

**NGO SHADOW REPORT FOR THE REVIEW OF
THE TURKISH GOVERNMENT UNDER THE UN
INTERNATIONAL CONVENTION ON THE
ELIMINATION OF ALL FORMS OF RACIAL
DISCRIMINATION (CERD)**

Submitted by Kurdish Human Rights Project

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Kurdish Human Rights Project

11 Guilford Street

London WC1N 1DH

KURDISH HUMAN RIGHTS PROJECT

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

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

KHRP was born out of a desire to utilise the international mechanisms available to victims of human rights violations, to make the perpetrators accountable and prevent further abuses in the future.

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

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

EXECUTIVE SUMMARY

Turkey's self-declared commitment to eliminating racial discrimination in line with CERD standards is to a large extent merely cosmetic. Although Turkey theoretically recognises its obligation to eliminate such discrimination, its third periodic report to the United Nations Committee on the Elimination of Racial Discrimination contains only vague discussion of measures taken or proposed to actually fulfil its obligations under CERD. The report provides no reliable proof that Turkey is implementing the measures it describes and that it is thereby actually attaining CERD standards. The report describes international obligations, domestic legislation and Constitutional provisions that purport to protect racial minorities and tackle discrimination problems within the state framework. However, it does not suffice merely to cite relevant legislation if, as is the case with Turkey, that legislation goes no real way in practice towards fighting discrimination.

The first part of this report tackles Turkey's failure to comply with CERD Article 2, which includes the requirement that State Parties must take effective measures 'to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists'. In reality, Turkey continues to operate according to a Constitutional framework grounded in ethnic nationalism. Recognition of a minority's identity is a fundamental prerequisite for achieving minority rights and negating discrimination on grounds of ethnicity. However, the Turkish state continues to employ a definition of minorities deriving from the 1923 Treaty of Lausanne, which excludes major cultural-linguistic groups like the Kurds. Turkey thus fails even to legally recognise its Kurdish population and to acknowledge the specific problems facing that population, in clear violation of CERD Article 2 (as well as CERD Article 5). In addition, specific pieces of legislation, including recently-amended anti-terror laws, have disproportionately eroded the civil and political rights of minorities, in violation of Article 2 Paragraph 1(c). Furthermore, the lack of specific anti-discrimination legislation violates CERD Article 2 Paragraph 1 (d).

The second chapter of this report tackles Turkey's failure to comply with CERD Article 4, which requires State Parties to condemn all propaganda and organisations that are based on ideas of racial superiority, or which promote or justify racial hatred or discrimination. Although Article 216 of the Turkish Penal Code prohibits incitement to racial hatred, in practice it is not used in cases where it ought to be applied for the protection of members of minority populations. On the other hand, the same Article has been used inappropriately to quash criticism of the State.

The third part of this report tackles Turkey's failure to comply with CERD Article 5, according to which State Parties undertake to ensure that all citizens are equal before the law, without distinction as to race, colour, or national or ethnic origin. In practice, Turkey violates CERD Article 5 in a number of concerning ways. These include a lack of adequate Kurdish-Turkish translation services within the justice system; severe restrictions on the right to peaceful expression, including harassment and persecution of Kurdish writers, publishers, broadcasters, intellectuals and others who express dissenting opinions or Kurdish sympathies; a prohibition on the use of minority languages in election campaigning; a requirement that any given political party must secure 10% of the entire national vote in order to secure representation in Parliament, which presents a severe obstacle to political participation by minorities; restrictive legislation governing trade unions; the denial of mother tongue education for minorities; infringement of the right of minorities to broadcast in their own languages; economic marginalisation of the south-eastern Kurdish regions as a result of discriminatory policies; and a severe lack of gender equality, which impacts most of all on Kurdish women, who already face discrimination by virtue of their ethnicity. From the point of view of gender-based discrimination, specific concerns include unequal access to education for Kurdish girls and inadequate protection against forms of gender-based violence such as honour killings.

The last section of this report addresses Turkey's failure to comply with CERD Article 6, which requires State Parties to ensure effective protection and remedies against acts of racial discrimination. Turkey has been reluctant to commit itself to

binding international standards in the field of human rights and has failed to sign up to a series of agreements relating specifically to discrimination and minority rights. Even where Turkey has signed up to international human rights agreements, it has frequently registered reservations in relation to provisions concerning minority rights.

Recommendations to the Government of Turkey

- A public body should be created to promote respect for the observation of rights and obligations under CERD, with the effectiveness of this body to be frequently monitored by international human rights institutions;
- Turkey's Constitution should be amended to recognise all ethnic, religious and linguistic groups as minorities;
- The rights of minorities should be protected within specific domestic legislation. This should include the right to equal treatment, the right to security of person, the right to freedom of opinion and expression, and the right to freedom of thought, conscience and religion;
- Provisions of the Anti-Terror Law and Turkish Penal Code which disproportionately affect Kurds should be amended, and its subsequent implementation monitored, together with the provision of appropriate human rights training for law enforcement bodies;
- An adequate Kurdish-Turkish interpretation service should be provided within the justice and other administrative and state systems;
- Restrictions on the use of minority languages in broadcasting should be abolished;
- Article 42 of the Constitution should be amended, and mother tongue education should be provided for minorities;
- All restrictions on the use of languages other than Turkish in political affairs should be abolished, and the 10% election threshold should be lowered to ensure effective representation of minorities;
- Turkey should sign and ratify all relevant international conventions protecting minority rights without any reservations or declarations.

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INTRODUCTION

1. This submission to the United Nations Committee on the Elimination of Racial Discrimination ('the Committee') concerns Turkey's observance of the provisions of the International Convention on the Elimination of all Forms of Racial Discrimination ('CERD'). The observations and comments are taken from KHRP's regular work with people, primarily of Kurdish origin, who face racial discrimination in Turkey and associated disadvantage. This paper cites extensive research and legal casework to demonstrate significant areas where the Turkish Government has failed to meet its obligations under CERD, in spite of statements that it makes in its 2003, 2005 and 2007 combined reports.¹
2. Turkey's commitment to eliminate racial discrimination in line with CERD standards is to a large extent merely cosmetic. Although Turkey recognises its obligation to eliminate such discrimination, the third periodic report contains only vague discussion of measures taken or proposed to actually fulfil its obligations under CERD. The report provides no reliable proof that Turkey is implementing measures it describes, and that it is thereby actually attaining CERD standards. International obligations, domestic legislation and Constitutional provisions that purport to protect racial minorities and tackle discrimination problems within the state are described, but it will not suffice merely to cite relevant legislation if, as is the case in reality, that legislation goes no real way to fighting issues of discrimination.
3. This report will illustrate that not only does Turkey fail to comply with its obligations under CERD, more specifically it does not acknowledge the specific problems facing the Kurdish population. Without recognising the Kurdish population as an ethnic entity, and without recognising the specific economic and social problems facing the Kurdish population, the state cannot address and tackle

¹ CERD/C/TUR/3 13 February 2008; containing the initial, second and third periodic reports of Turkey, due on 15 October 2003, 2005 and 2007 respectively but submitted in one document.

specific problems of racial discrimination that face that population. This primarily requires replacing the permeating Constitutional concept of ethnic nationalism with an acceptance of Turkish multiculturalism.

4. KHRP gives full permission for this submission to be placed on the website of the Office of the High Commissioner for Human Rights and for it to be referred to by Committee members as a source of information during discussions with the Turkish Government.

ARTICLE 2

1. Under Article 2 of CERD, Turkey undertakes to take effective measures ‘to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists’. KHRP is concerned that, far from preventing racial discrimination, the Turkish constitutional system and legal framework permits and harbours it.

Constitutional system of Turkey based upon concept of ethnic nationalism

2. According to Turkey’s own report to the Committee, the main philosophy of Turkey’s human rights policy is of ‘human rights for all with no discrimination ... the constitutional system of Turkey is based on the equality of all individuals without discrimination before the law’.² Within the Turkish legal framework, however, the approach of ‘no discrimination’ in fact reflects a fundamental failure to recognise the ethnic diversity of the country’s population. In practice, this supposed ‘equality’ results in great disadvantage as particular problems facing certain ethnic groups are ignored. It follows that those races are *in fact* discriminated against. The modern state of Turkey was founded upon a militarised, secular, mono-ethnic conception of national identity, which has long generated a relatively repressive state, a poor human rights record and considerable hostility towards the Kurds. Even though Kurds make up nearly one quarter of the population of Turkey, they have only recently been granted very limited rights in relation to freedom of cultural and linguistic expression. Even now, these rights remain largely confined to paper and in reality, any expression of ‘Kurdishness’ is repressed.
3. Turkey is evidently still uncomfortable with acknowledging the legitimacy of minorities’ calls for recognition of their existence and rights, and of relaxing tight controls on public use of languages other than Turkish, be it in the media, in the

² CERD/C/TUR/3, paragraphs 11 and 12.

political domain or in schools. In light of the harassment, discrimination and persecution that Kurds experience in Turkey, the state's claim that 'Every Turkish citizen is considered an integral part of the Turkish national identity and culture' and that 'diversity in [their] origins is the source of the richness in Turkish society'³ is hollow and deceptive.

4. Despite the raft of positive EU reforms, the protection of minorities' rights lags behind other areas, and genuine acceptance of the legitimate presence of minorities and the facilitation of their full participation in democratic society is proving elusive. The sacrosanct principles of ethnic nationalism in Turkey serve to foil efforts to extend recognition and rights to the Kurds and other minorities. Further, the concept of ethnic nationalism stands glaringly at odds with Turkey's claim that, 'Turkey adheres with great dedication to the legacy of multi-faith tolerance and cultural pluralism'.⁴

Exclusion of Kurds from Lausanne definition of 'minority'

5. Article 5 of CERD requires that Turkey 'guarantees the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law'. Turkey asserts in its third periodic report that 'in line with the State philosophy based on equality of citizens assuring non-discrimination, Turkish citizens belonging to non-Muslim minorities enjoy and exercise the same right and freedoms as the rest of the population. Additionally, they benefit from their minority status in accordance with the Lausanne Peace Treaty'.⁵
6. Under the Turkish Constitutional system, the word 'minorities' encompasses only groups of persons defined and recognised as 'non-Muslim minorities' following section 3 of the Treaty of Lausanne (1923). No groups in Turkey have minority status on grounds of ethnicity defined in cultural and/or linguistic terms, as

³ *Ibid.*, paragraph 67.

⁴ *Ibid.*, paragraph 13.

⁵ CERD/C/TUR/3, paragraph 31.

opposed to by religion. Therefore, as the majority of Kurds follow Sunni Islam⁶, they are excluded from minority protection. So, while Greek-Orthodox, Armenian and Jewish peoples are recognised as minorities by Turkey in line with the Treaty of Lausanne, the Kurdish identity has no such recognised status at state level. This is a serious denial of minority identity, especially given the size of the Kurdish population in Turkey, who represent almost 25 per cent of its citizens. ‘All individuals’ are therefore not ‘equal before the law’.

7. Indeed, a Government-commissioned report by the Turkish Human Rights Advisory Board found that Turkey’s minority definition was too restrictive and did not accord with current thinking, which accepts that minorities exist where communities are ‘ethnically, linguistically and religiously different’ and feel this difference is an inseparable part of their identity.⁷ The authors of the Turkish Human Rights Advisory Board report, Professor Baskin Oran and Professor Ibrahim Özden Kaboglu, subsequently faced protracted criminal proceedings under Articles 216 and 301 of the Penal Code in connection with the views expressed in the report.⁸ It is not within Turkey’s discretion to decide who should or should not benefit from minority rights protection within her jurisdiction.

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

⁶ David McDowall, *A Modern History of the Kurds*, (IB Tauris and Co. Ltd., London, 2004), 1-2.

⁷ *Turkish Daily News*, ‘Minority Phobia Haunts Turkey’.

⁸ For detailed information on the trial proceedings see KHRP Trial Observation Report, *Suppressing Academic Debate: The Turkish Penal Code*, (KHRP, London, June 2006).

9. In May 2003, the European Parliamentary Commission on Foreign Affairs, Human Rights, Common Security and Defence Policy produced a report condemning the continuing refusal of Turkey to accommodate the cultural and linguistic rights of the Kurds and stressed the need for Constitutional reform.⁹ Further, the Council of Europe Parliamentary Committee has recommended a major reform of the 1982 Constitution and further recognition of national minorities,¹⁰ as has the European Commission Against Racism and Intolerance.¹¹ However, in spite of this criticism from international human rights institutions, Turkey has shown no intention of changing the Lausanne minority definition, or other related failings in the Constitution, including the absence of adequate provisions prohibiting discrimination or promoting equal treatment, despite much criticism from international bodies.

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

10. To date, the Turkish authorities have failed to conduct any censuses or other comprehensive surveys which include information about respondents' ethnic or linguistic backgrounds.

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

⁹ Report on Turkey's application for membership of the European Union (COM(2002) 700 – C5-0104/2003 – 2000/2014(COS))

¹⁰ Parliamentary Assembly Resolution 1622 (2008), <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1622.htm>, last accessed 3 February 2009

¹¹ European Commission Against Racism and Intolerance, 'Third Report on Turkey', adopted 25 June 2004.

Legal framework which fails to prevent racial discrimination

12. Turkey claims that there is a sound legal framework in place to prevent all forms of discrimination, including racial discrimination¹². However, in reality, there are only a few provisions in the Constitution and national legislation which prohibit discrimination. There is no comprehensive law on anti-discrimination in Turkey.
13. Article 10 of the Turkish Constitution is a general provision which guarantees equality before the law. However, minority protection should include not only non-discrimination measures but also legislation providing for the specific protection and promotion of the separate identity of minorities, for example, within the realm of cultural and language rights.
14. Article 66 of the Constitution itself violates the principle of anti-discrimination insofar as it defines citizenship with the word “Turk” rather than in terms of “citizens of Turkey”. The word “Turk” is used to express specifically Turkish ethnic origin.
15. The existing legal framework of Turkey fails to prevent racial discrimination. Since 2005, the European Court of Human Rights has found that Turkey has failed to undertake an effective investigation of human rights abuses in a significant number of cases, over twenty of which were lodged and brought by KHRP.¹³ In each of these latter cases the victims were of Kurdish ethnicity and the abuses they suffered were linked to their ethnicity. Similar judgments are

¹² *Ibid*, paragraph 25.

¹³ *Menteşe and Others v. Turkey*, Application No 36217/97; *Akkum and Others v. Turkey*, Application No 21894/93; *Aydın v. Turkey*, Application No 25660/94; *Akdeniz v. Turkey*, Application No 25165/94; *Toğcu v. Turkey*, Application No 27601/95; *Kişmir v. Turkey*, Application No 27306/95; *Çelikkilek v. Turkey*, Application No 27693/95; *Ateş v. Turkey*, Application No 30949/96; *Koku v. Turkey*, Application No 27305/95; *Dundar v. Turkey*, Application No 26972/95; *Dizman v. Turkey*, Application No 27309/95; *Nesibe Haran v Turkey*, Application No 28299/95; *Kaya and Kaya v Turkey*, Application No 33420/96 & 36206/97; *Kanlibas v Turkey*, Application No 32444/96; *Seker v Turkey*, Application No 52390/99; *Ucar v Turkey*, Application No 523932/99; *Aksakal v Turkey*, Application No 37850/97; *Uzun v Turkey*, Application No 37410/97; *Dolek v Turkey*, Application No 39541/98; *Osmanoglu v Turkey*, Application No 48804/99; *Ayaz v Turkey*, Application No 44132/98

passed by the European Court of Human Rights on a regular basis, showing that Turkey repeatedly fails to adequately investigate ethnicity-related human rights abuses, and indicating that the domestic legal framework neglects the prevention of discrimination on ethnic lines.

New anti-terror law poses threat to minorities

16. A serious recent development has been the introduction of amended anti-terrorist legislation which has a skewed impact on people of Kurdish origin and erodes many civil and political rights for that group.
17. In June 2006, Turkey amended its anti-terror law, the Law on the Fight against Terrorism (Act 3713). The amendments enacted a series of draconian provisions which not only fail to meet Turkey's human rights obligations under CERD and other international legal mechanisms in theoretical terms, but have also been used in practice to violate the human rights of its citizens.
18. In common with anti-terror laws in other states, the amendments were enacted in response to an 'escalation of terrorism', and therefore are aimed at addressing a security agenda rather than protecting individual rights and freedoms. Although Turkey's aim of maintaining national security is understandable, protecting the nation need not and should not come at the expense of the fundamental human rights that it has promised to uphold as a signatory to international treaties. In particular, the new law fails to respect these treaties in containing a definition of terrorism that is too wide and vague. The new law also introduces a dramatic increase in the range of 'terrorist' offences, serious restrictions on freedoms of thought, expression, communication and the press, threats to the freedoms of belief and conscience, assembly, association and to the right to protest. It jeopardises the prohibition of torture and obstructs the rule of law. As the PKK is seen as the main terrorist threat, and Kurds themselves are generally viewed as a threat to Turkey's identity as an indivisible Republic, the legislation is being used

disproportionately against them. It has been used against non-violent expression of opinion, and to prosecute and harass national minority groups, political dissidents, members of the media, students and human rights activists wholly unconnected with terrorism.¹⁴ It has been applied arbitrarily by judges, resulting in protracted, burdensome and unfair trials for those involved,¹⁵ and to date, only Kurdish people have been arrested under the new laws. Further, Kurds have been charged as a result of conducting peaceful activities that entail their expression of Kurdish ethnicity under Article 7/2 of the Law on the Fight against Terrorism ('propaganda of illegal organisations') and also Articles 301 ('degrading Turkish nation, the Republic, the Organs and Institutions of the State'), 220/8 (propaganda for the illegal organization or its objectives and 314 ('armed organization') of the Turkish Penal Code.

19. Of particular concern is Article 2 of Law 3713, which allows the security forces to use disproportionate violence against individuals. The article states that, *'During operations to be carried out against terrorist organizations, if the "surrender" order is not obeyed... law enforcement officers shall be authorized to use their guns without any hesitation against the target to an extent and amount sufficient to render the danger ineffective.'* Violence against the Kurdish population in Turkey has always been more severe and systematic compared to other sections of society as a result of the policy and practice of oppressing the Kurdish minority. On 24 March 2006, 14 pro-Kurdish guerrillas were killed by Turkish security forces in the mountains in Diyarbakir province. The funerals of four of the guerrillas took place in Diyarbakir city. Security forces opened fire and used tear gas and truncheons against mourners. A total of 11 people died, including three children, seven of them as a result of being shot by members of the security forces. According to an investigation and observation report by the Human Rights Association (HRA), 563 persons were arrested and of those, 382

¹⁴ See, for example, KHRP Fact-Finding Mission Report, *Reform and Regression: Freedom of the Media in Turkey*, (KHRP, London, October 2007).

¹⁵ See, for example, KHRP Trial Observation Report, *Publishers on Trial: Freedom of Expression in Turkey in the Context of EU Accession*, (KHRP, London, May 2007).

were charged with offences and detained. The 563 arrested included 200 children under 18 years of age, 91 of whom were charged and detained. The youngest person detained was 12 years old. 34 children were released after an appeal was filed against their detention. 350 people applied to the HRA claiming torture and ill treatment during their detention.¹⁶ Despite this excessive force and allegations of torture and ill-treatment, there has not been any investigation against any member of the security forces nearly three years after the incidents.

20. The excessive violence against Kurds continued during the 2008 Newroz celebrations in various cities. Newroz celebrations in Van, Yuksekova (Hakkari), Urfa and Siirt were banned by the official authorities as they have been in the past. However, people disobeyed this decision and carried out their festivities in these cities. Turkish forces responded to celebrators with violence, using batons, tear gas and water cannons. Over the period of four days between 21 and 24 March 2008 two people were killed, one in Yuksekova and one in Van, and many were also injured by the security forces, with hundreds taken into custody.¹⁷ Between January and March 2008, 76 people were detained in Şırnak alone on the basis of illegally obtained telephone recordings, and 15 of these were charged and arrested.¹⁸ On 20 October 2008 Ahmet Ozkan was killed during a demonstration in Dogubeyazit, Ağrı.¹⁹ In October 2008, 24 children, one of them aged 13, were arrested for participating in protests in several cities in south-east Turkey. They are being charged with membership of a terrorist organisation.²⁰ At the time of writing, four children aged between 16 and 17 remain in Diyarbakır prison since

¹⁶ KHRP Fact-Finding Mission Report, *Indiscriminate Use of Force: Violence in South-east Turkey*, (KHRP, London, September 2006), 17-24.

¹⁷ Bianet, 'Two Deaths at Newroz Celebration,' 24 March 2008. See <http://www.bianet.org/english/kategori/english/105805/two-deaths-at-newroz-celebrations> (last accessed 30 October 2008).

¹⁸ KHRP Fact-Finding Mission Report, *Return to a State of Emergency? Protecting Human Rights in South-East Turkey* (KHRP, London, June 2008), 39.

¹⁹ Adnkronos International, 'Turkey: Clashes Break Out at Protestor's Funeral,' 22 October 2008. See <http://www.adnkronos.com/AKI/English/Security/?id=3.0.2617934389> (last accessed 30 October 2008).

²⁰ Bianet "13 Yaşındaki Çocuk Örgüt Üyeliği Suçlamasıyla Tutuklandı", 27 October 2008. See <http://bianet.org/bianet/kategori/bianet/110466/13-yasindaki-cocuk-orgut-uyeligi-suclamasiyla-tutuklandi> (last accessed 02 February 2009)

14 July 2008, charged with membership of a terrorist organisation as a result of participating in a protest in Diyarbakır.²¹

21. The disproportionate effect of the application of the laws and the adverse impact on the Kurdish population is clear. A KHRP fact-finding mission to Turkey in July 2007 found that the anti-terror laws had been used to close down five pro-Kurdish newspapers in one month alone.²² These laws also allow proscription of ‘terrorist’ organisations: 17 of these prohibited groups have some connection to Kurdish organisations, whilst 5 out of 12 organisations listed by the Director General of Police as ‘active terrorist organisations’ are Kurdish groups, including the PKK (Kurdistan Workers’ Party), KONGRA-GEL (People’s Congress of Kurdistan), Kürdistan Devrim Partisi (PŞK) (Kurdistan Revolution Party), Kürdistan Demokrat Partisi/Bakur (PDK/Bakur) (Kurdistan Democrat Party / North).

²¹ Bianet, “Mahkeme Çocukları "Terörist" Saymaktan Vazgeçmiyor!”, 16 January 2009. See <http://bianet.org/bianet/kategori/bianet/111966/mahkeme-cocuklari-terorist-saymaktan-vazgecmiyor> (last accessed 02 February 2009)

²² KHRP Fact-Finding Mission Report, *Reform and Regression: Freedom of the Media in Turkey*, (KHRP, London, October 2007), 57.

ARTICLE 4

Failure of current anti-racial hatred legislation

22. There is considerable evidence to suggest that Article 216 of the Penal Code, which prohibits incitement to racial hatred, does not apply in practice to oral, written or other expressions targeting minority groups. Previously Article 312 of the Penal Code, this law was recently amended, restricting its application to cases where incitement to racial hatred jeopardises public order. In addition, sources maintain that Article 216 continues to be used without real justification by certain public prosecutors, commonly in order to prosecute personalities expressing ‘pro-Kurdish views’²³, rather than being used properly to punish racist remarks.
23. An excellent example of skewed use of Article 216 is the Bolu High Penal Court’s recent ruling that an article urging the public to kill members of the Democratic Society Party (DTP) did not contravene Article 216. The article, which was published in a local newspaper, claimed that as long as the DTP does not label the PKK a terrorist organisation, DTP members should be targeted. DTP deputy Selahattin Demirtas petitioned public prosecutors in Bolu, demanding that a lawsuit be filed against the newspaper, which had also published the names of DTP members. After the prosecution denied Demirtas’ request, the DTP filed a lawsuit with the court itself, after which the court ruled that inciting people to commit murders is not against Article 216.²⁴ The DTP is expected to take the case to the European Court of Human Rights.
24. In a contrasting case, on 16 October 2007 the Penal Court in Viransehir, in the province of Sanliurfa in south-east Turkey, convicted Kurdish human rights activist and lawyer Eren Keskin of ‘incitement to hatred and hostility’ for saying,

²³ *European Commission against Racism and Intolerance Third Report on Turkey*, CRI(2005), adopted on 25 June 2004.

²⁴ *Today’s Zaman* “Ethnic tensions rise in Aegean town of Altinova”, 03 October 2008. See <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=154793>, (last accessed 4 February 2009)

‘If we look at the state statistics on perpetrators of sexual violence in Turkey and Kurdistan, then soldiers are in the majority; the reason there are so many is the war in Kurdistan.’ Keskin was informed of the 10 month sentence, which cited Article 312/2 of the former Penal Code (the predecessor to Article 216 of the current Penal Code), on 20 November 2007.²⁵ Turkey’s obligations under Article 4 of CERD to ‘not permit public authorities or public institutions, national or local, to promote or incite racial discrimination’ are contravened by the actions of public prosecutors in this way.

²⁵ Bianet, ‘Bia² 2007 Media Monitoring Report – Full Text’. See <http://www.bianet.org/bianet/kategori/english/104719/bia%C2%B2-2007-media-monitoring-report-%E2%80%93-full-text> (last accessed 30 October 2008).

ARTICLE 5

Discrimination in judicial procedure based on ethnic grounds

25. Reports of Kurdish individuals being brought before domestic court proceedings conducted only in Turkish, when their mother tongue is Kurdish, and provided with inadequate translation services, if any, are common. There is no established and adequate interpretation service for Kurdish language within the Turkish domestic court proceedings. Clerks of the courts, police, lawyers and even court cleaners are usually appointed as translators by the courts rather than appointing experts. For example, in October 2008, five Kurdish women Besra Yılmaz, Kamile Özdemir, Nafiye Ergül, Makbule Yılmaz and Fatma Sözer were arrested in Istanbul for allegedly publishing propaganda in support of the PKK. When they were brought before the court, they informed it that they could not speak Turkish. The court therefore appointed a cleaner as a translator, who claimed not to know enough Kurdish to translate properly.²⁶ In addition to contravening its international obligations under Article 5 of CERD and Article 6 of the European Convention on Human Rights, such practices highlight the inaccuracy of Turkey's statements in its periodic report. People of Kurdish origin face discrimination even within the justice system that purports to protect them.

The right of minorities to freedom of expression continues to be seriously infringed

26. Article 5 (viii) of CERD guarantees all signatory states' citizens the right to freedom of expression and equality before the law in exercising that right. The right to freedom of expression has been a key element in the relationship between the European Union and Turkey in the accession process. The Turkish Government has continually stressed its commitment to legislative reforms and amendments designed to protect the right. Yet legislative changes brought back

²⁶ Evrensel, "Temizliği bırak tercüme gel!", 28.10.2008. See http://www.evrensel.net/haber.php?haber_id=39333 (last accessed 2 February 2009)

in June 2005 have continued to allow for the restriction of the right to freedom of expression. Reform of the Penal Code has thus far involved the rearrangement and renumbering of what are effectively the same provisions, provisions which have in the past been criticised for their tendency to restrict freedom of expression.²⁷ These changes are cosmetic rather than substantive and, further, they contravene Turkey's obligation under Article 2 of CERD to nullify legislation that creates or perpetuates racial discrimination. As a result, Kurdish writers, publishers, broadcasters, intellectuals and others who express dissenting opinions or Kurdish sympathies continue to be the subject of harassment and persecution.²⁸ The Penal Code is in this way being used to stifle legitimate debate, opinion and criticism.

27. The trial of Ahmet Önal illustrates at firsthand how the state is able to stifle debate, repress comment and generally restrict the exercise of the right to freedom of expression. Ahmet Önal is the owner and editor in chief of Pêrî Publishing House in Istanbul, founded in 1992. Alongside works on contemporary politics, literature and translated texts, many of Pêrî Publishing House's publications focus on the Kurdish people. The subject matter of the books that Ahmet Önal publishes has resulted in him being an almost monthly attendee at the various courts of Istanbul, and he has served a seven-year prison term for his publishing activities. A KHRP mission which travelled to Turkey in February 2008 to observe trial proceedings against Ahmet Önal was informed that the case they were monitoring was one of a total of 12 that were pending against him in the courts at the time.²⁹ The sheer number of prosecutions and personal defamation actions being brought in the Turkish domestic courts indicate that the state is neither comfortable with a democratic approach to freedom of expression nor with taking active steps to protect that freedom.

²⁷ KHRP Trial Observation Report, *Persecuting Publishers, Stifling Debate: Freedom of Expression in Turkey*, (KHRP, London, May 2008), 11.

²⁸ In particular, see KHRP's reporting on the trial of publisher Songül Özkan: KHRP Trial Observation Report, *Publishers on Trial: Freedom of Expression in Turkey in the Context of EU Accession*, (KHRP, London, May 2007).

²⁹ KHRP Trial Observation Report, *Persecuting Publishers, Stifling Debate: Freedom of Expression in Turkey*, (KHRP, London, May 2008), 22.

28. In 2006, three Kurdish activists – Ibrahim Güçlü, Zeynel Abidin Özalp and Ahmet Sedat Oğur – were charged under the Anti-Terror Law for ‘making propaganda for the PKK’.³⁰ The charge was ironic, considering that Güçlü had repeatedly and publicly condemned violence initiated by the PKK. The activists were arrested as they prepared to walk to the border of Iraq to peacefully protest the recent killings of civilians by security forces in south-eastern Turkey and to express their concern about tensions between the Turkish government and the Kurdish-led administration in northern Iraq. All three are officials of Kurt-Der, a Kurdish association that the Turkish authorities had recently closed for conducting its internal business in the Kurdish language.
29. In June 2008, Abdullah Demirbaş was removed from his post as Mayor of the Sur district of Diyarbakır by the State Council's 8th Chamber for offering municipal services not only in Turkish, but also in Kurdish, Armenian and Syriac.³¹
30. In a separate development, on 13 August 2008, Ankara High Criminal Court Number 11 blocked the broadcasting of the website ‘gundemonline.net’, which focuses on Kurdish issues, for publishing a PKK statement. Website administrators said that the site had been blocked four times before and added, ‘We have not been informed [of the reasons that access was blocked], apart from the notice on the webpage. Lifting the ban through legal proceedings is too long a process for us. Hence, we continue our broadcasting under another extension.’³²
31. In a number of cases which KHRP has observed recently, individuals have been indicted for crimes under the Anti-Terror Law in Turkey but then subsequently acquitted at trial for lack of evidence. It is arguable that malicious prosecution in

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

³¹ KHRP Press Release, ‘Turkey Persists in Denial of Basic Cultural and Language Rights,’ 18 June 2007. See <http://www.khrp.org/content/view/298/2/> (last accessed 30 October 2008).

³² *Ibid*

this way violates the individual's freedom of expression. Such cases illustrate how Turkey continues to discriminate against the Kurdish minority, regardless of ostensible legislative reforms and pledges. In June 2008, for instance, a KHRP mission observed trial proceedings in Diyarbakır against members of a children's choir who were charged under anti-terror laws for singing a Kurdish song at a world music festival in the United States the previous October.³³ Prosecutors claimed the song was associated with the PKK, although it is also the anthem of the Kurdistan Regional Governorate in northern Iraq. Out of a total of nine children whose case went to trial – all of whom were aged between 13 and 17 at the time of the alleged 'crime' – three were made to appear before an adult court. Although all were eventually acquitted, this was only after they had spent several months with the prospect of a lengthy jail sentence hanging over their heads.

Restrictions on political participation by members of minority groups

32. Turkish legislation prohibits the use of languages other than Turkish in election campaigning. Turkey's report to CERD itself states that 'Under article 58 of the Law on Basic Provisions on Elections and Voters Registers, it [the State] is not allowed to use any language other than Turkish, which is the official language of the State, in the election processes'³⁴. The use of minority languages in election campaigning is also prohibited by Article 81(c) of the Political Parties Law.³⁵ These provisions have been used particularly against pro-Kurdish parties, many of whose supporters or electors cannot speak Turkish. For instance, in 2007, executives of HAK-PAR (Rights and Freedoms Party) were imprisoned for speaking in the Kurdish language at the first Ordinary Congress of the Party and

³³ KHRP Trial Observation Report, *A Children's Choir Face Terrorism Charges: Juveniles in the Turkish Justice System*, (KHRP, London, September 2008).

³⁴ CERD/C/TUR/3, paragraph 121.

³⁵ Article 81 (c) states "Political parties... (c) cannot use a language other than Turkish in writing and printing party statutes or programs, at congresses, indoors or outside; at demonstrations, and in propaganda; cannot use or distribute placards, pictures, phonograph records, voice and visual tapes, brochures and statements written in a language other than Turkish; cannot remain indifferent to these actions and acts committed by others. However, it is possible to translate party statutes and programs into foreign languages other than those forbidden by law"

for sending invitations to the President of Turkey in Kurdish and Turkish.³⁶ In June 2008, Ibrahim Ayhan, an independent candidate for parliamentary elections in July 2007, was sentenced by the Siverek First Magistrate Criminal Court for playing Kurdish music during the election campaigns.³⁷ On 12 September 2008, another independent candidate in Mersin, Orhan Mirođlu, was also sentenced by the Mersin Second Magistrate Criminal Court for speaking Kurdish during the election campaigns.³⁸

33. Kurdish citizens are often indirectly prevented from participating in the election process by virtue of this language restriction, just as they are prevented from participating effectively within the legal system.
34. Further, the Turkish electoral system maintains that political parties have to gain 10 per cent of the national vote to enter the parliament. This high entry level discriminates against the Kurds, as a minority racial group, who have strong regional support but whose national vote does not add up to the required 10 per cent. Other restrictions on political campaigning include severe limitations on where political posters may be displayed and controls on the contents of the posters which aim to crack down on anything that criticises the State.
35. The inability of minorities such as the Kurds to achieve adequate political representation is a substantial impediment to the realisation of genuine democracy in Turkey. Turkey's electoral system therefore undermines the ability of the Kurds to have fair political representation. The effective exclusion of pro-Kurdish parties from Parliament and restrictions on electioneering in Kurdish has

³⁶ See <http://www.ihd.org.tr/eana.html>, 23 September 2007.

³⁷ 'DTP'li Başkan'a `Kürtçe Müzik Cezası,' *Aktüel Bakış*, 14 June 2008. Available at <http://www.aktuelbakis.com/Politika/8926.html> (last accessed 1 November 2008).

³⁸ 'Siyasetçi Orhan Mirođlu'na Beş Yıl Kürtçe Yasak!' *Bianet*, 12 September 2008. Available at <http://www.bianet.org/bianet/kategori/bianet/109690/siyasetci-orhan-mirogluna-bes-yil-kurtce-yasak> (last accessed 10 November 2008).

inhibited genuine participatory democracy for the Kurds. This undermines the representation of Kurds' rights and interests.³⁹

36. The formation of a Democratic Society Party (DTP) group in Parliament following the July 2007 general elections in Turkey gave a pro-Kurdish party representation in the country's Parliament for the first time in 14 years. However, shortly afterwards, prosecutors filed a number of requests to have the parliamentary immunity of DTP MPs lifted, in order to pave the way for legal proceedings against them. A party closure case was then launched against the DTP. These moves are the latest manifestation of decades of turbulence in Turkish politics, stemming from the antipathy of proponents of the secularist, nationalist Turkish ideology towards political parties they regard as threatening. Parliamentary immunity ought to protect the electorate, allowing the candidate they have selected to talk openly and adopt policies without fear of prosecution, and is therefore a practice in most democratic countries. The relentless pursuit of parties and politicians by unelected agents undermines democratic governance and breaches Turkey's human rights obligations under CERD.

³⁹ KHRP Trial Observation Report, *Relatives of Human Rights Defenders at Risk: The Extra-Judicial Killing of Siyar Perineck*, (KHRP, London, February 2005), 63.

**The right of minorities to participate in the activities of
trade unions continues to be infringed**

37. Turkey is yet to adopt a pro-union stance that values unions as fully-fledged and necessary social partners within the democratic system. Following a fact-finding mission to the Kurdish region of south-east Turkey in March 2008, KHRP has found that the harassment of trade unions and their members is a particular problem in the region, and that this is contributing to the *de facto* state of emergency there.⁴⁰
38. Firstly, several pieces of domestic legislation constitute a fundamental impediment to the safeguarding of trade union rights. This is largely due to the failure to inject momentum into a reform process that would bring domestic legislation in line with Turkey's obligations under international covenants. Three of the most significant pieces of domestic legislation in this field in reality place severe limitations on both the definition of the types of workers who are eligible for rights and the scope of the rights which are to be applied. The Trade Unions Act (no.2821) and the Collective Labour Agreements, Strike and Lockout Act (no. 2822) contain provisions which curtail the functioning of trade unions, in breach of the principles of the right to organise. For example, to be recognised as a bargaining entity, unions must represent over 50 per cent of workers within an enterprise, and 10 per cent of the workers within the relevant industry as a whole. Only one trade union must exist and conduct collective bargaining for each enterprise. The Collective Labour Agreements, Strike and Lockout Act stipulates that unions take a series of steps before striking, including negotiations and non-binding mediation. Key forms of striking, such as solidarity, warning and general strikes (involving multiple unions over a geographical area) are prohibited, whilst the Government retains far-reaching powers to postpone strikes if it deems necessary. Furthermore, the Law for the Public Employees Trade Unions (PETU;

⁴⁰ KHRP Fact-Finding Mission, *Return to a State of Emergency? Protecting Human Rights in South-East Turkey*, (KHRP, London, June 2008), 55-56.

Act no.4688), which was enacted in 2001 and represents the legal base governing public sector trade union rights, does not recognise the right to strike and bargain collectively. It also takes a very narrow position on the types of public sector workers who are eligible to join trade unions. Under the Act, several key categories of public sector workers, including lawyers, civilian civil servants, employees at penal institutions, special security personnel, public persons in 'positions of trust', and senior personnel within higher education are prohibited from joining unions.

39. Against this background of restrictive legislation, it is not surprising that, at the end of 2006, less than 10 per cent of workers in Turkey were protected by collective agreements. The limitations on public servants covered under trade union legislation deny rights to some 450,000 public employees.⁴¹

40. Secondly, the Turkish Government continues in practice to conduct activities that impede the exercise of the right to associate freely, bargain collectively and to strike. The formation and organisation of trade unions, particularly in the public sector, as well as the practice of union activities such as strikes and protests are routinely constrained by state interference. This often takes the form of disciplinary action, malicious prosecutions or fines against individual union members or leaders. In 2006, two public sector unions were pressured with lawsuits on order to force them to change their constitutions. In some cases, these have resulted in cases being taken to the European Court of Human Rights. In February 2006 the European Court of Human Rights ruled that the dissolution in 1995 of *Tüm Haber-Sen*, an affiliate of the KESK was unlawful.⁴² The practice of prosecuting unionists is widespread. During 2006 a total of nine trade union members were fined a total of 1,476 Turkish Lira, roughly \$1,110; 36 were subject to ongoing 'disciplinary inquiries'; and 132 had been given disciplinary

⁴¹ ITUC, '2007 Annual Survey of Violations of Trade Union Rights: Turkey,' <http://survey07.ituc-csi.org/getcountry.php?IDCountry=TUR&IDLang=EN> (last accessed 30 October 2008).

⁴² Judgment of *Tüm Haber-Sen and Ginar v. Turkey* (Application no. 28602/95), European Court of Human Rights, 21 February 2006.

punishments, all because of their participation in unions.⁴³ A representative of the teachers' union Eğitim-Sen told KHRP mission members in March 2008 that the union had 140 cases pending against its members, for the most part on the basis of statements made during demonstrations.⁴⁴

41. Restriction of trade union activities and labour rights by the Turkish authorities has a particularly negative impact on the country's Kurdish population. Kurdish trade unionists have been subjected to allegations of involvement in terrorism, as is the case with many Kurdish politicians, socialists, lawyers and anyone else who argues for rights for the Kurds or working people. Furthermore, union activities must be carried out in Turkish, weakening the ability of Kurds to organise on their own terms. Eğitim-Sen was forced to remove a clause in its constitution supporting the right to education in one's mother tongue.⁴⁵ Kurds are also particularly vulnerable to the practice of 'internal exile' of activists, the compulsory transfer of an employee to a part of the country far from home, without the possibility of being accompanied by spouse or family. An unspoken but well understood element of this practice is that it involves uprooting a person generally of Kurdish origin, ethnicity and language group and transferring him to a Turkish-speaking area where they will be more or less isolated.⁴⁶

Failure to provide public education in minority languages

42. Article 42 of the Turkish Constitution states that 'No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of

⁴³ ITUC, '2007 Annual Survey of Violations of Trade Union Rights: Turkey,' <http://survey07.ituc-csi.org/getcountry.php?IDCountry=TUR&IDLang=EN> (last accessed 30 October 2008).

⁴⁴ KHRP Fact-Finding Mission, *Return to a State of Emergency? Protecting Human Rights in South-East Turkey*, (KHRP, London, June 2008), 55.

⁴⁵ International Confederation of Free Trade Unions, 'Turkey: Annual Survey of Violations of Trade Union Rights (2006),' <http://www.icftu.org/displaydocument.asp?Index=991223980&Language=EN> (last accessed 21 October 2008).

⁴⁶ KHRP Fact-Finding Mission, *Return to a State of Emergency? Protecting Human Rights in South-East Turkey*, (KHRP, London, June 2008), 55.

training or education, ...foreign language education will be determined by law'. According to Article 3 of the Constitution, the state language is Turkish.

43. Kurds and other ethnic minorities are denied their educational rights under these articles. They are denied education in their mother tongue in public schools, their language is not offered as an optional subject in schools and there are no Kurdish language departments in any university in Turkey. Only those minorities recognised under the Lausanne Treaty have the right to establish their own schools and other establishment for instruction and education, with the right to use their own language.
44. As a result of the EU accession process, the Government took an important step in 2002 by amending the Foreign Language Education and Teaching Law and the Learning of Different Languages and Dialects by Turkish Citizens to allow private courses to teach the different languages and dialects traditionally used by Turkish citizens. However the regulation introduced significant restrictions regarding the curriculum, appointment of teachers, and the criteria for enrolment, including a minimum age restriction, which prevented children from attending such schools. Although some private courses were opened in several provinces in south-east Turkey, these were closed down in 2005 because of bureaucratic restrictions and people's reluctance to pay to learn their mother tongue.⁴⁷

The right of minorities to broadcast in their own language continues to be infringed

45. Broadcasting in different languages and dialects traditionally used by Turkish citizens was allowed in June 2003 as part of the EU harmonisation packages. Pursuant to this, the Supreme Council for Radio and Television finally took the important step of permitting some television and radio broadcasting in Kurdish.

⁴⁷ Minority Rights Group International Report, "A Quest for Equality: Minorities in Turkey" 2007. See <http://www.avrupa.info.tr/Files/MRGTurkeyReport%5B1%5D.pdf>, (last accessed 3 February 2009)

The Government of Turkey finally launched its first 24-hour Kurdish-language television station, TRT-6, on 1 January 2009.

46. The launch of TRT 6 is important for the development of the Kurdish language. However, the extent to which the television station will be allowed to operate free from Government interference and restrictions remains to be seen. This is particularly true given the findings of a KHRP mission to Turkey in July 2007, which learnt that restrictions remained in place which severely obstructed the work of Kurdish language broadcasters.⁴⁸ The mission was informed that Kurdish language television broadcasting was limited by law to a maximum of four hours per week, with radio broadcasting restricted to five hours per week. Kurdish language broadcasters were also obliged to provide simultaneous Turkish subtitles or have an equivalent Turkish broadcast immediately following a Kurdish programme, making live broadcasts in Kurdish virtually impossible. At least one television station reported that it had been required to inform the Higher Turkish Radio and Television Supreme Council (RTÜK) in advance of the content of programming. Broadcasters were reported to have been prosecuted for playing songs from a list of banned Kurdish cassettes and albums, even though the list – which originated under the 1983 State of Emergency Legislation (OHAL) – officially no longer existed and had ceased to be distributed since 2004. The RTÜK was said to lack expertise and Kurdish-speaking staff, relying on translations provided by the police to launch investigations against Kurdish language broadcasters – a particularly problematic situation, given reports of police harassment of members of the opposition media. Kurdish language broadcasters – including Söz TV, Gün TV and Radio, and Özgür Radyo – were also said to face a pattern of investigations, threats, heavy penalties and forced closures.

⁴⁸ Fact-Finding Mission Report, *Reform and Regression: Freedom of the Media in Turkey* (KHRP, Article 19, Index on Censorship, the Bar Human Rights Committee of England and Wales, the Centre for European Studies, London, October 2007), 51-58.

47. The same mission also heard consistent reports of Kurdish newspapers being threatened with closure or actually being closed, some being subjected to ongoing office raids, and even the seizure of equipment.⁴⁹ While prison sentences have been replaced with fines, disproportionate penalties often levied against small independent media are considered to be far worse since the risk of debt and bankruptcy threatens permanent closure. Restrictions on Kurdish language broadcasters were lifted in 2003 and 2004, but the still tiny number of Kurdish language broadcasters witnesses the still substantial prohibitions on such producers.

48. Further, restraints on the use of minority languages in the public arena remain. In April 2006, for example, a Diyarbakir court closed the Kurdish Democracy Culture and Solidarity Association (Kürt-Der) for infringing the Associations' Law by conducting its internal business in Kurdish.⁵⁰

South-east Turkey remains economically marginalised by discriminatory policies

49. The Kurdish population in Turkey has not achieved economic and social advancement due to the economic deprivation and discriminatory policies practised by the Turkish Government. The economic gap between south-east Turkey and western Turkey has not closed and in fact is still widening. This has a fundamental impact on the ability of Kurds to participate in normal life and to access their rights, in particular their economic, social and cultural rights.

50. A Regional Economic View Report, prepared by the Union of South-eastern Municipalities (GABB), indicates that the segregationist economic policies executed by the Government in the east and south-east of Turkey have played a

⁴⁹ *Ibid.*, 58-62.

⁵⁰ Human Rights Watch, '2007 World Report: Turkey,' <http://hrw.org/englishwr2k7/docs/2007/01/11/turkey14845.htm> (last accessed 30 October 2008).

significant role in increasing poverty and unemployment.⁵¹ According to the report, the Turkish Statistical Institute has not released data on the distribution of national income by regions and provinces since 2001, and the Government has been trying to hide the economical and social ruin in the provinces of the south-east.

51. The GABB report covered 21 provinces in east and south-east Turkey, finding that the gross national product per person in these provinces was just 12 per cent of the European Union average. The report also found that 4 per cent of the 2,165,000 women over the age of 15 in the region were unemployed. Further, 46 per cent of all the green card users in Turkey - cards which are given to people with a low income to benefit from free health-care and social services - live in these 21 provinces.

52. The GABB report also showed that the Government of Turkey has not made any effort to reduce the regional development gap. Regional inequality has changed since the 1980s in favour of Turkey's western cities. For example, between 1987 and 2001, the proportion of national revenue received by Marmara region increased from 35% to 38%, whilst the proportion received by the east and south-east reduced, measuring in at just 5% for the south-east in 2001. In fact, the proportion of national revenue received by eastern and south-eastern provinces has steadily reduced since the 1960s, receiving 10.5 % of Turkish total revenue in 1965, compared to 7.7% in 1987 and 7.2% in 2001.⁵²

Gender equality in education and literacy

53. Although women have the right to equal education in law, in practice more than 640,000 girls in Turkey are not receiving compulsory education. Women's access

⁵¹ Hurriyet Daily News "Gap project did not help Southeast, says report" See <http://www.hurriyet.com.tr/english/domestic/10659117.asp> (last accessed 03 February 2009)

⁵² Diyarbakir Metropolitan Municipality "GABB Bölge Raporu açıklandı -1" 19 December 2008. See <http://www.diyarbakir-bld.gov.tr/NewsDetail.aspx?ID=1784>, (last accessed 3 February 2009)

to education is the lowest among the EU Member States and the OECD countries⁵³. Restricting women's right to education denies them the access to information about their rights, especially their right to choose how they live, their right to be free from violence and their access to justice.

54. According to the 2008 Human Development Report titled "Youth in Turkey", girls are still suffering from gender discrimination, including being deprived of schooling. The report states "The opportunities for girls to receive education are still lower than boys. Although school enrolment rates for girls have increased and gender gaps in enrolment and attendance in primary education have closed by 15% in recent years, there were gender gaps of 4% in primary education and 8% in secondary education in the 2006-2007 education year."⁵⁴

55. This gender gap disproportionately affects girls from the Kurdish regions of Turkey, who are less likely to be enrolled in schools compared to the rest of Turkey. It is a common attitude in traditional Kurdish families that girls are not worth educating as their destiny is simply marriage and motherhood. Further, in south-east Turkey, extreme poverty caused by forced migration, loss of assets and unemployment makes families dependent on child labour. Kurdish families are often fiercely protective of the 'honour' of females and may view schooling in Government institutions as a means of forcing them to assimilate with mainstream society and abandon their customs. In a study of women in east and south-east Turkey, and a district of Istanbul that is largely populated by migrants from those regions, WWHR found that 62.2 percent of the sample had never been to school or had not been permitted to complete primary education. Only 9.8 percent had completed middle school⁵⁵.

⁵³ Commission Of The European Communities "Turkey 2008 Progress Report", Brussels, 05.11.2008. See http://www.pbs.org/newshour/indepth_coverage/europe/turkey/progress_report_08.pdf, (last accessed 4 February 2009)

⁵⁴ Turkey 2008 Human Development Report. "Youth in Turkey", UNDP, March 2008, p. 31. See <http://europeandcis.undp.org/home/show/7153E9AF-F203-1EE9-B3404D3FE67422D4> (Accessed on 2 February 2009)

⁵⁵ Human Rights Watch Briefing Paper "Memorandum to the Turkish Government on Human Rights Watch's Concerns with Regard to Academic Freedom in Higher Education, and Access to Higher

56. Language has also been cited as a barrier to Kurdish girls accessing education. While private language schools can teach Kurdish, the only language of instruction in mainstream schools is Turkish. There are no provisions for teaching Turkish as a second language to Kurdish children starting school.

Gender equality: honour killings and violence against women

57. Honour killing is still prevalent among both Turkish and Kurdish communities in Turkey. This is in spite of recent legal reforms discouraging the practice: the new Turkish Penal Code no 5237 defines crimes committed for the sake of honour as qualified crimes and does not permit the reduction of the sentence in honour killing cases.

58. Despite this amendment, the Court of Cassation has established a new condition which can only be described as a backward step in the prevention of honour killings. The 1st Criminal Department of the Court of Cassation has decided that “if there is no proof showing that the crime is committed by the decision of family council it can not be defined as an ‘honour killing’”.⁵⁶ This condition will result in the acquittal of potential perpetrators who encouraged the committing of honour killing if it is not proved that the crime was committed following a decision by the family council.

59. According to the report of the Prime Ministry Human Rights Directorate, every year, over 200 women are victims of honour killings in Turkey.⁵⁷ The report found that there had been no improvement between 2006 and 2007, with 159

Education for Women who Wear the Headscarf” 29 June 2004. See http://www.hrw.org/legacy/backgrounder/eca/turkey/2004/headscarf_memo.pdf, (last accessed 4 February 2009) The quotation is taken from: Pınar İlkkaracan, *Doğu Anadolu’da Kadın ve Aile* (Women in the Family in Eastern Turkey) (Istanbul: Women for Women’s Human Rights, 1998), p. 2

⁵⁶ See <http://www.porttakal.com/haber-tore-cinayeti-ne-yeni-tanimlama-95874.html>

⁵⁷ Human Rights Presidency 2007 Honor Killings Report , 25 June 2008 See http://www.ihb.gov.tr/raporlar_reports.htm, 29.01.2009

victims in 2003, 233 victims in 2006 and 231 victims in 2007. In the last 5 years, the total number of victims amounts to over 1100. The report also states that “Penalties imposed for murder cases seemed to have no adverse effect on murderers. Murderers have no compunction. The notion of honour defined by traditional views is more important than anything else in their lives”.⁵⁸ Another report by Human Rights Association details that, in 2007, 36 women were killed in the name of “honour”, whilst another 3 were injured.⁵⁹

60. These figures prove that changing the law alone is not an effective way of preventing honour killings. The Government of Turkey urgently needs to improve the protection of women's rights and take further measures to eradicate this practice.

61. Violence against women remains a major problem in Turkey. Despite 2007 amendments to the Family Protection Law (no 4320), the implementation of the legislative framework is slow and ineffective. Many women lack awareness of their rights under this law, which presents a significant obstacle in using the mechanism because they are not aware of the system of redress under the law or how the complaints system works.

62. In addition, police officers are usually reluctant to investigate domestic violence cases. In many cases the issue is handled by officers who are not trained in women's rights and the issue is sent back to the family to deal with, as traditionally the policy in Turkish society was not to break families up. Prosecutors and judges have also different viewpoints on the implementation of these measures specified in law no 4320.

⁵⁸ Human Rights Presidency 2007 Honor Killings Report , 25 June 2008 See http://www.ihb.gov.tr/raporlar_reports.htm, 29.01.2009

⁵⁹ See <http://www.emekdunyasi.net/tr/article.asp?ID=1755>

63. According to Diyarbakir Bar Association⁶⁰, after making a complaint, women are usually sent back to their home where they are again subjected to the violence; especially as there are very few women's shelters where they can stay in safety. Protective measures issued by judges are often sent late to the law enforcement officers by the prosecutors and there is usually lack of information in the notification regarding how these measures should be implemented.
64. In addition, judges usually issue the most minor protection measures, instead of serious measures which may have a deterrent effect and prevent further domestic violence. These include orders not to use violence or threatening behaviour against the other spouse or children; not to damage the property of the spouse or children; to surrender a weapon or other similar instruments to the police. Other more protective measures such as to leave the property shared with the spouse or children if there are any and not to approach the property occupied by the spouse and children or their place of work are rarely applied, therefore victims continue to live in the same property with their spouse and be subjected to domestic violence.
65. A report by the Center for Women's Legal Support (KAHDEM) states that court decisions providing restraining orders for women facing the threat of violence in Turkey often take much longer than they should, thus undermining the effectiveness of the law. The report also shows that that such delayed decisions often result in further violence against women. Court decisions granting restraining orders generally only come in the wake of violent events: the requirement of having to prove that violence has taken place, or providing medical reports documenting injuries, effectively undermines the struggle against domestic violence⁶¹. If the goal of the current law on restraining orders is to

⁶⁰ Information given to KHRP Legal Director during a training to women's human rights defenders in Diyarbakir, February 2008

⁶¹ Today's Zaman: Violence against women takes no holidays. See <http://www.todayszaman.com/tz-web/detaylar.do?load=detay&link=159827>, 29.01.2009

prevent violence and protect women, it would be preferable for the possibility of violence to be regarded as a sufficient reason for a court to take such measures.

66. Further, the law only applies to civil marriages, creating another serious issue for the implementation of the law: women who are within a common law (religious and unregistered) marriage are left without protection. This impacts disproportionately on Kurdish women, since common law marriage is a widespread practice in south-east Turkey.

67. The following are examples of the violence experienced by women and Turkey's failure to implement legal framework, policies or programmes to combat violence against women:

- Aysegul Alpaslan was married to Abdürrezzak Dikici'nin within a common law marriage and had 5 children. She was killed by her husband in Diyarbakir, Turkey in January 2007, She applied to the Public Prosecution Office in Diyarbakir 6 months before her husband killed her because her husband had sent her death threats;⁶²
- Fatma Babatli was married to Suleyman Babatli and had 7 children. She was killed by her husband in Diyarbakir in November 2008. 2 months before her death Fatma Bababtli had made a complaint to the Public Prosecution office in Diyarbakir because her husband was beating her. Diyarbakir Family Court decided that Suleyman Bababatli should not approach their house for 6 months. However Suleyman Babatli continued to contact Fatma Babatli and he was arrested for non-compliance with the law. He was released the next day and killed his wife later on.⁶³

⁶² Bianet, see <http://www.bianet.org/2007/01/12/90102.htm>, 29.01.2009

⁶³ Milliyet Newspaper, see <http://www.milliyet.com.tr/default.aspx?aType=SonDakika&ArticleID=1014269>, 29.01.2009

ARTICLE 6

Insufficient remedies exist for violations of ECHR rights

68. Turkey's report claims that 'all remedies are available against violations of fundamental rights and freedoms, including acts of discrimination'⁶⁴. Should this be true, individuals would not need to seek redress for violated rights before the European Court of Human Rights. Yet, at the end of 2007, almost 12 per cent of the 80,000 cases pending before the ECtHR concerned Turkey,⁶⁵ and Turkey scored highest in the number of judgments against it (331). Over 78 per cent of these judgments against Turkey related to ECHR Article 5 (right to liberty/security) and Article 6 (right to fair trial).⁶⁶ These figures reveal that fundamental rights and freedoms, including acts of discrimination, continue to be violated by Turkey and that domestic remedies do not suffice to bring redress to victims.

Lack of findings of Article 14 violations by the European Court of Human Rights does not indicate inexistence of instances of discrimination by Turkey

69. Turkey states that 'no violation of Article 14 of the Convention has been found by the European Court of Human Rights', and that 'to date no ruling has been made by the European Court of Human Rights against Turkey on racial discrimination'.⁶⁷ There have, however, been numerous instances of the European Court of Human Rights declaring submissions based on Article 14 admissible. Since 1 January 2000, 12 cases brought against Turkey have been

⁶⁴ CERD/C/TUR/3, paragraph 25.

⁶⁵ European Court of Human Rights Annual Report 2007, page 13

⁶⁶ *Ibid.*, page 143

⁶⁷ CERD/C/TUR/3, paragraph 26.

declared admissible regarding Article 14 ECHR. Of these cases, ten concerned Kurdish individuals.⁶⁸

70. It is very rare that the European Court of Human Rights ever finds a violation of Article 14. Frequently the Court decides that due to findings of substantial violations of other Articles, commonly Articles 2 or 3, it is not necessary to investigate the claim of a violation of Article 14. This in no way indicates that the applicant has not suffered injustice at the hands of the state in question. Indeed, the Court stated in *Xenides-Arestis v. Turkey*⁶⁹, that the applicant's complaints under Article 14 amounted in effect to the same complaints, albeit seen from a different angle, as those considered in relation to other Articles (Article 8 and Article 1 of Protocol No. 1).

71. This does not suggest that the European Court of Human Rights has found no discrimination in the given case. It merely indicates that it feels the finding of a substantive violation of another Article right constitutes sufficiently just redress for the applicant.

Turkey must become a signatory to, and properly implement, international mechanisms if it is properly to protect minority rights

72. Turkey claims that it 'has become party to all relevant international instruments both at global and regional forums'.⁷⁰ Turkey's explicit obligations towards minorities are largely political, with Turkey having been predictably reticent to

⁶⁸ *Isaak and others v. Turkey* (application no. 44587/98); *Osmanoğlu v. Turkey* (application no. 48804/99); *Ataman v. Turkey* (application no. 47738/99); *Yildirim and others v. Turkey* (application no. 56154/00); *Şeker v. Turkey* (application no. 52390/99); *Uçar v. Turkey* (application no. 52392/99); *Aslan v. Turkey* (application no. 75307/01); *Xenides-Arestis v. Turkey* (application no. 46347/99) (Cypriot); *Şimşek and Others and Yilmaz and Others v. Turkey* (applications nos. 35072/97 and 37194/97); *Menteşe and Others v. Turkey* (application no. 36217/97); *Artun v. Turkey* (application no. 33239/96); *Aktas v. Turkey* (application no. 33240/96); *Şayli v. Turkey* (application no. 33243/96); *Öztoprak and Others v. Turkey* (application no. 33247/96); *Kurt v. Turkey* (application no. 37038/97); *Özkanlı and Others v. Turkey* (application no. 32965/96); *Keser and Others v. Turkey* (application no. 33238/96).

⁶⁹ Application no. 46347/99, 22 December 2005.

⁷⁰ CERD/C/TUR/3, paragraph 34.

sign up to binding international standards in the field of human rights. The primary international standard on minority rights is currently Article 27 of the ICCPR, which prohibits States Parties from denying national minorities ‘in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language’. Although Turkey ratified this treaty in September 2003, it submitted a reservation stating that Article 27 would be implemented in accordance with the Turkish Constitution and the Treaty of Lausanne (1923), effectively excluding its application to the Kurds. Under the Vienna Convention on the Law of Treaties a state cannot issue a reservation ‘incompatible with the object and purpose of the Covenant’.⁷¹

73. Turkey has attached similarly restrictive reservations to Article 13 of the ICESCR, limiting the applicability of education rights to accord with constitutional provisions prohibiting the use of languages other than Turkish in state schooling. Article 13 provides for the liberty of parents to ensure religious and moral education in conformity with their own convictions and for the liberty of individuals and bodies to establish and direct educational institutions under certain conditions. In reserving that these rights must be applied in conformity with the Constitution, Turkey maintains a margin of control over minority rights that creates the potential for abuse of those rights.

74. Protocol No. 12 to the ECHR, which provides for the general prohibition of discrimination, remains to be ratified by Turkey.

75. Turkey has also so far resisted pressure to become a party to the Framework Convention on National Minorities (‘FCNM’). This convention is important, particularly in view of Turkey’s reservation to Article 27 ICCPR, because it is the first and so far the only multilateral, binding treaty on minority rights. PACE has

⁷¹ Article 19(c).

called the rights set out in the FCNM ‘minimum rights of national minorities’,⁷² whilst Council of Europe bodies have requested that Turkey sign the FCNM on several occasions. PACE has repeatedly called on Turkey to sign the Convention, stating that ‘persistent failure to sign or ratify this instrument, and to implement its standards, should be the subject of particular attention in the monitoring procedures conducted by the Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe, as appropriate’.⁷³

76. The European Commission against Racism and Intolerance has more recently recommended that Turkey become party to the FCNM. Of the 45 states of the Council of Europe, only two have not signed this treaty.⁷⁴ The European Commission finds Turkey’s reservations to the ICCPR and the ICESCR to be ‘of concern’ in its October 2004 report, and reference is made annually in the Commission’s regular reports to Turkey’s failure to ratify the FCNM. It is concerning that in the context of Turkey’s current and historical treatment of the Kurds, its reluctance to sign up to international standards on minority rights casts serious doubts on the sincerity of its undertakings to respect the rights of minorities under its jurisdiction.

77. Turkey has not ratified the Convention against Discrimination in Education, the European Charter for Regional or Minority Languages, the Framework Convention for the Protection of National Minorities, the Convention on the Participation of Foreigners in Public Life at Local Level or the European Convention on Nationality.

78. Finally, the ability of lawyers, NGOs and civil society members based in Turkey to analyse and assess Turkey’s compliance with CERD has been seriously hampered by the fact that Turkey’s third periodic report is only available in

⁷² PACE, ‘Rights of National Minorities’, Recommendation 1492 (2000)1.

⁷³ PACE, ‘Rights of National Minorities’, Recommendation 1623 (2003)1.

⁷⁴ These are Andorra and France.

English, and has not been translated or disseminated in Turkish. In October 2008, KHRP lodged a request with Turkey's Foreign Ministry, under the Freedom of Information Act, for a copy of the report in Turkish (see Annex A). The Government of Turkey's written reply simply detailed where a copy of the report in English could be found (see Annex B); whilst over the telephone, KHRP was told that a copy of the report was not available in Turkish. KHRP submits that the Government's failure to provide a copy of the report in Turkish will have had a severe detrimental effect on the ability of human rights defenders in Turkey to respond and feed into the Committee's examination of Turkey's compliance with CERD.

Kurdish Human Rights Project
February 2009

ANNEX A

DIS İŐLERİ BAKANLIGI BILGI EDINME DAİRESİ BASKANLIGI'NA
ANKARA

03 Kasım 2008

İLGİ :06/10/2008 tarih ve 165939 sayılı bilgi edinme başvuru hakkında

Bakanlığınızın 4982 sayılı Bilgi Edinme Yasası kapsamında 06/10/2008 tarihinde yapmış olduğum ve 165939 sayı numarası işleme alınmış olan başvurum, yasal süre bitmesine rağmen sonuçlanmamış, tarafıma herhangi bir yazılı ya da elektronik bildirim yapılmamıştır.

Anılan yasanın 6.maddesine uygun olarak yapılan ve tarafınızdan işleme konulan başvurum, işlem takip merkezinde “geregi yapıldı” ibaresi konulmak suretiyle sonuçlanmış görülmektedir. Ancak halen tarafıma yazılı ya da başkaca bir bildirim ulaşmamıştır. Aynı yasanın 29. maddesinde başvuru süreleri başlığı altında düzenlenen amir hüküm başvuruların 15 iş günü içinde sonuçlandırılmasına ilişkindir. Süre uzatımı durumunun gerekli olduğu durumlarda da 15 iş gününden önce ilgiliye bilgi verilerek 30 güne kadar uzatılabilir. Bu kanunun uygulanmasına ilişkin esas ve usuller hakkında çıkarılan yönetmeliğin 18.maddesine göre de aynı sürelerde cevap verme yükümlülüğü ortaya konulmaktadır.

Kanunun uygulanmamasından doğan ceza hükümleri başlığı altında da ilgililerin kendi tabi oldukları kanun dahilinde cezalandırılacakları ve yönetmeliğin ilgili maddesi uyarınca da ihmal sebebiyle süre içinde cevap verilmediği takdirde bu yükümlülüğün ortadan kalkmayarak yeniden sorumlunun başlayacağı belirtilmiştir.

4982 yasa ve ilgili yönetmelik çerçevesinde yasal süreler geçmesine rağmen başvurum hakkında bir sonuç alamamış olduğumdan en kısa sürede yazılı ya da elektronik posta ile tarafımı bilgilendirmenizi, saygıyla arz ve talep ederim.

Av. Saniye KARAKAS

ANNEX B

Subject: Bilgi Edinme Başvurusu-Saniye Karakaş

Date: Wed, 19 Nov 2008 11:03:02 +0200

From: bilgiedinme@mfa.gov.tr

To:

Sayın Karakaş,

165939 sayılı Bilgi Edinme başvuruza verilen yanıt ekte bilgilerine sunulur.

T.C. DIŐIŐLERİ BAKANLIĐI
ENFD-Bilgi Edinme Birimi

“Her Türlü Irk Ayrımcılıđının Ortadan Kaldırılmasına İliŐkin Uluslararası Sözleşme”nin uygulanmasına yönelik İngilizce hazırlanan birleştirilmiş birinci, ikinci ve üçüncü dönem ülke raporumuz, Kasım 2007 tarihinde “İrk Ayrımcılıđının Önlenmesi Komitesi”ne iletilmiş ve Mayıs 2008 tarihinde anılan Komite tarafından yayınlanmıştır. Söz konusu rapora

<http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersions/CERD.C.TUR.3.doc>
internet adresi üzerinden ulaŐılması mümkündür.

Bilginizi rica ederim.