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Rapport de la Rapporteuse spéciale sur l'indépendance des juges et des avocats, Gabriela Knaul

Additif

Mission en Turquie* **

Résumé

La Rapporteuse spéciale sur l'indépendance des juges et des avocats s'est rendue en visite officielle en Turquie, sur l'invitation du Gouvernement, du 10 au 14 octobre 2011. Elle a rencontré les autorités gouvernementales, législatives et judiciaires, ainsi que les représentants d'associations professionnelles, d'organisations de la société civile et d'autres parties prenantes. Les visites effectuées à Ankara, Istanbul et Diyarbakir ont permis à la Rapporteuse spéciale d'évaluer la situation du système judiciaire et les difficultés auxquelles il était confronté dans différentes régions du pays.

Dans le présent rapport, la Rapporteuse spéciale examine les réformes de grande ampleur récemment conduites en Turquie, y compris au niveau constitutionnel, dont un grand nombre ont un rapport direct avec son mandat. Si, dans l'ensemble, les réformes entreprises peuvent être considérées comme des améliorations, il reste des difficultés à surmonter pour garantir pleinement l'indépendance et l'impartialité des juges et des procureurs dans la pratique. Il est en particulier fait référence au rôle des procureurs dans l'administration des tribunaux; à la position et aux fonctions du Ministre de la justice au sein du Conseil supérieur des juges et des procureurs; à la nécessité d'établir une séparation entre la carrière de juge et la carrière de procureur; aux relations par trop étroites entre les juges et les procureurs; au système de nomination, de transfert et de rotation des juges et des procureurs; à l'état d'esprit des juges et des procureurs; et à la question des femmes dans l'administration de la justice. La Rapporteuse spéciale

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit, joint en annexe au résumé, est distribué en anglais seulement.

** Soumission tardive.

examine aussi la question de l'accès à la justice et la lenteur des procédures, ainsi que les problèmes connexes que sont l'arriéré d'affaires en souffrance, le volume de travail très important, le manque d'infrastructures judiciaires adéquates et les longues périodes de détention avant jugement qui en résultent. Elle analyse en outre les restrictions autorisées par la législation dans les affaires concernant le terrorisme et le crime organisé qui sont jugées par les tribunaux pénaux spéciaux et se déclare préoccupée par l'absence de garanties procédurales dans ces affaires. Une partie du rapport est consacrée aux enquêtes en cours sur les affaires très médiatisées concernant la préparation présumée d'un coup d'État.

Le rapport s'intéresse aussi à la situation des avocats et étudie les difficultés qu'ils rencontrent dans l'exercice de leurs fonctions. Il évoque notamment le sentiment largement répandu chez les avocats qu'ils ne sont pas considérés ni traités de la même manière que les juges et les procureurs et les difficultés qu'ils rencontrent pour défendre convenablement leurs clients, en particulier dans le cas d'infractions liées au terrorisme. De ce point de vue, le fait qu'à diverses reprises des avocats aient fait l'objet de poursuites pénales pour des activités menées dans le cadre de l'exercice légitime de leur profession, alors qu'ils défendaient des personnes accusées d'infractions liées au terrorisme, est particulièrement inquiétant. Cette tendance préoccupante s'est fortement accentuée dans les mois précédant la soumission du présent rapport. La Rapporteuse spéciale fait aussi des recommandations concernant les critères d'admission au barreau.

Le rapport s'achève sur des remarques relatives au renforcement des capacités et à la formation aux droits de l'homme des juges, des procureurs et des avocats.

Annexe

Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Turkey (10 to 14 October 2011)

Contents

I. Introduction

1. At the invitation of the Government of Turkey, the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, visited the country on an official visit from 10 to 14 October 2011, in order to examine matters relating to the independence and impartiality of judges, prosecutors and the free exercise of the legal profession by lawyers. In particular, she had the opportunity to assess a series of judicial reforms recently undertaken by the Government that include several aspects at the core of her mandate. The Special Rapporteur also examined other issues, such as the respect of fair trial guarantees and access to justice.

2. The Special Rapporteur visited Ankara, Istanbul and Diyarbakir. She met with a number of Government officials from the Ministry of Foreign Affairs, including the Deputy Director General for the Council of Europe and Human Rights, and directors of various general directorates of the Ministry of Justice; the President, the Secretary-General and other judges of the Court of Cassation; the Secretary-General and other judges of the Council of State; judges from the High Military Criminal Court and the High Military Administrative Court; the Rapporteur and the Deputy Secretary-General of the Constitutional Court; the Secretary-General and other members of the High Council of Judges and Prosecutors; the Chief Prosecutor in Diyarbakir and the Deputy Chief Prosecutors in Ankara and Istanbul; members of the Human Rights Presidency; members of the Human Rights Inquiry and Justice Committees of the Grand National Assembly; representatives of the Justice Academy of Turkey; and representatives of the Turkish National Police and the General Command of the Gendarmerie. She also met with representatives of professional associations of judges and prosecutors, bar associations, lawyers, academics, international and local non-governmental organizations and United Nations agencies.

3. The Special Rapporteur wishes to thank the Government for its invitation and for having facilitated the smooth development of the visit with full respect for her mandate. The Special Rapporteur considers, however, that five days is too short a period to conduct a visit in a vast country like Turkey. She would also like to express her gratitude to the Office of the United Nations Resident Coordinator and the United Nations Development Programme office in Turkey for their valuable support.

II. The justice system

A. Recent developments

4. Turkey has recently undertaken a series of reforms aimed at consolidating the rule of law and strengthening respect for human rights and fundamental freedoms. Legislative reforms include the adoption, in 2004, of the new Criminal Code and the new Criminal Procedure Code, aimed primarily at aligning Turkish legislation to the standards contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms.[1] Article 90 of the Constitution was also amended in 2004, to provide that international agreements in the area of fundamental rights and freedoms prevail in case of conflict with the provisions of the national laws. Its impact on the jurisprudence, however, has yet to be seen. More recent, and of particular relevance for the Special Rapporteur's

[1] See the report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey from 10 to 14 October 2011, 10 January 2012, para. 5.

mandate, are the Judicial Reform Strategy 2009-2013 and its Plan of Action and the constitutional amendments adopted in 2010, aimed, inter alia, at improving the efficiency, independence and impartiality of the judicial system.

5. The Judicial Reform Strategy 2009-2013 was drafted by a commission established by the Strategic Development Department of the Ministry of Justice, taking into account the commitments of Turkey to the European Union and the priorities in the Ninth Development Plan and the Special Expertise Committee of Judicial Service. The Strategy put forward 10 main objectives; topping the list were (a) strengthening the independence of the judiciary and (b) promoting impartiality in the judiciary.[2] The Strategy is being implemented through a plan of action that covers the activities, the timetable and the budget required to reach the objectives.

6. With respect to the constitutional reform, a referendum on proposed amendments was held on 12 September 2010. A total of 58 per cent of the population supported the amendments, with a participation rate of 77.4 per cent. The constitutional reform package included 26 amendments to the 1982 Constitution. Particularly relevant for the Special Rapporteur's mandate are those redefining the jurisdiction of military courts and modifying the composition and functions of the Constitutional Court and the High Council of Judges and Prosecutors. These amendments will be analysed in more detail below.

7. In addition, since the 2010 constitutional referendum and the elections held in June 2011, consensus has been emerging on the need for a new Constitution to entirely replace the 1982 Constitution.

8. Both the Judicial Reform Strategy and the constitutional amendments represented, on the whole, positive steps towards strengthening the structural and functional independence of the judiciary. Nonetheless, challenges remain in various areas with respect to guaranteeing, in practice, the effective independence and impartiality of judges, prosecutors and lawyers. These challenges are rooted in a number of structural and functional problems in the administration of justice, which are associated with dispositional factors deeply embedded in the practice of judicial actors.

B. The Constitution: provisions related to the judiciary

9. The legal system in Turkey is fundamentally based on articles 138-160 of the 1982 Constitution, as amended in 2010.

10. The Constitution contains detailed provisions on judicial independence, starting from the provision that "judicial power shall be exercised by independent courts on behalf of the Turkish Nation" (art. 9). It further regulates the substance of judicial independence in its article 138 on independence of the courts.

11. The Constitution also generally regulates the elements of the security of tenure of judges and prosecutors (arts. 139 and 140), leaving the details thereof to specific legislation, notably Law No. 2802 of 24 February 1983 on judges and prosecutors (amended in 2010).

[2] Objectives 3 through 10 are as follows: enhancing efficiency and effectiveness in the judiciary; enhancing professionalism in the judiciary; improving the management system of the judicial organization; enhancing confidence in the judiciary; facilitating access to justice; ensuring effective implementation of measures to prevent disputes and improving alternative dispute resolution mechanisms; improving the penitentiary system; and the needs of the country and continuation of legislation work for European Union harmonization.

12. Regarding the structure of the judiciary in Turkey, courts are divided as described below.

C. The court structure

1. Constitutional Court

13. The Constitutional Court was established in 1962 and is one of the oldest in Europe. The establishment, composition, functions, duties and rules of procedures of the Court are stipulated in articles 146 to 153 of the Constitution.[3] With respect to its competences, the Constitutional Court examines laws, decrees having the force of law and the rules of procedure of the Grand National Assembly of Turkey (parliament) and assesses their constitutionality, in terms of both form and substance. It also has the unique and final power to dissolve political parties. Constitutional amendments are subject to constitutional review only in respect of form.

14. In terms of its composition, the Constitutional Court is currently composed of 17 members; previously there were 15 members. Ten members are nominated by the President of the Republic from among candidates proposed by the Court of Cassation, the Council of State, the High Military Administrative Court, the Military Court of Cassation and the High Education Board; four are elected directly by the President of the Republic from among senior administrators, lawyers and rapporteur judges of the Constitutional Court. The Grand National Assembly then elects the remaining three members from among the candidates proposed by the Court of Auditors and the bar associations. The involvement of the parliament in the election of Constitutional Court judges may be seen as a positive development.

15. With respect to its functions, another important novelty is that the amendment to article 148 of the constitution recognizes a new right of individual petition to the Constitutional Court. This groundbreaking innovation represents a potential improvement for human rights protection at the domestic level in all cases where an individual claims that any of her or his fundamental rights has been violated by the public authorities. In order to file such an application, all ordinary domestic legal remedies must have been exhausted. It is the Special Rapporteur's hope that this new procedure will also serve to foster the use of international and regional human rights standards in the judicial system by giving effect to article 90 of the Constitution. The Special Rapporteur was informed that the Court is taking the necessary measures, including with respect to the provision of human resources, to be able to effectively perform this new function, which will certainly have an impact on the workload of the Court. The Court is expecting to start examining individual petitions from September 2012.

2. Civil and criminal courts

16. Turkey has a two-tier system for civil and criminal courts, that is, the Court of Cassation (Yargitay, or Supreme Court of Appeal) and first instance civil and criminal courts. The Court of Cassation is the last instance for reviewing rulings and judgements rendered by civil and criminal courts and which are not referred by law to another judicial authority. Members of the Court of Cassation are appointed by the High Council of Judges and Prosecutors from among first-class judges and public prosecutors, by secret ballot and by an absolute majority of the total number of members (art. 154 of the Constitution). Law

[3] Law on the establishment and rules of procedure of the Constitutional Court (Law No. 6216 of 30 March 2011).

No. 2797 of 1983 on the Court of Cassation regulates in detail its establishment, composition, functioning and duties in addition to what is provided under the Constitution.

17. The establishment of district or regional courts of appeal as a potential intermediate tier in the structure of civil and criminal courts has been envisaged since 2005, when the legal framework for their creation was set up. However, there are still difficulties vis-à-vis their actual establishment, despite the fact that they should have been operational by 1 June 2007 (see para. 46 below).

3. Administrative courts

18. Administrative courts are divided into the Council of State, district administrative courts, and administrative and tax courts. The Council of State, as per article 155 of the Constitution, is the last instance court for reviewing decisions and judgements rendered by administrative courts and which are not referred by law to other administrative courts. It is also the first and last instance court for dealing with specific cases prescribed by law.

19. Three quarters of the members of the Council of State are appointed by the High Council of Judges and Prosecutors from among the first-class administrative judges and public prosecutors, while the remaining quarter is selected by the President of the Republic from among officials meeting the requirements designated by the law.

4. Military courts

20. Military justice is exercised by military courts and disciplinary courts. The Military High Court of Appeals, defined by article 156 of the Constitution, is the last instance for reviewing decisions given by military courts. Members of the Military High Court of Appeals are appointed by the President of the Republic from among three candidates nominated by the Plenary Assembly of the Military High Court of Appeals.[4] All members of this Court are military judges.

21. Military courts are criminal courts set up under the Law on establishment and procedural rules of the military courts.[5] The 2010 constitutional reform limits the jurisdiction of military courts to military service and military duties. Under the new system, crimes against State security, the constitutional order and the functioning of this order will be dealt with by civilian courts. By the amendments made to articles 145 and 156 of the Constitution regarding military justice, the scope of the authority of the military justice is limited to the trial of military offences, and civilians cannot in principle be tried before military courts for offenses under the Military Penal Code committed during peacetime. However, it is unclear whether in practice military courts continue to be competent when the crime is the result of military personnel's service or duty, even if the crime is committed against a civilian.[6.]

22. Disciplinary courts and high disciplinary courts are established to try the disciplinary offences of military personnel.[7] Finally, the High Military Administrative Court is defined by article 157 of the Constitution and regulated by the Law on the High Military Administrative Court.[8] The latter court is the first and last instance for the judicial supervision of disputes arising from acts and actions involving military personnel or relating to military service.

[4] Law No. 1600 of 8 July 1972 on the Military High Court of Appeals, art. 14.

[5] Law No. 353 of 26 October 1963.

[6] See ibid., art. 9.

[7] These courts are established under Law No. 477 of 26 June 1964 on the establishment of disciplinary and high disciplinary courts.

[8] Law No. 1602 of 20 July 1972.

23. Furthermore, in accordance with the amendment to article 125 of the Constitution on recourse to judicial review, all decisions by the Supreme Military Council concerning exemption from the Turkish Armed Forces are now subject to judicial review.

5. Court of Jurisdictional Disputes

24. The Court of Jurisdictional Disputes is empowered to deliver final judgments in disputes among civil, administrative and military judicial branches concerning their jurisdiction and decisions. It was established by article 158 of the Constitution and is regulated by the Law on the establishment and functioning of the Court of Jurisdictional Disputes (Law No. 2247 of 22 June 1979).

25. With respect to the structure of courts in Turkey, one element that should be underlined is that, under the 1982 Constitution, the then military Government established State Security courts to try cases involving crimes against the security of the State and organized crime. The panel of three judges in each State Security Court included one military judge. In a number of cases, the European Court of Human Rights has found the presence of military judges in the State Security Courts to be a violation of fair trial principles. In the context of a package of reforms to the Constitution passed in June 2004, such courts were formally abolished and transformed into Special Heavy Penal Courts, composed of three civilian judges, authorized to try only cases involving organized crime, organized drug trafficking and cases brought under Law No. 3713 on the fight against terrorism (Anti-Terrorism Law), as amended on 29 June 2006.

III. Challenges to the independence and impartiality of judges and prosecutors

A. High Council of Judges and Prosecutors

26. The 2010 Constitutional amendments brought substantive changes to the High Council of Judges and Prosecutors, which is the body that regulates and oversees the judge and prosecutor professions in the country. By the amendment made to article 159 of the Constitution, the organization, structure and functioning of the High Council was considerably modified.

1. Structure

27. The structure of the High Council of Judges and Prosecutors was rearranged in a manner which is more representative, enabling a more inclusive participation of the judiciary, as its members are now elected from a wider and more diversified base. This body now comprises a broader range of judicial as well as non-judicial actors; prior to the reform it was limited to members of the Higher Courts only. The number of Council members has also increased (now 22, up from 7).

28. Another positive change is that the authority of the Minister of Justice over the High Council of Judges and Prosecutors has been reduced, for example, the High Council is now detached from the Ministry of Justice. However, the Minister of Justice still retains significant powers and influence over the High Council, as he remains its president. The Undersecretary to the Minister of Justice is also an ex officio member of the High Council.[9] Despite the fact that the High Council has its own budget in law, this legal provision has not been applied in practice.

[9] Article 159 of the Constitution.

2. Functions

29. Under article 82 of the Law on judges and prosecutors as amended, investigations on the conduct of judges and prosecutors are to be carried out by the High Council of Judges and Prosecutors' own inspectors upon a proposal of the relevant chamber of the High Council. Nevertheless, under that same article—in accordance with article 159 of the Constitution—the approval of the president of the High Council (that is, the Minister of Justice) is still needed to undertake such investigations,

30. Another important modification resulting from the reform is that decisions taken by the High Council to dismiss judges and prosecutors may now be subject to judicial review. This is certainly welcome progress. However, the Special Rapporteur notes that other decisions taken by the High Council concerning judges and prosecutors, for example suspension, appointment, transfer and disciplinary actions, can only be appealed internally before one of the High Council's chambers or its plenary. In this respect, one of the main concerns heard relates to the way in which judges and prosecutors are transferred ex officio from location or duties.[10] The Special Rapporteur is of the opinion that all disciplinary or administrative decisions having an impact on the status of judges and prosecutors should be reviewed by an independent judicial body.[11]

3. Elections of the members of the High Council of Judges and Prosecutors

31. Various concerns were raised in relation to the fact that the elections of the High Council members, notably those in October 2010, were influenced in such a way that the elected candidates were those closer to or having certain links with the Ministry of Justice, where a considerable number of judges and prosecutors are regularly seconded to perform administrative or management tasks. Another related concern was that the High Council election system conceived by the Constitutional Court leaves no room for the election of minority candidates, because candidates who are elected by the majority of the voters take all the seats. This system also applies for the elections to the Constitutional Court. The Special Rapporteur believes that the election process of High Council members should be designed and implemented in a way that is—and is perceived to be—fair and transparent. In particular, it is important that judicial actors are satisfied with the way in which members of the body governing their career are chosen.

B. The influence of the Minister of Justice

32. The Special Rapporteur considers that, despite improvements in the High Council of Judges and Prosecutors, the current position and functions of the Minister of Justice within the High Council may jeopardize the full respect of the independence and impartiality of the judiciary and the perception thereof. Hence, an additional effort would be needed to ensure that the High Council is totally independent from the executive branch, both structurally and functionally.

33. She also notes with concern that the Minister of Justice still has a large influence on judicial activities, as he retains a key role in the management of budget administration and has a high degree of control over the profession of lawyers.

34. The Special Rapporteur would like to stress that it is the duty of all governmental and other institutions to respect and observe the independence of the judicial actors, so as to avoid any kind of political, institutional or social control or influence.

[10] See below, para. 39 ff.

[11] See, for instance, A/HRC/11/41, para. 61 and A/HRC/17/30/Add.3, paras. 13-14.

C. The role of chief public prosecutors in the administration of courts

35. The Special Rapporteur further notes that the administration of justice in courts is governed by chief public prosecutors, who seem to have a decisive role on judicial policies and all matters regarding promotion and representation of the judiciary within and outside of the judicial system. In addition, chief public prosecutors are responsible for the management of several daily activities, such as, inter alia, deciding which room will be occupied by each judge and prosecutor and what kind of resources will be made available to them. This appears to be an improper inversion of positions between judges and prosecutors that should be adjusted, as it affects the appearance of impartiality as well as the independence of judges and the fulfilment of their role to guarantee the real balance between different interests that come through judicial demands by counterparts, that is, between public prosecutors and lawyers.

36. This situation also creates an improper dependence of judges on the chief public prosecutors and at the same time diminishes the role of lawyers, affecting the principle of equality of arms. It also adds to the confusion of judges and prosecutors with regard to their different roles and the independence and impartiality that they should have, as illustrated in the next section.

D. The close relationship between judges and prosecutors and the principle of equality of arms

37. The Special Rapporteur notes that judges and prosecutors in Turkey have the same career within the judiciary, from the time of entry into service until retirement, with the possibility of switching from one function to another (although it seems that many more prosecutors have an interest in becoming judges than vice versa). She underlines that, as judges and prosecutors carry out different functions and have very distinct roles, there must be a clear distinction between their duties and functions. The competencies and the procedural role of public prosecutors should be established by law in such a way that there can be no legitimate doubt about the independence and impartiality of the court judges. Steps should also be taken to remove any ambiguity about the respective status and roles of public prosecutors and judges so that each profession can be clearly identified. Therefore it is necessary to tailor accordingly their training upon entry into the judicial career. Judges and prosecutors should also be perceived by the general public as actually performing different roles and functions. The careers of judges and prosecutors should be separate, in order to guarantee their respective necessary autonomy, impartiality and independence. The current emerging consensus for a new constitution in the near future could provide a good opportunity for promoting the needed separation between the careers of judges and prosecutors.

38. The close relationship between judges and prosecutors, however, is not limited to the way in which their careers begin and progress; it is noticeably reinforced by the fact that they often share the same offices and buildings in the courthouse and live in the same compounds provided by the Government. The way in which courtrooms are designed is also problematic, as both judges and prosecutors sit on a podium during the hearings, sometimes next to each other, in a higher position vis-à-vis the lawyers. In addition, prosecutors enter and leave the courtroom by the same internal door used by judges. This proximity between judges and prosecutors is a matter of concern in relation to the principles of impartiality and equality of arms and also has an impact on the society's perception of the judiciary as a whole. As rightly observed by one interlocutor during the mission, "equality of arms needs to be both physical and psychological".

E. Appointment and transfer system for judges and prosecutors

39. To enter the career, judges and prosecutors must pass a written examination and an oral interview, and complete a two-year pre-service training. Concerns were heard that the oral interview following the written examination takes place before a board where five of the seven members are officials from the Ministry of Justice (the other two members are appointed by the Justice Academy of Turkey).

40. Concerns were also raised about the mobility system for prosecutors and judges, based on a rotation between different geographical areas classified in various categories. The Special Rapporteur, for instance, was informed of a case where a prosecutor with more than 15 years of experience in criminal cases was transferred ex officio to work as a family judge in another region. This example, which does not seem to be an isolated one, shows that the transfer and rotation system should be improved and made more effective, fair, transparent and coherent in order to avoid possible misuses in its implementation. A transfer and rotation process that is public, based on objective criteria and, as a general rule, initiated by request would improve trust in the judicial system, especially with regard to those judges and prosecutors dealing with sensitive cases, and would contribute to making them more accountable in their activities.

41. There is also the perception that the appointment and transfer system can be used, depending on the case, as a punishment or reward mechanism. The Special Rapporteur has been informed that during an eight-month period beginning 25 October 2010—the date the new members of the High Council of Judges and Prosecutors took office—a total of 3,049 judges and prosecutors changed duty stations, constituting one third of the judges on duty. It was reported that many were transferred ex officio. In this process, judges and prosecutors who were members of judicial professional organizations seem to have been particularly penalized, with little attention being paid to very important issues, such as the right to family integrity.

42. The Special Rapporteur strongly believes that there is an urgent need to rationalize the manner in which judges and prosecutors are moved and to make this process more fair and transparent. A decision on the transfer or assignment of judges and prosecutors to other posts cannot be based merely on considerations relating to the needs of service; rather, it should be guided by objective criteria and adequately take into account the individual's family situation, personal wishes and aspirations as well as the specialization that judges and prosecutors have acquired during their career. Mobility, in particular, cannot be based on arbitrary decisions, and judges and prosecutors should have the right to challenge—including in court—all decisions modifying the status of their conditions of service.

F. Backlog of cases, judicial delay and access to justice

43. Almost unanimously, judges and prosecutors have called attention to the issue of workload and case backlog. A common concern expressed in relation to the workload relates to the fact that judges and prosecutors are often requested to carry out administrative tasks, which deprives them of precious time to devote to more substantive duties. The low number of prosecutors and judges and infrastructure deficiencies were also mentioned in this context, despite the fact that more than 200 judges and prosecutors are working in the Ministry of Justice performing administrative or management tasks. These elements also have an impact on the length of proceedings, which is one of the long-standing problems of

the Turkish judiciary. The Special Rapporteur would like to reiterate that the judicial delay factor has one of the greatest negative impacts on the judicial system as a whole.[12]

44. These structural problems also affect citizens' effective access to justice and have an impact on the public confidence in the justice system.[13] A regrettable consequence of case backlog and excessive length of proceedings is the overly long period of pretrial detention in a number of cases. Urgent attention should be given to these issues, including by taking practical steps to accelerate proceedings and creating a transparent system of indicators and benchmarks to assess the performance of the judiciary vis-à-vis specific cases.

45. In the first quarter of 2011, some steps were taken to reduce the backlog of cases in the judiciary. In fact, Law No. 6110 on amending certain laws increased the number of chambers and members of the Court of Cassation and the Council of State. For instance, the number of chambers of the Court of Cassation increased from 32 (21 civil and 11 criminal chambers) to 38 (23 civil and 15 criminal chambers), while the total number of members of the court was increased from 250 to 387.

46. Another recent change aimed at helping to solve this long-standing problem was the creation of district and regional courts of appeal as an intermediate tier in the structure of courts. The legal framework for the creation of these courts was established in 2005, but none of them is currently operational, due to, in particular, deficiencies in physical infrastructure and human resource capacities. However, in 2011 the High Council of Judges and Prosecutors appointed chief public prosecutors for these courts. The Special Rapporteur believes that urgent attention should be given to this issue. At the same time, there is the need to ensure that, with the creation of courts of appeal, the Supreme Court actually receives fewer cases to review and does not become a third instance court, which would make the judicial process even longer and more cumbersome.

G. Procedural guarantees in the legislation applicable to terrorism and organized crime and the operation of Special Heavy Penal Courts

47. Special Heavy Penal Courts, or Heavy Penal Courts with "special authority", are competent for the investigation, prosecution and trial of cases relating to terrorism, organized crime and organized drug trafficking (see para. 25 above).

48. Prosecutors and judges working in such courts are reportedly trained and specialized to investigate and adjudicate these crimes. These courts also have extended geographic scope, which can facilitate the investigation of complex organized crime cases. However, the "special authority" of these courts appears to transpire from the legislation that is applicable to the crimes under their jurisdiction, that is, terrorism and organized crime, rather than in respect of their structure or the specialization of the professionals working therein. In particular, the law applicable in these cases, mainly contained in article 220 of the Criminal Code (dealing with organized crime) and the Anti-Terrorism Law, allows a series of possible restrictions to procedural safeguards, which has been a matter of concern for several international and regional human rights monitoring bodies and mechanisms.[14]

[12] See, inter alia, the 2008 report of the Special Rapporteur on the independence of judges and lawyers (A/HRC/8/4), para. 43.

[13] According to the annual report published by the European Court of Human Rights in January 2011, more than half of the judgments concerning Turkey in which the court found a violation included a violation of article 6 of the European Convention on Human Rights—the right to a fair trial within a reasonable time.

[14] See, inter alia, the concluding observations of the Committee against Torture on the third periodic report of Turkey (CAT/C/TUR/CO/3), para. 11; follow-up letter of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

The Special Rapporteur shares these concerns, in particular with respect to the various possible restrictions that can be applied to the right to defence.

49. Under the current legal framework, for instance, there is a limitation on the number of lawyers who can assist, during the custody and pretrial investigation period, an individual charged under the anti-terrorism legislation.[15] Lawyers' access to documents pertaining to the case can be restricted before the trial, and censorship of correspondence between the defendants and their lawyer may also be allowed via judicial order.[16] Furthermore, upon a request from the prosecutor, a suspect's right to contact a lawyer may be restricted by a judge for the first 24 hours of his or her deprivation of liberty.[17] While statements cannot be taken from the suspect during this period, the provision may nevertheless potentially open the door to abuses, as the first 24 hours following the arrest of a criminal suspect is usually when individuals are more exposed to possible violations. In addition, the period of initial custody can be extended in cases under the jurisdiction of the Special Heavy Penal Courts to 96 hours, as opposed to the 24 hours allowed in "regular" cases; the pretrial detention period may also be extended.[18]

50. In addition to being a concern per se from a human rights point of view, this is particularly alarming due to the broad definition of terrorism and the wide application of the anti-terrorism legislation. The Special Rapporteur has been informed, for instance, of cases where individuals have been prosecuted and tried under the anti-terrorism legislation and article 220 of the Criminal Code simply for having participated in public demonstrations by showing banners and shouting slogans, activities that clearly do not sufficiently address the personal material link to violence against bystanders that an acceptable definition of terrorism would require.[19] Paradoxically, a person accused of murder would be tried by a "regular" court, while someone shouting slogans during a demonstration could be tried before a Special Heavy Penal Court and potentially be subject to all the above-mentioned restrictions. Irrespective of any consideration regarding potential violations of the right to freedom of expression in such cases,[20] this seems quite illogical.

51. Another concern related to the special powers granted to these courts is linked to a reportedly common use of secret witnesses for the investigation and prosecution of organized crime activities. While a person cannot be charged and convicted solely on the basis of evidence given by secret witnesses, the identity of such witnesses is kept secret from the accused and his or her lawyers throughout the entire proceedings. This is problematic as it touches upon, inter alia, the right to equality of arms in criminal trials, which requires that an accused be entitled to know who is testifying against him or her.

dated 27 June 2011 (A/HRC/20/14/Add.2, forthcoming); report of the Working Group on Arbitrary Detention on its mission to Turkey (A/HRC/4/40/Add.5), para. 41; press release of the Council of Europe Commissioner for Human Rights upon completion of his mission to Turkey, available from www.coe.int/t/commissioner/News/2011/111014TurkeyVisit_en.asp; report of the Council of Europe Commissioner for Human Rights (note 1 above), in particular paras. 90-95.

15 Article 10 (b) of the Anti-Terrorism Law.

16 Article 153 of the Code of Criminal Procedure and articles 10 (d) and (e) of the Anti-Terrorism Law.

17 Article 10 (b) of the Anti-Terrorism Law.

18 Article 252, para. 2, of the Code of Criminal Procedure.

19 See, among others, the follow-up letter of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism dated 27 June 2011 (note 14 above). See also the report of the same Special Rapporteur (A/HRC/16/51), para. 28.

20 See, among others, the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his visit to Turkey, (A/HRC/4/26/Add.2), para. 28 ff.; and the report of the Council of Europe Commissioner for Human Rights (note 1 above), in particular paras. 66, 112 and 150.

52. The Special Rapporteur believes that the judiciary can play an essential role in assessing whether such measures are compatible with both national legislation and international human rights law, although the supervision role of judicial actors and their margin of appreciation may be limited by the legislation itself.[21] A further concern in this respect relates to the information received by the Special Rapporteur on cases where judges and prosecutors who were working in Special Heavy Penal Courts and who expressed concerns regarding the respect of fair trial rights and procedural guarantees were transferred and replaced with those alleged to be more complacent about the special powers exercised by these courts.

53. The Special Rapporteur does not underestimate the terrorist threat, which has to be fought with the strongest resolve but also with strict adherence to the rule of law and in full compliance with international human rights standards.[22]

54. In conclusion, the utmost caution should be applied in allocating terrorism or other crimes to special or specialized courts, in particular due to the lower fair trial guarantees that often characterize such courts in practice.[23] This also applies to the Special Heavy Penal Courts.

H. The mindset of judges and prosecutors

55. The Special Rapporteur has observed on various occasions that the independence and impartiality of the judiciary are not merely structural or organizational problems, but rather are also dependent on the approach and mindset of the individual members composing the judiciary and the prosecution service. Every judge and prosecutor has her or his personal views, beliefs and opinions, which inevitably shape the way she or he approaches and examines a case. These subjective elements of independence may in turn depend on various factors, including personal background, public exposure, media pressure and societal expectations. Another important variable is the relationship between the judiciary and the State, that is, the impartiality of the judiciary vis-à-vis the interests of the State.

56. The impression gathered by the Special Rapporteur in this respect is that a State-centred mentality is rather prevalent in the Turkish judiciary, as the approach is often to favour or protect in the trial what are perceived to be the interests of the State. This situation, which is especially true in cases where the security of the State is felt to be at stake,[24] may actually be a danger (albeit very difficult to quantify or assess), notably in cases where the interests of the State and the rights of individuals may be considered to be conflicting. In this respect, a distinction must be drawn in order to avoid confusion between public and State interests; that is, the exercise of public interest functions, such as criminal prosecution, should not be conceived as having the role to protect the interests of the Government, a political party or any other State institution.[25] The drawing of such a line is

[21] See A/63/271, para. 19 and A/65/274, para. 43.

[22] See General Assembly resolution 60/288 on The United Nations Global Counter-Terrorism Strategy, annex, sect. IV.

[23] See the report of the Special Rapporteur on the independence of judges and lawyers (E/CN.4/2005/60), para. 59, as well as the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/63/223), paras. 24-28 and 45 (b).

[24] See the report of the Council of Europe Commissioner for Human Rights (note 1 above), paras. 8 and 112 ff.

[25] See European Commission for Democracy Through Law (Venice Commission), "Report on European standards as regards the independence of the judicial system: Part II – The prosecution service, adopted by the Venice Commission at its 85th plenary session (Venice, 17-18 December 2010)", para. 71.

made more difficult by, for example, the fact that a large number of prosecutors and judges carry out administrative tasks within the Ministry of Justice (see para. 31 above).

57. The Special Rapporteur has observed in a large number of countries that this approach—a sort of cultural resistance—is not rare in the judiciary. One possible measure to address this issue is the provision of a sound legal education with an international human rights focus.[26] It is in this respect that she would like to stress the importance of initial and continuing legal human rights education for all judicial actors who, inter alia, should be encouraged to study the relevant case law of international and regional human rights law mechanisms and apply it as much as possible in the domestic context.

I. Investigation of coup-plotting allegations

58. The Special Rapporteur was informed of various high-profile investigations into coup-plotting allegations, which have led to several arrests and the initiation of prosecutions, including what has been referred to as the Ergenekon case, where a large number of individuals—including serving and retired military officials as well as journalists and intellectuals—have been accused of belonging to a terrorist group allegedly aimed at overthrowing the Government of Turkey. Society is polarized on this issue. Many consider that these investigations and prosecutions represent a further step towards Government consolidation of civilian control over the army, while others suggest that there may be political reasons behind these arrests, which would in fact serve to silence opponents to the Government. The Special Rapporteur also notes that, in March 2011, three prosecutors assigned to the Ergenekon case were reassigned ex officio to other duties by the High Council of Judges and Prosecutors.[27]

59. It is not the role of the Special Rapporteur to enter into the merits of the different cases. In principle, those investigations may be a potential opportunity to combat impunity and strengthen the rule of law and the related public confidence. She would like to stress at the same time the need to always respect judicial guarantees for all suspects, including regarding the length of the pre-indictment and pretrial detention period, as well as the proper collection of evidence and the full respect of the right to defence. The external perception regarding the respect of procedural safeguards is especially important in high-profile cases, as they tend to shape public confidence in the justice system.

J. Women in the administration of justice

60. The Special Rapporteur noticed that the representation of women in the judiciary is increasing, particularly at the entry and middle levels of the profession. The presence of women in higher positions is still insufficient. She has been informed, for instance, that in the most recent elections of judges to the Supreme Court of Appeals and the State Council, held on 25 February 2011, the issue of the representation of women has been ignored, as only 5 of the 160 members elected to the Supreme Court of Appeals were women, and only one of the 51 members elected to the State Council was a woman. These figures are dramatically low.

61. The Special Rapporteur devoted two of her previous reports to the issue of women in the administration of justice. She stressed the importance of developing a gender-

[26] See, for instance, A/HRC/17/30/Add.3, para. 67.

[27] European Commission, "Turkey: 2011 progress report", commission staff working paper accompanying the communication from the Commission to the European Parliament and the Council on Turkey, 12 October 2011, p. 6.

sensitive judiciary and ensuring an adequate representation of women therein.[28] She would like to recall in that respect that an independent and impartial judiciary, an independent legal profession and the integrity of the judicial system based on equal gender opportunities are essential prerequisites to effectively protect women's human rights and ensure that the administration of justice is free from discrimination on the grounds of gender. At the same time, men also have the opportunity to play a crucial role, including as judges, prosecutors or lawyers, in making the justice system more accessible to women and therefore more equal.

62. The Special Rapporteur would like to encourage judges, prosecutors and lawyers to promote equal access to justice by combating gender stereotypes and applying non-discriminatory treatment of women in the criminal justice system, where women can be victims, witnesses and offenders; in the non-criminal justice system in cases involving family, inheritance, property and land ownership; and in personal status law and jurisprudence.

IV. The situation of lawyers

63. One concern that most lawyers have expressed, as mentioned above (paras. 37-38), relates to their perception that they are not treated at the same level as judges and prosecutors in the daily performance of their duties. Lawyers need to be treated as equal counterparts of judges and prosecutors within the legal professions. It is of the utmost importance that justice be not only impartial per se, but that it is also perceived to be impartial by the public opinion. The role of prosecutors in Turkey entails that they should investigate all circumstances affecting the defendant, irrespective of whether these are to the latter's advantage or disadvantage. However, it is important that, as a consequence of this role, the right of defence is not affected and the role of lawyers is not diminished.

64. The Special Rapporteur notes the difficulties that lawyers face in carrying out their work, given the obstacles to the effective performance of their professional functions posed by restrictions that the legislation allows in some—in particular anti-terrorism—cases. She observed in particular limitations to access to case files, non-disclosure of evidence and delays in the contact with clients.[29]

65. The increase in the number of cases of arrest, detention and prosecution under terrorism-related charges of lawyers defending individuals accused of terrorism-related crimes is of particular concern to the Special Rapporteur. Principle 18 of the Basic Principles on the Role of Lawyers provides that "lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions", and principle 20 affirms that "lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority". These principles are among the most routinely breached, as it is far from uncommon for investigations to be initiated against lawyers on grounds of an alleged link to, or the provision of support for, their clients' alleged criminal activities.[30] This regrettably seems to be increasingly the case in Turkey.

66. The Special Rapporteur further notes with concern that the activities of lawyers are controlled by the Ministry of Justice, which deals with lawyers' registration and disciplinary actions. It is recommendable that all aspects of the lawyers' career be regulated by the bar association.

[28] See A/HRC/17/30 and A/66/289.

[29] See also para. 48 ff above.

[30] Report of the Special Rapporteur on the independence of judges and lawyers (A/64/181), para. 64.

67. With respect to access to the legal profession and admission to the Bar, there is no requirement to pass an examination after completing studies in a law faculty. As suggested in previous reports, while the Special Rapporteur believes that those admitted to the legal profession should have, at minimum, a law degree obtained following an average length of four years of study at university, she also advises that a mandatory internship of significant length should be required. Only candidates fulfilling those criteria should be permitted to take a standardized written bar exam, conducted without their identity being revealed in order to guarantee objectivity. The written exam should be supplemented by an oral examination before an examining body, preferably primarily composed of lawyers, appointed by the bar association (A/64/181, para. 36).

68. The Special Rapporteur heard from the bar associations she met during the visit that it would be indeed desirable to establish a public examination to admit lawyers to the Bar. Given the large consensus perceived from the main stakeholders on this issue, she believes that there would be no serious difficulties in implementing this recommendation, which can contribute to improving the quality of the legal services provided by the legal profession.

V. Capacity-building

69. The Special Rapporteur considers that legal human rights education for all those who participate in the judicial process (judges; prosecutors; public defenders and lawyers) is a fundamental issue. This was the subject of her first thematic report to the Human Rights Council in June 2010 (A/HRC/14/26). Various stakeholders have expressed concern about the fact that legal human rights education remains poor in the country, especially at the university level, and highlighted the need for reform of the legal education system.

70. The establishment of the Justice Academy of Turkey in 2003 has been a welcome development in this respect. The Academy, which has scientific, administrative and financial autonomy, is responsible for the initial training of judges and prosecutors as well as their continuous in-service training. The initial training lasts two years and includes eight months of practical training. The training for judges and prosecutors is separated, after a initial segment of training common to both categories. The in-service training includes courses, seminars, conferences and other activities to help judges and prosecutors enhance their professional knowledge, skills and competences. To date, the Academy has trained more than 8,000 candidate judges and prosecutors since its foundation, including over 1,500 during 2010-2011 alone.

71. The Special Rapporteur acknowledges the important work carried out by the Justice Academy of Turkey and the efforts it is undertaking to enhance professionalism within the judiciary. Cooperation with other institutions, including academia and bar associations, should be strengthened with a view to further include academics, jurists and lawyers in the training programmes and modules. The continuous training could also be improved and shaped to regularly train judges, prosecutors and lawyers in human rights issues and juvenile justice, as well as in gender issues, in particular when women are victims of crimes. She emphasizes that one of the aims of training and capacity-building should be to strengthen the impartiality of the judiciary so that judges and prosecutors can better serve both the institutions and the society as a whole.

VI. Conclusions

72. **The Special Rapporteur recognizes the efforts made by the Government of Turkey to improve the structural independence of the judiciary and to guarantee its effective functioning, including through the recent adoption of a series of reforms.**

Nevertheless, challenges remain in various areas with respect to guaranteeing the effective independence and impartiality of judges and prosecutors and the free exercise of the legal profession by lawyers.

73. **One of these challenges is that the administration of justice in courts should be conducted by judges within the judiciary, not by chief public prosecutors. Public prosecutors and lawyers play extremely important roles within the judicial system as equal counterparts, but the adequate balance of their actions in trial should be guaranteed by independent and impartial judges. It is imperative to clearly separate the role, functions and career of public prosecutors from those of court judges in order to strengthen their independence, impartiality and autonomy.**

74. **Other challenges are related to a number of functional and structural problems associated with dispositional factors, including the position and function of the Minister of Justice within the High Council of Judges and Prosecutors and the mindset of judges and prosecutors, the pressure to which they are exposed in the context of the appointment and transfer systems, and the excessively close relationship between them.**

75. **Another serious challenge for the judiciary in Turkey is the need to ensure that the measures used to combat terrorism are compatible with international human rights principles and standards. In this respect, the Special Rapporteur believes that the special authority given to the Special Heavy Penal Courts allows for undue restrictions on fundamental procedural safeguards. In addition, when defending clients before those courts, notably in terrorism-related cases, lawyers are faced with several obstacles and unacceptable risks given, on one hand, the numerous limitations to the right to defence in these cases and, on the other, the consequences that many of them may face as a result of the exercise of their professional functions. In this respect, the Special Rapporteur is particularly concerned at the increasing number of cases of arrest, detention and prosecution under terrorism-related charges of lawyers defending individuals accused of terrorism-related crimes.**

76. **Structural problems, such as the backlog of cases, a heavy workload for judges and prosecutors and a lack of adequate infrastructure impact on the length of proceedings and have heavy consequences on citizens' effective access to justice as well as on the public confidence in the justice system.**

77. **The possible adoption of a new constitution could provide a good opportunity for strengthening the independence, impartiality and autonomy of both the judiciary and the Prosecution Office and for promoting equality of arms between lawyers and public prosecutors.**

VII. Recommendations

78. **The Special Rapporteur submits the following recommendations with the aim to help strengthen the independence and impartiality of judges, prosecutors and the free exercise of the legal profession by lawyers in Turkey, as well as the effective functioning of the justice system as a whole.**

Constitutional Court

79. **The new right to individual petition to the Constitutional Court should serve, inter alia, to foster the use of international and regional human rights standards in the judicial system.**

Military justice

80. **Military courts should not be competent when a crime is committed against a civilian, even if the crime is the result of military personnel's service or duty.**

High Council on Judges and Prosecutors

81. **The High Council on Judges and Prosecutors should be totally independent from the executive branch, both structurally and functionally.**

82. **All disciplinary or administrative decisions by the High Council having an impact on the status of judges and prosecutors—not only dismissal, as currently is the case—should be reviewed by an independent judicial body.**

83. **The election process of members of the High Council on Judges and Prosecutors should be designed and implemented in such a way that it is—and is perceived to be—fully fair and transparent.**

Role of chief public prosecutors in the administration of courts

84. **The administration of justice in courts should be the responsibility of judges, not the chief public prosecutors. The competencies and the procedural role of public prosecutors must be established by law in such a way that there can be no legitimate doubt about the independence, impartiality and autonomy of the court judges.**

Relation between judges and prosecutors

85. **Bearing in mind that judges and prosecutors carry out different functions and have very distinct roles, measures should be taken to ensure a clear separation of the duties, functions and careers of the two professions. All necessary steps should be taken to remove any ambiguity about the respective status and roles of judges and prosecutors in order to fully ensure their respective independence, impartiality and autonomy.**

86. **The role of prosecutors should not be confused with the role of courts and trial judges. Prosecutors and judges should be perceived by the general public as actually performing different roles and functions, as public confidence in the proper functioning of the rule of law is best ensured when every State institution respects each other's sphere of competence. Judges and prosecutors should also have independent and separated offices.**

87. **The judicial system should be conceived and structured in a manner that guarantees full respect of the principle of equality of arms vis-à-vis lawyers. One measure that needs to be taken in this regard is the reshaping of the physical court design so that prosecutors are not physically placed at a level higher than lawyers.**

Appointment and transfer system of judges and prosecutors

88. **The rotation system under which judges and prosecutors are moved should be rationalized and made more fair and transparent.**

89. **The decisions related to the transfer or assignment of judges and prosecutors to other posts should not be taken ex officio, but on the request of the individual judge or prosecutor. Such decisions should be based on objective criteria and take into adequate consideration the family situation, personal wishes and aspirations of the individuals concerned, as well as the specialization which judges and prosecutors have acquired during their career. It should not be based merely on simple considerations relating to the needs of service.**

90. **Judges and prosecutors should have the right to challenge—including in court—all decisions affecting them.**

91. **Allegations that appointments and transfers may be used as a punishment or reward mechanism, depending on the level of allegiance of the individual judge or prosecutor, should be duly investigated.**

Backlog of cases, judicial delays and access to justice

92. **The process of establishment of district and regional courts of appeal in civil and criminal courts should be expedited in order to reduce the huge backlog of cases. At the same time, necessary measures should be taken to ensure that the creation of this intermediate tier in the judicial structure actually reduces the workload of the Supreme Court, and does not lead to its transformation into a third instance court.**

93. **Further measures are urgently needed to reduce the backlog of cases and excessive length of proceedings, including speeding up procedures and ensuring that procedural time limits are respected. Major administrative tasks should not be carried out by judges and prosecutors, who should be supported by other apposite judicial staff.**

94. **Reliable indicators and benchmarks should be created to monitor the performance of the judicial system and improve its efficiency and effectiveness, including in terms of the duration of court proceedings.**

Procedural guarantees in the legislation applicable to terrorism and organized crime

95. **The utmost caution should be applied in allocating terrorism or other crimes to special or specialized courts, in particular due to the lower fair trial guarantees that often characterize those courts in practice. In this respect, serious consideration should be given to the abolishment of the Special Heavy Penal Courts or to a substantial modification of the legislation regulating their functioning, in order to bring them into compliance with human rights standards on fair trial and procedural guarantees.**

Mindset of judges and prosecutors

96. **Judges and prosecutors should not confuse the public interest with State interests. The Special Rapporteur, noting that this approach is not rare in the judiciary, would like to stress in this respect the importance of initial and continuing legal human rights education and training for all judicial actors. Judges, prosecutors and lawyers should be particularly encouraged to study the relevant case law of international and regional human rights mechanisms and to apply it as much as possible in the domestic context in their respective roles.**

Investigations into alleged coup-plotting

97. **Irrespective of the merits of the cases, it is essential that in all instances, and particularly in high-profile cases of high visibility to the public opinion, procedural safeguards are fully respected. It is in fact not only important that justice be done but also that it is perceived to be done.**

Women in the administration of justice

98. **The participation of women from various segments of society, as key actors within the justice sector in their roles as judges, prosecutors or lawyers, should be further promoted. In particular, measures should be taken to ensure that women are**

able to occupy high-level positions within the judiciary and in the justice system in general, including by setting up temporary special measures, if necessary.

99. **Access to justice should be encouraged, including by establishing specialized units within courts and prosecutorial offices to deal with specific gender-based crimes.**

Lawyers

100. **All aspects of the lawyers' career (such as, inter alia, registration and disciplinary actions) should be administered by the bar association rather than being under the control of the Ministry of Justice.**

101. **Lawyers exercising their professional duties in terrorism-related or organized crime cases should be able to perform all their professional functions without intimidation, hindrance, harassment or improper interference. Lawyers should have access to appropriate information, as well as relevant files and documents, in sufficient time to enable them to provide effective legal assistance for their clients.**

102. **Lawyers should not be identified with their clients or their clients' causes as a result of discharging their functions. They should enjoy civil and penal immunity for relevant statements made in good faith or in their professional appearances before a court, tribunal or other legal or administrative authority.**

103. **Lawyers need to be treated as equal counterparts of prosecutors, in order to fully respect the principle of equality of arms.**

104. **Measures should be taken to improve the quality and professionalism of the legal profession. In this respect, it is advisable to introduce a public examination as a requirement for entry into the lawyers' career; candidates should have completed a law degree as well as a subsequent internship/apprenticeship period.**

Capacity-building

105. **Judges, prosecutors and lawyers should be given the opportunity of continuing education in international human rights principles, standards, norms and jurisprudence; the latter should include not only decisions and judgements from regional bodies, but also outputs from the United Nations human rights mechanisms. Judges, prosecutors and lawyers should also be given the necessary information on the possibilities of applying, at the domestic level, international human rights principles, norms and standards.**

106. **The involvement of lawyers and bar associations in the training modules should be encouraged. The continuous training should also be improved and shaped so as to regularly train judges, prosecutors and lawyers in human rights issues, juvenile justice, and gender issues.**