victims identified.*

*Article 77*

*(1) The commission of the following acts systematically against a group of the population in line with a plan with political, philosophical, racial or religious motives shall constitute crimes against humanity:*

- a) deliberate homicide.*
- b) deliberate wounding.*
- c) torture or inhuman treatment or slavery.*
- d) depriving one of his/her liberty.*
- e) subjecting persons to scientific experiments.*
- f) sexual assault and sexual abuse of children.*
- g) impregnation by force*
- h) compelling persons to engage in prostitution.*

*(2) If the act in sub-paragraph (a) of the first paragraph is committed; the offender will be sentenced to aggravated life imprisonment: if the acts mentioned in other paragraphs are committed a penalty of not less than 8 years of imprisonment shall be imposed. However, for the acts of deliberate homicide and deliberate wounding defined in sub-paragraphs (a) and (b), the rule of real concurrence of crimes shall be applied in accordance with the number of victims identified.*

Furthermore, unlawful collection of personal data *inter alia* on racial grounds constitutes an offence with imprisonment under the Criminal Code.

*Article 135*

*(1) Any person who unlawfully records personal data shall be sentenced to imprisonment of six months to three years.*

*(2) Any person who records personal information relating to the political, philosophical or religious opinion of individuals or to their racial origins, ethical tendencies, sex lives, health conditions or connections to trade unions, is sentenced according to the provisions of the above paragraph.*

In conformity with the relevant laws, public or private organizations cannot propagate, promote or incite racial discrimination. The Law on Political Parties prohibits discrimination on, *inter alia*, religious and racial grounds and safeguards the principle of equality before the law. The Law on Associations, which entered into force in 2004, prohibits the establishment of associations advocating supremacy of a certain race.

The ongoing reform process that has been carried out with resolve and transparency in recent years has also led to further improvements in the legislation concerning religious freedoms. As regards Turkish citizens belonging to non-Muslim minorities, this freedom is further safeguarded in accordance with the Lausanne Peace Treaty.

Since 2001, there has been major progress in improving the legislation concerning citizens belonging to non-Muslim minorities in Turkey. In this context, a new governmental body, namely the Minority Issues Assessment Board, has been in operation since 2004 with a view to addressing and resolving difficulties which citizens belonging to non-Muslim minorities may encounter in their daily lives.

Turkey recognized the competence of the European Court of Human Rights (ECtHR) to receive petitions from any person, non-governmental organization or group of individuals in 1987 and the jurisdiction of the ECtHR in 1990. Therefore, individuals may lodge complaints against Turkey at the ECtHR after exhausting all national remedies. To date, no ruling has been made by the ECtHR against Turkey on racial discrimination.

There are also governmental, administrative and parliamentary remedies for individuals who claim to be subjected to discrimination, including racial discrimination. These remedies are utilized through the *Human Rights Presidency* at the Office of the Prime Minister and numerous *Human Rights Boards* at provincial and sub-provincial levels on the one hand, and the *Human Rights Inquiry Commission of the Parliament* on the other. These bodies are tasked with investigating complaints and allegations of human rights abuses and submitting their findings to relevant authorities for necessary action.

The *Human Rights Presidency*, which was established in April 2001 as an affiliate body of the Prime Ministry, and 931 Provincial and Sub-Provincial *Human Rights Boards* carry out extensive supervision works on human rights, particularly at local level. Human Rights Boards include almost 14,000 non-governmental members.

Both the Human Rights Presidency and the Human Rights Boards are entrusted with the task of receiving, examining and investigating allegations of human rights violations, including claims of racial discrimination, assessing the results of their examinations and investigations, referring the results to the offices of the public prosecutors or relevant administrative authorities and following up the results.

The Human Rights Boards conduct information activities such as preparing training sessions, seminars, TV programmes and printing publications for relevant purposes including the fight against discrimination including racism and xenophobia.

Between January and July 2006, a total of 1.085 applications were received by the Human Rights Presidency and the Human Rights Provincial and Sub-Provincial Boards. Only 91 cases were related to claims of discrimination. No application was received concerning claims of discrimination on the basis of race, colour, language, religion or political opinion.

Established in 1990, the *Human Rights Inquiry Commission of the Parliament* functions basically as a parliamentary monitoring mechanism with respect to allegations of human rights violations. The Commission receives and examines applications from individuals living in Turkey, who do not necessarily have to be citizens, relating to alleged violations of human rights and conveys its findings to competent government bodies for action.

Turkey believes that education and media are the primary tools in an effective, long-term strategy to combat racial discrimination and to achieve the desired level of harmony within societies.

To coordinate efforts and activities in the field of human rights education, the National Committee for Human Rights Education, established in 1998, prepared a national programme for the period of 1998-

2007 by taking into consideration the relevant guidelines and principles set forth in the UN Action Plan on Human Rights Education which was adopted in July 1999.

In line with the national programme, all government institutions directly related to human rights issues have intensified their in-service human rights training programmes. The intensification of the training of members of law enforcement agencies is also considered to be a particularly useful means for promoting the implementation of human rights.

In 2003-2004, the Human Rights Presidency of the Office of the Prime Minister organized a number of roundtable meetings for the Human Rights Boards and for NGOs within the framework of the project titled "Awareness-Raising on Human Rights and Democratic Principles" conducted in cooperation with the EU Commission and the Council of Europe. Between June 2005 and February 2006, the Human Rights Presidency and the EU implemented a human rights education project. 632 members of the Human Rights Boards attended courses on fundamental human rights issues and communication with victims of human rights violations. These projects addressed, *inter alia*, the issue of combating racial discrimination, xenophobia and related intolerance.

In an effort to prevent discrimination in school books and education materials, the By-law adopted in 2004, stipulates that textbooks should not contain language against fundamental human rights or include discrimination based on gender, race, religion, language, colour, political thoughts, philosophical beliefs, sect or any such consideration.

Recognizing the role of mass media in promoting human rights, Turkey attaches utmost importance to the dissemination of information to combat prejudices which lead to racial discrimination, and to the promotion of understanding, tolerance and friendship among nations and racial or ethnic groups. The legislation regulating broadcasting includes provisions on non-discrimination.

The fight against racial discrimination in all its forms as part of the ongoing reform process will continue to be a priority for Turkey.

Turkey spares no efforts in reviewing both the legislation and its implementation with a view to identifying shortcomings while educating the population to become more sensitive in eliminating racial discrimination, xenophobia and related intolerance.

## **Question 2**

In spite of the tangible progress achieved in elimination of institutionalized forms of racial discrimination, the international community still experiences new and mounting waves of bias, exclusion and racist violence. The need to fight all forms and manifestations of discrimination is more evident than before.

Turkey believes that a successful fight against all forms and manifestations of discrimination and intolerance requires combined efforts at national and international levels. In this respect, Turkey maintains a close and constructive cooperation within the special mechanisms of the Council of Europe and the OSCE on the fight against intolerance and discrimination including its contemporary forms.

Within the framework of the Council of Europe, Turkey has always taken part in the elaboration of policies and recommendations aimed at elimination and prevention of contemporary forms of racial discrimination.

Turkey is actively involved in the work of the OSCE in the field of promoting tolerance and non-discrimination. As a testimony to its efforts in this regard, a Turkish Ambassador, Mr. Ömür Orhun, nominated by the Turkish Government, was appointed in December 2004 as one of the three Personal Representatives of the OSCE Chairman-in-Office on Combating Intolerance and Discrimination.

In contribution to international efforts and with its deep-rooted legacy of mutual understanding, multi-faith tolerance, dialogue and respect for other cultures and religions, Turkey acts as the co-sponsor of the Alliance of Civilization Initiative.

Aiming at facilitating harmony and dialogue by highlighting the common denominator of different cultures and religions, this initiative should contribute to the elimination of some of the contemporary forms of discrimination.

#### **Question 4**

Turkey participated in the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, in 2001. Turkey took an active part in all phases of the preparatory process and played a active role in the Conference itself. In doing so, Turkey spared no effort in facilitating negotiations and bridging differences among various group of countries. Turkey will continue to bring its contribution through its membership in the Bureau of the Preparatory Committee for the Durban Review Conference which will be held in 2009.

Engaged in the follow-up process of Durban World Conference, Turkey actively participates to the Working Group on the effective implementation of the Durban Declaration and Programme of Action, the Working Group of Experts on People of African Descent and more recently to the Ad-Hoc Committee on the elaboration of complementary standards.

Being a member of the Bureau of the Preparatory Committee for the Durban Review Conference, Turkey will bring its contribution to the open-ended intergovernmental Working Group to be established. The Review Conference on the implementation of the Durban Declaration and Programme of Action is part of the follow-up and should not be overloaded with new issues.

As a general assessment, Turkey believes that priority should be given to the quality and effectiveness of the Durban follow-up process, and not only to the quantity and diversity of follow-up mechanisms.

#### **Question 5**

Turkey ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 13 May 2002. The instrument of ratification was deposited on 16 September 2002. In accordance with Article 19, the Convention entered into force for Turkey on 16 October 2002.

In 2007, Turkey has presented its initial, second and third periodic reports in a single consolidated document to the Committee on the Elimination of Racial Discrimination on the legislative, judicial, administrative and other measures which give effect to the provisions of the Convention.

Turkey is fully committed to the fight against racism, and racial discrimination as defined in the Convention. With this understanding, Turkey became party to the Convention along with other core UN instruments in the field of human rights, and incorporated sound and effective measures into its legislation concerning prohibition of racial discrimination.