RETURN TO A STATE OF EMERGENCY?
FACT-FINDING MISSION REPORT
PROTECTING HUMAN RIGHTS IN SOUTH-EAST TURKEY

June 2008

Kurdish Human Rights Project
KHRP
Celebrating 15 Years of Advocacy

Bar Human Rights Committee
OF ENGLAND AND WALES

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Kurdish Human Rights Project is an independent, non-political human rights organisation founded and based in London, England. A registered charity, it is dedicated to promoting and protecting the human rights of all people in 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 Kurdish and non-Kurdish people.

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LIST OF ABBREVIATIONS

AKP	Adalet ve Kalkınma Partisi (Justice and Development Party, AKP)
BİA	Independent Communication Network
CPC	Criminal Procedure Code
DTP	Demokratik Toplum Partisi (Democratic Society Party)
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FFM	Fact-Finding Mission
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organisation
İHD	İnsan Hakları Derneği (Human Rights Association of Turkey)
NGO	Non-Governmental Organisation
OHAL	Olağanüstü Hal (State of Emergency Legislation)
OSCE	Organisation for Security and Cooperation in Europe
PKK	Partiya Karkeren Kurdistan (Kurdistan Workers' Party)
TCC	Turkish Criminal Code
UN	General Assembly of the United Nations

I. INTRODUCTION

a. Aims of the FFM

The Kurdish Human Rights Project (KHRP) organised a fact-finding mission (FFM) to the east and south-east Kurdish regions of Turkey from 10 March to 16 March 2008, to gather information on the situation following the recent military operations, cross-border aerial bombardments and cross-border land operations against the pro-Kurdish armed group the Kurdistan Workers' Party (PKK).

In July 1987, the Turkish Government declared a state of emergency bypassing the State of Emergency Rule, known locally as OHAL, covering 11 provinces in the southeast. The rights and freedoms enshrined in the Constitution became regulated by the Emergency Law, which relied on Article 15 of the Constitution[1], to provide immunity from challenges to its constitutionality. The rule provided for the establishment of an emergency civil administration and the appointment of a Regional Governor who also enjoyed complete immunity from constitutional challenge. OHAL was ostensibly lifted in its entirety at the end of 2002, which brought to an end the food embargoes, village destructions and evacuations, and the reduction in the number of extrajudicial killings and instances of systematic torture. Despite the marked improvement in the situation[2], the mentality which underpinned it, aimed at repressing Kurdish people, remained present and most importantly, the restrictions remained in place in many of the regions.

In the last year, the KHRP was informed by its partners in the region that the ongoing conflict in the region had again deteriorated. The conflict and the PKK's

1 Article 15 of the Constitution provides that 'In times of war, mobilization, martial law, or state of emergency, the exercise of fundamental rights and freedoms can be partially or entirely suspended, or measures may be taken, to the extent required by the exigencies of the situation, which derogate the guarantees embodied in the Constitution, provided that obligations under international law are not violated. Even under the circumstances indicated in the first paragraph, the individual's right to life, and the integrity of his or her material and spiritual entity shall be inviolable except where death occurs through lawful act of warfare; no one may be compelled to reveal his or her religion, conscience, thought or opinion, nor be accused on account of them; offences and penalties may not be made retroactive, nor may anyone be held guilty until so proven by a court judgment.'

2 For further information see KHRP FFM *The Lifting of State of Emergency Rule: A Democratic Future for the Kurds?* (KHRP, London, November 2002).

attack on the Turkish military were used by the Turkish authorities to effectively return the region to a state of emergency by declaring the three provinces of Şırnak, Hakkari and Siirt as high security zones. This led to the implementation of extraordinary security measures in these provinces, whilst the neighbouring areas were subjected to check points. It was also reported that during the conflicts within Turkey, the state security forces used chemical weapons against the PKK members, in violation of international law, and mutilated the bodies of the PKK members. In addition, allegations were made regarding a number of attacks perpetrated by the PKK members that resulted in the killing of civilians. There were also reports that civil society groups, bar associations and human rights organisations were facing difficulties in carrying out their work in the climate of increased tensions and security. The mission was launched to shed light on the claims made by all parties and to paint a clearer and more accurate picture of the situation created by the rising tension in the region.

The mission met with mainstream political parties, state officials, civil society groups, including bar associations, trade unions, trade chambers and human rights organisations, local people living in high security zones and local administrators in Tunceli, Bingöl, Diyarbakır, Şırnak and Cizre with the view to create an up-to-date picture of the situation in the region. The mission also intended to visit the town of Hakkari but it had to amend its original itinerary for security reasons[3].

The purpose of the FFM was to obtain a solid understanding of the human rights situation in the Kurdish region under the current condition of conflict and cross-border operations. It considered whether the recent escalation in the conflict between the Turkish government and the pro-Kurdish armed group, PKK, is causing an increase in the human rights violations in the region. The mission also considered the extent of the impact of the situation on the Kurds in Turkey, as its largest minority group, to provide an indication of Turkey's commitment to the EU accession and reform process.

The report considers what, if any, are the differences between the current situation and that between 1990 and 1995 in terms of human rights violations, society, and everyday life. It endeavoured to ascertain what the nature of the rights most commonly violated in the current climate is and which members of society are most affected by the conflict. The mission attempted to adopt a holistic approach to the FMM, whilst focusing on the functioning of Turkey's political institutions

3 See p. 56 for a full explanation.

and its respect for human rights, so as to satisfy its obligations under the European Convention on Human Rights (ECHR).

b. Conclusions Drawn from the FFM

The mission found that the perspective on the conflict differs depending on location, the individual's occupation, role in society and political affiliation. However, despite a wide spectrum of opinions on the issue, there is a general consensus that there is a need for a peaceful resolution of the conflict. In the current situation, the human rights most affected are freedom of expression, thought and association unlike the 1990s, when common violations were killings, torture, ill-treatment and extra-judicial killings. Nevertheless, these violations still occur, and are particularly likely to occur during peaceful demonstrations against the government or state policy. There is a consensus amongst human rights lawyers that the 2003-04 EU reforms made under the governing party *Adalet ve Kalkınma Partisi* (Justice and Development Party, AKP) provided a step forward in the protection of human rights. However, the party's policies have since seen a regression attributed to the slow-down in the EU reform process, the passing of new legislation and, most importantly, the manner in which this legislation is being interpreted and applied by the state apparatus. This has led many to see these reforms as merely cosmetic.

The need for peace, not just the absence of conflict, is essential. Almost everyone interviewed by the mission stated that they feel that they can no longer live in a region ridden by conflict, which has led to a widespread loss of hope amongst all members of the community. The Mayor of Tunceli[4] told the mission that in order to find a peaceful resolution to the conflict, it is essential for the government to realise that the Kurdish question and the PKK are one issue and must be addressed jointly. Both the government and the PKK need to come together to find a peaceful solution. Yet, it is the view of this mission that the resolution of the conflict goes far beyond the PKK; it is a question of recognising all of the citizen's rights and the country's multicultural make up, thus affording equal opportunity to all groups. Therefore the methods employed by Government and the army, namely the use of force, are not effective in finding a solution to the Kurdish issue.

This first section gave the reasons for sending a FFM to southeast Turkey. In the section to follow, the report will provide an overview of the political background in Turkey, focusing on the conflict in the southeast region from the 1990s to the current situation. The third part outlines the relevant legislative provisions at domestic, regional and international level, applicable to the conflict. The fourth part sets out the nature of the violations observed by the mission. Sections five to

4 FFM Interview with Songül Erol Abdil, Mayor of Tunceli, 10 March 2008, Tunceli.

nine give an account of the impacts and repercussions that the conflict is having on the region, assessing economic, social, and political factors. Section ten considers the question of Turkey's accession to the EU to ascertain whether the process is moving forward and how it is being affected by the current climate. Finally, sections eleven and twelve summarise the conclusions and recommendations made by the mission.

II. GEO-POLITICAL BACKGROUND

a. The Conflict

i. The 1990s

The current conflict between the PKK and the Turkish military dates back to 1984, and since then the Kurdish region in Turkey has been ridden by conflict and armed struggle. Although the PKK and Turkish security forces have struggled for control of the southeast for the past 24 years, the violence increased dramatically in 1992, following the Gulf war. Over 3,000 Kurdish towns and villages in the south-east were burnt down and destroyed by the security forces[5] and more than 35,000 people have been killed, most of whom were civilians[6]. The Turkish government opposed making any concessions to the PKK, claiming that the organisation's ultimate goal is the dissolution of Turkey, considering it nothing more than a terrorist organisation. This period was plagued by widespread use of torture and ill-treatment, extra-judicial killings and unlawful detentions both by the state forces and village guards[7]. As a result three to four million, mainly rural Kurdish villagers, were displaced from their homes and forced to flee to nearby villages.

In February 1999, the PKK leader Abdullah Öcalan[8] was captured, convicted of treason and separatism, and was sentenced to death. It immediately spurred a rash of bombings and other terrorist attacks both in Turkey and abroad. Following the initial reaction, the violence steadily decreased until September 1999 when the PKK declared a unilateral ceasefire, claiming that it intended to put an end to the armed struggle and wanted to find a peaceful resolution to the Kurdish question. The PKK was restructured under a new party, namely the Congress for Freedom and

5 KHRP FFM Report, *Indiscriminate Use of Force: Violence in the South-east Turkey* (KHRP, London, October 2006).

6 Human Rights Watch, *Displaced and Disregarded: Turkey's Failing Village Return Program* (New York (2002).

7 The 'village guard' system required state-employed Kurds to kill, torture and beat their neighbours.

8 Abdullah Öcalan is the founding leader of the PKK (founded in 1978) and has been leading an armed campaign inside Turkey since 1984. He was captured in Kenya on February 15, 1999 and flown back to Turkey for trial. Since his capture Öcalan has been held under solitary confinement as the only prisoner on the Turkish island of İmralı. He was sentenced to death, but this sentence was commuted to life-long aggravated imprisonment when the death penalty was abolished in Turkey in August 2002 following an appeal to the ECtHR.

Democracy in Kurdistan (KADEK) whose stated aim was to solve the Kurdish issue through democratic means. However, whilst it did not initiate attacks, it continued a defensive armed struggle against Turkish forces in south-east Turkey, and Kurdish civilians, especially rural-dwellers, were all too often caught in the crossfire.

The PKK called off the ceasefire in June 2004 increasing its attacks on the military, police and governmental targets, claiming that Turkey had not taken sufficient steps to afford rights and freedoms to the Kurdish people. In the past seven years clashes have continued, interspersed with moments of relative calm.

ii. The Current Developments

On 7 June 2007 the Kurdish provinces of Şırnak, Hakkari and Siirt located close to the Iraqi border, were declared part of the 'high security zone' by the Turkish military with tensions between the Turkish state, the Kurdish administration in northern Iraq and the PKK reaching a height at the end of the summer. In October 2007 the Turkish government announced the commencement of military incursions in northern Iraq, with the purported aim of weeding out the PKK strongholds inside the Iraqi border. Since 1992, Turkey had been making cross border incursions, however, this was the first time in many years that it had done so with such force and with ground forces. The Turkish Parliament later passed a motion giving legitimacy and legal force to this announcement. The Turkish forces gathered troops near Iraq, shelled and air-raided suspected rebel positions along the border advancing into Iraq to gain full control of the area.

The Turkish military carried out its first aerial bombardment in northern Iraq on 13 October 2007[9] when the Turkish air force launched attacks on two civilian villages in the district of Sersenk in Kurdistan, Iraq. Although purportedly aimed at terrorist bases, the attacks caused widespread destruction of civilian homes and property and have resulted in at least one civilian death. In November 2007 and January 2008 KHRP sent a FFM to the border regions which observed that the area has suffered months of Turkish and Iranian artillery bombardment, causing the destruction of homes and farmland, and causing enormous distress to civilians, particularly children[10]. These air raids marked a step up in the intensity of Turkish bombardment of the regions, and resulted in the first confirmed civilian death. In addition, simultaneous strikes by the Iranian military in neighboring areas of the mountainous region were also reported. Many others followed. On 22 October the

9 'EU Presidency statement on the terrorist attacks of the PKK in Turkey over the weekend', 22 October 2007 – www.eu2007.pt. Last accessed April 2008.

10 KHRP FFM Report, *A Fact-Finding Mission to Kurdistan, Iraq: Gaps in the Human Rights Infrastructure* (KHRP, London, July 2008).

PKK ambushed a Turkish military Unit in the Dağlıca region of Hakkari, resulting in the killing of 12 soldiers and the capture of another 8 soldiers. On 5 November the PKK released the hostages, which were delivered to the American forces by a delegation of pro-Kurdish DTP MPs and NGO representatives. On 6 December 2007, the Turkish armed forces launched a massive attack, at night, on the Kurdish camps in northern Iraq. Subsequently, on the 16 December, the Turkish military carried out an aerial bombardment in northern Iraq when the Turkish air force, with up to 50 Turkish aircrafts, carried out raids in the Qandil mountains of Kurdistan, Iraq. During the clashes that took place in September, October and November many soldiers and PKK members lost their lives.

In the mission's opinion, the situation in 2007 had not deteriorated to the extent that military action could be justified. These military strikes merely served to ratchet up further hostilities and threaten the situation in Kurdistan Iraq, which was relatively calmer than other parts of the country, so as to destabilise a region inhabited by an estimated 10 million Kurds and target the Kurdish people as a whole.

On 21 February 2007 the Turkish military initiated its ground operations and deployed an estimated 10,000 troops inside northern Iraq as against the PKK. The operation lasted 8 days after which the Turkish forces withdrew from the Iraqi region. The Turkish government announced[11] that the operation had been very successful, claiming that 240 PKK members had been killed, and that 24 soldiers and 3 village guards had been lost. The PKK denied this claim and stated that they lost 9 members and killed over 100 soldiers.

Meanwhile the operations continue and daily life is disrupted and under constant threat for millions in Turkey and Iraq.

iii. The Recent Elections

The recent elections and the tensions surrounding them were often cited in interviews conducted during the mission in painting an accurate picture of what is happening in Turkey, and especially in the Kurdish regions. It is the mission's view that the election of 21 independent Kurdish candidates on 23 July 2007— which allowed the *Demokratik Toplum Partisi* (Democratic Society Party, DTP) to form a group in parliament— can be seen as a positive step for democratic representation in the Kurdish regions after years of historical persecution and forced assimilation. The victory serves as an important test of both the party's and the Turkish public's political maturity, and their ability to work together in the interest of all the citizens. It also presents a good opportunity for making progress in resolving the lingering

11 'Iraqi incursion finished, Turkey says', CNN, 29 February 2008.

'Kurdish problem', as it grants the opportunity to integrate the Kurdish demands into the parliamentary process. Nevertheless, it risks becoming a source of conflict in Parliament especially at a time of conflict.

The OSCE's electoral assessment found that the 'process was characterized by pluralism and a high level of public confidence underscored by the transparent, professional and efficient performance of the election administration'[12]. The three parties that crossed the 10% threshold were the AKP with 46.6%, resulting in 341 seats, the Republican People's Party (CHP) with 20.9% (99 seats) and the Nationalist Movement Party (MHP) which obtained 14.3% (70 seats). 26 independent candidates were also elected. 20 of these, from the pro-Kurdish Democratic Society Party (DTP), formed their own political group. This brought the number of political groups to four.

This ensures that the Parliament is more representative of the country's political diversity, yet there has still been criticism regarding the 10% threshold, which is the highest among European parliamentary systems. In January 2006 the threshold was subjected to scrutiny by the ECtHR,[13] which held that it did not violate the right to free elections[14] enshrined in the First Protocol to the ECHR. The Court, however, noted that to ensure optimal representation the threshold should be lowered. The issue is now pending before the Grand Chamber.

Nevertheless, DTP's role in Parliament can be regarded, not only as a step forward for the Kurdish people in terms of asserting their identity and their rights but also, from a practical perspective, as a way to voice their concerns at governmental level.

12 '2007 Progress Report on Turkey', 6 November 2007, European Commissionat < www.europa.eu> (last accessed in April 2008).

13 ECtHR, Appl. No. 10226/03, *Yumak and Sadak v Turkey,* 30 January 2007.

14 The next highest threshold can be found in several Council of Europe countries, including Germany, Luxembourg & Belgium.

III. THE LAW

a. Domestic law - The Turkish Constitution and Penal Code

The current Turkish Constitution, ratified in 1982, has been subject to numerous criticisms for restricting cultural and political freedoms, namely denying the fundamental rights of Turkey's Kurds. Article 12 of the Constitution guarantees 'fundamental rights and freedoms', including the equality of citizens which prohibits any discrimination on the basis of 'language, race, colour, sex, political opinion, philosophical convictions or religious beliefs', and ensures their equality before the law. However, the concept of Turkishness is founded on citizenship, rather than ethnicity, as enshrined in Articles 3 and 10 of the Constitution. This effectively bans Kurdish identity as only people who are identified as Turks are regarded as Turkish citizens.

Article 26 establishes freedom of expression, Articles 27 and 28 the freedom of the press, and Article 33 and 34 affirm the freedom of association and assembly. Despite these guarantees the prosecution and conviction for the expression of non-violent opinions, brought under the Constitution and the Penal Code, are a cause of serious concern.

Another problem faced in terms of freedom of expression is the new Penal Code, which entered into force on 1 June 2005 as part of the penal-reform package required by the EU accession criteria. The Code amended the former Article 159 and created the criminal offence of 'insulting the Turkish nation'[15]. Unfortunately the change seems merely cosmetic and many outsiders, such as the UN, the EC and countless NGOs, observe that it should be abolished. The number of persons prosecuted under the Penal Code almost doubled in 2006 compared to 2005[16]. Despite the final clause of Article 301, which provides that 'expressions of thought intended to

15 A person who publicly denigrates Turkishness, the Republic or the Grand National Assembly of Turkey, shall be punishable by imprisonment of between six months and three years. A person who publicly denigrates the Government of the Republic of Turkey, the judicial institutions of the State, the military or security organisations shall be punishable by imprisonment of between six months and two years. In cases where denigration of Turkishness is committed by a Turkish citizen in another country the punishment shall be increased by one third.

16 '2007 Progress Report on Turkey', 6 November 2007, European Commission <www.europa.eu>

criticise shall not constitute a crime', its wide scope leaves it open to interpretation and therefore provides a tool to suppress public debate and opinions.

The European Union has been calling on Turkey to amend Article 301, which has been the basis for charges against Turkish writers and journalists including Hrant Dink, Elif Şafak and Orhan Pamuk.

In April 2008 the Turkish Parliament started a debate on the amendment of Article 301 of the Penal Code. The Nationalist Movement Party (MHP) and the Republican People's Party (CHP) accused the government of betraying the country's identity, and instead pandering to EU demands that it reform laws prohibiting Turks from insulting their nation. Despite the opposition, on 29 April 2008[17] the notice of motion was passed with 250 votes against 65 at the end of the deliberations. The amendment replaced the 'Turkishness' statement in Article 301 with 'Turkish Nation' and 'The Republic' with 'the State of the Turkish Republic'. The new Article 301 read as follows:

> The person who denigrates openly the Turkish Nation, the State of the Turkish Republic or the Grand Assembly of Turkey and the judicial institutions of the State shall be punishable by imprisonment from 6 months to 2 years. The persons who denigrate the military and police organizations of the State will too receive the same punishment.
>
> Expressions of thought with the intention to critique shall not constitute a crime.
>
> The prosecution under this article will require the approval of the Ministry of Justice.

The Independent Communication Network (BİA) found that cases against activists, journalists and publishers under Article 301 has risen from 29 in 2005 and 72 in 2006, and a further 22 charges were brought between July and September 2007[18]. Despite the amendments, Article 301 still represents an illegitimate restriction of freedom of expression as it does not allow the free and open criticism of the State and its organs, contrary to the fundamental principles of a democracy. The mere

17 'Parliament passes the revised Article 301 with 250 votes against 65', 01 May 2008 <www.bianet.org> (last accessed May 2008).

18 'Freedom of expression under nationalistic siege', 16 February 2007 – www.bianet.org . Last accessed June 2008.

cosmetic amendments made to the Article do not address the real shortcomings of the provision, which should have been repealed in its entirety.

Other legal provisions of the Penal Code, such as Articles 215, 216, 217 and 220, criminalise offences against public order and are often employed to prosecute human rights defenders, journalists and lawyers for the non-violent expression of opinions on the Kurdish issue. The situation of media freedom in Turkey started to deteriorate in early 2005, prior to the commencement of formal EU-Turkey negotiations. There has been a rapid escalation in reports of harassment, arbitrary and pre-trial detention and criminalisation of journalists, publishers, political activists, and human rights defenders, becoming reminiscent of the 80's and 90s', particularly when new legislation appears to reintroduce former restrictions[19]. Article 288 (attempt to influence a fair trial) is also used to restrict freedom of expression[20].

The provisions of the Penal Code need to be brought in line with EU standards as it is clear from the numerous prosecutions that the Turkish legal system does not fully guarantee freedom of expression.

The impact of anti-terror legislation on freedom of expression is also a cause for concern. Article 8 of the Anti-Terror Law carries a maximum sentence of three years imprisonment for 'disseminating separatist propaganda', without advocating violence. Others include the following: Article 158 (insulting the President) that carries a three-year minimum sentence, Article 159 (insulting the state authorities)

19 For more information see KHRP FFM Report, *Reform and Regression, Freedom of the Media in Turkey,* (KHRP, London, July 2007).

20 *Article 215* provides that a person who 'praises a crime or a criminal' is given an imprisonment of up to three years; *Article 216* affirms that a person who 'incites groups of the population to breed enmity or hatred towards one another by, for instance, denigrating religious values, shall be sentenced to imprisonment for a term of one to three years but if such offence is committed through media and press, the penalty to be imposed shall be increased by half'; *Article 217* provides a person who commits the crime of 'inciting people to disobey laws' is given an imprisonment of nine months to three years, but if such an offence is committed through media and press, the penalty to be imposed shall be increased by half; *Article 220* provides that a person who 'makes propaganda – through the medium of press and media - about the goals of an organization which has been established in order to commit crimes' can be imprisoned of three to nine years; *Article 288* provides that 'a person who explicitly makes a verbal or written declaration for the purpose of influencing the public prosecutor, judge, the court, expert witness or witnesses until the final judgment is given about an investigation or prosecution will be imprisoned for a term from six months to three years. If this offence is committed through press or media, the penalty to be imposed shall be increased by one half'.

that carries a sentence of six to eight years, and Law 5816 (insulting Mustafa Kemal Atatürk, the founder of the Turkish Republic).

Some progress has been made in terms of the efficiency of the judiciary, including through amendments to the Turkish Criminal Code (CC) and the Criminal Procedure Code (CPC) adopted in December 2006. These amendments extend the discretion of the prosecutor as regards decisions not to prosecute, and allow the judiciary to accord an alternative to arrest for offences carrying a sentence of imprisonment for three years or less.

b. EU Reforms

In December 1999 the Helsinki European Council granted Turkey the status of candidate country and accession negotiations were opened in October 2005. The Copenhagen criteria require that a state has the institutions to preserve democratic governance and human rights, have a functioning market economy, and accept the obligations and intent of the EU in order to fulfil the basic requirements of a democratic state. This report will focus on the functioning of Turkey's political institutions and its respect for human rights, so as to satisfy its obligations under the European Convention on Human Rights (ECHR).

The prospect of acceding to the EU was an incentive for Turkey to make reforms to its political and legal system. During the first term of the AKP, the death penalty was abolished, the functions and composition of the National Security Council were changed to increase civilian control over the military, and a series of constitutional amendments enhanced democratic freedoms. Progress was also made in areas such as women's and children's rights, and with the 2004 imposition of the zero-tolerance policy against torture, which led to an overall decline of reported cases of torture and ill-treatment[21]. In spite of these improvements, since 2005 the implementation of reforms has declined[22]. On 6 November 2007, the European Commission presented the *2007 Progress Report on Turkey.* It drew the following conclusion on the state of affairs:

> Turkey now needs to renew the momentum of political reforms. Significant further efforts are needed in particular on freedom of expression, and the rights of non-Muslim religious communities. Further progress is needed in particular on the fight against corruption, judicial reform, trade union rights and women's and children's rights, and the accountability of the public

21 'Communication from the Commission to the European Parliament and Council – Enlargement Strategy and Main Challenges 2007-2008', 6 November 2007 at <www.europea.eu>

22 For further information see also KHRP FFM Report, *Reform and Regression: Freedom of the Media in Turkey,* (KHRP, London, October 2007).

> administration needs to be strengthened. In the South-East, Turkey needs also to create the conditions for the predominantly Kurdish population there to enjoy full rights and freedoms[23].

Following the general elections on 22 July 2007, the AKP pledged to continue with the reforms, and to carry on with the implementation of the Turkish plan for EU accession presented in April 2007[24]. The recent amendment to Article 301 is one of these steps.

c. International Law

In 2004 Turkey signed the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which was subsequently ratified in November 2006 and entered into force in February 2007. Through this Turkey is now subject to more stringent scrutiny as it has granted to the UN Human Rights Committee the competence to receive and consider complaints from individuals on violations of human rights. However, it has not yet ratified the Optional Protocol to the UN Convention against Torture (OPCAT), signed in September 2005.

In October 2006, Turkey ratified Protocol N°14 of the ECHR, which is aimed at improving the control system of the Convention by filtering cases for the Court that have less chance of succeeding. It has not yet signed the three additional Protocols to the ECHR.

Despite this apparent progress, it is debatable whether Turkey's authorities act in line with the obligations, and whether the rights and freedoms enshrined in these international documents are enforced and given effect. In fact, in 2007 the ECtHR has delivered 330 judgments finding that Turkey has violated at least one article of the Convention. The total number of new applications to the Court from 1 September 2006 to 31 August 2007 is higher than the same period last year. More than two thirds of these new applications refer to the right to a fair trial and the

23 'Communication from the Commission to the European Parliament and Council – Enlargement Strategy and Main Challenges 2007-2008', 6 November 2007 at <www.europea.eu>

24 'Communication from the Commission to the European Parliament and Council – Enlargement Strategy and Main Challenges 2007-2008', 6 November 2007 at< www.europea.eu>

protection of property rights. The right to life and the prohibition of torture are also referred to in a number of cases[25].

More importantly, there are numerous Court judgments that are awaiting enforcement by Turkey, the majority of which require general legislative amendments, namely lifting restrictions on freedom of expression and allowing the re-opening of domestic proceedings in certain circumstances. Other cases that are currently pending before the Committee of Ministers relate to violations perpetrated during the conflict in the 1990s, and require the adoption of measures on the control of the actions of security forces and effective remedies against abuses.

Despite the aforementioned issues, there have been improvements in terms of the promotion and enforcement of human rights. The Human Rights Presidency, under the Prime Minister's office and 931 members of the Human Rights Board, have received more applications in 2006 than in the previous years[26]. Furthermore, the Human Rights Board and state-sponsored social services have increased its visits to the detention centres.

Nevertheless, the Human Rights Advisory Board, composed of NGOs, experts and representatives of Ministries under the Office of the Prime Minister, has not been operating since the publication of a report on Minority Rights in October 2004. In its 2007 Progress Report, the Commission found that 'overall, further efforts are needed to improve the institutional framework for human rights'[27].

With regard to trade union right for public employees, restrictions still remain as Turkey fails to fully implement the International Labour Organisation (ILO) Conventions pertaining to the right to strike, the right to bargain collectively and the right to organise, despite Article 54 of the Constitution that recognises the right to strike of all workers under the conditions of the law. Furthermore, Turkey fails to remove its reservation on the right to organise (Article 5) and the right to bargain collectively (Article 6) of the European Social Charter.

Turkey acceded to the Mine Ban Treaty (also known as the Ottawa Treaty) on 25 September 2003. Although it has not yet enacted legislation for domestic implementation, Article 90 of the Constitution gives force of law to international treaties, Article 174 of the Penal Code imposes criminal sanctions for the use of

25 '2007 Progress Report on Turkey, 6 November 2007', European Commission < www.europa.eu> (last accessed April 2008).

26 '2007 Progress Report on Turkey, 6 November 2007', European Commission < www.europa.eu> (last accessed April 2008).

27 '2007 Progress Report on Turkey, 6 November 2007', European Commission, 13 < www.europa.eu> (last accessed April 2008).

explosives. Furthermore, Directives of the Army General Staff also gives effect to the treaty's provisions. In October 2005 Turkey stated that 'existing domestic legislation contains provisions, including the imposition of penal sanctions, to prevent and suppress any activity prohibited under the Ottawa Treaty'[28].

Turkey submitted an initial transparency measures report in October 2004 and an annual update in May 2005. It declared a stockpile of 2.97 million antipersonnel mines and about 920,000 antipersonnel mines placed in border areas, especially with Syria. Turkey ratified the Convention on Conventional Weapons (CCW) Amended Protocol II on 2 March 2005. During clearance operations in 2004, 1,225 antipersonnel mines were removed and destroyed, clearing 16,065 square meters. A significant increase in mine/UXO casualties (Unexploded Ordnance) was reported in 2004[29].

28 Letter No. 649.13/2005/BMCO DT/8805 from Vehbi Esgel Etensel, Counselor, Permanent Mission of Turkey to the UN in Geneva, to Landmine Monitor (HRW), 3 October 2005.

29 ' LM Report 2005 - Turkey' at <http://www.icbl.org/lm/2005/turkey.html#fn2>.

IV. MAIN AREAS OF CONCERN

a. Overview

'What will happen, will happen.' These were the first words of Mr Tanrıkulu, the Chairman of the Bar Association and Human Rights Foundation in Diyarbakır[30] to the mission, reminiscing about one of his speeches. He criticised the media and the government for referring to a 'critical situation', and questioned the real meaning of such a commonly used expression. Mr Tanrıkulu argued that 'a critical situation' is used when referring to a temporary state of affairs, yet the situation in southeast Turkey has been the same for the most part of 30 years. This is reflective of the loss of hope which the mission observed across the board in the region. The mission was told by others with whom it met that on the one hand, government policies view the use of force as the only solution to the Kurdish question, and on the other, the PKK continue to react to provocations or perceived provocations with armed tactics. This has led to a standstill, in that there is now a situation where there is no scope for manoeuvre unless each party is willing to take a step towards a compromise. Mr Tanrıkulu believes that unless this happens in the near future, there will inevitably be a question of geographical separation.

On 13 March 2008, the mission met with Ahmet Ertak, the mayor of Şırnak. In his welcome speech to the mission he stated that in order to analyse what is happening in the region with a view to finding a solution, there is a need to focus on a wider perspective; namely the importance of the Kurdish region in the Middle East, the US' influence and role in the Middle East and the Iranian, Syrian and Turkish states working against the Kurds, and the 'resistance movement'[31]. He went on to state that Turkey and the western world view the Kurdish issue as a terrorist problem but in reality it is a problem linked to Kurdish identity, culture and freedoms.

The mission found there to be a general consensus that the military operations have not brought a solution to the Kurdish question and have merely caused many deaths

30 FFM interview with Sezgin Tanrıkulu, Chairman of the Diyarbakır Bar Association and Human Rights Foundation, 12 March 2008, Diyarbakır.

31 FFM interview with Mr Ahmet Ertak, Mayor of Şırnak, and members of the City Council, 13 March 2008, Şırnak.

on both sides. Reyhan Yalçındağ of İHD in Diyarbakir told the mission that in 30 years, all that has been achieved is that four political parties have been shut down, hundreds of party members have been arrested and detained, shot and killed, and democratic solutions and activities halted.

b. Perceptions

A matter which particularly occupied the mission was to what extent the current conflict has affected the general public living in the Kurdish regions. The mission was confronted with different opinions, which were rather difficult to reconcile. It became clear to the mission, as it discussed issues with various people, that there is a significant variation between localities, and also variations depending on individuals' occupations, gender, political affiliation and economic status.

The first town that was visited by the mission was Tunceli, a province in the Eastern Anatolia region of Turkey. The President of the Bar Association in Tunceli, Mr Özgür Ulaş Kaplan[32], told the mission that human rights violations in the region have increased. Conversely, the Chairman of AKP in Bingöl[33] stated that the town is not affected by the conflict. For example, he is a producer of honey and stated that he can easily access his business located in the mountains surrounding Bingöl. He found this to be in stark contrast to the 1990s, when citizens could not have businesses in the rural areas, travel or carry out any political activity despite Bingöl being renowned for violent incidents this summer. It appeared to the mission that Mr Yaşa either had not considered or was unwilling to discuss violations of human rights. He often steered the conversation in the direction of what the AKP had done to provide a strong human rights framework in the country as a whole, but he did not address specific problems to the locality.

An interesting point was made by the Chairman of AKP Şırnak[34] when he said that in comparing the past and present, the current conditions have improved. He maintained that despite the restrictions imposed in the past two years, the situation is not as dire as it is depicted by the media. Mr Birlik used the clashes that took place in December 2007 as an example; he said that the manner in which the media reported those attacks gave the impression that the PKK had declared an independent state in the area, which was obviously not true. On the same note, he told the mission that the military operation that took place at the beginning of March 2008 was barely felt by the local people, despite the fact that it was launched

32 FFM interview with Mr Özgür Ulaş Kaplan, President of the Bar Association Tunceli, 10 March 2008, Tunceli.

33 FFM interview with Mehmet Yaşa, Chairman of AKP Bingöl, 11 March 2008, Bingöl.

34 FFM interview with Rizgin Birlik, Chairman of AKP Şırnak, 13 March 2008, Şırnak.

from the province of Şırnak. Yet, it was reported as though it had gravely affected the lives of civilians.

Overall, the mission found great divergence between the official analysis of the situation, as provided by the AKP representatives and that of the public. The former held that there had been no significant changes in the everyday life of the people since the revival of the conflict, whilst the latter believed that the gravity of the conflict was gradually returning to that of the 1990s. During the course of the mission the delegation heard speculation that members of the AKP are renowned for merely providing information in the form of official party policy, rather than as they, in fact, perceive the situation to be. In an interview with Cevat İshakoğlu, a member of Bingöl Bar Association[35], he argued that public servants from the AKP are often accused of playing to Bingöl's small town religious conservatism by only addressing alleged human rights violations involving religion, such as those related to headscarves, and ignoring others related to discrimination against Kurds. However, this cannot be taken as information gathered first hand by the mission.

It was interesting for the mission to discover that there are Kurdish AKP officials. For example, Mr Birlik was open about his Kurdish origin and told the mission that his father disappeared ten years ago as he crossed back into Turkey after having been on a business trip to Iraq. It is not for the mission to say whether Kurdish AKP supporters are those with a pro-government mentality, or whether some become involved with the AKP simply in order to make life easier by working with 'the powers that be'. The mission found it interesting to meet Mr Birlik as a person that defended the rights of the Kurds, but acted on behalf of the Government. This demonstrates that the Kurds cannot all be 'lumped together' and like Turks, and other peoples, they have diverging opinions and views. Pro-Kurdish parties, armed opposition and the state, in the view of the mission, would do well to recognise this diversity and move towards addressing the discrimination in the region, rather than taking a piecemeal approach to serve ideologies. Yet, this also illustrates the overarching point made by the report that there is a wide range of opinions in the region as to the situation, but also shows that this is not necessarily solely due to an individual's background and role in society. There might be other external factors that come into play.

Mr İshakoğlu[36] also told the mission that he believes there is a large difference between the AKP in the west of Turkey and that in the southeast; the former is headed by the Government whilst the latter is subject to the will of the army, which are renowned

35 FFM Interview with Cevat İshakoğlu, a member of Bingöl Bar Association, 11 March 2008, Bingöl.

36 FFM Interview with Cevat İshakoğlu, member of Bingöl Bar Association, 11 March 2008, Bingöl.

for disregarding human rights and freedoms. Many of those interviewed by the mission referred to this extensive influence of the Turkish military and police in laying the parameters for freedom of expression and the media, thus interfering with the democratic process and attempting to undermine the progress made.

The mission asked Mr Özgür Ulaş Kaplan what, in his opinion, contributed or spurred the current phase of the conflict. He told the mission that after the PKK declared its first unilateral ceasefire the region was relatively secure, with an understanding on both sides of the conflict that rights should not be violated. This period was characterised by a decrease in cases involving abuses of human rights, including fewer checkpoints allowing people to travel freely and contributing to a general sense of an atmosphere of freedom. Yet, he believed that the government did not take advantage of this period of relative calm by attempting to take democratic and economic steps to find a peaceful resolution to the Kurdish question. Mr Kaplan went on to relate that the EU reform process brought some changes, yet saw them as mere 'paper reforms', which were not brought about to improve the lives of the Kurdish people and of Turkey as a whole but merely to show EU countries that something was being done towards accession. This, in his opinion, has led to the current situation of conflict. Through his casework, Mr Kaplan told the mission that he has noticed that the government is now using similar methods of harassment and repression to those employed in the 1990s. He provided the mission with numerous example of violations of freedom of expression and arbitrary detentions. However, most interestingly, he stated that a common problem is that of the security of the people living in rural areas. For example, in the summer of 2007 the districts of Hozat and Ovacık were burnt down during military operations, and the local people were not even allowed to put out the fire to salvage what they could and had to allow it to burn for days.

The mission believes that it is especially important to highlight the condition of those that are caught in the crossfire, because their loss often goes completely unreported. For example, those living in remote rural villages and in the mountains are often subjected to harassment and violence by the Turkish soldiers, yet due to their isolated location many outside the specific location where violations have occurred do not know what has happened[37]. In the 25 years since the Turkish state and the PKK have been in conflict, the province of Şırnak has been one of the most affected. During the recent clashes, all but 10 km around Şırnak have been closed, allowing travel only on the highroad as everything else is a military zone. In 1992 the military forces attacked the town of Sırnak for over 60 hours, although most of the people that lived there at the time escaped. Hundreds of villages were destroyed and people forcibly displaced migrated to Şırnak town centre, or other big cities.

37 FFM interview with Mr Özgür Ulaş Kaplan, President of the Bar Association Tunceli, 10 March 2008, Tunceli.

As will be discussed further in the report, the relocation of IDPs to large cities is detrimental to them, as they struggle to adapt to city life, but it is also a strain on the economy and administration of the area.

Physical but equally psychological intimidation is a tool of governance in the region. The mission was told by many with whom it met that they believe that the military is carrying out a 'psychological war' on the Kurdish people, illustrated by the fact that the forces continually insult the Kurds, through words and actions, treating them like second class citizens. This attitude has led the Kurdish people to grow closer to the DTP and the PKK as these show support for their cause.

A bus driver[38] interviewed by the mission explained that in his view, because Tunceli is isolated, it is easy to exercise brutal pressure in this region. The people are afraid and therefore they succumb to this pressure. Many of them want to be more active in their daily lives but they cannot. Whilst there are no proscribed restrictions in carrying out his work as minibus driver, if he is travelling and carrying politicians he is often stopped and fined, which acts as such a proscription. For example, the driver recently carried DTP members and was stopped and fined for driving without headlights on, although he believes that in reality he was being 'punished' for carrying DTP passengers. He has paid fines up to 1200 NTL. In the view of the mission, such fines not only damage the ability of the driver to earn his wage but they also damage the image of the rule of law and its reason for being.

Overall the mission observed the way in which different social/economic classes are affected by the conflict in terms of human rights violations. From the information obtained and observed, it seemed that for the poorest members of society it is their economic rights that are most in jeopardy, whilst for intellectuals and professionals, it is their right to freedom of expression and association. However, this should not be seen as a steadfast rule. In fact, the mission also felt that no class could escape any particular kind of violation because when the rule of law is violated, the arbitrary nature of such violations means that everyone and anyone is at risk. This was exemplified by trade unionists losing their employment for exercising their freedom of expression. Further evidence of the departure from the rule of law was given when the mission was stopped at the checkpoint at the border of the province between Tunceli and Elazığ on the way to Bingöl. The gendarme[39] officer told the mission that every month they receive new orders from the prosecutor so now

38 FFM Interview with Ali Tulga, minibus driver, Bingöl, 10 March 2008.

39 The Turkish *Jandarme* is a branch of the Turkish armed forces responsible for the maintenance of public order in areas that fall outside the jurisdiction of police forces (generally in rural areas). It also assures internal security and general border control along with carrying out other specific duties assigned to it by certain laws and regulations. It is an armed security and law enforcement force of military nature.

they are allowed to employ wiretapping methods. This is not only an infringement of privacy without specified reasons for the restriction, but it also provides the gendarme with disproportionate authority. Whilst already a problem in and of itself, the mission found this particularly alarming given the poor reputation of the gendarme in Turkey for upholding human rights. The mission was told by İHD in Diyarbakır, the largest branch of this Human Rights Association, that their records show that the rate of human rights violations in the region have increased since the conflict resumed in 2005. Below are some of the specific areas of concern:

c. Freedom of Expression, Thought and Association

i. Mayors

Some of the most fundamental values of a democratic society are freedom of expression, thought and association. Despite the importance of these values and the weight they are given in Turkey's EU reform process, the mission found them to be the most commonly violated.

The mission recorded numerous instances of violations of freedom of expression, resulting in unfair investigations, trials and sentences. These were mostly perpetrated against those members of the community that expose themselves by the very nature of their employment or positions, such as lawyers, politicians and activists. Despite this tendency, it is the poorest members of society that feel the weight of violations, but this is unfortunately the reality in every conflict around the world. The Chairman of the Bar Association and Human Rights Foundation in Diyarbakır[40] told the mission that in his view, a country that requires bravery as a prerequisite to express one's freedoms and in which only these courageous individuals are aware of the difficulties in asserting one's fundamental rights and freedoms, is not a democratic country. Mr Tanrıkulu went on to relate that, bravery is an old fashioned concept and it has a fundamental flaw in that at the very heart of democracy is the idea that it is for everyone. This, he said, is the Kurdish problem in a nutshell, and unfortunately it is only the brave people that can afford to stand up for human rights and accept that they will then pay the consequences.

The mission met with several pro-Kurdish mayors and noted that each recounted similar difficulties in carrying out their duties. Many of the prosecutions brought against the mayors were fairly prominent in the local and often international news.

40 FFM Interview with Sezgin Tanrıkulu, 12 March 2008, Diyarbakır.

That causes an added burden, in terms of their reputation, and in turn works as a tool to cause psychological abuse. These will be discussed in more detail below.

Mrs Abdil, the mayor of Tunceli, told the mission that one of the obstacles encountered by persons in positions of authority is the lack of dialogue with the government[41]. The mission observed that all the mayors with whom it met criticised the Government for creating policies that were detrimental to the Kurdish people. Another common opinion amongst DTP mayors, as relayed to the mission, is that they do not have access to the budgets allocated to the towns in the southeast, which affects the quality of life of the citizens as they are not able to provide them with adequate services. Mrs Abdil told the mission that she often tried to engage with the government authorities in an attempt to seek explanations as to why she was not receiving her allocated budget, or why she was not receiving the support she requested. However, they would not return her calls or reply to her letters. For example, the mayor of Şırnak[42] stated that the council's funds are extremely low because he does not receive the allocated budget. This led the council to ask the citizens for donations, despite being aware that they cannot afford it.

The mission was told by several mayors that a similar problem to that encountered with regard to the governmental authorities, also occurs with the police forces and the gendarmerie. Mrs Abdil informed the mission that the army officials outwardly refuse to shake her hand because of her affiliation with the DTP. For example, in 2006 two policemen were shot and she attended the funeral in her capacity as mayor of Tunceli, but was asked to leave. Other examples include a policeman at the entrance of the Tunceli Town Hall, placed there by the Government without her consent. Further, the police seem to monitor all activities and initiatives in Tunceli, such as planting trees or setting up a waste collection system. These are all filmed and recorded by the police. These practices constitute an inconvenience to the administration, but most importantly, are a form of psychological pressure and harassment[43].

In 2005, 53 Kurdish mayors sent a letter to the Danish Prime Minister, Anders Fogh Rasmussen, urging him not to shut down the Denmark-based Kurdish station ROJ TV. The letter stated that 'For a truly democratic life to flourish in Turkey, ROJ TV should not be silenced.... The elimination of the voice of ROJ TV would mean the loss of an important vehicle in the struggle for democracy, human rights and

41 FFM Interview with Songül Erol Abdil, Mayor of Tunceli, 10 March 2008, Tunceli.

42 FFM Interview with Ahmet Ertak, Mayor of Şırnak, 13 March 2008, Şırnak.

43 KHRP FFM Interview with Mrs Songül Erol Abdil, Mayor of Tunceli, 10 March 2008, Tunceli Town Hall.

fundamental freedoms of democratic civilization'[44]. Two years later, the case is still pending and the mayors risk up to 15 years imprisonment.

The mission met with the mayors of Tunceli, Şırnak, Cizre and Sur (one of Diyarbakir's districts), all involved in this case which provides an excellent example of what Kurdish mayors are faced with everyday and the level of democratisation in Turkey. Such figures should be able to use their positions of authority to express an opinion and yet they face a lengthy imprisonment. This is merely one of the numerous examples the mayors relayed to the mission. Below is a list of other cases faced by the mayors:

- The mayor of Tunceli faces legal proceedings regarding a statement, made with other DTP mayors, regarding Öcalan's conditions of detention, calling on the government to provide him with adequate medical treatment and remove him from isolation.[45] She was prosecuted for releasing an interview to the Turkish journalist Hasan Cemal where she stated that the PKK ceasefires should have been used by the Government as an opportunity to reach a peaceful solution to the Kurdish question, but that they failed in doing so. Mayor Abdil went on to relate that she has also received numerous threatening letters and telephone calls. For example, on 25 November 2007 she made a speech on the issue of violence against women and was subsequently threatened with death. She gave a formal statement to the prosecution but she said it produced no results. Although KHRP and others have consistently reported this to be a common occurrence, the mission learned that the rate of threats has risen in recent months.

- The major of Cizre, Mr Aydın Budak[46], is being tried under the Anti-Terror legislation for making a statement in Kurdish during the Newroz celebrations on 21 March 2007. He was detained for 45 days and the case is now before the 5th Heavy Court in Diyarbakir. As a result of the legal proceedings, the Minister of Interior dismissed him from his post as mayor on 09 May 2007 on the basis of Article 7 of the Municipality Law n°4393. This law provides that dismissals are justified only if the individual in question is carrying out an illegal activity in his capacity as mayor, and Turkish law bans

44 'Kurdish mayors urge Denmark not to silence Kurdish TV show', 30 December 2005 and 'Danish mayors defend free speech over Kurdish ROJ TV case', 12 March 2008 at < www.ekurd.net>.

45 See recent report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 6 March 2008, Council of Europe Website at <www.cpt.coe.int>.

46 FFM Interview, 13 March 2008, Cizre.

speaking Kurdish when acting as a public figure and in any political setting. The mission was interested to learn that Mr Budak argues that the dismissal is unfair as he was taking part in the Newroz celebrations as an ordinary citizen and was not challenging the law itself. The mission understood this to be a step further than most 'courageous' and well established human rights advocates are willing to go, and that it illustrates how much work still needs to be done. However, in the view of the mission, it remains nonetheless a step forward. The dismissal was followed by a letter from the prosecution stating that the dismissal was against him as an individual, and not as mayor, therefore this supports the argument of unfair dismissal. Mr Budak was extremely concerned that, as a result of the lengthy legal procedures that are a characteristic of Turkey's legal system, it is likely that a judgment will not be issued in time for the next elections which will affect his chances of being re-elected. This illustrates the malicious misinterpretation of the law, straddling the boundaries of the law, as well as an infringement of the right to freedom of expression. This constant threat of pending criminal proceedings is also a form of harassment and psychological pressure on an individual.

- An investigation was opened on 14 March 2008 against the former mayor of Sur, Abdullah Demirbaş[47] and Osman Baydemir, the mayor of Diyarbakır, for publishing leaflets in Kurdish on the subject of organ donation. They were subsequently charged under Article 222 of the Penal Code, which bans the use of Kurdish letters and abuse of power. The case is currently pending before the court. Mr Demirbaş also has a further 25 cases and investigations for distributing illegal propaganda of an illegal organisation, charges under Articles 3 and 47 of the Turkish Constitution, misuse/abuse of power, just to name a few. There are currently 21 ongoing cases against Mr Baydemir, and a further two cases have recently been brought against him although he has not yet been formally notified of these; he is also the subject of 14 investigations. These are at various stages, some trials have resulted in acquittals, some are pending before the Supreme Court and others are at the investigation stage.

The mission found that the aforementioned investigations and legal proceedings provide mere examples of what mayors and advocates who challenge state policy and mindset face in their everyday lives; and the repercussions are also felt in

47 FFM Interview, 15 March 2008, Diyarbakır.

their personal and family lives. For example, the Mayor of Şırnak chose to send his son to a renowned primary school but could not do so because the child of a military official was attending the same school. A similar incident happened to the journalist, Faruk Bildirici[48] whose son attends the University of Gaziantep, south of Diyarbakır. His son's professor entered the classroom and said to the son that he was from Diyarbakır and therefore he had to walk in after him.

Many mayors could not even recall the exact number and nature of cases against them. Many explained that it is difficult to communicate to those that have not been subjected to this reality how wearing, fear-inducing and enervating this constant unbridled control affects the lives of these individuals.

ii. Lawyers

The mission was confronted with an overwhelming number of stories of the restrictions and harassment faced by lawyers, both in their professional and personal capacity.

Lawyers told the mission that they are often followed whilst travelling to visit defendants in detention centres or that the prosecutor will no longer meet with them, or return their phone calls following their involvement in a 'pro-Kurdish case' (as was the case for Mr Cevat İshakoğlu, a member of the Bar Association in Bingöl, after he attended the funeral of PKK members in Bingöl).

Mr Kaplan told the mission that methods of interfering, illegally obtaining and fabricating evidence, which were common during the height of the conflict in the 1990s, are now being used again by the Turkish authorities as a tool to link Kurds to the PKK. For example, he asserted that Turkish Special Forces raid homes and compel the owners to leave whilst they carry out an investigation in order to deposit incriminating evidence[49]. When the police then carry out further enquiries, this evidence is 'found' and used against innocent individuals. If true, this is of serious concern to the mission as it is not only an infringement of Turkish law, which provides that home owners are permitted to be present during an investigation on their property, but it also hinders effective investigations violating the right to privacy, due process and right to fair trial. The mission observed that this situation

48 FFM interview with Faruk Bildirici, correspondent for DHA, 12 March 2008, Diyarbakır.

49 FFM interview with Mr Özgür Ulaş Kaplan, President of the Bar Association in Tunceli, 10 March 2008, Tunceli.

is further exacerbated by the unwillingness of the judiciary to examine the methods of obtaining evidence.

Mr Ertak told the mission that since the end of January 2008, 76 people have been detained in Şırnak alone on the basis of illegally obtained telephone recordings, and 15 of these were charged and arrested[50]. The mayor of Cizre[51] has also been a victim of this illicit practice when his name was allegedly written on a document found in the pocket of a dead PKK fighter after he was shot by the military forces. Further, the Chairman of the Bar Association in Cizre told the mission that one of his clients, a 16-year-old boy, was arrested after a demonstration. He was then allegedly beaten by the police on the way to the police station, in custody and during the transfer to a detention centre in Diyarbakır. The defence lawyer stated that when he made this known to the prosecutor, he replied that the boy was throwing stones at the police and they were compelled to act. This story was not uncharacteristic of many the mission heard where prosecutors inferred that the 'ends justify the means'. The mission also heard that it is a common occurrence for lawyers to be mistreated when they attend the cells of their clients[52].

It was reported to the mission[53] that the emergency situation arising out of the conflict is often used as an excuse by the Turkish authorities to validate excessive force. For example, if there is blood on the clothes of an innocent demonstrator, authorities will claim that he was violent or defied their authority and that the situation in the region warrants firm reactions, or that they acted in self-defence. According to Mr Dilsiz, this is a major obstacle for defence lawyers because the evidence turns on the weight of a statement made by a Turkish official versus that of an individual that was upholding Kurdish rights. The bias of the judiciary, in terms of the arbitrary application and disparities in the interpretation of legislation against the Kurds, often makes court cases battles fought in vain.

Several individuals interviewed by the mission, such as Mrs Yalçındağ and Mr Dilsiz [54], told the mission that the tampering of evidence has caused great distrust and despondency amongst the Kurdish people, which no longer see the point in reporting abuses perpetrated by the authorities. This has also caused people to be afraid to report cases because the tampering of evidence means that it is likely that they will be tried on the basis of distorted facts and because they are afraid of the

50 FFM Interview with Ahmet Ertak, Mayor of Şırnak, 13 March 2008, Şırnak.

51 FFM Interview with Mr Aydın Budak, Mayor of Cizre, 13 March 2008, Cizre.

52 FFM Interview with Rojhat Dilsiz, member of the Şırnak Bar Association, 13 March 2008, Cizre.

53 FFM Interview with Rojat Dilsiz, member of the Şırnak Bar Association, 13 March 2008, Cizre.

54 FFM Interview with Reyhan Yalçındağ, IHD Diyarbakır, 12 March 2008, Diyarbakır and Rojhat Dilsiz, member of the Şırnak Bar Association, 13 March 2008, Cizre.

repercussions, especially for those that live in rural areas that are isolated and where crimes go unnoticed. This constitutes a great difficulty for defence lawyers in cases involving torture and inhuman or degrading treatment whose success hinges on medical evidence. For these reasons, the victims of such practices will not seek medical assistance and the perpetrators are not brought to justice, encouraging the impunity that is already deeply rooted in Turkey.

The mission also heard that the burning[55] down of villages and forests (which will be discussed below) is used by the gendarmerie as another method of harassment and human rights violation. The government justifies this practice as a security measure. However, many argue that it is a means of gaining maximum visibility during military operations, i.e. a publicity campaign. The mission saw first hand that this 'military tactic', which has occurred in various villages in the province of Tunceli, has left many villagers homeless, destroying their lives. Worse, it appeared to the mission from seeing the people who were displaced, that such tactics were indiscriminately directed against civilians. In its view, the Turkish state has therefore violated international humanitarian law as stipulated in the Geneva Conventions, which provide that attacks may be made solely against military objectives.

According to domestic criminal law, arson is a serious crime punishable with life imprisonment (in the past, it was a capital offence). The Bar Association in Tunceli applied to the court to request an investigation into the fires. In response, the prosecutor brought a case against the applicants on the ground that such an allegation amounted to an assault against the Turkish army. The military court found no evidence against the Bar Association and acquitted them[56].

Mr Özgür Ulaş Kaplan, the Chairman of the Bar Association in Tunceli, provided the mission with examples of cases brought against him in violation of his rights to freedom of expression, thought and association:

- He was prosecuted under Article 7 of the Anti-Terror Law for making a statement to ROJ TV stating that the use of force employed by the Turkish government to resolve the Kurdish question has proved

55 FFM interview with Mr Özgür Ulaş Kaplan, President of the Bar Association in Tunceli, 10 March 2008, Tunceli.

56 FFM interview with Mr Özgür Ulaş Kaplan, President of the Bar Association in Tunceli, 10 March 2008, Tunceli.

unsuccessful; a solution can only be found through democratic steps. He was acquitted due to lack of evidence.

- In 2007 clashes between the Armed Socialist Ground (ASG) and the security forces took place, claiming the lives of two ASG members. In searching the bodies, the security forces allegedly found a document containing the names of two lawyers, including that of Mr Kaplan and concluded that he was linked to a terrorist organisation. Before the trial, the document was sent for forensic analysis which revealed that the names were added to the document after it was originally drafted.

- In 2006 the Commander of the gendarme in Tunceli requested the prosecutor to commence legal proceedings against the Bar Association on the ground that they coerce individuals into making applications to the ECtHR. The Minister of Justice refused to grant permission to open the case.

d. Political Affiliation

Like defence lawyers, another category of persons that is constantly under attack from the State due to the nature of their activities are members of political parties. The revival of the conflict, since the military operations that began in October 2007, has seen a significant increase in rallies and demonstrations. In addition, the nationalistic coverage of the conflict by the media, attacking the Kurdish people and labelling them as responsible for the conflict, has contributed to the people's desire to assert their rights (the role of the media will be discussed below). For example, the Chairman of DTP told the mission that in Diyarbakır there have been open air meetings with over 10,000 people in attendance[57]. These demonstrations are always strictly monitored by the authorities. For example, after last year's Newroz[58] celebrations the police detained six DTP members. This year's celebrations again resulted in clashes, protests and violence. The use of extreme force on civilians by the authorities has been well-documented. Videos and photographs have been widely circulated in the media showing riot police baton charging unarmed Kurdish civilians, many of whom were elderly. Another widely-circulated video shows a Turkish police officer deliberately breaking the arm of an already-restrained 15-year-old Kurdish child in the town of Colemerg, south-east Turkey. According to

57 FFM Interview with Necdet Atalay, Chairman of DTP Diyarbakır, 12 March 2008, Diyarbakır.

58 Refers to the celebration of the traditional Iranic new year holiday of Norouz in Kurdish society. The celebration is commonly known as Newroz by the Kurds and coincides with the spring equinox which falls mainly on 21 March and the festival is held usually between the 18th and 24th of March.

KHRP sources, the child remains in custody despite the serious injury inflicted upon him[59].

This strict control by the Turkish authorities is employed as a means to gather evidence that can be subsequently used to charge anyone that is asserting and defending their Kurdish identity.

Violations against politicians often also take the form of restrictions on their right to free speech. Below are some of the examples related to the mission by members of political parties:

- On 11 March 2008 the Chairman of DTP Diyarbakir, Necdet Atalay, was sentenced to ten months imprisonment for making a statement which was regarded to 'insult Turkishness' pursuant to Article 301 of the Penal Code . The sentence will be appealed. This is only one of the many cases against him.

- The former Chairman of İHD in Bingöl, Rıdvan Kızgın, is currently serving a sentence of two years and six months imprisonment in an M-type prison in Bingöl (but will serve one year). This case was about a report that he compiled on the killing of villagers in Bingöl in 2003. The police claimed that when he investigated the issue he took a bloody knife from the scene of the incident, despite a villager confessing that he had taken it. He is also the subject of an appeal currently pending before the court in Ankara for aiding and assisting an illegal organisation. If the decision is upheld he will be serving five more years imprisonment. In the latter case the police officers allege that during a military operation in Bingöl, they found a handwritten letter stating that Mr Kızgın had had contact with members of the PKK. The mission heard no evidence in support of this allegation.

- The councillors and Mayor of Şırnak all have multiple cases pending against them. The Mayor is currently the subject of seven pending cases, all opened on the basis of Article 215 of the Penal Code, and countless investigations. Cases include the letter to Danish PM with

59 KHRP Newsline article 'KHRP Condemns Ongoing Violence against Civilians in Turkey and Syria since Newroz Festival', 02 April 2008.

other mayors; a statement he made to ROJ TV, sending invitations in Kurdish, naming streets in Kurdish.

- The members of the DTP in Şırnak each have more than 20 cases brought against them. Mr İrmez, the Chairman of DTP in Şırnak[60], went on to relate that when they carry out visits to villages between Şırnak and Beytüşşebap to investigate reported violations of the authorities, they are subject to 14 checkpoints. For each one they were stopped and questioned for more than one hour merely because they are members of the DTP. The only female member of the Council in Şırnak, Ms Songül Akar, has more than 40 cases against her. On 8 January 2008 she was arrested with 31 other people, on the grounds that she was assisting an illegal organisation, and held in police custody for four days. During the interrogation at the police station she was told that she had been followed for the previous nine months, she felt violated and it had psychological repercussions on her. She was later sentenced and served two months imprisonment.

e. Freedom of the Media

The İHD in Diyarbakır told the mission that the media are key actors in provoking Turkish nationalism by inciting the 'lynching' of Kurds, reporting the death of Turkish soldiers, disregarding the violence against PKK members, and the torture practiced on their corpses[61]. Conversely, the Kurdish media have only a limited broadcasting time of approximately an hour per week, which is insufficient to reinstate a balance in the public information.

Faruk Bildirici[62], a correspondent for DHA[63], told the mission that a journalist working during the conflict in the 1990s could not travel to the locations where violations were taking place. Journalists were working under dangerous conditions, often putting their lives at risk. For example, in 1993 he witnessed the killing of a Turkish journalist, İzzet Kezer, by the Turkish military, in the midst of a demonstration. The prosecution closed the case and stated that the perpetrator was

60 FFM Interview with Halil İrmez, Chairman DTP Şırnak, 13 March 2008, Şırnak.

61 FFM interview with Reyhan Yalçındağ, İHD Diyarbakır, 12 March 2008, Diyarbakır.

62 FFM interview, 12 March 2008, Diyarbakır.

63 Doğan Haber Ajansı news agency.

unknown. In comparison, the current situation is safe; journalists can travel, visit villages etc., apart from entering the designated security zones.

Nonetheless, the mission found that journalists are still unable to freely report events without fear of the repercussions, although the situation has improved in comparison to the 1990s. For example, Mr Bildirici wrote an article about a demonstration and was tried on the grounds that he should have informed the police of the illegal slogans that were being used. He was acquitted due to the widespread media coverage of the case. KHRP's trial observation in February 2008[64] witnessed the acquittal of publisher Ahmet Önal, charged with the dissemination of separatist propaganda during proceedings at Istanbul Heavy Criminal Court Number 11. Mr. Önal was accused of showing demonstrable support of an 'armed terror organisation', for his publication in 2005 of The Diaspora Kurds by Hejare Şamil. It is interesting to note that acquittals following media exposure appear to be common occurrences, implying an admission of wrongdoing on the part of the authorities.

Mr Bildirici is currently on trial for allegedly beating up three policemen in the garden of a Kaymakam's office, which he vehemently denies. He told the mission that this is an example of the harassment faced by journalists considered to have dissenting opinions — especially those critical of the military and voicing suspicion of deep state activity. He believes that these are continually at risk of being branded as terrorists and being treated as enemies of the state. Consequently, it was perhaps not surprising that the media is tempted to err on the side of caution in fear of recrimination by providing a very detached view of the events or, at times, failing to report certain incidents.

The most concerning admission made to the mission by Mr Bildirici is that the reason why the situation has improved is that journalists have begun to practice self-censorship. They have developed an intrinsic ability to discern between news that can be reported and that which cannot. This disquieting statement made by Mr Bidirici regarding self-censorship implies that the repression, constant threats and judicial proceedings have become entrenched in the mentality of the people. A comparable trend was noticed by the mission in relation to torture. The Chairman of the Bar Association told the mission that although traditional forms of systematic torture are no longer practiced, they have been replaced with violence and beatings. As a result, victims do not report cases of violence because they do not believe

64 See KHRP news 'KHRP observes acquittal of Kurdish publisher charged with disseminating separatist propaganda', 13 February 2008.

them to be serious enough. This shows how deeply the Turkish state practices of intimidation have affected the Kurdish people.

The harassment of journalists also crosses into their personal lives. For example, the authorities in Diyarbakır will note who socialises with members of the DTP or other pro-Kurdish figures. Hence many journalists ensure that they are always seen as neutral. As a matter of fact, the mission had the impression that Mr Bildirici was not enthusiastic to meet with the mission and was very cautious in what he said.

The mission's observations concur with those made by the KHRP's fact-finding mission to Turkey in July 2007[65], which reported that while not legally obliged to divulge their sources, journalists are often pressured to hand over videos, cassettes and films to the police on demand. Further, those refusing to do so can become the targets of police harassment.

Whether in terms of the restrictions imposed on journalists and the media, or in the right to hold public meetings and other forms of demonstrations, Turkey is in violation of its obligations enshrined in Article 10 and 11 of the ECHR. This underlying respect for rights and freedoms casts doubt over Turkey's claim to be a European democracy and illustrates the long road ahead before it can be said to comply with European standards.

f. Extra-Judicial Killings and Killings of Civilians

The Mayor of Tunceli told the mission that, since the revival of the military operations, the rate of extra-judicial killings has again risen. The first extra-judicial killing in the province of Tunceli, since the conflict in the 1990s, took place in 2006 with the death of Hasan Şahin. It is believed by the Mayor of Tunceli that he was shot because the Turkish forces believe that his son is a commander of the PKK[66].

The last two years in Tunceli have seen numerous killings of civilians, not resulting from military operations[67]. For example, Mrs Abdil told the mission that 17

65 KHRP FFM report, *Reform and Regression: Freedom of the Media in Turkey*, (KHRP, London, July 2002).

66 KHRP FFM Interview with Mrs Songül Erol Abdil, Mayor of Tunceli, 10 March 2008, Tunceli Town Hall.

67 KHRP FFM Interview with Mrs Songül Erol Abdil, Mayor of Tunceli, 10 March 2008, Tunceli Town Hall.

members of the Maoist Communist group and 9 members of the PKK were taken into custody and then shot. They had no weapons when they were arrested.

The Tunceli Bar Association, in collaboration with the local DTP MP, established a 'Commission on Human Rights' (the Commission) to monitor human rights violations in the region[68]. The Commission recorded that, in September 2007, Turkish soldiers opened fire at civilians in the district in the vicinity of a village. The Commission visited the location to investigate the incident and found that numerous bullets were set in the walls of the houses. This supported the Commission's contention that the soldiers had aimed at civilians, many of which were gravely wounded. The case is still awaiting consideration by the prosecution.

Mr Kaplan went on to tell the mission that in November 2007, two villagers from Mazgirt were shot by Turkish soldiers whilst they were in the mountains gathering wood, unaware that a military operation was taking place. The soldiers fired at them, killing one villager and seriously wounding the other, on the suspicion that they were members of the PKK. The office of the General Staff made a statement confirming that two terrorists were shot down, whilst it is believed by the mission that these were merely unarmed villagers. The prosecutor claimed that the men had gone to the mountains to help the PKK. The surviving villager was charged with membership of an illegal organisation. The case is now pending before the Third Heavy Criminal Court in Malatya. It should also be noted that there is a Heavy Criminal Court in Tunceli where it would have been easier for the family to visit the defendant. The mission learned that this is yet another method employed by the government to intimidate and harass those it sees as 'enemies'.

During the same period in the district of Ovacık members of the Gendarme fired at villagers claiming that it had happened upon in the midst of a conflict. An investigation carried out by the Commission did not reveal that there had been a conflict that had compelled the Gendarme to act in self-defence. All the villagers maintained that the Gendarme had fired for three to four hours for no apparent reason. No one was injured but numerous bullets were found set in the walls of the houses. The Commission requested that the Public Prosecutor and Governor authorise an official investigation. The Public Prosecutor chose to have the Gendarme of the village in question carry out the investigation, which involved gathering statements from the villagers at whom they had allegedly shot. Not surprisingly, the Gendarme did not find any evidence against themselves. Mr Kaplan told the mission that had a ballistic report been prepared, it would have been possible to ascertain who was responsible for the shooting. However, it was

68 FFM interview with Mr Özgür Ulaş Kaplan, President of the Bar Association in Tunceli, 10 March 2008, Tunceli.

clear to the mission that there was no question that the fault lay with the Gendarme. The mission learned that many human rights violations committed in rural areas are often not investigated by the Public Prosecutor's office for 'security reasons'. Therefore many perpetrators are never brought to justice, which encourages the already significant impunity. These examples characterised the human rights scene of the 1990s and are now worryingly reappearing.

Similar incidents are taking place also in other parts of the region. In the autumn of 2007, ten PKK members were allegedly killed in Bingöl using chemical weapons[69]. Their families seized the bodies and therefore it was not possible to carry out all the necessary examinations to ascertain whether their death was in reality caused by chemical weapons. The mission was not told the exact reason why in this instance the bodies were not examined, however, it is worth noting that it is tradition for the family of the deceased to bury the body of their loved one as soon as possible after their death. Due to this custom, human rights groups often find it difficult to persuade the families to allow the body to be subject to an autopsy, or other examination, to ascertain the cause of death.

The Turkish government vehemently denies the use of chemical weapons and argue that because the incident took place very close to a village, if chemical weapons had been used, it would have been obvious. This is not the first time that chemical weapons are alleged to have been used against Kurdish civilians. On 24 March 2006, 14 armed combatants were killed in the mountains outside Diyarbakır by the Turkish army. Rumours held that chemical weapons had been used by the military, but yet again the absence of an independent autopsy meant that the allegations could not be substantiated or refuted[70]. Where there is an incident involving the alleged use of chemical weapons, the families and lawyers of the victims and human rights groups are often skeptical of the autopsy procedure. They fear that the claim will not be properly investigated, and that the facilities are inadequate to carry out such a procedure. Experts of the Forensic Institute have in fact been requested to be

69 FFM interview with Mehmet Yaşa, Chairman of AKP in Bingöl, 11 March 2008, Bingöl.

70 KHRP FFM report, *Indiscriminate use of force: violence in South-east Turkey*, (KHRP, London, October 2006).

present alongside the local doctors, prosecutor and police officers when performing the autopsy.

With the escalation of the conflict in the last two to three years, coupled with the state of emergency that has recently been declared, the mission found that the province of Bingöl has seen a deterioration in the conditions faced by the people[71].

On 3 February 2008 a military operation took place in the village of Dağlıtepe. The Turkish security forces dropped an explosive on a cave where PKK members were hiding and killed ten armed fighters. The fact that the forces aimed for the cave suggests that they were aware that the PKK members were hiding there and had organised the operation accordingly. An autopsy was carried out on the bodies 15 days later. The bodies remained unidentified until the PKK released a statement declaring the death of ten of its members. The family of two of the bodies never went to identify them and the DTP organised their funeral. Eight DTP members were imprisoned for attending the burial. The Chairman of İHD in Bingöl told the mission that he accompanied one of the mothers of the deceased militants to the morgue. The body of this young man had been tortured, his eye balls had been removed, his neck was severed, his nose was broken. It had been so badly mutilated that his mother could not recognise him. The explanation provided by the Governor was that the PKK, who hold themselves out to be the 'saviours' of the Kurdish people (the majority of whom are Muslim), are in reality disrespecting their people by claiming to be Muslims since the autopsy revealed that the men were not circumcised (required by the Islamic faith for all men). The mission was shocked to hear such ridiculous reasoning. Arguably the State believed that the fact that it provided an explanation for the incident, even if a preposterous one, was sufficient to legitimise its actions.

In January 2008 the PKK carried out a bomb attack in Diyarbakir, killing several civilians. This was widely condemned by Kurdish mayors and councillors as well as the general public. The mission was not told of what action, if any, was taken to bring the perpetrators to justice.

The week before the mission embarked on the FFM, two 16-year-old boys were killed during a demonstrations in Cizre and in Van. There is not yet an investigation

71 FFM interview with Cevat İshakoğlu, member of the Bar Association in Bingöl, 11 March 2008, Bingöl.

for the killing in Van. This incident will be discussed in more detail later on the report.

g. Arbitrary Detentions

The mission found there to be widespread consensus that arbitrary detentions have increased since the revival of the conflict. The Mayor of Tunceli[72] told the mission that one of her advisers was detained for two months after a democratic demonstration. No reason was given for the arrest, therefore, it was assumed that it was because of his political affiliation with the DTP. In addition to an issue of illegal, arbitrary detention, if true, there is also a clear violation of freedom of expression and association.

In February 2008 in Diyarbakir, more than 200 people were arrested and 100 detained for participating in democratic demonstrations[73]. In Şırnak in three months, 180 people were taken into custody, 50 were arrested and 24 of these 50 were children. They were reportedly ill-treated and harrassed whilst being held for 3 days. KHRP was later told by Rojhat Dilsiz, the children's lawyer, that an indictment is expected to be handed down against all 24 of them in June 2008.

After the Chairman of the DTP in Şırnak was elected, his house was raided and his daughter, Fatma İrmez, was detained. She was taken to Diyarbakır and is now being detained in an E-type prison on the grounds that she was aiding an illegal organisation, on the basis of illegally obtained telephone recordings. The mission was concerned to learn that although the investigation is still ongoing and the prosecution has still not prepared the indictment, she is being detained on the grounds of illegal and minimal evidence.

The most commonly reported occurrence is detention resulting from participation in peaceful demonstrations, as discussed above in terms of freedom of expression[74]. A woman was recently taken into custody for issuing a statement against Prime Minister Erdogan and charged under Article 7 of the Anti-Terror law. The authorities have begun to bring charges under Article 7, rather than Article 215 of the Penal Code, as the former has a wider scope and carries a maximum sentence of five years imprisonment which cannot be revoked. Conversely, Article 215 carries a maximum penalty of two years which can be withdrawn. Article 7 is therefore

72 FFM Interview with Mrs Songül Erol Abdil, Mayor of Tunceli, 10 March 2008, Tunceli Town Hall.

73 FFM Interview with Necdet Atalay, Chairman of DTP Diyarbakır, 12 March 2008, Diyarbakır.

74 FFM interview with **Cevat İshakoğlu, a member of the Bar Association in Bingöl, 11 March 2008,** Bingöl.

being applied to a wide range of crimes infringing on the principle of legal certainty and misinterpreting the law to suit the interests of the authorities. It became clear to the mission that this strategy is aimed at carrying out more arrests that cannot be revoked by the judiciary, and provides them with more authority to fight against terrorism.

Interestingly, Mr Bildirici told the mission that, in his opinion, arbitrary detentions in the 1990s were more common and used to be for 7-14 days, whilst now it is for 24 hours. Taking the different accounts provided to the mission, it appears as though the situation with regard to arbitrary detentions has deteriorated in terms of the rate of occurrence, but not in 'substance'. The latter probably requires an amendment in legislation or guidelines and would be more difficult and lengthy to put into practice. It is to be seen whether that will be the next step.

On 15 February 2008 the people of Cizre organised a demonstration for the liberation of Abdullah Öcalan[75]. During the demonstration, a police panzer drove against the crowd and crushed a 15-year-old boy, Yahya Menekşe, who died in hospital a week later. A month after the incident, the people of Cizre organised a funeral for Yahya and 30 people were wounded by the police. Furthermore, when those in attendance at the funeral chanted and sang Kurdish songs during the ceremony, 147 people were taken into custody for chanting and singing during the funeral.

Following the incident, the prosecution issued a statement saying that 'during a demonstration, a child lost his life'. The Governor and Vice-Governor of Cizre also misinformed the media about the events stating that a boy had been killed by a stone thrown by an unknown person, and then changed the story several times. There was no mention of the police being involved in the death.

75 KHRP is grateful to the family of Yahya Menekşe who shared their story with the mission just one week after the painful and tragic loss of their son. FFM Interview, 13 March 2008, Cizre.

The lawyers acting for Yahya told the mission that the legal issues that arise are:

1. The law provides that if an official commits an offence, the prosecution must request permission to initiate an investigation; and

2. The police will rely on the defence that there were many protestors and they ran over Yahya by mistake, which will be difficult to refute.

There are always two sides to every story and the mission questioned whether the individuals that were taken into custody had been violent, unruly or had acted in such a way to warrant their detention. All the individuals that met with the mission recounted that the victims were participating in a peaceful demonstration and did not act so as to provoke the authorities, despite this being the reason given by the State for the arrest. The misson was told that the State does not provide a valid explanation for the arrests and that the police merely find pretexts to target Kurds. In sensitive areas, such as Şırnak, Hakkari and Diyarbakır, the population is highly politicised making them easy targets for the police and security forces who see demonstrators as supporters of terrorism. As a result, demonstrations can 'rise' quickly and the police exercise more strict surveillance.

V. ECONOMIC AND SOCIAL IMPACT

a. Poverty and Unemployment

The Chairman of the AKP in Bingöl[76] told the mission that Government projects are often poorly implemented due to people's lack of business sense, which he attributed to lack of education. For example, he explained that the government provided many families in Bingöl[77] with two cows, yet they did not build barns or take care of the animal in order to ensure that it would provide their livelihood for the future. The Chairman went on to explain that such mismanagement in turn leads to low levels of production in the region. For example, the rate of unemployment in Şırnak is 60%[78]. The mission is unaware of whether the people to whom the cows were given were farmers, or whether they had the economic means to build a barn, or indeed, whether there was a comprehensive programme put in place for those who had never had a cow. Mr Yaşa[79] also told the mission that another contributing factor to the high levels of unemployment is the people's unwillingness to work, which he said can be seen by walking down the streets of Bingöl where the men are socialising in tea houses during what should be working hours. In the mission's opinion this is not sufficient evidence to demonstrate an 'unwillingness to work', but simply an example of the high rates of unemployment.

Despite the high levels of unemployment and a need for a more robust workforce, the mission was told that Postal Services in Diyarbakır are keeping employment to a minimum by providing work only to 20 people when they require 100 to function properly[80], resulting in a poorly functioning postal service. When the mission enquired as to why this might be happening, it was explained that the number of jobs available at any given branch of the postal service is based on the population density in the region. Because of the high number of displaced persons, whilst the population level may be high in Diyarbakir, the recorded number will be much lower. This means that the actual number of posts available will not meet the need of the local population. It was asserted that because the state does not keep a record

76 FFM interview with Mehmet Yaşa, Chairman of AKP in Bingöl, 11 March 2008, Bingöl.

77 FFM interview with Mehmet Yaşa, Chairman of AKP in Bingöl, 11 March 2008, Bingöl.

78 FFM interview with Mr Ahmet Ertak, Mayor of Şırnak, and members of the City Council, 13 March 2008, Şırnak.

79 FFM interview with Mehmet Yaşa, Chairman of AKP in Bingöl, 11 March 2008, Bingöl.

80 FFM interview with Chairman of the Diyarbakır Trade Union, 12 March 2008, Diyarbakır.

of the numbers of the internally displaced overwhelming Turkey's cities, there is a chronic lack of support in the areas of employment, education, health care and all public services. It is believed by many interviewed by the mission that this is an intentional policy of the state, meant to keep Kurds impoverished.

The EU has provided financial support for small projects aimed at spurring economic growth and targeting the social problems resulting from unemployment[81]. The successful projects were those that provided training and capacity building. Nevertheless, the EU budget allocated to the southeast has not been received by the region, which prevents the local authorities from putting in place local initiatives. This is ironic as the AKP is the ruling party in Bingöl, which the local people thought would ensure that financial support would be received and employment levels would rise[82]. The mission believes that a specific development project is needed for the healthy and sustainable economic growth of the region, not just ad-hoc infusions of cash. Mr Atalay, the Chairman of DTP in Diyarbakir, told the mission that he believes that Turkish policies clearly demonstrate a will to keep the southeast part of the country underdeveloped[83]. For example, the national income per capita in western Turkey has risen, yet in the Kurdish regions it has decreased. Poverty is a direct result of the conflict, for example, the high security zone around Şırnak prevents shepherds from going to the mountains. This affects both their earnings and their quality of life[84]. It is common knowledge in the region that the State believes that people travel to the mountains and highlands to provide food to the fighters and, therefore, it puts in place policies preventing anyone from accessing these areas.

The law was changed to implement International Labour Organisation laws, but it has done so very narrowly as it does not allow the right to strike or free bargaining. The mission noted that in the sphere of public sector unionisation, the situation in Turkey has not changed since the last KHRP FFM in 2002 concerning, inter alia, trade union rights[85]. The legal structure of trade unions and its membership are nonetheless deficient. For example, the Law number 4688 of June 2001 excludes

81 FFM interview with Mehmet Yaşa, Chairman of AKP in Bingöl, 11 March 2008, Bingöl.

82 FFM interview with Mehmet Yaşa, Chairman of AKP in Bingöl, 11 March 2008, Bingöl.

83 FFM interview with Necdet Atalay, Chairman of DTP Diyarbakır, 12 March 2008, Diyarbakır.

84 FFM interview with Mr Ahmet Ertak, Mayor of Şırnak, and members of the City Council, 13 March 2008, Şırnak.

85 KHRP FFM Report, *The Lifting of State of Emergency Rule: A Democratic Future for the Kurd*, (KHRP, London, November 2002).

workers from the right of collective bargaining and prohibits them from striking, in violation of its international obligations.

The Chairman of DİSİAD[86] told the mission that the economic situation between 1980 and the 1990s was dire, with no investments in the region due to the conflict. When the conflict abated, the region saw improvements in the mining and textile industry and a more active social life. The last ten years have seen a positive progress in Diyarbakır with investments in shopping centres, call centres etc., which have changed the local dynamics and made the area attractive to foreigners. Recently, with the operations in northern Iraq, investors are again hesitating to invest in the region. The Turkish Prime Minister has told the New York Times that there will be more investments in the area, $12 million as part of the GAP[87]. The State is calling for new packages for the region, specific and regional based, and both economic and social policy should have the same timing to work together to be more effective.

For example, IDPs represent a large social problem, especially in large towns such as Diyarbakir, as there is no integration programme in place to assist them in adapting to city life. There is a need for economic support programs to rebalance the social and economic disparities that have been created and exacerbated by the conflict.

b. Trade Union Rights

On 12 March 2008, the mission met in Diyarbakir with members of KESK, the Confederation of Trade Unions of the Public Offices, who are often discriminated against for being members of a trade union and harassed for asserting their rights to freedom of expression and association. The representative of the teachers' union, Eğitim-Sen, told the mission that it currently has 140 cases pending against its members, for the most part on the basis of statements made during demonstrations.

The most severe sanction is the so-called 'internal exile' of activists, which is the compulsory transfer of an employee to a part of the country far from home, without the possibility of being accompanied by spouse and family. An unspoken but well understood element of this practice is that it involves uprooting a person generally of Kurdish origin, ethnicity and language group and transferring him to a Turkish-speaking area, such as middle Anatolia, where they will be more or less isolated. For example, one of the representatives of KESK present at the meeting was an

86 FFM interview with Raif Türk, Chairman of DİSİAD – Association of Businessmen and Entrepreneurs, 12 March 2008, Diyarbakır.

87 South-Eastern Anatolian Project, 'New York Times touts old Kurdish investment plan as new initiative', Gareth Jenkins, 13 March 2008.

agricultural engineer that was relocated from Diyarbakir to Ardahan for six years. Although Ardahan is in the Kurdish region, it is still far away from his home town and constitutes an upheaval of his personal life. If the individual that has been exiled takes legal action for the arbitrary dismissal he will lose his job pending the judgment and the process can take up to two years. If the judge finds against the employee, he will lose his job permanently. As many cannot afford to lose their salary, this practice carries on un-denounced. KESK has set up a solidarity network which provides those exiled with 1/3 of their salary until the court judgement. For those individuals that lose their job in this way, they can initiate legal proceedings before the Administrative Court. However, this is a lengthy process and usually unfair due to the lack of independence of the judiciary.

Members of unions are also targeted for participating in peaceful demonstrations. In 2005, legal proceedings were initiated against 700 public workers as active members of civil servants union because of their involvement in peaceful protests[88]. All 700 were acquitted due an amendment in the law, yet it nonetheless constituted a form of harassment. All the representatives of KESK that took part in the meeting with the mission had been or were currently implicated in judicial proceedings due to infringements of their right to freedom of expression and association.

The Chairman of KESK went on to relate that in the last three months there have been numerous military operations. These have not only been a cost in terms of human lives, but also a financial one. He argues that the Turkish government should have spent the taxpayers money on solving many of the problems that are affecting the region, such as poverty, unemployment, lack of education and adequate health system. The people that have 'paid' the most have been the working class, which are the ones that cannot afford it.

88 FFM interview with Mr Özgür Ulaş Kaplan, President of the Bar Association in Tunceli, 10 March 2008, Tunceli.

VI. POLITICAL REPERCUSSIONS

The Turkish Army's Chief of Staff, General Yaşar Büyükanıt, recently made a statement saying that 'if the homeland is in danger, the rest is just detail'; in the view of the Bar Association in Cizre, as relayed to the mission, this statement epitomises the attitude of the Turkish administration[89].

As mentioned throughout the report, the mission is concerned with the apparent bias of the judiciary. Problems encountered by the mission include violations of procedural law, misinterpretation of legislation and collusion between the prosecution and the judiciary[90].

The members of the Bar Association in Tunceli[91] believe that the relationship between lawyers, judges and prosecution varies depending on the political situation and the role of the military. There is the perception that the State appoints public servants whom they know will tow the government line in order to obstruct local political will and the law[92]. This causes tension between the local and governmental bodies and is ultimately to the detriment of the people. For example, until recently the Governor of Tunceli used to be a member of the MHP (Nationalist Movement Party). Given that the MHP is notoriously anti-Kurdish, local authorities view such an appointment from the central government as a form of harassment and as being harmful to an already sensitive region.

The members of the Bar Association in Tunceli[93] went on to tell the mission of the ex-Commander of the gendarmerie in Tunceli, responsible for the security of the province, who was renowned for his anti-Kurdish policies and disregard for human rights. He threatened civilians, openly intimidated Muhtars and members

89 FFM interview with Rojhat Dilsiz, Chairman of Cizre Bar Association, 13 March 2008, Cizre.

90 For example, in Cizre the judge and Prosecutor are married - FFM interview with Rojhat Dilsiz, Chairman of Cizre Bar Association, 13 March 2008, Cizre.

91 FFM interview with Mr Özgür Ulaş Kaplan, President of the Bar Association in Tunceli, 10 March 2008.

92 FFM interview with Mr Özgür Ulaş Kaplan, President of the Bar Association in Tunceli, 10 March 2008, Tunceli and Cevat İshakoğlu, member of the Bar Association in Bingöl, 11 March 2008, Tunceli.

93 FFM interview with Mr Özgür Ulaş Kaplan, President of the Bar Association in Tunceli, 10 March 2008.

of the Bar Association. The Commander was never prosecuted for his actions due to the impunity that pervades the Turkish administration. Further, the impunity was never questioned by anyone, including the members of the Bar Association, as it has been accepted as the normal course of events. This impunity is endorsed by the Turkish legal system, which provides that in order to initiate an investigation against a state official, permission must be granted by the Ministry of Justice[94]. The Bar Association in Tunceli attempted to bring legal proceedings against the Commander but permission was refused.

In order to carry out a comprehensive and objective FFM, the mission attempted to schedule meetings with individuals representing both the Turkish and Kurdish positions. It requested meetings with the governors of Tunceli, Bingöl, Diyarbakır, Cizre and Şırnak. Some of these did not reply to the request for an appointment, whilst others agreed to meet the delegation and cancelled at the last minute. It is extremely unfortunate that the mission was unable to meet with them and their lack of willingness raises questions about whether these government officials were not willing answer what could be construed as 'uncomfortable' questions, or whether they were instructed by Ankara not to meet with the mission.

As a result, the only state official interviewed by the mission was in Tunceli. This individual wishes to remain anonymous hence hereinafter will be referred to as 'Mr X'[95].

The mission was told by 'Mr X' that the democratic channels in Turkey are open and accessible to the citizens. Since the reform process, the government has urged the administration to be sensitive to human rights issues. There has been a fundamental shift in mentality, as the 'new bureaucratic generation' have developed an intrinsic respect for human rights. The gendarmerie and the police are also more sensitive to the issue, and they are aware that any form of resistance would not be tolerated[96]. The government has taken numerous steps to change the administration's 'idea' of human rights. 'Mr X' admitted that the police and the gendarmerie are still

94 According to Article 15(e) of the *Gendarmerie Organization, Duties and Authority Law (Law no 2803)* and Article 154(4) (the Article 161(5) in the new code no 5271) *Code of Criminal Procedure (Law No 1412)* for crimes arising from the legal services of the district or central district commanders or those who provide these duties vicariously, Article 82 of the *Law on Judges and Public Prosecutors (Law No 2802)* applies. Article 82 of the *Law on Judges and Public Prosecutors* states that 'An investigation and prosecution against judges and public prosecutors for their crimes arise from their duties or during their terms depends on permission by the Ministry of Justice...'

95 FFM interview, Governor's offices in Tunceli, 10 March 2007, Tunceli.

96 For example, due to the influential role of the gendarme, it has always been difficult to carry out visits and investigations in detention centres. The Committee has the authority to visit detention centres and the gendarme and the police do not oppose them.

responsible for minor violations of human rights. However, he believes that these occur when the authorities are responding to violence, for example, during demonstrations. The 1982 Constitution has often been criticised for affording the armed forces too much influence, pursuant to Article 118, through the National Security Council. This has now been amended to allow for a 'civil' majority in the Council granting the administration the authority to intervene against decisions and action taken by the police and gendarmerie.

'Mr X' went on to relate to the mission that the Minister of Interior has taken many steps in terms of human rights as it forms an important part of Government policy. A specific Human Rights Committee (the 'Committee') was created to ensure the protection of human rights. The body is under the supervision of the Vice-Governor and is composed of members of civil society organisations, political parties and members of the Bar Association. They meet once a month and have a secretariat where ordinary members of the public can submit applications for investigations. These can also be presented anonymously. When it receives applications that are not within the remit of the Committee, or if a citizen wants to exercise their constitutional right to make a statement, they provide assistance.

In an attempt to highlight government initiatives with regard to human rights, 'Mr X' told the mission that three of four times a year all bureaucratic staff receive human rights training, focusing on ECHR rights. Governors, Vice-Governors and District Governors receive nearly five months training, which includes human rights. Once they are appointed they are required to follow updating courses.

The other side of the coin, as represented to the mission, is that the democratic channels appear to be open, yet the reality is that citizens are afraid to voice their concerns and denounce violations for fear of repercussions. For example, the President of the İHD branch in Bingöl told the mission that last year a hamlet was burnt down by the gendarmerie. A villager filmed the fire on his mobile phone and contacted İHD to report the incident. In the end he was too afraid to provide a statement and disappeared, which is a common occurrence. The reality witnessed by the mission, and the examples reported above, are closer to that reported by the citizens than that of 'Mr X'.

VII. SOCIAL REPERCUSSIONS

The Mayor of Tunceli told the mission that the current situation has brought about an increase in the rate of use of drugs and prostitution. She brought this to the attention of the Prime Minister and stated that she believed it was being supported by the military forces in the region who failed to address the issue. The mission does not have sufficient information to comment on the accuracy of this allegation, yet it can be said that the new generations in the region have only ever known a society ridden by conflict, where education levels are low and employment is widespread. It is therefore plausible that a social plague, like drugs and prostitution, have made their way into the community. Furthermore, the journalist Faruk Bildirici [97] told the mission that in the past five years the levels of street crime have increased.

The above social developments have led to what the Chairman of DTP in Şırnak[98] termed a 'large migration of the brains'. This translation of a typical Kurdish expression signifies that that academics, industrial workers and entrepreneurs leave the region because of the conflict, and this contributes to the poverty of the region. This makes the future even more bleak.

97 FFM interview with Faruk Bildirici, correspondent for DHA, 12 March 2008, Diyarbakır.

98 FFM interview with, Mr Halil İrmez, Chairman of DTP Şırnak, 13 March 2008, Şırnak.

VIII. ENVIRONMENTAL IMPACT- DAMS, HISTORICAL SITES, BURNING OF FORESTS

The mission found that forest fires, instigated by the military forces, have become a common occurrence, especially in the region between Bingöl and Tunceli. This is a tactic used by the state to target every aspect of the Kurdish identity.

The Mayor of Tunceli told the mission there are eight dams being built in the region, justified by the state as being for security reasons. In other words, eradicating the forests allows the security forces to have a better view, and therefore control, of the area. In reality, this is merely destroying the forests, villages and historical sites that form part of the Kurdish culture and identity. For example, the Munzur Valley in the province of Tunceli is a natural park, but it will now be destroyed to create a dam.

The President of the Bar Association in Tunceli, Mr Özgür Ulaş Kaplan, stated that the people of Tunceli have brought a case before the Administrative Court against the decision to open the Munzur dam. The court rejected the case and the applicants sought a judgment from the ECtHR. The case is currently pending before the Court as it decides whether it fulfils the admissibility criteria. The authorities were threatened by this step and halted the construction of the dam and an international campaign was set up as a result of the proceedings[99].

As with the resolution of the conflict, there could be other methods to achieve the same goal, but it appears as though the Turkish government is merely willing to employ those methods that are mostly to the detriment of the Kurdish people. It was not at all apparent to the mission that issues of environmental protection were being considered in the state's decision-making process. It would have been useful to be able to put this question to the state, but our request was denied by the governors' offices.

99 See KHRPFFM Report *This is the only valley where we live: the impact of the Munzur Dams* (KHRP, London, 2003 publication) and KHRP FFM Report, *The cultural and environmental impact of large dams in southeast Turkey* (KHRP, London, 2005).

IX. PROPERTY RIGHTS

In the 1990s, over 3,000 villages were destroyed and nearly four million people were forcibly displaced. The Law 5233 on 'Compensation for Damage Arising from Terror and Combating Terror' was created to provide compensation for the damages incurred by IDPs[100]. This law has been widely criticised[101] for having been created merely to prevent victims from taking cases to the ECtHR, the rationale being that taking a case to Strasbourg is a lengthy procedure and the victims are in dire need of financial support, thus the Commission (the body set up under the Law 5233) can afford to provide lesser sums as applicants will settle for them. Furthermore, it is fundamentally flawed as it only compensates victims for pecuniary damage, thus neglecting the psychological damage incurred from losing a home, memories, leaving one's hometown and often place of birth, and the stress and difficulty in having to relocate without the financial means and desire to do so. The law also provides that it cannot be applied to compensate those that have been charged with 'assisting an illegal organisation' or 'membership of an illegal organisation'. This caveat is ironic as many Kurds have, often unfairly and unreasonably, been investigated for this crime due to the State's discrimination policy.

It is interesting to note that 'Mr X'[102] talked the mission through the particulars of the compensation law, explaining how it had purposely been drafted in order to ensure that those that had suffered a loss would be fairly compensated. Yet he failed to mention the limitations of the law.

100 For more information see KHRP Publication, 'The Internally Displaced Kurds of Turkey: Ongoing issues of Responsibility, Redress and Resettlement', September 2007.

101 FFM interview with Reyhan Yalçındağ, İHD Diyarbakır, 12 March 2008, Diyarbakır.

102 FFM interview, Governor's offices in Tunceli, 10 March 2007, Tunceli.

X. EU REFORMS

The mission was continuously told that the AKP's first term was active in implementing EU reforms, especially with regard to rights and freedoms[103]. Conversely, the second term brought a step back in the reform process with regards to criminal courts, police laws and anti-terror laws, and now there are articles preventing freedom of expression and thought. For example, many of the amendments to the Penal Code, namely Articles 301, 220, 228, 215, 222, 28, are merely more onerous restrictions on rights and freedoms masked as reforms[104]. Turkey wanted to show the EU that it was undergoing a democratisation process.

Mr Tanrikulu told the mission that this reality is difficult to explain to European colleagues because they cannot comprehend that the Turkish government is using the reforms as a means to fight against the PKK. In fact the conclusions drawn by the European Commission in its 2007 report stated that:

> The EU Presidency reiterated on 22 October the Union's total condemnation of PKK terrorist violence in Turkey. It further stated that 'the international community, in particular all the main stakeholders in the region, must support Turkey's efforts to protect its population and fight terrorism, while respecting the rule of law, preserving the international and regional peace and stability and refraining from taking any disproportionate military action'[105].

Many have described the situation to the mission by saying that the government has 'two faces', the artificial one concerned with the EU reforms and changes in legislation versus the reality, with police impunity, restrictions on freedoms and bias of the judiciary.

It is clear from the information obtained by the mission in relation to the general treatment of the Kurdish people, that Turkey has a long way to go before it meets

103 FFM interview with Mehmet Yaşa, Chairman of AKP in Bingöl, 11 March 2008, Bingöl.

104 FFM Interview with Mr Sezgin Tanrıkulu, Chairman of Bar Association and Human Rights Foundation in Diyarbakır, 12 March 2008, Diyarbakır .

105 "Communication from the Commission to the European Parliament and Council – Enlargement Strategy and Main Challenges 2007-2008", 6 November 2007, at <www.europea.eu>.

the Copenhagen Criteria. Information gathered by the mission, such as the bias of the judiciary, the numerous incidents of arbitrary detention and abuse by the police and security forces, the policies of discrimination against the Kurdish people, the lack of due process and the encroachment on freedom of expression, just to name a few, illustrate that there are still fundamental deficiencies in its rule of law, human rights record, functioning of institutions guaranteeing democracy and respect for and protection of minorities.

The mission believes that for the reforms to be effective, there is a need for an overhaul of the legislative structure, and a change in the attitudes and mindset of those across all sections of Turkish society. The current attitude of the Turkish government solely to appease EU demands will only continue to be dismissed both internally and externally, leading to a loss of credibility in Turkey's willingness to accede to the EU. It is not sufficient to rely on changes in statutory law as the mission's experience shows that what is critical, is what is done by the authorities on the ground. The importance lies in the decisions which have a direct impact on the quality of life and mentality of the people. This is the level at which Turkey should make changes. By the same token, responsibility also lies with the EU in providing long term monitoring of human rights and democracy in Turkey as it plays a critical role in the evolution of the Turkish democratic institutions.

XI. CONCLUSION

In all, the mission noted that whilst the level of human rights violations has not reached the same levels of repression as in the 1990s, it has deteriorated over the past two years. For lawyers, media, members of opposition political parties and human rights advocates, state violations of their freedom of expression, thought and association are very common, and most of these individuals have numerous court cases and investigations pending before the courts. The mission's observations concur with those in KHRP's Fact Finding Mission on the freedom of the media in July 2007 which found that the 'legislative restrictions on freedom of expression, including publishing and the media, designed to prevent dissenting opinion, discussion of politically "taboo" subjects, and criticism of state institutions, have frequently been utilized in an effort to prevent *status quo*'[106].

The lack of respect for the rule of law, the partiality of the judiciary and the 'attitude' of the authorities are key factors in the violations of fundamental freedoms. The fight against impunity of human rights violations remains an area of concern. There is a lack of prompt, impartial and independent investigation into allegations of human rights violations by members of security forces. Furthermore, judicial proceedings into allegations of torture and ill-treatment are often delayed by the lack of efficient trial procedures or abuse of such procedures.

The mission itself was also faced with the security measures that have been imposed in the region. For example, it could not visit the town of Hakkari, which was part of its original itinerary. Despite the decision to change its route, it is interesting to note that when the mission asked the local people whether it would be safe to travel to Hakkari, it was met with diverging opinions; many believed it to be safe whilst others did not. That is to say that despite the difficulties encountered in the people's everyday lives as a result of the conflict, the mission understood that the perception of safety is relative and dependent on the individual and his or her past and current experiences. Also, the mission was stopped and questioned at Istanbul airport when transferring from the domestic flight from Diyarbakır to that for London.

106 KHRP FFM report, *Reform and regression, freedom of the media in Turkey* (KHRP, London, July 2007).

The mission was subjected to lengthy questioning solely on the basis that it was arriving from Diyarbakır. Amongst insistent questions as to the nature and purpose of the mission and why it was working on behalf of a Kurdish NGO, the security personnel alleged that the mission had visited the region in order to unlawfully cross the border into Iraq, and that it had done so using an illegal passport. On the basis of the experience of KHRP, which regularly sends FFMs to the region, this type of harassment was common in the 1990s but it had not occurred in some time.

For 'ordinary citizens', the most common violations are those concerning their 'economic, social and cultural rights' causing widespread poverty and unemployment. Some interviewed by the mission appear to be less aware of the effects of the conflict on the human rights situation of the people living in the region. Nevertheless there is a widespread consensus that there is an urgent need for a peaceful resolution of the conflict.

In sum the mission found that everyone living in the security zones is being affected. Those most affected are those without a voice. Those suffering economic hardships are rarely heard because political agendas seem to outweigh the wrongs done to them. The Turkish government is obligated to protect all of it citizens, especially those potentially caught in the cross-fire. In addition, the mission believes it should laud its human rights advocates, rather than treat them with suspicion. It is only when civil society can talk about, advocate for and defend human rights that Turkey's success in implementing the human rights criteria of the EU accession process can be properly gauged. The mission is disappointed to find that whilst things are not as bad as they were at the height of the conflict, they continue to deteriorate. What is more, the mission is concerned that the deplorable height of human rights violations that occurred in the 1990s appears to be the bar for measuring how good or bad things are. The mission believes that Turkey as a member of the Council of Europe and a potential EU candidate should have the European Convention on Human Rights and the Copenhagen Criteria as its measure for success.

XII. RECOMMENDATIONS

The authors of this report urge both parties to the conflict to:

- Immediately cease all practices which violate international humanitarian law, including burning of villages and forests.
- Bring to a swift end the armed conflict and find a peaceful resolution of the Kurdish question.

The authors of this report urge the Government of Turkey to:

- End the impunity in the gendarmerie and the police forces through a thorough, independent and transparent investigation, by a body that would enjoy the confidence of those affected, into the activities of the police and security forces both during the demonstrations and in the ensuing process of arrest and detention. This investigation must be open to those directly affected by the events, including those injured and detained, and the families of those killed.
- Ensure the impartiality of the judiciary and prosecution.
- Ensure respect for the rule of law.
- Ensure the transparent investigation of cases and a just and expeditious trial process for those presently detained conducted in accordance with European human rights norms.
- Ratify the Optional Protocol to the ECHR against Torture.
- Ratify all of the additional protocols to the ECHR.
- Facilitate the operation of the Human Rights Advisory Board which has not functioned since 2004.

- Amend the constitution to remove the divisive concept of 'Turkishness'.

- Provide projects and training in order to address unemployment.

In specific regard to the rights of freedom of expression, association and thought, the authors of this report urge the Turkish State to:

- Allow trade unions to protect the economic interests of their members without retaliation or other restrictions or penalties imposed by the state.

- Ensure the protection of freedom of expression, thought and association, including the abolition of Article 301 and all legislation which is routinely being used to inhibit freedom of expression.

- Remove restrictions on striking and collective bargaining by public sector employees.

- Implement in full the rights enshrined in ILO conventions including implementation of Article 54 of the Constitution which recognises the right to strike of all workers.

- Remove reservations to Article 5 (right to organise) and Article 6 (right to bargain collectively) of the European Social Charter.

- Develop a clear legislative framework for implementation of Mine Ban Treaty (Ottowa Treaty) Amended Protocol II to the Convention on Conventional Weapons.

The authors of this report call on the governments of the European Union and Council of Europe, and the EU and CoE themselves, to:

- Actively assess Turkey's compliance with the Copenhagen Criteria by sending missions to visit the High Security Zones and the Kurdish regions in Turkey.

- Support Turkey financially with positive economic initiatives that strengthen the human rights of all of Turkey's Kurdish and non-Kurdish citizens, such as training programmes and public education

initiatives aimed at lowering the economic disparity between the east and west of Turkey.

- Urge Turkey to ratify the Optional Protocol of the ECHR against Torture.

- Encourage Turkey to comply with all international treaties to which it is party, including the ILO.

- Urge Turkey to initiate an independent investigation into the reason and causes for the burning down of villages and forests and the alleged use of chemical weapons as referred to in the report, and provide technical and financial assistance for this initiative.

- Condemn both parties to the conflict for breaches of international humanitarian law.

- Lend its financial and technical support as well as vast experience in conflict resolution in regards to ending the conflict.

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