

# HUMAN RIGHTS IN THE KURDISH REGION OF TURKEY: THREE PRESSING CONCERNS

FACT-FINDING MISSION REPORT

August 2009

by Edel Hughes and Saniye Karakaş





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KURDISH HUMAN RIGHTS PROJECT  
BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES

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The Kurdish Human Rights Project is an independent, non-political human rights organisation founded and based in London, England. A registered charity, it is dedicated to promoting and protecting the human rights of all people in the Kurdish regions of Turkey, Iraq, Iran, Syria and elsewhere, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include Kurdish and non-Kurdish people.



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## LIST OF ABBREVIATIONS

AKP	Justice and Development Party
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHP	<i>Cumhuriyet Halk Partisi</i> (Republican People's Party)
CPT	Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
DEHAP	<i>Demokratik Halk Partisi</i> (Democratic People's Party)
DTP	<i>Demokratik Toplum Partisi</i> (Democratic Society Party)
ECHR	European Convention on Human Rights
Eğitim-Sen	Education and Science Workers' Union
ICCPR	International Covenant on Civil and Political Rights
İHD	<i>İnsan Hakları Derneği</i> (Human Rights Association of Turkey)
ECtHR	European Court of Human Rights
KHRP	Kurdish Human Rights Project
Mazlum-Der	Association of Human Rights and Solidarity for Oppressed People
NGO	Non-Governmental Organisation
OPCAT	Optional Protocol to the UN Convention Against Torture
PKK	<i>Partiya Karkerên Kurdistan</i> (Kurdistan Workers' Party)
TIHAK	Human Rights Institute of Turkey
TIHV	<i>Türkiye İnsan Hakları Vakfı</i> (Human Rights Foundation of Turkey)
WWHR	Women for Women's Human Rights - New Ways



## EXECUTIVE SUMMARY

The Kurdish Human Rights Project (KHRP) organized a fact-finding mission to the Kurdish region of Turkey from 1 to 7 May 2009 to gather information on the human rights situation there, with a particular focus on impunity of state officials, women's access to justice and restrictions on the work of human rights defenders. The mission interviewed local MPs, mayors, human rights activists, lawyers and journalists in the provinces of Şırnak, Siirt, Mardin, Batman and Diyarbakır in order to assess developments in these areas in recent months.

Broadly speaking, the human rights situation in the Kurdish region of Turkey remains profoundly troubling. This fact was underlined in the aftermath of the local elections in March 2009, with the detention or investigation of hundreds of pro-Kurdish politicians and activists. It is also borne out by statistics prepared by KHRP's partner organisation *İnsan Hakları Derneği* (Human Rights Association of Turkey, İHD), which in the course of 2008 in the province of Siirt alone, recorded 77 reported cases of torture and ill-treatment and more than 380 instances of violations of the right to freedom of expression.<sup>1</sup> In addition to ongoing human rights violations such as these, the Turkish authorities have also continued to fail in their responsibility to effectively address the widespread abuses of the recent past. This issue was again brought to the fore in the first half of 2009 by excavations of wells alleged to contain the remains of some of the many who 'disappeared' at the height of the conflict in the region in the 1990s.

The mission noted that state officials accused of human rights violations in the Kurdish region of Turkey continue to hide behind a consistent practice of impunity. As one interviewee put it, it is the interests of the state, rather than the interests of justice, that are considered paramount.<sup>2</sup> According to the information gathered by the mission, officials suspected of involvement in human rights violations are frequently not prosecuted, and when prosecutions do go ahead they often receive relatively lenient treatment. Citizens who suffer human rights violations at the hands of state agents are thus discouraged from filing complaints, believing with good reason that their allegations will not be taken seriously. This reluctance to file complaints is further consolidated by a regular practice amongst state officials of filing counter-

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1 FFM interview with Vetha Aydın, İHD Siirt branch, 5 May 2009, Siirt.

2 FFM interview with Nuşirevan Elçi, Head of Şırnak Bar Association, 2 May 2009, Cizre.

claims against individuals who accuse them of human rights violations, resulting in the victims themselves facing investigation and prosecution.

With regard to women's access to justice, the mission learned that women who are the victim of crimes, including widespread domestic violence, continue to face an array of obstacles that hinder their ability to make use of the legal remedies that are theoretically available to them. Matters of deep concern to the mission in this regard include language barriers, a lack of awareness amongst women of their rights, severe failings in the provision of legal aid and medical examinations, and the routine failure of officials to take complaints by women seriously and to implement legislation intended to afford them protection. Many of the same obstacles also stand in the way of justice for women in the Kurdish region who are themselves accused of crimes.

In relation to the situation of human rights defenders in the Kurdish region of Turkey, the mission found that these individuals continue to face routine harassment and obstruction of their work. Whilst the situation has improved since the bleak days of the 1990s, when human rights activists were frequently killed or 'disappeared', the mission was informed by all of the human rights defenders with whom it met that they now face bureaucratic obstruction and continual 'legal harassment' including malicious prosecutions, often grounded in allegations that their activities constitute support for terrorism. They also face imprisonment under anti-terror legislation, often resulting in ill-treatment at the hands of state actors protected by the culture of impunity in which they operate.

This report begins by placing the human rights situation in the Kurdish region of Turkey in its wider geopolitical context, with a brief history of the conflict that has blighted the lives of the local population in recent years and the harsh measures that have been imposed by the authorities. The next section sets out the domestic and international legal frameworks relevant to Turkey's responsibility to protect the human rights of its citizens. The report goes on to tackle the three main areas of concern explored by the mission, before concluding with a series of recommendations directed towards the Turkish authorities and the European Union outlining steps that ought to be taken in order to improve the human rights situation in the Kurdish regions of the country.

## I. GEOPOLITICAL BACKGROUND

Since the inception of the modern republican state in Turkey in 1923, following the downfall of the Ottoman Empire, the country's religious, linguistic, ethnic and cultural minorities have been systematically marginalised and suppressed.<sup>3</sup> Under the leadership of Mustafa Kemal Atatürk, the state instigated a lengthy process of reform designed to move Turkey away from its previous 'Arabised Ottoman identity' towards a new 'Turkish Nationalism'.<sup>4</sup> The Kemalists advocated a unified Turkish state based on one people and one language, in an attempt to convert an ethnically heterogeneous population into a homogenous body of Turkish citizens.<sup>5</sup> This process involved the suppression of the religious identity and cultural expression of non-Turkish people within Turkey, particularly the Kurds, the country's largest non-Turkish minority who were a majority in the south-east. At the heart of Atatürk's project was the dissolution of this cohesive community. This led to a campaign of mass exile and village destruction in the Kurdish region, which continued until 1946.<sup>6</sup>

Amid ongoing widespread and systematic oppression of the Kurdish people by Turkish security forces, the *Partiya Karkerên Kurdistan* (Kurdistan Workers' Party, PKK) emerged in the 1970s, an era ravaged by political instability and turmoil. From 1984 until 1999, the state and the PKK fought a brutal armed conflict which claimed tens of thousands of lives.

In addition, following a military coup in 1980 thousands of people were taken into custody by the security forces under martial law. From 1984 to 1987, martial law was gradually replaced by a State of Emergency, confined initially to the provinces of Bingöl, Diyarbakır, Elazığ, Hakkari, Mardin, Siirt, Tunceli and Van but later extended to include Batman, Şırnak, Adıyaman, Bitlis and Muş. KHRP's body of

3 See generally David McDowall, *The Kurds: A Nation Denied* (Minority Rights Publications, London, 1992).

4 Edip Yüksel, 'Cannibal Democracies, Theocratic Secularism: The Turkish Version,' 7 *Cardozo Journal of International and Comparative Law*, 423 (Winter 1999), 448. Atatürk's famous slogan, 'Ne mutlu Türkem diyene' (Happy is he who can call himself a Turk), comes from this period.

5 See Kerim Yıldız, *The Kurds in Turkey: EU Accession and Human Rights* (Pluto Press, London, 2005), 50. Yıldız particularly notes the importance in Turkey of the 'homogenous and secular Turkish identity, and her elevation of the idea of the state'.

6 David McDowall, *The Destruction of Villages in South East Turkey: A Report by Medico International and the Kurdish Human Rights Project*, (London, June 1996), 3.

work has documented how under the State of Emergency, a regional governor exercised quasi-martial law powers, which included restrictions on the press and village evacuations.<sup>7</sup> In November 1984, the Interior Minister himself declared that in the first ten months of that year alone, 26,295 people had been arrested for alleged ‘terrorist activities’.<sup>8</sup> Allegations of torture and extrajudicial killings were rife during this period. In 1985 the government also established the controversial village guard system, which is alleged to have been widely implicated in criminal activities and human rights violations. Initially launched in 22 provinces, the scheme was extended to a total of 35 provinces in 1993 with the introduction of the ‘voluntary village guard’ system.<sup>9</sup>

The conflict in the Kurdish region of Turkey waned in September 1999 when the PKK declared a unilateral ceasefire following the arrest of the organisation’s leader in February of that year. According to Turkish government figures, by the end of the conflict 353,000 people had been displaced from their homes. International observers and Turkish non-governmental organisations (NGOs) estimate that the total number may be as high as 1 to 4.5 million.

Since that time, violence and repression of identity remained an everyday feature in the Kurdish regions, and within a few years the PKK had resumed its offensive with attacks on police, government workers and the military. The reason cited by the PKK for this renewed violence was that the government had not taken sufficient steps to improve the freedoms and rights of the Kurdish people.<sup>10</sup> Clashes between the PKK and the Turkish security forces have continued, increasing significantly over the past two years. In response to escalating tensions, the Turkish authorities declared the imposition of a High Security Zone in the south-eastern provinces of Siirt, Şırnak, and Hakkari, in June 2007.<sup>11</sup>

As a result, the level of violence against Kurds, including children, human rights activists and politicians, has increased. Members of the pro-Kurdish *Demokratik Toplum Partisi* (Democratic Society Party, DTP) in particular have been targeted with arbitrary arrest and detention after local elections on 29 March 2009. Police operations started against DTP members in 13 provinces on 14 April 2009. At the

7 United States Department of State, ‘Country Reports on Human Rights Practices: Turkey’, 2001, available at <http://www.state.gov/g/drl/rls/hrrpt/2000/eur/844.htm> (last accessed 5 August 2009).

8 Info-Turk Bulletin, ‘State Terror’, November 1984, 7. Available at <http://www.info-turk.be/97E.pdf> (last accessed 5 August 2009).

9 Bianet, ‘Nomad Guard of Doganli Camp’, 29 December 2004, available at <http://bianet.org/bianet/english/51686-nomad-guards-of-doganli-camp> (last accessed 3 August 2009).

10 BBC online, ‘Kurdish rebels abandon truce’, 2 September 2003, available at <http://news.bbc.co.uk/1/hi/world/europe/3200907.stm> (last accessed 4 August 2009).

11 KHRP FFM Report, *Return to a State of Emergency? Protecting Human Rights in South-East Turkey*, (KHRP, London, 2008), 18.



time of writing, more than 500 DTP members – including vice presidents, board members, former mayors and active members of the party’s women council and youth council – have been taken into police custody. According to what has been reported to KHRP, they were not told of what they were being accused. A total of 267 of them were formally detained on the order of a judge.<sup>12</sup> Representatives of the DTP with whom the mission met expressed their grave concern about the mass arrests of members of the party. They also noted that they believed the operations would destroy hopes for finding a democratic and peaceful solution to the Kurdish question. The moves against DTP members were perceived as part of a revenge operation on behalf of the *Adalet ve Kalkınma Partisi* (Justice and Development Party, AKP) government following the success of the party in local elections in Turkey in late March 2009, in which it almost doubled its number of municipalities (from 56 to 98).<sup>13</sup>

Throughout the period since major hostilities officially ended, the village guard system has remained in place, with 57,601 village guards still on duty in 2006 according to official figures.<sup>14</sup> In response to a written inquiry by MP Mesut Deger in 2003, the then Interior Minister Abdulkadir Aksu stated that 4,804 village guards were involved in criminal activities and they were the target of over 5,200 criminal investigations.<sup>15</sup> A recent report released by the İHD cites 1,591 separate human rights violations perpetrated by village guards between January 1992 and March 2009, including forced evacuations, burning of villages and forests, kidnappings, rapes, disappearances, summary executions, torture, arbitrary arrest and forced suicides.<sup>16</sup> The village guard system has also been identified as one of the main obstacles preventing displaced villagers from safely returning to their homes.<sup>17</sup> On 4 May 2009, as the mission carried out its research in Turkey, the controversy surrounding the system was again pushed to the top of the agenda when village guards killed 44 people in the village of Bilge (known as Zanzurt in Kurdish), in Mardin province for reasons that have yet to become entirely clear at the time of writing.

12 Bianet, ‘Beş ilde 19 DTP’li gözaltında’, 23 June 2009, available at <http://bianet.org/bianet/ifade-ozgurlugu/115304-bes-ilde-19-dtpli-gozaltinda> (last accessed 21 July 2009).

13 FFM interview with Selim Sadak, Mayor of Siirt, 5 May 2009, Siirt.

14 Commission of European Communities, *Turkey 2005 Progress Report*, 9 November 2005, available at [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2005/package/sec\\_1426\\_final\\_progress\\_report\\_tr\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2005/package/sec_1426_final_progress_report_tr_en.pdf), (last accessed 3 August 2009).

15 Batman Petrol, ‘Koruculuk Sistemi ve Türkiye’, 1 August 2006, available at <http://www.petrolgazetesi.com/Default.Asp?Action=Haberler&HID=1405&Haberler=Detay>, (last accessed 3 August 2009).

16 İHD, ‘Special Report on the Human Rights Violations Perpetuated by Village Guards between January 1990 and March 2009’, 8 May 2009, available at [http://ihd.org.tr/images/pdf/ocak\\_1990\\_mart\\_2009\\_koy\\_koruculari\\_ozel\\_raporu.pdf](http://ihd.org.tr/images/pdf/ocak_1990_mart_2009_koy_koruculari_ozel_raporu.pdf) (last accessed 3 August 2009).

17 Commission of European Communities, *2004 Regular Report on Turkey’s Progress Towards Accession*, 6 October 2004, available at [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2004/rr\\_tr\\_2004\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2004/rr_tr_2004_en.pdf), (last accessed 3 August 2009).



## II. LEGAL FRAMEWORK

### 1. Domestic Law

The current Turkish constitution, which was ratified in 1982, has since then been subject to widespread criticism for restricting cultural and political freedoms, including denying the fundamental rights of Turkey's ethnic, religious and other minorities.<sup>18</sup> Such criticism frequently makes particular reference to the Kurds, who make up approximately 23 per cent of Turkey's population. The constitution was designed in conformity with the official policy of the state and does not provide for the recognition of minorities, be they ethnic minorities or otherwise, with the exception of a few religious minorities.<sup>19</sup> A general provision under Article 10 guarantees the equality of all citizens before law and prohibits any discrimination based on 'language, race, colour, sex, political opinion, philosophical conviction or religious beliefs'. However, the constitution also includes a concept of citizenship based on Turkishness and, under Article 66, every citizen is referred to as a Turk regardless of his/her ethnic, linguistic or cultural origins.<sup>20</sup>

Beyond the constitution, current Turkish legislation includes numerous provisions that serve to entrench impunity for state officials, facilitate harassment of human rights defenders and obstruction of their work, and stand in the way of women's access to justice.

One major concern, particularly relevant to disruption of the activities of human rights defenders, is the extent to which the legislative framework in Turkey allows for violations of freedom of expression, despite the fact that Article 26 of the constitution theoretically enshrines this important right. Perhaps the best known examples is Article 301 of the Turkish Penal Code, which criminalises denigration

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18 See, for example, Esin Örucü, 'The Turkish Constitution Revamped?', 8.2 *European Public Law* (2002), 201-218 and 201-202. Örucü notes that the amendments made to the 1982 Constitution can be seen as merely 'paying lip service to the demands of the European Union'.

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

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

of the Turkish nation, the Republic of Turkey or the Grand National Assembly.<sup>21</sup> Article 301 is often employed to restrict legitimate criticism of the state and its representatives, something which is vital for the proper functioning of democratic governance. Other provisions in the Penal Code which are often used to repress the expression of non-violent views and prosecute human rights defenders, journalists, lawyers and politicians for their declarations, statements and remarks on the Kurdish issue include Articles 215 (praising crime and criminals), 216 (inciting enmity or hatred among the population), 217 (provoking people to disobey the law), 220/6 (committing crime on behalf of an organisation without being a member of the organisation) and 220/8 (propaganda on behalf of an illegal organization and its objectives). As KHRP, Amnesty International and others have noted in past reports, there has been an escalation in reports of harassment, arbitrary detention and criminalization of political activists and human rights defenders in recent years, despite supposed improvements engendered by the EU accession process.<sup>22</sup>

In addition to the Turkish Penal Code, other laws that allow for arbitrary restrictions on the legitimate exercise of freedom of expression include an amended Anti-Terror Law introduced in 2006,<sup>23</sup> the Law Concerning Crimes Committed Against Atatürk (no. 5816) and the Law on Meetings and Demonstrations (No. 2911). For example, Article 7/2 of the Anti-Terror Law provides for harsh prison sentences for the dissemination of ‘terrorist propaganda’, regardless of whether or not this includes advocating violence. This and other provisions of the Anti-Terror Law are all the more alarming in light of Article 1 of the same law, which gives an extremely wide definition of terrorism which potentially criminalizes non-violent activities such as legitimately criticizing the state. The vague definition mainly defines terrorism according to its purpose or aims, rather than with reference to specific criminal acts.<sup>24</sup>

While Article 10 of the European Convention on Human Rights (ECHR) makes it clear that the right to free expression is not absolute, and that states may impose

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21 The Article was amended in April 2008, with the amended version coming into force on 8 May 2008. Before the amendment the article criminalized publicly insulting ‘Turkishness’, the Republic or the Grand National Assembly of Turkey. The term ‘Turkishness’ was widely criticised because of its ethnic connotations and vagueness. As a result of the recent amendments, the terms ‘Turkishness’ and ‘Republic’, were changed to ‘Turkish Nation’ and ‘Republic of Turkey’. The amended article makes it necessary to obtain permission from the Minister of Justice for the commencement of investigations in relation to crimes committed under Article 301.

22 KHRP FFM Report, *Reform and Regression, Freedom of the Media in Turkey*, (KHRP, London, July 2007).

23 For more information on Turkish anti-terror legislation see KHRP Briefing Paper, *Turkey’s Anti-Terror Laws: Threatening the Protection of Human Rights*, (KHRP, London, September 2008).

24 *Ibid.*, 12; See also, Resmi Gazete, ‘Terörle Mücadele Kanunu’, 12 April 1991, available at <http://www.mevzuat.adalet.gov.tr/html/809.html> (last accessed 22 June 2009).

limits in this regard, Turkish legislation goes far beyond what is permissible. The jurisprudence of the European Court of Human Rights (ECtHR) has made it clear that such restrictions must be ‘prescribed by law’ and that legal provisions ‘must be adequately accessible’ and ‘should be formulated with sufficient precision to enable the citizen to regulate his conduct. Furthermore the restrictions must be necessary in democratic society and must be proportionate to the aims pursued’<sup>25</sup> Thus, the interference has to correspond to a pressing social need and be proportionate to a legitimate aim, such as preservation of national security and territorial integrity, prevention of crime or disorder or protection of public health or morals. In the case of *Özgür Gündem v. Turkey*, the ECtHR stated that expression can only be limited where it incites or advocates the use of violence. There is thus a clear need for amendments to legislation such as Article 220/8 of the Turkish Penal Code and Article 7/2 of the Anti-Terror Law, which obviously violate the principles of ‘proportionality’, ‘predictability’ and ‘prescription by law’, in order to bring them into line with the jurisprudence of the ECtHR and international standards.

In addition to its impact on freedom of expression, the amended Anti-Terror Law also paves the way for abuses such as excessive use of force and torture and ill-treatment in custody. Article 10 of this law, for example, seriously undermines protections against torture and ill-treatment by restricting access to legal counsel for the first 24 hours for those detained for terror offences, while Article 2 paves the way for disproportionate use of force by state officials. The latter Article states that ‘During operations to be carried out against terrorist organizations, if the “surrender” order is not obeyed and there is an attempt to resort to guns, law enforcement officers shall be authorized to use their guns without any hesitation against the target to an extent and amount sufficient to render the danger ineffective.’<sup>26</sup> A nearly identical provision in Turkish law was previously repealed in 1999 after a Constitutional Court ruling finding it unconstitutional and a threat to the right to life.<sup>27</sup>

The newly amended Anti-Terror legislation also poses a serious threat to children’s rights. Article 9 of the amended Anti-Terror Law allows for children between 15 and 18 years of age to be tried as adults in High Criminal Courts set up specifically

25 KHRP case, ECtHR, Appl. No.23144/93, *Özgür Gündem v. Turkey*, judgment of 16 March 2000.

26 KHRP Briefing Paper, *Turkey’s Anti-Terror Laws: Threatening the Protection of Human Rights*, fn. 23 above, 9-10.

27 Principal no. 1996/68, Decision No. 1999/1, 6 January 1999. See also Altıparmak Özlem, Yılmaz Sibel, Ulusoy Orçun, ‘Terörle Mücadele Kanununda Değişiklik Yapılmasına Dair Kanun Tasarısı Hakkında Değerlendirme Raporu,’ available at [http://www.rightsagenda.org/attachments/197\\_tm\\_k\\_degerlendirmesi.doc](http://www.rightsagenda.org/attachments/197_tm_k_degerlendirmesi.doc) (last accessed 22/06/2009).

to handle terrorism-related cases.<sup>28</sup> In reply to a motion raised in early 2009 by MP Selahattin Demirtaş, the then Minister of Justice Mehmet Ali Şahin revealed that 724 children had been accused of terror charges in 2006 and 2007. Of these, 319 were tried in courts in Diyarbakır. During the same period, another 422 children who had organised and attended protests were tried under Article 220 of the Turkish Penal Code, which criminalises ‘organising to commit crime’. Yet another 413 children were accused of ‘membership of armed organizations’, as defined in Article 314 of the Penal Code: their accusations were similarly connected to their alleged participation in demonstrations.<sup>29</sup>

In addition to the above figures, following street protests in the provinces of Diyarbakır, Şırnak, Cizre, Batman and Adana in 2008, hundreds of Kurdish children were arrested, detained and tried for terrorism related offences.<sup>30</sup> They have been charged with crimes that carry possible sentences of more than 20 years. For example, children throwing stones at law enforcement officers during protests have been charged with ‘committing a crime on behalf of a terrorist organization without holding membership of that organization’ under Article 220/6 of the Turkish Penal Code and with ‘making propaganda for a terrorist organization’ under Article 7/2 of the Anti-Terror Law.

Local media report that in Adana alone, between June 2008 and late May 2009, 198 children between the ages of 13 and 17 were in prison.<sup>31</sup> Following street protests in February 2007, 84 children were reportedly sentenced to a total 382 years and 11 months’ imprisonment for making propaganda on behalf of a terrorist organization.<sup>32</sup> Some of these children have been remanded in custody for up to one year pending trial, being thus deprived of their right to education.

Further concerns from the point of view of excessive use of force and impunity of state officials arose with amendments introduced to the Law on the Powers and

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28 These courts were set up to replace post-coup State Security Courts in duty and jurisdiction. For a case study of anti-terror proceedings against children before High Criminal Courts, see KHRP TO Report, *A Children’s Choir Face Terrorism Charges: Juveniles in the Turkish Justice System*, (KHRP, London, 2008).

29 Bianet, ‘Act Now, Cease Trying Children with Terror Charges’, 10 March 2009, available at <http://bianet.org/english/kategori/english/113053/act-now-cease-trying-children-with-terror-charges> (last accessed 23 March 2009).

30 Bianet, ‘AKP and CHP Promise Change in Terrorism Law for Children’, 19 February 2009, available at <http://bianet.org/english/kategori/english/112659/akp-and-chp-promise-change-in-terrorism-law-for-children> (last accessed 28 June 2009).

31 Kurdistan Commentary, ‘Anti-terrorism laws in Turkey’, 31 May 2009, available at <http://kurdistancommentary.wordpress.com/2009/05/31/anti-terrorism-laws-in-turkey/> (last accessed 29 June 2009).

32 IFEX, ‘Kurdish human rights activist on trial after criticising arrest of children’, 22 June 2009, available at [http://www.ifex.org/turkey/2009/06/22/ethem\\_acikalin\\_trial/](http://www.ifex.org/turkey/2009/06/22/ethem_acikalin_trial/) (last accessed 29 June 2009).

Duties of the Police by Law No. 5681, which came into effect in June 2007.<sup>33</sup> The amended legislation increased the powers available to police officers, including granting them the right to shoot fleeing suspects if a warning to stop is disobeyed.<sup>34</sup> The amended law also allows police to stop suspects or vehicles if they have reason to believe that doing so would prevent a crime.<sup>35</sup> It further permits body searches and searches of people's personal belongings without a court order – merely on the basis of the authorization of a local authority – if police believe a delay would hamper their work.<sup>36</sup> Fingerprinting by police has become mandatory when someone applies for an identification card, driver's license or passport.<sup>37</sup>

According to a report by the *Türkiye İnsan Hakları Vakfı* (Human Rights Foundation of Turkey, TIHV), this increase in police powers resulted in a sharp rise in cases of police violence against people from all sectors society. TIHV states that 53 people have been killed by police officers since June 2007, when the Law was amended. Of these, 40 were reportedly killed when police opened fire in response to an alleged failure to heed a warning to stop, during interventions in demonstrations or raids on homes. A further 53 people were injured in other similar cases. The report also relays a total of 416 cases of alleged torture in the same period.<sup>38</sup>

## 2. EU Reforms

In December 1999 the Helsinki European Council granted Turkey the status of 'candidate country' and accession negotiations were opened in October 2005. The Copenhagen criteria, which define whether a country is eligible to join the European Union, require EU applicant states to provide for the stability of institutions guaranteeing democracy, for the rule of law, for human rights and for respect for and protection of minorities.<sup>39</sup>

The prospect of EU accession thus provided an incentive for Turkey to reform its political and legal system. Since 2001, the Turkish government has passed several legal reforms within the framework of harmonization packages, including consti-

33 Law No. 5681 came into effect on 2 June 2007, available at <http://www.mevzuat.adalet.gov.tr/html/569.html> (last accessed 22 June 2009).

34 Article 16 of the Law on the Powers and Duties of the Police.

35 Article 4/A of the Law on the Powers and Duties of the Police.

36 Article 9 of the Law on the Powers and Duties of the Police.

37 Article 5 of the Law on the Powers and Duties of the Police.

38 Bianet, 'Report: 53 people killed by Police in two years', 17 June 2009, available at <http://bianet.org/english/health/115284-report-53-people-killed-by-police-in-two-years> (last accessed 22 June 2009).

39 European Council, Conclusions of the Presidency, Copenhagen, 21-22 June 1993, SN180/1/93, Rev 1, 13.

tutional reforms (2001 and 2004),<sup>40</sup> the adoption of a new Civil Code (November 2001), Criminal Code (2004),<sup>41</sup> and Criminal Procedure Code (2004),<sup>42</sup> and nine further sets of reform packages. The new Civil Code introduced improvements in individual rights such as freedom of association and assembly, gender equality and protection for children. The death penalty was abolished and permissible detention periods were shortened. The ruling AKP has also declared a ‘zero tolerance’ policy with regard to torture and legal regulations relevant to such abuses have been tightened. This included abolishing incommunicado detention, improving the rules for pre-trial detention, access to a lawyer and medical examinations, and increasing punishments for the perpetrators of torture.<sup>43</sup> In the same period, regulations limiting freedom of expression were eased to some extent. In 2004, the functions and composition of the National Security Council were changed to increase civilian control over the military, the State of Emergency that had been in place in the south-east for 15 years was ostensibly lifted completely in 2002, and State Security Courts were abolished in 2004.

However, despite these positive developments, many critical concerns remain in relation to human rights, including minority rights. As has been mentioned, in June 2007, in the context of unrest on the Iraqi border, the provinces of Şırnak, Hakkari and Siirt were declared part of a High Security Zone. The imposition of extraordinary security measures has resulted in a deterioration in the human rights situation in the region, and has had a particularly negative impact on freedom of expression and freedom of association.<sup>44</sup>

The European Commission has noted a need for further amendments of Turkish legislation, including in relation to torture, freedom of expression and association, children’s rights, political representation of minorities, and cultural and linguistic rights.<sup>45</sup> A particular cause for concern is the fact that some of the key advances that have been made have then been undermined by subsequent changes to the law, such as the amendments to anti-terror legislation which effectively introduced a two-tier system within which improvements in procedural safeguards are denied to those detained for alleged security-related offences.

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40 The most extensive amendments came in October 2001 when Law No. 4709 introduced amendments to the Preamble and thirty-four provisions of the 1982 constitution.

41 Entered into force on 1 June 2005.

42 Entered into force on 1 June 2005.

43 European Commission, *2004 Regular Report on Turkey’s Progress Towards Accession*, fn. 17 above.

44 KHRP FFM Report, *Return to a State of Emergency?*, fn. 11 above, 15.

45 The European Commission highlights that ‘As regards *fundamental rights*, there has been some legislative progress, but vigorous further efforts need to be made to ensure full respect of the fundamental rights guaranteed by the ECHR and the case law of the ECtHR.’ See European Commission, *Communication from the Commission to the European Parliament and Council – Enlargement Strategy and Main Challenges 2008-2009*, 5 November 2008, 71.



### 3. *International Law*

As part of efforts to bring domestic laws into line with European norms in the context of moves towards EU accession, in 2004 Turkey signed the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which was subsequently ratified in November 2006 and entered into force in February 2007. As a signatory to the Optional Protocol, Turkey has recognised the competence of the UN Human Rights Committee to receive and consider complaints from individuals in relation to alleged violations of human rights and is therefore subject to more stringent scrutiny.

In 2005, Turkey also signed the Optional Protocol to the UN Convention Against Torture (OPCAT). However, Turkey is yet to ratify this document. If ratified, OPCAT would provide for the establishment of an effective and independent regime for the inspection of places of detention with a view to ensuring the prevention of torture and other cruel, inhuman or degrading treatment or punishment.<sup>46</sup> Independent inspection of detention facilities in Turkey has also been recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).<sup>47</sup> Besides failing to allow for such independent inspections, Turkey has also ignored recommendations made by the CPT in relation to improving the detention conditions of Abdullah Öcalan, the founder of the PKK who has been held in solitary confinement on Imrali Island since his capture in 1999.<sup>48</sup>

In 1954 Turkey ratified the ECHR, established by the Council of Europe to implement the provisions of the Universal Declaration of Human Rights. The right of Turkish citizens to apply individually to take complaints about alleged violations of the ECHR to the ECtHR was recognized in 1987.

The Turkish constitution requires that judgments of the ECtHR take precedence over the decisions of national judicial bodies. Theoretically, this ought to provide a decisive contribution to the transformation of both the jurisprudence of Turkish courts and the policies of the Turkish government. However, to date ECtHR case

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46 KHRP FFM Report, *Closed Ranks: Transparency and Accountability in Turkey's Prison System*, (KHRP, London, April 2009), 17-18.

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

48 Council of Europe, Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 'Report to the Turkish Government on the Visit to Turkey Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 14 December 2005', Strasbourg, 6 September 2006, 10.

law has been poorly implemented in Turkey.<sup>49</sup> Particular areas in which implementation has been lacking include laws on conscientious objection, control of the security services, remedy of abuses, and freedom of expression.

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<sup>49</sup> The European Commission has noted that 'a considerable number of ECtHR judgements are still awaiting enforcement by Turkey'. See European Commission, 'Communication from the Commission to the European Parliament and Council – Enlargement Strategy and Main Challenges 2008-2009', Brussels, 5 November 2008.

### III. IMPUNITY OF STATE AGENTS

The fact-finding mission aimed to answer a number of questions regarding the attitudes and practices of the Turkish authorities – including members of the political, judicial and military hierarchies – in relation to allegations of human rights violations committed by state actors. Ensuring accountability for officials is a vital step towards establishing the rule of law and respect for human rights, and previous research by KHRP and others has repeatedly shown that this is an area in which very significant improvements are required in Turkey.

The mission looked both at the need to prosecute officials for human rights violations which occurred during the 1990s, and the need to address abuses such as torture and excessive use of force that continue to this day. Alarming, the evidence gathered by the mission suggested that allegations of human rights violations are routinely not taken seriously by the authorities. The mission heard that officials who are accused of involvement in human rights violations often do not face any further action and that, when cases do end up before the courts, they frequently receive lenient treatment. In the words of Cihan Aydın of the Diyarbakır Bar Association, ‘Either public officers are not investigated or when they are investigated they receive reduced or symbolic sentences when they are involved in human rights violations.’<sup>50</sup>

The mission was also alarmed to learn that state agents who are alleged to have been responsible for human rights violations often file counter-claims against their accusers, resulting in the victims of human rights violations themselves facing prosecution.

The above factors have contributed to a situation in which citizens who suffer human rights violations are reluctant to take any action because they do not trust that their complaints will be dealt with effectively and instead fear that they themselves could simply suffer further as a result.

The Turkish authorities’ failure to hold to account those responsible for the widespread disappearances and extrajudicial killings that occurred at the height of the conflict in the Kurdish regions has been a central problem in relation to the reso-

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50 FFM interview with Cihan Aydın, Diyarbakır Bar Association, 8 May 2009, Diyarbakır.

lution of the conflict since the most intensive period of fighting ended with the capture of PKK leader Abdullah Öcalan in 1999 and the lifting of the State of Emergency in the south-east in 2002. It is estimated that as many as 5,000 people disappeared whilst in custody in the 1990s. İHD alone recorded the disappearances of as many as 467 people in police custody between 1991 and mid-1995.<sup>51</sup> This appears to confirm widespread allegations that the security forces were targeting not only active PKK fighters but also politicians, journalists and other civilians in violation of international humanitarian law.

This matter was once again pushed to the fore in February 2009, when a Turkish judge ordered the excavation of several sites believed to be the location of mass graves containing the bodies of Kurds killed during the 1990s. More than 70 families had applied to a prosecutor in the town of Silopi after information emerged suggesting the location of their relatives' bodies. Information came from a former security officer, currently hiding abroad, who related the torture and execution of Kurdish civilians. The prosecutor ordered the excavation of two old well shafts behind an abandoned roadside restaurant, with another site to be dug on the grounds of a storage facility of the Botash oil company.<sup>52</sup>

Separately, the local branch of İHD in Mardin, whose representatives say there were 87 reported disappearances in that area alone between 1993 and 2004, had also funded the opening of a cemented well in Kızıltepe in October 2008 where bodies were alleged to have been dumped. Two sets of remains were found as a result of this investigation and at the time of the mission, families were still awaiting the results of DNA analysis to determine their identities.<sup>53</sup>

Holding to account those responsible for disappearances of the 1990s would arguably go a long way towards combating the culture of impunity that has existed in Turkish officialdom for far too long. The recent excavations are widely perceived as an important step towards reconciliation and justice for the victims and their families. However, according to those interviewed, serious questions remain about whether anyone will be charged or prosecuted as a result. Nuşirevan Elçi, a lawyer representing families of the disappeared, expressed doubts as to whether the aim of the recent excavations is actually to prosecute those responsible for the crimes in question. He noted that the judicial process lacks fundamental transparency and reported that while 150 people had applied to the Şırnak Bar Association to date

51 İHD, 'Campaign Against Disappearances', 15 May 1995, available at [http://www.ihd.org.tr/english/index.php?option=com\\_content&view=article&id=485:campaign-against-disappearances&catid=13:headquarters&Itemid=29](http://www.ihd.org.tr/english/index.php?option=com_content&view=article&id=485:campaign-against-disappearances&catid=13:headquarters&Itemid=29) (last accessed 21 August 2009).

52 See Nicholas Birch, 'Turkey Begins Dig for Missing Kurds In Push for New State Accountability', *The Wall Street Journal*, 10 March 2009.

53 FFM interview with Erdal Kuzu, İHD Mardin branch, 6 May 2009, Mardin.

to report disappearances, many more do not come forward because of their lack of confidence in the system.<sup>54</sup> KHRP has previously expressed concern at the considerable delays in organising such excavations, which raise the risk of evidence being tampered with.<sup>55</sup>

In the view of the mission, the failure to bring to account those responsible for human rights violations during the conflict in the Kurdish region not only harms the friends and relatives of the 'disappeared' but also enables and encourages an ongoing culture of impunity within the security services. That is to say, it encourages, among soldiers, police officers and other state authorities, the belief that they are above the law and that there are little if any consequences for state actors perpetrating human rights violations. It also contributes to the current situation whereby victims of contemporary human rights violations are reluctant to take action against the perpetrators.

To this day, the mission heard allegations that reports of ongoing human rights violations do not result in effective investigations and prosecutions.<sup>56</sup> Muharrem Erbey of the Diyarbakır branch of İHD related to the mission that, during a meeting on the use of disproportionate force by security forces organized in cooperation with the European Commission in Ankara in May 2009, a civil inspector at the Turkish Interior Ministry informed participants that between 2005 and 2008, 98 per cent of criminal and administrative investigations against public officials were dismissed.<sup>57</sup>

One key obstacle to criminal proceedings against officials is Article 3 of Law No. 4483 on the Prosecution of Civil Servants and other Public Employees, which stipulates that civil servants who are alleged to have committed a crime can only be investigated after permission has been obtained from their superiors, except in cases involving alleged torture and ill-treatment. The Committee of Ministers of the Council of Europe has expressed concerns about this requirement and has called for

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54 FFM interview with Nuşirevan Elçi, Head of Şırnak Bar Association, 2 May 2009, Cizre. Transparency International's Global Corruption Barometer 2005 gave the judiciary in Turkey a score of 4 on a scale of 1 to 5 (where 5 is highly corrupt). See Transparency International, *Global Corruption Report of 2007: Corruption in Judicial Systems*, (Cambridge, Cambridge University Press, 2007), 279.

55 See, for example, KHRP Press Release, 'Excavations Begin in Search for Remains of a Relative of KHRP Applicant,' 3 April, 2009, <http://www.khrp.org/content/view/457/2/>

56 FFM interview with Hakan Generi, Mardin Bar Association, 6 May 2009, Mardin.

57 FFM interview with Muharrem Erbey, İHD Diyarbakır branch, 7 May 2009, Diyarbakır.

legislative amendments to make it explicit that such permission is unnecessary not only in relation to alleged torture and ill-treatment but also other serious crimes.<sup>58</sup>

To illustrate this problem, Mr Erbey gave the example of a police officer who allegedly shot an individual in 2007 after the latter refused the officer's request to return a television that he had purchased a year earlier and which he said was broken. Although the victim was incapacitated as a result of the shooting, the officer was reportedly neither detained nor suspended from his duty. A criminal investigation was only launched in 2008 after the officer's superior finally granted permission. The case is ongoing and has just recently been brought before a court.<sup>59</sup>

The mission heard that excessive use of force by the Turkish security forces in the Kurdish region is particularly common during and in the aftermath of demonstrations, and that the authorities routinely fail to carry out effective investigations into such incidents. For example, during the funerals of four PKK members in Diyarbakır in March 2006 and subsequent demonstrations, a total of 11 people reportedly died, including three children. Seven of those killed were allegedly shot by members of the security forces. The mission heard that one victim, 17-year-old Mahsum Mızrak, died after being hit with a tear gas canister. The authorities subsequently identified the gun which with he had been shot and traced it to three police officers in whose name it was registered. Despite these individuals having been identified, the governor of Diyarbakır apparently withheld permission for a criminal investigation on the grounds that the policemen in question had acted in accordance with procedure and had fired into empty space.<sup>60</sup> The governor's decision was only overturned in April 2009 after an appeal was submitted to the Regional Administrative Court in Diyarbakır. At the time of the mission's visit to Turkey, local human rights defenders expected that a criminal investigation would finally be launched by the Diyarbakır Public Prosecutor in the near future.<sup>61</sup>

In the view of the mission, excessive use of force by security forces in connection with demonstrations has been encouraged by public statements by senior government figures which appear to condone such behaviour. In response to the unrest in Diyarbakır in March 2006, for example, Prime Minister Recep Tayyip Erdoğan declared, 'If you cry tomorrow, it will be in vain. The security forces will intervene

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58 Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), *Information Note on the Fact-Finding Visit to Turkey by the Chair of the Committee* (24-26 November 2008), 7 April 2009, para. 71. Available at [http://assembly.coe.int/CommitteeDocs/2009/20090407\\_amondoc10rev\\_2009.pdf](http://assembly.coe.int/CommitteeDocs/2009/20090407_amondoc10rev_2009.pdf) (last accessed 26 May 2009).

59 FFM interview with Muharrem Erbey, İHD Diyarbakır branch, 7 May 2009.

60 Telephone interview with Barış Yavuz, lawyer, Diyarbakır Bar Association, 7 August 2009.

61 FFM interview with Cihan Aydın, member of Board Committee of Diyarbakır Bar Association, 8 May 2009, Diyarbakır.

against the pawns of terrorism, no matter if they are women and children. Everybody should realise that.<sup>62</sup> Although Abdurrahman Kurt, a leading member of the AKP, stated that the Prime Minister had made a ‘mistake in style and expression’ and ‘perhaps should apologise’, he nonetheless went on to say that he did not believe that Erdogan was deliberately stoking violence against the demonstrators.<sup>63</sup> The mission considers that statements such as the above clearly incite violence and that they are unacceptable under any circumstances, particularly when coming from the Prime Minister.

Besides excessive use of force against demonstrators and others, impunity also remains a problem in relation to torture and ill-treatment perpetrated by state officials against individuals detained in custody, despite the government’s declared policy of ‘zero tolerance’ in relation to such abuses. The official rhetoric on this front was supposedly backed up by the decisive response of the authorities to the case of Engin Çeber, a human rights activist who died in October 2008, allegedly as a result of severe beatings in custody. In the wake of Mr Çeber’s death, the then Minister of Justice Mehmet Ali Şahin took the unusual step of issuing a public apology in connection with the case and unprecedented trial proceedings were launched against 60 officials accused of various forms of involvement.<sup>64</sup>

However, a previous KHRP mission which observed part of the trial proceedings and interviewed a range of relevant actors cast doubts on whether this case illustrates a fundamental shift in state policy towards the treatment of detainees. In light of Mr Çeber’s relatively high profile as a political activist and the seemingly clear-cut circumstances of his death, it appeared instead that the authorities had been left with little choice but to make an example of his case.<sup>65</sup> In fact, the mission noted statistics that appear to confirm that this much-hyped trial is very much an exception. In response to a parliamentary question in October 2008, for example, Justice Minister Şahin stated that in the course of 2006 and 2007 more than 6,000 security officers had been investigated in relation to torture allegations. However, only 223 of them faced criminal charges and of those just 79 received punishment.<sup>66</sup>

62 BBC News online, ‘Turkey warns children off clashes,’ 1 April 2006, available at <http://news.bbc.co.uk/1/hi/world/europe/4867934.stm> (last accessed 5 August 2009).

63 FFM interview with Abdurrahman Kurt, Chair of AKP Diyarbakır branch, 20 April 2006, Diyarbakır.

64 See for example Bianet, ‘Security Forces Deny Murder of Engin Çeber,’ 23 January 2009, available at <http://bianet.org/english/freedom-of-expression/112105-security-forces-deny-murder-of-engin-ceber> (last accessed 22 June 2009).

65 KHRP TO Report, *The Death of Engin Çeber: Prosecuting Torture and Ill-treatment Within the Turkish Detention System*, (KHRP, London, June 2009).

66 Tümgazeteler, ‘Hak İhlalleri Ve İşkence Cezasız,’ 18 October 2008, available at <http://www.tumgazeteler.com/?a=4241312> (last accessed 22 June 2009).

In addition to the problem of investigations and prosecutions not being launched in response to allegations of torture and ill-treatment by state officials, the mission also heard allegations that those officials who do end up before the courts frequently receive lenient treatment.

There is currently no regulation in Turkey limiting the postponement of trials for cases of torture, nor does any law state that sentences for crimes of torture and ill-treatment cannot be converted into a fine or a suspended sentence. Moreover, the statute of limitations for the crime of torture is set to 15 years (20 in cases of aggravated torture).<sup>67</sup> The length of judicial proceedings, and occasional deliberate efforts on the part of defendants to delay the process, often results in trials being dropped as a result of exceeding the statute of limitations.<sup>68</sup>

One example cited by interviewees to back up the reported problem of lenient treatment was the case of Ahmet Kaymaz and his young son Uğur Kaymaz, who were shot by police outside their home in Kızıltepe, Mardin on 21 November 2004. On 19 June 2009, just weeks after the mission returned from Turkey, the Supreme Court of Appeal upheld a finding that the police officers involved in the shooting were legitimately exercising their right to self defence.<sup>69</sup> The four officers – Mehmet Karaca, Yasafettin Açıkgöz, Seydi Ahmet Döngel and Salih Ayaz – claimed that the victims died when they returned fire during an anti-terrorist operation targeting the PKK. Earlier trial proceedings before the Eskişehir High Criminal Court, which were observed by KHRP, had acquitted the officers on the same grounds on 19 April 2007.<sup>70</sup> The ruling came in spite of forensic medical reports stating that Uğur was 12 years old (a claim denied by the police) and that no battle had taken place, but rather an extrajudicial execution. This view was also publicly upheld by the Turkish Parliamentary Human Rights Commission.<sup>71</sup>

Even where state officials are convicted in connection with human rights violations, the mission heard that they often receive lenient sentences which are not commensurate with the gravity of the crimes.

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67 In the wake of Engin Çeber's death, Turkey's main opposition party, the *Cumhuriyet Halk Partisi* (Republican People's Party, CHP), proposed amendments to the law to prevent jail sentences from being replaced with a fine or suspended sentence where an individual is convicted of torture, aggravated torture or 'torment'. At the time of writing, however, this proposal has not entered into law.

68 Amnesty International, *Turkey: The Entrenched Culture of Impunity Must End*, 5 July 2007, 6, available at <http://www.amnesty.org/en/library/info/EUR44/008/2007> (last accessed 21 August 2009).

69 Bianet, 'Supreme Court Ratifies Acquittal of Killing Father and Son,' 19 June 2009, available at <http://bianet.org/english/human-rights/115351-supreme-court-ratifies-acquittal-of-police-killing-father-and-son> (last accessed 22 June 2009).

70 KHRP Trial Observation Report, *Effective Criminal Accountability? Extra-Judicial Killings on Trial* (KHRP, London, May 2006).

71 Amnesty International, *Turkey: The Entrenched Culture of Impunity Must End*, fn. 68 above, 19.



surate with their crimes. In May 2009, shortly after the mission returned from Turkey, the Karşıyaka First Heavy Penal Court handed down a conviction for reckless killing and a sentence of just two years and one month to a police officer who was found to have shot dead 20-year-old Baran Tursun in Izmir on 24 November 2007 after the latter allegedly failed to obey an order to stop.<sup>72</sup> Ten other police officers who had been accused of hiding evidence in the case were acquitted. The convicted officer claimed in his defence that he had thrown himself to the ground to protect himself and that the shot had gone off as a result. However, an expert report submitted in the case indicated that the bullet entered Baran Tursun's head on a straight path resulting from direct targeting, not as a consequence of any ricochet.

In addition to all of the factors outlined thus far, proper investigations into alleged human rights violations by military personnel in particular have in the past been hampered by laws limiting the powers of civilian courts to try members of the armed forces. In this regard, mission members were encouraged by an amendment to the Code of Criminal Procedure approved by President Abdullah Gül on 17 July 2009, which will require civilian courts to try members of the armed forces accused of crimes such as threats to national security, violations of the constitution, organizing armed groups and attempting to topple the government during peace time.<sup>73</sup> The mission welcomed this development, which it believes could help bring an end to the practice of military courts effectively extending protection to the perpetrators of such crimes. The fact that military courts cannot be regarded as independent and impartial, since they are appointed by and responsible to the Ministry of Defence and the General Staff, has been underscored in several cases against Turkey before the ECtHR.<sup>74</sup>

It is the mission's hope that this new development could lead to civilian courts regaining jurisdiction over important cases that are currently ongoing before the military court system. This includes the trial of two non-commissioned military officers, Ali Kaya and Özcan İldeniz, accused of involvement in an unprovoked bomb attack on a Kurdish-owned bookshop in the town of Şemdinli in Hakkari province

72 Bianet, 'Police Officer Gets 2 Years for Killing Youth,' 21 May 2009, available at <http://bianet.org/english/human-rights/114649-police-officer-gets-2-years-for-killing-youth> (last accessed 22 June 2009).

73 Hürriyet Daily News, 'Turkish president Approves military trial law but urges more steps,' 17 July 2009, available at <http://www.hurriyet.com.tr/english/domestic/12035064.asp?scr=1> (last accessed 17 July 2009).

74 Relevant cases include *Ergin v. Turkey* (Application no. 47533/99), *Erükçü v. Turkey* (Application no. 4211/02) and *Özel and Others v. Turkey* (Application no. 37626/02).

in November 2005, which killed one man and injured two others.<sup>75</sup> The two defendants were convicted by a civilian court in connection with the bombing and each sentenced to 39 years and six months in jail in June 2006. However, they appealed the decision, arguing successfully that their status as members of the military meant they should be tried before a military tribunal. Following the recent change in the law, lawyers representing the victims of the bombing applied to the Van Military Court – which is currently trying Mr Kaya and Mr İldeniz, along with a former PKK member-turned-informant Veysel Ateş – to request that the case be returned to the Van High Criminal Court.<sup>76</sup>

Beyond the failure to effectively investigate and prosecute officials accused of human rights violations and to hand down appropriate punishments to those who are convicted, the mission was also alarmed to hear reports that public officials accused of involvement in human rights violations routinely file counter claims against their accusers in an effort to turn the tables on them. This practice clearly contributes to the culture of impunity by discouraging citizens from taking appropriate action against officials responsible for abuses.

Mission members were given the example of an incident alleged to have taken place in Diyarbakır in April 2009, just weeks before the mission's visit, in which a police officer was said to have severely beaten the driver of a school bus in the context of a traffic dispute. The driver was taken to the police station and an İHD mission that visited him there found him covered in blood. The mission was told that when the police officer in question was unable to convince the individual to desist from lodging a complaint against him, he obtained a false medical report indicating that he himself had been injured by the victim. As a result, in addition to a case which was subsequently launched against the policeman, a criminal investigation was also instigated against the victim and he was prosecuted for allegedly injuring the police officer.<sup>77</sup>

The mission also heard allegations of similar problems arising in a case in which residents of the village of Tepecik were allegedly attacked by village guards after voting for the pro-Kurdish DTP in local elections in late March 2009. After the vil-

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75 Parts of the trial proceedings in this case have been monitored by two separate KHRP missions. See KHRP Trial Observation Reports, *Promoting Conflict: The Şemdinli Bombing*, (KHRP, London, September 2006); and *State Accountability? The Şemdinli Trial Re-Hearing*, (KHRP, London, September 2007).

76 Today's Zaman, 'Lawyers apply to bring Şemdinli case to civilian court,' 14 July 2009, available at <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=180879> (last accessed 17 July 2009).

77 FFM interview with Muharrem Erbey, İHD Diyarbakır branch, 7 May 2009, Diyarbakır; and private phone interview with Serdar Çelebi, lawyer, İHD Diyarbakır branch, 5 August 2009.

lage guards opened fire on a home in the village, the owner of the house reportedly submitted a complaint to the Gercüş Public Prosecutor and the Kayapınar gendarmerie station by phone. Gendarmerie officers were said to have reached the village within two or three hours, assessed the state of the house and confiscated the village guards' weapons. However, according to a witness statement from one villager, the guns were returned five days later and, on the same day, 26 villagers were arrested in connection with the unrest. The witness reported that, with the exception of himself, those arrested were forced to sign statements that had been written in advance by police officers. In the words of the witness, 'Although we were complainants we became defendants.'<sup>78</sup>

Similarly, shortly after the killings of Ahmet Kaymaz and his son Uğur in 2004, mentioned earlier in this section, a prosecutor prepared reports on the wife and younger brother of Ahmet Kaymaz accusing them both of membership of the PKK and calling for them to be charged. The effort eventually failed after a more senior prosecutor found no evidence that the claim was true. However, particularly given that the mother of Mr Kaymaz was formally registered as a complainant in the case against those charged with responsibility for the killing, international observers have expressed concern that the move may have been designed to discredit the family and influence the court.<sup>79</sup>

In light of the factors outlined in this section, the mission was not surprised to hear that victims of human rights violations in the Kurdish region of Turkey are often extremely reluctant to file complaints against the perpetrators, believing that there is little likelihood that effective action would be taken against them and fearing that they themselves could suffer damaging consequences as a result of the decision to speak out. The mission heard, for example, of an incident alleged to have occurred in Şırnak in April 2009, in which five journalists were subjected to tear gas in a confined area and were beaten by police officers but nonetheless chose not even to report their mistreatment.

The mission raised the question of impunity with Abdullmuttalip Özbek, Hakkari Deputy for the AKP. Speaking in relation to the police force in particular, Mr Özbek said that in his opinion, there are no systematic problems in this regard. He also said that if isolated problems did arise, these should be immediately reported to him so that he could investigate them. While the mission applauds Mr Özbek's willingness to take action on such issues, the underlying concerns about mechanisms for redress remain. It is clear that one MP cannot put a stop to impunity in a vast region and that the checks and balances required cannot be handled by one office. Citizens

78 Witness statement made available to KHRP via the Batman branch of İHD.

79 Amnesty International, *Turkey: The Entrenched Culture of Impunity Must End*, fn. 68 above, 21.

must feel that they can report a crime committed by a state agent without needing to turn to their MP for support.

It is crucial that steps should be taken to ensure that allegations of human rights violations by state officials are effectively investigated and prosecuted, that appropriate punishments are handed down to those who are convicted, that senior public figures cease to voice support for indiscriminate violence, and that officials are prevented from filing malicious counter-claims against any individuals who dare to accuse them of stepping out of line. Until that time, widespread impunity of state officials will continue to feed into a belief amongst citizens that there is no point in attempting to file complaints against them, and this attitude in turn will continue to contribute to a dangerous perception amongst officials that they are above the law.

## IV. ACCESS TO JUSTICE FOR WOMEN

KHRP has, in previous fact-finding mission reports, outlined the barriers that people in the Kurdish regions of Turkey face in accessing justice.<sup>80</sup> One aim of the present fact-finding mission was to focus specifically on the ability of women to access justice and on how state authorities – be they police, legislators, prosecutors or judges – can better protect women who are the victims of discrimination and violence.

Despite some positive reforms in this area, the mission heard that women in the Kurdish regions face an array of barriers that seriously hamper their access to the justice system. Women are often discouraged from filing complaints against perpetrators of domestic violence and other offences because of a lack of awareness of their rights. Even when women do file complaints with the authorities, officials routinely refuse to take their case seriously and fail to implement the protective measures that are theoretically available to them. The mission heard that further obstacles include language barriers, severe failings in the provision of legal aid and serious shortcomings in medical examinations of alleged victims of abuse.

Women in the Kurdish regions of Turkey, as in other parts of the country and in many areas of the world, operate in a social context defined by patriarchy. Women face harassment and violence not only outside of the home – for example, in their dealings with the security services – but often also from others within their own families. According to research conducted by the Prime Ministry Directorate General on the Status of Women in 2008, the findings of which were released in February 2009, four out of ten women in Turkey are beaten by their husbands and one in ten reports having been beaten during pregnancy.<sup>81</sup> Women are also affected by customary and religious practices including early and forced marriages and po-

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80 See for example KHRP FFM Report, *Return to a State of Emergency?*, fn. 11 above, 39-41 and 48; and *The Internally Displaced Kurds of Turkey: Ongoing Issues of Responsibility, Redress and Resettlement*, (KHRP, London, September 2007), especially parts 5-7. For a detailed report on the shortcomings of the Turkish justice system, see *An Ongoing Practice: Torture in Turkey* (KHRP, London, August 2007).

81 Turkish Republic Prime Ministry Directorate General on the Status of Women, 'National Research on Domestic Violence against Women in 2008,' available at <http://www.ksgm.gov.tr/tdvaw/index.htm> (last accessed 28 June 2009).

lygamy, as well as honour crimes.<sup>82</sup> Indeed, Women for Women's Human Rights - New Ways (WWHR), an NGO that has been active in Turkey since 1993, has noted that honour killings tend to be more prevalent in south-east and eastern areas of the country, particularly among Kurdish communities.<sup>83</sup> According to KA-MER, a leading women's rights organization in south-east Turkey, between 2003 and 2007 a total of 198 women from eastern and south-eastern Anatolia contacted its representatives to report that their family had threatened them with honour killings. Out of these women, three eventually died from injuries sustained in attacks, one committed suicide, and 27 were pressured to commit suicide.<sup>84</sup> These cases are likely to represent only a very small glimpse of a far wider problem.

As well as encouraging violence and other offences against women in the first place, the patriarchal social framework also makes reporting crimes, particularly violent and sexual offences, very difficult. The mission heard that many women choose not to report domestic violence, at least partly because of their internalization of values of patriarchy and female servility.<sup>85</sup> The mission heard that rape cases in particular are not reported to the authorities because of families' fear of losing 'honour'.<sup>86</sup> It was reported that, in an attempt to protect this family honour, relatives even frequently force rape victims to marry the perpetrator.<sup>87</sup> The mission heard of the case of one particular woman who had allegedly been raped in Siirt in 2007. Her relatives made peace with the family of the perpetrator and forced the victim to get engaged to him. Two weeks after the engagement, her fiancé took the victim out and she was subsequently found dead. Although her fiancé was accused of murdering her, he was reportedly released from prison after just a few months.<sup>88</sup>

The Turkish authorities have taken some steps in recent years to address violations of women's rights, including signing and ratifying international human rights instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its first optional protocol. Turkey has also taken significant legislative steps in cooperation with the EU, including annulling

82 KHRP, 'European Parliament Project: The Increase in Kurdish Women Committing Suicide', 2007, available at [http://www.khrp.org/component/option,com\\_docman/task,doc\\_view/gid,126/](http://www.khrp.org/component/option,com_docman/task,doc_view/gid,126/) (last accessed 5 August 2009).

83 Refugee Documentation Centre of Ireland, 'Honour Killings in Turkey', 25 June 2009, available at <http://www.unhcr.org/refworld/pdfid/4a4b6cead.pdf> (last accessed 5 August 2009).

84 US Department of State, 'Country Report on Human Rights Practices: Turkey', 2007, available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100589.htm> (last accessed 17 July 2009).

85 FFM interview with Rüya Elçi, Head of Şırnak Bar Association Women and Children Rights Committee, Cizre, 2 May 2009; and FFM interview with Ferda Miran, Diyarbakır Bar Association, 8 May 2009, Diyarbakır.

86 FFM interview with Vetha Aydın, Chair of İHD Siirt branch, 5 May 2009, Siirt.

87 *Ibid.*

88 *Ibid.*

Article 159 of the Civil Code, which previously held that women must gain consent from their husbands in order to work away from home, and repealing Article 438 of the Criminal Code, which provided for a one-third reduction in sentences for rape in cases where the victim was a sex worker. The Family Protection Law was also introduced in 1998, providing for protective measures to be applied when women face domestic violence.<sup>89</sup> In such cases, measures available to a judge include ordering the perpetrator to leave a dwelling shared with his wife or children, to surrender any weapons, and to desist from arriving at the dwelling under the influence of alcohol or other intoxicants. Such reforms, however, while certainly welcome, are rendered largely ineffective by a widespread lack of implementation, which, the mission learned, continues to hamper progress.<sup>90</sup>

While certain steps have also been taken to provide practical support to women who are the victims of domestic violence and other abuses, their success has been limited. On 25 January 2007, for example, a hotline (ALO 183) was established by the State Ministry for Women and Children's Affairs with the aim of preventing the exploitation of women, children, persons with disabilities, and senior citizens. Between January 2007 and 5 June 2008, the hotline reportedly received 198,433 calls. However, in response to a parliamentary question, State Minister Nimet Çubukçu stated that only 336 of these calls related to cases that she would categorise as involving exploitation. Of these, she said, 136 calls were from children, 199 were from women, five were from disabled people and four were from senior citizens.<sup>91</sup> The hotline received only seven calls from Diyarbakır in 2007 and two from Şanlıurfa in 2006 and 2007.<sup>92</sup> Such figures clearly show that the initiative has not been used effectively by the target group. Indeed, during the present mission, none of the women interviewed even mentioned the hotline, further highlighting the need to redouble efforts to promote awareness of existing support schemes, particularly in the Kurdish region.

More generally, the mission heard that women's access to justice in the Kurdish region, and the willingness and ability of women to take advantage of the protections

89 The full text of the Family Protection Law is available in Turkish at <http://www.mevzuat.adalet.gov.tr/html/888.html> (last accessed 18 August 2009).

90 FFM interview with Rüya Elçi, Head of Şırnak Bar Association Women and Children Rights Committee, 2 May 2009, Cizre; FFM interview with Erdal Kuzu, İHD Mardin branch, 6 May 2009, Mardin.

91 Bianet, 'Alo 183'ü Bin Kişiden Biri İstismanlarla İlgili Arıyor,' 27 August 2008, available at <http://bianet.org/bianet/siyaset/109316-alo-183u-bin-kisiden-biri-istismanlarla-iligili-ariyor> (last accessed 23 June 2009).

92 Sabah, "'Alo 183'e 2 yılda sadece 2 kişi başvurdu,'" 5 February 2008, available at <http://arsiv.sabah.com.tr/2008/02/05/haber,DEC2141985B7412CA21C6C1307273949.html> (last accessed 5 August 2009); and 7bd, 'kadınlar alo 183 şiddet hattından habersiz!,' 25 August 2008, available at <http://7bd.info/article.php?story=20080825002738856> (last accessed 5 August 2009).

that are available to them, is severely hampered by a widespread lack of awareness of their rights. It was reported that this lack of awareness is particularly common for women living in rural areas because of the particular dominance of patriarchal values in such areas.<sup>93</sup> This lack of awareness is exacerbated by restricted access to education and high levels of illiteracy amongst women in the Kurdish region. The rate of illiteracy amongst women in south-eastern Turkey is around 40 per cent, far higher than the national average of about 20 per cent.<sup>94</sup> The mission heard that the majority of women who apply to the Women's Rights Centre of the Diyarbakır Bar Association for legal advice and legal aid have either never been to school, or else left school without completing their primary education.<sup>95</sup>

Even where women do overcome such barriers and file complaints about offences committed against them, the mission heard that officials are frequently wilfully uncooperative. The mission was told that the police, who are the first resort in cases of domestic violence, usually fail to investigate women's complaints. Instead of informing victims about their rights under the Family Protection Law, they are reportedly generally reluctant to get involved and instead encourage women to resolve the issue themselves within the context of their own family. The mission was told that in most cases, the police refuse even to record women's complaints.<sup>96</sup>

As noted previously, the Family Protection Law provides for protective measures to be granted to women in cases of domestic violence. However, more than a decade after the law came into force, and despite a November 2002 Ministry of Justice circular to courts and public prosecutors explaining how to implement it, representatives of women's rights organisations told the mission that it is not used effectively.

The mission heard that in order to secure protective measures, female victims of domestic abuse are required to meet arbitrarily high standards of proof. Representatives of the Diyarbakır Bar Association reported that judges often require physical evidence of violence, such as can be provided through a medical examination. This effectively ignores suffering caused by forms of abuse which do not leave physical traces, such as psychological violence and the threat of physical violence.<sup>97</sup> Moreover, the ways in which medical examinations are conducted mean that this process can itself prove deeply humiliating to the victim. For example, in spite of the

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93 FFM interview with Vetha Aydın, İHD Siirt branch, 5 May 2009, Siirt.

94 Turkey's Prime Ministry State Planning Organisation, *Ranking Provinces and regions in Terms of Socioeconomic Development Indicators*, quoted in Ferhat Selli and Aygul Fazioglu, 'Social Parameters of Woman Labour in the GAP region', *Second International Conference in Women's studies*, Eastern Mediterranean University, Centre for Women's Studies, 26-28 April 2006.

95 FFM interview with Ferda Miran, Diyarbakır Bar Association, 8 May 2009, Diyarbakır.

96 FFM interview with Özlem Özen, DIKASUM, 7 May 2009, Diyarbakır.

97 FFM interview with Ferda Miran, Diyarbakır Bar Association, 8 May 2009, Diyarbakır.



stipulation that examinations should not take place in the presence of law enforcement officers, it is reported that it is in fact very common for such individuals to be present.<sup>98</sup> Many women understandably refuse to undergo examinations under such conditions.

Where judges do put in place protective measures under the Family Protection Law, reports suggest that these are not monitored effectively. According to the terms of the Family Protection Law, responsibility for monitoring court orders lies with the police and any spouse who fails to comply can face criminal proceedings before a magistrate's court. However, as an illustration of failings on this front, the mission was told of the case of Fatma Babatlı, a mother of seven in Diyarbakır who was killed by her husband in November 2008 in spite of a court order forbidding him from approaching their house. She had reportedly filed seven complaints to the police in different occasions, reporting previous threats and attacks from her husband, including an attack with a cleaver on the very day before he finally killed her.<sup>99</sup>

It was reported that the police also often fail to maintain secrecy in relation to the cases of women who are under protection. The mission was told that police officials, when contacted by the woman's family, often confirm her presence in a shelter and provide the name of the organization responsible for sheltering her. Although this information is not in itself enough to identify the specific whereabouts of the woman in question, it endangers human rights defenders and threatens the security of their organizational premises.<sup>100</sup>

The mission was told that another major shortcoming in the implementation of the Family Protection Law is the failure to take advantage of provisions allowing a judge to order the abusive spouse to pay an allowance to the abused partner, whether or not a claim is filed for such financial support. The mission heard that courts frequently fail to establish an allowance sufficient to provide for the needs of the woman and her family, and that court rulings with regard to maintenance payments are also not enforced. This is a serious barrier to women filing complaints against their husbands, since households are often dependent on the husband's income and women fear that if the husband is issued with a restraining order without sufficient maintenance payments having been put in place, they will be left without any means to support their family.<sup>101</sup>

Besides the failure of the authorities to take women's complaints seriously and implement relevant protective legislation, the mission heard time and again that lan-

98 Amnesty International, *Turkey: The Entrenched Culture of Impunity Must End*, fn. 68 above, 10.

99 FFM interview with Özlem Özen, DIKASUM, 7 May 2009, Diyarbakır.

100 *Ibid.*

101 FFM interview with Ferda Miran, Diyarbakır Bar Association, 8 May 2009, Diyarbakır.

guage barriers present another fundamental obstacle to women's access to justice in the Kurdish region. Throughout the country, Turkish is the language of official administration and those who do not speak Turkish are effectively barred from accessing public services.<sup>102</sup> No satisfactory translation service is provided for Kurdish speakers in police stations, during meetings with public prosecutors or in court proceedings. Instead, court staff, lawyers and police officers are usually appointed to act as translators. This arrangement stands in the way of due process and seriously threatens the right of non-Turkish speakers to a fair hearing. A displaced woman in Siirt told the mission that in 2008, she faced criminal charges for using the honorific 'Mr' when referring to PKK founder Abdullah Öcalan. Whilst at the police station, she was encouraged by the individual who was translating for her to admit that she had committed a crime by saying 'Mr Öcalan' and to express regret.<sup>103</sup> The language barrier in this context is particularly detrimental to the rights of women in the Kurdish region of Turkey in light of the limited access to education and high rate of illiteracy mentioned previously.

The mission heard that women's access to justice is further obstructed by serious deficiencies in the legal aid system. High levels of unemployment and poverty, particularly in the Kurdish region, mean that an effective legal aid system is essential. This is particularly the case for women, given that throughout Turkey men own 92 per cent of all property, women's salaries amount to only 20 to 50 per cent of those of men, and many women provide unpaid domestic work at home.<sup>104</sup> According to the Turkish Statistical Institute, only around 6 per cent of women aged 15 and above in south-east Anatolia are employed, compared with a national employment rate of 16 per cent.<sup>105</sup>

To an extent, internalization of traditional values and lack of awareness about the role of legal aid hamper women's access to the financial support that is available. One displaced woman in Siirt told the mission that, on an occasion in the past when she had been charged with a crime, she had not wanted to request legal aid because

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102 FFM interview with Suden Güven, Coordinator of Selis Women's Counselling Centre, 7 May 2009, Diyarbakır.

103 FFM interview with Halime Erdoğan, 5 May 2009, Siirt. Individuals referring to Abdullah Öcalan using the honorific 'Mr' have in the past been prosecuted under Article 215 of the Turkish Penal Code, which covers the offence of 'praising crime and a criminal'.

104 KHRP, 'European Parliament Project: The Increase in Kurdish Women Committing Suicide', fn. 82 above.

105 Turkish Statistical Institute, 'Population By Population Group and Sex'; 'The Characteristics Of The Population By Provinces, 2000 Population Census'; 'Employment Status by Years and Sex'; and 'Regional Results Of Household Labour Force Survey After 2007'. All available at <http://www.turkstat.gov.tr/PreHaberBultenleri.do?id=3894> (last accessed 21 August 2009).

she felt that to do so would lead to the perception that she had in fact committed the offence.<sup>106</sup>

In many other respects, however, it was clear to the mission that it was the legal aid system itself that was flawed, particularly in relation to the provision of financial support to women who come into contact with the law as a result of domestic or sexual violence. Representatives of the Commission on Violence against Women, an initiative established and supported by local government, told the mission that accessing legal aid is a lengthy processes, which requires submission of documents proving poverty and can often last several months. Women who are exposed to domestic violence are obviously particularly at risk as a result of such delays.<sup>107</sup> What is more, women who are already in protection because of domestic violence are required to apply in person to the authorities to collect the documents required in order to secure legal aid, potentially putting their lives in danger. The mission heard that women who wish to mount a civil case – in order to secure a divorce, for example – also face a lengthy process in order to secure exemption from court fees.<sup>108</sup>

Shortly after mission members returned from Turkey, the ECtHR issued a judgment which underscored many of the same concerns about women's access to justice that had been highlighted by the mission's own research. In the landmark decision in *Opuz v. Turkey*, the ECtHR ruled that the Turkish authorities had failed to protect the Applicant from her ex-husband, who had repeatedly attacked the Applicant and killed her mother. The Court found Turkey in violation of Article 2 of the ECHR (right to life) with regard to the murder of the Applicant's mother, noting that the authorities had known from previously reported incidents that the husband was extremely violent. It also ruled that there had been a violation of Article 3 (prohibition of torture or inhuman or degrading treatment) for 'failure to take protective measures in the form of effective deterrence against serious breaches of the Applicant's personal integrity by her husband'.<sup>109</sup> Above all, the Court emphasised that when authorities are aware of instances of grave domestic violence, the onus is on them to undertake effective action of their own volition. Waiting for the victim to seek protection is not sufficient. The Court also found a violation of the prohibition of discrimination on the basis of gender. Looking at CEDAW and at case law of other human rights institutions, the Court held that 'the State's failure to protect women

106 FFM interview with Taybet Tekin, 5 May 2009, Siirt.

107 FFM interview with Lawyer Semire Nergiz, Women, Violence and Law Group of Local Agenda 21, Municipality of Diyarbakır, 7 May 2009. At the UN Earth Summit in Rio de Janeiro in 1992, a gathering of 179 heads of state and government developed an action plan for sustainable development in the 21st century. Governments pledged that they would encourage local councils to produce their own plan, to be known as Local Agenda 21, in consultation with the community. The Commission on Violence Against Women was established in Turkey under Local Agenda 21.

108 *Ibid.*

109 ECtHR, Appl. No.33401/02, *Opuz v. Turkey*, judgment of 9 June 2009, para. 176.

against domestic violence breaches their right to equal protection of the law' and that this failure need not be intentional.<sup>110</sup>

In coming to these conclusions, the ECtHR expressed a sharp judgment on the provisions for protection against domestic violence in the Kurdish region of Turkey, affirming that '[t]he Applicant has been able to show... that the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence.<sup>111</sup> The Court also noted serious problems in relation to implementation of the Family Protection Law, noting especially: the attitude of local authorities; the manner in which women are treated at police stations when they report domestic violence; the fact that police officers often attempt to assume the role of mediators rather than investigating complaints; and judicial passivity in providing effective protection to victims.<sup>112</sup>

Overall, the Court stated that '[d]espite the reforms carried out by the Government in recent years, the overall unresponsiveness of the judicial system and impunity enjoyed by the aggressors, as found in the instant case, indicated that there was insufficient commitment to take appropriate action to address domestic violence.'<sup>113</sup>

Unsurprisingly, the barriers outlined in this section and the failure to implement or enforce protective measures have contributed to a deep sense of mistrust in the justice system amongst women in the Kurdish regions of Turkey. Until such problems are addressed, many women will continue to choose not even to report domestic violence and other offences against them, in the belief that the perpetrators will anyway not be brought to justice.

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110 *Ibid.*, para. 191.

111 *Ibid.*, para. 198.

112 *Ibid.*, para. 192 and 198

113 *Ibid.*, para. 200.

## V. HUMAN RIGHTS DEFENDERS

The term ‘human rights defender’, introduced by the UN in 1998 to supersede narrower phrases like ‘human rights activists’ and ‘human rights professionals’, refers to anyone who works to uphold the 1948 Universal Declaration of Human Rights. Over the years, KHRP has been instrumental in reporting instances in which human rights defenders in Turkey have been impeded in carrying out their work, including as a result of harassment, intimidation and arbitrary detention.<sup>114</sup> In investigating the current situation of human rights defenders in the five provinces visited – Şırnak, Siirt, Mardin, Batman and Diyarbakır – the mission was disappointed to hear that such problems persist to this day and have even intensified since the local elections in Turkey in March 2009.

In Turkey, the main human rights NGOs include TIHV, İHD, the Association of Human Rights and Solidarity for Oppressed People (Mazlum-Der) and the Human Rights Institute of Turkey (TIHAK). These organisations conduct monitoring, reporting and lobbying of the government. They also participate in the drafting of legislation, provide legal assistance, organise demonstrations and promote protection of minority rights.

As noted in the section of this report detailing the legal framework in Turkey, certain provisions of current legislation pave the way for systematic violations of freedom of expression and freedom of association. In addition to such laws, which facilitate interference in the efforts of human rights defenders to communicate legitimate criticism of the state and its representatives, further problems are also posed by legislation specifically regulating the establishment and functioning of NGOs. For example, Article 30 of the Law on Associations (No. 5253) restricts the operations of NGOs which have objectives that are prohibited by the constitution or other legislation. Such objectives can include making propaganda on behalf of a terrorist organization, insulting the Turkish nation or a range of other offences whose vague legal definitions pave the way for arbitrary interference in the work of NGOs undertaking any number of legitimate activities. Similarly, Article 56 of the Turkish Civil Code (no. 4721) places restrictions on organisations who commit the loosely-defined offence of contravening ‘law and morality’. Under Article 92 of the Turkish Civil Code, foreign NGOs are required to obtain a license from the authorities, and

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114 See especially Kerim Yıldız and Claire Brigham, *Human Rights Defenders in Turkey* (KHRP, London, September 2006).

this provision has been used to launch several cases, including proceedings against the Diyarbakır branch of the İHD for receiving foreign NGOs, media, and political and student delegations.<sup>115</sup>

Further bureaucratic obstacles include a requirement for NGOs to secure permission from the Ministry of Justice before they are allowed to take advantage of their right – established under Article 26 of the Regulation No. 25848 dated 17 June 2005 – to visit prisoners. The mission heard that permission is often not given, thus hampering NGOs' efforts to undertake crucial independent monitoring of detention conditions.

In recent years, there have been some welcome changes to the law which have reduced the scope for interference in the work of human rights defenders. The 2004 Law on Associations (No. 5253) did away with some previous obstructive provisions, such as requirements to obtain prior authorization for foreign funding and partnerships; to inform local government officials of the day, time and location of general assemblies and other meetings; and to invite a government official to general assembly meetings. The amendment also withdrew the power of security forces to access the premises of associations without a court order, allowed NGOs to legally form temporary platforms to pursue common objectives, and lifted a prohibition on the use of minority languages in their non-official correspondence.

Amendments to the Law on Meetings and Demonstrations (No. 2911) also expanded the freedom to organize meetings and demonstration marches (Articles 9 and 21), and introduced positive revisions of the provisions allowing local authorities to prohibit or postpone such meetings and marches (Article 17). However, the same law still includes a range of restrictive and vaguely defined provisions that have been used to target NGOs that participate in such events. These include Article 23, which criminalizes carrying the emblem or signs of illegal organisations and groups, attending meetings and demonstrations with one's face partially or totally hidden, carrying posters, placards, pictures, signs, instruments and materials deemed illegal, or shouting 'illegal' slogans.

In addition to such legislative changes, the Turkish authorities have also established several bodies responsible for monitoring and promoting protection of human rights.

In December 2000, the approval of supplementary Article 6 to Law No. 3056 provided for the establishment of Provincial and Sub-Provincial Human Rights Boards. Regulation published in the official gazette in November 2003 (No. 25298) provided

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115 International Helsinki Federation for Human Rights, 'Human Rights Defenders in Turkey,' 2006, available at <http://www.unhcr.org/refworld/pdfid/46963ae5d.pdf> (last accessed 20 July 2009).

the details of the boards' mandate and officially marked the entry into force of these bodies. Ostensibly, their aim was to protect human rights, to investigate claims of human rights violations, to inform the concerned state institutions and the public, to promote a culture of tolerance, and to ensure implementation of relevant legal provisions. There are currently 81 Provincial Human Rights Boards and 850 Sub-Provincial Human Rights Boards.<sup>116</sup> Another such organ is the Prime Ministry Human Rights Presidency, charged with monitoring the implementation of legislation relating to human rights, coordinating with NGOs, and educating public officials. Under the supervision of the Prime Ministry Human Rights Presidency, the Human Rights Consultation Board was created in 2001, with the aim of establishing a link between the government and NGOs on human rights and to provide advice to relevant institutions on domestic and international human rights issues. Finally, the Human Rights Investigative Board was established as far back as 1990 under the authority of the Grand National Assembly, and was made responsible for: following developments related to human rights in the international fora; determining law and constitutional changes to ensure compliance with the international human rights instruments to which Turkey is a party; examining the extent to which human rights practices in Turkey comply with the requirements of the constitution, national legislation and international instruments; and carrying out research and proposing amendments.

In spite of the breadth of their formal mandates, the mission learned that most of these bodies are seriously limited in their scope and fall far short of ensuring protection of human rights. For example, the Human Rights Boards have an ambiguous legal status and, rather than being allowed to launch investigations into reported human rights violations themselves, they may only examine complaints regarding such violations.<sup>117</sup> Public perception of the boards' ineffectiveness is reflected by the relative scarcity of applications to the boards. In 2006, a total of only 1,495 applications were made to the 931 boards and this number did not increase in 2007. Between 2004 and 2007, only 461 applications were made to the boards on the basis of allegations of ill-treatment.<sup>118</sup> In Milas, between 2004 and 2006, only one application was submitted and media reports suggested that no progress was made

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116 Republic of Turkey Prime Ministry Human Rights Presidency Website, available at <http://www.ihb.gov.tr/ENGLISH/activities.htm#hrp>, (last accessed 20 July 2009)

117 Art. 13, 'Regulation on the Establishment, Duties and Working Principles of Provincial and Sub-provincial Human Rights Boards', available on the Republic of Turkey Prime Ministry Human Rights Presidency Website at <http://www.ihb.gov.tr/ENGLISH/activities.htm#hrp>, (last accessed 5 August 2009).

118 İnsan Hakları Bülteni, 'İnsan Hakları İhlal İddiası Başvurularına İlişkin Sayısal Veriler', 9 June 2008, available at [http://www.ihb.gov.tr/istatistikler/insan\\_haklari\\_bulteni\\_2008-1.doc](http://www.ihb.gov.tr/istatistikler/insan_haklari_bulteni_2008-1.doc) (last accessed 5 August 2009).

with this application for at least three months afterwards.<sup>119</sup> In 2006, Prof Nermin Şaşmaz, a member of the Milas Sub-Provincial Human Rights Board, resigned on the grounds that the board consisted only of bureaucrats, police and gendarmerie, not representatives of civil society, and that members only gathered to have tea and chat.<sup>120</sup> The lack of independence and effectiveness of the Human Rights Boards discourages participation of many leading human rights groups.

In December 2007, Hasan Tahsin Fendoğlu, the head of the Prime Ministry Human Rights Presidency, advocated a reform of the boards, noting that no fruitful results were achieved in spite of them having over 14,000 members throughout Turkey. The Prime Ministry Human Rights Presidency had reportedly prepared an action plan for such reform, including provisions to increase the number of civilian board members. They were also reported to have conducted a training programme and sent approximately 11,000 CDs containing information about human rights to the boards.<sup>121</sup> In spite of such moves, however, it appears that the boards have since remained largely ineffective. In its 2008 annual report, the US Department of State highlights that many boards did not hold regular meetings, and that NGOs still refuse to participate in their activities. According to the same report, in the first half of 2008, the boards received only 496 complaints of human rights violations, of which 115 regarded health services and patient rights, and 84 property rights.<sup>122</sup>

Members of human rights boards are often subject to the same intimidation and harassment as other human rights defenders. For example, the Human Rights Consultation Board became ineffective after its former chairman, Professor Ibrahim Kaboğlu, and the former sub-commission chairman, Professor Baskin Oran, were charged in May 2005 with 'inciting people to hatred' and 'openly belittling judicial organs' in connection with a 2004 report on minority rights, in which they proposed replacing the idea of Turkishness, with its strong ethnic connotations, with *Türkiyelilik*, which translates roughly as 'being from Turkey'.<sup>123</sup> Legal proceedings

119 Radikal, 'Boyle Kurula Kimse Gelmez', 1 January 2006, available at <http://www.radikal.com.tr/Default.aspx?aType=HaberDetay&ArticleID=767713&Date=>, (last accessed 28 June 2009).

120 *Ibid.*

121 NTVMSNBC, 'İnsan Hakları Başkanlığı Eylem Planı Hazırlıyor', 14 December 2007, available at <http://www.ntvmsnbc.com/news/429555.asp?cp1=1> (last accessed 29 June 2008).

122 US Department of State, '2008 Human Rights Report: Turkey', 25 February 2009, available at <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119109.htm> (last accessed 5 August 2009).

123 US Department of State, '2006 Human Rights Report: Turkey', 6 March 2007, available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78844.htm> (last accessed 5 August 2009).



against the two men in connection with this report subsequently dragged on for years and were closely monitored by KHRP.<sup>124</sup>

In spite of initiatives such as those outlined above, human rights defenders in Turkey continue to face severe challenges in carrying out their work, including arbitrary detention and harassment.<sup>125</sup> Representatives of the Diyarbakır branch of İHD told the mission that their office phones are routinely tapped and that police officers attend every press conference organised by the organisation. The mission also heard numerous examples of investigations and malicious prosecutions of human rights defenders in connection with their activities.

The mission was told of one such episode stemming from a decision by the Diyarbakır Bar Association in 2007 to publish a diary in which days and months were written in both the Turkish and Kurdish languages. This reportedly prompted a case being filed against Sezgin Tanrikulu, the then chair of the association, which is a semi-official body, for misusing public duty. When Necip Yıldırım, an executive board member of the Diyarbakır Bar Association and president of the Diyarbakır branch of Mazlum-Der, released a press release supporting the publication of the diary and criticising the case against Mr Tanrikulu, he was charged under Article 215 of the Penal Code with ‘praising crime and criminals.’

The chair of the Siirt branch of İHD, Vetha Aydın, told the mission that she currently has several cases open against her for alleged violations of Law No. 2911 on Meetings and Demonstrations, and Articles 215 (praising crime or criminal) and 220/8 (making propaganda on behalf of a terrorist organization) of the Turkish Penal Code.<sup>126</sup> One of the cases was reportedly opened because of a press release published to mark ‘Peace Day’ on 1 September 2005, which addressed the human rights situation in the region and discussed issues such as the need to abolish the village guards system.

The mission heard that in the past year, two investigations had also been opened against the chair of the Diyarbakır branch of İHD, Muharrem Erbey, one of which was also in connection with a press release distributed on Peace Day, and the other in connection with his use of the term ‘Mr’ to refer to PKK founder Abdullah Öcalan.

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124 See, for example, KHRP Trial Observation Report, *Suppressing Academic Debate: The Turkish Penal Code* (KHRP, London, June 2006). In April 2008, the Supreme Court confirmed the acquittal of Oran and Kaboğlu under Article 216 of the Penal Code. There was subsequently a fresh attempt to prosecute them under the amended version of Article 301 of the Penal Code, which was eventually blocked by the Justice Ministry in March 2009.

125 US State Department, ‘2008 Human Rights Report: Turkey,’ fn. 122 above.

126 FFM interview with Vetha Aydın, İHD Siirt Branch, 5 May 2009, Siirt.

The chair of the Mardin Branch of İHD, Erdal Kuzu, told the mission that he currently has six cases open against him, including one in which he is accused of making propaganda on behalf of an illegal organisation for circulating a press release in June 2008 in connection with the killings of Ahmet Kaymaz and his young son Uğur in Kızıltepe, Mardin in November 2004.<sup>127</sup>

Once investigations have been launched, the mission was told that efforts are made to maximise the extent to which they hamper human rights defenders' work. This reportedly includes applying probationary measures in place of custodial sentences in accordance with Article 50 of the Turkish Penal Code, which can involve forbidding human rights defenders from going to coffee shops and teahouses, participating in meetings and demonstrations, and taking part in training courses.<sup>128</sup> Ms Aydın stated that since the beginning of 2008, the Siirt branch of İHD had been contacted by more than 500 individuals against whom such measures had been applied.<sup>129</sup> The mission heard that courts also often postpone the announcement of rulings for up to two years in accordance with Article 231 of the Turkish Code of Criminal Procedure, thereby putting enormous psychological pressure on human rights defenders.<sup>130</sup>

In addition to speaking with those working for human rights NGOs, the mission also considered the situation of trade unionists and their efforts in defence of labour rights. Such individuals told the mission that they too face investigations and other forms of harassment as a consequence of their activities.

Şahin Kayıkcı, the former chair of the Siirt branch of the Education and Science Workers' Union (Eğitim-Sen), reported to the mission that, because of his unionist and pro-democracy activities, he has been subject to more than 100 criminal and administrative investigations. As an example, he told the mission that he had been sentenced to 20 months imprisonment after a visit in September 2007 to the premises of the *Demokratik Halk Partisi* (Democratic People's Party, DEHAP), where a hunger strike was taking place in protest against conditions in the country's high-security F-type prisons. He reported that police had raided the DEHAP premises while he was there, and that he had been arrested with others and sentenced for making propaganda on behalf of a terrorist organization. Mr Kayıkcı, who works as a teacher in a state-run school, also told the mission that he had twice had promotions suspended in connection with his activities in support of human rights. In addition, he reported that in 2002 he was subject to a disciplinary punishment because

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127 FFM interview with Erdal Kuzu, İHD Mardin branch, 6 May 2009, Mardin. For more on this killing, see the section of this report focusing on impunity of state agents.

128 FFM interview with Vetha Aydın, İHD Siirt branch, 5 May 2009, Siirt.

129 *Ibid.*

130 *Ibid.*

of his membership of İHD which resulted in his salary being cut. He noted that he was not aware of any other individuals who had faced such action for involvement with İHD.<sup>131</sup>

Another representative of the Siirt branch of Eğitim-Sen told the mission that in June 2008 the local governorship and police department had prevented its members from joining a meeting on 'Peace and a Democratic Solution for the Kurdish Problem' in Van, which had been organised by a platform known as the Peace Assembly, bringing together organisations such as political parties, NGOs and trade unions. According to the account provided to the mission, the unionists were fined approximately 20 billion YTL, their cars were seized, and police officers put psychological pressure on them by taking videos and searching the bags of female members.<sup>132</sup>

Overall, the consistent reports of obstruction and harassment left the mission in little doubt that the authorities in the Kurdish region of Turkey are very far from recognising the valuable role that human rights defenders have to play in voicing legitimate criticism of the state and its agents and facilitating public debate on such issues. The cases outlined above illustrate the vast gap that exists between some of the more positive reforms that have been put in place in recent years in the context of the EU accession process, and the reality of life for those working on the ground to promote the protection of human rights.

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131 FFM interview with Şahin Kayıkçı, former chair of Education and Science Worker's Union (Eğitim-Sen), Siirt branch, 5 May 2009, Siirt.

132 FFM interview with Serdar Batur, Education and Science Worker's Union (Eğitim-Sen), Siirt Branch, 5 May 2009, Siirt.



## CONCLUSION

Although it is clear that the human rights situation in the Kurdish region of Turkey has improved in the years that have passed since the lifting of the State of Emergency, the findings of the mission confirm that the current state of affairs remains deeply troubling. Impunity of state officials, women's access to justice and the situation of human rights defenders are just some of the areas in which there is a clear need for far-reaching reform, especially in relation to the day-to-day practices of state agents.

To this day, efforts to address the human rights violations that occurred at the height of the conflict in the Kurdish region and to establish accountability of officials for ongoing abuses have been deeply inadequate. In order to ensure the rule of law and restore public confidence in the state and its representatives, it is crucial that allegations of human rights violations past and present should be taken extremely seriously and should consistently result in thorough, expeditious investigations. Where such investigations indicate that an offence has been committed, prosecutions must go ahead without obstruction and in accordance with fair trial standards, and convicted officials should receive punishments commensurate with the seriousness of their crimes. Until such steps are taken, the current culture of impunity amongst officials will persist and citizens who face abuse at the hands of state agents will remain reluctant to speak out, in the belief that any attempt to do so would be in vain.

At the same time, the Turkish authorities and civil society alike should engage in systematic efforts to increase awareness amongst women in the Kurdish region of their rights and the services and protections that are available to them when they face domestic violence and other abuses. Police officers, prosecutors and members of the judiciary must also be made to understand the need for a robust response to allegations of domestic violence, including efforts to ensure proper implementation of the protective measures available under existing legislation. Women's access to the justice system should be further improved through the lifting of language barriers and streamlining of support such as legal aid.

In order to facilitate the work of human rights defenders, the Turkish authorities must focus on amending the vague provisions in existing legislation which serve as the basis for arbitrary interference in their expression of non-violent views and other legitimate activities. Rather than facing daily harassment and obstruction at

the hands of the security services and the judiciary, human rights activists, trade unionists and others should be recognised for the crucial role they have to play in working with the state to ensure transparency, public debate and progress towards internationally recognised human rights standards.

While recent years have brought certain positive reforms in all three of the areas on which this report has focused, far greater efforts are needed to ensure that officials at all levels of government and the security forces in the Kurdish region of Turkey and beyond come to see human rights as an ideal to be promoted rather than an imposition that must be tolerated.

## RECOMMENDATIONS

The authors of this report urge both parties to the conflict in the Kurdish region of Turkey to:

- Bring a swift end to the fighting in the region and focus on participatory dialogue aimed at finding a peaceful resolution of the Kurdish issue.

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

- Ratify international human rights instruments including OPCAT.
- Ensure the impartiality of the judiciary and prosecution, and respect for the rule of law.
- Repeal and amend existing legislation which paves the way for arbitrary arrest, abuses in detention and excessive use of force, including the Anti-Terror Law and the Law on the Powers and Duties of the Police.
- Ensure that officials suspected of involvement in recent or past human rights violations are thoroughly investigated, that prosecutions are pursued wherever appropriate, that resulting court proceedings are conducted in line with international fair trial standards, and that those who are convicted receive punishments commensurate with their offence.
- Ensure that trials of officials charged in relation to alleged human rights violations are conducted expeditiously and are not allowed to collapse as a result of exceeding the time bar laid down in the statute of limitations.
- Continue investigations into sites thought to be the location of the remains of individuals who ‘disappeared’ during the conflict in the Kurdish regions, ensuring that these are carried out thoroughly and objectively, and launch investigations without delay in response to information purporting to identify other alleged grave sites.
- Institute the legislative reforms necessary to remove any ambiguity surrounding the fact that administrative authorisation is no longer required for prosecutions of officials for serious offences other than torture and ill-treatment.

- Put an end to the practice of officials filing counter-claims against individuals who accuse them of responsibility for human rights violations, including prosecuting officials suspected of making malicious false allegations.
- Ensure full implementation of the new legislation paving the way for trials of military personnel before civilian courts, including transferring cases that are currently underway before military tribunals to the civilian judiciary wherever appropriate.
- Ensure that government representatives refrain from making public statements which contribute to legitimising excessive use of force and consolidating a culture of impunity amongst state officials.
- Abolish the village guard system.
- Increase efforts to raise awareness amongst women of their human rights and of the support that is available in this regard, with a particular focus on efforts to reach women in the Kurdish regions, those in rural areas, those who have been displaced from their homes, and those who are unable to read.
- Facilitate access to justice for members of minority groups, particularly women, by making public services available in minority languages, including through the provision of professional interpretation in dealings with law enforcement officials and the judiciary.
- Address obstacles to women's access to legal aid, as well as lengthy processes that serve to delay such access, particularly in cases where women are exposed to domestic violence.
- Ensure that public officials take allegations of domestic violence seriously, including recording all such complaints and taking all available steps to protect victims and prosecute perpetrators. This should include systematic training and awareness-raising amongst law enforcement officers, judges, lawyers and prosecutors to ensure effective implementation of existing legislation.
- In particular, ensure that full use is made of the protective measures available under the Family Protection Law and that implementation of such measures is effectively monitored by the police.
- Promote the provision of protection measures for women, and the instigation of court proceedings where appropriate, in circumstances where there may not necessarily be clear evidence of physical abuse, including in relation to



allegations of psychological violence, threats of physical violence and other forms of exploitation.

- Ensure that medical examinations, particularly of women, are allowed to proceed without law enforcement officers being present.
- Support organisations engaged in promoting women's rights.
- Repeal Article 301 of the Penal Code and amend other legislation that facilitates harassment of human rights defenders and obstruction of their work, including relevant provisions of the Law on Associations, the Law on Meetings and Demonstrations, and the Civil Code.
- Cease harassment of human rights defenders, including widespread malicious prosecutions and the use of tactics such as delaying trial proceedings and implementing disproportionate probationary measures.
- Take measures to strengthen existing public bodies charged with promoting the protection of human rights, including increasing their independence, powers and resources, and providing for greater participation of civil society representatives in the work of these bodies.

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

- Actively assess Turkey's compliance with the Copenhagen Criteria, including dispatching missions to investigate the human rights situation in the Kurdish regions of the country.
- Encourage Turkey through the use of benchmarks and incentives to comply with its obligations under international human rights law, particularly CEDAW, Articles 3, 9, 10 and 14 of the ECHR, and Articles 2, 3, 7, 18, 19 and 26 of the ICCPR.
- Urge Turkey to ratify OPCAT and other international human rights instruments.
- Support the repeal or amendment of legislation that is not in line with EU standards, including Article 301 of the Penal Code, the Anti-Terror Law, the Law on the Powers and Duties of the Police, the Law on Associations, the Law on Meetings and Demonstrations, and the Civil Code.

- Using their good offices, offer technical and financial support to Turkey in implementing the above legislative reforms and to civil society in creating public awareness about human rights and the tools with which to advocate for them.
- Advocate a just and lasting resolution to the conflict in the Kurdish region of Turkey.



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