Kurdish Human Rights Project

KHRP

Established 1992

Submission to the Office of the United Nations High Commissioner for Human Rights, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

For consideration by the Office of the United Nations High High Commissioner for Human Rights on GA res. A/RES/64/147

21 June 2010

Kurdish Human Rights Project
11 Guilford Street
London, WC1N 1DH
Tel: 0044 207 405 3835
Fax: 0044 207 404 9088
www.khrp.org

KURDISH HUMAN RIGHTS PROJECT

The Kurdish Human Rights Project ('KHRP') is an independent, non-political, nongovernmental human rights organisation and registered charity founded in 1992 and based in London, England. KHRP is committed to the promotion and protection of the human rights of all persons living within the Kurdish regions of Turkey, Iran, Iraq, Syria and elsewhere, irrespective of race, religion, sex, political persuasion or other belief or opinion.

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

KHRP was born out of a desire to utilise the international mechanisms available to victims of human rights violations, to make the perpetrators accountable and prevent further abuses in the future. Today, KHRP has earned international recognition for its tireless work to promote and protect human rights in these regions. Its victories have established weighty judicial precedents, secured justice and redress for past abuses and prevented further abuses from recurring. KHRP also produces publications and research that members of the mainstream media have come to rely on as a reliable source of accurate information about the situation for the Kurdish people in these regions.

KHRP employs 10 permanent members of staff. Its office is located in central London, where it is not subject to the intimidation and censorship faced by NGOs (Non-Governmental Organisations) in these regions. It has formed partnerships with such NGOs as The Corner House and Human Rights Watch to send fact-finding missions to the aforementioned regions, and works with the Bar Human Rights Committee of England and Wales to conduct trial observation missions to these regions. KHRP is both a registered charity and limited company, and is funded through charitable trusts and donations.

A. Introduction

1. This submission is based on the work of the Kurdish Human Rights Project (KHRP) in the Kurdish regions. It aims to raise concerns regarding the ongoing manifestations of racism in the following countries:

   (a) Turkey;
   (b) Iran;
   (c) Syria.

2. KHRP's concerns are based on the above mentioned countries' failures to comply with a number of international treaties to which they are signatories.

B. Manifestations of contemporary forms of racism and xenophobia in Turkey, Iran and Syria

1. Problems encountered by the Kurdish Population in Turkey

Despite the initial progress of improving the standard of the protection of human rights in Turkey, which had been stimulated by the opening of the accession process of Turkey to the European Union, reforms have ground to a halt, as has the process itself. The rapid regression in human rights since 2006 is underlined by the enforcement of 'high security zones' in the Southeast. Kurds and other ethnic groups are unable to properly represent and organise themselves without obstruction or prosecution and Turkey's 15 million-strong Kurdish population continue to face systematic violations of their human rights. These are often manifested in prosecutions for criticising the state or the military or merely for speaking in Kurdish.

In addition, KHRP has learned that Kurds are at least five times more likely to be tried under the anti-terror law for alleged criminal offences than non Kurds. Although the AKP government's recent Democratic Opening, aimed at resolving the ongoing issues between Turkey and its Kurdish population can be viewed as a positive step, the government has yet to consult or include civil society organisations in its proposals and recent months have seen an increase in violence and discrimination being regularly used against Kurds.

1.1 Legal framework for discrimination

a) Exclusion of Kurds from Lausanne definition of 'minority'

Whereas Article 5 of CERD requires that Turkey 'guarantees the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law', Turkey asserts in its third periodic report that,

> in line with the State philosophy based on equality of citizens assuring non-discrimination, Turkish citizens belonging to non-Muslim minorities enjoy and exercise the same right and freedoms as the rest of the population. Additionally, they benefit from their minority status in accordance with the Lausanne Peace Treaty.[1]

The word 'minorities' under the Turkish Constitutional System only encompasses groups of persons defined and recognised as 'non-Muslim minorities' following section 3 of the Treaty of Lausanne (1923). No groups in Turkey have minority status on grounds of ethnicity defined in cultural and/or linguistic terms, as opposed to by religion. Therefore, as the majority of Kurds follow Sunni Islam[2], they are excluded from minority protection. So, whereas Greek-Orthodox, Armenian and Jewish peoples for example are recognised as minorities by Turkey in line with the Treaty of Lausanne, the Kurdish identity has no such recognised status at state level. This is a serious denial of minority identity, especially given the size of the Kurdish population in Turkey, who represent almost 25 per cent of its citizens.

A Government-commissioned report by the Turkish Human Rights Advisory Board found that Turkey's minority definition was too restrictive and did not accord with current thinking, which accepts that minorities exist where communities are 'ethnically, linguistically and religiously different' and feel this difference is an inseparable part of their identity.[3] The authors of the Turkish Human Rights Advisory Board report, Professor Baskin Oran and Professor Ibrahim Özden Kaboglu, subsequently faced protracted criminal proceedings under Articles 216 and 301 of the Penal Code in connection with the views expressed in the report.[4]

The exclusion of the Kurds from the Lausanne definition is highly problematic and has significantly detrimental consequences. Recognition of a minority's

[1] CERD/C/TUR/3, paragraph 31.
[2] David McDowall, *A Modern History of the Kurds*, (IB Tauris and Co. Ltd., London, 2004), 1-2.
[3] *Turkish Daily News*, 'Minority Phobia Haunts Turkey'.
[4] For detailed information on the trial proceedings see KHRP Trial Observation Report, *Suppressing Academic Debate: The Turkish Penal Code*, (KHRP, London, June 2006).

identity is a fundamental prerequisite for achieving minority rights and negating discrimination on grounds of ethnicity. References to minorities within the Constitution and other legislation refer back to this definition, barring the Kurds from inclusion in any protective provisions. Moreover, it sends the wrong signal to institutions of the state and others seeking to deny Kurdish rights, granting informal legitimacy to Turkey's denial of a distinct Kurdish identity and consequent attempts to subjugate and forcibly assimilate the Kurds.

In May 2003, the European Parliamentary Commission on Foreign Affairs, Human Rights, Common Security and Defence Policy produced a report condemning the continuing refusal of Turkey to accommodate the cultural and linguistic rights of the Kurds and stressed the need for Constitutional reform.[5] Further, the Council of Europe Parliamentary Committee has recommended a major reform of the 1982 Constitution and further recognition of national minorities,[6] as has the European Commission Against Racism and Intolerance.[7] However, in spite of this criticism from international human rights institutions, Turkey has shown no intention of changing the Lausanne minority definition, or other related failings in the Constitution, including the absence of adequate provisions prohibiting discrimination or promoting equal treatment, despite much criticism from international bodies.

b) Lack of official censuses or data collection on ethnic or linguistic grounds

The Turkish authorities have failed to conduct any censuses or other comprehensive surveys which include information about respondents' ethnic or linguistic backgrounds.

With no accounts of people's ethnic origin, minority groups cannot be identified by the State. It follows that their identity as minority groups are not recognised by the State, and thus the particular plight of the Kurds is not addressed. This lack of recognition leaves minority groups feeling alienated.

c) Legal framework which fails to prevent racial discrimination

Turkey claims that there is a sound legal framework in place to prevent all forms of discrimination, including racial discrimination.[8] However, in reality, there are

[5] Report on Turkey's application for membership of the European Union (COM(2002) 700 – C5-0104/2003 – 2000/2014(COS))
[6] Parliamentary Assembly Resolution 1622 (2008), http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1622.htm, last accessed 3 February 2009
[7] European Commission Against Racism and Intolerance, 'Third Report on Turkey', adopted 25 June 2004.
[8] *Ibid*, paragraph 25.

only a few provisions in the Constitution and national legislation which prohibit discrimination. There is no comprehensive law on anti-discrimination in Turkey.

Article 10 of the Turkish Constitution is a general provision which guarantees equality before the law. However, minority protection should include not only non-discrimination measures but also legislation providing for the specific protection and promotion of the separate identity of minorities, for example, within the realm of cultural and language rights.

Article 66 of the Constitution itself violates the principle of anti-discrimination insofar as it defines citizenship with the word 'Turk' rather than in terms of 'citizens of Turkey'. The word 'Turk' is used to express specifically Turkish ethnic origin.

The existing legal framework of Turkey fails to prevent racial discrimination. Since 2005, the European Court of Human Rights has found that Turkey has failed to undertake an effective investigation of human rights abuses in a significant number of cases, over twenty of which were lodged and brought by KHRP.[9] In each of these latter cases the victims were of Kurdish ethnicity and the abuses they suffered were linked to their ethnicity. Similar judgments are passed by the European Court of Human Rights on a regular basis, showing that Turkey repeatedly fails to adequately investigate ethnicity-related human rights abuses, and indicating that the domestic legal framework neglects the prevention of discrimination on ethnic lines.

d) New anti-terror law poses threat to minorities

A serious recent development has been the introduction of amended anti-terrorist legislation which has a skewed impact on people of Kurdish origin and erodes many civil and political rights for that group.

In June 2006, Turkey amended its anti-terror law, the Law on the Fight against Terrorism (Act 3713). The amendments enacted a series of draconian provisions which not only fail to meet Turkey's human rights obligations under CERD and

[9] *Menteşe and Others v. Turkey*, Application No 36217/97; *Akkum and Others v. Turkey*, Application No 21894/93; *Aydin v. Turkey*, Application No 25660/94; *Akdeniz v. Turkey*, Application No 25165/94; *Toğcu v. Turkey*, Application No 27601/95; *Kişmir v. Turkey*, Application No 27306/95; *Çelikbilek v. Turkey*, Application No 27693/95; *Ateş v. Turkey*, Application No 30949/96; *Koku v. Turkey*, Application No 27305/95; *Dundar v. Turkey*, Application No 26972/95; *Dizman v. Turkey*, Application No 27309/95; *Nesibe Haran v Turkey*, Application No 28299/95; *Kaya and Kaya v Turkey*, Application No 33420/96 & 36206/97; *Kanlibas v Turkey*, Application No 32444/96; *Seker v Turkey*, Application No 52390/99; *Ucar v Turkey*, Application No 523932/99; *Aksakal v Turkey*, Application No 37850/97; *Uzun v Turkey*, Application No 37410/97; *Dolek v Turkey*, Application No 39541/98; *Osmanoglu v Turkey*, Application No 48804/99; *Ayaz v Turkey*, Application No 44132/98

other international legal mechanisms in theoretical terms, but have also been used in practice to violate the human rights of its citizens.

In common with anti-terror laws in other states, the amendments were enacted in response to an 'escalation of terrorism', and therefore are aimed at addressing a security agenda rather than protecting individual rights and freedoms. Although Turkey's aim of maintaining national security is understandable, protecting the nation need not and should not come at the expense of the fundamental human rights that it has promised to uphold as a signatory to international treaties. In particular, the new law fails to respect these treaties in containing a definition of terrorism that is too wide and vague. The new law also introduces a dramatic increase in the range of 'terrorist' offences, serious restrictions on freedoms of thought, expression, communication and the press, threats to the freedoms of belief and conscience, assembly, association and to the right to protest. It jeopardises the prohibition of torture and obstructs the rule of law. As the PKK is seen as the main terrorist threat, and Kurds themselves are generally viewed as a threat to Turkey's identity as an indivisible Republic, the legislation is being used disproportionately against them. It has been used against non-violent expression of opinion, and to prosecute and harass national minority groups, political dissidents, members of the media, students and human rights activists wholly unconnected with terrorism.[10] It has been applied arbitrarily by judges, resulting in protracted, burdensome and unfair trials for those involved,[11] and so far, mainly Kurdish people have been arrested under the new laws. Further, Kurds have been charged as a result of conducting peaceful activities that entail their expression of Kurdish ethnicity under Article 7/2 of the Law on the Fight against Terrorism ('propaganda of illegal organisations') and also Articles 301 ('degrading Turkish nation, the Republic, the Organs and Institutions of the State`), 220/8 (propaganda for the illegal organisation or its objectives and 314 ('armed organisation') of the Turkish Penal Code.

Of particular concern is Article 2 of Law 3713, which allows the security forces to use disproportionate violence against individuals. The article states that,

> During operations to be carried out against terrorist organisations, if the 'surrender' order is not obeyed… law enforcement officers shall be authorised to use their guns without any hesitation against the target to an extent and amount sufficient to render the danger ineffective.

[10] See, for example, KHRP Fact-Finding Mission Report, *Reform and Regression: Freedom of the Media in Turkey*, (KHRP, London, October 2007).
[11] See, for example, KHRP Trial Observation Report, *Publishers on Trial: Freedom of Expression in Turkey in the Context of EU Accession*, (KHRP, London, May 2007).

Violence against the Kurdish population in Turkey has always been more severe and systematic compared to other sections of society as a result of the policy and practice of oppressing the Kurdish minority. On 24 March 2006, 14 pro-Kurdish guerrillas were killed by Turkish security forces in the mountains in Diyarbakir province. The funerals of four of the guerrillas took place in Diyarbakır city. Security forces opened fire and used tear gas and truncheons against mourners. A total of 11 people died, including three children, seven of them as a result of being shot by members of the security forces. According to an investigation and observation report by the Human Rights Association (HRA), 563 persons were arrested and of those, 382 were charged with offences and detained. The 563 arrested included 200 children under 18 years of age, 91 of whom were charged and detained. The youngest person detained was 12 years old. 34 children were released after an appeal was filed against their detention. 350 people applied to the HRA claiming torture and ill treatment during their detention.[12] Despite this excessive force and allegations of torture and ill-treatment, there has not been any investigation against any member of the security forces nearly three years after the incidents.

The excessive violence against Kurds continued during the 2008 Newroz celebrations in various cities. Newroz celebrations in Van, Yuksekova (Hakkari), Urfa and Siirt were banned by the official authorities as they have been in the past. However, people disobeyed this decision and carried out their festivities in these cities. Turkish forces responded to celebrators with violence, using batons, tear gas and water cannons. Over the period of four days between 21 and 24 March 2008 two people were killed, one in Yuksekova and one in Van, and many were also injured by the security forces, with hundreds taken into custody.[13] Between January and March 2008, 76 people were detained in Şırnak alone on the basis of illegally obtained telephone recordings, and 15 of these were charged and arrested.[14] On 20 October 2008 Ahmet Ozkan was killed during a demonstration in Dogubeyazit, Ağrı.[15] In October 2008, 24 children, one of them aged 13, were arrested for participating in protests in several cities in south-east Turkey. They are being charged with membership of a terrorist organisation.[16] Four children aged between 16 and 17 remain in Diyarbakır prison were

[12] KHRP Fact-Finding Mission Report, *Indiscriminate Use of Force: Violence in South-east Turkey*, (KHRP, London, September 2006), 17-24.

[13] Bianet, 'Two Deaths at Newroz Celebration,' 24 March 2008. See http://www.bianet.org/english/kategori/english/105805/two-deaths-at-newroz-celebrations (last accessed 30 October 2008).

[14] KHRP Fact-Finding Mission Report, *Return to a State of Emergency? Protecting Human Rights in South-East Turkey* (KHRP, London, June 2008), 39.

[15] Adnkronos International, 'Turkey: Clashes Break Out at Protestor's Funeral,' 22 October 2008. See http://www.adnkronos.com/AKI/English/Security/?id=3.0.2617934389 (last accessed 30 October 2008).

16 Bianet '13 Yaşındaki Çocuk Örgüt Üyeliği Suçlamasıyla Tutuklandı', 27 October 2008. See http://bianet.org/bianet/kategori/bianet/110466/13-yasindaki-cocuk-orgut-uyeligi-suclamasiyla-tutuklandi (last accessed 02 February 2009)

detained on 14 July 2008, charged with membership of a terrorist organisation as a result of participating in a protest in Diyarbakır.[17]

The disproportionate effect of the application of the laws and the adverse impact on the Kurdish population is clear. A KHRP fact-finding mission to Turkey in July 2007 found that the anti-terror laws had been used to close down five pro-Kurdish newspapers in one month alone.[18] These laws also allow proscription of 'terrorist' organisations: 17 of these prohibited groups have some connection to Kurdish organisations, whilst 5 out of 12 organisations listed by the Director General of Police as 'active terrorist organisations' are Kurdish groups, including the PKK (Kurdistan Workers' Party), KONGRA-GEL (People's Congress of Kurdistan), Kürdistan Devrim Partisi (PŞK) (Kurdistan Revolution Party), Kürdistan Demokrat Partisi/Bakur (PDK/Bakur) (Kurdistan Democrat Party / North).

1.2 Examples of racism and xenophobia in form of prosecutions

The trial of Ahmet Önal illustrates at firsthand how the state is able to stifle debate, repress comment and generally restrict the exercise of the right to freedom of expression. Ahmet Önal is the owner and editor in chief of Pêrî Publishing House in Istanbul, founded in 1992. Alongside works on contemporary politics, literature and translated texts, many of Pêrî Publishing House's publications focus on the Kurdish people. The subject matter of the books that Ahmet Önal publishes has resulted in him being an almost monthly attendee at the various courts of Istanbul, and he has served a seven-year prison term for his publishing activities. A KHRP mission which travelled to Turkey in February 2008 to observe trial proceedings against Ahmet Önal was informed that the case they were monitoring was one of a total of 12 that were pending against him in the courts at the time.[19] The sheer number of prosecutions and personal defamation actions being brought in the Turkish domestic courts indicate that the state is neither comfortable with a democratic approach to freedom of expression nor with taking active steps to protect that freedom.

In 2006, three Kurdish activists – Ibrahim Güçlü, Zeynel Abidin Özalp and Ahmet Sedat Oğur – were charged under the Anti-Terror Law for 'making

17 Bianet, 'Mahkeme Çocukları 'Terörist' Saymaktan Vazgeçmiyor!', 16 January 2009. See http://bianet.org/bianet/kategori/bianet/111966/mahkeme-cocuklari-terorist-saymaktan-vazgecmiyor (last accessed 02 February 2009)

18 KHRP Fact-Finding Mission Report, *Reform and Regression: Freedom of the Media in Turkey*, (KHRP, London, October 2007), 57.

19 KHRP Trial Observation Report, *Persecuting Publishers, Stifling Debate: Freedom of Expression in* Turkey, (KHRP, London, May 2008), 22.

propaganda for the PKK'.[20] The charge was ironic, considering that Güçlü had repeatedly and publicly condemned violence initiated by the PKK. The activists were arrested as they prepared to walk to the border of Iraq to peacefully protest the recent killings of civilians by security forces in south-eastern Turkey and to express their concern about tensions between the Turkish government and the Kurdish-led administration in northern Iraq. All three are officials of Kurt-Der, a Kurdish association that the Turkish authorities had recently closed for conducting its internal business in the Kurdish language.

In June 2008, Abdullah Demirbaş was removed from his post as Mayor of the Sur district of Diyarbakır by the State Council's 8th Chamber for offering municipal services not only in Turkish, but also in Kurdish, Armenian and Syriac.[21]

In a separate development, on 13 August 2008, Ankara High Criminal Court Number 11 blocked the broadcasting of the website 'gundemonline.net', which focuses on Kurdish issues, for publishing a PKK statement. Website administrators said that the site had been blocked four times before and added,

> We have not been informed [of the reasons that access was blocked], apart from the notice on the webpage. Lifting the ban through legal proceedings is too long a process for us. Hence, we continue our broadcasting under another extension.[22]

In a number of cases which KHRP has observed, individuals have been indicted for crimes under the Anti-Terror Law in Turkey but then subsequently acquitted at trial for lack of evidence. It is arguable that malicious prosecution in this way violates the individual's freedom of expression. Such cases illustrate how Turkey continues to discriminate against the Kurdish minority, regardless of ostensible legislative reforms and pledges. In June 2008, for instance, a KHRP mission observed trial proceedings in Diyarbakır against members of a children's choir who were charged under anti-terror laws for singing a Kurdish song at a world music festival in the United States the previous October.[23] Prosecutors claimed the song was associated with the PKK, although it is also the anthem of the Kurdistan Regional Governorate in northern Iraq. Out of a total of nine children whose case went to trial – all of whom were aged between 13 and 17 at the time of the alleged 'crime' – three were made to appear before an adult court.

---

[20] Human Rights Watch, 'Turkey: Anti-Terror Law Used Against Peaceful Activists: Turkey's Reform Process at Risk as Three Kurdish Activists Go on Trial,' 7 June 2006. See http://www.hrw.org/english/docs/2006/06/07/turkey13521.htm (last accessed 30 October 2008).

[21] KHRP Press Release, 'Turkey Persists in Denial of Basic Cultural and Language Rights,' 18 June 2007. See http://www.khrp.org/content/view/298/2/ (last accessed 30 October 2008).

[22] *Ibid*

[23] KHRP Trial Observation Report, *A Children's Choir Face Terrorism Charges: Juveniles in the Turkish Justice System*, (KHRP, London, September 2008).

Although all were eventually acquitted, this was only after they had spent several months with the prospect of a lengthy jail sentence hanging over their heads.

The mayor of Suruc-Diyarbakir, Etem Sahin of BDP, has been sentenced to 21 months in prison. Mayor Etem Sahin was convicted for speaking Kurdish during his election campaign and for violating Article 2911 regarding 'Law on Demonstrations and Marches.'[24] Furthermore, the banned politician and former Chairman of the DTP Ahmet Türk, was sued by Ankara Chief Public Prosecution on charges of speaking Kurdish in the Turkish Assembly during a group meeting of the party. Turk's words, 'The people must express their feelings and ideas in their mother languages at 21 February World Language Feast,' which followed his speech in Kurdish on 24 February 2009 were found against Article 81 of 2820 of the Political Parties Law.[25]

In addition, three members of the dissolved pro-Kurdish Democratic Society Party received prison sentences of six months each by the Midyat Magistrate Criminal Court. The three defendants were found guilty of making election propaganda in Kurdish[26].The Magistrate Criminal Court of Midyat in Mardin handed down a six-month prison sentence each to three former members of the now banned Democratic Society Party (DTP), namely Midyat Mayoral candidate Yüksel Aslan Acer, Midyat Provincial Chair Abdulaziz Bilgin and party member Süleyman Tekin. They were sentenced for speaking Kurdish in a meeting during the run-up for the elections. Acer noted in his defence that whilst he did open the speech with greetings to his multicultural constituency in Kurdish, Syriac and Mıhellemi, the substance of his speech was conducted in Turkish. In the hearing on 3 June, the six-month sentences were postponed.[27]. The use of the letters 'W, X and Q' which appear in the Kurdish but not the Turkish alphabet continues to be outlawed and several prosecutions were reported during the year.[28].

1.3 State violence against Kurdish women

Violence against Kurdish women perpetrated by state actors is a salient problem which is a clear violation of Turkey's CEDAW obligations. Turkey has failed to address allegations of violence by state actors in its Sixth periodic report.

[24] Media Institute of West Kurdistan Society – Afrin 10 June 2010
[25] ISTANBUL – Daily News with wire, 8 June 2010
26 Mehmet Halis İŞ - Erol Önderoğlu <http://bianet.org/yazar/mehmet-halis-is---erol-onderoglu> Mardin - BİA News Center, 09 June 2010
[27] Mehmet Halis İŞ - Erol Önderoğlu <http://bianet.org/yazar/mehmet-halis-is---erol-onderoglu> Mardin - BİA News Center, 09 June 2010
[28] VAN (DIHA) 9 June 2010

In a paper to the EU Turkey Civic Commission (EUTCC), Barrister and KHRP Advisor on Women's and Children's Rights, Margaret Owen, highlighted the issue of physical, sexual, and mental abuse and ill treatment of Kurdish women by Turkish state agents, such as security forces, police, and village guards.[29] Due to recent legal reforms increasing punitive measures for torture, state agents have resorted to using violence against Kurdish women as a substitute for torturing Kurdish men in formal detention in order to demoralise the community and also specific individuals.[30] State agents are aware of the dishonour attached to such violence, especially sexual assault, and of the low probability of these women reporting these acts of violence; thus, they are able to use physical and sexual violence against Kurdish women with impunity.[31] This use of sexual violence by state agents against Kurdish women is not only in violation of CEDAW obligations but also the Convention against Torture (CAT) and international *jus cogens* norms. The ECtHR has recognised the severity of such physical and sexual abuse in the KHRP-assisted case, *Aydin v. Turkey*, in which the court ruled that rape is a form of torture.[32]

If Kurdish women do choose to report sexual violence by state agents, they then face extreme difficulty in pursuing criminal claims against the state. A KHRP-led delegation observed several trials prosecuting gendarmes who had allegedly committed physical and sexual violence against Kurdish women.[33] One such case involved Şükran Esen, a Kurdish woman who had allegedly been tortured and raped on three occasions by gendarmes who unofficially detained her. The Prosecutor had indicted 405 gendarmes for this crime which significantly lessened the probability of the guilty to be convicted beyond a reasonable doubt for physical and sexual violence. The victim's attorney requested that the court order the indicted gendarmes to be arrested for fear that the guilty ones would flee; instead, the court allowed the indictment of forty additional gendarmes which further reduced the victim's ability to assert her rights. Additionally, the victim's attorney drew attention to the fact that the Chief Commander of the Gendarme who had been found guilty of torture in *Aydin* had still not been removed from his post; this failure by Turkey to implement fully the ECtHR's judgment in *Aydin* signals a culture of impunity for torturers in Turkey.[34]

[29] Margaret Owen, *Women's Rights in Turkey and Kurdish Cultural Rights*. European Union Turkey Civic Commission (Paper: Brussels 2005). <http://www.eutcc.org/articles/8/20/document215.ehtml> (last accessed 12 May 2010).
[30] *Ibid*.
[31] *Ibid*.
[32] KHRP case, ECtHR case, Appl. no. 23178/94, *Aydin v. Turkey*, judgment of 27 September 1997.
[33] Margaret Owen, edited by Kerim Yildiz. *Trial Observation Report, Turkey's Shame: Sexual Violence Without Redress – The Plight of Kurdish Women*. KHRP: December 2003, at 10-21.
[34] Margaret Owen, edited by Kerim Yildiz. *Trial Observation Report, Turkey's Shame: Sexual Violence Without Redress – The Plight of Kurdish Women*. KHRP: December 2003, at 21

A KHRP-led delegation also found that the lack of proper recording of detentions, especially those such as the unofficial detention suffered by Şükran Esen, prevented Kurdish women from successfully bringing to justice those state agents responsible for the torture and ill treatment of female detainees. The Human Rights Association of Turkey (İHD) reported to the delegation that 99 per cent of detentions went unrecorded. KHRP concluded from these observations that physical and sexual violence against Kurdish women was rife in Turkey, and by ignoring illegal detentions and violence against Kurdish women by state agents, the Turkish government is in violation of relevant international conventions and *jus cogens* norms from which no state is legally able to derogate under any circumstances[35].

A criminal court in Diyarbakir allowed for the confiscation of a Kurdish newspaper, Azadiya Welat, after a complaint from the Diyarbakir police department and demands by the Diyarbakir Public Prosecutor.[36] The newspaper's confiscation was ordered after it reported a woman's claims that she had been raped by four plainclothes Diyarbakir police officers. The woman alleged that was sexually assaulted by these plainclothes officers for her activities with the Democratic Free Women's Movement (DÖKH). The Human Rights Association in Turkey (İHD) also reported that four other women had brought similar claims of rape by police officers within the same week.

It is of great concern that violence against women perpetrated by its agents is ignored by the Turkish government and that the authorities have in some cases taken direct action to conceal allegations of this violence. Under its international obligations, Turkey must investigate all allegations of violence, punish perpetrators whether they are state or non-state actors, and have in place preventative mechanisms protecting women against such treatment.

1.4 Discrimination against Kurdish children

a) Juvenile Legal Protection in Turkey

Juvenile justice is an area where, until recently, legislative reforms suggest that Turkey has made positive progress towards meeting its international obligations. On paper, an effort is being made to construct a child-friendly judicial system in Turkey. The Turkish Criminal Code contains basic provisions regarding the status of children. However, the Child Protection Law contains the security and

[35] KHRP: Communication to the Commission on the Status of Women on the Status of Kurdish Women in Turkey, August 2009, para 18. http://www.khrp.org/khrp-news/human-rights-documents/doc_details/227-communication-to-the-commission-on-the-status-of-women-on-the-status-of-kurdish-women-in-turkey.html (last accessed 13 May 2010)

[36] Erol Önderoğlu, 'Newspaper Confiscated for Reporting Allegations of Police Rape,' Bianet, 10 July 2009, <http://bianet.org/english/gender/115773-newspaper-confiscated-for-reporting-allegations-of-police-rape> (last accessed 12 May 2010).

protection measures applicable to children. This act covers the specific protection measures applicable to children; sentencing by courts in cases involving children; qualifications and appointments of those to work in such courts; enforcement measures; and supervision measures for protection orders granted. There are also specific measures available to courts in cases involving children, such as suspending the pleading of a criminal case or the announcement of a verdict.

Political vs. Non-Political Crime

A key distinction that should be recognised in relation to the juvenile justice system in Turkey is that the types of crime committed by children are classified into two subgroups, according to those that are considered political in nature and those which are deemed non-political.

Political crime refers to behaviour such as joining demonstrations and rallies.[37] All children charged with non-political crime, and those under the age of 15 charged with a political crime, fall under the jurisdiction of the children's courts.

Types of Children Courts

Two forms of children's courts exist. The first is the regular children's court that has jurisdiction over minor offences over which a judge presides but no prosecutor is present. The second is the Children's Heavy Criminal Court where there are three judges and a prosecutor. These courts operate under some special conditions, including the requirement that both the prosecutor and the judge are parents themselves.[38] According to Mr. Eren and Mr. Yavuz of the Diyarbakır Bar Association, the treatment of children under the Child Protection Act through the children's criminal courts, is better than the treatment of those that fall under the jurisdiction of the Heavy Criminal Court.[39]

Special Rules Applicable to Children

Special rules that are applicable to children regarding their apprehension and arrest are included in Article 19 of the Regulation on Apprehension, Arrest, and Examination.

The right of children to a fair trial is further protected by more general reforms enacted in 2002. These included the following:

[37] FFM interview with Mr. Selahattin Coban, Chairman, Mazlumder, 19 June 2004, Diyarbakır.
[38] *Ibid*.
[39] FFM interview with Mr. Nahit Eren, Head of Children's Rights Commission, and Baris Yavuz, Coordinator of Legal Aid Unit, Diyarbakır Bar Association, 18 June 2008, Diyarbakır.

- Detainees shall be informed of the reason for the apprehension;
- They will have the right to remain silent and to make use of legal counsel;
- They will be allowed to inform a relative or another person about their detention;
- They will have the right to be examined by a doctor without police present;
- Detainees cannot be held in custody for more than seven days without the decision of a judge;
- They may meet their lawyer only upon extension of the custody period;
- The lawyer has the right to examine the file and the preparatory documents.[40]

In an attempt to prevent torture and inhuman and degrading treatment, an article has been added to the Code of Criminal Procedure, which specifically addresses the importance of allegations of torture and ill-treatment. Such allegations and related investigations are to be considered urgent cases which are thus debated promptly and without long periods of adjournment. Article 6 of the Law on Formation, Duties and Trial Methods of Juvenile Courts, reads, 'cases regarding crimes committed by children younger than 18 and debated by general courts are to be debated by juvenile courts'.[41] However, there is an exception if a child is charged under Turkish anti-terror legislation when they are aged between 15-18 years. In this instance, s/he is held and tried as an adult, as will be discussed in more detail below.

The Law also requires that a specially trained expert psychologist must produce reports on the charged child, with regard to their ability to understand what they have done and factors such as their social status. However, although the Ministry of Justice provides training for psychologists, lawyers, judges and prosecutors, the implementation of such regulations is not always effective.[42]

b) Problems with the Legal Framework

Despite the apparent strengths of the legal system, the fact-finding mission reported that numerous problems remain with regards to the application of law.

Mr. Coban, Chairman of Mazlumder Diyarbakır Branch, informed the mission that the Child Protection Law is often merely used to reduce the length of sentences in cases involving juveniles, while provisions for special protection

[40] Enlargement, 'Turkey Adopts Regulations to Implement Pro-EU Legislation', 26 September 2002, <http://www.eur…/1924220-517?targ=1&204&OIDN=1503960&-home=hom>.
[41] *Turkish Press, Cicek: Turkey has Taken an Important Step on the Way to EU*, 22 September 2004.
[42] FFM interview with Mr. Selahattin Coban, Chairman, Mazlumder, 19 June 2004, Diyarbakır.

measures which acknowledge children as a vulnerable group, are ignored.[43] He said for example, that according to the Child Protection Law, a social service officer can be present when a child's statement is taken by the Public Prosecutor or during other procedures the Public Prosecutor carries out. However, in his experience he has never witnessed any social service officer present during procedures carried out by the Public Prosecutor.[44] He also said that although social service experts do compile reports, they do not in his opinion undertake adequate research, but rather 'spit out the same pro-forma report for every child.'

Another major problem that was relayed to the mission by Mr. Erbey, Chairman of the Diyarbakır Branch of İHD, is that there is only one regular children's court in Diyarbakır, as there is only one specific judge and prosecutor designated for these cases.[45] Mr. Erbey expressed that this was proving to be insufficient to cope with the court's caseload. The resulting backlog was said to lead to delays in dealing with children's cases, which was being further exacerbated by the increasing number of crimes being committed by children.[46] Mr. Erbey stated that in 2002, 1,000 children were tried for minor offences and that this number rose to 3,300 in 2006. This dramatic increase was attributed to the number of IDP children who were born into the city's slums, with poverty marking the lives of this vulnerable group. He identified this as one of the long-term consequences of the forced migration and suggested that 90 per cent of non-political crimes committed by Kurdish children in Diyarbakır are due to economic reasons.[47]

Despite the extensive legislative reform, allegations of ill-treatment of juveniles have been made against state agents from various parts of the criminal justice system. The legal apparatus that has been designed to protect children also seems to have suffered from a poor legal infrastructure which has led it to become congested and weakened.

In Cizre, the mission found that no specific children's court exists. Instead, when a child is to be tried the court simply changes its name and then continues with the trial. Thus, the same court, judge and prosecutor try children.[48] Special measures, such as the judge being a parent and the recipient of special training, are reportedly not met, and although contrary to the requirements of the legislation, the prosecutor is often present. [49] It was stated that although they

[43] FFM interview with Mr. Selahattin Coban, Chairman, Mazlumder, 19 June 2004, Diyarbakır.
[44] Telephone interview with Mr. Selahattin Coban, Chairman, Mazlumder, 13 November 2009.
[45] FFM interview with Mr. Muharrem Erbey, Chairman, İHD Diyarbakır Branch, 18 June 2008, Diyarbakır.
[46] *Ibid*.
[47] *Ibid*.
[48] FFM interview with Ms. İlknur Yokuş Tanış, Head of the Women and Children Commission, Mr. Nûrîrevan Elai, Chair, and Ms. Rüya Elai, and Ms. Dirşeng Bartan, Şırnak Bar Association, 22 June 2008.
[49] *Ibid*.

would leave if they were asked to do so, their initial presence betrays the fact that children are not seen as deserving of special treatment by the judicial system, with officials constantly needing to be reminded that they should be treated differently.[50] Further, while interviewees said that there are attempts to comply with the Child Protection Law when children are victims of a crime (for example, having a psychologist or social worker present during interviews), no such experts are said to be available to provide the reports required by the legislation.[51]

c) Children in Armed Conflict and Juvenile Justice

The armed conflict in the Kurdish region has created a legal loophole where Turkish authorities have defined areas as falling under a 'high security zone'. The designation of such zones in the provinces of Şırnak, Hakkari and Siirt is remincient of 15 years of emergency rule in Turkey during the 1980s-1990s. Although the state of emergency was officially lifted in 2002, in these zones and across the Kurdish region, children who were considered to have a connection, however loose, to the PKK were detained, interrogated, and tried under Turkey's Anti-Terror legislation (TMK).[52] From 1999-2007, the number of child detentions for the alleged purpose of terrorism control had decreased. However, concern has been heightened due to the alarming number of children that have been arrested and charged since newly-ratified provisions came into place in an amended version of the TMK legislation.

The Initiative to Structure Children's Justice System has called for the abolition of this law on the grounds that it violates children's rights. The legislation allows children above the age of 15 to be tried before High Criminal Courts for anti-terrorism offences, and a 2006 amendment allows children between the ages of 15 and 18 to be tried as adults concerning such charges. This directly contradicts Turkey's treaty obligations under Articles 1, 2 and 40 of CRC, and Article 6 of the European Convention on Human Rights, as well as Article 37 of the Turkish Constitution, which provides for special legislation for the trial of minors.

In 2003, an amendment was made to criminal procedure legislation which provided that trials involving children under the age of 18 were to fall under the jurisdiction of the children's courts. However, Mr. Eren and Mr. Yavuz of the Diyarbakır Bar Association informed the mission that despite this legislative change, in practice children have always been tried by the former state security

[50] *Ibid*.
[51] Telephone interview with Ms. İlknur Yokuş, the Head of the Women and Children Commission of Şırnak Bar Association, 13 November 2009.
[52] The World Organisation against Torture, 'Rights of the Child in Turkey', Committee on the Rights of the Child: 27th session, Geneva 2001, Report Concerning the Application of the Rights of the Child by Turkey.

courts for political crimes, even before the 2006 amendment to the TMK. They also highlighted that where previously sentences of less than two years committed by 15 to 18-year-olds could be suspended, this is no longer the case following a recent amendment to the TMK introduced in February 2008. Mr. Eren expressed that although imprisonment of a child should be the last resort under the CRC, it is the first choice under the TMK. [53] This is a clear violation of Turkey's international human rights obligations.

Children's involvement in the demonstrations was described as usually encompassing the chanting of slogans, making the victory sign, waving illegal flags and posters supporting the PKK, and throwing stones. The throwing of stones was said to be especially common during police intervention, aimed at police vehicles.[54] Interviewees said that the throwing of stones tends to be in anticipation of expected violence from the police, with children more recently also reportedly using petrol bombs against the police.[55]

It was observed that children in İstanbul are also involved in demonstrations in a similar manner to that described in Diyarbakır and Cizre.[56] Although İHD lawyers are not automatically involved in such cases, Ms. Yoleri, Chairwoman of the İHD Branch, informed the mission that the main problem is the sheer number of cases brought against children due to their involvement in political activity. As a result, many incidents involving children being subjected to violence on the streets or in custody were said to be simply forgotten. In particular, as cases under the anti-terror law involving children over the age of 15 are dealt with by the adult courts, these children are said to become lost in the system.[57]

Children arrested in connection with demonstrations are also often tricked and threatened by the authorities, such as being told that if they inform on other children the case against them will be dropped, although this never happens.[58] Under the law the police can only establish the identity of a child but have no power to take evidence from children, as all investigations related to juveniles should be carried out by the Public Prosecutor.[59] However, interviewees stated that the police do in fact report on statements children have made in custody, which are then subsequently used in court.[60] This evidence has apparently been

[53] FFM interview with Mr. Nahit Eren, Head of Children's Rights Commission and Baris Yavuz Coordinator of Legal Aid Unit, Diyarbakır Bar Association, 18 June 2008, Diyarbakır.
[54] FFM interview with Ms. İlknur Yokuş Tanış, Head of the Women and Children Commission, Mr. Nŭrîrevan Elai, Chair, and Ms. Rüya Elai, and Ms. Dirşeng Bartan, Şırnak Bar Association, 22 June 2008.
[55] *Ibid*.
[56] FFM interview with Ms. Gulseren Yoleri, Chairwoman, İHD İstanbul Branch, 24 June 2008, İstanbul.
[57] *Ibid*.
[58] FFM interview with Ms. İlknur Yokuş Tanış, Head of the Women and Children Commission, Mr. Nŭrîrevan Elai, Chair, and Ms. Rüya Elai, and Ms. Dirşeng Bartan, Şırnak Bar Association, 22 June 2008.
[59] *Ibid*.
[60] *Ibid*.

held to be acceptable by the appeal court.[61] One interviewee also described an occasion when a child was being shown a video of a demonstration in the prosecutor's office. The prosecutor was reportedly being nice to the child, saying that it looked like fun and asking who else was there. The boy apparently revealed the names of other children because he thought it was in the context of a friendly conversation.[62]

d) Political Activism

It is important to note that Kurdish children not only have their rights violated during their arrest and detention in police custody following their alleged participation in political demonstrations, but also during the demonstrations themselves. The brutal treatment received by children, and the ensuing decisions of some to become involved in further political activity or active militancy, is vital in understanding the current position of children in the conflict.

Naivety of Children Taking Part in Demonstrations

Mr. Erbey stated that children in the bigger cities, including Diyarbakır, attend demonstrations thinking it is a game. However, when the police use water guns and tear gas to intervene, they do not discriminate between adults and children.[63]

This was a sentiment echoed by the the Bar Association in Cizre. A number of its members stated that because of the political climate, activism among children has increased in recent years. They highlighted that children's participation extends beyond their school holidays to after school hours, with some children even missing classes in order to attend. At the same time, their increased participation is a phenomenon which is said to have been matched by a marked increase in the levels of aggression exhibited by security forces against children, yet children were often said to be naïve to the dangers of their greater participation in such rallies.[64] Because children have not been exposed to external pressure in the past and have not witnessed the legal consequences of political activism, they were reportedly less wary than adults to become involved, seeing their participation in political rallies as more of a game, or a youthful dare than anything else.[65]

[61] *Ibid*.
[428] *Ibid*.
[63] FFM interview with Mr. Muharrem Erbey, Chairman, İHD Diyarbakır Branch, 18 June 2008, Diyarbakır.
[64] FFM interview with Ms. İlknur Yokuş Tanış, Head of the Women and Children Commission, Mr. Nûrîrevan Elai, Chair, and Ms. Rüya Elai, and Ms. Dirşeng Bartan, Şırnak Bar Association, 22 June 2008.
[65] *Ibid*.

Reasons for Growth in Children's Participation

The mission heard about the various factors that contribute to the large attendance of children at demonstrations, including Turkish governmental policies and the growing politicisation of the Kurdish people.

According to interviewees, not only are more children participating, but those which do are also taking a more active role as their political consciousness increases.[66] This was attributed to the conflict environment in which they live; although there was no pressure placed upon the children to take part, it was said to be easy for them to become involved as they observe what is happening around them (such as the clashes in the region), and they begin to view the state as their opponents.[67]

Cultural Attitudes and Gendered Participation

The mission was informed that the majority of children taking part in demonstrations are male, with many families said to be proud of boys who take part.[68] Conversely, if a girl takes part she was said to be likely to face serious repercussions from her family. Prevalent cultural attitudes influence the low participation of girls, who rarely participate in the demonstrations due to social structures, according to which it is not accepted for girls to be involved in public affairs. It was also said to be the case that because boys are more commonly out on the streets, it makes it easier for them to become involved in incidents.[69]

The reported age range of children taking part is from six to 18; however involvement is especially common among children aged between 12 to 18 years of age.[70] This older age group were said to motivate and direct the involvement of the younger children.[71]

Special Suspicion towards Children

Turkish authorities have consistently accused armed separatist groups of deliberately using children in the protests in order to win sympathy.[72] This is a pressing issue for children in Turkey, particularly in the context of rising tensions

[66] *Ibid*.
[67] *Ibid*.
[68] *Ibid*.
[69] *Ibid*.
[70] FFM interview with Ms. İlknur Yokuş Tanış, Head of the Women and Children Commission, Mr. Nûrîrevan Elai, Chair, and Ms. Rüya Elai, and Ms. Dirşeng Bartan, Şırnak Bar Association, 22 June 2008.
[71] *Ibid*.
[72] BBC News, 'Turkey Warns Children Off Clashes', at <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/europe/4867934.stm>, (last accessed April 2008).

in the region. This has meant that children at rallies are treated with special suspicion, as they are seen as pawns of the armed groups.

A case involving 10 children from Diyarbakır who protested Prime Minister Recep Tayyip Erdoğan's visit on 20 October 2008 was relayed to the mission. Six of the children who have now been released were detained for two months and then charged with membership of an illegal organisation (PKK). Four of these children were arrested for taking part in the protests based on statements provided by police officers, although they denied participation. According to experts, one of the other two children was not filmed on the police video, and there were serious doubts as to the identity of the other child on the film. Two children remain in detention, and four others, because they are aged 15 to 18, are being tried in front of a Special Heavy Penal Court.[73]

In addition, the change in TMK, along with a 2006 ruling of the Supreme Court of Appeal which states that participation in protests is 'a legal proof' of membership in an illegal organisation, enabled courts to treat all participants of a protest as 'members of a terrorist organisation', in cases where 'the terrorist organisation called for that protest'. According to the lawyers of the children, many were arrested purely on statements of police officers stating that they had taken part in protests and without any further evidence.[74] Allegations involve police checking the hands of bypassing children to see 'if they have marks to prove they throw stones or not.'[75]

Criminalisation of Children

Thousands of children have been on trial before Special Heavy Penal Courts since the beginning of 2008. In reply to a motion by an MP Selahattin Demirtas, the Minister of Justice Mehmet Ali Sahin revealed that 724 children have been accused of terror charges in 2006 and 2007, as defined in Turkey's Anti-Terror Law. Three hundred and nineteen of these children were tried in courts in Diyarbakır; during the same period; another 422 children were tried under Article 220 of the Turkish Penal Code for 'organising to commit crime'. Yet another 413 children were accused of 'membership of armed organisations', as defined in Article 314 of the Penal Code.[76] İHD Diyarbakır Branch report that

[73] Erhan Ustundag, Diyarbakir Police Prevents Release of Children, 26 February 2009, at <http://www.bianet.org/bianet/kategori/english/112792/diyarbakir-police-prevents-release-of-children> (last accessed March 2009).
[74] *Ibid*.
[75] Bianet 'Rights Activists React as Children Crowd Prisons' 17 February 2009, at <http://bianet.org/english/english/112634-rights-activists-react-as-children-crowd-prisons> (last accessed 12 November 2009).
[76] Bianet 'Act Now, Cease Trying Children with Terror Changes', 10 March 2009, at <http://bianet.org/english/kategori/english/113053/act-now-cease-trying-children-with-terror-charges> (Accessed 12 November 2009).

approximately 500 children aged between 12 and 17 are on trial for events that happened in 2008 alone[77] and according to 'Call for Justice for Children Initiative,' 3,000 children had been on trial by September 2009.[78] Hundreds of these children have already been sentenced to imprisonment of between six and 24 years for being members of an illegal organisation and for manufacturing propaganda.

The widespread detention of children raises serious concerns about the infringement of their right to liberty. International legal standards and Turkish Law on the Protection of Children stipulate that children should only be deprived of their liberty as a measure of last resort and for the shortest possible time. However, by using the anti-terror legislation children are detained as soon as they are brought before a judge without any other measure being taken into consideration. Some of them are kept in prison for up to one year before trial. Many children detained are between the ages of 14 and 18 years and are therefore at the most important point in their schooling years. Children who have received a prison sentence will face serious and in many cases irreparable interruption in their education if their prison sentence is upheld by the Supreme Court of Appeal.

Most children have been kept in adult prisons which can be detrimental to their social and psychological development. Malik Ecder Özdemir, MP for the Republican People's Party visited around 20 children aged 14-17 who have been detained in Cizre and kept in Diyarbakır prison for more than a year. Mr. Özdemir stated that:

> There are 20 children staying in a cell made for 5-6 people. They have been separated from their families and their education has been interrupted. They have been taken to court two to three times, their statements have been taken, their identities were verified, and then they were sent back to prison. As this trial is taking so long, it is difficult for these children to believe in justice.[79]

As a result of extensive campaigning by the Call for Justice for Children Initiative which is supported by many national civil society bodies, the government has introduced a new proposal to change Articles 5, 9 and 13 of the Anti-terror Law, but its submission and debate in Parliament has been indefinitely delayed.

---

[77] Bianet 'AKP and CHP Promise Change in Terrorism Law for Children' 19 February 2009, at <http://bianet.org/english/english/112659-akp-and-chp-promise-change-in-terrorism-law-for-children>, (last accessed 12 November 2009).

[78] Bianet '31 Children Tried under Charges of Terrorism',3 September 2009, at <http://bianet.org/english/english/116821-31-children-tried-under-charges-of-terrorism> (last accessed 12 November 2009).

[79] Bianet 'One Child Dead, His Friends in Prison- Justice?', 30 January 2009, at <http://bianet.org/english/kategori/english/112235/one-child-dead-his-friends-in-prison-%E2%80%93-justice> (last accessed 24 March 2009).

However the new proposal has been criticised on the grounds that these amendments will 'fail to protect children as long as other additional amendments in Turkish Penal Code and Anti-terror Law is not included in the proposal.'[80] In the Initiative's press release, they called on the government to make amendments on Articles 5, 9 and 13 of the Anti-Terror Law and to also amend Article 2 of the Anti-terror law, Article 220/6 of the Turkish Penal Code and Article 33 of the Law on Assembly and Demonstration. [81]

Lack of Measures for Children

Of particular concern to the authors is that the active participation of children in demonstrations does not prevent or deter violence between demonstrators and security forces. Furthermore, the authors are disturbed by the failure of state actors to account for the presence of children in their preparation and handling of public demonstrations.

One example given to the mission regarded the death of a 17-year-old boy who was run over by a police vehicle during protests on 15 February 2008. It was highlighted that more children could in fact have been killed or injured given that the vehicle had been moving speedily amongst a crowd comprising a large number of children. In this case, reportedly due to the high level of public outcry, the state hospital's report accurately identified that the boy was run over by a heavy object and that this was the cause of death. This was in apparent contrast to an earlier official statement that suggested a stone thrown by other demonstrators had killed the child. The body was subsequently sent to a hospital in Malatya, and the autopsy report confirmed the state hospital's conclusion. However at the time of writing, the investigation into the incident remains suspended.

State officials suggest that children get involved in and are at the front of demonstrations as a matter of design, in order to paint the authorities in a bad light when they respond against protestors. Yet according to those interviewed, it is a hatred of the state that leads to a genuine desire among children to participate in, and indeed push themselves forward during rallies; this itself fuelled by incidents such as the death of a friend and the treatment they receive at the hands of the state authorities vis-à-vis the conflict.[82]

---

[80] Fair Play for Children 'Planned reform not enough to save children, experts say' 26 October 2009, at <http://www.fairplayforchildren.org/index.php?page=HTML_News&story_id=2780>, (last accessed 12 November 2009).

[81] Diyarbakır Bar Association, Press Release, 15 November 2009, at <http://www.Diyarbakırbarosu.org.tr/modules.php?name=News&file=article&sid=132&mode=thread&order=0&thold=0>, (last accessed 15 November 2009).

[82] FFM interview with Ms. İlknur Yokuş Tanış, Head of the Women and Children Commission, Mr. Nûrîrevan Elai, Chair, and Ms. Rüya Elai, and Ms. Dirşeng Bartan, Şırnak Bar Association, 22 June 2008.

The riots of March 2006, provides another example of the degree of violence present at these demonstrations. Three children aged under-10 died (two of them from gunshot wounds),[83] another five teenagers were killed, and a further 500 people were wounded. During and after the riots, 180 under-18's were reportedly detained.[84] Both international and local observers were shocked when the Turkish government's heavy-handedness came through so boldly in the Turkish Prime Minister's statement of that week, which said that Turkish security forces would act against women and children who he said were being used as 'pawns of terrorism'.[85]

The role of children in the violence which swept the region in 2006 was noted in a *Guardian* report that told the story of Sevder. This 17-year-old Kurd—allegedly because of the deprivation he had suffered throughout his life and having witnessed the shootings of his schoolmates by Turkish security forces—had become involved with PKK activity.[86] Moreover, he was also said to be 'seething' because of vulgar taunts his mother and sisters had received from Turkish police, and the stories of family and friends of forced displacement.[87] *The Guardian* report uses Sevder as an example of what the author described as a new wave of militancy among young Kurds in Turkey. The article quoted lawyer Sezgen Tanrikulu as saying, 'there is a different generation now in Diyarbakır' and that '[t]hese youths are aged 14 to 20. They've grown up in this place feeling they don't belong. We can't communicate with them.'[88] The brutal response of the Turkish authorities in March 2006, during a 48-hour clash between Kurdish protestors and the security forces were described as an 'effective recruitment drive for the PKK.'[89] Another young Kurdish youth Cevat was quoted as stating, 'we're fed up of the discrimination. It doesn't have to be like this' and that 'every time they do something like this, more people go into the mountains.'[90] The latter phrase referred to joining the PKK fighters, estimated in the article to number around 5,000, in their bases nearby northern Iraq. The author reported that an estimated 100 local youths had gone into the mountains in the month of May 2006 alone.

[83] Story from BBC NEWS at <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/europe/4867934.stm>, published: 2006/04/01 17:58:47 GMT (last accessed April 2008).
[84] Traynor, Ian, 'Children of the Repression: Turkish Kurd Teenagers Turn to the PKK After Enduring Years of Brutality,' Guardian, 5 June 2006, available at <http://www.guardian.co.uk/world/2006/jun/05/turkey.iantraynor> (last accessed March 2008).
[85] Story from BBC NEWS at <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/europe/4867934.stm>, published: 2006/04/01 17:58:47 GMT (last accessed April 2008).
[86] Traynor, 'Children of the Repression'.
[87] *Ibid*.
[88] Traynor, 'Children of the Repression'.
[89] *Ibid*.
[90] *Ibid*.

The growing politicisation of children in south-east and eastern Turkey is related to various factors. A long-term source of resentment is the active level of state violence against Kurdish minorities which has played a fundamental role in the disenfranchisement of Kurds. Ian Traynor reports in *The Guardian* article of 5 June 2006 that the Turkish electoral system is structured to keep the Kurdish nationalists out of parliament in Ankara. A party needs 10 per cent of the national vote to enter parliament. The pro-Kurdish DTP, which gained 45 per cent of the vote across much of the south-east in the last election in 2002, cannot obtain 10 per cent nationally. This absence of political channels has resulted in the resort to violence. The article concludes that 'the children of Diyarbakır are growing up to swell the ranks of the 'terrorists'.' Although DTP MPs did end up entering parliament after running as independents, the party was recently outlawed, and the 10 per cent rule remains an in tact barrier to real representation.[91]

Children aged 11 and under who participate in demonstrations are usually admonished on the street but not imprisoned, though not always. However, older children reportedly receive worse treatment at the scene of the demonstrations. On a number of occasions, children have been the victims of physical assault and water cannons are often used.[92] If these older children are arrested and detained they may fall victim to ill-treatment or even torture. The severity of the violence inflicted was stated to have been affected by the recent military operations. The level of aggression or violence committed against children reportedly tends to increase if there have been recent deaths of soldiers.[93]

As mentioned already, protestors suffer violence at the hands of Turkish authorities during demonstrations, but also go on to be subject to continuing harsh treatment in detention. Those who are incarcerated often face more abuse under difficult prison conditions. According to a report from the Diyarbakır Bar Association, which is based on witness statements and medical reports, all of the children detained were subjected to severe abuse in detention.[94] The report says, 'mistreatment and illegal torture was applied. The unlawful behaviour of the police lent a new dimension to the situation'. The teenagers said they had been repeatedly beaten, threatened with death and rape, stripped naked, immersed in cold water, subjected to high pressure hosing and had cigarettes stubbed out on their bodies.[95]

[91] *Ibid*.
[92] FFM interview with Ms. İlknur Yokuş Tanış, Head of the Women and Children Commission, Mr. Nûrîrevan Elai, Chair, and Ms. Rüya Elai, and Ms. Dirşeng Bartan, Şırnak Bar Association, 22 June 2008.
[93] *Ibid*.
[94] Traynor, 'Children of the Repression'.
[95] *Ibid*.

Another problem that arises due to the political situation was particular to Cizre. The mission was informed that a number of landmines and other weaponry have been left lying around in the countryside around the villages, and many children have reportedly died or lost limbs as a result of finding unexploded weaponry lying around.[96] The mission was surprised to hear that little had been done by the state to address this pressing concern.

The attention of the mission was also drawn to a number of cases of suicide that have occurred involving 15, 16 and 17-year-old children, where it is believed that the reasons related to growing in a conflict situation.[97] Mr. Erbey explained that displacement changed their life; their socio-economic situation worsened causing them to live in poverty; they were unemployed and had limited access to social services. These factors and the ongoing conflict created pressure both from wider society and their immediate families that became too overwhelming. Families often force girls to enter into marriage because of this low living standard. [98]

e) Legal Harassment

Ms. Yoleri, Chairwoman of İHD Branch in İstanbul, and other members of her staff told the mission that the social and economic circumstances of Kurdish children lead them to become more involved in crime and gang culture, and thus increasingly brings them into contact with the criminal justice system.[99] It was strongly submitted by the interviewees that the Turkish courts award heavy sentences for children charged with various crimes, without taking any account of the fundamental underlying problems or looking for ways to approach meaningful reform.

İHD observed that in İstanbul, cases regarding children between 15 and 18 are sometimes joined with those of adults and that this had occurred in cases involving children as young as 14.[100] Further, a key problem identified is that although children have to be compulsorily assigned a lawyer, İHD only has the right to assign the lawyer if there have been incidents of torture or other ill-treatment. It is often difficult for allegations of this type to be substantiated, as doctors are reportedly afraid of the repercussions of telling the truth in their medical reports, or medical reports are delayed.[101] The issue appeared to be one of time as there appeared to be nothing the İHD could do if the child had been released and if the child was not seen by medical staff quickly enough or

[96] FFM interview with Mr. Muharrem Erbey, Chairman, İHD Diyarbakır Branch, 18 June 2008, Diyarbakır.
[97] *Ibid*.
[98] *Ibid*.
[99] FFM interview with Ms. Gulseren Yoleri, Chairwoman, İHD İstanbul Branch, 24 June 2008, İstanbul.
[100] FFM interview with Ms. Gulseren Yoleri, Chairwoman, İHD İstanbul Branch, 24 June 2008, İstanbul.
[101] *Ibid*.

evidence of beatings or other violence had been ignored. It was asserted that if a child comes to the organisation claiming s/he was the victim of torture or violence, they write reports and try to follow the case, and they also collaborate with the Foundation for Social Health to obtain medical reports. However, the lengthy passage of time often means that little can actually be done.[102]

The mission also met with members of the Prisoner's Family Association and the parents of two children who were currently detained in custody.[103] The first was a 16-year-old boy who was arrested on 10 March 2008 in İstanbul, after being caught in possession of a sound bomb (a device that when activated makes a loud noise) that he allegedly intended to detonate near a police vehicle. At the time he was apparently with four friends who were all over the age of 18. They were sitting in a park carrying the package containing the sound bomb when police saw them. They fled and the officers chased and shot at them until they were eventually captured. During the first 48 hours that the boy was held in custody, his family reportedly had no idea where he had gone, and it was only after the family was eventually informed that they were able to send him a lawyer. Not until the lawyer first gained access to the child did the family then discover that he had been sent to a police station on the other side of town from where they had been told he was being held. The family tried to visit the child at this point but were refused access and had to wait three days to see him.[104]

The mission met with the family of a child who had been arrested in İstanbul. At the time the boy was arrested he was 17 years old, however, he is now 18. They did not know the exact date of his arrest but stated that it was about seven months prior to the interview, which took place on 24 June.[105] It was stated that the boy's phone calls were being intercepted by the police because he was alleged to be working for the DTP election office. According to his defense lawyers, the boy was allegedly calling friends on his phone from this office asking them to bring water and other items.[106] In the indictment against him the police reportedly stated that these requests were coded messages for other items such as gas or petroleum. Further, it was alleged that his phone held political pictures and music that amounted to illegal propaganda.[107] The family was at home on a Sunday morning when the police suddenly arrived and took the boy away. It was stated that the rest of the family were taken to another room, and

[102] *Ibid*
[103] FFM interview with staff of Tutuklu Aileleri İle Dayanişma Derneği (TUAD), Prisoner's Families Association, and members of families with a child in detention, 24 June 2008, İstanbul.
[104] FFM interview with staff of Tutuklu Aileleri İle Dayanişma Derneği (TUAD), Prisoner's Families Association, and members of families with a child in detention, 24 June 2008, İstanbul.
[105] FFM interview with staff of Tutuklu Aileleri İle Dayanişma Derneği (TUAD), Prisoner's Families Association, and members of families with a child in detention, 24 June 2008, İstanbul.
[106] *Ibid*.
[107] *Ibid*.

that the younger children were crying, but that the brother was refused access to a glass of water to help calm them.[108] The child also has a nickname that the family use, which is not his official name on his ID.[109] When he was taken into custody the family referred to him by his nickname. The indictment apparently alleged that this nickname was a terrorist code name.[110]

The ease with which court cases are brought forward on the basis of evidence that is little and of dubious quality, was observed by Mr. Coban, Chairman of Mazlumder. He outlined that the Heavy Criminal Courts always starts cases brought to their attention in respect of political crimes, regardless of the amount and quality of evidence brought before them.[111] This over-readiness to open cases despite the fact that they do not always result in a conviction, and the ensuing investigation, is a form of harassment in itself as it results in psychological pressure, especially given the length of time such cases take to reach the court.[112] Further, Mr. Coban stated that decisions taken by the Heavy Criminal Courts involving political crimes are subject to an invisible external pressure from the army and security forces, which means that they are not impartial.[113]

Mr. Coban informed the mission that he has 14 clients linked with the events on and after 28 March 2006.[114] Although during that time 12 Kurdish people were killed by police officers, no-one has ever been prosecuted. On the contrary, there was chaos in the town with the police 'picking people off the streets,' including some children who were not involved in the demonstrations. Banks were attacked and windows of shops smashed, and the children were accused of committing these acts, but they deny the charges. Once the children had been arrested they were held in a basketball court at a sports centre.

The members of the mission were also part of a team that observed a trial in Diyarbakır on 19 June 2008.[115] The hearing observed related to charges brought against three children under the age of 18 who were charged under the anti-terror legislation for singing a Kurdish song (allegedly adopted as the march of the PKK and sung in front of a PKK flag) at a folk music festival in San Francisco in October 2007. Prosecutors had filed charges against the children under Article 7/2 of the Anti-Terror law, which governs the production of propaganda for a

[108] *Ibid*.
[109] *Ibid*.
[110] *Ibid*.
[111] FFM interview with Mr. Selahattin Coban, Chairman, Mazlumder, 19 June 2004, Diyarbakır.
[112] *Ibid*.
[113] *Ibid*.
[114] *Ibid*.
[115] A Children's Choir Face Terrorism Charges: Juveniles in the Turkish Justice System, Trial Observation Report, KHRP, London, 2008.

terrorist organisation. These three children were over the age of 15 and therefore tried as adults in an adult court. A further six children charged in connection with the same incident were under the age of 15 and so were tried by a children's courts. The three older children were acquitted on 19 June 2008 and the six younger children were acquitted on 3 July 2008. KHRP delegates, who were the only international observers present at the proceedings at the Diyarbakır Heavy Crimes Court, noted that the environment was clearly intimidating and wholly inappropriate for a trial involving minors. The majority of the court's other cases involved security charges, including alleged drug-trafficking and weapons-handling. A number of other concerns were registered with regard to court procedure. The three children were eventually acquitted after it was ruled that they had not intended to commit the crime of which they were accused. Despite the acquittal, KHRP is deeply concerned that such a trial should have occurred in the first place and that the grounds of acquittal failed to acknowledge the spurious nature of the charges themselves.

In addition to the heavy handed approach to justice, according to Mr. Coban, all his clients were badly beaten, with some were bleeding from their ears.[116] Mr. Coban wrote to the prosecutor to report the ill-treatment, who replied saying that it was not his business but was rather a concern for a doctor.[117] Although the injuries were allegedly clearly visible, medical reports are said to have found no evidence of ill-treatment. However, Mr. Coban took both pictures and testimony from his clients regarding their experiences.[118] All 14 of his clients from the 2006 riots were between the ages of 15 and 18 at the time of the incident.[119] Initially the Children's Court dealt with the case. However, the nature of the charges was changed so that they were then accused with political crimes. Thus, the Children's Court then held that it had no jurisdiction over the case. The children were held in custody during the first four months, during which time the case was under the jurisdiction of the Children's Heavy Criminal Court. However, the case was still ongoing at the time of writing and, even though Mr. Coban believes that there is no concrete evidence against the children, he stated that he expects at least some of the 14 to be convicted. This is because in his view adults and children are convicted regularly despite a lack of concrete evidence.[120]

The charges which are brought against many of these children and the ease with which they are convicted present a worrying situation. In 2008, 228 children were convicted on anti-terror related charges according to the provisional number given by the Turkish Minister of Justice in the Grand Assembly in December

[116] FFM interview with Mr. Selahattin Coban, Chairman, Mazlumder, 19 June 2004, Diyarbakır.
[117] *Ibid*.
[118] *Ibid*.
[119] FFM interview with Mr. Selahattin Coban, Chairman, Mazlumder, 19 June 2004, Diyarbakır.
[120] *Ibid*.

2009. By the end of October 2009, 103 children in Adana alone were convicted for being members of, and making propaganda for, an illegal organisation,[121] (corresponding figures for İstanbul, Cizre and Diyarbakır were unavailable). The fact that many children are tried and convicted as adults is a gross violation of their rights as children. The ensuing psychological and social impact of this abuse of their rights will undoubtedly represent a major social challenge to the Turkish state in future.

f) Physical and Mental Abuse

Ill-treatment inflicted against the children in detention was stated to be rendered more likely in the high security zones or when children are held under anti-terror charges. Most instances of abuse occur during the first 24 hours when s/he does have access to legal representation.[122] Further, in the high security zones and with the 2006 amendments to the TMK, police powers have increased considerably, especially in relation to which powers they can employ to control demonstrations.[123]

There have been increased allegations of torture or ill-treatment of street children detained by police. A report by the International Helsinki Foundation for Human Rights noted in its 2006 Annual report that:

Turkish human rights organisations stated that the safeguards provided by the government were not always respected in practice by the security forces despite progressive improvement. Torture and ill-treatment occurred particularly in the southeast, but disadvantaged groups including the IDPs, Roma and children in the poorer sections of bigger cities were particularly vulnerable to torture and ill-treatment. Political detainees still risked torture.[124]

Ms. Yoleri of İHD told the mission that street children and other children held in custody are often subjected to ill-treatment and torture.[125] An example was given of 15 IDP children who were sitting in a park when officers requested to see their IDs. As they did not have them they were allegedly taken to the local police station and tortured.[126] This was but one example of seemingly trivial incidents that can result in children becoming the victims of torture.

---

[121] Gündem Online 'Adana'da 103 çocuğa 475 yıl hapis cezası', 23 October 2009, at <http://www.gundem-online.net/haber.asp?haberid=80559>.
[122] FFM interview with lawyer, Mr. Rojhat Dilsiz, 23 June 2008, Cizre.
[123] *Ibid*.
[124] International Helsinki Federation for Human Rights Annual Report 2006 – Turkey, p440, at <http://insanhaklarimerkezi.bilgi.edu.tr/source/turkce/4.2.5.4/International%20Helsinki%20Federation%20For%20Human%20Rights-Annual%20Report%202006-Turkey.pdf>.
[125] FFM interview with Ms. Gulseren Yoleri, Chairwoman, İHD İstanbul Branch, 24 June 2008, İstanbul.
[126] *Ibid*.

The ease with which children are convicted of political crimes is evident in the mistreatment of Kurdish children during the incidents which took place in Diyarbakır in March 2006. A total of 34 preparatory investigations were launched against police officers. The Diyarbakır Bar Association has stated that although officials have previously promised a zero tolerance policy against torture, and that there has been a decrease in the number of reported incidents during the EU accession period, the incidents reported following the Diyarbakır disturbances shows that the promises made were not sincere. During the disturbances 213 children were initially detained, 94 of whom were then arrested. A majority of the children placed in custody were allegedly subjected to mistreatment and torture.[127] It is believed that further amendments to the law are unlikely to prevent such occurrences. Rather, more preventative measures must be taken and the culprits must be held accountable. Although the children were released after 62 days in detention, there was much discussion about why they were held for such a long period, especially without any trial which violates their special rights as children.[128]

Another example can be drawn from the aftermath of the protests that occurred in the south-eastern cities of Hakkari, Siirt, Van, and Yuksekova after local authorities refused to permit traditional Newroz celebrations earlier in 2008.[129] There were widespread allegations of use of excessive force and ill-treatment by police officers in clashes that left three people dead.[130] A large number of people, including some police officers, were also reportedly injured during the demonstrations.[131] After demonstrations on the 22 March in Hakkari a 15-year-old boy was arrested by police.[132] He was apparently ill-treated during and after his arrest and was charged with offences including resisting arrest and making propaganda for a terrorist organisation. Television footage apparently shows plainclothes police officers injuring his arm while he was under their control and not resisting arrest.[133] He was the subject of an Amnesty International appeal for urgent independent medical examination and appropriate treatment.[134] This call followed official medical reports that had apparently not found his arm to be seriously injured. Concerns for his health were heightened by reports that after he was taken into police custody, he was punched, slapped and verbally abused by police officers. Such alleged incidents highlight the ongoing concerns regarding the treatment of Kurdish children by the Turkish legal system.

---

[127] Bia news centre, Kemal ÖZMEN, 01-06-2006'All Diyarbakır Child Prisoners Released'; 'Torture Investigations in Diyarbakır, at <http://bianet.org/english/kategori/english/79870/all-diyarbakir-child-prisoners-released>.
[128] *Ibid*.
[129] Gündem Online, <http://www.gundemonline.org/haber.asp?HaberId=49576 (last accessed 10 October 2008)>.
[130] Gündem Online, <http://www.gundemonline.org/haber.asp?HaberId=49576 (last accessed 10 October 2008)>.
[131] *Ibid*.
[132] *Ibid*.
[133] *Ibid*.
[134] Amnesty USA, <http://www.amnestyusa.org/index.html>, (last accessed April 2008).

The fact-finding mission found that these allegations were not uncommon. A specific example of children's interaction with the juvenile justice system was related by Mr. Dilsiz, a lawyer in Cizre, who informed the mission about events that took place on 15 February 2008, amid protests to mark the anniversary of the capture of Abdullah Öcalan.[135] The protests reportedly continued until 20 February, during which time 85 adults and 25 children were arrested and detained in custody for three days.[136] Mr. Dilsiz represents all 25 of the children.[137] He informed the mission that although Turkish law states that children cannot be held alongside adults (and should this be the case, then children cannot be arrested or held), the children detained were reportedly held with adults due to the insufficient capacity of the prison.[138] When the lawyers objected to this the children were sent to Diyarbakır. The children's parents were subsequently said to have become angry with the lawyers because it meant they could not visit their children.[139] It was stated that it is only children arrested under the anti-terror law who are sent to Diyarbakır, while children charged with general crimes continue to be held with adults.[140]

Mr. Dilsiz also detailed that initially on 15 February eight children were detained and beaten very badly. These were the children who had witnessed the death of the boy mentioned earlier in this report, who had been run over by security forces. They were allegedly the victims of verbal assaults, and some were said to have suffered broken noses and other injuries. They were also threatened with sexual abuse, being told that they would be raped that night. The rest of the children were detained during the protests taking place over the following days. These children also allegedly suffered ill-treatment, although it was of a less severe nature than the initial eight children.[141] The police have stated that the injuries identified in the medical report were inflicted when the children were resisting arrest.[142] It was again highlighted to the mission that often doctors are too afraid to state in medical reports that the children are suffering from visible injuries.[143] Further, due to lack of modern technology at the hospital many internal injuries are not diagnosed even when children are actually assessed.[144]

Mr. Dilsiz said he had made a complaint to the prosecutor's office about the treatment of his clients and that after this the treatment of the children improved.

[135] FFM interview with lawyer, Mr. Rojhat Dilsiz, 23 June 2008, Cizre.
[136] *Ibid*.
[137] *Ibid*.
[138] FFM interview with Ms. İlknur Yokuş Tanış, Head of the Women and Children Commission, Mr. Nûrîrevan Elai, Chair, and Ms. Rüya Elai, and Ms. Dirşeng Bartan, Şırnak Bar Association, 22 June 2008.
[139] *Ibid*.
[140] *Ibid*.
[141] FFM interview with lawyer, Mr. Rojhat Dilsiz, 23 June 2008, Cizre.
[142] *Ibid*.
[143] *Ibid*.
[144] *Ibid*.

However, the case was dismissed and the mission was informed that this is nearly always the case.[145] It was explained to the mission that in such instances, often the officers who commit the beatings are not local but are brought in from outside to help control the demonstrations, making it difficult to identify them.[146] The riot police brought in for this demonstration stayed for seven days and were accused of committing the worst acts of violence towards the protestors and the children in detention.[147] Mr. Dilsiz stated that after the complaint was made the ill-treatment did not stop, but only became less severe and officers made more effort to avoid leaving any marks.[148] The children being held in prison are all aged between 15 and 18. However, the mission was informed that several children under the age of 15 were detained during the protests. Although they were released without charge they were also allegedly the victims of ill-treatment, and Mr. Dilsiz said he had made complaints regarding the treatment of all the children.[149]

Mr. Dilsiz informed the mission that he has been providing training seminars to the recruits of a private security firm, and had informed them about their obligation to protect civil liberties. However he said that the recruits replied that police officers who had also provided them with training had informed them that they can do whatever they like as long as they do not break any bones.[150] This was the kind of behaviour exhibited towards children following the Newroz celebrations. Mr. Dilsiz recounted a case involving 18 children who were arrested following the festival on 21 March 2008.[151] As the incident occurred after a complaint about ill-treatment had already been made following the incidents in February (described above), the treatment of this second group of children was reportedly less severe. However although no bones were broken, they were still allegedly beaten up and subjected to verbal abuse and threats.[152]These children have also been charged under Article 7/2 of the anti-terror law.[153] Further, he anticipates that this case will also be delayed so that the children will have served their sentences prior to the verdict being established.[154]

g) Incarceration and Mistreatment

Allegations of heavy-handedness towards children have resurfaced in desk research as well as during the course of the mission. In addition to the abuse

[145] *Ibid*.
[146] *Ibid*.
[147] *Ibid*.
[148] FFM interview with lawyer, Mr. Rojhat Dilsiz, 23 June 2008, Cizre.
[149] *Ibid*.
[150] FFM interview with lawyer, Mr. Rojhat Dilsiz, 23 June 2008, Cizre.
[151] *Ibid*.
[152] *Ibid*.
[153] *Ibid*.
[154] *Ibid*.

facing children when they are arrested, are the conditions in which they are imprisoned. Children held for both political and non-political crimes are allegedly subject to ill-treatment, although the treatment of the former is said to generally be more severe.[155] Interviewees stated that children are often beaten, although officers are careful not to leave marks.[156] They are also allegedly insulted, sworn at, threatened and often kept waiting for hours.[157]

Returning to the case described in the previous section, this was transferred to a lawyer in Diyarbakır, and has also been the subject of a report produced by two lawyers the mission met with there, Mr. Muharrem Sahin and Mr. Fuat Cosacak.[158] This report followed interviews conducted by the lawyers with the children in prison in Diyarbakır on 11 June 2008. The report details the accounts given by the children to their lawyers about the treatment they were subjected to in Cizre. The content of the report was described to the mission by Mr. Muharrem Sahin and Mr. Fuat Cosacak.

According to this account, during the initial arrest the children were deprived of food and water and refused access to the toilet for long periods or not allowed to use it at all. They were woken during the night under the pretext of feeding them. They were also required to stand for two to three hours at a time at five o'clock in the morning. They were required to stand facing the wall whilst being bludgeoned by police. One child is stated in the report to have been sexually assaulted by police officers. When some of the children arrived at Cizre prison at midnight they were reportedly left wearing only their underwear outside in the cold for approximately two to three hours. During the transfer to Diyarbakır prison they were allegedly deprived of water, subjected to abusive language and, in at least one case, slapped. Another child was allegedly beaten with a belt and had his tooth broken by an officer thought to be a specialist sergeant from Diyarbakır E-Type Prison Gendarmerie. On arrival at the prison the children were apparently stripped and kept waiting naked for a long time in the prison's garden. The children were said to suspect that another child in the prison was being used to inform on their activities during their imprisonment.[159]

It was also reported by the children that one of the officers had been using insulting language towards the children and talking to them about subjects of a sexual nature.[160] The example given was that he asked the children if they knew how to masturbate. One incident reported was that he rubbed against one of the

[155] FFM interview with Ms. İlknur Yokuş Tanış, Head of the Women and Children Commission, Mr. Nûrîrevan Elai, Chair, and Ms. Rüya Elai, and Ms. Dirşeng Bartan, Şırnak Bar Association, 22 June 2008.
[156] *Ibid*.
[157] *Ibid*.
[158] FFM interview with lawyers Mr. Muharrem Şahin and Mr. Fuat Coşacak, 21 June 2008, Diyarbakır.
[159] FFM interview with lawyers Mr. Muharrem Şahin and Mr. Fuat Coşacak, 21 June 2008, Diyarbakır.
[160] *Ibid*.

children's sexual organs with his baton and used expressions, such as 'are you someone who gives his ass.' Another child who had been taken to hospital was allegedly beaten on more than one occasion by police officers.[161] At the time of writing, all of the children had been charged under the anti-terror law with disseminating propaganda; some had been released pending trial and some had been convicted. It took more than three and a half months before a case was opened against them because the prosecutor in Cizre had not sent his report about the incidents to the prosecutor's office in Diyarbakır; these reports are supposed to be sent within 15 to 20 days. Mr. Dilsiz, the lawyer who acted for the children in Cizre, stated that the purpose behind such a delay is the fact that under Article 7/2 of the anti-terror law, which covers disseminating propaganda, the maximum sentence is four months. The trial is expected to take place sometime in July. By the time the trial is completed the children will have served the sentences and can be released regardless of whether their guilt is established. In the view of Mr. Dilsiz sentences are being imposed pre-emptively, undermining the children's right to a fair trial.[162]

Mr. Dilsiz informed the mission that in the examples given, the police reports contained testimony obtained unofficially during the children's detention.[163] As this has been held to be acceptable evidence, he has made a complaint to the prosecutor's office, which he believes is highly unlikely to work.[164] He has also made a complaint to the Ministry of Justice, which apparently sends investigators sometimes. However, he did not anticipate an outcome that would prevent the use of such evidence.[165] Further, he also elaborated that during questioning, the police often employ a 'good cop, bad cop' approach.[166] Thus, some will threaten and abuse the children while others will be friendly, telling them that if they admit what they have done and tell them who else was involved they will not be in trouble.[167]

In İstanbul, the mission encountered similar experiences from the conditions of incarceration. In an interview in İstanbul with lawyers and the family of a child in detention, the child had reportedly informed his lawyer that during the first four days that he was held he was given no food or water, and that he was subjected to torture.[168] It is alleged that he was not allowed to sit or sleep, and that he was beaten. During this time he was apparently also continually

[161] *Ibid*.
[162] FFM interview with lawyer, Mr. Rojhat Dilsiz, 23 June 2008, Cizre.
[163] *Ibid*.
[164] FFM interview with lawyer, Mr. Rojhat Dilsiz, 23 June 2008, Cizre.
[165] *Ibid*.
[166] *Ibid*.
[167] *Ibid*.
[168] FFM interview with staff of Tutuklu Aileleri İle Dayanişma Derneği (TUAD), Prisoner's Families Association, and members of families with a child in detention, 24 June 2008, İstanbul.

interrogated by security forces.[169] After this period he was taken before a court for heavy crimes and then sent to Bayrampaşa prison.[170] In this prison the situation of the child was described as having improved because there was not as much ill-treatment committed against him here.[171] However, he was subsequently moved to Maltepe prison on the other side of İstanbul after the first prison was closed down. This meant that for the family to visit the boy it would take about three hours and they would have to change vehicles five times.[172] Further, it was stated that the child's situation had worsened since the move.

The parents had seen their child three weeks prior to the interview and described him as being in a very bad way. He had allegedly been badly beaten and had lesions and other marks of torture on his body. This reportedly led to him joining a hunger strike with other prisoners, which resulted in the prisoners being held in isolation.[173] All of the 10 prisoners involved in the strike were said to have been charged with political crimes and were all aged between 15 and 18. On 20 June the Prisoner's Family Association had released a public statement about the treatment they were receiving and after this they ended the hunger strike.[174] The strike was precipitated by the fact that the political prisoners had refused to take part in a head count. The officers had then allegedly attacked them and placed them in isolation.

During the hunger strike, the father was able to visit his son for five or six minutes. After this meeting, both parents visited him in prison.[175] However, during this second visit, there was a glass screen between them and their child and they had to communicate by telephone.[176] The mother can only speak Kurdish so when she began to speak Kurdish on the telephone the wardens were said to have cut off the line. Even though the mother explained she could not speak Turkish and cried out for the child, the visit was apparently ended.[177] The last time they saw the child before the mission met with them was on 19 June 2008. The father was able to say two or three words in Turkish but again the mother was cut off for speaking Kurdish. They described their son as having lost a lot of weight, in a very bad physical condition and as having a black mark under his eye. However, they were given no opportunity to discover if he had

[169] *Ibid*.
[170] *Ibid*.
[171] FFM interview with staff of Tutuklu Aileleri İle Dayanişma Derneği (TUAD), Prisoner's Families Association, and members of families with a child in detention, 24 June 2008, İstanbul.
[172] *Ibid*.
[173] *Ibid*.
[174] FFM interview with staff of Tutuklu Aileleri İle Dayanişma Derneği (TUAD), Prisoner's Families Association, and members of families with a child in detention, 24 June 2008, İstanbul.
[175] *Ibid*.
[176] *Ibid*.
[177] *Ibid*.

been badly treated or received medical treatment.[178] Although he has been held since March 2008, the trial was not set to begin until 1 September 2008. By this time he would have been held for nearly six months, even though the indictment had already been released.[179] At the time of writing, there had been no update on this situation. Although the children are held separately in a children's prison, the torture they are allegedly subjected to is said to make this segregation irrelevant.[180]

In May 2010, the Diyarkabir Bar Association protested to the prison management against prison conditions, as the arrested children have found broken glass, nails and hair in their food[181]. Many children have suddenly fallen ill with infections. Their exercise, food and rest breaks and other prison activities get suspended. The prison management has punished 31 children by sending them to five different prisons, which made it impossible for their parents to visit them. Since the end of May some twenty parents have been protesting outside the prison in Diyarkabir because they do not have the money to visit their deported children.
The conditions of detention and separation from family reportedly can and has resulted in acute and prolonged mental stress of the children can cause various mental disorders (post-traumatic stress disorder, depression, anxiety and phobias).

The current judicial practices relating to these children, which are contrary to both international and domestic law, tend to be ignored by the bar associations in Turkey.[182] It has been reported that children victimised by the Law on Struggle against Terrorism are facing 'systematic psychological torture and that many of the psychologists working at the prisons address these children as terrorists and act improperly in terms of professional ethics.' 'These children were successful students in good schools before they were put in prisons. However, they will come out of these prisons as terrorists fighting in the mountains. This is exactly the result of the strategies of the ones who benefit from such a war[183].

On 9 June 2010, three children between ages 14 to 16 were sentenced to 11 years and 5 months in prison by the Adana 6th High Criminal Court on the grounds that they had 'committed crimes on behalf of an organisation' and 'making propaganda for an illegal organisation'. Their crime was to participate in a

[178] *Ibid*.
[179] FFM interview with staff of Tutuklu Aileleri İle Dayanişma Derneği (TUAD), Prisoner's Families Association, and members of families with a child in detention, 24 June 2008, İstanbul.
[180] *Ibid*.
[181] Open Letter of Kurdocide Watch, 13 June 2010
[182] Lawyer Filiz Kerestecioglu, a member of the Istanbul Bar Association and the editorial director of the periodical Contemporary Law and Justice gave a talk on a press conference of the NGO Justice for Children on 7 June 2010, Newsletter of Justice for Children
[183] Psychologist Ayusegul Akyaprakli quoted in Open Letter of Kurdocide Watch, 13 June 2010

demonstration on February 12 in Ceyhan-Adana, a charge they deny. According to their lawyers Vedat Ozkan and Ibrahim Cagdas Bozdoğan, there is no conclusive evidence against the children and the only evidence given is the police officers' statements, which are not be used as evidence according to the related law.[184]

1.5 Hate Crimes in Turkey / Attacks on people of ethnic minorities

KHRP continues to receive numerous reports of attacks against people of ethnic minorities (people of both Kurdish and Roma ethnic background). Many of the attacks are carried out by Turkish citizens with strong nationalistic views. Legal sanctions for such attacks are often either too weak or non-existent. KHRP has received reports that when the police become aware of such incidents instead of launching an official investigation they often wait until a complaint is made by a victim. Such complaints are often not made as victims don't want to exacerbate an already tense situation.

On 15 October 2009, a group of 10 people attacked Halis Çelik on a mini-bus for speaking on the phone in Kurdish. The incident took place in the province of Sakarya. The group told him to speak in Turkish, the language of the country. Due to the injuries Çelik sustained he was unable to work for 15 days. Instead of launching a police investigation into those who caused his injuries, Halis Çelik was instead subjected to an investigation by the police as a result of complaints made against him by four of the alleged attackers.

On 26 October 2009, in the Edirne İpsala's Karpuzlu district, Ümit Baran and his two brothers were physically attacked in a market place because his mobile phone ring tone was a Kurdish melody. Although this attack was reported to the police it is believed that his attackers were not prosecuted.

On 13 November 2009, in the district of Tekirdağ's Hayrabolu six Kurdish workers, Selahattin Çalban, Metin Çalban, Emrah Kılıçasalan, Mehmet Salan and Rojhin Çalban who were from the Dougbeyazit district of Agri were speaking in Kurdish at a construction site where they were working. Shop owners from the local area confronted them to ask why they were speaking Kurdish and an argument ensued. A crowd of approximately 100 people gathered during the argument and together with the shop-owners attacked the Kurdish workers. It is believed that those who attacked these individuals were not prosecuted.

On 22 November 2009, a convoy of the Democratic Society Party (DTP) was attacked in Izmir. The convoy consisted of 2,000 vehicles all driving back to their

[184] ADANA (DIHA), 9 June 2010,

party's headquarters in Izmir where they were attacked by citizens of Izmir and right-winged activists. The convoy was on the way to greet the DTP (*Demokratik Toplum Partisi*) leader, Ahmet Türk, who had paid a surprise visit. The attackers threw stones and sticks at the DTP members whilst waving the Turkish flag and singing the national anthem. The police were slow to intervene and when they did they fired shots into the air in order to disperse the crowd. The attacks left 11 people injured, four of which were police officers. A total of five people were detained in the incident. DTP in Izmir submitted a complaint to the Izmir Public Prosecution Office on 3 December 2009. KHRP understands that no arrests have been made despite the fact that the attack was recorded on video and attackers are clearly identifiable from the video.

A group of approximately 200 people, led by MHP (*Milliyetçi Hareket Partisi*), party members, chanting anti-Kurdish slogans vandalised various houses belonging to Kurdish families in Bayramiç, Çanakkale on 25 November 2009. IHD (*Insan Haklari Dernegi*) Çanakkale Branch report that they believe that the police and district governor could have prevented the crowd walking the 2 kilometres to the homes of these families. It is also alleged that the local chief of police and the district governor were part of the crowd chanting slogans and throwing stones. In a report prepared jointly by IHD, DTP and EMEP (*Emek Partisi*,), Taner Demir, one of the victims explains how incident happened; he states 'On 25 November 2009, the police wanted to arrest my nephew Tamer Demir because of involving in a fight, but my nephew did not know the reason of arrest and asked the police why they were arresting him. The police put him and his friend Ceyhun Görmüş in the police car forcibly by using pepper gas and allowed crowd to beat them by opening back door of the car. They were taken to the police station and crowd gathered in front of the station wanted to take my nephew out from the station and beat him. The crowd was led by Tevfik Kıyı (member of MHP (*Milliyetçi Hareket Partisi*), Kenan Aygün (member of MHP), Necdet Pozam (manager of municipality park) and Hasan Yüksel (a school director) and they visited all coffee house and told people that Kurds attacked and injured police and Kurds are the enemies of the state. A group of people gathered and chanted anti-Kurds slogans ('Bayramiç will be grave for Kurd' 'Bayramiç in Kurds out') and they forced other people to join them and they gathered in front of our houses around 22.30 and throw stones to our houses until 24.00.' Seven people are being prosecuted on charges relating to criminal damage regarding this incident and their trial continues. [185]

[185] Insan Hakları Derneği 'Çanakkale ili Bayramiç Ilçe Merkezinde 25.11.2009 tarihinde Kürt Ailelere Yapılan Saldırı ile ilgili Inceleme Araştırma Raporu' 5 December 2009, http://www.ihd.org.tr/index.php?option=com_content&view=article&id=1698:canakkale-ili-bayramic-ilce-merkezinde-25112009-tarihinde-kurt-ailelere-yapilan-saldiri-ile-ilgili-inceleme-arastirma-raporu&catid=34:el-raporlar&Itemid=90

Şehmus Tosun and Remiz Akpolat, two Kurdish students studying at the Selçuk University, were attacked and abducted on 11 December 2009 in the province of Konya. The attack was carried out by a group of nationalists. The two students were taken to a field where they were tortured. BDP (Peace and Democracy Party) representatives in Konya told KHRP that despite this incident being reported to the police nobody has been prosecuted regarding this incident and believes that no effective investigation has taken place. The students in question have not returned to university as they are too scared. They are currently investigating ways of transferring to a different university. BDP representatives have told KHRP that they believed if an effective investigation and prosecution was carried out this would alleviate much of the students' fears.

Emrah Gezer was shot on the 26 December 2009 for singing Kurdish songs in a Bar located in the Ankara province. Emrah got into an argument with the Police Office S.A. who shot him. The Police Officer has been detained. The court started hearing the case on 11 February 2010. However, the trial has been adjourned until the 6 April in order to conduct a full investigation of the crime scene.

On 31 December 2009, Burham Uçkun, a Turkish citizen of Roma origin was beaten by customers when trying to light a cigarette in a coffeehouse in the district of Selendi which is in the province of Manisa. After this the owner refused to serve Burham. In an act of revenge relatives of Burhan vandalised the coffeehouse. This sparked an outrage which resulted in a group of 1000 locals throwing stones at all houses occupied by Roma people in the district and setting their cars on fire. Slogans such as 'Get the Gypsies out' were chanted in the streets. The local police could not control the situation and sought reinforcements to assist. There have been no arrests relating to the incident however, the judiciary is considering whether any action should be taken. Instead of providing them with protection following this incident the Governor of Manisa decreed together with the Security director and the head of the police forces that the Roma people should leave the district resulting in a total of 74 Roma people, of which 15 were children being forced to sign a document stating that they would leave the district on the 6 January 2010. It is understood that those people who were forcibly displaced have now settled in a town called Gördes.

On 24 June 2004 two police officers attacked İbrahim Sil for listening to a Kurdish artist called Ahmet Kaya. They demanded that he turn off the music and hand over the tape. However, Mr. Sil refused to give them the tape. The police officers, known as M.B. and B.O., started to beat him. Mr. Sil's lawyer filed a complaint. In 2009 the two police officers were convicted of mistreatment, threat and wrongful arrest. Both officers were disqualified from working as officers and despite the fact that these charges carry a sentence of up to nine years imprisonment they were each sentenced to eight months imprisonment.

2. Problems encountered by the Kurdish Population in Iran

There are around 6.5 million Kurds in Iran. Discrimination against mainly Sunni Kurds in Shi'a Iran is occasionally more complex than elsewhere because of the added religious dimension, and the fact that Kurds have often been more actively involved in resistance against the regime than other groups. State motives for repression of Kurds are, therefore, often based on 'security' as much as other factors.

The Iranian authorities use security laws, press laws and other legislation to arrest and prosecute Iranian Kurds solely for trying to exercise their right to freedom of expression and association.

Since last June, the government has executed at least seven Kurdish political dissidents, all of whom were charged with the vaguely-defined crime of *moharebeh*, or 'enmity against God.' Today, more than a dozen Kurdish dissidents sit on death row at imminent risk of execution.[186]

Among the targets of the crackdown are journalists and human rights defenders, presumably because of their skill at gathering information about abuses and communicating it both inside and outside the country. At least 37 journalists are in prison, with 19 more free on bail awaiting trial, according to the Committee to Protect Journalists. An even larger number of journalists and defenders have fled Iran during the past year and live as refugees in neighboring Turkey.[187].

2.1 Arrests and detentions of Kurdish persons

Eisa Saharkhiz is a detained reporter whose coronary illness has turned for the worse after being transferred to Gohar Dasht (Rajai) Prison, where he has been detained for unknown reasons.[188] On 26 May 2010, following intense chest pains, the detained reporter was transferred to the medical unit inside the prison, where doctors recommended a stress test and treatment outside of the prison.

When Mr. Saharkhiz was transferred to this prison, his medication was not delivered to him and prison authorities have refused to return his medication until now. Mr. Saharkhiz has been under temporary detention for almost a year without a trial and his legal status remains uncertain.

[186] HRW news, Iran: Crisis Deepening One Year After Disputed Elections, Pressure Mounting on Iranian Civil Society, 10 June 2010
[194] HRW news, Iran: Crisis Deepening One Year After Disputed Elections, Pressure Mounting on Iranian Civil Society, 10 June 2010
[187] HRW news, Iran: Crisis Deepening One Year After Disputed Elections, Pressure Mounting on Iranian Civil Society, 10 June 2010
[188] IHRV 3 June 2010

In the continued detention of activists from the Teachers Association Center, Mohammad-Ali Shirazi and Mohammad-Ali Shahedi, members of its management board in the city of Yazd, were detained on 26 May 2010.

Mr. Shirazi initially appeared a police station in response to a summons, and later, while he was being escorted by a number of guards, he arrived at his residence, and following a search of his residence, a number of his personal items were seized and Mr. Shirazi was placed under arrest. Mr. Shahedi was likewise summoned before security police and was also arrested.

Including these detentions, the total number of detained teachers now stands at ten.

The ten detained teachers have been identified as Ali-Akbar Baghani, Mahmoud Beheshti, Rasoul Badaghi, Ali-Reza Hashemi, Esmail Abdi, Hashem Khastar, Abdullah Momeni, Mohammad Davari, Alireza Ghanbari (a teacher sentenced to death in Pakdasht) and Bahman Nasirzadeh.

Farzad Kamangar, a teacher from Kamyarani who was hanged on 9 May 2010, was a member of this Center in Kurdistan province.

2.2 Executions of Kurdish persons

The Iranian government has closed Kurdish-language newspapers and journals, banned books and punished publishers, journalists and writers for opposing and criticizing government policies. Authorities also suppress legitimate activities of nongovernmental organisation with spurious security offences.

In May 2010 Iranian authorities executed five prisoners, four of them ethnic Kurds, without warning their families or lawyers, and have so far refused to release their bodies. These executions follow convictions that appear to have relied on the use of torture.

The Kurdish prisoners – Farzad Kamangar, Ali Heidarian, Farhad Vakili, and Shirin Alam Holi – were executed by hanging on the morning of May 9, 2010, in Tehran's Evin prison, said a statement released by the Tehran Public Prosecutor's office. The government also executed a fifth prisoner, Mehdi Eslamian, an alleged member of a banned pro-monarchist group. Authorities maintain that all five were engaged in 'terrorist operations, including involvement in the bombing of government and public centers in various Iranian cities.'

The 17 Kurds presently facing execution are: Rostam Arkia, Hossein Khezri, Anvar Rostami, Mohammad Amin Abdolahi, Ghader Mohammadzadeh, Zeynab Jalalian, Habibollah Latifi, Sherko Moarefi, Mostafa Salimi, Hassan Tali, Iraj

Mohammadi, Rashid Akhkandi, Mohammad Amin Agoushi, Ahmad Pouladkhani, Sayed Sami Hosseini, Sayed Jamal Mohammadi, and Aziz Mohammadzadeh.

These executions are violations by the Iranian authorities of their international obligations under the UN's Covenant on Civil and Political Rights and the Convention on the Rights of the Child not to sentence to death those under the age of 18 at the time of their offence.

In addition to the Kurdish activists listed above, KHRP has raised concern in an urgent action letter on 9 November 2009 regarding the execution of Kurdish activist Ehsan Fattahian and the immanent executions of Fasih Yasamini, Rashid Akhandi, Hossein Khaziri, Ali Haydariyan, Fahrad Vakili, Fahrad Chalesh and Ramezan Ahmad.

3. Problems encountered by the Kurdish Population in Syria

Human rights abuses against Syria's million-strong Kurdish population, some 10 per cent of the population, are serious and ongoing and Syria's human rights record has continued to deteriorate. There is mounting acknowledgement by humanitarian organisations, the UN, and government bodies that there is currently a well-founded fear of persecution of Kurds in Syria, on the grounds of race.

Syrian Kurds are stateless peoples and the refusal of the State to reinstate citizenship to 360,000 Kurds who were stripped of it in 1962, is among the most pressing problems. At the hands of the Ba'athist regime, the Kurdish minority in Syria faces severe restrictions on cultural and linguistic expression and systematic and pervasive human rights abuses. Opposition figures, human rights activists and relatives of exiled dissidents are prevented from traveling abroad, and many ordinary Kurds lack the requisite documents to leave the country. There are concerns about numerous reports of torture, ill-treatment, deaths in custody and incommunicado detention of people belonging to the Kurdish minority, in particular political activists of Kurdish origin, with many Kurds continuing to be targeted by the Syrian authorities.

A state of emergency has been in force since 1963, and continues to restrict the rights of Syrian citizens by giving security agencies unlimited authority to arrest suspects and hold them incommunicado for prolonged periods without charge.[189] The state of emergency is based on the justification that Syria is still at

[189] http://kurdistancommentary.wordpress.com/2010/06/13/spanish-campaign-raises-awareness-of-kurdish-political-prisoners-in-syria/; Freedom House, Freedom in the World 2010 Report

war with Israel. There are arbitrary arrests, intimidation, torture, travel bans, lack of freedom of expression and lack of respect for the rights of the Kurdish minority.

Some convictions handed down to Kurdish detainees by military courts have been given on vague charges of 'weakening national sentiment' or 'spreading false or exaggerated information'. There is also a growing trend of deaths of Kurdish conscripts who have died whilst carrying out their military service and whose bodies were returned to the families with evidence of severe injuries.

People in Syria who express dissent or criticise the government, are perceived as opponents of the government. People detained on these grounds include leading human rights lawyers, advocates of political reform and members of the Kurdish minority campaigning against discrimination and advocating for greater respect of their rights. Furthermore, some Syrian nationals who have been returned to the country after living abroad have been arbitrarily detained on arrival or shortly after their return. To seek asylum abroad is perceived as manifestation of opposition to the Syrian government, so returned asylum seekers face the likelihood of arrest.

On 11 June 2010, twenty-seven people including women and children were forcibly removed by authorities in Cyprus, back to Damascus airport. They had been on hunger strike along with many others for some time in Cyprus and upon their return to Damascus were each interviewed with the authorities and were issued with a summons to report to intelligence security a week later.[190]

3.1 The use of torture against Kurds in Syria

Consistent allegations made by detainees have described the use of methods which clearly constitute torture under the definition contained within the UN Convention Against Torture and the jurisprudence of international tribunals. In several cases these allegations are substantiated by testimony, interrogators in court,[191] medical evidence and reports by human rights monitoring bodies.[192] Most torture victims are left disabled and others have died. The following cases, raised by KHRP, exemplify its concerns about the use of torture in Syrian prisons:

Osman Mihemed Silêman Hecî[193], who served as a Syrian MP between 1991 and 2007, was tortured to death. Osman was arrested on 27 November 2007 and

[190] International Support Kurds in Syria Association –SKS, newsletter 15 June 2010
[191] April 1995(6) Amnesty International Report
[192] Amnesty International reports, February 2007 and 2009; The Home Office, 'Country of Origin Report on Syria;
[193] KHRP press release, 'Kurdish Politician Tortured to Death in Syria', 20 February 2008

subsequently tortured in prison. On 22 January 2008 he was taken to El-Kindi Hospital by Syrian officials and registered with the name of 'Eli Ehmed' to hide his identity. He died in hospital on 18 February 2008 from his injuries.

Rojin Jumaa Rammo,[194] born in 1969 in Turbaspiya, was a member of a woman's organisation called 'Sterk'. She was arrested on 29 July 2009 by security forces in Kobani, Syria. Rammo was subjected to torture in prison and subsequently admitted to Al- Kindi hospital on 21 August 2001 under a different name. She has since been granted amnesty by legislative decree.

Sheikh Mohammad Maashuq Al Khaznawi[195] died in June 2005 in hospital, where he was taken in secret by security officials, as a result of his injuries attributable to being tortured in detention.

Sisters **Esma Murad Samî** (d.1960) and **Eyhan Murad Samî**[196] (b.1973) both from al-Muabdah in al-Malikiyah province, were arrested by the Political Security Directorate in Al-Hasakah on 3 August 2009. They have been tortured and forced to collaborate with the security forces against fellow Kurds. On 17 September 2009, the sisters were released by the single military judge in al-Qamishli, to whom the case has been transferred. Their trial is pending before the court.

Mohammed Musto Rashid,[197] from Mabatli in the Kurdistan district of Afrin, Syria, died on 19 January 2010 as a result of being subjected to torture in Aleppo Central prison in Syria. Mr Rashid and his brother, **Zahr al-Din Khorshid Ibish,** were arrested on 1 January 2010 following security raids on their house.

Legislative measures preventing acts of torture against persons undertaking military service have not been implemented effectively. There has been a growing trend in the number of Kurdish conscripts who have died whilst carrying out their mandatory military service: the number of deaths among conscripts' amounts to 33 since the uprising on 12 March 2004, of which 16 died in 2009.[198] According to the Syrian authorities, the individuals concerned committed suicide. However, reports from families and severe injuries on returned bodies indicate that they were tortured and killed because of their political activities.[199] KHRP has raised its concerns regards torture in these circumstances in respect of the following persons:

[194] UA sent to the Office of the High Commissioner for Human Rights by KHRP on 15 September 2009
[195] Ibid.
[196] Ibid.
[197] UA sent to the Office for the High Commissioner for Human Rights by KHRP on 1 March 2010.
[198] Support Kurds in Syria, 'Kurdish conscript Khalil Bozan Sheikh Muslim is one of the new victims of killings in mysterious circumstances in the Syrian army', 11 December 2009
[199] Middle East Newsline, 'Syria Said to Kill Its Kurdish Soldiers, 29 January 2009; Kurdish Aspect, 'A Series of killings of Kurds in Syria', 26 January 2009; Support Kurds in Syria, 'Continued Killing of Kurdish Conscipts in

Barkhoddan Khalid Hammo[200] from Qobani town died in al-Hassaka on 19 January 2009.

Mohammad Bakker Sheikh Daada[201] died whilst he was in the army on 13 January 2009.

Ibrahim Rouf'att Charwish[202] from Afrin died in Damascus.

Siwar Tammo[203] from Durbassia town died in Aleppo on 21 December 2008.

3.2 Cases of arbitrary arrests and prison conditions

Syria has implemented legislation aimed at outlawing arbitrary arrests,[204] incommunicado detention,[205] the use of force against detainees,[206] and which guarantee the rights of detainees to medical treatment and to contact with their families.[207] According to international human rights jurisprudence, use of these methods constitutes torture.[208] Despite the legislative safeguards, the cases raised by KHRP with OHCHR detailed below, demonstrate that use of these practices against politically active Kurds is widespread and habitual. This is of particular concern in view of the fact that Kurdish political prisoners are at grave risk of being tortured in Syrian prisons- a trend that began over a decade ago.[209]

Mustafa Jum'a Daqori,[210] (b.1947) was the deputy chairperson of the Syrian Kurdish Azadi Party, when he was arrested by Syrian security forces on 6 January 2009. It is believed that he was transferred to Damascus on 10 January 2009 and was held by the military secret service in the Fir'a Vilistin near the Syrian capital.

Mohammad Sa'id Hossein 'Omar and **Sa'dun Mahmoud Sheikhu**[211] are also members of the committee of the Kurdish Azadi Party. They were arrested by the

Syria', 9 April 2010; Support Kurds in Syria, 'Ez al-Din Morrow – the latest Kurdish conscript to die in Syria' 24 December 2009; Support Kurds in Syria 'YASA report July 2009', 6 September 2009. (all online)
[200] UA sent to the Office for the High Commissioner for Human Rights on 30 January 2009
[201] Ibid.
[202] Ibid.
[203] Ibid.
[204] Article 214 of the Police Service Regulations.
[205] Article 105 of the Code of Criminal Procedures.
[206] Article 30 of the Prison Regulation of 1929 and Act No. 496 of 1957
[207] Committee against Torture, 'Consideration of reports submitted by States parties under article 19 of the Convention: The Syrian Arabic Republic,' 16 July 2009, paras 98 and 99
[208] UN General Assembly, UN Doc. A/RES/60/148, 16 December 005, Article 11; UN Convention on Human Rights, UN Doc. E/CN.4/RES/2005/39, 19 April 2005, article 9.
[209] The Damascus Centre for Human Rights Studies Report, August 2006
[210] UA sent to the Office of the High Commissioner for Human Rights by KHRP on 22 January 2009
[211] Ibid.

Syrian military security services in the towns of Romelan and Raas al-Ein on 26 October 2008. All three are currently held in Adra prison.

Mohammad Sa'id 'Omar was hospitalised after having suffered a stroke on 24 April. As a result he is now partially paralysed and has impaired mobility and speech. Guards chained him to his bed whilst he was in hospital. He received medication from his family when they make weekly visits to him in prison.

Naser Daqori,[212] (b.1962), who is married with three children, was arrested in Amoda city on 11 January 2009. He was subsequently transferred to the political security service in Hasaka. He has since been released.

Darweesh Ghaleb,[213] ran Kurdish language courses, established the Committee for Learning the Kurdish Language and was a member of the Kurdish PEN. He was taken from his home by Syrian security forces in Qamishli on 13 January 2009. He has since been released.

Kadar Mahmoud Saadoh[214] was arrested on 16 January 2010 in Qamishli city by intelligence security services. He is held in incommunicado detention.

Salah Saed Unis, a Kurdish activist, was arrested on 31 October 2008 by military security services in Amuda town and is held in incommunicado detention.

Mesh'al al-Tammo,[215] a 51 year old spokesperson for Kurdish Future Current, was arbitrarily arrested on 15 August 2008 by Syrian Air Force security officers. Mr al-Tammo was held in incommunicado for twelve days. During his initial detention he was transferred to Adra prison, which is infamous for torture amongst political prisoners[216]and where is still thought to be detained.

Abdelbaqi Khalaf[217] was arrested by State Security Officers on 11 September 2008 in Qamishli. Mr Khalaf is an advocate for democracy and political unity within the Kurdish community in Syria. He is still held in incommunicado detention.

Munther Ahmed and his brothers **Nedal Ahmed** and **Riad Ahmed**[218] were planning to set up a Kurdish cultural organisation when they were arrested by state security officers at their homes in Qamishli on 3 September, 11 September

[212] Ibid.
[213] Ibid.
[214] Ibid.
[215] UA sent to the Office of the High Commissioner for Human Rights by KHRP on 1 July 2009
[216] See Amnesty International reports of 2007 and 2009
[217] UA sent to the Office of the High Commissioner for Human Rights by KHRP on 7 September 2009
[218] Ibid.

and 8 October 2008 respectively. They are in incommunicado detention. The grounds for their arrest are unknown.

Falak Naz Khalil and **Ms Afra Mohammad Musa**[219] were arrested by security forces on 3 August 2009, following a raid on their houses in the Zorava district of Damascus. They were members of Yekitiya Star a women's union belonging to the Democratic Union Party (PYD). They participated in a hunger strike in prison due to their torture and ill treatment in prison and were subsequently held incommunicado at an unknown prison. The detainees had their charges dropped, together with another Kurdish detainee called **Mohammed Khalil Khalil**, on 22 March 2010 due to the amnesty legislative decree 22 that was issued on 23 February 2010.

Berzani Karro,[220] (20) was arrested at Damascus airport in Syria by the security forces on 27 June 2009, following his deportation from Cyprus. He was permitted to make one phone call to his family after being arrested, during which he told his family that he was going to be taken to the al-Fayha Security branch in Damascus. Mr Karro is being held in incommunicado detention, without access to a lawyer, and has not been charged with a criminal offence. There is a strong possibility that Mr. Karro requires medical treatment.

Nashat Mustafa Hanan,[221] (45) from Aleppo, was detained by Syrian security officers on 27 October 2009. Mr Hanan's family have no information about his condition and have been prevented from visiting him. They believe that Mr. Hanan was transferred to the Political Security Directorate in Damascus soon after his disappearance.

Ms Naziye Ahmed Kejal,[222] a member of the PYD has been missing since 2004 and is thought to be at grave risk of torture.

Mustafa Ismail,[223] a lawyer and a member of the non-governmental organ 'Defend International', was arrested in Aleppo on 12 December 2009 and was held in incommunicado detention without access to his family, a lawyer, or any medical treatment until 22 March 2010 He is currently in the central prison in Aleppo.

3.3 Disappearances and deaths in military service

[219] UA sent to the Office of the High Commissioner for Human Rights by KHRP on 15 September 2009
[220] UA sent to the Office of the High Commissioner for Human Rights by KHRP on 13 November 2009
[221] UA sent to the Office of the High Commissioner for Human Rights by KHRP on 17 November 2009
[222] UA sent to the Office of the High Commissioner for Human Rights on 4 December 2009
[223] KHRP Press release, 'KHRP Calles for Immediate and Unconditional Release of Mr. Mustafa Ismail', 21 December 2009

Many Kurdish citizens living in Kobani and the nearby villages have disappeared since their arrests since the beginning of 2010.[224] Security agents make arrests but do not disclose the whereabouts of detainees.

On 14 February 2010, Bozan Abdelkader Bozan, born 1958 in Kobani was arrested by the criminal security service and his family allegedly have not been given information about where he is being held. He previously suffered a stroke and bleeding in his brain.[225]

Two other men were arrested on 8 May 2010.Anwar Mustafa Mahmoud, born 1975 in the city of Kobani. He was arrested by the Air Intelligence branch which is notorious for the brutal treatment of detainees. Mahmoud Mohamed Kulja Nebo, born 1970 in Kobani was arrested by a joint patrol of the security services and his fate is still unknown since his arrest.

This pace of arrests and raids which are sporadic and do not follow any patterns has affected dozens of Kurds and serves to intimidate others from expressing their cultural identity.

An armed security patrol raided the home of Mohammed Mesto in al-Raqqa on 18 May 2010. [226] They searched his home but he was not there and so he avoided being arrested. He is now in hiding, in fear of being arbitrarily detained as many others have been since the shooting at al-Raqqa during the celebrations of Newroz in March 2010. Threats and arrests of many Kurds is causing fear in the area. Those who have been arrested report being tortured to give false confessions, and people are afraid.

There have been conspicuous deaths of some 34 Syrian soldiers of Kurdish origin since 2004 while doing their military service.[227]

The body of 19 year-old Najm al-Din Hassan Daallo was returned to his family on 7 June 2010. He had been stationed for his military service in the Syrian army in a military unit near al Raqqa. He joined the service in March and after he had finished training he was deployed to the en-Essa battalion in Al_Raqqa. Three days later, the army reported that Najm al-Din Hassan Daalloo had committed suicide during a night patrol. The death of Najm al-Din Hassan Daallo brings the number of Kurds who have been killed during this year in mysterious circumstances to five, which is causing panic and distress amongst Kurdish

[224] Media Institute of West Kurdistan Society – Kobani, 4 June 2010
[225] Media Institute of West Kurdistan – Kobani, 4 June 2010
[226] Media Institute of West Kurdistan Society – al-Raqqa, 3 June 2010
227 http://kurdistancommentary.wordpress.com/2010/06/13/spanish-campaign-raises-awareness-of-kurdish-political-prisoners-in-syria/

families who fear for the fate of their children whilst they perform their obligatory service in the Syrian army.[228]

3.4 Stateless people

There are an estimated to be 300,000 stateless Kurds in Syria today and this is a direct result of a census conducted in 1962 that led to their denationalisation.[229] This census was conducted with the political agenda to 'Arabise' the Northeast of Syria, as it is very rich in natural resources. A further aim was to identify recent illegal migrants from Turkey, but the census had disastrous results for many Kurds who had been living in Syria for a significant period.

When the census was conducted there were approximately 120,000 to 150,000 Kurds who lost their citizenship,[230] but this number has risen to above 300,000 at present. The problems encountered by stateless people each and every day are numerous, and the situation for Kurds in Syria is a prime example of this. They suffer a variety of social, economic and political hardships that all contribute to the struggles they encounter on a daily basis.

As they are not Syrian citizens they are unable to vote. Stateless people are also unable to own property in Syria, as with no nationality they cannot obtain deeds or register either property or vehicles. Nevertheless, they still have to pay property tax on the land they do not legally own. The fact that stateless people are not recognised as citizens also means they can suffer in relation to remuneration. Because they are unable to open bank accounts employers may decide to underpay them, or even worse refuse them payment at all.
Due to the problems encountered at a young age for Kurdish speaking children in school classes, which are taught in Syrian Arabic, higher education is hardly accessible for Syrian Kurds. Furthermore, many Stateless people cannot marry**.** Only female Kurds marrying a Syrian male citizen can register their marriage legally. Any other marriage involving either stateless Kurds, commonly refered to as 'Ajanib' or 'Maktoumeen,' be it to one another or to a Syrian female citizen, will not be recognised by the courts as a marriage. Because of these restrictions many Syrian citizens will not allow their children to marry Ajanib or Maktoumeen.

[228] Media Institute of West Kurdistan Society – Afrin, 10 June 2010
[229] Decree No. 93 on August 23, 1962.
[230] KHRP Report, *The Kurds of Syria: The Forgotten People*, (Kerim Yildiz KHRP, London, March Pluto Press 2005), 150.

C. Conclusion

As elaborated above, there are still many manifestations of racism and contemporary forms of xenophobia in Turkey, Iran and Syria, which vary from the suppression of freedom of expression and the use of language to state violence against women and children, and, in the worst cases, arbitrary executions of Kurdish people (and their supporters).

KHRP is gravely concerned about these manifestations of racism, which clearly violate the obligation of the above mentioned states under international law and accordingly supports the condemnation and abolition of these practices.

KHRP
June 2010