

TRIAL OBSERVATION REPORT

TURKEY'S SHAME: SEXUAL VIOLENCE WITHOUT
REDRESS - THE PLIGHT OF KURDISH WOMEN

DECEMBER 2003

KHHRP
Kurdish Human Rights Project

TRIAL OBSERVATION REPORT

TURKEY'S SHAME: SEXUAL VIOLENCE WITHOUT REDRESS - THE PLIGHT OF KURDISH WOMEN

Kurdish Human Rights Project

2 New Burlington Place
London W1S 2HP
Tel: +44 20 7287 2772
Fax: +44 20 7734 4927
Email: khrp@khrp.demon.co.uk

The Kurdish Human Rights Project (KHRP) is an independent, non-political, non-governmental human rights organisation founded and based in London, England. KHRP is a registered charity and is committed to the promotion and protection of the human rights of all persons living with the Kurdish regions, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people.

DECEMBER 2003

KHRP
Kurdish Human Rights Project

Table of Contents

	Page
Postscript	7
Foreword	9
Chapter I: Background	11
Chapter II: The Trials	15
i) Case A	16
ii) Case B	18
iii) Case C	22
Chapter III: Main Issues	25
i) The Increase in Complaints by the Victims of Sexual Violence	26
ii) The Use of Sexual Violence as a Means of Destroying Kurdish Families, Culture and Communities	28
iii) The Legal System	28
iv) The Police	29
v) Freedom of Expression and Freedom of Association	30
vi) Political Representation	30
vii) Returning Internally Displaced Persons	31
Chapter IV: Human Rights Machinery	33
i) United Nations Security Council Resolution 1325	33
ii) Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and its Optional Protocol (CEDAWOP)	34
iii) Office of the Special Rapporteur on the Elimination of Violence Against Women	35
iv) The Beijing Platform for Action (BPA) 1995	35
v) International Commission of Jurists (ICJ)	35
vi) The Rome Treaty of the International Criminal Court	36

Acknowledgements

This report was written by Trial Observation Mission Member Margaret Owen and edited by KHRP Executive Director Kerim Yildiz and Environmental and Human Rights Officer Suzanne Dowse.

KHRP would also like to express its appreciation to Pırl Akkuş, Halil Bayhan and Meri İzrael for their help and support with this trial observation mission.

This Fact-Finding Mission was carried out with the financial support of:

The AB Charitable Trust, ACAT Suisse – Action des Chrétiens pour l'Abolition de la Torture (Switzerland), Ajahma Trust (UK), Allan and Nesta Ferguson Trust (UK), The Avenue Charitable Trust (UK), The Bromley Trust (UK), The Community Fund (UK), Finnish Ministry of Foreign Affairs (Finland), The Jane Hodge Foundation (UK), Joel Joffe Charitable Trust (UK), The Netherlands Ministry of Foreign Affairs (Netherlands), Oakdale Trust (UK), The Sigrid Rausing Trust (UK), The Stichting Cizira Botan (Netherlands), World Organisation Against Torture [OMCT] (Switzerland)

*Printed in Great Britain
December 2003*

*Published by the Kurdish Human Rights Project
ISBN 1 900175 69 X
All rights reserved*

vii) The European Convention on Human Rights and Fundamental Freedoms	36
Chapter V: Recommendations	37
i) For the Turkish Government	37
ii) For International Organisations	39
Appendix A – Indictment for Case A	41
Appendix B – Indictment for Case B	43
Appendix C – Interviews Held During the Mission	45
Appendix D – Extracts: United Nations Security Council Resolution 1325.	47
Appendix E – Extracts: The Convention on the Elimination of All Forms of Discrimination against Women.	49
Appendix F – Extracts: The Convention on the Elimination of All Forms of Discrimination against Women Optional Protocol.	51
Appendix G – Statistics on Torture and Sexual Violence	53
Appendix H – Substantive Rights in the European Convention of Human Rights	59
Reference	61

Postscript

As this report was being prepared, news of the terrorist bombings in Istanbul on 20 November had just been broadcast. In response, Turkey vowed to crackdown and take intensive measures to seek out and arrest those responsible in its fights against terrorism. Enquiries as to the perpetrators of the bombing have focused on the town of Bingöl in the Turkish Southeast, prompting speculation that given Turkey's accession hopes a formal return to a "State of Emergency"¹ is unlikely. However, it is possible that the "war on terrorism" will be used in Turkey, as it has been in other countries, to undermine human rights in less obvious ways. Equally, the possibility has also been mooted that the UK will use its influence to hasten Turkey's accession to the EU and may ignore evidence of its continuing breaches of human rights under the European Charter for geo-strategic and political reasons. Furthermore, the Turkish state classifies the activities of many pro-Kurdish organisations as "terrorist" because they are viewed as damaging the Turkish State.² Thus, there is a real danger that this atrocity could put back the clock and heighten the tensions between the Turkish State and the Kurdish minority that is struggling to secure the freedom to exercise its human rights.

Foreword

In November 2003, KHRP sent a trial observation mission to Turkey, in order to continue the essential monitoring of the issue of state violence against Kurdish women.

The need for such a mission was unfortunately quite clear: despite the passing of reform measures aimed at eliminating torture and the violation of women's rights, these practices continue. Turkey remains a country in which violence against women carried out by state agents is both widespread and unmitigated. Kurdish women in this context are at extreme risk. In their daily lives, particularly in the Southeast region, they risk being victims of arbitrary arrest and detention and accordingly are more vulnerable to torture or cruel, inhuman or degrading treatment or punishment, simply because they are Kurds. In addition, given the virtual impunity with which state officials can act in Turkey, in the vast majority of cases, these crimes are not formally reported or, if they are, the alleged perpetrators are usually acquitted due to a lack of due diligence on the part of the police or prosecutors.

The mission was tasked with observing the trial of 405 members (including 65 senior officers) of the Turkish Gendarmerie of the Derik District, indicted under Articles 416/1, 417, 243/1 of the Turkish penal code for the torture and rape in 1993 and 1994 of Şükran Esen, a Kurdish woman. The Delegation was also able to observe a separate trial concerning the torture and rape of another Kurdish woman.

This report covers these trials, and also presents the views and information gathered at various meetings held with human rights and women's groups and state officials in Mardin and Diyarbakır in the Turkish Southeast. In addition, a meeting held in Istanbul on 7 November 2003, with Gülbahar Gündüz; another female victim of sexual torture and her lawyer is documented. This latter case is of great significance as the events reported occurred very recently, in June 2003; in broad daylight in the centre of Istanbul and the victim is a respected member of the Executive Board of the pro-Kurdish political party the Democratic People Party (DEHAP).

Once again this latest KHRP publication builds on the findings of previous reports and investigations, and provides an up-to-date picture of the plight of Kurdish women in Turkey within the context of the prevailing human rights situation.

Kerim Yildiz
Executive Director
Kurdish Human Rights Project

I.....BACKGROUND

This mission, focusing on the State's use of sexual torture and rape of Kurdish women, is a follow-up to an earlier mission of June 2001.³ The December 2001 report details the trial held in the State Security Court, of women, including women lawyers, indicted for offences under the State Security Laws for "propaganda against the State." Their crime had been to give factual representations that Kurdish women had been systematically sexually abused during custody by the police.

This earlier report drew attention to the appalling abuses perpetrated on Kurdish women and the grave deficiencies in the Turkish justice system amounting to breaches of fundamental international human rights law including the European Convention on Human Rights (hereafter the 'Convention'). In addition, the report concluded that Turkey's omission to protect women or to provide them with adequate remedies through the domestic courts breached articles of the Convention against All Forms of Discrimination against Women (CEDAW) and the Convention against Torture, both of which Turkey has ratified. The report also documented the fact that the rights of lawyers and human rights defenders were being abused. It suggested that the credibility of the European Union will be undermined should Turkey be admitted before such violations are stopped, the perpetrators are punished and women are able to enjoy proper access to an independent Justice System.

Recent KHRP reports (January, August and September, 2003)⁴ have repeatedly stressed concern over the fact that far from being eradicated, reported torture by police and the Gendarme, has actually increased from previous years. For example, statistics compiled by the Istanbul branch of the Human Rights Association of Turkey (IHD) show that in October 2003, 18 women, 22 men and 5 children reported they were tortured – a number significantly higher than that reported in the two preceding months.⁵ However, since many women feel unable to speak of what happened to them during detention the real incidence of torture of women could be much higher.

Formal Changes in Law

This mission, of November 2003, has taken place in the context of very significant formal changes in the political and legal framework in Turkey. Among these are first, the harmonization reform packages which Turkey has agreed with the European Union; second, the December 2002 general election which brought the new Justice and Development party (AKP) to power; and third, the increased tension in the Kurdish Southeast region due to the situation in Iraq and the potential deployment of Turkish troops along the Turkey-Iraq border.

In July 2003 Turkey granted a partial amnesty to members of KADEK (the successor to the PKK) and members of Islamist and ultra-nationalist groups. However in September 2003 KADEK ended its unilateral cease-fire due to Turkey's widespread failure to implement the legislative amendments made in the harmonization reform packages and start peace negotiations leading to a bi-lateral ceasefire.⁶ Human rights abuses continue to be reported, with a rise in complaints by Kurdish women, but there are huge obstacles in monitoring implementation of any changes due to the constraints imposed on NGOs trying to carry out this work. The State authorities appear to feel threatened by the concept of freedom of expression. They fear that with the extension of democratic rights there would be a resurgence of violence led by those who advocate secession and constitutional change. However, the response to State repression is inevitably a vicious circle of tension and instability which can lead to violence. So it has been for the last three decades and so it is today.

Whilst this mission was ongoing, on 5 November 2003, the European Union (EU) stated in its regular report on Turkey's progress towards accession (following its own critical report on Turkey's compliance with the principles outlined in the Copenhagen Criteria)⁷ that Turkey must work harder to fully implement the reforms before December 2004, when the EU will decide whether or not to open accession negotiations. During a visit to Diyarbakır, on the 10

June 2003, Alvaro Gil-Robles the Council of Europe's (CoE) Commissioner for Human Rights concluded "*There are the laws on the one hand and their implementation on the other The real problem is implementing the laws.*"⁸ This reproof from the CoE, while encouraging to the Kurdish population and activists, appeared to incense some of the State officials that members of the mission spoke with.

The Amnesty International (AI) report *End Sexual Violence against Women in Custody*⁹ based on research undertaken in June and September, 2002 also views with considerable scepticism the theoretically promising developments in changes in domestic law. It points to the State's inability to implement its own new legal code and its failure to act with *due diligence* when complaints are made that State agents have tortured and sexually abused Kurdish women.

The foremost question on the minds of everyone that the delegation consulted was whether it was better to ensure real on-the-ground implementation of the new laws and harmonization criteria *before* negotiations commence, or whether further delays to the process of accession would tilt the scales against EU membership. The right-wing and military groups might then pull Turkey right out of Europe and every gain so far achieved could be lost, with grave consequences for both Turks and Kurds. On the other hand, for Turkey to be granted a seat at the negotiating table while such serious human rights abuses continued would undermine the credibility of the human rights principles enshrined in the European Charter, as well as give a clear signal to the State that its agents could continue to violate the rights of its Kurdish minority with impunity.

Implementation of Reforms

This mission concluded (as did the KHRP fact-finding mission of August 2003)¹⁰ that Turkey is far from achieving the degree of reform and implementation necessary to meet the Copenhagen Criteria. Although many laws have been changed or repealed, (see Annex 1) these changes are mainly "cosmetic." The use of by-laws, regulations and the exploitation of Articles of the Penal Code to fill gaps left by the repeal of the infamous Article 8 of the State Security Law, the lack of control over the police and military and the inherent faults in the justice system has meant that there has been little improvement on-the-ground.

Sexual torture and rape

Furthermore, **Kurdish women, whether in the Southeast or in the major cities, appear to be in even more danger from torture and abuse than they were when KHRP conducted the trial observation mission to investigate State violence against women eighteen months ago, before the so-called “law reforms.”** Kurdish women have become easily the most vulnerable “soft targets” for a largely unaccountable police and army force that operates with wide discretionary powers. As will become patently clear in this report, torture has *not* been eliminated and, on the contrary, is increasing with women as the main victims. Inventive methods are being deployed so that the signs and scars of torture and degrading sexual harassment, sexual threats and psychological abuse are not evident. Such methods are especially possible when abusing women. Verbal abuse of a sexual nature, death threats and obscene perverted sexual abuse are all the more horrifying when the incidents of sexual violence may involve many perpetrators. Currently such acts are almost routinely carried out whilst the victims are blindfolded and therefore unable to identify their torturers. This practice continues in spite of the fact that Turkish law now prohibits the blindfolding and stripping of detainees.¹¹ Unfettered discretion and impunity is given to village guards, police and military, in spite of the lifting of the State of Emergency Legislation (OHAL), the introduction of new laws, and judgments of the European Court of Human Rights (hereafter ECHR). Today, many more abductions of Kurdish women are taking place unofficially, with police disguised in plain clothes, and numerous detentions of women go unrecorded. KHRP is furthermore, extremely concerned about the difficulties faced by vulnerable individuals such as Kurdish women when trying to access domestic and international legal remedies

Turkey has failed to fully implement the judgments of the ECHR. In many cases, even where the ECHR has found Turkey guilty of human rights abuses such as torture, the perpetrators have not been tried or punished, but have continued in their positions and therefore able to continue repeating such abuses with impunity.¹²

The Turkish justice system, its institutions and operations must be brought in line with the standards laid down in international human rights legislation. Only an independent judiciary, independent Prosecutors, protection and respect for human rights defenders, and a properly accountable and controlled police force, all retrained in human rights standards and laws, will be able to deliver the remedies and protection of rights that new legislation is intended to provide. Only then will Kurdish women be safe and free.

II.....THE TRIALS

As described in previous KHRP reports, lawyers accustomed to European courts, or courts in other countries based on the rule of law and the independence of the judiciary are easily shocked by the procedures and physical arrangements of a Turkish court. The arrangements reflect too close an association between the Chair of the Bench and the Public Prosecutor. The Prosecutor sits on the Bench alongside the three judges. On the wall above are emblazoned the words “Adalet Mülkün Temelidir (Justice is the Basis of Property), an enigmatic saying of Kemal Atatürk. The Prosecutor can be seen frequently conferring with the Chair of the Bench when decisions need to be made. The Chief Judge, at neither of the two hearings observed by the Delegation, held any discussions with his two judicial colleagues, who seemed to play no role in the proceedings. Delays in hearings and adjournments are common features of the legal process. The trial observation mission was at court, as required, by 9.a.m., as were all the lawyers. The judges did not arrive until 1.p.m., three hours later than the time set down in the schedule. Shakespeare, in Hamlet, has Polonius speak disparagingly of the “*insolence of office, the law’s delay*” and his concerns, several hundred years ago, would be very relevant to the Turkish system today.

Case A) is the seventh hearing since proceedings were started. Case B) is in its second hearing. Both cases were further adjourned. The file concerning Cases C) has been prematurely closed.

The Hearings

Case A) Wednesday, 5 November, 2003

Criminal Court, Mardin. Case No. 2003/29

Indictment: (see Appendix A)

Stage in the Proceedings: Seventh Hearing

Central Figures in the Proceedings:

Three presiding judges: Two men and one woman

The Prosecutor

The Defence Advocate

The Advocate for the victim: Hüseyin Cangir (IHD)

NOT PRESENT IN COURT:

Accused: Five Police Officers (one a woman)

Victim: Hamdiye Aslan. Date of Birth: 1958.

Indictment:

On the 5 March 2002, the Anti-Terror branch of the Mardin police came to the home of **Hamdiye Aslan**, a Kurdish 37-year-old mother of three, living in Kiziltepe district in Mardin province, whose husband is a political prisoner. They told her she was being arrested for sheltering the PKK, which she denied. She was detained for 48 hours in the police station where she was blindfolded, tortured with cold water, verbally abused and anally raped with sticks. She was able to identify one of the torturers as a woman because she felt a woman's breasts when struggling to defend herself. "I was blindfolded, stripped naked, beaten with sticks and they tried to put sticks up my anus. I fainted." She suffered severe physical injuries and psychological trauma. There is no written record of the victim being arrested or detained in that police station. Nevertheless, the severity of her injuries and continuing physical and psychological trauma is consistent with the torture described. This notwithstanding, initially, the State forensic institute's doctors would not admit to this, and the Prosecutor had asked only for a psychological, not a physical report.

The Turkish Medical Chamber, an independent body for medical practitioners, has since reopened the case against the two doctors who certified, in writing, that she had not experienced torture. Another doctor who reported that the victim's injuries were consistent with the torture alleged was speedily transferred to another province. The victim was remanded to Mardin closed prison and kept there, without being charged, until her release ten weeks later, on the 23 May 2002, after being acquitted by the State Security Court. Following her formal complaint about her treatment, and further medical reports, some two months later, which found her injuries consistent with her allegations, the Mardin Prosecutor opened an investigation into the five police-officers, (one of who is a woman) alleged to have tortured her.

The victim is now living in Istanbul and was not present in court. Her testimonies and the medical certificates were with the Bench. However, because the Prosecutor had done nothing to ensure that responses to letters he had written to the accused were received, and because the defence lawyer demanded more time to read the submitted reports, the case was further adjourned until 5 December 2003.

During this short hearing the Prosecutor and the Chair held whispered discussions which the other two judges were excluded from. To an impartial observer it was obvious that on the slightest pretext the case would be adjourned if the defence lawyer or the Prosecutor so desired.

This case has already dragged on for one year, and like similar cases, it is likely to continue to be subject to delays and adjournments on either trivial or unnecessary grounds. This time the Chief Judge decided further time was required on two grounds. First, to investigate whether or not the doctor who signed the medical certificates was in fact on the staff of the hospital and that the document was genuine. Second, to identify and obtain statements from the army privates who were on duty at the "gate" to the station on the day in question. The victim's lawyer attempted to argue the point that these men, even when identified, would be unlikely to provide any new evidence relevant to the rape allegation inside the detention room, and that this was a dubious ground for an adjournment, as was the suggestion that the doctor who signed the certificate was not *bona fide*. The Delegation considered that any reasonable bench would not have tolerated such delays on these flimsy grounds, and requests from the defence lawyer to adjourn further would have been dismissed. Furthermore, the Prosecutor had ample time, in the preceding months, to ensure that the statements of the accused were prepared well before this second hearing. This is the Prosecutor's duty and in this case, it appeared obvious that he had failed in his obligations to act with *due diligence*.

KHRP has since learnt that the case has been further adjourned until 22 December 2003.

Case B) Thursday, 6 November 2003

No.2 Aggravated Felony Court Mardin.

Indictment: (see Appendix B)

Stage in the Proceedings: Second hearing (First hearing 10 October 2003)

Central Figures in the Proceedings:

Three presiding judges: Two men and one woman (the same as in preceding case)

The Prosecutor

The women lawyers for the Victim: Meral Beştaş (Deputy Chairperson of Bar Association of Diyarbakır) Reyhan Yalçındağ (Vice-President of the Human Rights Association of Turkey (IHD)) Aygül Demirtaş (IHD Diyarbakır Branch Lawyer).

NOT PRESENT IN COURT:

Accused: 405 members of the Gendarmerie indicted for raping Şukran Esen in 1993-1994. Under Articles 243, 416 and 417 of the Turkish Penal Code

Victim: Şukran Esen. Now aged 31 (21 at the time of the alleged crimes). Proceedings began in 1995 from Germany, where the victim has emigrated as a refugee.¹³

Background:

The Prosecutor had decided, without precedent, to indict the *entire* 405 members of the Derik District Gendarme Command, 65 of which being senior officers. The case concerns the allegation made that people, unknown, but believed to be Gendarmes, on three separate occasions between 1993 and 1994 arrested Şukran Esen in Derik Çayönü village and tortured and raped her. This indictment, accusing 405 men of raping one woman, might be regarded as almost farcical if the context had not been so tragic for the victim concerned. In the view of the IHD lawyers, this multiple charge was a clever ruse to ensure that ultimately not one of the Gendarmes would be found guilty "beyond all reasonable doubt." The Prosecutor had avoided any effort to identify those who could clearly be eliminated from the indictment; for example,

upon determination of where they were at the time of the alleged offences.

In the petition of complaint submitted by the complainant's lawyers to the Mardin Prosecutor's office in June 1993, Şukran Esen stated that in the early hours of 28 June 1993, the Gendarme came to her house and accused her of assisting the PKK, a charge she denied. The victim further stated that while in custody she was stripped naked, subjected to falaka,¹⁴ given electric shocks, put inside a vehicle tyre and rolled over, subjected to high pressure jet sprays of cold water, threatened with death and raped twice with a stick and hands during a seven-day period. On being released she dared not complain through fear. The victim was also unable to identify the perpetrators of the torture because she was blindfolded throughout the ordeal; nevertheless she recognised them as being Turkish from their speech. The victim was detained for a second time in March 1994 and held for two weeks during which time she was tortured again, raped vaginally by Gendarmes while blindfolded and threatened with death, before finally being taken to hospital while haemorrhaging as a result of the rape. In the third incident, the victim was arrested whilst working in the fields, and again raped by the Gendarmes and their officer and then threatened with death.

Şukran Esen subsequently left the region for Izmir, where she applied for help from the Turkish Human Rights Foundation (TIVH). She was treated there by Dr. Türkan Baykal who then wrote a report, before her family sent her to Germany following her submission of a formal complaint.

Defence:

The Derik District Gendarme Command, in correspondence of August, 1998, not only denied that such incidents had ever taken place, but also that anyone by the name of Şukran Esen had ever been detained. They further stated that no records exist in any of the hospitals and clinics in the region that anyone of this name was ever treated. However, nine witnesses have testified that in autumn 1993 the victim, along with several other people whose names they could not remember, had been taken away and that some of these people had been released after a few days. Those of the accused who had been questioned have all denied committing the alleged offences.

For the Victim:

In her speech, Reyhan Yalçındağ drew the court's attention to the decisions of the Strasbourg court in a similar case¹⁵ and the need for Turkey, in the eyes of the world, to act in compliance with the ECHR judgement. She pointed out that the Chief Commander of the Gendarme was found guilty in the Strasbourg case, yet had never been sentenced in Turkey or removed from his post. She argued the dangers to society of permitting such people, convicted of torture, to remain in their senior positions and that lack of action to implement the ECHR judgment in full signalled a culture of impunity to torturers, so that cases like this continue to occur. She then submitted a medical report, from the **International Berlin Torture and Rehabilitation Centre**, where Şükran Esen had undergone treatment. This certified that the injuries were the result not of normal sexual activity, but of torture.

The Court room:

As in the previous case, the same three judges sat on the Bench. Alongside them on their left, only distinguishable from the judiciary by the lack of the red-collared robe, sat the Prosecutor. The defence; the three women lawyers, were bunched together at a small lectern below, and on the opposite side of the room sat the lawyer for the 405 accused. Discussions on the Bench took place exclusively in whispers between the Prosecutor and the Chief Judge or the Chair of the Bench. The other two judges appeared to have no role in the proceedings and took no part in the deliberations.

This case, with its huge numbers of accused, had clearly attracted a large amount of interest. The public benches were crowded with press and representatives of pro-Kurdish organisations, such as the political party DEHAP and human rights organisation IHD, and other members of the public, some of whom are thought to have been people from the victim's home village. The proceedings finally started at 1.15pm when the Judges and Prosecutor walked in and all stood up. The defence lawyers were asked for their names and the Chief Judge then dictated these to the Court stenographer. These procedures took a good deal of time as the stenographer was only permitted to take down the representations of the lawyers on dictation from the Judge. Sometimes, the lawyers interrupted to correct his version of what they said. This is another extraordinary feature of the proceedings, for it seems unnecessarily intrusive for the Judge to be in exclusive control of what is entered in the official record of the hearing. The Delegation noted the striking absence of a verbatim account of the defence lawyers' speech in the transcript. An unnecessarily long time was then taken up by the Judge dictating the names of each of the 405

accused to the stenographer. The defence submitted the medical report from Germany, which had yet to be translated into Turkish. After some arguments, the Judge accepted the document in German, and allowed the defence five days to deliver the Turkish translation.

The victim's lawyer, **Meral Daniş Beştaş**, pleaded for due diligence: *"We all know that not every one of the 405 accused are guilty of this crime. We worry that, with such an indictment, the guilty ones will disappear among them. Please arrest them so that they can be brought to court and properly questioned about their whereabouts on the relevant dates. I also demand that Dr. Adnan Halitoglu, who wrote the report certifying that our client had been tortured as she claims, is given an opportunity to be heard."*

The Court accepted the request to listen to Dr. Halitoğlu, but (after the Chief Judge conferred in whispers with the Prosecutor) refused the request to arrest the 405 accused. It decided that their statements would be requested in correspondence. The trial was postponed until 20 November 2003.

According to information received by KHRP, a further 40 Gendarme were indicted at the Mardin court. However, the victim's lawyers only learned of this at the hearing on 20 November, which lasted 10 minutes. With the number of accused having increased to 445, none of whom have been arrested and all of whom are continuing in their posts, the court agreed to the victim's lawyers' request that the two indictments be merged. The next hearing is listed for 24 February 2004. The Judge rejected a repeated request, by the victim's lawyers that those indicted be arrested, but did request that the Police and Gendarme station in the incident area be contacted to establish if Şükran Esen had in fact been arrested. The hospital is also to be contacted for the medical evidence relating to the trial. The Delegation is concerned that the refusal to allow the lawyers for Şükran Esen the opportunity to cross-examine the accused, given the seriousness of the allegations, detracts from the actual and perceived fairness of the proceedings.

The Delegation considers this hearing as graphically illustrative of the vulnerability of Kurdish women to torture and rape through unofficial arrests and detention, and the difficulties they have in pursuing their complaints through the Turkish courts. It is anxious that the progress of this case is closely monitored by human rights organisations in the United Kingdom, the EU and internationally. The outcome of this trial will have significant implications for all other similar cases of women abused by State agents.

Case C) The Abduction and Torture of Gülbahar Gündüz, member of the Executive Board of the Istanbul Branch of DEHAP.

DEHAP is one of a succession of pro-Kurdish political parties targeted for closure by the Turkish state. It was founded in 1997 as a pre-emptive move against the potential banning of People's Democracy Party (HADEP) its predecessor. In June 2003, in a resolution concerning Turkey's progress towards accession, the European Parliament stated that the closure of HADEP and the Court of Appeal's Chief Prosecutor's request to the Constitutional Court to close DEHAP showed an "unwillingness to guarantee fundamental democratic rights in practice."¹⁶

This particular case is of great significance because the abduction and torture occurred recently in broad daylight in the centre of Istanbul, and the victim is well known for her work concerning the rights of Kurdish women.

On 14 June 2003, at 8a.m. Gülbahar Gündüz, on her way to a peaceful demonstration in the centre of Istanbul, was abducted by four men in civilian clothes and pushed into a car. Her eyes and mouth were covered, and as she was blindfolded she never saw her abductors. She nevertheless believes them to have been police officers since as she was being thrown into the car, she heard a man ask them what they were doing with her. They answered "*We are Police.*"

Gülbahar Gündüz is unable to say where she was taken to, but after a drive she was pushed into a small room where the torture began. She was beaten, burnt with cigarettes, sexually tortured and threatened with death. Fourteen hours later, at 10.p.m, she was thrown, half-conscious, out of a car, near her home, with the threat that, "*this time we are not killing you, but if you continue your work you will be dead.*" She was then advised to warn other women of what they should expect if they engaged in similar activities. On that same day 67 people, involved in the same peaceful demonstration that she had been on her way to prior to her abduction, were officially detained. Their trial commenced on 6 November.

Since this time, other women in DEHAP have been followed, even to their homes, and been warned "*Haven't you learnt the lesson of Mrs. Gündüz?*" According to information received by KHRP, in early December, Afife Mintaş, the provincial head of DEHAP's women's Diyarbakır branch was kidnapped by plain-clothed security forces. After being physically and sexually tortured and threatened with death and rape, she was reminded of the attack on Gülbahar Gündüz.

Gülbahar Gündüz was still too traumatised to describe her ordeal in any detail to the Delegation and is currently receiving trauma counselling. (A heroic and intelligent woman, at times she wept during the meeting). Instead, she described the non-violent activities of the DEHAP women's programme and the constant harassment and restrictions placed upon these by the Turkish authorities. For example, in the winter of 2002/2003, the women peacefully protested against the war in Iraq and organised meetings calling for peace and democracy. They had also lobbied and campaigned for Kurdish women to participate in decision-making and government. They wore white clothes, in a procession, because white is a symbol of peace (there is a Kurdish legend about two brothers fighting each other, but their sister stops them by throwing between them a white scarf). These gatherings were constantly broken up by the police.

As with similar cases, there are no records of Gülbahar Gündüz' detention. The night of her release she complained to her local police station. The police there ridiculed and humiliated her and refused to record her complaint or even register that she had attended their station. "*How do you know it was Police? You say you did not see them! They were probably just criminals. Nothing to do with us!*" Later the President of the DEHAP Women's Group went to the police station and requested that they at least write down what Gülbahar had said, since at that stage, it was irrelevant who the perpetrators were: clearly, a crime had been committed. She was also insulted amid considerable tension. "*Women in DEHAP are assisting terrorists. Are you trying to save Kurds?*"

In the meantime, the lawyers advertised in the press for the man that their client had heard questioning the police to come forward. He never appeared; in all likelihood, out of fear because he too had been threatened.

As these events occurred over the weekend when the State Forensic Institute was closed, a medical examination could not be obtained until the following Monday. Three lawyers accompanied Gülbahar to the Institute, but the police presumably had left instructions and the lawyers' access was blocked. The Medical Report must go first to the Prosecutor, rather than to the lawyers, but by the end of the week the Prosecutor had not received it. In Turkey, the waiting-time for transmission of such certificates is usually between 5 and 6 months. This is yet another manifestation of the culture of delay, which obstructs fair access to the justice system. On 18 June 2003, a detailed complaint was filed and a press release reading, attended by 11,000 people, was held in Istanbul, to condemn the torture of Gülbahar Gündüz. This time the police attacked the demonstrators with dogs and batons and 200 people had to be treated in hospital. Many were detained, including three lawyers and members of feminist groups and IHD. Some of the injuries were serious. All these individuals filed complaints but so far nothing has been heard from the Prosecutor, and the case against the police has not been opened.

A few weeks later, the Prosecutor of Gaziosmanpasa, the quarter where the abduction had occurred, summoned the victim to make a detailed statement for the record. He appeared initially to be sympathetic, referring to “*some groups in the State who are beyond the law...they can even tap your phone...*” However, he ruled that as the crime was committed by “*persons unknown*” who would be impossible to identify, the file would be closed. The file was subsequently closed in October 2003. An appeal to the Governor of Istanbul is now the only channel for legal redress left open to Gülbahar Gündüz.

Gülbahar’s lawyers argue that this file should never have been closed, and certainly should have remained open to receive the Forensic Report. Moreover, under Turkish Law, a file is normally kept open at least for 6 months; the State is, therefore, in breach of its own legislation. Their anger at this injustice is understandable. That this torture could occur in these circumstances and in Istanbul is an ominous sign that women, even publicly respected women, will be the priority targets for the police. The increasing incidence of illegal abductions and torture by people in civilian clothes and detentions without any record make it almost impossible for women to get the justice they have a right to. It also gives an idea of the sort of obstructions established to block Kurdish women’s access to the justice system, or indeed their enjoyment of their right to form NGOs so as to advance the status of women in Turkey.

III.....MAIN ISSUES

The two hearings observed by the Delegation in Mardin, and the interview with Gülbahar Gündüz and her lawyer in Istanbul must be seen in the context of several features of the legal and political landscape of Turkey today. In discussing these features and the issues they raise, the views expressed by human rights lawyers at IHD, representatives of DEHAP, women’s legal rights groups are reported, as well as the opinions voiced by State officials, such as a Prosecutor and a Deputy Governor, during interviews held with them.

As mentioned already, Turkey now stands at the crossroads in relation to her chances of acceptance into the EU. The country received a severe reprove in October 2002,¹⁷ when the EU, while acknowledging that some progress had been made, ruled that “Turkey does not fully meet the political criteria” required for accession. This means that they now only have until December 2004 to implement the legal reforms required.

The ‘Harmonization’ Reform Packages passed in 2002 relating to linguistic rights, pre-trial detention and the effectiveness of legal redress against human rights abuses have remained on paper only. The European Commission has ruled such positive developments have often

been followed by “contradictory actions.”¹⁸ ECHR judgments against Turkey are frequently not implemented¹⁹ and those found guilty of heinous crimes remain free and in their original posts. The new laws therefore, appear to be merely a “cosmetic” gesture designed to persuade the EU and the international community into believing that Turkey has now cleaned up its human rights record and can be welcomed into the European Union.

Nevertheless it is clear from the evidence gleaned from interviews and from scrutiny of the case-papers that the reality is quite different. Torture has not been eliminated; illegal detentions continue; the judiciary is not independent of the State and the justice system is defective as well as ineffective. Turkey's Kurdish minority, are unable, in practical terms, to enjoy their linguistic rights; they enjoy neither freedom of association nor expression and are unlikely to get either speedy redress or compensation for the many abuses that they endure. In addition only a tiny fraction of the Kurds existing as internally displaced persons (IDPs) within Turkey have been able to return to their former homes.

Formal legal changes are not enough. It is the practice and realities on the ground that must be examined. At present there is a huge gap between “*cup and lip*.”

i) The Increase in Complaints by the Victims of Sexual Violence

Kurdish women need to be armed with great courage in order to speak out and formally complain of the sexual violence and rape perpetrated on them by agents of the State. Fortunately their numbers are increasing. In the summer of 2000, 171 Kurdish women testified to such abuse, with the result that many of them, their lawyers, and the organisers of the Congress “Against Sexual Violence in Custody” were themselves indicted under the Criminal Code.²⁰ It is not merely that Kurdish women are routinely threatened with death by their rapists should they make a complaint; rural women have feared the stigma, the shame and the consequent ostracism by their families should it be known that they had been sexually violated. The women's branch of IHD told the Delegation of cases where victims of sexual violence have committed suicide or have been killed by a family member, in an “honour” crime, or sent far away once details of their ordeals had become known. *All our women victims had to leave this region once they had spoken of their rape experiences*” explained lawyer Aygül Demirtaş.²¹ The obstacles to obtaining legal redress through the Turkish courts are massive, leaving the ECHR as the only legal avenue available through which to institute proceedings. Unfortunately this avenue is often unavailable until the women have fled abroad, as Şükran Esen did who is now living in Germany.

Conversely, neither Mustafa Celal the Deputy Prosecutor of the Mardin court nor Vahabettin Özkan, the Deputy Governor in Diyarbakır viewed the issue in this light. Both men fulminated against the women and their lawyers who had brought torture cases to Strasbourg. *“Kurds are exploiting the remedies of the ECHR, and they and their lawyers are motivated merely by money. Why do these women complain so long after the alleged crimes? Women are raped and sexually assaulted all over the world, but here they accuse the State.”*²² These Turkish officials insisted that claimants and the organisations that helped them were linked to “terrorists,” and that women had “ample opportunity” to use the existing domestic remedies available to them under Turkish law. The Prosecutor remarked that *“If their claims were sincere they would have filed their accusations immediately!”* He added *“They should not be afraid if the perpetrator is a State official!”*²³ He blamed all the delays in the legal processes on women who launched their complaints sometimes years after the date of the offences and refused to acknowledge the reasons for this. He gave the Delegation the impression that he prosecuted in such cases with reluctance. (He admitted that had he been in charge when the Şükran Esen case was first presented, he would have determined that there was no case to answer). The Governor concluded his interview with the Delegation by condemning the sources of its “misinformation” on “terrorist groups” – particularly active, he claimed, in the UK and Germany - and insisted that the high incidence of terrorism in the Southeast justified the continuance of repressive measures. Finally, he denied that the police or the Gendarmerie could ever be guilty of sexual torture and rape.

This latter claim is patently untrue and three important factors, in addition to the courage of the victims of sexual violence, are helping to bring such abuses to light. First, women are becoming more politicised. In part this is due to that fact that the thousands of women forced to migrate to cities in the west, or abroad, are in more urbanised settings, becoming better organised and aware of their rights. For example, the women's branch of DEHAP is active in many cities in Turkey and has even launched a Women's Charter. Ezgi Dursun, the Chair of the Diyarbakır branch told the Delegation that *“Our identity as women is more important than our political identity.”*²⁴ Widespread publicity, both in Turkey and abroad over the abduction and sexual abuse of Günbahar Gündüz, has mobilised numerous protests and will undoubtedly encourage more women to come forward. Secondly, the attitudes of Kurdish men, which in the past hindered their womenfolk from speaking out about such crimes, are changing. Thirdly, more NGOs and pressure groups are focusing on the increasing abuse and torture of women during unofficial detentions. For example, IHD, which initiated the proceedings on behalf of Şükran Esen, is now representing many more cases where Kurdish women have been abducted into detention and torture, without there being any records. IHD lawyer Aygül Demirtaş, a lawyers in the Şükran Esen trial, explained how women were now, more than ever, exposed to the violence of uncontrolled village guards, army and police since so many of their male family members have been killed, disappeared, or forced to migrate or emigrate to asylum.²⁵ Women, who are blindfolded, even if they dare speak, can never identify their assailants. Furthermore as documented by numerous

human rights organisations, there are a many ways of torturing women that are detectable only with advanced forensic investigation methods, which are rarely available in Turkey.²⁶ Thus, only a small proportion of cases actually get to the trial stage

ii) The Use of Sexual Violence as a Means of Destroying Kurdish Families, Culture and Community

Within Kurdish society, as in many other traditional and patriarchal societies, rape and sexual violation are seen as matters of grave dishonour. The chastity of women is a core component of the social structure of the family and its tribe. Thus, the State's targeting of women and their use of sexual violence strikes at the very heart of the kinship group, disrupting the family structure and demoralising the whole community, as well as causing life-long physical and psychological damage to the women victims. The State has circumscribed the legal prohibition of torture and detention without trial by turning a blind eye to the abductions, detentions, sexual and psychological torture of Kurdish women by plain-clothes members of the police or gendarme. The Delegation was told by IHD that today 99 per cent of detentions are unrecorded. Death threats, such as those received by Gülbahar Gündüz, illustrate how brave women must be to file a complaint with the state authorities, but *"we must speak out"* she said for *"until we all lift the silence on these atrocities the unspeakable will continue."*²⁷

iii) The Legal System

In its current form and operation, the Turkish legal system is incapable of either delivering justice or providing the forum for a fair trial. Both the judges and the Prosecutors are State agents and appeared, during the hearings observed by the Delegation, to collaborate closely. The system of recruiting and training judges and Prosecutors, described to the Delegation by IHD, confirmed concerns regarding judicial independence and the rule of law. The "screening system" for selecting trainees ensures that future judges and Prosecutors will have total commitment and loyalty to the State. They are not trained to be objective investigators or arbitrators that pass judgement based only upon factual evidence. Rather their position as servants of the State is to ensure that State interests are afforded a greater priority than that of implementing new laws or ensuring that those before the court, whether as defendants or plaintiffs, accused or victims, have a "fair trial." The ethnic composition of judges, prosecutors, governors and police is predominantly Turkish despite the fact that 90 per cent of the population of the Southeast provinces is Kurdish.

These prosecutors and judges train for two years in comparative isolation, and once appointed, are remote from and do not mix with the civil population. Some IHD lawyers applied for this training as a fact-finding exercise. Each one when interrogated in the "psychological interview" on their political views and attitudes to the State failed the screening.²⁸

However, it is not only the composition and the training of the judiciary and the State Prosecutors, which needs reforming. As the report from the trials documented above clearly show, the legal procedures currently in place are cumbersome, time wasting and unfair. Endless delays and adjournments do not deliver justice, and breach the articles of the Convention as well as the rights of human rights defenders.²⁹ IHD lawyers explained how those who act for unarmed civilian victims of this State violence are systematically labelled as "terrorist lawyers." The indictments against such women lawyers as Eren Keskin³⁰ illustrates the lengths the State will go to silence human rights defenders.

iv) The Police

The Police are ostensibly under the control of the regional governors. Yet no one seems to know exactly from whom they take their orders, or whether the spate of unofficial abductions, detentions and torture is directed from the local Governor, or from the State. Clearly, they have a freedom to check, search, arrest, beat, detain, and break up peaceful meetings, without any visible control. Significantly, 90 per cent of the police are Turkish and according to the lawyers in DEHAP; appear to view all Kurds as potential criminals.³¹

Check-points still operate, as a continuing feature of the formally ended OHAL period. The Delegation, whilst travelling in a Dolmuş between Mardin and Diyarbakır, on 6 November, was stopped and everyone had to produce their IDs. One young man was detained. The police appear to have wide discretionary powers. The Delegation was told by members of IHD, DEHAP and the Mayor of Diyarbakır of many occasions where the police had raided offices, stopped peaceful assemblies, burst into meetings and seized, without warrants, computers, tapes, film and cameras. The police raided the meeting of an International Kurdish Literature and Art Festival the week that the Delegation was in Diyarbakır.

v) Freedom of Expression and Freedom of Association

From meetings the Delegation held with various NGOs it is apparent that there is no real freedom of association. Vahap Bakış the Chair of DEHAP in Mardin described the methods used by the police and the Governor to limit the activities of the Kurdish organisations. For example, it is almost impossible to find landlords willing to rent out office accommodation to Kurdish associations; people were too terrified of police detentions should they be seen to be actively associated with these. Because of this fear, it was difficult to find Kurdish people willing to stand for the party in elections. *“Although we won 80 per cent of the votes, we could not find candidates.”*³² The Delegation was told of raids, arrests and detentions when the Kurdish parties peacefully demonstrated against the war in Iraq and Turkey joining the coalition. Although all the party members were acquitted in the court, the charges brought by the Prosecutor were intended to make them fearful of any activism.

Ezgi Dursun of the Diyarbakır Women's Branch of DEHAP told the Delegation that when women tried to hold a meeting, they were constantly harassed by the police. *“All of us women have been taken into detention and beaten.”*³³ On 26 October 2003, 15 men and 8 women were arrested. She drew up her sleeve and showed the bruises on her arm. The next day 168 people protesting against these detentions were brought before the court. There was no case to answer but these arrests illustrate the attitudes, wide powers and lack of accountability of the police.

vi) Political Representation

Although, the Kurds make up 25 per cent of the population of Turkey, they are still debarred from any representation in the Turkish parliament. This is in spite of the fact that the meaningful participation of minorities in public life is internationally recognized as an “essential component of a peaceful and democratic society,” that should be provided for using special measures if necessary.³⁴ The Turkish electoral system denies seats in Parliament to political parties gaining less than 10 per cent of the vote nationwide. This threshold effectively prevents the Kurdish minority gaining political representation as they are geographically concentrated in the Southeast. Yet waiving the threshold has been recommended where the numerical size of the minority is too small to be represented under normal circumstances.³⁵ Turkey's failure to establish specific measures to facilitate Kurdish political representation, calls into question the sincerity of its commitment to fulfilling the provisions of the Copenhagen Criteria.³⁶ A fact made more prominent given that in the 2002 general election, DEHAP failed to gain seats in

Parliament despite obtaining nearly 2 million votes, achieving 6.2 per cent of the national vote and being the leading party in 12 provinces in the Kurdish regions with an average of 47 per cent of the vote. Furthermore, women also have rights to be represented under the Beijing Platform for Action of 1995, to which Turkey is a signatory, and which requires States to work towards the participation of women – up to 1/3 – in decision-making bodies.

vii) Returning Internally Displaced Persons (IDPs)

Since the lifting of OHAL and under the harmonization package, the government of Turkey is bound to support the return of IDPs to their villages. According to NGO estimates, 4 million Kurdish people were displaced during the OHAL period and 5,000 villages destroyed.³⁷ However, only 5 per cent of these have been able to go back to their homes. Firstly, many of their houses were destroyed, their fields burnt, landmines have not been cleared and they would have no livelihoods to support them without government compensation and financial support. Second, although the State is required, under the harmonization packages, to provide them with protection and assistance, including repairs of their homes, and compensation and financial grants to enable them to rebuild their lives in their original villages, this has not happened. Third, many returnees are met by violence from the village guards.³⁸ Current accounts rebound of situations where people returning in recent months have been attacked by these guards who often inhabit their former homes – and forced yet again into exile. When the Delegation interviewed the Deputy Governor of Diyarbakır on the Village Guards he replied that these young men were Kurdish villagers, committed to safeguarding their communities.³⁹ On 20 June 2003, villagers who tried to return to the village of Ozalp were verbally threatened by the army, in spite of having a written permission from the Governor. Fourth, many of the IDPs are women whose husbands, fathers and/or sons have been killed, (30,000 people died in the 15 years of conflict) have disappeared, are in detention, or have emigrated as refugees to Europe, and therefore there exist huge problems for these unaccompanied women should they attempt to go back. Fifth, the permission of the Governor is required, although not expressly written into the law. Even when permission is granted, supporting funds and other assistance is not provided. The Deputy Governor told the Delegation that people who applied for grants did so in order to obtain funds for “commercial investments” and were not genuine returnees.⁴⁰ Sixth, many of the villages, especially those on the Iraqi border, no longer exist, and there is no planned policy to rebuild the small farming settlements in the mountains, provide them with essential services or clear the surrounding fields of mines, so return is dangerous. Seventh, in spite of the requirements under the EU that the IDPs be assisted to return, the State will only permit Kurds to return to “predetermined settlements.”⁴¹ The Deputy Governor justified such large settlements on economic grounds, saying that it was not economically feasible to install electricity, piped

water and other essential services in small villages.⁴² But according to DEHAP the true reason is that authorities are intent on “controlling” the Kurdish population which can only be achieved if mountain villages are abandoned and the people are kept together in big settlements. This policy further disadvantages Kurdish households, depriving them of their livelihoods in farming and other rural income-generating pursuits as well as destroying centuries-old social networks and traditions. In the context of internal displacement and the return to villages, the particular situation and needs of the impoverished rural Kurdish women; forced into the slum ghettos of the cities of the western Turkey, experiencing multiple economic, social and psychological problems of displacement requires addressing. They will need special help in repairing their homes, extension services for their agricultural work, training and continual support to enable them to survive and raise their children. Many of these will be without male heads of households and therefore vulnerable to violence and economic exploitation, including trafficking and prostitution.

IV.....HUMAN RIGHTS MACHINERY

All the international and regional human rights machinery available to the women of Turkey should now be used to ensure that they can effectively enjoy their basic human rights, as enshrined in international conventions that their government has ratified.

i) United Nations Security Council Resolution 1325. Passed 31 October, 2000

Turkey has been engaged in armed conflict for over 16 years and Kurdish women are its invisible victims. Many Kurds have disappeared without trace or been killed in that period and there are many Kurdish women, of all ages, who have been widowed or are wives of the disappeared, suffering from the trauma of conflict, violence, torture, displacement and poverty. UN initiatives, such as Security Council Resolution (UNSCR) 1325, acknowledge the terrible impact of armed conflict on women, and require that women's needs and roles are properly

recognised and addressed in the aftermath. It requires all players in the peace processes to ensure that women's voices are heard and that they have due representation in decision-making committees of government.

Kurdish women however, have not been included in this process, primarily because the international community, the major UN agencies and many NGOs have failed to address the issues of armed conflict in Turkey. Yet the significant period of armed conflict in Turkey has disproportionately affected Kurdish women. Consequently the provisions of UNSCR 1325 are particularly pertinent for Kurdish women; poverty, homelessness, displacement, forced migration, asylum-seeking, economic exploitation, prostitution, and continuing trauma must no longer be their destiny. Nevertheless action taken by the Turkish State in an attempt to proscribe women's NGOs is diametrically opposed to the provisions of UNSCR 1325, articles of the Convention and all the main international human rights legal standards.

ii) Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and its Optional Protocol (CEDAWOP)

Turkey signed and ratified the CEDAW in 1985 and also ratified its Optional Protocol in October, 2002. CEDAW requires States Parties to submit reports on their implementation within two years of acceding and then in not less than four years subsequently. The Optional Protocol also allows the CEDAW committee to initiate a confidential investigation if it receives reliable information on grave and systematic violations by the State Party of Rights guaranteed in the Women's Convention. This opportunity should be seized upon by NGOs working to further the promotion and protection of Kurdish women's rights. The guidelines issued by the CEDAW committee specifically note that the report submitted should describe the participation of NGOs and women's associations in the preparation of the report, implicitly making NGO participation in the report compilation a requirement.⁴³ Furthermore the CEDAW committee also invites NGOs to submit their own "shadow reports" on implementation, so as to highlight gaps and omissions in the official report. The Turkish government does not appear to have involved NGOs in the process of writing their Official Report, and none of representatives of the NGOs that the Delegation spoke to had seen any draft official report so they could comment on it. Turkey's report to the CEDAW is now well overdue. Its last report was submitted 6 September 1996.⁴⁴ It is essential that Kurdish human rights and women's NGOs now compile their own report identifying the CEDAW articles breached by the Turkish government.⁴⁵

Turkey also ratified the Optional Protocol to CEDAW on 29 October 2002. This provides for claims to be made by individual women, who have a well-founded case that their rights under the CEDAW have been breached. Individual Kurdish women and Kurdish women's groups should now consider using these tools to draw attention to their situation, thus heightening awareness of the abuse of human rights that they are experiencing.

iii) Office of the Special Rapporteur on the Elimination of Violence Against Women

The new UN Special Rapporteur on Elimination of Violence to Women is Ms. Yakin Ertürk, from Turkey.⁴⁶ KHRP would encourage Kurdish Women's organisations to submit their report on violence to Kurdish women to the Special Rapporteur who will report on its causes and consequences. This appointment, given that Ms Ertürk is herself Turkish and was once Professor of Sociology at the Middle East Technical University of Ankara may prove useful to the Kurdish women's cause as she is familiar with human rights issues in Turkey as they affect Kurdish women.

iv) The Beijing Platform for Action (BPA) 1995⁴⁷

Turkey has agreed the Beijing Platform for Action for the Advancement of Women. This singles out violence to women as a major obstacle to the achievements of the objectives of equality, development and peace. It also requires governments to collaborate and consult with NGOs regarding the measures taken to promote the advancement of women and integrate gender perspectives in legislation, public policies, programmes and projects.⁴⁸ Every year since 1995, the UN Commission on the Status of Women meets in New York to evaluate State implementation of each of the twelve critical areas. The NGOs present, both as members of the official Delegations, or independently of the latter, play an important part in the proceedings and are invited, at most sessions, to make statements at the plenaries. Kurdish women's parties should be using this venue to bring their government to account.

v) International Commission of Jurists (ICJ), Geneva

The International Commission of Jurists regularly sends Delegations to examine issues such as the independence of the judiciary, the rights, status and protection of lawyers and other

human rights defenders, the use of torture, access to justice, and other breaches of international conventions and charters. NGOs should consider requesting the ICJ to send a mission to examine the effectiveness and accessibility of the Justice System in Turkey, in the context of freedom of association, expression, equality before the law, due process and other legal and juridical issues which concern Kurdish and minority rights in the context of international law standards.

vi) The Rome Treaty of the International Criminal Court

Turkey is the only member of the Council of Europe which did not sign the Rome Statute. In the European Commission (EC) Report for 2000, the EC considered whether Turkey's position on the ICC should impact its candidacy for the European Union. The failure to do so poses questions about the sincerity of its commitment to eliminate impunity for those who commit crimes against humanity, wherever in the world.

vii) The European Convention on Human Rights and Fundamental Freedoms

Turkey should ensure that the provisions of the Convention are both fully incorporated into domestic legislation and implemented in practice, so as to provide its citizens with access to human rights protection and remedies without the need to go to Strasbourg.

V.....RECOMMENDATIONS

For the Turkish Government:

1. **Immediate enforcement of Judgments of the ECHR.** The instigation of effective and objective investigations, and possible arrest and trial of those held responsible by the ECHR of perpetrating torture.
2. **Immediate removal from their posts** of those indicted of human rights abuses and temporary relief from duties of those indicted, whilst awaiting trial.
3. **On-the-ground implementation and enforcement of all new laws enacted to comply with the Copenhagen Criteria and the seven Harmonization Packages.**
4. **Ratification of the International Covenant on Economic Social and Cultural Rights and the International Covenant on Civil and Political Rights.**

5. **Reform of the justice system.** Including reform of recruitment procedures and effective training of police, Prosecutors and the judiciary.
6. **Change composition of police and local authorities in Southeast to reflect the composition of the population.**
7. **Implement measures to ensure independence of the Judiciary, separation of roles of Prosecutor from Judge, fair trials, the equality of arms and due diligence** so as to ensure impartial, neutral and objective determination at hearings.
8. **Reform of the definition of "Rape" under the Penal Code.** The draft law, repealing the definition of rape so that it covers all acts of penetration. (At present, rape by hands, truncheons, sticks or anal rape is only deemed 'sexual harassment'). Abolition of the law which exonerates rapists from prosecution if they marry their victim after the crime.
9. **Criminalisation of the practice of non-consensual virginity tests.**
10. **Total demobilisation and abolition Village Guard system.**
11. **Support through financial, social and technical assistance to returning IDPs.** Measures should be taken to address the particular needs of female IDPs, and the provision of essential services to outlying villages.
12. **Respect for the right to Freedom of Association and Freedom of Expression.** For example, registration and authorisation to enable Kurdish NGOs, including Kurdish Women's NGOs to operate according to the principles enshrined in the Beijing Platform for Action.
13. **In accordance with European and International Standards** ensure representation of Kurdish political parties in national and local government.
14. **Consultations with women's NGOs, are required under the Beijing Platform for Action (see Institutional Arrangements Para.289), in the development of the Official Report for the CEDAW committee.** This report is already overdue and Turkey should ensure that it is submitted to the CEDAW committee as soon as possible.

For International Organisations

1. To closely monitor implementation of new legislation, the lifting of OHAL and enforcement of judgments of the ECHR.
2. To apply pressure on the State Party urgently release a draft of its overdue CEDAW report for comment by the NGO community.
3. To explore taking cases concerning breaches of CEDAW using the provisions of the CEDAWOP.
4. To explore using such other human rights machinery such as UNSCR 1325.
5. To invite Delegations of the ICJ to investigate issues within their remit such as the proceedings relating to the case of Şukran Esen and Gulbahar Gündüz. (ICJ has reported on the trial of Leyla Zana etc).
6. To facilitate women's NGOs development of links with European and international women's human rights organisations and promote dialogue with the European Union on the issues raised in this report throughout all future discussions relating to accession.
7. To provide women's NGOs with assistance for training, capacity-building, mobilisation and on methods of using UN and European human rights machinery through contact with UNIFEM, ICRW, International-Alert, British Council.

Appendix A – Indictment for Case A

T. R.
Mardin
Public Prosecutor's Office

Preliminary No. 2003/444

Principal No. 2003/173

Indictment No. 2003/26

05.02.2003

Indictment

To the High Criminal Court
Mardin

Plaintiff: Public Law

Wounded party (complainant): Hamidiye Aslan: daughter of Nuri, born in 1965, currently on remand in Mardin Closed Prison.

Accused:

- 1- Bayram Ural: son of Abdulhamit and Fadime, born in Siverek in 1973, registered in Hacıömer neighbourhood, Siverek district, Şanlıurfa province, domiciled at Station E2 Police Residences no. 9 Mardin.
- 2- Nazım Ege: son of Ali Osman and Nejla, born in Görele in 1971, registered in Yeğenli, Görele district, Giresun province, domiciled at Station C1 Police Residences block no. 9 Mardin.
- 3- Abdulkadir Özer: son of Yunus and Naciye, born in Yerköy in 1967, registered in Yenimahalle, Yerköy district, Yozgat province, domiciled at Station Police Residences G1 block floor 5: flat 10 Mardin.
- 4- Hanife Şennur Pat: daughter of Cumalı and Aysel, born in Istanbul in 1969, Demirciler neighbourhood, Kilis, resident in Cihan Apt. B block floor 4 flat 18 above Yenişehir Police Station, Mardin.
- 5- Levent Bilsel: son of Muhittin and Fatma, born in Mersin in 1972, from Mahmudiye, İçel city, resident of Meydanbaşı police residences A block no. 4 Mardin.

Offence: Police officers' torture and mistreatment of accused in order for them to admit guilt.

Date of offence: 05.03.2002-07.03.2002

Article of law: article 243/1 of Turkish Penal Code with reference to article 64/1

Evidence: reports compiled by Diyarbakır Forensic Institution Branch Directorate, statements

in report of Expertise Council of no. 4 Forensic Institution, statements of complainant, witness statements and entirety of file.

Preliminary documents examined:

As required by the preliminary investigations carried out by our Public Prosecutor's Office regarding the above named accused;

It has been established in the light of the above evidence that the accused are police officers at the Mardin Security Directorate Anti-Terror Branch, that the wounded party was taken into custody on 05.03.2002 accused of being a courier for the PKK terror organisation, that in order to get her to admit the accusation they hosed her with cold water, knocked her head against the wall by pulling on her hair, kicking her above the kidney, punching her in the chest and removing all her clothes except her shorts, thereby dishing out mistreatment.

It is therefore requested that a public prosecution be carried out regarding the above accused and that they be convicted of the above offences, based on the evidence, which your court has the discretion to assess.

Salih Kılıçdağ

Public Prosecutor 39604

Appendix B – Indictment for Case B

Offence: Ill treatment, rape

Date of offence: November 1993, March 1994

Articles of Law: Articles 416/1, 417, 243/1 (twice) of the Turkish Penal Code for all accused, separately articles 31 and 33.

Evidence: Indictment, defence, witness statements, date of offence of Derik District Gendarme Command, custody records, personnel records, hospital correspondence, registration records and entire file.

Preliminary file examined

In the petition of complaint submitted by counsel for the complainant lawyers Eren Keskin and Fatma Karakaş to the Mardin Prosecutor's Office on 19.06.1998 their client Şükran Esen stated that firstly in November 1993 she had been detained by gendarmes in the village of Cayköy in Derik district of Mardin province and that while in custody she had been stripped naked, beaten on the soles of her feet, given electric shocks, put inside a vehicle tyre and rolled over, threatened with death, raped twice in a 7-day period with a stick and hands by persons she could not see on account of being blindfolded the whole time; on being released she was unable to complain out of fear; she had been detained for a second time in March 1994 and held for two weeks during which time she was subjected to severe torture, being raped vaginally by gendarmes while blindfolded, being taken to hospital with haemorrhaging resulting from the rape; Şükran Esen subsequently leaving the region with her elder brother and going to Izmir, applying to the Turkish Human Rights Foundation where she was treated by Doctor Türkan Baykal who wrote a report, the family sending Şükran Esen to Germany out of fear, the complainant making a formal complaint regarding the personnel in the Derik Gendarme Command during 1993 and 1994.

In her statement Şükran Esen said she had been detained in November 1993 and accused of assisting the PKK, being remanded in custody by the Gendarme, blindfolded by them, being stripped naked, mistreated, a stick thrust into her genital region, being tortured with electricity, being raped, beaten again, pressed into a vehicle tyre, not going to a doctor after being released, that she would not be able to show witnesses for the ill treatment and not identify the culprits on account of being blindfolded, knew they were Turkish from their speech, being detained for a second time by the Gendarme in March 1994, stripped naked, being tortured as on the first occasion, and not be able to testify regarding the culprits on account of being blindfolded, being hit on the head resulting in a large wound and being taken to hospital in Mardin; in the third

incident she stated that armoured vehicles arrived in the village while she was working in the fields, on going to a neighbouring village it was raided by the gendarme, she was raped by the gendarmes and their officer, the officer was a large man, with green eyes, after he had finished the other troops raped her, she was blindfolded and beaten, after the troops had gone she was released and taken to a hospital by her relatives, she did not know which hospital, it may have been a hospital in Kızıltepe or Mardin; after their village was destroyed they moved to Izmir.

Correspondence no. 4908 from the Derik District Gendarme Command of 25.08.1998 stated that a person by the name of Şükran Esen had not been detained, correspondence no. 11724 of 11.09.1998 from the Mardin Provincial Gendarme Command stated that no person by the name of Şükran Esen had been detained, it was ascertained from an examination by the Derik District Gendarme Command that no such incident had taken place as alleged by Şükran Esen, according to correspondence from Mardin State Hospital no. 704 of 28.07.1998, correspondence no. 87 of 29.04.2002 from the Mardin Tuberculosis Clinic, no. 81 of 01.05.2002 from Mardin no. 3 Health Centre, no. 76 of 02.05.2002 from Mardin Social Security Hospital, no. 3813 of 03.05.2002 from Mardin Provincial People's Health laboratory, no. 106 of 30.04.2002 from Mardin no. 4 Health Clinic, no. 78 of 07.05.2002 from Mardin no. 5 Health Clinic, unnumbered and undated correspondence from the Mardin Mother Child and Family Planning Centre, no. 157 of 16.05.2002 from the Derik Central Health Centre no record was found of Şükran Esen. Witnesses Ahmet Gören, Süleyman Dölek, Ismet Yıldız, Şeyho Gövsa, Şeyhmus Başaran, Piro Yıldız, Bedir Ay, Hüseyin Çin and Mehmet Gören in similar statements said that in the autumn of 1993 Şükran Esen had been taken away by the security forces with several other people whose names they could not remember, that they did not know where they had been taken, that 2 or 3 days later the people were released and returned to the village and that they had not seen or heard that Şükran Esen had been tortured or sexually assaulted.

Those of the accused whose statements have been taken denied committing the offences. In his defence accused Mehmet Yurdakul stated that he had participated in the operation to arrest Şükran Esen but was not present at her interrogation; accused Murat Karataş stated that he had heard of the incident from earlier recruits and had no other information; accused Faruk Öztürk stated that a woman terrorist had surrendered to the Bozok military post on the dates in question, had remained there 7 or 8 days and then been taken away by the company commander, he did not know where she had been taken;

It is requested that the evidence be evaluated by your court and that the accused be tried and convicted in a public prosecution.

Yeşim Doğan Kar
Public Prosecutor 42507

Appendix C - Interviews Held During the Mission

KHRP had written to Prosecutors, Judges and Governors in Mardin and Diyarbakir, requesting a meeting with the Delegation. There was only one affirmative reply; from the Governor of Mardin. From all others there was silence.

1. The Prosecutor in the case of the 405 Gendarmes refused to speak with the Delegation citing a lack of authorisation. Instead the Delegation was able to meet with Assistant Prosecutor Mustafa Celal, Mardin, 5 November 2003.
2. Hüseyin Cangir, IHD Lawyer, Mardin, 5 November 2003.
3. Vahap Bakış, Chair of DEHAP, Mardin, 5 November 2003.
4. Feridun Çelik, Mayor, Diyarbakır, 6 November 2003.
5. Devrim Barış Baran, Contemporary Lawyers Association, Diyarbakır, 6 November 2003.
6. Mahsum Batı, Contemporary Lawyers Association, Diyarbakır, 6 November 2003.
7. Nermin Parlamlı, Contemporary Lawyers Association, Diyarbakır, 6 November 2003.
8. Aygül Demirtaş, IHD Lawyer, Diyarbakır, 6 November 2003
9. Ezgi Dursun, Chair of DEHAP Women's Branch, Diyarbakır, 6 November 2003
10. Vahabettin Özkan, Deputy Governor Diyarbakır, 6 November 2003
11. Gülbahar Gündüz, Executive Board Member DEHAP, Istanbul, 7 November 2003
12. Nermin Selçuk, Lawyer for Gülbahar Gündüz, Savunma Hukuk Bürosu, Istanbul, 7 November 2003

Appendix D – Extracts: United Nations Security Council Resolution 1325. Adopted by the Security Council at its 4213th Meeting, 31 October 2000

The Security Council,

Reaffirming the important role of women in the prevention and resolution of conflicts and in peace-building, and *stressing* the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution,

Reaffirming also the need to fully implement international humanitarian and human rights law that protects the rights of women and girls during and after conflict,

Recognising that an understanding of the impact of armed conflict on women and girls, effective institutional arrangements to guarantee their protection and full participation in the peace process can significantly contribute to the maintenance and promotion of international peace and security,

Article 1: *Urges* Member States to increase representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management and resolution of conflict;

Article 8: *Calls* on all actors involved when negotiating and implementing peace agreements, to adopt a gender perspective, including inter alia:

- (a) The special needs of women and girls during repatriation and resettlement, and for rehabilitation, reintegration and post-conflict reconstruction;
- (b) Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements;
- (c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary;

Article 9: Calls on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape or other forms of sexual abuse, and all other forms of violence in situations of armed conflict, in particular the obligations applicable to them under the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, the Refugee Convention of 1951 and the Protocol thereto of 1967, the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and the Optional Protocol thereto of 1999 and the United Nations Convention on the Rights of the Child of 1989 and the two Optional Protocols thereto of 25 May 2000, and to bear in mind the provisions of the Rome Statute of the International Criminal Court;

Appendix E – Extracts: The Convention on the Elimination of All Forms of Discrimination against Women.

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Article 2: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

Article 3: States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Part II

Article 7: States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8: States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Appendix F – Extracts: The Convention on the Elimination of All Forms of Discrimination against Women Optional Protocol. 15 October 1999.

Article 2:

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any individual rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 7:

(1) The Committee shall consider communications received under the present Protocol in the light of all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned, provided that this information is transmitted to the parties concerned.

(2) The Committee shall hold closed meetings when examining communications under the present Protocol.

Article 11:

A State Party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill treatment or intimidation as a consequence of communication with the Committee pursuant to the present Protocol.

Appendix G – Statistics on Torture and Sexual Violence

Legal Aid Project Against Sexual Assault and Rape in Custody

Kulođlu mah. Turnacıýý sok. Fikret Tüner Ýphaný No: 55-57 Beyođlu/Istanbul

Tel/Fax: (0212) 245 4593

Report on Status of the Proceedings (December 2003)

Total Number of Applications 182

Number of Applications in Turkey 179

(2 applications made in Germany before opening of Berlin office)

Applications received by Berlin office for formal complaint 3

Total number of women abroad 23

Number of these applications being processed by Berlin office 41

Number of applicants in Turkish prisons 18

Range of offences:

Rape 60

(Of these, two women committed suicide after being raped, one died as a result of torture, one 14-year-old girl was murdered by her relatives to 'cleanse her honour', one woman died in December 1999 from the long term effects of torture).

Sexual Assault 122

Breakdown of the above incidents:

Forced prostitution 2

Assault after abduction 2

Sexual harassment through media	1
Miscarriages as a result of torture	5
Women suffering torture together with children aged 3-10)	5
Women becoming pregnant following rape (one child is alive, one was aborted and one was stillborn)	3
Those subjected to virginity test	2

Age:

10 - 18	31
18 - 67	151

Perpetrators*:

Police	139
Gendarme/Soldier	39
Special Forces	4
Village Guards	7
Prison Officers	1
Informer [former guerrilla]	2
Journalist	1

* The reason the figures are high is that in some cases there were more than one perpetrator

Ethnic origin of women:

Kurdish	142
Turkish	33
German	1
Roma (Gypsy)	4
Bulgarian	1
Romanian	1

Reasons for arrest of women:

For political reasons or stemming from conflict [war]	160
Stemming from conflict	15
Woman herself political	123

(Of these 1 was accused of criminal act despite being political, 5 were political/conflict related, 7 political and in order to obtain information regarding male members of the family, 7 political and in order to convict political members of the family) Total: 20

In order to get male members of the family to talk or (usually)	
To obtain information regarding men in the family	14
To punish the family on account of its political members	8

For non-political reasons	22
Suffered rape for non-political reasons	8
Suffered sexual assault for non-political reasons	14

Legal Status of the Proceedings:

Total Number of Cases	80
At the European Court of Human Rights, Strasbourg (1 case is continuing after the suicide of the applicant)	33
In Turkish Criminal Courts	20
At Turkish Court of Cassation (High Court of Appeals) (In one of these cases previous judgment against Turkey in Strasbourg)	7
At Public Prosecutor's Office	17

(In 2 cases successful objections have been made against decisions of non-jurisdiction, these are back with the prosecutor)

Awaiting decision on objections to decisions of non-jurisdiction	2
Ongoing cases in court of administration	1

Files closed and removed to archive for purpose of documentation:	103
1 - Did not want legal action due to fear	43
(Despite this in one case a perpetrator/soldier was removed from his post)	
2 - Withdrawing from case after commencement	18
(In one incident a victim withdrew on account of severe oppression following lodging of application, in another, after an acquittal the victim withdrew when it was possible a re-trial could have been ordered by the Court of Cassation)	
3 - Unable to contact victim after initial application	7
4 - Cases pursued by victim and own lawyers	21
(One of these suffered sexual torture after abduction, two and a half months later the file was removed from process by the Interior Ministry on the grounds that the perpetrator could not be found, two of these are at Strasbourg and in two cases action could not be taken on account of mistakes by lawyers).	
5 - Cases concluding in domestic law in Turkey	2
(One of these concluded with the conviction of the perpetrators. 10 month suspended sentence. The second concluded with the conviction of the perpetrators).	
6 - Cases in which there is insufficient evidence to take action	5
(One case from Germany)	
7 - Cases in which domestic remedies were exhausted prior to application	2
8 - Cases dropped as a result of the forced marriage of the victim to the perpetrator	1
9 - Perpetrator (Police superintendent) murdered by drugs mafia	1
10 - Cases which concluded in Strasbourg	3
(one of these is back at the Court of Cassation)	

11 - Incidents of death	6
12 - Cases dropped as a result of death of victim (one of these died on death fast in prison)	3
13 - Case continuing in Strasbourg after suicide of victim	1
14 - One-year prison sentence for causing death by neglect	1
15 - No action desired by family of 14-year-old girl, due to her being raped	1
Victims suffering persecution as a result of reporting a crime	39
Those who had to leave their homes in Turkey as a result of oppression	25
Intimidation, threat, taken into custody again and/or torture	16
Case lodged against victim	7

IHD Statistics on Torture, Released 14 November 2003

Torture

August 2003 - 10 people reported that they were tortured. 7 female, 2 male and 1 child.

September 2003 - 23 people reported that they were tortured. 7 female, 15 male and 1 child

October 2003 - 45 people reported that they were tortured. 18 female, 22 male and 5 children

Arrest

August 2003 - 93 female, 313 male, 18 children

September 2003 - 9 female, 308 male, 7 children

October 2003 - 323 female, 498 male, 92 children

Appendix H – Substantive Rights in the European Convention on Human Rights

Article 1	Obligation to respect human rights
Article 2	Right to life
Article 3	Prohibition of torture
Article 4	Prohibition of slavery and forced labour
Article 5	Right to liberty and security
Article 6	Right to a fair trial
Article 7	Prohibition retrospective penalties
Article 8	Right to respect for private and family life
Article 9	Freedom of thought, conscience and religion
Article 10	Freedom of expression
Article 11	Freedom of assembly and association
Article 12	Right to marry
Article 13	Right to an effective remedy
Article 14	Prohibition of discrimination
Article 15	Derogation in time of emergency
Article 16	Restrictions on political activity of aliens
Article 17	Prohibition of abuse of rights
Article 18	Limitation on use of restrictions on rights

Additional Protocols to the Convention

First Protocol: Rights to i) peaceful enjoyment of possessions; ii) education; iii) free elections at reasonable intervals

Fourth Protocol: i) no deprivation of liberty merely on the grounds of inability to fulfil contractual obligation; ii) freedom of movement and residence; iii) no expulsion of nationals; iv) prohibition of collective expulsion of aliens

Seventh Protocol: i) conditions on expulsions of lawfully resident aliens; ii) right of review of a criminal conviction or sentence; iii) compensation for miscarriages of justice; iv) no second criminal trial or punishment; v) equality of rights of spouses

Twelfth Protocol: i) free-standing prohibition against discrimination

Thirteenth Protocol: i) abolition of the death penalty in all circumstances

Reference

¹ State of Emergency Legislation (OHAL) governed the majority of provinces in the Kurdish regions of the Southeast of Turkey. OHAL conferred wide administrative and legal powers upon specially created Regional Governors, which effectively making the area a police state, in which fundamental civil, political, social and economic rights were denied. Having been applied throughout the Kurdish regions from 1987- 2002, OHAL was a remarkably long state of 'emergency' by any standards and despite formally ending in compliance with the Copenhagen Criteria, the Regional Governors and many features of a police state still exist.

² "The Turkish state, with its territory and nation is an indivisible entity. Its language is Turkish" Article 3, "The fundamental aims of the state are to safeguard...the indivisibility of the country" Article 5. The Constitution of the Republic of Turkey. NB Such sentiments are repeatedly written throughout the Turkish Constitution and contained in articles (i.e. Article 3) that are "irrevocable" – they can neither be amended nor can their amendment be proposed.

³ KHRP, *State Violence Against Women in Turkey and Attacks on Human Rights Defender of Victims of Sexual Violence in Custody*, (London: KHRP, December 2001).

⁴ KHRP and the Bar Human Rights Committee of England and Wales, *The State and Sexual Violence: Turkish Court Silences Female Advocate* (London: KHRP, January 2003). KHRP et al, *In the Wake of the Lifting of the State of Emergency Rule* (London: KHRP, August 2003). KHRP and the Bar Human Rights Committee of England and Wales, *Turkey's non-implementation of European Court judgments: the Trials of Fikret Baskaya* (London: KHRP, September 2003).

⁵ See Annex 1 – Statistics compiled by the Istanbul Branch of IHD, *3 Months of Human Rights Violations* (Istanbul: IHD, November, 2003).

⁶ Human Rights Association, Press Statement "Report on Human Rights Violations" (April-June 2003).

⁷ European Parliament resolution on Turkey's application for membership of the European Union. (COM(2002) 700 - C5-0104/2003 – 2000/20/14COS). The EU has established both political and economic criteria for accession which must be met by all candidate countries such as Turkey. The political the 'Copenhagen Criteria' was established at the Copenhagen European Council in June 1993. Included within the provisions laid down, was the requirement of candidate countries to have achieved "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities."

⁸ *Turkey Pushes EU Reform*; Office for the Commissioner for Human Rights, 12 June 2003, [http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit/Press_room/Speeches_articles_interviews/130603%20Com%20Turquie%20\(Kathimerini\).asp](http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit/Press_room/Speeches_articles_interviews/130603%20Com%20Turquie%20(Kathimerini).asp).

⁹ Amnesty International EUR 44/006/2003.

¹⁰ KHRP et al, *In the Wake of the Lifting of the State of Emergency Rule* (London: KHRP, August 2003).

¹¹ Human Rights Watch, Briefing Paper, "A Human Rights Agenda for the Next Phase of Turkey's EU Accession Process," January 2003.

¹² For example; see page 19.

¹³ The ECHR had found Turkey guilty in a very similar case of rape: KHRP assisted *Aydin v Turkey* (No.23178/94, 25 September)

¹⁴ Beatings on the soles of the feet.

¹⁵ KHRP assisted case of *Aydin v Turkey* (No.23178/94, 25 September 1997). The Case established the precedent that rape constitutes a form of torture contrary to Article 3 of the Convention; and further found breaches of Article 13.

¹⁶ European Parliament resolution on Turkey's application for membership of the European Union (COM (2002) 700 - C5-0104/2003 - 2000/2014(COS))

¹⁷ Regular Report of the European Communities on Turkey's Progress Towards Accession, Brussels 09/10/2002, SEC (2002) 142.

¹⁸ REPORT on Turkey's application for membership of the European Union (COM(2002) 700 – C5-0104/2003 – 2000/2014(COS)) 20 May 2003.

¹⁹ European Union Parliamentary Assembly Resolution 1297 (2002). Adopted 23 September 2002 (25th Sitting). See also KHRP and the Bar Human Rights Committee of England and Wales, *Turkey's non-implementation of European Court judgments: the Trials of Fikret Baskaya* (London: KHRP, September 2003).

²⁰ For further information see; KHRP, *State Violence Against Women in Turkey and Attacks on Human Rights Defender of Victims of Sexual Violence in Custody*, (London: KHRP, December 2001).

²¹ Interview: Aygül Demirtaş, IHD Lawyer, Diyarbakır, 6 November 2003.

²² Interview: Vahabettin Özkan, Deputy Governor Diyarbakır, 6 November 2003.

²³ Interview: Mustafa Celal: Deputy Prosecutor, Mardin Court, 5 November 2003.

²⁴ Interview: Ezgi Dursun, Chair of DEHAP Diyarbakır Women's Branch, Diyarbakır, 6 November 2003.

²⁵ Interview: Aygül Demirtaş, IHD Lawyer, Diyarbakır, 6 November 2003.

²⁶ For further information refer to Amnesty International, Annual Report 2003, Turkey, March 2003; Human Rights Watch World Report 2003, Turkey, January 2003 and FIDH, 'After sending a mission to Turkey, the FIDH urges Turkish authorities to take further steps to eradicate torture', 9 January 2003.

²⁷ Interview: Gülbahar Gündüz, Executive Board Member Istanbul Branch DEHAP, Istanbul, 7 November 2003.

²⁸ Interview: Hüseyin Cangir, IHD Lawyer Mardin Branch, Mardin, 5 November 2003

²⁹ Articles breached for example would include Article 6 (1) of the Convention; "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

³⁰ For further information see KHRP and the Bar Human Rights Committee of England and Wales, *The State and Sexual Violence: Turkish Court Silences Female Advocate* (London: KHRP, January 2003).

³¹ Interview: Hüseyin Cangir, IHD Lawyer Mardin Branch, Mardin, 5 November 2003

³² Interview: Vahap Bakış, Chair of DEHAP Mardin Branch, Mardin, 5 November 2003.

³³ Interview: Ezgi Dursun, DEHAP Diyarbakır Women's Branch, Diyarbakır, 6 November 2003.

³⁴ The Lund Recommendations on the Effective Participation of National Minorities in Public Life, OSCE doc. RC. GAL/36/99. Article 1.

³⁵ Report on Constructive National Arrangements for Minorities by UN Special Rapporteur of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Asbjörn Eide, UN Doc. E/CN.4/sub.2/1993/34/Add.4. para 17 (E).

³⁶ Under the Copenhagen Criteria Turkey is bound to achieve the "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities," 'EU Enlargement - A Historic Opportunity', <http://europa.eu.int/comm/enlargement/intro/criteria.htm> (accessed 31 July 2003).

³⁷ KHRP et al, *Internally Displaced Persons: The Kurds in Turkey*. (London: KHRP September, 2003). 13.

³⁸ From the mid-1980's Kurdish villagers were coerced or lured with the prospect of money and power into join the Village Guard System (koruçuluk), a militia developed and armed by the Turkish Government to create local resistance to the PKK – Village Law, Law No. 422 as amended 26 March 1985 and 7 February 1990. The system was aimed at dividing the Kurdish communities in the villages and tribal loyalties and divisions were used to recruit Kurds. Those that refused to join were subject to severe reprisals such as eviction or the destruction of their homes. The system was, with the lifting of OHAL officially disbanded, yet the village guards remain armed, active and operate in a legal vacuum, outside of any higher authority and with total impunity.³⁹ They have been responsible for a multitude of human rights abuses: murder, torture, looting, burning of houses, and raping of women. The system has been effective in breaking up families, emptying the villages, and sending thousands of people into displacement and poverty.

⁴⁰ Interview: Vahabettin Özkan, Deputy Governor Diyarbakır, Diyarbakır, 6 November 2003.

⁴¹ Interview: Vahabettin Özkan, Deputy Governor Diyarbakır, Diyarbakır, 6 November 2003.

⁴² This policy is revealed in a leaked communication of President Turgut Özal, dated 1993, for further information see: KHRP & The Corner House, *"This is the Only Valley Where We Live": The Impact of the Munzur Dams,*

(London: KHRP, April 2003).

⁴³ Interview: Vahabettin Özkan, Deputy Governor Diyarbakır, Diyarbakır, 6 November 2003.

⁴⁴ Compilation of the Guidelines in the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties, HRI/GEN/2/Rev.1/Add.2 % May 2003, Article D.2.6

⁴⁵ www.un.org/womenwatch/daw/cedaw for latest information on status of reporting and on reservations.

⁴⁶ KHRP with the Bar Human Rights Committee has produced a manual for NGOs on how to use the CEDAW mechanisms. See Kerim Yildiz and Anke Stock, *Taking Human Rights Complaints to UN Mechanisms: A Manual* (London: KHRP, August 2003). As has the International Center for Research on Women; www.icrw.org.

⁴⁷ The mandate of the Special Rapporteur is to report annually to the United Nations Human Rights Commission on the information gained from governments and NGOs and to respond to such information. The Special Rapporteur is also to recommend measures at local, national and international level to eliminate the incidence of violence against women and also the effects of such violence.

⁴⁸ Agreed at the UN 4th World Conference on Women held in Beijing, China on 4-15 September 1995 UN doc DPI/1766/Wom, February 1996

⁴⁹ For further information see FWCW Platform for Action: Institutional Mechanisms for the Advancement of Women. <http://www.un.org/womenwatch/daw/beijing/platform/institu.htm>

ISBN 1 900175 69 X

