



## TURKEY AND EU ACCESSION: KEY HUMAN RIGHTS CONCERNS

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### I. SUMMARY

The entry of Turkey into the European Union (EU) is predicated on the State achieving the political elements of the Copenhagen Criteria, namely '*[t]he stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities.*'<sup>1</sup> Since official talks with the EU commenced in 2005, Turkey has made halting progress towards this goal in the course of its EU accession negotiations.

KHRP believes that Turkey's membership of the EU offers the only viable and stable option for a resolution to the 'Kurdish question'.<sup>2</sup> However, it is essential to closely monitor Turkey's progress in terms of both legislative reform and its practical implementation, in order to ensure that all key concerns are addressed.

The European Commission recently communicated to the European Parliament and the European Council its '*Enlargement Strategy and Main Challenges 2010-2011*' report (**Progress Report**).<sup>3</sup> Although the Commission stated that '*new chapters have*

<sup>1</sup> The Copenhagen Criteria is the common term used to denote the current EU membership criteria, as defined by the EU in 1993. See

[http://ec.europa.eu/enlargement/enlargement\\_process/accesion\\_process/criteria/index\\_en.htm](http://ec.europa.eu/enlargement/enlargement_process/accesion_process/criteria/index_en.htm)

<sup>2</sup> For a detailed examination of this issue, including the ongoing armed conflict in south east Turkey and discrimination experienced by Turkey's Kurdish population, see generally, Kerim Yildiz and Mark Muller, *The European Union and Turkish Accession: Human Rights and the Kurds*, (Pluto Press: London, 2008)

<sup>3</sup> Communication from the Commission to the European Parliament and the European Council,

*Enlargement Strategy and Main Challenges 2010-2011*, page 2,

[http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/strategy\\_paper\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/strategy_paper_2010_en.pdf),

*been opened in the negotiations with Turkey and the country has embarked on a thorough revision of its constitution, moving closer to European standards',<sup>4</sup> the Commission also noted that "[f]urther results are needed regarding fundamental rights, the 'democratic opening' and the involvement of all stakeholders in the reform process".<sup>5</sup>*

This Briefing Paper sets out the key areas that Turkey must address if it is to meet the political limb of the Copenhagen Criteria. It serves as an update to the June 2006 KHRP briefing paper entitled '*Implementation Gaps in Turkey's Domestic Law*'.

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accessed 5 July 2011

<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*, page 22

## II. THE USE OF TORTURE

Despite recent legislative developments aimed at preventing the use of torture, efforts to implement and apply this framework in practice have been limited. Although the Commission noted a continuing positive trend in the prevention of torture and ill-treatment, it concluded that the disproportionate use of force by law enforcement authorities and impunity continued.<sup>6</sup> However, KHRP has observed that over recent years, there appears to have been a conscious transition to the use of torture methods that are less conducive to forensic detection and hence that are more difficult to prove.<sup>7</sup> Furthermore, the lack of statistical information on torture cases and the reparation, compensation and rehabilitation of torture victims has meant that the torture situation in Turkey has been difficult to establish<sup>8</sup> and may even be worse than it ostensibly appears.

### International Obligations and Standards

In terms of international standards, Turkey passed Law 6167<sup>9</sup> on 23 February 2011 which approved the ratification of the Optional Protocol to the UN Convention against Torture (OPCAT).<sup>10</sup>

<sup>6</sup> Commission of the European Communities, *Turkey 2010 Progress Report*, page 18 (hereafter 'European Commission 2010 Progress Report on Turkey'), [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/tr\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf), accessed 29 June 2011

<sup>7</sup> KHRP, *An ongoing practice: Torture in Turkey* (KHRP, London, August 2007), page 27

<sup>8</sup> Concluding Observations of the Committee Against Torture, 20 January 2011, CAT/C/TUR/CO/3, paragraphs 12 - 14

<sup>9</sup> <http://www.mevzuatlar.com/sy/resmiGazete/Rga/11/03/120311033.Htm>, accessed 27 June 2011

<sup>10</sup> Letter from Turkish Government to the President of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 28 February 2011, found in *Response of the Turkish Government to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* on its visit to Turkey from 4 to 17 June 2009, 31 March 2011

This is a significant development as OPCAT, which Turkey signed on 14 September 2005, establishes an international monitoring system whereby independent bodies regularly visit places of detention, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Turkey's performance at the European regional level is less encouraging. In 2010, the European Court of Human Rights (ECtHR) found 32 violations by the Turkish government of the prohibition of inhuman or degrading treatment, three violations of the prohibition against torture and 24 violations of the duty to carry out an effective investigation into allegations of torture or inhuman or degrading treatment, all of which are enshrined under Article 3 of the European Convention for the Protection of Human Rights (ECHR).<sup>11</sup> Whilst these findings represent historical violations, implementation of such judgments has been slow, and acknowledgement and redress for allegations of torture, inhuman or degrading treatment in Turkey are still proving to be problematic due to the continuing failure of the Turkish authorities to carry out effective investigations into such allegations, regardless of when the alleged acts occurred.

For example, the ECtHR asked Turkey to inform it of the concrete measures it is taking to conduct effective investigations into the suspicious deaths of nine Greek Cypriots who disappeared during the military operations carried out by Turkey in Cyprus in 1974. This case is still under the enhanced supervision of the Committee of Ministers, despite being decided in September 2009.<sup>12</sup> This lack of

<sup>11</sup> ECtHR, *Violation by Article and Country*, 2010, [http://www.echr.coe.int/NR/rdonlyres/596C7B5C-3FFB-4874-85D8-F12E8F67C136/0/TABLEAU\\_VIOLATIONS\\_2010\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/596C7B5C-3FFB-4874-85D8-F12E8F67C136/0/TABLEAU_VIOLATIONS_2010_EN.pdf), accessed 27 June 2011

<sup>12</sup> *Varnava and Others v Turkey* (16064/90), 18 September 2009, see Council of Europe, Execution of Judgments of the ECtHR, Pending cases: current

adherence to appropriate due diligence measures in respect of effective investigation, prosecution and punishment is a hindrance to the effective reduction of torture.

### Use of Torture in Practice

The UN Committee against Torture (CAT) issued a report on 20 January 2011 in relation to Turkey, noting that allegations of torture, “particularly in unofficial places of detention” are still widespread,<sup>13</sup> despite the Turkish government having a stated “zero-tolerance” policy against torture. KHRP and other NGOs have also continued to receive reports of allegations of torture and ill-treatment in recent years. Of particular concern is the reported casual violence and beatings in the prison system (where so called ‘welcome’ beatings occur routinely), by State legal and security authorities generally.<sup>14</sup>

The widespread nature of this problem is evidenced by statistics collected by one of KHRP’s partner organisations, *İnsan Hakları Derneği* (Human Rights Association of Turkey, *IHD*), which, in 2009, recorded 305 cases of torture and ill-treatment of detainees, 358 cases of torture and ill-treatment of persons outside of official places of detention, 34 cases of torture and ill-treatment by village guards, 397 cases of torture and ill-treatment in prisons, 51 cases where individuals were threatened with torture or ill-treatment by law-enforcement officers, 565 cases where individuals were beaten and wounded by security forces

state of execution,  
[http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases\\_en.asp?CaseTitleOrNumber=&StateCode=TUR&SectionCode](http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=&StateCode=TUR&SectionCode), accessed 27 June 2011

<sup>13</sup> Committee against Torture, *Consideration of reports submitted by state parties under article 19 of the Convention*, page 3, 20 January 2011, available at

[http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.TUR.CO.3\\_en.pdf](http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.TUR.CO.3_en.pdf), accessed 27 June 2011

<sup>14</sup> KHRP FFM Report, *Closed Ranks: Transparency and accountability in Turkey’s prison system*, (KHRP: London, April 2009), 79

during demonstrations, 10 cases of torture and ill-treatment by private security operatives working for security companies, and 115 cases of violence in schools.<sup>15</sup>

### Impunity

Confirming the findings of KHRP’s visits to the Kurdish regions and reports from its partners over the last 3 years, the CAT found that law enforcement officials who have been found guilty of ill-treatment receive light sentences, contributing to “a climate of impunity” in Turkey.<sup>16</sup> Court investigations into allegations of abuse and torture by security forces reportedly rarely result in convicted or punished offenders.<sup>17</sup> Authorities “typically” allow officers accused of abuse to remain on duty during their trials.<sup>18</sup> Counter-claims are also frequently initiated by law enforcement bodies against persons who allege torture or ill-treatment, deterring individuals from making or pursuing formal complaints.<sup>19</sup>

In 2009, the Turkish National Police (TNP) reportedly received 11 torture allegations (two of which resulted in acquittals and nine of which were dropped by the judiciary for lack of evidence) and opened

<sup>15</sup> IHD 2009 Turkey Human Rights Violations Balance Sheet available at [http://www.ihd.org.tr/images/pdf/human\\_rights\\_violation\\_in\\_turkey\\_summary\\_table\\_of\\_2009.pdf](http://www.ihd.org.tr/images/pdf/human_rights_violation_in_turkey_summary_table_of_2009.pdf), accessed 13 April 2011

<sup>16</sup> Committee against Torture, *Consideration of reports submitted by state parties under article 19 of the Convention*, page 3, 20 January 2011, available at

[http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.TUR.CO.3\\_en.pdf](http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.TUR.CO.3_en.pdf), accessed 27 June 2011

<sup>17</sup> Findings of the Human Rights Foundation, reported in *US State Department Country Report on Human Rights Practices in Turkey*, released by the Bureau of Democracy, Human Rights and Labor, 8 April 2011, <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>, accessed 27 June 2011

<sup>18</sup> *Ibid*

<sup>19</sup> Commission of the European Communities, *Turkey 2009 Progress Report*, October 2009, [http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/tr\\_rapport\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf) (hereafter, ‘European Commission 2009 Progress Report on Turkey’), page 16

administrative and judicial investigations against 104 personnel (68 of which resulted in no punishment and 36 of which were continuing by the end of 2009).<sup>20</sup> As at November 2009, no cases of prosecution against alleged torture suspects resulted in convictions or firing.<sup>21</sup> Similarly, in 2009, the Turkish Parliament's Human Rights Investigation Committee reportedly found that: out of the 35 lawsuits filed against 431 members of the Istanbul police for ill-treatment or torture, none resulted in a conviction, leading to "*suspensions about the effectiveness of proceedings initiated against law enforcement agents*"; and "*only two per cent of police officers accused of ill-treatment or torture [being] subject to disciplinary sanctions as a result of an administrative investigation into allegations of torture or ill-treatment*".<sup>22</sup> The acquittal by the Court of Cassation in June 2009 of four police officers who allegedly killed Ahmet Kaymaz and his 12 year-old son<sup>23</sup> outside legitimate self-defence<sup>24</sup> is a prime example of this culture of impunity.<sup>25</sup> The Kaymaz family has since appealed to the ECtHR.<sup>26</sup>

According to the Commission, this trend continued in 2010 as "*the efforts to fight impunity for human rights violations have not sufficiently addressed the backlog of judicial proceedings*".<sup>27</sup> These problems are exacerbated by systemic flaws in the judicial system. For instance,

<sup>20</sup> *Ibid.* Please note that according to the 2010 US State Department's Human Rights Report on Turkey, no data was available from the TNP at the year's end on alleged torture cases: <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>, accessed 27 June 2011

<sup>21</sup> *Ibid*

<sup>22</sup> European Commission 2010 Progress Report on Turkey, page 18

<sup>23</sup> Details of this case can be found in KHRP's fact-finding mission report, "*Thirteen Bullets*", *Extra-judicial killings in southeast Turkey*, March 2005

<sup>24</sup> European Commission 2009 Progress Report on Turkey, page 16

<sup>25</sup> March 2005

<sup>26</sup> *Ibid*

<sup>27</sup> European Commission 2010 Progress Report on Turkey, page 18

the domestic courts do not recognise any forensic medical doctors other than the Forensic Medicine Institute (FMI), which is under the control of the Ministry of Justice, effectively creating a monopoly and preventing the development of effective and independent forensic services.<sup>28</sup> The findings of the Commission confirm those found by KHRP and the Norwegian Bar Association in their 2010 Trial Observation Report of Şebnem Konur Fincancı and Barış Yarkadaş, in which they found that "*every government appoints its 'own' people to key positions within the FMI in the absence of any real criteria for appointment other than political malleability*".<sup>29</sup> In addition to these serious structural concerns, the Trial Observation Report found serious inefficiencies with FMI, as large numbers of defendants wait on remand for forensic reports, which are reportedly "*often inadequate*" and "*are said to rely on flimsy scientific findings*".<sup>30</sup>

Substantial reforms are therefore needed to address these institutional weaknesses, reinforce legislative guarantees and improve the training of state officials and the judiciary in international human rights standards.

State violence against women, as well as violence by non-State actors against women, is considered further below in Part VI (*Vulnerable Groups*).

### III. MINORITY RIGHTS

Legislative progress in the area of minority rights has been disappointingly slow and is in urgent need for reform. In

<sup>28</sup> *Ibid*

<sup>29</sup> Professor Matthew Happold and Eric Osvec, KHRP and the Norwegian Bar Association, *An Observation of trial proceedings against Şebnem Konur Fincancı the chairwoman of the Human Rights Foundation of Turkey and journalist Barış Yarkadaş, The Concealment of Torture and Ill-Treatment in Turkey*, October 2010, page 8

<sup>30</sup> *Ibid*

practice, the situation is equally disturbing and requires the Member States to exert considerable political pressure on the Turkish Government to pass overdue reforms recognising, securing and promoting minority rights.

### International Standards

Although Turkey is a party to both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), it maintains reservations regarding the rights of minorities and the right to an education respectively, with damaging implications for the effective enjoyment of human rights by minority groups. At the European regional level, Turkey has yet to sign the Council of Europe Framework Convention for the Protection of National Minorities<sup>31</sup> or the European Charter for Regional or Minority Languages.<sup>32</sup> In addition, Turkey has not ratified Protocol 12 of the ECHR (on non-discrimination).<sup>33</sup> In order to monitor and encourage the full development of minority rights in Turkey in practice, Member States should urge Turkey to ratify the above key international instruments.

### National Legal Framework

At the domestic level, Turkey's official policy towards minority groups remains constrained by Turkey's constitutional framework. The Treaty of Lausanne 1923, which Turkey entered into with **Britain, France, Italy, Japan, Greece, Romania and Serbia**, only recognises non-Muslim minority groups present in Turkey in 1923. Further, Article 10 of the

<sup>31</sup> FCNM, CETS No.: 157, Signed on February 1995 by 22 member States of the Council of Europe

<sup>32</sup> ECRML CETS No.: 148, Adopted in 1992 under the auspices of the Council of Europe to protect and promote historical regional and minority languages in Europe

<sup>33</sup> Turkey signed Protocol 14 on 18 April 2001

Constitution, which guarantees the equality of all citizens before the law and prohibits any discrimination based on '*language, race, colour, sex, political opinion, philosophical conviction or religious beliefs*', must be read in conjunction with both Article 66 and Article 3 which state that '*[e]veryone bound to the Turkish state through the bond of citizenship is a Turk*' and '*[t]he language of the country is Turkish and there can be no changes made to this article*', respectively.

The extremely narrow definition of minorities therefore fails to recognise groups such as the country's estimated 20 million Kurds (representing approximately 23 per cent of the population), who face both overt and indirect restrictions in daily life within Turkey. Amongst other things, Kurds who use and/or publicly support using Kurdish in the public domain risk censure, harassment, or prosecution.<sup>34</sup> Proposed legislative reforms must therefore be considered within this context as without recognition of minority groups, legislative protections will have a limited effect. The Committee on Economic, Social and Cultural Rights (CESCR) has in fact expressed its concern at Turkey's failure to recognise not only Kurds, but Romas and Arameans, urging it to "*provide them the full opportunities to enjoy their economic, social and cultural rights and to adopt the necessary plans of action for this purpose*".<sup>35</sup>

### Education

Under Article 42 of the Turkish Constitution, no language other than Turkish may be taught as a mother-tongue

<sup>34</sup> US State Department Country Report on Human Rights Practices in Turkey, released by the Bureau of Democracy, Human Rights and Labor, 8 April 2011, <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>, accessed 27 June 2011

<sup>35</sup> CESCR, *Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant*, E/C.12/TUR/CO/1, 20 May 2011, paragraph 10

to Turkish citizens in any training or education institution. In practice, no minority language is taught as a foreign language in public schools.<sup>36</sup> KHRP has found that although private Kurdish language courses are permitted, they are proving unsuccessful due to a lack of time and money and a desire for Kurdish to be used as the language of instruction as a priority.<sup>37</sup> Further, although Turkey permits private and public schools and universities to teach in languages such as English, German, French and Italian, the Turkish Prime Minister, Recep Tayyip Erdoğan, has resisted calls to introduce Kurdish as a language of instruction in Turkish schools.<sup>38</sup> The Kurdish civil disobedience campaign **against the ruling Justice and Development Party's (AKP) continuing failure to effectively address the 'Kurdish question' therefore demanded Kurdish language rights in both public and private schools.**<sup>39</sup> The post-election period is an ideal opportunity for the Turkish government to address this fundamental issue.

With regards to religion and ethics, Article 24 of the Turkish Constitution and Section 12 of Basic Law 1739 on national education provide that religious culture and ethics classes are compulsory in primary and secondary schools. In October 2007, the ECtHR found that this aspect of the Turkish education system failed to meet the criteria of objectivity and pluralism necessary for education in a democratic society and for pupils to develop a critical mind towards religion.<sup>40</sup> The ECtHR therefore requested that Turkey bring its education system and domestic legislation in line with Article 2 of Protocol 1 (right to education) to the ECHR. However, once again, Turkey's

<sup>36</sup> Minority Rights Group International, *Forgotten or Assimilated? Minorities in the Education System of Turkey*, by Nurcan Kaya, 2009, page 6

<sup>37</sup> KHRP, *Culture and Language Rights - Mother-Tongue Education in the Kurdish Regions*, July 2011, pages 13-14

<sup>38</sup> *Ibid*, page 14

<sup>39</sup> *Ibid*

<sup>40</sup> *Zengin v Turkey* (1448/04), 9 October 2007

implementation of the judgment is pending.<sup>41</sup>

The CESCR recently highlighted the need to promote human rights in the Turkish education system, a vital recommendation which, if implemented, would raise awareness of human rights and could work to protect minority rights in education going forward. It urged Turkey to "*provide education on human rights, including economic, social and cultural rights to students at all levels of education, and human rights training for members of all professions and sectors that have a direct role in the promotion and protection of human rights, including civil servants, teachers, medical professionals, law enforcement officers, the police and the military.*"<sup>42</sup>

In terms of physical access to education, reports state that 33.9 per cent of displaced children in Diyarbakır, 77.8 per cent in Batman and 56.2 per cent in Van, do not attend school, mainly due to financial constraints.<sup>43</sup> This is compared to 40.7 per cent in Istanbul, 34.2 per cent in Izmir and 50.3 per cent in Mersin.<sup>44</sup> In addition, the CESCR found that persons with disabilities, migrant workers, asylum-seekers and refugees face serious difficulties in accessing education.<sup>45</sup> There is therefore an urgent need for Turkey to guarantee minority groups and displaced persons not only appropriate curricula,

<sup>41</sup> Council of Europe, Execution of Judgments of the European Court of Human Rights, Pending Cases - Current Status of Execution, [http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases\\_en.asp?CaseTitleOrNumber=1448%2F04&StateCode=&SectionCode=](http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=1448%2F04&StateCode=&SectionCode=), 28 June 2011

<sup>42</sup> CESCR, *Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant*, E/C.12/TUR/CO/1, 20 May 2011, paragraph 32

<sup>43</sup> Minority Rights Group International, [\*Forgotten or Assimilated? Minorities in the Education System of Turkey\*](#), March 2009, page 12

<sup>44</sup> *Ibid*

<sup>45</sup> CESCR, *Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant*, E/C.12/TUR/CO/1, 20 May 2011, paragraphs 11-12

but also a physically accessible education as well.

### Freedom of Expression

There has been some legislative progress in respect of media freedom. Whilst the European Commission noted that, following regulatory amendments in November 2010, all restrictions on broadcasting in Kurdish and other languages by private and public channels at local level, and on children's and language teaching programmes, have been lifted, it considered that the amendments do not go far enough in that "the primary law and implementing regulations are not yet fully aligned with the *acquis*".<sup>46</sup>

The situation in practice is cause for great concern as the Turkish authorities use criminal sanctions to suppress those who criticise the government and armed forces.<sup>47</sup> Kurdish political activists, journalists and human rights defenders are also frequently prosecuted under anti-terror laws which carry higher prison sentences and pre-trial detention orders.<sup>48</sup> For instance, in June 2011, Professor Osman Küçükosmanoğlu and Dr Ömer Eşki were charged with spreading propaganda for a terrorist organisation following their speeches made at the Democratic Solution Tent in Adana, in which they criticised the Government's health policies, although they were subsequently acquitted.<sup>49</sup>

<sup>46</sup> European Commission 2010 Progress Report on Turkey, pages 32 and 57

<sup>47</sup> Amnesty International, *Annual Report 2011: Turkey*, <http://www.amnesty.org/en/region/turkey/report-2011#section-148-3>, accessed 28 June 2011

<sup>48</sup> *Ibid*

<sup>49</sup> Bianet, *Right to Health Must Not be Tried*, 23 June 2011, <http://www.bianet.org/english/freedom-of-expression/130953-right-to-health-must-not-be-tried>, accessed 29 June 2011; Bianet, *Doctors Acquitted of Terror Charges*, 27 June 2011, <http://bianet.org/english/print/131066-doctors-acquitted-of-terror-charges>, accessed 5 July 2011

### Politics

The Turkish general election on 12 June 2011 resulted in significant gains for the Kurdish Peace and Democracy Party (BDP), which won 36 out of 550 Parliamentary seats. Pressure has since been mounting on the AKP, which enjoyed its third consecutive win, to seize the opportunity to introduce real democratic changes in Turkey, including a peaceful solution to the 'Kurdish question' and the drafting of a new constitution. Demands for reform include the abolition of the 10 per cent electoral threshold to facilitate the election of minority representatives into Parliament.<sup>50</sup> In his victory speech, Prime Minister Erdoğan promised to seek consultation and consensus with the opposition in drafting a new Turkish constitution.<sup>51</sup> However, the post-election period in Turkey is fragile following reports from May that since the launch of the Civil Disobedience Campaign,<sup>52</sup> 2,506 people had been taken into custody, with 400 of those subsequently being arrested.<sup>53</sup> In addition, the opposition BDP and CHP parties both initially refused to take their

<sup>50</sup> Voice of America News.com, *Kurdish Politician Urges Turkey to Heed 'Our Demands'*, 10 June 2011,

<http://www.voanews.com/english/news/europe/Kurdish-Politician-Urges-Turkey-to-Heed-Our-Demands-123637084.html>, accessed 28 June 2011

<sup>51</sup> Bloomberg, *Erdoğan Elected to Third Term with Pledge to Rewrite Turkey's Constitution*, 13 June 2011, <http://www.bloomberg.com/news/2011-06-12/early-election-results-from-turkey-show-erdogan-likely-to-win-third-term.html>, accessed 28 June 2011

<sup>52</sup> This movement, which was launched by the BDP in March 2011, called on Kurds in Turkey to stage acts of civil disobedience to highlight four demands: the right to education in the Kurdish mother-tongue; the removal of the ten per cent electoral threshold; the release of Kurdish political prisoners, including Abdullah Öcalan; and the end to military and political operations against the Kurdish people.

<sup>53</sup> Hurriyet, *Thousands Detained in Eastern Turkey Since March*, 16 May 2011, <http://www.hurriyetdailynews.com/n.php?n=thousands-detained-in-the-east-since-march-2011-05-13>, accessed 15 July 2011

seats in the Parliament because of the arrest of some of their elected MPs. At the time of writing, more than a month post-election, BDP still has not entered Parliament.

Although legislation was introduced in March 2010 to allow campaigning in Kurdish,<sup>54</sup> the use of the Kurdish language in state institutions and official correspondence is still prohibited. There have been several recent attempts by parliamentarians and activists to introduce the use of Kurdish in Parliament and other official venues. For example, in 2009, Kurdish MP, Ahmet Turk, switched to Kurdish during a parliamentary speech in breach of legal restrictions.<sup>55</sup> In the course of the KCK trial in Diyarbakır in which 151 people, including 12 mayors, are accused of links to the PKK, use of the Kurdish mother-tongue by the defendants is prohibited.<sup>56</sup>

#### IV. DEMOCRACY, THE RULE OF LAW AND HUMAN RIGHTS DUE DILIGENCE OBLIGATIONS

Turkey continues to face major challenges relating to the rule of law and the confidence of citizens in democratic institutions. Although steps have been taken to begin addressing the political elements of the Copenhagen Criteria, Turkey continues to place restrictions on political parties and activities through legislation and in practice. In terms of human rights, Turkey proposes to make

<sup>54</sup> European Commission 2010 Progress Report on Turkey, page 8

<sup>55</sup> Sarah Rainsford, 'MP breaks language law in Turkey' (25 February 2009) *BBC News*, available at <http://news.bbc.co.uk/1/hi/7909242.stm>, accessed 28 June 2011

<sup>56</sup> Kurd Net, *The Kurdish Language Stands on Trial in Turkey*, 27 January 2011, <http://www.ekurd.net/mismas/articles/misc2011/1/turkey3123.htm>, accessed 28 June 2011

some key structural changes to its justice system to protect and promote fundamental rights. However, change has been slow and often does not meet international human rights standards. In practice, human rights violations remain widespread.

#### Democracy

On 13 March 2009, the Venice Commission of the Council of Europe<sup>57</sup> published its Opinion on the Constitutional and Legal Provisions Relevant to the Prohibition of Political Parties in Turkey.<sup>58</sup> It concluded that Articles 68<sup>59</sup> and 69<sup>60</sup> of the Turkish Constitution and the relevant provisions of the Law on Political Parties "*form a system, which, as a whole, is incompatible with Article 11<sup>61</sup> of the [ECHR] as interpreted by the [ECTHR] and the criteria adopted in 1999 by the Venice Commission and since endorsed by the Parliamentary Assembly of the Council of Europe*".<sup>62</sup> The Venice Commission essentially found that the procedural and substantive threshold for party closures was too low, a feature which was difficult to reconcile with basic

<sup>57</sup> The Venice Commission, more formally known as the 'European Commission for Democracy through Law', is the Council of Europe's advisory body on constitutional matters. It works in the following key areas: constitutional assistance; elections, referendums and political parties; cooperation with constitutional courts and ombudspersons; and transnational studies, reports and seminars.

<sup>58</sup> European Commission for Democracy through Law, *Opinion on the Constitutional and Legal Provisions Relevant to the Prohibition of Political Parties in Turkey*, Opinion No. 489/2008, 13 March 2009, [http://www.venice.coe.int/docs/2009/CDL-AD\(2009\)006-e.pdf](http://www.venice.coe.int/docs/2009/CDL-AD(2009)006-e.pdf), accessed 29 June 2011

<sup>59</sup> This Article governs the formation and membership of political parties.

<sup>60</sup> This Article sets out the principles to be observed by political parties.

<sup>61</sup> Freedom of assembly and association

<sup>62</sup> European Commission for Democracy through Law, *Opinion on the Constitutional and Legal Provisions Relevant to the Prohibition of Political Parties in Turkey*, Opinion No. 489/2008, 13 March 2009, paragraph 106, [http://www.venice.coe.int/docs/2009/CDL-AD\(2009\)006-e.pdf](http://www.venice.coe.int/docs/2009/CDL-AD(2009)006-e.pdf), accessed 29 June 2011

European traditions for constitutional democracy.<sup>63</sup>

Despite the findings of the Venice Commission, on 11 December 2009, the Constitutional Court of Turkey banned the pro-Kurdish Democratic Society Party (DTP), reportedly ruling that the party had become “*a focal point of activities against the indivisible unity of the State, the country and the nation*”.<sup>64</sup> The EU Presidency at the time expressed its concern over the ruling, stating that, “[w]hile strongly denouncing violence and terrorism, the Presidency recalls that the dissolution of political parties is an exceptional measure that should be used with the upmost restraint”.<sup>65</sup> Together with the ban on 37 DTP members from joining party politics for five years, the ruling has been viewed as a “*serious setback to the Government’s efforts at democratic opening*”.<sup>66</sup>

In a national referendum on 12 September 2010, approximately 29 million people (making up around 58 per cent of the votes), voted in favour of certain amendments to the Turkish Constitution in order to bring it more in line with EU standards.<sup>67</sup> The changes included: amendments to the composition of the Constitutional Court and of the High Council of Judges and Prosecutors; prohibition on military personnel suspected of crimes against state security from being tried in military courts; and

positive discrimination measures in favour of women, children and the elderly. Although these changes are encouraging developments which may serve as a preview for more fundamental reforms in the future, the process was criticised by the European Commission for lacking a consultation process involving political parties and civil society.<sup>68</sup> As noted above, the post-election period is an ideal opportunity for the ruling AKP to consult with the various stakeholders and finally tackle deep-rooted issues, such as the Kurdish question. It is essential that such consultation involve all political parties and an engaged civil society, in order to strengthen support for constitutional reform.

Whilst constitutional reforms are slowly underway, in practice, there is a continuing clampdown on opposition political activists, especially those sympathetic to minority issues. For example, the aforementioned trial of 151 Kurds, including mayors, politicians and lawyers, is widely considered by Kurdish advocates as politically motivated. Many of the prisoners have been in jail without bail since 2009 and could face 15 years to life in prison if convicted.<sup>69</sup> More recently in June 2011, the Supreme Election Board (YSK) banned pro-Kurdish elected candidate and another of an ever-growing list of suspects in this case, Hatip Dicle, from taking his seat in Parliament due to a conviction for disseminating propaganda of a ‘terrorist organisation’, a decision which has been strongly appealed by the EU Turkey Civic Commission (EUTCC).<sup>70</sup> The EU Commissioner for Enlargement, Stefan Füle, also issued a public statement to report that the Commission was “*following the situation very closely and*

<sup>63</sup> *Ibid*, paragraphs 107-108

<sup>64</sup> BBC News, *Turkish top court bans pro-Kurdish party*, 11 December 2009, <http://news.bbc.co.uk/1/hi/world/europe/8408903.st>, accessed 29 June 2011

<sup>65</sup> Swedish Presidency of the European Union, *Presidency Statement on the closure of Democratic Society Party (DTP) in Turkey*, 11 December 2009, [http://www.se2009.eu/en/meetings\\_news/2009/12/11/presidency\\_statement\\_on\\_the\\_closure\\_of\\_democratic\\_society\\_party\\_dtp\\_in\\_turkey.html](http://www.se2009.eu/en/meetings_news/2009/12/11/presidency_statement_on_the_closure_of_democratic_society_party_dtp_in_turkey.html), accessed 29 June 2011

<sup>66</sup> European Commission 2010 Progress Report on Turkey, page 7

<sup>67</sup> BBC News, *Turkey’s Constitutional Referendum*, 12 September 2010, <http://www.bbc.co.uk/news/world-europe-11228955>, accessed 29 June 2011

<sup>68</sup> European Commission 2010 Progress Report on Turkey, page 8

<sup>69</sup> See, KHRP Briefing Paper, *Report of the KCK Trial, Diyarbakır, Turkey*, (KHRP, London, March 2011)

<sup>70</sup> Kurdish Info, *EUTCC Press Release*, 23 June 2011, <http://www.kurdish-info.eu/News-sid-EUTCC-PRESS-RELEASE-17081.html>, accessed 28 June 2011

with concern,” reminding Turkey that it will have “to deal in the near future with important challenges, which will require the inclusion of all democratic forces” and that “all sides must contribute to guaranteeing [Parliament’s] integrity and its good functioning”.<sup>71</sup> The ruling echoes that taken by the YSK on 18 April 2011 to ban 12 BDP-backed Kurdish politicians from running as independent candidates to circumvent the electoral threshold, although this ruling was later revoked.

The armed forces continue to exercise undue political influence, particularly over judicial issues, although the number of such incidents has decreased.<sup>72</sup>

### Rule of Law

Concerns remain about the independence, impartiality and efficiency of the judiciary, although some positive steps have been taken to increase impartiality, such as the September 2010 constitutional reform which prohibits military courts from trying civilians.<sup>73</sup> Further, amendments to the process of appointing judges to the Constitutional Court, which now include elections by Parliament, bring the judicial system more in line with those of EU Member States – although the amended system appears to allow military judges to return to the military justice system when their term in the Constitutional Court expires, a feature which the European Commission describes as a potential threat to their impartiality as Constitutional Court judges.<sup>74</sup> It is therefore concerning that the Constitutional Court has decided to reject Dicle’s application to file a case against the ban,<sup>75</sup> the impartiality of which must

<sup>71</sup> Stefan Füle, *Latest Developments in Turkish Parliament*, July 2011, [http://ec.europa.eu/commission\\_2010-2014/fule/headlines/news/2011/07/20110705\\_en.htm](http://ec.europa.eu/commission_2010-2014/fule/headlines/news/2011/07/20110705_en.htm), accessed 7 July 2011

<sup>72</sup> European Commission 2010 Progress Report on Turkey, pages 11-12

<sup>73</sup> *Ibid*

<sup>74</sup> *Ibid*

<sup>75</sup> Today’s Zaman, *Constitutional Court Overturns Hatip Dicle’s Appeal of YSK Ban*, 7 July 2011,

be called into question. Dicle’s lawyers are reportedly in the process of bringing the case before the ECtHR.<sup>76</sup>

The lack of legal safeguards in domestic proceedings also greatly undermines the applicability of the rule of law in Turkey. In 2010, the ECtHR found 41 breaches by Turkey of Article 6 (right to a fair trial) of the ECHR, placing Turkey second only to Russia with regards to the most breaches of that provision during that period.<sup>77</sup> In 2010, excessive pre-trial detention sentences without consideration of alternatives by the judicial authorities were reportedly routine, with lawyers having “no effective mechanism to challenge the lawfulness of the detention in practice”.<sup>78</sup> As noted above in Part II (*The Use of Torture*), the KHRP and Norwegian Bar Association’s 2010 report into the trial of Şebnem Konur Fincancı and Barış Yarkadaş, further highlighted systemic problems with the FMI and the resulting impact on Turkey’s ability to ensure legal due process.<sup>79</sup> Such failings suggest an unwillingness, or at the very least poor training, by the authorities to uphold the rule of law in practice.

### Human Rights

In terms of international standards, Turkey is a party to several key human

<http://www.todayszaman.com/news-249720-constitutional-court-overturns-hatip-dicles-appeal-of-ysk-ban.html>, accessed 11 July 2011

<sup>76</sup> AK News, *Turkey: Dicle Case To Go To European Court Following Appeal Rejection*, 7 July 2011, <http://www.aknews.com/en/aknews/4/250731/>, accessed 11 July 2011

<sup>77</sup> European Court of Human Rights, *Table of Violations 2010*, [http://www.echr.coe.int/NR/rdonlyres/596C7B5C-3FFB-4874-85D8-F12E8F67C136/0/TABLEAU\\_VIOLATIONS\\_2010\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/596C7B5C-3FFB-4874-85D8-F12E8F67C136/0/TABLEAU_VIOLATIONS_2010_EN.pdf), access 4 July 2011

<sup>78</sup> Amnesty International, *Annual Report 2011: Turkey*, <http://www.amnesty.org/en/region/turkey/report-2011#section-148-7>, accessed 4 July 2011

<sup>79</sup> KHRP and Norwegian Bar Association, *An Observation of trial proceedings against Şebnem Konur Fincancı the chairwoman of the Human Rights Foundation of Turkey and journalist Barış Yarkadaş* (KHRP June 2010), page 3

rights instruments.<sup>80</sup> As mentioned above, it has also recently approved ratification of OPCAT under its domestic law. However, Turkey has still not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) which provides for an individual complaints mechanism, in addition to the key human rights instruments mentioned in Part III above.

Structurally, Turkey has made and proposed several changes to its justice system which aim to protect fundamental rights. The September 2010 reforms allow individuals to bring cases directly before the Constitutional Court, a significant step in empowering individuals to enforce their human rights. The September 2010 reforms also provide for the establishment of an Independent Human Rights Institution and Ombudsman to monitor the human rights situation in Turkey. However, the efficacy of such measures largely depends on the impartiality of the Constitutional Court judges and judicial system which, as mentioned above, has been called into question. Further, at the time of writing, neither of the proposed human rights bodies has been established. The independence and functional autonomy of the proposed Independent Human Rights Institution has also been criticised as falling below UN standards.<sup>81</sup>

The need for structural reform has been highlighted by the Turkish system's continued failure to provide efficient, impartial and effective responses to human rights abuses. Human rights organisations have been described as lacking resources, independence and impact.<sup>82</sup> The ECtHR ruling against Turkey for failing to adequately

investigate the murder of the Turkish-Armenian journalist,<sup>83</sup> Hrant Dink,<sup>84</sup> is indicative of Turkey's widespread failure to adequately investigate and prosecute complaints against state officials, despite being presented with overwhelming independent and corroborative evidence. The European Commission has also expressed its concern over the FMI which reportedly provided conflicting reports on the same cases at different times.<sup>85</sup> As mentioned above, there appears to be unwillingness on behalf of the Turkish authorities to address institutional failings within this organisation.

In practice, Turkey is failing to fully comply with its international human rights obligations, as evidenced by the increasing number of violations found by the ECtHR. In 2010 alone, the ECtHR issued 228 judgments against Turkey in which it found at least one violation of the ECHR, the highest number out of all the ECHR State Parties.<sup>86</sup> This is not to say that Turkey has not improved in certain areas. On the contrary, the European Commission found that: the positive trend in preventing torture and ill-treatment has continued (although, as mentioned above, this may be due to incidents of torture escaping detection); the legal framework on freedom of association is broadly in line with EU standards; the freedom of worship continues to be generally accepted; and open and free debate has continued and expanded.<sup>87</sup>

<sup>80</sup> For instance, the ICCPR, the ICESCR, International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Convention on the Rights of the Child and the International Convention on the Elimination of all forms of Racial Discrimination

<sup>81</sup> European Commission 2010 Progress Report on Turkey, page 17

<sup>82</sup> *Ibid*

<sup>83</sup> The ECtHR found Turkey in breach of, *inter alia*, Article 2 of the ECHR (the right to life), both in its substantive and procedure aspects, for failing to act on information about the future assassination of Dink and for failing to adequately investigate his death (*Dink v. Turkey* (2668/07), 14 September 2010)

<sup>84</sup> Real name 'Firat Dink'

<sup>85</sup> European Commission 2010 Progress Report on Turkey, page 14

<sup>86</sup> European Court of Human Rights, *Table of Violations by Article and By Country 2010*, [http://www.echr.coe.int/NR/rdonlyres/596C7B5C-3FFB-4874-85D8-F12E8F67C136/0/TABLEAU\\_VIOLATIONS\\_2010\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/596C7B5C-3FFB-4874-85D8-F12E8F67C136/0/TABLEAU_VIOLATIONS_2010_EN.pdf), accessed 29 June 2011

<sup>87</sup> European Commission 2010 Progress Report on Turkey, pages 18, 21 - 24

However, Turkey has a long way to go in meeting international human rights standards. Recent reports by KHRP and other human rights organisations continue to highlight worrying trends in criminal prosecutions violating the right to freedom of expression, reports of torture and ill-treatment (particularly in detention facilities), unfair trials under anti-terror legislation, inadequate criminal investigations, a pervading culture of impunity, continuing violence against women, arbitrary detentions and a failure to recognise, protect and promote minority rights.<sup>88</sup> Further, the European Commission has expressed its concern over the inadequate provision of legal aid both in terms of coverage and quality of services provided<sup>89</sup> and the high proportion of prisoners in pre-trial detention.<sup>90</sup>

## V. FREEDOM OF EXPRESSION<sup>91</sup>

Although open and free debate has continued and expanded in Turkey, including on sensitive issues such as minority rights,<sup>92</sup> its domestic legal framework “does not yet sufficiently guarantee freedom of expression”<sup>93</sup> and

<sup>88</sup> KHRP, *Briefing to the UN Committee Against Torture for its consideration of Turkey’s Third Periodic Report under CAT*, October 2010; Amnesty International, *Annual Report on Turkey 2011*,

<http://www.amnesty.org/en/region/turkey/report-2011>, accessed 29 June 2011; Human Rights Watch, *World Report 2011: Turkey*,

<http://www.hrw.org/en/world-report-2011/turkey>, accessed 29 June 2011; Roj Women’s Association, *Annual Activities Report April 2010*, March 2011

<sup>89</sup> *Ibid*, page 19

<sup>90</sup> *Ibid*, page 20

<sup>91</sup> For a more detailed analysis of the right to freedom of expression and the media in the Kurdish regions, please see KHRP’s 2011 briefing paper entitled “*Freedom of Expression and the Media in the Kurdish Regions*”

<sup>92</sup> *Ibid*

<sup>93</sup> Communication from the Commission to the European Parliament and the Council, *Enlargement Strategy and Main Challenges 2010-2011*, page 8, [http://ec.europa.eu/enlargement/pdf/key\\_docum](http://ec.europa.eu/enlargement/pdf/key_docum)

falls below the standards required by the ECHR and ECtHR jurisprudence.<sup>94</sup> In fact, in his public statement, the EU Commissioner for Enlargement, Stefan Füle, commented that “*the current confusion*” following Turkey’s general election “*has also its origins in the fact that people are being kept in detention for excessive periods of time pending their trial, or are convicted for their speeches. These are flaws which we have consistently highlighted in our progress reports, and which undermine fundamental rights such as freedom of expression or the right to effective judicial guarantees. We hope the next government will address these concerns through amending the legal framework*”.<sup>95</sup>

In 2010, the ECtHR found Turkey in violation of Article 10 of the ECHR (which guarantees the right to freedom of expression) 19 times, the highest number of violations of this provision out of all the ECHR Party States during that period.<sup>96</sup>

The Turkish authorities continue to use the Penal Code to suppress criticisms of the Government or support for minority issues.<sup>97</sup> Controversially, Article 301 of the Turkish Penal Code remains in force. The provision was amended in 2008 to criminalise the denigration of the “*Turkish nation, the Republic of Turkey and the Grand National Assembly*” (as opposed to “*Turkishness, the Republic*

[ents/2010/package/strategy\\_paper\\_2010\\_en.pdf](ents/2010/package/strategy_paper_2010_en.pdf), accessed 29 June 2011

<sup>94</sup> European Commission 2010 Progress Report on Turkey, page 19

<sup>95</sup> Stefan Füle, *Latest Developments in Turkish Parliament*, July 2011,

[http://ec.europa.eu/commission\\_2010-2014/fule/headlines/news/2011/07/20110705\\_en.htm](http://ec.europa.eu/commission_2010-2014/fule/headlines/news/2011/07/20110705_en.htm), accessed 7 July 2011

<sup>96</sup> European Court of Human Rights, *Table of Violations by Article and By Country 2010*, [http://www.echr.coe.int/NR/rdonlyres/596C7B5C-3FFB-4874-85D8-F12E8F67C136/0/TABLEAU\\_VIOLATIONS\\_2010\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/596C7B5C-3FFB-4874-85D8-F12E8F67C136/0/TABLEAU_VIOLATIONS_2010_EN.pdf), accessed 29 June 2011

<sup>97</sup> Amnesty International, *Annual Report 2011: Turkey*, <http://www.amnesty.org/en/region/turkey/report-2011#section-148-3>, accessed 29 June 2011

and institutions and organs of the State", which it criminalised previously) and to require the permission of the Minister of Justice to bring a case under that provision. Although this led to a "significant decline" in the number of prosecutions in 2009,<sup>98</sup> in 2010, the Ministry of Justice received 352 complaints under Article 301 although it granted permission to proceed to only 10.<sup>99</sup>

However, such reforms have a limited impact as anti-terror legislation is frequently used to stifle free speech, particularly that of Kurdish and other opposition groups. In fact, the European Commission observed that pressure on newspapers discussing the Kurdish question or publishing in Kurdish increased in 2010.<sup>100</sup> The Solidarity Platform of Imprisoned Journalists reportedly found that there were 43 journalists in prison at the end of 2010, mostly for charges under anti-terror laws.<sup>101</sup> As mentioned above, more recently in June 2011, two men were charged with spreading propaganda for a terrorist organisation after criticising the Government's health policies during a speech at the Adana Democratic Solution Tent, although they were subsequently acquitted.<sup>102</sup>

<sup>98</sup> European Commission 2009 Progress Report on Turkey, page 17

<sup>99</sup> US State Department Human Rights Report: Turkey 2010, 8 April 2011, <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>, accessed 30 June 2011

<sup>100</sup> European Commission 2010 Progress Report on Turkey, page 20

<sup>101</sup> US State Department Human Rights Report: Turkey 2010, 8 April 2011, <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>, accessed 30 June 2011

<sup>102</sup> Bianet, *Right to Health Must Not be Tried*, 23 June 2011, <http://www.bianet.org/english/freedom-of-expression/130953-right-to-health-must-not-be-tried>, accessed 29 June 2011; Bianet, *Doctors Acquitted of Terror Charges*, 27 June 2011, <http://bianet.org/english/print/131066-doctors-acquitted-of-terror-charges>, accessed 5 July 2011

The ECtHR has recently taken steps to challenge Turkey's anti-terror legislation and its suppression of free speech. In *Ürper and Others v. Turkey*, the ECtHR ordered the Government to revise its domestic law<sup>103</sup> to put an end to the suspension of the future publication and distribution of entire periodicals, a measure which it considered exceeded any notion of "necessary constraint" in a democratic society and which in fact amounted to censorship.<sup>104</sup> To date, the Turkish authorities have provided no information to the Council of Europe on its progress in implementing this judgment.<sup>105</sup> The ECtHR is also currently considering an application against Turkey under, amongst other things, Article 10 (freedom of expression) for an injunction which blocked access to the Google domain in order to prevent access to another webpage which included material deemed to be offensive to Turkey's former President, Atatürk.<sup>106</sup>

Reports of police authorities using excessive force against public demonstrators continue, one of the most recent being the use of tear gas against protestors campaigning against the YSK's decision to strip elected politician, Hatip Dicle, of his Parliamentary mandate.<sup>107</sup> The authorities also continue to impose bans on websites, which KHRP regards as disproportionate in scope and duration. Until October 2010, *YouTube* was blocked

<sup>103</sup> 6(5) of Anti-Terror Law 3713

<sup>104</sup> 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07, 20 October 2009, declared final on 20 January 2010

<sup>105</sup> Council of Europe, Execution of Judgments of the European Court of Human Rights, [http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases\\_en.asp?CaseTitleOrNumber=14526%2F07&StateCode=&SectionCode=](http://www.coe.int/t/dghl/monitoring/execution/Reports/pendingCases_en.asp?CaseTitleOrNumber=14526%2F07&StateCode=&SectionCode=), accessed 30 June 2011

<sup>106</sup> *Ahmet Yıldırım v. Turkey* (3111/10), *Yaman Akdeniz v. Turkey* (20877/10), 31 January 2011 (date of decision to communicate)

<sup>107</sup> Kurdish Info, *Demonstration by Block Deputies Attacked in Istanbul*, 26 June 2011, <http://www.kurdish-info.eu/News-sid-Demonstration-by-Block-deputies-attacked-in-Istanbul-17110.html>, accessed 30 June 2011

due to videos which the Turkish authorities regarded as insulting to Atatürk. The internet freedom NGO, Engelliweb, reportedly found that by 31 October 2010, the number of blocked sites substantially increased to 6,457.<sup>108</sup>

## VI. VULNERABLE GROUPS

### Women

The European Commission observed “*some progress*” on women’s rights and gender equality in 2010, including a Constitutional amendment passed by the September 2010 referendum to permit the adoption of positive discrimination measures in favour of women. However, the position in practice remains a concern, with gender equality and violence against women still major challenges for the country. In terms of economic, social and cultural rights, the UN has recently concluded that women continue to be treated unequally from men.<sup>109</sup>

Various structural reforms and national action plans aimed at combating gender-based discrimination were commended by the UN Committee on the Elimination of Discrimination against Women (CEDAW).<sup>110</sup> These included the adoption of the Gender Equality National Action Plan and the establishment of the Parliamentary Commission on Equal

Opportunities for Men and Women, the latter being responsible for monitoring and informing Parliament of national and international developments on gender issues and providing opinions upon request on related draft laws.<sup>111</sup> More specifically with regards to gender-based violence, the CEDAW praised Turkey for the establishment of a Monitoring Committee for Violence against Women, the adoption of a National Action Plan for Combating Domestic Violence against Women, legislative reform (such as the adoption of a Prime Ministerial Circular on honour killings) and training and awareness programmes.<sup>112</sup>

Whilst the Turkish legal framework regarding women’s rights and gender equality is broadly in place, in terms of anti-gender discrimination provisions, Turkey’s domestic law is not fully aligned with international standards. Despite the fact that Article 10 of the Turkish Constitution enshrines a general anti-discrimination provision, the CEDAW has expressed its concern over the absence of a comprehensive anti-discrimination legal framework in Turkey.<sup>113</sup> The CEDAW has therefore invited Turkey to consider “*developing and adopting comprehensive anti-discrimination legislation, including a clear definition of discrimination against women and a clear prohibition of multiple forms of discrimination against women in all areas of life*”.<sup>114</sup> With regards to domestic violence, the CESCR is concerned that physical and psychological domestic violence are still not criminalised by the State.<sup>115</sup>

<sup>108</sup> US State Department Human Rights Report: Turkey 2010, 8 April 2011, <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>, accessed 30 June 2011

<sup>109</sup> CESCR, *Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant*, E/C.12/TUR/CO/1, 20 May 2011, paragraph 14

<sup>110</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations on Turkey’s Sixth Periodic Report*, CEDAW/C/TUR/CO/6, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-TUR-CO-6.pdf>, 30 June 2011

<sup>111</sup> *Ibid*, paragraphs 5-7

<sup>112</sup> *Ibid*

<sup>113</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations on Turkey’s Sixth Periodic Report*, CEDAW/C/TUR/CO/6, 30 July 2010, paragraph 10, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-TUR-CO-6.pdf>, 30 June 2011

<sup>114</sup> *Ibid*, paragraph 11

<sup>115</sup> CESCR, *Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant*, E/C.12/TUR/CO/1, 20 May 2011, paragraph 23

In practice, the situation in Turkey is far more concerning. A lack of coordination, insufficient resource allocation and lack of measurable goals meant that the Gender Equality National Action Plan failed to record significant progress.<sup>116</sup> Violence against women, which is a form of gender-based discrimination,<sup>117</sup> is a profound problem. The CESCR has expressed its “alarm” at the “very high incidence of violence against women”. The European Commission also noted an increase in honour killings in 2010.<sup>118</sup> The US State Department’s Human Rights Report on Turkey 2010 noted that due to penalties for honour killings, families sometimes pressurised girls to commit suicide instead.<sup>119</sup> A lack of data and statistics on honour killings in the rural areas of Turkey<sup>120</sup> may mean that the problem is actually greater than initially envisaged. KHRP’s shadow report to the Committee in 2010 found that ingrained cultural attitudes, male-dominated environments and non-compliance by law enforcement officials have all hindered the implementation of anti-gender violence reforms.<sup>121</sup> A lack of awareness of one’s rights, linguistic barriers<sup>122</sup> and reputational concerns<sup>123</sup> also contribute to

<sup>116</sup> Amnesty International, Annual Report 2011: Turkey, <http://www.amnesty.org/en/region/turkey/repor-t-2011#section-148-3>, accessed 29 June 2011

<sup>117</sup> ECtHR, Application No. 33401/02, *Opuz v Turkey*, 9 June 2009

<sup>118</sup> European Commission 2010 Progress Report on Turkey, page 26

<sup>119</sup> US State Department Human Rights Report: Turkey 2010, 8 April 2011, <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154455.htm>, accessed 30 June 2011

<sup>120</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations on Turkey’s Sixth Periodic Report*, CEDAW/C/TUR/CO/6, 30 July 2010, paragraph 25, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-TUR-CO-6.pdf>, 30 June 2011

<sup>121</sup> KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women*, May 2010, paragraph 13

<sup>122</sup> *Ibid*, paragraphs 21-22

<sup>123</sup> Kurdish Human Rights Project, *Human Rights in the Kurdish region of Turkey: Three Pressing Concerns, A Fact-Finding Mission Report*, August

the status-quo in this area. In the Kurdish areas, there is a worrying trend of physical, sexual and mental abuse and ill treatment of Kurdish women by Turkish state agents.<sup>124</sup>

With regards to gender equality more generally, women continued to be under-represented in politics and public life.<sup>125</sup> UN Women’s first comprehensive report, *In Pursuit of Justice*, found that 13 per cent of Turkey’s judges in supreme, constitutional and regional courts are women, compared with 67 per cent in Serbia (being the highest out of those countries surveyed), and 0 per cent in Andorra, Cameroon, Cape Verde, Hungary, Malaysia, Pakistan and Peru (being the lowest out of those countries surveyed).<sup>126</sup> In Turkey, only 8 per cent of ministerial positions in 2010 were filled by women, compared with 28 per cent in Poland (being the highest in Central and Eastern Europe and Central Asia) and 0 per cent in Hungary and Bosnia and Herzegovina (being the lowest in Central and Eastern Europe and Central Asia).<sup>127</sup> Further, in 2011, women made up a 9 per cent share of the Turkish Parliament, compared with 7 per cent in Georgia (the lowest in Central and Eastern Europe and Central Asia) and 33 per cent in The Former Yugoslav Republic of Macedonia (the highest in Central and Eastern Europe and Central Asia).<sup>128</sup>

2009, page 38

<sup>124</sup> Margaret Owen, *Women’s Rights in Turkey and Kurdish Cultural Rights*. European Union Turkey Civic Commission, 2005, <http://www.eutcc.org/articles/8/20/document215.ehtml>, accessed 12 May 2010

<sup>125</sup> European Commission 2010 Progress Report on Turkey, page 25; Committee on the Elimination of Discrimination against Women, *Concluding Observations on Turkey’s Sixth Periodic Report*, CEDAW/C/TUR/CO/6, 30 July 2010, paragraph 28,

<http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-TUR-CO-6.pdf>, 30 June 2011

<sup>126</sup> UN Women, *2011-2012 Progress of the World’s Women: In Pursuit of Justice*, page 61, <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf>, accessed 7 July 2011

<sup>127</sup> *Ibid*, page 122

<sup>128</sup> *Ibid*

In employment, the CESCR observed that working conditions for women have recently deteriorated, forcing many of them to seek employment in the “informal economy”.<sup>129</sup> It further observed a wide wage gap between men and women which domestic labour inspections had neither identified nor reported.<sup>130</sup>

There remains a disparity between boys and girls at all levels of education and a persistence of stereotyped educational choices. Minority groups, particularly Kurdish females and women in rural areas, continue to face educational disadvantages.<sup>131</sup> According to UN Women, the average rate of boys and girls in secondary school attendance is just under 70 per cent, compared with just under 80 per cent for urban rich girls and just under 50 per cent for rural poor girls.<sup>132</sup> In the labour market, women’s employment rate was a disappointingly low 22.3 per cent in 2009.<sup>133</sup>

### Children

Over the last few years, KHRP has observed a general failure and apathy by the Turkish authorities in terms of guaranteeing children the extra legal protections they are guaranteed under international human rights law, particularly the Convention on the Rights of the Child (CRC). In particular, KHRP has raised concerns in relation to: access to education; street children and child labour; gender-based discrimination;

<sup>129</sup> CESCR, *Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant*, E/C.12/TUR/CO/1, 20 May 2011, paragraph 14

<sup>130</sup> *Ibid*, paragraph 18

<sup>131</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations on Turkey’s Sixth Periodic Report*, CEDAW/C/TUR/CO/6, 30 July 2010, paragraph 30, <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-TUR-CO-6.pdf>, 30 June 2011

<sup>132</sup> UN Women, *2011-2012 Progress of the World’s Women: In Pursuit of Justice*, page 109, <http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf>, accessed 7 July 2011

<sup>133</sup> *Ibid*, paragraph 32

violence in the home; and juvenile justice.<sup>134</sup>

A positive step was the September 2010 Constitutional reforms, which permitted the adoption of positive discrimination measures in favour of children. On the other hand, until recently, minors participating in demonstrations, particularly in the south-east of Turkey, faced anti-terror charges, often merely for attending demonstrations or throwing stones. Prison sentences for such crimes ranged from four to seven and a half years,<sup>135</sup> with the children often being held in adult police custody and subjected to unofficial interrogation by police in the absence of lawyers,<sup>136</sup> in breach of international human rights standards including those set out in the CRC. Although legislative amendments were made which meant children no longer faced similar charges in such circumstances, there have been delays in the release of previously detained minors. Unfortunately, similar amendments have not been made to the Turkish Penal Code, meaning that children continue to be prosecuted in practice for similar acts under the Turkish Penal Code.<sup>137</sup>

With regards to economic, social and cultural rights, the CESCR reported that domestic legislation on the minimum employment age and authorised work for children falls short of international

<sup>134</sup> KHRP, *The Situation of Kurdish Children in Turkey: Fact-Finding Mission and Research Report*, January 2010. See also, KHRP, *A Children’s Choir Face Terrorism Charges: Juveniles In The Turkish Justice System - Trial Observation Report*, September 2008, page 35

<sup>135</sup> Human Rights Watch, *Protesting as a Terrorist Offense: The Arbitrary Use of Terrorism Laws to Prosecute and Incarcerate Demonstrators in Turkey*, 1 November 2010, page 2

<sup>136</sup> KHRP, *Briefing to the CAT for its consideration of Turkey’s Third Periodic Report under the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, October 2010, paragraph 13

<sup>137</sup> Kurd Net, *Demonstrating Kurdish Children Still Facing Prison Sentences In Turkey*, 20 January 2011, <http://www.ekurd.net/mismas/articles/misc2011/1/turkey3118.htm>, accessed 4 July 2011

standards, with insufficient action being taken to combat child labour prevailing in the agriculture and furniture industries.<sup>138</sup> More specifically with regards to minority groups, the CESCR noted that evictions and displacement of the Roma community have “seriously affected” the schooling of children.<sup>139</sup>

## VII. DEVELOPMENTAL ISSUES

Overall, there has been some modest progress in aligning Turkey’s physical infrastructure with EU standards.<sup>140</sup> The European Commission has reported that “*Turkey maintains a sufficient level of alignment with the *acquis* in the field of enterprise and industrial policy*”. However, there are significant gaps in Turkey’s infrastructure, partly due to the lack of investment and the failure to address the environmental, cultural and human rights impact of certain large-scale infrastructure projects.

Good progress was made in developing Turkey’s transport networks, oil pipelines and science and research policy, and some progress was recorded in the area of energy networks, but none in respect of telecommunications.<sup>141</sup>

In terms of the environment, although good progress was recorded in waste management, there was limited progress in industrial pollution control, risk management and water quality, very limited progress in climate change and no progress on nature protection.<sup>142</sup>

More specifically in the Kurdish region, as part of the South-East Anatolia Project (GAP),<sup>143</sup> investment in irrigation, road

transport, health and education has continued.<sup>144</sup> However, the Ilisu Dam project,<sup>145</sup> which the European Parliament had urged the Turkish government to cease until the European Commission presented its report on the consequences of the GAP,<sup>146</sup> has continued with local financial support. European funding was officially withdrawn in 2009 due to Turkey’s failure to comply with 150 ethical requirements (most notably, those relating to resettlement).<sup>147</sup>

The environmental, social and cultural damage that is and will continue to be inflicted by the Ilisu Dam project to the region and its inhabitants has been condemned by KHRP and its partners.<sup>148</sup> In 2009, KHRP reported that there have been cases of intimidation, harassment and illegal expropriation of land in the region.<sup>149</sup> It added that lacking any formal consultation with stakeholders and in the absence of resettlement plans and compensation packages,<sup>150</sup> the project also threatens to displace an estimated 85,000 people, the majority of which are Kurds,<sup>151</sup> denying them or hindering the ability to

<sup>138</sup> CESCR, *Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant*, E/C.12/TUR/CO/1, 20 May 2011, paragraph 25

<sup>139</sup> *Ibid*, paragraph 27

<sup>140</sup> European Commission 2010 Progress Report on Turkey, page 43

<sup>141</sup> *Ibid*, pages 73, 43 and 87

<sup>142</sup> *Ibid*, pages 89-90

<sup>143</sup> GAP is a regional development project in the provinces of Adiyaman, Batman, Diyarbakir, Gaziantep, Kilis, Siirt, Sanliurfa, Mardin, and Sirnak

<sup>144</sup> European Commission 2010 Progress Report on Turkey, page 34

<sup>145</sup> The Ilisu Dam is one of 22 dam projects in the GAP

<sup>146</sup> European Parliament, *Resolution on Turkey’s Progress Report 2009*, 10 February 2010, [http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/1E690E46004D36D6C22576C70042B105/\\$file/2009\\_progress\\_report\\_on\\_Turkey\\_en\\_2\\_.pdf](http://www.mfa.gov.cy/mfa/mfa2006.nsf/All/1E690E46004D36D6C22576C70042B105/$file/2009_progress_report_on_Turkey_en_2_.pdf)

<sup>147</sup> KHRP, *The Ilisu Dam Project: An Update*, 14 December 2009), page 2

<sup>148</sup> KHRP, *KHRP Protests Against the Ilisu Dam outside AKBANK’s Headquarters*, <http://www.khrp.org/khrp-news/537-khrp-protest-against-the-ilisu-dam-outside-akbanks-london-headquarters.html>, 15 March 2010

<sup>149</sup> KHRP, *The Impact of Large-scale Dam Construction on Regional Security in the Kurdish Regions of Turkey*, 21 March 2009

<sup>150</sup> *Ibid*

<sup>151</sup> KHRP, *KHRP Protests Against the Ilisu Dam outside AKBANK’s Headquarters*, <http://www.khrp.org/khrp-news/537-khrp-protest-against-the-ilisu-dam-outside-akbanks-london-headquarters.html>, 15 March 2010

enjoy fundamental rights such as the right to education, health and community services. Other catastrophic consequences include the imminent flooding of the ancient town of Hasankeyf, the destruction of unexplored archaeological sites and the Tigris River's richly diverse ecosystems and the severe reduction of water flow to Iraq and Syria, aggravating the delicate security situation in the area.

<sup>152</sup> Equally worryingly, however, are the doubts over the sincerity of the project, the driving force behind which is believed to be the weakening of Kurdish identity and a military victory in the regional conflict.<sup>153</sup>

The CESCR echoes EU concerns over the impact of the Ilisu Dam. In its concluding observations on Turkey's progress report, the CESCR expressed its deep concern at the potential impact of the several dam projects on economic, social and cultural rights, "*especially with regards to forced evictions, resettlements, displacement, and compensation of people affected as well as the environmental and cultural impacts of the construction of these dams*".<sup>154</sup>

Turkey is failing to address calls from the international community for it to revise its plans. The Committee on Economic, Social and Cultural Rights has urged Turkey "*to take account of a human-rights based approach in its infrastructure development projects, especially dams, and to undertake a complete review of its legislation and regulations on evictions, resettlement and compensation of the people affected by these construction projects, especially the Ilisu dam, in line with the Committee's general comment No. 7 on forced evictions*".<sup>155</sup> The

<sup>152</sup> *Ibid*

<sup>153</sup> KHRP, *The Impact of Large-scale Dam Construction on Regional Security in the Kurdish Regions of Turkey*, 21 March 2009, page 1

<sup>154</sup> CESCR, *Consideration of Reports Submitted by State Parties under Articles 16 and 17 of the Covenant*, E/C.12/TUR/CO/1, 20 May 2011, paragraph 26

<sup>155</sup> *Ibid*

European Parliament has raised similar concerns and has urged Turkey to "*consider the sustainability and environmental consequences of its plans for new water and energy infrastructure under the South-East Anatolia Project (GAP), which threaten to destroy the environment and the unique landscape of many regions, and, in particular, the project's impact on neighbouring Iraq*". In particular, the European Parliament has stressed the need to "*ensure that the draft law on nature protection and biodiversity is amended so as to preserve the cultural and archaeological heritage in full accordance with European standards and to allocate responsibility for nature protection clearly within the executive*".<sup>156</sup>

Privately-funded commercial infrastructure projects pose similar problems. For example, in March 2011, the UK National Contact Point<sup>157</sup> found that the BP-led consortium responsible for the controversial Baku-Tbilisi-Ceyhan oil pipeline breached the OECD Guidelines for Multinational Companies<sup>158</sup> by (i) "*[failing] to identify specific complaints of intimidation against affected communities by local security forces where the information was received outside the formal grievance and monitoring channels*" and by (ii) "*not taking adequate steps in response to such complaints, [failing] to adequately safeguard against the risk of local partners undermining the overall consultation and grievance process*".<sup>159</sup>

<sup>156</sup> European Parliament, *Resolution of 9 March 2011, on Turkey's 2010 Progress Report*, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0090+0+DOC+XML+V0//EN>

<sup>157</sup> The UK National Contact Point is part of the UK Government's Department for Business Innovation and Skills and is responsible for raising awareness of the OECD Guidelines with businesses, trade unions and non-governmental organisations and addressing complaints

<sup>158</sup> The Guidelines are voluntary principles and standards for businesses

<sup>159</sup> UN National Contact Point for the OECD Guidelines for Multinational Enterprises, *Revised Final Statement on BTC Pipeline*, 22 February 2011, <http://www.bis.gov.uk/assets/biscore/business->

For instance, KHRP has brought a case with the ECtHR under several Articles of the ECHR, including Article 3, on behalf of local human rights defender, Ferhat Kaya, who was detained and allegedly tortured by the paramilitary police for insisting on fair compensation.<sup>160</sup> A judgment is expected in the near future.

## VIII. THE SECURITY SITUATION IN THE KURDISH REGION OF TURKEY

The security situation in the Kurdish region of Turkey remains fragile, particularly after the June 2011 general election. The rise of civil disobedience by pro-Kurdish supporters<sup>161</sup> demanding a solution to the “Kurdish question” and the parallel clampdown by authorities on Kurdish activism<sup>162</sup>, have created a climate of tension, not only in the Kurdish region of Turkey but in central Turkey as well.<sup>163</sup> The post-election debate has been

[sectors/docs/r/11-766-revised-final-statement-ncp-btc.pdf](#), accessed 4 July 2011

<sup>160</sup> KHRP, *BP Violating Human Rights Rules, says UK Government*, 9 March 2011, <http://www.khrp.org/latest-news/643-bp-violating-human-rights-rules-says-uk-government.html>

<sup>161</sup> Hurriyet Daily News, *Civil Disobedience Call for Kurdish Issue*, 23 March 2011, <http://www.hurriyetdailynews.com/n.php?n=turkey8217s-leading-kurdish-platforms-declare-civil-disobedience-actions-2011-03-23>, accessed 4 July 2011; Helen Pidd, *The Guardian*, *Kurds Threaten Turkish Government With Civil Disobedience*, 9 June 2011, <http://www.guardian.co.uk/world/2011/jun/09/turkish-kurds-election-civil-disobedience>, accessed 4 July 2011

<sup>162</sup> Rojhelat, *Turkish Police Detained 2506 Kurds in 50 Days*, 12 May 2011, <http://www.rojhelat.info/english/kurdistan/1155-turkish-police-detained-2506-kurds-in-50-days>, 4 July 2011; Kurdish Info, *Police Assaulted All Democratic Solution Tents Pitched Across Turkey*, 26 April 2011, <http://www.zimbio.com/World+Politics/articles/jnrqu3MQ1zR/Police+assaulted+Democratic+Soluti on+Tents>, accessed 4 July 2011

<sup>163</sup> Kurd Net, *Turkish Police Attack Demonstrators in Istanbul Protesting the Decision to Exclude Kurdish MP Hatip Dicle*, 27 June 2011, <http://www.ekurd.net/mismas/articles/misc2011/6/turkey3274.htm>, accessed 4 July 2011

dominated by the YSK’s decision to strip Kurdish deputy, Hatip Dicle, of his parliamentary mandate. There are reports of the Turkish authorities responding violently to the resulting protests by pro-Kurdish supporters.<sup>164</sup> The security of the Kurdish region in Turkey, and even Turkey as a whole, therefore largely depend on whether the AKP recognises the Kurdish question and translates its hints of reform into practice.

In addition to the civil unrest, attacks by the PKK and armed operations by the Turkish military continue, having increased strongly in the summer of 2010, including in major urban areas.<sup>165</sup> On 26 May 2011, a bomb attack aimed at Prime Minister Erdoğan’s election convoy resulted in one death.<sup>166</sup> The PKK’s military wing, the Kurdish People’s Defence Force (HPG), has claimed responsibility for the attack.<sup>167</sup> At the same time, Turkish forces, in conjunction with the Iranian military, continue to launch cross-border attacks on suspected terrorist hideouts in Northern Iraq.<sup>168</sup> However, despite the unavoidable loss of civilian property and livestock, the displacement of complete villages<sup>169</sup> and the breach of international law, KHRP has observed that these actions have triggered little reaction by the EU Member States.<sup>170</sup>

<sup>164</sup> *Ibid*

<sup>165</sup> European Commission 2010 Progress Report on Turkey, page 34

<sup>166</sup> Mark Bentley for Bloomberg, *One Policeman Dead After Gun Attack on Erdoğan Convoy*, *NTV Says*, 4 May 2011, <http://www.bloomberg.com/news/2011-05-04/one-policeman-dead-after-gun-attack-on-erdogan-convoy-ntv-says.html>, 4 July 2011

<sup>167</sup> Firat News Agency, *PKK Claims Responsibility for Attack on Erdoğan Convoy*, 6 May 2011, <http://en.firatnews.com/index.php?rupel=article&nucelID=2137>, accessed 4 July 2011

<sup>168</sup> European Commission 2010 Progress Report on Turkey, page 34

<sup>169</sup> Over 1000 families in Iraq have been displaced in 2010 alone due to aerial bombardments.

<sup>170</sup> KHRP, *Review and Progress of EU Accession*, Speech Delivered by KHRP Executive Director Kerim Yıldız at the Fifth International Conference on the EU, Turkey and the Kurds, European Parliament, Brussels, 28-29 January 2009, pages 1-2

Whilst strongly condemning the continuing the armed opposition's violence, the European Parliament has called on the Turkish Government to, "[address] efficiently the problems of persons displaced from their home regions as a consequence of, inter alia, the long conflict."<sup>171</sup> This confirms the serious concerns raised by KHRP regarding the estimated 3 to 3.5 million internally displaced persons (IDPs) in Turkey who are unable to return home due to the unstable security situation, lack of basic infrastructure, limited employment opportunities<sup>172</sup> and threats of violence from village guards.<sup>173</sup> In a letter to the Turkish Minister of Interior on 8 June 2010, the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, reported complaints of village guards using their weapons for illegal purposes and has requested information as to whether village guards are included in any proposals for an independent police complaints mechanism.<sup>174</sup> However, the European Commission noted that no steps were being taken to address the village guard system and that Turkey needed to "step up efforts" to address the needs of IDPs.<sup>175</sup>

Finally, landmines remain a security concern for both military personnel and civilians. Turkey has undertaken to destroy all anti-personnel mines in mined areas no later than 1 March 2014.<sup>176</sup>

<sup>171</sup> European Parliament, *Resolution of 9 March 2011, on Turkey's 2010 Progress Report*, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0090+0+DOC+XML+V0//EN>

<sup>172</sup> KHRP, *Review and Progress of EU Accession*, Speech Delivered by KHRP Executive Director Kerim Yıldız at the Fifth International Conference on the EU, Turkey and the Kurds, European Parliament, Brussels, 28-29 January 2009, page 3

<sup>173</sup> For a recent overview of this issue, see generally: KHRP, *Turkey's Village Guard System*, 22 March 2011

<sup>174</sup> Council of Europe Commissioner for Human Rights, Letter to Minister of Interior of Republic of Turkey, CommHR/SG/sf 132-201, 8 June 2010

<sup>175</sup> European Commission 2010 Progress Report on Turkey, pages 35 – 36

<sup>176</sup> *Ibid*, page 36

## IX. CONCLUSION AND RECOMMENDATIONS

The EU accession process provides a strong incentive for Turkey to strengthen its democratic and human rights framework and practice. However, the pace of reforms continues to be the key concern in moving forward. There have been welcome initial steps to improve its human rights record, but these address surface issues that require substantial policies and legislation to improve. Turkey must step up its efforts in meeting relevant conditions and to build upon the new political reform, which has begun.

KHRP recommends that the Turkish Government take the following steps in order to work towards achieving the political elements of the Copenhagen Criteria:

### **In respect of the continuing use of torture and ill-treatment:**

- Complete the necessary formalities to formally ratify OPCAT under international law;
- Cooperate promptly with the Committee of Ministers of the Council of Europe regarding the progress of implementing outstanding ECtHR judgments on Article 3 of the ECHR;
- Take prompt and efficient measures to fully implement outstanding ECtHR judgments under Article 4 of the ECHR;
- Consult, develop and implement comprehensive training for state officials and the judiciary on international human rights standards relating to torture and inhuman/degrading treatment prevention;
- Conduct research into and keep accurate, up-to-date records of all allegations of torture and inhuman/degrading treatment to

ensure that resources are being directed to the areas which are most in need;

- Develop an independent, impartial and effective monitoring system to monitor and supervise allegations of torture and to act as a complaints-handling mechanism; and
- Conduct a thorough consultation of the system relating to the provision of medical forensic evidence, involving NGOs and civil society, to develop an impartial, efficient and independent alternative.

#### **In respect of minority rights issues:**

- To bring its domestic legislation in line with international human rights obligations and standards, in particular:
  - Retract reservations from the ICESCR and other relevant conventions which require it to interpret its international obligations in accordance with the Treaty of Lausanne and its Constitution;
  - Recognise all minority groups within its jurisdiction, entrenching their recognition in its Constitution such that the human rights guarantees apply to them;
  - Ratify the Council of Europe Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages and Protocol 12 to the ECHR on non-discrimination;
  - Continue to take steps to legalise, facilitate and guarantee in practice the use of minority languages, particularly in the areas of education, media and politics, to encourage full participation in society and the enjoyment of all human rights by minority groups;
- Keep up-to-date and accurate records of the literacy and

employment rates in the Kurdish region and rural areas of Turkey so as to ensure the appropriate distribution of resources to encourage access to education and employment by minority groups;

- Consult with all stakeholders regarding necessary constitutional steps to fully recognise and address the Kurdish question; and
- Comprehensive training and monitoring of state officials and judiciary in applying anti-terror laws in accordance with international standards.

#### **In respect of democracy, the rule of law and human rights due diligence obligations:**

- Consult with stakeholders, including NGOs and civil society and use findings to develop a new Turkish Constitution in line with EU standards;
- Amend Articles 68 and 69 of the Turkish Constitution and the relevant provisions of the Law on Political Parties so that they are in line with international standards;
- Remove the major hurdles to developing a pluralistic democracy and multi-party politics, including the 10 percent electoral threshold;
- Consult and develop an independent, impartial and efficient judiciary;
- Pass legislation to regulate and monitor the activities of the security forces and ensure effective remedies against abuse and restrictions on freedom of expression;
- Provide comprehensive training for state officials and the judiciary in fair trial guarantees under international human rights law.

#### **In respect of freedom of expression:**

- Amend the domestic legal framework to bring it in line with the ECHR and ECtHR jurisprudence, including a complete repeal of Article

301 of the Turkish Penal Code and redrafting of anti-terror provisions;

- Comprehensive training for state officials and judiciary on international standards regarding the right to freedom of expression and permissible restrictions; and
- Develop legislation and policy to allow a free, multi-lingual media.

#### **In respect of vulnerable groups:**

- Develop comprehensive anti-discrimination legal framework in all areas of life;
- Maintain detailed, accurate and up-to-date records of allegations of honour crimes to ensure the appropriate distribution of resources;
- Develop education curricula incorporating gender equality issues to challenge discriminatory traditions and raise awareness of rights of women and minors;
- Training for state officials and judiciary on diligent investigations into allegations of abuse and the implementation of protective measures for women in practice;
- Establish an independent, impartial and efficient gender equality body to monitor gender equality issues and comment on related draft legislation;
- Amend the Turkish Penal Code so as to guarantee rights to minors in accordance with anti-terror legislation; and
- Ensure the release and rehabilitation of all minors who continue to be held under draconian anti-terror legislation.

#### **In respect of developmental rights:**

- **Prior to any large-scale infrastructure development projects, undertake comprehensive assessments of the human rights and environmental impact on affected areas, particularly the effect on minority populations;**

- **Develop a compulsory regulatory framework for non-State actors** in connection with development projects to ensure that human rights abuses are prevented, investigated, prosecuted and punished in line with international standards and guidelines;
- Revise the GAP in consultation with stakeholders to ensure respect for fundamental rights in balance with economic needs; and
- Develop and implement appropriate compensation packages and resettlement arrangements for displaced or affected parties.

#### **In respect of the security situation in Turkey:**

- Cease cross-border military operations and ensure appropriate compensation for affected villages;
- Consult with all stakeholders to recognise the Kurdish question and develop a negotiated, practical and peaceful solution to the issue;
- Abolish the village guard system;
- Develop a national policy regarding the rehabilitation of IDPs and training for state officials in its implementation; and
- Keep accurate and up-to-date records of IDPs to ensure the appropriate distribution of resources for their rehabilitation.