

# TURKEY'S IMPLEMENTATION OF PRO-EU REFORMS

## Fact-Finding Mission Report

November 2004





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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.

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## FOREWORD

KHRP visited Southeast Turkey (Diyarbakir, Mardin, Derik and Batman) in March 2004 to deliver training seminars on aspects of human and women's rights, hold meetings with local representatives, victims of human rights violations and their defenders, and to observe three trials. This report focuses on the legal, economic and social situation of Kurdish women following from the mission's findings. This supplements previous reports, notably *Turkey's Shame: Sexual Violence Without Redress – Trial Observation Report* (KHRP: London, 2003), *KHRP/ BHRC Trial Observation Report: The State and Sexual Violence – Turkish Court Silences Female Advocate* (KHRP: London, 2003) and *KHRP State Violence Against Women in Turkey and Attacks on Human Rights Defenders of Victims of Sexual Violence in Custody – Trial Observation Report* (KHRP: London, 2001). In addition, KHRP has additional reports that address the human rights situation in Turkey, focused on the condition of the Kurdish communities, in the context of international human rights standards.

This KHRP mission examined Turkey's actual implementation of recent legislative changes, specifically in relation to the protection of human rights situations of the most vulnerable segments of society in Turkey, namely women and children. As of 2003, Turkey has passed seven packages of reforms that attempt to harmonise Turkish law with EU standards, in hopes of gaining accession to the EU in December 2004. Turkey's desired relationship with the EU is considerably dependant on a future accession partnership. Consideration of Turkey's eligibility must consider the real implementation of human rights standards in Turkey and related compliance with the Copenhagen Criteria.

Though KHRP supports Turkey's application for EU membership and applauds recent legislative changes, KHRP firmly reminds the international community that failure to meet the Copenhagen Criteria should bar Turkey from further EU negotiation; calling in mind that the ten states which became EU members on 1 May 2004 were required to prove compliance with the European Convention on Human Rights (ECHR). The maintenance of international and internal respect and compliance with the EU is partially dependant on the equality of

member states' dedication to the institution of human rights and compliance with EU standards. Accession should not be determined by the strategic interest of individual member states, but rather should be a communal agreement about the mutual benefit, both morally and politically, of including Turkey in the EU family.

*Kerim Yildiz*

KHRP Executive Director



## BACKGROUND

In April 2004, the Council of Europe's Parliamentary Assembly decided to discontinue monitoring procedures, which had been evaluating Turkey since 1996.<sup>1</sup> In June 2004, the European Commission commenced the preparations of a report on Turkey's compliance with the Copenhagen Criteria. The Commission's report is to be released October 6; however, reports of the Commission's activities and opinions of Commissioners note that despite their acknowledgment of recent achievements in the situations of human rights and democracy in Turkey, the actualisation of improved human rights legislation has not been adequately felt by all segments of Turkish society. Specifically, Günter Verheugen, EU's Enlargement Commissioner, stated that Turkey should continue to reform its policies concerning the Kurdish minorities.<sup>2</sup>

The positive results of the EU harmonization reforms have achieved a moderate amount of success in certain arenas. For example, an amendable result of the recent legislative amendments in Turkey was that on 9 June 2004, Leyla Zana and 3 other persons of Kurdish ethnicity who were formerly parliamentary deputies were released from prison, after their ten-year imprisonment. Their release followed a decision from the Supreme Court stating that their retrial at Ankara's State Security Court (DGM) had been unfair and in violation of the ECHR. The Ankara DGM had previously upheld the ruling against the four parliamentarians, despite a European Court of Human Rights ruling in favour of the accused.<sup>3</sup> Furthermore, the Government has announced a policy of 'zero tolerance' on torture.

### *Situation of Kurdish Females*

However, despite positive reforms, KHRP continues to believe that there are a number of critical concerns in the application of human rights protection in Turkey. For example, there are continued allegations of torture, indicating that reforms of legislation have not actualised the prohibition of torture in Turkey.<sup>4</sup>

In addition, the egregious targeting of certain women for threats of sexual torture and actual sexual violation, including those involved in pro-Kurdish political organisations, raises considerable alarm and indicates a failure of the actual implementation of harmonization reforms.<sup>5</sup> Politically active Kurdish women have been subjected to unofficial abductions, undocumented detentions and physical, psychological and sexual torture, including rape. The case of Gündüz, an executive member of the Women's Section of the Democratic People's Party (DEHAP), well illustrates such operations. On 14 June 2003, Gülbahar Gündüz, an executive member of the Women's Section of the Democratic People's Party (DEHAP) was abducted by four plainclothes men and sexually tortured. The investigation file was closed.<sup>6</sup> It is difficult to obtain reliable statistics on the incidence of state violence against Kurdish women, partly due to women's inability to publicly address the issue for fear of further victimization, by both culture and state. The stigma and shame associated with sexual violation and abuse by state actors is believed to keep many victims silent.

The KHRP mission explored the actual implementation of recent reforms that seek the protection of freedom of thought, expression, and association.<sup>7</sup> The resulting indicators suggested that considerable concern should be focused on the issue of Kurdish women's right to organise themselves (freedom of association) and to speak publicly about their experiences, needs and demands (freedom of expression). It appears that these rights are frequently restricted, sometimes brutally, by the police and authorities.

Kurdish women, particularly those living in the major cities, have, in recent years, become much more aware of their rights enshrined in international conventions, declarations and agreements such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>8</sup>, the Declaration on the Elimination of Violence against Women and the Beijing Platform of Action. All of these have been ratified or agreed by the Turkish Government. However, decades of exclusion and oppression have resulted in the disadvantage of Kurdish women in their ability to access human rights protections and constructively engage in remedying violations.

The publication and circulation of the *Charter for the Rights and Freedoms of Women in the Kurdish Regions and Diaspora*,<sup>9</sup> a KHRP and Kurdish Women's

Project (KWP) publication, could potentially strengthen women's struggle for equality and respect. Officially launched in London on 22 June 2004, the collective effort of the KWP and KHRP is being presented to the international and national community, including the UN and the European Parliament. It is intended to be an effective tool for aiding the constructive increase of political representations of women in the new administration in Iraq, and will undoubtedly assist the efforts of Kurdish women in Syria, Turkey and Iran who also suffer from discrimination, violence and neglect.

In Turkey hundreds of thousands of women, Turkish as well as Kurdish, are victims of human rights abuses every day. At least one-third, if not half, of women in rural areas have been subject to physical abuse from their families.<sup>10</sup> Violence against women is generally tolerated in Turkish society. Often, state authorities fail to investigate domestic violence.<sup>11</sup> The amended TCK, which was supposed to be passed in the fall of 2004, would allow judges and prosecutors authority to discern the necessity of a virginity test for victims of rape.

However, while most women in Turkey, regardless of ethnicity, suffer from discrimination; Kurdish women are often subjected to double discrimination, because of both their ethnicity and their gender. In southeast Turkey, women's access to education is far more restricted than in other parts of the country. Of the limited number of girls that attend any form of education, few continue into secondary school. Instead their fate is often early marriage, childbearing, and poverty. Girls are frequently unaware of their rights and remain dis-empowered in their communities, due in part to their lack of education and illiteracy. Domestic violence is a common phenomenon. It is culturally problematic for a Kurdish woman to seek protection or inform the Turkish police that a male relative has committed violence against her. Turkish police often do not interfere in matters of domestic violence; it is considered a 'family issue'. Thus, it is believed that many honour killings or suicides continue to occur within Kurdish communities that are not appropriately investigated. Women also fear ostracism and abandonment by their families (or, at worst, violence or death) if they were to come forward with their experiences of sexual violence.

### *Position of Human Rights Defenders*

In recent years there has been a disturbing increase in arrests, prosecutions and detentions of human rights defenders often accused of illogical and, usually, non-existent crimes. For example, lawyers who represented Kurdish victims of torture and other human rights abuses are targeted, frequently accused of “associating with terrorists”. Despite the deconstruction of previous legislation, authorities have devised alternative ways to obstruct the work of human rights lawyers and defenders. Such harassment and intimidation is in breach of international standards and treaties. While most of such prosecutions end in acquittals, the cases can last many months, even years. These legal processes impede NGOs, lawyers and human rights defenders’ ability to continue their professional work, in addition to impacting the professional and personal lives of their respective organizations and their clients.

### *Media*

Similar harassment and bureaucratic obstruction has hindered the establishment of Kurdish cultural centres, language schools and the registration of Kurdish personal names, despite the formal legality of such actions. On 2 June 2004 Turkey’s state radio and television (TRT) delivered its first Kurdish language-broadcast. Kurdish broadcasts are now permitted for 35 minutes per week. However, the Kurdish language is still far from being fully recognised.

### *IDPs*

The plight of millions of Kurdish IDPs continues to deteriorate, partly due to the State’s lack of appropriate facilitation of aid to returning persons. It is estimated that three million people were forcibly evicted from their villages between 1989 and 1999. Their right to return is enshrined in the Harmonisation Packages, in the ECHR and in various international treaties, declarations and frameworks.<sup>12</sup>

## *Legal System*

Finally, as the Leyla Zana and the Poster trial verdicts<sup>13</sup> illustrate, the legal system, as it now operates, appears incapable of delivering justice in accordance with international law standards. The actual independence of the judiciary is highly controversial; substantial qualitative research indicates that the judiciary is dependent on the executive branch of the government. The close relationship between judges and prosecutors and their joint recruitments and training suggests a serious lapse in the administration of actual justice. A judicial reform is urgently needed if Turkey is to become a member of the EU and to enable Turkish courts' ability to meet international and European standards.

The State of Emergency Legislation (OHAL) governed the majority of provinces in the Kurdish regions of southeast Turkey from 1983- 2000. This legislation conferred very broad administrative and legal powers on Regional Governors, who were almost always of Turkish decent, not Kurdish. The OHAL was lifted in the last two provinces of the southeast in November 2002. The subsequent harmonization packages were an alleged attempt to ensure the protection of all parts of Turkish society

However, the law reforms have been inadequately implemented. Human rights abuses continue. Many of the new laws are merely cosmetic, resulting in little actual change. Attitudes among State agents – police, prosecutors and judges - remain hostile and suspicious of the Kurds.

While the infamous Article 8 of the Anti-Terror Law No. 3713 was officially repealed by the sixth Harmonisation Law in June 2003, courts continue to apply a combination of articles from the Turkish Penal Code (TCK) and the Turkish Constitution, among others. Such repression and harassment is constantly justified by accusations, which claim that Kurdish defendants are undermining the memory of Kemal Atatürk. This ideology of the "Holy State" seemingly legitimises the continued disregard for new, more human rights focused, legislation.

Thus the legal system - archaic, bureaucratic and slow - requires fundamental restructuring if it is to be able to deliver the legal changes. Freedom of association

and expression are far from being enjoyed by Kurdish people. NGOs and human rights defenders are not free to involve themselves in activities on behalf of their members, to monitor the implementation of the reforms and to have proper consultative status with the Government, in the context of commitments under international conventions and agreements. On the contrary, many of them reported many instances of oppression and intimidation by the authorities often on the most trivial grounds.

The lack of control over the police, military and village guards, the close working relationship of public prosecutors and judges to circumvent new legislation, and other inherent faults in the system of local government in the Southeast region have meant that there has been little real improvement in the Turkey's treatment of the Kurdish population.

On 31 March 2004, the Delegation to the EU-Turkey Joint Parliamentary Committee in its Explanatory Statement to the Oostlander Report declared that, "the protection of human rights must remain a priority for the Turkish authorities, since there are still restrictions on fundamental freedoms, and the enjoyment of these freedoms by Turkish citizens, even if guaranteed by law, still lags behind European standards". This report will indicate areas where much further work is required to fulfil the demands of the harmonisation packages and of European and international law.

## MAIN ISSUES

### *1. Prohibition of Torture*

The Government announced a policy of “zero tolerance” of torture on 10 December 2003.<sup>14</sup> Nonetheless 692 people have reported that they have experienced torture in the first six months of 2004. KHRP continues to receive complaints of ‘heavy’ torture methods including electric shocks, Palestinian hanging and falaka (beating on the soles of the feet). Other methods of torture reportedly include: threats of death to the subject or his/ her family, threats of rape, solitary confinement, the use of blindfolds, enforced standing for prolonged periods and deprivation of sleep, food and/ or water.<sup>15</sup> The torture methods outlined above constitute a violation of Article 17(3) of the Turkish Constitution, Article 243 of the Turkish Criminal Code (TCK)<sup>16</sup> and Article 135(a) (“forbidden interrogation procedures”) of the Code of Criminal Procedure and Article 23 of the Regulation on Apprehension, Police Custody and Interrogation.

While improvements have taken place in the legislative and regulatory frameworks, the current challenge is the creation and protection of mechanisms that combat deep-seated prejudice felt by many law enforcement officials. Turkey’s pro-EU reforms have been lauded as evidence of progress towards meeting the Copenhagen Criteria. However many commentators seem unaware of the political realities in Turkey, most notably that the longstanding failure to respect the rule of law and due process has eroded civil expectations of legislative implementation.

The Human Rights Foundation of Turkey (TIHV) in Diyarbakir, a partner organisation, informed the mission that complaints of torture have increased in the last two years.<sup>17</sup> This is partly attributed to an increased awareness of available remedies. In 2003, the mission was shown evidence that beatings are used as a torture mechanism.<sup>18</sup> The beatings were reported to have occurred during peaceful public demonstrations, marches and press conferences or while subsequently arrested or detained, and to have been inflicted against children and women as well as men. One week after the mission’s departure from Diyarbakir,

journalists and demonstrators who had gathered outside the courthouse to protest suspected vote rigging in the elections were attacked by police. Several people were taken to hospital with serious injuries including broken arms.

TIHV states that many incidents of torture, particularly those involving the physical, sexual or psychological abuse of women, are not reported.<sup>19</sup> It estimates that only 10 per cent of those tortured actually make formal complaints or seek assistance from human rights organisations including TIHV or IHD. TIHV has however recorded annual increases in its medical caseload since 1998. In 2004, they documented 195 new cases.<sup>20</sup> “There has been a decrease in torture, but it has certainly not been eliminated. We certainly are not witnessing ‘zero tolerance,’” explained one IHD lawyer.<sup>21</sup>

The Fourth Harmonisation Law amended Section 16 of the State Security Courts Act; the act now allows detainees immediate access to a lawyer. Lawyers from the Diyarbakır Bar informed the mission that in some cases, visitors were not allowed to visit the detained person for the first few days of their detention.<sup>22</sup> Most incidents of torture or ill treatment occur in the first 24 hours of detention. Human rights lawyers express grave concern at the conditions, for example, in the D-type prison built outside Diyarbakır that contains isolated underground cells for political prisoners.<sup>23</sup>

The use of blindfolds and forced stripping in prisons were banned in May 2002. Recent legislation protects the detainee’s right to notify relatives of his or her arrest and to have access to a lawyer. Security agents, police and gendarmes continue to arrest, detain and abuse arbitrarily. KHRP, IHD, Göç-Der (Immigrants’ Association for Social Cooperation and Culture), among others, have experienced such treatment.

KHRP interviewed the Assistant to Governor Vahdettin Özkan concerning the composition and function of the Parliamentary Human Rights Commission, established in every province. The Human Rights Commissions were set up to investigate complaints about human rights abuses. Representatives of non-governmental organisations, the police and the army sit on the Commissions. Striking a balance between engagement and independence may be their most difficult challenge.



## *2. Women and Torture*

According to information received by KHRP and the Foundation for Social and Legal Research (TOHAV), since 2003 there have been an increase number of women who report incidents of torture or ill treatment.<sup>24</sup>

Women detainees are exceptionally vulnerable to sexual torture and rape when in the custody of the police, gendarmes, or at the hands of village guards. Kurdish women continue to be victims of torture, despite the absolute illegality of torture. The sexual torture and rape of Kurdish women is believed to go largely unreported due to the stigma attached to it in Turkey. A woman who publicly speaks about her sexual torture risks being abandoned or sent far away by her family. She may be seen as having brought dishonour on them. She may also be at risk of an honour killing.<sup>25</sup>

Human rights defenders who challenged and highlighted problems of sexual violence against women are frequently faced with judicial harassment. For example, human rights lawyer, Eren Keskin, faces over 100 indictments because of her legal work with Kurdish victims of sexual violence in custody.

Honour killings have been part of the patriarchal traditional culture for centuries, and continue to be pervasive in parts of the world. 'Honour' killings, at times, directly result from sexual abuse by state agents. The Turkish Penal Code (TCK) allows for the reduction of punishment if it is a clear case of an 'honour killing'; this article was due for review and possible reform this September, however, the reformation of the TCK has not gone as planned.

In March 2004, Güldünya Tören, after giving birth to an illegitimate child, was killed in a hospital in Istanbul by her brother for 'dishonouring' her family. According to recent data from IHD, 40 women died as a result of "honour crimes" in 2003; 37 women died as a result of domestic violence.<sup>26</sup>

The KHRP mission interviewed women's organisations in Diyarbakir including the Epi-Dem, Selis (Women's Advisory Service) and Dikasum (Women's Problems Research and Practice Centre). These organizations informed the mission of recent cases, including that of a 16-year old girl who became pregnant

following rape. Unlike many, she informed a prosecutor. She was killed by her brother shortly thereafter. The mission was informed of the substantial lack of women's shelters.<sup>27</sup> On 5 July 2004 women's organisations throughout Turkey petitioned municipalities for more shelters. This campaign was a first step in raising awareness for this pressing issue.

There is believed to be a high rate of suicide among young women in Turkey, understood to particularly affect Kurdish women. There has been no empirical research into this phenomenon in Turkey, but women's organisations believe the suicide rate to be one of the highest in the world, particularly in the Batman area.<sup>28</sup>

Another worrying development has been the abduction and sexual torture of politically active Kurdish women by plainclothes police. The Ministry of Justice has yet to explain why the files have been closed on a complaint made to the Prosecutor in Istanbul by Gülbahar Gündüz,<sup>29</sup> of the Executive Board of the Istanbul branch of DEHAP, following her abduction and sexual torture in the summer of 2003. On 9 December 2003, the Provincial Head of pro-Kurdish political party DEHAP's women's branch, Afife Mintas, was kidnapped and brutalised in exactly the same way in Diyarbakır. Her torturers explicitly reminded her of the abduction and sexual torture of Gülbahar Gündüz.

The sexual torture and rape of women, cause gross physical and psychological harm to the victim. It also attacks the integrity of the family, the community and the whole society. It not only destroys the physical, emotional and sexual identity of the woman victim, but it disturbs the fabric of the entire Kurdish community.

### *3. Forensic Evidence in Medical Reports*

Women who delay in making complaints of rape or torture are likely to have problems in obtaining adequate forensic medical evidence for the court, and their case files may be closed for lapse of time. The lawyer Aygül Demirtas, a board member of the IHD Diyarbakır Branch and a member of the Women's Rights Commission of the Women's Branch of the IHD in Diyarbakır, described

how a Kurdish woman detainee refrained from mentioning her rape while in detention, although she had described other forms of torture.<sup>30</sup> Her lawyer learned of the rape six months later from other female detainees in whom she had confided. By the time the truth emerged it was too late for medical evidence of rape to be obtained.

Although international guidelines explicitly bar police participation in and presence at medical examinations of alleged torture victims, the mission was told of many cases in which police attended and influenced these procedures. “The doctor is my friend,” explained one police officer, when an IHD lawyer challenged his attendance in the consulting room.<sup>31</sup>

Several organisations and human rights lawyers described the pressure the police placed on doctors to find no evidence of torture.<sup>32</sup> Doctors have been threatened with dismissal or relocation if they insist on writing “independent” reports that name evidence of torture. One doctor, subjected to such ‘relocation,’ succeeded in bringing his case before the High Court. He was allowed to return home.<sup>33</sup>

The reform packages increased the punishment for torture, but, according to IHD, prosecutions of torturers remain limited.<sup>34</sup> ECtHR judgments in support of claims of women rape victims have not been properly enforced in Turkey; the perpetrators, found guilty in Strasbourg, continue in their posts.

In 2001, at a Conference on Sexual Torture some 171 women testified about their experiences in custody.<sup>35</sup> Human rights lawyer, Eren Keskin, a Deputy Chair of the Istanbul IHD, and several other women lawyers represented victims of sexual violence in court. Keskin spoke publicly in Turkey and in Europe about the state torture of Kurdish women. As a result Eren Keskin now faces one hundred indictments for having “insulted the State”, supported terrorism, promoted enmity and attacked the integrity of the Turkish Republic. Other human rights lawyers, such as Hüseyin Cangir, the Chair of IHD’s Mardin branch, haven also fallen victim to police campaigns that attempt to obstruct human rights work.

Police and gendarmes operating in the southeast do not appear to have received sufficient retraining on torture prevention nor have they been made aware of the illegality of torture. Pursuing allegations of torture, especially concerning

Kurdish women, is extremely difficult, partly because of ingrained prejudices of Prosecutors, and partly due to the extreme difficulty faced by persons who attempt to obtain honest and accurate medical evidence, acceptable to judges.

Sükran Esen attempted to bring her police rapists to justice (she could not identify them due to the blindfold she had been forced to wear).<sup>36</sup> The Prosecutor decided to indict the entire 405 members of the Derik District Gendarme, 65 of whom were senior police officers.<sup>37</sup> Due to the publicity, her family sent Sükran Esen to Germany for her own safety. The entire gendarmerie was indicted. The Public Prosecutor's preposterous indictment was clearly a device to ensure that all the defendants would be acquitted. Esen's lawyers were refused the right to cross-examine any of the accused, none of whom were present at the hearings. The independent medical report from the International Berlin Torture and Rehabilitation Centre, where the claimant had undergone treatment, was not initially accepted. This case is still pending. Its progress demands close monitoring by human rights organisations in Europe as well as in Turkey. These procedures graphically illustrate the vulnerability of Kurdish women to the oppression of the State.

It is of significant importance that the International Medical Association and the Medical Council of Turkey protest the harassment of doctors, and the compromise of medical independence. It is only thus that allegations of rape and torture can be accurately assessed. It should be duly noted that the work of women's organizations, among others, has encouraged women to voice their concerns and their victimizations. The more women who name their experience and their fears, the more women are provided with an increasingly safe space to do so.

#### *4. Prisons*

A given prison experienced is greatly influenced by the location and the type of prison. Turkish prisons do not allow civilian prison monitors entrance. Lawyers encounter many obstacles when they attempt to meet their imprisoned clients.<sup>38</sup> Their documents are often confiscated. It is difficult to obtain signatures from prisoners because prison guards refuse to allow lawyers to take papers away from

prisons. Tokay-Der (the Legal Solidarity Organisation of Prisoners' Families) in Batman told the KHRP mission that prisoners were only able to converse with their relatives in the presence of guards. Telephone conversations are also monitored.<sup>39</sup> Prisoners are required to pay the electricity and heating for their cells.<sup>40</sup> They report being subjected to degrading searches. The mission was told of cases where sick prisoners were left to die.<sup>41</sup>

Women detainees and prisoners are subjected to: forced strips (in front of male police and guards), strip-searching, verbal sexual abuse and sexual harassment. Women officers reportedly cooperate in activities that sexually and morally degrade prisoners.<sup>42</sup>

A D-Type Prison for political prisoners has been established 15 km outside Diyarbakır. These prisons are under the control of the Ministry of Justice. They include underground cells that are windowless and cells for solitary confinement.

The mission was informed that prison visitors are forbidden from speaking the Kurdish language. All correspondence to prisoners in Kurdish is also prohibited. Kurdish women who have often not been educated in the Turkish language are therefore prevented from communicating with their relatives during their term in prison.<sup>43</sup>

### *5. Rights of IDPs to Return to their Villages*

Displacement remains one of the most significant issues for the Kurdish population. The questions of return, resettlement, compensation and support of extension services are of crucial concern to the IDPs.<sup>44</sup>

An estimated 3 million people were forced to flee their homes, and more than 3,500 villages were destroyed in a campaign of displacement that peaked during the mid-1990s.<sup>45</sup> Livestock and fields were ruined, and forests scorched. The landmines around the mountain villages have not been cleared. The army has no minefield maps. Those who return risk being killed or severely mutilated if they

go outside the village in search of firewood. Villages have been left without basic services such as electricity and running water. Vahdettin Özkan, the Assistant to the Governor of Diyarbakir, states, "It is not economical to install these services in the many outlying villages, we have built centralised settlements instead."<sup>46</sup> He did not seem to know who was responsible for mine clearance; nor did he seem aware of any government research on the situation of the displaced that consulted representatives of the Kurdish displaced people to understand their concerns and needs.<sup>47</sup>

KHRP has had limited success on individual IDP cases at the ECtHR.<sup>48</sup> However, it is believed that none of the successful applicants have been allowed to return to their homes. Not all damages awarded by judgments of the ECtHR regarding compensation to people who lost their houses, farmlands and livestock, have been paid. Moreover, lawyers and others human rights defenders who represent and assist Kurdish clients in their claims have been subject to retaliatory acts of arbitrary judicial intimidation and harassment. Two leading representatives of Göç-Der faced trial on 19 January 2004 for, "inciting people to enmity and hatred because of calls, racial, religious, confessional or regional differences", under Article 312/2 of the Turkish Criminal Code (TCK) following their participation in a press conference.

The Village Return and Rehabilitation Project, announced by the Turkish Government in March 1999, has assisted the return of some displaced persons. This project facilitated the return of IDPs to twelve villages, an insignificant number compared to the 3,000 destroyed villages.<sup>49</sup> Even returning IDPs who have acquired proper permission from the Regional Governor have been met with brutality by village guards, many of who now occupy former Kurdish homes and farmlands. KHRP, IHD and Göç-Der have documented numerous cases of murders, rapes, beatings, and disappearances of returning villagers.<sup>50</sup> Nobody has been arrested or prosecuted for these crimes.

On the 17 July 2004, the Law on Compensation for Losses Arising from Terrorism and Anti-Terrorism was approved by the Grand National Assembly. This law could provide displaced Kurds, as well as non-displaced Kurds affected by the conflict, with compensation for the loss of property during the armed conflict. Though it has not been adequately implemented, it is promising and

encouraging.

Up until 2003, the Government maintained some 60,000 village guards.<sup>51</sup> The presence of these armed village guards hinders villagers from returning to their villages or utilising their pastures and fields.<sup>52</sup> KHRP case, *Tangüner and Tangüner v Turkey* (No.36218/97), is an example of a reported assault of a returning IDP by village guards.<sup>53</sup> A further obstacle to return is the concentration of minefields in the southeast of Turkey.<sup>54</sup>

Vahdettin Özkan, the Assistant to the Governor in Diyarbakir, informed the mission that the majority of Kurdish IDPs have no wish to return to their home villages: "These people have got used to living in the urban environment. In the cities and towns they can get employment and education for their children, access health and social services. They like where they are."<sup>55</sup> He went on to declare that 90 per cent of applicants did not take up the procurements offered to them such as sheep and seeds, and that many of the applicants were not 'genuine'.<sup>56</sup>

KHRP believes that the majority of IDPs live well below the poverty line, frequently inhabiting shantytowns and squatter settlements. In the southeast cities of Diyarbakır, Batman and Mardin, around 80 per cent of IDPs are unemployed. Speaking only Kurdish, many are denied access to employment because they do not speak Turkish. There is no social security provision. Many rely on begging, prostitution or child labour, exposing them to continual harassment from police. IHD and Göç-Der informed the mission that they were concerned about the extreme emotional and social problems resulting from difficulties of urban adaptation and poverty such as: family conflicts, alienation, discrimination, and social exclusion.<sup>57</sup>

## 6. Education

Hundreds of thousands of Kurdish children, exiled from their villages, do not attend school because they do not speak Turkish.<sup>58</sup> Those that do attend are extremely disadvantaged by their lack of proficiency in Turkish. They are usually two years or more behind Turkish children of the same age. In Derik, the Lady Mayor stated that only 20 per cent of Kurdish girls in the region go on

to secondary school, and many never attend primary school.<sup>59</sup> Discrimination and economic poverty causes many Kurdish IDP children drop out of school. Some children are forcibly withdrawn from school by their families who depend on their labour and income; children as young as five or six are forced into exploitative situations. In the worst case they become involved in crime, prostitution and drugs. Forced displacement has had a devastating effect on all youth. Displaced Kurdish children are often regarded as potential criminals, due in part to their poverty and their lack of education.

There has been virtually no investment in the southeast region that encourages employment. On 29 January 2004, the “Law on Encouragement of Investment and Employment” was passed as an attempt to increase the economic activity in the southeast. The positive results of this program have not yet been felt. The existing construction projects bring no benefits to Kurds since the jobs go to incoming Turks. The Agriculture Trade Union representative in Batman described how the tobacco industry in the southeast region had once employed 200,000 people; however, the armed conflict of the 80s and 90s was disastrous to the industry.<sup>60</sup> The representative stated that, “Although the armed war against the Kurds was over, the economic war continued.”<sup>61</sup> The Baku-Tblisi-Ceyhan (BTC) pipeline project has not brought work to the Kurds. It has, however, resulted in more Kurdish dislocation and will mostly likely continue to do so. The trade unions all agree that the only way to reduce the high unemployment rate and to control the population explosion in the towns of the region is to help the Kurdish displaced people to return to their villages.<sup>62</sup>

Göç-Der states that there have been more than 20,000 petitions to the respective authorities for permission to return since state of emergency legislation (OHAL) was lifted, but the authorities decline to answer them.<sup>63</sup> Furthermore, applicants seeking the authorities’ permission to return are required to sign an official declaration that the PKK is a “terrorist organisation” and was responsible for burning their homes. In some cases male applicants were told that they would only be permitted to return if they joined the ‘village guards’.

Vahdettin Özkan, the Assistant to the Governor of Diyarbakir, spoke, with some pride, of the Centralised Manageable Village Settlements. However, IHD described them as virtually “open prisons” intended to control the Kurdish



population. Most IDPs were formerly agriculturalists and thus the absence of available land in government settlements and/or related employment makes sustenance extremely difficult and the living situation alienating. In general, Kurds express the desire to return to the land from which they were displaced.

### 7. Women and Child IDPs

The Mayor of Derik described the effect of displacement on Kurdish children, especially girls, in relation to unemployment and seasonable out-migration work on farms. Whole families of IDPs, including young children, travel from the southeast to the big farms in Western Turkey. The mayor estimated that fifty per cent of the migrants living in and around Derik migrate west every spring.<sup>64</sup> There is no work for them in the southeast. There has been limited investment that enables employment. The Mayor asked for support for olive production and carpet-weaving projects, but received no financial or technical support from the Turkish government. Seasonal migrant work is one of the only opportunities some Kurds have to prevent starvation in the winter months. Kurdish migrant labourers are paid much less than Turkish workers, are forced to live in tented accommodations and receive only the most basic sources. During periods of migration children are out of school. Often they do not return once they miss a substantial period of schooling. Although state education is theoretically free, the cost of clothes, notebooks, pencils and other essentials make it substantially expensive for many poor and/ or illiterate families. Most displaced girls, if they go to school at all, finish their education at the age of twelve, when they often leave in order to marry and have children.<sup>65</sup>

In these patriarchal communities' customs such as bride price, child marriage and polygamy persist. Among some families the tradition of *berdel* continues whereby a brother and sister are exchanged in a marriage agreement between two families.<sup>66</sup> Girls marry extremely young and bare many children. In the southeast region infant mortality is significantly far higher than in the rest of Turkey. Female illiteracy is higher than that in Algeria.<sup>67</sup>

Saadet Becerikli, Chair of the Batman branch of IHD and representative of the Women's Platform underscored the plight of displaced women. She spoke of

their inability to adjust to urban life, their problems of identity, lack of language and their vulnerability to sexual violence and exploitation.<sup>68</sup> She also referred to the high incidence of depression, which can result in attempted or actual suicide and/or mental illness. Many women are unable to feed their children, let alone educate them. In Batman one can find children as young as five working on the street, begging or selling water. Becerikli reported an instance of a ten-member family who were completely dependant on the earnings of a 10 year-old child.<sup>69</sup>

Many displaced Kurdish women are either widowed or wives of “disappeared” or “missing” men. During the 1990s, thousands of men were killed or ‘disappeared’; others are in prison or have migrated to Europe. The resulting destitution forces many women into prostitution. They are also vulnerable to sexual trafficking, which operates in the region, forcing young women and girls to work in the sex-trade in Europe and the Gulf States. In Diyarbakır there are an estimated 8,000 prostitutes, mainly believed to be women expelled from the villages.<sup>70</sup> In Batman, walking down the streets of the town centre, one sees young mothers and babies begging or offering themselves. IHD’s Batman branch estimates that there are over 6,000 prostitutes among the displaced and that the numbers continue to increase. Batman itself only has 200,000 inhabitants.<sup>71</sup>

Although Kurdish families are typically close-knit, years of oppression have weakened the family unit. Many women now find themselves victims of domestic violence from male relatives. Women in the southeast are in need of specialised support to aid their return to their villages and to enable them to take up their traditional livelihoods. They require guarantees of individual security, compensation, repair or reconstruction of their houses, and gender-sensitive agricultural extension services (for example, in rural crafts, animal husbandry and farming) so they can become economically independent.

Göç-Der research reveals substantial inadequacies of the health care system in Diyarbakır. Significantly the Diyarbakır Governor’s office indicates that the systems are working and in place. Often Kurdish women do not have adequate knowledge of the Turkish language and are thus prevented from communicating with health care professionals. Consequently, displaced Kurdish women have poor reproductive and gynaecological health. Their conditions are exacerbated by inadequate nutrition, housing and sanitation.<sup>72</sup>

The Batman branch of IHD and the Mayor of Derik informed the mission that the social, economic and legal position of Kurdish women and children needs to be properly investigated. Though precise data is impossible to obtain, it appears that there are now more Kurdish women than men. More than half of the population is under 15-years old. Real implementation of the harmonisation packages and actual respect for human rights must include women and children both in the discussion of and the dissemination of human rights.

### *8. Kurdish Languages in the Education System*

Following the lifting of restrictions on education in 'non-Turkish dialects' (i.e. Kurdish), five Kurdish language schools have been opened: in Urfa, Batman, Van, Diyarbakir and Adana. These schools are private and are thus only able to accommodate a limited number of persons. The mission visited the school in Batman one week after its opening.

Opening Kurdish language schools has been extremely difficult.

The majority of Kurds who live in the southeast, especially women, neither speak nor read Turkish. Thus, the prohibition of Kurdish has been one of the most abhorrent human rights abuses.

The EU Commission in its Regular Reports on Turkey's Progress towards Accession<sup>73</sup> has repeatedly stressed the need for an increase in protection and respect of the Kurdish minority. Turkey has been most reluctant to initiate reforms that protect Kurdish culture. The Treaty of Lausanne only recognised three minorities and three minority languages – Greek, Hebrew and Armenian. Significantly the Kurds and their language are not mentioned.

Article 42 of the Constitution established the ban on the use of the Kurdish language in education settings. It states that:

*“No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education.”*

The recent legal changes permit non-Turkish languages, including Kurdish, to be taught in private schools; however, Kurdish is still banned from public schools. This restriction frustrates the intention of the reforms since there are very few private schools in Turkey.

Despite of the new legislation, Kurdish cannot be taught, even as an elective subject, in primary school, secondary school or in University. It is difficult, even for private schools, to receive the necessary authorization for both establishment and permission to teach in Kurdish. For example, the mission was told that in Batman a private institution was denied establishment permissions because doorways were five centimetres too narrow and the emergency exit stairs too steep. Persons attempting to open Kurdish language schools have been harassed, beaten up and their premises raided.<sup>74</sup>

In 2001, university students had demanded the option of taking Kurdish language classes as part of their curriculum and were joined, in their campaigns, by schoolchildren who demanded education in Kurdish or at least to be taught the Kurdish language as a subject. The authorities were ruthless in their punishment of the protestors. 1,359 students were taken into custody and 45 students suspended from university or school.

In June 2002, legal proceedings were brought against leading members of the teachers' union, Egitim-Sen, for carrying banners reading 'Mother languages do not divide, they unite'. Six members were transferred to posts in remote regions and the promotion of others was blocked. In August 2002, the third harmonisation package produced an amendment to the old law, but with very limited scope. The crucial amendment, made on Article 2 (a) of the Law on Foreign Language Education and Teaching was, provided that:

“Private Courses subject to the Law on Private Educational Institutions No. 625 [...] can be opened to enable the learning of the different languages and dialects used traditionally by Turkish citizens in the daily lives.”

This wording, of course, has dramatically limited the scope of the legal reform desired by the Copenhagen political criteria. The amendment did not alter

the law that states that courses must not attack the “indivisible integrity of the state and the fundamental principles of the Turkish Republic enshrined in the Constitution”. The September 2002 regulation was laden with restrictions, making it impossible to actualise change that would make reality compatible with the spirit of the 2002 harmonisation package.

In April 2003, Aydın Üneşi applied to open a language school in Batman to teach three Kurdish dialects. After satisfying a number of bureaucratic conditions, he eventually received permission from the local education authorities. He had to widen the classroom doorways by 5 centimetres, devote a corner of the school building to Kemal Atatürk and have the latter's portrait hung in every room.

Most of those who have enrolled in Kurdish language institutes have university degrees and are engineers, doctors, lawyers and teachers. They all speak Kurdish as their mother tongue but they have never had the opportunity to learn its grammar, its literature and its subtleties. Everyone involved with the school is aware that the opening of classes is but a small step towards the full realisation of their language rights. The cost of the schools continues to be a barrier. Children are denied the right to learn Kurdish or be taught in Kurdish in their formal education. The Director Mr Özer is worried that there will be no teachers in the future because children are not learning Kurdish. He and his colleagues are also concerned that women, who are the principal transmitters of the Kurdish culture to their children, are unlikely, for economic and cultural reasons, to benefit from this change in the law.

Children learn Kurdish at their mother's knee - the reason for the term *mother tongue*. However, an estimated 60 per cent of Kurdish mothers in the southeast are illiterate. Children are not allowed to attend any Kurdish classes during the state school terms. Provided that they do well in primary school, they are sometimes able to study Kurdish on the weekends and during holidays. This provision ensures that young Kurdish children are still forbidden to learn their mother tongue during their crucially formative years. It also marginalises the Kurdish language by outlawing it from the state prescribed curriculum.

If reforms properly reflected the harmonisation package, education in

the Kurdish language should be available in the state education system. Furthermore, the eleven articles of Regulation 24882 of September 2002 is so full of restrictions concerning teachers, students, premises, permissible attire and other miscellaneous issues as to make full implementation of the spirit of the reforms impossible.

### *9. Cultural Institutions - Kurdish Pen*

For years, writers and intellectuals have longed to establish a Kurdish PEN. The Kurdish culture is one of the oldest in the world but insufficiently appreciated outside of Kurdistan. The earliest epic literature emerged from Mesopotamia. There is a long tradition of music, song, and poetry. The earliest string instruments were developed in this region. However, Kurdish writers, poets, musicians, songwriters and broadcasters have suffered harassment, prosecution, imprisonment and torture in recent decades.

For example, only one month after the Constitutional amendments of October 2001 purported to expand the scope of freedom of expression, Kurdish cultural centres and publications were the focus of organised raids, confiscations and harassment by the police. Many arrests took place. In 2002 the Van cultural centre was temporarily closed by the Regional Governor for hosting a course of musical tuition in playing the saz, a traditional instrument without permission. In the same year Regional Governors banned Newroz (the Kurdish New Year) celebrations in many southeaster towns.

This year the mission was told that the situation has improved. Further improvement is still needed. The mission met with writers, poets, and educators at the newly opened offices of Kurdish Pen in a suburb of Diyarbakır. There are still many barriers to be overcome before Kurdish Pen can be legally established.

The Minister of Trade was legally required to evaluate the establishment of Kurdish Pen. Notably, the Minister objected to the use of the word “Kurd” in the title. The Cabinet had to give its permission because Kurdish Pen would be undertaking research into Kurdish culture, publishing reports and newsletters, as well as providing language courses. There were numerous laws, by-laws and

administrative regulations that were presented to the organisers at every stage of their planning.

The Board members, several of them distinguished writers and poets, spoke of the many problems facing intellectuals and artists. Many writers and publishers had been imprisoned. Others faced economic problems since publishers cannot sell enough books for them to be properly paid. The woman writer Suzan Samanca, author of the acclaimed novel 'Two Mothers' spoke of the triple disadvantages of being a woman, an intellectual and a Kurd. She has been prevented from writing in her mother tongue. She had been prosecuted many times, and harassed by police who threatened her, followed her home and watched her house.

### *10. Legal Frameworks*

It is clear from the mission's interviews with many different organisations that Turkey has a long way to go before it can be said that its justice system complies with international standards. There are serious doubts about whether the judiciary is independent, trials are fair and the rule of law is respected. These are the basic features of a democratic state.

In spite of the repeal of Article 8 of the Anti-Terror Law No. 3713 and the reforms – on paper – under the seven harmonisation packages, public prosecutors and judges are able to browse through the Constitution, the statute books and local administrative regulations and by-laws and find any number of laws that will do the same job as Article 8 had in the past, and thereby avoid the intended effect of recent law reforms. Instead of bringing a prosecution under the former Article 8 of the Anti-Terror-Law, prosecutors now initiate proceedings under Article 169 or Article 312 of the Turkish Criminal Code (TCK).

The problem lies in the ideology of the Turkish State, often called the "Holy State", as laid down by Kemal Atatürk. Whatever the new law says, prosecutors and judiciary can always return to the Constitution and its declaration on the "indivisible integrity of the Turkish Republic". Any act or even thought that might suggest anything different can be considered unconstitutional.

The Turkish Penal Code (TCK) has more than 500 articles, and a number of them are being used now to plug the gaps left by the repeal of other laws. For example, Article 312 TKC is an integral part of the legal panoply that can be used against human rights defenders, political activists, journalists and writers who voice an opinion on the Kurdish problem. This and other articles contain the sort of imprecise language that allows Prosecutor and Judges to interpret them in a way that make basic fundamental rights to freedom of association and of expression inaccessible to Kurdish or pro-Kurdish people. Article 312 of the Turkish Criminal Code (TCK) incriminates actions that “incite hatred and animosity in the heart of the people on the grounds of differences of class, race, religion or region”.

In addition there are many other administrative, press, public order, trade and education laws that, used cleverly by the courts, can punish lawful activities as if Article 8 of Law No. 3713 was still in force.

The recent guilty verdicts imposed on IHD Chairpersons in Southeast towns who put up posters in Kurdish during the December 2003 human rights week well illustrate the way the courts can manipulate the vast array of laws to repress free speech.

The existence of these restrictive laws and the development of new interpretations conflicts not only with Turkey's international obligations but also with its own legislative changes. The pattern of pressure against human rights defenders has now reached an all-time high and it is obvious that they are targeted because of their active representation of Kurdish people claiming their rights.

This failure to abide by its own new laws shows how little political will there is to meet the conditions of the Copenhagen Principles and to respect the European Convention on Human Rights and other international treaties that Turkey has ratified.



## CONCLUSION

The improvements made to the legislative body of the Turkish government are to be commended. However, implementation of human rights must reach all levels for a nation state to meet the international human rights standards. Turkey has not yet developed adequate systems for the protection of the Kurdish minority within their borders. The authorities continue to allow and perpetuate gross human rights violations. It is essential that the international community, specifically the European community, demand that Turkey discontinue practices that harm the physical, sexual, emotional, and mental well-being of the Kurdish Turks. Furthermore, the international community should ensure that legislative changes in Turkey are actually being implemented at all levels before assuming Turkish compliance with EU standards.

## RECOMMENDATIONS

The following are recommendations to the international community, particularly address to the European Union, concerning Turkey's human rights situation and their desired accession into the EU. KHRP encourages the international community and European Union to take the following actions:

- Continue to exert pressure upon Turkey to implement in good faith all legal reforms made pursuant to the Copenhagen political criteria for accession to the EU in the area of minority rights;
- Rigorously evaluate Turkey's attempt to accede to the EU on the basis of actual changes in practice, rather than solely considering formal reforms made to laws. This is mandatory if Turkey's practical progress and political will are to be accurately assessed during this critical period. Also, this alone will ensure that the EU retains its integrity as an institution committed to ensuring the protection of human rights;

- Ensure that the decision regarding Turkey's accession to the EU is based on an accurate appraisal of Turkey's fulfilment of the relevant criteria rather than upon external political considerations. All Member States must genuinely assess Turkey's ability to guarantee the cultural, political, and civic rights of the Kurdish population in all areas of public and private life.
- Monitor Turkey's actual implementation of reforms, specifically, the judgments of the European Court of Human Rights.

## **Annex 1**

### **Resolution 1380 (2004)<sup>1</sup>**

#### **Honouring of obligations and commitments by Turkey**

1. Turkey has been a member of the Council of Europe since 1949 and as such has undertaken to honour the obligations concerning pluralist democracy, the rule of law and human rights arising from Article 3 of the Statute. It has been the subject of a monitoring procedure since the adoption, in 1996, of Recommendation 1298 on Turkey's respect of commitments to constitutional and legislative reforms.

2. On 28 June 2001, in Resolution 1256 concerning the honouring of obligations and commitments by Turkey, the Parliamentary Assembly welcomed the progress made by Turkey but decided to continue the monitoring process and review progress, pending a further decision to close the procedure.

3. The Assembly notes that, despite a serious economic crisis in 2001, the political instability that led to early elections in November 2002 and the uncertainties caused by the war in Iraq, the Turkish authorities have not deviated from their efforts to implement the reforms necessary for the country's modernisation. Turkey has achieved more reforms in little more than two years than in the previous ten.

4. The Assembly welcomes the adoption in October 2001 of important changes to the constitution, seven reform packages approved by parliament between February 2002 and August 2003 and numerous other laws, decrees and circulars to implement these reforms. It also welcomes the changes made to the constitution in May 2004, which paved the way for the ratification of the Statute of the International Criminal Court.

5. It notes with satisfaction that, despite initial concern in November 2002 about the accession to power of the Justice and Development Party, led by Mr Erdogan,

the new government, with the unstinting support of the only opposition party, the Republican People's Party (CHP), has so far made good use of its absolute majority in parliament to expedite and intensify the reform process.

6. With regard to pluralist democracy, the Assembly recognises that Turkey is a functioning democracy with a multiparty system, free elections and separation of powers. The frequency with which political parties are dissolved is nevertheless a real source of concern and the Assembly hopes that in future the constitutional changes of October 2001 and those introduced by the March 2002 legislation on political parties will limit the use of such an extreme measure as dissolution. The Assembly also considers that requiring parties to win at least 10% of the votes cast nationally before they can be represented in parliament is excessive and that the voting arrangements for Turkish citizens living abroad should be changed.

7. With regard to institutional arrangements, the Assembly congratulates Turkey on reducing the role of the National Security Council to what it should never have ceased to be, namely a purely consultative body concerned with defence and national security. The amendment to Article 118 of the constitution and those to the legislation governing the National Security Council and its secretariat represent fundamental progress that is to be welcomed. With the changes made to the constitution in May 2004, Turkey completed this reform by taking the necessary steps to exclude army representatives from civil bodies such as the Higher Education Council (YÖK) and to establish parliamentary supervision of military activities, particularly from a financial standpoint. The Assembly also calls on the Turkish authorities to exclude any army representatives from the Supreme Board of Radio and Television (RTÜK). Despite Turkey's geostrategic position, the Assembly also demands that Turkey recognise the right of conscientious objection and introduce an alternative civilian service.

8. The Assembly welcomes the fact that the maximum period of police custody for collective offences has been reduced from fifteen to four days and that all detained persons are entitled to see a lawyer from the first hour of police custody.

9. The Assembly also welcomes the Turkish authorities' decision to abolish the state security courts, following the abrogation of Article 143 of the constitution in

May 2004. It strongly urges Turkey, as it did in 2001, to draw on the experience of the Venice Commission for any further constitutional revisions. It believes that the 1982 Constitution, which has already been frequently modified, would gain in coherence and clarity from a complete overhaul. The Assembly also welcomes the fact that the Turkish authorities have started to consider granting individuals direct access to the Constitutional Court.

10. The Assembly also calls on the Turkish authorities to finalise without delay the draft proposal to create an ombudsman institution and congratulates Turkey on the steps taken to improve dialogue with NGOs, particularly via the new composition of regional human rights councils and the more flexible legislation on associations. NGOs' freedom of action nevertheless needs to be strengthened.

11. The Assembly welcomes Turkey's determination to fight corruption, particularly through the establishment of several parliamentary committees of inquiry, its approval in January 2003 of an emergency anticorruption plan and its ratification of the Council of Europe Criminal and Civil Law Conventions on Corruption (ETS Nos. 173 and 174) in September 2003 and March 2004 respectively. It hopes that Turkey will shortly submit the instruments of ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141), already ratified by the Turkish Parliament on 16 June 2004.

12. The Assembly welcomes the significant advances in women's rights resulting from the constitutional revisions of October 2001 and May 2004, the entry into force in January 2002 of the new Civil Code and the August 2002 Job Security Act, and welcomes the fact that Article 10 of the constitution, as amended in May 2004, now expressly stipulates that the state has a duty to guarantee equality between men and women. Modern states must provide for equality between all their citizens, particularly as regards access to employment, public and elective offices, health and education. It calls on the Turkish authorities to introduce programmes to eradicate female illiteracy, which is essential for women to be able to exercise their rights. The Assembly has noted with satisfaction that the Criminal Code was amended in July 2003 to make it impossible to plead mitigating circumstances for honour crimes. It calls on the authorities to take

a clear stand against honour crimes and domestic violence and to offer women support, particularly by increasing the number of refugees.

13. Regarding fundamental freedoms, the Assembly congratulates Turkey for finally abolishing the death penalty, by ratifying Protocol No. 6 of the European Convention on Human Rights in November 2003 and signing Protocol No. 13 in January 2004. Following the changes made to the constitution in May 2004, Protocol No. 13 should be ratified very shortly.

14. It also congratulates Turkey for its commitment to combating torture and impunity – the authorities' zero tolerance policy is starting to bear fruit. Improvements to conditions of police custody, greater safeguards for the rights of the defence and entitlement to a medical examination have been welcomed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), whose recommendations, including those relating to detention conditions, have been systematically implemented. Although the latest report published by the CPT on 18 June 2004 recognises that important progress has been achieved, the Assembly agrees with the CPT that the Turkish authorities must remain vigilant and ensure that their instructions are followed throughout the country.

15. The Assembly considers that, as part of the fight against impunity, abolishing the requirement to secure prior administrative approval to prosecute officials charged with torture or inhuman or degrading treatment, removing the power to suspend prison sentences or commute them into fines, making it obligatory to investigate complaints from victims as a priority and requiring prosecutors to conduct investigations personally all represent considerable progress. It also notes that considerable efforts have been made to improve police and gendarmerie training, with Council of Europe assistance.

16. The Assembly takes note of important measures to liberalise the legislation on freedom of expression: Section 8 of the Anti-Terrorism Act has simply been repealed, Articles 312, 159, 169 of the Criminal Code and Section 7 of the Anti-Terrorism Act have been amended to make them more compatible with the case-law of the European Court of Human Rights and the legislation on press-related offences has also been amended. However, the Assembly still awaits progress on

the offences of defaming or insulting the principal organs of state, which should no longer be liable to imprisonment.

17. The Assembly notes that important progress has been made regarding freedom of association. Under the amended Article 33 of the constitution, only the courts may refuse to register associations' statutes or dissolve or suspend their activities. The 1983 Associations Act has been considerably revised, particularly as regards prior scrutiny of associations' activities. Concerning freedom of assembly, meetings can now only be banned if they pose a clear threat to public order.

18. Turning to freedom of religion and the treatment of religious minorities, the Assembly congratulates the Turkish authorities for amending the legislation on religious foundations and on constructions, which will now allow the bodies concerned to buy and sell property and build new places of worship.

19. Turkey is a secular Muslim state. This unique state of affairs is evidence of its attachment to European democratic values, based on tolerance and mutual respect. Turkey must ensure that the state's neutrality continues to be respected and that the religious sphere does not interfere with the principles of governance of a modern society.

20. The Assembly welcomes the lifting of the state of emergency in the remaining four south-eastern provinces where it was still in force, and the passing of the Reintegration Act in July 2003, which has permitted the release, among others, of several thousand Turkish citizens of Kurdish origin and a return to normal life for hundreds of other people who have given themselves up to the authorities. The Assembly also hopes that parliament will shortly approve the draft legislation to compensate the victims of terrorism or of measures taken by the government to combat terrorism. Nearly five years after the end of hostilities, the Assembly believes that the time has come to invest more in the economic and social reconstruction of the south-east. It notes the Turkish authorities' commitment to developing the "village return" programme, with the assistance of the World Bank and the United Nations. The Assembly also welcomes the recent adoption of the law encouraging investments in provinces with low per capita income.

21. The Assembly regrets that Turkey has still not ratified the Framework Convention for the Protection of National Minorities (ETS No. 157) and the European Charter for Regional or Minority Languages (ETS No. 148). Nevertheless, it considers that the first steps have been taken towards recognising the cultural rights of members of different ethnic groups and notably of persons of Kurdish origin. The constitution has been revised and no longer bans the use of languages other than Turkish; it is now possible to open language schools for studying the Kurdish language or languages, radio and television broadcasts are now authorised in Kurdish and parents may choose Kurdish first names for their children. The Assembly strongly encourages the Turkish authorities to continue promoting cultural and linguistic diversity, and hopes that the measures will have a real impact on the daily lives of those concerned, particularly their access to the judicial and administrative authorities and the organisation of health care.

22. The Assembly notes that the points it made in Resolution 1256 have been dealt with satisfactorily:

i. it congratulates the Turkish authorities for introducing the necessary changes to domestic legislation in 2002 and 2003 to permit the retrial of cases following findings by the Court of a violation of the Convention, which in particular has permitted the reopening of the trial of Leyla Zana and three other members of parliament in the Ankara Security Court. Nevertheless, the Assembly deeply regrets the decision handed down by the Ankara Security Court on 21 April 2004, at the end of the retrial, upholding the prison sentences they were given in 1994. It invites the Turkish Court of Cassation to examine with the utmost care the complaints currently before it concerning the way in which the trial was conducted and is pleased to note the court's decision of 9 June 2004 to release them in the meantime;

ii. it also notes that more than five years after the judgment awarding Ms Loizidou just satisfaction, and in accordance with Article 46 of the Convention by which, like all the other parties to the Convention, it is bound, Turkey has finally agreed unconditionally to make the required payment. It reminds the Turkish authorities that they must still execute the judgment on the merits in the same case, delivered in 1996, and in particular adopt general measures to avoid repetition or continuation of the violations found by the Court. It asks



Turkey to continue to co-operate fully with the Committee of Ministers in its difficult task of securing the proper implementation of judgments, particularly in the *Cyprus v. Turkey* inter-state case.

23. The Assembly therefore invites Turkey, as part of its authorities' current reform process, to:

i. carry out a major reform of the 1982 Constitution, with the assistance of the Venice Commission, to bring it into line with current European standards;

ii. amend the electoral code to lower the 10% threshold and enable Turkish citizens living abroad to vote without having to present themselves at the frontier;

iii. recognise the right of conscientious objection and establish an alternative civilian service;

iv. establish the institution of ombudsman;

v. ratify the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages and the Revised European Social Charter and accept the provisions of the Charter which it has not already accepted;

vi. complete the revision of the Criminal Code, with the Council of Europe's assistance, bearing in mind the Assembly's observations on the definitions of the offences of insulting language and defamation, rape, honour crimes and, more generally, the need for proportionality arising from the European Court of Human Rights' case-law on freedom of expression and association;

vii. undertake, with the Council of Europe's assistance, a comprehensive examination of the legislation dating from the period of the state of emergency, particularly that relating to association, trade unions and political parties, to ensure that as far as possible it reflects the spirit of recent reforms;

viii. reform local and regional government and introduce decentralisation in accordance with the principles of the European Charter of Local Self-Government (ETS No. 122); as part of the reform, to give the relevant authorities the necessary institutional and human

resources and arrange redistribution of resources to compensate for the underdevelopment of certain regions, particularly south-east Turkey, and move from a dialogue to a formal partnership with United Nations agencies to work for a return, in safety and dignity of those internally displaced by the conflict in the 1990s;

ix. continue the training of judges and prosecutors as well as the police and gendarmerie, with the Council of Europe's assistance;

x. lift the geographical reservation to the 1951 Geneva Convention relating to the Status of Refugees and implement the recommendations of the Council of Europe Commissioner for Human Rights on the treatment of refugees and asylum seekers;

xi. pursue the policy of recognising the existence of national minorities living in Turkey and grant the persons belonging to these minorities the right to maintain, develop and express their identity and to apply it in practice;

xii. continue efforts to combat female illiteracy and all forms of violence against women.

24. The Assembly considers that over the last three years Turkey has clearly demonstrated its commitment and ability to fulfil its statutory obligations as a Council of Europe member state. Given the progress achieved since 2001, the Assembly is confident that the Turkish authorities will apply and consolidate the reforms in question, the implementation of which will require considerable changes to its legislation and regulations, extending beyond 2004. The Assembly therefore decides to close the monitoring procedure under way since 1996.

25. The Assembly will continue, through its Monitoring Committee, the post-monitoring dialogue with the Turkish authorities on the issues raised in paragraph 23 above, and on any other matter that might arise in connection with Turkey's obligations as a Council of Europe member state.

<sup>1</sup> Assembly debate on 22 June 2004 (18th Sitting) (see Doc. 10111, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Ms Delvaux-Stehres and Mr Van den Brande).

Text adopted by the Assembly on 22 June 2004 (19th Sitting).

**Annex 2**

**Recommendation 1662 (2004)<sup>1</sup>**

**Honouring of obligations and commitments by Turkey**

1. The Parliamentary Assembly considers that over the last three years Turkey has clearly demonstrated its commitment and ability to fulfil its statutory obligations as a Council of Europe member state. Given the progress achieved since 2001, the Assembly is confident that the Turkish authorities will apply and consolidate the reforms in question, the implementation of which will require considerable changes to its legislation and regulations, extending beyond 2004. The Assembly therefore decides to close the monitoring procedure under way since 1996.

2. Referring to Resolution 1380 (2004) on honouring of obligations and commitments by Turkey, the Assembly considers that Turkey must continue to benefit from the Council of Europe's assistance and co-operation programmes in order to complete and implement the reforms it has undertaken to strengthen a state governed by rule of law and respectful of human rights and fundamental freedoms.

3. The Assembly therefore recommends that the Committee of Ministers:

i. continue, in co-operation with the Turkish authorities, the training programmes for police officers, judges and prosecutors, and the prison system reform programmes;

ii. continue to assist the authorities with their future constitutional reform projects;

iii. continue to offer expert legal advice on draft legislation under preparation or planned, particularly on the Criminal Code and Code of Criminal Procedure, and legislation on associations, political parties, trade unions and decentralisation;

iv. introduce a programme of assistance and co-operation aimed at fighting corruption;

v. prepare and implement an action plan for equality between women and men in Turkey, with particular emphasis on violence against women, in accordance with Committee of Ministers

Recommendation Rec(2002)5 of 30 April 2002 on the protection of women against violence.

<sup>1</sup>. *Assembly debate* on 22 June 2004 (18th Sitting) (see Doc. 10111, report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), co-rapporteurs: Ms Delvaux-Stehres and Mr Van den Brande). *Text adopted by the Assembly* on 22 June 2004 (19th Sitting).

## ENDNOTES

<sup>1</sup> PACE, Honouring of Obligations and Commitments by Turkey, Recommendation 1662 (2004) [perhaps Annex 2 together with Resolution 1380 (2004)].

<sup>2</sup> Simon Jeffery, *EU Pushes Turkey on Kurdish Rights*, The Guardian, Sept. 7, 2004 [available on Internet]

<sup>3</sup> Case of Sadak and Others v Turkey, Nos. 29900/96.29902/96/29903/96, 17 July 2001.

<sup>4</sup> Europe and Central Asia; Summary of Amnesty International's Concerns in the Region; Amnesty International; 1 September 2004.

<sup>5</sup> See also the report by TOHAV (Foundation for Social and Legal Research) in July 2004.

<sup>6</sup> See KHRP, Turkey's Shame, December 2003 and KHRP Newslines 2003.

<sup>7</sup> Seventh Harmonization Package, Amendments to Articles 426, 427, and 159 of the Turkish Criminal Code.

<sup>8</sup> CEDAW entered into force on 19 January 1986, the Optional Protocol to CEDAW entered into force on 29 January 2003

<sup>9</sup> KWP and KHRP, *Charter for the Rights and Freedoms of Women in the Kurdish Regions and Diaspora*, (KHRP: London) 2004

<sup>10</sup> Amnesty International, Turkey, Women confronting family violence, AI: EUR 44/013/2004, 2 June 2004.

<sup>11</sup> Amnesty International, *Turkey: Women Confronting Family Violence*, 2 June 2004.

<sup>12</sup> See KHRP 'Torture in Turkey' (KHRP, Yildiz, and Hughes: London) 2004; TOHAV, Report on Torture in 2003, July 2004.

<sup>13</sup> See KHRP trial observation report into Leyla Zana and Poster Trials, September 2004

<sup>14</sup> See Deputy Prime Minister Abdullah Gül's statement to the Grand National Assembly, 10 December 2003.

<sup>15</sup> KHRP FFM interview with IHD in Istanbul, 12 March 2004

<sup>16</sup> Other related Articles of the TCK are: Articles 452, 456, 245, 450 (3), 354.

<sup>17</sup> KHRP FFM interview with TIHV representative, Diyarbakir, 15 March 2004

<sup>18</sup> *ibid.*

<sup>19</sup> *ibid.*

<sup>20</sup> The numbers of cases referred to TIHV are: 1998:31; 1999:73; 2000:128; 2001:175; 2002:188; 2003: 195.

<sup>21</sup> KHRP FFM interview with IHD representative, Istanbul, 12 March 2004

<sup>22</sup> KHRP FFM interview with lawyers from Diyarbakir Bar, 15 March 2004

<sup>23</sup> KHRP FFM interview with IHD Batan, 18 March 2004

<sup>24</sup> See KHRP 'Torture in Turkey' (KHRP, Yildiz, and Hughes: London) 2004; TOHAV, Report on Torture in 2003, July 2004

<sup>25</sup> The draft bill to reform the Turkish Criminal Code (TCK) is progressive on women's rights. However, 'honour related crimes' does not constitute an aggravating circumstance despite international condemnation; for example the Outcome Document of Beijing (also known as 'Beijing +5') agreed by the Turkish Government in 2000 at the UN Commission on the Status of Women. Virginity tests have not been outlawed.

<sup>26</sup> KHRP FFM interview with IHD representative, Diyarbakir, 16 March 2004

<sup>27</sup> KHRP FFM interview with Epi-Dem, Selis and Dikasum, Diyarbakir, 16 March 2004

<sup>28</sup> *ibid.*

<sup>29</sup> Gündüz' abduction took place in broad daylight in the centre of Istanbul. She heard the abductors say they were police to a passer-by. They said "*We are not killing you this time. So you can tell other women to stop their activities. But next time we will.*" Although on release she made an official complaint, the Prosecutor refused to investigate the case and the file was prematurely closed. Later, a peaceful demonstration protesting against her ill-treatment, attended by eighty women, was violently broken up by the police, and many of the protestors were beaten. Some of these were taken to hospital and others detained in custody.

<sup>30</sup> KHRP FFM interview with Aygül Demirtas, Diyarbakir, 16 March 2004

<sup>31</sup> KHRP FFM interview with IHD, Diyarbakir

<sup>32</sup> KHRP FFM interview with IHD, Diyarbakir

<sup>33</sup> KHRP FFM interview with IHD, Diyarbakir

<sup>34</sup> KHRP FFM interview with IHD representative, Istanbul, 12 March 2004

<sup>35</sup> See KHRP, State Violence against Women in Turkey, December 2001.

<sup>36</sup> Sükran Esen was repeatedly raped during detention in 1993, 1994 and 2002.

<sup>37</sup> For a fuller report, see KHRP, *Turkey's Shame: Sexual Violence without Redress – the Plight of Kurdish Women*, December 2003. The number of indicted was subsequently increased to 410.

<sup>38</sup> The Delegation was informed about the problems faced by lawyers by Sezgin Tanrikulu, the President of the Diyarbakir Bar.

<sup>39</sup> KHRP FFM Interview with Tukay-Der, Batman, 18 March 2004

<sup>40</sup> *ibid.*

<sup>41</sup> *ibid.*

<sup>42</sup> See KHRP, State Violence against Women in Turkey, December 2001.

<sup>43</sup> KHRP FFM Interview with Tukay-Der, Batman, 18 March 2004

<sup>44</sup> See KHRP, IHD, Göç-Der, *Internally Displaced Kurds in Turkey* (KHRP: London), September 2003.

<sup>45</sup> See Global IDP, *Turkey: EU accession process puts issue of internal displacement on political agenda*, April 2004.

<sup>46</sup> KHRP FFM Interview with Vahdettin Ozkan, Assistant to the Governor of Diyarbakir, Diyarbakir, 17 March 2004

<sup>47</sup> *ibid.*

<sup>48</sup> See *Akdivar and Others v Turkey* (No.21893/93, 16.9.1996); *Mentes and Others v Turkey* (No. 23186/94, 28.11.1997); *Selcuk and Asker v Turkey* (Nos.23184/94, 23185/94, 24.4.1998); *Bilgin v Turkey* (No.23819/94, 16.11.2000); *Dulas v Turkey* (No. 25801/94, 30.1.2001); *Orhan v Turkey* (No.25656/94, 18.6.2002); *Yöyler v Turkey* (No.26973/95, 24.7.2003); *Ipek v Turkey* (No.25760/94, 17.2.2004).

<sup>49</sup> Internally Displaced Persons in the Caucasus Region and Southeastern Anatolia, Hearing before the Commission on Security and Cooperation in Europe, 10 June 2003, p. 25.

<sup>50</sup> KHRP FFM Interview with IHD Istanbul branch, Istanbul 12 March 2004; KHRP FFM Interview with Goc-Der Istanbul branch, Istanbul 12 March 2004

<sup>51</sup> See Global IDP, Turkey, EU accession process puts issue of internal displacement on political agenda, April 2004.

<sup>52</sup> See also CoE, PA, Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, Explanatory Memorandum, March 2004, para. 248.

<sup>53</sup> See US Department of State, Country Report 2002, March 2003, p. 2/3, Annex B; Application in *Nafiye Ünal and 37 Others v. Turkey*, No. 7556/03.

<sup>54</sup> See also Global IDP, Turkey, EU accession process puts issue of internal displacement on political agenda, April 2004.

<sup>55</sup> KHRP FFM Interview with Vahdettin Ozkan, Assistant to the Governor of Diyarbakir, Diyarbakir, 17 March 2004

<sup>56</sup> *ibid.*

<sup>57</sup> KHRP FFM interview with IHD's Batman branch, Batman, 18 March 2004; KHRP FFM interview with Goc-Der's Istanbul branch, Istanbul, 12 March 2004

<sup>58</sup> The Göç-Der research revealed that 43.4% of children aged 6-14 in their sample had all formal relations with school. The reasons given were mainly economic difficulties.

The most significant problem that children face is not being able to use their mother tongue. Also, the larger society sees these e IDP children as potential criminals and such experiences of ethnic discrimination negatively affect the school life of the minority of children who attend school.

<sup>59</sup> KHRP FFM interview with Ayse Karadag, Lady Mayor of Derik, Mardin, 17 March 2004

<sup>60</sup> KHRP FFM interview with Agriculture Trade Union representative, Batman, 18 March 2004

<sup>61</sup> *ibid.*

<sup>62</sup> *ibid.*

<sup>63</sup> KHRP FFM interview with Goc-Der's Istanbul branch, Istanbul, 12 March 2004

<sup>64</sup> KHRP FFM interview with Ayse Karadag, MAYOR OF DERIK , Mardin, 17 March 2004

<sup>65</sup> *ibid.*

<sup>66</sup> See also Amnesty International, Turkey, Women confronting family violence, AI: EUR 44/013/2004, 2 June 2004.

<sup>67</sup> KHRP FFM interview with Ayse Karadag, Mayor of Derik, Mardin, 17 March 2004

<sup>68</sup> KHRP FFM interview with Saadet Becerikli, Chair of IHD's Batman branch, Batman, 18 March 2004

<sup>69</sup> *ibid.*

<sup>70</sup> KHRP FFM interview with Epi-Dem, Selis and Dikasum, Diyarbakir, 16 March 2004

<sup>71</sup> KHRP FFM interview with IHD's Batman branch, Batman, 18 March 2004

<sup>72</sup> KHRP FFM interview with Epi-Dem, Selis and Dikasum, Diyarbakir, 16 March 2004

<sup>73</sup> See EU Commission, 2003 Regular Report on Turkey's Progress towards Accession, November 2003, p. 25, 28, 104.

<sup>74</sup> See also KHRP *Newsline* Autumn 2003.









