

# TORTURE IN TURKEY

## The Current Status of Torture and Ill-treatment

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### Kurdish Human Rights Project

11 Guilford Street

London WC1N 1DH

Tel: +44 (0) 20 7405 3583

Fax: +44 (0) 20 7404 9088

Email: [khrp@khrp.org](mailto:khrp@khrp.org)

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The Kurdish Human Rights Project (KHRP) is an independent, non-political, non-governmental human rights organisation founded and based in London, England. KHRP is a registered charity and is committed to the promotion and protection of the human rights of all persons living with the Kurdish regions of Turkey, Iraq, Iran, Syria and elsewhere, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its beneficiaries include both Kurdish and non-Kurdish people.

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## Summary

Turkey has signed numerous treaties agreeing not to subject its population to torture or ill-treatment and to actively prevent it occurring. The Constitution of Turkey forbids it. Yet despite these commitments the practice of torture and ill-treatment persists.

Whilst the legal reforms of the last few years have been positive, torture in Turkey remains serious and systematic. Potentially retrogressive steps in Turkey's reform process require immediate attention, and further effort is needed to bring about widespread and effective change on the ground. 'Zero tolerance' must correspond to 100 per cent accountability, and if Turkey is serious about ending torture, it must ensure that potential victims are protected and perpetrators are answerable to the courts.

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### I. What is torture?

Torture is the infliction of severe pain as a means of punishment or coercion. The UN Convention Against Torture defines it as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person.'<sup>1</sup>

In Turkey commonly reported methods of torture include electric shock, *falaka* (the beating of the soles of the feet), being stripped naked, blind folded and hosed,

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<sup>1</sup> Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

severe beatings, rape, death threats, sexual assault and 'Palestinian hangings'.

Torture is unequivocally banned by a number of international treaties. The prohibition of torture is so strong that it has the special status of *jus cogens* in international law. This means that along with other grave crimes like genocide it has the status of a 'higher law', allowing no derogation and overriding all other obligations.<sup>2</sup> Alongside torture is 'inhuman and degrading treatment' which whilst by definition less severe, has equally significant status in international law.

### II. Who are likely victims of torture?

Anyone can be a victim of torture but often victims are individuals

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<sup>2</sup> Article 53 Vienna Convention on the Law of Treaties

involved in political, social, or religious opposition or are members of ethnic or religious minorities. For example, those who advocate for Kurdish rights, belong to 'pro-Kurdish' political parties, are suspected of Islamist or leftist activities and ordinary criminal activities all have an increased likelihood of enduring torture or ill-treatment.

The Kurds in Turkey, who make up approximately 23 per cent of the population have historically been perceived as a threat to the mono-ethnic nationalism of the Turkish Republic and have as a result found themselves victims of state brutality. The long and bloody conflict between armed groups, particularly the Kurdistan Workers' Party (PKK), and the state security forces has intensified the repression all Kurds face and exponentially increased the occurrence of human rights abuses, including widespread incidents of torture and ill-treatment, across the country but particularly in the south-east.

### III. Who are the likely perpetrators?

Torture continues to be an administrative practise of the State, so its most common perpetrators are either agents of the State or armed opposition forces seeking retribution.

Much torture and ill-treatment occurs at the hands of the Gendarmerie, a branch of the

Turkish armed forces responsible for policing rural regions in Turkey. Police 'Special Teams' involved in anti-terrorist activity are also thought to be responsible for torture and ill-treatment. Though no longer in recruitment, the paramilitary village guard<sup>3</sup> are thought to number around 58,000 and have a reputation for being the least disciplined of the Government forces and are commonly involved in torture and ill-treatment allegations.

### IV. Causes for concern

"It is unfortunately fair and frank to say that the pace of changes has slowed in 2005 and the implementation of the reforms remains uneven, to say the least. Human rights violations continue to occur. The new laws that in principle enhance the rule of law and human rights must be duly implemented on the ground."

**Olli Rehn, European Commission  
Responsible for Enlargement<sup>4</sup>**

#### A. Concerns over the nature and content of the reforms

It should be emphasised that Turkey's pro-EU reform process is

<sup>3</sup> During the 1990's, the Turkish government created a civil defence force, the 'Village Guard' in response to 'unrest in the Southeast'

<sup>4</sup> Speech by Olli Rehn, "Accession negotiations with Turkey: fulfilling the criteria" to the European Economic and Social Committee EU-Turkey JCC, 28 November 2005, available at: [http://europa.eu.int/comm/commission\\_barroso/rehn/index\\_en.htm](http://europa.eu.int/comm/commission_barroso/rehn/index_en.htm)

a remarkably positive development, and a considerable amount has been achieved. However there remain concerns over some provisions omitted from the reforms, and especially over the practical effect of these reforms on the ground.

Despite the obvious threat it presents to detainees, the abolition of 'incommunicado' detention, where the detainee is not permitted to communicate with anyone other than his or her captors, including friends, family, and independent counsel, was neither among the constitutional amendments nor the short-term measures promised by Turkey in its reforms for EU accession.

There is widespread concern about the content of some of the recent reforms amongst the human rights community, particularly the new Penal Code and the new Code on Criminal Procedure implemented in 2005. Elements of both have been criticised as a retrogressive development for human rights. As far as torture and ill-treatment are concerned, despite the recommendations of the UN Committee Against Torture (CAT) to repeal the statute of limitations for crimes involving torture,<sup>5</sup> the New Penal Code merely extended the limitation. In the new Code on Criminal Procedure an Article limiting the postponement of torture trials is notably absent and it is

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<sup>5</sup> UN Committee Against Torture, 'Conclusions and recommendations of the Committee against Torture: Turkey. 27/05/2003.' para D7(c)

unclear whether the new Code permits suspended sentences or reductions to a fine for perpetrators.

## B. Concerns over the impact of the reforms

Violent clashes erupted between protestors and security forces in late March 2006 after the funerals of four alleged guerrilla fighters who were among 14 killed in Turkish Military operations in south-east Turkey. Security forces were observed to shoot indiscriminately, use tear gas, truncheons and pressurised water on protestors. This incident sparked further protests which resulted in further clashes. In total, 14 people were killed as a result of civil unrest and the actions of security forces, 400-600 people were held in detention, and six of the men detained have disappeared following their detention. There is evidence of the use of torture and ill-treatment on detainees, and that many were denied access to legal advice. Furthermore, there have been reports of harassment and attacks of individuals by police officers in the wake of the clashes.

According to the US Department of State's March 2006 report, during 2005 'incidents of torture and abuse declined during the year but remained widespread.' According to Turkey's Human Rights Foundation (TIHV) chairman Yavuz Önen, 113 out of 165 claims of torture in the first five months of 2006 were successful. In 2005, 193

of the 675 torture claims were successful, 5 people died in custody and at least 7 people died in prison.<sup>6</sup> Human rights advocates claimed that 'only a small percentage of detainees reported torture and ill-treatment because they feared retaliation or believed that complaining was futile.'<sup>7</sup>

In October 2005 the EU Human Rights Sub-Committee visited south-east Turkey and voiced concerns that security forces were reverting to past abusive practises. Richard Howitt MEP said 'there were accounts of soldiers cutting off people's ears and tearing out their eyes if they were thought to be Kurdish separatist sympathisers.' The Sub-Committee spoke with various regional human rights organisations and Mr Howitt described the sources they had consulted as credible and corroborated.<sup>8</sup>

As noted above, reports of traditional forms of torture have certainly decreased. However reports suggest that perpetrators are adapting their methods to meet the new state of affairs. Regional NGOs have reported that authorities are deliberately using less detectable methods and adopting more devious practices including forms of psychological torture such as sexual harassment and humiliation, mock executions

<sup>6</sup> BIA News Centre "Onen Speaks Out: Why Torture is Systematic" 28 June 2006

<sup>7</sup> USDOS "Country Report on Human Rights Practices" 8 March 2006

<sup>8</sup> Smith, H. 'European mission unearths torture claims in Turkey', *Guardian*, 10 October 2005

and sleep deprivation<sup>9</sup>. It seems that perpetrators are also adapting old methods by beating detainees with weighted bags instead of clubs or fists, or applying electric shocks to a metal chair where the detainee sits, rather than directly to the body. Meanwhile, KHRP continues to receive complaints of severe torture methods being used such as rape, Palestinian hangings and *falaka*.

Another alarming development is that whilst torture and ill-treatment in detention are thought to have decreased, cases of torture and ill-treatment outside detention and are still common<sup>10</sup>. Often, people suspected of being involved in terrorist activities are taken into unofficial detention. No records are kept of such incidents and suspects are generally kept until the authorities have the information they require.

### C. Justice, reparation and ending impunity

Turkish official statistics stipulate that in the first quarter of 2005, 1,239 torture and ill-treatment cases were filed against law enforcement officials. Of these only 447 prosecutions were pursued by the relevant prosecutor.<sup>11</sup> In the first half of 2005, final verdicts were reached in 531 torture and ill-treatment cases that were

<sup>9</sup> Home Office Country Information & Policy Unit, 'Turkey Country Report, April 2005' para 6.36

<sup>10</sup> European Commission 'Turkey 2005 Progress Report' pp.22-23

<sup>11</sup> European Commission 'Turkey 2005 Progress Report' p.23

previously started, resulting in 232 convictions and 1005 acquittals. "Of the convicted officials, 30 were given jail terms, 32 were fined, and 163 were subjected to other punishments," such as suspensions and salary cuts.<sup>12</sup> In 2004, of the 1,831 cases that were concluded, 1,631 led to acquittals, 99 to imprisonment, and 85 to fines<sup>13</sup>.

The Human Rights Association of Turkey (İHD) October 2005 'Report on Prevention of Torture and Impunity of Perpetrators'<sup>14</sup> gathered information from the 52 cases and 59 investigations in August 2005. This report suggested that perpetrators of torture are still protected in almost all levels of investigation and judicial prosecution.

According to İHD, 69 per cent of trials led to acquittals and 15 per cent led to postponement, bringing no punishment to suspected perpetrators.

These statistics show that changes in law do not necessarily correspond to changes in practice. In the absence of any fundamental changes in the detention centres and in the courts, the legal reforms are irrelevant.

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## V. Progress made in Turkey

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<sup>12</sup> USDOS "Country Report on Human Rights Practices" 8 March 2006

<sup>13</sup> European Commission 'Turkey 2005 Progress Report' p.23

<sup>14</sup> İnsan Hakları Derneği, 'İşkenceye Sessiz Kalma' 2005

The Republic of Turkey from the outset has been an overtly nationalist state and legislative provisions have traditionally been geared towards protecting the state against attack from individuals. At least theoretically, the last few years have seen great improvements in Turkey's human rights related legislation, and a positive move towards protecting the individuals from the excesses of state power. The progressive reform of Turkey's domestic law is largely associated with Turkey's prospective membership of the EU.

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### A. Turkey and the EU

The process of Turkey's accession to the EU has been a slow one. Turkey applied for associate membership of the European Economic Community (as it was then) in 1957 and entered into an Association Agreement in 1963. Economic instability and internal strife stunted the process and it was not until October 2005, that the EU agreed to accession negotiations. In the lead up to this agreement, the EU set many conditions for membership; the so called 'Copenhagen Criteria' was required and the eradication of torture was an early priority. The 'fight against torture practices' and compliance with the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) were short term priorities in the 2000 accession plan.<sup>15</sup>

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<sup>15</sup> Council Decision of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession

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## B. Pro-EU reforms

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In 2001 some major constitutional reforms were adopted, including a reduction in the amount of time an individual can be detained without judicial scrutiny. Police training was extended and a human rights unit was established.

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In 2002 the new AKP government famously announced a 'zero tolerance' policy on torture.<sup>16</sup> That year the maximum length of police and gendarmerie 'incommunicado' detention was reduced from four days to 48 hours for individuals suspected of crimes under State Security Court jurisdiction. Other pieces of legislation banned blindfolds and required families to be informed immediately of an individual's detention. State officials were made liable for compensation ordered by the European Court of Human Rights (ECtHR) for torture and ill-treatment violations (Article 3 of the European Convention of Human Rights). The reforms in August that year were particularly far reaching and included the limiting of police discretionary authority and new detainee's right to legal representation and unsupervised medical examination.

In 2003 amendments to the Turkish Penal Code meant public officials could investigate allegations of

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Partnership with the Republic of Turkey, (2001/235/EC)

<sup>16</sup> See Deputy Prime Minister Abdullah Gül's statement to the Grand National Assembly, 10 December 2003

torture without clearance from superiors and prison sentences for health officials who falsified medical reports were increased. Hearings concerning torture and ill-treatment were given greater priority and under new legislation could not be delayed for more than 30 days. Judges were also denied the power to suspend prison sentences for torturers or reduce their sentences to fines, as had been a common practice.

Detainees' rights were strengthened again in 2004 by a further amendment to the Regulation on Apprehension Detention and Statement Taking and an amendment to bring the detention procedures of military courts in line with those of other courts. Policy circulars were sent to police officers urging them to avoid possible ill-treatment and to Public Prosecutors instructing them to prioritise investigations into allegations of torture and ill treatment.

A new Penal Code and Code of Criminal Procedure were introduced in 2005, as well as further safeguards for detainees in the new Regulation on Apprehension, Detention and Statement Taking in June 2005.

A draft of the new anti-terror legislation (TMY) was passed by Parliament in June 2006 and is currently with the President, who may ratify the bill or send it back to Parliament for reformulation. The current TMY represents a step backwards in legislative reform. It

renders statements made under torture admissible in court, eliminates the examination of security officials responsible for taking statements and preparing incident reports at trial and allows the use of secret investigative agents, whose identities will not be revealed and who cannot be examined at trial. These reforms will seriously affect the fairness and efficacy of torture trials, as well as increase the opportunity for extra-judicial detention without recourse.

### C. Has torture decreased?

Most sources suggest that the widespread reforms have had a positive impact on the number of incidents of torture and ill-treatment.<sup>17</sup> According to the Diyarbakir Branch of the İHD torture in the first three months of 2005 continued to decrease despite an overall increase in human rights violations.<sup>18</sup> Extreme forms of torture such as electric shock and 'Palestinian hangings' have notably decreased.<sup>19</sup>

However there is a worrying disparity between the breadth of

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<sup>17</sup> See for example EU Commission Turkey 2005 Progress Report p.22; Commission of the EC 2004 Regular Report on Turkey's Progress Towards Ascension p.34; KHRP's fact-finding mission report on *Turkey's Implementation of Pro-EU Reforms* November 2004

<sup>18</sup> Ozgur Politika, 20 June 2005

<sup>19</sup> Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) from 7 to 15 Sept 2003 p.10

the legislation, which according to the President of the CPT exceeds most European standards,<sup>20</sup> and the relatively limited or at least inconsistent impact of the reforms. "There has been a decrease in torture but it has certainly not been eliminated. We are not witnessing 'zero tolerance'", one İHD lawyer explained.<sup>21</sup> The Government's pledge of 'zero tolerance' and the extensive EU related legislation should have led to the near eradication of incidents, and a total end to impunity. This has not happened.

### VI. How can torture in Turkey be prevented?

There are many practical measures capable of dramatically reducing incidents of torture. A 'cultural revolution' inside the security forces must take place.

Psychological barriers are the single biggest obstacle to realising Turkey's zero tolerance policy. Independent supervision of law enforcement and security authorities coupled with effective criminal accountability are thought to be the most efficient ways of preventing torture and ill-treatment and correcting the culture of brutality that has been pervasive in Turkey's security forces. In addition, several international human rights instruments have developed safeguards designed to prevent

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<sup>20</sup> European Commission, 'Turkey 2005 Progress Report' p.22

<sup>21</sup> KHRP's fact-finding mission report on *Turkey's Implementation of Pro-EU Reforms* November 2004



incidents of torture and ill-treatment, which must be effectively implemented in Turkey.

#### A. Torture and detention

Detention provides an environment in which the victim can be isolated and easily controlled, and most incidents of torture occur during detention, particularly incommunicado detention by security officials in south-east Turkey, although it can happen all over the country. Torture and ill-treatment can be reduced by limiting the circumstances in which people can be detained and instituting effective safeguards to monitor their detention. Standard measures include the mandatory notification of a detainee's rights, the keeping of custody records, and impartial judicial scrutiny of detention. Allowing the detainee contact with the outside world and especially affording independent legal representation is one of the most effective ways of preventing torture and ill-treatment. Eliminating incommunicado detention in Turkey, then, is one way to prevent torture from occurring in detention. Legal measures ensuring detainees have communication with family, and access to a lawyer or medical professional are crucial.

It is also possible that the conditions of detention may themselves amount to ill-treatment. It is important that the detention conditions respect the human dignity of the detainee and that the

detention regime is open to independent scrutiny. The monitoring of F-type prisons in Turkey, which isolate prisoners and increase the chances of torture occurring, is crucial to the prevention of torture.

Education and monitoring are crucial to the prevention of torture in detention. Security officials, particularly police and Gendarmerie, should be given proper human rights training, which should be reinforced by effective monitoring.

#### B. Accountability and redress

The scarcity of convictions and light sentences imposed on police and Gendarmerie for torture has fostered a climate of impunity. Effective accountability and redress are essential for preventing torture, and for dealing with its brutal consequences. Actions such as blindfolding in detention and intimidation must be stopped. Statements that are extracted under torture should not be used in criminal trials. Seeking reparation is an important part of the rehabilitation process both for the individual victim and for the wider society. However, bringing perpetrators to justice can present serious obstacles, since most of them work within law enforcement and are protected by the legal system. Doctors frequently do not report signs of torture and lawyers often resign or fail to disclose relevant information. Independent complaints procedures, criminal and disciplinary proceedings are

essential to preventing authorities from abusing their positions. The need for impartial scrutiny cannot be overstated.