

# Human Rights Defenders in Turkey



by Kerim Yildiz and Claire Brigham







# HUMAN RIGHTS DEFENDERS IN TURKEY

BY KERIM YILDIZ AND CLAIRE BRIGHAM

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KURDISH HUMAN RIGHTS PROJECT  
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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 within the Kurdish regions, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people.



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## Table of Abbreviations

CDF	Committees for the Defence of Democratic Liberties and Human Rights
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CEDAW	Convention for the Elimination of All Forms of Discrimination Against Women
DEHAP	People's Democratic Party
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
GİYAV	Migration and Humanitarian Assistance Foundation
Göç-Der	Migrants Association for Social Co-operation and Culture
HADEP	People's Democracy Party
HPG	People's Defence Force
HRDs	Human rights defenders
İHD	İnsan Hakları Derneği (Human Rights Association)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
KADEK	Freedom and Democracy Congress of Kurdistan
KHRP	Kurdish Human Rights Project
Kongra-Gel	Kurdistan People's Congress
KÜRT-PEN	Kurdish Writers Association
NSC	National Security Council
OHAL	State of Emergency legislation
OSCE	Organisation for Security and Co-operation in Europe
PKK	Kurdistan Workers' Party
RTÜK	Supreme Council of Radio and Television
TEU	Treaty on European Union
TİHV	Türkiye İnsan Hakları Vakfı (Human Rights Foundation of Turkey)
UDHR	Universal Declaration of Human Rights



## Foreword

The attitude of a state toward the work of human rights defenders (HRDs) who support, protect and uphold the human rights of its citizens must serve as an indicator of the value that the state itself places on its own human rights obligations. This is particularly true of Turkey, which has in recent years embarked on an ambitious and long overdue reform process aimed at bringing its legal system in line with the standards required by the EU accession process. At the heart of this reform process has been a set of legislative amendments designed to liberalise the legal system and offer concrete protection for fundamental rights and freedoms.

The treatment of HRDs in Turkey can be a gauge by which the reform process, and Turkey's long term commitment to democratisation, can be evaluated. The conclusion of this publication, researched and drafted in September 2005, is that while externally the reform process has initiated a great many positive and commendable changes to Turkey's legal system, an internal shift in the state's attitude towards HRDs has yet to take place. That is to say that while the reforms have largely put pay to the more overt forms of harassment of HRDs that have been a characteristic of the repressive governments of Turkey's recent past, the intimidation of human rights defenders by state authorities has continued. Instead, more subtle methods of coercion have been utilised. HRDs are being continually hauled before Turkish courts to answer trumped up charges which seemingly have the sole purpose of frustrating their work. This concern has been echoed in the European Commission's most recent progress report on Turkey released in October 2005 which openly criticised the number of "open investigations and prosecutions" instigated against HRDs in Turkey.

In the intervening months since KHRP conducted this research, criminal prosecutions have continued to be instigated against HRDs. Free expression is being stifled by the pursuit of spurious prosecutions against journalists, politicians and academics who put forward opinions considered too unpalatable by the Turkish authorities. Ironically, the justification for many of the prosecutions has been provisions under the amended Turkish penal code, revised in 2005, with the stated aim to bolster the protection for free expression.

The prosecution of Professor Baskin Oran and Professor İbrahim Özden Kaboğlu illustrates how the amendments have clearly not gone far enough. Professor Oran and Professor Kaboğlu were members of the Human Rights Advisory Board of the Prime Ministry (BİHDK), a body set up by the Turkish Government to oversee its own adherence to human rights standards. They were both charged under articles 301 and 216 of the revised penal code following the release of a report from the working group on Minority and Cultural Rights, of which they were both members. This working group produced a report, commissioned by the prime minister's own office, in which it was argued that "Turk" is an identity of only one ethnic group and that Turkey also includes other ethnic groups such as "Kurds" or "Arabs"; a comment that was considered to be sufficient "denigration" of the Turkish state to warrant criminal proceedings under article 301 and 216. (See "Suppressing the Academic Debate: The Turkish Penal Code, A Trial Observation Report" KHRP June 2006).

This case is emblematic of the mistrust which is shown to the work of HRDs by the criminal justice system in Turkey which the state's program of human rights training seems to have done little to shift. The irony is that the Human Rights Advisory Board was set up, *by the state itself*, for view points such as this to be aired and debated. Although the charges against these two eminent academics were eventually dropped, the fact that they were indicted in the first place shows that very little has changed, and that the antipathy shown to HRDs by prosecutors and the judiciary remains firmly entrenched. The reform process has done a great deal to bolster the independence of the office of the prosecutor, but in this instance, the prosecutor was able to use this independence to advance his own political agenda against state officials.

This case also exposes the inadequacies of the legislative reforms that have been enacted so far. Despite being amended, article 301 is still badly drafted because its parameters of criminal liability under the offence are unclear. An individual will be guilty if the judge perceives that they have "denigrated" the state but not guilty if they have merely "criticised" it, as this has been specifically exempted. The ambiguity of the terms leaves too much scope for further unjustified prosecutions of HRDs. If this is the best that can be achieved in redrafting this article, it appears that the Turkish Government has no other option but to repeal the article altogether.

Kurdish politicians and parties that include Kurdish and other minority rights in their platforms continue to have their work impeded and undermined by criminal charges being levied at them. Diyarbakır's Metropolitan Mayor, Osman Baydemir, was charged in July 2006 under article 314 of the Penal Code for "knowingly and willingly assisting" the outlawed Kurdistan Workers Party (PKK) for statements he made to calm the violence that occurred in the southeast region of Turkey in March 2006. This charge is in addition to two charges already filed against him by the

Chief Prosecutor's Office of Diyarbakir and one by an Istanbul Prosecutor.

Members of the Democratic Society Party (DTP) have been indicted for “serving the interests of an outlawed organisation” after they sent a letter to the Danish Prime Minister asking him not to close the Kurdish TV channel that broadcasts from there. Ahmet Turk, the leader of the DTP, has been charged with “praising a criminal” by referring to Abdullah Öcalan as “mr” in a speech. The Rights and Freedoms Party (Hak-Par) has also faced prosecution for flouting the restrictions placed on the use of languages other than Turkish in official settings. They were before a court in June 2006 to answer charges under article 81(c) of the Political Parties Law after making speeches in Kurdish during their party conference in 2005.

Human rights activists too are targets of this “judicial” harassment. The Chair of the Diyarbakir Human Rights Association (İHD), Selahattin Demirtaş, has been prosecuted under article 220 of the Turkish Penal code for carrying out “propaganda for an outlawed organisation” after he made remarks on a pro-Kurdish television channel regarding the conditions in which Abdullah Öcalan is being detained. In June 2006, three Kurdish members of the organisation Kurd-Der (Kurdish Association) went on trial under anti-terrorism charges for a peaceful protest they held near the Iraqi border after civilians were killed by security forces in the southeast of the region. The charges were eventually dropped after the case provoked international condemnation. Kurd Der is, however, now defunct after a court in Diyarbakir closed the organisation in April for conducting its internal business in Kurdish.

The pursuit of criminal prosecution against writers, politicians or activists for expressing a legitimate opinion tears at the heart of the right to free expression enshrined by article 10 of the European Convention on Human Rights. The fact that the charges in most free expression cases are usually dropped once the case provokes international condemnation does not negate the “chilling effect” that they have on free speech. Prosecutions, no matter how spurious, taint the work of HRDs with the smear of illegality and criminality, undermining them in the eyes of the very public for whom they are working, and dissuading them from pursuing their cause. Taken in their entirety, these examples show that Turkey is still trying to silence HRDs and that the reform process is failing to address the ingrained suspicion and paranoia with which human rights defenders have traditionally been treated in Turkey. The Turkish state must address its own prejudices to reflect the openness with which the Turkish public now embrace the work of HRDs.

The right to free assembly, which is crucial for the realisation of all other human rights, is still being constrained by the Government. This is particularly evident in the overly burdensome restrictions that are placed on demonstrations in the Kurdish regions. Throughout 2006, security forces have continued to adopt a hard-

line attitude towards unarmed civilians and aggressive dispersal tactics during pro-Kurdish protests. There have been a number of violent clashes between police and civilians, with reports of police firing on civilians and children. A fact finding mission sent by KHRP to the Kurdish region in April 2006 found that the rule of law was clearly put aside during the security forces' handling of the violence that sparked following the funerals of PKK guerrillas at the end of March 2006 (See KHRP Fact-Finding Mission Report "Indiscriminate Use of Force" August 2006). Police used indiscriminate, disproportionate and lethal force, condoned by their superiors, chillingly reminiscent of behaviour that received international condemnation under "OHAL" the state of emergency during the 1990s. Ten civilians lost their lives, including three children; hundreds of civilians were detained, many of whom have alleged that there were tortured during their detention.

Further, we share the concerns of the European Commission, expressed in its 2005 progress report, regarding the March 2005 regulation detailing the implementation rules for the new *Law of Associations*. This provision imposes restrictions on the registration of associations whose name and/or objectives are considered to be contrary to the aims of the constitution, clearly against the spirit of article 11 of the European Convention on Human Rights. Human rights associations which uphold the rights and freedoms of Kurds could easily be perceived as seeking to undermine the state notion of the "Turkish identity", enshrined in the constitution, which does not acknowledge the existence of ethnic minorities. They are therefore at risk of being denied the opportunity to register. Human rights organisations provide a stable and empowering environment for HRDs and have an important role in monitoring and seeking redress for human rights abuses. Their role and their work have to be respected if Turkey's intention to guarantee human rights protection for all its citizens is to be taken seriously.

The work of international NGOs and foreign HRDs could also be impeded if the current draft of the new bill on foundations makes it into law after it is debated in September 2006. In June, the Parliament's Justice Commission altered the bill to stop non-Turkish citizens setting up and administering foundations in Turkey. If enacted, the provision would restrict foreigners to sitting on the board of human rights associations. It would appear then that the Turkish administration's suspicion of HRDs is not only limited to Turkish HRDs as during the debate, many deputies openly cited that the law was necessary to prevent the activities of organisations such as the Soros Foundation, which is seeking to promote democracy in Turkey, from meddling in domestic affairs and "toppling the state".

There has been little progress during 2006 to ease the unduly restrictive legal regime which is criminalising the work of human rights lawyers in Turkey. The ability of lawyers to effectively represent their clients, as standards of due process require, is impeded by legal provisions which circumscribe the principle of client

confidentiality and threaten their work with criminal investigation. A judge can require the presence of a law enforcement official at meetings between a lawyer and their client, discussions to be taped and documents confiscated based only on a suspicion of "abettment". Once a criminal investigation is pursued against a lawyer, they will be immediately suspended before any guilt is established and prevented from contacting their client. The new anti terror law also limits a suspect to the legal assistance of just one lawyer. These provisions appear to be designed to unduly frustrate the work of the defence team, placing the principle of "equality of arms" in jeopardy, and raising questions of their compatibility with the right to fair trial.

We consider that the new anti-terror law which has this year amended the 1991 *Law on the Fight against Terrorism* (Act 3713) will have profound ramifications for the work of all types of human rights defenders. These amendments are in many ways fundamentally flawed and will undo a lot of the good work that the reform process has already achieved to the detriment of rights and freedoms in Turkey. In terms of the rule of law, the imprecise drafting of the legislation and the use of ambiguous terms means that it will be difficult for human rights defenders to regulate their behaviour so as to avoid criminal liability. The perhaps intentional result will be that individuals will be prosecuted for "terrorist" acts without having any real links to the "terrorist" organisation itself.

The amendments also disproportionately punish behaviour that, to the layperson, would not constitute "terrorism". Under article 6, the types of activity that will be deemed to be a "terrorist offence" are broadened to include the carrying of an emblem, signs or placards of a "terrorist" organisation and attempting to conceal your own identity during a demonstration. HRD's are further at risk as the penalty will be doubled if the offence is committed on the premises of political parties, trade unions or student dormitories.

By abolishing incommunicado detention and guaranteeing detainees immediate access to a lawyer, Turkey had sent a strong signal that it would make good on its promise to eradicate the practice of torture. In the case of Turkey, though, old habits die hard as article 9 of the new anti-terror law states that during detention, the detained suspect's right to meet with a lawyer can be restricted for a period up to 24 hours – the period when the detainee is at the greatest risk of being tortured. With instances of torture still being reported in the Kurdish regions of Turkey, the enactment of this provision could not come at a worse moment. It invites the practice of torture at a time when Turkey should be doing everything in its power to stamp out this heinous activity.

The anti-terror amendments were passed by the Turkish Parliament in June 2006 and are now in force. We deplore the enactment of these amendments; they represent a retrograde step for Turkey, a return to an authoritarian police state where rights and

fundamental freedoms are placed secondary to supposed security concerns. It is likely that HRDs, who place themselves at the front line between the individual and the state and invite controversy, will bear the brunt of these measures. The reform process is, of course, only in its infancy but if we are to use HRD's as an indicator of its success then the continued enactment of draconian laws, pursuit of spurious prosecutions and the use of disproportionate force against legitimate demonstrators show that little has changed.

We hope that the Turkish Government will pay heed to the recommendations of this report and address the stalling reform process to ensure that HRDs are able to go about their work free from intimidation or criminal prosecution. The Committee of Ministers of the Council of Europe and the institutions of the EU have to be more robust in their monitoring of Turkey if the reform process is to be of any meaningful value. The Committee of Ministers should hold Turkey to account for flouting provisions of the European Convention on Human Rights and the established jurisprudence of the European Court of Human Rights. The European Commission, too, must not shirk from openly and publicly critiquing Turkey's human rights record in its next progress report. It has to be reiterated that Turkey's accession to the EU is not a foregone conclusion, and its candidacy will be jeopardized by the enactment of laws which suppress rights and freedoms. This will provide a powerful incentive to prevent Turkey drifting back into bad habits.

## Introduction

The idea of internationally applicable human rights standards which emerged with the signing of the 1948 Universal Declaration of Human Rights (UDHR) has spawned an immensely far-reaching and influential human rights movement staffed by thousands of committed individuals and groups and reaching into virtually all corners of the world. The courageous efforts of those engaged in striving for the protection and promotion of human rights have contributed enormously to upholding civil liberties, to relieving the hardships faced by society's most vulnerable and marginal groups, and to ensuring that governments are held accountable for their actions and the rule of law is accordingly upheld. The value and legitimacy of the work of human rights defenders (HRDs) is recognised by international bodies including the UN.

HRDs are, though, by no means welcomed everywhere. They are regarded variously as undermining the state through their criticism of its structures and methods; as politically motivated; or as linked with criminal or terrorist organisations. Even in relatively open and established democracies HRDs are not infrequently dismissed as trying to impose undue limitations on the government's freedom to act, and are accused of failing to comprehend the realities of state administration. These trends have intensified in the aftermath of the events of September 11<sup>th</sup>.

The result is that HRDs often encounter intimidation, harassment and repression. Because of their tendency to expose and criticise state actions violating human rights and to seek to impose government accountability, HRDs frequently themselves become primary targets of repressive state practices in breach of human rights. HRDs' messages are silenced; they are denied access to victims of human rights abuses, prevented from conducting public activities such as press conferences and demonstrations and prosecuted under anti-democratic laws. HRDs often face considerable restrictions in founding and operating associations. At times they are dismissed from their professions or otherwise sanctioned at work. Government figures publicly undermine their credibility, exposing them to potential attacks by political groups and other private individuals. HRDs are also confronted with arbitrary detention, torture and ill-treatment, and sometimes even 'disappearances' or killings perpetrated by the state.

International bodies and mechanisms have increasingly recognised the centrality of the role played by HRDs in furthering human rights, and the specific risks which they confront in their work. In 1998 the UN adopted a declaration on the rights and responsibilities of HRDs,<sup>1</sup> and the EU has recently explicitly incorporated this declaration into its external activities promoting human rights.<sup>2</sup> The declaration upholds the rights of HRDs to go about their work freely and in safety. The OSCE, the Inter-American Commission on Human Rights and the African Commission on Human and People's Rights have also engaged with the issue of HRDs.

Turkey has for many years failed to respect the legitimacy and rights of HRDs, and has instead persecuted them and interfered with their work. The Kurdish Human Rights Project (KHRP) has been instrumental in documenting abuses committed against HRDs, through pressing for improvements in their treatment and using international mechanisms to achieve justice for HRDs whose rights have been violated. The current EU-inspired impetus for change in the country promises some respite to HRDs, as Turkey enacts a string of reforms aimed at readying itself for EU accession. The Turkish state recently declared:

In line with its strong commitment to the cause of human rights and democracy, the Turkish Government regards human rights defenders as an essential element of a vibrant civil society and spares no effort to create favourable conditions for their effective functioning.<sup>3</sup>

This positive rhetoric is welcome, as are the host of legislative changes brought in by Turkey which go towards improving human rights in the country.

Concern has been expressed, though, that progress towards a genuine relaxation in restrictions upon HRDs to exercise key rights such as freedom of expression and association, and to therefore effectively advocate for improvements in human rights, has proved faltering. It appears that as the reform process moves forward, the pressure on HRDs is not receding as such but instead explicit targeting is being replaced by more subtle methods of coercion, the most prevalent of which is the pattern of harassment imposed on HRDs by the opening of huge numbers of

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<sup>1</sup> United Nations General Assembly, 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms', General Assembly Resolution 53/144, A/RES/53/144, adopted 8 March 1999

<sup>2</sup> Council of the European Union, 'Ensuring Protection – European Union Guidelines on HRDs'; adopted at the 2590th Council Meeting, General Affairs and External Relations Luxembourg, 14 June 2004

<sup>3</sup> Commission on Human Rights, 'Promotion and Protection of Human Rights: Human Rights Defenders - Letter dated 23 March 2005 from the Permanent Mission of Turkey to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights', E/CN.4/2005/G/25, 24 March 2005, §3

cases against them. KHRP supports the EU accession process as the most effective means of securing democracy and human rights in Turkey, but is concerned that the European Commission must rigorously monitor Turkey's progress on political reform to ensure that the accession process realises its potential to bring about genuine change.

The aim of this report is to contribute to analysis and debate on Turkey's pro-EU reform process by examining how far she is progressing in the direction of European standards in her treatment of HRDs. International definitions of who HRDs are and their functions are first outlined, then elements of Turkey's conduct towards HRDs as well as legislative and policy changes affecting them are assessed against the background of its international obligations, using case studies to illustrate key points. The principal conclusions reached are founded in research carried out by KHRP representatives in Turkey and from the organisation's London office. The substance of the text is followed by a series of recommendations to the Turkish government on how it could better comply with international standards concerning HRDs and so demonstrate the strength of its commitment to realising reform.

Turkey has a vibrant and dynamic human rights movement which has defied the odds to form an effective force for bringing the Turkish government to account for breaches of human rights standards. Well-organised and professional human rights NGOs are a significant force in furthering the protection and promotion of human rights in Turkey, while countless other brave individuals, affiliations and groups make valuable contributions in various ways towards achieving these ends. It is of crucial importance to Turkey's democratisation effort that it acknowledges the validity of HRDs' activities and respects their rights; HRDs not only play a valuable role to the process of democratic renewal, but how they are treated by a state is also a significant indicator of that state's progress towards genuine democracy. Turkey must ensure that HRDs are able to carry out their legitimate activities without fear of being harassed, intimidated or otherwise persecuted.



# 1. Human Rights Defenders: Definitions

## a. Who are human rights defenders?

'Human Rights Defenders' is a term of relatively recent common usage, favoured by the UN in its 1998 Declaration. It broadly includes those previously referred to as human rights 'activists', 'campaigners', 'professionals', 'monitors' and other similar terms. It includes principally those who work towards the elimination of all violations of the fundamental rights and freedoms of peoples and individuals. The commonly accepted definition of HRDs is that now set out in the 1998 UN Declaration. This Declaration refers to the rights and responsibilities of "individuals, groups and organs of society" who "promote and protect universally recognised human rights and fundamental freedoms".<sup>4</sup>

Protection is not, then, limited to individuals but applies equally to those acting in a group or collectively. Nor is it limited to professionals in relevant fields, paid individuals or those who are members of officially constituted human rights organisations. The definition is functional; it includes anyone who promotes or protects human rights and as such refers to what people actually do rather than their job title. HRDs may operate in different sectors throughout society, a lawyer fighting a high profile human rights case is an obvious example, but HRDs can also be local associations of women co-ordinating searches for missing relatives, students organising a campaign for an end to torture in prisons, or entertainers who use theatre to convey messages about the prevention of HIV / AIDS. They might also, in some instances, be government officials, civil servants or members of the private sector. For example where judges or police officers make a special effort to ensure access to fair justice in the judicial process, and thereby to guarantee the related human rights of victims, they can be said to be acting as HRDs. People may not generally be classified as HRDs, but may become so when their work adopts a human rights element. For example, a journalist who exposes a story on human rights abuses will be a HRD in the context of that particular role.

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<sup>4</sup> United Nations General Assembly, 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms', General Assembly Resolution 53/144, A/RES/53/144, adopted 8 March 1999

HRDs not only defend civil and political rights but also work towards protecting and promoting any universally recognised right. Thus defenders working towards the promotion, protection and realisation of the rights recognised in the International Covenant on Economic, Social and Cultural Rights (ICESCR), for example in the fields of housing and the provision of adequate food and water, are also incorporated. The EU paper ‘Ensuring Protection – European Union Guidelines on HRDs’ also cites the rights of members of groups such as indigenous communities.<sup>5</sup>

HRDs are not, though, those who commit or who propagate violence. Nor can they deny the existence of one human right while professing to advocate for others; human rights are universal and indivisible.

The question of whether or not a HRD is factually ‘right’ or ‘wrong’ the right(s) a person professes to protect or promote is immaterial, as is the national government’s designation of the activities of a HRD (for example as a front for pursuing political or terrorist objectives). Only the subject matter of the activity in question is important, and if this falls within the scope of international human rights standards the person or group will be a HRD.

Examples of HRDs, based upon complaints received by the UN Special Representative on Human Rights Defenders (UN Special Representative), include members of human rights NGOs, lawyers, journalists, doctors, trade unionists, students, teachers, professional associations, members of the judiciary, environmental rights activists, international humanitarian workers, peace activists and intellectuals.<sup>6</sup>

#### *b. What do human rights defenders do?*

Most HRDs work locally or at a national level to promote respect for human rights in their own communities or countries. These HRDs engaged on local and national issues may engage with international action aimed at upholding human rights, and increasingly now will seek partnership with international organisations which support them in their work.<sup>7</sup> Other HRDs act at an international level, monitoring

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5 Council of the European Union, ‘Ensuring Protection – European Union Guidelines on HRDs’, adopted at the 2590th Council Meeting, General Affairs and External Relations Luxembourg, 14 June 2004

6 See UN Commission on Human Rights, ‘Promotion and Protection of Human Rights - Human Rights Defenders: Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on human rights defenders, pursuant to the Commission on Human Rights resolution 2000/61; E/CN.4/2002/106, 27 February 2002

7 Office of the United Nations High Commissioner for Human Rights, ‘Special Representative of the Secretary General on HRDs -About HRDs’, <<http://www.ohchr.org/english/issues/defenders/who.htm>>

the human rights situation across different countries. Among these organisations there is similarly a growing trend towards joint action.

The activities of HRDs are broadly likely to include:

- Documenting violations
- Seeking remedies for victims of such violations through the provision of legal, psychological, medical or other support; and
- Combating cultures of impunity which serve to cloak systematic and repeated breaches of human rights and fundamental freedoms.<sup>8</sup>

With regard to documenting violations, HRDs monitor state policy, practice and legislative initiatives, aiming to ensure that these are carried out in compliance with domestic and international human rights standards. They may draw public attention to breaches of these standards, or highlight situations or individual cases where there is a gap between official provisions and reality. Usually this work is done by human rights organisations which publish reports on their findings, and may use this information to lobby public officials. Their activities may compel a government to reconsider policies or practices developed without sufficient regard to or in violation of international human rights standards.

Many HRDs provide legal, psychological, medical or other support to victims of human rights violations. Such victims are often from the most oppressed sections of society and lack the resources necessary to access judicial and quasi-judicial mechanisms offering redress. Victims of human rights violations may also suffer harassment and intimidation at the hands of the state which, without the support of HRDs, may leave them reluctant to pursue avenues of redress. Some HRDs provide professional legal advice and represent victims in the judicial process, while others provide victims with counselling, rehabilitation and other means of support.

Combating impunity is a crucial element of what HRDs do. Without the work of the courageous people who uncover and publicise systematic state practices that violate human rights, repressive regimes could conceal breaches of their domestic and international legal obligations. By drawing attention to these violations, HRDs play a vital role in encouraging increased efforts by the state to comply with human rights obligations. Securing accountability can be through general lobbying activities, through taking part in judicial proceedings or proceedings before international

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<sup>8</sup> Council of the European Union, 'Ensuring Protection – European Union Guidelines on HRDs'; adopted at the 2590th Council Meeting, General Affairs and External Relations Luxembourg, 14 June 2004, §3

tribunals and mechanisms aimed at securing justice for previous violations (and therefore breaking patterns of impunity) and assisting the state in its attempts to prosecute perpetrators of violations.

In mature democracies HRDs are often able to participate in public affairs through formal and informal consultation processes with organs of the government. HRDs will provide valuable insight into the human rights dimensions of law and policy, and their expertise is recognised and taken into account by policy makers.

In other countries relations between HRDs and the state are less harmonious, and considerable polarisation can occur. The work of HRDs is seen in the eyes of the state as unduly critical of the government and may be denounced as pertaining to undue criticism of the state, threatening national security or, in the case of minorities, constituting a threat to national unity. Hostility and mistrust between those upholding human rights and the government can result in a lack of public space to air human rights concerns and state unwillingness to take on board the views of HRDs.

## 2. Human Rights Defenders in the other Countries of the Kurdish Regions

The Kurdish population is distributed across the mountainous border areas between Turkey, Iran, Iraq and Syria. There are also smaller Kurdish populations in the Caucasus, particularly in Azerbaijan, Armenia and Georgia.

From the demise of the Ottoman Empire, the Kurds were for many years divided between regimes which tended towards repressive behaviour and were deeply uncomfortable with the expression of viewpoints which appeared to criticise the state or oppose its policies. These regimes showed a decided reticence towards implementing democratic reform, instead choosing to cling to increasingly outdated notions of the primacy of the state. The rule of law had a weak grasp, and powers of censorship, arrest, arbitrary detention, torture and ill-treatment were employed to silence voices deemed hostile to the state. HRDs were, for the most part, equated with other perceived ‘political’ opponents and were accordingly subject to repression, intimidation and interference with their work.

The Kurds, a large, non-Arab population inhabiting an area of significant strategic importance, have been treated throughout the Kurdish regions with deep distrust. Expressions of Kurdish identity and pro-Kurdish political activity are heavily discouraged and comprehensive attempts have been made to forcibly dissipate Kurdish networks in border areas. Where Kurds have sought to press for respect for their human rights, including the recognition of their culture and language, they have been particularly vilified.

In recent years, the situation in the Kurdish regions has developed somewhat. The inauguration of President Khatami in Iran in 1997 looked to offer renewed civil space for the exchange of reformist ideas including the promotion of human rights, while it was anticipated that the presidency of Bashar al-Assad in Syria would bring a relaxation in the treatment of HRDs and other ‘dissenters’. This has not, though, proved the case in either country, and indeed HRDs have been particularly targeted in recent crackdowns in both Iran and Syria. The US-led invasion of Iraq has, of course, wrought substantial changes there by ousting the former Ba’athist regime and installing a new, democratically elected government. However, the situation in

Iraq now for HRDs is far from straightforward, and they face a number of challenges particularly stemming from the acute insecurity which pervades the country.

*a. Iraq*

The serious and widespread human rights abuses which occurred under former President Saddam Hussein have recently been the subject of considerable public attention. Those perceived as opponents of the regime were routinely tortured, killed or died in unexplained circumstances in custody, while thousands of others were 'disappeared'. Comprehensive controls were placed on freedom of expression and association, strict controls on media outlets were maintained and the formation of groups unaffiliated to the ruling Ba'athist Party was prohibited; thus no independent human rights organisations functioned in the area of Iraq controlled by Saddam Hussein's government. In Iraqi Kurdistan the establishment of the safe haven in 1992 led to the development of civil society – albeit in an embryonic form – although Iraqi forces continued to arbitrarily detain, torture and kill HRDs in the region who spoke out against the regime.

The US-led invasion of Iraq has in theory sparked the transformation of the country into a democratic, pluralist republic. As of October 2005, the country has a new constitution which obligates the Iraqi Government to uphold the rights to freedom of expression<sup>9</sup> and assembly<sup>10</sup>-subject to the requirements of public order and morality. There are other guarantees which relate to the work of HRDs. Article 37 protects the right to freedom of forming and joining associations and political parties. Article 38 guarantees the freedom to communicate free from surveillance. HRDs are accordingly no longer systematically targeted by the state for non-violently advocating the promotion and protection of human rights, although it has been alleged that the Iraqi administration has on occasion taken action against those critical of the human rights situation in the country.<sup>11</sup> For example Mr. Zuhair Al-Maliki, Chief Investigative Judge of the Criminal Court of Iraq, was dismissed from his position after publicly condemning detention practices.<sup>12</sup>

The Iraqi administration has erred fairly heavily on the side of caution in its balancing of freedom of expression and national security. Both US occupation authorities and the Iraqi government have restricted local and international

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<sup>9</sup> Article 36(a)

<sup>10</sup> Article 36(c)

<sup>11</sup> International Federation for Human Rights, Annual Report 2004, 'HRDs on the Front Line', 14 April 2005

<sup>12</sup> International Federation for Human Rights, Annual Report 2004, 'HRDs on the Front Line', 14 April 2005

media reporting on issues containing important human rights elements. In November 2004, for example, a US military assault against insurgents in Fallujah was accompanied by a stern warning from the Higher Media Commission, a body empowered to impose sanctions against news outlets, that the media should reflect the government's position in their reporting.<sup>13</sup> The Iraqi police have also reportedly threatened, assaulted and detained journalists; in August 2004 police attempted to seize the camera of Allison Long when she photographed officers beating a suspect near the Baghdad Convention Center.<sup>14</sup> The Iraqi Association of Journalists recently reported that journalists had been detained by US forces, accused of collaboration after travelling with insurgents to try to report on both sides of the conflict.<sup>15</sup>

The Iraqi administration has responded to the frequent public demonstrations which now take place in Iraq with considerable vigour. From 8 November 2004 the government declared a three-month state of emergency under legislation which permits substantial restrictions on free assembly, and it has since warned citizens not to hold protests on the basis that they are an invitation for terrorist attacks.<sup>16</sup> There have been several reported incidents of Iraqi and/or US forces opening fire on unarmed protesters, for example in September 2004 a US helicopter attacked unarmed protesters killing at least 13 and wounding 55. It has been argued by the US that public demonstrations have been used as fronts for rebel actions.<sup>17</sup>

Civil society in Iraq remains very much in its infancy, though it is somewhat better developed in Iraqi Kurdistan as a result of liberalisation under the safe haven. In the immediate aftermath of the invasion of Iraq, a plethora of human rights groups were formed with a broad range of mandates. The work of these organisations is not generally hampered by administrative restrictions on their operation,<sup>18</sup> and government officials have at times proven responsive to NGO concerns. However, a lack of resources, inexperience in the structures of transparency and accountability

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- 13 Committee for the Protection of Journalist, 'Attacks on the Press 2004; Documented Cases from Middle East and North Africa 2004', <<http://www.cpj.org/attacks04/mideast04/iraq.html>>
  - 14 Committee for the Protection of Journalist, 'Attacks on the Press 2004; Documented Cases from Middle East and North Africa 2004', <http://www.cpj.org/attacks04/mideast04/iraq.html>
  - 15 Index on Censorship, 'Iraqi journalists complain of censorship', 7 June 2005 <<http://www.indexonline.org/en/indexindex/articles/2005/2/iraq-iraqi-journalists-complain-of-censorship.shtml>>
  - 16 China Daily, 'Iraq official discourages demonstrations', 28 March 2005 <[http://www.chinadaily.com.cn/english/doc/2005-03/28/content\\_428871.htm](http://www.chinadaily.com.cn/english/doc/2005-03/28/content_428871.htm)>
  - 17 US Department of State - Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices – Iraq 2004', February 28, 2005, <<http://www.state.gov/g/drl/rls/hrrpt/2004/41722.htm>>
  - 18 An exception is the arrest of a National Democratic Institute (NDI) employee for failing to seek governate approval for conducting NDI activities, despite the Ministry of Interior edict mandating the soliciting of such approval not being generally enforced. The employee was subsequently released. US Department of State - Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices – Iraq 2004', February 28, 2005, <<http://www.state.gov/g/drl/rls/hrrpt/2004/41722.htm>>

necessary to operate an NGO, and habits of deference to local community leaders and to the state are hampering the emergence of an effective human rights movement in Iraq. International assistance has been limited and aid is mainly centred on multi-lateral organisations.

A Ministry of Human Rights is operational in Iraq and meets regularly with NGO leaders, but it is substantially under-resourced and currently lacks the capacity to materially influence the human rights situation in the country.

The greatest threat to HRDs in Iraq is the chronic insecurity in the country. Violent attacks on civilians by insurgents, including suicide bombings, are frequent, and the physical integrity of HRDs has been threatened as insurgency targets have included humanitarian agencies, NGOs and civic leaders. In a high profile case the head of operations of Care International, Margaret Hassan, was kidnapped on 19 October, and it is presumed she was subsequently executed. The British peace activist Norman Kember who was working with Christian Peacemaker teams was taken hostage with three other western peacemakers in November 2005. He was freed on 23 March 2006 but one of his fellow hostages was executed. UN agencies and many non-Iraqi NGOs have pulled out of the country altogether or retain a minimal presence. The prevailing atmosphere of violence places considerable strain on civic life generally, rendering people less willing to engage in public and associational activities for fear of their personal safety. Furthermore, HRDs are prevented from moving about the country to investigate alleged abuses except where they are embedded with troops, and some HRDs were subject to campaigns of intimidation by political opposition groups. For example Yanar Mohammed, a women's rights activist and founder of the Organisation for Women's Freedom in Iraq, received death threats after campaigning against the enactment of Islamic laws which would have denied women fundamental rights.<sup>19</sup> The Minister of Human Rights and members of his staff also received death threats.<sup>20</sup> In short, the Iraqi government and US occupation forces have failed to provide a sufficiently secure environment for HRDs to operate effectively; indeed, US forces with apparent Iraqi complicity have themselves been accused of conducting counter-insurgency campaigns in violation of the laws of war, and of arbitrarily detaining and systematically torturing detainees.<sup>21</sup>

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19 Human Rights First, 'Iraqi Women's Rights Activist Receives Death Threats', 9 February 2004, <[http://www.humanrightsfirst.org/middle\\_east/alert020904.htm](http://www.humanrightsfirst.org/middle_east/alert020904.htm)>

20 US Department of State - Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices – Iraq 2004', February 28, 2005, <<http://www.state.gov/g/drl/rls/hrrpt/2004/41722.htm>>

21 See Human Rights Watch, 'Getting Away with Torture? Command Responsibility for the U.S. Abuse of Detainees', April 2005, <<http://www.hrw.org/reports/2005/us0405/>>

*b. Iran*

The inauguration of the moderate President Khatami in 1997 had looked to offer renewed freedom for those speaking out against the governing regime, including HRDs. Civil society began to flourish, numerous NGOs were formed and a diversity of viewpoints challenging the traditional Iranian establishment were propounded by increasingly vociferous writers, journalists and other reformists. A subsequent backlash in 2000 orchestrated by the Iranian judiciary and security forces sought to comprehensively quash this upsurge of dissent in the country. Pressure for reform in Iran and the growth of civil society over the proceeding five years has only intensified the repressive practices of the state, which are now impinging more and more upon the activities of the emerging community of HRDs in Iran. In recent months a concerted government campaign of intimidation mounted against HRDs has been escalating.

Iranian tactics in silencing HRDs and other perceived opponents of the state have included interrogation, arbitrary arrest, the denial of a fair trial and imprisonment on the basis of vaguely worded legislative charges. A high profile case is that of Akbar Ganji, a journalist who exposed the role of former president Akbar Hashemi Rafsanjani and other prominent conservative figures in the deaths of leading intellectuals in the 1990s. Ganji was sentenced to six years imprisonment on conviction of collecting confidential information that harms national security.<sup>22</sup> Lawyer Nasser Zarafshan, who represented the families of intellectuals and journalists murdered at the hands of the state in 1998, was sentenced to five years for ‘dissemination of confidential information’<sup>23</sup> Even officially registered NGOs have faced politically motivated prosecutions. Emadoddin Baqi, Board Member of the Society for Defence of the Rights of Prisoners, was sentenced to one month imprisonment for spreading anti-state propaganda.<sup>24</sup> Attacks on HRDs were stepped up in September 2004, with a spate of arbitrary arrests and prosecutions. Journalists were particularly targeted and several journalists involved in human rights work are now in prison solely for non-violently expressing their opinions. The UN General Assembly in December 2004 expressed serious concern at “the continuing persecution, including through ...arbitrary sentencing to prison of HRDs”<sup>25</sup>

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- 22 PEN American Centre, ‘Honorary Member Akbar Ganji’, <<http://www.pen.org/freedom/hm/ganji.htm>>
- 23 Commission on Human Rights, ‘Report submitted by the Special Rapporteur on the right to freedom of opinion and expression, Ambeyi Ligabo, Mission To The Islamic Republic Of Iran’, 12 January 2004, E/CN.4/2004/62/Add.2, § 66
- 24 Amnesty International, ‘Report 2005 – Iran’, <<http://web.amnesty.org/report2005/irn-summary-eng>>
- 25 United Nations General Assembly Resolution 59/205, adopted on December 20 2004 by a vote of 71 in favour, 54 against and 55 abstentions.

The net result of Tehran's attitude towards HRDs is a highly intimidatory environment in which self-censorship and fear prevail, rendering it extremely difficult for Iran's increasingly numerous and self-confident HRDs to carry out their work, particularly in the wake of the September 2004 crackdown. Moreover, lower level harassment and bureaucratic obstructionism are inhibiting the activities of the human rights sector. HRDs are routinely issued with judicial summons and interrogated as a result of their work, for example Dr Roya Toloui, founding member of a non-violent Kurdish women's group, was interrogated after speaking out on the government's refusal to register the group. The prosecutor claimed her public comments jeopardised national security.<sup>26</sup> Also in Iranian Kurdistan members of the legally recognised NGO Association for the Defence of Children's Rights (Kanoun-e Defa' az Hoqouq-e Koudekan) were interrogated, threatened and subject to a judicial summons, seemingly as a result of their human rights work.<sup>27</sup>

Iranian authorities may also refuse to register NGOs in what cannot be described as a transparent process, substantially impeding their capacity to operate. HRDs can also be banned from travelling abroad,<sup>28</sup> and public meetings are subjected to strict registration requirements that significantly restrict HRDs' freedom to assemble. A meeting against capital punishment for juveniles organised by Shirin Ebadi, 2003 Nobel Peace Prize recipient, was denied authorisation by the Ministry of Foreign Affairs.<sup>29</sup> Journalists seeking to expose human rights abuses are challenged by the almost total absence of independent media; virtually all independent publications have been closed down and prominent dissident writers have been imprisoned or forced into exile. 'Blogging', which in the absence of an independent media plays a pivotal role in exposing breaches of human rights, exchanging ideas, building awareness of rights and putting pressure on state violators, has been the subject of concerted, systematic repression. In October 2004 six bloggers and online journalists were charged with 'acting against national security, disturbing the public mind and insulting sanctities'.<sup>30</sup>

#### HRDs in Iran face obstacles to gaining accurate information about human rights

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- 26 Human Rights First, 'Kurdish Women's Rights Activist Summoned to Revolutionary Court in Iran', 6 April 2005, <[http://www.humanrightsfirst.org/defenders/hrd\\_iran/alert040605\\_kurd.htm](http://www.humanrightsfirst.org/defenders/hrd_iran/alert040605_kurd.htm)>
  - 27 Amnesty International, 'Iran: Threats against Kurdish HRDs must stop', 3 March 2005 <http://web.amnesty.org/library/Index/ENGMDE130102005?open&of=ENG-IRN>
  - 28 Two members of the Human Rights Defenders Center (Mohammad-Ali Dadkhah and Mohammad Seyfzadeh), Azam Taleghani, head of the Society of Islamic Revolution Women of Iran, and Mohammad Maleki, former Dean of Tehran University, are currently banned from travelling. International Federation for Human Rights, Annual Report 2004, 'Human Rights Defenders on the Front Line', 14 April 2005
  - 29 International Federation for Human Rights, Annual Report 2004, 'Human Rights Defenders on the Front Line', 14 April 2005
  - 30 BBC News, 'Iran cracks down on blog protests', 13 October 2004, <[http://news.bbc.co.uk/2/hi/middle\\_east/3740336.stm](http://news.bbc.co.uk/2/hi/middle_east/3740336.stm)>

violations in the country. The more pressure is mounted on Tehran to respect human rights, the harder it appears to try to cover its tracks. The climate of fear deliberately fostered among those disposed to publicise human rights violations is accompanied by strategies designed to hamper reporting on state practices breaching human rights standards. A recent example is the attempt by secret squads operating under the authority of the Iranian judiciary to torture detained journalists into writing ‘confession letters’ describing detention conditions as “satisfactory”, in order to cover up illegal detention and torture.<sup>31</sup> It has also been alleged that the Iranian judiciary has sought to conceal the torture of journalists and civil society activists by compelling victims to appear on television and declare that they have been well treated, after former Member of Parliament Ali Mazroi implicated the judiciary in the torture of detainees in a public letter.<sup>32</sup>

#### c. Syria

Syria has been under emergency rule since 1963. It was thought that the presidency of Bashar al-Assad, beginning in 2000, would herald a new era of reform, and from this time the human rights organisation Committees for the Defence of Democratic Liberties and Human Rights (CDF) has been able to operate to some extent. However, freedom of expression and association are severely limited and non-violent criticism of the government is met with harassment and intimidation.

HRDs are a common target of the state and, although there was some relenting in Damascus’ hard-line approach in 2004, 2005 has seen a renewed crackdown. In Syria’s current climate, the Al-Assad presidency has used its exceptional powers to subject HRDs to arrest, summons to interrogation before the military courts, arbitrary detention and detention without access to a lawyer or family members, prolonged prison sentences on the basis of vaguely worded convictions, intimidation and prohibitions on leaving the country.

The CDF and its President, Lawyer Aktham Nu’aisse, have been particularly targeted. The group published an annual report on human rights in Syria and has peacefully demonstrated in favour of the lifting of the state of emergency. Nu’aisse, who has faced repeated harassment for his activities in favour of human rights, was charged in April 2004 with ‘publishing false news to cause public anxiety’ and ‘opposing the objectives of the revolution’.<sup>33</sup> He was released on bail on 17 August

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<sup>31</sup> Human Rights Watch ‘Iran: Torture Used to Obtain ‘Confessions’, December 7 2004, <<http://hrw.org/english/docs/2004/12/06/iran9785.htm>>

<sup>32</sup> Human Rights Watch, ‘Iran: Judiciary Uses Coercion to Cover Up Torture’, December 20 2004, <<http://hrw.org/english/docs/2004/12/17/iran9913.htm>>

<sup>33</sup> Amnesty International, ‘Annual Report 2005 – Syria’, <<http://web.amnesty.org/report2005/syri>>

2004 and his trial has since been repeatedly postponed. If found guilty, Naisse faces up to 15 years in jail. Another recent target of government persecution has been the Board of Directors of the Jamal al-Atassi Forum, nine of whom were arrested in May 2005 after a statement by exiled Muslim Brotherhood member Sadr Al-Din Bayanouni calling for human rights reforms in Syria was read at a Forum meeting. They were detained without access to lawyers or family and without charge for six days before all but one were released. Ali Al-Abdullah, who read the statement, was subsequently transferred to the State Security Court where he is likely to be charged with promoting an illegal organisation; an offence punishable by a sentence of death, though this is usually commuted to 12 years imprisonment.<sup>34</sup>

Developments in Iraqi Kurdistan and the renewed self confidence of the Kurds as demonstrated in the Qamishli riots have sparked renewed fear of demands for Kurdish secession among the Syrian leadership. Consequently, when Kurds attempt to challenge the repression they face at the hands of the Syrian state and claim their civil, political and cultural rights, they are met with arrest, imprisonment and, increasingly, ill-treatment or torture. Seven Kurds were given sentences of one and two years imprisonment for ‘belonging to a secret organisation’ and ‘attempting to sever part of the Syrian territory and annex it to a foreign entity’ after taking part in a peaceful demonstration in Damascus calling for respect for the rights of Syrian Kurds.<sup>35</sup> They claimed during their trial to have been tortured in detention and held in solitary confinement.<sup>36</sup>

Lower level impediments to the activities of HRDs include the difficulties faced by independent associations in obtaining legal recognition. Two prominent human rights NGOs, the CDF and the Human Rights Association in Syria (HRAS) are not legally recognised.

The capacity of HRDs to assemble and peacefully demonstrate in favour of improved human rights protection is greatly inhibited in Syria. A peaceful demonstration of over 400 members and supporters of the CDF on 8 March 2004 calling for an end to the state of emergency and the introduction of reforms was met with violent repression and 102 arrests.<sup>37</sup> It was also alleged that demonstrators intending to take

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<sup>34</sup> Syrian Human Rights Commission, ‘Death of Sheikh Muhammad Ma’shoq al-Khaznawi’, 1 June 2005, <<http://www.shrc.org.uk/data/aspx/d9/2229.aspx>>; Amnesty International, ‘Syria: End crack-down on HRDs’, 25 May 2005, <<http://web.amnesty.org/library/Index/ENGMDE240342005>>

<sup>35</sup> Amnesty International, ‘Annual Report 2005 – Syria’, <<http://web.amnesty.org/report2005/syr-summary-eng>>

<sup>36</sup> Amnesty International, ‘Syria: Unfair trial of Kurdish prisoners of conscience and torture of children is totally unacceptable’, 29 June 2004, <<http://www.amnestyusa.org/countries/syria/document.do?id=80256 DD400782B8480256EC2003AD12E>>

<sup>37</sup> International Federation for Human Rights, ‘Annual Report 2005 – Mahgreb and the Middle East’,

part in the demonstration were intimidated by security forces and consequently withdrew.<sup>38</sup> Subsequent to the demonstration a number of CDF members were subject to retaliatory attacks: Ahmad Khazen and Hassan Watfa both received sentences of 45 days imprisonment under state of emergency legislation and subsequently decided to stop their activities in defence of human rights. Another peaceful demonstration held by Kurdish children and their parents in front of UN offices was violently dispersed and several participating parents were arrested and later given prison sentences.<sup>39</sup>

Syria has no independent media, and in 2004 the license of the only independent newspaper was withdrawn.<sup>40</sup> All newspapers issued in Syria are either official or semi-official.<sup>41</sup> Use of the internet is heavily restricted: websites are frequently blocked and anonymous email services are often unavailable so that internet users have to use accounts which can be easily checked by the security services.<sup>42</sup> Those browsing internet sites not approved by the General Department of Communications face punishment,<sup>43</sup> and five men were detained for disseminating material critical of the government which they downloaded from a banned internet site.<sup>44</sup>

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31 March 2005, <<http://www.fidh.org/IMG/pdf/Maghrebang.pdf>>

38 Frontline, 'Human rights defenders hold demonstration in Syria, March 2004', 18 June 2004, <<http://www.frontlinedefenders.org/news/893>>

39 Syrian Human Rights Commission, 'Annual Report 2004', 26 June 2004, <<http://www.shrc.org.uk/data/aspx/10NEWSEN.aspx>>

40 Syrian Human Rights Commission, 'Annual Report 2004', 26 June 2004, <<http://www.shrc.org.uk/data/aspx/10NEWSEN.aspx>>

41 Syrian Human Rights Commission, 'Annual Report 2004', 26 June 2004, <<http://www.shrc.org.uk/data/aspx/10NEWSEN.aspx>>

42 International Federation for Human Rights, 'Annual Report 2005 – Mahgreb and the Middle East', 31/03/2005, <<http://www.fidh.org/IMG/pdf/Maghrebang.pdf>>

43 Syrian Human Rights Commission, 'Annual Report 2004', 26 June 2004, <<http://www.shrc.org.uk/data/aspx/10NEWSEN.aspx>>

44 Human Rights Watch, 'World Report 2005 – Syria', <<http://hrw.org/english/docs/2005/01/13/syria9812.htm>>



### 3. Why protect Human Rights Defenders?

In recent years mounting attention has been focused on the situation of HRDs and their treatment at the hands of states. It is recognised among the international community that HRDs play a vital role in furthering the objectives of the human rights movement, and that their growing influence has been met by state attempts to hinder their work and so quell criticism and dissent. Manifestations of state hostility towards HRDs suggest that a state has not embraced democratic principles. The situation of women HRDs and HRDs operating in conflict situations deserves separate consideration since they face especial challenges to their capacity to effectively protect and promote human rights.

The changes in the human rights environment prompted by the events of September 11<sup>th</sup> have had highly adverse consequences for HRDs, and upholding their right to freely conduct their activities without undue state interference is perhaps now more important than ever.

#### *a. The importance of the role of human rights defenders*

The responsibility for enforcing human rights lies with states. It is states who sign up to international human rights conventions, undertaking international obligations to respect specific rights within their jurisdictions, and it is states that are responsible under domestic law for protecting rights. At a domestic level state responsibility for upholding human rights may be imposed where an international treaty is directly applicable at a national level (in ‘monist’ states), where rights are incorporated from international treaties through additional legislation (in ‘dualist’ states), or otherwise protected through constitutional provisions or other domestic legislation.<sup>45</sup>

Notwithstanding the primary responsibility of the state for ensuring that human rights are upheld, it is unequivocal that HRDs play a critical role in this endeavour, particularly since states are also the main violators of human rights. Indeed, the stimulus of HRDs’ work has been decisive in the advancement of the human rights

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45 The UK’s Human Rights Act 2000 is an example.

movement during the latter half of the twentieth century and beyond.<sup>46</sup> From the issuing of the 1948 UDHR, individuals, groups and associations have striven bravely and against considerable odds to achieve more just societies, and have accordingly strengthened human dignity and lessened many of the sufferings of the oppressed and the marginalised. The work of HRDs in collecting information on state behaviour is central to the process of discovering the truth about human rights conditions, particularly in more oppressed parts of the world. HRDs also disseminate the message of human rights, and they mobilise and energise others to think about human rights.<sup>47</sup> HRDs have the capacity to influence state behaviour by shaming governments into compliance with their human rights obligations. They can further contribute positively to the evolution of government policy and legislation and, in utilising international and domestic legal and quasi-legal mechanisms, ensure that states are accountable for their behaviour. The UN estimated that the number of human rights NGOs rose from around 1,300 in 1960 to more than 36,000 in 1995, and it has certainly increased again since then.<sup>48</sup> According to the Secretary-General of the UN:

Human rights defenders are at the core of the human rights movement the world over... Human rights defenders contribute to the improvement of social, political and economical conditions, the reduction of social and political tensions, the building-up of a peaceful environment, domestically and internationally, and the nurturing of national and international awareness of human rights.<sup>49</sup>

Indeed, in many ways HRDs, and particularly human rights NGOs, are the central component of the human rights protection system. Some international organisations with a human rights mandate are overly bureaucratic, under-resourced and/or too frequently mired by the political interests of their state-based constituent parties or funders. The work of others is authoritative and highly regarded, but nonetheless relies upon monitoring and reporting by NGOs and other HRDs. State initiated advancement of human rights standards and inter-state enforcement of human rights is rare. This is because unlike the situation with, say, a trade treaty or a treaty of economic co-operation where one state loses out by another's non-cooperation or breach, states will usually have no interest at stake where another state party

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<sup>46</sup> Henry J Steiner & Philip Alston, *International Human Rights in Context* (1996, Clarendon Press, Oxford) p938

<sup>47</sup> See Henry J Steiner & Philip Alston, *International Human Rights in Context* (1996, Clarendon Press, Oxford) p938

<sup>48</sup> See Henry J Steiner & Philip Alston, *International Human Rights in Context* (1996, Clarendon Press, Oxford), p940

<sup>49</sup> UN General Assembly, 'Human rights defenders: Report of the Secretary General', A/55/292, 11 August 2000, <<http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/007cd95d20846be5c125696e004aa3bf?OpenDocument>>

fails to abide by its international human rights treaty obligations towards its own citizens. Increasingly, states and institutions such as the EU are incorporating a human rights element into their external relations, but this is only one element of a much broader range of economic, political and other considerations vying for precedence, as the talks over the EU-Syria Association Agreement and, indeed, the EU-Turkey accession negotiations clearly show. States and international bodies no doubt have an important role to play in implementing human rights, but where a state is identified as violating human rights, where it is pressured into altering its behaviour, or where new human rights standards are advanced, this will most often be a result of advocacy by HRDs.<sup>50</sup>

The impact of HRDs is by no means limited to large, well-resourced NGOs with international mandates. Increasingly, these organisations are recognising the valuable role played by local HRDs both in collecting accurate information on the human rights situation and ensuring that advocacy work is based on a true understanding of what are locally perceived to be the most pressing human rights issues. Many international NGOs are now more open to input from the ground; they operate in a more inclusive fashion, building partnerships with locally based individuals, groups and associations involved in human rights.

It is also worth noting that while the term HRDs incorporates anyone peacefully working to uphold internationally recognised human rights regardless of whether they are an employee of a high profile human rights NGO or an individual coordinating a demonstration against environmental degradation of local farmland, the human rights sector has grown enormously in its professionalism over the past two decades. NGOs in particular have a far more professional output, they disseminate their messages more clearly, are better funded and have greater levels of expertise. They contribute materially to the emergence of new human rights standards such as the 1989 Convention on the Rights of the Child, the landmine ban and the Statute of the International Criminal Court, and have been at the forefront of the development of new institutional arrangements such as the establishment of the various UN Special Rapporteurs.<sup>51</sup> HRDs are also increasingly involved in delivering services such as human rights training to the judiciary and law enforcement agencies in partnership with governments.

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- 50 See Henry J Steiner & Philip Alston, *International Human Rights in Context* (1996, Clarendon Press, Oxford), p940
- 51 Peter Van Tuijl, 'NGOS and Human Rights: Sources of Justice and Democracy', in *Journal of International Affairs* 52 1999 493

*b. Hostility towards Human Rights Defenders*

In furthering their quest for the better protection and promotion of human rights, HRDs have incurred many obstacles, including to their personal safety. The reception of HRDs by states varies enormously across the world. As discussed above, HRDs may work constructively with the state to further human rights, but elsewhere their activities are regarded as an attack on the supremacy of the state over its citizens, or as pertaining to the promotion of interests which oppose the interests of the state. Conceptions of the functions of the state will sometimes construe state control of all aspects of public life as legitimate, including of the protection of human rights. HRDs who seek to go beyond state-based human rights initiatives will consequently find themselves subjugated or, at the least, discredited. A strong nationalist ethos can cause criticism of state behaviour by HRDs to be interpreted as an attack on the state itself or its institutions, and thus as traitorous, unpatriotic or ‘insulting’ to the state. Where HRDs advocate for improved rights for minorities, their work may be officially portrayed as undermining national integrity. Most often, though, a state will simply wish to cover up its aberrant behaviour.

Where a regime is unreceptive to the message of human rights, governments use various mechanisms to impede or prevent the activities of HRDs: they may use the law to strategically reduce the civil space available to HRDs, for example by enforcing provisions allowing the closure of groups on spurious pretexts or demanding NGOs’ precise conformity with a series of complex and demanding administrative requirements where failure to comply can result in sanctions. Prior notice requirements for public assemblies are invoked to prevent human rights press conferences and demonstrations, and charges are brought against HRDs where they criticise state behaviour under criminal defamation laws or laws prohibiting ‘insulting’ the state, at times resulting in long prison sentences or prohibitive fines. Often such charges will be too vaguely worded to comply with the requirements of the rule of law, and brought where HRDs are merely exercising their legitimate rights. At times, HRDs may face a string of spurious judicial and administrative proceedings aimed principally at interrupting their work and coercing them into giving it up. HRDs are commonly placed under surveillance or have their personal documents such as identity cards confiscated. States may contest the credibility of HRDs or defame them; one common practice is to conduct public vilification campaigns through state-controlled media attacking HRDs’ integrity. Such campaigns may publicly misrepresent HRDs as politically motivated, or portray them as rebels or terrorists.

More radical measures include the use of force by security personnel to intimidate individual HRDs – HRDs themselves or occasionally their families suffer threats, beatings, raids involving the destruction of their property, the violent dispersal of peaceful public meetings, and in extreme cases serious physical attacks, killings

or ‘disappearances’. Where illegal attacks are made on HRDs, states will often cover them up by failing to investigate them or bringing charges against their perpetrators, creating a climate of impunity that encourages and perpetuates these violations. Calling on officials to conduct impartial investigations will often in itself bring about further harassment, intimidation or violence. HRDs are also subject to being placed in preventive detention without access to the courts, where they are vulnerable to torture and ill-treatment aimed at forcing confessions or as reprisals for their censure of state actions.

Legislation designed to protect national security, and particularly to counter terrorism, is increasingly used to silence or take punitive actions against HRDs. For example, many countries have legislation rendering it a criminal offence to publish or disseminate information about groups engaged in terrorist activity, and such laws are used to prosecute HRDs who uphold the rights of terrorist suspects, advocate for the protection of rights seen to be linked to terrorist groups’ agendas, or even simply share the ethnicity of terrorist groups.

Antagonism directed at HRDs is not limited to the non-governmental sector. Public sector employees mandated to protect human rights, such as members of human rights ministries, national human rights commissions and ombudsmen, are also made objects of attacks and intimidation where they make statements counter to official lines or delve too deeply into state administered human rights violations.

In some states abuses against HRDs are systematic and constitute an integral element of state policy. They are usually commissioned by state security officers – though a recent rise in abuses by courts and administrative bodies such as Ministries of the Interior has been noted<sup>52</sup> – and are of a particularly serious order. Otherwise, local officials may act out of habit or out of individual persuasions to quash the messages of HRDs with varying degrees of authorisation, or because the central organs of the state have little power to control such individuals. It should be stressed that such scenarios in no way diminish a state’s responsibility for the actions of its officials; the onus is unequivocally on states to ensure the realisation of human rights obligations.

Although more democratic states are unlikely to bring groundless judicial charges against HRDs or, indeed, to torture or ill-treat them, it should be stressed that antagonistic relationships between HRDs and the state can exist in liberal democracies and that such regimes may still place unreasonable pressure on HRDs. The UN Special Representative notes that:

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<sup>52</sup> UN Commission on Human Rights, ‘Promotion and Protection of Human Rights: Human Rights Defenders - Report submitted by Hina Jilani, Special Representative of the Secretary-General on the situation of human rights defenders’, E/CN.4/2004/94, 15 January 2004, §75

reports of violations of the rights of human rights defenders that came to her attention concern countries in all regions of the world and are certainly not confined exclusively to those where the political and institutional arrangements are implicitly or explicitly undemocratic.<sup>53</sup>

Disproportionate censorship provisions are far from uncommon, as are unwarranted restrictions on public access to government information. There are also growing instances of western governments and media putting pressure on HRDs to reign in their criticism of state policies, or openly condemning their activities as ‘disloyal’, too concerned with unreasonable legal niceties, or unappreciative of the need for state freedom to do whatever is necessary to fight terrorism. In the US, for example, President Bush recently referred to an Amnesty International report criticising US detention of terrorist suspects in Guantánamo Bay as “absurd”, condemning the allegations as being made by “people who hate America”.<sup>54</sup>

### *c. Human rights defenders and democratisation*

In general, there is an evident relationship between a state’s attitude towards HRDs and that state’s commitment to human rights and democratic principles. State levels of tolerance of HRDs, and the extent to which they are able to contribute to the administration of the state, will form an indicator of that state’s level of democratisation. Denigration of HRDs and measures aimed at impeding their effectiveness suggest a clinging to pre-democratic notions of the ascendancy of the state over its citizens and a flimsy adherence to human rights standards. A state may fear that tolerating dissent will appear a sign of weakness which undermines its authority, or that the expression of reasonable concerns over its record on human rights and democratisation will challenge the legitimacy of its methods of governing. Regimes with repressive tendencies will often lack democratic mandates and rely upon a monopoly of force and total control over information sources to retain their authority. Often, governments will simply wish to conceal their less palatable practices, and harassment and attacks on HRDs usually amount to attempts to avert blame, silence critics of government human rights practices or divert attention from reports of human rights violations.<sup>55</sup> Undemocratic regimes frequently regard the institutions of the state as valid instruments to be used in their attempts to maintain

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53 UN Commission on Human Rights, ‘Promotion and Protection of Human Rights - Human Rights Defenders: Report submitted by Ms. Hina Jilani, Special Representative of the Secretary-General on human rights defenders, pursuant to the Commission on Human Rights resolution 2000/61, E/CN.4/2002/106, 27 February 2002, § 46

54 CNN, ‘Bush: Amnesty report ‘absurd’’, May 31 2005, <<http://www.cnn.com/2005/POLITICS/05/31/bush.newsconference.ap/>>

55 Amnesty International, “Essential actors of our time”: Human rights defenders in the Americas, 10 November 2003, <<http://web.amnesty.org/library/index/engamr010092003>>

a stranglehold on power and protect their own administrations.

An absence of legislative provisions or official policy hampering the activities of HRDs will reflect some allegiance to human rights and a degree of democratisation, as will efforts to combat the unofficial use of intimidatory tactics against HRDs. Where HRDs are allowed to operate freely and states are responsive to their criticisms and proposals, this points to a strong culture of human rights, democratic maturity and a regime sufficiently at ease with itself to countenance peaceful dissent. Such regimes show faith in their citizens' commitment to democratic principles, thus obviating the need for more repressive tactics of government.

In addition to state treatment of HRDs acting as a gauge of democratisation, there is also the more obvious point that HRDs themselves are key contributors to the process of democratisation. A well-established and robust body of HRDs strengthens the protection and promotion of human rights, and so contributes to the evolution of a diverse and vibrant civil society that enriches democratic governance. Many typical activities of HRDs enhance government accountability, combat corruption, support the independence of the judiciary, tackle impunity and add a human rights perspective to policy development and the drafting of new legislation. Each of these elements fosters progress towards good governance and the rule of law, which in turn ensure that democracy is healthy and sustainable.<sup>56</sup> HRDs also broaden participation in public affairs by assisting marginalised groups to access decision-making structures, disseminating alternative knowledge and information, and formally monitoring election processes.<sup>57</sup>

#### *d. The effects of the events of September 11<sup>th</sup>*

The events of September 11<sup>th</sup> have yielded dramatic changes in the global human rights environment. The tragic attacks in New York and Washington precipitated a movement towards a 'security first' agenda among leading democratic powers which prioritises security strategies and downgrades the importance accorded to human rights. The 'War on Terror' has presented a new human rights paradigm which threatens to undermine the very foundations of the values, principles and standards which the human rights movement has struggled over decades to establish. The memo by Counsel to the US President Alberto Gonzales stating that the 'War on Terror' is a new kind of war which "renders obsolete Geneva's

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56 Hina Jilani, Special Representative of the United Nations Secretary General on Human Rights Defenders, 'Human Rights Defenders and Democratization', paper presented to the Fifth International Conference of New or Restored Democracies, Ulaanbaatar, Mongolia, 10-12 September 2003

57 Hina Jilani, Special Representative of the United Nations Secretary General on Human Rights Defenders, 'Human Rights Defenders and Democratization', paper presented to the Fifth International Conference of New or Restored Democracies, Ulaanbaatar, Mongolia, 10-12 September 2003

strict limitations on questioning of enemy prisoners and renders quaint some of its provisions”<sup>58</sup> is indicative of the changing priorities accorded to what were once viewed as inviolable rights.

The consequences of changing attitudes to human rights for HRDs are serious. The relegation of the status of human rights means that HRDs’ mandates are more difficult to fulfil. The rhetoric emanating from powerful western nations advocating a strong stance against terror is being taken advantage of by opportunistic regimes predisposed to repression, who are justifying measures which violate human rights on the basis of the need to fight terrorism. Often the link between the measures enacted and any terrorist threat faced is spurious and leaders are merely exploiting the current climate to further their own ends. The UN Special Representative has noted that the cover of “reasonable restrictions” on rights adopted in the name of security has been used by states to enforce laws and adopt policies that curtail rights in a manner that destroys the very existence of these rights, and that there is sometimes no nexus between these restrictions and any legitimate security objective.<sup>59</sup> The US has been slow to criticise any state enacting such laws, measures or policies if it identifies itself as an ally in the ‘War on Terror’ and, indeed, has lost much of its credibility to do so.

The situation is further compounded by the fact that discourse on human rights and national security often puts forward the idea that respecting human rights standards limits a state’s capacity to protect its citizens, or that measures protecting national security are somehow opposed to the realisation of human rights. In short, national security and human rights are portrayed as incompatible, giving rise to the notion that the state must choose between upholding one or the other. This idea creates a framework within which it is difficult for HRDs to gain support for their work. The human rights movement is attempting to counter these conceptions by arguing that counter-terrorism strategies and human rights in fact have the same aim: to ensure that people can live in freedom and security, and that the most effective measures to protect security are those which do not breach human rights.

There has also been a dramatic upsurge in regimes manipulating counter-terrorism legislation and other means of repression to restrict the work of HRDs or to target HRDs themselves. Exceptional legislative measures or executive orders introduced ostensibly to fight terrorism frequently contain very broadly worded definitions of what or who comprises a threat, and its ‘exceptional’ nature will often grant state authorities wide powers to define an individual as a threat and thus someone against

<sup>58</sup> Washington Post, ‘Gonzales Pledges to Preserve Civil Liberties’, 6 January 2005

<sup>59</sup> UN General Assembly, ‘Report of the Special Representative of the Secretary-General on Human Rights Defenders, in accordance with General Assembly resolution 57/209’, 18 September 2003, § 12

whom the legislation applies. This situation paves the way for the arbitrary exercise and deliberate misuse of power by over-zealous state authorities aiming to silence non-violent critics of state policies. Now, more than ever, individuals and groups peacefully protecting and promoting human rights face prosecution, detention or other infringements of their rights as a result of being opportunistically branded ‘subversives’, ‘terrorists’ or ‘threats to national security’ as regimes attempt to deflect criticism and dismiss HRDs’ claims.

Ways in which security legislation has been misapplied to target HRDs includes the use of legislative provisions on internal security, official secrets and sedition to prevent HRDs from accessing the information they need to effectively analyse human rights situations and to prosecute them where they disseminate information on the observance of human rights standards.<sup>60</sup> Reporting on human rights violations, and particularly criticising government security policies, has repeatedly been deemed a threat to national security, and governments have retaliated against such reporting by charging HRDs with defaming state authorities, spreading false information or damaging the reputation of the state. Security legislation is being increasingly used to justify refusals to register human rights organisations, and peaceful assemblies are arbitrarily banned on the pretext of maintaining public order. New powers of arrest and preventative detention on the basis of undisclosed evidence are frequently used to harass and intimidate HRDs.

#### *e. Human rights defenders in conflict and post-conflict societies*

The role of HRDs in an armed conflict situation is particularly important because of the likelihood of the occurrence of serious breaches of human rights. In addition, conflicts almost always stem from or are intensified by human rights violations. HRDs can contribute to addressing these violations at their outset, limiting their impact and combating impunity.<sup>61</sup> However, HRDs operating in conflict and post-conflict societies face especial threats and challenges. Often, a state will use the context of the conflict as a cover to place restrictions on the activities of HRDs, particularly where it is concerned to prevent revelations of its behaviour during the conflict. It is true that some human rights can be legitimately subject to certain limitations in an emergency, but human rights activity in itself cannot be suspended whatever the exigencies of a situation may be.<sup>62</sup>

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60 UN General Assembly, ‘Report of the Special Representative of the Secretary-General on Human Rights Defenders, in accordance with General Assembly resolution 57/209’, 18 September 2003, § 16

61 UN General Assembly, ‘Report of the Special Representative of the Secretary-General on Human Rights Defenders, in accordance with General Assembly resolution 57/209’, 18 September 2003, § 60

62 UN General Assembly, ‘Report of the Special Representative of the Secretary-General on Human

States or rebel groups involved in armed conflicts may also directly target HRDs. The trend towards denouncing HRDs as being influenced by political beliefs or being tools of the other 'side' is particularly pronounced in conflict and post-conflict situations, and such accusations where made publicly can leave HRDs vulnerable to threats, intimidation, arbitrary arrest, detention or killings.

HRDs who focus on the realisation of minority rights or self-determination are especially susceptible to attack, more so after the diminution in respect for human rights after September 11<sup>th</sup>. They are commonly accused by the state of being implicated in the conflict-related actions of the military wings of the minority or people on whose behalf they are working, and are denounced accordingly. This means of dealing with HRDs is damaging not only because it impedes the crucial work of HRDs in upholding human rights standards in situations where they are perilously at risk, but also because it excludes those able to make a valuable contribution to the peaceful resolution of a conflict from the negotiating table. States involved in civil conflicts will sometimes harbour intense fears that any concessions granted will loosen their grip on power or lead to the break-up of the country. They will accordingly give precedence to military solutions, potentially leading to the escalation of conflict, and refuse to address what are commonly the underlying causes of a conflict by engaging with those peacefully pressing for improved protection of minorities or the devolution of central power.

#### *f. Women human rights defenders*

Across the globe, women are fighting for the better promotion and protection of human rights. The endeavours of women HRDs include, but are by no means limited to, the protection of women's rights. Women make a powerful and unique contribution to the struggle for human rights which vastly enriches the human rights movement and empowers women worldwide. However, women HRDs meet with a compound array of gender-specific obstacles, pressures and challenges which are often additional to those faced by HRDs generally, and against which they may require special protection.

The position of women in society, and patriarchal conceptions of the traditional role of women, tends to mean that concerns raised by women HRDs are less likely to be taken seriously. It is not regarded as appropriate in some cultures for women to engage in public life and proposals put forward by women which relate to the traditionally male-dominated world of state governance are not taken seriously. The work of women HRDs is discredited or dismissed by governments and not afforded

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Rights Defenders, in accordance with General Assembly resolution 57/209, 18 September 2003, § 49

due consideration, detracting from its perceived credibility and increasing the vulnerability of women HRDs to stigmatisation and discrimination. Even women HRDs' male colleagues will at times regard their involvement in human rights work as inappropriate and accordingly harass them or discriminate against them. Bids by women HRDs for acceptance of the legitimacy of their work are further complicated in some societies by the requirement that men defer to women in public, making it difficult for women to transgress these patriarchal stereotypes and question men over human rights violations.

Furthermore, women face gender specific human rights violations including honour killings, polygamy, female genital mutilation and gender violence. Where women challenge these practices they may also be challenging religious precepts, customary norms of society and culturally rooted patriarchal stereotypes about femininity and the status of women. Indeed, the traditional role of women is seen in many regions as integral to a society's culture, making it markedly difficult to resist cultural practices which violate human rights. In this context, restrictions on the work of women HRDs go beyond state legislative provisions, which may be largely secular; in many states customary law and religious belief continue to exert powerful controls over women. As a result, women HRDs suffer stigmatisation from forces in society, and even pressure from within their own families and communities to stop their human rights work. State authorities are frequently complicit in the targeting of women HRDs who oppose conventional customs through their failure to provide adequate protection to such women.

It is also the case that women are precluded from contesting laws and conventions which unjustly restrict their rights where women are not accepted as qualified to interpret religious scriptures.<sup>63</sup> Arguments put forward by women in favour of the full realisation of their rights are therefore not treated as legitimate in this context, or at least are not heard on an equal footing as those asserted by men.

Women HRDs face practical obstacles to their work. Many have day-to-day responsibilities, including caring for children or elderly relatives, which render it difficult to carry out their human rights activities, particularly where there is an ever-present threat of arrest or attacks on their physical integrity.<sup>64</sup>

Harassment and intimidation of women HRDs can also take gender-specific forms. Women may be dismissed from their jobs where they challenge preconceptions of gender roles at work, for example through trade union activity. A typical means

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63 UN, Fact-sheet No. 29, 'Human Rights Defenders: Protecting the Right to Defend Human Rights,' <<http://www.unhchr.ch/html/menu6/2/fs29.pdf>>

64 UN, Fact-sheet No. 29, 'Human Rights Defenders: Protecting the Right to Defend Human Rights,' <<http://www.unhchr.ch/html/menu6/2/fs29.pdf>>

of discrediting women HRDs is through gender-related verbal abuse and public attacks on their character or standing in society, contesting their probity or morality. Women HRDs are also vulnerable to sexual harassment, rape and sexual torture or ill-treatment in detention.

## 4. Human Rights Defenders: Turkey's International Obligations

Where HRDs are intimidated, harassed or attacked, such behaviour will often breach recognised and binding international human rights standards. The methodologies employed by states against HRDs are diverse, and accordingly raise issues under a broad range of rights. Those focused on here are those which are violated in some of the most common and the most serious state actions aimed at silencing HRDs, and include freedom of expression, freedom of association and assembly, the prohibition on torture and ill-treatment, the right to privacy, the right to liberty and security of the person and the right to take part in public affairs.

In this context, Turkey's international obligations under the UN human rights treaties, particularly the International Covenant on Civil and Political Rights (ICCPR), are of significance, as are the European Convention on Human Rights (ECHR) and provisions protecting women's rights.

In addition to these relevant provisions of international human rights law, the international human rights community has over recent years responded to the important role played by HRDs and the risks that they face by developing a protective regime specifically focused on their rights. The principle instrument is the UN's 1998 Declaration, which constitutes a non-binding codification of standards in this area. A UN Special Representative on Human Rights Defenders was appointed in 2000.

Of particular importance in the current climate are Turkey's EU obligations as it moves towards EU accession. Like all prospective EU members Turkey, which has a particularly troubled human rights record, is obliged to demonstrate respect for human rights in order to fulfil the political elements of the Copenhagen Criteria for EU membership before being admitted as a formal candidate for accession. In December 2004 it was decided that Turkey had sufficiently fulfilled the Copenhagen Criteria and that she would assume candidature in October 2005, subject to a series of conditions which have since been fulfilled.

*a. International Covenant on Civil and Political Rights*

The ICCPR is the key international legal standard on civil and political rights, and many state acts against HRDs constitute breaches of the substantive rights it contains.

The right to freedom of expression is protected under Article 19, and includes “freedom to seek, receive and impart information and ideas of all kinds”. This right therefore protects not only the right of HRDs to freely disseminate information concerning human rights situations, but also their right to seek access to such information, for example regarding state records and statistics on human rights-related incidents. Article 19 also makes clear that freedom of expression applies “regardless of frontiers”, which has clear implications for state action to prevent co-operation by HRDs with foreign and international groups.

Freedom of expression is not an absolute right, and the circumstances under which it can lawfully be restricted are a common issue of contention where states endeavour to justify limitations imposed on the activities of HRDs. Any restrictions on the right must be prescribed by law and necessary either for the respect of the rights or reputations of others or for the protection of national security, public order, public health or morals. The fact that a restriction on freedom of expression is set out in national law is not sufficient in itself; it must also be ‘necessary’ to achieve one of the specified objectives. Where another measure imposing lesser restrictions on the right could have served the same purpose, the measure taken by the government is unlikely to be deemed ‘necessary’, and nor will a government measure fulfil these criteria if it bears no real functional relation to the stated objective. This has particular application to the fairly common scenario where governments impose restrictions on HRDs accessing or disseminating information in the name of preventing ‘threats to the state’ or maintaining public order.<sup>65</sup>

Article 22 protects the right to freely associate with others, and this is a right which states commonly breach in regard to HRDs. Typically, a series of onerous legislative and administrative provisions will prevent individuals from legally forming associations or from effectively operating associations where their activities are human rights-related.

The right to freedom of association can be limited in accordance with the same conditions as those necessary to restrict the right to freedom of expression, and the

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<sup>65</sup> The UN Special Representative notes that governments have often cited maintaining ‘public order’ or preventing ‘threats to the state’ as justifications for restricting HRDs’ freedom of expression. UN Commission on Human Rights, ‘Promotion and Protection of Human Rights: Human Rights Defenders - Report submitted by Hina Jilani, Special Representative of the Secretary-General on the situation of human rights defenders’, E/CN.4/2004/94, 15 January 2004, § 93

same observations apply since governments will often impose arbitrary or excessive restrictions on the creation and operation of associations.

The right of peaceful assembly is set out under Article 21. State authorities often prevent human rights demonstrations or public meetings, subject them to burdensome notification or other restrictive administrative requirements, or forcefully break them up. Such actions may be outside the law or the law itself may permit the placing of excessive restrictions on peaceful assembly. Article 21 requires that no restrictions be placed on the exercise of the right to peaceful assembly unless such restrictions are in conformity with the law and are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Again, restrictions on the right encountered by HRDs will often not meet this test.

Article 7 prohibits torture and cruel, inhuman or degrading treatment or punishment. HRDs, who may question the way a state is administered, disseminate information the state prefers to conceal or rally public support for human rights reform, are especially vulnerable to torture. Where they allege to be victims of torture, their allegations may be ignored and not investigated.

The prohibition on torture under Article 7 is non-derogable, absolute and, indeed, is a peremptory norm of international law; torture can never be justified in any circumstances. Article 7 together with Article 2(2)<sup>66</sup> imposes obligations on states to take all legislative and other measures necessary against the acts prohibited under the article. Interrogation rules and practices should be regularly reviewed, registers of detainees should be maintained, provisions should be made against incommunicado detention, state legal systems should effectively guarantee redress for acts contrary to Article 7 and complaints must be investigated promptly and impartially.

Under Article 17, individuals are protected from arbitrary or unlawful interference with their privacy, family, home and correspondence, and from unlawful attacks on their honour and reputation. Accordingly, no interference can take place which is not provided for by law. Furthermore, if the law does not accord with the provisions of the ICCPR or is otherwise unreasonable in the circumstances it may still be arbitrary and thus contrary to Article 17. This right offers protection to HRDs against certain prevalent forms of state harassment, including surveillance,

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<sup>66</sup> “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”

unauthorised or arbitrary searches of their homes and attempts to undermine their honour or reputations.

Article 9 prohibits arrest and detention which is arbitrary or not prescribed by law. This is of particular relevance to HRDs since they are routinely subject to arbitrary or unlawful arrest and detention without charge, and are denied access to a judge. Article 9(2) states that anyone who is arrested must be informed, at the time of arrest, of the reasons for his arrest and promptly informed of any charges against him, while Article 9(3) determines that any person arrested or detained has to be brought “promptly” before a judge.

Under Article 25, everyone has the right, without discrimination or unreasonable restrictions, to participate in public affairs. This right “covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels”<sup>67</sup> and thus states should not limit HRDs from participating in consultation processes or accessing structures and other procedures which permit public input into state governance.

The right to a remedy in the event of a breach of a convention right is set out in Article 2(3). Breaches of the rights of HRDs are frequently met with impunity. Any person claiming such a remedy must have his right determined by competent judicial, administrative, legislative or other authorities. Acts of torture, arbitrary killings or enforced disappearance give rise to a specific obligation to investigate and to punish perpetrators.

It is also worth noting that it flows from the obligations in Article 2(1) to “ensure” the rights set out in the Covenant and in Article 2(2) to “take the necessary steps” to give effect to them that governments will be obliged in certain circumstances to take action against acts committed by private persons or entities that would impair the enjoyment of Covenant rights, in so far as they are amenable to application between private persons or entities.<sup>68</sup> There may be circumstances where a failure to ensure Covenant rights as required by Article 2 resulting from a state party permitting prohibited acts by private persons, or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by them, would give rise to a violation.<sup>69</sup> A common complaint by HRDs is that the

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<sup>67</sup> Human Rights Committee, ‘General Comment 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)’, CCPR/C/21/Rev.1/Add.7, 12 July 1996

<sup>68</sup> Human Rights Committee, ‘General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’, CCPR/C/74/CRP.4/Rev.6, 21 April 2004

<sup>69</sup> Human Rights Committee, ‘General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant’, CCPR/C/74/CRP.4/Rev.6,

authorities take no action against abuses perpetrated by individuals not affiliated with the state.

*b. The European Convention on Human Rights*

Many of the rights contained in the ECHR which are relevant to HRDs are comparable to those set out in the ICCPR, and where provisions are substantially the same their content and particular relevance to HRDs is not reiterated in detail.

The right to freedom of expression, including freedom to hold opinions and to receive and impart information and ideas without interference by public authorities, is protected under Article 10. Article 10(2) sets out the conditions under which states can legitimately restrict this right. Limitations must be prescribed by law, they must be imposed for a convention reason (national security, territorial integrity or public safety, the prevention of disorder or crime, the protection of health or morals, the protection of the reputation or rights of others, preventing the disclosure of information received in confidence, or maintaining the authority and impartiality of the judiciary), and they must be necessary in a democratic society. This latter criterion requires that limitations serve a pressing social need and are proportionate to the legitimate aim pursued.

Under Article 11, everyone has the right to freedom of peaceful assembly and to freedom of association with others. These rights may be limited only where they fulfil the provisions of Article 11(2),<sup>70</sup> the contents of which are essentially similar to the test outlined in Article 10(2) for assessing restrictions on freedom of expression.

Article 3 prohibits torture and inhuman or degrading treatment or punishment.

The rights to respect for private and family life, home and correspondence are protected under Article 8. A public authority cannot interfere with the exercise of these rights except in accordance with the provisions of Article 8 (2),<sup>71</sup> which again

21 April 2004

- 70 "No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others." ECHR, Article 11(2)
- 71 "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." Article 8(2), ECHR

are substantially similar to those of Article 10(2) above.

Article 5 protects the right to the right to liberty and security of person. It mandates that an individual cannot be deprived of his liberty except in a series of specified circumstances, including where arrest or detention is effected in order to bring him before a court on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent him committing an offence or fleeing after having done so. Any deprivation of liberty must be carried out in accordance with the law. It therefore follows that states cannot arbitrarily arrest HRDs, as they frequently do, without “reasonable suspicion” that they have committed an offence – sometimes no charges are indeed contemplated when HRDs are arrested – or where it is not necessary to prevent them from committing an offence. In addition, detainees must be promptly informed of the any charges against them and be promptly brought before a judge, and they have the right to challenge the legality of their detention in court. HRDs frequently endure state harassment through being arbitrarily arrested and subject to lengthy detention, often beyond that contemplated by the law and without access to a court.

Under Article 13, everyone whose rights and freedoms under the ECHR are violated has the right to an effective remedy.

Like the ICCPR, the ECHR imposes an obligation on states to protect those within its jurisdiction against violations of convention rights by non-state actors. Here this applies only to certain rights, in accordance with the caselaw of the ECtHR.<sup>72</sup>

### *c. Women's rights*

Both the ICCPR and the ECHR contain provisions setting out that the rights contained in the treaties must be realised without discrimination based on sex,<sup>73</sup> and Article 26 of the ICCPR provides a free-standing right to equal protection of the law without gender discrimination. Article 26 further specifies that the law shall guarantee equal and effective protection against discrimination. In addition, there is a separate UN convention on women's rights<sup>74</sup> which imposes a host of obligations on state parties with the objective of achieving justice between the genders, including taking “all appropriate measures to eliminate discrimination against women by any person, Organisation or enterprise”.<sup>75</sup> Equality must be

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<sup>72</sup> See, for example, Osman v UK, Application No. 23452/94

<sup>73</sup> ICCPR, Article 3; ECHR, Article 14

<sup>74</sup> UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

<sup>75</sup> CEDAW, Article 2

achieved in the fields of education and employment,<sup>76</sup> and women and men must be granted equal protection of the law.<sup>77</sup>

These protections are important to women HRDs, who often face challenges to their work over and above those faced generally by HRDs of both sexes as a result of discriminatory practices.

#### *d. The UN Declaration on Human Rights Defenders*

The UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms was adopted in 1998. The instrument is only a declaration and therefore has no legally binding force, but by signing up to it at the General Assembly every state that is a member of the UN has recognised the challenges and dangers facing HRDs and has agreed to protect their rights and freedoms as set out in the Declaration. It is worth noting additionally in this context that the Declaration is the outcome of thirteen years of drafting by a UN working group comprising of government representatives, and its provisions were all decided upon by consensus. In any case, the key substantive rights in the Declaration have their foundations in human rights standards already contained in binding international treaties, particularly freedom of association and assembly, freedom of expression, the right to participate in public affairs and the right to a remedy. The Declaration reiterates these standards, expounds their application to situations faced by HRDs, and in some instances builds upon and develops them.

The overarching principle of the Declaration is set out in Article 1, whereby everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms. It is also stated in Article 12(1) that everyone has the right to participate in peaceful activities against human rights violations. Activities in furtherance of human rights as referred to in the Declaration must be conducted in accordance with national law, but only where national law is itself in compliance with the UN Charter and other international human rights obligations of the state (Article 3).

Article 2 makes clear that it is the responsibility of states to take legislative, administrative and other necessary steps to guarantee the rights and freedoms of HRDs as defined in the Declaration. This article stresses that the primary responsibility to promote and protect human rights and fundamental freedoms lies with the state, but it also outlines positive obligations which are important in

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76 CEDAW, Articles 10 and 11

77 CEDAW, Article 15

relation to situations where HRDs are targeted or threatened by non-state actors.

The rights of HRDs to peacefully assemble, to form, join, and participate in non-governmental organisations, associations and groups, and to communicate with non-governmental and inter-governmental organisations are protected under Article 5. Article 6 enjoins that everyone has the right to access and hold information about human rights and how they are implemented, including regarding how rights are given effect at a national level, and to freely disseminate views, information and knowledge on human rights. This article further recognises the right to “study, discuss, form and hold” opinions on state observance of human rights standards, and to otherwise draw public attention to these matters. The right to develop and discuss new human rights ideas and to advocate for their acceptance is also protected (Article 7).

Article 8 protects the right to participate in government and public affairs, including to submit criticisms and proposals for improvement to public bodies and to draw attention to instances where the work of such bodies adversely impact on human rights.

The right to an effective remedy for violations committed against those acting to promote and protect human rights is detailed in Article 9. This includes the right to complain about violations of rights and to have such complaints promptly heard by an impartial and competent judicial authority. Victims are entitled to a decision from the court, and to redress and to any compensation due where there is found to have been a violation. The right to a remedy under Article 9 additionally comprises the right to complain to national authorities about violations of human rights perpetrated by government officials or bodies and to receive a decision on a complaint, to observe trials, to give legal advice in defending human rights, and to communicate with international bodies concerned with human rights. Under Article 9, the state is obliged to conduct a prompt and impartial investigation whenever there are reasonable grounds to believe a human rights violation has occurred in its jurisdiction.

Under Article 12 the state is further required to act where HRDs are made victims of violence, threats, retaliation, discrimination, pressure or other arbitrary actions by both state and non-state actors. Article 12(3) establishes a corresponding right to protection under national law for those reacting against or opposing human rights violations committed both by state and non-state actors.

Everyone has the right under Article 13 to solicit, receive and use resources to promote human rights, provided that this is carried out in accordance with national law where national law complies with the UN Charter and other international human rights obligations.

Article 17 provides that the rights set out in the Declaration are not absolute, but can be limited only where such limitations accord with international obligations, and are determined by law solely in order to fulfil one of the specified purposes which include: securing due recognition and respect for the rights and freedoms of others and meeting the just requirements of morality, public order and the general welfare in a democratic society.

The UN Secretary-General appointed a Special Representative on Human Rights Defenders in August 2001. Her mandate is to monitor the situation of HRDs, to co-operate and engage in dialogue with governments on implementing the Declaration, and to recommend effective strategies to better protect HRDs.

*e. Protection of human rights defenders in other regions*

The needs of HRDs have been afforded specific recognition in regional protection systems beyond Europe. The General Assembly of the Organisation of American States adopted a resolution in June 1999 reiterating its support for the work carried out by HRDs and recognising their valuable contribution to the protection, promotion, and observance of human rights. The Inter-American Commission has now adopted a Human Rights Defenders' Unit whose function is to monitor the situation of HRDs.

The African Commission on Human and Peoples' Rights announced in November 2003 the establishment of its Focal Point on Human Rights Defenders, and in June 2004 it issued a resolution in support of the work of HRDs in Africa and appointed a Special Rapporteur to monitor the situation of HRDs in the continent.

*f. The EU accession process*

Turkey entered into an Association Agreement with the EU in 1963 which envisaged her eventual accession, but for many years Turkey's dismal record on human rights precluded any significant progress on her EU bid. It was not until 1999 that Turkey's current path towards EU membership was opened when it was decided that it was a candidate for accession on the basis of the same criteria as the other applicant states. These criteria included the minimum political standards decided upon at the Copenhagen Council of 1993<sup>78</sup> (the 'Copenhagen Criteria') which states must fulfil in order to advance through the accession process, and which must be met before official negotiations on membership can commence. According to the Copenhagen

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<sup>78</sup> Council of the European Union, 'Presidency Conclusions of the Copenhagen Council, June 21 – 22 1993'

## Criteria:

Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.<sup>79</sup>

The human rights requirements of EU accession must, at a minimum, include respect for the rights contained in the ECHR, since all EU members are parties to this convention and the EU itself has considered acceding to it. More recently the EU has drafted its own Charter of Fundamental Rights which, although not given binding force through incorporation into the Treaty on European Union (TEU), is intended to constitute a statement of the rights of EU citizens and residents as recognised in common European constitutional traditions, the ECHR, the EU, the European Court of Justice and the ECtHR. As such it offers firm guidance on the substantive rights which candidate states must satisfy. Both the ECHR and the EU Charter incorporate rights which are fundamental to the protection of HRDs, including the prohibition on torture and ill-treatment, freedom of expression, association and assembly, liberty and security, privacy, and the right to a remedy. These rights are also referred to in Commission reports on candidate states' progress towards accession, and in any event are key human rights protected in leading international texts such as the UDHR and the ICCPR.

It can therefore be surmised that the human rights obligations which candidate states must satisfy incorporate the principle rights of relevance to HRDs cited above,<sup>80</sup> and that in the context of her EU accession bid Turkey is accordingly obliged to ensure the realisation of these rights for HRDs. Turkey's treatment of HRDs, where it pertains to the rights referred to, is also an indicator of her progress towards fulfilment of EU accession criteria. Indeed, the importance of the protection of HRDs to EU human rights standards has recently been underlined by the EU's issuing of a series of guidelines aimed at enhancing EU action in relation to HRDs. This document appears aimed primarily at EU relations with other third states rather than with candidate states as it is stated that the Guidelines will be utilised in the context of Common Foreign and Security Policy,<sup>81</sup> but the Guidelines are of some relevance to EU accession negotiations with Turkey as they make clear that the treatment of HRDs is a human rights priority of the Union, that the EU considers the matter of sufficient importance for positive EU action, and that the EU explicitly supports

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<sup>79</sup> Council of the European Union, 'Presidency Conclusions of the Copenhagen Council, June 21 – 22 1993', § 7(A) (iii)

<sup>80</sup> i.e. the prohibition of torture and ill-treatment, freedom of expression, association and assembly, liberty and security, privacy, and the right to a remedy.

<sup>81</sup> Council of the European Union, 'Ensuring Protection – European Union Guidelines on HRDs', adopted at the 2590th Council Meeting, General Affairs and External Relations, Luxembourg, 14 June 2004, § 7

the UN Declaration which is annexed to the Guidelines. Furthermore, it would be extraordinary for the EU to promote standards externally which it did not endorse in the accession process.

Turkey's movement towards compliance with EU human rights standards since 1999 has been halting and tentative. However, on 6 October 2004, despite substantial reservations over the effectiveness of Turkey's reform process expressed among the human rights community, the European Commission issued a recommendation concluding that Turkey "sufficiently" fulfilled the Copenhagen Criteria provided it first bring into force six specified pieces of legislation.<sup>82</sup> The recommendation was largely endorsed by the Council in its decision of 17 December 2004<sup>83</sup> to open formal accession negotiations with Turkey, currently due for 3 October 2005.

On 29 June 2005 the Commission issued its draft Negotiating Framework for Turkey,<sup>84</sup> a document which outlines the guiding principles and procedures for accession negotiations. It was drawn up in accordance with the Council decision and in the main reinforces its findings on the opening of accession negotiations. The Framework must be accepted by all 25 current member states before Turkey can commence formal accession negotiations.

The Commission report and recommendation, the Council decision of 17 December 2004 and the draft Framework all indicate that human rights criteria will be closely integrated into measuring Turkey's compliance with accession standards. The Commission recommends that

It is primarily by demonstrating determined implementation of continued reform that Turkey would be able to ensure a successful conclusion of the whole accession process.<sup>85</sup>

The Framework mandates that Turkey's advancement will be measured "in particular" against a series of requirements which include the political elements

<sup>82</sup> These include: the Law on Associations, the new Penal Code, the Law on Intermediate Courts of Appeal, the Code of Criminal Procedure, the legislation establishing the judicial police and the legislation on the execution of punishments and measures. European Commission, 'Communication from the Commission to the Council and the European Parliament: Recommendation of the European Commission on Turkey's progress towards accession', COM(2004) 656 final, Brussels, 6 October 2004

<sup>83</sup> Council of the European Union, 'Presidency Conclusions of the Brussels European Council, 16 – 17 December 2004'

<sup>84</sup> European Commission, 'Negotiating Framework for Turkey (Draft)', 29 June 2005

<sup>85</sup> European Commission, 'Communication from the Commission to the Council and the European Parliament: Recommendation of the European Commission on Turkey's progress towards accession', COM(2004) 656 final, Brussels, 6 October 2004, § 6

of the Copenhagen Criteria.<sup>86</sup> The Commission will continue to monitor Turkey's progress and report on this regularly to the Council, and these reports will provide the basis of the Union's final decision as to whether the conditions for the conclusion of negotiations are met. Importantly, the Framework explicitly states that the Commission must confirm that Turkey has fulfilled the aforementioned series of requirements (to include the Copenhagen Criteria) before a positive decision on accession will be taken.<sup>87</sup>

The institutions of the EU's insistence on the centrality of human rights in the next phases of the accession process is of considerable importance; human rights NGOs and other commentators have expressed concern that the Commission has not adequately addressed serious shortcomings in Turkey's pro-EU reform programme. In particular, the Commission's 2004 Regular Report, while identifying significant outstanding human rights concerns, to a considerable extent 'glossed over' critical human rights problems in Turkey. This is particularly the case regarding key rights vital to the protection of HRDs such as the prohibition on torture, freedom of expression, assembly and association, and liberty and security of the person. Indeed, though KHRP supports Turkish accession to the EU, it disputes the EU's conclusion that Turkey had "sufficiently" fulfilled the political element of the Copenhagen Criteria in December 2004, and does not find that it has done so today. It is to be hoped that with the December 2004 Council Decision out of the way, the Commission will adopt a more robust approach to its analysis of political reform in Turkey, setting appropriate reform priorities and stringently monitoring Turkish compliance with her ongoing human rights obligations in the accession process.

Also crucial to ensuring Turkey's compliance with human rights accession standards, and therefore the future protection of HRDs in Turkey, is the condition imposed by the Council and reinforced in the Negotiating Framework known as the 'break clause'. This condition is comparable to Article 7 of the TEU, under which EU membership rights can be suspended where a member commits a "serious and persistent breach" of fundamental rights. Thus if Turkey commits a "serious and persistent breach of the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law on which the Union is founded",<sup>88</sup> the Commission is obliged to recommend the suspension of negotiations and propose the conditions for eventual resumption. It is for the Commission on its own initiative or one third of the EU's member states to propose this measure,

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<sup>86</sup> European Commission, 'Negotiating Framework for Turkey (Draft)', 29 June 2005, § 6

<sup>87</sup> European Commission, 'Negotiating Framework for Turkey (Draft)', 29 June 2005, § 1 & 6

<sup>88</sup> European Commission, 'Communication from the Commission to the Council and the European Parliament: Recommendation of the European Commission on Turkey's progress towards accession', COM(2004) 656 final, Brussels, 6 October 2004, § 4; European Commission, 'Negotiating Framework for Turkey (Draft)', 29 June 2005, § 5

which the Council would then vote upon. Given the fragility of some of Turkey's administrative and legislative reforms, their frequent failure so far to take hold at a local level and the continuation of grave violations of human rights, including against HRDs, it is imperative that the Commission be vigilant and act upon this obligation where necessary.

If Turkey does, as anticipated, formally commence accession negotiations on 3 October 2005, it will subsequently begin participation in inter-governmental conferences aimed at screening her domestic legislation against the *acquis communautaire*: that is the full body of community law which states must adopt upon accession. It has been outlined that the December 17<sup>th</sup> decision-making process and the draft Negotiating Framework explicitly confirm that Turkey must make further progress on human rights reform in the course of accession negotiations. There are further indications that human rights standards will be relevant to Turkey's progress towards the *acquis*.

It is stated in the Framework that the *acquis* includes "the content, principles and political objectives of the Treaties on which the Union is founded", thus Turkey will have to abide by the provision that "The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law."<sup>89</sup> Previous accession processes indicate that Turkey's fulfilment of the Copenhagen Criteria will also remain relevant at this stage, since developments in this sphere are closely linked to a state's capacity to implement the *acquis*, particularly in the domain of justice and home affairs.<sup>90</sup> Furthermore, the Commission has stated that human rights developments "are in many ways closely linked to developments regarding [Turkey's] ability to implement the *acquis*, in particular in the domain of justice and home affairs".<sup>91</sup> This implies that human rights may be set to play a more focal role in dialogue on Turkey's adoption of the *acquis*, as does the fact that the preliminary indicative list of chapter headings for negotiations includes 'Judiciary and fundamental rights', which was not a title in the Bulgarian or Romanian accession talks.

In considering Turkey's human rights obligations in the accession process, it should be noted that while Turkish accession to the EU is in many ways a very positive development, the admission of Turkey to the EU before it has shown herself able to take on the necessary human rights commitments could be very damaging to the Union. While it is the case that the EU as an institution has lacked a defined and coherent human rights policy, the TEU now makes clear, as described above,

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<sup>89</sup> Article 6, Treaty on European Union (as amended by the Treaty of Amsterdam)

<sup>90</sup> Slovakia regular report

<sup>91</sup> European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final, 6 October 2004, p14

that human rights are one of the founding principles of the Union. A variety of significant individual policy initiatives have underlined the important role of the Union in promoting respect for human rights, including judgments of the European Court of Justice requiring the Union to respect fundamental rights, statements by the European Council stressing the importance of human rights, and EU initiatives taken on human rights issues.<sup>92</sup> Now the Charter on Fundamental Rights purports to set out in a single document the human rights values of the Union. The incorporation of a state into the EU in which human rights were only partially or intermittently respected, and in which HRDs were treated with contempt, would substantially undermine the Union's policies, commitments and principles in the field of human rights.

In addition, the EU's financial resources and its global position confer on it a unique capacity to impact on the human rights policies of other states,<sup>93</sup> and a responsibility to utilise this power to further the protection and promotion of human rights globally. It is apparent in a number of contexts that the EU can and has used its influence to press for positive change, including through human rights clauses in co-operation agreements, development co-operation strategies containing human rights components, and not least through requiring candidate states to comply with human rights criteria. Weakening EU human rights standards by allowing Turkey to accede to the EU while it continues to violate key rights and to harass and persecute those seeking to uphold human rights would damage the EU's credibility on the world stage, impairing its attempts to use its leverage to enforce these principles in other parts of the world.

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92 Alston, P & Weiler, JHH, 'An "Ever Closer Union" in need of a human rights policy: The European Union and Human Rights', in P Alston (ed.) *The EU and Human Rights* (1999 Oxford) p6-7

93 Alston, P & Weiler, JHH, 'An "Ever Closer Union" in need of a human rights policy: The European Union and Human Rights', in P Alston (ed.) *The EU and Human Rights* (1999 Oxford) p6-7

## 5. Human Rights Defenders in Turkey

Recent years in Turkey have witnessed some movement away from decades of conflict, repression and military rule, inspired to a significant extent by Ankara's bid for EU membership. The imperative of aligning the country with democratic principles has proven a potent force for stimulating change, and human rights reform has advanced somewhat, albeit falteringly, since the election of the moderate Islamist AKP government in November 2002.

For Turkey's burgeoning human rights community, long accustomed to state-sponsored campaigns of intimidation and persecution, EU-inspired legislative advances in the areas of freedom of expression and association, detention practices and the prohibition of torture have heralded some improvements in the framework in which its members operate. Notwithstanding these positive developments, it is not the case that HRDs in Turkey are now free to carry out their work without impediment, and nor does their contribution to Turkey's much-lauded democratisation process appear to be much welcomed by the Turkish authorities. If a state's treatment of HRDs can be regarded as a barometer of how far that state has embraced democracy and human rights, the scale of continued harassment of HRDs in Turkey suggests that a great deal remains to be done before it can be judged a on a par with modern, European standards.

### *a. Background*

For many years, government in Turkey was interminably hostile towards perceived dissent. The state and its institutions have held a peculiarly elevated status in the modern Turkish Republic, regarded as something to be revered and protected against vilification or attack. Any actions appearing to criticise or denigrate the state have accordingly been vigorously suppressed, and even today legislative provisions prohibiting 'insulting' the state itself are retained and frequently utilised. At the same time, the legacy of Kemalism in Turkey bred adherence to the overarching idea of an ethnically homogenous Turkish nation in which all citizens are 'Turks' and the expression of alternative identities is not tolerated. Asserting the rights of the Kurdish people, or even their existence in Turkey, was an extremely risky

undertaking.

Accordingly, those who sought to promote or protect human rights in Turkey were faced with an environment deeply unreceptive to their activities. This was particularly so after 1980, when a military coup ushered in an era of severe repression which made the work of HRDs both more necessary and more dangerous. In the Kurdish regions of the east and southeast, a State of Emergency (OHAL) declared by the government in response to the armed conflict being fought there against the Kurdistan Workers Party (PKK) meant that state authorities wielded extraordinary powers to limit fundamental rights.

Nevertheless, a courageous body of HRDs set up groups in this period, monitored state behaviour, disseminated information on human rights violations, assisted victims to seek redress, held demonstrations and otherwise lobbied for change. KHRP partner organisation the Human Rights Association (İHD) was established by lawyers and other HRDs in 1986 and, together with other leadings human rights NGOs such as the Turkish Human Rights Foundation (TİHV) and Mazlum-Der, contributed considerably to establishing a dynamic and vibrant human rights movement in spite of state restrictions. Countless other smaller groups and individuals took part in peaceful protests, published articles, participated in trade union activities, lobbied for an end to torture and killings, sought to locate missing friends and relatives, defended victims of human rights violations in court, attended student demonstrations, and spoke out in favour of human rights from within government.

Their work in publicising human rights violations frequently brought them into contact with the law, and they were charged with disseminating separatist propaganda, insulting state officials, the president, the military, or Atatürk, praising a terrorist organisation, or damaging Turkey's reputation abroad. Article 8 of the Anti-Terror Law which punished disseminating "separatist propaganda" regardless of its method, aim, and intent was particularly widely used. Conviction for these 'crimes' often resulted in long terms of imprisonment. Offices of human rights groups were raided and vandalised, their files and other belongings confiscated and their members arrested, interrogated, tortured and put on trial. Their organisations faced banning orders, their meetings were customarily prohibited and peaceful demonstrations were broken up.

HRDs have also met with violence and attacks on their physical integrity at the hands of the Turkish regime. Their criticism of the state and their promulgation of alternative perspectives of governance in Turkey left them vulnerable to torture and to beatings and killings by security forces. HRDs have also received death threats and have been attacked and killed by other individuals, usually members of right-wing groups with affiliations to the security forces. The state's deliberate portrayal

of HRDs as working against the state or as in league with terrorist organisations created the environment in which these crimes could occur, and they were very rarely investigated. At least 13 members of İHD have lost their lives since 1991, in some cases in circumstances in which the security forces have been heavily implicated.<sup>94</sup>

HRDs operating in the Kurdish regions faced especial challenges. The state's response to the genuine threat posed by PKK insurgency in the region was entirely disproportionate; existing state fears over Kurdish separatism were fuelled by the violence and instead of entering negotiations with peaceful, democratic elements among the Kurds and satisfying legitimate calls to respect Kurdish cultural and linguistic rights, the military was given a free rein in the area and security forces forcibly and violently evacuated villages, beat and killed those regarded as sympathetic to the PKK and routinely violated fundamental rights.

Those who sought to uphold human rights in the Kurdish regions at this time were publicly denigrated and their work was customarily portrayed as being linked to the PKK or as otherwise undermining the integrity of the nation state. Attempts to draw attention to abuses by the military or to the severe limitations on the ability of the Kurds to express their identity were met with criminal charges. Those viewed as 'hostile' to the state – including HRDs upholding the rights of the Kurds – were frequently arrested and could be detained without access to their family or a lawyer for up to 30 days. The rule of law was so far undermined that the military presided over 'state security' matters in the courts and torture was sanctioned as an interrogation method from the highest levels and very rarely punished. A virtual communications blackout substantially impeded the capacity of HRDs to get their messages out – the state routinely closed down publishing houses and banned publications. Harassment through judicial means, physical intimidation, raids and arbitrary administrative restrictions towards human rights groups was at times so severe that these groups were compelled to cease their activities altogether.

#### *b. The Pro-EU Reform Process*

On 17 December 2004, the EU Council agreed to open accession negotiations with Turkey on 3 October 2005, provided that it first implement six outstanding pieces of legislation. This decision was the outcome of two years of intense reformatory zeal by Turkey as she sought to meet EU standards on democracy, human rights and the rule of law. From its election in November 2002, the current AKP government has balanced a cross section of reformist interests to successfully enact a series of political

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94 Amnesty International, 'World press freedom day: Human rights activists harassed, tortured and persecuted', 3 May, 2005, <<http://www.amnesty.org.uk/news/press/16075.shtml>>

reform packages which amend undemocratic provisions in the Constitution, Civil Code, Penal Code and other legislation.

This pro-EU reform process has doubtless moved Turkey haltingly in the direction of democratisation. The Constitution under which Turkey had been governed since 1980 was a security-based document, drawn up in the context of a military coup, which entrenched the influence of the military in government and placed the interests of the state and national security ahead of fundamental rights. The Turkish Penal Code criminalised non-violent dissent, and Turkey's 1991 Anti-Terror Law imposed limitations on press freedom, assembly, association, the right to legal counsel and the liability of security forces for torture where an individual fell within the law's extremely broad definition of terrorism. OHAL imposed across the Kurdish regions between 1987 and 2002 conferred on the Regional Governor non-reviewable quasi-military powers including to impose restrictions on the press, to order village evacuations and to remove from the area individuals whose activities were deemed threats to public order.

Turkey's reform packages have reduced the formal role of the military in the Turkish administration by the abolition of the military-influenced State Security Courts and by the appointment of a civilian head of the National Security Council: the body through which the military had previously exerted outward influence over civilian government. The death penalty was eliminated, detainees' rights were brought closer into line with European standards and the legislative framework providing protection against torture was improved so far that it has been judged as "now among the strongest in Europe"<sup>95</sup> Restrictions on the use of the Kurdish language have been eased a little, and the introduction of a new Press Law in June 2004, a new Law on Associations in July 2004 and a new Penal Code in June 2005 have had some positive implications for freedom of expression, association and assembly.

Nevertheless, human rights observers both within and outside Turkey maintain serious concerns over the reform process. While any improvement on Turkey's previously poor human rights record are certainly to be welcomed, it is feared that a series of formal measures have been rushed through in order to meet pre-determined EU criteria without being afforded sufficient opportunity to take root on the ground, that implementation of reform packages is slowed by a public administration long accustomed to limiting rights, and that the reform process is by no means yet at a stage where Turkey can reasonably be pronounced to have "sufficiently" fulfilled the Copenhagen Criteria for the opening of EU accession negotiations. Torture in effect remains systematic, freedom of expression and association have improved but are still substantially impeded, and there has been only very limited recognition of

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<sup>95</sup> Human Rights Watch, 'Eradicating Torture in Turkey's Police Stations: Analysis and Recommendations', September 2004, <<http://www.hrw.org/backgrounder/eca/turkey/2004/torture/>>

the cultural rights of the Kurds. Furthermore, KHRP has received worrying reports from HRDs and other representatives of civil society within Turkey that since the decision of 17 December 2004 to formally commence membership talks, human rights violations have begun to increase again.<sup>96</sup> İHD's Diyarbakır branch reports a "drastic increase" in human rights violations during the second quarter of 2005 as compared with previous periods.<sup>97</sup>

For HRDs, the growth in civil society and the consequent change in atmosphere which is discernible in Turkey in the wake of the reform packages have no doubt generated some relaxation in the environment in which they operate. This is marred, however, by extensive continued examples of Ankara's failure to tolerate the expression of non-violent dissenting viewpoints. Legal reforms and especially the new Penal Code represent only very tentative progress in freedom of expression, association and assembly, and there is a decided trend towards officials substituting alternative, undemocratic legislative provisions still on the statute books where former provisions have been amended or repealed. HRDs continue to be subjected to attacks on their physical integrity, though importantly overt state targeting of HRDs through practices such as arbitrary detention, torture and extra-judicial killings are being progressively replaced by more covert tactics, particularly the use of the judicial system to harass HRDs through the repeated instigation of large numbers of proceedings. Women HRDs and HRDs operating in the Kurdish regions face especial challenges.

In October 2004, the Ministry of the Interior issued a circular directing local authorities to act in accordance with UN and EU guidelines on the rights of HRDs,<sup>98</sup> and in the same month the government allowed the UN Special Representative to visit the country. These are welcome steps, but Turkey's treatment of HRDs indicates that they continue to be viewed with considerable hostility, and the deep-rooted antagonism which evolved during the 1990s between HRDs and the state has barely dissipated in spite of pro-EU reforms. Turkey holds on to her 'security-first' notion of government; HRDs are still commonly associated with terrorism, or viewed as a 'threat' against which the state must be protected or 'troublemakers' promoting their own ideological agendas. There has been only very limited acceptance of the important contribution made by HRDs to public debate in an open, pluralist and fair society. Indeed, the extent of Ankara's misconceptions over how to meet European standards on civil society was powerfully revealed when Prime Minister Erdoğan himself denounced the reporting activities of domestic NGOs critical of Turkey

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96 See Özgür Politika, 'İHD: Sharp increase in human rights abuses', 10 June 2005; DEHAP, 'Human Rights Violations, January – February 2005'

97 Özgür Politika, 'Drastic increase in human rights violations', 10 June

98 US Department of State, Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices 2004 – Turkey', 28 February 2005

in the run-up to the 17 December 2004 EU decision, failing to appreciate that a publicly expressed intolerance for NGOs undermined rather than strengthened Turkey's claim to fulfil the political elements of the Copenhagen Criteria.<sup>99</sup>

The future of the pro-EU reform process in Turkey is as yet unclear in the wake of the political crisis precipitated by the French and Dutch votes against the EU Constitution. Opposition to Turkey's EU hopes was regarded as a key factor behind the no votes. Though reiterating that talks are open-ended, that accession cannot be guaranteed and that Turkey must make further progress on human rights,<sup>100</sup> the Commission remains upbeat and insists that accession negotiations will go ahead as planned from October 2005, and KHRP supports this prospect as still the most viable means of securing real change in Turkey. Turkey, for her part, has kept up the pressure on the EU to keep to its word. It is evident, though, that the EU will need to look carefully at public perceptions of the legitimacy of its structures and administration methods before continuing apace with the enlargement process.

### *c. Human rights defenders in Turkey today*

Large numbers of groups and individuals are involved in the Turkish human rights movement today, braving harassment and repression to fight for human rights improvements in the country. They have succeeded in documenting violations as well as placing human rights issues on both national and international agendas, particularly in the context of the EU accession process.

IHD is the largest human rights group in Turkey. It is branch based and monitors the human rights situation in the country, as well as assisting victims to achieve redress. TİHV is another leading Turkish NGO which reports on human rights violations and runs a documentation centre and torture rehabilitation centres. Mazlum-Der, founded in 1991 and focusing on the issues of freedom of religion and conscience, reports on human rights in Turkey, offers advice to victims and takes part in demonstrations and consultations. Large numbers of other NGOs of varying sizes and levels of professionalism tirelessly advocate for human rights improvements in Turkey. Though HRDs' work is usually within organisations, the UN Special Representative notes that "A few act individually or as members of platforms that are loose, temporary, issue-oriented structures."<sup>101</sup>

<sup>99</sup> K Hughes, 'The Political Dynamics of Turkish Accession to the EU: A European Success Story or the EU's most Contested Enlargement?', Swedish Institute for European Policy Studies, 2004, p20

<sup>100</sup> Gulf Daily News / NTV/MSNBC, 'Rights record key to Turkey bid says EU', 21 June 2005

<sup>101</sup> UN Commission on Human Rights, 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, §56

HRDs' work is focused primarily on key civil rights such as freedom from torture, freedom of expression and association, and fair trial rights. There is a vibrant women's rights movement in the country, as well as a number of organisations working on minority rights and cultural and language rights.

Many human rights NGOs in Turkey operate in conjunction or co-operation with international human rights organisations, in order to broaden access to decision-makers, international mechanisms and public opinion. KHRP, for example, implements joint projects with a range of Turkish human rights NGOs.

#### *d. Accessing Information*

The capacity of HRDs to access information is critical in determining how far they are able to effectively protect and promote human rights. Knowledge is an extremely powerful tool in the struggle to ensure accountability and redress for state actions and to facilitate public involvement in decision making; a lack of information and knowledge fundamentally inhibits democratic scrutiny of government behaviour and allows injustices to thrive.

The state invariably has far greater control over and access to information than any group or individual within society, but established democratic principles dictate that government-held information 'belongs' to the people and consequently access to information is increasingly recognised as an integral element of modern government. One important way in which this is being achieved is through laws permitting and facilitating access to government records and processes, which are now becoming commonplace throughout the democratic world. Repressive governments, on the other hand, will tend to employ the apparatus of the state to maintain a culture of secrecy and cover up questionable practices, weakening the ability of HRDs to research and monitor human rights developments and ultimately to analyse human rights situations, to carry out advocacy, awareness building and so on.

In Turkey, state secrecy was for many years the norm. There were no provisions for HRDs to formally request information on human rights-related matters from the government, and official documentation concerning alleged human rights violations tended to be kept out of the public domain. HRDs have also been prevented from accessing areas and / or speaking with victims where human rights violations are reported to have taken place, particularly in conflict areas, or they have otherwise faced harassment and intimidation when they have attempted to carry out monitoring activities. Furthermore, broadly worded, anti-democratic legislative provisions and the wide discretion afforded to security officials meant that individuals were routinely held in unacknowledged detention and tortured

or ill-treated, or they were killed by state security forces who subsequently simply denied their involvement. Those detained on political grounds in particular were kept out of reach of HRDs. HRDs could not obtain the information necessary to accurately ascertain or document the fate of many of these victims of serious human rights abuses, or to assist them in achieving justice.

There has been a reduction in new cases of ‘disappearances’ in Turkey in recent years, though such cases still occur, and the reform process has improved considerably the information available to HRDs on the situation of detainees at risk of human rights violations, at least on paper. Comprehensive formal steps have been taken to combat unacknowledged detention and importantly, in 2003 the right of detainees to immediate access to legal counsel was recognised – a crucial step in itself towards the elimination of torture.

However, there remain barriers impeding lawyers’ access to their clients and this right is often not recognised in practice. At times, security officials inform lawyers that their clients do not want to see them when in reality it is questionable whether this is the case.<sup>102</sup> In addition, individuals may not be inclined to exercise their right to see a lawyer because within the climate of Turkish police stations such a request could be seen as an admission of guilt. Lawyers may also be subject to tactics of harassment or intimidation by state security officials. Lawyers report deliberate obstruction when attempting to enter detention centres, especially F-type prisons, to visit their clients.<sup>103</sup> It has been reported that lawyers visiting their clients have been submitted to unnecessary, minute and at times humiliating body searches, especially female lawyers.<sup>104</sup> The Ankara Bar Association reports that searches have involved female lawyers being required to remove their underwear, which is then subjected to examination.<sup>105</sup>

On 2 August 2004, lawyer Abdulhekim Gider was threatened by police at gunpoint when he tried to visit his clients in southeast Turkey.<sup>106</sup> Mr Gider’s clients had been

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102 European Committee for the Prevention of Torture, ‘Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and In-human or Degrading Treatment or Punishment (CPT) from 7 to 15 September 2003’, CPT/Inf (2004) 16, Strasbourg, 18 June 2004

103 Paul Richmond, ‘Turkey - Presentation on the Independence of the Judiciary and the Legal Profession in Turkey’, International Commission of Jurists, 26 April 2004

104 UN Commission on Human Rights, ‘Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, § 75

105 Paul Richmond, ‘Turkey - Presentation on the Independence of the Judiciary and the Legal Profession in Turkey’, International Commission of Jurists, 26 April 2004

106 Amnesty International (UK), ‘Turkey: Lawyer threatened at gunpoint for defending clients from torture’, 5 August, 2004, <<http://www.amnesty.org.uk/news/press/15522.shtml>>

detained and allegedly tortured, though when Mr Gider tried to lodge a complaint the prosecutor attempted to dissuade him from this course. When he returned to the prosecutor's office on 2 August, a police officer reportedly pointed his rifle at the lawyer and said to another officer, "I might accidentally pull the trigger". He was later prevented from entering the police station to meet with his clients by police officers who threatened him, and was only allowed to see his clients after appealing to a senior police officer.

Furthermore, human rights NGOs encounter problems in accessing detention facilities to monitor conditions there. An application from İHD to the Ministry of Justice to inspect the prison conditions of Abdullah Öcalan, following concerns expressed by his lawyers, was left unanswered in February 2005.<sup>107</sup> Although detention facilities are now theoretically monitored by the new state Reform Monitoring Committee, this process is woefully inadequate. Failings in official processes aimed at scrutinising places of detention are a highly significant factor in perpetuating practices at a local level which make torture more likely, including denying or discouraging access to a lawyer, influencing medical reports which document torture or not informing family of a detainee's whereabouts. The UN Special Representative recommends that access to prisons in Turkey must be granted to independent NGOs.<sup>108</sup>

The period of EU-inspired reforms and the relaxation of the conflict in the southeast until June 2004 have seen a reduction in deliberate state obstruction of efforts by HRDs to access and monitor human rights violations on site. There are, though, still incidences of security forces preventing access to scenes of human rights violations, particularly in the Kurdish regions where the armed conflict has now resumed. National security can be a legitimate basis for restricting efforts to gather human rights related information in conflict areas, but only where the specific circumstances render this necessary. It was reported in March 2005 that the gendarme blocked efforts by Hüseyin Cangir, the head of İHD's Mardin branch, to enter the village of Dirçomer to investigate allegations that a 13-year-old shepherd was shot and killed by village guards on 20 March 2005. Mr Cangir was travelling to the village to meet the relatives of the victim and speak to witnesses. Security forces did not give a reason for blocking entrance to the village and requested that a written application be submitted for permission to enter.<sup>109</sup> There are concerns that the actions of the officials may have been directed towards covering up the details of the shooting.

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<sup>107</sup> BIA, 'Access to Imrali Island Prison Denied for İHD', 3 February 2005

<sup>108</sup> UN Commission on Human Rights, 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>, § 76

<sup>109</sup> BIA, 'Gendarme Blocks Human Rights Delegation', 25 March 2005, <[http://www.bianet.org/2005/06/01\\_eng/news57269.htm](http://www.bianet.org/2005/06/01_eng/news57269.htm)>

With regard to the possibility of HRDs successfully requesting documentation from the government on human rights issues, Turkey passed a Freedom of Information Law in October 2003. This law, which came into force on 24 April 2004, grants statutory rights of access to government information, marking an important step towards transparency.

Under the law, any information requested must usually be provided within 15 days. There is a right of appeal to a Review Board. To date, compliance with the law by Turkey's institutions of government has been mixed, and at times has not reflected well on Turkey's ostensible commitment to open government.<sup>110</sup> Some departments have largely responded efficiently to applications for information while others, particularly those working in more sensitive areas of government, have refused or not answered requests.<sup>111</sup>

The principle problem with the law for HRDs is the possibility of denying access to specific information for reasons of national security or related grounds. There are exceptions written into the law on the release of information where it clearly causes harm to state security, national defence or national security,<sup>112</sup> or to judicial procedures.<sup>113</sup> These are standard exceptions and common to many laws on freedom of information, though it has been observed that there is no possibility of counter-balancing the test of whether the release of a piece of information would cause 'harm' under these factors where there is an overwhelming public interest in accessing the information.<sup>114</sup> Also of potential concern is the fact that information and documents regarding the duties and activities of the civil and military intelligence units are out of the scope of this law regardless of whether their release causes harm.<sup>115</sup> This provision has the potential to allow the government to refuse requests for information on alleged human rights abuses by members of the intelligence services.

Much will depend upon how the law is implemented in practice. In the context of the post-September 11 security environment some states have stepped up their levels of secrecy, and there is a trend towards the overly restrictive application of security-

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<sup>110</sup> For an analysis of the implementation of the law, see Bilgiedinmehakki.org, 'The implementation and application of the Right to Information Act by the Turkish Ministries', 28 September, 2004, <[http://www.bilgiedinmehakki.org/index\\_eng.asp](http://www.bilgiedinmehakki.org/index_eng.asp)>

<sup>111</sup> For an analysis of the implementation of the law, see Bilgiedinmehakki.org, 'The implementation and application of the Right to Information Act by the Turkish Ministries', 28 September, 2004, [http://www.bilgiedinmehakki.org/index\\_eng.asp](http://www.bilgiedinmehakki.org/index_eng.asp)

<sup>112</sup> Article 16

<sup>113</sup> Article 20

<sup>114</sup> Open Society Justice Initiative, 'Croatia and Turkey adopt Freedom of Information Laws', <[http://www.justiceinitiative.org/activities/foifoe/foi\\_foi\\_adoption/croatia\\_turkey](http://www.justiceinitiative.org/activities/foifoe/foi_foi_adoption/croatia_turkey)>

<sup>115</sup> Article 18

related exceptions. At times, national security is used as a pretext for denying HRDs and others access to information which may reflect badly on the state.

The TİHV maintains that the Turkish law gives the state too broad a leeway to reject information requests on national security and other grounds; TİHV applications for information during the year were denied, and there was no opportunity to appeal.<sup>116</sup> Sanar Yurdatapan, spokesperson for the Initiative Against Thought Crimes, reportedly lodged an inquiry with the National Security Council under the Freedom of Information Law requesting access to the ‘National Security Policy Document’. He received a response that the document was ‘secret’ and got no further response to his enquiry as to why it is ‘secret’.<sup>117</sup>

#### e. Disseminating Information

Turkish police, security forces, prosecutors and judges have for many years had at their disposal an armoury of draconian legislative provisions imposing restrictions on the capacity of HRDs to disseminate information on human rights. This legislation, and its extensive and often arbitrary usage by the Turkish state, to a significant extent reflected the legacy of Kemalism in Turkey. Founder of the modern Turkish republic Mustafa Kemal Atatürk instilled a concept of nationalism which mandated total ethnic cohesion and uniformity, an omnipotent, centralised state, a fierce loyalty to secularist principles and an elevated status for the army. While these beliefs were by no means uncontested, they informed attitudes towards the media, publishing and other forms of expression which resulted in the suppression of certain ‘sensitive’ topics including the situation of the Kurds, the role of Islam and the status and integrity of the military. The model of the all-powerful state served as a public ‘justification’ for restrictive policies, and generated perceptions among state officials that certain non-state actors (such as HRDs) were dangerous or disruptive and a potential threat which the state should guard against.

The old Turkish Penal Code,<sup>118</sup> based upon the Italian code of 1889, accordingly established penalties for ‘crimes’ including insulting the state, its institutions or the military; aiding and abetting an illegal organisation; and inciting people to enmity or hatred based on class, racial, religious, confessional, or regional differences. Each of these articles was employed unremittingly by Turkey to punish non-violent

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<sup>116</sup> US Department of State, Bureau of Democracy, Human Rights, and Labor, ‘Country Reports on Human Rights Practices - 2004, Turkey’, February 28 2005, <<http://www.state.gov/g/drl/rls/hrpt/2004/41713.htm>>

<sup>117</sup> BIA, ‘Yurdatapan’s “Document” Quest Continues’, 5 January 2005, [http://www.bianet.org/2005/03/01\\_eng/news52130.htm](http://www.bianet.org/2005/03/01_eng/news52130.htm)

<sup>118</sup> The ‘old’ Turkish Penal Code, initially adopted in 1926 and subsequently amended several times, was replaced by a revised code as of 1 June 2005

expression by HRDs and others – the latter two primarily to silence speech relating to the situation of the Kurds. The 1991 Anti-Terror Law contained further clauses curbing freedom of expression, as did the Press Law. The application of these laws resulted in the imprisonment and fining of journalists, the banning of books and other publications, closure of publishing houses, and extensive self-censorship on ‘taboo’ subject-areas. The issuing of press releases and other efforts to raise awareness of the human rights situation in Turkey were particularly targeted. The Kurdish regions witnessed heavy state-imposed restrictions on communications.

The inability to freely communicate information and analyses concerning the human rights situation in Turkey had a highly deleterious impact on HRDs. While some, working on non-contentious issues, were largely left to continue their activities without interference, many others were routinely targeted by the state on account of the nature of the material they disseminated. Since many of the most serious human rights abuses were taking place in the Kurdish regions, human rights advocacy often necessarily involved questioning the treatment of the Kurds by the state and / or expressing reservations over the behaviour of the military or security forces. In addition, monitoring and reporting on human rights would commonly entail criticising the state organs as perpetrators of violations, and such criticism not only formed the basis of prosecutions but contributed to perceptions of HRDs as ‘troublemakers’ or as undermining national integrity. HRDs endured countless investigations, periods of detention, trials, instances of ill-treatment and torture and other forms of harassment for their non-violent efforts to convey information and ideas on human rights. In the Kurdish regions, the comprehensive state imposed restrictions on freedom of expression during the 1984 – 1999 armed conflict substantially impeded the ability of the Kurds to inform the outside world of the severe human rights violations which were taking place there.

Restraints on freedom of expression have proven one of Brussels’ principal concerns regarding Turkey’s human rights record in the context of EU accession, and a series of incremental reforms to Turkish law in this area in the form of EU reform packages has consequently been enacted from 2002. Of particular importance were the revisions to the Penal Code and the Anti-Terror Law realised via the harmonisation packages, the new Press Law which entered into force in June 2004 and, most recently, Turkey’s new Penal Code which was revised with effect from 1 June 2005 as a condition of the October 2005 opening of accession negotiations.

There have been halting advances made in freedom of expression as a result of these EU-inspired reforms. The sixth harmonisation package of 20 July 2003 saw the repeal of Article 8 of the Anti-Terror Law which had prohibited spreading separatist propaganda – without doubt a constructive step forward for freedom of expression in Turkey. This ill-famed law, which mandated prison sentences of one to three years, had been used unremittingly to prosecute HRDs, especially those

upholding the human rights of the Kurds. Prior to 1995, Article 8 did not even contain a requirement of intent.

Article 169 of the old Penal Code, which had been applied very broadly to suppress attempts by HRDs to impart information on human rights, does not appear in its original form in the new code. The Article had prohibited ‘aiding and abetting a terrorist organisation’, and was another principle component of the cache of legislative provisions used by Turkey to silence HRDs where they were upholding human rights in the Kurdish regions; press releases, reports, analyses or other forms of commentary on the human rights situation in the Kurdish-dominated southeast routinely result in groundless accusations of collusion with the PKK or its successors.<sup>119</sup>

The seventh reform package passed in July 2003 had narrowed the scope of Article 169 somewhat by removing the article’s incorporation of ‘actions which facilitated the operation of terrorist organisations in any manner whatsoever.’ This change had some positive consequences; twenty-one members of the organisation Migration and Humanitarian Assistance Foundation (GİYAV) were acquitted of charges brought under Article 169 for using expressions including ‘Kurdish mother tongue’, ‘multi-culturalism’ and ‘forced migration’ following the reform.<sup>120</sup> The Article was, though, interpreted unevenly. In October 2004, for example, the Supreme Court of Appeals confirmed a sentence of 3 years and 9 months imprisonment for the former chair of the Socialist Workers’ Party of Turkey (TSIP) and former executives Necmi Özurda and Hasan Yavaş under Article 169 for their activities condemning F-Type prisons.<sup>121</sup> Given this, the removal of Article 169 from the penal code is unquestionably a welcome move for HRDs attempting to impart views, information and knowledge on human rights.

The scope of Article 7 of the Anti-Terror Law and Articles 159 and 312 of the new Penal Code to infringe upon freedom of expression (discussed further below) has also been reduced somewhat, at least in theory, by amendments brought in as a result of the harmonisation process.

Turkey’s new Press Law, enacted in June 2004, represents some progress on press freedom and the ability of journalists to communicate human rights information. The law has, in the past, been behind the closure of publishing houses and journals

<sup>119</sup> The PKK changed its name in April 2002 to the Congress for Freedom and Democracy in Kurdistan (KADEK), and again in November 2003 to the Kurdistan People’s Congress (Kongra-Gel) – the name by which it is now known.

<sup>120</sup> International Federation for Human Rights, “Trial against the Turkish NGO “GİYAV”, 22 October 2003, <[http://www.fidh.org/article.php3?id\\_article=2147](http://www.fidh.org/article.php3?id_article=2147)>. This case is discussed further below.

<sup>121</sup> TİHV, ‘Human Rights in Turkey – October 2004’, <[http://www.tihv.org.tr/report/2004\\_10/oct-organi.html](http://www.tihv.org.tr/report/2004_10/oct-organi.html)>

and the imprisonment of dozens of writers, journalists, publishers and academics airing views through the media on subjects viewed as contentious by the state. Prison sentences have been removed from the new law and replaced by heavy fines, and the power of authorities to close down media outlets or to impose bans on printing and distribution is abolished. Particularly welcome is the strengthened protection for confidential sources contained in the new Press Law; owners of periodicals, editors and writers can no longer be compelled to reveal their sources. Turkey's commitment to press freedom is, though, somewhat brought into question by Prime Minister Erdogan's recent instigation of judicial charges against political cartoonists who made fun of him in print.

Amendments to specific articles of legislation improving freedom of expression have resulted in case file reviews where trials have not yet commenced, in order to ascertain whether or not a case should still proceed.<sup>122</sup> Where trials have already commenced at the time of amendment the revised law is applied, and in the case of abolished articles (Article 8 of the Anti-Terror Law) trials are stayed.<sup>123</sup> Sentences resting on amended articles have been reviewed in light of legislative changes.<sup>124</sup> Together, these changes have resulted in acquittals and people being released from prison which would not otherwise have occurred.

Furthermore, there are also a small but growing number of encouraging judicial decisions. An example is the acquittal of Selahattin Demirtas, head of the Diyarbakir branch of IHD, who stood trial on charges of making terrorist propaganda for criticising the inclusion of Kongra-Gel in the EU's list of terrorist organisations.<sup>125</sup> His acquittal was reportedly based on the principles of the ECHR. In a decision of February 2005, the Supreme Court of Appeals overturned the conviction of writer Selahattin Aydar of the Islamist Milli Gazete on the basis that "Turkey's secular public order is so firmly established that counter-secularist opinions should be granted maximum freedom of expression."<sup>126</sup>

However, significant problems remain. The extent to which these legislative changes constitute meaningful advances in freedom of expression in Turkey, and hence the capacity of HRDs to publicise human rights violations, is strongly contested by HRDs within Turkey and internationally. Despite extensive reforms, laws which do

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122 Paul Richmond, 'Turkey - Presentation on the Independence of the Judiciary and the Legal Profession in Turkey', International Commission of Jurists, 26 April 2004

123 Paul Richmond, 'Turkey - Presentation on the Independence of the Judiciary and the Legal Profession in Turkey', International Commission of Jurists, 26 April 2004

124 Paul Richmond, 'Turkey - Presentation on the Independence of the Judiciary and the Legal Profession in Turkey', International Commission of Jurists, 26 April 2004

125 BIA, 'Freedom of Expression Cases Continue', 11 March 2005, <[http://www.bianet.org/2005/06/01\\_eng/news56192.htm](http://www.bianet.org/2005/06/01_eng/news56192.htm)>

126 BIA, "Thought is Absolutely Free" High Court Says', 08 February 2005

not comply with international standards on free expression remain on the statute books and continue to be against HRDs. Even in their amended forms, articles of the Penal Code and Anti-Terror Law are still open to interpretation in ways which penalise the non-violent expression of views. Furthermore, several commentators in Turkey have expressed the view that the revised Penal Code which came into force on 1 June 2005 is in fact a regressive step for freedom of expression in Turkey.<sup>127</sup> New attitudes to freedom of expression are proving slow to take root, and there is a marked tendency among the police and judicial system where one law has been repealed to simply employ alternative provisions from Turkey's remaining litany of repressive laws to justify arrests and prosecutions. In effect, the non-violent suppression of views disfavoured by the government, including human rights monitoring and reporting, is still pervasive.

Turkey's new Penal Code proved highly controversial in its drafting stages; an attempt to include anti-democratic provisions in the original version threatened to derail the EU accession process in the lead-up to the 17 December 2004 decision, and plans to bring the Code into effect on 1 April 2005 were delayed because of vociferous criticism from press associations and human rights groups concerning unacceptable provisions limiting freedom of expression, particularly press freedom. A two-month effort to have the code amended met with little success, and the eventual form taken by the Penal Code is disappointing. The President of the Union of World Press Councils Oktay Ekşi sent an open letter to Prime Minister Erdoğan noting that their efforts to amend the code in accordance with democratic principles had amounted to only a few minor changes being made to the version delayed from April.<sup>128</sup> OSCE Representative on Freedom of the Media, Miklos Haraszti, agreed, noting "despite some improvements, the amendments do not sufficiently eliminate threats to freedom of expression and to a free press".<sup>129</sup>

Criticism of the old Penal Code centred on Articles 159, 169 and 312. The removal of Article 169 criminalising 'aiding and abetting a terrorist organisation' from the new Penal Code has been described. Articles 159 and 312, however, appear virtually unaltered in the new code.

Article 159 provides for the punishment of acts which:

insult or belittle Turkishness, the Republic, the Grand National Assembly

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<sup>127</sup> Kurdish Human Rights Project, Bar Human Rights Committee & EU Turkey Civic Commission, 'Recognition of Linguistic Rights? The impact of pro-EU reforms in Turkey', September 2005

<sup>128</sup> Cascfen, 'Tr: Penal code comes into force', 1 June 2005, <<http://www.cascfen.org/news.php?nid=1201&cid=15>>

<sup>129</sup> OSCE Representative on Freedom of the Media, 'OSCE Media Representative praises Turkey for changing penal code, but remains concerned', 7 July 2005, <[http://www.osce.org/fom/item\\_1-15572.html](http://www.osce.org/fom/item_1-15572.html)>

or the moral personage of the Government or the military security forces of the State or the moral personage of the judiciary.

It has been used on countless occasions to mount prosecutions against HRDs where they have denounced human rights violations perpetrated by state institutions or otherwise criticised the institutions of government on human rights grounds.

An amendment in the 19 February 2002 EU harmonisation package meant that the maximum sentence for insulting state institutions was reduced from six to three years imprisonment, and the minimum sentence was subsequently reduced from one year to six months. A further revision in the 9 August 2002 harmonisation law added a clause under which expression that amounts merely to criticism ‘without the intention to insult or deride the bodies or institutions listed in the first paragraph’ should not be punished. This clause, limiting the reach of Article 159, is a welcome addition and has resulted in some positive judicial decision-making. In September 2004, a sentence against the İzmir branch of the TİHV was reportedly overturned on the basis that in imposing the sentence, the lower court had not taken into account the amendments made to Article 159 whereby expression must be intended to ‘insult’ and not just to ‘criticise’.<sup>130</sup> This decision by the Court of Cassation indicates movement towards greater commitment by the Court to guarding fundamental rights, which could be imitated in subordinate courts.

However, Turkey’s statement in relation to the amendment that it “extends the limits of the freedom of expression and thought in alignment with the norms of the European Convention”<sup>131</sup> is misleading, as is its assertion that the amendment to Article 159 “ensures that expressions of thought undertaken solely for the purpose of criticism do not incur any penalties”.<sup>132</sup> The clause has not so far always been interpreted in the courts in accordance with ECHR standards on freedom of expression, and Article 159 can still be used by recalcitrant public officials to silence the messages expounded by HRDs despite the amendment.

Dr. Alp Ayan, a psychiatrist and member of the İzmir Center for the Rehabilitation of Torture Victims (part of the TİHV) has faced a large number of investigations and trials under Article 159 over recent years on account of his human rights work, notwithstanding the new clause permitting ‘criticism’. Dr Ayan, together with three other HRDs, was charged with insulting the Ministry of Justice and the

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<sup>130</sup> UN Commission on Human Rights, ‘Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005

<sup>131</sup> Republic of Turkey, Prime Ministry, Secretariat General for European Union Affairs ‘An Analysis Of The EU Harmonisation Laws Adopted by the TGNA on August 3, 2002’ <[http://insanhaklar-imerkezi.bilgi.edu.tr/ab\\_turkiye/3.doc](http://insanhaklar-imerkezi.bilgi.edu.tr/ab_turkiye/3.doc)>

<sup>132</sup> Government of Turkey, ‘Analysis of the Seventh Harmonization Package’, <<http://www.byegm.gov.tr/on-sayfa/uyum/AB-7paket-analiz.htm>>

Armed Forces after he read aloud a press release denouncing torture and inhuman detention conditions in Turkish prisons during a meeting on 10 February 2002.<sup>133</sup> The press release also criticised ‘Operation Return to Life’, a notorious military operation of 19 December 2000 transferring over a thousand political prisoners to F-type prisons which resulted in the deaths of 30 prisoners and 2 members of the gendarmerie.<sup>134</sup> This incident was the subject of serious concern to the Council of Europe’s Anti-Torture Committee (CPT),<sup>135</sup> and in January 2001 the EU called for an independent investigation.<sup>136</sup> HRDs who condemned the incident faced considerable harassment. Dr Ayan was himself facing a separate trial also under Article 159 for another press conference held on 10 February 2001 in which he had similarly condemned the situation in F-type prisons and the December 2000 military transfer of political prisoners. The outcome of this trial in June 2002 saw Alp Ayan and his colleague Mehmet Barındık receive a one year prison sentence which, though subsequently over-turned by the Court of Cassation under the amendments to Article 159 on the grounds that the speech at issue did not amount to criticism, was reinstated by the İzmir Heavy Penal Court on 19 June 2003. This decision was reached notwithstanding the fact that the prosecutor had requested the release of the defendants on the grounds of the revisions to Article 159, and the UN Special Representative suggests the decision in this case is indicative of attitudes among parts of the judiciary which are “hampering concrete change at a local level”.<sup>137</sup> After multiple court appearances and frequent postponements of trial hearings, Dr Ayan was finally cleared of all charges under Article 159 on 26 April 2004.

Other HRDs have continued to be indicted under Article 159 of the old Penal Code, in spite of the amendment. A trial is ongoing against Lawyer Hüseyin Aygün, former head of the Tunceli Bar, for ‘insulting the Republic’ and ‘praising an action deemed crime by law’ after he spoke out in favour of the right to mother tongue education during the 2002 Newroz celebrations.<sup>138</sup>

<sup>133</sup> International Federation for Human Rights, ‘Dr. Alp Ayan Trial: State sponsored harassment of Human Rights Defender’, 25 April 2003

<sup>134</sup> For further details see Euro-Mediterranean Human Rights Network, Kurdish Human Rights Project and the World Organisation Against Torture, ‘The F-Type Prison Crisis and the Repression of Human Rights Defenders in Turkey: Report from a Fact-Finding Mission to Istanbul and Ankara no 5 – 11 May 2001 with Update’, October 2001

<sup>135</sup> European Committee for the Prevention of Torture, ‘Report to the Turkish Government on the visits to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 16 December 2000 and 10 to 15 January 2001 and from 18 to 21 April and 21 to 24 May 2001’ Strasbourg, 13 December 2001

<sup>136</sup> Commission of the European Communities, ‘2001 Regular Report on Turkey’s Progress Towards Accession’, SEC(2001) 1756, Brussels, 13 November 2001

<sup>137</sup> UN Commission on Human Rights, ‘Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, §92

<sup>138</sup> BIA News Centre, ‘Threatened Lawyer Charged with “Defamation”’, 1 April 2005, <<http://www>.

The adverse implications of Article 159 for freedom of expression in Turkey have been widely attested to by human rights groups and international organisations, and numerous calls have been issued to amend or to abolish altogether Article 159. The OSCE Representative on Freedom of the Media and Freedom of Expression noted that the article could have a chilling effect on public debate, and that

Most international standards, including those of the European Court of Human Rights, see criminal insult provisions vis-à-vis the State authorities as an infringement of freedom of expression.<sup>139</sup>

The UN Special Representative has outlined concerns over the implications of the article for HRDs, noting:

Defenders apprehend that the amendment of 9 August 2002, which limits the scope of punishable offences to situations with intent to insult, may still be interpreted in such a way as to restrict freedom of expression.<sup>140</sup>

The European Commission observed in its October 2004 report on Turkey's progress towards accession that

The revised Article 159 continues to be used to prosecute those who criticise the state institutions in a way that is not in line with the approach of the [European Court of Human Rights].<sup>141</sup>

The European Commission adds that when assessing freedom of accession cases:

The judiciary should consider whether the expression incites violence, armed rebellion or enmity, what the capacity of the individual or group is to influence the public and what kind of opportunity the target of the expression has to respond.<sup>142</sup>

In light of these criticisms of Article 159, and its continued use to institute proceedings

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bianet.org/2005/06/01\_eng/news57811.htm>

139 OSCE, The Representative on Freedom of the Media Miklos Haraszti, 'Review of the Draft Turkish Penal Code: Freedom of Media Concerns', May 2005, <[http://www.osce.org/documents/rfm/2005/03/14223\\_en.pdf](http://www.osce.org/documents/rfm/2005/03/14223_en.pdf)>

140 UN Commission on Human Rights, 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, § 18

141 European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final, 6 October 2004, p37

142 European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final, 6 October 2004, p37

against HRDs where they are peacefully imparting legitimate information and views on human rights issues, it is of considerable concern that the Article has not been removed from the new Turkish Penal Code. Article 301 of the new code sets out the old Article 159 in a virtually unaltered form, thus leaving intact Turkey's capacity under this article to punish legitimate criticism of its human rights record.

Article 312 of the old Penal Code also reappears in an almost identical form in the new Penal Code under Article 216. Article 312(2) punished 'deliberate incitement of a section of the population to hatred and hostility' on grounds of race, region or membership of a religious group. Like Article 159, Article 312 was one of the most widely-used of the panoply of legal tools available to the Turkish state for silencing HRDs. The article was problematic less as a result of its content but rather because of its illogical and at times perverse application by the Turkish judicial system. Many liberal legal systems apply provisions allowing for the sanctioning of incitement to racism and other forms of intolerance where this threatens public order, and indeed international human rights standards arguably demand such rules. However, instead of applying article 312 to protect vulnerable groups from incitement to discrimination, the Turkish judiciary has instead used it to punish speech pertaining to the rights of the Kurds, or even mere assertions that there are Kurdish people in Turkey at all. Since the Kurdish identity has not been recognised throughout the life of the modern Turkish republic, and constitutionally mandated concepts of Turkish national identity are explicitly mono-ethnic, even referring to human rights of the "Kurdish" people, the "Kurds" or the "Kurdish" regions – or worse, "Kurdistan" – would frequently result in prosecution under Article 312. Indeed, the article had been amended by Law No. 2370 in the wake of the 1980 military coup; prior to this amendment Article 312 did not mention race, region or membership of a religious group and this clause was likely added in reaction to the reawakening of ethnic awareness among many Kurds that came about during the 1970s.<sup>143</sup>

Prior to February 2002, old Article 312(2) was also controversial because it contained no requirement that acts defined as 'incitement' under the law provoked violence or endangered public order. This omission facilitated its broad use in circumstances which violated freedom of expression, and the ECtHR issued several judgments determining the non-compliance of the article with the ECHR.<sup>144</sup> The first harmonisation law adopted in February 2002 resolved this problem by mandating that an act would only amount to a violation of Article 312(2) where it caused 'a clear and direct danger to public order'. The harmonisation law also abolished the heavy fines previously enforced for violations of this article.

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<sup>143</sup> Human Rights Watch, 'Turkey: Violations of Free Expression in Turkey' February 1999, n34 <<http://www.hrw.org/reports/1999/turkey/index.htm#TopOfPage>>

<sup>144</sup> Öztürk v Turkey, Application No. 24914/94; Incal v Turkey, Application No. 22678/93

The amendment setting out that ‘incitement’ must be such as to endanger public order narrowed the scope of Article 312 and there were subsequently some positive developments in interpretation of the article. A significant number of acquittals were made by the courts of defendants tried under this article in the course of 2004:<sup>145</sup> in July 2004 the Diyarbakır Penal Court of First Instance acquitted Selahattin Demirtaş, Chair of the İHD Diyarbakır branch and his four co-defendants Ali Öncü, Necdet Atalay, Emir Ali Şimşek and Bülent Kaya, of charges brought under Article 312. Proceedings were instituted following the defendants’ speeches of 21 June 2003 in support of a peaceful and democratic resolution on the Kurdish question in Turkey and a general amnesty. The decision reportedly relied on the provisions of the ECHR.<sup>146</sup>

An important case against Erdal Taş in July 2004<sup>147</sup> saw the Supreme Court of Appeals rule that freedom of speech covered an individual’s right not to think like the majority, to question and criticise the government and to issue statements that shocked or angered the majority. The court also said that freedom of speech should be protected and that a balance should be struck as outlined in the ECHR between the right to free expression and the interests of public order, morality, national security, the honour and rights of others. The court consequently held that although the statements at issue would anger the majority of people, they did not incite hatred or violence but only amounted to criticism and thus could not be deemed a danger to public order. They were accordingly protected under freedom of speech.

However, notwithstanding these welcome judicial decisions it should be stressed that utilisation of Article 312 (now 216) has been far from uniform<sup>148</sup> and the provision continues to be employed in a controversial manner in cases against HRDs carrying out their legitimate activities – some resulting in convictions. Nazım Çiftçi, Chair of the Hakkari branch of NGO Göç-Der which advocates for the rights of the large numbers of people displaced from their homes in the Kurdish regions, was indicted under article 312 for a speech in which he said that Kurdish villages had not been evacuated because of the PKK but simply because they were Kurdish.<sup>149</sup> On 19 January 2004 Sefika Gürbüz, President of Göç-Der, was fined TL 2,180 billion after presenting a report on forced displacement at a press conference

<sup>145</sup> BİA, ‘A Delicate Dance: Freedom to Publish in Turkey’, 05 July 2004

<sup>146</sup> TİHV, ‘Human Rights in Turkey – July 2004’, <<http://www.tihv.org.tr/eindex.html>>

<sup>147</sup> See TİHV, ‘Human Rights in Turkey – July 2004’, <<http://www.tihv.org.tr/eindex.html>>; cascfen.org, ‘Tr: Court of Appeals defines freedom of speech’, 16 July 2004, <<http://www.cascfen.org/news.php?nid=152&cid=15>>

<sup>148</sup> UN Commission on Human Rights, ‘Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, <[http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?Open Element](http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement)>, § 90,

<sup>149</sup> TİHV, ‘Human Rights Report of Turkey’, November 2003

in April 2002.<sup>150</sup> In this instance, the amendment to Article 312 restricting its use was drawn on to increase Ms Gürbüz's sentence.<sup>151</sup> In a July 2005 KHRP fact finding mission to Turkey, human rights groups reported that Article 312/216 was behind trials currently pending against their members. For example, Yüksel Mutlu of İHD's Ankara branch is being tried under old Article 312 on account of her involvement in a press conference for the organisation Peace Mothers' Initiative.<sup>152</sup> The prosecutor is reportedly requesting a prison sentence of one year.

Article 312/216 also continues to be used against journalists expressing non-violent views on aspects of the Kurdish question in Turkey. The recent proceedings against Ragıp Zarakolu for an article published in the journal *Özgür Politika* on 8 March 2003 upholding the right of the Kurds to self determination in Iraq is a case in point.<sup>153</sup> Mr Zarakolu has been repeatedly tried and imprisoned for his work as a writer and publisher over the past 30 years.

Criticism has been directed at Article 312/216 from human rights groups and press organisations both internationally and within Turkey. The OSCE Representative on Freedom of the Media requested that the Turkish government remove Article 216 from the new Penal Code,<sup>154</sup> and the UN Special Representative expresses concerns over the implementation of Article 312, noting that it is one of a series of provisions "still used to impose heavy penalties, including imprisonment of journalists, authors and publishers who criticise State institutions and policies or publish the statements of certain political groups", and to result in the confiscation of publications and printing equipment and the imposition of heavy fines on publishers and printers in some regions.<sup>155</sup>

Thus whilst the growing number of acquittals resulting from the amendment to the article which directs that incitement must endanger public order is to be welcomed, Article 312 / 216 remains problematic. The myriad of prosecutions in violation of

<sup>150</sup> International Federation for Human Rights, 'Trial against the Turkish NGO "GÖÇ-DER" before the Istanbul State Security Court', 21 January 2004, <[http://www.fidh.org/article.php3?id\\_article=479](http://www.fidh.org/article.php3?id_article=479)>

<sup>151</sup> International Federation for Human Rights, 'Trial against the Turkish NGO "GÖÇ-DER" before the Istanbul State Security Court', 21 January 2004, <[http://www.fidh.org/article.php3?id\\_article=479](http://www.fidh.org/article.php3?id_article=479)>

<sup>152</sup> Interview with Kurdish Human Rights Project, Ankara, 29 July 2005

<sup>153</sup> Kurdish Human Rights Project, 'Freedom of Expression at Risk: Writers on Trial in Turkey', March 2005

<sup>154</sup> OSCE, 'OSCE media freedom representative concerned over legal grounds for trials of publisher and writer in Turkey', 2 March 2005

<sup>155</sup> UN Commission on Human Rights, 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, §90

freedom of expression which have been and continue to be brought under it, in spite of the amendment, point to its interpretation by the Turkish police and judiciary in a way which does not accord with human rights principles. Proceedings should not be launched under Article 312 / 216 against HRDs seeking to peacefully convey information and ideas relating to their work, and there is an urgent need for its application to be narrowed and the circumstances of its proper employment to be clearly set out by the Turkish authorities.

In addition to failing to amend in any meaningful sense provisions in the old Penal Code which have been used pervasively to stifle non-violent expression, Ankara has inserted additional articles into the new Penal Code with clear potential to be used against HRDs seeking to disseminate human rights information. Article 305 is of concern; it punishes engagement in activities against ‘fundamental national interests’ with prison sentences of between three and ten years.

Fundamental national interests are defined under Article 305(4) as referring to independence, territorial integrity, national security and the fundamental qualities defined in the Constitution of the Republic. Of especial concern are the explanatory notes which were attached to the code during its passage through parliament containing examples of such acts, including claims that the deaths of Armenians during the First World War amounted to genocide and calls for the withdrawal of Turkey’s armed forces from northern Cyprus. These ‘examples’ could potentially prove a substantial impediment to freedom of expression in Turkey; powerful, conservative elements within the Turkish state remain deeply sensitive about certain ‘taboo’ subjects, including the army and the Armenian genocide, and HRDs expressing themselves in these areas face especial challenges. The depth of conviction which endures regarding the Armenian genocide, for example, is demonstrated by Justice Minister Cemil Çiçek’s accusation of treason against a group of academics organising a conference of academics questioning Turkey’s official position on the killings of Armenians under the Ottoman Empire.<sup>156</sup>

Even aside from the examples of fundamental national interests provided in the explanatory text, the designation of these interests as territorial integrity, national security and constitutionally defined principles potentially opens the doors to interpretations by the police and judiciary which result in breaches of the right to freedom of expression, for example on matters such as the Kurdish question and the role of Islam in Turkey. The European Parliament has expressed the view that Article 305, and particularly the accompanying explanations, is incompatible with the ECHR and should be repealed.<sup>157</sup> The OSCE Representative on Freedom of the

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<sup>156</sup> AFP, ‘Dissident conference stirs tensions in Turkey’, 24 May 2005

<sup>157</sup> European Parliament, Committee on Foreign Affairs, Rapporteur Camiel Eurlings, ‘Report on the 2004 regular report and the recommendation of the European Commission on Turkey’s progress

Media called on the Turkish Parliament to officially delete the examples relating to Turkey and Cyprus from the text of the explanatory notes,<sup>158</sup> and the European Commission has also deemed these examples as going well beyond what would be acceptable under the ECHR.<sup>159</sup> In a democratic society, speech can only be legitimately restricted in this context where it incites violence or advocates racial or religious – as the OSCE Representative points out:

These issues (*independence, territorial integrity, national security and the fundamental qualities defined in the Constitution*) are normal topics of political debates in any free country.<sup>160</sup>

Other provisions in the new Penal Code which could potentially be employed to stifle HRDs exercising their right to freedom of expression include those preceding Article 301 (old Article 159) in the section of the code labelled ‘Crimes against symbols of state sovereignty and the honour of its institutions’. Here, defaming the President, denigrating the Turkish flag or insulting the national anthem – provisions which could potentially be used against HRDs – are all punishable with prison sentences.<sup>161</sup>

There are also concerns over the new Article 220, which is in some respects reminiscent of the old Article 169. Under Article 220, anyone disseminating propaganda for an organisation which has been set up with aim of ‘committing a crime’ is liable to a sentence of 1 – 3 years imprisonment. The fact that HRDs continue to be widely perceived as affiliated with criminal networks and / or terrorist organisations renders it possible that this article will be used to prevent HRDs disseminating information. The OSCE Representative on Freedom of the Media recommends that the article be appended by a clear stipulation securing the right of journalists to freely spread information and discuss public-interest issues.<sup>162</sup>

As a whole, the new Penal Code is highly problematic as a supposed step forward

towards accession (COM(2004)0656 - C6-0148/2004 - 2004/2182(INI)), A6-0063/2004, 3 December 2004

- 158 OSCE, The Representative on Freedom of the Media Miklos Haraszti, ‘Review of the Draft Turkish Penal Code: Freedom of Media Concerns’, May 2005, <[http://www.osce.org/documents/rfm/2005/03/14223\\_en.pdf](http://www.osce.org/documents/rfm/2005/03/14223_en.pdf)>
- 159 European Commission, ‘2004 Regular Report on Turkey’s Progress Towards Accession’, COM (2004) 656 final, 6 October 2004, p38
- 160 OSCE, The Representative on Freedom of the Media Miklos Haraszti, ‘Review of the Draft Turkish Penal Code: Freedom of Media Concerns’, May 2005, <[http://www.osce.org/documents/rfm/2005/03/14223\\_en.pdf](http://www.osce.org/documents/rfm/2005/03/14223_en.pdf)>
- 161 Turkish Penal Code, Articles 299(1), 300(1) and 300(2) respectively
- 162 OSCE, The Representative on Freedom of the Media, Miklos Haraszti, ‘Review of the Draft Turkish Penal Code: Freedom of Media Concerns’, May 2005, <[http://www.osce.org/documents/rfm/2005/03/14223\\_en.pdf](http://www.osce.org/documents/rfm/2005/03/14223_en.pdf)>

for democratisation in Turkey. Some changes were made to the code prior to its final passage through parliament on 29 June 2005, including the removal of stronger sanctions where crimes are committed via the media,<sup>163</sup> but these were not sufficient to render the document compliant with international freedom of expression standards. Of particular concern in this vein is the fact that the adoption of the new Penal Code was set out by the European Council as one of six specified pieces of legislation which must be passed before Turkey could be allowed to open formal EU accession negotiations.<sup>164</sup> Turkey was directed to implement these new laws in the context of furthering the pro-EU reform process, and the European Commission's recommendation to the Council on Turkey's progress towards accession specifically relates the enactment of the new Penal Code to Turkey's fulfilment of the Copenhagen Criteria. Given the substantial problems posed by the code in the sphere of freedom of expression (as well as in relation to other human rights), the assignation of the Penal Code as advancing democracy and Turkey's progression towards European standards on human rights and the rule of law is somewhat troubling.

The Penal Code is not the only legislative instrument utilised to put pressure on HRDs attempting to disseminate opinions and information. Concern has been expressed over the use of provisions in the Constitution whereby freedom of expression can be limited to protect national security, public order and public safety, the basic characteristics of the Republic and the indivisible integrity of the state. HRDs have reported that this wording has been used to penalise peaceful dissent or other forms of expression.<sup>165</sup> The 'poster crisis' of December 2003 saw the confiscation of posters displaying the slogan 'Peace will Prevail' in Kurdish in Van, Hakkari, Gaziantep, Adiyaman, Siirt and other parts of the Kurdish regions. The posters were published by the İHD for Human Rights Day and circulated throughout the country.<sup>166</sup> Posters with identical wording but in Turkish were not confiscated. In Van, posters were confiscated because they were contrary to the territorial integrity of the country, as protected by the Constitution. In other regions the law was employed opportunistically and different legal bases were invoked to justify confiscating the posters; in some provinces posters were not confiscated at all. Justice Minister Cemil Çiçek apparently requested an interim order against the

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<sup>163</sup> OSCE, 'Press release: OSCE Media Representative praises Turkey for changing penal code, but remains concerned', 7 July 2005, <[http://www.osce.org/fom/item\\_1\\_15572.html](http://www.osce.org/fom/item_1_15572.html)>

<sup>164</sup> Council of the European Union, 'Presidency Conclusions of the Brussels European Council, 16 – 17 December 2004'

<sup>165</sup> UN Commission on Human Rights, 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, § 91

<sup>166</sup> TİHV, 'Human Rights in Turkey – December 2003', <[http://www.tihv.org.tr/report/2003\\_12/deckurd.html](http://www.tihv.org.tr/report/2003_12/deckurd.html)>

confiscation decision and it was later overturned by the Court of Cassation,<sup>167</sup> but Human Rights Day had long passed by that stage.

Turkey's broadcasting watchdog, the Supreme Council of Radio and Television (RTÜK), has also proven a salient force in stifling human rights reporting. Despite some legislative amendments, articles of the Broadcasting Act (RTÜK Law) continue to place at the RTÜK's disposal an array of provisions through which broadcasters can be disproportionately sanctioned, including where they "violate the territorial and national integrity of the State" or "incite violence, terror, ethnic discrimination or hate and hostility." These are used especially against pro-Kurdish broadcasts critical of the government.<sup>168</sup> Özgür Radyo received a one month ban under the latter article for referring in a press review to the front page of the 27 August 2003 issue of the newspaper Günlük Evrensel, which said that police in plain clothes had "massacred" members of the Democratic People's Party (DEHAP) during a wedding in Adana.<sup>169</sup> In September 2004, RTÜK ordered Gün TV of Diyarbakır to cease broadcasting for 30 days after the station screened a live symposium on local administration, human rights, and the media in December 2003. Authorities reportedly judged the broadcast to be contrary to the values of Atatürk and against the unity of the State.

Article 7 of the Anti-Terror Law – which prohibits assisting a terrorist organisation or making propaganda in favour of a terrorist organisation – also forms part of Turkey's stockpile of anti-democratic positions impeding freedom of expression. The first harmonisation law amended Article 7 so that an individual charged with 'making propaganda' must have 'advocated the use of methods of terror', and the seventh harmonisation law brought further changes so that the offence includes 'incitement to violence or other methods of terror'. These amendments are to be welcomed insofar as they decrease the latitude with which the article can be applied to HRDs, and the requirement that propaganda incite violence or terror brings it closer into line with European standards. Nevertheless, the formulation of Article 7 is still sufficiently broad to allow its routine employment by the Turkish authorities to limit freedom of expression, and the law continues to be used to target HRDs.

The abolition under the sixth harmonisation package of Article 8 of the Anti-Terror Law, an exceptionally broadly worded provision used widely in the Kurdish regions to limit the activities of HRDs, has been referred to above as a welcome

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<sup>167</sup> TIHV, 'Human Rights in Turkey – December 2003', <[http://www.tihv.org.tr/report/2003\\_12/deckurd.html](http://www.tihv.org.tr/report/2003_12/deckurd.html)>; Kurdish Human Rights Project, 'Report on the Trial of Hüseyin Cangir – Chair of the İHD Derik, Province of Mardin, Turkey', November 2004, p11

<sup>168</sup> Reporters Without Borders, 'Turkey still far from European standards of press freedom', Turkey 16 December 2004, <[http://www.rsf.org/article.php3?id\\_article=12096](http://www.rsf.org/article.php3?id_article=12096)>

<sup>169</sup> Reporters Without Borders, 'One month suspension against local radio', 24 August 2004, [http://www.rsf.org/article.php3?id\\_article=11227%20id=r-97](http://www.rsf.org/article.php3?id_article=11227%20id=r-97)

measure. While this is certainly the case, it should also be noted that the repeal of this provision has not left prosecutors and judges without a means of indicting individuals for the offence contained in that article. The related Article 169 of the old Penal Code prohibiting ‘aiding and abetting terrorist organisations’ was used to fill the gap left in the state’s tools for quashing the messages of HRDs until its removal from the new Penal Code, and Article 216 (ex 312) of the old Penal Code is also used to punish offences which would previously have been covered by Article 8, as is Article 7 of the Anti-Terror Law.

That the lifting of Article 8 of the Anti-Terror Law was not intended to mark any real change in what type of speech can and cannot be punished as a crime in Turkey is demonstrated by an exchange between the National Security Council (NSC) and the Minister of Justice Cemil Çiçek in June 2003. The military, via the NCS, reportedly expressed concerns that the abolition of Article 8 would encourage terror and promote separatism. Mr Çiçek responded that in abolishing Article 8, he did not mean that the related offences should be left without punishment. He went on to reassure the military that these crimes could still be sanctioned via Article 312 of the Penal Code; that they would still be criminalised in the new Penal Code; and that any gaps which may arise in the future would be covered through jurisprudence of the courts.<sup>170</sup>

This tendency towards scouring the statute books to circumvent reforms and find alternative laws under which to launch proceedings against individuals who have expressed views disfavoured by the government is discernible generally through Turkish reforms in the area of freedom of expression, and is of great concern. It occurs not only in relation to the gap left by the repeal of Article 8, but also where amendments to articles of the old Penal Code and now the enactment of the new Penal Code has imposed limitations on prosecutions under certain articles. Rather than accept that an item of speech which may have previously been prosecuted under a now repealed or amended law is in fact a legitimate exercise of an individual’s rights, police and prosecutors will instead turn to alternative laws in order to punish what they view as unacceptable forms of expression. The UN Special Representative notes

It generally appears that prosecutors have not actively engaged in the implementation of the reform. Proceedings against defenders have continued, in spite of the legislation.<sup>171</sup>

Indeed, it is far from uncommon for a prosecutor to circumvent reforms by bringing

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<sup>170</sup> TİHV, ‘Human Rights in Turkey: May June 2003 Report’, [http://www.tihv.org.tr/report/2003\\_05\\_06/may\\_june2003.html](http://www.tihv.org.tr/report/2003_05_06/may_june2003.html)

<sup>171</sup> Special Rep §89

renewed charges under a different law if a previous prosecution has resulted in acquittal due to the impact of the pro-EU reforms process. An example is the launching of prosecutions under Article 7 of the Anti-Terror Law or Article 216 (ex 312) of the Penal Code where Article 169 of the old Penal Code might otherwise have been used, prior to its amendment and subsequent repeal. The state response to the December 2003 poster crisis (mentioned above) is indicative of Turkish resolve to secure the punishment of acts viewed as subversive or hostile rather than impartially determining whether an actual crime has been committed. It has been outlined that in Van, the posters were confiscated because they were contrary to the territorial integrity of the country, as protected by the Constitution. According to a TİHV report, Van Police Headquarters maintained that the posters were an offence under Article 312 of the old Penal Code, while Deputy Governor Süleyman Özçakıcı asked the public prosecutor to act on the assumption that the posters contained separatist propaganda. The prosecutor for his part asked for an order of confiscation on the grounds that putting up the posters constituted an offence under the Law on Associations and articles of the Constitution, including contravening the basic characteristic of the Republic and the ban on creating minorities.<sup>172</sup> Charges were brought against Vetha Aydin, chair of the İHD's Siirt branch, and Hüseyin Cangir, chair of the Mardin branch, based on the pretext that posters had been hung on municipal billboards without permission from the governor.<sup>173</sup>

KHRP observed the trial of Hüseyin Cangir, a lawyer who is targeted by the state as a result of his active representation of Kurds accused of crimes against the state, torture victims and the displaced. As mentioned, the charges against Hüseyin Cangir in relation to the hanging of posters on human rights day were based on his failure to obtain permission from the Governor. Under Article 536 of the Penal Code (as it stood then) a fine could be imposed for posting documents at places other than those designated without obtaining permission from the competent authority. The trial observers found that Mr Cangir had in fact obtained permission from the Mayor of Derik, a 'competent authority'. Notwithstanding this, and the fact that the Court of Cassation had by this stage overturned the decision of the Van court whose facts were virtually identical (though brought under a different law), the judge came to a guilty verdict and Hüseyin Cangir received a fine. The KHRP trial observers considered that the trial had not been fair, that the judge was not impartial and that he had clearly decided on a guilty verdict before hearing the defence's arguments.<sup>174</sup>

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172 TİHV, 'Human Rights in Turkey – December 2003', <[http://www.tihv.org.tr/report/2003\\_12/deckurd.html](http://www.tihv.org.tr/report/2003_12/deckurd.html)>

173 Kurdish Human Rights Project, 'Report on the Trial of Hüseyin Cangir – Chair of the İHD Derik, Province of Mardin, Turkey', November 2004, p9

174 Kurdish Human Rights Project, 'Report on the Trial of Hüseyin Cangir – Chair of the İHD Derik, Province of Mardin, Turkey', November 2004, p15

The trend towards identifying alternative laws to punish expression by HRDs and others as a response to the partial limitations which have been placed on the state's capacity to restrict expression by the harmonisation laws not only undermines somewhat the progress on freedom of expression which has been achieved by the pro-EU reform process, but also accords added pertinence to concerns voiced over the undemocratic provision in this area which remain in force. Furthermore, it demonstrates that the harmonisation process has, in reality, brought little change in what types of expression are and are not classified as criminal. State officials do not have quite the arsenal of repressive laws at their disposal that they enjoyed prior to the commencement of the reforms, but the continuation in force of broadly worded provisions criminalising such actions as insulting the state and disseminating terrorist propaganda means that they have seen only little diminution in their ability to launch investigations and prosecutions where they perceive this to be necessary. Since outdated, anti-democratic mindsets among prevailing elements of the Turkish administration still exhibit decided hostility towards legitimate criticism of the state by HRDs, and particularly discourse on issues such as the Kurdish question, efforts by HRDs to disseminate information and ideas continue to meet with considerable repression.

The persistence of authoritarian attitudes among sections of Turkey's public authorities and its inhibiting effect on HRDs' ability to convey information and opinions is a salient factor generally in the mixed results of pro-EU reforms in the area of freedom of expression in Turkey. While it is certainly true that the incentive of EU membership has stimulated an impressive reform momentum within Turkey, and that this is supported by a vibrant civil society sector, old outlooks hinder the full realisation of legislative reforms in line with international standards and, crucially, the implementation of those reforms on the ground. Failings among the police and judiciary to interpret reforms in accordance with the right to freedom of expression have been described in some detail. Of especial concern today is the fact that the drop in prosecutions under laws limiting free expression in the lead-up to the Council decision of 17 December 2004<sup>175</sup> is countered by more recent rises. The head of İHD's Diyarbakır branch, Selahattin Demirtaş, said in June 2005 that more intolerant attitudes were discernible over recent months in the field of freedom of expression, and that in the context of a significant rise in human rights violations in January and February 2005 legal proceedings had been instituted against 2,811 persons for expressing their opinions in the southeast region between January and June of that year.<sup>176</sup> Turkey has made significant strides towards enhancing freedom of expression over recent years and her progress should not be belittled, but this apparent 'relaxation' in human rights standards following the period of EU scrutiny

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<sup>175</sup> European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final, 6 October 2004, p37

<sup>176</sup> Özgür Politika, 'Drastic increase in human rights violations', 10 June

leading up to the decision to open formal accession negotiations necessarily raises questions over Turkey's commitment to freedom of expression and to the reform process generally.

#### *f. Establishing and operating associations*

Turkey has a vibrant and dynamic civil society sector which has braved harassment and persecution to further non-state interests in the country. For the most part, HRDs in Turkey work within associations, as well as foundations, professional bodies and trade unions. In spite of the challenging circumstances faced by HRDs in associations in Turkey, they have succeeded in documenting human rights violations, bringing national and international attention to the human rights situation and influencing international dialogue on matters such as Turkish EU accession.

The capacity of HRDs to form and effectively operate associations has been significantly undermined in the past, as authorities have raided their premises, arbitrarily closed them down and subjected them to a plethora of administrative hurdles. Turkey has traditionally fielded a deep mistrust of human rights associations and has interfered pervasively in their establishment and subsequent work. Members of associations, particularly those working on human rights or other 'sensitive' issues, were additionally vulnerable to investigations and prosecutions under the draconian Law on Associations, and at times physical violence and other forms of ill-treatment and torture in state custody. Some NGO representatives were even killed or 'disappeared' in circumstances in which the state was implicated.

A typical scenario was that faced by the İHD on 25 January 2001, where security police raided İHD headquarters after allegations it had received funding from the Greek government. The raid followed close monitoring by İHD of police attacks on prisoners in December 2000 and their subsequent transferral to F-type prisons discussed above.<sup>177</sup> The İHD was accused under the Law on Associations of carrying out activities not in conformity with its statute: documents and computers were confiscated, and İHD files were sent to the State Security Court prosecutor to assess whether charges would be brought under the Anti-Terror Law for membership of an illegal organisation.<sup>178</sup>

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<sup>177</sup> Euro-Mediterranean Human Rights Network, 'Human Rights Association in Turkey (İHD) threatened by closure in court cases related to prison raids', 30 March 2001 <[http://www.euromedrights.net/english/emhrn-documents/pressreleases/30\\_03\\_2001.htm](http://www.euromedrights.net/english/emhrn-documents/pressreleases/30_03_2001.htm)>

<sup>178</sup> Euro-Mediterranean Human Rights Network, 'Human Rights Association in Turkey (İHD) threatened by closure in court cases related to prison raids', 30 March 2001 <[http://www.euromedrights.net/english/emhrn-documents/pressreleases/30\\_03\\_2001.htm](http://www.euromedrights.net/english/emhrn-documents/pressreleases/30_03_2001.htm)>

Today, the more open forms of attack against human rights NGOs have dissipated to some extent as a result of pro-EU reforms, but the notion of state control of organisations remains paramount and more insidious methods of impeding them through a variety of legislation or administrative orders are now widely practised. Human rights associations continue to be regarded widely viewed as legitimate targets of state subjugation, while those engaging in advocacy on disfavoured subject areas such as the rights of minorities and other vulnerable groups, or criticising Turkey's record on EU reform, are particularly targeted. On 15 September 2005 the NGO Kaos GL (Gay and Lesbian Cultural Research and Solidarity Association) was informed that the governor had initiated closure proceedings on the grounds that its title and aims violated the Civil Code's prohibition on 'establishing any organisation that is against the laws and principles of morality'.<sup>179</sup> In a welcome decision the prosecutor rejected the governor's demand on the grounds that homosexuality was not immoral,<sup>180</sup> following protests from international human rights groups. Homosexuality is not illegal in Turkey, but it remains a taboo subject and there are no laws to protect homosexuals. Excessive and often arbitrary state actions against disfavoured associations greatly impede the capacity to form associations and for associations to function effectively, thus diminishing their ability to contribute to democratisation and respect for human rights.

The European Commission states that "The recently adopted new Law on Associations is important in reducing the possibility for state interference in the activities of associations."<sup>181</sup> It is indeed the case that the revisions made to the Law on Associations as part of Turkey's harmonisation programme, and the enactment of a new Law on Associations on 23 November 2004, place some limitations on the capacity of government to restrict and interfere with the legitimate activities of associations. Of especial importance is the fact that security forces can no longer access an association's premises or confiscate goods without a prior court decision. Where an NGO has committed an infringement of the law, the governor must first issue a written warning in order that the association concerned can put right the situation before sanctions are taken. Arbitrary raids and confiscation of files and other belongings from human rights associations have represented a common form of harassment in the past. This change in the law is accordingly to be welcomed and indeed, even prior to the enactment of the Law on Associations some relaxation in these practices was evident. The UN Special Representative stated in her report that:

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<sup>179</sup> Human Rights Watch, 'Turkey: Officials Try to Shut Down Rights Group', 26 September 2005; Reuters, 'Turk governor demands closure of gay group', 20 September 2005

<sup>180</sup> Reuters, 'Turkish gays win first legal victory on road to EU', 12 October 2005

<sup>181</sup> European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final, 6 October 2004, p40

In the past two years, raids against Organisations, closure of offices and seizing of materials have decreased. The last report of raids dates back to December 2003 against the Van branches of the Human Rights Association [İHD].<sup>182</sup>

Another encouraging development is the lifting of the former prohibition on associations using a language other than Turkish, including at private meetings. Kurdish human rights associations can therefore now conduct activities in their native language. However, Turkish must still be used for written communications with the authorities, and infringement of this provision results in a hefty fine. Official hostility to the Kurdish language means that investigations and prosecutions can still be launched against HRDs on the slightest provocation on this basis. Head of İHD's Bingöl branch, Ridvan Kızgın was fined under the Law on Associations for writing a letter on 29 June 2005 to the Governor which contained the name of the association in Turkish, Kurdish and English.<sup>183</sup>

Provisions in the old law forbade the formation of associations with certain aims, and were used repeatedly to impede the establishment of groups protecting human rights, particularly of Kurds. Under Article 5, associations could not be formed where they threatened national security and public order or general health and morals, or for the purposes of claiming that there are minorities in Turkey or 'creating minorities by protecting, promoting or spreading languages or cultures separate from the Turkish Language and Culture'. These clauses do not appear in the new text of the law. In a further positive development, the Diyarbakır Security Directorate retracted a decision even prior to the change in the law which had denied permission for the establishment of the organisation the Kurdish Writers Association (KÜRT-PEN) because of the inclusion of the word 'Kurdish' in its name,<sup>184</sup> though the organisation has later faced charges for receiving a delegation from the EU.

Also welcome is the repeal of Article 4 of the old Law on Associations which prevented individuals who had been convicted of a criminal offence from founding or joining associations. This article had been used against HRDs where they had been convicted of offences under legislative provisions in violation of human rights,

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<sup>182</sup> UN Commission on Human Rights, 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, [http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?Open Element](http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement), §60

<sup>183</sup> This incident is discussed further below in 'Human Rights Defenders and the Kurds'

<sup>184</sup> A report by the TİHV notes that the Diyarbakır Security Directorate altered its decision following a press conference held by the organisers in which they expressed their intention to make an application to the European Court of Human Rights. TİHV, 'Human Rights in Turkey – March 2004', <[http://www.tihv.org.tr/report/2004\\_03/markurd.html](http://www.tihv.org.tr/report/2004_03/markurd.html)>

such as the right to freedom of expression.

At root, however, Turkish hostility towards non-governmental associations continues to be reflected in a plethora of requirements, restrictions and criteria which are used to impede their formation and activities. Notwithstanding the welcome improvements made to the Law on Associations, the document still bears a closer resemblance to a comparable law from an authoritarian regime than that of a modern, European democracy. Moreover, as pro-EU reforms increasingly place limits on some of the state's more flagrant means of silencing HRDs, there has been a dramatic surge in the utilisation of repressive laws, particularly the Law on Associations but also the Law on Foundations, the Civil Code and public order legislation, to sustain a constant barrage of investigations, prosecutions and lower-level administrative red-tape against disfavoured associations, thus intruding into their affairs, pressurising them and disrupting their work.

Registration requirements in the revised law are simplified a little. In previous years trivial instances of non-fulfilment of the law's precise stipulations for registering an association was frequently used as a pretext for refusing or delaying the establishment of associations disapproved of by the state. The UN Special Representative, writing at a time when the old Law on Associations was still in force, noted that "in practice defenders face a cumbersome administrative process which can result in legal proceedings for minor administrative irregularities in their applications".<sup>185</sup>

However, associations must still produce a statute detailing the association's aims and its type and field of activities to be carried out, and it is not permitted to carry out activities other than those indicated in its statute. Though the change in the law so that associations acting outside their statute are subject to fines rather than dissolution, it is of concern that this provision has been commonly used by the Turkish authorities to impose barriers before human rights associations engaging in legitimate efforts to promote and protect human rights. The UN Special Representative notes that:

Nearly all defenders have reported encountering obstacles in carrying out some of their activities because the police or the Department of Association decided they were outside of their mandate.<sup>186</sup>

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<sup>185</sup> UN Commission on Human Rights, 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>, §68

<sup>186</sup> UN Commission on Human Rights, 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, <http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>, §73

The Human Rights Agenda Association, established by a group of lawyers to monitor human rights, was threatened with closure in April 2004 under the Law on Associations after articles were drafted incorrectly in twenty two of the association's standing rules.<sup>187</sup> An İzmir court decided to drop the case in September 2004. In 2004 the association Göç-Der, which works for the rights of the displaced, was charged with undertaking activities outside its statute. It had reportedly distributed a questionnaire in an attempt to ascertain the number of persons wishing to return to their villages of origin.<sup>188</sup> The European Commission undertakes in its October 2004 report to scrutinise the future interpretation and implementation of this provision in light of a government regulation issued on its application, in order to ascertain whether full alignment with Article 11 of the ECHR is achieved.<sup>189</sup>

As detailed above, restrictions on the purposes for which an association can be established have been somewhat eased. However, under Article 5 an association cannot be founded to serve a purpose expressly excluded under the constitution; a provision with scope to place undue limitations on the establishment of legitimate human rights associations, since the constitution stresses the principles of territorial integrity and loyalty to the nationalism of Atatürk, and makes reference to Turkish historical and moral values. Human rights associations espousing the human rights of the Kurds, frequently labelled as disloyal to the state or advocates of separatism, are at particular risk in this context. The European Commission, in its 2004 Report, observes that:

Although constitutional prohibitions which could be used to restrict the establishment of certain kinds of association are invoked in the new law, recent practice suggests that associations are increasingly permitted to open, even when established on the basis of currently prohibited categories.<sup>190</sup>

If this is the case then it certainly marks an encouraging step towards state toleration of associations, but given the widely observable inclination among public officials to locate and exploit repressive legislation where possible to target HRDs and others viewed as 'hostile', the presence of these provisions is of concern. Furthermore, a

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<sup>187</sup> BIA, 'Association may be closed before it opens', 29 April 2004; Turkish Daily News, 'Procedural glitch lands human rights association on court', 28 April 2004

<sup>188</sup> Council of Europe Parliamentary Assembly Committee on the Honouring of Obligations and Commitments by the Members States of the Council of Europe (Monitoring Committee), 'Explanatory Memorandum by the Co-rapporteurs Mrs. Mady Delvaux-Stehres and Mr. Luc Van den Brande (Co-rapporteurs)', March 2004, p44 <<http://assembly.coe.int/Communication/TemporaryDocs/ASmon/Turkey/TurkeymemorandumE.pdf>>

<sup>189</sup> European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final, 6 October 2004, p41

<sup>190</sup> European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final, 6 October 2004, p40

major case decided against a trade union in July 2005 markedly contradicts the Commission's 2004 observation.

Education union Eğitim-Sen, the largest trade union in Turkey, was compelled by a decision of the Supreme Court on to remove references to the right to mother tongue education from its statute. The union has been concerned with human rights in the Kurdish region and has issued reports on the subject, resulting in state harassment including prosecutions and enforced exile. On 27 June 2003, the Chief of General Staff sent a letter to the Ministry of Labour and Social Security stating that Article 2 of the union's statute, in which it expresses its intention to defend the right of individuals to receive education in their mother tongue, was incompatible with Articles 3 and 4 of the Turkish Constitution. These constitutional articles protect territorial integrity and prohibit the teaching of languages other than Turkish in educational facilities as a mother tongue.<sup>191</sup> These accusations, originating from the military, ultimately resulted in the instigation of an investigation of Eğitim-Sen in 2004.

On 10 June 2004 the Ankara State Prosecutor launched a prosecution seeking the union's closure for breach of the Turkish Constitution after the union refused to remove Article 2 from its statute. A regulation analogous to Article 5 of the Law on Associations is contained in the Law on Public Servants' Trade Unions which stipulates that the activities and administration of such trade unions may not be contrary to the Constitution.<sup>192</sup> In a decision much welcomed by human rights groups, the case was originally dismissed by the Ankara Labour Court on 15 September 2004 on the basis that closure would contravene the rights to freedom of expression and association under the ECHR. The case was returned to the Second Labour Court by the Court of Cassation in November 2004 in a decision which stated that

freedom of establishing an association can be limited for the protection of national security, integrity of the country and public order according to the European Convention of the Human Rights.<sup>193</sup>

The Ankara Labour Court again ruled in favour of Eğitim-Sen.

When the Prosecutor appealed to the Supreme Court on 25 May 2005, however, the court ruled that Eğitim-Sen's constitutional commitment to mother tongue

<sup>191</sup> Turkish Daily News, 'Court rejects bid to close Eğitim-Sen', 22 February 2005

<sup>192</sup> Amnesty International, 'Teachers' union under pressure', 21 January 2005 <<http://web.amnesty.org/library/Index/ENGEUR440022005?open&of=ENG-TUR>>

<sup>193</sup> TİHV, 'Human Rights in Turkey: November – December 2004', <<http://www.tihv.org.tr/eindex.html>>

education for all citizens was in breach of Article 42 of the Turkish Constitution.<sup>194</sup> On 3 July 2005, Eğitim-Sen voted to remove the commitment to mother tongue from its constitution, and now hopes that when the case goes back to the local court in September the court will find there is no longer any legal reason for closure of the union. Eğitim-Sen has also lodged a case with the European Court of Human Rights.

Interestingly, the Supreme Court in its decision of 25 May 2005 explicitly stated that its ruling against Eğitim-Sen accorded with the permissible limitations to freedom of expression and association set out in Articles 10 and 11 of the ECHR. The prohibition on mother tongue language was seen to comprise an element of Turkey's constitutional protection of the indivisibility of the nation. The threat posed by advocating for mother tongue education was accordingly deemed of sufficient magnitude to abrogate the rights of freedom of expression and thought and trade union rights set out in the Turkish Constitution in Articles 25, 26 and 51. It is the case that the rights to freedom of expression and association can be limited to protect the interests of preserving territorial integrity as cited by the court, but only where such limitations are strictly proportionate to the aim pursued. It is submitted that it is highly unlikely that compelling Eğitim-Sen to alter its statute (or potentially to close down) in order to protect territorial integrity on the basis of its statutory commitment to defending mother tongue language rights would be considered proportionate by the ECtHR.

A further hindrance to human rights associations are the burdensome annual reports which must be submitted to local authorities on activities undertaken and the association's income and expenditure. Auditing requirements are also excessively onerous. Associations are no longer obliged to publish general assembly meeting times in the newspaper or to have a government representative present, but Ankara retains an excessively controlling hand in the affairs of associations by imposing sanctions for failing to conduct the general meeting in accordance within the stipulated time and location requirements. Broad powers to conduct investigations of associations are retained, including assessing whether an association is acting in accordance with its statute or has maintained its records in conformity with the law, and associations continue to be subjected to frequent and intrusive investigations which foster an environment which is hostile to the evolution of civil space autonomous of the government.

Turkish associations can now theoretically engage in international activities or hold meetings with foreign individuals or groups without needing to first gain permission. Previously, the capacity of associations to engage with foreign and

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<sup>194</sup> Trade Union Movement, 'The Supreme Court of Turkey has Decided to Close Down the Teachers' Union', June 10 2005, <<http://www.emep.org/trade/Egitim-Sen.html>>

international groups was highly circumscribed and subject to onerous notice requirements. Old Article 43 of the Law on Associations, which forbade meetings with international bodies without the permission of the Ministry of the Interior relying on the opinion of the Minister for Foreign Affairs, was used a great deal to prosecute human rights associations for holding meetings with foreign associations or international organisations. In August 2004 a Diyarbakır prosecutor launched proceedings against the local branch of the Kurdish Writers Association (KURT-PEN) for ‘receiving a committee from the EU’ without permission. The defendant was acquitted in October 2004.<sup>195</sup> Also in Diyarbakır, the Public Prosecutor started an investigation of İHD Diyarbakır branch Chair Selahattin Demirtaş and the branch executives on allegations of ‘organising an unauthorised meeting’ after they met with 20 students from Swedish universities on 16 April 2004 to discuss the Kurdish question.<sup>196</sup> The repeal of notice requirements for international activities of associations is, then, a welcome development in improving freedom of association for human rights NGOs in Turkey.

On paper, foreign groups can now open branches in Turkey or establish co-operation with Turkish associations, and Turkish NGOs can establish representation abroad or affiliate themselves with larger, international organisations. These are significant steps forward. However, this is subject to the permission of the Ministry of Interior in conjunction with the Ministry of Foreign Affairs – provisions which are virtually unheard of in existing EU member states<sup>197</sup> and which indicate that Turkey is still mistrustful of the influence of foreign associations.

The capacity of associations and foundations to receive funds from abroad without prior permission was a moot point during the passage of the Law on Associations through the Turkish parliament; the Prime Minister vetoed the law after its passage through the National Assembly in July 2004 reportedly because of this provision, but the new law was later approved without change. This is broadly a welcome change, but associations must still serve notice to the local administrative authority when receiving funds from abroad. As such, the state is able to monitor the foreign alliances formed by associations – a troubling factor in view of the hostility with which foreign participation in civil society is viewed by Turkish authorities.

It is far from clear, in any case, that these altered provisions of the revised Law on

<sup>195</sup> TİHV, ‘Human rights in Turkey – August 2004’ <[http://www.tihv.org.tr/report/2004\\_08/augorgani.html](http://www.tihv.org.tr/report/2004_08/augorgani.html)>

<sup>196</sup> TİHV, ‘Human rights in Turkey – July 2004’, <[http://www.tihv.org.tr/report/2004\\_07/julyorgani.html](http://www.tihv.org.tr/report/2004_07/julyorgani.html)>

<sup>197</sup> Third Sector Foundation of Turkey (TÜSEV) & International Center for Not-For-Profit Law, ‘Comparative Report on Turkish Association Law Provisions - September 2004’, September 2004, <<http://www.icnl.org/PRESS/Articles/2004/TÜSEV%20Association%20Law%20Report%202004%20Final.doc>>

Associations have yet been taken on board and that public authorities are exhibiting a more liberal approach to foreign and international involvement in the human rights community in Turkey. The European Commission notes, prior to the new Law on Associations coming into force, “In practice, some NGOs have continued to face problems as a consequence of their relations with organisations located abroad.”<sup>198</sup>

A particular case in point is that of the closure of the Torture Prevention Group, established in December 2001 by the İzmir Bar Association, after the implementation of the Law on Associations. On 7 December 2004 President of the İzmir Bar Association Nevzat Erdemir decided to close the group, which worked with torture victims, and reportedly seized files containing confidential testimony, photos and other records relating to around 575 applications from victims of alleged torture, potentially placing the applicants at risk of state persecution.<sup>199</sup> Nevzat Erdemir’s reasoning for closing the group, clarified in a press statement of 13 December, included its receipt of funds from the European Commission and its co-operation with international organisations (most likely a reference to its work with Amnesty International).<sup>200</sup> For human rights associations, the capacity to forge alliances with other interested parties in Europe and globally is fundamental to propagating their messages to international audiences, and in particular to ensuring that human rights concerns in Turkey are accurately and effectively presented to regional and international human rights mechanisms. In light of the current EU accession process these factors take on especial importance, and it is vital that what relaxations in Turkish law on this matter have occurred in theory are given effect on the ground.

Failure to comply with the intricately detailed minutiae of the Law on Association’s requirements, including acting contrary to the association’s statute or holding general assembly meetings in places other than that indicated in the statute, is no longer grounds for dissolution but results in disproportionate fines with the potential to cripple often small and under-funded human rights associations.

Furthermore, there has been no relaxation in the Law on Foundations akin to the new provisions found in the revised law on Associations, and the significant number of human rights organisations registered as foundations rather than associations – including the TİHV – suffer repeated investigations and prosecutions under the Law on Foundations. On 12 November 2003 a case was brought against TİHV

<sup>198</sup> European Commission, ‘2004 Regular Report on Turkey’s Progress Towards Accession’, COM (2004) 656 final, 6 October 2004, p42

<sup>199</sup> Amnesty International, ‘Turkey: Closure of Torture Prevention Group shocking’ 14 January 2005 <<http://web.amnesty.org/library/Index/ENGEUR440012005?open&of=ENG-TUR>>

<sup>200</sup> Amnesty International, ‘Turkey: Closure of Torture Prevention Group shocking’ 14 January 2005 <<http://web.amnesty.org/library/Index/ENGEUR440012005?open&of=ENG-TUR>>

under the Law on Foundations. The foundation was accused of ‘co-operating’ with international organisations without the permission of the Council of Ministers and of fundraising via the Internet. ‘Co-operation’ had involved translating reports and distributing them to the European Parliament Rapporteur for Turkey, the Council of Europe Commissioner for Human Rights and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. The case was effectively dropped in March 2004.

A new Draft Law on Foundations has been prepared and revised on a number of occasions, but at the time of writing the draft law still contained provisions which did not accord with European and international human rights standards and it had not been approved by Parliament.<sup>201</sup> Furthermore, the Directorate General for Foundations retains tight control over the activities of foundations and has the power to dissolve them, seize their properties, dismiss their trustees without a judicial decision and intervene in the management of their assets and accountancy.<sup>202</sup> In May 2004 the Directorate General for Foundations issued a circular directing that all foundations gain permission prior to submitting applications to participate in projects funded by international organisations, including the European Commission.<sup>203</sup>

In short, the underlying theme of the new Law on Associations is very much state control. The law contains some encouraging provisions but democracy is not yet sufficiently mature in Turkey that its coercive state bureaucracy is willing to countenance the association of individuals peacefully advocating alternative views of governance in Turkey, nor to embrace the positive contribution to good government made by human rights associations. The Law on Foundations remains overly restrictive and impedes the creation and operation of human rights organisations. The European Commission notes in its assessment of Turkey’s progress on freedom of association that “civil society, in particular human rights defenders, continues to encounter significant restrictions in practice.”<sup>204</sup> Public authorities, though making some halting steps forward, still appear deeply uncomfortable with the idea of human rights groups operating freely in the country and regard the law as a device to keep them under a tight rein.

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201 Speech by Mr Olli Rehn Member of the European Commission, responsible for Enlargement “Accession negotiations with Turkey: the journey is as important as the final destination” European Parliament Plenary Session Strasbourg, 28 September 2005

202 European Commission, ‘2004 Regular Report on Turkey’s Progress Towards Accession’, COM (2004) 656 final, 6 October 2004, p43

203 European Commission, ‘2004 Regular Report on Turkey’s Progress Towards Accession’, COM (2004) 656 final, 6 October 2004, p43

204 European Commission, ‘2004 Regular Report on Turkey’s Progress Towards Accession’, COM (2004) 656 final, 6 October 2004, p40

*g. Peaceful assembly*

The ability to assemble freely and to hold public meetings is an essential component of the work of HRDs. It allows them to raise public awareness of human rights abuses and to put visible pressure on the government to address a situation, as well as facilitating activities such as press conferences and seminars.

Ankara, though, has long been nervous of allowing collective, public expressions of views or grievances which do not accord with official state positions, and HRDs assembling peacefully have frequently met with arrest, prosecution under anti-democratic laws and excessive use of force by law enforcement officials. Freedom of assembly can legitimately be restricted for reasons including national security, public safety or the prevention of disorder or crime, and police tasked with maintaining public order may need to use force to disperse a public meeting. In Turkey, however, insufficient weight has been accorded to the right to freedom of assembly and public authorities have repeatedly misused their authority to place limitations on the communal activities of disfavoured groups, including HRDs.

The situation has changed little as a consequence of pro-EU reforms, and the continued severity of Turkey's treatment of those exercising their right to free assembly is one of the most significant challenges to democratisation in the country. Legally speaking, the bases for restricting assembly by HRDs include the Penal Code, public order legislation, the Law on Associations and, in particular, the Law on Public Meetings and Demonstrations. This latter law has been amended several times, and major revisions in July 2003 resulted in some welcome changes. These include the rescission of the right of governors to ban a demonstration unless there is a serious risk of it resulting in a criminal act, and a reduction in the period of time for which the Interior Ministry could postpone demonstrations from 30 days to 10.<sup>205</sup> The July 2003 reform package also resulted in a reduction in the period of notice of intention to demonstrate from 72 to 48 hours.<sup>206</sup> The law is complemented by a series of government circulars: important among these was a June 2004 circular by the Ministry of the Interior which went towards clarifying elements of the law relating to freedom of assembly by instructing local authorities to deal with demonstrations, marches and press conferences in a way that does not encroach on the rights of peaceful assembly and avoids placing restrictions on the organisers that are not in accordance with the Law on Public Meetings and Demonstrations.<sup>207</sup>

205 Mazlum-Der, 'The Evaluation Report of Applications of Mazlum-Der İstanbul Branch - 2003', <<http://www.mazlumder.org/english/text.html?sy=226&cst=other>>

206 HRW, 'Turkey: Continuing Restrictions on Freedom of Assembly - Letter to Deputy Prime Minister Abdullah Gül', 28 April, 2004, <<http://hrw.org/english/docs/2004/04/27/turkey8498.htm>>

207 European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final, 6 October 2004, p41

It is manifestly apparent, though, that the right to freedom of assembly is frequently restricted in practice. During the six months between January and June 2004, İHD reports that investigations relating to freedom of assembly were launched against 667 individuals, and 227 individuals were prosecuted.<sup>208</sup> 102 individuals were sentenced to a total of 125 years, 3 months and 2 days of imprisonment, plus 21 years and 2 months sentences of suspended sentences. They were fined 13 billion, 487 million and 440 thousand Turkish Liras. According to Mazlum-Der, 1200 people exercising their right to free assembly were detained during the first seven months of 2004, most of whom were released without charge.<sup>209</sup> These figures represent considerable increases on comparable data from 2003, and there appears to have been no real falling off in these numbers since. İHD's Diyarbakır branch reported that violations of the right to freedom of assembly increased following the December 2004 EU decision to open negotiations with Turkey, and that in January and February 2005 80 people were detained in the Diyarbakır region during demonstrations.<sup>210</sup> The association also asserted that intolerance of Kurdish citizens wishing to exercise their right to demonstrate has reached "alarming levels".<sup>211</sup> The UN Special Representative notes that despite the circulars issued by the government indicating a commitment to rectifying obstacles to NGO activities, "Compliance with the instructions issued by the Ministry is still erratic and not implemented to an extent that prevents the occurrence of violations."<sup>212</sup>

The persistence of extensive state interference with freedom of assembly appears to reflect a view among sections of the Turkish administration that holding public meetings and demonstrations is a concession to be granted at the discretion of the state, rather than a right to be restricted only in limited circumstances. In particular, state officials will frequently consider the content of a protest or meeting as determinative of whether or not it should be permitted to go ahead. Of course, it is legitimate for a state to limit public demonstrations which are clearly liable to endanger public order, but it cannot curtail the right to freedom of assembly simply because it disapproves of the agenda of a collective gathering. Those expressing views which are objectionable to the state (such as HRDs) are most commonly denied permission to stage demonstrations or other public meetings, or met with

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208 İHD, 'Human Rights Violations in Turkey Summary Table – January – June 2004', <<http://www.ihd.org.tr/eindex.html>>

209 BİA, 'EU Inspired Laws Remain on Paper', 29 July 2004, <[http://www.bianet.org/2004/07/01\\_eng/news39787.htm](http://www.bianet.org/2004/07/01_eng/news39787.htm)>

210 İHD (Diyarbakır Branch), 'Critical Report By İHD: In 2 Months 2855 Rights Violations Occurred', March 8 2005

211 İHD (Diyarbakır Branch), 'Critical Report By İHD: In 2 Months 2855 Rights Violations Occurred', March 8 2005

212 UN Commission on Human Rights, 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, §62

disproportionate force by security officials during protests.

A common ground for curtailing the right to free assembly of HRDs in Turkey is that a demonstration or public meeting is ‘unauthorised’. In spite of the aforementioned legal provision setting out that assembly can only be restricted by the governor where there is a clear and imminent threat of a crime being committed, and the ministerial instruction contained in the June 2004 circular that local authorities do not unduly impinge on the right to assembly or impose restrictions on protest organisers contrary to the Law on Public Meetings and Demonstrations, these stipulations are frequently not respected in practice. Governors still sometimes postpone or cancel public meetings or demonstrations when they concern contentious issues such as allegations of human rights violations, and charges are brought against attendees at events which lack the requisite permissions.<sup>213</sup> An indictment was brought against over 100 individuals attempting to found a ‘peace table’, including İHD former Vice-Chair Eren Keskin and head of İHD’s Bingöl branch Rıdvan Kızgın, on grounds of ‘staging an unauthorised demonstration’.<sup>214</sup> Authorities reportedly prevented a signature campaign by the Prisoners’ Relatives Association (TUHADDER) planned for 17 November 2004 in Mersin in protest at the draft Law on Execution of Sentences, on the basis that the Mersin Governorate had not given its permission for the event. The group postponed the campaign after being warned that its members would be detained if they went ahead with it.<sup>215</sup> On 26 July 2004 Greenpeace members were acquitted of ‘staging an unauthorised demonstration’ at the opening of the Sugözü Thermal Power Plant.<sup>216</sup>

Where HRDs demonstrate or hold meetings on especially sensitive or ‘taboo’ subjects such as the activities of the military, the role of Islam or the rights of Kurds they are at particular risk of being targeted by the authorities. This may be the case even where public gatherings simply involve manifestations of Kurdish culture and identity. A trial was launched by the prosecutor in Diyarbakır in September 2003 against 34 people wishing to participate in a World Peace Day demonstration on the grounds that they wore their local dress. Charges were brought on grounds of staging an unauthorised demonstration, as well as ‘inciting people to hatred and enmity’ under Article 312 of the Penal Code.<sup>217</sup>

A specific problem encountered by HRDs and other groups wishing to exercise

<sup>213</sup> BİA, ‘Mazlum-Der: EU Inspired Laws Remain on Paper’, 29 July 2004, <[http://www.bianet.org/2004/07/01\\_eng/news39787.htm](http://www.bianet.org/2004/07/01_eng/news39787.htm)>

<sup>214</sup> TİHV, ‘Human Rights in Turkey: October 2004’, <<http://www.tihv.org.tr/eindex.html>>

<sup>215</sup> TİHV, ‘Human Rights in Turkey: November – December 2004’, <<http://www.tihv.org.tr/eindex.html>>

<sup>216</sup> TİHV, ‘Human Rights in Turkey: July 2004’, <<http://www.tihv.org.tr/eindex.html>>

<sup>217</sup> TİHV, ‘Human Rights in Turkey: September 2003’, <<http://www.tihv.org.tr/eindex.html>>

their right to free assembly is the burdensome notification requirements which must be fulfilled prior to holding a public meeting or demonstration. Notification requirements placed upon protest organisers are not unheard of in mature democracies, and can be justified if they are specifically targeted at maintaining public order and preventing crime. However, they are liable to abuse by unscrupulous local authorities seeking to prevent certain types of public assemblies through the outright denial of permission for peaceful, legitimate assemblies, the imposition of time-consuming and sometimes costly bureaucratic hurdles on applications, and the attachment of time and place restrictions when permission is granted.

In Turkey officials repeatedly employ notification requirements for public meetings and demonstrations as a means of hindering freedom of assembly for HRDs. Despite an instruction in the June 2004 Ministry of Interior circular that documentation should not be requested in excess of what is required under the Law on Demonstrations and Public Meetings, notification requirements are in reality often excessive in themselves, and are interpreted with great pedantry by public officials where a particular assembly is likely to involve criticism of state policies. Non-fulfilment of notification requirements, which can even include informing the authorities of slogans or text on banners, result in refusals to grant permission for a demonstration or public meeting, or actions by security forces to prevent an assembly from taking place. Public authorities in some areas will also incline towards controlling the time and place of a demonstration or public meeting, and will be particularly unwilling for protesters expressing views unacceptable by the state to be staged in visible, locally significant areas such as main squares or close to government buildings. A range of arbitrary grounds may be invoked to re-route a protest or to restrict it to a designated area.

The applicability of prior notification and other such requirements to activities such as holding press conferences and leafleting, and indeed the extent to which public officials can limit this type of meeting, is the subject of some contention and ambiguity in Turkey. Press conferences are important mechanisms used by Turkish human rights groups to build awareness of human rights issues, to publicise the findings of human rights reports and to express their position on certain events and situations. HRDs in the past were frequently prevented from holding press conferences, or faced prosecution for holding them without state authorisation. Often these events would be low-key, open air events with few participants, and measures by public authorities to prevent, intimidate or punish HRDs holding press conferences bore no real reference to threatened criminal acts or the endangerment of public order.

A Supreme Court judgment of 2 February 2000 overturned the conviction of a group of trade unionists under the Law on Public Meetings and Demonstrations for giving a press conference on the Ministry of Justice's treatment of prison staff.<sup>218</sup> This ruling was interpreted as signifying that holding press conferences entailed no notification requirements. The June 2004 circular by the Ministry of the Interior mandated that where press conferences of civil society organisations meet with set criteria, including lasting less than an hour and not disrupting traffic, they should no longer be subject to the notification and prior permission requirements imposed under the Law on Public Meetings and Demonstrations.

However, in practice restrictions are still imposed upon the holding of press conferences, particularly where they are held by groups and individuals critical of the state such as HRDs. In certain regions security forces will prevent or intervene in minor, unobtrusive and peaceful press conferences given by local human rights organisations, trade unions, women's groups and political parties protesting over human rights abuses almost as a matter of course where the subject matter of the conference is at all sensitive. Where conferences are permitted to go ahead, they are almost invariably subject to intense police monitoring which is far in excess of what can be deemed necessary for the protection of the public. The attendance of large numbers of police officers at press conferences, at times photographing or video-recording participants, is intimidatory and is likely to deter local involvement in human rights events and activities.<sup>219</sup>

Furthermore, the law still places logistical restrictions on public gatherings, including that they cannot be held within 300 metres of any public building or major road, and these are used to curtail press conferences, as are local administrative measures implemented by public authorities restricting the locations where conferences can be held. The Diyarbakır Governorate in June 2004, in response to the government circular issued at that time, forbade the holding of press conferences near the buildings of the governorate, court house, prison, military premises and security directorates, and in the main squares.<sup>220</sup> TİHV reports that following Diyarbakır, Mardin, Hatay, Niğde, Osmaniye, Aksaray and Çanakkale governorates also introduced restrictions on the locations where press statements can be staged.<sup>221</sup> Since public events such as press conferences by definition aim at attracting public attention, restrictions preventing them being held in the most visible and / or

218 HRW, 'Turkey: Continuing Restrictions on Freedom of Assembly - Letter to Deputy Prime Minister Abdullah Gü'l', 28 April, 2004, <<http://hrw.org/english/docs/2004/04/27/turkey8498.htm>>

219 UN Commission on Human Rights, 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, §65

220 TİHV, 'Human Rights in Turkey: July 2004', <<http://www.tihv.org.tr/eindex.html>>

221 TİHV, 'Human Rights in Turkey: October 2004', <<http://www.tihv.org.tr/eindex.html>>

symbolic locations substantially infringe upon the right to free assembly and may even defeat its purpose in some instances.<sup>222</sup>

It is also common for the organisers of press conferences to be investigated and prosecuted under the Law on Public Meetings and Demonstrations, as well as other laws such as the Penal Code; indeed, the UN Special Representative concludes that most cases filed against HRDs in Turkey were “based on articles of the Penal Code...in connection with unauthorized press statements”.<sup>223</sup> Public authorities will commonly infer a connection between individuals protesting over human rights violations and the actions or interests of the victims they seek to protect, and consequently organisers of press conferences given on topics such as the rights of the Kurds are targeted. Thus trade unions Eğitim-Sen and KESK, which has protested over the closure case against Eğitim-Sen (see above), have faced investigations on account of press conferences they have organised. HRDs have even been imprisoned for holding press conferences: on 26 May 2003 former Vice-Chair of İHD Eren Keskin and İHD members Ümit Efe and Halit Dinler were sentenced to eighteen month terms of imprisonment for a press conference held on 22 April 2000 in Sultanahmet Square in Istanbul protesting over prison conditions. The prosecutions were brought under the Law on Public Meetings and Demonstrations. 35 other defendants received suspended sentences.<sup>224</sup> Most of those convicted under the Law on Public Meetings and Demonstrations have their sentences suspended.<sup>225</sup>

More generally, where cases concerning freedom of assembly reach the courts, judicial decision making tends to mirror the restrictive approach to the right adopted by local officials. An example is the case decided on 13 February 2004, when a four year trial ended with the sentencing of 31 people to prison sentences of between one and a half years to three years on the basis of Article 32(3) of the Law on Meetings and Public Demonstrations (resisting dispersal by violent means).<sup>226</sup> The defendants in the case included psychiatrist and TİHV member Dr Alp Ayan and TİHV Board Member Günseli Kaya, as well as members of the İzmir branches of the TİHV and the İHD, trade unionists and lawyers.<sup>227</sup> The convictions followed

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222 UN Commission on Human Rights, ‘Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, § 21

223 UN Commission on Human Rights, ‘Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, § 81

224 TİHV, ‘Human Rights in Turkey: May – June 2003’ <<http://www.tihv.org.tr/press/aliaga.html>>

225 HRW, ‘Turkey: Continuing Restrictions on Freedom of Assembly - Letter to Deputy Prime Minister Abdullah Gül’, 28 April, 2004, <<http://hrw.org/english/docs/2004/04/27/turkey8498.htm>>

226 TİHV, ‘Human Rights in Turkey – February 2004’, <<http://www.tihv.org.tr/press/aliaga.html>>

227 TİHV, ‘Information Note: Human Rights Defenders on Trial’, 4 September 2001, <<http://www.tihv.org.tr/press/aliaga.html>>

the defendants' attendance on 30 September 1999 at the funeral of Nevzat Çiftçi, who was killed in the notorious military operation in Ankara's Ulucanlar prison in September 1999. Dr Alp Ayan and Günseli Kaya attended the funeral in their capacity as HRDs.<sup>228</sup> Testimony from witnesses of the incident at the funeral indicates that gendarmerie forces erected barricades to prevent entry to the village of Helvacı in İzmir where the funeral was held, and used disproportionate force against those attempting to attend. TİHV reports that 14 people were subsequently arrested and detained for four months, and that prior to the decision of 13 February 2004 the defendants had attended more than 25 hearings. Human rights groups observing the trial noted flaws including failing to take into account video evidence documenting the incident.<sup>229</sup>

Other cases against demonstrators and participants in public meetings include that of Özkan Hoşhanlı, Chair of the Malatya branch of Mazlum-Der, who has recently finished serving a sentence of fifteen months imprisonment under the Law on Demonstrations and Public Meetings following his attendance as an observer at a demonstration against the ban on wearing the headscarf in public institutions.<sup>230</sup>

Policing of demonstrations is an area of significant concern for HRDs in Turkey. Protestors involved in exposing deficiencies in the state's human rights record continue to be met with excessive violence by security forces. Security forces are justified in using force where this is strictly necessary to address a situation, and police monitoring demonstrations are often compelled to make quick and difficult decisions about events unfolding. However, force must only be used where non-violent methods of achieving the desired result are exhausted, and the level of force employed must be proportionate to the legitimate objective to be achieved.<sup>231</sup> In Turkey, police frequently employ force to disperse demonstrations in excess of these principles. Demonstrators are attacked without warning, subjected to tear gas attacks, and beaten even after they are incapacitated.

The European Commission has repeatedly expressed concern at the violence with

[sskt.nu/4%20sept01freedom%20of%20thoug.htm>](http://sskt.nu/4%20sept01freedom%20of%20thoug.htm)

- 228 Amnesty International, 'Turkey: Human rights defenders in İzmir harshly sentenced', 27 February 2004, <<http://web.amnesty.org/library/Index/ENGEUR440092004?open&of=ENG-TUR>>
- 229 International Federation for Human Rights & World Organisation Against Torture, 'Open letter To Mr. Cemil Çiçek, Minister of Justice of Turkey, Re: Trial of Dr. Alp Ayan, Mrs. Günseli Kaya and other defendants before the Aliaga First Instance Penal Court', 30 January 2004, <[http://www.fidh.org/article.php3?id\\_article=525>](http://www.fidh.org/article.php3?id_article=525>)
- 230 This case is discussed further below, see 'Women human rights defenders'
- 231 See Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, § 4 & 5

which demonstrators are treated in Turkey,<sup>232</sup> and in August 2004 a Ministry of Interior circular was issued directing governors as a matter of priority to take steps to avoid excessive force in the policing of demonstrations and requesting that Governors ensure that disproportionate force by members of the security forces is appropriately punished.<sup>233</sup> The circular instructs authorities to conduct studies to ascertain the root causes of the use of disproportionate force, working in conjunction with NGOs and civil society groups where necessary.<sup>234</sup>

However, these measures have had very little impact, and police heavy-handedness in responding to collective action of these kinds is showing no real sign of abating. The UN Special Representative reports that “Cases where the police outnumber defenders are numerous and reports of excessive force against protesters, in particular students and trade unions, continue.”<sup>235</sup> Mazlum-Der’s central branch in Ankara reported that police intervention in street demonstrations during January and February 2005 was a major source of serious human rights violations in Turkey, and İHD’s Diyarbakır branch reports that despite directives and police training by the Interior Ministry, demonstrators attempting to flee police violence are chased and beaten with truncheons. The group also states that administrative investigations are rarely opened in alleged instances of the disproportionate use of force against protesters,<sup>236</sup> though there is a tendency to initiate proceedings against participants in demonstrations where violence breaks out and so, perhaps, to avert blame or accord *ex post facto* legitimisation to police actions. It is not uncommon for protesters to face investigation or prosecution for offences such as ‘resisting dispersal by violent means’ after a public assembly where excessive force has been applied by police.

A case which illustrates some of these observations and which has gained notoriety in Europe, coming as it did so soon after Turkey was accepted as an EU negotiating partner, is that of the demonstrations which took place on 6 March 2005 in Istanbul ahead of Women’s Day. The demonstration at issue was peaceful and aimed at demanding equal rights for women; Turkey’s record on women’s rights has been

<sup>232</sup> European Commission, ‘2004 Regular Report on Turkey’s Progress Towards Accession’, COM (2004) 656 final, 6 October 2004, p41-42; European Commission, ‘Regular 2003 Regular Report on Turkey’s progress towards Accession’, p33

<sup>233</sup> European Commission, ‘2004 Regular Report on Turkey’s Progress Towards Accession’, COM (2004) 656 final, 6 October 2004, p41

<sup>234</sup> BBC, ‘Turkish police beatings shock EU’, 7 March, 2005, <<http://news.bbc.co.uk/1/hi/world/europe/4325347.stm>>

<sup>235</sup> UN Commission on Human Rights, ‘Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, §66

<sup>236</sup> İHD (Diyarbakır Branch), ‘Critical Report By İHD: In 2 Months 2855 Rights Violations Occurred’, 8 March 2005

repeatedly criticised by the European Commission. Police issued orders to the demonstrators to disperse, and when these orders were ignored they reportedly charged on the crowds with tear gas and truncheons.<sup>237</sup> Eyewitnesses report seeing police beating and kicking those trying to flee. Pictures of the police reaction to the demonstration were met with alarm across Europe, and the European Commission issued a press release expressing shock at the images and concern at the use of disproportionate force against demonstrators. The Commission requested an investigation into the incident.<sup>238</sup>

In response to these events, Prime Minister Erdoğan expressed the view that the media exaggerated the extent of police violence and stated that some of the demonstrators had deliberately provoked police officers. Mr Erdoğan also accused protesters of staging the demonstration two days before International Women's Day on March 8 to coincide with a visit to Turkey by EU enlargement chief Olli Rehn, and insisted that police would continue to intervene in such illegal demonstrations. Relatively light punishments were imposed upon the police who were implicated; an investigation launched by the Interior Ministry reportedly recommended that six officers ought to have their salaries suspended for using disproportionate force, while deputy director of Istanbul Security Directorate Sükrü Pekgil together with deputy directors of Special Team Branch would receive an official 'condemnation'.<sup>239</sup> It appears that no criminal proceedings are to be initiated against the officers. In contrast, judicial proceedings were launched against participants in the demonstration; 56 of those present were charged under the Law on Public Meetings and Demonstrations. The case resulted in the acquittal of the defendants on 15 June 2005.<sup>240</sup>

Further examples of police responding violently to legitimate, peaceful demonstrations, press conferences and other public meetings are numerous. On 1 August 2004 police reportedly prevented a group of around 300 people protesting about prison conditions in Tunceli from marching, and dispersed them using tear gas, pressurised water and truncheons.<sup>241</sup> Police beat nine journalists with clubs and chains in March 2004 when they attempted to report on the violent dispersal of a demonstration by the pro-Kurdish party DEHAP held to protest against alleged

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237 BBC, 'Turkish police beatings shock EU', 7 March, 2005, <<http://news.bbc.co.uk/1/hi/world/europe/4325347.stm>>

238 European Commission, 'Press Release: Statement by the EU Troika following incidents during a women's rights demonstration in Istanbul on 6 March 2005', 7 March 2005, <[http://www.eu2005.lu/en/actualites/communiques/2005/03/07turkey\\_troika\\_statement/](http://www.eu2005.lu/en/actualites/communiques/2005/03/07turkey_troika_statement/)>

239 Info-Turk, June 2005 N°s 320 & 321, original source: Radikal, <<http://home.scarlet.be/~ozguden/321.htm>>

240 Info-Turk, June 2005 N° 321, original source: Radikal, <<http://home.scarlet.be/~ozguden/321.htm>>

241 TİHV, 'Human Rights in Turkey: August 2004', <<http://www.tihv.org.tr/eindex.html>>

fraud in local elections in Diyarbakir.<sup>242</sup> The DEHAP protesters were attacked by police when they assembled outside the Diyarbakir court house on 28 March charging security forces with rigging the election, and the police then turned on the journalists from local papers and a television channel covering the clash.<sup>243</sup>

It is broadly apparent, then, that although some welcome improvements have been made to the Law on Public Meetings and Demonstrations, and the government has expressed some commitment to improving freedom of assembly, the law in Turkey still facilitates unjustified interferences with HRDs' freedom of assembly, public authorities exhibit hostility towards demonstrations and meetings on contentious issues, and police meet human rights demonstrations with disproportionate force. Clarifications in the law in relation to when demonstrations and meetings can be restricted and what notification requirements are legitimate, as well as improved guidance on the use of force by security officials, would improve the situation. Turkey also needs to move on from the idea that the state can legitimately grant or withhold authorisation of protesters' activities based on factors such as objections to the subject matter, and accept that a meeting of HRDs or a human rights-related demonstration should be allowed to go ahead without interference *unless* there is a legitimate reason to impose limitations. This would prove a major step towards democratisation in the country.

#### *h. Torture, ill-treatment and threatening behaviour*

Respect for the physical integrity of HRDs has undoubtedly improved in Turkey in recent years. Killings and disappearances have abated and protections against torture have improved, particularly since 2002, as state targeting of HRDs has become less overt and focused on more insidious methods, in particular the institution of multiple judicial proceedings for legitimate human rights-related activities as a form of deliberate state harassment (see 'judicial harassment'). As a result of this trend, focus on the situation of HRDs in Turkey has generally turned away from the question of their physical integrity and is instead centred on how they are treated in the judicial system. Notwithstanding this observation, levels of torture and ill-treatment in Turkey remain unacceptably high and HRDs are still victims of these practices. Moreover, there have been a number of recent examples of local officeholders apparently acting beyond their official remits to issue threats against HRDs, 'warning' them of adverse consequences if they continue to expose

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242 Reporters Without Borders, 'Police brutally beat nine journalists' Turkey, 30 March 2004, <[http://www.rsf.org/article.php3?id\\_article=9687](http://www.rsf.org/article.php3?id_article=9687)>; TİHV, 'Human Rights in Turkey – March 2004', <[http://www.tihv.org.tr/report/2004\\_03/marorgani.html](http://www.tihv.org.tr/report/2004_03/marorgani.html)>

243 Reporters Without Borders, 'Police brutally beat nine journalists' Turkey, 30 March 2004, <[http://www.rsf.org/article.php3?id\\_article=9687](http://www.rsf.org/article.php3?id_article=9687)>; TİHV, 'Human Rights in Turkey- March 2004', <[http://www.tihv.org.tr/report/2004\\_03/marorgani.html](http://www.tihv.org.tr/report/2004_03/marorgani.html)>

human rights violations or otherwise criticise the government.

In the past, and particularly throughout the 1980s and 1990s, hundreds of people simply 'disappeared' after being arrested or abducted by state officials. The state subsequently simply denied any knowledge of the 'disappeared' individual's whereabouts. At this time, torture and ill-treatment in Turkey's detention facilities were widespread and systematic. Flawed detention and interrogation practices facilitated their perpetration, and torture was implicitly sanctioned from the top rungs of government. HRDs critical of Turkey's human rights record were frequent targets. Members of the İHD, as well as other human rights organisations, suffered countless instances of state violence including armed attacks on branch offices, beatings by police during demonstrations and public meetings, and torture and ill-treatment in detention.

The pro-EU reform process has been responsible for the dramatic improvements in formal protections against torture in Turkey instituted since 2002, and the country's leaders have expressed a policy of 'zero tolerance' to the practice. There has been some subsequent reduction in 'heavy' torture, including electric shock treatment, falaka, and hanging by the arms. However, as reported by the European Commission in October 2004, "numerous cases of torture still continue to occur",<sup>244</sup> and the fall in 'traditional' torture practices has been offset by a parallel rise in torture incidences outside of detention facilities<sup>245</sup> and an increased use of torture methods which leave no visible marks.<sup>246</sup> Impunity for torture remains rife – only very small numbers of law enforcement officials are convicted of torture offences in comparison to the number of investigations opened. In September 2005, İHD reported that as armed violence in the Kurdish regions intensifies, increased reports of physical abuse were again being reported.<sup>247</sup>

The subject of torture and ill-treatment in Turkey is currently one of great importance and great debate. The high levels of routine torture in Turkey in the past were a source of substantial disquiet to the EU, and the issue became a cornerstone of the accession process. Prior to the December 2004 decision to open accession negotiations with Turkey, EU enlargement commissioner Guenter Verheugen

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244 European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final, 6 October 2004, p17

245 TİHV, 'Current Evaluation of the Work of the Treatment And Rehabilitation Centers Of The TİHV', 2004 Monthly Reports; İHD, 'Human Rights Violations in Turkey - Summary Table', January-June 2004; İHD, 'Human Rights Violations in Turkey - Summary Table', 2003

246 DIHA, 'Torture report: There is increase in number of women victims of torture' by Meryem Yilmaz, İstanbul, 27 July 2004. See also European Committee for the Prevention of Torture, 'Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 15 September 2003', CPT/Inf (2004) 16, Strasbourg, 18 June 2004

247 NTV/MSNBC 'İHD calls on provocateurs to be named', 14 September 2005

concluded from an EU envoy sent to Turkey that there was no evidence of systematic torture in the country.<sup>248</sup> National and international human rights NGOs, including KHRP, disagree, concluding from the evidence that torture is still an administrative practice of the Turkish state.

HRDs, while by no means as commonly subject to torture and ill-treatment as in the past, still report the employment of these practices during interrogation as a means of obtaining information or punishing them, or as a form of coercion or intimidation. Turkey still fails to back up its formal commitment to ‘zero tolerance’ on torture with sustained efforts to eradicate torture in practice – in particular she has done very little to institute independent inspections of detention facilities where HRDs and others vulnerable to torture are held, or to prosecute and punish alleged perpetrators.<sup>249</sup> These failings not only perpetuate conditions in which the continued commission of torture and ill-treatment is more likely, but also send a message to law enforcement officials that the rhetoric of ‘zero tolerance’ among Turkey’s leaders is not backed by a genuine commitment to stamping out these practices on the ground.

A recent example of torture allegations by a HRD is the case of Ferhat Kaya, who has worked on behalf of villagers affected by the controversial BTC pipeline. Fact finding missions by KHRP have strongly indicated that the BTC pipeline, which was conceived largely in order that the USA and Europe can secure a non-Arabian source of oil,<sup>250</sup> is having adverse human rights, social and environmental impacts in the north-east of Turkey. KHRP has filed cases in the ECtHR on behalf of 38 affected villagers along the route, alleging multiple violations of the ECHR including the illegal use of land without payment of compensation or expropriation, underpayment for land, intimidation, lack of public consultation, involuntary resettlement and damage to land and property. Mr Kaya, who has made efforts to promote improved consultation on the BTC project and to obtain redress for abuses associated with land acquisition, was arrested on questionable grounds in May 2004 and alleges to have been tortured in police custody.<sup>251</sup>

Mr Kaya reports that after his arrest the police accused him of being linked to the PKK, insulted his family and derided him for defending his work for the political party DEHAP. He alleges that he was beaten by a policeman, then his hands were

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<sup>248</sup> European Commission, ‘2004 Regular Report on Turkey’s Progress Towards Accession’, COM (2004) 656 final, 6 October 2004, p35

<sup>249</sup> See Human Rights Watch, ‘Eradicating Torture in Turkey’s Police Stations: Analysis and Recommendations’, September 2004, <<http://www.hrw.org/backgrounder/eca/turkey/2004/torture/>>

<sup>250</sup> Kurdish Human Rights Project, Corner House, Friends of the Earth and Environmental Defense, ‘The Trials of Ferhat Kaya’, September 2004, p13

<sup>251</sup> Kurdish Human Rights Project, The Corner House, Friends of the Earth and environmental defense, ‘The Trials of Ferhat Kaya’, September 2004, pp 20 - 25

handcuffed behind his back and he was forced to lie face down while he was kicked. A policeman pointed a gun at him and Mr Kaya says that he was terrified that he was going to be shot, having previously witnessed a killing in police custody. The beatings then continued and he lost consciousness for a time. Mr Kaya was removed to a hospital for examination, which was conducted in the presence of the police officers and resulted in a report which Mr Kaya believed to inadequately represent his injuries. He was removed to a cell with extremely bright lighting and a loud speaker emitting a constant noise. He received no treatment for his injuries. The police officers involved offer an alternative description of events, contending that Mr Kaya became aggressive after returning from the hospital, and that he sustained his injuries by banging his head and hands on the walls of the police station and grabbing broken glass from the floor.<sup>252</sup>

The occurrence of this incidence of alleged torture, as it is reported by Ferhat Kaya, is of concern on several fronts. It suggests that the police officers involved regard Mr Kaya's efforts simply to defend the legitimate rights of people adversely affected by the BTC pipeline as warranting or at least justifying the infliction of severe violence against Mr Kaya. Turkey's legislative and administrative reforms improving protections against torture are much to be welcomed, but will mean little to those working to improve the human rights situation in the country until they are implemented in practice.

As troubling is the fact that the impressive string of paper reforms designed to combat torture did not in this case result in a robust state response to the alleged incident. Ferhat Kaya lodged a complaint with the public prosecutor concerning his treatment by the police, and the officers concerned were subsequently indicted under Article 245 of the Penal Code. However, the subsequent trial raises concerns over the capacity or willingness of the Turkish judicial system to deal adequately with accusations of torture.

Firstly, although the Prosecutor had found enough evidence to launch judicial proceedings, he requested at the first hearing that the defendants be acquitted with no real explanation.<sup>253</sup> Furthermore, after only three short hearings the police officers were found not guilty, with the judge's reasons stating that since the defendants denied the allegations and there was no evidence other than the complainant's testimony, from an evidential perspective she could not be satisfied beyond reasonable doubt of the defendants' guilt.<sup>254</sup> It was further of concern that the police

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<sup>252</sup> Kurdish Human Rights Project, The Corner House, Friends of the Earth and environmental defense, 'The Trials of Ferhat Kaya', September 2004, p28

<sup>253</sup> Kurdish Human Rights Project, The Corner House, Friends of the Earth and environmental defense, 'The Trials of Ferhat Kaya', September 2004, p31

<sup>254</sup> Kurdish Human Rights Project, The Corner House, Friends of the Earth and environmental de-

officers' statements were not questioned in any detail, and the investigating judge did not exercise her power to further investigate the allegations after the prosecutor expressed his opinion on the case, raising questions over the independence of the tribunal. Finally, the judge expressed her view that the injuries sustained by Mr Kaya may have been a result of him resisting police officers, which is the subject of a separate, incomplete trial.<sup>255</sup>

Indeed, as well as the flaws in the legal proceedings lodged against the officers alleged to have tortured Ferhat Kaya, it should be added that Turkey also launched a case against Mr Kaya himself in relation to the incident for resisting and insulting police officers.<sup>256</sup>

The continuing occurrence of torture against Turkey's HRDs is taking place against a background of lower level, state-administered intimidation and threats by local law-enforcement officials, designed to instil fear and insecurity among those who protect and promote human rights. The issuing of threats to HRDs who are outspoken on issues viewed as contentious by the government is by no means a new phenomenon; members of the local law enforcement agencies and other local officials have over many years sought to frighten or intimidate HRDs by warning them that their families are at risk, that they will be arrested, detained prosecuted, or subject to physical attacks or killed, that their reputations will be damaged, or that they will be harmed in some other way if they carry on with their human rights-related work. That this type of threatening behaviour persists is an indicator of pockets of resistance at least at a local level, where law enforcement officials do not accept that HRDs operate legitimately. Ankara's failure to adequately punish these instances of errant conduct by members of the state administration raises more general questions over Turkey's professed commitment to creating favourable conditions for the effective functioning of HRDs.

An example of threatening behaviour practised by local officials against a HRD is the treatment of former Chairman of Tunceli Bar Association, lawyer Hüseyin Aygün. Mr Aygün, a HRD who has worked on behalf of victims of forced displacement in the region, claimed to have been threatened by Namik Dursun, a security official. The threats may have been prompted by Mr Aygün's current work in Tunceli seeking justice for the families of victims of those who 'disappeared' during the 1984 – 1999 armed conflict and recent calls for further investigations into these incidents.<sup>257</sup>

fense, 'The Trials of Ferhat Kaya', September 2004, p31

255 Kurdish Human Rights Project, The Corner House, Friends of the Earth and environmental defense, 'The Trials of Ferhat Kaya', September 2004, p40

256 See below, 'human rights defenders and the Kurds'

257 Amnesty International, 'Turkey: Fear for safety/Harassment: Hüseyin Aygün (m), aged 35, lawyer and human rights defender', 15 February 2005, <<http://web.amnesty.org/library/Index/ENGEUR440062005?open&of=ENG-2U5>>

Gendarmerie Commander Namik Dursun is alleged to have visited one of Hüseyin Aygün's relatives and, during an ensuing conversation, referred to Hüseyin Aygün as a "traitor" and an "enemy of the state" who would be discredited. On 7 February 2005 Mr Aygün met with Namik Dursun, and during this meeting the Commander said to Hüseyin Aygün:

We know you. You are under every stone. You are not viewed favourably by our institution. Your family is very good, but why are you so bad? Do not cross us in every incident. Well, you are doing your job, but don't do it any longer – let someone else do it.

On 3 February three plain-clothed gendarmerie officials visited Mr Aygün to tell him that the Commander Namik Dursun wished to interview him again. Upon telephoning Mr Dursun, the commander reportedly attempted to blackmail Mr Aygün into complying with his demands by threatening to pass on files to the prosecutor's office.

Turkey's reaction to this alleged incident in Tunceli is suggestive of a greater sympathy towards the local gendarmerie commander accused of issuing the threats than for the targeted lawyer. Hüseyin Aygün complained to the Prosecutor about the threats and an investigation followed. However, legal proceedings were then launched against Hüseyin Aygün himself for defaming commander Namik Dursun. These charges followed a complaint by Mr Dursun about a 13 February press conference at the Elazığ branch of the İHD, where Mr Aygün made a public statement concerning the threats against him. Journalists Irfan Ucar and Hasan Bayar are also to be tried in the case after they published Mr Aygün's comments which were subsequently published in the newspaper Özgür Gündem.<sup>258</sup> A conviction could result in terms of imprisonment of 3 to 12 months or a fine.

An episode comparable to that outlined in relation to Hüseyin Aygün concerned Rıdvan Kızgın, Chairman of the Bingöl Branch of the İHD, who allegedly received threatening phone calls from the local gendarmerie.<sup>259</sup> Mr Kızgın asserts that on 8 July 2003 he received a telephone call from a man identifying himself as the gendarmerie commander for Bingöl. The caller requested that Rıdvan Kızgın report to the local gendarmerie station on the grounds that he had made false statements concerning human rights violations. He was asked to make no further statements

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<sup>258</sup> BIA, 'Threatened Lawyer Charged with "Defamation"', 1 April 2005, <[http://www.bianet.org/2005/06/01\\_eng/news57811.htm](http://www.bianet.org/2005/06/01_eng/news57811.htm)>

<sup>259</sup> See TİHV, 'Human Rights in Turkey – July – August 2003', <[www.tihv.org.tr/report/2003\\_07\\_08\\_julyaugorgani.html](http://www.tihv.org.tr/report/2003_07_08_julyaugorgani.html)>; Amnesty International, 'Turkey: Fear for safety/Threats, Ridvan Kizgin', 10 July 2003, <<http://web.amnesty.org/library/Index/ENGEUR440192003?open&of=ENG-TUR>>; Observatory for the Protection of Human Rights Defenders, 'The Observatory - Newsletter No. 23, July-August 2003', <<http://www.fidh.org/lobs/mensuel/2003/nwlt07a.pdf>>

before consulting with the gendarmerie and to publicly state that his prior reports on human rights had been incorrect. The statements referred to are likely to be those contained in the İHD's regular report on the human rights situation in the province, which had been released three days prior to this telephone call and attested to an increase in human rights violations commissioned by local security forces and other public officials in the area. Mr. Kızgın refused to comply with the caller's request, stating that all his statements had been based on applications made to İHD. He was reportedly then threatened.

Rıdvan Kızgın received further calls to the same effect over subsequent days, demanding that he withdraw his previous statements on human rights violations and make a corrective statement admitting that his previous allegations were unfounded.

Following these threats, applications were made to the Prime Minister, the State Minister Responsible for Human Rights, the Minister of Foreign Affairs, Gendarmerie General Headquarters and the Parliamentary Human Rights Investigation Commission to investigate the incident. However, no investigation has reportedly ensued, and although no prosecution of Rıdvan Kızgın himself followed his allegations, as in the case of Hüseyin Aygün, Mr Kızgın continues to be persecuted for his work defending human rights. Over 47 cases have been opened against him as a result of his activities as a HRD.<sup>260</sup> In one such case Mr Kızgın and İHD General Secretary Feray Salman were acquitted on 21 September 2004 of 'insulting state authorities' in relation to a speech delivered at İHD Bingöl branch stating that torture continued to occur in Turkey, and in another he was indicted together with over 100 others on charges of 'staging an unauthorised demonstration' for founding a 'peace table'.<sup>261</sup>

It is difficult to conclude from these series of events that Turkey is taking seriously her obligation to ensure the safety of those working to uphold human rights, and to adequately investigate and punish any infringements or threatened infringements. It is understandable to some extent that human rights reforms will take time before they take genuine hold at a local level among security officials long-accustomed to receiving implicit authorisation from above to treat HRDs with aggression and contempt, but these cases indicate that Turkey is by no means responding with sufficient robustness to the wrongful actions of local security and law enforcement officials. These failings greatly weaken Turkey's claims of a genuine commitment to change, and it is vital that positive and forceful signals are sent from central

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<sup>260</sup> Amnesty International, 'Turkey: Fear for safety/Threats, Rıdvan Kızgın', 10 July 2003, <<http://web.amnesty.org/library/Index/ENGEUR440192003?open&of=ENG-TUR>>

<sup>261</sup> TİHV, 'Human Rights in Turkey – October 2004', <[http://www.tihv.org.tr/report/2004\\_10/octas-sem.html](http://www.tihv.org.tr/report/2004_10/octas-sem.html)>

authorities to counter mindsets which continue to regard it as reasonable or even desirable to forcibly attempt to silence HRDs by threats or physical violence. In particular, it is untenable in the context of the pro-EU democratisation process for Turkey to continue to meet credible allegations of acts as serious as torture and of state-administered threats to a HRD's personal safety not with vigorous and credible investigations but instead with ill-conceived prosecutions against the alleged victims themselves.

*i. Protection of human rights defenders against non-state actors*

It has been outlined above that private individuals have in the past been responsible for death threats, assaults and killings of HRDs, and that these acts have taken place against a background of public portrayals of HRDs by the state as subversive threats to national security or as pursuing terrorist agendas (see 'background'). In addition, individuals at risk have been insufficiently protected by the state and crimes against HRDs have rarely been adequately investigated. It is further well documented that state complicity in aggression perpetrated by non-state actors against HRDs has gone well beyond creating an environment in which attacks on HRDs appear legitimised; on occasion the evidence has strongly suggested collusion between state security forces and the groups or individuals responsible for attacks. A high profile case saw Akin Birdal, former President of IHD and Vice-President of the International Federation for Human Rights (FIDH), shot and critically injured on 12 May 1998 in the İHD Ankara office. Mr Birdal had called on several occasions for the peaceful resolution of the Kurdish question and an end to violence in the southeast. The shooting followed closely in the wake of unsubstantiated claims 'leaked' to the media from the prosecutor's office asserting that Mr Birdal was working for the PKK, and was perpetrated by a right wing group calling themselves Türk İntikam Tugayi (the Turkish Revenge Brigade).

Today, although allegations of collusion by Turkish security forces in attacks on HRDs at the hands of private individuals have considerably diminished since the 1990s, the institution of the pro-EU reform process has done very little to defuse hostility towards HRDs fuelled by state condemnation of their work. Indeed, officials have repeatedly undermined HRDs, publicly maligning their activities and casting aspersions on their reputations. The UN Special Representative note that:

Overall, authorities continue to consider human rights defenders with great hostility. High-level officials have continued to publicly denigrate the work of human rights Organisations.<sup>262</sup>

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262 UN Commission on Human Rights, 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005,

State authorities continue to view those seeking the promotion and protection of human rights on the whole with deep suspicion and hostility, and HRDs have faced repeated attacks on their characters or personal integrity, accusations of disloyalty to the state or, particularly in the current climate, of misunderstanding or misrepresenting the reform process. State officials also seek to discredit HRDs by making public and unsubstantiated allegations associating HRDs with criminals and terrorist organisations.

In February 2005, the Istanbul Police reportedly accused the İHD, TİHV, the Association of Modern Jurists (ÇHD), and the Turkish Medical Association (TTB) of being associated with the Marxist-Leninist Communist Party of Turkey (MLKP). The accusations followed the submission of a joint report by these organisations on the case of trade unionist Süleyman Yeter, an alleged member of the MLKP who died in police custody after being tortured in 1999.<sup>263</sup> Two police officers were convicted of ‘unintentionally killing’ Mr Yeter in April 2003. The lead up to the December 2004 decision on opening formal EU accession talks saw a surge in Turkish efforts to disparage HRDs and silence their criticisms of Turkey’s human rights record. On 6 October 2004, Prime Minister Tayyip Erdoğan declared before the Parliamentary Assembly of the Council of Europe that “the people who affirm that ideologically motivated acts of torture exist in Turkey are people with links to terrorist organisations”<sup>264</sup>. Of course, in behaving this way Turkey failed to appreciate that allowing HRDs to freely articulate their concerns would in fact strengthen, rather than weaken, its aspirations to be seen as democratising.

These types of often vaguely worded statements publicly defaming those upholding human rights which remain fairly common in Turkey are not, of course, directly responsible for subsequent attacks by non-state actors on HRDs. However, in addition to constituting a means of intimidating HRDs, public denouncement of HRDs does outwardly intimate that the defence of human rights is officially regarded as a hostile activity, as well as giving official credence to suspicions that HRDs are commonly linked to organisations working against the state. Such a climate can create the impression that attacks on HRDs may be justified. In February 2001, for example, lawyer and then Deputy Chair of İHD Eren Keskin travelled to Silopi in the province of Şırnak to investigate the ‘disappearance’ of two members of a Kurdish political party. Shortly afterwards, the governor of the province said on television “...this woman from the İHD came and stirred everything up”.<sup>265</sup> Ms

<<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, §99

263 Mazlum-Der, ‘Intolerance towards Basic Rights and Liberties is on’, 11 March 2005 <<http://www.mazlumder.org/english/text.html?sy=255&cst=press>>

264 Reported in FIDH, ‘Europe and the Commonwealth of Independent States (CIS)’, 31 March 2005

265 Amnesty International, ‘Turkey: Death threats/Fear for safety Eren Keskin and Osman Baydemir’,

Keskin subsequently received an increased number of telephone death threats, and on 15 November 2001<sup>266</sup> a man named Zeki Genç forced his way into the İHD Istanbul office with a gun, a knife and a package which he claimed to contain a bomb about to explode. He fired the gun into the air and said "I will kill you all. I am not alone - I have friends", before İHD members managed to pacify and disarm the assailant.

It should be added that dominant elements within the media contribute to the depiction of HRDs as a threat, further sanctioning their harassment in the eyes of the population. The UN Special Representative notes: "the media play a crucial role in informing collective perceptions of human rights defenders and situations".<sup>267</sup>

The phenomenon of condemnation of HRDs by state officials and the media generating a background against which violence against HRDs can appear authorised is especially troubling in view of the recent resurgence of extreme nationalism in Turkey. In the context of spiralling tensions between the far right and other groups in towns and cities throughout the country, HRDs and other activists – particularly those associated with pro-Kurdish causes – have been victims of a spate of threats and violent attacks including attempted lynchings. For example Nedim Değirmenci, former Chairman of the Progressive Lawyers Association (ÇHD), was reportedly beaten with iron rods by members of the extreme right on 24 March 2005 on the grounds that he tore a piece of paper in the shape of the Turkish flag on the window of a cafe.<sup>268</sup> On 6 April 2005 in the Black Sea city of Trabzon, five people were attacked by a crowd when they attempted to hand out leaflets calling for an end to solitary confinement in prisons on behalf of the Association for Inmates' Families' Solidarity (TAYAD).<sup>269</sup> The group were reportedly insulted and badly beaten after rumours began circulating that members had insulted the flag and were associated with Kongra-Gel.

In April 2005, members of the İstanbul branch of İHD received death threats from the extreme right organisation the Turkish Revenge Brigade – the same organisation

10 April 2001, <<http://web.amnesty.org/library/Index/ENGEUR440222001?open&of=ENG-TUR>>

266 For further information on this incident see Amnesty International, 'Turkey: Restrictive laws, arbitrary application - the pressure on human rights defenders', 12 February 2004; İHD, 'The Armed Attack against our Branch Office in İstanbul', 15 November 2001, <<http://www.ihd.org.tr/press/press20011115.html>>

267 UN Commission on Human Rights, 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G051116.pdf?OpenElement>>, § 102

268 Info Turk, March 2005, No 319, Original source: BIA, <<http://home.scarlet.be/~ozguden/319.htm>>

269 Turkish Daily News, 'TAYAD: "The justice pursues the victims, not the lynchers"', 21 May 2005

in whose name those behind the 1998 shooting of Akin Birdal claimed to be acting. Indeed, Turkish Revenge Brigade members have been responsible for a number of politically motivated killings. The threats were made via letters posted on 13 April 2005 and addressed to Eren Keskin, head of İHD Istanbul branch, Doğan Genç, responsible for İHD activities in the Marmara region, and Istanbul branch secretary Şaban Dayanan. The letters, two of which were delivered to the İHD members' private home addresses, described their targets as spies and pro-Kurdish traitors and charged them with the deaths of "40,000 sons of the Motherland" in the armed conflict fought between the Turkish government and the PKK. The letters also drew reference to the flag burning incident in Mersin in March 2005, where three children's alleged attempts to set fire to the Turkish flag during a demonstration became the catalyst for nationalist outrage across the country. The letters also referred to the İHD's defence of "traitors like Orhan Pamuk" who had made comments earlier that Turkey should face up to unpleasant aspects of its recent past such as acknowledging the Armenian genocide.<sup>270</sup> During a meeting with KHRP, Şaban Dayanan voiced concerns that the security services were complicit in issuing the death threats. The security chief in Ankara denied any direct security service involvement in the incident.<sup>271</sup>

Given the current climate of nationalist fervour in Turkey, the recent outbursts of nationalist violence against those suspected of disloyalty towards the symbols and institutions of the state, and the history of violence associated with the Turkish Revenge Brigade, the state must respond promptly and effectively to these threats. The İHD members targeted should receive sufficient protection by the state and the threats should be properly investigated. It is also vital that Turkey disassociates itself from the positions of the Turkish Revenge Brigade and makes clear her disapproval of their aims and methods.

The Turkish authorities have stated that the Ministry of the Interior is investigating the threats, and statements have been taken from the İHD members concerned.<sup>272</sup> The authorities have also warned provincial governors in Turkey to take "the necessary security precautions" to protect İHD branches and those of other NGOs.<sup>273</sup> It is to be hoped that the state response to the incident will indeed prove effectual and robust. In the past, state complicity in or sympathy with attacks and threats against HRDs has resulted in unwillingness to adequately punish these actions. The gunman who

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<sup>270</sup> Kurdish Human Rights Project & Bar Human Rights Committee, 'Dissenting Voices: Freedom of Expression and Association in Turkey – Fact Finding Mission', September 2005

<sup>271</sup> Kurdish Human Rights Project & Bar Human Rights Committee, 'Dissenting Voices: Freedom of Expression and Association in Turkey – Fact Finding Mission', September 2005

<sup>272</sup> Amnesty International, 'Turkey: Further information on Death threats/Fear for safety', 2 August 2005, <<http://web.amnesty.org/library/Index/ENGEUR440282005?open&of=ENG-TUR>>

<sup>273</sup> Amnesty International, 'Turkey: Further information on Death threats/Fear for safety', 2 August 2005, <<http://web.amnesty.org/library/Index/ENGEUR440282005?open&of=ENG-TUR>>

threatened İHD members in the organisation's Istanbul branch in 2001 reportedly escaped after his release was ordered by the Beyoğlu Criminal Court on 18 July 2002. The day before the incident at the İHD office he had attacked two offices of the legal pro-Kurdish political party HADEP, and had apparently managed to leave the scene and carry out his next attack despite police presence in the area.

Today, Turkey's reaction to nationalist-inspired violence suggests that little has changed and that rather than taking decisive action to protect the security of targeted individuals and groups, authorities appear to exhibit sympathy for the perpetrators. The victims of attacks in Trabzon, for example, allege that the police did little to protect them from their attackers.<sup>274</sup> A number of prosecutions have been initiated against those alleged to have incited the violence, but TAYAD Representatives Nurgül Acar, Emre Batur and İhsan Özil, and journalist Zeynep Ertuğrul have themselves been charged with staging an unauthorised demonstration and insulting security officials. They face possible sentences of up to four and a half years. Indeed, governors and other public figures have reportedly made statements to the effect that non-state groups responsible for violence against people involved in protests in cities across Turkey during the summer of 2005 were legitimate reactions of citizens provoked by the demonstrators.<sup>275</sup>

Turkey must impartially uphold the rule of law and take steps to prevent violence by non-state actors, including political groups, against HRDs and others peacefully exercising democratic rights. State officials should not contribute to devaluing the legitimacy of HRDs work by associating them with terrorist groups, or in any way implicitly sanction attacks on them. Individuals and groups are entitled to engage in activities aimed at the protection and promotion of human rights, and it is the responsibility of the state to ensure that criminal activity is sanctioned. In particular, Turkey's willingness to publicly and unequivocally assert the worthwhile contribution made by human rights organisations to good governance in Turkey and to distance herself from nationalist extremism would go towards dissipating current tensions in the country and would demonstrate a genuine commitment to the principles of democratisation among Turkey's leaders.

#### *j. Judicial harassment*

It has been discussed in the preceding section that overt attacks on the physical integrity of HRDs has decreased somewhat in recent years, but this means targeting

274 BİA, 'Nationalist Violence Spreads', 13 April 2005, <[http://www.bianet.org/2005/07/01\\_eng/news58921.htm](http://www.bianet.org/2005/07/01_eng/news58921.htm)>

275 İHD, 'We are deeply concerned with the latest developments and practices', 6 September 2005; İHD, 'The provoked society and lynching attempts', 25 August 2005

of HRDs has been replaced by new, more subtle and covert forms of persecution. Public officials are making use of what tools they have left available to them in the wake of pro-EU reforms in order to continue their targeting of HRDs and interfere with their work. The UN Special Representative notes in her report that HRDs have reported “a shift from overt targeting through killings, assaults and torture to more insidious targeting by legal action, defamation and fines.”<sup>276</sup>

Chief among these means of “insidious targeting” is the marked increase in the pressure placed on HRDs via legal action. Judicial harassment – that is, the repeated instigation of investigations and prosecutions against individuals – is one of the principal methods by which the Turkish authorities now seek to harass and intimidate HRDs. Those working for the protection and promotion of human rights across Turkey are currently confronted with an enormous number of investigations and trials, launched under a range of restrictive or arbitrarily interpreted laws and regulations. Indeed, since the commencement in earnest of the pro-EU reform process in Turkey in 2002 and the consequent limitations placed on other anti-democratic means of silencing human rights messages, several HRDs have reported increases in the number of cases being opened against them, notwithstanding that these proceedings will less often result in a conviction.

Some human rights NGOs and individuals representing these organisations are especially targeted, including İHD and TİHV and their respective executive members. Other individuals acting on behalf of human rights groups or in their own professional capacity are singled out where their work touches on issues regarded as especially sensitive by the state, such as the rights of the Kurds and the role of Islam. Recent spates of judicial harassment have been focused on HRDs including Selahattin Demirtaş, Eren Keskin, Rıdvan Kızgın and Alp Ayan.

It is difficult to convey the scale of proceedings endured by HRDs. The İHD, as Turkey’s largest human rights organisation with branches across the country, is relentlessly targeted. Raids on its offices and the frequent closure orders which previously beset İHD branches have fortunately abated over the last two years, but İHD members face arbitrary arrests, prolonged and unsubstantiated investigations, and indictments for wholly legitimate and often lawful activities defending human rights. An often repeated statistic is that of the rise in the number of cases opened against the İHD from 300 during the first 14 years of its existence to over 450 in the three years from 2001 – 2004. This figure represents only those cases which resulted in prosecutions; an even larger number of investigations not leading to

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<sup>276</sup> UN Commission on Human Rights, ‘Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, §61

prosecutions were initiated against the organisation. In 2003 alone the İHD reported that prosecutors opened approximately 60 new cases against it during the year; a large number of cases initiated in previous years would have remained pending against the organisation at that time.<sup>277</sup> Eren Keskin, head of the Istanbul branch of İHD, has faced up to around 90 cases against her.

The İHD is by no means the only organisation targeted; theTİHV has also been forced to defend itself against a barrage of investigations and prosecutions. A major case against TİHV, which ended with all charges being dropped in March 2004, saw an effort to suspend nine executive board members for unauthorised ‘co-operation’ with international organisations after they met with representatives of international and regional organisations from the UN and Council of Europe.<sup>278</sup>

Cases launched against HRDs are principally brought under laws restricting freedom of expression, association and assembly discussed above. Despite legal reforms since 2002, broadly worded provisions still afford state officials many possible pretexts for bringing cases against HRDs or for otherwise using the law to restrict their activities. Furthermore, laws which are not necessarily problematic in their wording are construed by state authorities in such a way as to punish the legitimate work of HRDs. The Law on Public Meetings and Demonstrations, the Penal Code and the Laws on Associations and Foundations are widely used, and cases may further be brought under public order legislation and articles of the Constitution. As outlined above, where laws are revised in accordance with the pro-EU reform process to exclude the possibility of conviction, it is far from uncommon for new proceedings to be brought on the basis of an alternative anti-democratic provision which remains on the statute books.

Activities especially likely to result in prosecution include issuing press releases, participating in protests and public meetings, releasing human rights reports or giving speeches – particularly in the areas of torture, activities of the security forces, the rights of the Kurds and internal displacement – and failure to comply with the detailed regulations governing the activities of associations. HRDs in the Kurdish regions, or those advocating for the rights of the Kurds or using the Kurdish language in their human rights work, face an exceptionally large volume of proceedings against them. They have been frequently investigated or prosecuted for ‘inciting enmity and hatred’, ‘aiding and abetting an illegal organisation’ and ‘making propaganda for an illegal organisation’.

277 US Department of State - Bureau of Democracy, Human Rights, and Labor, ‘Country Reports on Human Rights Practices – Turkey – 2003’, 25 February 2005, <<http://www.state.gov/g/drl/rls/hrpt/2003/27869.htm>>

278 See above, ‘establishing and operating associations’

Human rights organisations, including KHRP, believe that judicial harassment is deliberately orchestrated by state authorities to create an atmosphere of unremitting pressure and intimidation among HRDs and to hamper their work. This is highlighted by the large numbers of proceedings that continue to be launched against HRDs in spite of the fact that investigations now more frequently end in a decision not to prosecute and trials often result in acquittal or a suspended sentence. Recently, HRDs on the ground have reported that cases have been initiated against them under the old Penal Code despite the coming into force of the new code. Such cases are baseless and are inevitably thrown out by the courts but they nevertheless put pressure on HRDs, and the fact that they are brought at all suggests that officials in some instances are knowingly misusing the law in order to target HRDs. As the EU-inspired reform programme progresses, sections of the Turkish administration are turning to the exploitation of the law and the justice system as a calculated means of intimidating and coercing HRDs.

The barrage of proceedings sustained against HRDs as a result of this new form of harassment undoubtedly has a stultifying effect on the human rights environment in Turkey. Groups and individuals working to uphold human rights are compelled to divert significant time and other resources which could otherwise be directed to their human rights work to defending themselves in court; regardless of a case's outcome, there may still be administrative requirements such as the production of documentation, as well as appearances in court and the necessity of consulting a lawyer. Some groups and individuals are on the receiving end of multiple, ongoing lawsuits launched against them at any one time, forcing them to be constantly defending themselves on several fronts. For several HRDs, the scale of proceedings against them is such that they report losing track of which cases are open against them at any one time. The burden of the countless investigations and trials against HRDs is exacerbated by the vagaries of the Turkish judicial system whereby cases are repeatedly postponed or delayed, causing them to drag on for many years.

There is also the problem of cases resulting in fines, which substantially encumber the individual HRDs and human rights groups upon whom they are imposed. The extensive use of fines as a means of punishing HRDs is explained partly by the fact that several legislative provisions which are contrary to international human rights standards have not been repealed by Turkey in the pro-EU reform process, but instead prison sentences for breaching these provisions have been replaced by fines. In addition, prison sentences imposed on HRDs where they are convicted of an offence are at times converted into fines by the courts. In January 2004 Şefika Gürbüz, Chair of Göç-Der, had a sentence of 10 months imprisonment in connection with a report published on forced displacement converted to a fine of \$1,430 (1.9 billion Turkish Lira). Smaller fines are issued on a regular basis to some HRDs, usually for trivial transgressions of the laws governing the activities of associations and foundations.

Fines can have very serious consequences for the financial welfare of both individual HRDs and human rights NGOs. Particularly among smaller human rights organisations or those subject to repeated financial penalties, fines can inflict significant financial pressure and even threaten the solvency of the organisation itself. On many occasions HRDs simply cannot pay the fines, and in such cases they may face further legal proceedings based on the non-payment.

A particular difficulty confronted by individual members of human rights NGOs lies in the fact that, as the UN Special Representative points out, all members of an association in Turkey are personally liable for the payment of fines imposed on that organisation under Article 70 of the Turkish Civil Code.<sup>279</sup> This differs from the situation in most countries, where organisations have legal personality themselves and individual board members are thus not directly liable for any offences committed by the organisation. Accordingly, when HRDs undertake human rights-related actions through the organisation they work for or with which they are associated, they may risk incurring fines which they themselves are obliged to pay.

Though it is now less common with most prosecutions ending in acquittals, suspended sentences or fines, HRDs tried for legitimately exercising their rights to free expression, association or assembly still sometimes find themselves facing prison sentences. The case of Alp Ayan, the doctor and member of the TİHV who was sentenced to 18 months imprisonment for statements he made on F-type prisons, has been detailed above. Aside from the evident distressing consequences of losing their liberty, HRDs in detention may also find themselves especially vulnerable to ill-treatment due to perceptions of their work as ‘political’ in nature or as otherwise linked with criminality and terrorism.

The combined threats of fines and imprisonment, as well as the constant fear of being investigated, arrested, detained, subjected to time-consuming administrative proceedings or put through trials in court, serve to generate an atmosphere of perpetual insecurity among HRDs. This may in turn discourage others from becoming involved in human rights in Turkey, weakening the human rights movement as a whole. Furthermore, the pressurised environment in which HRDs are now compelled to operate may cause them to begin censoring their own work in order to avoid prosecution or other adverse consequences. Again, such an eventuality would have unfortunate consequences for the strength of Turkey’s human rights community.

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<sup>279</sup> UN Commission on Human Rights, ‘Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, §86

It should further be added that the vast amounts of cases brought against HRDs in Turkey must put a strain on the Turkish justice system, where already trials last for long periods and are subject to repeated adjournments,<sup>280</sup> and does little to enhance the judiciary's reputation.

It is imperative that methods of addressing the judicial harassment of HRDs are developed by Turkey's central government. State authorities who continue to launch proceedings against those legitimately engaged in activities to protect and promote human rights should receive improved training on amended laws and their interpretation, and circulars should be issued setting out how the spirit of the reform initiative should be reflected in the treatment of HRDs. It is true that it is often local security forces, prosecutors, judges and other officials who misconstrue the law in order to exert pressure on HRDs, but it is the responsibility of the state to prevent this from occurring and to ensure that laws are correctly interpreted. Until clear signals are sent to local officials clarifying that legislation and regulations must be applied in a manner consistent with internationally recognised human rights standards, the pro-EU reform process will have little resonance for HRDs on the ground in Turkey.

#### *k. Professional human rights defenders*

Where HRDs conduct human rights activities in the course of their profession – they may be lawyers, teachers or other civil servants or medical practitioners – they can find themselves facing sanctions designed to punish professional misconduct. This practice constitutes part of the wider picture of judicial harassment against HRDs, and may take the form of proceedings brought under professional codes of conduct, prosecutions via relevant legal provisions (proceedings against lawyers for misconduct are usually legal rather than administrative), or of dismissal from a professional post. Lawyers who seek to defend the human rights of clients deemed hostile to the state, such as pro-Kurdish political activists, are particularly at risk, as are members of the medical profession supporting the fight against torture, members of certain trade unions and, occasionally, teachers who speak out on sensitive subjects.

On June 17 2005, the eight lawyers of Abdullah Öcalan were issued with a temporary suspension from their profession in accordance with Article 151(3) of Turkey's new Criminal Procedure Code. Less than two weeks later a further four lawyers defending Öcalan were also suspended, again under Article 151(3) of the Criminal

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<sup>280</sup> European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final, 6 October 2004, p26

## Procedure Code.<sup>281</sup>

Turkish hostility towards Abdullah Öcalan's legal counsel has a long history, and indeed there is a propensity among Turkish authorities to fail to properly appreciate the independent functions of the legal profession, and instead to infer that the lawyers of individuals prosecuted under counter-terrorism laws are necessarily implicated in terrorist activity themselves. The comprehensive restrictions on the capacity of Öcalan's lawyers to access their client in his island prison was one of the primary reasons behind the ECtHR's decision that Turkey had violated Öcalan's right to challenge the lawfulness of his detention in court.<sup>282</sup> The Court ruled that "the special circumstances of the case made it impossible for the applicant to have effective recourse to the remedy".<sup>283</sup> Furthermore, Öcalan's lack of assistance from his lawyers during questioning in police custody; his inability to communicate with his lawyers out of the hearing of third parties; restrictions on the number and length of his lawyers' visits; and the denial of proper and timely access to the case file to his lawyers all served to restrict the rights of the defence so that the principle of a fair trial, as set out in Article 6 of the ECHR, was contravened.<sup>284</sup> There was therefore found to have been a violation of Article 6 (1) taken together with Article 6 (3)(b) and (c). The European Commission subsequently issued a statement expressing its expectation that "Turkey will respect this decision of the court of human rights".<sup>285</sup>

These most recent cases brought against Öcalan's lawyers raise questions regarding Turkish observance of this requirement. The suspension of Öcalan's lawyers is linked to the fact that they are being prosecuted under Article 7(2) of the Anti-Terror Law ('making propaganda for an illegal organisation'). The proceedings were made possible by the new Criminal Procedure Code: one of the pieces of legislation which the EU instructed Turkey to bring into force prior to the opening of formal EU accession negotiations in the context of furthering democratisation and human rights in the country. The revised Code was passed by the Turkish parliament on 26 May 2005. The provision of the Code relevant to the case brought against Öcalan's lawyers stipulates that lawyers who defend 'terrorism' or are being investigated or prosecuted for other specified crimes can be prevented from acting in a case if they themselves are subject to certain types of criminal proceedings. Article 151 may therefore be being used to prevent human rights lawyers from conducting their legitimate professional activities aimed at defending the rights of their clients. It

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<sup>281</sup> Info-Turk, June 2005 N° 322, Original Source: Özgür Gündem, <<http://home.scarlet.be/~ozguden/322.htm>>

<sup>282</sup> Öcalan v. Turkey (Grand Chamber Judgment), Application No. 46221/99, § 70 - 72

<sup>283</sup> Öcalan v. Turkey (First Section Judgment), Application No. 46221/99, § 71, referred to in the Grand Chamber Judgment, § 70

<sup>284</sup> Öcalan v. Turkey (Grand Chamber Judgment), § 148

<sup>285</sup> AFP, 'EU expects Turkey to respect Öcalan ruling', 12 May 2005, <[http://www.eubusiness.com/East\\_Europe/050512113942.1dkjed6a>](http://www.eubusiness.com/East_Europe/050512113942.1dkjed6a>)

is possible that further groundless cases will be brought against lawyers involved in other human rights-related cases who themselves are not involved in and have never advocated terrorist or other criminal activity, as a means of harassment.

Other provisions in the new Criminal Procedures Code have further potential to interfere with the relationship between human rights lawyers and their clients. In particular, a number of grounds are stipulated whereby a judge can order that a member of the security forces be present during lawyer-client consultations, including where the client is a member of a proscribed organisation and prison security is deemed to be threatened. These stipulations have been applied in the case of Öcalan.<sup>286</sup> International principles set out that lawyer-client consultations can legitimately take place within sight, but not within hearing, of security officials.<sup>287</sup> Öcalan's defence team faced additional impediments to accessing their client when local authorities refused to allow them to visit Öcalan in his island prison on the basis that the ferryboat used to transport them was out of order, despite an order from the public prosecutor permitting the visit.

Another case which appears to be directed towards using the judicial system to obstruct the human rights-related work of legal representatives is the case against lawyers Sezgin Tanrikulu, Sabahattin Korkmaz, Burhan Deyar and Habibe Derya. They were prosecuted in relation to village destruction cases which were being brought on behalf of villagers from the Kulp and Lice districts of Turkey. The indictment was launched on the basis that the lawyers "were trying to acquire unjust gains by convincing some people that they were going to get money from the state although their villages were not evacuated or burned".<sup>288</sup> Charges were brought on the grounds of 'professional misconduct' pursuant to Article 240 of the old Penal Code. The village evacuations were, though, attested to in a report by the Provincial Directorate of Public Works.<sup>289</sup> The agenda behind the charges, which had no real evidentiary basis, appears to have been to harass the lawyers concerned and to discredit the allegations made by NGOs and others relating to forced village clearances perpetrated by security forces in the Kurdish-dominated southeast during the 1990s. The case was the subject of a joint urgent appeal by the UN Special Rapporteurs on freedom of expression and on the independence

<sup>286</sup> AFP, 'Lawyers of jailed Kurdish leader allege "anti-democratic" treatment', 15 July 2005

<sup>287</sup> UN Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, § 8

<sup>288</sup> Observatory for the Protection of Human Rights Defenders, 'Trial against four lawyers of the Diyarbakır's Bar Association (Southeast)', 9 December 2003, <[http://www.fidh.org/article.php3?id\\_article=361](http://www.fidh.org/article.php3?id_article=361)>

<sup>289</sup> Observatory for the Protection of Human Rights Defenders, 'Trial against four lawyers of the Diyarbakır's Bar Association (Southeast)', 9 December 2003, <[http://www.fidh.org/article.php3?id\\_article=361](http://www.fidh.org/article.php3?id_article=361)>

of judges and lawyers, and the Secretary-General's Representatives on adequate housing, on human rights defenders and on internally displaced persons.<sup>290</sup> The lawyers were eventually acquitted on 24 December 2004, almost ten months after the case file was opened on 7 March 2003.

Lawyer Zülfü Dündar, who represented two children allegedly ill-treated in detention, was acquitted on 9 February 2005 by Diyarbakir Heavy Penal Court of misconduct and abusing his duty as a lawyer. Mr Dündar had criticised the decision of the public prosecutor not to prosecute the officers concerned due to lack of evidence, and attested that the alleged incident involving law enforcement officers smearing the children's faces with faeces and parading them around the town had indeed taken place.<sup>291</sup> A report by the Children Rights Commission of the Diyarbakır Bar, released on 17 June 2003 and based upon interviews with relatives, witnesses and the public prosecutor, concluded that the incident had indeed occurred.<sup>292</sup>

In March 2002, a case was launched against lawyer Filiz Kalaycı under Articles 159 (now Article 301) and 240 of the old Penal Code. The indictment, brought on 12 April 2002, alleged that Ms Kalaycı had insulted the Ministry of Justice and committed professional misconduct after she made statements in the newspaper Cumhuriyet concerning conditions in F-Type prisons. The charges were ultimately dropped on 20 May 2003.

Nevertheless, it is contended that the proceedings against Filiz Kalaycı were directed towards intimidating her and silencing other HRDs inclined to express similar opinions.<sup>293</sup> The subject matter of the case was highly contentious, with Turkey insisting that her prison regime complied with international standards despite overwhelming evidence showing that small-group isolation and solitary confinement practised in F-Type prisons generated widespread torture and ill-treatment of detainees. That the case against Ms Kalaycı constituted an instance of judicial harassment is given further credence by the fact that many other human rights and civil society organisations also forcefully criticised F-Type prisons, and the European Commission in its 2002 report on Turkey's progress towards

290 Civil And Political Rights, Including the Questions of: Independence Of The Judiciary, Administration Of Justice, Impunity Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, submitted in accordance with Commission on Human Rights resolution 2003/43, Addendum, Situations in specific countries or territories, E/CN.4/2004/60/Add.1, 4 March 2004

291 Info-Turk, February 2005, N° 318, Original source: Özgür Gündem, <<http://home.scarlet.be/~ozguden/318.htm>>; TİHV, 'Human Rights in Turkey, May – June 2003', <[http://www.tihv.org.tr/report/2003\\_05\\_06/mayjunepersosecu.html](http://www.tihv.org.tr/report/2003_05_06/mayjunepersosecu.html)>

292 TİHV, 'Human Rights in Turkey, May – June 2003', <[http://www.tihv.org.tr/report/2003\\_05\\_06/mayjunepersosecu.html](http://www.tihv.org.tr/report/2003_05_06/mayjunepersosecu.html)>

293 See, on this point, International Committee of Jurists, 'Turkey - Final Report on the Trial of Filiz Kalaycı', 30 September 2003, <[http://www.icj.org/news.php3?id\\_article=3081&lang=en](http://www.icj.org/news.php3?id_article=3081&lang=en)>

accession referred to a series of outstanding problems with regard to conditions in these prisons.<sup>294</sup> Furthermore, the indictment against Ms Kalaycı was initiated *after* a change was made in the law in February 2002 to the effect that under Article 159 (described above), statements intended only to criticise and not to insult the state would no longer result in criminal convictions. The case then remained pending, in spite of this new provision in Article 159 excluding its application to statements such as that made by Ms Kalaycı which were merely critical of the state, until the public prosecutor finally sought Ms Kalaycı's acquittal on the basis that no offence had in fact been committed. The UN Special Representative considers that the decision of the prosecutor to press charges against Ms Kalaycı despite the reform attests to the need for a change of mindset in Turkey.<sup>295</sup>

In addition to the targeting of lawyers involved in human rights work, medical practitioners who insist upon following procedures set out by law or executive order designed to combat torture and ill-treatment in detention, such as conducting medical examinations of detainees, can face sanctions. In early 2004 an investigation was opened into Dr İlker Meşe for 'insulting soldiers' and 'failing to examine a prisoner in the presence of soldiers' after he asked soldiers to leave the room while he was examining a prisoner at the Tekirdağ State Hospital on 26 December 2003.<sup>296</sup> The event reportedly occurred prior to the circulation in Tekirdağ in January 2004 of a revised government regulation permitting the presence of soldiers during medical examinations where the examination room is not secure or where the individual is accused of terrorist acts. The proceedings against Dr Meşe were based on this regulation, which was signed by the relevant ministries in October 2003. A previous directive of February 2003, however, had mandated in accordance with recommendations by human rights groups that security officials should not be present during medical examinations. Dr Meşe reportedly had an investigation opened against him, and was transferred to another medical facility as a disciplinary measure.<sup>297</sup>

Other cases involving the sanctioning of doctors involved in human rights include that of Professors Şebnem Korur Fincancı and Servet Koç, who had previously been invited to act as advisors to the Human Rights Advisory Board of the Prime Ministry and Human Rights Commission of the Grand National Assembly. They

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<sup>294</sup> European Commission, '2002 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final, 9 October 2002, p45

<sup>295</sup> UN Commission on Human Rights, 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, § 91

<sup>296</sup> TİHV, 'Human Rights in Turkey - March 2004', <<http://www.tihv.org.tr/eindex.html>>

<sup>297</sup> DEHAP, 'Human Rights Violations, January – February 2005'; TİHV, 'Human Rights in Turkey: March 2004', <<http://www.tihv.org.tr/eindex.html>>

were dismissed from their posts as heads of the two faculties of Forensic Medicine at hospitals attached to Istanbul University in June 2004 as a result of professional disciplinary proceedings,<sup>298</sup> after having voiced concerns that the Forensic Medical Institute's independence was compromised and that it was not robustly seeking to combat torture.<sup>299</sup> In an earlier incident Şebnem Korur Fincancı, who is a founding member of the TİHV, was removed from her position after she wrote a report alleging that a death in custody had occurred as a result of torture.<sup>300</sup> Dr Fincancı has been outspoken in fighting torture and her findings in virtually all cases upheld alleged torture victims' testimonies.<sup>301</sup>

There are also regular proceedings brought against civil servants and trade union members. In April 2004 thirteen teachers in Izmit were given official warnings and had their salaries reduced for participating in a protest demonstration organised by Turkey's main public service union, KESK, against the draft Law on Public Reform on 10-11 December 2003.<sup>302</sup> June 2003 saw the arrest and temporary suspension of teacher Hülya Akpinar, who had made comments during a conference on the alleged Armenian genocide. She was acquitted in December 2003.<sup>303</sup> The UN Special Representative reports that the public workers' organisation KESK referred to some unionised workers being sent into 'internal exile' by being 'lent' by their employers to another firm as a result of their human rights work.<sup>304</sup> KHRP has similarly received reports of union members being sent into exile for union-related activities.<sup>305</sup>

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298 TİHV, 'Human Rights in Turkey: June 2004', <<http://www.tihv.org.tr/eindex.html>>

299 Amnesty International, 'Report 2005 – Turkey', <<http://web.amnesty.org/report2005/tur-summary-eng>>; On 23 June the TİHV made a press statement on the incident: TİHV, 'Prof. Dr. Kemal Alemdaroğlu Punishing Scientific Freedom', <[www.tihv.org.tr/report/2004\\_06/junpersosecu.html](http://www.tihv.org.tr/report/2004_06/junpersosecu.html)>

300 Amnesty International, 'Report 2005 – Turkey', <<http://web.amnesty.org/report2005/tur-summary-eng>>

301 Kurdish Human Rights Project, 'State Violence Against Women in Turkey and Attacks on Human Rights Defenders of Victims of Sexual Violence in Custody - KHRP Trial Observation Report', December 2001

302 TİHV, 'Human Rights in Turkey – April 2004', <[www.tihv.org.tr/report/2004\\_04/aprassem.html](http://www.tihv.org.tr/report/2004_04/aprassem.html)>

303 TİHV, 'Human Rights in Turkey – December 2003', <[http://www.tihv.org.tr/report/2003\\_12/dec-thought.html](http://www.tihv.org.tr/report/2003_12/dec-thought.html)>

304 UN Commission on Human Rights, 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, § 87

305 Interview with : İhsan Babaoglu, head of Eğitim-Sen Diyarbakır branch and Abdullah Karahan, branch secretary, 2:15-3:15pm, 26 July 2005

### *l. State monitoring and surveillance of human rights defenders*

Ankara's perception of HRDs as criminals, individuals who constitute threats to national security or, at best, politically motivated ideologues, together with its preoccupation with tightly controlling individuals and groups seeking improvements in Turkey's human rights record, mean that HRDs are closely and systematically monitored while carrying out their activities. Surveillance of HRDs is apparently sanctioned from high levels within government: the UN Special Representative reports that in a meeting the Security Chief of Istanbul did not deny that intelligence on the activities of HRDs was gathered, though he pointed out that this was done through legal procedures.<sup>306</sup>

State surveillance of HRDs provides public authorities with information which can be used as a basis for threats, the deliberate obstruction of HRDs' work and other tactics of harassment, as well as supplying material for the launching of investigations and prosecutions – HRDs report that security forces have initiated cases against them based on information gathered through surveillance.<sup>307</sup> In addition, the frequent presence of public officials monitoring the activities of HRDs, in the context of state hostility towards HRDs and the repeated initiation of judicial proceedings against them, contributes to the prevailing environment of intimidation in which HRDs operate in Turkey.

Surveillance of HRDs takes varied forms. Press conferences convened by HRDs and other forms of public assembly are often attended by large numbers of law enforcement officials with cameras or recording equipment, creating a pressurised atmosphere which may prove daunting to both HRDs and attendees. Law enforcement officials also commonly attend the private meetings of human rights groups, and Government Commissioners continue to attempt to record human rights associations' general assemblies despite the repeal of the provision in the Law on Associations which had mandated this practice. Security forces will sometimes demand to see identity cards and log the names of those attending public meetings and demonstrations or otherwise involved in human rights activities which, given the authorities' tendency to single out HRDs for persecution, will inevitably cause disquiet among participants in human rights activities. HRDs frequently report having their phones tapped and being followed in the streets.

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306 UN Commission on Human Rights, 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?Open Element>>, § 63

307 UN Commission on Human Rights, 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?Open Element>>, § 63

KHRP has itself experienced similar kinds of state behaviour. For example, members of a fact finding mission<sup>308</sup> to the Ardahan and İmranlı regions of Turkey in September 2004 which investigated the impacts of the BTC pipeline and reported on the trial of HRD Ferhat Kaya were stopped and had their passport details taken. Later, plainclothes policemen followed the mission on a visit to a village and stayed in the village while the mission spoke to villagers. The mission later learned that police had asked the village Muhtar about the mission. Another fact finding mission conducted by KHRP and its partners to monitor the impacts of the BTC Pipeline was detained on two occasions by the Gendarmerie and, due to police harassment and intimidation, was forced to abandon a number of planned visits to villages affected by the pipeline for fear of exposing local villagers to potential human rights abuses by the state security agencies.<sup>309</sup>

#### *m. Participation in government and public affairs*

The participation of HRDs in public affairs underlines and strengthens state commitment to human rights and enriches the processes of democratic governance. Indeed, HRDs, with their knowledge of their subject matter, access to constituencies they represent on the ground, networks among other interested parties and injection of new ideas on human rights issues, can prove a highly positive and important resource to the state. The activities of HRDs in independently monitoring and constructively criticising human rights practices can also contribute to the strengthening of freedom of expression and association, and to the evolution of a diverse and vibrant civil society.

In addition, the capacity of HRDs to actively contribute to the running of the country can be regarded as an acid test of how far Ankara has genuinely embraced democratic reform. Moving beyond established conceptions of HRDs as threats to the authority of the state and its values, and beginning to regard them instead as having a beneficial contribution to make towards ensuring that Turkey is governed in accordance with the principles of pluralism, respect for civil liberties and the rule of law, would prove a strong indicator that Turkey is truly changing. Furthermore, established democracies will usually have effective and well-resourced bodies or institutions dedicated to ensuring that state policies and practices respect human rights incorporated into governing structures.

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308 Kurdish Human Rights Project, The Corner House, Friends of the Earth and environmental Defense, 'Baku-Tbilisi-Ceyhan Oil Pipeline – Human Rights, Social and Environmental Impacts Turkey Section, 10-27 September 2004'; p43 - 44

309 Campagna per la Riforma della Banca Mondiale, Kurdish Human Rights Project, PLATFORM & The Corner House, 'Baku-Tbilisi-Ceyhan Pipeline – Turkey Section', June 2003, p19

Turkey has taken some outward steps towards integrating efforts to protect and promote human rights into the state administration. Training initiatives on human rights for judges, prosecutors, police and Ministry of Justice staff are being implemented, and HRDs are increasingly asked to participate in state-run bodies and fora. The Human Rights Presidency and its 81 provincials and around 930 sub-provincial human rights boards, made up of local elected representatives, academics, lawyers, politicians, professional bodies, journalists, NGOs and trade unions, is tasked with monitoring human rights-related legislative reforms and their implementation in the country. An important element of the Boards' remit is to investigate complaints it receives about human rights abuses, and to forward its findings to the prosecutor where necessary. A Human Rights Advisory Board has also been established to provide a platform for consultation and information exchange between academics, NGOs and other civil society actors interested in human rights. There is additionally the Reform Monitoring Group – a Human Rights Office within the Ministry of Interior – and a Human Rights Committee of the Parliament with investigative functions.

No doubt the establishment of these official bodies, with their competencies to address human rights issues in Turkey, is a positive step in the path towards incorporating the promotion and protection of human rights into the way Turkey is governed. However, these bodies have encountered substantial operative problems and to date their real impact has been minimal. The European Commission notes that "the impact of these bodies has as yet been very limited",<sup>310</sup> while the Council of Europe's Commission Against Racism and Intolerance has expressed concern that:

the large number of bodies competent to receive complaints stands in stark contrast to their lack of independence and genuine power. Such bodies cannot take effective action to remedy human rights abuses.<sup>311</sup>

Indeed, the record of Turkey's state-sponsored human rights bodies, when considered in conjunction with pronounced government unwillingness to engage with HRDs at all critical of the state, detracts strongly from any inference that Ankara's setting up of these human rights bodies is indicative of a genuine engagement with the defence of human rights.

The principal criticism directed at the provincial and sub-provincial Human Rights Boards is that they are not independent. They are chaired by governors and,

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<sup>310</sup> European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final, 6 October 2004, p32

<sup>311</sup> Council of Europe, European Commission Against Racism and Intolerance, 'Third report on Turkey, Adopted on 25 June 2004', Strasbourg, 15 February 2005, § 115, <[http://www.coe.int/T/E/Human\\_Rights/Ecri/1-ECRI/2-Country-bycountry\\_approach/Turkey/Turkey%20third%20report%20-%20cri05-5.pdf](http://www.coe.int/T/E/Human_Rights/Ecri/1-ECRI/2-Country-bycountry_approach/Turkey/Turkey%20third%20report%20-%20cri05-5.pdf)>

importantly, have no statutory independence or separate budget. They act under the authority of the Human Rights Presidency, which in turn reports to the Prime Minister.<sup>312</sup> Although members of the police and gendarmerie were prevented from sitting on the boards from November 2003, reports by local human rights groups suggest that the Boards' members constitute primarily those sympathetic to the government including public officials and representatives of dominant political parties. The UN Special Representative observes that selection of NGO participation appears to be based on political affiliation or other extraneous considerations.<sup>313</sup> Of course, constituting a state-dominated body in order to investigate violations of human rights perpetrated by the state dramatically undermines the functionality of such a body, as does the appointment of public officials and civil society representatives with little experience or expertise in human rights.

Furthermore, the boards do not yet appear to have won public confidence. Some have received none or very few complaints, and only 391 complaints were received in total by the boards in the six months from January to June 2004.<sup>314</sup> These numbers have since risen only slightly – in January 2005 it was reported that 76 individuals filed complaints, and in February the figure was 62.<sup>315</sup> Turkey's larger human rights NGOs deal with much greater numbers of complaints. It is also by no means clear that the Human Rights Boards yet have the necessary personnel and financial resources to carry out their wide ranging duties and to ensure that all complaints they receive are properly dealt with.

This array of shortcomings, combined with the fact that Turkey continues to express her antagonism towards HRDs in the pursuit of countless judicial and administrative proceedings against them, have meant that Turkey's largest and most important human rights NGOs, including the İHD, TİHV and Mazlum-Der, refuse to participate in the activities of the Human Rights Boards.

Other government-backed human rights initiatives in Turkey have fared little better. The Human Rights Advisory Board has made only very limited progress towards the fulfilment of its mandate to facilitate co-operation between government and civil society on human rights issues. Indeed, Ankara's behaviour towards the Advisory

<sup>312</sup> Council of Europe, European Commission Against Racism and Intolerance, 'Third report on Turkey, Adopted on 25 June 2004', Strasbourg, 15 February 2005, § 115, <[http://www.coe.int/T/E/Human\\_Rights/Ecri/1-ECRI/2-Country-by-country\\_approach/Turkey/Turkey%20third%20report%20-%20cri05-5.pdf](http://www.coe.int/T/E/Human_Rights/Ecri/1-ECRI/2-Country-by-country_approach/Turkey/Turkey%20third%20report%20-%20cri05-5.pdf)>

<sup>313</sup> UN Commission on Human Rights, 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, § 48

<sup>314</sup> TİHV, 'Human Rights in Turkey – August 2004', <[http://www.tihv.org.tr/report/2004\\_08/augpersosecu.html](http://www.tihv.org.tr/report/2004_08/augpersosecu.html)>

<sup>315</sup> Zaman, 'Human Rights Issue Unites Media and State Institutions', 28 July 2005

Board displays a marked reluctance to institute a more open manner of government responsive to human rights concerns, and amplifies concerns that Turkey continues to regard legitimate efforts to critique her human rights record with contempt.

It became clear almost from the outset that the Advisory Board would not see the kind of constructive, consultative relationships which exists between government institutions and civil society through much of Europe. In December 2003 25 members of the Advisory Board sent a public letter to the Minister responsible for human rights, complaining that the board's input had not been sought on the human rights reform process and that it had not even been consulted on the regulations of the operation of the board.<sup>316</sup> They also expressed concern that the Human Rights Presidency had established a "managerial approach" towards the Advisory Board and attempted to assert hierarchical superiority over it, rather than respecting its independent, advisory role.<sup>317</sup> The complainants noted nearly two months later that they still received no response to the issues raised from the Minister.<sup>318</sup>

The situation worsened considerably in November 2004 when the Board's chairman İbrahim Kaboğlu had to stop a news conference called to formally release a report critical of human rights in Turkey. The report, which recommended reforms in minority rights along the lines recommended by bodies such as the Council of Europe and the European Commission, was reportedly ripped from the hands of Mr Kaboğlu by a fellow member of the Board who shouted "This report is a fabrication and should be torn apart".<sup>319</sup> Other members of the Advisory Board with nationalist leanings were said to have referred to the report as a "document of betrayal", and it was very badly received among senior members of government: officials including Foreign Minister Abdullah Gül and Justice Minister Cemil Çiçek reportedly expressed distaste for some of the reforms it recommended,<sup>320</sup> and President Ahmet Necdet Sezer issued a warning that the unitary structure of the state was an untouchable issue.<sup>321</sup> The Advisory Board subsequently began to crumble; fourteen academics and NGO representatives were notified that they were dismissed from the Board as of February 2005,<sup>322</sup> and in March 2005 the Chairman of the Board Yavuz Önen and five colleagues announced their decisions to resign amidst bitter criticism of the Turkish government's attitude towards human rights.<sup>323</sup>

<sup>316</sup> TİHV, 'Press Release: 20 February 2004', <<http://www.tihv.org.tr/press/press20022004.html>>

<sup>317</sup> TİHV, 'Press Release: 20 February 2004', <<http://www.tihv.org.tr/press/press20022004.html>>

<sup>318</sup> TİHV, 'Press Release: 20 February 2004', <<http://www.tihv.org.tr/press/press20022004.html>>

<sup>319</sup> Al Jazeera, 'Rights report sparks row in Turkey', 2 November 2004

<sup>320</sup> Al Jazeera, 'Rights report sparks row in Turkey', 2 November 2004

<sup>321</sup> Turkish Daily News, 'Minority Phobia' Haunts Turkey', November 7 2004

<sup>322</sup> International Helsinki Federation for Human Rights, 'Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005', 27 June 2005

<sup>323</sup> BBC, 'Turkey PM rights adviser resigns', 25 March 2005, <<http://news.bbc.co.uk/2/hi/eu->>

Mr Önen denounced the government's insincere attitude to human rights and its failure to consult with the Board.<sup>324</sup>

The history of Turkey's project of formal consultation with non-governmental HRDs is, then, to date fraught with failure. Turkey's assertion that:

The recent comprehensive legislative changes as well as administrative measures have been crafted through a real collaborative process, taking the views of the civil society and academic circles into consideration<sup>325</sup>

is not borne out in reality. Her behaviour has made it clear that she has no real interest in the input of those seeking to protect and promote human rights where they depart from official lines on the reform process and contest the government's performance.

This disinclination to allow HRDs to participate in the government of Turkey and in the administration of public affairs is also apparent in Ankara's response to efforts from HRDs generally to offer their opinions and submit recommendations to state institutions on human rights matters. Endeavours by HRDs to highlight to the government weaknesses in its human rights record are ignored or vehemently rebuffed. HRDs have been disappointed by their attempts to have a constructive input into the reform process being rebuffed, and consultation initiatives have not yielded a genuine exchange of information and ideas between government and civil society. Allegations made by the İHD and supported by other leading Turkish HRDs and international human rights organisations such as KHRP that torture in Turkey remained systematic met with accusations by Turkish Interior Minister Abdulkadir Aksu that the organisation had "failed to grasp revolutionary changes".<sup>326</sup> In a letter to the UN High Commissioner for Human Rights Turkey condemned the Society for Threatened Peoples International, an international NGO with special consultative status with the UN, referring to the organisation as "void of the required goodwill and seriousness in addressing the subject of IDPs in Turkey" after it submitted criticisms of Turkey's response to the issue of displacement in Turkey.<sup>327</sup> A Human

- rope/4383075.stm>
- 324 BBC, 'Turkey PM rights adviser resigns', 25 March 2005, <http://news.bbc.co.uk/2/hi/europe/4383075.stm>>
- 325 UN Commission on Human Rights, 'Promotion and Protection of Human Rights: Human Rights Defenders, Letter dated 23 March 2005 from the Permanent Mission of Turkey to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights', E/CN.4/2005/G/25, 24 March 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/131/78/PDF/G0513178.pdf?OpenElement>>
- 326 BBC, 'Turkey denies charges of torture', 16 September 2004, <<http://news.bbc.co.uk/2/hi/europe/3662644.stm>>
- 327 UN Commission on Human Rights, 'Specific Groups and Individuals: Mass Exoduses and Displaced Persons, Letter dated 5 April 2005 from the Permanent Mission of Turkey to the United

Rights Watch report detailing pertinent ongoing problems in Turkish efforts to combat internal displacement was dismissed as overly negative and attempting to internationalise a domestic issue.<sup>328</sup>

HRDs are not generally permitted to contribute towards human rights initiatives, the formulation of human rights legislation, institutional reforms in the protection of human rights or other policy issues pertaining to human rights. Mazlum-Der, for example, asserts that the government rejected any debate with human rights organisations on the issue of combating torture, and reacted negatively to arguments and initiatives expressed by human rights NGOs.<sup>329</sup> State responses to NGO expressions of concern over the severe human rights situation facing internally displaced persons (IDPs) in Turkey are also illustrative of this latter point.

Turkey has shown a manifest unwillingness to address the dire circumstances of the three million or so people who were displaced, largely by government security forces and state armed militias, during the armed conflict fought in the Kurdish regions between 1984 and 1999. What small-scale and wholly inadequate government return plans have been instituted in the region have been devised and executed with insufficient or non-existent consultation of individuals and organisations representing the displaced.<sup>330</sup> Where HRDs have challenged Turkey on this issue or offered recommendations and assistance, they have been ignored, harassed or prosecuted. Sefika Gürbüz, head of Göç-Der, was fined TL 2,180 billion in January 2004 for publishing a report on forced displacement.<sup>331</sup> In 2001, the Diyarbakır municipality was denied permission to organise a survey entitled ‘The Impact of Migration on Municipal Services’, in which the possible options for respondents to cite for leaving their villages included pressure to become village guards or practices of the security forces during OHAL. The State Statistics Institute said that the report was ‘inconvenient’ in its substance.<sup>332</sup> It is difficult to see that such a complex, multi-faceted problem as internal displacement can be adequately

Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights, E/CN.4/2005/G/33, 6 April 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/134/82/PDF/G0513482.pdf?OpenElement>>

<sup>328</sup> Turkish Daily News, ‘Turkey slams rights group for report on the displaced’, March 15 2005

<sup>329</sup> Mazlum-Der, ‘The Evaluation Report of Applications of Mazlum-Der İstanbul Branch - 2003’, <<http://www.mazlumder.org/english/text.html?sy=226&cst=other>>

<sup>330</sup> These concerns are reflected in European Commission, ‘2003 Regular Report on Turkey’s Progress Towards Accession’, p. 40; Immigrants’ Association for Social Cooperation and Culture (Göç-Der), ‘The Research and Solution Report on the Socio-Economic and Socio-Cultural Conditions of the Kurdish Citizens Living in the Turkish Republic who are Forcibly Displaced due to Armed-Conflict and Tension Politics; the Problems they Encountered due to Migration and their Tendencies to Return back to the Villages’, 2002

<sup>331</sup> International Federation for Human Rights (FIDH), ‘Trial against the Turkish NGO “GÖÇ-DER” before the Istanbul State Security Court’, 21 January 2004

<sup>332</sup> Human Rights Foundation of Turkey, ‘Monthly Report’, February 2001

resolved without the input of civil society representatives putting forward the needs and interests of affected groups, and indeed the results of this failure to consult has been inappropriate and ill-thought out return plans – NGOs and international organisations are broadly in agreement that they provide a wholly inadequate framework for resolving internal displacement.<sup>333</sup>

Turkish antipathy towards efforts by HRDs to actively contribute towards the resolution of human rights problems is reflective of the fact that even among the upper echelons of government it is apparent that HRDs are viewed by public officials in a highly negative manner: as troublemakers with prejudices against the state, as activists pursuing their own political agendas, as criminals who pose a threat to the state and must be stopped, as dissidents with links to terrorist organisations and, particularly in the case of pro-Kurdish HRDs, as separatists aiming at the break-up of the Turkish state. The UN Special Representative expressed after a visit to Turkey in October 2004 that:

All but one of the security chiefs, a number of governorship representatives and prosecutors, during their meeting with the Special Representative, linked human rights defenders to terrorist activities and Organisations.<sup>334</sup>

In an interview the Deputy Governor of Bingöl stated that the real purpose of the İHD “was not to help people but to trouble them”, while “Some security chiefs referred to the infiltration of human rights organisation by the PKK” and “Others bluntly asserted that well-recognized human rights groups had engaged in illegal terrorist activities such as hiding weapons”.<sup>335</sup> The Special Representative also noted that “many within the State apparatus continue to see [HRDs] as a potential threat from which the State needs to be protected.”<sup>336</sup> The Turkish government’s formal

<sup>333</sup> Human Rights Watch, ‘Last Chance for Turkey’s Displaced?’, October 4, 2004; Immigrants’ Association for Social Cooperation and Culture (Göç-Der), ‘The Research and Solution Report on the Socio-Economic and Socio-Cultural Conditions of the Kurdish Citizens Living in the Turkish Republic who are Forcibly Displaced due to Armed-Conflict and Tension Politics; the Problems they Encountered due to Migration and their Tendencies to Return back to the Villages’, 2002; Francis Deng’s report

<sup>334</sup> UN Commission on Human Rights, ‘Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, § 99,

<sup>335</sup> UN Commission on Human Rights, ‘Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, § 99,

<sup>336</sup> UN Commission on Human Rights, ‘Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, § 100,

response to this latter allegation, that it rather views HRDs as “essential elements of a vibrant civil society, with which cooperation and constant dialogue are necessary to attain perfection in human rights standards”,<sup>337</sup> is rather difficult to sustain in light of Turkey’s treatment of the Advisory Board and of HRDs who attempt to liaise with the government on human rights issues.

It should be noted, though, that Turkish hostility towards HRDs contributing to public decision-making is broadly reserved for those who criticise the evolution and implementation of the reform programme in Turkey in areas such as freedom of expression and torture, and press for further change. The government responds very negatively to public expressions of dissent or disagreement by HRDs concerning its policies on reform. She does, however, co-operate with and even offer support to civil society to some extent where organisations are working on issues supported by the government. She conceives her relationship with civil society less as a process of consultation and co-operation with independent groups and individuals, and more as an opportunity to co-opt grassroots organisations in order to further state policies.<sup>338</sup> Locally established groups whose aims coincide with the state may find their independent status challenged as officials make use of their knowledge and links to implement state strategies and projects, while HRDs who contest government policies and behaviour meet instead with state obstructionism.<sup>339</sup> In acting in this way, Turkey fundamentally misconstrues the independent functions of HRDs, which should not be subject to state interference of this nature, as well as the legitimacy of efforts by HRDs with alternative views on human rights to seek to influence the governance of the country.

#### *n. Women human rights defenders*

Women are a highly significant and influential factor in the Turkish human rights movement. There is a dynamic body of courageous groups and individuals

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337 UN Commission on Human Rights, ‘Promotion and Protection of Human Rights: Human Rights Defenders’, Letter dated 23 March 2005 from the Permanent Mission of Turkey to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights, E/CN.4/2005/G/25, 24 March 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/131/78/PDF/G0513178.pdf?OpenElement>>

338 The UN Special Representative notes that “overall, Turkish authorities even at the highest level view the role of civil society as providing tools for the State to further its policies”. UN Commission on Human Rights, ‘Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?Open Element>>, § 101

339 UN Commission on Human Rights, ‘Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?Open Element>>, § 101

dedicated to combating the myriad of injustices faced by women in Turkey, while at the same time women HRDs are prominent among those leading the battle for improved human rights protection in Turkey generally. However, not only must women contend with the challenges faced by all HRDs operating in Turkey, they are also subject to additional harassment and intimidation on account of their sex and to gender-specific forms of persecution. Kurdish women HRDs face discrimination on several fronts – as Kurds, as women and as HRDS – and therefore encounter especially compound problems.

The situation of women in Turkey is a complex issue in itself. Turkey has a majority Muslim population and deep-seated traditionalism holds sway in much of the country. At the same time, though, there are pockets of strong modernist leanings, particularly in urban areas, and the country has a fierce, historically rooted and constitutionally entrenched commitment to secularism. The realisation of gender equality and the advancement of women were outwardly promoted from the founding of the modern Turkish republic, and Western-oriented elements within Turkey's governing structures and now the pro-EU reform process, are both geared towards furthering compliance with international standards on women's rights. However, pressures from contending forces within society continue to create a situation where women are subject to pervasive discrimination, violence, marginalisation and degrading traditional practices. To date, although the reform process has resulted in some improvements in the status of women in Turkey, abuses within the family including sexual abuse, forced and early marriages, unofficial religious marriages, polygamy, trafficking and honour killings remain serious problems. Furthermore, substantial socio-economic disparities between the genders remain and women and girls face marked educational disadvantages. Female participation in decision-making is hindered by political conservatism.

Efforts to resist gender-based injustices in Turkey were for many years impeded by the pre-dominance of negative stereotyping of women and ingrained societal norms, and women HRDs were limited to participation in small scale, charity-based organisations. After the 1990s the women's rights movement matured significantly, and is now a significant and highly organised and co-ordinated force for change, capable of raising the visibility of women's rights, assisting victims of abuses and impacting on national policies and practices. The civil society sector has had a very substantive input into the changes enacted to the Civil Code and the Penal Code as part of the pro-EU reform process, following a constructive and sustained campaign by women's rights groups in Turkey to incorporate a gender perspective into these laws.

Notwithstanding these positive developments, patriarchal mindsets embedded through Turkish society, inter-family and community relations, private bodies and governing structures continue to place substantial obstacles in the way of women

HRDs. Women who speak out against violations of their rights will frequently be contesting not only a particular law or practice, but a symbol of a long-established belief system which distributes power and resources according to gender and conceives the traditional role of women in a way which is integrally rooted in cultural norms. In some instances, violations of women's rights will be embedded within the fabric of society and 'rationalised' by social convention; women who protest against such violations can be confronted with hostility and resistance from diverse sections of society, including from within their own communities. These observations are by no means confined to Turkey and are true to differing extents of societies of all faiths and levels of development worldwide.

HRDs opposing the commission of brutality and violence against women in particular have been confronted with the challenge of contesting customary practices which are closely intertwined with deep-rooted conceptions of femininity and sanctioned or condoned from within society. Domestic violence is widespread in Turkey and women are beaten, subjected to psychological abuse, raped and sometimes killed; others are forced into unwanted marriages and compelled to undergo virginity testing. 'Honour' codes mandate that husbands, brothers, fathers and sons, sometimes acting at the behest of family 'councils', impose punishments on women deemed to have transgressed traditional behavioural norms. Despite a number of more positive recent court decisions, police and the courts still tend towards sympathy for the attacker in the commission of these acts and do astoundingly little to ensure his arrest or conviction. Underpinning the continued perpetration of violence against women and state failure to adequately address it is discrimination which denies women's equality with men, implicitly endorses the use of brutality to control or punish women, and places the blame for acts of violence with the female victim who has contravened socially constructed 'rules'.

HRDs who speak out against attacks on women are consequently at times seen as threatening the status quo and the vesting of social and economic power in the hands of men, and are ostracised, threatened, harassed or intimidated accordingly. They may be placed under heavy pressure by colleagues, public officials and the media. They are also confronted with resentment and antagonism within their own communities, where they may face censure or, at times, aggression. It is reported by a leading international human rights organisation that many of the women lawyers spoken to by the organisation's representative in the course of a study on violence against women had been directly or indirectly discouraged from continuing their work by their families and communities.<sup>340</sup> A lawyer working for a women's rights organisation received telephone threats from a man facing prosecution for torturing

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<sup>340</sup> Amnesty International, 'Turkey: Women confronting family violence', 2 June 2004 <<http://web.amnesty.org/library/Index/ENGEUR440132004?open&of=ENG-TUR>>

his wife.<sup>341</sup> The man concerned had believed that his wife was having an affair and allegedly tied up her hands behind her head each night, stubbed cigarettes out on her, forced objects into her vagina, and left her until she 'confessed'. He also took her out to buy her a gun, showed her how to use it, and one day drove her around in the car to find the man with whom he claimed she was having an affair. When the divorce came through he telephoned his wife's lawyer and threatened her: "This job is not finished yet. You will be punished for being a feminist lawyer. It is your fault that we are divorced."

Notwithstanding the very substantial problems encountered by women HRDs who speak out against culturally legitimised practices which injure women, it should be added that the courageous women who refuse to bow to cultural stereotyping and risk ostracism and persecution to defend women against violence and brutality have achieved much. The issue has been placed firmly on the public agenda and women are more conscious of their rights and of mechanisms of redress. Organisations such as the Purple Roof Foundation and the Women's Centre (Ka-Mer) in Diyarbakur make vital contributions to raising awareness of gender violence at a grassroots level and equipping women with the knowledge and resources to assert their rights. Of particular importance are local women's organisations dedicated to aiding women who have been threatened or attacked through the provision of shelter and related services.

Unfortunately, the state has not given practical force to its professed commitment to the furthering of women's rights by adequately supporting these vital lifelines for battered women. The only two women's shelters operated by NGOs were forced to close as a result of financial constraints,<sup>342</sup> and the very small numbers of shelters which remain open are government-run.<sup>343</sup> Legislation that came into force in December 2004 means that municipalities with a population of more than 50,000 must set up shelters for women,<sup>344</sup> but so far the government has exhibited very little political will to establish women's shelters – as of November 2004 there were only 13 state shelters in the whole country with none in the east and southeast<sup>345</sup> – and

<sup>341</sup> This account is taken from Amnesty International, 'Turkey: Women confronting family violence', 2 June 2004, <<http://web.amnesty.org/library/Index/ENGEUR440132004?open&of=ENG-TUR>>

<sup>342</sup> Kurdish Human Rights Project, 'State Violence Against Women in Turkey and Attacks on Human Rights Defenders of Victims of Sexual Violence in Custody - KHRP Trial Observation Report', December 2001

<sup>343</sup> 'Shadow Report on The 4th and 5th Combined Periodic Country Report for Turkey The Executive Committee for NGO Forum on CEDAW-Turkey', Submitted for the 32nd CEDAW Session in January 2005, November 2004, <[http://www.iwraw-ap.org/resources/turkey\\_Flying\\_Broom\\_\(Eng\).pdf](http://www.iwraw-ap.org/resources/turkey_Flying_Broom_(Eng).pdf)>

<sup>344</sup> Amnesty International, 'Turkey: Implementation of reforms is the key!', 11 March 2005, <<http://web.amnesty.org/library/Index/ENGEUR440102005?open&of=ENG-2U5>>

<sup>345</sup> 'Shadow Report on The 4th and 5th Combined Periodic Country Report for Turkey The Executive Committee for NGO Forum on CEDAW-Turkey', Submitted for the 32nd CEDAW Session

women's groups have raised serious concerns over whether this type of service is most appropriately left in the hands of the government. There is little confidence that the government is sufficiently committed to funding and implementing the new legislation; the CEDAW Committee expresses concern that "support services for women victims of violence, including shelters, are inadequate in number", and that

under the recently enacted Law on Municipalities, the responsibility for establishing shelters has been delegated to municipalities without adequate mechanisms to monitor its implementation and ensure financing.<sup>346</sup>

There have been reports of women being turned away from state-run shelters because they do not have identity cards with them, or because they are pregnant, have health problems or work as prostitutes.<sup>347</sup> In spite of their established expertise and grassroots familiarity with the issues, women's rights NGOs have not been sidelined from government action on women's shelters – they have not been consulted, their co-operation on formulating and implementing a plan for the establishment of shelters has not been sought and assistance has not been granted to NGOs offering community-based services to support victims of domestic violence. The CEDAW Committee calls on Turkey to incorporate "research results and practical experiences of non-governmental Organisations in this field."<sup>348</sup>

It is not only those assisting female victims of 'private' violence – perpetuated within the home or community – who are subject to hostility as a result of their work defending human rights. Women under the control of state authorities in Turkey are routinely subject to gender specific forms of torture and ill-treatment including rape and threats of rape, sexual harassment, sexual humiliation and insults. These practices severely undermine professed public commitments to gender equality, reinforcing a culture which denigrates women and portrays them as inferior to men. As with in relation to private violence, individuals, women's groups, lawyers and others who attempt to expose abuses against women in detention meet with intolerance and repression. In March 2001, a trial was launched against nineteen organisers and speakers at a congress organised by the Project 'Legal Aid for Women

in January 2005, November 2004, <[http://www.iwraw-ap.org/resources/turkey\\_Flying\\_Broom\\_\(Eng\).pdf](http://www.iwraw-ap.org/resources/turkey_Flying_Broom_(Eng).pdf)>

<sup>346</sup> Committee on the Elimination of Discrimination Against Women, 'Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined fourth and fifth periodic reports of States parties, Turkey', 8 August 2003

<sup>347</sup> Amnesty International, 'Turkey: Shelters not cemeteries!', 2 June 2004, <http://web.amnesty.org/library/Index/ENGEUR440242004?open&of=ENG-TUR>

<sup>348</sup> Committee on the Elimination of Discrimination against Women, Thirty-second session, 10-28 January 2005, 'Concluding comments: Turkey', C/TUR/CC/4-5, 15 February 2005

Raped or Sexually Assaulted by State Security Forces'. Charges included 'insulting the State authorities' under Article 159 of the old Penal Code. In separate proceedings, charges of inciting hatred and enmity under Article 312(2) and spreading separatist propaganda under Article 8(1) of the Anti-Terror Law were also brought.<sup>349</sup> The congress had aimed at highlighting the problem of sexual violence against women in custody, and participants included lawyers representing victims of sexual torture as well as individual women who had suffered torture and ill-treatment.<sup>350</sup>

A prime example is the treatment accorded to Eren Keskin, a lawyer and founder of the Legal Aid Project to assist women who have been raped or sexually abused in detention mentioned above. Eren Keskin has endured an exceptionally large number of investigations and over 100 prosecutions for her human rights work, as well as death threats, arbitrary detention and assault, Ankara's antipathy towards her work being further fuelled by Ms Keskin's status as a leading, female human rights lawyer, her defence of the human rights of disfavoured Kurds, and her role as former vice-president of the İHD (she is now chair of the Istanbul branch) – an organisation which has been outspoken in its criticisms of Turkey's human rights record. On 26 April 2005 Eren Keskin was sentenced to five months imprisonment, subsequently commuted to a fine, in connection with a speech she made at a panel entitled 'Women in Social Life' in 2002.<sup>351</sup> Her statement that "women are subjected to sexual harassment in detention" was deemed to breach the prohibition on insulting the security forces under Article 159 of the old Penal Code. It is worth noting in this context that international institutions including the European Commission have attested to the occurrence of sexual harassment and violence perpetrated against women in detention in Turkey.<sup>352</sup> Ms Keskin has faced a string of other investigations and charges for her vocal condemnation of violence and sexual abuse of women in Turkey's detention facilities, including in November 2002 when a prosecution was launched under Article 159 of the old Penal Code against Eren Keskin, lawyer and representative of the Diyarbakır İHD office Sezgin Tanrikulu, and sociologist Pınar Selek. The indictment referred to speeches they made at a human rights symposium on 8 December 2001 highlighting the use of torture against female detainees in Turkey.

Turkey's response to Eren Keskin's efforts to bring to light the treatment of women in

<sup>349</sup> Kurdish Human Rights Project, 'State Violence Against Women in Turkey and Attacks on Human Rights Defenders of Victims of Sexual Violence in Custody - KHRP Trial Observation Report', December 2001

<sup>350</sup> Kurdish Human Rights Project, 'State Violence Against Women in Turkey and Attacks on Human Rights Defenders of Victims of Sexual Violence in Custody - KHRP Trial Observation Report', December 2001

<sup>351</sup> Info Turk, February 2005, № 320, Original Source: Özgür Gündem <<http://home.scarlet.be/~ozguden/320.htm>>

<sup>352</sup> European Commission, '2003 Regular Report on Turkey's Progress Towards Accession', p26

detention adds force to concerns that she is not taking seriously her responsibility to robustly address this problem. The state is emphatically and unequivocally obliged to take measures aimed at tackling torture and ill-treatment of women under the control of state authorities. The deliberate infliction of physical and psychological suffering on women detainees through threats, violence, or sexual harassment and humiliation is a means of asserting unfettered control over another individual, attacking her personality and diminishing her capacity to assert her autonomy. It is fundamentally grounded in patriarchal structures which endorse male control over women and has devastating consequences for victims, including the destruction of the sexual identity of a woman, of her dignity, honour, self-respect, and indeed at times her life, in addition to the resultant terrible physical and emotional damage. While it has been suggested by bodies such as the European Commission that such practices have declined in the course of the pro-EU reform process,<sup>353</sup> evidence on the ground including reports of local human rights bodies monitoring torture incidences suggest otherwise. Turkey's response to state violence against women – prosecuting those who speak out against it rather than going after the perpetrators – reinforces rather than challenges the parameters of gender stereotypes which justify violence against women and undermines what limited progress has been made in breaking down traditionalist cultural belief systems which legitimise gender violence.

At the same time as long-established societal stereotypes of women's role in Turkey act to limit women's freedom and perpetuate discrimination, the Turkish state's staunch commitment to secularism has also led to barriers to the realisation of women's rights and to the oppression of those who seek to uphold them. Atatürk's determination to fashion the modern Turkish republic as a western-leaning, secular democracy has left a legacy of deep-seated commitment, particularly among the military, to keeping the state free of the symbols and conventions of Islam. A manifestation of this commitment is the ban on wearing the headscarf in public institutions, including parliament, government offices, universities and even secondary schools. The ban on headscarves – worn by nearly two-thirds of Turkish women – is to a large extent motivated by fears of the rise of political Islam and attempts to impose Islamic mores upon women against their will. Turkey fears that women wearing the headscarf would exert pressure upon other women to do the same. However, by restricting women's ability to exercise choice on this issue Turkey's secular government is itself placing undue pressure on women, as well as restricting their right to education and to public employment. The issue of the headscarf ban in universities was referred to the ECtHR in the case of *Leyla Sahin v. Turkey*, where regrettably it was ruled on 29 June 2004 that the ban was justified as

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<sup>353</sup> Commission of the European Communities, 'Regular 2004 Regular Report on Turkey's progress towards Accession', COM(2004) 656 final, 6 October 2004, p?, [http://europa.eu.int/comm/enlargement/report\\_2004/pdf/rr\\_tr\\_2004\\_en.pdf](http://europa.eu.int/comm/enlargement/report_2004/pdf/rr_tr_2004_en.pdf)

a measure restricting religious freedom in order to defend the values and principles of a democratic society.<sup>354</sup>

The state view that the wearing of headscarves in public institutions would become a form of Islamic oppression, though complicated by the fact that high-ranking officials' wives wear the headscarf,<sup>355</sup> has resulted in the targeting of HRDs who actively oppose the ban. Several peaceful demonstrations were carried out throughout 2003 and 2004 opposing the headscarf ban which ended in the detentions and trials of participants. Where women wear the headscarf in defiance of the ban they are at risk of being disciplined at work or facing dismissal, and headscarf-wearing women have been expelled from universities in their droves.

The human rights NGO Mazlum-Der, which receives thousands of requests for assistance from women who have been compelled to leave university or public employment for wearing the headscarf, has been actively involved in opposing the headscarf ban for several years. Chair of the Malatya branch Özkan Hoşhanlı was arrested in 1999 along with 75 others when a protest against the headscarf ban at Malatya İnönü University ended in an outbreak of violence between security forces and protesters. Özkan Hoşhanlı had reportedly attended the demonstrations as an observer. The Malatya State Security Court which heard the case had sought the death penalty for 51 of the defendants on the basis that they had tried 'to create public unrest with the aim of forcibly changing the constitutional order of Turkey'.<sup>356</sup> The court requested sentences of 5 to 15 years for Özkan Hoşhanlı and the other defendants. These charges were eventually dropped and Mr Hoşhanlı was sentenced to fifteen months imprisonment under the Law on Public Meetings and Demonstrations in a decision upheld by the Supreme Court on 5 June 2003. His 'crime' was 'participating in an illegal demonstration and not dispersing after orders and warnings, and having to be dispersed by government forces with force'.<sup>357</sup>

Concern has been raised by women HRDs within Turkey over the absence of any mention of the adverse impacts of the headscarf ban in the recent report by the Rapporteur of the European Parliament's Committee on Women's Rights and Gender Equality on the role of women in Turkey.<sup>358</sup> The Rapporteur, Emine Bozkurt, reportedly said that the headscarf issue was not part of her mandate and should be

<sup>354</sup> Leyla Sahin v. Turkey, Application no. 44774/98

<sup>355</sup> See AFP, 'Turkish PM seeks to relax Islamic headscarf ban', 10 July 2004

<sup>356</sup> Amnesty International, 'Turkey: Human rights defender imprisoned', 1 December 2003, <<http://web.amnesty.org/library/Index/ENGEUR440272003?open&of=ENG-TUR>>

<sup>357</sup> Amnesty International, 'Turkey: Human rights defender imprisoned', 1 December 2003, <<http://web.amnesty.org/library/Index/ENGEUR440272003?open&of=ENG-TUR>>

<sup>358</sup> European Parliament, Committee on Women's Rights and Gender Equality Rapporteur: Emine Bozkurt, 'Report on the role of women in Turkey in social, economic and political life', 2004/2215, 10 June 2005

solved in the Turkish parliament.<sup>359</sup> The implications of the ban on wearing the headscarf for Muslim women's economic prospects and participation in political life, and the potential for an analysis of the ban from such a report to give backing to those working to uphold the human rights of women choosing to wear the headscarf, render this decision somewhat disappointing. The CEDAW Committee in its 2005 report on Turkey expresses concern about the impact of the headscarf ban in schools and universities.<sup>360</sup>

Women HRDs face especial challenges not only as a result of the subject matter of their work where they seek to defend women's rights in Turkey, but also on account of their gender where they advocate for improved women's rights or for human rights generally. A difficulty which faces women HRDs across the board is their capacity to be taken seriously as valid contributors to the administration of the state. It has already been outlined that Turkey is unwilling to allow the genuine participation of HRDs in government and public affairs; for women HRDs this is exacerbated by the vast under-representation of women among state officials and perceptions of government and public administration as firmly male pursuits. The Rapporteur of the European Parliament's Committee on Women's Rights and Gender Equality notes that:

political participation by women in Turkey's decision-making bodies is disconcertingly low, with women constituting only 4.4% of the parliament and around 1% of representatives in local assemblies, with weak numerical participation by women in economic and political centres of decision making.<sup>361</sup>

In many ways the modern Turkish republic was in its early life relatively forward-looking on the position of women. Atatürk launched a series of legislative changes during the 1920s and 1930s aimed at giving women equal rights and opportunities, reforming the laws on divorce, custody and inheritance and allowing women to stand for public office and to vote. In 1993 Turkey elected her first female Prime Minister, and in July 2005 a woman was voted in as Chief Justice by the Supreme Court. Nevertheless, proportionately very few women have entered parliament – the 550-member House has only 24 women MPs and one female minister – and the civil service, particularly at the higher levels, is very male-dominated. The acceptance at least in theory of a public role for women in Turkey provides a starting point for

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<sup>359</sup> The Turkish Weekly, 'Headscarf Protest for 'Woman in Turkey' Report', 4 July 2005

<sup>360</sup> Committee on the Elimination of Discrimination against Women, Thirty-second session, 10-28 January 2005, 'Concluding comments: Turkey', C/TUR/CC/4-5, 15 February 2005, § 33

<sup>361</sup> European Parliament, Committee on Women's Rights and Gender Equality Rapporteur: Emine Bozkurt, 'Report on the role of women in Turkey in social, economic and political life', 2004/2215, 10 June 2005

women HRDs, but the confining of government and policy making to the public, male sphere in practice detracts from the perceived credibility and importance of their work. Powerful elements within the Turkish state and society continue to view the rightful domain of women as limited to the home and family.

Furthermore, women HRDs, particularly where their human rights work involves entering the professions or otherwise working away from the home, can face practical impediments to their work. Ingrained cultural stereotypes concerning the different roles of men and women in society shape the reduced educational and employment opportunities available to women. Women also face disproportionately high levels of illiteracy and low participation in the labour force, being concentrated primarily into casual labour or unpaid family work.<sup>362</sup> Childcare facilities in Turkey are relatively scarce and women will often be expected to remain at home to look after children – presenting another obstacle to their participation in human rights activities.<sup>363</sup>

These forces have conspired for many years to limit women HRDs to conducting informal, home-based human rights activities or to working within charity and service-oriented sectors, and it is still the case today that efforts by women HRDs to contribute to the governance of Turkey are substantially hindered by the attribution of gender-assigned roles. Small numbers of women have, though, over the last decade overcome the obstacles and become involved in advocacy, parliamentary lobbying for legislative change and collaborative work on furthering Turkish compliance with international standards on gender equality. A compelling recent example of the strength of women HRDs in Turkey in spite of pronounced inequality in decision-making structures is the NGO Forum on CEDAW, which brought together Turkey's leading women's groups to prepare a detailed report on Turkish compliance with the Convention.<sup>364</sup> Furthermore, the changes effected in the new penal code which strengthen penalties for rape and sexual abuse, define sexual crimes as committed against the individual rather than as crimes against public decency, and introduce life sentences for 'custom crimes', are attributable in large part to pressure from the women's human rights movement. The revisions were preceded by a coalition of academics, NGOs, lawyers and other representatives from civil society launching recommendations and publicly campaigning for the improved protection of women and gender equality under the law.

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362 Committee on the Elimination of Discrimination against Women, Thirty-second session, 10-28 January 2005, 'Concluding comments: Turkey', C/TUR/CC/4-5, 15 February 2005, § 35

363 Committee on the Elimination of Discrimination against Women, Thirty-second session, 10-28 January 2005, 'Concluding comments: Turkey', C/TUR/CC/4-5, 15 February 2005, § 35

364 'Shadow Report on The 4th and 5th Combined Periodic Country Report for Turkey The Executive Committee for NGO Forum on CEDAW-Turkey', Submitted for the 32nd CEDAW Session in January 2005, November 2004, <[http://www.iwraw-ap.org/resources/turkey\\_Flying\\_Broom\\_\(Eng\).pdf](http://www.iwraw-ap.org/resources/turkey_Flying_Broom_(Eng).pdf)>

Women HRDs in Turkey are further at risk of gender-specific threats to their mental and physical integrity. The widespread commission of torture and ill-treatment by state officials in spite of impressive improvements in formal torture protections in Turkey has been described above. Female detainees are additionally subjected to sexual humiliation – they may be forced to strip in front of male security officials, then touched, insulted and threatened with rape.<sup>365</sup> They are sometimes compelled to endure virginity testing,<sup>366</sup> subject to beatings targeting the breasts and genitals, and raped, including with objects such as truncheons. Women who speak out against human rights violations or who involve themselves publicly in human rights activities may be viewed with hostility not only because they are seen to be opposing or criticising the state, but also because they are regarded as intruding upon traditionally male-dominated domains and contravening customary codes of feminine behaviour. It is well documented that women who are active in the public sphere and express opinions which are unpalatable to state officials or the military are at especial risk of gender-specific forms of torture and ill-treatment.<sup>367</sup>

In April 2005, after an inadequate investigation and delays to the trial totalling nearly four years, two police officers were acquitted of brutally torturing and raping two young women, Nazime Ceren Salmanoğlu and Fatma Deniz Polattaş, on the rather spurious conclusion that there was a lack of evidence.<sup>368</sup> Failure to effectively pursue the prosecution and conviction of perpetrators of sexual torture detracts from Turkey's professed hard line against torture. It also potentially perpetuates the employment of state violence as a means of punishing women who are viewed as transgressing gender-dictated behavioural norms, including those who speak out against gender injustice and other human rights violations.

Women who seek to protect and promote the rights of Kurdish women face challenges over and above those confronted by women HRDs in the rest of Turkey. Kurdish women in Turkey are often subjected to discrimination on account of both their status as Kurds and as women; indeed Kurdish women are among Turkey's most disadvantaged groups, with poor access to education and healthcare, pronounced economic hardship and low employment levels. They may also be caught between oppressive forces of the state and of their own traditionalist communities when they

<sup>365</sup> J McDermott & K Yildiz, 'Torture in Turkey: The ongoing Practice of Torture and Ill-Treatment', January 2004, p75

<sup>366</sup> The new Penal Code now outlaws 'genital examinations' unless necessary for public health or, on the order of a court, if required for the investigation of a crime. There is still no requirement that the woman's consent must first be sought.

<sup>367</sup> J McDermott & K Yildiz, 'Torture in Turkey: The ongoing Practice of Torture and Ill-Treatment', January 2004, p76

<sup>368</sup> Amnesty International, 'Turkey: Justice denied to tortured teenage girls', 22 April 2005, <http://www.amnestyusa.org/countries/turkey/document.do?id=80256DD400782B8480256FEB005065B8>

attempt to assert their rights. Many Kurdish women do not speak Turkish, making them less able to receive information about their rights and reducing their access to support groups and lawyers.

It became increasingly recognised by the international community through the 1990s that simultaneously bearing the burdens of both ethnic and gender-based discrimination did not result simply in a series of distinguishable violations attributable to one category of discrimination or the other; the intersection of ethnicity and gender can have complex and inter-related negative impacts upon the lives of women from ethnic minorities. Turkey resists the movement towards international consensus on this matter. In January 2005 she informed the CEDAW Committee that Turkey did not collect data based on ethnic origin and refused to use the term “minority women”, preferring to refer to the “situation of women in underdeveloped regions of Turkey”.<sup>369</sup> KHRP is pleased that the CEDAW Committee did not accept this re-classification, and in its concluding observations on Turkey requested that in its next report the state provides

information, sex-disaggregated statistics and data relating to ... Kurdish women and other groups of women subject to multiple forms of discrimination and their access to health, employment and education, as well as various forms of violence committed against them.<sup>370</sup>

In eastern and southeastern Turkey, where Kurdish women are particularly in need of assistance and support in asserting their rights, this ‘double discrimination’ impacts heavily upon HRDs who are targeted as a result of both the ethnic and the gender dimensions of their work.

Eren Keskin, whose treatment at the hands of the state has been described above, has faced sustained judicial harassment in relation to her work on behalf of Kurdish women. Ms Keskin faced charges of ‘incitement to hatred’ based on class, race, religion or belief during 2003 in relation to a speech she gave concerning sexual assault perpetrated against women by the military in the Kurdish regions in Cologne,<sup>371</sup> and a separate indictment for ‘disseminating separatist propaganda’ following a speech made during a panel on violence against women ended in acquittal on 25 March 2005.<sup>372</sup> In April 2002, it was reported that Ms Keskin was

<sup>369</sup> Committee on the Elimination of Discrimination against Women, Pre-session working group, ‘Responses to the list of issues and questions for consideration of the combined fourth and fifth periodic reports: Turkey’, 5 November 2004

<sup>370</sup> Committee on the Elimination of Discrimination against Women, Thirty-second session, 10-28 January 2005, ‘Concluding comments: Turkey’, C/TUR/CC/4-5, 15 February 2005, §41

<sup>371</sup> TİHV, Human Rights in Turkey - January – March 2003’, <[www.tihv.org.tr/report/2003\\_01\\_03/janmarthought.html](http://www.tihv.org.tr/report/2003_01_03/janmarthought.html)>

<sup>372</sup> TİHV, Human Rights in Turkey - January – March 2003’, <[www.tihv.org.tr/report/2003\\_01\\_03/](http://www.tihv.org.tr/report/2003_01_03/)>

arrested on charges of separatist propaganda when she used the word 'Kurdistan' in the phrase "women in Kurdistan face harassment and rape the most".<sup>373</sup>

In October 2000, five members of the women's group Peace Mothers' Initiative were detained by Turkish gendarmes. The women allege that they were beaten, strangled with their headscarves, stripped and sexually assaulted in detention. There was no satisfactory investigation of the allegations made by the Peace Mothers' Initiative, and their formal complaints made to the prosecutor did not result in any charges being brought against the officers implicated. Eren Keskin, however, was put on trial for 'insulting the Turkish army' after her description of these acts of sexual torture were published in a newspaper.

Measures to defend women's human rights by relevant bodies of the Turkish state have proved slow to get off the ground. The Directorate General on the Status and Problems of Women was established in 1991 and attached to the office of the Prime Minister. It is identified as Turkey's national mechanism for defending women's rights, and is defined by Turkey as "the lead institution aiming to develop relevant policies and promote the advancement of women, as well as having responsibility on the international level."<sup>374</sup>

However, the Turkish government has shown no real commitment to the work of the Directorate. This is reflected in the fact that its staff and budget have for much of its existence been very limited, and remain so today. The CEDAW Committee stated that resource deficiencies of this type are indicative of a gender bias in the allocation of the national budget;<sup>375</sup> they suggest that women's rights are a marginal matter of minor importance, and that the substance of the state's funds should be allocated to 'real' issues such as defence or education. Confusion over the organisation's status and mandate has also been identified as constraining its efficacy. The European Commission in its report of October 2004 noted that the continued failure to adopt a law that would establish the Directorate had "significantly hampered" the organisation's operation,<sup>376</sup> and the CEDAW Committee likewise referred with regret to the functioning of the Directorate without an organisational law. In June 2005 the European Parliament's Committee on Women's Rights and Gender Equality report on the role of women in Turkey pointed to the need to ensure that the Directorate

janmarthought.html>

<sup>373</sup> Associated Press (AP), 'Leading Turkish Human Rights Activist Stands Trial', 11 April 2002

<sup>374</sup> Directorate General on the Status and Problems of Women, <<http://www.kssgm.gov.tr/arsiv/en-kssgm.htm>>

<sup>375</sup> Committee on the Elimination of Discrimination against Women, Pre-session working group, 'Responses to the list of issues and questions for consideration of the combined fourth and fifth periodic reports: Turkey', 5 November 2004

<sup>376</sup> European Commission, '2004 Regular Report on Turkey's Progress Towards Accession', COM (2004) 656 final, 6 October 2004, p46

has a “clear mandate”<sup>377</sup>

*o. Human rights defenders and the Kurds*

HRDs who advocate for the better protection of the rights of the Kurds face challenges over and above those confronted by HRDs in Turkey generally, and thus merit especial consideration. The country is founded upon the notion of an overarching, mono-ethnic national identity which constitutionally defines all its citizens as ‘Turks’ and excludes the possibility of ethnic difference. The Treaty of Lausanne – a document which remains of considerable contemporary importance in Turkey – recognises only non-Muslim minorities as in need of protection. For the Kurds, with their distinct identity, language and culture, this has meant that Turkey has long viewed them with deep-seated hostility; a hostility exacerbated by the location of the Kurdish dominated regions in an area of high strategic importance in Turkey’s sensitive borderlands and the longstanding, deep-rooted suspicions held in Ankara that the Kurds harbour separatist aims.

As a result, almost since the inception of the modern Turkish republic the Kurds have met with repression and violence at the hands of the Turkish state, while public manifestations of the existence of a separate Kurdish identity have been rigorously suppressed. Even attesting to the presence of the Kurds as a people within Turkey was for many years a high risk undertaking. Between 1984 and 1999 the Turkish state and the PKK were engaged in an armed conflict, and this period saw an intensification in state violations of human rights in the Kurdish regions as killings, ‘disappearances’, torture, arbitrary detention and comprehensive restrictions on free expression became commonplace. Turkey’s ongoing efforts to assimilate the Kurds into mainstream Turkish culture and to disband Kurdish regional dominance in the east and southeast reached a head as a programme of enforced evacuations emptied Kurdish villages of their inhabitants.

During this period, Ankara refused to engage with groups and individuals attempting to broker peace in the region or to offer an alternative, non-violent perspective on the grievances of the Kurds. This was because Turkey conceived of events taking place there as solely a terrorist problem, requiring a military solution. The Turkish state refused to acknowledge the additional political and rights-related elements of the situation, which stem from its long-standing refusal to recognise Kurdish ethnicity and the legitimate demands of the Kurds for recognition of their cultural and linguistic rights. The parameters of the conflict in the southeast have thus been determined almost exclusively by reference to security considerations.

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<sup>377</sup> European Parliament, Committee on Women’s Rights and Gender Equality Rapporteur: Emine Bozkurt, ‘Report on the role of women in Turkey in social, economic and political life’, 2004/2215, 10 June 2005, § 5

This security-centred approach has resulted in a tendency among Turkey's military and sections of the judiciary and civil service to associate the public expression of ethnic differences, even where they are made within the cultural sphere, as tending towards more militant demands for secession.<sup>378</sup> Organisations vocal in criticising Turkish abuses during the armed conflict and upholding the human rights of the Kurds have been portrayed by the state as siding with militant organisations, despite the peaceful nature of their activities. During a 2001 KHRP fact finding mission, for example, the Chief Public Prosecutor told the mission that the lawyers prosecuted for representing Kurdish defendants at the State Security Courts were "militant people" who worked as volunteers for terrorist organisations.<sup>379</sup>

For HRDs, as well as for other associations, journalists, broadcasters, lawyers and politicians, the implications are severe. As has been highlighted at various points in this report, pressing for improved protection of Kurdish cultural and linguistic rights, or even otherwise referring to the Kurdish dimension of nationwide human rights violations such as torture, frequently results in accusations of separatism, inciting ethnic hatred, spreading terrorist propaganda or supporting an illegal organisation. Turkey's endeavours to silence advocates voicing concerns on virtually all elements of the Kurdish issue, be they related to civil rights, Kurdish culture and language, the political status of the Kurds or the ongoing difficulties faced by the internally displaced, have been routinely subsumed under the headings of 'counter-terrorism'. Turkey has also made extensive use of alternative anti-democratic laws and employed the machinery of the state to harass and intimidate those upholding the rights of the Kurds.

The most high-profile example is the treatment of Leyla Zana and her fellow Kurdish parliamentarians after they spoke their oath of allegiance to the Turkish Parliament in Kurdish in 1994. Despite having never advocated separatism or the use of violence, they were convicted of being members of the PKK and sentenced to fifteen years imprisonment. The EU called repeatedly for Ms Zana and her colleagues to be released, and in 2001 the ECtHR ruled that the four had received an unfair trial.<sup>380</sup> Their retrial in 2004, initiated as a result of pro-EU reform legislation permitting retrial based on ECtHR decisions, ended initially in the sentences being re-affirmed. However, in June 2004 the verdict was quashed and the parliamentarians were released. KHRP, along with many other human rights organisations, strongly welcomed the release of Leyla Zana and her colleagues as

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<sup>378</sup> Conversely, in more mature democracies the accommodation of alternative ethnicities and cultures is seen to lead to the neutralisation of demands by minority groups, rather than fuelling their radicalisation.

<sup>379</sup> Kurdish Human Rights Project, 'State Violence Against Women in Turkey and Attacks on Human Rights Defenders of Victims of Sexual Violence in Custody - KHRP Trial Observation Report', December 2001

<sup>380</sup> Selim Sadak & Others v Turkey, Application No.s 29900/96, 29901/96, 29902/96 and 29903/96

lending credence to hopes that the pro-EU reform process was bringing about real change in Turkey's approach to the Kurds.

The lifting of OHAL in 2002 and the amendments introduced by Turkey as a result of the accession process have indeed generated notable improvements in freedom of expression, association and assembly, and have begun to address practices such as arbitrary detention and torture. However, the reality is that notwithstanding these tentative improvements for the Kurds, the question of a Turkish-Kurdish rapprochement and countenancing further recognition of Kurdish cultural and linguistic rights is still extremely sensitive. While the reform process has undoubtedly lessened the visible influence of the 'old guard' in Turkey's administration, elements of the deep state remain heavily embedded within Turkish public structures and institutions and old perceptions and prejudices concerning the Kurds endure among Turkey's leaders. In an interview in with CNN on 13 July 2005 Prime Minister Erdoğan expressed frustration at American and European politicians meeting with representatives of the Kurds in Turkey and so treating them as significant actors, asking:

Where do politicians from some of those countries go when they come to my country? Diyarbakır, Hakkari. If you want to speak, come to Ankara. What are you doing, going to such regions? What is your reason?<sup>381</sup>

In December 2004, pro-Kurdish groups took out advertisements in the International Herald Tribune and Le Monde newspapers outlining what Kurds living in Turkey want from Ankara in its EU membership bid, including constitutional change, a political amnesty and the economic development of the Kurdish regions.<sup>382</sup> The need for several of the changes outlined in the document has been attested by bodies such as the Council of Europe.<sup>383</sup> The advertisement was condemned by Prime Minister Recep Tayyip Erdoğan, who reportedly responded by stating that

Daring to abuse the democratization efforts in order to subvert national unity, social peace and the will to live together is a political assassination directed against the nation's will.<sup>384</sup>

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<sup>381</sup> Hürriyet, 'Erdoğan: If necessary, we will hit at PKK beyond our borders', 14 July 2005, <<http://www.turkishweekly.net/news.php?id=15025>>

<sup>382</sup> Radikal, 'Reacting To Kurds', 13 December 2004

<sup>383</sup> See, for example, Parliamentary Assembly of the Council of Europe, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, 'Turkey: Explanatory memorandum by the co-rapporteurs, Mrs. Mady Delvaux-Stehres and Mr. Luc Van den Brande (Co-rapporteurs)', March 2004, <<http://assembly.coe.int/Communication/TemporaryDocs/ASmon/Turkey/TurkeymemorandumE.pdf>>; Council of Europe, 'Council of Europe Parliamentary Committee recommends ending monitoring of Turkey', 3 March 2004, <[http://press.coe.int/cp/2004/106a\(2004\).htm](http://press.coe.int/cp/2004/106a(2004).htm)>

<sup>384</sup> Turkish Daily News, 'Erdoğan: Kurdish Ad Political Assassination', December 16 2004

Those responsible for placing the advertisement were described as disturbing national peace and “damaging a millennium-old brotherhood”.<sup>385</sup>

Against this background, HRDs who press for improvements in the human rights of the Kurds are still met with hostility and relations with Ankara remain highly polarised. The UN Special Representative noted that:

Defenders working on minority issues have been disproportionately exposed to harassment by the Government in the context of violence in the southeast.<sup>386</sup>

Further, it has been described above that the Special Representative during her visit to Turkey found that in the Kurdish regions most security officials as well as other members of the administration took the view that HRDs were linked with terrorist aims and organisations. The Special Representative also noted

Authorities have often failed to distinguish between human rights defenders advocating peacefully for the respect of the recognized social and cultural rights of those who may share a regional or ethnic identity with the armed groups, which may have used such discourse for their own political purpose.<sup>387</sup>

The human rights organisation Mazlum-Der reported that the military and police authorities made several public statements condemning demands for minority rights as divisive of the country and as national security threats.<sup>388</sup> Certainly the pro-EU reform process has prompted some improvements in the human rights situation in the region, but trust is proving slow to build and the idea that groups and individuals can rightfully use peaceful, legitimate means to advocate for the rights of the Kurds separate from the illegitimate, violent means used by militant groups has not yet taken sufficient root. Indeed, escalating nationalist violence in Turkey has only intensified official condemnation of all activities pertaining to the furtherance of Kurdish rights and interests as necessarily linked with Kongra-Gel.<sup>389</sup>

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<sup>385</sup> Turkish Daily News, ‘Erdoğan: Kurdish Ad Political Assassination’, December 16 2004

<sup>386</sup> UN Commission on Human Rights, ‘Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, § 104

<sup>387</sup> UN Commission on Human Rights, ‘Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, § 104

<sup>388</sup> Mazlum-Der, ‘The Evaluation Report of Applications of Mazlum-Der İstanbul Branch - 2003’, <<http://www.mazlunder.org/english/text.html?sy=226&cst=other>>

<sup>389</sup> İHD, ‘We are deeply concerned with the latest developments and practices’, 6 September 2005

A KHRP fact finding mission to southeast Turkey in April – May 2005 concluded that all the lawyers, associations and political parties the mission spoke with in Tunceli and Diyarbakır said that the state continued to view their activities with suspicion and considered them to be a threat.<sup>390</sup>

This is manifested in the fact that branches of national human rights organisations based in the Kurdish regions, locally operating HRDs, trade unions interested in the human rights of the Kurds, lawyers, bar associations, journalists writing on human rights topics and women's groups defending the rights of Kurdish women are faced with levels of state surveillance, police intimidation, investigations and prosecutions over and above those experienced elsewhere in the country.<sup>391</sup> Turkey's treatment of members of İHD branches in the Kurdish regions is indicative. In May 2005, İHD representative for Eastern and Southeastern Anatolia Mihdi Perinçek and head of the İHD branch in Diyarbakır Selahattin Demirtaş were prosecuted for a report they prepared on the killings by state security forces of alleged 'terrorists' Ahmet Kaymaz and his 12 year old son Ugur on 21 November 2004. A KHRP fact finding mission in March 2005 which met with witnesses of the killings raised question marks over the official version of events put forward by the state.<sup>392</sup> The charges against the İHD members alleged that the report violated Article 19 of the Press Law concerning the 'secrecy of the preparatory investigation'. Article 19 and its inhibiting effects on reporting on judicial investigations has been criticised by press organisations and human rights groups.<sup>393</sup>

In November 2004, Abdulkadir Aydin of İHD's Diyarbakır branch was compelled to postpone a seminar entitled 'do you know your rights?' due to be held at the branch office.<sup>394</sup> Police reportedly waited outside the building and, when Mr Aydin noted their car registration numbers, the police requested his notes. Mr Aydin asked to see their identification and reports that he was subsequently assaulted and that the intervention of his lawyers prevented his subsequent detention. The seminar was re-scheduled.<sup>395</sup> On 6 May 2003 police raided the İHD offices in Ankara and confiscated books, human rights reports, files, cassettes and computers, apparently

<sup>390</sup> Kurdish Human Rights Project & Bar Human Rights Committee, 'Dissenting Voices: Freedom of Expression and Association in Turkey – Fact Finding Mission', September 2005

<sup>391</sup> Members of the İHD's Batman branch Board of Directors suggested that twice as many cases were opened against associations in the Kurdish regions in comparison with the rest of the country. Kurdish Human Rights Project interview with İHD, Batman, 28 July 2005

<sup>392</sup> Kurdish Human Rights Project and Bar Human Rights Committee, '"Thirteen Bullets": Extra-judicial Killings in Southeast Turkey', March 2005

<sup>393</sup> See, for example, the International Press Institute's letter to HE Recep Tayyip Erdogan at <http://www.freemedia.at/Protests2005/Turkey23.03.05.htm>

<sup>394</sup> TİHV, 'Human Rights in Turkey: November – December 2004', <http://www.tihv.org.tr/eindex.html>

<sup>395</sup> TİHV, 'Human Rights in Turkey: November – December 2004', <http://www.tihv.org.tr/eindex.html>

on the orders of Ankara State Security Court under Article 169 of the old Penal Code because the İHD was suspected of ‘coordinating a campaign to voice support for the terrorist organisation PKK/KADEK’.<sup>396</sup> The raid was condemned in a resolution of the European Parliament.<sup>397</sup>

The TİHV reported that in June 2003 two plain clothes police officers demanded to observe a seminar for forensic practitioners on the medical documentation of torture, which had been organised jointly with the Turkish Medical Association and the Association of Forensic Science Practitioners, on the basis that the seminar amounted to spreading propaganda for illegal organisations. When the organisers refused and complained to the Governor of İzmir, an investigation was opened against practitioners attending the seminar on the basis that during the training propaganda on behalf of PKK/KADEK had been carried out, the spiritual personality of the state had been insulted, and the security forces had been slandered.<sup>398</sup>

Of particular concern in the context of the targeting of Kurdish HRDs are reports pointing to a pronounced recent deterioration in human rights standards in the southeast,<sup>399</sup> as the reform process loses momentum in the wake of the decision of 17 December 2004 to allow Turkey to commence formal accession negotiations in October 2005. İHD’s Diyarbakır branch reported in March 2005 that violations of the right to freedom of assembly increased after the December 2004 EU decision, and that in January and February 2005 80 people were detained in the Diyarbakır region during demonstrations.<sup>400</sup> The group added that intolerance of Kurdish citizens wishing to exercise their right to demonstrate has reached “alarming levels”, and that most of the more severe violations have occurred in the East and Southeast Anatolia Region.<sup>401</sup> The April – May 2005 KHRP fact finding mission confirmed that these escalations in human rights violations in the southeast were reflected in the treatment of HRDs; it was found that the degree of intimidation suffered by HRDs had increased dramatically in the preceding months, and that they seemed to be singled out for harassment because of their involvement in protecting the rights of Kurdish people. It is hoped that these setbacks will ultimately give way as the EU

<sup>396</sup> Amnesty International, ‘Turkey: Fear for safety’, 6 May 2003, <<http://web.amnesty.org/library/Index/ENGEUR440142003?open&of=ENG-TUR>>

<sup>397</sup> European Parliament, ‘European Parliament resolution on the search made of the Ankara headquarters of the Human Rights Association of Turkey’, 15 March 2003

<sup>398</sup> UN Commission on Human Rights, ‘Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>

<sup>399</sup> See, for example, BBC, ‘Turkey PM rights adviser resigns’, 25 March 2005

<sup>400</sup> İHD (Diyarbakır Branch), ‘Critical Report By İHD: In 2 Months 2855 Rights Violations Occurred’, 8 March 2005

<sup>401</sup> İHD (Diyarbakır Branch), ‘Critical Report By İHD: In 2 Months 2855 Rights Violations Occurred’, 8 March 2005

accession process brings about a real improvement in the environment in which Kurdish HRDs operate.

Persecution of HRDs in the Kurdish regions is particularly pronounced when the subject matter of human rights advocacy is specifically contentious. On 20 October 2003, 14 members of the NGO GİYAV, which aims to provide voluntary humanitarian assistance to victims of forced evictions, were acquitted by an Adana court of charges of ‘aiding an illegal organisation’ brought under Article 169 of the old Penal Code. The public prosecutor specified the use of terms including “mother tongue Turkish”, “multiculturalism”, “forced migration” and “arbitrary practices concerning village guards”.<sup>402</sup> The acquittal rested on amendments to Article 169 arising through the pro-EU reform process, and documentation which had been confiscated during the judicial process was ordered by the court to be returned.

While this acquittal is much to welcomed, the fact that the prosecutor saw fit to launch proceedings against GİYAV on the basis that merely using terms such as ‘Kurdish mother tongue’ and ‘multi-culturalism’ was indicative of links to Kurdish militant groups is a worrying indictment of how the Turkish justice system perceives the activities of HRDs promoting improvements in Kurdish cultural and linguistic rights. Moreover, the changes to Article 169 which spelled the end of proceedings in the Adana court did not prevent the transferral of the case against seven co-defendants to a court in Mersin on charges of ‘praising a crime’.<sup>403</sup> A case was also filed to the Mersin Court of First Instance in order to have the foundation closed permanently. Seemingly, the dropping of the original proceedings against GİYAV was not accompanied by a genuine transformation in perspectives on HRDs in the Kurdish regions; as in many other cases, it appears that members of the Turkish judiciary conspired to find an alternative means of prosecuting GİYAV for what they still perceived as the offence of using terms such as ‘multi-culturalism’.

Furthermore, these prosecutions take place against a background of long-standing harassment and persecution of individuals and organisations seeking to assist those internally displaced by the Turkish-Kurdish conflict of 1984 – 1999. Around 3 million people were displaced in the fighting, some as a result of PKK activity or natural rural-urban migration processes but the majority were forcibly and often violently evacuated by state security forces and the state-sponsored militias of the village guard. Forced displacement aimed both to root out the PKK and to dissipate Kurdish dominance in the region, and it resulted in the movement of rural Kurdish communities from the sensitive mountain border areas down to more centralised

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<sup>402</sup> Kurdish Human Rights Project Newsline, ‘Kurdish Organisation on Trial for Multi-Culturalism’, Spring 2003, Issue 21, <<http://www.khrp.org/newsline/newsline21/newsline21.pdf>>

<sup>403</sup> International Federation for Human Rights, ‘Trial against the Turkish NGO “GİYAV”’, 22 October 2003, <[http://www.fidh.org/article.php3?id\\_article=2147](http://www.fidh.org/article.php3?id_article=2147)>

settlements close to established population centres. Turkey has shown very little inclination indeed to facilitate the return of the displaced to their homes; return plans have lacked the resources and public commitment necessary for effective implementation, shattered rural infrastructures have not been repaired and many of the displaced live in dire socio-economic hardship in ghettos on the outskirts of Turkey's cities.

HRDs who have criticised Turkey's handling of the problem of displacement, or who have simply sought to contribute towards resolving the myriad of problems confronted by IDPs, have faced deliberate, state-orchestrated intimidation and harassment. Göç-Der, a leading NGO working on displacement, reported in 2002 that its offices were constantly under police surveillance and had been repeatedly raided.<sup>404</sup> At least two of these raids resulted in detentions of Göç-Der staff.<sup>405</sup> The organisation's work publicly highlighting failings associated with one of Turkey's string of troubled return programmes around this time was in all probability behind these incidents, which were compounded by a series of charges brought against the organisation for breaking the Law on Associations, insulting the armed forces, and disseminating separatist propaganda in respect of their news bulletin.<sup>406</sup>

As mentioned above, on 19 January 2004 legal proceedings which had been brought against the Chair of Göç-Der Şefika Gürbüz and sociologist and Göç-Der Board Member Mehmet Barut were concluded. The two had been charged under Article 312 of the old Penal Code ('inciting hatred and enmity based on social class, race, religion, sect or region') in connection with a report on forced displacement which they published in March 2002. Şefika Gürbüz was sentenced to 10 months imprisonment, converted to a fine of TL 2,180 billion. Mehmet Barut was acquitted.

Another topic of considerable government sensitivity is the extensive local and international criticism which has greeted the controversial Baku-Tbilisi-Ceyhan (BTC) oil pipeline. Ferhat Kaya, who is active in seeking justice and adequate compensation for villagers adversely affected by the pipeline, has faced harassment by local officials. A 2003 fact finding mission to the Ardahan region by KHRP and its partner organisations noted that "A pervasive atmosphere of repression and lack of freedom of speech in the region...precludes dissent about the BTC project",<sup>407</sup>

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<sup>404</sup> Human Rights Watch, 'Displaced and Disregarded: Turkey's Failing Village Return Program', October 2002, <<http://hrw.org/reports/2002/turkey/index.htm#TopOfPage>>

<sup>405</sup> Human Rights Watch, 'Displaced and Disregarded: Turkey's Failing Village Return Program', October 2002, <<http://hrw.org/reports/2002/turkey/index.htm#TopOfPage>>

<sup>406</sup> Human Rights Watch, 'Displaced and Disregarded: Turkey's Failing Village Return Program', October 2002, <<http://hrw.org/reports/2002/turkey/index.htm#TopOfPage>>

<sup>407</sup> Campagna per la Riforma della Banca Mondiale, Kurdish Human Rights Project, PLATFORM & The Corner House, 'International Fact-Finding Mission: Baku-Tbilisi-Ceyhan Pipeline – Turkey

and restraints have been imposed on consultation and the achievement of redress for abuses associated with land acquisition.<sup>408</sup> The area through which the pipeline passes is around 30-35% Kurdish, and also contains Turkish, Azeri and Terekeme communities. Many of the villages affected by the pipeline are Kurdish. Ferhat Kaya has helped over thirty villagers negatively affected by the pipeline take their cases to the ECtHR. He is also closely involved in furthering efforts to achieve redress for violations of land acquisition agreements in the area.

Ferhat Kaya's arrest on 5 May 2004 and his allegations that he was tortured in custody have been detailed above (see 'torture'). Mr Kaya reports that during his detention he was accused by security officials of having links to the PKK, and believes that his arrest was directly linked to his human rights work, particularly his work relating to the BTC pipeline.<sup>409</sup> The police officers accused of torturing Mr Kaya were acquitted, but Kaya himself has stood trial for resisting arrest, threatening and insulting officers, and damaging state property.<sup>410</sup> If found guilty he faces a custodial sentence. Observation of the trial by KHRP and partner organisations raised concerns including that Mr Kaya lacked adequate legal representation, that the tribunal was not impartial and that the defendant had no opportunity of questioning the complainant.<sup>411</sup> The trial against Mr Kaya was ongoing at the time of writing, and he was arrested again on 25 December 2004 and detained overnight. The reason for his renewed detention is unclear.

Advocacy on questions of cultural and linguistic rights is another area especially susceptible to repression by the state, and advocacy in favour of improved recognition of the Kurdish language has for many years been regarded by Turkey as invariably originating from the PKK or its successors. A campaign for optional courses in the Kurdish language in early 2002 resulted in hundreds of detentions, allegations of torture and ill-treatment in detention and trials based on counter-terrorism and other legislation. More recent cases both for using Kurdish as a means of communication and for advocating for improvements in Kurdish linguistic rights continue to beset HRDs in the Kurdish regions and to impede their work.

KHRP welcomed the 2001 amendments to the Turkish Constitution and subsequent legislation which relaxed the prohibition on the use of the Kurdish language and

#### Section' June 2003

- 408 Kurdish Human Rights Project, Corner House, Friends of the Earth and Environmental Defense, 'The Trials of Ferhat Kaya', September 2004, p9
- 409 Kurdish Human Rights Project, Corner House, Friends of the Earth and Environmental Defense, 'The Trials of Ferhat Kaya', September 2004, p9
- 410 Kurdish Human Rights Project, Corner House, Friends of the Earth and Environmental Defense, 'The Trials of Ferhat Kaya', September 2004, p35
- 411 Kurdish Human Rights Project, Corner House, Friends of the Earth and Environmental Defense, 'The Trials of Ferhat Kaya', September 2004, p39 – 40

allowed for the establishment of Kurdish language schools and broadcasting in the Kurdish language. Turkey has made significant progress on linguistic reform since the Kurdish language was subject to a total ban less than 15 years ago. However, together with other Turkish and international human rights organisations KHRP expressed concern that eye-catching, pro-EU reforms which were readily cognisable across the west as indicative of changing attitudes were coming to represent little in terms of real change for Kurds on the ground.

The decision by all seven of the private language schools established in the Kurdish regions to close at the start of August 2005 followed numerous state-imposed bureaucratic impediments to the functioning of the schools. In addition, classes were prohibitively expensive for Kurds in the poverty-stricken southeast and only adult Kurds fluent in Turkish were permitted to enrol. A KHRP fact finding mission<sup>412</sup> visiting the region in July 2005 found local Kurds placed the responsibility for the closures with Turkish authorities for failing to provide adequate legislative and material support to enable the schools to survive. Kurdish language broadcasting has also been widely criticised, as applications for permission to broadcast have been subject to heavy delays and private broadcasters transmitting in Kurdish without licenses have received punitive sanctions.

It is difficult, then, to escape the view that ingrained mindsets among the Turkish establishment which regard accepting the validity of the Kurdish culture and language as a threat to the integrity of the state continue to hold significant sway. While other areas of reform are progressing, albeit rather slowly, in the right direction, only limited movement towards a genuine tolerance of the multi-cultural, multi-ethnic make-up of Turkey is discernible and this is reflected in Turkey's treatment of HRDs.

KHRP's July 2005 fact finding mission to southeast Turkey made some positive observations, for example on the capacity of HRDs to use the Kurdish language in leaflets and publications as a result of the second Harmonisation Law in 2002 which removed the prohibition against 'publishing in a language prohibited by law' from the Press Law.<sup>413</sup> Considerable disillusionment was, though, also noted among Kurdish HRDs and other representatives of civil society, who expressed their regret at Turkey's slow progress on linguistic and cultural rights during 2005. Associations may now use Kurdish in conducting their day-to-day business, but must use Turkish in official communications. Head of İHD's Bingöl branch, Rıdvan Kızgın, was fined under Article 31 of the Law on Associations for a letter he wrote to the Ministry of the Interior and the Governor's office in Bingöl on 29 June 2005

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<sup>412</sup> Kurdish Human Rights Project, Bar Human Rights Committee & EU Turkey Civic Commission, 'Recognition of Linguistic Rights? The impact of pro-EU reforms in Turkey', September 2005

<sup>413</sup> Interview with Saadet Becerikli and Muzaffer Ginar, June 27, 2005

which contained Kurdish writing. The letter, which detailed clashes taking place in Bingöl, had the İHD's name written in Turkish, Kurdish and English and the name of the province of Bingöl written in its Kurdish form (Çewlik). Mr Kızgın has faced a number of previous prosecutions on this basis. This time he was fined TL 1.12 new lira and has applied to the regional administrative courts in Elazığ to appeal the penalty. Individual members of associations also face judicial harassment where, for example, they give press releases or speeches in Kurdish or containing occasional Kurdish words, with prosecutions occurring most commonly under the Law on Meetings and Demonstrations on charges of 'separatism' under Article 216 of the new Penal Code.

It is also the case that Turkey is still displaying marked intolerance towards HRDs endeavouring to defend Kurdish cultural and linguistic rights. The decision by the Turkish courts to order the removal of a provision referring to the protection of mother tongue language rights in the statute of the teaching union Eğitim-Sen has been discussed above (see 'Freedom of Association'). The statutory statement at issue is a commitment to "the right of every person to education in one's mother tongue and the right to develop one's own culture". Eğitim-Sen, which has reported on human rights violations in the Kurdish region, has faced state harassment in the past including arbitrary detention, enforced exile of union staff to other parts of the country.<sup>414</sup>

Eğitim-Sen is not the only association operating in the Kurdish regions to face prosecution and possible closure on the basis of a commitment to upholding Kurdish linguistic or other rights in its statute. The Diyarbakır branch of the Kurdish association Kurd-Der was requested to remove provisions in its statute concerning the rights of the Kurds.<sup>415</sup> Kurd-Der, which seeks to advance the status of the Kurdish language and to institutionalise personal and collective rights in Turkey, refused this request. The Diyarbakır branch is now facing a closure case brought on 12 July 2005 under Article 60 of the Law on Associations and Article 3 of the Constitution. At the time of writing the case was ongoing, with the next hearing scheduled for 18 August 2005.

The Ankara branch of Kurd-Der, which is independent from the Diyarbakır branch, is also subject to legal proceedings as a result of a clause in its statute stating that the association conducts activities "in favour of the individual and collective rights of the Kurdish people." The public prosecutor has stated his belief that the commitment to the "collective rights" of the Kurdish people revealed in this phrase

414 Interview with Alaattin Dinçer, President of Eğitim-Sen, Emirali Şimşek, General Secretary, and Ali Berberoğlu, Organisational Secretary, Headquarters in Ankara, July 30, 2005.

415 TİHV, 'Human Rights in Turkey: November – December 2004', <<http://www.tihv.org.tr/eindex.html>>

is a violation of the Turkish Constitution. In all Kürd-Der is confronted with at least 6 prosecutions against 11 of its members under the Law on Associations, the Law on Demonstrations and Public Meetings, the Penal Code and the Constitution.

KHRP has also received reports<sup>416</sup> that an investigation is being launched against the office workers' union BES, which supports the right to receive mother tongue education, after the decision taken against Eğitim-Sen. The union expects the case to be opened in September 2005.

These cases against associations with statutes upholding the rights of Kurds indicate that Turkey has a long way to go to meet EU standards on minority rights in the cultural and linguistic spheres. Its refusal to countenance associations peacefully attempting to further Kurdish language and other rights, even in spite of the second Harmonisation Law of 2002 which removed the prohibition on founding an association "to protect, develop or expand languages or cultures other than the Turkish language or culture", suggests that public officials remain highly reticent about the validity of actions defending human rights in this area. Turkey needs to intensify her efforts to move away from police and judicial conduct which is based on the premise that peaceful calls for improved linguistic rights or use of the Kurdish language in advocacy should be silenced.

Of further concern in relation to the capacity of HRDs to carry out their activities freely and securely is the resurgence of armed violence in the Kurdish regions. Kongra-Gel announced the end of its five-year ceasefire on 1 June 2004, and since then the region has witnessed an upsurge in fighting. 159 people were reportedly killed in armed hostilities from January to October 2004,<sup>417</sup> and clashes between Kurdish militant groups and Turkish soldiers have continued to spiral in 2005. The fighting resulted in the deaths of 123 people during July – September 2005.<sup>418</sup>

For HRDs in the region, the renewal of the conflict has implications not only for the security environment within which they carry out their work, but also for the level of repression which they face at the hands of the state. There is a risk that Kongra-Gel's return to armed activities will provoke a reversion by the government towards the kind of heavy handed response witnessed during the 1980s and 1990s. For HRDs working on Kurdish issues, who are already widely perceived by public officials as having links with Kongra-Gel, this could mean greater restrictions on freedom of expression, association and assembly and increased state targeting.

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<sup>416</sup> Kurdish Human Rights Project interview with BES, 25 July 2005

<sup>417</sup> US Department of State (US DOS), 'Turkey: Country Reports on Human Rights Practices 2004', Bureau of Democracy, Human Rights, and Labor, 28 February 2005

<sup>418</sup> Reuters, 'Violence in southeast Turkey overshadows EU drive', 27 September 2005

The recent detention of several prominent HRDs, politicians and journalists who had acted as mediators in securing the safe release of the Turkish soldier Çoşkun Kırandi was not a positive sign. The group, which included the head of İHD's Diyarbakır branch Selahattin Demirtaş and İHD's Southeast Turkey Coordinator Mihdi Perinçek, were reportedly detained on accusations of 'making propaganda for an illegal organisation' and 'assisting an illegal organisation'. Upon their return to the village of Güleç near Tunceli with the soldier Çoşkun Kırandi, who had been abducted on 11 July 2005 by the Kurdish guerrilla group People's Defence Forces (HPG), they reportedly contacted the Governor to inform him of events. The military arrested them soon afterwards. The group have now been released and the Prosecutor is considering whether to press charges.

Moreover, İHD's Diyarbakır branch report that state intervention in freedom to assemble, freedom of expression and freedom to organise increases with the growing number of clashes and operations in the region. Head of İHD in Diyarbakır, Selahattin Demirtaş, blames these rises in breaches of human rights on the lack of a democratic environment and social peace in Turkey stemming from the mounting conflict there.<sup>419</sup>

It is submitted that an overall improvement in the situation of HRDs in the Kurdish regions of Turkey is closely linked to comprehensively addressing the Kurdish issue itself. Legislative changes improving the human rights situation there can bring HRDs some welcome respite, but the reality on the ground indicates that there is much further to go and that in any event, the treatment of HRDs involved in protecting the rights of the Kurds is for the most part inseparable from the Turkish ethnic-nationalist approach to the situation in the southeast. Turkey's security-centred position on the Kurdish issue and her denial of the legitimacy of HRDs' peaceful efforts to improve cultural and linguistic rights and stem other human rights abuses against the Kurds is a significant impediment to lessening state targeting of HRDs. At the same time, a more open, constructive attitude towards HRDs and other civil society representatives in the Kurdish region would in itself constitute an important step to securing peace and democracy there.

Comments made by Turkey's leaders, including Cemil Çiçek's assertion that Turkey and the EU speak "different languages" on minorities<sup>420</sup> and a reference by the general staff to a group of Kurds as "so-called citizens",<sup>421</sup> do little to denote a change in attitude in the Turkish establishment. Turkey's response to the report of the UN Special Representative included a fairly strongly worded objection to the Representative's

419 BİA, 'Violations Increase with Clashes in Southeast', 21 September 2005

420 AFP, 'Turkey And EU Speak 'Different Languages' On Minorities, Says Minister' November 4 2004

421 Financial Times, 'Furious Turks wave the flag demonstrators tried to burn', 26 March 2005

refusal to characterise the PKK as a terrorist organisation or otherwise<sup>422</sup> – she had not found it necessary or relevant to make such a characterisation – as well as an objection that Turkey’s “struggle against the PKK” had been portrayed as an “armed conflict”. Turkey insists it is nothing but a “fight against terrorism”.<sup>423</sup>

On 12 August 2005, however, Prime Minister Erdoğan broke new ground by referring to the “Kurdish issue” during a speech in which he listed his government’s principles on the matter, “whether described as social demands by citizens of Kurdish origin, the Southeast issue or the Kurdish issue”.<sup>424</sup> Mr Erdoğan also reportedly pledged in the speech, given in Diyarbakır, that “We will resolve all problems with more democracy, more civil rights and more prosperity”.<sup>425</sup> In response, Kongra-Gel declared a temporary ceasefire, at the time of writing projected to last until the opening of accession talks on 3 October. Whether or not these developments signify a new hope for a peaceful resolution to the Kurdish question, and a consequent possible easing of the harassment of HRDs in the region, will remain to be seen.

#### *p. Human rights defenders and national security*

Many Turkish measures impeding the activities of HRDs have been taken on purported national security grounds. The Anti-Terror Law, as well as national security-related provisions of the Penal Code, were employed widely to detain and try HRDs and other non-violent activists, trade unionists, academics, journalists and academics peacefully expressing their views, while the Anti-Terror Branch of the Security Directorate became infamous for ill-treating and torturing detainees accused of ‘political’ crimes. Detainees held under the jurisdiction of the state security courts<sup>426</sup> were subject to *de jure* violations of key due process rights, including the presence of a military judge on each court panel. Article 16 of the Anti-Terror law allowed for those convicted of political offences to be held in solitary confinement

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422 Commission on Human Rights, ‘Letter dated 23 March 2005 from the Permanent Mission of Turkey to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights’, E/CN.4/2005/G/25, 24 March 2005, § 5.1, <http://daccessdds.un.org/doc/UNDOC/GEN/G05/131/78/PDF/G0513178.pdf?OpenElement>

423 Commission on Human Rights, ‘Letter dated 23 March 2005 from the Permanent Mission of Turkey to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights’, E/CN.4/2005/G/25, 24 March 2005, § 5.2, <http://daccessdds.un.org/doc/UNDOC/GEN/G05/131/78/PDF/G0513178.pdf?OpenElement>

424 Turkish Daily News, ‘Erdoğan statements on ‘Kurdish issue’ music to Europe’s ears’, August 14, 2005, <http://www.turkishdailynews.com.tr/article.php?enewsid=20721>

425 Turkish Daily News, ‘Erdoğan’s Kurdish mission encouraging, broad strategy must follow’, August 14, 2005, <http://www.turkishdailynews.com.tr/article.php?enewsid=20720>

426 The courts’ jurisdiction was “to deal with security offences against the indivisible integrity of the State with its territory and nation, the free democratic order, or against the Republic whose characteristics are defined in the Constitution, and offences directly involving the internal and external security of the State”

in conditions which were forcefully condemned by the CPT, the UN's Committee Against Torture and the European Commission. Counter-terrorism laws and procedures were employed widely, though by no means solely, in the context of the conflict in the Kurdish regions, where HRDs upholding the rights of the Kurds were commonly arrested, detained and prosecuted as a result of their work.

The situation improved considerably in the course of the pro-EU reform process. Article 8 of the Anti-Terror law is repealed, State of Emergency legislation which suspended many basic rights in the Kurdish regions has been lifted, and the prison regime is now better, although prisoner isolation remains a significant problem. State security courts were abolished in June 2004.

Recent events in the field of counter-terrorism in Turkey have, though, given cause for concern. Since the tragic events of September 11<sup>th</sup>, commentators have drawn reference worldwide to increased targeting of HRDs, often under the pretext of newly enacted counter-terrorism legislation affording broad powers to restrict freedom of expression and association, detain 'terror' suspects without charge and to use military courts and other exceptional jurisdictions to try 'terrorist' crimes. Western and supposedly liberal states such as the USA and the UK have led the way in implementing counter-terrorism legislation infringing on individual liberties. Against this background, and in consideration of the resurgence of the armed conflict in the Kurdish regions, Turkey is now looking at stepping up counter-terrorism measures again. In July 2005, Turkey's Justice Minister Cemil Çiçek stated that Turkey's Anti-Terror Laws were to be re-drafted to give authorities "greater powers" to tackle Kurdish rebels.<sup>427</sup> Influential members of the military have complained that legal and administrative reforms, largely brought about through the EU inspired reform process, have hampered its fight against Kurdish rebels.<sup>428</sup> In August 2005, Chief of Staff General Hilmi Özkök reportedly complained that the army is carrying out its struggle against the "separatist terrorist organisation" with "limited authority."<sup>429</sup> Draft legislation has accordingly been prepared and is reportedly due to be submitted to parliament when it reconvenes on 1 October following the summer recess.<sup>430</sup>

It is, of course, perfectly legitimate for Turkey to take reasonable steps to deal with armed violence in the southeast – indeed, she is obliged to protect the safety of its Citizens – but it is imperative that this is done in keeping with international human rights standards and does not bring about a reversal in Turkey's moves towards democratisation. According to Mr Çiçek, the amendments to the anti-terror law

<sup>427</sup> AFP, 'Turkey to amend anti-terror law to enhance struggle against PKK', 21 July 2005

<sup>428</sup> Reuters, 'Violence in southeast Turkey overshadows EU drive', 27 September 2005

<sup>429</sup> BIA News Centre, 'The Army Demands Unlimited Authority..', 19 August 2005

<sup>430</sup> AFP, 'Turkey to amend anti-terror law to enhance struggle against PKK', 21 July 2005

“would not curtail individual freedoms and human rights introduced in recent years, in line with EU standards and norms”.<sup>431</sup> However, human rights groups have expressed great concern over restrictive provisions in the draft legislation. A broader, more ambiguous definition of terrorism and terrorist suspects is reportedly introduced which, given the tendency among public authorities to label HRDs in the Kurdish regions as connected to Kongra-Gel, would potentially result in the arbitrary application of the law to target HRDs for legitimate human rights activities. Another provision of concern is the imposition of prison sentences for those, including media representatives, who disseminate statements made by ‘terrorist’ organisations. This offence is punishable with a fine under Article 6 of the Anti-Terror Law, and human rights groups have commonly faced charges under this or other laws or administrative impediments for issuing press releases concerning human rights abuses, particularly where these relate to the human rights situation in the Kurdish regions.

It is not yet clear if the legislation will be passed by parliament in its current form, since some ministers have reportedly refuted the need for further counter-terrorism provisions. Whether or not the revised law is adopted, there remain other national security-inspired impediments to the defence of human rights in Turkey, in spite of the relaxation of some counter-terrorism measures in the EU reform process. The continued targeting of HRDs using Article 7 of the Anti-Terror law, which proscribes ‘assisting a terrorist organisation’ and ‘making propaganda in connection with a terrorist organisation’, has been described above. In addition, following the closure of the state security courts in 2004, their caseload was taken over by civilian penal courts with similar restrictions on vital procedural rights. Perceptions of the balance to be struck between national security and human rights still differ significantly from what would be expected of a modern, European state. The UN Special Representative still noted in her January 2005 report that “defenders suffered particularly from the use of anti-terrorism legislation.”<sup>432</sup>

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<sup>431</sup> AFP, ‘Turkey to amend anti-terror law to enhance struggle against PKK’, 21 July 2005

<sup>432</sup> UN Commission on Human Rights, ‘Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, <[http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?Open Element>](http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement), § 30

## Conclusion

Turkey has taken some important steps towards improving relations with HRDs, recognising their legitimacy and relaxing restrictions on key rights which are vital to the capacity of HRDs to carry out their work effectively. The repeal of Article 8 of the Anti-Terror Law and changes in the wording of articles of the Penal Code to limit their application in violation of the right to freedom of expression are welcome developments, as is the easing of provisions controlling the founding and operation of associations. Turkey also deserves praise for greatly strengthening the legal regime prohibiting torture, and for taking steps to co-operate with human rights groups and incorporate human rights concerns into governing structures and institutions. No doubt the 'carrot' of EU accession has proven highly instrumental in prompting these changes.

Nonetheless, non-violent human rights advocacy remains criminalised to a significant extent in Turkey, despite extensive legislative reforms, and the Turkish administration still exhibits a marked tendency towards silencing HRDs and interfering with their work. Turkey's behaviour in many cases sits ill with her international human rights obligations. Undemocratic articles of the old Penal Code which authorise state interference with freedom of expression in circumstances which would not meet with international standards are copied into the new Code, and the new Law on Associations continues to sanction an undue degree of state control over associations. Small-scale public meetings and press conferences meet with high level police presence and the employment of coercive tactics such as video-recording participants, and the excessive use of force at demonstrations remains common. HRDs are still on occasion subject to torture and ill-treatment in detention, and have also been threatened with violence by state officials. Statements by members of the administration publicly denigrating the work of HRDs go towards creating an environment in which attacks on HRDs by political groups and other non-state actors hostile to their activities appear legitimised, and initiatives apparently aimed at fostering greater input from HRDs into the administration of the country are very much in their infancy.

In addition to the persistent obstacles to the peaceful and legitimate activities of HRDs in the form of questionable laws and their arbitrary application, it is of

deep concern that new, more covert means of persecuting HRDs are emerging simultaneously with the enactment of pro-EU reforms. The repeated institution of huge numbers of investigations and prosecutions against HRDs, though unlikely to result in more than a suspended sentence or acquittal, sap HRDs' resources and generate an intimidatory atmosphere. Professional HRDs also face groundless administrative or judicial proceedings for professional misconduct.

KHRP believes that these practices amount to a deliberate pattern of judicial harassment intended to silence HRDs, as EU-inspired legislative reforms reduce the opportunities open to state officials to see HRDs imprisoned as a result of their work, to raid their premises, to physically coerce them or to employ other tactics of repression common prior to 2002. Parallel developments similarly indicate that officials are evading the effects of other important pro-EU reforms, for example there has been a well-documented increase in the use of torture methods not leaving visible marks on the body as permissible detention periods are shortened. Much, therefore, is still to be done in terms of ensuring that the reform process is embraced at all levels of the Turkish administration.

There further remains in Turkey a clear and troubling nexus between the subject matter of HRDs' activities and how far they are able to engage in human rights advocacy. Women make an extremely valuable contribution to defending human rights, but state failure to adequately address the persistence of patriarchal mores in Turkish society impedes the struggle for improvements in women's rights. Gender-assigned roles restrict women to the domestic sphere, limiting their access to public platforms to advocate for change, while women who challenge social conventions that violate human rights, such as violence against women, can face hostility from both the state and from within society. Kurdish women working to uphold human rights face exceptionally compound challenges, as they are targeted as Kurds, as women and as HRDs. HRDs also face pronounced adverse consequences where they attest to the non-implementation of pro-EU reforms, and particularly the persistence of torture, or where they challenge ingrained taboos on questions such as the role of Islam.

Repeatedly singled out over and above other HRDs are those who advocate for the human rights of the Kurds. Turkey has for many years refused to acknowledge the political and rights-related aspects of the problems in the Kurdish regions and has instead viewed efforts to protect and promote the rights of the Kurds, no matter how peaceful, as necessarily linked with terrorist activity. Consequently, HRDs upholding the rights of the Kurds have been routinely arrested, detained and prosecuted under Anti-Terror Laws, as well as being disproportionately confronted with arbitrary restrictions on their freedom of expression, association and assembly and exposed to high incidences of practices such as torture. The recent resurgence of the conflict in the Kurdish regions risks worsening conditions for HRDs there,

and the prospect of a possible backsliding into state of emergency conditions which facilitated gross violations of human rights prior to 2002 is of especial concern, particularly in view of proposed new counter terrorism laws.

Combating the limitations imposed upon the capacity of HRDs in the Kurdish regions to carry out their activities is interminably linked to resolving the Kurdish question as a whole, and it is hoped that Prime Minister Erdoğan's recent acknowledgement that there exists a "Kurdish issue" paves the way towards constructive dialogue on this topic. KHRP believes that resolving the Kurdish question is central to the establishment of a stable, democratic and peaceful Turkey, and that the EU has a critical role to play in addressing this matter in the course of the accession process.

Turkey is on the threshold of taking the momentous step of commencing formal accession negotiations with the EU. How it responds to the challenges of political reform over the next few years will prove crucial in determining the course of its EU membership bid; the negotiating framework makes clear that Turkey's progress on human rights will be pivotal to its advance towards accession. This report indicates that at least in areas which touch upon the activities of HRDs, Turkey has a long way to go before it achieves European standards on human rights. Its employment of the judicial system and other means at its disposal to harass and intimidate HRDs is also indicative of substantial impediments to democratisation generally. It is essential that Turkey enact further legislative reform directed to strengthening fundamental rights and curbing arbitrary state action; the law currently affords state officials many pretexts under which to hamper the work of HRDs. Furthermore Turkey must carry forward institutional reform so that amended legislation protecting rights becomes a reality on the ground. On the latter point, sending strong messages to local authorities on the correct interpretation of reforms and ensuring accountability for violations would constitute an important move towards change. Although many of the obstacles to Turkish accession are the result of arbitrary action by local security forces or the judiciary, Turkey is undoubtedly responsible for their commission and should ensure rights are realised in practice.

HRDs can provide a very positive and constructive input into the pro-EU reform process in Turkey, highlighting areas where further reform is necessary, drawing attention to instances of violations and offering advice on measures to ensure rights are implemented. Provided that EU institutions fulfil their undertakings to predicate Turkish progress towards accession on human rights improvements, this could in turn result in a more open and responsive environment for HRDs to operate in. Much will depend upon how far Turkey is prepared to genuinely commit to changing, and upon EU determination to see a democratic, peaceful Turkey that respects human rights brought into the Union.



## Recommendations

In light of the issues raised in this report, KHRP urges Turkey to acknowledge the legitimacy of the work of HRDs and to ensure that they are allowed to carry out their activities upholding human rights safely and without undue hindrance. To this end, the following recommendations are made to the government of Turkey:

### *Accessing Information*

- Ensure that HRDs are not arbitrarily denied access to victims or potential victims of human rights violations and are granted access to government information on activities affecting human rights.

### *Disseminating Information*

- Review articles of the Penal Code and the Anti-Terror Law impeding freedom of expression, with a view to repealing or amending provisions which do not comply with international standards and offering guidance on the application of provisions which are incorrectly applied by the police and judiciary against HRDs legitimately exercising their rights. Articles of especial concern include:
  - The prohibition on insulting the state and its institutions under Article 301 (ex 159) of the Penal Code
  - The prohibition on activities against fundamental national interests under Article 305 of the Penal Code
  - The prohibition on inciting hatred and enmity under Article 216 (ex Article 312) of the Penal Code
  - The prohibition on making propaganda in connection with a terrorist organisation under Article 7 of the Anti-Terror Law
- Bring an end to the practice whereby security officials and the judiciary

circumvent the effects of legislative reforms by identifying alternative provisions under which to bring cases against HRDs.

*Establishing and operating associations*

- Review the Law on Associations so that freedom of assembly is guaranteed in accordance with international standards. It should be ensured that:
  - Associations established with aims pertaining to the peaceful and legitimate protection of recognised human rights are allowed to form and operate freely. The closure case against Egitem Sen is unlikely to fit with the approach to freedom of association adopted by the European Court of Human Rights.
  - Registration and reporting procedures are simplified and unnecessary bureaucracy is removed.
  - Associations are allowed to freely co-operate at an international level, and to gain funding from abroad without interference.
  - Association are not heavily fined for transgressing administrative regulations
- Appraise the draft Law on Foundations to ensure compliance with international standards on freedom of association.

*Peaceful assembly*

- Take action to ensure authorisation is not denied to peaceful public meetings and assemblies and that excessively onerous notification requirements are not imposed.
- Implement effective measures so that excessive force is not applied during demonstrations or other public meetings.
- Issue guidance on the appropriate attendance of security forces at public meetings and demonstrations.

*Torture, ill-treatment and threatening behaviour*

- Ensure that formal measures regulating torture are implemented in practice.

- Make clear that threatening behaviour by local officials acting outside their formal remit will not be tolerated, and investigate allegations of such behaviour.
- Publicly affirm the legitimacy of the work of HRDs and undertake to actively protect the rights of HRDs, including by ensuring that the correct approach to HRDs is taken on board throughout the state administration.

*Protection of human rights defenders against non-state actors*

- Explicitly counter statements and actions by political groups and other non-state actors questioning the credibility of legitimate HRDs.
- Ensure that criminal investigations are opened where violence is perpetrated or threatened against HRDs by such actors.
- Respond effectively to groundless accusations against HRDs by local officials.

*Judicial harassment*

- Review cases pending against HRDs to ensure that no cases are continued for acts which are within the scope of freedom of expression, assembly and association, or other internationally attested human rights.<sup>433</sup>
- Cease initiating cases against HRDs for their legitimate activities protecting and promoting human rights. Prosecutors in particular should ensure that unjustified cases are not initiated against HRDs.
- Investigate situations where state officials appear to be abusing the judicial system or administrative processes to launch cases with the aim of harassing or intimidating HRDs.
- Take measures to combat the judicial harassment of HRDs, in particular through challenging hostility towards HRDs and better instilling among security forces, local officials and the judiciary the difference between

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433 This recommendation is also made by the UN Special Representative and by Amnesty International. UN Commission on Human Rights, 'Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, <<http://daccessdds.un.org/doc/UNDOC/GEN/G05/111/16/PDF/G0511116.pdf?OpenElement>>, §123(b); Amnesty International, 'Turkey: Restrictive laws, arbitrary application - the pressure on human rights defenders', 12 February 2004, <<http://web.amnesty.org/library/Index/ENGEUR440022004?open&of=ENG-TUR>>

illegal activities and actions taken in the legitimate defence of human rights.

- Ensure that excessive financial penalties and custodial sentences are not enforced for legitimate acts defending human rights.

*Professional human rights defenders*

- Stop using administrative and legal procedures for the sanctioning of professional misconduct to punish HRDs in ways which are contrary to the UN Declaration and international human rights standards.
- Review usage of Article 151 and other provisions in the Criminal Procedure Code which may infringe internationally recognised principles concerning the rights of defendants and the role of lawyers.

*State monitoring and surveillance of human rights defenders*

- Stop the monitoring and surveillance of HRDs, including through:
  - Attendance of large numbers of law enforcement officials at public meetings.
  - Attendance of law enforcement officials at the general assemblies of human rights associations.
  - Tapping HRDs' phones and following them in the streets.

*Participation in government and public affairs*

- Take concrete steps to combat negative perceptions of HRDs and the role they play among state officials.
- Engage in constructive dialogue with HRDs on how to best carry forward the human rights reform process. To this end:
  - Review the structure and operation of the Human Rights Boards, with a view to taking measures to improve their independence and to addressing the concerns of human rights organisations which have withdrawn from participation in the Boards.
  - Respect the independent functions of bodies such as the Human Rights Advisory Board and take genuine account of their input

into decision-making.

- Undertake genuine consultation with HRDs where relevant in the course of developing new policies and legislation.
- Refrain from publicly identifying HRDs as ‘enemies’ of Turkey or otherwise denigrating their work.
- Improve state tolerance of criticism and respond to the identification of human rights problems and suggestions for their resolution made by HRDs in a spirit of co-operation.

*Women human rights defenders*

- Undertake education and awareness campaigns to combat patriarchal attitudes and traditional stereotypes regarding the roles and responsibilities of women and men in society, which underlie the hostility exhibited towards HRDs speaking out against culturally legitimised practices that violate women’s rights.
- Support the efforts of women’s rights organisations striving to combat violence against women and to assist victims.
- Take action to prevent the sanctioning of women HRDs who speak out against gender-specific forms of torture and ill-treatment.
- Take measures to improve women’s participation in public life and their access to education and employment, in order that they are not impeded from participating in human rights activities in the public sphere.
- Address the ‘double discrimination’ faced by Kurdish women who work to defend human rights.

*Human rights defenders and the Kurds*

- Acknowledge the elements of the conflict in the Kurdish regions which stem from state denial of Kurdish cultural, linguistic and other rights, and thus the legitimacy of HRDs who peacefully campaign on these issues.
- Stop using counter-terrorism provisions and other legislation to investigate and prosecute HRDs peacefully advocating for improvements in human rights for the Kurds.

- Take active steps to challenge the view that HRDs advocating for improvements in the Kurdish regions necessarily have a political agenda or are linked to terrorist organisations.

*Human rights defenders and national security*

- Ensure that state interpretations of national security do not unjustly impinge on the rights of HRDs, particularly in the proposed new counter-terrorism legislation.

## Annex One: The UN Declaration on Human Rights Defenders

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

*The General Assembly,*

*Reaffirming* the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

*Reaffirming also* the importance of the Universal Declaration of Human Rights<sup>2</sup> and the International Covenants on Human Rights Resolution 2200 A (XXI), annex, as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

*Stressing* that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter,

*Acknowledging* the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize

the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

*Recognizing the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,*

*Reiterating that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and freedoms,*

*Stressing that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,*

*Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,*

*Declares:*

*Article 1*

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

*Article 2*

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

*Article 3*

Domestic law consistent with the Charter of the United Nations and other

international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

#### *Article 4*

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights,<sup>2</sup> the International Covenants on Human Rights<sup>3</sup> and other international instruments and commitments applicable in this field.

#### *Article 5*

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental Organisations, associations or groups;
- (c) To communicate with non-governmental or intergovernmental Organisations.

#### *Article 6*

Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

### *Article 7*

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

### *Article 8*

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.
2. This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and Organisations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

### *Article 9*

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.
2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.
3. To the same end, everyone has the right, individually and in association with others, *inter alia*:

- (a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

- (b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;
  - (c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.
4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.
5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

#### *Article 10*

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

#### *Article 11*

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

#### *Article 12*

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate

exercise of the rights referred to in the present Declaration.

3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

#### *Article 13*

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

#### *Article 14*

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include, *inter alia*:

(a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

#### *Article 15*

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of

the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

#### *Article 16*

Individuals, non-governmental Organisations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, *inter alia*, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

#### *Article 17*

In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

#### *Article 18*

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.
2. Individuals, groups, institutions and non-governmental Organisations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.
3. Individuals, groups, institutions and non-governmental Organisations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

#### *Article 19*

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any

activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

*Article 20*

Nothing in the present Declaration shall be interpreted as permitting States to support and promote activities of individuals, groups of individuals, institutions or non-governmental Organisations contrary to the provisions of the Charter of the United Nations.

## Annex Two: European Union Guidelines on Human Rights Defenders

### **Ensuring Protection -**

#### **European Union Guidelines on Human Rights Defenders**

##### **I. PURPOSE**

1. Support for human rights defenders is already a long established element of the European Union's human rights external relations policy. The purpose of these Guidelines is to provide practical suggestions for enhancing EU action in relation to this issue. The Guidelines can be used in contacts with third countries at all levels as well as in multilateral human rights fora, in order to support and strengthen ongoing efforts by the Union to promote and encourage respect for the right to defend human rights. The Guidelines also provide for interventions by the Union for human rights defenders at risk and suggest practical means to support and assist human rights defenders. An important element of the Guidelines is support for the Special Procedures of the UN Commission on Human Rights, including the UN Special Representative on Human Rights Defenders and appropriate regional mechanisms to protect human rights defenders. The Guidelines will assist EU Missions (Embassies and Consulates of EU Member States and European Commission Delegations) in their approach to human rights defenders. While addressing specific concerns regarding human rights defenders is their primary purpose, the Guidelines also contribute to reinforcing the EU's human rights policy in general.

##### **II. DEFINITION**

2. For the purpose of defining human rights defenders for these Guidelines operative paragraph 1 of the "UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms" (see Annex I), which states that "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental

freedoms at the national and international levels” is drawn upon.

3. Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognised human rights and fundamental freedoms. Human rights defenders seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. Human rights defenders also promote and protect the rights of members of groups such as indigenous communities. The definition does not include those individuals or groups who commit or propagate violence.

### **III. INTRODUCTION**

4. The EU supports the principles contained in the Declaration on the Right and responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms. Although the primary responsibility for the promotion and protection of human rights lies with states, the EU recognises that individuals, groups and organs of society all play important parts in furthering the cause of human rights. The activities of human rights defenders include:

- documenting violations;
- seeking remedies for victims of such violations through the provision of legal, psychological, medical or other support; and
- combating cultures of impunity which serve to cloak systematic and repeated breaches of human rights and fundamental freedoms.

5. The work of human rights defenders often involves criticism of government's policies and actions. However, governments should not see this as a negative. The principle of allowing room for independence of mind and free debate on a government's policies and actions is fundamental, and is a tried and tested way of establishing a better level of protection of human rights. Human rights defenders can assist governments in promoting and protecting human rights. As part of consultation processes they can play a key role in helping to draft appropriate legislation, and in helping to draw up national plans and strategies on human rights. This role too should be recognised and supported.

6. The EU acknowledges that the activities of Human Rights Defenders have over the years become more recognised. They have increasingly come to ensure greater protection for the victims of violations. However, this progress has been achieved at a high price: the defenders themselves have increasingly become targets of attacks and their rights are violated in many countries. The EU believes it is important to

ensure the safety and protect the rights of human rights defenders. In this regard it is important to apply a gender perspective when approaching the issue of human rights defenders.

#### IV. OPERATIONAL GUIDELINES

7. The operational part of the Guideline is meant to identify ways and means to effectively work towards the promotion and protection of human rights defenders in third countries, within the context of the Common Foreign and Security Policy. Monitoring, reporting and assessment

8. EU Heads of Mission are already requested to provide periodic reports on the human rights situation in their countries of accreditation. The Council Working Party on Human Rights (COHOM) has recently approved the outline of fact sheets to facilitate this task. In line with these fact sheets Missions should address the situation of human rights defenders in their reporting, noting in particular the occurrence of any threats or attacks against human rights defenders. In this contexts HoMs should be aware that the institutional framework can have a major impact on the ability of human rights defenders to undertake their work in safety. Issues such as legislative, judicial, administrative or other appropriate measures, undertaken by States to protect persons against any violence, threats retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of any of the rights referred to the UN Declaration on Human Rights Defenders are all relevant in this regard. Where it is called for, HoMs should make recommendations to COHOM for possible EU actions, including condemnation of threats and attacks against human rights defenders, as well as for demarches and public statements where human rights defenders are at immediate or serious risk. HoMs should also report on the effectiveness of EU actions in their reports.

9. The HoMs reports and other relevant information, such as reports and recommendations from the Special Representative of the Secretary General for Human Rights Defenders, UN Special Rapporteurs and Treaty Bodies as well as non-governmental organisations, will enable COHOM and other relevant working parties, to identify situations where EU actions are called upon and decide actions to be taken or, where appropriate, make recommendations for such action to PSC / Council.

##### *Role of EU Missions in supporting and protecting human rights defenders*

10. In many third countries EU Missions (Embassies of EU Member States and European Commission Delegations) are the primary interface between the Union and its Member States and human rights defenders on the ground. They therefore

have an important role to play in putting into practice the EU's policy towards human rights defenders. EU Missions should therefore seek to adopt a proactive policy towards human rights defenders. They should at the same time be aware that in certain cases EU action could lead to threats or attacks against human rights defenders. They should therefore where appropriate consult with human rights defenders in relation to actions which might be contemplated. Measures that EU Missions could take include:

- co-ordinating closely and sharing information on human rights defenders, including those at risk;
- maintaining, suitable contacts with human rights defenders, including by receiving them in Missions and visiting their areas of work, consideration could be given to appointing specific liaison officers, where necessary on a burden sharing basis, for this purpose;
- providing, as and where appropriate, visible recognition to human rights defenders, through the use of appropriate publicity, visits or invitations;
- attending and observing, where appropriate, trials of human rights defenders.

*Promotion of respect for human rights defenders in relations with third countries and in multilateral fora*

11. The EU's objective is to influence third countries to carry out their obligations to respect the rights of human rights defenders and to protect them from attacks and threats from non-state actors. In its contacts with third countries, the EU will, when deemed necessary, express the need for all countries to adhere to and comply with the relevant international norms and standards, in particular the UN Declaration. The overall objective should be to bring about an environment where human rights defenders can operate freely. The EU will make its objectives known as an integral part of its human rights policy and will stress the importance it attaches to the protection of human rights defenders. Actions in support of these objectives will include:

- where the Presidency, or the High Representative for the CFSP or EU Special Representatives and Envoys, or European Commission are making country visits they will, where appropriate, include meetings with, and raising individual cases of, human rights defenders as an integral and part of their visits to third countries;

- the human rights component of political dialogues between the EU and third countries and regional organisations, will, where relevant, include the situation of human rights defenders. The EU will underline its support for human rights defenders and their work, and raise individual cases of concern whenever necessary;
- working closely with other like minded countries with similar views notably in the UN Commission on Human Rights and the UN General Assembly;
- promoting the strengthening of existing regional mechanisms for the protection of human rights defenders, such as the focal point on human rights defenders of the African Commission on Human and Peoples' Rights and the special Human Rights Defenders Unit within the Inter-American Commission on Human Rights, and the creation of appropriate mechanisms in regions where they do not exist.

*Support for Special Procedures of the UN Commission on Human Rights, including the Special Representative on Human Rights Defenders*

12. The EU recognises that the Special Procedures of the UN Commission on Human Rights (Special Rapporteurs, Special Representatives, Independent Experts and Working Groups) are vital to international efforts to protect human rights defenders because of their independence and impartiality; their ability to act and speak out on violations against human rights defenders worldwide and undertake country visits. While the Special Representative for Human Rights Defenders has a particular role in this regard the mandates of other Special Procedures are also of relevance to human rights defenders. The EU's actions in support of the Special Procedures will include:

- encouraging states to accept as a matter of principle requests for country visits by UN Special Procedures;
- promoting via EU Missions, the use of UN thematic mechanisms by local human rights communities and human rights defenders including, but not limited to facilitating the establishment of contacts with, and exchange information between, thematic mechanisms and human rights defenders;
- since the Special Procedures are unable to carry out their mandate in the absence of adequate resources, EU Member States will support the allocation of sufficient funds from the general budget to the Office of the High Commissioner for Human Rights

*Practical supports for Human Rights Defenders including through Development Policy*

13. Programmes of the European Community and Member States aimed at assisting in the development of democratic processes and institutions, and the promotion and protection of human rights in developing countries are among a wide range of practical supports for assisting human rights defenders. These can include but are not necessarily limited to the development co-operation programmes of Member States. Practical supports can include the following:

- bi-lateral human rights and democratisation programmes of the European Community and Member States should take further account of the need to assist the development of democratic processes and institutions, and the promotion and protection of human rights in developing countries by, inter alia, supporting human rights defenders through such activities as capacity building and public awareness campaigns;
- by encouraging and supporting the establishment, and work, of national bodies for the promotion and protection of human rights, established in accordance with the Paris Principles, including, National Human Rights Institutions, Ombudsman's Offices and Human Rights Commissions.
- assisting in the establishment of networks of human rights defenders at an international level, including by facilitating meetings of human rights defenders;
- seeking to ensure that human rights defenders in third countries can access resources, including financial, from abroad;
- by ensuring that human rights education programmes promote, inter alia, the UN Declaration on Human Rights Defenders

*Role of Council Working Parties*

14. In accordance with its mandate COHOM will keep under review the implementation and follow-up to the Guidelines on Human Rights Defenders in close co-ordination and co-operation with other relevant Council Working Parties. This will include:

- promoting the integration of the issue of human rights defenders into relevant EU policies and actions;
- undertaking reviews of the implementation of the Guidelines at appropriate intervals;

- continuing to examine, as appropriate, further ways of co-operating with UN and other international and regional mechanisms in support of human rights defenders.
- Reporting to Council, via PSC and COREPER, as appropriate on an annual basis on progress made towards implementing the Guidelines.



## Publications List

*Other materials available from the Kurdish Human Rights Project include:*

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