

Human Rights Violations Against Kurds in Turkey

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

INTRODUCTION TO THE KURDISH HUMAN RIGHTS PROJECT

In 1992, KHRP was established in response to the growing need for an independent, non-governmental human rights organisation focusing on the rights of all persons in the Kurdish regions of Turkey, Iraq, Iran, Syria and elsewhere, irrespective of race, religion, sex, political persuasion or other belief or opinion.

These states, encompassing the Kurdish regions and forming the crossroads between East and West, are bound by numerous international laws regarding the respect of human rights. Yet, they have been the scenes of some of the worst human rights violations in the twentieth century and onwards; often combined with the failure of the international community to bring governments in the regions to account for their human rights abuses.

KHRP was born out of a desire to utilise the international mechanisms available to victims of human rights violations; to make accountable the perpetrators and prevent further abuses in future.

Today, KHRP has earned international recognition for its tireless work to promote and protect in the regions. Its victories have established precedents with an unprecedented reach, securing justice and redress for past abuses and preventing further abuses from recurring in future.

KHRP employs a team of twelve permanent members of staff in England and Turkey. Its UK office is located in central London, where it is not subject to the intimidation and censorship faced by NGOs in the regions. KHRP is both a registered charity and limited company, and is funded through charitable trusts and donations.

BACKGROUND TO REPORT

KHRP continues to make submissions to the Organisation for Security and Co-operation in Europe (OSCE), and actively participates in the OSCE Human Dimension Mechanisms in order to stress its concern that some member states, in particular Turkey, are not fulfilling their OSCE obligations and adhering to internationally accepted human rights standards.

Since the foundation of the Turkish Republic in 1923, Turkey has not recognised the existence of a separate Kurdish ethnic community within its borders. Over 20 million Kurds presently live in Turkey, who for decades have been subjected to economic disadvantage and human rights violations which bear the hallmarks of systematic persecution intent on destroying Kurdish identity. In 2004, the European Court of Human Rights found at least one violation of the European Convention on Human Rights in 154 cases against Turkey, representing over a fifth of the cases considered by the Court and the highest number of violations by country. Most of these cases were brought by Kurds.

On 17 December 2004, the EU made the historic decision to open its doors to Turkey as a potential fellow member state. Turkey's future is now unequivocally grounded in European structures and institutions, with formal EU accession negotiations set to commence on 3 October 2005. Heralded as the best opportunity in nearly a century to end Kurdish oppression, the EU accession process seemed to offer the Kurds a secure future where their identity was recognised and their rights protected. The developments of 2004 and 2005 have therefore provided a vital opportunity to examine the implementation of the wealth of recent reforms, and determine Turkey's commitment to the protection of human rights.

This report focuses on the extent to which Turkey has fulfilled the commitments it has entered into as an OSCE state with regard to national minorities, rights of human rights defenders, the prevention of torture, and IDPs. It also makes recommendations for enhancing Turkey's compliance in the future and suggestions as to where OSCE initiatives may be used to provide support and assistance to achieve such objectives, including potential international intervention with a view to resolving the Kurdish Question.

KHRP urges that the member states of the OSCE give their most urgent consideration to the situation faced by Kurds in Turkey and assist the Turkish Government to end these human rights violations.

SUMMARY OF RECOMMENDATIONS

The KHRP reiterates its recommendations to all the participating States of the OSCE to invoke the relevant OSCE Human Dimension Mechanisms and conflict prevention mechanisms in relation to the situation of the Kurds. KHRP urges the OSCE to:

1. Ensure that Turkey as a participating state in the OSCE fulfils its undertakings to uphold the rights and freedoms of all its citizens including the civil, political, and cultural rights of the Kurdish minority as set out in the OSCE commitments, including the provisions of the Copenhagen Document;
2. Authorize the High Commissioner for Minorities of the OSCE to examine the situation of the Kurdish minorities in Turkey;
3. Request information from Turkey on its human rights record, in particular in relation to internally displaced persons (IDPs), and to act and to establish a bilateral forum with Turkey on these issues

NATIONAL MINORITIES

Background

Definition of Minorities in Turkey

The Turkish Government has been resistant to accepting Kurds as a national minority within Turkey. This seems to have stemmed from the Kurdish people's definitional exclusion from section 3 of the post World War I Treaty of Lausanne (1923), which provides protection for minority groups within Turkey. Whilst Article 44 of the Treaty reinforces that such issues are the subject of international concern, are placed under the guarantee of the League of Nations, and cannot be modified without the consent of the majority of the Council of the League of Nations, the definition of minority groups throughout these provisions exclusively refers to the non-Muslim nationals of Turkey. As the majority of Kurds follow Sunni Islam¹, they are excluded from protection under this treaty. This has occurred despite the fact that Kurds have inhabited the area that is now modern-day Turkey for more than 2000 years and have acquired a strong sense of communal identity in the age of the Ottoman Empire².

International powers recognised the Kurdish people as a distinct national group in Turkey in the years following World War I. In fact Article 62 of the Treaty of Sevres (1920), signed between Turkey and the Principle Allied Powers, went so far as to envisage a Commission drafting "a scheme of local autonomy for the predominantly Kurdish areas lying southeast of the Euphrates, south of the southern boundary of Armenia as it may be hereafter determined, and north of the frontiers of Turkey with Syria and Mesopotamia". The establishment of the Republic of Turkey in 1923 however meant that this treaty was not ratified and instead the Treaty of Lausanne was concluded between Turkey and the Allies later in this year.

Over the past two decades, legal instruments have been developed to protect the rights of minority groups internationally. These instruments do not need to be canvassed here. However, the evolving definition as to what constitutes a minority group is of relevance for OSCE consideration.

In 1979 Francesco Capotorti, Special Rapporteur of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities, stated that a minority is: "a group that is numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing to those of the rest of the

¹ McDowall, D. *A Modern History of the Kurds* (I. B Tauris: New York), 2000, pp.1-2.

² Ibid. McDowall estimated approximately 75% of Kurds follow Sunni Islam

population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language”³.

The Parliamentary Assembly of the Council of Europe has issued a similar definition which classes minority groups as those which: reside within the territory of the State and are citizens thereof, maintain longstanding ties with the State, display distinctive ethnic, cultural, religious or linguistic characteristics, are sufficiently representative, and are motivated by a concern to preserve together that which constitutes their common identity⁴.

The definition of national minorities developed thus provides international and regional direction that the Kurdish people can be classed as a minority group of Turkey and therefore should be considered as such for the purpose of assessing Turkey’s fulfilment of OSCE commitments.

Turkish National Law and Minorities

Independent of issues surrounding the definition of “minority”, Turkish unification laws introduced under Atatürk and developed thereafter have provided little scope for the acknowledgment of minority rights.

The Turkish Constitution of 1982 (and subsequently amended in 2001) also provides contradictory guidance on the rights of minority groups within the state. Whilst Article 2 states that “the Republic of Turkey is a democratic, secular, and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice, respecting human rights...”, the preamble of the Constitution which informs the articles states “no protection shall be accorded to an activity contrary to Turkish national interests, the principle of the indivisibility of the existence of Turkey with its state and territory, Turkish historical and moral values or the nationalism, principles, reforms and modernism of Atatürk and that, as required by the principle of secularism, there shall be no interference whatsoever by sacred religious feelings in state affairs and politics”⁵.

The European Commission’s October 2004 report on Turkey’s progress towards accession describes the perpetration of “numerous” cases of torture and ill-treatment, the “numerous provisions in different laws which can be interpreted to unduly restrict freedom of expression”, the prosecution of non-violent opinion, the judicial harassment of human rights defenders, the serious problem of violence against

³ United Nations Document E/Cn.4/Sub.2/384/Add.1-7.

⁴ Parliamentary Council of Europe Recommendation 1202 (1993), www.assembly.coe.int.

⁵ Constitution of the Republic of Turkey, www.mfa.govt.tr.

women, restrictions on the exercise of cultural rights, and the critical situation of the internally displaced.⁶

The OSCE is urged to consider therefore the balance between the Turkish national constitutional framework which places an emphasis on political unification, and the honouring of human rights commitments, in particular the rights of minority peoples within the state.

Use of the Kurdish Language

The most distinctive feature of Kurdish identity that has been traditionally suppressed and which has caused conflict within Turkey has been the use of the Kurdish language as a means of expression.

The Treaty of Lausanne signed between Turkey and the Allies in 1923 provided for the free use of language for citizens of Turkey. The treaty guaranteed that the Turkish government would “accord to all inhabitants of Turkey full and complete protection of their life and liberty, without distinction of birth nationality, language, race and religion” (Article 38.1), place no restrictions on “the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings” (Article 39.4), and that “notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech⁷” (Article 39.5).

In 1928, the Law on the Adoption and Application of the Turkish Alphabet was introduced which dictated that state and private organisations’ written correspondence, notices, publicity material and publications be in Turkish. From 1 January 1929, it became illegal to write Turkish using Arabic script⁸. In effect this has meant that the Kurdish alphabet has not been able to be utilised in written works. Further to these restrictions, the Surname Regulation of 1934 was used to prohibit the registration of children under Kurdish names and an amendment made to the Provincial Administration Law in 1959 provided for non-Turkish village names to be changed⁹.

Spoken Kurdish also began to be limited at this time with the Law Concerning Fundamental Provisions on Elections and Voter Registries permitting only the use of the Turkish language for election propaganda or propaganda disseminated on radio and television. The assumed state control of

⁶ 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,

⁷ Yildiz, K. and Fryer G., *The Kurds: Culture and Language Rights*, KHRP, August 2004, p.19.

⁸ *ibid.*, p. 22.

⁹ *ibid.*, p. 23.

broadcasting in 1964 and creation of the Turkish Radio and Television Corporation also excluded Kurdish broadcasting¹⁰.

The Constitution of 1982 then enshrined Turkish as the official language of Turkey and various provisions severely restricted citizens' ability to acquire and use the Kurdish language. Article 28, for example, stated that "publication shall not be made in any language prohibited by law", whilst Article 42 stated that "no language other than Turkish shall be taught as a mother tongue to Turkish citizens at any training or education institutions". Legislation passed thereafter further reduced linguistic freedom. The Law on Publications in Languages other than Turkish 1983 for example forbade the use of languages other than the first official language of states recognised by Turkey for the expression, dissemination and publication of opinions¹¹.

However, the recognition of Turkey as a potential European Union candidate in 1999 created the need for Turkey to review such legislation and constitutional provisions. Progress has been slow with constitutional changes in 2001 not materially affecting minority protection. Most notable of the legislative reforms that followed in 2002 and 2003 and which impact upon the ability of Kurds to enjoy their language and culture was the sixth reform package, which allowed for private and public radio and television broadcasting in languages and dialects used by Turkish citizens in their daily lives¹², and the seventh reform package which allowed for the learning of different languages and dialects used traditionally by Turkish citizens to be undertaken at the facilities of existing language courses. In 2004, constitutional reforms amended Article 30, which pertains to the Protection of Printing Facilities, but which does not affect linguistic rights.

These restrictive laws and subsequent reforms construct the context for assessing Turkey's performance over the past year in relation to its protection and promotion of minority rights, in particular those of the Kurdish people.

OSCE Commitments

General

The rights of national minorities will be relevant to several sections of this report, including the section on human rights defenders, which includes freedom of expression and freedom of association. This section will examine in particular the commitments made by OSCE states to ensure that the distinct

¹⁰ *ibid.*, p. 26

¹¹ *ibid.*, p. 32.

¹² European Commission, Regular Report on Turkey's Progress Towards Accession 2003, www.europa.eu.int/comm/enlargement/report_2003, p. 37.

identity of minority groups is preserved both through allowing minority cultures to maintain their language and culture, and through states pro-actively protecting their distinctive identity.

The most extensive protections accorded to minorities by OSCE states are contained in the Copenhagen Document 1990 (Paragraphs 30 to 40.7). Some of the significant overarching commitments include:

- “Persons belonging to national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality of the law” (from *Paragraph 31*)
- “Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic, or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will” (from *Paragraph 32*).
- “Participating States will protect the ethnic, cultural, linguistic, and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organisations or associations of such minorities, in accordance with the decision-making procedures of each State” (from *Paragraph 33*)
- “Participating States will endeavour to ensure that persons belonging to national minorities, notwithstanding the need to learn the official language or languages of the State concerned, have adequate opportunities for instruction of their mother tongue or in their mother tongue, as well as, wherever possible and necessary, for its use before public authorities, in conformity with applicable national legislation’ (from *Paragraph 34*)
- “Participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities” (from *Paragraph 35*)

Rights of Children of Minority Groups

The OSCE has made particular commitments with regard to the protection of the human rights of children. As the identity of children of minority groups is likely to be damaged by state restrictions on

the expression of their culture and language and upon education, relevant commitments have also been recorded here.

OSCE states have affirmed the Convention on the Rights of the Child as setting the appropriate standards for the rights of children in member states, and agreed in Paragraph 13 of the Copenhagen Document 1990 to recognise such an international agreement in domestic legislation once ratified. It should be noted that Turkey ratified this Convention in 1995.

Some key provisions of the Convention on the Rights of the Child are:

- Article 7(1) provides that a child “shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents”.
- Article 8(1) provides that “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference”.
- Article 29 provides that the education of the child shall be directed to: “the development of the child's personality, talents and mental and physical abilities to their fullest potential; the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; and the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own”.
- Article 30 provides that “in those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language”

Rights to Utilise Minority Languages

The OSCE High Commissioner for National Minorities commissioned the development of guidelines regarding the linguistic rights of minority groups building upon OSCE obligations and United Nations

treaties. These guidelines, which were produced in 1998, assist to describe the standards that participating states should meet¹³.

Of particular note to the situation of the Kurds in Turkey are the recommendations concerning the use of names and the official use of minority languages in regions inhabited by significant numbers of a minority group. The recommendations state for example that persons belonging to national minorities have the right to use their personal names in their own language according to their own traditions and linguistic systems, and that these shall be given official recognition and be used by the public authorities. With regard to regions inhabited by significant numbers of a minority group, recommendations are made for the provision of local street and place names, the provision of broadcasting time commensurate with the numerical size of the population, the right to receive civil documents in the language of the national minority concerned, the right of members of a minority group to express themselves in their own language in judicial proceedings, the ability to communicate with administrative authorities in the minority language and the ability for elected members of regional and local governmental bodies to use their minority language during official activities.

In addition to these recommendations, a panel of experts commissioned by the OSCE released guidelines for the use of minority languages in the broadcast media. These guidelines were presented by the High Commissioner on National Minorities in October 2003 and describe the standards that participating states should meet¹⁴. Emphasis was placed on the commitment of states to develop policies to address the use of minority languages in the broadcast media and provide active support through the provision of access to broadcasting, subsidies and capacity building for minority language broadcasting. The guidelines also stressed that regulations must pursue a legitimate aim and not restrict or have the effect of restricting broadcasting in minority languages.

Assessment 2004-2005

General

The European Commission's October 2004 report on Turkey's progress towards accession found that, in the area of freedom of expression, numerous provisions still exist in different laws that can be interpreted to unduly restrict freedom of expression.

¹³ These guidelines can be found at www.osce.org/hcnm/documents/recommendations/oslo/index.php.

¹⁴ These guidelines can be found at www.osce.org/documents/hcnm/2003/10/2242_en.pdf

The OSCE High Commissioner on National Minorities visited Turkey in January 2003. However, although KHRP has been informed that this dialogue is continuing,¹⁵ it has not produced any visible results at the time of writing.

Ability to preserve and develop ethnic, cultural, linguistic or religious identity

a) Broadcasting and publishing in Kurdish Language

Although recent reforms have changed Turkish laws to allow publishing and broadcasting in Kurdish, a KHRP fact-finding mission in July 2005 found that broadcasting is extremely difficult in practice. Further, while journalists may publish in Kurdish, they are regarded with suspicion and are frequently prosecuted in court for their activities.

The Second Harmonisation Law of 2002 removed the prohibition against “publishing in a language prohibited by law” from Article 16 of the Press Law. However, the new Turkish Penal Code – which came into force on 1 June 2005 – now acts as a hindrance to the media. Many of the old provisions that run contrary to freedom expression not only still exist, but instead of imposing fines, they now impose imprisonment.¹⁶ For example, Article 312 of the old Turkish Penal Code - now Article 216 of the new code - prohibits the instigation of “a part of the people having different social class, race, religion, sect or region to hatred or hostility against another part of the people in a way dangerous for the public security.” Under Article 312, punishment ranged from 3 months’ to 1 year’s imprisonment and a 50 - 500 lira fine, whilst Article 216 now provides for 3 years’ imprisonment, which is to be increased by half if the crime occurred through the media. In addition, although it now provides that court proceedings should be started against media organisations - rather than outright banning of them - this often causes economic difficulties for the organisation and makes it much harder for them to publish. And while the Second Harmonisation Law now allows for publishing in Kurdish, 12 journalists were investigated in 2005 because they used the letter “w” in their writings, a letter found in the Turkish alphabet but not in the Kurdish alphabet.

The Law on the Establishment and Broadcasting of Radio Stations and Television Channels passed in 1994 maintains the state’s control of broadcasting through the existence of the Supreme Board of Broadcasting (the RTÜK). This body has the power to issue and revoke licences and ensure that broadcasts comply with the general principles of the Constitution, fundamental rights and freedoms, national security, and general moral values under Article 4 of the Act. The Law was amended in 2002

¹⁵ According to Stuart Adam, Human Dimension Officer of UK Delegation to OSCE, as discussed at pre-OSCE HDIM meeting at FCO on 30 August 2005

¹⁶ Fact -Finding Mission report on Linguistic Rights in Turkey, 24-31 July 2005

to provide that “although Turkish will be the basis of television and radio, broadcasts in different languages and dialects by Turkish citizens in their daily lives is made possible.” In 2003, it was further modified to provide “in addition, public and private radio and television corporations may broadcast in different languages and dialects used traditionally by Turkish citizens in their daily lives.”

These amends held great promise for broadcasts in Kurdish. However, in practice, the implementation of these laws and the accompanying regulations has significantly limited their application. The July 2005 KHRP fact-finding mission found that broadcasts in Kurdish, or other languages, are allowed for only one 30-minute interval per week.¹⁷ In addition, this 30-minute broadcast is usually aired at 6am, an inconvenient time for a population of approximately 14 million.

Additionally, the grant of a broadcast licence in the first place is very difficult. On 23 March 2004, GUN-TV, an alternative news station based in Diyarbakir, applied to the Chamber of Permission for a broadcast licence in Kurdish. Although more than a year has passed, they have not received a response to their application, despite other national television stations being granted licences. The Government has told them they must wait until September 2005 for an answer. Further, the application process itself was difficult, with requirements that the application state the content of each program and who will present the program.¹⁸

GUN-TV has also experienced significant legal harassment since its founding in 2001, with more than 60 cases filed against them. Most of these cases have resulted in acquittals or fines, whilst others have had more serious implications. In September 2004, broadcast was suspended for one month because the ex-head of the Diyarbakir Municipality used the word “Kurdistan” in a live programme entitled “Local Authorities Debating”. In addition, the new Press Law requires that a programme which is found to be objectionable must be suspended and, in its place, the station must air a documentary on Turkish nationalism. According to the News Director, Deniz Gorduk, this has resulted in considerable self-censorship: everything they write is checked so that the station is not shutdown, and reports are carefully crafted to avoid direct criticism of the state. The police have also acted violently towards GUN-TV journalists and cameraman.

KHRP continues to maintain that much progress is necessary if Turkey is to meet the guidelines developed for OSCE states. Although reforms that allow for linguistic freedom are to be welcomed and encouraged, the actual implementation of these reforms is scattered and ineffectual in practice. Many of the supposedly liberal legislative amendments in fact place additional restrictions on linguistic

¹⁷ Fact -Finding Mission report on Linguistic Rights in Turkey, 24-31 July 2005

¹⁸ Interview with GUN-TV Director of News Deniz Gorduk, Director of Advertising Seyfetten Onder and Financial Officer Zelal Ozleyen, 26 July 2005

freedom. The punishment available under Article 216 of the new Penal Code, for example, is clearly discouraging publication in the Kurdish language, and should be withdrawn. The Turkish authorities also need to take practical steps towards allowing broadcasts in Kurdish, including granting Kurdish broadcast licences, rather than introducing paper reforms which are not applied in practice.

b) *Instruction in "mother tongue"*

The teaching of Kurdish remains banned from the state education system. Article 42 of the Constitution provides that "no language other than Turkish shall be taught as a mother tongue to Turkish citizens". This severely limits Turkey's ability to abide by its commitment under Paragraph 34 of the Copenhagen Document, which states "persons belonging to national minorities will have adequate opportunities for instruction of their mother tongue or in their mother tongue".

Seven Kurdish language centres opened after the seventh harmonisation package reforms, mostly in the southeast of Turkey. In August 2005, 2,027 people had enrolled in the courses, of which 1,056 had graduated.¹⁹ However, KHRP's July 2005 Fact Finding Mission found that since the courses are only allow for learning Kurdish, not learning *in* Kurdish, they are economically unfeasible and ineffectual, since most Kurdish people do not wish to pay to attend a course to learn a language they have known since birth but rather wish to be educated in it. As a result, severe under-enrolment in available courses was commonplace. Further, those who opened the courses faced a great deal of harassment from the government, and therefore, on 1 August 2005, announced that they were closing them, citing lack of interest, lack of government support, bureaucratic hurdles and economic difficulties.

Egitim Sen, a teachers' trade union made up of over 200,000 members, has suffered similar obstacles. Sensitive to the Kurdish issue, it included a commitment to mother tongue education in Article 2 of its constitution. On 27 June 2003, the Chief of General Staff of the Military sent a letter to the Ministry of Labour and Social Security concerning the Article, referring to Articles 3 and 42 of the Turkish Constitution, and stating that Egitim Sen's constitutional commitment was illegal under the Turkish Constitution. The letter finished with "Therefore we request you to take necessary steps to correct this constitution." This information was subsequently passed by the Ankara Governor's Office to the public prosecutor, following which an official investigation into Egitim Sen began.

In addition, the Supreme Court recently overruled a lower court's ruling that Egitim Sen's constitution was not in breach of the Turkish Constitution's Article 42 by including the instruction in mother tongue

¹⁹ "Kurdish Language Centers Close in Turkey, citing lack of interest", Associated French Press, 1 August 2005

provision²⁰ and held that Articles 10 and 11 of the European Convention of Human Rights had not been violated in reaching this decision.

The case has now been referred to the European Court of Human Rights, and has also led to a vote by the majority of the delegates at the Egitim Sen Extraordinary Congress of 3 July 2005 to remove the commitment to mother tongue from the Union's constitution. The Union hopes that, by removing the offending article, the court will find there is no longer any legal reason for closure of the Union when the case goes back to the local court in September 2005.

This chain of events raises questions about the Turkish government's commitment to the separation of powers. It shows a significant amount of collusion between the military branches and the executive branch of government, and eventually with the judiciary. Article 1 of the Turkish Constitution proclaims that "The Turkish state is a Republic."²¹ In continuity with this structure, the Preamble of the Constitution states that the Turkish state embodies:

The principle of *separation of powers*, which does not imply an order of precedence among the organs of state, but refers solely to the exercising of certain state powers and discharging of duties which are limited to cooperation and division of functions, and which accepts the supremacy of the Constitution and the law.²²

Egitim Sen is not the only Union to face scrutiny of its constitution as a result of commitment to mother tongue education in Turkey. Buro Emekcileri Sendikasi (BES) is an Office Employees Trade Union. Founded in 2002 after the new reforms, BES supports human rights in general, and also has a provision supporting mother tongue education in their constitution. As a labour Union, the aim of BES is to defend the idea of living in a social and cultural sense, not just economically. Many different languages and cultures are represented in the Union and as a result it supports mother tongue for Turkish, Kurdish, Greek and Armenian.²³

However, despite this commitment, BES and other unions are unable to publish or hold official meetings in any languages other than Turkish. BES uses Kurdish in banners and posters, but not in press releases or in public. In order to avoid problems, it practices self-censorship of statements and activities. Some of its members have applied for Kurdish names but their applications have been

²⁰ On 10 June 2004, a case was opened against the Union by the Ankara Prosecutor who contended that since the Turkish Constitution states that "no language other than Turkish shall be taught as mother tongue to Turkish citizens at any institutions of training or education," Article 2 of Egitim Sen's constitution was illegal. The Ankara Second Labour Court found in favour of Egitim Sen and dismissed all charges on 15 September 2004, but when this decision was brought before the Supreme Court, it rejected the ruling and sent the case back to the Second Labour Court in November 2004. The Second Labour Court reaffirmed its ruling 21 February 2005.

²¹ CONSTITUTION OF THE REPUBLIC OF TURKEY (2001), Pt I, Art. 1.

²² CONSTITUTION OF THE REPUBLIC OF TURKEY (2001), Preamble. Emphasis added.

²³ Interview with Bulent Kaya, President and other members of BES, July 29, 2005, Ankara

rejected. Further, BES constitution had previously stated that the Union used “mother tongue and teaching”, although they have since changed this to state “we support mother tongue.” In March 2005, a new investigation into the BES constitution was opened, similar to the case against Egitem Sen. It is likely that a case will be opened against them shortly in this respect. BES has since proposed removing the article from its constitution in an effort to keep their union open.

c) Effective Participation in Public Affairs

The use of any language but Turkish for political speeches remains prohibited under Law No. 2820 on Political Parties. As a result, speaking in Kurdish – even just one word – at official party functions, press conferences or political propaganda is illegal.

The basic inability to use the Kurdish language in electioneering and to promote the values of minority group political parties undermines the OSCE states’ commitment to ensuring that minority groups have “effective participation in public affairs”. The law also contradicts Turkey’s commitment to support the participation of minority groups in affairs relating to the “protection and promotion of the identity of such minorities” under Paragraph 35 of the Copenhagen Document.

KHRP’s July 2005 fact finding mission found that many branches of DEHAP (Democracy Party) are facing numerous court cases for using Kurdish at official functions, which has the effect of draining their resources to carry on their activities. For example, the Batman branch of DEHAP recently organised a peaceful protest against the increase in pressure on Kurdish people and the political party itself, at which Kurdish words were spoken. On 23 July 2005, a case was opened against those who attended the protest. Another DEHAP member was imprisoned for 6 months because she said “I” in Kurdish at an official function. Handan Caglayan, DEHAP’s Vice-President in Urfa, was sentenced to 8 months’ imprisonment for saying “Hello my sisters” in Kurdish.

Summary of Assessment

- Broadcasting remains heavily under state control. Whilst regulations allow for broadcasting in Kurdish language, onerous restrictions discourage radio and television stations in practice.
- The expression and teaching of Kurdish culture continues to be suppressed with reforms on linguistic education and minority language broadcasting explicitly excluding contemporary expressions of Kurdish culture.

- The private language courses that had commenced have been forced to close down, due to the unnecessary restrictions placed on them. In addition, Kurds would like to be taught *in* their own language, not to be taught their language.
- The ability of pro-Kurdish political parties to represent the interests of their people and to be involved in public affairs is made very difficult by the prohibition of the use of Kurdish language for political speech
- Overall, linguistic rights are severely limited in Turkey, and the expression and use of these rights often invites scrutiny, suspicion and legal harassment from the authorities.
- Turkey has made great stride forward, but the mentality and practice of the Turkish authorities still form significant barriers to the implementation of the legislation.

Recommendations to Government of Turkey

- Recognise the Kurds as a significant minority group within the state and amend the Constitution and domestic legislation to reflect this acknowledgement
- Establish Kurdish advisory or consultative bodies to enable dialogue with government authorities on key issues such as education, language, and culture
- Consider giving the Kurdish language de facto official status in the Kurdish provinces and implement Kurdish language and culture education in state schools in these regions
- Consider the revision of the Constitution to allow minorities to be educated on their mother tongue and/or remove the restrictions placed on the curricula used in private language schools
- Ensure that children can develop to their full potential through educational initiatives that promote respect for their cultural identity
- Increase the maximum duration permissible for minority broadcasting and allow for more diverse programming, particularly in respect of educational programmes in minority languages that promote minority groups' language and culture
- Proactively support minority language broadcasting through positive regulation and through the provision of access to broadcasting, subsidies and capacity building

- In accordance with OSCE principles and European and international standards, ensure representation of pro-Kurdish political parties in national and local government

Recommendations to OSCE

- Encourage and emphasise the importance of protecting and promoting multiple cultural identities in Turkey
- The High Commissioner on National Minorities to participate in dialogue with the Government of Turkey to develop policy and legal reforms to provide the Kurdish population with minority group rights that meet international standards and norms, learning from recent similar models such as Bosnia and Serbia

PREVENTION OF TORTURE

Background

Torture and ill-treatment became a pivotal issue in the build-up to the 17 December 2004 decision of the European Council to start accession negotiations with Turkey. Opening accession negotiations with a country that sanctions the internationally prohibited practice of torture from the highest levels of government could not be countenanced, so it was imperative that Turkey was shown not to practice systematic torture before formal talks began. The Commission concluded, following a fact-finding mission, that torture cases remained “numerous” but that torture was not systematic. However, contrary to this finding, KHRP believes that torture remains widespread, habitual and deliberate, and should therefore be classed as systematic.

Definitions of Torture and Inhuman or Degrading Treatment

Torture is defined in the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment as any act:

- That is *intentionally* inflicted;
- By, or on the orders of, or with the agreement of a *public official*, or person acting in an official capacity;
- Causing severe pain or *suffering*, physical or mental, on a person, in order to: obtain information or a confession; punish; intimidate or coerce; or for any other reason based on discrimination²⁴

Acts of sexual violence committed by state agents, including rape, sexual slavery, and sexual mutilation, are also considered to amount to torture.

Inhuman treatment or degrading treatment or punishment is generally not considered to involve severe pain or suffering but may include the unnecessary use of force against prisoners, unacceptable prison conditions, prolonged solitary confinement, or treatment that grossly humiliates an individual. The OSCE Handbook for Field Staff clarifies that whilst the Convention Against Torture does not consider such acts to amount to torture, treatment falling into any one of these categories “is strictly and unequivocally prohibited by OSCE commitments and by international law” and “as such, any individual complaint alleging torture or cruel, inhuman, or degrading treatment or punishment would be an

²⁴ Summary of definition copied from OSCE Individual Human Rights Complaints Handbook, p.50

extremely grave matter and would constitute a valid basis for an OSCE field operation to take action on an individual complaint”²⁵.

OSCE Commitments

The OSCE has placed an ongoing emphasis on the abolition of torture and has closely followed the state obligations described in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and the European Convention on Human Rights.

OSCE commitments are contained in the Vienna 1989, Copenhagen 1990, Moscow 1991, Budapest 1994, and Istanbul 1999 documents. Key commitments include that States:

- will “prohibit torture and other cruel, inhuman, or degrading treatment or punishment and take effective legislative, administrative, judicial, and other measures to prevent and punish such practices” (Concluding Document of Vienna 1989, Paragraph 23.4)
- “stress that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political stability or any other public emergency, may be invoked as a justification of torture” (Copenhagen Document 1990, Paragraph 16.3)
- “ will ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment” (Copenhagen Document 1990, Paragraph 16.4)
- “will keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under their jurisdiction, with a view to preventing any case of torture” (Copenhagen Document 1990, Paragraph 16.5).

In summary, the Concluding Document of Budapest 1994 recorded that “participating States strongly condemn all forms of torture as one of the most flagrant violations of human rights and human dignity. They commit themselves to strive for its elimination...They also recognize the

²⁵ OSCE, Preventing Torture: A Handbook for OSCE Field Staff, www.osce.org/documents/odihr/1999/08/754_en.html.

importance of national legislation aimed at eradicating torture. They commit themselves to inquire into all alleged cases of torture and to prosecute offenders” (part of Paragraph 20).

Assessment 2004-2005

General

Numerous complaints have been lodged with the European Court of Human Rights (ECHR) since 1996. The European Court of Human Rights has found that Turkey violated the European Convention on Human Rights (ECHR) in at least 41 torture cases since October 2004.

The European Commission has also noted that there are concerns around Turkey not complying with the judgments of the European Court of Human Rights²⁶.

Legal reforms

In 2004 there were a variety of amendments to Turkish domestic legislation regarding torture. In May 2004, Article 90 of the Constitution was amended to give international agreements precedence over national law. No appeal to the Constitutional Court can be made on the grounds that these agreements are unconstitutional. The new Penal Code has also increased punishment for torture and the maximum statute of limitations for torture cases has been increased from 15 to 30 years.

However, the reforms have not been implemented in practice. Torture and ill-treatment remain widespread,²⁷ and still deserve to be described as ‘systematic’. The Committee Against Torture states that ‘torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question.’²⁸ This will be examined further below.

Prohibition of torture in all circumstances

Despite claims to a zero tolerance policy to torture, the past year has seen ongoing cases of torture and ill-treatment occurring within Turkey. Whilst there are less reported cases of customary methods of ‘heavy torture’, such as electric shock treatment, falaka and hanging by the arms, torture cases still

²⁶ *ibid.*, p. 24

²⁷ US Dept of State Country Report on Human Rights Practices, Turkey: 2004, 28 February 2005

²⁸ CAT ‘Article 20 Examinations Re: Systematic Torture, Part V: Activities of the Committee under Article 20 of the Convention,’ CAT A/55/44, 2000

continue to be reported. IHD (The Human Rights Association of Turkey) alone received a total of 455 reports of torture or ill-treatment in the first six months of 2004.²⁹ These included torture and ill-treatment in police custody, outside official detention premises, by village guards and in prisons. Other human rights organisations and torture rehabilitation centres report similarly high incidences of torture.³⁰

KHRP undertook a Fact Finding Mission and trial observation in December 2004, which observed a part of the trial of three security officers who are allegedly responsible for the extra-judicial execution of Siyar Perincek on 28 May 2004 and the subsequent torture of Nurettin Basci whilst in detention. The state alleges that both were members of the PKK who were preparing for armed activity in Adana. The trial observation revealed significant failings in the legal system, including an apparent lack of impartiality and independence on the part of the judge and the prosecutor and a lack of disclosure of key evidence. The mission met with representatives of IHD, who vigorously disputed the European Commission's October 2004 conclusion that the Turkish government is seriously pursuing its policy of zero tolerance and that torture is no longer systematic. Despite recent legislative changes, IHD confirmed that torture is still practised by the state, including both physical and psychological torture. Further, police security forces continue to be present during medical examinations (and were present when Nurettin Basci was examined), and therefore often do not reflect the true medical state of the examined. Although further medical reports would contradict the findings of the state report, these are rarely taken into consideration by the prosecutor³¹. Even where cases do go to court, they are often consistently delayed by the courts and eventually thrown out, leaving the perpetrator free.³² Instead of being suspended from their duties, those blamed of torture are often promoted, in direct contradiction of Turkey's zero tolerance approach.³³

In addition, although the Turkish authorities may have declared that convicted torturers will be met with the severest punishment, the minimum punishment for a convicted torturer remains too low.³⁴ This sends the wrong message to law enforcement officials, keeping alive the old idea that torture is an acceptable state practice.

Furthermore, incommunicado detention continues to occur in Turkey, as detainees are denied access to legal counsel and their families are not informed of their detention. Whilst there may have been a

²⁹ Human Rights Association (IHD), 'Human Rights Violations in Turkey – Summary table', January – June 2004

³⁰ Human Rights Foundation of Turkey, 'Current Evaluation of the Work of the Treatment and Rehabilitation Centres of the HRFT', 2004 Monthly Reports; Foundation for Social and Legal Research (TOHAV) 'People Exposed to violence by state officers in 2003', International Rehabilitation Council for Torture Victims, 'Stop the denial of torture', Media Release, 17 December 2004

³¹ Human Rights Foundation of Turkey, 'Current Evaluation of the Work of the Treatment and Rehabilitation Centres of the HRFT',

³² Report by Human Rights Council of Prime Minister's office, October 2004

³³ *Ibid*

³⁴ Report by Human Rights Council of Prime Minister's office, October 2004

decline in traditional police custody, this has been offset by a parallel rise in torture incidences outside of detention facilities. A regional human rights organisation reports a huge increase in torture and ill-treatment occurring in 'other places' such as open spaces and vehicles,³⁵ and of the 455 cases reported by IHD, 208 (46 per cent) were of incidents occurring outside official detention, compared to 25 per cent in 2003.³⁶ Similarly, there has been an increase in less detectable methods of torture or ill-treatment. Torture practices which do not leave visible marks on the victim, including deprivation of basic needs, spraying with high pressure water, sexual harassment and death threats are frequently reported. Law enforcement officials are clearly circumventing controls on torture, rather than accepting that torture is not tolerated.

In summary, in spite of ostensible government commitment to a 'zero tolerance' policy, all the evidence suggests that torture in fact remains widespread, officially sanctioned and habitual. Torture therefore continues to be systematic within Turkey, according to the definition set out above at page 21. It is agreed by all parties that torture is widespread – even the European Commission admits that 'numerous' cases continue to occur. The very scale of torture and the fact that it results from long-established practices among law enforcement bodies point to it being habitual. The use of less detectable methods of detention and its commission outside detention centres suggest that it is deliberate. In any event, torture levels are unacceptably high and Turkey has failed so far in its OSCE commitments to eradicate the practice.

Summary of Assessment

- Torture continues unabated in Turkey and has been described by human rights organisations over the past year as widespread and systematic and reports of ill-treatment have increased
- Despite OSCE states committing to the training of all relevant personnel and the systematic review of arrangements for detention and imprisonment, it has been found that particular police headquarters and detention centres are habitually employing methods of ill-treatment and torture, demonstrating - at the very least - that there has been insufficient or disproportionate training provided to police officers regarding the treatment of detainees. The trial of those responsible for utilising methods of ill-treatment and torture remains delayed.

³⁵ *Ibid*

³⁶ IHD 'Human Rights Violations in Turkey – Summary Table 2004'

Recommendations to Government of Turkey

- Make clear to members of the police, military, and other security forces that torture will not be tolerated and prosecutions should be accorded priority
- Prosecutors must be empowered to act on complaints swiftly and instigate investigations even in the absence of express complaints
- Undertake regular inspections of detention centres and police stations and punish those responsible for torture and ill-treatment
- Monitoring should occur in relation to forms of psychological torture and ill-treatment as these cases are less likely to be reported and medical reports are not likely to provide proof
- Custody registers are introduced where detainees record their decision to not take up such rights of notification and legal assistance.

Recommendations to OSCE

- Actively condemn the continued existence of torture in Turkey
- Authorise an OSCE Field Mission to be based in Turkey to aid in the elimination of torture and ill-treatment

INTERNALLY DISPLACED PERSONS (IDPs)

Background

In an effort to combat the Kurdish Workers' Party ("PKK") insurgency during the 1980s and 1990s, state security forces forcibly displaced thousands of rural communities in the Kurdish regions of Turkey. Some 3,500 towns and villages were destroyed during this time, which reached its peak between 1993 and 1995. Illegal detention, torture and extra-judicial execution also took place, by both state forces and village guards, as evidenced by the numerous cases brought by the Kurdish Human Rights Project before the European Court of Human Rights. Today, the majority of these villages remain demolished and there are no plans for their reconstruction. Between 3 and 4 million villagers were forced from their homes³⁷ and are still not allowed to return. Most internally displaced people are unable to return to their homelands because of obstruction by village guards, landmines and poor socio-economic conditions.

These evacuations were enabled under the State of Emergency Legislation which granted to the Regional Governor the authority to "order the temporary or permanent evacuation of villages, winter stations...and arable fields in areas within his territorial jurisdiction to make necessary arrangements for the general security"³⁸.

Since the declaration of a ceasefire by the PKK in 1999 and the lifting of the state of emergency in south-east Turkey in 2002, some residents have returned to their former homes. In 1994, the Government introduced the "Back to Village and Rehabilitation Project". The stated objectives of the project were to "facilitate return and resettlement as well as the creation of minimum social and economic infrastructure and sustainable living standards and more rational provision of public services and to "increase productivity of the people concerned as well as their educational level. To this end, the project comprises activities such as agriculture, animal husbandry and handicrafts"³⁹.

The European Commission has observed that the return of displaced persons has been slow and inconsistent. They have voiced concerns regarding the lack of transparency and adequacy of consultation in the development of the project and the absence of a clear strategy regarding its scope

³⁷ The Ministry of Interior counts less than 400,000 IDPs, but its figure includes only persons displaced as a result of village and hamlet evacuations in the southeast, and does not include people who fled violence stemming from the conflict between the government and the PKK, which included evacuations, spontaneous movement, displacement and related rural-to urban movement within the southeast itself. U.S. Committee for Refugees and Immigrants. <http://www.refugees.org/countryreports.aspx?id=1336>.

³⁸ *ibid.* p. 15

³⁹ Permanent Mission of Turkey to the United Nations, Geneva, 18 March 2004.

and aims⁴⁰. It also observed that the presence of village guards remains an issue, citing official figures that 58 551 guards remained on duty⁴¹.

In May 2003, the EU's Accession Partnership with Turkey required that "the return of IDPs to their original settlements should be supported and speeded up". On 17 July 2004, under pressure from the Council of Europe, Turkey passed the Law on Compensation for Damage Arising from Terror ("Law 5233"). This offers villagers from southeast Turkey the possibility of full compensation for material losses, including land, homes and possessions, in the context of displacements that happened between 19 July 1987 and 17 July 2004.

OSCE Commitments

OSCE states have made commitments to refrain from the mass expulsion of their citizens as well as to facilitate the return of refugees and IDPs. With regard to the expulsion of citizens, the OSCE have committed to the following provisions:

Participating States recognise:

- "the importance of preventing situations that may result in mass flows of refugees and displaced persons and stress the need to identify and address the root causes of displacement and involuntary migration" (Concluding Document of Helsinki 1992, Paragraph 40)
- "among the acute problems within the human dimension, the continuing violations of human rights, such as involuntary migration (...) continue to endanger stability in the OSCE region. We are committed to continuing to address these problems" (Lisbon Summit Declaration, Paragraph 9).

The magnitude of the numbers of Kurdish residents displaced during the conflict of the 1980s and 1990s also makes the provisions relating to the resettlement and return of people of particular importance in Turkey. OSCE participating states:

- "Welcome and support unilateral, bilateral, and multilateral efforts to ensure protection of and assistance to refugees and displaced persons with the aim of finding durable solutions" (Helsinki 1992, Chap VI, Paragraph 45)

⁴⁰ Report of European Commission, p. 40

⁴¹ *ibid*

- “Will facilitate the return, in safety and in dignity, of refugees and IDPs, according to international standards. Their reintegration into their places of origin must be pursued without discrimination. We commend the work of the ODIHR Migration Advisor and express support for his continuing activities to follow up on the Programme of Action agreed at the May 1996 Regional Conference to address the problems of refugees, displaced persons, other forms of involuntary displacement and returnees in the relevant States” (Lisbon Summit Declaration 1996, part of Paragraph 10)

The facilitation of the safe return of IDPs is then reaffirmed in the Istanbul Charter for European Security, Paragraph 22.

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Law on Compensation for Damage Arising from Terror (Law 5233)

The law compensates for material damage inflicted by armed opposition groups and security forces combating those groups. It provides for the establishment of provincial damage assessment commissions, which will investigate deaths, physical injury, damage to property and livestock, and loss of income arising from the inability of the owner to access their property between the applicable dates. The provincial commissions are comprised of a deputy provincial governor and six other members: five civil servants responsible for finance, housing, village affairs, health and commerce, and a board member of the local bar association. After assessing each claim, they propose a figure for compensation based on principles set out in tables of compensation levels and, for damage to property, levels established in laws on compulsory purchases.

Through ‘Law 5233’ IDPs have been afforded an opportunity for the first time to receive compensation for the loss of houses, livestock, farming equipment, farms and possessions. However, upon closer examination of the law and its machinery, KHRP has found that there are a number of areas of concern. This was concluded from a KHRP fact-finding mission in June 2005 and a strategy meeting held in Diyarbakir to discuss, analyse and provide advice on the Situation of IDPs and the Law 5233. This meeting was organised in conjunction with the Diyarbakir Bar Association, Human Rights Watch and the Bar Human Rights Committee, and was attended by over 50 lawyers and NGO representatives from southeast Turkey, all of whom represent applicants before the assessment commissions.

First, the law contains ample scope for claims and payments to be avoided, minimised and delayed. For example, the commissions demand that each claim should be supported by documentation and evidence of their forced evacuation, a requirement that many applicants will be unable to meet, since

the unlawful destruction programme of the army and village guards tended to leave no trail of evidence. Eyewitness testimony of fellow villagers, who may have seen the destruction of property, is excluded; whilst village *muhtar* are reluctant to confirm the true version of events, fearing persecution. Further, land ownership and use within the Kurdish regions was often on an informal basis. Many applicants are therefore unable to provide documentation to support their claims.

Concerns about the impartiality and independence of the assessment commissions also exist. The six civil servants appointed by the Government have a lot more at stake in the outcome of their determinations than the independent member, who is appointed by the local bar association. In this aspect, future promotions, job security and politics may play a stronger role in how commission members make their decisions as to compensation levels than a disinterested sense of justice. In addition, there are no members from chambers such as agriculture, engineering, architecture or trade. Members with knowledge of these fields would be far more effective in assessing damages than lawyers or civil servants.

Many applicants are automatically excluded from applying to the commission. These include those who have already been compensated, even where that compensation was complete, or even sufficient for subsistence; those who the state label 'voluntary evacuees', in the absence of documentation or other evidence confirming the real reason IDPs were forced to leave their homes; and those who were convicted under Articles 1, 3, and 4 of the Anti-Terror Law for aiding and abetting the PKK, even though many of the Turkish courts' findings in this regard are untrue.

Further, in the past, Kurdish villagers have received justice and respectable sums of compensation – including non-pecuniary damages – in the European Court of Human Rights if an adequate remedy cannot be found within the domestic courts.⁴² However, the Compensation Law excludes payment for suffering and distress, symptoms commonly felt by IDPs who saw their homes and crops burnt down and their livestock machine-gunned down.

Law 5233 contains an inappropriate time limit for IDPs to apply to the compensation commissions: they had just one year, which expired on 27 July 2005, to apply for a remedy. At the beginning of August 2005, the Minister Interior Affairs Abdulkadir Aksu stated that that 104,734 people had applied to compensation commissions, out of a total of 3 to 4 million displaced. KHRP suspects that many IDPs did not know, or did not have time, to apply. Further, no provision for legal aid to assist applicants in preparing their claims, or assessing an amount of compensation proposed by the commissions was made available. Poorly educated farmers from a region where 35 percent of the villagers are illiterate

⁴² In *Akdivar v Turkey*, judgment of the ECHR, 1 April 1998, case no 21893/93 the ECtHR awarded non-pecuniary damages of £8,000 to each applicant for suffering and distress.

are expected to assemble comprehensive and complex documentation in order to establish their eligibility for compensation.⁴³

The damage assessment commissions are currently unable to deal with all the applications they have received. Of the 104,734 claims received, only 5,239 applications have been examined so far, of which 1,190 people have received compensation. 4,049 applications were refused because they were not “genuine” applications. Further, payments of more than 20 billion Turkish Lira require Interior Ministry approval, causing unnecessary delays or obstruction of payments, particularly since most claims are likely to exceed that figure. Abdurrahman Kurt, Chairman of the Diyarbakir branch of the Justice and Development Party (AKP), admitted to KHRP during its June fact-finding mission that the amount which must be approved by the Internal Affairs Minister should be increased as this is causing unnecessary delays.

In terms of payment, the compensation law offers two levels of opportunity. Firstly, the assessment commissions may make reasonable offers to the displaced persons, which would provide an early injection of cash or materials which the villagers can use to re-establish themselves in their former homes. However, if the commission’s offers are too low and do not adequately compensate the level of loss, the villagers can challenge it in the Administrative Court, which is a lengthy and expensive process. Yet the court must be satisfied that the state is criminally liable for the damage suffered and that the sum already proposed by the commission is insufficient to cover that damage, which is entirely inappropriate, since an appeals process should be a straightforward evaluation of the lower commission’s decision. But village guards have received more.

Recommendations to Government of Turkey

- Undertake consultations with IDPs and non-governmental and international agencies in order to develop durable solutions for return
- Abolish the village guard system and clear landmines and munitions from villages and farmland areas
- Amend the Law on Compensating for Losses Arising from Terrorism and Anti-Terrorism Operations to
 - Enhance the independence of Compensation Law assessment commissions, and ensure their work is timely, fair and consistent;

⁴³ Council of Europe, Parliamentary Assembly, Committee on Migration, Refugees and Demography, June 3, 1998, Humanitarian Situation of the Kurdish Refugees and Displaced Persons in South-East Turkey and North Iraq, Doc 8131.

- Enlarge the membership of the Compensation Law commissions to include appropriate experts, such as civil and agricultural engineers;
- Increase the range of evidence which is acceptable by the Commissions, to include eye-witness evidence;
- Undertake not to disclose the identity of witnesses or the content of their evidence to other government agencies and to safeguard anonymity in commission hearings;
- Investigate thoroughly any reports of intimidation of, or reprisals against, witnesses or prospect witnesses, and refer evidence of any abuses to the judicial authorities;
- Create an independent appeals body to review decisions by Compensation Law assessment commissions;
- Increase the limit of compensation which must be approved by the Interior Ministry;
- Provide for pecuniary damages and/or the possibility for IDPs to return to their homes;
- Conduct a review of the operation of the law in late 2005 after provincial assessment commissions have processed an initial group of applications;

Recommendations to OSCE

- Provide assistance as a matter of urgency to both the Kurdish internally displaced and the Turkish Government to address these issues;
- Consider funding projects for the return of IDPs and the support of the return of IDPs in the cities
- Monitor the operation and working methods of Compensation Law assessment commissions, providing an evaluation on the work of the assessment commissions during the latter half of 2005

TREATMENT OF HUMAN RIGHTS DEFENDERS

Background

During the 1980s and 1990s, human rights defenders in Turkey encountered multiple obstacles and significant hostility towards their work, particularly those operating in the Kurdish regions. Many members of NGOs, lawyers, doctors, trade unionists and others were threatened, arbitrarily detained, ill-treated, tortured and subjected to disappearances and extra-judicial killings.

A large number of laws and administrative rules regulated the activities of human rights defenders in this period, including the Law on Associations (No. 2908), the Penal Code, the Press Law, the Law on Public Meetings and Demonstrations (No. 2911), the Civil Code, the Anti-Terror Law and the Law on Foundations (No. 2762). Frequently these laws were employed in a way which infringed upon human rights defenders' freedom of expression, association and assembly, and which conflicted with Turkey's international human rights obligations.

Turkey's human rights defenders have benefited considerably from the relaxation in the conflict in the Kurdish regions since 1999 and the enactment of human rights reforms from 2002 aimed at readying Turkey for EU accession. In particular, legislative changes to the above mentioned laws have reduced the extent to which public officials can interfere with defenders' work. Articles of the Penal Code which had commonly formed the basis of prosecutions against human rights defenders have been narrowed in scope. For example, the harmonisation law of 9 August 2002 added a clause to the prohibition on insulting the state under Article 159 so that expression amounting merely to "criticism" should not be punished, and the first harmonisation law adopted in February 2002 limited the reach of Article 312 by setting out that an act would only be punishable for inciting enmity and hatred if it caused "a clear and direct danger to public order".

Other amendments to the law with positive implications for human rights defenders include the repeal under the 20 July 2003 harmonisation package of Article 8 of the Anti-Terror Law prohibiting separatist propaganda, revisions to the Law on Associations – particularly the new provision that security forces can no longer access an association's premises or confiscate goods without a prior court decision - and the revisions of July 2003 to the Law on Public Meetings and Demonstrations.

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 human rights defenders,⁴⁴ and in the same

⁴⁴ US Department of State, Bureau of Democracy, Human Rights, and Labor 'Country Reports on Human Rights Practices - 2004, Turkey', February 28, 2005

month the government allowed the UN Special Representative of the Secretary General on Human Rights Defenders to visit the country.

Nevertheless, the treatment of human rights defenders by Turkey continues to elicit concern. Provisions in the law that do not comply with international human rights standards are still used to obstruct human rights defenders, and legislative reforms are not always complied with in practice. The human rights community in Turkey and indeed civil society generally remain subject to substantial unwarranted state interference. The UN Special Representative concludes in her report on her October 2004 visit to Turkey that despite improvements over the past 4 years, “defenders continue to face obstacles to their work”,⁴⁵ and that Turkey’s efforts at transformation “will remain incomplete without full implementation of reforms at all levels of governance.”⁴⁶ The European Commission notes in its October 2004 report on Turkey’s progress towards accession that “civil society, in particular human rights defenders, continues to encounter significant restrictions in practice”.⁴⁷

KHRP and other human rights organisations are especially concerned by emerging patterns whereby police and the judiciary instigate multiple investigations and trials against defenders which, though frequently ending in acquittal or suspended sentences, constitute a form of harassment and considerably limit the capacity of human rights defenders to carry out their activities.

OSCE Commitments

The rights of freedom of expression, association and assembly are of particular relevance to the work of human rights defenders.

With regard to freedom of expression, the Copenhagen document contains the commitment by states that “everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers” (Paragraph 9.1). The document also states that “the exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards”.

The Moscow document of 1991 reaffirms OSCE states’ commitment to freedom of expression, “including the right to communication and the right of the media to collect, report and disseminate

⁴⁵ UN Commission on Human Rights, ‘Human Rights Defenders- Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, Summary

⁴⁶ UN Commission on Human Rights, ‘Human Rights Defenders- Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey’, 18 January 2005, Summary

⁴⁷ European Commission, ‘2004 Regular Report on Turkey’s Progress towards Accession’, Brussels, 6 October 2004 p40

information, news and opinions. Any restriction in the exercise of this right will be prescribed by law and in accordance with international standards”.

Such international standards are set forth for example in Article 19 of the International Convention on Civil and Political Rights. Article 19.2 states that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”. These rights are balanced by certain restrictions contained in Article 19.3, which cover respect for the rights or reputations of others, and the protection of national security, public order, public health or morals.

Concerning freedom of association and assembly, in the Copenhagen Document 1990, OSCE states made commitments to:

- “ensure that individuals are permitted to exercise the right to association, including the right to form, join and participate effectively in non-governmental organizations which seek the promotion and protection of human rights and fundamental freedoms, including trade unions and human rights monitoring groups” (Paragraph 10.3).
- “allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law” (Paragraph 10.4).

Participating States also reaffirmed in this document that “everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards” (Paragraph 9.2).

Assessment 2004-2005

General

Overt targeting of human rights defenders, and particularly attacks on their physical integrity, has abated somewhat in recent years. However, Turkish law and the activities of local officials still significantly hampered human rights defenders during 2004 and 2005. Moreover, as the reform process

has progressed, state officials are making use of remaining undemocratic provisions in the law to apply pressure on human rights defenders through the instigation of huge volumes of cases against them.

Freedom of expression and the new Penal Code

In June 2004 Turkey's new Penal Code came into force. KHRP is concerned that despite a series of last minute amendments the new code represents only limited progress on freedom of expression, and still contains articles with considerable scope to limit how far human rights defenders can disseminate information and ideas on human rights topics.

Articles which have been used extensively in the past to prosecute human rights defenders legitimately exercising their right to publicise human rights violations and otherwise document the human rights situation in the country re-appear in the new Penal Code. Article 159, which prohibits 'insulting' the state and its institutions, appears virtually unaltered in the new Code. The article, used repeatedly against human rights defenders critical of state behaviour, has been criticised by both the UN Special Representative and the European Commission for its interpretation by state officials in ways which restrict freedom of expression.⁴⁸ Article 312 providing for punishment for inciting hatred or enmity also resurfaces in the new Code. Like Article 159, Article 312 was widely used against human rights defenders peacefully monitoring and reporting on human rights. Despite the amendment to the article setting out that incitement must endanger public order, the article retains broad scope for interpretation in ways that infringe upon freedom of expression. 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".⁴⁹

Other articles of concern in the new Code include Article 305 which penalises activities against "fundamental national interests" with prison sentences of between three and ten years, and Article 220 under which 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. This article is reminiscent of Article 169 of the old Penal Code, which prohibited "aiding and abetting a terrorist organisation". The fact that human rights defenders continue to be widely perceived as affiliated with criminal and terrorist organisations⁵⁰ prompts concerns over how Article 220 of the new Code will be interpreted.

⁴⁸ UN Commission on Human Rights, 'Human Rights Defenders- Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, § 18; European Commission, '2004 Regular Report on Turkey's Progress towards Accession', Brussels, 6 October 2004, p37

⁴⁹ UN Commission on Human Rights, 'Human Rights Defenders- Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, §90

⁵⁰ The UN Special Representative noted in her report on Turkey as recently as January 2005 that 'All but one of the security chiefs, a number of governorship representatives and prosecutors, during their meeting with the Special Representative, linked

Freedom of association

2004 and 2005 have witnessed a continued upsurge in state utilisation of repressive laws, particularly provisions contained in the Law on Associations but also the Law on Foundations, the Civil Code and public order legislation, to impede the formation and activities of human rights associations. KHRP is particularly concerned that legislative and administrative 'red tape' is employed as a pretext for putting pressure on human rights and other disfavoured associations. Trivial instances of non-fulfilment of onerous and exacting registration, annual reporting and auditing requirements still result in the instigation of proceedings against associations, as does the requirement that associations do not carry out activities outside their statute. 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.⁵¹

Restrictions on foreign involvement in Turkish civil society have been lifted somewhat; foreign groups can now open branches in Turkey and establish co-operation with Turkish groups, platforms between associations can be established and associations and foundations can receive funds from abroad without prior permission.

However, on 7 December 2004, President of the Izmir Bar Association Nevzat Erdemir decided to close the Torture Prevention Group – an organisation established in December 2001 by the Izmir Bar Association to work with torture victims. Files containing confidential testimony, photos and other records relating to around 575 applications from victims of alleged torture were reportedly seized, potentially placing the applicants at risk of persecution by the state.⁵² 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).⁵³

human rights defenders to terrorist activities and organizations'. UN Commission on Human Rights, 'Human Rights Defenders- Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, § 99

⁵¹ UN Commission on Human Rights, 'Human Rights Defenders- Report submitted by the Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani – Mission to Turkey', 18 January 2005, §73

⁵² Amnesty International, 'Turkey: Closure of Torture Prevention Group shocking' 14 January 2005

⁵³ Amnesty International, 'Turkey: Closure of Torture Prevention Group shocking' 14 January 2005

Closure cases against Kürd-Der

The Diyarbakir branch of the Kurdish association Kürd-Der was requested to remove provisions in its statute concerning the rights of the Kurds.⁵⁴ Kürd-Der, which seeks to advance the status of the Kurdish language and to institutionalise personal and collective rights in Turkey, refused this request. The Diyarbakir 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.

The Ankara branch of Kürd-Der, which is independent from the Diyarbakir 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 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.

Freedom of assembly

During 2004 and 2005, there was very little improvement in the capacity of human rights defenders to exercise their right to freedom of assembly.

A June 2004 circular by the Ministry of the Interior helped to clarify 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.⁵⁵ The Law on Public Meetings and Demonstrations directs that assembly can now only be restricted where there is a clear and imminent threat of a crime being committed.

However, this circular appears to have had little impact on the ground. The Penal Code, public order legislation, the Law on Associations and, in particular, the Law on Public Meetings and Demonstrations are still used to launch proceedings which breach Turkey’s obligations under international human rights law, commonly on the grounds that an assembly is ‘unauthorised’, and governors still sometimes postpone or cancel demonstrations when they concern contentious issues such as allegations of human rights violations.⁵⁶ Despite an instruction in the June 2004 Ministry of Interior circular that

⁵⁴ Human Rights Foundation of Turkey, ‘Human Rights in Turkey: November – December 2004’

⁵⁵ European Commission, ‘2004 Regular Report on Turkey’s Progress towards Accession’, Brussels, 6 October 2004, p41

⁵⁶ BIA, ‘Mazlumder: EU Inspired Laws Remain on Paper’, 29 July 2004

documentation should not be requested in excess of what is stipulated under the Law on Demonstrations and Public Meetings, notification requirements for public assemblies are often excessive. They can include informing the authorities in advance of slogans or text to be used on banners and even minor instances of non-fulfilment can result in officials preventing 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 are unwilling for protesters expressing views objectionable to the state to be staged in visible, locally significant areas such as main squares or close to government buildings.

In many cases state interference with freedom of assembly takes place in the context of minor, unobtrusive and peaceful open-air press conferences given by local human rights organisations. These are routinely attended by large numbers of police officers, who will sometimes outnumber participants and who periodically photograph or video-record those present. Public authorities have also implemented local administrative measures restricting the locations where press conferences can be held.⁵⁷

Restrictions on the assembly rights of human rights defenders are particularly pronounced in the Kurdish regions of the country. The Diyarbakir branch of the Human Rights Association (IHD), a Turkish human rights NGO and a KHRP partner organisation, reported that violations of the right to freedom of assembly increased following the December 2004 EU decision to open accession negotiations with Turkey. In January and February 2005, 80 people were detained in the Diyarbakir region during demonstrations.⁵⁸ The association also asserted that intolerance of Kurdish citizens wishing to exercise their right to demonstrate has reached “alarming levels”.⁵⁹

Policing of demonstrations is also an area of significant concern for human rights defenders in Turkey. 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.⁶⁰ However, protestors continue to be met with excessive violence by security forces: they are attacked without warning, subjected to tear gas attacks, and beaten even after they are incapacitated. Human rights defenders’ public activities are monitored by plainclothes police officers and additional ‘security’

⁵⁷ Human Rights Foundation of Turkey, ‘Human Rights in Turkey: July 2004’; ‘Human Rights in Turkey: October 2004’

⁵⁸ Human Rights Association (Diyarbakir Branch), ‘Critical Report By IHD: In 2 Months 2855 Rights Violations Occurred’, March 8 2005

⁵⁹ Human Rights Association (Diyarbakir Branch), ‘Critical Report By IHD: In 2 Months 2855 Rights Violations Occurred’, March 8 2005

⁶⁰ European Commission, ‘2004 Regular Report on Turkey’s Progress towards Accession’, Brussels, 6 October 2004, p41

measures such as documenting the ID cards of participants have been reported. Investigations are rarely opened in alleged instances of the disproportionate use of force against protesters.⁶¹

The women's day protests

In Istanbul on 6 March 2005, ahead of Women's Day, a series of peaceful demonstrations aimed at demanding equal rights for women met with considerable police violence. Police issued orders to the demonstrators to disperse, and when these orders were not complied with they reportedly charged on the crowds with tear gas and truncheons.⁶² 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 the demonstrators.⁶³ The Commission reportedly requested an investigation into the incident.⁶⁴ Turkish media sources indicate that the officers involved received light punishments for their behaviour and that no criminal proceedings were initiated against them.⁶⁵ Judicial proceedings were, though, 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 2005.⁶⁶

Threats against human rights defenders

The capacity of human rights defenders to freely express ideas and information, to form associations and to organise and attend meetings and demonstrations is jeopardised by instances of threatening behaviour practised by local officials. An example is the treatment of former Chairman of Tunceli Bar Association, lawyer Hüseyin Aygün. Mr Aygün, a human rights defender who has worked on behalf of victims of forced displacement in the region, claims to have been threatened by Namik Dursun, a local security official. The threats may have been prompted by Mr Aygün's current work in Tunceli seeking justice for the families of victims who 'disappeared' during the 1984 – 1998 armed conflict and recent calls for further investigations into these incidents.⁶⁷

⁶¹ Human Rights Association (Diyarbakir Branch), 'Critical Report By IHD: In 2 Months 2855 Rights Violations Occurred', March 8 2005

⁶² BBC, 'Turkish police beatings shock EU', 7 March, 2005

⁶³ 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

⁶⁴ 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

⁶⁵ Info-Turk, June 2005 N°s 320 & 321, original source: Radikal, <http://home.scarlet.be/~ozguden/321.htm>

⁶⁶ Info-Turk, June 2005 N° 321, original source: Radikal, <http://home.scarlet.be/~ozguden/321.htm>

⁶⁷ Amnesty International, 'Turkey: Fear for safety/Harassment: Hüseyin Aygün (m), aged 35, lawyer and human rights defender', 15 February 2005

Gendarmerie official Namik Dursun is alleged to have referred to Hüseyin Aygün as a “traitor” and an “enemy of the state”, and to have warned him to stop his human rights work. Commander Namik Dursun also reportedly threatened to pass on files to the prosecutor’s office concerning Mr Aygün. 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 Namik Dursun, following a complaint by Captain Dursun about a press conference at the Elazığ branch of the IHD where Mr Aygün made a public statement concerning the threats against him.

Use of alternative legal provisions

A discernible trend among the police and judicial system is to circumvent the repeal of undemocratic laws by simply employing alternative provisions from Turkey’s remaining laws to infringe upon human rights defenders’ freedom of expression, association and assembly. The abolition under the sixth harmonisation package of Article 8 of the Anti-Terror Law, an exceptionally broad-worded provision used widely in the Kurdish regions to limit the activities of human rights defenders, 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 by Article 8 until its removal from the new Penal Code, and Article 312 of the old Penal Code (now 216 – see below) is also used to punish offences which would previously have been covered by Article 8, as is Article 7 of the Anti-Terror Law.

It is not only in relation to old Article 8 of the Anti-Terror Law that this process occurs. Where revisions to, for example, the Law on Associations exclude prosecution, proceedings may be brought under alternative provisions in the Penal Code in relation to a specific incident. Furthermore, it is far from uncommon for a prosecutor to bring renewed charges under a different law if a previous prosecution has resulted in acquittal due to the impact of pro-EU reforms.

Judicial harassment of human rights defenders

The continued presence on the Turkish statute books of undemocratic provisions in the Penal Code, the Law on Associations and the Law on Public Meetings and Demonstrations which are used to impose obstacles on human rights defenders has been described. Instances of state officials using these articles to bring cases which limit the exercise of human rights defenders’ rights to freedom of expression, association and assembly have also been detailed. In addition to generating concern in themselves, many of these investigations and prosecutions constitute part of a broader picture whereby human rights defenders are subject to repeated judicial and administrative proceedings as a form of deliberate state harassment.

Judicial harassment of human rights defenders, which has surged dramatically as the reform process has progressed and practices such as torture have decreased somewhat, now constitutes one of the principal means by which human rights defenders are targeted by the state. Many human rights organisations including KHRP believe that this amounts to a deliberate attempt by the Turkish administration to create a climate of insecurity among human rights defenders and to hamper their legitimate activities aimed at the protection and promotion of human rights. Human rights defenders across Turkey are currently confronted with an enormous number of investigations and trials, with some admitting that they lose track of which cases are currently pending against them.

According to figures supplied by the IHD for example, 300 cases were opened against it and its staff in the first 14 years of its existence whereas in the three years from 2001 there were more than 450 cases opened against the organisation.⁶⁸ During a recent KHRP fact finding mission to southeast Turkey, virtually all human rights defenders interviewed cited multiple cases currently pending against them or their associations. The Diyarbakir Bar Association stated that not less than 100 of its members were being tried in Turkish courts.

Positive changes in the law brought about by the harmonisation process, though in many instances deficient, mean that investigations more frequently result in a decision not to prosecute and judicial proceedings will often result in acquittal or a suspended sentence. Nonetheless, the law still provides plenty of possible pretexts to indict human rights defenders, and the sheer volume of proceedings against them undoubtedly has a stultifying effect on the human rights environment in Turkey. Groups and individuals working to uphold human rights are compelled to divert time and other resources to defending themselves in court, and are often on the receiving end of multiple, ongoing lawsuits launched against them at any one time. This forces human rights defenders to be constantly defending themselves on several fronts; cases are repeatedly postponed causing them to drag on for many years, multiple court appearances may be necessary and a climate of insecurity is generated where many human rights defenders are in perpetual fear of arrest and detention.

Human rights defenders in the Kurdish regions

Human rights defenders operating in the Kurdish regions or advocating for the rights of the Kurds are especially targeted. In May 2005, IHD representative for Eastern and South-eastern Anatolia Mihdi Perinçek and head of the IHD branch in Diyarbakir Selahattin Demirtas were prosecuted for a report they prepared on the killings by state security forces of alleged 'terrorists' Ahmet Kaymaz and his 12-

⁶⁸ Amnesty International, 'Turkey: Restrictive laws, arbitrary application - the pressure on human rights defenders', 12 February 2004

year-old son Uğur on 21 November 2004. A KHRP fact-finding mission in March 2005 which met with witnesses of the killings raised some question marks over the official version of events put forward by the state.⁶⁹ The charges against the IHD 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.⁷⁰

In November 2004, Abdulkadir Aydin of IHD's Diyarbakir branch was compelled to postpone a seminar entitled 'do you know your rights?' due to be held at the branch office.⁷¹ 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.⁷²

Human rights defenders continue to face prosecution for their use of the Kurdish language. Head of IHD's Bingöl branch, Ridvan Kizgin, 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 which contained Kurdish writing. The letter, which detailed clashes taking place in Bingöl, had the IHD's name written in Turkish, Kurdish and English and the name of the province of Bingöl written in its Kurdish form (Cewlik). Individual members of associations also face judicial harassment where, for example, they give press releases or speeches in Kurdish, with prosecutions occurring most commonly under the Law on Meetings and Demonstrations or under Article 216 (ex Article 312) of the Penal Code.

The renewal of the conflict in the Kurdish regions has potential implications for the treatment of human rights defenders in Turkey. There is a risk that Kongra Gel's return to armed activities will provoke a reversion by the state towards the kind of heavy handed response witnessed during the 1980s and 1990s. For human rights defenders working on Kurdish issues, who are already widely perceived by public officials as having links with terrorist groups, this could mean greater restrictions on freedom of expression, association and assembly and increased state targeting.

Summary of Assessment

- Turkey's new Penal Code contains articles which potentially impose undue limitations on freedom of expression

⁶⁹ KHRP and Bar Human Rights Committee, 'Thirteen Bullets': Extra-judicial Killings in Southeast Turkey', March 2005

⁷⁰ See, for example, the International Press Institute's letter to HE Recep Tayyip Erdoğan at <http://www.freemedia.at/Protests2005/Turkey23.03.05.htm>

⁷¹ Human Rights Foundation of Turkey, 'Human Rights in Turkey: November – December 2004'

⁷² Human Rights Foundation of Turkey, 'Human Rights in Turkey: November – December 2004'

- Turkish authorities place onerous bureaucratic requirements on associations and interpret laws and regulations in a manner which impedes the formation and activities of legitimate human rights associations
- Interference with public meetings and demonstrations held by human rights defenders is common, particularly in relation to press conferences, and excessive force is frequently employed against human rights defenders peacefully exercising their right to free assembly
- Improvements in the legal regulation of freedom of expression, association and assembly are circumvented by police and the judiciary relying on alternative undemocratic provisions to launch cases
- A key means of targeting human rights defenders in Turkey is now the institution of multiple investigations and prosecutions, placing a significant burden on defenders and generating a climate of insecurity
- Human rights defenders working to uphold the rights of the Kurds are subject to especial impediments to free expression, association and assembly

Recommendations to Government of Turkey

- Re-examine elements in the new Penal Code, the Law on Associations, the Law on Public Meetings and Demonstrations and other relevant pieces of legislation which are not in accordance with the right to freedom of expression, association and assembly as set out in international human rights treaties
- Allow human rights associations to operate free from unnecessary bureaucratic restrictions, and avoid bringing judicial proceedings against associations such as those lodged against Egitim Sen and Kürd-Der which may infringe the right to freedom of association
- Ensure that state officials do not prevent legitimate public assemblies; issue further guidance and training on policing of public assemblies and ensure that those responsible for using excessive force are adequately sanctioned
- Monitor the implementation of reforms in the areas of freedom of expression, association and assembly with a view to ensuring that state officials do not undertake means of targeting human rights defenders through the use of alternative legal provisions
- Review outstanding prosecutions of people for the peaceful exercise of their rights to freedom of expression, association and assembly in order to ensure that cases which do not accord

with international standards in these areas are dropped, and take action against police and members of the judiciary who initiate unwarranted investigations or prosecutions

- Take effective action to counter the disproportionate state interference with human rights defenders' right to free expression, association and assembly which occurs in the Kurdish regions, including through mitigating perceptions that human rights defenders operating there are necessarily associated with criminal or terrorist groups

RIGHT TO SELF-DETERMINATION

Background

Turkey's adherence to international human rights standards in respect of its ethnic Kurdish community is an issue of major concern. Although new reforms towards EU accession may announce a greater respect for the expression of Kurdish culture, whether these regulations will be actually implemented remains to be seen. The repression of Kurdish people trying to peacefully assert their identity continues to occur. Indeed, although the Turkish government has claimed a zero-tolerance policy against torture - there have indeed been some noticeable improvements in that respect - such practices⁷³ as well as extra-judicial killings and many cases of disappearance are still reported.⁷⁴

It is arguable that an armed conflict is occurring in Turkey and that the international community has so far failed to intervene effectively. Many factors indicate that the hostilities between Turkey and the PKK as well as other guerrilla groups could be assimilated to an armed conflict. Although there remains some uncertainty as to level of intensity that is necessary to amount to an international armed conflict, it is undeniable that in the light of the violence perpetrated on the part of the Turkish army it is appropriate to label it an "Armed Conflict".⁷⁵ The fact that around 10,000 Kurds have been victims of extra-judicial killings, that approximately 5,000 Kurds have "disappeared" while in custody and that an estimated 3,024 Turkish soldiers and 1,177 village guards have lost their lives emphasises the above statement. Moreover, to date, it would seem that the Turkish army's actions have gone far beyond counter-terrorist measures. For example, between 3 and 4 million Kurds from about 3,500 villages have been affected by the forced evacuation from their homes in south-eastern Turkey, most of whom have not been able to return. State security operations became notorious for extremely high casualty rates, extra-judicial killings of non-combatants, torture of civilians and the destruction of Kurdish villages.

OSCE Commitments

The OSCE Commitments relating to national minorities, as provided by the Copenhagen Documents 1990 (Paragraphs 30 to 40.7) are set out above, at page 9.

⁷³ The Institute of Human Development (IHD) alone has received 455 reports on torture and ill-treatment in the first six months of 2004.

⁷⁴ Read KHRP Fact-Finding Mission Report, "Thirteen Bullets", March 2005. See also the previous case of ECtHR, Application No. 28516/95, *Macir v. Turkey*, 22 April 2003.

⁷⁵ See J.P. Bialke, "Al-Qaeda & Taliban Unlawful Combatant Detainees, Unlawful Belligerency, and the International Laws of Armed Conflict" (2004) 55 A.F. L. Rev. 1, note 49.

Assessment 2004-2005

The Need to Institute a Dialogue between Kurds and the Turkish Authorities

A political solution within the Turkish frontiers - that is the internal aspect of self-determination – would be the most appropriate response. Kurds' culture and identity in Turkey must indeed be recognised and implemented. These include, *inter alia*, linguistic rights⁷⁶, education, freedom of association and freedom of expression. Most importantly, the repression against Kurdish people trying to peacefully assert their identity must be ended. Although the Turkish government has claimed a zero-tolerance policy against torture - there have indeed been some noticeable improvements in that respect - such practice continues to occur⁷⁷ and extra-judicial killings are still reported,⁷⁸ as discussed above.

Greater respect for Kurds' minority rights would constitute a definitive step in the right direction; yet a more fundamental shift is also urgently needed. The way Turkey has chosen to tackle the Kurds' issue is problematic as it has exclusively addressed the matter on a security level, using military responses to address the actions of the PKK and other guerrilla groups. While it is undeniable that the PKK has resorted to measures threatening the national security and territorial integrity of the state, the means resorted to respond to these threats have often gone far beyond counter-terrorism measures. A genuine and peaceful dialogue needs to be instituted between the two parties, in which the peace, security and aspirations of both sides is recognised and addressed efficiently. However, this dialogue cannot be properly instituted without the unequivocal recognition on the part of the Turkish government that, on the one hand, the Kurdish question goes far beyond the repression of terrorist activities and that, on the other it should be addressed on a political rather than military level. In short, a first step towards reconciliation would be Ankara's recognition of a conflict between Turkey and the Kurds in the southeast. Recent declarations by the Turkish Prime Minister claiming that he was seeking a "democratic solution" to the problem definitely constitute a positive improvement; however, this may not be sufficient to resolve the issue. Ankara has indeed constantly emphasised that the Kurdish problem was a purely domestic matter and therefore precluded any international interference. Yet, international mechanisms and institutions would also be needed to provide a viable solution to the conflict. The extent and desirability of the international community's intervention will be examined below.

⁷⁶ KHRP Fact-Finding Mission Report on Linguistic Rights, July 2005.

⁷⁷ The Institute of Human Development (IHD) alone has received 455 reports on torture and ill-treatment in the first six months of 2004.

⁷⁸ Read KHRP Fact-Finding Mission Report, "Thirteen Bullets", March 2005. See also the previous case of ECtHR, Application No. 28516/95, *Macir v. Turkey*, 22 April 2003.

The Need for International Intervention

International intervention is necessary for several reasons. Firstly, Turkey is unlikely to be willing to act without international pressure. This is in part due to a culture inherited from the Ottoman Empire: a constant policy of denial that there actually exists a “Kurdish Question”. As recent examples show, Ankara has only been willing to engage in substantive reforms when pressured by the European Commission, during talks about Turkey’s accession to the EU. Although objections exist to such an approach, on the grounds that Turkey only adopted these reforms in order to start talks in October 2005, it is inescapable that such a shift in governmental attitude will always be intrinsically linked to political will and interest. What matters, therefore, is not *why* the Turkish government has engaged in such reforms but whether these legal changes are actually effectively implemented, and whether they improve the Kurds’ situation within Turkey. Secondly, assuming that Turkey is willing to address the Kurdish issue, it appears questionable whether it would actually be able to do so without international support. The Kurdish side is generally reluctant to engage with a state that has indulged in violent repression over so many years, which is likely to undermine Turkish efforts towards reconciliation. Similarly, Turkish people themselves may not feel inclined to launch negotiations with Kurdish representatives when they have been told for almost a century that there was no such thing as a “Kurdish question”. The loss of life of many Turkish and Kurdish civilians and soldiers contributes to this general reluctance. To that extent, the intervention of a “neutral” party may legitimise Turkey’s actions.

The Nature of an International Intervention

Although the international community’s involvement appears essential, it is important to be clear about one the nature of such an intervention, which needs to be both justified and effective. The first and most radical option would be a military action against Turkey, that is, a humanitarian intervention. It is true that human rights abuses occur on a frequent basis and that they are the cause of great instability in the region, yet a humanitarian intervention would be highly undesirable on many grounds. Firstly, it could result in even greater instability in the region and result in the loss of many lives. Secondly, far from achieving the desired result, it could worsen an already difficult situation, as it is uncertain whether Turkey will indeed recognise Kurds’ rights under these circumstances. Thirdly, it appears doubtful whether any international coalitions would be willing to launch a military action against the Turkish state. Fourthly, although the Kurds’ situation is extremely preoccupying in the southeast and many lives have been lost, the regime in place is not as brutal as the barbarous one in place in Kosovo. In other words, even though the continuous human rights violations occurring in Turkey are unworthy of a democratic society, political negotiations remain nonetheless possible. A political, diplomatic and even judicial solution is therefore preferable.

There are various European and international mechanisms which could be instrumental in bringing about a substantial shift in the current treatment of Kurds within Turkey. These include political pressure from states enjoying a particular relationship with Turkey, and the use of European instruments such as the European Convention of Human Rights and the European Court of Human Rights⁷⁹ case law, both of which both constitute a great step towards the recognition of a Kurdish issue and the institution of a genuine dialogue. Moreover, the Commission in charge of monitoring Turkey's accession to the EU and EU members at large have been and remain great incentives for Turkey to adopt substantial reforms to improve its human rights record.

Relevance of an OSCE mandate

In spite of the above, the ECtHR and the EU alone may not be sufficient to bring about a peaceful solution to the conflict. Fundamental to the resolution is an institution capable of monitoring a viable peace process between both sides. To that end, the OSCE - which includes Turkey as one of its members - may provide an adequate framework. For instance, the OSCE mission in Kosovo - established on 1 July 1999 - proved instrumental in "promoting institution and democracy-building and human rights and rule of law", and constitutes the Pillar III of the United Nations Interim Administration in the region.⁸⁰ Furthermore, all OSCE participating states have accepted that implementation of OSCE human rights commitments is a matter of direct and legitimate concern to all participating states and is not an internal affair. Most importantly, the United Nations⁸¹ established the United Nations Interim Administration Mission in Kosovo⁸² an interim administration made up of the EU and the OSCE, charged with transferring power to local institutions as part of its commitment to "gradually introduce self-government in Kosovo".⁸³ Although the situation in Kosovo is to be distinguished from the one in the southeastern Turkey, the close monitoring of a democratic solution to the Kurdish problem by the OSCE would be welcome. In this context, the OSCE possesses various mechanisms at its disposal to address these serious issues.

If participating states are willing to meet their obligations under the OSCE, it could provide a viable solution which would meet the legitimate concerns of both parties. Most importantly, it would enable both sides to reach a peaceful agreement, which would in turn enhance stability within the region.

⁷⁹ Hereinafter ECtHR.

⁸⁰ See the OSCE Mission in Kosovo website: <http://www.osce.org/kosovo/13194.html>, as on 19 August 2005.

⁸¹ Hereinafter UN.

⁸² Hereinafter UNMIK.

⁸³ "UN Transfers Final Government Responsibilities to Kosovo Institutions", News coverage, UNMIK online, 30 December 2003, at <http://www.unmikonline.org/news.htm>, as on 19 August 2005. Read generally Yildiz, "The Kurds in Iraq", 2005, Pluto Press, p. 159-161.

Recommendations to the OSCE:

- Ensure that the human dimension of its work continues to emphasise that the accommodation of national minorities is integral to the pursuit of regional security
- Support the High Commissioner for National Minorities in facilitating a dialogue and providing for a conclusion of multilateral agreements between the Kurds and the Turkish authorities
- Create effective monitoring procedures which ensure that diplomatic progress made between the High Commissioner and Turkey may be capitalised upon.

CONCLUSION

As a result of our assessment of the year 2004-2005, the Kurdish Human Rights Project is seriously concerned that Turkey is not fulfilling its obligations as an OSCE state. This is despite considerable legal reform over the past two years, the most recent in the form of the revised Penal Code.

There are ongoing abuses of the human rights and fundamental freedoms of Kurds in Turkey that require the urgent attention of the OSCE. These are:

- The denial of minority group rights to Kurds in Turkey
- The continued and systematic use of torture and methods of ill-treatment
- The critical situation of IDPs who have been prevented from returning to their villages and denied an effective mechanism of compensation
- The placing of onerous bureaucratic requirements on associations and the interpretation of laws and regulations in a manner which impedes the formation and activities of legitimate human rights associations

The KHRP calls upon member states of the OSCE to urgently assist both the Kurds and the Turkish Government to address the human rights abuses outlined in this submission, and to support the High Commissioner on National Minorities in providing a viable solution which would meet the legitimate concerns of all parties, enhancing stability within the region.

Kurdish Human Rights Project
September 2005