

Human Rights Violations Against Kurds in Turkey

**Report Presented to the Organisation for Security and Co-operation
in Europe (OSCE)**

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Kurdish Human Rights Project

11 Guilford Street

London, WC1N 1DH

Tel: +44 20 7405 3835

Fax: +44 20 7404 9088

Web: www.khrp.org

Email: khrp@khrp.org

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, which encompass the regions traditionally and currently inhabited by Kurds and form 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 borne out of a desire to utilise the international mechanisms available to victims of human rights violations, to make the perpetrators accountable and prevent further abuses in the future.

Today, KHRP has earned international recognition for its tireless work to promote and protect human rights in the regions. Its victories have established precedents, secured justice and redress for past abuses and prevented further abuses from recurring.

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.

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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 but also including Armenia and Azerbaijan, 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. Over the past year, Turkey has made some gains in the quest for equality for the Kurds, but much work remains. Several high-profile trials have put Turkey's reluctance to embrace certain freedoms in the international spotlight.

In its goal to join the EU, Turkey has enacted reforms that it says were designed to liberalise and open its political system. However, during the last year as Turkey has slid into its old habits of torture, repression, the denial of freedom of expression and association and discrimination against Kurdish people, concerns have been raised that Turkey's reforms were merely superficial and designed to give the appearance of change, without any substantive alterations to either the political system or the everyday lives of Kurds living in the country.

This report focuses on the extent to which Turkey has fulfilled the commitments it has entered into as an OSCE state with regard to topics such as national

minorities, the rule of law, 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.

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

SUMMARY OF RECOMMENDATIONS

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:

- Monitor Turkey's commitments to the OSCE, primarily in areas where the Government claims it has made substantial reforms.
- Provide incentives for Turkey to create actual improvements on the ground for the Kurdish minority in terms of its recognition, democratic participation, legal reforms, and education.
- Ensure that Turkey solves the specific problems plaguing Kurdish women, both in the home and in education and the workplace. By solving the problems facing women, Turkey can hope to achieve its OSCE goals more quickly and fairly.
- Press Turkey to amend its existing and proposed laws to ensure the freedom of expression and freedom of association. This will usher in new rights into Turkey that will help it fulfil its OSCE obligations as well as the criterion to enter into the EU.
- Elicit the help of human rights groups and encourage Turkey to welcome their role. Human rights groups could provide much of the information and support for the OSCE to get Turkey to realise its OSCE obligations.
- Investigate the situation of Kurdish IDPs in Turkey and monitor the effectiveness of Turkey's current steps to afford them the necessary redress and facilitate their return, including engagement with the Government to improve these mechanisms;
- Encourage the eradication of torture through the organisation of human rights groups to observe conditions in Turkey's prisons and the

monitoring of legal reforms, as well as combating the cultural barriers within the legal apparatus that effectively endorse the use of torture.

INTERNALLY DISPLACED PERSONS

Current Situation in Turkey

The number of Internally Displaced Persons (IDPs) in Turkey of Kurdish origin numbers in the hundreds of thousands. Removed from their homes during the social unrest and fighting between Turkish security forces and Kurdish militants during the 1980s and 1990s, Kurdish IDPs in Turkey today are still waiting to return home.

Turkey's obligations on compensation

Turkey enacted the Law on Compensation for Damage Arising from Terror and Combating Terror ("Law 5233"), in July 2004. This law was designed to compensate for claims of material damage inflicted by opposition and security forces filed within one year. This deadline was recently extended by Law 5442 to 3 January 2007. A KHRP Fact-Finding Mission in July 2006 found that Turkey has had some difficulty in executing the law and bringing fair compensation for displaced Kurds in the last year. These problems are set out below.

a) Lack of compensation for psychological harm

Law 5233 only recognises material and physical damage, not psychological harm or suffering and distress. Psychological torture is not viewed as "real torture" by many in Turkey, both citizens and Government officials. Therefore, Law 5233 has not been able to address

many of the mental and emotional scars left by the Turkish military campaigns in Kurdish villages.

b) Lack of legal aid

Turkish officials provide no legal aid to applicants filling out compensation forms. Many Kurds in south-eastern Turkey are illiterate and therefore completing complicated compensation forms without help has been an insurmountable burden for them. The inability of many Kurds who deserve compensation under Law 5233 to complete the necessary procedures without any legal assistance results in the compensation mechanism not being effective at reimbursing Kurdish displaced persons. Many lawyers have charged a 10% fee which is payable should a compensation award be made, which reduces an already minimal compensation amount.

c) Exclusion of some claims

A number of applicants are automatically excluded from applying to the commissions for compensation, either because they have already been compensated, albeit minimally;¹ because they are 'voluntary' evacuees or because they had been convicted under the Anti-Terror Law. Out of 27,011 applications considered by the commissions before 3 May 2006, 15,112 were rejected.² Of these, 4,980 were considered 'outside of the scope' of Law 5233, and 1213 were rejected for lack of information and documents.

¹ In 1999, before the general election, the Turkish Government gave small symbolic amounts of compensation to a small number of displaced persons. Many people accepted these payments because they represented the only compensation available at that time. They are now prevented from making further claims for realistic amounts.

² ANF News Agency, Ankara, 21 July 2006

Now that the compensation commissions have started to review and assess the compensation claims, the results clearly show that, in addition to the above problems, various other applicants are excluded. These include applicants whose property was built on treasury land and those who are not prepared to state that the damage and their loss was caused by actions of the armed opposition groups. This may explain why, out of the 27,011 applications decided by 3 May 2006, only 11,899 - 44% - were awarded compensation.³

d) Inadequacy of appeal

Law 5233 does not afford IDPs an adequate opportunity to appeal insufficient compensation awards. The appeals process is both lengthy and costly, therefore many IDPs have been forced to accept inadequate payments they would otherwise be reluctant to accept. The claims thus accepted do not correctly reflect the true value of the damage inflicted on the IDPs. This has meant that insufficient funds have been allocated and distributed to Kurds displaced from their land.

e) Unacceptable delays

Since their establishment, the compensation commissions have been overwhelmed with applications. By 3 May 2006, 195,463 applications had been lodged: yet the commissions cannot process them fast enough.⁴ Only 27,011 - 13.8% - of the full number of applications have been considered and assessed. With so many cases to deal with, any assessment is going to be cursory at best.

³ ANF News Agency, Ankara, 21 July 2006

⁴ ANF News Agency, 21 July 2006

In Batman, 11,000 applications have been lodged with the compensation commissions, yet only 1,000 of these have been considered so far, and only 600 were offered compensation.⁵ By 28 April 2006, Diyarbakır's 4 commissions had only managed to consider 3,797 (10%) of its 35,569 pending applications. Further, by 31 January 2006, Hakkari's two commissions had assessed just 1,325 (6%) of the 21,597 applications.

f) Continued violence in the Kurdish regions

Renewed violence in the Kurdish regions of Turkey has threatened resettlement efforts and could mean further displacement in the future. Kurdish IDPs technically do not need permission to resettle their lands, but they often find themselves tied up in bureaucratic processes and procedures, hampering their ability to return to their places of origin. Compounding the problem are village guards who are often placed in the evacuated Kurdish towns. Often, these guards and officials are the same individuals who destroyed the village and tortured some of its inhabitants years earlier. This undoubtedly causes returning Kurdish IDPs to feel intimidated and does not help in the resettling effort that the OSCE has outlined for displaced persons.

g) Hardships and urban life

While a large number of Kurdish IDPs await resettlement, their situation in cities and urban areas is bleak. Many displaced Kurds come from rural, underdeveloped regions and they lack the urban-living skills needed for life in large cities to which many have relocated. Therefore,

⁵ ANF News Agency, 20 July 2006

Kurdish IDPs suffer from endemic unemployment in the cities to which they have fled. Once in large cities like Ankara or the metropolis İstanbul, Kurds are often alienated from their people, language, and culture.

h) Women and children

This situation has often proved hardest to the more marginalised sectors of Kurdish society, namely the women and children. Women continue to be subjected to honour killings, an issue which is exacerbated by the poor living conditions of IDPs. Alienation and frustration at having been displaced to the large, unfamiliar cities of Turkey not only does not mitigate practices such as honour killings, but can reinforce them. Children become victim to dangerous conditions of child labour as families barely make ends meet. Displacement to large urban centres in Turkey has destroyed much of the Kurdish IDPs' social and familial fabric, often at the expense of women and children.

In spite of these concerns, the European Court of Human Rights (the 'European Court') has recently ruled that Law 5233 is an effective mechanism of redress and therefore has held that the Court should not be used as an alternative mechanism to provide compensation for displacement (*Icyer v Turkey*, Application No 1888/02, decision of 6 January 2006). The European Court has applied this judgment in many subsequent cases, including the recent ruling in *S.S. and M.Y. v. Turkey* (Application No. 37951/97), where roadblocks were thrown up to Kurds using the European Court to seek compensation. Given the problems which KHRP and other organisations and political bodies have identified with Law 5233, the OSCE must monitor the situation of IDPs closely in

Turkey to make sure that Kurds are resettled and receive fair compensation for their losses.

Unsustainable Development Projects

Turkey has recently moved forward with plans to construct the Ilisu Dam, which would flood predominantly Kurdish cities such as Hasankeyf on the Tigris River in Batman province, threatening more displacement. Hasankeyf has seen significant progress in recent years in terms of urban design, city planning, technology and architecture. Hasankeyf stands out as a relatively successful Kurdish city whose evacuation and flooding would derail recent efforts that the Kurdish population has undertaken to modernise. Turkey's campaign to build the Ilisu Dam will limit the areas to which Kurdish IDPs can return and will threaten thousands more who already live in areas like Hasankeyf that would be submerged.

Additionally, the proposed Baku-Tbilisi-Ceyhan pipeline, which would cut across largely Kurdish areas of Turkey, threatens Kurdish lands with environmental degradation and adverse economic impact on inhabitants of the region. Neither the Ilisu Dam or the BTC pipeline has been endorsed by local populations living on the land to be affected, nor have Kurds living in the area been asked to participate in the debate. Nonetheless, world leaders have been eagerly pushing for the pipeline to be used due to skyrocketing oil prices and to remove funding from oil-rich states that are hostile to the West.

OSCE Obligations

- The participating States “recognize that displacement is often a result of violations of OSCE commitments, including those relating to the Human Dimension” (Helsinki Document 1992, Decisions, chapter VI, par. 42).
- “The continuing violations of human rights, such as involuntary migration (...) continue to endanger stability in the OSCE region” (Lisbon 1996 Document, Summit Declaration, par. 9).
- OSCE states will “facilitate the return, in safety and in dignity, of refugees and internally displaced persons, according to international standards. Their reintegration into their places of origin must be pursued without discrimination” (Lisbon Document 1996, Summit Declaration, par. 10).
- The OSCE recognises the “need for international co-operation in dealing with mass flows of refugees and displaced persons” (Helsinki Document 1992, Decisions, chapter VI, par. 41).
- The OSCE takes “into account the role of other relevant international bodies” to solve problems concerning IDPs (Rome Document 1993, chapter IV, par. 3).
- OSCE states “decide to expand their co-operation with appropriate international bodies” in terms of providing for IDPs (Budapest Document 1994, Decisions, chapter VIII, par. 32).

Assessment 2005-2006

Turkey has succeeded in its OSCE obligation in that it understands that the continuing problem of the IDPs is both a violation of the rights of its citizens and of the role the OSCE has given all member states in solving

IDP issues. By creating a compensation plan, Turkey has acknowledged that IDPs need to be returned to their land and that they suffered physical and material harm for which they are due funds from the state.

However, the resettlement and compensation programmes have been inadequate. Turkey therefore has not met its OSCE commitments, which include stamping out the continuing and involuntary migration of Kurds throughout the region. Turkey is obliged under the Lisbon Document to facilitate the return of displaced Kurds to their homes. By only allowing a small window of opportunity for displaced and diaspora Kurds to make their claims, and then giving little chance for appealing improperly judged claims, Turkey cannot hope to seriously address and solve the problem of Kurdish IDPs.

The OSCE needs to monitor the situation in Kurdish regions of Turkey and help coordinate different local and international aid groups that can offer assistance and help in resettling Kurdish IDPs. This will help push through a joint effort that can solve the IDP issue quicker and more effectively than Turkey acting on its own.

Recommendations to Government of Turkey

The OSCE has maintained that the rights of IDPs are critical to both human rights and regional stability. Meeting in İstanbul in 1999, the OSCE announced its support of the 1951 Convention Relating to the Status of Refugees and reaffirmed its 1967 Protocol that states should facilitate the safe return of IDPs to their places of origin. Although Turkey has instituted many of these measures by law, the implementation of these ideals in Turkey has a mixed record, at best.

Turkey has not lived up to its obligations under the OSCE conference in Copenhagen of 1990 which committed OSCE members to implement its declarations allowing protection of human rights except on narrow exceptions based on public safety. Turkey's inability or unwillingness to effectively compensate those whose property was damaged during the civil unrest falls far short of OSCE standards.

a) Need for development in evacuated areas

To make the returns to the Kurdish regions sustainable, Turkey would need to develop the infrastructure and invest in the economy of the south-eastern regions of the country. Accurate information regarding the resettlement effort is hard to come by, as well, because much of it is provided by security forces who are often inclined to give overly optimistic views of the problem.

There exists a problem of trust between IDPs and state and social actors which hampers resettlement activities. In order to preserve national and regional stability and security, though, Turkey needs to expedite the return and rebuilding of Kurdish villages that were evacuated during the violence of the 1980s and 1990s.

b) Need for efficiency in running compensation programme

In addition, Turkey would need to set up and create focal points of responsibility in the resettlement efforts to implement the plan at various levels of government. Greater transparency and better cooperation and coordination between the Government and non-governmental

organisations, such as human rights groups, are needed to make the programme work. Presently, many land mines are in place in south-eastern Turkey which pose a danger for Kurdish IDPs trying to return to their places of origin.

Recommendations to the OSCE

a) Human rights and IDPs

The OSCE needs to investigate the root causes of the continued status of IDPs amongst Kurds in Turkey and to work with Turkey, other OSCE members and independent aid groups to oversee the return of Kurds who seek to return to their cities, towns, and villages.

The OSCE conference in Vienna in 1989 explicitly protected individuals from psychological and psychiatric abuses, for which Law 5233 does not provide. The following year, in Copenhagen, the OSCE reaffirmed this principle and added that torture is never an acceptable practice, even in times of national emergency. The OSCE needs to ensure that Turkey avoids psychological abuse at all times.

b) Need for facilitation of return of IDPs

By making the compensation forms difficult to understand and to fill out for Kurdish displaced persons, the OSCE needs to push for Turkey to promote adequate redress and appeal to Governmental organs to ensure a fair, just, independent and impartial hearing before the law. The OSCE needs to monitor the IDP situation in Turkey more closely, including how

compensation mechanisms often have not given Kurdish IDPs the redress they are due.

c) Role of human rights groups and international organisations

The OSCE outlines several ways that human rights groups can improve the situation of IDPs, however this will require coordination and clearance from Turkey, which thus far it has been reluctant to effect. The OSCE should push Turkey to accept help from international rights and aid groups and highlight incentives, such as lower cost.

Summary

These problems highlight the ways that Law 5233 fails to comply with OSCE standards. The 1996 Lisbon summit affirms the right of IDPs to return without discrimination to their lands. Law 5233 has not ensured that Kurdish IDPs return to their places of origin either efficiently or with dignity. The OSCE reforms and guidelines have not been implemented in full in Turkey with respect to Kurdish IDPs and Law 5233. In order for substantial progress to take place for Kurdish IDPs, the OSCE will need to be more proactive in monitoring and encouraging reforms.

FREEDOM OF EXPRESSION

Current Situation

In order to be in compliance with European standards, Turkey has been enacting legislation that, on the face of it, should augment freedom of expression and speech. However, whilst these laws are amongst the most progressive in Europe, they have not translated into any real reforms on the ground. Individuals, including authors, publishers, and editors have faced threats, investigations and trials for expressing their viewpoints. Turkish officials usually file charges based on anti-terrorism, the disruption of Turkish unity, or insulting Turkishness legislation. Recent trials in Turkey for offences on free speech and expression have raised questions on Turkey's commitment to freedom of expression.

Cases against authors, publishers and human rights defenders

a) Orhan Pamuk

On 30 June 2005, Orhan Pamuk, an internationally popular writer from Turkey, was indicted in Turkey for comments made in Switzerland regarding the human rights violations and deaths committed against Kurds and Armenians in Turkey during the twentieth century. Prosecutors said that he had violated Article 301 by denigrating the Turkish state and he faced four years in prison, one of which was for making his comments while abroad.

His trial brought international attention and exposed the continued lack of freedom of expression pervasive in Turkey. The charges made against Orhan Pamuk were eventually dismissed, but the fact that he was prosecuted at all raises questions about Turkey's seriousness in enacting true reforms. Additionally, the trial was marred by outbursts of nationalistic sentiment, adding to an atmosphere of intimidation, not one of justice.⁶

b) Fatih Taş

Fatih Taş is the owner of a publishing company in Turkey called Aram Yayıncılık which published a number of political books, for which he has been charged under Article 301 of the Turkish Penal Code. One of these details American arms sales to Turkey which were used against Kurds, whilst another tells of assassinations, intimidating tactics and surveillance used by JİTEM⁷ in the 1990s against politically motivated members of the Kurdish community in Turkey. These books do not glorify or condone acts of violence by Kurdish militants, but rather aim to provide an alternative point of view. Fatih Taş has raised paragraph 4 of Article 301 as a defence and claimed that the books were legitimate criticism.

Prosecutors in Turkey filed an indictment against Aram Yayıncılık, the Turkish publisher of "Manufacturing Consent: The Political Economy of the Mass Media," by Noam Chomsky and Edward S. Herman, alleging that it "denigrated Turkishness, the Republic and Parliament", under Article 301 and Article 261/1 of the Turkish Penal Code, provoking hatred and enmity among the public. The indictment also seeks the trial

⁶ KHRP Trial Observations Report "Turkey on Trial: The Prosecutions of Orhan Pamuk & Others", July 2006

⁷ Jandarma İstihbarat Teşkilatı (Turkish Gendarmerie Intelligence Agency)

of Fatih Taş, for his publishing activities. The indictment claims that the Turkish edition of the book was edited and prepared by Ömer Faruk Kurhan and Lütfi Taylan Tosun.

c) Hrant Dink

Hrant Dink is a publisher of Agos newspaper, which is printed in both the Turkish and Armenian language. His commentary on the Armenian genocide landed him charges under Article 159 for denigrating Turkish character. Although convicted of the offence, he faced no jail time since it was his first offence and he was unlikely to commit it again. He is now facing investigation under Article 301 for insulting the judiciary after claiming in an interview that the court did not understand his comments and also for commentary he made on Turkey's national anthem.

In July 2006 at Dink's trial, fights broke out in the courtroom between nationalist lawyers and defence attorneys. Hrant Dink and his co-defendant Serkis Seropyan denied that they attempted to inappropriately influence the judicial process in Turkey. Seropyan has said that his and Dink's comments regarding their investigations and trials were to convey their anger, not to undermine the judicial process. Authorities have claimed that Dink and Seropyan, and other co-defendants Avdın Engin and Arat Dink, intended to "subvert to Republic of Turkey and attack the judiciary so that it became ineffective".⁸ If convicted, the defendants could spend up to three years in prison.

⁸ "Scuffles at Dink Trial yet Again", *Turkish Daily News*, 6 July 2006.

Nationalist lawyers have been ramping up efforts to prosecute those who they believe threaten the security and territorial integrity of Turkey by pushing the state to investigate any speech with which they disagree.

d) Professors Kaboğlu and Oran

In 2003, the Prime Minister convened the Human Rights Advisory Board to investigate and detail the human rights situation in Turkey. Professors Kaboğlu and Oran released a report in October 2004 which was critical of Turkey's minority rights record and were subsequently arrested and charged for inciting hatred. Although acquitted of the charges in February 2006, Professor Oran now faces an investigation regarding an alleged improper leak of the case to foreign journalists.

It is unlikely that Professors Kaboğlu and Oran were aware that their participation, invited by the Turkish Government, on the Human Rights Advisory Board would land them in trouble with laws designed to stymie critical talk of the nation. Articles 301 and 216, under which they were charged, criminalises those who "insult" or "denigrate" Turkishness or the Turkish state.

e) Elif Şafak

Elif Şafak is a novelist and columnist for the Turkish Daily News who published *Baba ve Piç* ('The Bastard of Istanbul'), which contained characters who referred to a genocide of Armenians in Turkey during World War I. Her criminal file was reopened by the Beyoğlu Prosecutor's Office in Istanbul after nationalist lawyers had complained about the lack of progress on the investigation into her. Prosecutors have accused Şafak

of belittling Turkishness, insulting Mustafa Kemal Atatürk, and the military and Government, all of which are crimes under the Turkish Penal Code. Although the charges were eventually dropped at the opening of her trial on 21 September 2006, concerns remain that such charges should have been allowed to have been raised against Şafak in the first place.

f) Mayor Osman Baydemir

“Over 200 people have been wounded and 6 people have lost their lives.... We are not any longer in a position or have the tolerance to lose more of our people... Let us be responsible and act with conscience.”⁹

In Diyarbakır, the Public Prosecutor’s Office was able to indict Mayor Osman Baydemir from the pro-Kurdish Democratic Society Party for making the above statement, which the Turkish Government considered as praising, aiding, and abetting the PKK, and “knowingly and willingly assisting” the PKK¹⁰, under Article 314 of the Turkish Penal Code. In March 2006, violent demonstrations during the funeral of several PKK members, following hostilities between the PKK and Turkish soldiers resulting in the death of more than 20 in the eastern province of Bingöl, left the region in turmoil. Mayor Baydemir’s comment, calling on both sides of the conflict to stop the violence, allegedly lent support to the PKK fighters who had died since he exclaimed that he sympathised with the dead and their mourners. Diyarbakır prosecutors have accused the mayor of embracing and congratulating masked gunmen.

⁹ Speech by Osman Baydemir, Diyarbakır, 31 March 2006

¹⁰ “Another charge against Diyarbakır mayor”, *Alarab Online*, 10 July 2006.

However, Mayor Baydemir claims his comment was intended to defuse a tense situation in which angry civilians were attending the funerals of Kurdish men killed in hostilities between the PKK and Turkish security forces. Mayor Baydemir felt that the funeral had the potential to turn violent and states that he assessed the situation and took action to mitigate any risk for both his constituents and the Turkish authorities. Turkey should have welcomed and understood that Mayor Baydemir's presence and comment were intended to calm any unrest, not to foment it.

The mayor complained that the investigation into his words amounted to an unfair targeting, stating, "sacrifice me if you must for democratisation and social peace." Turkish Prime Minister Erdoğan declared that Mayor Baydemir's comments were "irresponsible" while ignoring the work that the mayor has done in contributing to stability and peace in Diyarbakır. The Public Prosecutor's Office in Diyarbakır has claimed that Mayor Baydemir's remarks amount to supporting the PKK.

Turkey has accused the Democratic Society Party with being close to the outlawed PKK. It is also trying to shut down Roj TV, a Copenhagen-based Kurdish language television station that Turkey accuses of promoting PKK views. Turkish attempts to shut it down are both uncalled for, in that it does not threaten stability or order in Kurdish regions of Turkey, and outrageous in that such an action is a flagrant violation of OSCE guidelines on freedom of expression. In June 2006, over 50 mayors from the region were accused by Turkish officials of committing a crime by writing a letter to the Danish prime minister seeking his assistance to keep the station open. Diyarbakır Prosecutor's Office has initiated a criminal investigation into the sending of the letter:

the trial commenced on 26 September 2006 and remains pending. To promote the continuation of a Kurdish language television station was seen by many Turkish nationalists as “humiliating”.

Mayor Baydemir is already under investigation and is facing charges for ties to the PKK after allegedly allowing a municipal ambulance to transport the body of a PKK member home to his family. Prosecutors have also targeted and filed charges against Mayor Hüseyin Kalkan of Batman, a Kurdish city in south-eastern Turkey, alleging him to be a member of the PKK. If convicted, Mayor Baydemir could face up to fifteen years in prison.

g) Other instances

Turkey prosecuted Suat Çetinkaya, Özgür Bakış, Yeni Evrensel, Selman Yeşilgöz and Ali Firik for what Turkey has described as outlawed meetings, newspaper articles and public speeches. Europe has been applying pressure recently on Turkey. The European Court of Human Rights in June 2006 sentenced Turkey to significant fines for its violations on freedom of expression. Europe continues to work to advance freedom of expression in Turkey through various reports and commissions that are meant to keep pressure on Turkey.

On 4 August 2006, Özgür Gündem, the Kurdish newspaper in Turkey, was closed down for 15 days pursuant to a court decision, on the grounds that it “continuously publishes content that is doing the propaganda of the terrorist organisation”, under the Press and Anti-Terror Laws. The court decision did not offer any concrete legal ground or justification for the finding that the newspaper’s contents violated the Press and Anti-

Terror Laws. The decision was overturned some four days later and the paper re-opened. As at 20 July 2006, 550 cases had been opened against the paper.

OSCE Obligations

- OSCE members must make laws regarding freedom of expression “known as widely as possible and to render them accessible to all individuals in their countries” (Vienna Document 1989, par. 13.3)
- Turkey has a “relevant and positive role to play in contributing to the achievement of the aims of their co-operation” and to “take effective measures to facilitate access to information on the implementation of CSCE provisions and to facilitate the free expression of views on these matters.” (Vienna Document 1989, par. 26)
- Participating States will “provide that no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process” (Copenhagen Document 1990, par. 7.8).
- The participating States reaffirm that “everyone will have the right to freedom of expression including the right to communication...The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards” (Copenhagen Document 1990, par. 9.1).
- A recognition that “independent media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms” (Moscow Document 1991, Par. 26).

- “The print and broadcast media in their territory should enjoy unrestricted access to foreign news and information services. The public will enjoy similar freedom to receive and impart information and ideas without interference by public authorities” (Moscow Document 1991, Par. 26.1).
- “The participating States will not discriminate against independent media with respect to affording access to information, material and facilities” (Moscow Document 1991, Par. 26.2).
- The OSCE is “deeply concerned about the exploitation of media in areas of conflict to foment hatred and ethnic tension” (Istanbul Document 1999, par. 27)

Assessment 2005-2006

The Orhan Pamuk case highlights where Turkey has failed to live up to obligations of the OSCE. The Copenhagen Document requires Turkey to grant Orhan Pamuk the freedom to express and communicate his ideas, no matter how politically unpopular they may be. The OSCE only allows for restrictions on freedom of expression in cases consistent with international law. By declaring that the Armenian genocide happened and that tens of thousands of Kurds were killed in the 1990s, Orhan Pamuk did not endanger any legitimate state interest that would justify an abrogation of his freedom to express himself and a subsequent trial.

Additionally, Turkey has fallen short of the OSCE guideline promulgated in Istanbul in 1999 that the media not be exploited to foment hatred and ethnic tension. The number of aggressive nationalists who appeared outside the courthouse during Orhan Pamuk’s trial and the tactics of intimidation used by them showed a tacit approval by Turkish officials to

use the event as a display of ultra-nationalism and against the expansion of the freedom of expression.

Article 301 of the Turkish Penal Code criminalises denigrating the State, however subsection (4) allows legitimate criticism as a defence. The seemingly arbitrary way that prosecutors have interpreted speech and expression as either denigration or legitimate criticism does not comport with OSCE standards of transparency and clear knowledge of the law. Turkey needs to play a constructive role in setting out expression rights that promote freedom. Also, Turkey must ensure that when publicising these trials, it does not use its media to promote nationalistic displays outside that seek to intimidate expression.

Turkey is obliged by the Vienna Document to play a positive role in facilitating access to information and to implement all provisions of the OSCE on freedom of expression.

This is threatening the rights of freedom of expression in Turkey and goes against OSCE guidelines for Turkey to promote freedom of expression, not to facilitate criminal investigations seeking to limit these rights.

By investigating the comments and actions of Hrant Dink, Turkey is impeding the right of the Turkish public to have access to media. By choosing to discriminate based on content, Turkey's control on the media suffers from a bias against any reports the Government deems offensive. Turkey is allowed to arbitrarily decide how it will enforce its laws prohibiting freedom of expression. Publishers of nationalist propaganda and/or books with a nationalist agenda are rarely subjected to similar criminal charges.

Under OSCE guidelines, restricting freedom of expression is not acceptable unless it comports with international standards.

By calling an Advisory Board and then criminalising its work, Turkey has not been playing the positive role to which it committed after the OSCE meeting in Vienna in 1989. The following year in Copenhagen, Turkey agreed, with other OSCE members, to only restrict the freedom of expression where international law allows it. The calling of a board to monitor human rights activities in Turkey is to be welcomed, yet the subsequent criminalisation of its members as result of their findings is a clear step in the wrong direction.

This violates OSCE guidelines in the Vienna Document, which require Turkey to play a positive role in facilitating access to avenues of freedom of expression. Also, according to the Copenhagen Document of 1990, Turkey is obliged to give access to all forms of media. By opening a criminal investigation into Elif Şafak's publishing of her book, it is not ensuring the freedoms of expression expounded by the OSCE are taking root in Turkey.

Recommendations to Government of Turkey

Fatih Taş should be given the right to publish books critical of the Government as this would comport with OSCE guidelines to allow independent media access to information and channels of communication. Publishing books is an important part of the dissemination of information to the public and impeding this violates OSCE norms.

Turkey has obliged itself to play a positive role to contribute to the facilitation of freedom of expression. This should include the freedom to criticise the Government and to disagree with its decisions.

Further, an elected official needs to have the right to express his beliefs and should not fear prosecution for it.

Recommendations to the OSCE

The OSCE should closely monitor the freedom of expression trials in Turkey along with international non-governmental organisations. The OSCE has recommended a wide range of freedoms that are associated with the rights of speech and expression with very little room for abrogation. Per the Istanbul Document of 1999, the OSCE is aware of the problems that exist within the OSCE region regarding freedom of expression. The OSCE should push Turkey towards liberalising its views on freedom of speech and away from finding ways to fit in offences into tangentially-related criminal codes.

Restrictions on Kurdish language rights

Turkey has historically denied Kurds the right to use their language in public as late until the 1990s. As Turkey continued its accession talks with the European Union, it made small attempts to appease critics of its laws regarding the Kurdish language, but in recent years these efforts have been labelled as merely superficial. There are still challenges to usage of the Kurdish language in Turkey. For example, political meetings

must, by law, take place in the Turkish language, so Kurdish political groups experience difficulty in establishing political groups while conducting its meetings in a language other than their own.

Turkey has made commitments to OSCE standards of permitting and encouraging Kurdish language use among the nation's Kurds. However, the Turkish Constitution allows only the Turkish language to be used in any official capacity, which runs contrary to OSCE standards. Schools teaching the Kurdish language that were opened during Turkey's bid to join the European Union received no support from state authorities in the impoverished south-eastern region of Turkey. Additionally, they have closed due to lack of interest on the part of the Kurdish population who already speak the Kurdish language and were not looking for language instruction schools but rather for education in their mother tongue. In this way, their access to education would not be impeded by non-familiarity with the Turkish language. This demonstrates Turkey's misaddressing of the problem. To fulfil its OSCE obligations, Turkey's superficial reforms will not suffice. The Government must analyse the problem, that Kurds in Turkey demand and deserve education in the Kurdish language, and then tackle the problem by implementing schools that teach in the Kurdish language. Turkey must not claim that it is seeking to solve a problem when it is providing the incorrect remedy.

For the performing arts, Kurds often must seek official permission and have no criminal records. However, as Kurdish continues to be forbidden in official Governmental and commercial venues, the Kurdish language will be relegated to the home and the arts, where it would be endangered.

Use of the Kurdish language is still frowned upon by the authorities in Turkey. Private media regulations demand that a need be shown in order to be able to broadcast in the Kurdish language. Turkey now only allows 45 minutes of Kurdish language broadcast a day, and this must not include cartoons, for children, or be educational in any way.

For access to public media, Kurdish language programming must often include subtitles in Turkish, translations and equal time for Turkish language since broadcasts rarely can be completely and solely in Kurdish. Additionally, the Kurdish language broadcasts are often infused with Turkish words by personalities with a poor command of the Kurdish language.

The RTÜK, the Radio and Television Higher Board in Turkey, is responsible for regulating and monitoring radio and television broadcasts. It watches for offensive language, libel, obscenity, instigating separatist propaganda and broadcasts in the Kurdish language. The RTÜK has arbitrarily forced closures and censoring in the past, but in 2005 this policy was changed. However, instead of blanket closures, broadcasters now face rulings by the RTÜK on specific programmes and are subjected to harassment. For example, Özgür Radio (“Free Radio”) was recently accused by the RTÜK of inciting violence merely for reporting on Kurdish issues.

OSCE Obligations

- OSCE members “will protect and create conditions for the promotion of...linguistic...identity of national minorities on their territory. They will respect the free exercise of rights by persons belonging to such minorities and ensure their full equality with others” (Vienna 1989, par. 19)
- Language rights “will not be subject to any restrictions except those which are provided by law and are consistent with their obligations under international law. The participating States will ensure that these restrictions are not abused and are not applied in an arbitrary manner, but in such a way that the effective exercise of these rights is ensured” (Vienna 1989, par. 21)
- “Persons belonging to national minorities have the right freely to express, preserve and develop their...linguistic...identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will” (Copenhagen 1990, par. 32)
- Minorities may “use freely their mother tongue in private as well as in public” (Copenhagen 1990, par. 32.1)
- Minorities need to “have adequate opportunities for instruction of their mother tongue or in their mother tongue” (Copenhagen 1990, par. 34)
- States should promote linguistic identity “by establishing...appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities” (Copenhagen 1990, par. 35)
- “Anyone who is arrested will be informed promptly in a language which he understands of the reason for his arrest, and will be

informed of any charges against him” (Moscow Document 1991, Par. 23.1.ii).

- Member States affirm that “the requirement that laws and policies regarding the educational, linguistic, and participatory rights of persons belonging to national minorities conform to applicable international standards and conventions” (Istanbul 1999, par. 30)

Recommendations to Government of Turkey

For Turkey to adequately fulfil its commitments to the OSCE, it should provide Kurdish language instruction in publicly-funded schools, not just specialty and private schools. In addition, children should be taught in Kurdish, their mother tongue, in order that they are not excluded from the education system. Turkey must also aim for more than superficial reforms in its attitude towards Kurdish language programmes. The Turkish bureaucracy should take steps to implement Kurdish language broadcasting and should not restrict its right to provide information and entertainment to the Kurdish population. This would satisfy Turkey’s obligations under the 1989 Vienna Document.

It seems that Turkey, through maintaining its prohibitions on use of the Kurdish language in political gatherings and in children’s programming, is trying to stymie the association of Kurds to their culture through the repressions of language at its most important levels: in education and in political discourse. Kurdish language schools must be allowed to operate freely without Government interference, children should be taught in Kurdish and Kurdish community groups and political organisation need to be protected from the state and also encouraged to grow naturally through the use of the Kurdish language.

Recommendations to the OSCE

The OSCE should press Turkey to implement the Copenhagen Document and allow for regional and municipal Governmental meetings to take place in the Kurdish language. Additionally, Turkey should promote the use of the Kurdish language in the south-eastern regions of the country. This not only promotes cultural understanding between ethnic Kurds and Turks, but it encourages participation by Kurds in political affairs and institutions who can only do so in their native Kurdish language. Turkey must not impede the use of the Kurdish language in any way, whether it be in the home or in public.

The OSCE's Moscow Document in 1991 dealt with arrest rights. Any individual apprehended by the police or authorities has a right to know which charges are pending against him or her. Reading the charges in the Kurdish language will ensure that arbitrary detentions where the accused does not know the charges pending against him, are prevented.

The OSCE should also follow through with the mandate of its Representative on Freedom of the Media to monitor the media and to promote freedom of information and access by the public to it. UNICEF has recently encouraged Turkey to promote Kurdish language education for Kurdish youth. This will improve education in the country and help to stabilise relations with the Kurds. Literacy and matriculation rates between the Kurdish-populated southeast and the rest of the country reveal huge discrepancies. By promoting education in the Kurdish language, following models such as Belgium, which has education for the languages of its minorities, Turkey will be improving its overall economy

as Kurds contribute to and profit more from cooperation with ethnic Turks.

Summary

The last year has seen a serious lack of commitment on Turkey's part to enact any real and substantive reforms on freedom of expression. At least half a dozen trials of noted journalists, editors and authors have gone underway in the face of intense international criticism. The crimes charged by the state include offending Turkishness and disrupting the unity of the state. Also, Turkey still fights against the use of the Kurdish language. After superficial reforms aimed at deflecting growing criticism from the West, Turkey still seems intent on pushing the Turkish language onto the large Kurdish minority.

FREEDOM OF ASSOCIATION

Current Situation

a) Act 3713

The new anti-terror legislation, Law 3713, came into force in August 2006. It contains the potential for arrests of demonstrators and opposition gatherings under the guise of fighting terror.

KHRP is concerned that Law 3713 will give the Government more leeway in suppressing dissent. New sentencing guidelines mandate double the incarceration time for any activity which Turkey deems “terrorism” that comes from trade unions, political parties, student groups or civic organisations. Also, the new anti-terror law provisions contain a vague definition of what constitutes funding for terrorist activity, giving Turkey the potential to arbitrarily prosecute indirect money flow that passes through what it considers to be “terrorist” hands. Further, demonstration may only be permitted with Government approval, which allows Turkish officials to have a powerful veto on any protest it does not like. Turkey needs to amend its anti-terror laws in order to comply with the OSCE’s stronger insistence of freedom of association.

On 29 March 2006, responding to the unrest in Diyarbakır, the Turkish Prime Minister made a television statement indicating that all necessary action would be taken to quell the protests, irrespective of whether women or children were involved.

*'If you cry tomorrow, it will be in vain. The security forces will intervene against the pawns of terrorism, no matter if they are children or women. Everybody should realise that.'*¹¹

The impact and effect of this statement was profound: for many, it was perceived as a *carte blanche* for the security forces to use indiscriminate violence. It is of particular concern that the Prime Minister referred to the proposed new Law 3713 when making this statement, which supports our concerns that the law may give the Government more opportunity to suppress dissent.

Further, Law 2911 places restrictions on meetings and demonstrations. Additionally, notification must be given to the Government in order to form an association or when dealing with other groups and organisations abroad. These laws and measures violate the OSCE Copenhagen Document that forces signatory states to not only allow but also to encourage assembly of political groups.

b) Political activism

Today, lawyers, politicians, human rights activists and media organisations are subject to hostility and damages to reputation in the press. They also often face intimidation from the judiciary, which may support the Government in its claims against opponents, and by the police, who attend and film press conferences and Kurdish party meetings. This is both intrusive and intimidating to all those present. The police also attend meetings in plain clothes and then intimidate those who choose to have associations with certain individuals.

¹¹ 'Turkey warns children off clashes' BBC News Online, 1 April 2006, at <<http://news.bbc.co.uk/2/hi/europe/4867934.stm>> (last accessed 25 September 2006).

Ongoing accession talks with the EU have also recently inflamed nationalist sentiment, often to the detriment of association rights of the Kurds. On 2 May 2006, politicians and activists İbrahim Güçlü, Zeynel Abidin Özalp, and Sedat Oğur, were arrested, detained violently and accused of spreading propaganda for the PKK. The three individuals were members of Kurd-Kom (Kurdish Association) who were merely protesting the placement of Turkish troops on the Iraqi border and civilian deaths in Kurdish regions along the border.

The three were charged under an anti-terror law, even though Güçlü has publicly condemned PKK violence in the past. The arrest and the charges violate the standards that member States of the OSCE has set forth in the Copenhagen Document of 1990, allowing for peaceful assembly and demonstrations. Turkey likely fears that any show of support towards the stability of Kurdish regions of Iraq will destabilise the Kurdish regions of Turkey.

c) Article 302

Turkey has often invoked Article 302 to persecute human rights defenders, activists and protestors. Article 302 criminalises disrupting the unity of the state. Kurdish political parties and individuals have been particularly targeted by Turkish authorities in the past.

OSCE Obligations

- Participating States will “respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and

- organization with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities” (Copenhagen Document 1990, par. 7.6)
- Participating States reaffirm “their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their protection and promotion” (Copenhagen Document 1990, par. 10)
 - “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” (Copenhagen Document 1990, par. 10.3)
 - “Everyone will have the rights 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” (Copenhagen Document 1990, par. 9.2)

Assessment 2005-2006

Turkey has been struggling in its adoption of OSCE standards on association rights. As the OSCE presses its members to adopt more progressive rights for individuals to gather and demonstrate, Turkey has taken the opportunity to enact more stringent laws on the legality of political protests. As the world fights against global terror, Turkey seeks to redefine terror to achieve its goals of undermining Kurdish identity.

Turkey has repeatedly flaunted OSCE guidelines by violently breaking up peaceful meetings and by seeking the break-up of associations such as Eđitim-Sen, the teachers' union. The union was under threat of closure by the Government for supporting the right to teach citizens, including Kurds, in their mother tongue. However, on 26 October 2005, the Second Labour Court in Ankara overturned an earlier May decision to shut down the union. This was however only a pyrrhic victory for the union, as the Court's decision resulted from the removal of all mention of mother tongue education from the union's articles of constitution.

Further, the Prime Minister's comments about the legitimacy of shooting women and children are effectively trying to quash any future demonstrations and peaceful assemblies.

Recommendations to Government of Turkey

Turkey must drop the charges against İbrahim Güçlü, Zeynel Abidin Özalp, and Sedat Ođur. The OSCE Moscow Document in 1991 lays out guidelines for fair trials and that "law enforcement personnel, when enforcing public order, will act in the public interest, respond to a specific need and pursue a legitimate aim" (Moscow Document 1991, par. 21.1).

To fulfil its obligations under the Copenhagen Document, Turkey must not only allow political gatherings of citizen groups but should encourage their formation. This promotes the right of the individual as well as allows for progress on the democratic front.

Recommendations to the OSCE

Rights of association form a vital part of freedom and democracy. The OSCE must push Turkey to implement the Copenhagen Document and not only allow but actually support association rights, alternative political parties, and non-governmental organisations dedicated to human rights. The only restrictions to be placed can be those prescribed by international law. However, Turkey's reasoning behind the limiting of rights of association do not appear to be related to any legitimate state purpose.

Summary

Freedom of association is still endangered in Turkey. Political groups that are deemed subversive by the state are put in danger as its leaders are investigated and often arrested on trumped-up charges. New proposed changes to Turkish law will likely exacerbate the problem rather than solve it.

TORTURE

Current Situation

a) Torture methods in Turkey

Turkey has been a practitioner of torture for decades. However, its use of torture against Kurds climaxed during the civil unrest of the 1980s and 1990s. Since the violence between Turkish security forces and Kurdish militants greatly decreased towards the end of the 1990s, instances of torture have decreased with it. Additionally, Turkey has made legislative reforms in order to modernise its penal system. With the goal of eventual membership in the EU, Turkey has taken steps which ostensibly should assist in limiting torture by its security forces and in its jails. Yet troubling instances of torture still exist in Turkey even in light of the recent reforms.

Turkey has begun to recognise and implement new reforms regarding torture, based on OSCE conventions, however problems still exist. Turkish authorities and officials still subject those imprisoned to beatings, electric shocks, stripings, death threats, deprivation of food, water and sleep, threats of rape, burns by cigarettes and sexual torture. There has been little monitoring of torture reforms in Turkey. Turkey should follow OSCE procedure and encourage, pursue and investigate reforms. However, there are few prosecutions and they often result in repeated delays.

b) The Kızıltepe Affair

In December 2004, police officers Mehmet Karaca, Yaşafettin Açıksöz, Seydi Ahmet Töngel, and Salih Ayaz were indicted for using excessive force the month earlier when they executed Ahmet Kaymaz and his 12-year-old son Uğur. This was only after widespread national and international attention had been created by the incident. Previously, witnesses to the killings had complained that the prosecutors office had ignored or downplayed their complaints, in direct contradiction to OSCE guidelines that the state actively pursue claims of abuse.

The Government has since moved the location of the trial 900 km away from the place of occurrence to Eskişehir, claiming public protection demanded it. This has made observation of the trial by family members of the victims difficult. The hearings have been marred by intimidation and have constantly been adjourned, raising questions about whether Turkey will honour OSCE guidelines.

c) New anti-terror law

A new anti-terror law came into force in Turkey in August 2006: Law 3713. Concerns have been raised as to whether this will increase torture, since it will allow Turkish officials to detain those arrested for 24 hours without a visit by counsel. Additionally, a defendant under the new anti-terror law is allowed one defence attorney to be paid privately whilst any state official accused of torture is allowed three defence attorney to be paid by the state. This creates an imbalance that is likely to lead to impunity of perpetrators of torture.

d) Escalation of violence in Diyarbakır and surrounding area

In March 2006, violent protests occurred in south-eastern Turkey after the funerals of four militants, killed by Turkish troops. Eyewitnesses claimed that security forces used tear gas, water cannons, and shot indiscriminately at the protestors. Between 400 and 600 people were detained and 14 people were killed during the clashes. There has been evidence that Turkish officials used torture on the detainees and many of them were denied access to legal advice. The police have reportedly continued to harass Kurdish people in the region after the riots.

Whereas instances of torture are alleged to have decreased, a March 2006 report from the US Department of State found hundreds of credible cases and reports of torture. Additionally, many others are probably tortured as well, but fear of recriminations from the Government if they report the torture to the authorities or to human rights groups.

After visiting south-eastern Turkey in October 2005, the EU Human Rights Sub-Committee complained about torture again being on the rise in Turkey. Richard Howitt, a member of the European Parliament, claimed there were “accounts of soldiers cutting off people’s ears and tearing out their eyes if they were thought to be Kurdish separatist sympathisers”.¹²

¹² Smith, H. ‘European mission unearths torture claims in Turkey’, *Guardian*, 10 October 2005

OSCE Obligations

- Participating States will “ensure that all individuals in detention or incarceration will be treated with humanity and with respect for the inherent dignity of the human person” (Vienna 1989, par. 23.2).
- States “reaffirm their commitment to prohibit torture and other cruel, inhuman or degrading treatment or punishment, to take effective legislative, administrative, judicial and other measures to prevent and punish such practices” (Copenhagen Document 1990, par. 16.1).
- The participating States “stress that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture” (Copenhagen Document 1990, par. 16.3).
- Member states “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, par. 16.4).
- The OSCE “will take up with priority for consideration and for appropriate action...any cases of torture and other inhuman or degrading treatment or punishment made known to them through official channels or coming from any other reliable source of information” (Copenhagen Document, par. 16.6).
- Member States will allow a person or his counsel the right “to make a request or complain regarding his treatment, in particular when

torture or other cruel, inhuman or degrading treatment has been applied, to the authorities responsible for the administration of the place of detention and to higher authorities, and when necessary, to appropriate authorities vested with reviewing or remedial power” (Moscow Document 1991, par. 23.2(ix)).

Assessment 2005-2006

Turkey still has problems with the prevalence of torture, although there have been improvements. Reports of psychological torture still persist, and many Turks and Kurds do not consider psychological torture to be “real” torture. This creates a climate where psychological torture is seen as an acceptable means of extracting information and enforcing laws. It therefore becomes hard to enforce existing torture legislation when current interpretations do not recognise the scope of torture that they should. There remain reports of beatings, electric shocks, stripings, death threats, deprivation of food, water and sleep, violent arrests, threats of rape, burnings by cigarettes and sexual torture.

Turkey presently has no effective monitoring of the implementation of torture reforms in Turkey. Complaints made are often not followed up and/or there are little investigations or prosecutions. Those prosecutions or investigations that are commenced are often delayed and adjourned. Turkey officially has a zero-tolerance policy towards torture and its laws regarding humane treatment towards prisoners and torture are among the most progressive in Europe. In reality, however, the police forces often flout these rules and the judiciary has not been eager to honour Turkey’s strong anti-torture laws. Therefore, there has been little

implementation or enforcement of Turkey's anti-torture laws by state actors.

Recommendations to Government of Turkey

To improve its record, the Turkish Government should produce periodic reports on torture methods still in place, their frequency and findings of visits on a provincial basis. It should also take steps to punish the perpetrators and ensure protection for those who do report such abuses. Intimidation of those wanting to make complaints about torture and abuses still exists today. Local human rights groups can play a monitoring part and should receive support from Government ministries.

Turkey must follow the protocols of the Vienna Document and afford all those detained a basic human respect, and must work to prevent inhuman treatment. Turkey should ensure that its Government prevents any and all acts of torture. To fulfil its commitments under the Copenhagen Document, Turkey will have to educate its population and the Kurdish people about the definition of torture, how to report it and what their rights are to protect them from it.

Turkey needs active participation in the project to eradicate torture from within its borders. Turkey should work with human rights and anti-torture non-governmental organisations and groups and should not hinder their work. The Turkish Government must cooperate with the training programmes, educational initiatives, fact-finding missions, and data gatherings. This way, Turkey can rapidly achieve its goals of full implementation of OSCE guidelines on Torture.

Recommendations to the OSCE

The OSCE should organise more international human rights groups to participate in observations of jails and prisons. This will help Turkey achieve its OSCE commitments. The OSCE must monitor torture reforms in Turkey to see that its initiatives are implemented and adopted. The OSCE had earlier committed itself in the Copenhagen Document to paying attention to human rights cases and pledging efforts to solving them. All OSCE member states should work with Turkey and non-governmental organisations to eradicate torture.

Human rights defenders

In September 2005, Turkey signed the Optional Protocol to the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). This treaty is to allow a system of regular visits by international monitors and civilians to prisons to verify that no torture is taking place.

The response of Turkish authorities has been mixed. There have been no visits yet to police stations by Turkish authorities to monitor the place of torture in prisons. Additionally, legal guidelines for visits to monitor the human rights situation and torture in Turkey have yet to be completely implemented in a consistent way over the entire country. At present, nationalist governors are attempting to participate and exert control over the monitoring boards.

Although torture is less of a problem than it was a decade ago, there are still reports of widespread torture¹³ and cases of torture have increased since 2004¹⁴. Records are scarcely kept however some Turkish records show that in the first quarter of 2005, 1,239 cases of torture were filed against law enforcement officials, but only 447 were ever prosecuted¹⁵. There are very few convictions and even fewer instances of perpetrators serving prison time; acquittals are still the norm.

Reports coming out of Turkey still find that torture is protected at all levels of Government and the judiciary. Although the new laws in place are sufficient to eradicate torture, without complementing it with viable reforms, torture reform has stagnated in Turkey.

Women and torture

It was recently revealed by the Contemporary Jurists Association in Turkey that fifty women prisoners were severely beaten and slammed into doors when being transferred between prisons towards the end of June 2006. Many of the women are now on a hunger strike to protest their treatment. Although the women were covered in bruises and evidence of physical abuse, prison doctors have been attempting to cover up all markings on the women, presumably to deny that any abuse happened¹⁶.

These women have been denied the right to see counsel either during their transfer or to talk to an attorney about the abuse. In addition, the

¹³ European Commission 'Turkey 2005 Progress Report' pp.22-23

¹⁴ Commission of the EC '2004 Regular Report on Turkey's Progress Towards Ascension' p.34

¹⁵ European Commission 'Turkey 2005 Progress Report' p.23

¹⁶ BIA News Center, 10 July 2006

women detainees were not allowed clothing, personal items, or their letters. One of the women had tried to commit suicide in protest over the poor prison conditions. Other women have been kept in isolation cells since the transfer.

Summary

The legislative changes introduced by Turkey, which aim to reduce torture within its borders, are to be welcomed. However, the work on eliminating it is far from complete. The last year has still seen Turkish officials reacting harshly to peaceful protests and political dissent. True reform and eradication of torture from Turkey cannot be expected until Turkish officials allow independent observers into its prisons to monitor the situation.

MINORITY RIGHTS

Current Situation

Although Turkey has loosened restrictions on the Kurdish minority in recent years, several obstacles still remain that hamper full equality and integration into mainstream Turkish society and Government. The Turkish Government still encourages a view in Turkish society that all Muslims within its borders are ethnically Turk. This allows only room for the Jewish, Armenian and Greek minorities to exist within a framework recognised by Turkey, and hampers any efforts to target specifically Kurdish programmes designed to bring up their social position and economic and education opportunities to the same standard as the rest of the country.

Kurdish cultural institutions have sought to create a space for themselves but Turkey's harsh laws make that difficult. For instance, political meetings must be conducted in the Turkish language, effectively cutting out Kurdish participation in Turkish Governmental affairs at a grass-roots level.

OSCE Obligations

- Participating States “will take all the necessary legislative, administrative, judicial and other measures and apply the relevant international instruments by which they may be bound, to ensure the protection of human rights and fundamental freedoms of persons belonging to national minorities within their territory”

- (Vienna Document 1989, "Questions relating to Security in Europe", par. 18).
- Minority groups may "establish and maintain organizations or associations within their country and to participate in international non-governmental organizations. Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group" (Copenhagen Document 1990, par. 32.6).
 - "The 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" (Copenhagen Document 1990, par. 35).
 - OSCE States must "recognize the right of the individual to effective remedies and endeavour to recognize...the right of interested groups to initiate and support complaints against acts of discrimination" (Copenhagen Document 1990, par. 40.5).
 - Minority groups are allowed to "establish and maintain their own educational [and] cultural...institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance" (Copenhagen Document 1990, par. 32.2).
 - Minority groups may "establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin [or] cultural heritage" (Copenhagen Document 1990, par. 32.4).

- OSCE States must “promote understanding and tolerance, particularly in the fields of education, culture and information” (Copenhagen Document 1990, par. 40.3).
- “Persons belonging to national minorities have the right freely to express, preserve and develop that identity without any discrimination and in full equality before the law” (Paris Document 1990, “Human rights, Democracy and Rule of Law”, par. 6).
- “The participating States clearly and unequivocally condemn...ethnic hatred...and discrimination against anyone” (Copenhagen Document 1990, par 40).
- OSCE States must “provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred” (Copenhagen Document 1990, par. 40.1).
- Participating States “will consider developing programmes to create the conditions for promoting non-discrimination and cross-cultural understanding which will focus on human rights education, grass-roots action, cross-cultural training and research” (Helsinki Document 1992, par. 34).
- “The participating States acknowledged...that there was a serious deterioration in some areas and a need for action against the continuing violations of human rights and manifestations of aggressive nationalism” (Budapest Document 1994, Decisions, chapter VIII, par. 1).
- The OSCE recognised that “continuing violations of human rights...continue to endanger stability in the OSCE region” (Lisbon Document 1996, Summit Declaration, par. 9).

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a) Continued non-recognition of Kurds

Turkey has not yet recognised the Kurds as a legitimate national minority within Turkish borders. By refusing to see a non-Turkish minority as a separate group, only because they share the same religion, the Turkish Government is ignoring the unique challenges facing the Kurdish population and the specific needs they have that differ from the larger population's needs. Additionally, the present policy of the Turkish Government vis-à-vis its minorities threatens to create artificial divisions between Kurds based on religion. The Turkish Government has decided who is in the majority and who is an "other" in the Kurdish populace solely because some Kurds are Muslim, yet some are Alevi or Yezidi.

By claiming that no real differences exist between the two populations, Turkey has avoided implementing legislation specifically targeted towards the Kurdish population and creating benefits for Kurds and incentives for ethnic Turks to achieve both *de jure* and *de facto* equality between the two peoples.

b) Stunted development of Kurdish organisations

Turkey has also resisted allowing the creation of Kurdish civic associations. Kurds have been hindered in their participation in these associations and similarly are not fully free to join international Kurdish groups. This has prevented equality from being reached because Kurds cannot participate in public affairs, nor can they achieve political representation which will help them reach equality.

Turkey has not taken steps to increase awareness of the Kurdish population, their culture and their concerns among the majority ethnically Turkish population. By not following the Copenhagen Document's call to "promote understanding and tolerance, particularly in the fields of education, culture and information" by providing resources to Turks seeking cooperation with ethnic Kurds, Turkey has prevented any improvement on Turks and Kurds living in harmony and in respect of each other's culture.

c) Regional stability

Ethnic tensions lead to violence which leads to destabilisation. Much of the violence from the civil unrest of the 1990s has subsided. However, sporadic outbursts of violence are still common in the Kurdish regions of Turkey and the enmity between ethnic Kurds and the Turkish Government still exists and has not subsided. Mutual distrust between both groups threatens Turkey's growth and the progress of the Kurdish minority.

There exists today difficulty for Kurds in Turkey to be in contact with Kurds both in the wider Kurdish regions and in the diaspora. Since they make up one people who happened to be separated by national borders, there is no legitimate Turkish state interest to be protected by keeping Kurds out of contact with one another.

d) Kurds in Turkish Government

Turkey needs to work on increasing Kurdish participation in Governmental affairs. Today, a political party needs a 10% threshold to ensure representation, but this is very high for any party and has effectively ruled out any real representation of Kurds as a group in Turkish Government. It also far surpasses the threshold required in other OSCE states. Turkey should apply OSCE standards and allow Kurds an easier opportunity to representative Government.

e) Women as a minority

Turkey has begun to recognise and understand the unique challenges facing women in Kurdish areas of the Southeast. In an atmosphere where many traditional attitudes prevail, honour killings and violence against women continue with little intervention from Turkish officials. Turkey's attempts at changing the laws regarding honour killings in order to reflect Western notions of women's rights have been curtailed by many in the Kurdish regions. Such problems occur on a more frequent basis in the non-Kurdish regions of Turkey, indicative of the national and Government attitude towards these issues. In order to prevent the arrest of a male family member for the honour killing of a woman, many paterfamilias and family heads have begun to convince women to take their own lives so as to avoid sending a father, brother, or husband to prison for her "indiscretions". Turkey has not been forthcoming or eager in investigating or prosecuting these events.

Whereas Turkey has seen advances in globalisation, Kurdish women still live in traditional frameworks. The conflict of the 1980s and 1990s have left many women to care for their families whilst their access to economic opportunities and social services is less than those of men. This has continued in the past year as literacy rates for women remain relatively low. Kurdish women, therefore, are less likely to be able to seek help for domestic abuse. The Turkish Government provides no sort of shelter or habitat for victims of domestic abuse in the Kurdish regions of Turkey nor does it provide any assistance for individuals or groups seeking to establish or maintain such shelters.

Women in the Kurdish regions of Turkey still are victim to discriminatory laws and discrimination from their communities. Due to the frequent conflicts that have occurred in the region, socio-economic problems and underdevelopment still plague the Kurdish populace. As women from a persecuted minority, Kurdish women face struggles on two fronts. Without directing specific attention to the problems and concerns of Kurdish women, Turkey will not be able to fulfil its OSCE duties and reach a stable and equitable living and social position for Kurdish women vis-à-vis both Kurdish and Turkish men.

Recommendations to Government of Turkey

- a) Equality between Kurds and the Majority

To fulfil its commitments under the Vienna Document of 1989, Turkey needs to involve all levels of Government and society, including the

legislature, judiciary, and national Government and local groups to ensure that the human rights of the Kurds are being met.

Turkey still has much to improve in order to meet OSCE guidelines as agreed upon in 1990 in Copenhagen. By claiming that as Muslims, Kurds do not differ from ethnic Turks, the Turkish Government fails to understand that it is impossible to solve ethnic problems between majority and minority groups by skirting the issues. In almost a century of the existence of the Turkish Republic, problems in violence, suppression of language rights, and lack of representation in governing bodies still exist for the Kurdish minority.

Turkey must work to protect the unique identity and culture of the Kurds and not do anything to impede the promotion of a Kurdish identity. Turkish officials must also allow Kurds to freely express themselves and the concerns of the Kurdish people without discrimination, in full equality of the law, and in a language of their choosing.

- b) Promotion of Kurdish rights as contributing to national and regional security

Allowing civic and Kurdish organisations can also serve as a watchdog to protect Kurdish rights in south-eastern Turkey. With significant power and authority, these organisations will provide support to Kurds in need of help asserting their rights and will also help Turkey achieve the goals it has bound itself to in the OSCE Copenhagen Document of 1990.

Turkish officials should promote the establishment of institutions for Kurds such as language schools, cultural organisations and educational

facilities. These organisations should be independent from Government control and must be free to seek funding and support from individuals and groups both nationally and abroad. However, regardless of their independent status, the groups should still receive support, including financial support, from officials in Turkey and the Government.

Turkey has an obligation to promote good relations between the majority and the Kurdish minority. Especially in south-eastern Turkey, which is largely Kurdish, it is not beneficial to Turkey to keep the majority of Kurds in a situation where they lack rights and representation in municipal Government.

c) Turkey's continuing obligation to the area of minority rights

Turkey must condemn ethnic hatred towards Kurds not only abroad, but also at home. It is not sufficient to preach tolerance while promoting an ultranationalist and ethnocentric agenda in schools and in the media. Turkey must raise awareness of the Kurdish people and culture among the majority group as a national security imperative. Also, Turkey needs to take the initiative in building bridges of understanding and respect to the Kurdish minority.

Not only is Turkey obliged to protect Kurds as a class and a people, but it must find ways to ensure that each person as an individual lives in safety and freedom from fear of ethnic attacks. Turkey can accomplish this and satisfy its goals of full implementation of OSCE guidelines by working with, and not hampering, the work of provincial and municipal levels of Government to ensure that Kurds are free to and feel comfortable approaching state authorities about human rights abuses.

The Budapest Document of 1994 calls to attention the use of ultra-nationalism as a threat to human rights. Turkey must make an effort to promote tolerance and not to use the trials of Orhan Pamuk or Hrant Dink as opportunities to fan ethnic hatred. The recent displays of ultra-nationalism at these trials has a chilling effect on freedom and the judiciary. They also go against OSCE guidelines, so Turkey needs to limit the influence of ultra-nationalism and its ability to stir nationalist fervour to the detriment of justice but also to minorities, especially the Kurds.

d) Women in Turkey

Turkey has noticed this problem and should be commended for updating its penal code to reflect these changes. It is now a punishable offence in Turkey to prod another person into suicide. However, Turkey needs to take concrete action and go beyond mere proclamations and cosmetic changes in the law. Turkey must recognise that women must be considered a minority and afford them the protections of OSCE guidelines.

Turkey should address and solve the diverse problems that affect Kurdish women. Domestic violence shelters should be established and supported by the Turkish Government. Additionally, Turkey should ensure that women are afforded the same educational and economic opportunities as are men. This will help afford a better life to all Kurdish families and improve Turkey's society at the same time.

Recommendations to the OSCE

In Helsinki, Madrid, and Vienna in the 1970s and 1980s, the OSCE affirmed the rights of minorities to live in safety and security within the borders of the nations in which they live. The Copenhagen Document from the 1990 OSCE meeting highlights important goals for member states to achieve in terms of equality for their minorities to the dominant ethnic groups of each nation.

The OSCE understands the importance of building and forging strong cultural ties within groups as a prerequisite for achieving a wider-scale cross-cultural understanding. This is especially true for Turkey if it seeks to implement OSCE guidelines and improve its relations with the Kurds while defining and increasing the quality of minority rights. The OSCE recognises that the promotion of cultural identity and regional security are directly correlative of one another.

Subsequent to the Copenhagen Document of 1990, the OSCE reaffirmed its stance that minority rights are essential to promote equality, fair participation in government, and national and regional security. The Helsinki Document of 1992 obligates Turkey to use its legislature to enact laws fair to the Kurdish population and to use its judiciary enforce these laws.

How human rights groups can help

Human rights groups can assist Turkey in protecting the rights of its Kurdish populations. Under OSCE guidelines, Turkey needs to promote Kurdish representation in government, empower Kurds to provide for

their own community, and to reclaim their cultural heritage with other Kurds in Turkey and abroad. Rights workers can help provide Kurds within Turkey with the resources, both in terms of labour and funds, that they need to achieve parity with ethnic Turks.

Rights groups can also act as important liaisons with Kurds outside of Turkey both in the other Kurdish regions and in the diaspora. By encouraging human rights workers to help improve conditions of the Kurdish population, Turkey satisfies the OSCE's Helsinki Document calling for cross-cultural cooperation and understanding.

Summary

Minority rights are an area in which Turkey still needs to vastly improve. Turkey's continued reluctance to recognise the Kurdish people as a distinct ethnic group is the initial problem in bridging the gap between the two communities and creating equality. Without acknowledging, allowing and promoting a Kurdish identity among its Kurdish citizens, Turkey endangers its own security by continuing to alienate its population. Special attention, too, must be placed on women who are often overlooked. By addressing the specific problems that affect them, Turkey has an opportunity to improve the lives of all Kurdish citizens.

ARBITRARY DETENTION

Current Situation

a) Diyarbakır and Law 3713

Turkey's new anti-terror law, Law 3713, referred to above under the section on "Freedom of Association", would allow police and security forces to use a firearm without hesitation if a suspect defies a "stop" order. This allows for too much discretion at the hands of individual officers.

A recent example of Turkey's poor record on arbitrary detention includes the violence which erupted in Diyarbakır in March 2006. A number of PKK militants were killed by Turkish security forces and, after their funeral - a peaceful event attended by an estimated 30,000 Kurdish protestors - violence erupted between the protestors and the security forces. The security forces acted quickly and harshly, unlawfully detaining and imprisoning many. Riots spread to nearby Batman and Istanbul where several deaths occurred. Turkey and its press defended the police's response, saying it was to restrict the violence, but the Diyarbakır Bar Association has accused Turkish security officials of using excessive force and torture when detaining the Kurdish youths. The Interior Ministry has promised an investigation of the affair and has sent two investigators to the region.

Turkey has also increased its arrests of children. In Diyarbakır, following the evidence gathered by the Diyarbakır Bar Association, close to 2,200 of

over 10,000 people arrested were children. Many children arrested were brought in for petty crimes and theft. However, the new anti-terror legislation threatens to increase the sentences for children guilty of committing these crimes. This would allow the Turkish prosecutors and judiciary to imprison children for extended periods for petty crimes. Turkey should work instead to promote programmes and education for children who take to petty theft and violence.

b) The Jandarma and Abbas Emani

There has been an increase in instances of arbitrary detentions leading to extra-judicial killings. However, the Turkish Government simply claims that the victims were PKK members. Iranian Kurdish leader Abbas Emani was seen last year being detained and then escorted by Turkish security officials. Reports were that after his detainment he was subsequently tortured and then executed in Turkey's Batman province in the Kurdish southeastern region of the country. Additionally, Kurds who have tried to return to their home villages after the violence in the 1990s have found that village guards, many of those who had been involved in forcibly evacuating the villages and detaining citizens during the 1990s, were acting as a security force. These Jandarma are paramilitary forces under the control of the Interior Ministry and the military. Kurdish villagers had accused many of them of being involved in arrests, corruption, rape, theft and other human rights abuses. Investigations of such abuses seldom occur and perpetrators are rarely punished.

c) Iranian Refugees

Recently, the European Court of Human Rights ruled that Turkey must respect the human rights of Iranian refugees who found their way and entered Turkey illegally, in the case of *D. and Others v. Turkey* (No. 24245/03). These families sought refuge in Turkey but were swiftly detained by security forces. The Court unanimously agreed that deporting the families to Iran would breach the European Convention on Human Rights. Turkey had justified the arrest and detainment of the families by accusing them of illegally working for banned Kurdish groups such as the PKK. The Court said that Turkey's Interior Ministry's deportation order was inappropriate because it would expose the families to political persecution and torture in Iran.

d) Women and detention

Women are not immune from the clashes between militant groups and the Turkish Government. After civil unrest in April, Turkish Prime Minister Erdoğan suggested that not even women and children would be immune from Turkey's need to win control against terrorists, so this presumably would mean that women and non-combatants could be held arbitrarily by Turkish security forces under the guise of fighting terror. Following his remarks, Turkish security forces conducted mass arrests. Given their precarious state, women in Kurdish regions of Turkey need extra protection from the Government.

OSCE Obligations

- “Any person arrested or detained on a criminal charge will have the right, so that the lawfulness of his arrest or detention can be

decided, to be brought promptly before a judge or other officer authorized by law to exercise this function” (Copenhagen Document 1990, Par. 5.15).

- “Anyone who is arrested will be informed promptly in a language which he understands of the reason for his arrest, and will be informed of any charges against him” (Moscow Document 1991, Par. 23.1.ii).
- “Everyone will be presumed innocent until proven guilty according to law” (Copenhagen Document 1990, Par. 5.19).
- [The participating States will ensure that] “no one will be deprived of his liberty except on such grounds as in accordance with such procedures as are established by law” (Moscow Document 1991, Par. 23.1.i).
- “Effective measures will be adopted...to provide that law enforcement bodies do not take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, or otherwise incriminate himself” (Moscow Document 1991, Par. 23.1.vii).
- “A detained person or his counsel will have the right to make a request or complaint regarding his treatment” (Moscow Document 1991, Par. 23.1.ix).
- “Anyone who has been the victim of an unlawful arrest or detention will have a legally enforceable right to seek compensation” (Moscow Document 1991, Par. 23.1.xi).

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This is particularly important for Turkey because officially, Turkish language is the only language that can be used for Governmental or

judicial hearings. This effectively means that any Kurd who is arrested or detained must be charged in the Turkish language. To charge a Kurd who is not comfortable with use of the Turkish language would violate his rights under the OSCE. Providing a court interpreter to inform Kurds who are charged fulfils the requirement of the OSCE to allow detainees to understand why he is incarcerated.

Whereas Turkey has improved its record on arbitrary arrests and detention, along with a decrease in extra-judicial killings since the end of the civil unrest of the 1980s and 1990s, there has yet to be full compliance with OSCE guidelines. Turkey continues to use terrorism as an excuse to clamp down on civil liberties and opposition. Although they have decreased, the sporadic nature of arbitrary detentions that continue to occur prevent Turkey from meeting its OSCE goals.

Recommendations to Government of Turkey

a) Right to counsel

Turkey cannot keep Kurds detained indefinitely without charges. The Moscow Document of 1991 necessitates that an inmate must be immediately released if there is no cause for his detention. Additionally, detainees are afforded rights, even when in custody. Turkey must allow Kurdish detainees to notify appropriate persons, including counsel, of where he or she is being held. Although the Turkish Penal Code provides such notification, in practice, those detained often are not allowed to exercise these rights. Turkey should ensure that its laws regarding right to counsel and notification are honoured by police forces and the judiciary. Turkish officials must not use the detention of an individual as

a pretext to strip him of his rights nor must it use arbitrary detention as a means of silencing unpopular opinions.

b) Arrests and women

Prime Minister Erdoğan's comments seem to justify allowing women to become collateral damage in Turkey's battle against militants. According to OSCE guidelines, unrelated parties must not be involved in any detention and if there are not charges pending or no reason for imprisonment, then the inmate must be released. Turkey cannot use its conflict with Kurdish militants to inordinately punish Kurdish women whom Turkey declares are committing an offence, whether by its statutes forbidding the disruption of unity, insulting Turkishness, or Turkey's anti-terrorism law - which has been used to stifle criticism and imprison dissidents in Kurdish regions - since this would amount to double discrimination.

Recommendations to the OSCE

The OSCE has been concerned with the issue of arbitrary detention and arrest and has addressed it several times at meetings. Not only does the OSCE demand that arbitrary detentions not take place and that member states including Turkey work to reduce and eliminate it, but the Copenhagen Document also points out that a defendant is innocent until proven guilty. This has important consequences for the way Turkey treats its prisoners. Turkey has an obligation to afford all inmates basic human dignity and to treat them as if all are innocent.

The OSCE is concerned enough about arbitrary detention that it has enacted guidelines to allow individuals to seek redress when there are violations of human rights abuses. The OSCE should pressure Turkey to keep the channels of justice open to allow Kurds who have been unlawfully detained to sue for compensation. This will afford Kurds redress and for Turkey to have real incentive to affirm and enforce its laws on human rights and arbitrary detention.

The OSCE has met on several occasions to stress the importance of a fair judiciary that gives an individual redress to justice. When arrested and detained, a person has the right to go before the judge to hear the charges against him. He or she also has a right to hear the charges pending in a language that he or she understands.

Human rights defenders and detainees

Human rights groups have complained about Turkey's unwillingness to allow human rights defenders access to detainees for counsel and to appraise the Turkish prisons of their conditions. Turkey advances no state interest by arbitrarily detaining Kurds without trial. By promoting transparency in its prison system, Turkey could make advances in its criminal justice system that would bring it closer to the EU and to other OSCE members.

Human rights groups should act in cooperation and conjunction with Turkish authorities, not against them. Workers for rights groups can also work with Turkey to help implement OSCE guidelines by providing services such as legal representation and counsel, informing family and community members, and monitoring of inmates' conditions and health.

This would thereby fulfil Turkey's requirements under the OSCE and promote a more fair justice system.

By working with human rights groups in Turkey, the Turkish Government can help ensure that arbitrarily detaining persons such as political refugees is minimised or eliminated. Additionally, by allowing human rights groups to share some of the burden, many of which have workers who are specifically trained to deal with IDPs, the obligations which fall on the shoulders of the Turkish Government would not be too onerous. This will ensure the likely success of Turkey achieving its OSCE goals that detainee rights are respected.

Summary

Instances of arbitrary detention have decreased in recent years, yet the problem still exists in the examples outlined above. It can be argued that the decrease of arbitrary arrests correlates to the general stability in Kurdish regions of Turkey compared to the situation in previous decades. However, it does not seem likely that Turkey has fully committed itself to ending arbitrary detention since it still occurs throughout the region with worrying frequency.

RULE OF LAW

Current Situation

a) Law 3713

Turkey has been impeding the founding and development of non-governmental organisations based in Kurdish regions dealing with Kurdish issues. This effectively alienates a large sector of the population from democracy and participation in political affairs. That creates a society and political landscape not governed by the rule of law and thus not comporting with OSCE guidelines.

The new anti-terror law, Law 3713, removes restrictions on the prosecutorial authorities' power and the judiciary's role. "High Criminal Courts" will have jurisdiction over offences under this statute. The court also has the ability to restrict the rights of the inmate and defendant and maximum prison term caps have been removed. This puts too much power into the hands of the Government and is not consistent with the OSCE guidelines on the rule of law. Additionally, certain offences and categorisations, like "terrorist", have not been strictly defined, so a fear remains that Turkey will ignore its OSCE obligations and use the anti-terror law arbitrarily to stifle criticism and dissent where it sees fit.

b) Women and the rule of law

International Women's Day, 8 March, was marred this year by the arrest of women's activist Aysel Tuğluk and her colleague Ahmet Türk, both

chairs of the Democratic Society Party. Prosecutors have charged that the pair were distributing leaflets that glorified jailed PKK leader Abdullah Öcalan¹⁷. Additionally, the leaflet was printed in the Kurdish language, another violation of the law that states that all political activity must occur in the Turkish language.

Another case incident involves Evrim Dengiz and Nesrin Yazar, two young women working for the pro-Kurdish news agency DİHA, who were stopped on 15 February 2006 and questioned by the anti-terrorist police at a great distance from their car after reporting on a pro-Kurdish rally to commemorate the seventh anniversary of the arrest of Abdullah Öcalan. The police then began to search their car and claimed to have found two home-made bombs.

Authorities subsequently charged the pair with making the bombs for use in the demonstration. Most troubling is that the judge presiding over the matter has classified the proceedings on grounds of security and defence attorneys have not had the opportunity to review the charges. Defence attorney Bedri Kuran has claimed that the legal procedure was violated by a search which should have been carried out in the judge's presence. Kuran also charges that he has seen no forensic report on the bombs the pair was accused of transporting, and there likely exists none.¹⁸ Charged under Article 302(1) of the Turkish Penal Code, threatening the territorial integrity and unity of the state, the pair face life imprisonment.

c) Şemdinli Incident

¹⁷ "Kurdish party leaders risk jail over leaflet", *Agence Free Press*, 6 July 2006

¹⁸ *Kurdistan Observer*, 10 May 2006

On 9 November 2005, a bookstore in Şemdinli, in Hakkari province, owned by a Kurdish man and alleged former PKK member, was firebombed and several bystanders were injured and one killed. Three state agents, two who were non-commissioned military officers, Ali Kaya and Özcan İldeniz, and a former PKK member turned informant, Veysel Ateş, were indicted for their involvement and the trial opened on 4 May 2006 at the Van Heavy Penal Court. A KHRP mission to the trial raised questions about the efficacy of the investigation and prosecution¹⁹.

There has been concern that coordinated and planned acts of violence in the tense Kurdish regions of Turkey could be utilised to provoke a conflict. This would allow security forces to use the violence as a reason to increase its presence in the area, crack down on what they see as opponents, and boost the military's power, securing for it more resources and weaponry.

OSCE Obligations

- “[The participating States] are determined to support and advance those principles of justice which form the basis of the rule of law. They consider that the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, but justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression” (Copenhagen Document 1990, Par. 2).

¹⁹ KHRP Trial Observation Report “Promoting Conflict – The Semdinli Bombing”, September 2006

- It is necessary that the “activity of the government and the administration as well as that of the judiciary will be exercised in accordance with the system established by law. Respect for that system must be ensured” (Copenhagen Document 1990, Par. 5.5).
- “Human rights and fundamental freedoms will be guaranteed by law and in accordance with their obligations under international law” (Copenhagen Document 1990, Par. 5.7).
- “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground” (Copenhagen Document 1990, Par. 5.9).
- [The participating States] reaffirm that democracy is an inherent element of the rule of law. They recognize the importance of pluralism with regard to political organizations” (Copenhagen Document 1990, Par. 3).
- It is essential to inherent human dignity to have a “form of government that is representative in character” (Copenhagen Document 1990, Par. 5.2).
- “Military forces and the police will be under the control of, and accountable to, the civil authorities” (Copenhagen Document 1990, Par. 5.6).
- “The independence of judges and the impartial operation of the public judicial service will be ensured” (Copenhagen Document 1990, Par. 5.12).
- “The participating States will take appropriate measures to ensure that education and information regarding the prohibition of excess force by law enforcement personnel as well as relevant

- international and domestic codes of conduct are included in the training of such personnel” (Moscow Document 1991, Par. 22).
- “The participating States emphasize that all action by public authorities must be consistent with the rule of law, thus guaranteeing legal security for the individual” (Budapest Document 1994, Chapter VIII, par. 18).
 - “Everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity” (Copenhagen Document 1990, Par. 5.10).

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The police and military forces in Turkey continue to act with impunity. In Turkey today, the armed forces are not under control of civilian authorities, and are not accountable to the people. The military has often acted in any way it sees fit, frequently to the detriment of the Kurdish minority, which means individuals cannot find redress with their elected officials concerning abuses by the police or military.

The judiciary, although it performs the role of interpreting the law, is often not accountable to it, either. In order for the judiciary to function properly it would need to serve the public impartially and cannot be above the law itself. All law enforcement personnel, and those who carry out the law, need to be held accountable to the people and may only act when serving a legitimate state interest in order to comply with OSCE standards. If there is any injustice caused by a failure to follow the law by

the Turkish judiciary regarding any Kurdish issue, then a full investigation and appropriate redress is due.

The Şemdinli investigation failed to identify those responsible for the incident and there was no judicial examination of the local military officials who had the capability of arming the perpetrators. Concerns have been raised about the impartiality of the investigation, especially in light of the dismissal of the Public Prosecutor when the indictment he pushed had laid blame at several high-ranking military officials. It is believed that this dismissal was requested by the military itself.²⁰ Additionally, public statements were made by officials involved in the investigation that could have likely compromised the work of the judiciary. The investigation also heavily focused on the victim, the owner of the bookstore, and his imprisonment more than two decades ago for alleged PKK activity.

The investigation, trial, and dismissal of the prosecutor for implicating the members of the military, do not follow OSCE guidelines on implementing the rule of law. The state has had too much involvement in an incident in which military members took part. Additionally, that the prosecutor was dismissed after complaints by the military highlights the lack of independence that prosecutors have from the state and the military.

Recommendations to Government of Turkey

a) Checks and controls

The best way to ensure that Government officials, police and military forces, and the judiciary are under the law is to promote education about

²⁰ As reported by Nicholas Birch, Washington Times, 15 May 2006

the roles of all members of Turkish society, Government and public service have to play in a democratic Turkey. Officials in Turkey must play a positive role that respects and guarantees the security of all individuals, especially the Kurdish minority, and that they follow internationally accepted protocols on the duties which each part of the Government has to play.

Turkey needs to be encouraging the participation of Kurdish women in politics, not frustrating it by jailing offences of freedom of association. In order to be protected by the state, women in the Kurdish regions of Turkey need to take a part in and play an active role in the development of the rule of law. This means that Turkey will need to make affirmative steps to ensure that women's rights are respected.

b) Trials and justice

Rule of law and justice complement one another and the right to a fair trial is an important aspect of a society governed by rule of law. Any individual charged with an offence has the right to not only be seen by a judge during arraignment, but also to be before a judge during a trial. Throughout the criminal proceedings, the defendant is to be treated as innocent unless and until it is proved that he is guilty.

For Turkey, that means that all detainees are to be afforded human dignity and respect. Turkey must allow prisoners opportunities to redress their complaints in the form of a trial or another appropriate tribunal of justice. The addressed panel must be impartial and independent from Government or any outside influence. This must be enshrined in law and also practised by the Turkish Government.

Turkey should take serious steps to reconsider and amend Law 3713, its new anti-terror law, which may endanger free speech and criticism by labelling it as terrorist propaganda. Prison sentences have been lengthened from three to five years and now publishers can be prosecuted for articles written by reporters. Further, any publication printing material in violation of the anti-terror law faces a one-year closure. This violates OSCE norms on rule of law governing with fair justice for all in society.

Although the investigation into the Şemdinli incident led to an eventual conviction of two of the alleged perpetrators, concerns remain that it failed to adequately investigate and expose the existence and involvement of a larger organisation, which is widely believed to be composed of many more than the three people on trial.²¹ Turkey must work to ensure that any future violence is investigated properly and efficiently by an independent prosecutor without pressure from the military or other Governmental officials. Turkey should also use this opportunity to enact political reforms, such as creating independent agencies and bodies to conduct investigations and promote justice, in order to put it in line with OSCE mandates on the rule of law.

Recommendations to the OSCE

The OSCE has outlined its fundamental beliefs and demands in terms of rule of law in its member states. Turkey's laws are advanced and progressive and protect democracy on paper, but it is important - to fulfil its objectives under the Copenhagen Document - that its laws have a

²¹ "Şemdinli gang not only three people"; BIA News Center, 21 June 2006

positive and substantive effect and are not merely for show. The Government and an independent judiciary both need to participate to ensure that the rule of law is protected in Turkey, and the OSCE can oversee and monitor this.

The rule of law also ties into human rights and democracy and the corresponding international standards. All persons within OSCE member states must have full equality before the law and must be free from all types of discrimination. The OSCE must then look to Turkey to ensure that Kurds are afforded full and equal rights and democratic representation in order to meet OSCE guidelines. Only restrictions that satisfy internationally accepted reasons – such as, in the legitimate and proportionate interests of national security - can curtail the rule of law, however Turkey has had little to no reason to reduce democracy or rule of law.

The OSCE recognises that rule of law applies not only to the Government but also its relation vis-à-vis to its people. In order to achieve a just society ruled by law, the OSCE should press Turkey to allow the Kurdish people to organise and support their own political groups and organisations. This will give Kurds better representation in Turkey and in the nation as a whole. This has not been accomplished in the past and therefore OSCE supervision or encouragement of a lowering of the 10% election threshold and the use of Kurdish language within political meetings would be wise.

In any society governed by the rule of law, each official who executes and protects the law must also be accountable to it. The OSCE has promulgated several mechanisms for protecting the citizenry against

officials who take advantage of the law. There is no room in a democratic society for a system where judges and politicians make law from which they exempt themselves.

Summary

The development of the rule of law in Turkey is to be lauded, however obstacles still remain which hinder the full improvement of Turkey's governing system. Turkey must make sure that the prosecutors are independent from the Government and that other branches of Government, especially the judiciary, are removed from influence and pressure of other branches. Additionally, the rule of law will not firmly take hold of Turkey until judges, politicians, and rogue police officers are held to the same standard to which all citizens are held.

DEMOCRACY

Current Situation

Turkey has been enacting reforms designed to give better representation to the Kurdish people. Several Kurdish friendly politicians and political organisations have emerged recently and are actively participating in social affairs, although not without challenge. Turkey's recent commitments to democracy have been encouraging, but need to be continued.

OSCE Obligations

- Humans are entitled to a “form of government that is representative in character, in which the executive is accountable to the elected legislature or the electorate” (Copenhagen Document 1990, Par. 5.2)
- “The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral process” (Copenhagen Document 1990, Par. 6).
- [The participating States] “will endeavour, in order to strengthen democratic participation and institution building and in developing co-operation among them, to share their respective experience on

- the functioning of democracy at a local and regional level” (Helsinki Document 1992, Par. 53).
- “The participating States recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions” (Copenhagen Document 1990, Par. 26).
 - “The protection of human rights, including the rights of persons belonging to national minorities, is an essential foundation of democratic civil society” (Budapest Document 1994, Decisions, chapter VIII, par. 2).
 - “Pluralistic democracy [is] essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character” (Copenhagen Document 1990, Preamble, par. 9).
 - “The protection of human rights, including the rights of persons belonging to national minorities, is an essential foundation of democratic civil society” (Budapest Document 1994, Decisions, chapter VIII, par. 2).
 - “Pluralistic democracy [is] essential for ensuring respect for all human rights and fundamental freedoms, the development of human contacts and the resolution of other issues of a related humanitarian character” (Copenhagen Document 1990, Preamble, par. 9).

Assessment 2005-2006

Turkey has made improvements in recent years in its democratic institutions and has moved towards further compliance with OSCE

standards. This has meant more participation for Kurds and Kurdish activists in Governmental affairs.

However Turkey has not completely liberalised its democracy, and challenges remain. Kurdish participation in Government is hampered by the requirement that the Turkish language be used exclusively, since it creates obstacles to Kurdish groups establishing political associations if they cannot conduct meetings in their own language.

The democracy in Turkey, in order to function properly, must be truly representative of all populations in the country, especially the large Kurdish minority in the south-eastern region. This means that regional, provincial and municipal Governments in Kurdish regions should be comprised of largely Kurdish factions that not only represent the Kurdish people but their diverse ideas and viewpoints. The current requirement that political parties surpass a 10% threshold to ensure representation is too high for any party and prevents much-needed participation of Kurdish political parties.

Recommendations to Government of Turkey

The Kurdish people should have representation in national levels of Government in Ankara and İstanbul. Periodic, regular and fair elections in which each citizen gets a vote, will ensure that the large Kurdish minority has its voice heard in all sectors of the Government and at all levels. Turkey should strive to see that Kurds make up a viable part of the police force, judiciary, civil service and Government. This will also inspire feelings in Kurds within Turkey that they have a role to play and that their participation in the society will have positive benefits for them.

Democracy is important to build domestic and regional stability. By promoting representation in Governmental bodies in Kurdish regions, Turkey will promote peaceful relations within the Kurdish regions inside its borders. Thereafter, dealings between the Turkish Government and the Kurdish minority will be smooth and will create more peace and prosperity for the Kurdish community and the nation as a whole.

Recommendations to the OSCE

The OSCE understands the role that democracy has as a bulwark against human rights abuses. The likelihood of future abuses of human rights against the Kurdish people diminishes when Kurds have representation and a voice in their own affairs and in the Government's, as well. By promoting human rights as a national initiative, Turkey will be reinforcing its own democratic stature in the region. This will mean Turkey will have to accept the work that remains in terms of its relations with its Kurdish minority.

The OSCE understands how democracy functions as an important value. It is an endeavour that needs to be taken up by the Turkish Government with cooperation from various non-governmental organisations. Turkey needs to examine the democratic values of its neighbours in Europe and try to emulate them and can do so with the help of the OSCE.

Summary

Democratic reforms in Turkey have been encouraging. Turkey has taken steps that have helped increase representation of all its citizens and the

Kurds. The international community and the OSCE will need, though, to see the final stages put in place. Turkey will not be fully democratic until Kurdish political groups can participate in the political process and that means Kurdish political organisations must be allowed to recruit freely and in the Kurdish language. Until then, a truly representative democracy will not take hold in Turkey.

Kurdish Human Rights Project

September 2006