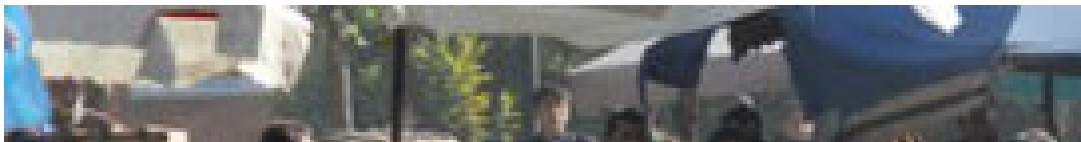


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JUSTICE FOR
CHILDREN
INITIATIVE

CHILDREN ARE NOT TERRORISTS!



NGO report to the Committee on the Rights of the Child on Juvenile
Justice and Armed Conflict in Turkey | JUSTICE FOR CHILDREN INITIATIVE IN TURKEY

NGO report to the Committee on the Rights of the Child on Juvenile Justice and Armed Conflict in Turkey

Members of the Justice for Children Initiative in Turkey:

Families of Children who are under trial, Ankara Bar Association, Amargi Women Academy, Başak Culture and Art Foundation, Berfin Combating against Poverty Association, Boğaziçi Performing Arts Society, Contemporary Jurists Association Van Branch, Cizre Chamber of Merchants and Craftsmen, Cizre Chamber of Drivers, Cizre University Association (CÜDER), Children under Same Roof Association (ÇAÇA), Bilgi University Child Studies' Unit (ÇOCA), Union of Workers in Religious Affairs Cizre Branch, Diyarbakır Bar Association, Child Department of Diyarbakır Metropolitan Municipality, Association for Solidarity with Migrants and Internally Displaced Persons (GÖÇ-DER) Diyarbakır Branch, Diyarbakır Sarmaşık Combating against Poverty and Sustainable Development Association, Union of Education and Science Workers, Union of Education and Science Workers Cizre Branch, Agenda Child Association, Say Stop to Racism and Nationalism Initiative, Human Rights Association, Human Rights Agenda Association, İstanbul Children Rights Activists Group, Contemporary Jurists Association İzmir Branch, Confederation of Public Employees Trade Unions Şırnak Branch, MEM U ZİN Cultural Center, Organization of Human Rights and Solidarity with Oppressed People (MAZLUMDER), Organization of Human Rights and Solidarity with Oppressed People İstanbul Branch, Organization of Human Rights and Solidarity with Oppressed People Van Branch, Association for Solidarity with Children Deprived from Freedom, (ÖZ-GE-DER), Sendika.Org Initiative, Association of Social Workers Headquarters and all branches, Şırnak Bar Association, Şırnak Women's Association (Şar-Der), Şırnak Youth Working Group (Genç-Der), Şırnak Medical Association, Trauma Studies Institute, Democratic Solidarity Association for Families of Detainees and Convicted (TUHAD-DER), Human Rights Foundation Turkey (TIHV), Peace Assembly Turkey, Youth Re-autonomy Foundation of Turkey Ankara Branch, Youth Federation of Turkey, Central Council of Turkish Medical Association (TTB), Flying Broom, Time is Now Initiative, Van Bar Association

Justice for Children Initiative (JCI), is composed of children's rights and human rights activists who are in collaboration to underline that those children who are arrested and being tried or whose trials are ended (with punishment or not) during the public demonstrations in Eastern and South eastern Anatolia in 2008 are "**children.**" JCI is established to ensure that the abovementioned children are subjected to the **proceedings specific for children** as it has been described in Convention on the Rights of the Child and United Nations Standard Minimum Rules for the Administration of Juvenile Justice. The initiative conducts its activities aiming to reveal the injustice that public criminal cases filed against **500 children (ages between 12 and 18)** in various cities with the allegations of "propagandizing terrorist organization," "violating Law 2911," and "becoming a member of the organization through crime." The initiative targets to raise awareness on this problem, and to create public pressure for abolishment of such exercises.

The initiative is formed when several individuals and organization in different locations who are already working on this issue or who are willing to work on this issue established communications among each other following the call from families of these children. It started to act in a coordinated manner with monitoring of some hearings. In this framework, data on the situation of these children is collected, expert opinions are composed, several coordination meetings in various cities are organized, and media advocacy is developed through pres meetings, press releases, and etc.

Introduction and background

Turkey became party to the “Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict” on 4 May 2004. Turkey submitted its initial report in December 2007 with a year delay.

There is an armed conflict pertaining more than 25 years in Turkey between illegal PKK (Kurdistan Worker’s Party) and the Turkish armed forces. Due to this conflict, there have been dramatic human rights violations, especially in the south eastern region of Turkey. Thousands of cases regarding violation of right to life, forced eviction, torture, forced disappearances were taken to the European Court of Human Rights from the region to seek justice.

Republic of Turkey has kept a policy to deal with this armed conflict in the context of fight against terrorism. Unfortunately, certain laws and policies to address terrorism related concerns cause more harm than producing solutions to these concerns, especially on the lives of hundreds of children who were arrested and in trial for charges of being a member of an armed terrorist organisation. Even though the Committee on the Rights of the Child expressed its concerns “that relevant parts of the legislation, such as the "Anti-terror Law" of 1991 and some provisions on juvenile courts, are still not in full conformity with the provisions and principles of the Convention.”¹

This report is written by Justice for Children Initiative in Turkey to highlight Turkey’s international obligations towards these children within the framework of the Optional Protocol on the Rights of the Child on the involvement of children in armed conflict (hereinafter OPAC).

More than 500 children between the ages of 12 – 18 have been arrested and/or on trial in the High Criminal Courts of Turkey with charges of membership to an “armed terror organisation”. Turkey is under international legal obligation to provide protection to these children in accordance with OPAC articles 6:

“States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social

Recommendations

- Children who are under arrest should immediately be released,
- All children should be tried at juvenile courts rather than heavy penal courts designed for adults,
- Social Investigation Reports containing reasons for involvement of children in crime and proposals the ways to be protected from involvement in crimes should comprehensively, independently and impartially be prepared,
- The reports indicating whether children at the age between 12 and 15 understand and distinguish the meaning and the result of his/her acts; whether understand the crime attributed should be prepared by relevant experts,
- Reports prepared for children should be respected by courts,
- Establishment of mechanisms to prevent children to be involved in criminal activities,
- All children should not be deprived of any of their rights including education and should be provided psychological and developmental support during and after trial process.
- Urgent amendments should be made concerning Articles 9 and 13 of the Anti_Terror Law, Articles 314 and 220 of the Turkish Penal Code as these articles constitute a breach to the Constitution of Republic of Turkey and to international conventions undersigned by Turkey.

¹ Para 13, Concluding Observations of the Committee on the Rights of the Child: Turkey. 09/07/2001. CRC/C/15/Add.152

reintegration.”

Children in question were arrested in relation to their involvement in public demonstrations venting their opinions and dissent after a court decision about killings of their fellow Kurdish citizens. If there is no armed conflict in Turkey, children should be provided with space to vent their dissent as well in accordance with articles 12, 13 and 15 of CRC. If this constitutes a crime, children should be dealt within juvenile justice system in accordance with articles 37, 39, and 40 of CRC and paragraphs 65, 66, and 67 of the Concluding Observations of CRC on Turkey. If children are treated as members of an armed group that are distinct from the armed forces of the State, they should be provided with “appropriate assistance for their physical and psychological recovery and their social reintegration” in accordance with Article 6 of OPAC.

Existing legislation enabling the trial of individuals under the age of 18 at Juvenile courts and the Specially Authorised Heavy Penal Courts

In the legislation concerning the juvenile courts, the State has taken some measures partly aligning with the concluding observations of the Children Rights Committee (re para 65). However, age limit for children to be exempted from the penalty is remained as 11. The upper limit to be sued at Juvenile Courts was increased from 15 to 18 with an amendment made on 30 July 2003 at article 6 of the Children Protection Law (**ARTICLE 8 of Law no 4963 concerning amendments in several laws dated 30.07.2003**).

This positive amendment in favour of children was taken back through an amendment made in the Anti-Terror Law. Changes made in the Anti-Terror Law with a law no 5532 concerning amendments in several laws on 20 June 2006, brought a provision against children between the age of 16 and 18 by enabling the authorities to refer children at that age before the Specially Authorised Heavy Penal Courts dealing with specifically organised crimes and terrorism crimes.

Cases related crimes in the context of this Law are handled in the heavy penal courts indicated in the first paragraph of the Article 250 of the Turkish Penal Code no 5271 dated 4.12.2004. Court cases launched against children over the age of 15 in relation to these crimes are also handled in these courts..”

With the same amending law, Article 13 of the Anti-Terror Law was also changed. According to this amendment, the penalty given by the court shall not be postponed in case of a penalty issued for a child over the age of 15. This creates a discriminatory practice for children between the age of 16 and 18 and children between the age of 15 and 11 whose penalties are normally postponed by the Juvenile Courts of which protection extends to the age of 18.

ARTICLE 13- Penalty of imprisonment given in the context of these crimes cannot be transferred to optional sanctions and remitted. However, this provision is not applicable for children under the age of 15.”

In addition to above mentioned negative developments against children in the legislation, a decision was made by the Supreme Court (Court of Appeal) in 2006 in relation to the interpretation of Article 220/6 of the Turkish Penal Court. Upon a disagreement between the local court and the Court of

Appeal², the final decision was made by the 9th Chamber of the court of Appeal which become a case law for further relevant cases at courts. The Decision given by the Chamber was as follows:

"... The general call of the Organisation was materialised by the broadcasting and publications belong to the Organisation and there is no need to make these calls to specific people. It is entrenched that these demonstrations made in line with the organisation's wish and knowledge are organised on the name of the Organisation. Act of the suspect who participated in the demonstration organised on the name of the Organisation, breaches the 3rd paragraph of Article 314 and 6th paragraph of Article 220 of the Turkish Penal Code."

The Chamber therefore made a decision that even there is no membership to the illegal organisation identified, by only participating in any demonstration will be regarded as being the member of the Organisation. Therefore the penalty which was foreseen in paragraph 2 of the Article 314 of the Turkish Penal Code should be applied to those found guilty.

ARTICLE 220. - (6) Any person who committed a crime on the name of the organisation, even there is no membership, shall also be punished for the crime of being member of the organisation.

ARTICLE 314. -

(2) members of the organisations which identified in the paragraph 1 shall be given a punishment of imprisonment from 5 to 10 years.

(3) Other provisions in relation to establishment of an organisation to commit crime shall be applied in similarly for this crime.

Situation of Children Who Participated in Demonstrations in the South Eastern Region of Turkey

In the framework of above mentioned legislation and the case law, approximately 800 children under the age of 18, have been arrested, tried at both Juvenile Courts and Specially Authorised Heavy penal Courts and imprisoned as adults. The information provided by the Minister of Justice to a Parliamentary Question on 6 February 2009, proves that the legislation and the case law have been applied towards children under the age of 18 since 2006. Following statistical data is taken from the Minister's official reply which was published on the web site of the Turkish Grand National Assembly and covers the period between 2006 and 2007.

- *On the grounds of the Anti-Terror Law No 3713, a total of 1056 children between the age of 12 and 18 were treated as defendants in Penal Courts and Specially Authorised Heavy Penal Courts. 208 children were sentenced by these courts and 445 children were given decisions other than sentence.*
- *On the grounds of Article 220 of the Turkish Penal Code, a total of 529 children between the age of 12 and 18 were treated as defendants in Penal Courts and Specially*

² On 28 March 2006, a total of 10 people (of which 7 were children) died in Diyarbakır as result of brutal intervention of the security forces to demonstrators who chanted slogans in favour of PKK during the funeral of some PKK members died in armed conflict. Upon these events a court case was launched against demonstrators at Specially Authorised Heavy Penal The Court convicted some of demonstrator on the grounds of Law No 2911 on Demonstrations and Meetings and on the grounds of Anti-Terror Law No 3713/7(2) and decided that there was no reason to charge them on the grounds of Article 220/6 concerning the membership to an illegal organisation. During the appeal procedure, a contradiction appeared between the Court of Appeal and the local Court for the application of the Article 220/6 of the Turkish Penal Court. Upon the resistance of the local Court on its original decision, the final decision was made by the General Chamber of the Court of Cassation on 04.03.2008. With this decision local Court's decision was abandoned.

Authorised Heavy Penal Courts. 23 children were sentenced by these courts and 214 children were given decisions other than sentence.

- *On the grounds of Article 314 of the Turkish Penal Code, a total of 681 children between the age of 12 and 18 were treated as defendants in Penal Courts and Specially Authorised Heavy Penal Court . 62 children were sentenced by these courts and 236 children were given decisions other than sentence.*
- *On the grounds of Article 301 of the Turkish Penal Court, 16 children were treated as defendants in Penal Courts and Specially Authorised Heavy Penal Courts. 6 children were sentenced and 37 children were given decisions other than sentence.*

Above mentioned statistics covers only the period between 2006 and 2007; in 2008, there have been a significant numbers of children under the age of 18 who have been subjected to similar procedures. For example in Adana (South Mediterranean Region) since the beginning of 2008, 193 children were referred to the courts. 42 of them were sentenced on the grounds of Article 314 and Article 220 of the Turkish Penal Code and on the grounds of Article 7 of the Anti-Terror Law. The total amount of sentence of imprisonment for 42 children amounted to 161 year and 10 months. Court cases concerning 152 children are still continuing. As there is no juvenile court in Adana, children between the age of 12 and 15 have been tried at heavy penal courts.

The number of children who were undergone a trial at the Juvenile Courts is also significantly low. There has been only 6 children were identified to be tried at the Juvenile Heavy Penal Court in Diyarbakir.

Conclusion

We are principally against the use and provocation of children under the age of 18 to participate in actions by political groups. Expectation of human rights and children rights organisations is from State and non-state political or armed groups not to use children in their activities. Non-State actors who invite the general public to social demonstrations or protests are expected to think about the influential effect of their calls on children and to act in a way to protect them.

On the other hand, we urge the State to take necessary measures to comply fully with the provisions of OPAC and the Convention on the rights of Children and to discontinue the existing policy regarding children as “member of terrorist organisations” by respecting to our recommendations.

Recommendations

- Children who are under arrest should immediately be released.
- All children should be tried at juvenile courts rather than heavy penal courts designed for adults.
- Social Investigation Reports containing reasons for involvement of children in crime and proposals the ways to be protected from involvement in crimes should comprehensively, independently and impartially be prepared.
 - “In terms of the Law on Child Protection and Juvenile Courts, preparations of social investigation reports are obligatory. This obligation, however, does not cover the court cases launched against children at the age between 15 and 18 on the grounds of Anti-Terror Law No 3713 and Specially Authorised Heavy Penal Courts of which mandate was given by the Anti-terror Law. It has been observed by the Initiative that social investigation reports were not prepared for any children at Specially Authorised Heavy Penal Courts. Court decisions were generally based on claims given to the prosecutors by security forces.

In case of not having social investigation reports prepared, it will not be possible to re-include children into the society which is one of the basic aim of juvenile justice and will not be possible to evaluate social, moral and cognitive development of children, perception of the meaning of his/her acts and to direct his/her attitude. Therefore hundreds of children between the age of 15 and 18 were regarded as “an adult criminal” and were become the subjects of the conflict. Another important point here in is that acts of children do not constitute the terror crime fully. All these factors can only be evaluated through Social Investigation reports. Not preparing these reports shall result in stigmatisation of children as “terrorists” and exclusion from the society.”³

- The reports indicating whether children at the age between 12 and 15 understand and distinguish the meaning and the result of his/her acts; whether understand the crime attributed should be prepared by relevant experts.
 - Independent forensic experts, social psychologists, child psychiatrists should be invited to evaluate children. In existing circumstances, it is very rare for courts to accept experts to provide reports.
- Reports prepared for children should be respected by all courts.
 - There has been legislative and judicial practice problems observed when trial processes were examined. Although the Law concerning Child Protection obliges courts to obtain all necessary reports and in case of not obtaining, the Law also obliges the court to provide the justification. However, the Anti-Terror Law conflicts with Law concerning Child Protection in obtaining reports. According to the Anti-Terror Law, the courts cannot give a decision to inflict a precaution for defendants (Article xxx). Therefore, children convicted on the grounds of Anti-Terror Law and relevant articles of the Turkish Penal Code are left without any protection and treated as adults.
- Establishment of mechanisms to prevent children to be involved in criminal activities.
 - Punishment of children with terrorism crime shall not prevent the further participation of children in demonstrations. It can be justifiably said that these type of heavy measures could provoke more involvement as mentioned rightly by a Social Psychologists in an article issued on this issue.

“... What we are expecting by arresting these children and treating them as adults and trying them as terrorists? Are we expecting the number of children who throw the stone will reduce? Policing the country? Or, the transformation of stones to kalashnikov and bombs? What we are expecting them to experience in prisons? Are we expecting them to be regenerated? Or, to be pushed to the violence by becoming more traumatised? When they stayed in long years in prisons are we expecting them to be productive and creative citizens or individuals loaded with hate running behind the revenge to heal their wounds.? ...”Murat Paker, Bilgi University, Birikim Journal, 9.04.2009, translated from the article entitled: “A new example of unjustness: Children being tried as Terrorists.”
- All children should not be deprived of any of their rights including right to education and should be provided psychological and developmental support during and after trial process.

³ Excerpted from the assessments made by xxx on Social Investigation reports prepared for 6 children tried at Diyarbakır Juvenile Courts as an obligation stipulated by the Law on Child Protection.

- There has been no involvement and/or no intervention by the Social Services and Child Protection Institution (hereafter SSCHI) which was given the authority to implement and monitor the Convention on the Rights of Children and its Protocols by the instruction of the Office of Prime Minister on 11 January 1995. It has not also observed any policy drafted by the SSCHI in order to implement the Article 6 of the OPAC.
 - In Adana and Diyarbakır, the Human Rights Foundation of Turkey provided some psychological and physical treatment for children who are released.
- Urgent amendments should be made concerning Articles 9 and 13 of the Anti -Terror Law No 3713, Articles 220/6 and 314/4 of the Turkish Penal Code as these articles constitute a breach to the Constitution of Republic of Turkey and to international conventions undersigned by Turkey.
 - These articles constitute breach to the Article 2 of the Constitution (concerning Rule of Law Principle under the heading of Qualities of the Republic.) Article 10 of the Constitution (equality before the law), Article 38 of the Constitution (Principles Relating to Offences and Penalties), Article 11 of the Constitution (Supremacy and Binding Force of the Constitution) and finally Articles 6 and 7 of the European Convention of Human Rights through the Article 90 of the Constitution.