



Submission to the UN Universal Periodic Review of the Republic of Turkey

*For consideration by the Office of the UN High Commissioner
for Human Rights for the eighth session
of the UPR Working Group in 2010*

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Kurdish Human Rights Project (KHRP) 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.

Introduction

1. This submission is based on KHRP's work in Turkey over the past four years, conducted in partnership with a large number of national NGOs, and it outlines ongoing concerns in relation to the following human rights issues:
 - (a) Torture and ill-treatment of those detained by agents of the state;
 - (b) Restrictions on the freedom of expression and association; and
 - (c) Discriminatory practices towards minorities and restrictions of their cultural and language rights.
2. KHRP's concerns are based upon Turkey's obligations contained in a number of international treaties and conventions signed and ratified by Turkey and in domestic legislation, all of which are identified during the course of this submission.

Torture and ill-treatment

3. The period from 2002 to 2005 saw a raft of legislative reforms in Turkey designed to bring the state's human rights provisions in line with international human rights standards and the Copenhagen Criteria for EU Ascension. Many of these reforms related to standards in policing and the criminal justice system, the development of regulations for the restriction of discretionary police powers, the prevention and detection of torture, improvements in medical examinations of prisoners and judicial oversight of the prison system.
4. The Criminal Procedure Code (Law No. 5271) and Penal Code (5237) adopted in 2005 brought together several legislative provisions developed from 2002 for the regulation and prosecution of torture, 'torment' and ill-treatment.¹ The 2005 penal code introduced definitions of torture and ill-treatment more in line with international law.
5. In addition to these criminal code changes, there were several procedural reforms, including removing restrictions on the opening of cases of torture against security forces and officials, enabling the involvement of complainants in the proceedings, improved medical examination procedures, and the introduction of judicial review of decisions not to prosecute torture cases.² Measures were also taken to establish prison monitoring boards, 'execution judges', to review prisoners' complaints, and provincial and sub-provincial human rights boards.
6. The above reforms are part and parcel of the Turkish government's self-declared 'zero tolerance' policy on torture. However, concerns remain that despite procedural and legislative changes which in theory increase accountability and discourage rights violations, implementation remains ineffective, meaning that in practice the problem of impunity for rights violations against prisoners continues.³
7. A KHRP fact-finding mission to İstanbul, Ankara, Mardin and Diyarbakır in December 2008 to investigate the situation of prisoners' rights confirmed that torture and ill-treatment remain a

¹ *An Ongoing Practice: Torture in Turkey*, Yildiz and Piggott, KHRP, August 2007, p 36, http://www.khrp.org/component/option,com_docman/task,doc_download/gid,122/

² Ibid, p 38

³ Ibid, p.38

problem in detention centres across the country⁴. The mission heard frequent reports of casual violence, including routine beatings of prisoners during their transfer from one location to another, and on arrival at a new prison. KHRP remains concerned about conditions of detention, including unprecedented overcrowding, unsatisfactory access to medical care for prisoners and arbitrary and unfair disciplinary proceedings. The mission members also noted an acute lack of transparency, accountability and independent oversight within the prison system.

8. The most apparent change observed by KHRP's mission was the shift which had taken place 'from flagrant to more subtle forms of ill-treatment, leaving few traces or long-term physical signs, as well as an increase in incidences of ill-treatment outside official detention centres.'⁵
9. Despite the procedural reforms set out above, it is clear that in most cases of torture committed by state agents little, if any, investigation is carried out. An investigation generally undertaken only in cases where the torture has had serious consequences, for example it has led to the death in custody of the victim.
10. KHRP's observations are supported by those of the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, Martin Schenin, who has also noted that "...it is clear that the past widespread use of torture during detention and criminal investigations is still not addressed in a consistent manner".⁶
11. Though Turkey has signed the Optional Protocol to the UN Convention Against Torture (OPCAT) it has yet to ratify this document. If ratified, OPCAT would provide for the establishment of an effective and independent regime for the inspection of places of detention with a view to more effectively ensuring the prevention of torture and other cruel, inhuman or degrading treatment or punishment. Independent inspection of detention facilities in Turkey has also been recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).⁷ Yet despite such pressure, the Turkish police and penal authorities have failed to allow for such independent inspections.
12. At parliamentary level, KHRP welcomed the Human Rights Investigation Committee's establishment of two subcommittees to investigate torture and ill-treatment in prisons and detention centres, and to carry out investigations into the murder of journalist Hrant Dink in July 2007. The latter Commission finalised its report in July 2008 and came to the conclusion that there had been negligence, error and a lack of co-ordination in the activities of the security organisations and of the gendarmerie in failing to prevent Hrant Dink's murder. While this is a positive development, the findings of the Committee have not since been followed up by a concrete change in practice by the appropriate state authorities.

Freedom of expression and association

⁴ *Closed Ranks: Transparency and Accountability in Turkey's Prison System*, Fact-Finding Mission Report, Nicholas Stewart QC and Walter Jayawardene, KHRP, April 2009 (**Annex 1**)

⁵ *Ibid*, p.18

⁶ *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, 16th November 2006, A/HRC/4/26 Add.2, para.49.

⁷ Council of Europe, Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Report to the Turkish Government on the visit carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7-15 September 2003*, Strasbourg, 18 June 2004, para.40

13. KHRP is particularly concerned by the extent to which the legislative framework in Turkey allows for violations of freedom of expression, despite the fact that Article 26 of the Constitution of the Republic of Turkey enshrines this important right.
14. Article 301 of the Turkish Penal Code criminalises denigration of the Turkish nation, the Republic of Turkey or the Grand National Assembly and it is often employed to restrict legitimate criticism of the state and its representatives. In the first quarter of 2008 186 people, including 71 journalists, appeared before courts in cases relating to their exercise of the right to freedom of expression; 42 of these individuals had been charged under Article 301 of the Penal Code.
15. A small step forward occurred in April 2008 with amendments to Article 301 which previously criminalised ‘denigration of Turkishness, the Republic and institutions and organs of the State’ and has in the past been used to prosecute high-profile defendants such as the Nobel Laureate Orhan Pamuk. The amendments included replacing the article’s reference to ‘Turkishness’ with ‘the Turkish Nation’, reducing the maximum punishment from three to two years’ imprisonment and requiring the permission of the justice minister for prosecutions to go ahead. Nonetheless, the new text still represents an illegitimate restriction on free and open criticism of the state and its organs that is central to a democratic system.
16. Other provisions in the Penal Code which are often used to repress the expression of non-violent views and prosecute human rights defenders, journalists, lawyers and politicians for their declarations, statements and remarks on the Kurdish issue include Articles 215 (praising crime and criminals), 216 (inciting enmity or hatred among the population), 217 (provoking people to disobey the law), 220/6 (committing crime on behalf of an organisation without being a member of the organisation) and 220/8 (propaganda on behalf of an illegal organization and its objectives). Reports of harassment, arbitrary detention and criminalization of political activists and human rights defenders have not abated in recent years, despite supposed improvements engendered by the EU accession process.⁸
17. In addition to the Turkish Penal Code, other laws that allow for arbitrary restrictions on the legitimate exercise of freedom of expression include the amended Anti-Terror Law introduced in 2006, the Law Concerning Crimes Committed Against Atatürk (no. 5816), and the Law on Meetings and Demonstrations (No. 2911). Article 7/2 of the Anti-Terror Law, for example, provides for harsh prison sentences for the dissemination of ‘terrorist propaganda’, regardless of whether or not this includes advocating violence. This and other provisions of the Anti-Terror Law are all the more alarming in light of Article 1 of the same law, which gives an extremely wide definition of terrorism which potentially criminalizes non-violent activities such as legitimately criticizing the state.⁹ The vague definition mainly defines terrorism according to its purpose or aims, rather than with reference to specific criminal acts.

⁸ See in particular: FFM Report, *Reform and Regression, Freedom of the Media in Turkey*, KHRP, July 2007 (**Annex 2**); and Briefing Paper, *Turkey’s Anti-Terror Laws: Threatening the Protection of Human Rights*, KHRP, September 2008 (**Annex 3**).

⁹ Article 1 states “Terrorism is any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental

18. Another cause of concern is Turkey's continued impingement on the right to freedom of association, in particular the freedom to associate as members of unions.¹⁰ Several laws that severely impede the formation and functioning of trade unions, and which provide for the prosecution of their members and leaders are currently in force. The situation is particularly bad in the Kurdish regions of the country, where conflict and political tensions mean that collective mobilisation of employees is particularly likely to be viewed as a threat, and even more so where it is connected with expressions of Kurdish culture. It is evident that violations of trade union rights in Turkey are systematic and that this situation is deeply intertwined with wider patterns of violations of freedom of association, freedom of speech and cultural and language rights. Such concerns present clear infringements of Articles 11 and 10 of the ECHR and of the International Labour Organisation's Conventions C087 (Freedom of Association and Protection of the Right to Organise, 1948) and C098 (Right to Organise and Collective Bargaining, 1949), all three of which Turkey has signed and ratified.

Minority rights

19. Ethnic, cultural and linguistic minorities continue to suffer disproportionately from patterns of rights violations that have persisted ever since the modern republic was established on an ethnic nationalist footing in 1923.¹¹ The current Turkish constitution, ratified in 1982, has since then been subject to widespread criticism for restricting cultural and political freedoms, including denying the fundamental rights of Turkey's ethnic, religious and other minorities¹².

20. The extremely narrow official definition of minorities, for example, fails to recognise groups such as the country's estimated 20 million Kurds (representing approximately 23 per cent of the total population) whose linguistic and cultural rights are consequently systematically disregarded. And yet a general provision under Article 10 of the constitution guarantees the equality of all citizens before law and prohibits any discrimination based on 'language, race, colour, sex, political opinion, philosophical conviction or religious beliefs'. However, the constitution also includes a concept of citizenship based on Turkishness and, under Article 66, every citizen is referred to as a Turk regardless of his/her ethnic, linguistic or cultural origins.¹³

21. Kurds and other minority groups are prevented from accessing education in their mother tongue in the public school system, face severe restrictions on their right to broadcast in languages other than Turkish and are banned from using minority languages in official contexts. Such violations prevent individuals and communities from living rich and fulfilling lives, and represent a clear contravention of, among other international law provisions, Article 27 of the UN International

rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat." (unofficial translation)

¹⁰ For further details see *Freedom of Association and Labour Rights under threat: The Situation of Trade Unions in Turkey*, KHRP, August 2008, http://www.khrp.org/component/option,com_docman/task,doc_download/gid,177/.

¹¹ Turkish official policy on minorities is based on the Lausanne Treaty signed on 24 July 1923, which provides protection only for non-Muslim minorities. Turkey has always recognized Armenian Orthodox Christians, Greek Orthodox Christians and Jews as minorities, although there are other non-Muslim groups in Turkey such as Protestants, Catholics and Syriac Orthodox Christians which are not recognized.

¹² For further details please see: *Human Rights in the Kurdish Region of Turkey: Three Pressing Concerns*, Fact-Finding Mission Report, Edel Hughes and Saniye Karakaş, KHRP, August 2009:

http://www.khrp.org/component/option,com_docman/task,doc_download/gid,230/Itemid,47

¹³ Article 66 states that 'Everyone bound to the Turkish state through the bond of citizenship is a Turk'.

Covenant on Civil and Political Rights (ICCPR) which provides for the free exercise of language, culture and religion.

22. The UN Committee on the Elimination of Racial Discrimination, at its 74th meeting in February 2009, considered Turkey's compliance with the UN Convention on the Elimination of All Forms of Racial Discrimination (CERD). The Committee expressed concern regarding allegedly hostile attitudes on the part of the Turkish public, including attacks and threats towards Kurds, Roma and non-Muslim minorities, and highlighted the need for Turkey to enact comprehensive anti-discrimination legislation to combat such attitudes and discriminatory practices.
23. In its 2009 Progress Report on Turkey the European Commission noted the following with respect to minority rights:

“Turkey's approach to minority rights remains restrictive. While Turkey is a party to the UN International Covenant on Civil and Political Rights, its reservations regarding the rights of minorities and its reservation concerning the UN Covenant on Economic, Social and Cultural Rights regarding the right to education are causes for concern. Turkey has not signed the Council of Europe Framework Convention for the Protection of National Minorities or the European Charter for Regional or Minority Languages... There is a need for a dialogue between Turkey and the OSCE High Commissioner on National Minorities including on the participation of minorities in public life and broadcasting in minority languages. This would facilitate Turkey's further alignment with international standards and best practice in EU Member States... *Overall*, full respect for and protection of language, culture and fundamental rights, in accordance with European standards have yet to be fully achieved. Turkey made limited efforts to enhance tolerance or promote inclusiveness vis-à-vis minorities.”¹⁴

24. There have been limited signs of progress in relation to Kurdish cultural and language rights. At the end of 2008, the state-run Turkish Radio and Television Corporation (TRT) began broadcasting TRT-6, its first ever Kurdish-language channel however privately operated Kurdish-language broadcasters have continued to face oppressive regulations.

Conclusion

25. The human rights situation in Turkey remains a matter of serious concern despite earlier optimism in many quarters about the opportunities for improvement presented by the country's moves towards EU accession. While the period from 2002 to 2005 saw positive the appearance of legislative reforms pushed through in a bid to advance the accession process, recent years have been characterised by stagnation and even regression. Further reforms are necessary at constitutional level to bring Turkey's national legislation in line with its obligations under international law. Public awareness and training for officials is essential to securing protection of human rights for Turkish nationals and robust measures must be undertaken to ensure effective implementation of existing provisions, particularly with regard to investigations into allegations of torture and ill-treatment. Civil society organisations must also be given a platform from which to aid the state in these reforms and to monitor implementation without risk of harassment.

¹⁴ European Commission, *Turkey 2009 Progress Report*, 14th October 2009, at p.28, available at http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/Progress/turkey_progress_report_2009.pdf.