

**BRIEFING TO THE UN COMMITTEE AGAINST TORTURE
FOR ITS CONSIDERATION OF
TURKEY'S THIRD PERIODIC REPORT
UNDER THE CONVENTION AGAINST TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT**

Submitted by Kurdish Human Rights Project

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KURDISH HUMAN RIGHTS PROJECT

The Kurdish Human Rights Project ('KHRP') is an independent, non-political, non-governmental human rights organisation 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. 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. KHRP is both a registered charity and limited company, and is funded through charitable trusts and donations.

INTRODUCTION

- (1) KHRP submits this shadow report for consideration by the Committee Against Torture (CAT) at its examination in November 2010 of Turkey's third periodic report on its implementation of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ('the Convention'). The report summarises KHRP's main concerns about Turkey's failure to implement its obligations under the Convention with particular reference to the questions posed by the Committee.

- (2) When pursuing its policy of 'zero tolerance for torture', Turkey claims in its report's introduction that 'no effort is spared' in order to implement new legislative reforms and amendments. This stands in

stark contrast to the documented failures to implement its obligations under the Convention which are set out below.

- (3) Broadly speaking, the human rights situation in the Kurdish region of Turkey remains profoundly troubling. This fact was underlined in the aftermath of the local elections in March 2009, when hundreds of pro-Kurdish politicians and activists were investigated and detained.¹ It is also borne out by statistics prepared by KHRP's partner organisation *İnsan Hakları Derneği* (Human Rights Association of Turkey, İHD), which in the course of 305 cases of torture and ill treatment of detainees, 358 cases of torture and ill-treatment of persons outside of official places of detention, 34 cases of torture and ill-treatment by village guards, 397 cases of torture and ill-treatment in Prisons, 51 cases where individuals were threatened with torture or ill-treatment by law-enforcement officers, 565 cases where individuals were beaten and wounded by security forces during demonstrations, 10 cases of torture and ill-treatment by private security operatives working for security companies, 115 cases of violence in schools.²
- (4) There exist major barriers to accessing legal and medical assistance both for adult and child detainees, detainee's contact with their families is hindered due to arbitrary implementation of prison regulations and restrictions on the use of Kurdish languages during visits and communications, thousands of children have been detained in circumstances which violate numerous international human rights

¹ E.Hughes and S.Karakaş, KHRP FFM Report, *Human Rights in the Kurdish Region of Turkey: Three Pressing Concerns*, (KHRP, August 2009) 13.

² İHD 2009 Turkey Human Rights Violations Balance Sheet

principles including CAT, prison monitoring is ineffective and non-state supervised monitoring of prisons is nearly impossible, conditions in F-type prisons frequently fall far below international standards regarding protection from torture and inhuman and degrading treatment, Asylum seekers and immigrants face considerable hardships and are not guaranteed protections accorded to them by international law, a climate of impunity exists in relation to those accused of Torture, the evidential norms that exist in relation to allegations of torture are flawed, investigations into allegations of torture are frequently ineffective and lack independence, cross border operations carried out by Turkey in Iraq disregard the impact on civilians and result in violations of CAT, counter terror operations put civilians including children at risk of torture, violence against women – both at the hands of the state and private individuals is not being effectively dealt with, women and young girls continue to be vulnerable to human trafficking and forced prostitution, human rights defenders are targeted specifically because of their work, measures put in place to compensate internally displaced persons are ineffective and do not provide redress, public awareness and education measures are neither comprehensive nor effective and meaningful engagement with civil society particularly Kurdish civil society on issues surrounding the eradication of torture is non-existent.

- (5) Turkey states that the Optional Protocol to the Convention against Torture (OPCAT) will be ratified as soon as a domestic monitoring mechanism is put in place. Five years have now passed since Turkey signed the OPCAT. It has neither given any timetable for when preventive mechanisms can be expected to come into place, nor has it

supplied any detailed information regarding what concrete steps have been made to establish such a mechanism. Turkey has also not given any information as to what kind of monitoring mechanism can be expected.

(6) Turkey refers to a statement made by the President of the European Committee for the Prevention of Torture (CPT) at the Meeting of the Committee of Ministers' Deputies, Council of Europe, on 13 October 2004, stating that 'it would be difficult to find a Council of Europe member State with a more advanced set of provisions in the area'. However, in addition to the failures to implement these provisions set out below Turkey has made many legislative amendments in recent years that do not support this statement, the most controversial being the draconian anti terror legislation, which affects the Kurds more than any other group. Under this piece of legislation human rights defenders and even children are increasingly arrested and detained as political prisoners many of them suffering treatment which violates both CAT and other international human rights instruments to which Turkey is a party.

(7) Therefore, it can hardly be said that Turkey's legislative stance on these issues are 'advanced'. In fact, Turkey continues to violate many provisions of the Convention both through its failure to implement provisions which are on the statute books, and through its oppressive laws that disproportionately violate the rights of the Kurds.

ARTICLE 2

- (8) In the KHRP publication *Torture in Turkey: an Ongoing Practice*, the authors observed in Turkey 'a shift from flagrant to more subtle forms of ill-treatment, leaving few traces or long-term physical signs, as well as an increase in incidences of ill-treatment outside official detention centres.'³ It is certainly the case that allegations of the more extreme forms of torture were rare, with most claims of torture referring to casual violence by guards, and 'emotional/psychological torture' such as the deprivation of visiting rights, censorship, isolation and various general complaints relating to the hardship of prison life. Though it is not possible to be confident that the more 'extreme' forms of torture are a thing of the past, there was a general acceptance that the flagrant forms of ill-treatment such as 'Palestinian hanging', falaka and electric shocks, commonly used in prisons and police stations in the 1980s and 1990s, were no longer a common occurrence. As Serder Çelebi of İHD Diyarbakır told KHRP, 'This extreme type of torture is no longer used, though there is the possibility of isolated incidents.'⁴ That said it is clear from the evidence highlighted below that there are serious and real concerns regarding the implementation of CAT in order to prevent incidents of torture and inhuman and degrading treatment or punishment from occurring.

Legal assistance

³ Yildiz and Piggott, *Torture in Turkey: An Ongoing Practice*, KHRP, London, 2007, p 14

⁴ KHRP FFM Report, *Closed Ranks: Transparency and accountability in Turkey's prison system* (KHRP, London, April 2009), p39

- (9) Turkey claims that it has provided an effective legal aid system under the provisions of the new Criminal Procedure Code No. 5271,⁵ and that it has taken further steps regarding the confidentiality, length and venue of the meetings between the detainees and their lawyers, ensuring that all detainees have access to a lawyer.⁶ There is, however, evidence proving that although such positive legislative measures have been introduced, they are persistently followed with a lack of thorough implementation.
- (10) Confidentiality of contacts between a prisoner and his lawyers is a fundamental safeguard against ill-treatment⁷ however, in Turkey there is a systematic prohibition of confidential contacts between prisoners and their lawyers.⁸ In one reported case, a prisoner and his lawyers were seated behind tables at two opposite sides of the room (at a distance of several metres), with a prison officer sitting at another table in between and directing the microphone of the recording device at whoever was speaking.⁹ In a ruling in an earlier KHRP-assisted case in 2005, the Grand Chamber of the European Court of Human Rights (ECtHR) noted that there are indeed circumstances in which restrictions can legitimately be imposed on an accused's access to a

⁵ CAT/C/TUR/3, 26 January 2010, Consideration of reports submitted by States parties under article 19 of the Convention, Turkey, 30 June 2009, p 7, paragraphs 17.

⁶ CAT/C/TUR/3, 26 January 2010, Consideration of reports submitted by States parties under article 19 of the Convention, Turkey, 30 June 2009, p 8, paragraphs 23.

⁷ See CPT/Inf (2008) 13 *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, paragraphs 20.

⁸ Since this issue is the subject of a complaint which is currently pending before the European Court of Human Rights, the Committee refrained from making further remarks about the precise modalities of the meetings with the lawyers in its 2010 report.

⁹ See CPT/Inf (2010) 20 *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, Footnote note. 13.

lawyer if good cause exists. In the same case, however, the Grand Chamber ruled that in the circumstances under consideration, in which the applicant and his lawyers had been unable to communicate out of the hearing of the authorities at any stage, the rights of the defence were infringed.¹⁰

- (11) It is also concerning that prisoners' legal representatives are facing major restrictions accusations of conducting 'secret communications' with their clients and frequently have to defend themselves in malpractice cases aimed at obstructing their ability to represent their clients.¹¹ New provisions introduced in 2005 under Article 151 and related provisions in Articles 220, 257 and 314 of the Criminal Procedural Code provide for the suspension of a lawyer for a year, with up to two six month extensions, on the commencement of proceedings against him for various forms of misconduct, including praising, aiding or abetting a criminal organisation.¹² Lawyers are being obstructed in the conduct of their duties, since filing a case against a lawyer is a very easy process and does not depend on a judgment having been determined against the lawyer. Thus, lawyers can face suspension on the foot of spurious cases filed against them.¹³ A fact finding mission by the Haldane Society in 2009 found that since 2005 when the provisions were introduced, 12 lawyers had been

¹⁰ ECtHR Grand Chamber Judgment in *Öcalan v. Turkey* (Application no. 46221/99), 12 May 2005.

¹¹ FFM interview with Diyarbakır Bar Association representatives, 19 December 2008. Many of Öcalan's lawyers are from Diyarbakır and would be members of this Bar Association.

¹² See Bowring, Bill; Hobson, John; Punto, Ville; Rought-Brooks, Hannah: *Conditions of Detention in Turkey: Blocking Admission to the EU*, Haldane Society of Socialist Lawyers, London, February 2009, pp 37-41. The report gives the example of one of Öcalan's lawyers, Özgür Erol, who was accused of praising a terrorist organisation for referring to his client as 'Mr Öcalan' instead of 'Öcalan'. He was suspended from practice (cf p 39).

¹³ Bowring, Bill; Hobson, John; Punto, Ville; Rought-Brooks, Hannah, above, p 38.

subjected to this process and had been suspended from practice for periods of one to two years.¹⁴ As a result of the cases having been filed, these lawyers are not allowed to represent their clients. It is believed that since 2009 a number more lawyers have been subjected to such restrictions.

- (12) In short, there is a routine misuse by Turkish prosecutors of provisions within the Criminal Code to take politically-motivated and malicious cases against publishers, politicians and public figures in order to obstruct or silence them.¹⁵ It is unfortunate that the provisions for suspending lawyers seem to be used in a similar way.¹⁶ As a result, Turkey not only fails to provide an effective legal system regarding prisoners' rights to legal assistance but also by suspending lawyers thereby preventing prisoners of enjoying this very fundamental right.
- (13) Many of the thousands of children in Turkey, some as young as 12, who have been prosecuted under anti-terrorism legislation, solely for their alleged participation in demonstrations considered by the government to be in support of terrorism, have not received the legal protections for children in pre-charge detention. Amnesty International has reported that children accused of participation in demonstrations are detained in adult police custody in the Anti-Terror branch rather than the Children's branch of police stations where they

¹⁴ Bowring, Bill; Hobson, John; Punto, Ville; Rought-Brooks, Hannah above.

¹⁵ See, for example, *Persecuting Publishers, Stifling Debate: Freedom of Expression in Turkey*, KHRP, London, May 2008. Indeed, during the mission's interview with Eren Keskin on 15 December 2008 in Istanbul, Ms Keskin informed us that there are 21 cases currently against her on freedom of expression-related charges.

¹⁶ KHRP FFM Report, *Closed Ranks: Transparency and accountability in Turkey's prison system* (KHRP, London, April 2009), 73-75.

are often subjected to unofficial interrogation in the absence of lawyers or social workers. Records of these statements are often later used as evidence in the children's prosecutions.¹⁷

Medical Assistance

- (14) It is evident to KHRP that Turkey continues to fail to provide necessary medical attention to detainees. In this regard, Turkey neither addresses the concerns outlined by KHRP or other civil societies nor does it commit to a review of healthcare services.
- (15) It is the contracting state's responsibility to "ensure that prisoners enjoy a level of medical care equivalent to that provided to persons in the outside community, which implies the greatest possible participation of the Ministry of Health in the field of prison health care. Particular attention should be given to the principles of the independence of prison doctors in the performance of their duties and of medical confidentiality, as well as to the specific training required by such doctors for them to perform their duties satisfactorily."¹⁸ However, prisoners in Turkey regularly face difficulties such as inadequate or inconsistent access to medical treatment along with the deliberate withholding of the same.¹⁹ These failings are illustrated by the death of Selçuk Güvenilir, a prisoner from Tekirdağ Type Closed

¹⁷ Amnesty International Press Release "Turkey must stop unfair prosecutions of children under anti-terrorism laws 17 June 2010.

¹⁸ See CPT/Inf (2006) 30, *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, paragraph 57.

¹⁹ KHRP FFM Report, *Closed Ranks: Transparency and accountability in Turkey's prison system* (KHRP, London, April 2009), 32.

Prison on 7 September 2010 as a result of the failure to ensure access to emergency medical attention.²⁰

- (16) Seriously ill prisoners may in certain circumstances be granted an amnesty which will allow them to be released to hospital for necessary medical treatment.²¹ Only in such cases where an amnesty is granted will these prisoners have the opportunity to receive the required standard of care. In many cases, however, seriously suffering prisoners are not transferred to hospital despite requiring such treatment and in cases like Selçuk Güvenilir referred to above prisoners have died as a result.²² Delays spanning months in basic diagnoses such as x-rays; the prohibition of supplementary nutrition provided by family; the absence of permanent on-site medical staff; inadequate treatment by staff (for example, in the provision of painkillers); and inordinate waiting times for transfer to hospital when seriously ill, are common complaints by prisoners in the area of healthcare provision.²³ In these circumstances, a prison health service cannot be expected to perform

²⁰ Human Rights Foundation of Turkey, accessed on 28th September 2010 > <http://www.tihv.org.tr/index.php?28-September-2010-Daily-Human-Rights-Report>.

²¹ FFM interview with Öztürk Türkođan, Chair of İHD, Ankara, 17 December 2008. The mission was provided with a list of 306 ill prisoners in need of urgent treatment, compiled by İHD from January – September 2008 (their conditions included cancer, heart conditions, diabetes and asthma): Ocak - Eylül 2008 Döneminde Cezaevlerinde Bulunan Hasta Tutuklu ve Hükümlülerin Listesi (List of Ill Convicts and Detainees in Prisons in the Period January to September 2008), İHD Headquarters, Ankara, October 2008. Available online at: http://www.ihd.org.tr/images/pdf/2008_yili_hasta_tutuklu_ve_hukumlulerin_listesi.pdf (last accessed 7 September 2010).

²² Mr Türkođan cited an incident in June 2008 where İHD made representations to the Ministry of Justice and the execution judge on behalf of a prisoner in Siirt Prison, Mr Ali Çekel, who was suffering from a serious liver condition. İHD called for his immediate release to hospital for treatment of his condition, but to no avail, and Mr Çekel died of his condition the following week.

²³ KHRP FFM Report, *Closed Ranks: Transparency and accountability in Turkey's prison system* (KHRP, London, April 2009),34.

its tasks in an effective manner and anomalous situations will inevitably arise.²⁴

- (17) Further prison doctors have been shown in many cases to lack independence in the performance of their duties. As documented in a trial observation report published by KHRP in 2009 on the killing of Engin Ceber²⁵, Dr Birgen was suspended from practice for six months by the Turkish Medical Association (TTB) after examining seven detainees in 1995 and reporting them to be in good health, ignoring the fact that they had been tortured. Despite this, Dr Birgen was subsequently appointed head of the governmental Forensic Medicine Institute's (FMI) Third Specialised Committee. In that post, she produced a medical report on two hunger-strikers confirming their continued fitness to be detained, despite the fact that they were both suffering from Wernicke-Korsakov syndrome (a brain disorder caused by a lack of thiamine, or vitamin B). For her authorship of that report, she was suspended from practice for one month and fined by the TTB. In December 2002, she was once again found to have issued medical reports concealing torture and was sentenced to three months in jail, though this was later commuted to a nominal fine. Despite this record of well-publicised malpractice, the state not only maintained Dr Birgen's employment but appointed her in 2006 to lead a 3 million Euro EU-sponsored training programme for judges and prosecutors. She was only replaced after the TTB and The Human Rights

²⁴ See CPT/Inf (2006) 30, *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, paragraph 56.

²⁵ M.Himsworth, KHRP Trial Observation Report, *The Death of Engin Cerber: Prosecuting Torture and Ill Treatment Within the Turkish Detention System*, (KHRP June 2009)

Foundation of Turkey (TIHV) spent over two years contesting her appointment and ultimately threatened to withdraw from the programme.²⁶

- (18) The concerns highlighted above in relation to adult prisoners apply equally and sometimes more worryingly to children who are in detention with the Turkish State failing to provide for the special needs of children, young persons and vulnerable adults.
- (19) In short, since the release of the 2006 Committee for the Prevention of Torture (CPT) report, it is not clear that there have been any concrete improvements in the provision of health care in Turkish prisons and places of detention. There is an immediate need for the Turkish authorities to heed the recommendation of the CPT, also echoed by domestic human rights NGOs, and conduct a full review of the state's prison healthcare provision system.²⁷

Detainees contact with their families

- (20) Arbitrary withholding of visiting rights by prison authorities and unnecessary and malicious obstacles to family visits, particularly in reaction to protests or the use of the Kurdish language, are major issues facing Kurdish prisoners in Turkey. The denial of language rights to prisoners and their families during visits, along with general

²⁶ Trial Observation by the Kurdish Human Rights Project and the Norwegian Bar Association, An observation of trial proceedings against Şebnem Korur Fincancı, the chairwoman of Human Rights, Foundation of Turkey (TIHV) and journalist Barış Yarkadaş, 16–18 June 2010.

²⁷ KHRP FFM Report, *Closed Ranks: Transparency and accountability in Turkey's prison system* (KHRP, London, April 2009), 32-35.

prohibitions of conversations, correspondence and reading material, emerges as a common problem amongst former political prisoners and other prisoners of Kurdish origin, as well as their families. Also it appears that prohibitions on Kurdish and other languages are applied inconsistently, arbitrarily and not necessarily in accordance to a set of rules and regulations specifically covering non-Turkish languages.

- (21) All prisoners serving an aggravated life sentence are in principle allowed to receive two one-hour visits from relatives per month, one being a closed visit and the other one taking place under open conditions (a "table visit").²⁸ Some prisoners are effectively excluded from receiving "table visits" from members of their family and are not allowed to accumulate unused visiting periods.²⁹ Some are also not allowed to have any telephone contacts with their relatives.³⁰
- (22) It seems that these restrictions and denial of visiting rights are designed as a measure to punish the families as much as the prisoner.³¹ Families, especially families of Kurdish political prisoners, are being treated in an undignified manner by prison guards. During an interview with a sister of a prisoner imprisoned in Muş prison for PKK membership, she described how she and her family had been treated

²⁸ See CPT/Inf (2010) 20 *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, paragraphs 24.

²⁹ See CPT/Inf (2010) 20 *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, paragraphs 25.

³⁰ See CPT/Inf (2010) 20 *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, paragraphs 28.

³¹ Mr Fahrettin Keskin (mentioned above) told the mission that his son is punished with regular denials of family visits for protesting the failure to adequately treat his diabetes. This has meant that Mr Keskin's son has not seen his mother in over four years. This situation will be dealt with in more detail later in the report.

by guards during the search on entry to the prison to visit her sister. She described being obliged to strip and having her clothes scrutinised in detail, including the removal of metal and plastic from her bra. She was also subjected to an 'intimate' body search, during which she experienced verbal abuse.³² She claimed that the search procedure previously consisted of a regular body search, but that this had changed recently on the arrival of a new governor. Other claims have been made of undignified treatment of visiting families by prison bureaucracy, such as deliberate cancellations of visits for families who had traveled far, or the deliberate refusal to schedule specific visiting times, obliging families to wait for hours, often outdoors in the cold.³³ Another issue is that many prisons are located well out of public transport range, making visits difficult and expensive, especially for poorer families.³⁴ Though security checks are necessary in a prison context, and although there will naturally be a degree of distress and inconvenience caused to families in visiting incarcerated loved ones, the onus is on the Turkish authorities to facilitate visits in a respectful and dignified manner, both in discharging security duties, and allowing access to the prison.³⁵

³² The mission members attempted to clarify what was meant by this, however she was unwilling to go into any further detail due to the presence of men in the room. Discussion of this was the cause of some embarrassment for her, so the mission continued with its questions. It can be assumed, however, that the nature and the extent of the search was beyond what would be considered appropriate or dignified.

³³ FFM interview with representatives of TUAD-DER, Diyarbakır, 19 December 2008; FFM interview with representatives of Mardin Bar Association, Mardin, 18 December 2008.

³⁴ FFM interview with representatives of TUAD-DER, Diyarbakır, 19 December 2008. This complaint also appeared in a January 2008 report handed to the mission by the Contemporary Lawyers Association in İstanbul on 15 December 2008, entitled *Çağdaş Hukukçular Derneği İstanbul şubesi, Cezaevi İzleme Komisyonu, Ocak 2008 Raporu*.

³⁵ KHRP FFM Report, *Closed Ranks: Transparency and accountability in Turkey's prison system* (KHRP, London, April 2009), 57.

- (23) On a more positive note, on 15 January 2009, Turkish prison authorities announced the launch of a pilot videoconferencing family visit facility to enable far-away families to communicate with inmates.³⁶ Nizamettin Kalaman, the head of the Turkish General Directorate of Prisons, is reported to have announced that the plan is being piloted in Sinan prison before his office considers whether or not to establish it in other prisons.³⁷ It is not clear whether this facility will be implemented throughout Turkey and even if it is the facility will only be made available to families in possession of the necessary technology, it is unlikely, however, that this measure will have a pronounced effect on the visiting conditions of most prisoners' families in Turkey.³⁸
- (24) Prisoners' legal representatives told the KHRP in İstanbul of the *de facto* prohibition of the use of Kurdish languages to their clients during family visits and in correspondences, stating that these prohibitions are widespread in all F-type prisons.³⁹ A former Kurdish political prisoner, İmam Canpolat, stated to KHRP that during his incarceration from 1999 to 2005, he and other Kurdish prisoners were expressly told that they could not communicate in Kurdish on the telephone.⁴⁰ Their line would immediately be cut if they did, and a disciplinary punishment would be applied. He also stated that since his release he has heard from prisoners of a number of instances where inmates were

³⁶ 'Inmates to converse with family members in Kurdish', Today's Zaman, 15 January 2009.

³⁷ 'Inmates to converse with family members in Kurdish', Today's Zaman, 15 January 2009.

³⁸ KHRP FFM Report, *Closed Ranks: Transparency and accountability in Turkey's prison system* (KHRP, London, April 2009), 36-37.

³⁹ FFM interview with lawyers of Asrın Law Office, İstanbul, 15 December 2008.

⁴⁰ FFM interview with İmam Canpolat, Prisoner's Families Association (TUAD-DER) Ankara Branch, 17 December 2008.

obliged to pay for a translation of correspondence into Turkish for censorship purposes.⁴¹ Havva Özcan, the manager of the Prisoners' Families Association in Ankara that conducts regular visits to prisoners as their appointed guardian in Kırıkkale and Sincan prisons, has encountered the prohibition of Kurdish on a regular basis.⁴² During her interview with the KHRP in 2008, she stated that visits are monitored and that any attempt to speak Kurdish prompts an interruption by the prison guards.⁴³ She added that one of the prisoners she visits as a guardian is a Syrian Kurd with whom she shares only Kurdish as a common language. The use of the language is nonetheless denied. A family member of one prisoner told KHRP that guards specifically forbade Kurdish, telling her they could speak Arabic, English, or any other language, as long as it is not Kurdish.⁴⁴ Although this complaint has been an extremely common one amongst interviewees, it has not been appropriately addressed.⁴⁵

- (25) There is no lawful basis for the prohibition of the use of Kurdish or other languages during visits or in correspondence. In fact, such prohibitions are 'completely illegal'⁴⁶. Despite this, Turkish prison authorities routinely impose punishments for the use of Kurdish, and these punishments are usually upheld by Execution Judges as being in

⁴¹ The mission was informed by the Chair of İHD, Mardin Branch, that an October 2008 ruling by the Mardin Appeal Court deemed it unlawful to require prisoners to pay for translations from Kurdish. This was the only example heard by the mission of any ruling in favour of a prisoner on a Kurdish language issue. The İHD Mardin Chair told the mission he was not aware of any similar instances.

⁴² FFM interview with Havva Özcan, Prisoner's Families Association (TUAD-DER) Ankara Branch, 17 December 2008.

⁴³ FFM interview with Havva Özcan, Prisoner's Families Association (TUAD-DER) Ankara Branch, 17 December 2008.

⁴⁴ KHRP FFM Report, *Closed Ranks: Transparency and accountability in Turkey's prison system* (KHRP, London, April 2009), 58.

⁴⁵ FFM interview with representatives of Diyarbakır Bar Association, 19 December 2008.

⁴⁶ FFM interview with lawyers of Asrın Law Office, İstanbul, 15 December 2008.

line with prison rules.⁴⁷ Since there is no ban on Kurdish in the private sphere there is an acute contradiction in denying prisoners the right to speak in Kurdish amongst themselves and their families.⁴⁸ In short, the exact basis if one exists, remains unclear upon which such prohibitions of the use of Kurdish are justified. The Application of such restrictions clearly have an impact on the ability of Kurdish prisoners to have access to their families and in some cases even access to legal assistance.

Children and other safeguards against ill-treatment and torture

- (26) It is accepted that some efforts have been to construct a child-friendly judicial system in Turkey. The Child Protection Law contains the security and protection measures applicable to children.⁴⁹ Also, the right of children to a fair trial is further protected by more general reforms enacted in 2002.⁵⁰ This legislative reform does in many ways appear to comply with the United Nations Standard Minimum Rules for the Administration of Protection of Juveniles Deprived of Their Liberty (the Havana Rules).⁵¹ However, despite the apparent strengths of the legislation, numerous problems remain with regards to the application of the law and its effective implementation.⁵² Provisions for special protection measures under the Child Protection Law which

⁴⁷ FFM interview with Eren Keskin, Istanbul, 15 December 2008.

⁴⁸ FFM interview with Akin Birdal MP, Turkish Grand National Assembly, Ankara, 17 December 2008. The new state-run Kurdish-language television channel TRT6 officially began broadcasting on 1 January 2009.

⁴⁹ KHRP FFM Report, *The situation of Kurdish children in Turkey* (KHRP, London, January 2010), 123.

⁵⁰ KHRP FFM Report, *The situation of Kurdish children in Turkey* (KHRP, London, January 2010), 126.

⁵¹ KHRP FFM Report, *The situation of Kurdish children in Turkey* (KHRP, London, January 2010), 150.

⁵² KHRP FFM Report, *The situation of Kurdish children in Turkey* (KHRP, London, January 2010), 126.

acknowledge children as a vulnerable group, are often ignored.⁵³ For example according to the Child Protection Law, a social service officer can be present when a child's statement is taken by the Public Prosecutor or during other procedures the Public Prosecutor carries out. This is obviously crucial to ensuring that the Child's basic rights are protected. However, based on reports, social service officers are not present during procedures carried out by the Public Prosecutor.⁵⁴

- (27) Cases regarding children between 15 and 18 years of age are sometimes joined with those of adults and this occurs in cases involving children as young as 14.⁵⁵ Further, a key problem identified is that although legal children must be assigned a lawyer, İHD only has the right to assign the lawyer if there have been allegations of 'conventional' torture or other ill-treatment.⁵⁶ A case of a 16 year old boy was reported to KHRP by members of the Prisoner's Family Association in which it was said that during the first 48 hours that the boy was held in custody, his family had no idea where he was and were only informed much later as to his purported whereabouts and that they could instruct a lawyer on his behalf. Not until the lawyer first gained access to the child did the family then discover that he had been sent to a police station on the other side of town from where they had been told he was being held. The family tried to visit the child at this point but were refused access and had to wait a further three days to see him.⁵⁷

⁵³ KHRP FFM Report, *The situation of Kurdish children in Turkey* (KHRP, London, January 2010),

⁵⁴ Telephone interview with Mr. Selahattin Coban, Chairman, Mazlumder, 13 November 2009

⁵⁵ FFM interview with Mr. Muharrem Erbey, Chairman, İHD Diyarbakır Branch, 18 June 2008, Diyarbakır.

⁵⁶ KHRP FFM Report, *The situation of Kurdish children in Turkey* (KHRP, London, January 2010), P. 138.

⁵⁷ KHRP FFM Report, *The situation of Kurdish children in Turkey* (KHRP, London, January 2010), 139.

(28) Thousands of children, some as young as 12 years of age, have been prosecuted under anti-terrorism legislation as a result of their participation or attendance in demonstrations. In 2008, 228 children were convicted on anti-terror related charges according to the provisional number given by the Turkish Minister of Justice in the Grand Assembly in December 2009. By the end of October 2009, 103 children in Adana alone were convicted for being members of, and making propaganda for, an illegal organisation,⁵⁸ (corresponding figures for İstanbul, Cizre and Diyarbakır were unavailable). The fact that many children are tried and convicted as adults is a gross violation of their rights as children. The ensuing psychological and social impact of this abuse of children's rights as a major social challenge is undeniable.⁵⁹

(29) Although Turkish law states that children cannot be held alongside adults (and should this be the case, then children cannot be arrested or held), the children detained during protests to mark the anniversary of the capture of Abdullah Öcalan on 15 February 2008 were reportedly held with adults due to the insufficient capacity of the prison.⁶⁰ On the same date, eight children were detained and beaten very badly. These were children who had witnessed the death of the boy who had been run over by security forces. They were allegedly the victims of verbal assaults, and some were said to have suffered broken noses and other

⁵⁸ Gündem Online 'Adana'da 103 çocuğa 475 yıl hapis cezası', 23 October 2009, at <<http://www.gundem-online.net/haber.asp?haberid=80559>>.

⁵⁹ KHRP FFM Report, *The situation of Kurdish children in Turkey* (KHRP, London, January 2010), 141.

⁶⁰ FFM interview with Ms. İlknur Yokuş Tanış, Head of the Women and Children Commission, Mr. Nürürevan Elai, Chair, and Ms. Rüyâ Elai, and Ms. Dirşeng Bartan, Şırnak Bar Association, 22 June 2008.

injuries. They were also threatened with sexual abuse, being told that they would be raped that night. The rest of the children were detained during the protests taking place over the following days. These children also allegedly suffered ill-treatment, although it was of a less severe nature than the initial eight children.⁶¹ The police have stated that the injuries identified in the medical report were inflicted when the children were resisting arrest.⁶² It has been reported that doctors are often too afraid to state in medical reports that the children are suffering from visible injuries.⁶³ Further, due to lack of modern technology at hospitals, many internal injuries are not diagnosed even when children are actually assessed.⁶⁴

- (30) In short, even where positive legislative measures have been introduced, they are persistently followed with a lack of thorough implementation. The numerous gaps that exist between legislative content and its application in practice have to be filled in order to ensure Kurds benefit from the safeguards against ill treatment and torture. In all areas this will require considerable levels of investment and planning to improve the infrastructure and services provided. This must be led by the central government. In regard to children especially, at present they receive little special attention due to their status, and the Turkish central government does not have a national policy or strategic plan directed at children.⁶⁵

Inspection of prisons and places of detention

⁶¹ FFM interview with lawyer, Mr. Rojhat Dilsiz, 23 June 2008, Cizre.

⁶² FFM interview with lawyer, Mr. Rojhat Dilsiz, 23 June 2008, Cizre.

⁶³ FFM interview with lawyer, Mr. Rojhat Dilsiz, 23 June 2008, Cizre.

⁶⁴ KHRP FFM Report, *The situation of Kurdish children in Turkey* (KHRP, London, January 2010), 144.

⁶⁵ KHRP FFM Report, *The situation of Kurdish children in Turkey* (KHRP, London, January 2010), 153.

- (31) Turkey states in its report that “with a view to preventing torture and ill-treatment, prisons are subject to national and international inspections including by 131 national independent monitoring mechanisms, 141 Offices of the Execution Judge as well as international inspection mechanisms such as CPT.”⁶⁶ Turkey also states that “Human Rights Boards have almost 14,000 non-governmental members from civil society organizations, trade unions, chambers of professions, academia, human rights experts, local press and political party representatives.”⁶⁷ It has been proved, however, that Prison Monitoring Boards lack real independence and do not work in cooperation with some civil society organisations including Mazlum-Der, ignoring their reports and concerns. Lawyers working with the Mazlum-Der human rights organisation in Ankara also express the view that the boards are neither independent nor effective in highlighting human rights abuses in Turkish prisons.⁶⁸ Complaints include the fact that the Ministry of Justice assigns members without seeking recommendations from professional associations such as bar associations, instead favouring figures sympathetic to the state such as retired judges and prosecutors. As a result, there is little independent civilian participation in such councils. Given this lack of independence, prison-monitoring boards are essentially used in order to counter complaints by NGOs that prisons are not adequately monitored. As

⁶⁶ CAT/C/TUR/3, 26 January 2010, Consideration of reports submitted by States parties under article 19 of the Convention, Turkey, 30 June 2009, p 12, paragraphs 52.

⁶⁷ CAT/C/TUR/3, 26 January 2010, Consideration of reports submitted by States parties under article 19 of the Convention, Turkey, 30 June 2009, p 14, paragraphs 61.

⁶⁸ KHRP FFM Report, *Closed Ranks: Transparency and accountability in Turkey's prison system* (KHRP, London, April 2009), 26.

long as the monitoring boards are government-appointment, their work will remain 'completely ineffective'.⁶⁹

- (32) The year 2003 saw the establishment of provincial and sub-provincial human rights boards. According to the Turkish government, as of 2006 these boards were up and running in 81 provinces and 850 districts, and were:

"authorised to visit relevant institutions and organisations to monitor on-site human rights practices, examine police stations and custody supervision forms, deliver recommendations to relevant authorities on eliminating defects -if any-, advise on improving custody conditions and making them compatible with the relevant legislation, conduct investigation and research to ensure that suspects' rights are effectively implemented, investigate applications concerning allegations of human rights violations, evaluate the results of investigations and researches conducted, submit their conclusions to offices of public prosecutors or relevant authorities on the basis of their subject matter, and follow the outcome."⁷⁰

- (33) The human rights boards (HRBs) also, according to the Turkish government, 'carry out awareness-raising activities in the field of fighting against torture and ill-treatment through their work in the

⁶⁹ FFM Interview with representatives of the Contemporary Lawyers' Association, İstanbul, 15 December 2008.

⁷⁰ See CPT/Inf (2006) 31, *Response of the Turkish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Turkey from 7 to 14 December 2005*, paragraph 11.

form of seminars, panels, meetings and publications⁷¹ in cooperation with the Human Rights Presidency of the Prime Ministry. However, in practice it is evident that there is a lack of engagement among the Presidency and its boards with the Kurdish question.⁷²

- (34) Between October 2004 and March 2005, HRBs received 565 complaints of human rights abuses despite a considerably higher number of abuses reported in total, bringing into question the efficacy and visibility of the Boards. The Boards vary in effectiveness, and their independence has been questioned by some Turkish human rights NGOs.⁷³
- (35) Local HRBs are slightly more effective than prison monitoring boards in terms of meaningful monitoring, though with the exception of Izmir prison, by 2008 they had only inspected police stations.⁷⁴ There remain concerns with HRBs, as they too are appointed in an undemocratic fashion, that is, directly by district deputy governors, without consultation with professional bodies.⁷⁵ As such, they lack real independence.

⁷¹ See CPT/Inf (2006) 31, *Response of the Turkish Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Turkey from 7 to 14 December 2005*, paragraph 12.

⁷² Marlies Casier, 'Contesting the 'Truth' of 'Turkey's Human Rights Situation: State-Association Interactions in and outside the Southeast', *European journal of Turkish studies*, 2009 > <http://ejts.revues.org/index4190.html> (accessed on 6 October 2010).

⁷³ Yildiz and Piggott, fn. 14 above, p 57.

⁷⁴ FFM interview with representatives of Mazlum-Der, Ankara, 17 December 2008.

⁷⁵ According to Yildiz and Piggott, 'Provincial HRB's are made up of the mayor or deputy mayor, the provincial head or a selected representative of the political parties represented, university rectors or a lecturer, a lawyer or a public official who is a law school graduate, as well as representatives from the Bar Association, Turkish Medical Association, the chamber of industry or commerce, the provincial general assembly, and other professional organizations.' Yildiz and Piggott, *Torture in Turkey: An Ongoing Practice*, KHRP, London, 2007, p 57.

- (36) Beyond the state-appointed execution judges, prison monitoring boards and human rights boards, there are no provisions in Turkish penal regulations for civil society or NGO oversight of prison conditions. Non-state supervision or monitoring of prisons in Turkey is nearly impossible.⁷⁶ This effectively means that, aside from occasional visits by the CPT and UN Special Rapporteurs, the Turkish prison system operates with no accountability to non-state actors, and with no obligation to consider civil society's concerns. The Turkish authorities not only need ratify OPCAT and to institute functionally independent monitoring mechanisms including the creation of an independent prison Ombudsman⁷⁷, but need to be seen to do so. This should be done in full consultation and through engagement with civil society. Until trust can be placed in the monitoring of Turkey's prison system, violations of prisoners' rights, and allegations thereof, will continue.⁷⁸

F-type prisons

- (37) Turkey has persistently failed to heed the calls of the CPT and Turkish civil society for adequate communal activities for prisoners incarcerated in F-type prisons. Indeed conditions in F-type prisons frequently fall far below international standards regarding protection from torture and inhuman and degrading treatment or punishment.

⁷⁶ The mission applied to the Directorate of Prisons to visit Diyarbakır E-type prison and was refused, on the basis that a visit by an NGO was not permitted by law.

⁷⁷ The Chair of the Human Rights Presidency of the Turkish Prime Ministry, Hasan Tahsin Fendoğlu, recommended the establishment of a prison Ombudsman during an interview with the television channel NTV in October 2008. However, at the time of writing no proposed legislation has been put forward for setting up such a body.

⁷⁸ KHRP FFM Report, *Closed Ranks: Transparency and accountability in Turkey's prison system* (KHRP, London, April 2009), 28.

- (38) The CPT has expressed its concern for example that prisoners who have recently been transferred there face a much more restricted regime than that provided at Bolu and Kırkkale F-type Prisons where they had previously been incarcerated.⁷⁹
- (39) The Turkish prison system remains very much open 'to the accusation of perpetuating a system of small group isolation'.⁸⁰ Holding prisoners in small groups, with little or no access to their cohort and with minimal access to their families through fortnightly visits and phone calls, can have a similar effect to solitary confinement on an individual. Wider human contact is essential to a prisoner's well being. The Turkish Human Rights Foundation (TIHV) pointed this out to members of a Haldane Society mission to Turkey in February 2008 when they stated that 'the consequences of small group isolation are similar to those in solitary confinement with attendant direct impacts on the physical integrity of prisoners and their psychological health.'⁸¹ Additionally, as the CPT stated in its 2006 report: "an isolation-type regime ... can have very harmful consequences for the person concerned and can, in certain circumstances, lead to inhuman and degrading treatment."⁸² As the Haldane Society mission asserted, in order to guarantee the freedom of prisoners from ill-treatment in F-type prisons, a comprehensive system of communal recreation and

⁷⁹ See CPT/Inf (2010) 20 *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, paragraph 16.

⁸⁰ See CPT/Inf (2010) 20 *Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*.

⁸¹ Bowring, Bill; Hobson, John; Punto, Ville; Rought-Brooks, Hannah: *Conditions of Detention in Turkey: Blocking Admission to the EU*, Haldane Society of Socialist Lawyers, London, February 2009.

⁸² CPT/Inf (2006) 30 paragraph 50.

activity time should be implemented throughout Turkey's F-type and similar prisons to ensure that the cell-accommodation system does not risk being, in effect, a small group isolation regime.⁸³

Creation of the "Public Inspector"

(40) The Turkish Parliament adopted the Ombudsman Law No. 5548 on 28 September 2006. Subsequently, however, the former President of the Republic of Turkey and some members of Parliament appealed to the Constitutional Court for the annulment of some articles of the said Law. In response, the Constitutional Court immediately decided for the suspension of the execution of the Ombudsman Law, and on 25 December 2008, the Court unanimously decided to abrogate the Law on grounds that it was not in conformity with the Constitution.⁸⁴

(41) In its response to the Committee's question, Turkey states that "preparatory work on the legal framework for a National Human Rights Institution is carried out in parallel with the developments related to the Ombudsman Law". They suggest that "due attention is paid to the Paris Principles in the creation of the National Human Rights Institution", and also that "the Government aims to establish this institution as the domestic monitoring mechanism that will enable Turkey to ratify the Optional Protocol to the Convention against

⁸³ KHRP FFM Report, *Closed Ranks: Transparency and accountability in Turkey's prison system* (KHRP, London, April 2009), 49.

⁸⁴ CAT/C/TUR/3, 26 January 2010, Consideration of reports submitted by States parties under article 19 of the Convention, Turkey, 30 June 2009, p 16.

Torture (OPCAT)".⁸⁵ However, in their response, Turkish authorities do not clarify the mandate, resources and activities of the alleged National Human Rights Institution and its compliance with the Paris Principles relating to the status of national institutions for the promotion and protection of human rights. The questions of how Turkey intends to comply with Paris principles, and whether the authorities have any detailed information on the results of the Institution, have not been sufficiently answered by Turkish government. More clarification on the plan and steps of the alleged procedure is required.

Children

- (42) Thousands of children have been on trial before Special Heavy Penal Courts since the beginning of 2008. It has been revealed that 724 children were accused of terror charges in 2006 and 2007, as defined in Turkey's Anti-Terror Law. Three hundred and nineteen of these children were tried in courts in Diyarbakır; during the same period, another 422 children were tried under Article 220 of the Turkish Penal Code for 'organising to commit crime'. Yet another 413 children were accused of 'membership of armed organisations', as defined in Article 314 of the Penal Code.⁸⁶ İHD Diyarbakır Branch reports that approximately 500 children aged between 12 and 17 were on trial for

⁸⁵ CAT/C/TUR/3, 26 January 2010, Consideration of reports submitted by States parties under article 19 of the Convention, Turkey, 30 June 2009, p. 16.

⁸⁶ Bianet 'Act Now, Cease Trying Children with Terror Charges', 10 March 2009, at <<http://bianet.org/english/kategori/english/113053/act-now-cease-trying-children-with-terror-charges>> (last accessed 07 September 2010).

events that happened in 2008 alone,⁸⁷ and according to 'Call for Justice for Children Initiative,' 3,000 children have been on trial since September 2009. Hundreds of these children have already been sentenced to imprisonment of between six and 24 years for being members of an illegal organisation and for manufacturing propaganda.⁸⁸

- (43) Those who are incarcerated often face abuse under difficult prison conditions. Conditions in Turkish prisons remain poor, plagued by overcrowding, underfunding and insufficient training.⁸⁹ All children detained in the Turkish prison system have been subjected to severe abuse in detention.⁹⁰ Teenagers recall in interviews that they had been repeatedly beaten, threatened with death and rape, stripped naked, immersed in cold water, subjected to high pressure hosing and had cigarettes stubbed out on their bodies.⁹¹ Therefore, although all Kurdish children are under the threat of ill-treatment, those arrested in connection with political crimes appear to be at particularly high risk of being the victims of ill-treatment or torture regardless of their location.⁹² However, the severity of the violence the children are reported to be subjected to appears to be higher in the south-east and east, which appeared to be directly linked to the increasing tension in

⁸⁷ Bianet 'AKP and CHP Promise Change in Terrorism Law for Children' 19 February 2009, at <<http://bianet.org/english/english/112659-akp-and-chp-promise-change-in-terrorism-law-for-children>>, (last accessed 07 September 2010).

⁸⁸ KHRP FFM Report, *The situation of Kurdish children in Turkey* (KHRP, London, January 2010), 133.

⁸⁹ K.Yildiz and F.Piggott, *An Ongoing Practice: Torture in Turkey*, (KHRP 2007) 63.

⁹⁰ Traynor, 'Children of the Repression'; Kerim Yildiz, Rachel Bernu and Julianne Stevenson, KHRP FFM Report, *The situation of Kurdish children in Turkey*, (KHRP January 2010), 137.

⁹¹ Traynor, 'Children of the Repression'; Kerim Yildiz, Rachel Bernu and Julianne Stevenson, KHRP FFM Report, *The situation of Kurdish children in Turkey*, (KHRP January 2010), 137.

⁹² Kerim Yildiz, Rachel Bernu and Julianne Stevenson, KHRP FFM Report, *The situation of Kurdish children in Turkey*, (KHRP January 2010), 150.

the region.⁹³ Thus, the problems regarding the treatment of such children appear to be endemic.⁹⁴

- (44) The Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg wrote to the Turkish Minister of Interior on 8 June 2010 following a visit to Turkey in May 2010 outlining his concerns with regard to children detained, prosecuted and sentenced particularly under anti-terrorist legislation in east and southeast Turkey. He stated that during his visit to Diyarbakir in May he met with sixteen Kurdish boys and two girls aged from 15 to 18 and that while some of them had been detained already between six to nine months still awaiting their trial, others had been sentenced in the first instance to fifteen years of imprisonment for having caused disturbances during their participation in demonstrations considered to be supporting terrorism. None of them had been able to attend school while being detained and no satisfactory alternatives are being provided to ensure the children's right to education. He was also informed that some of the children had been beaten by members of the police force during the first hours of their arrest. He learned that at the end of 2009 more than 2500 children had been detained in Turkey with less than 10% of them eventually sentenced.

⁹³ Kerim Yildiz, Rachel Bernu and Julianne Stevenson , KHRP FFM Report, *The situation of Kurdish children in Turkey*, (KHRP January 2010), 150.

⁹⁴ Kerim Yildiz, Rachel Bernu and Julianne Stevenson , KHRP FFM Report, *The situation of Kurdish children in Turkey*, (KHRP January 2010), 151.

ARTICLE 3

(45) Immigrants, especially asylum seekers from non European states, face considerable hardships when fleeing to Turkey for safety. Turkey persistently fails to provide asylum seekers with basic human rights. The geographical limitation continues to be the primary cause of problems faced by asylum seekers.

Non European Asylum Seekers

(46) Non-European asylum seekers, once they manage to cross the border into Turkey, face numerous problems with health, housing and the refugee status determination (RSD) process itself. This is particularly problematic given that Turkey lies along major migration routes towards Europe from Africa, south and south-west Asia and the Middle East. Further, Turkey shares a 499km border with Iran and a 352km border with Iraq, both of which generate large numbers of refugees, particularly due to the continuing conflict and instability in Iraq and the widespread human rights violations committed in Iran, especially against its Kurdish minority.

(47) A number of directives set out provisions to reform the RSD process to bring it in line with EU and international standards.⁹⁵ Specifically within the context of the lifting of the geographical limitation, the National Action Plan envisages, among other things, that a country of origin and asylum information system be established, that premises for

⁹⁵ KHRP FFM Report, *Refusing Refuge: Investigating the Treatment of Refugees in turkey, Fact-Finding Mission Report*, (KHRP February 2007), 53.

the asylum unit be obtained, that reception and accommodation centres for asylum seekers be created, that a personnel training academy be established and that return centres be established. The target dates for the completion of these projects range from 2006 to 2012.⁹⁶ The National Action Plan envisages a study to be conducted which would investigate the expected increase in refugees arriving in Turkey following the lifting of the geographical limitation, cost projections for the creation of reception and accommodation centres, cost projections for the establishment of a personnel training academy, and cost projections for the financing of integration of migrants and refugees into Turkey.⁹⁷ However, it is not clear to what extent Turkey is committed to this process, nor how much impetus there is within the EU to push Turkey on the issue. Indeed, there is little information or guidance as to the current and future steps being taken by Turkey to meet its obligations and enact the Plan, indicative perhaps of their reluctance to introduce the necessary reforms.⁹⁸

- (48) There are also many ECtHR cases that highlight that Turkey has not taken the necessary steps to change or introduce new legislation that treats the expulsion of aliens with respect and thus in line with international standards. For example: *Abolkhani and Karimnia v. Turkey*⁹⁹; *Alipour and Hosseinzadgan v. Turkey*¹⁰⁰; *Z.N.S v Turkey*¹⁰¹.

⁹⁶ KHRP FFM Report, *Refusing Refuge: Investigating the Treatment of Refugees in turkey, Fact-Finding Mission Report*, (KHRP February 2007), 53.

⁹⁷ KHRP FFM Report, *Refusing Refuge: Investigating the Treatment of Refugees in turkey, Fact-Finding Mission Report*, (KHRP February 2007), 54.

⁹⁸ KHRP FFM Report, *Refusing Refuge: Investigating the Treatment of Refugees in turkey, Fact-Finding Mission Report*, (KHRP February 2007), 54.

⁹⁹ Appl. No. 30471/08, *Abolkhani and Karimnia v. Turkey*, Judgment of 22 September 2009.

¹⁰⁰ Appl. No. 6909/08, *Alipour and Hosseinzadgan v. Turkey*, Judgment of 13 July 2010.

¹⁰¹ Appl. No. 21896/08, *Z.N.S v Turkey*, Judgment of 19 January 2010.

- (49) Overall, there are a number of directives that illustrate an attempt to comply with international standards with respect to RSD. However, serious issues as to the expulsion of aliens in situations where they face a real risk of Torture or inhuman and degrading treatment or punishment on their return remain.

ARTICLE 4

- (50) The scarcity of convictions, the light sentences imposed, and poor quality of investigations foster a climate of impunity in relation to Torture in Turkey.¹⁰²
- (51) Legal provisions and reforms suggest attempts to improve the legal basis of prosecutions for perpetrators of torture, however, it does not suffice merely to cite relevant legislation if, as is the case with Turkey, that legislation is not implemented properly in practice.

Evidential Norms

- (52) Turkey maintains that when a claim of torture is supported with concrete evidence, public prosecutors promptly initiate criminal cases to bring those responsible to justice. However, as documented in KHRP's trial observation report published in 2009 on the killing of

¹⁰² K. Yildiz and F. Piggott, *An Ongoing Practice: Torture in Turkey*, (KHRP 2007).

Engin Ceber,¹⁰³ a doctor ignored evidence of torture and issued medical reports concealing torture.¹⁰⁴

- (53) Furthermore, the Forensic Medicine Institute (FMI) itself is claimed to have been involved in the concealment of thousands of torture cases from 1980 until today.¹⁰⁵ This lack of effective investigation indicates significant problems with the norms upon which perpetrators of torture are prosecuted. Evidence from the FMI is used invariably by Turkey's criminal courts without much or any scrutiny, thereby indicating an evidential bias of the criminal justice system. Proceedings of criminal libel against Şebnem Korur Fincancı and Barış Yarkadaş, who indicated systemic problems with the FMI and the resulting impact on Turkey's ability to ensure due process of law illustrate the lack of willingness to ensure that any failings within the FMI are addressed.¹⁰⁶
- (54) The ability to initiate a preliminary inquiry, investigation or prosecution against public prosecutors who may disregard or neglect evidence under Law No. 2802 is fruitless in many cases.

¹⁰³ M.Himsworth, KHRP Trial Observation Report, *The Death of Engin Cerber: Prosecuting Torture and Ill Treatment Within the Turkish Detention System*, (KHRP June 2009)

¹⁰⁴ KHRP and Norwegian Bar Association, Trial Observation Report, *An observation of trial proceedings against Şebnem Korur Fincancı, the chairwoman of Human Rights Foundation of Turkey (TIHV) and journalist Barış Yarkadaş*, (KHRP June 2010), 2.

¹⁰⁵ KHRP and Norwegian Bar Association, Trial Observation Report, *An observation of trial proceedings against Şebnem Korur Fincancı, the chairwoman of Human Rights Foundation of Turkey (TIHV) and journalist Barış Yarkadaş*, (KHRP June 2010), 2.

¹⁰⁶ KHRP and Norwegian Bar Association, Trial Observation Report, *An observation of trial proceedings against Şebnem Korur Fincancı, the chairwoman of Human Rights Foundation of Turkey (TIHV) and journalist Barış Yarkadaş*, (KHRP June 2010), 3.

- (55) It must also be maintained that legal processes and norms lack impartiality where political motivation intercedes. For example, the Turkish Medical Association (TTB) concedes that there are serious structural problems where the FMI, which is a centralised monopoly in forensic medicine, is directly dependant on the state which it serves to sustain.¹⁰⁷ This political malleability is not the only negative consequence of faulty evidential norms; the system is also inefficient and often produces scientifically inadequate reports.¹⁰⁸ KHRP finds that the prosecuting judiciary must be more willing to receive reports from other expert witnesses.

Ineffective Investigations and Limitations for Crimes Involving Torture

- (56) Turkey states that allegations of torture and ill-treatment are taken seriously and diligently by judicial authorities at all stages of the investigation and trial process. Investigations are ineffective as prosecutors are reluctant to investigate conduct of members of the security forces, prolonged detention and lengthy trials hamper improvements in human rights standards,¹⁰⁹ and there is a failure to suspend personnel from active duty while the outcome of the investigation is pending. For example KHRP believes that no official effective and independent investigations have taken place regarding the treatment alleged to have been suffered by the children arrested

¹⁰⁷ ¹⁰⁷ KHRP and Norwegian Bar Association, Trial Observation Report, *An observation of trial proceedings against Şebnem Korur Fincancı, the chairwoman of Human Rights Foundation of Turkey (TIHV) and journalist Barış Yarkadaş*, (KHRP June 2010), 6.

¹⁰⁸ ¹⁰⁸ KHRP and Norwegian Bar Association, Trial Observation Report, *An observation of trial proceedings against Şebnem Korur Fincancı, the chairwoman of Human Rights Foundation of Turkey (TIHV) and journalist Barış Yarkadaş*, (KHRP June 2010), 6.

¹⁰⁹ K. Yildiz and F. Piggott, *An Ongoing Practice: Torture in Turkey*, (KHRP 2007), p121.

and detained during demonstrations referred to above under Article 2.¹¹⁰ The ineffective nature of investigations into allegations of Torture is evidenced by the numerous judgments of the ECtHR against Turkey on the procedural aspect of Article 3 of the ECHR and also the huge number of cases pending before the court where allegations are made of such violations.

- (57) Moreover, despite recommendations of the Committee to repeal the statute of limitations for crimes involving torture, the new Turkish Penal Code merely extends the limitation.¹¹¹ Missing from the new Code on Criminal Procedure is an article limiting the postponement of torture trials and some clarity on whether the new Code permits suspended sentences or reductions to a fine for perpetrators.

Statistical Data

- (58) The provided statistical data regarding convictions indicates that the number of torture cases pending has dropped considerably, as have the number of accused, the number convicted, and the number of perpetrators fined. Although these statistics do not say much about the norms under which perpetrators are prosecuted as they can be influenced by a number of factors, a steady decrease in the numbers is no evidence of an improving system of prosecution.

¹¹⁰ Amnesty International Press Release "Turkey Ends Prosecution of Child Demonstrators under Anti-Terror Laws : 23 July 2010.

¹¹¹ KHRP Report, *Torture in Turkey: The Current Status of Torture and Ill-Treatment*, (KHRP, July 2006), p4.

- (59) The statistics reveal that fines are the most popular form of punishment for convicted perpetrators of torture. Whether a fine is an effective or suitable punishment for these cases must be scrutinised closely and should be explained further by Turkey.

ARTICLE 5

- (60) KHRP continues to receive compelling evidence of the minimal regard given for the rights of civilian populations in Iraq by Turkey in contravention of the Geneva Conventions, to which Turkey is signatory.¹¹² Since the launching of Turkey's aerial bombardments in October 2007, KHRP has acted for an overwhelming amount of applicants in cases involving violations of Article 3 of the ECHR before the ECtHR. These cases involve deaths, injuries, psychological trauma, damage to property and destruction of crops and livelihoods. Turkey continues its low level flights over villages in northern Iraq, an estimated 2,000 Turkish troops are permanently deployed there, and in October 2009, the Turkish Parliament extended the Government's cross-border mandate for another year.¹¹³ To date no official investigation into the violations of the Convention against Torture in relation to civilians affected by these bombardments has been carried out by the Turkish Government.

ARTICLES 10 and 11

- (61) Turkey continues to violate Article 10 and 11 of CAT. Turkey has introduced a training programme to improve the role of medical

¹¹² KHRP Impact Report, *Impact Report 2009*, (KHRP, London, December 2009), 23.

¹¹³ KHRP Impact Report, *Impact Report 2009*, (KHRP, London, December 2009), 23.

professionals in detection of torture. However, in practice many of these professionals work for the state in some capacity so cannot be fully impartial when examining patients who accuse state officials of torture. Additionally, medical professionals are under threat themselves if they determine that officials have subjected a patient to torture. As a result, investigations into torture allegations are often weak due to the lack of sound medical evidence, which is central to the successful prosecution of a torture case. This situation is not helped by the fact that Turkey fails to adequately investigate ethnic related human rights abuses. This is primarily illustrated through the anti terror legislation which disproportionately affects the Kurds. Moreover, a culture of impunity within the Turkish criminal justice system means that victims of torture rarely receive justice.

Medical professionals detecting torture

- (62) Turkish state officials frequently fail to acknowledge signs of torture when conducting autopsies. Doctors need more training in this field, which Turkey recognises. However, it has still not adopted concrete measures to detect signs of torture or ill treatment, and has merely adopted a project involving the training of medical personnel. There is no evidence of the implementation of strong legislation to aid in the detection of torture. Furthermore, Turkey does not indicate the effects this training has on the detection of torture and ill treatment.
- (63) Doctor-patient privacy exists in principle for those who are detained by the police. They have a right in Turkish law to a confidential examination by a doctor. However, in practice this right is

systematically abused with police presence common place for medical examinations looking into torture claims.¹¹⁴ The methods in which doctors record allegations made by the person examined is highly disorganised. Consequently, this contributes to the lack of redress for torture victims as medical evidence is heavily relied upon in such claims.¹¹⁵ There is an ongoing pattern of intimidation and harassment towards those who are involved in the eradication of torture, and doctors are often included in this.¹¹⁶

- (64) Turkish courts refuse to place due weight on evidence obtained through independent medical examinations in cases where allegations of torture have been made.¹¹⁷ The jurisprudence of the appeal court has meant that only official medical examinations carried out under the supervision of the Forensic Medicine Institution, have been deemed admissible. As a result, the recording of the torture remains very much in the hands of the State.
- (65) Turkish law stipulates heavy jail sentences and fines for medical personnel who coerce doctors into making false medical reports, however, in practice there are few such prosecutions.¹¹⁸ In addition, the Medical Association has the power to temporarily suspend licenses and impose fines on doctors who falsify medical reports. In practice,

¹¹⁴ K.Yildiz and F.Piggott, *An Ongoing Practice: Torture in Turkey*, (KHRP 2007) 51-52.

¹¹⁵ K.Yildiz and F.Piggott, *An Ongoing Practice: Torture in Turkey*, (KHRP 2007) 53.

¹¹⁶ K.Yildiz and F.Piggott, *An Ongoing Practice: Torture in Turkey*, (KHRP 2007) 53.

¹¹⁷ N.Stewart and W.Jayawardene *Closed Ranks: Transparency and Accountability in Turkey's Prison System* (KHRP, April 2009) 40.

¹¹⁸ K.Yildiz and F.Piggott, *An Ongoing Practice: Torture in Turkey*, (KHRP 2007) 53.

however, the Association is unable to implement these sanctions as most doctors work for the state in some part.¹¹⁹

ARTICLES 12 and 13

Statistical data on torture and ill treatment

- (66) Turkey admits that it does not take ethnicity and region into account when preparing such data. As a result, the Kurds, the biggest ethnic minority group in Turkey, are not recognised in data accretion. Therefore, through its exclusion of ethnicity and region from its data, Turkey fails to fully answer the Committee's question.

Investigations into torture and ill treatment

- (67) Since 2005, the ECtHR has found that Turkey has failed to undertake an effective investigation of human rights abuses in a significant number of cases.¹²⁰ In many of these cases the victims were of Kurdish ethnicity and the victims alleged that the abuses they suffered were linked to their ethnicity. These judgments show Turkey repeatedly fails to adequately investigate ethnicity-related human rights abuses, and indicate that the domestic legal framework neglects the prevention of discrimination on ethnic lines.¹²¹

¹¹⁹ K. Yildiz and F. Piggott, *An Ongoing Practice: Torture in Turkey*, (KHRP 2007) 53.

¹²⁰ KHRP, *Submission to the Office of the United Nations High Commissioner for Human Rights, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, 21st June 2010, 4.

¹²¹ KHRP, *Submission to the Office of the United Nations High Commissioner for Human Rights, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, 21st June 2010, 4.

- (68) 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.¹²² 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. Many who were arrested and detained by the Security forces claimed that they were subject to torture and ill treatment during their detention.¹²³ Despite the use of excessive force and allegations of torture and ill-treatment, there had not been any investigation against any member of the security forces nearly three years after the incidents.¹²⁴
- (69) Besides the excessive use of force against demonstrators and others, impunity also remains a problem in relation to torture and ill-treatment perpetrated by state officials against individuals detained in custody, despite the government's declared policy of 'zero tolerance' in relation to such abuses.¹²⁵ The official rhetoric on this front was supposedly backed up by the decisive response of the authorities to the case of Engin Çeber, a human rights activist who died in October 2008, as a result of severe beatings in custody. In the wake of Mr

¹²² KHRP, *Submission to the Office of the United Nations High Commissioner for Human Rights, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, 21st June 2010, 6.

¹²³ KHRP, *Submission to the Office of the United Nations High Commissioner for Human Rights, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, 21st June 2010, 6.

¹²⁴ KHRP, *Submission to the Office of the United Nations High Commissioner for Human Rights, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, 21st June 2010, 6.

¹²⁵ E.Hughes and S.Karakaş, KHRP FFM Report, *Human Rights in the Kurdish Region of Turkey: Three Pressing Concerns*, (KHRP, August 2009) 31.

Çeber's death, the then Minister of Justice, Mehmet Ali Şahin, took the unusual step of issuing a public apology in connection with the case and unprecedented trial proceedings were launched against 60 officials accused of various forms of involvement.¹²⁶ However, it is doubtful whether this case illustrates a fundamental shift in state policy towards the treatment of detainees.¹²⁷ In light of Mr Çeber's relatively high profile status as a political activist and the seemingly clear-cut circumstances of his death, it appeared instead that the authorities had been left with little choice but to make an example of his case. In fact, statistics appear to confirm that this much-hyped trial is very much an exception and this is illustrated for example by the failure to investigate and prosecute any officials for the torture and ill-treatment of children during demonstrations which has been referred to above.

(70) In addition to the problem of investigations and prosecutions not being launched in response to allegations of torture and ill-treatment by state officials, there are allegations that those officials who do end up before the courts frequently receive lenient sentences which are no commensurate with the crimes they have been found to have committed.¹²⁸

(71) Proper investigations into alleged human rights violations by military personnel in particular have in the past been hampered by laws limiting the powers of civilian courts to try members of the armed

¹²⁶ E.Hughes and S.Karakaş, KHRP FFM Report *Human Rights in the Kurdish Region of Turkey: Three Pressing Concerns*, (KHRP, August 2009), 31.

¹²⁷ E.Hughes and S.Karakaş, KHRP FFM Report, *Human Rights in the Kurdish Region of Turkey: Three Pressing Concerns*, (KHRP, August 2009), 31.

¹²⁸ E.Hughes and S.Karakaş, KHRP FFM Report *Human Rights in the Kurdish Region of Turkey: Three Pressing Concerns* (KHRP, August 2009), 32.

forces.¹²⁹ However, following an amendment to the Code of Criminal Procedure approved by President Abdullah Gül on 17 July 2009, civilian courts will be enabled to try members of the armed forces accused of crimes such as threats to national security, violations of the constitution, organising armed groups and attempting to topple the government during peace time.¹³⁰ This could help bring an end to the practice of military courts by effectively extending protection to the perpetrators of such crimes. The fact that military courts cannot be regarded as independent and impartial, since they are appointed by and responsible to the Ministry of Defense and the General Staff, has been underscored in several cases against Turkey before the ECtHR.¹³¹

(72) Even where cases of torture and ill-treatment do come to light, prosecutions are frequently ineffectual. In cases of police violence that could be prosecuted under Article 94 of the Penal Code (Torture), prosecutors have often opted to use Article 86 (Intentional Injury) instead. A public official convicted under this article could receive a jail sentence of as little as one and a half years, and would therefore be eligible for a suspended sentence.¹³²

¹²⁹ E.Hughes and S.Karakaş, KHRP FFM Report, *Human Rights in the Kurdish Region of Turkey: Three Pressing Concerns*, (KHRP, August 2009), 33.

¹³⁰ E.Hughes and S.Karakaş, KHRP FFM Report, *Human Rights in the Kurdish Region of Turkey: Three Pressing Concerns*, (KHRP, August 2009), 33.

¹³¹ E.Hughes and S.Karakaş, KHRP FFM Report, *Human Rights in the Kurdish Region of Turkey: Three Pressing Concerns*(KHRP, August 2009), 33.

¹³² M.Himsworth, KHRP Trial Observation Report, *The Death of Engin Cerber: Prosecuting Torture and Ill Treatment Within the Turkish Detention System*, (KHRP June 2009) 37.

Statute of limitations for crimes involving torture and ill treatment

(73) The statute of limitation for crimes involving torture which is set to 15 years (20 in cases of aggravated torture) has not been repealed in Turkey. It still exists in the form of Articles 94-96 of the new Penal Code.¹³³ Despite this Turkey claims to have taken necessary precautions to preserve the appearance to the public that justice has been done.¹³⁴ Its Penal Code and Criminal Procedure Code were introduced with the mindset that perpetrators of offences are arrested and brought to justice, have a fair trial, convicted if guilty and sentenced fairly, while observing human rights, and to duly execute the sentence. However, in practice the judicial system in Turkey faces a large backlog of cases.¹³⁵ The average duration of a judicial proceeding lasts 210 days in criminal courts.¹³⁶ In torture cases, the proceedings are often excessively long, with many unresolved as they exceed the statute of limitations.¹³⁷ Backlogs facing judges and public prosecutors result in insufficient allowances of time for hearings and inadequate analyses of case files.¹³⁸ Thus, trials remain overly lengthy and generally suffer from delays which reduce victims' chances of redress.¹³⁹

¹³³ Turkey's Report submitted in response to the list of issues (CAT/C/TUR/Q/3) transmitted to the State party pursuant to the optional reporting procedure (A/62/44, paras. 23 and 24) 30th June 2009, 17-18.

32.

¹³⁴ Turkey's Report submitted in response to the list of issues (CAT/C/TUR/Q/3) transmitted to the State party pursuant to the optional reporting procedure (A/62/44, paras. 23 and 24) 30th June 2009, 32.

¹³⁵ K.Yildiz and F.Piggott, *An Ongoing Practice: Torture in Turkey*, (KHRP 2007) P61.

¹³⁶ K.Yildiz and F.Piggott, *An Ongoing Practice: Torture in Turkey*, (KHRP 2007) P61.

¹³⁷ K.Yildiz and F.Piggott, *An Ongoing Practice: Torture in Turkey*, (KHRP 2007) P61.

¹³⁸ K.Yildiz and F.Piggott, *An Ongoing Practice: Torture in Turkey*, (KHRP 2007) P61.

¹³⁹ K.Yildiz and F.Piggott, *An Ongoing Practice: Torture in Turkey*, (KHRP 2007) P61.

- (74) There is currently no regulation in Turkey limiting the postponement of trials for cases of torture, nor does any law state that sentences for crimes of torture and ill-treatment cannot be converted into a fine or a suspended sentence. The length of judicial proceedings, and occasional deliberate efforts on the part of defendants to delay the process, often results in trials being dropped as a result of exceeding the statute of limitations.¹⁴⁰
- (75) Additionally, Turkey fails to fully answer the Committee's question by neglecting to provide updated comparative data specifying trial duration and numbers of public officials suspended and dismissed in relation to torture and ill-treatment.

Detention records of detainees

- (76) Turkey does not provide the Committee with information with regard to detention records of detainees. Such information is crucial in determining the extent to which legal provisions have been implemented.

The promotion of human rights while countering terrorism

- (77) Turkey's answer to the question regarding the recommendations of the Special Rapporteur on the Promotion Protection of Human Rights while Countering Terrorism following his visit over four years ago focuses mostly on plans to create a National Human Rights institute in an attempt to strengthen the administration of human rights in the country through monitoring the violation of such rights. The Special

¹⁴⁰ E.Hughes and S.Karakaş, KHRP FFM Report, *Human Rights in the Kurdish Region of Turkey: Three Pressing Concerns*, (KHRP, August 2009) 32.

Rapporteur also recommended that a rapid procedure be established through which persons convicted of or charged with terrorist offences can obtain redress in cases where the evidence used against them does not meet the current standard of zero tolerance in respect of torture, that an impartial, thorough, transparent and prompt investigation and fair trial be carried out in relation to the incidents in Semdinli and Kiziltepe and that OPCAT and the Rome Statute of the ICC be ratified.

(78) The Government simply denies that evidence obtained as a result of torture is used in Court in answer to this question. This is in stark contradiction to the evidence set out under Article 15 below regarding the use of such evidence. Similarly the explanations regarding the ratification process for OPCAT are incomplete and insufficient and no mention is made of any plans to ratify the Rome Statute of the ICC. Finally no reference is made to the investigations regarding the incidents in Semdinli and Kiziltepe which have not in fact been completed in accordance with Turkey's international obligations both under CAT but also under the ECHR.

(79) Kurdish children have been particularly affected by the implementation of anti-terror legislation in Turkey resulting in frequent and numerous violations of numerous international obligations including the Convention against Torture. Please see *inter alia* the submissions under Article 16 below.

(80) While the moves by Turkey's Parliament to end prosecution of children under anti-terrorism laws solely for taking part in demonstrations meaning that all children previously convicted under

anti-terrorism legislation should have their convictions quashed and ending the prosecution of children aged 15 and over in adult Special Heavy Penal Courts, there are reports that numerous children have yet to be released from prison.¹⁴¹

ARTICLE 14

Compensation and rehabilitation of victims of torture

- (81) Even though statistical information was requested by the Committee¹⁴², Turkey has failed to provide any such information in relation to the compensation and rehabilitation of victims of torture. By doing so, the possibility to assess the implementation and effect of the domestic law referred to by the State Party is severely restricted. In addition, keeping in mind the high number of Turkish applicants to the ECtHR having experienced torture and having been awarded just satisfaction, the domestic laws evidently do not function well with regard to compensation of victims of torture.
- (82) Further, the State party's report does not address the issue of rehabilitation and medical and psychological treatment of children having been subjected to torture, or other inhuman or degrading treatment during incarceration. As documented in this report, this is clearly an issue in Turkey. The physical and psychological consequences for these children are very serious. The State party does

¹⁴¹ Phone conversations with Lawyer Sinan Zincir, Istanbul, October 2010

¹⁴² Questions 17 and 19.

not, however, comment on which facilities and resources that are available for the rehabilitation of these children.

- (83) The SSCPA have 59 'Public Centres' in 31 of 81 provinces, (22 in the east and south-east of the country)¹⁴³ where they open courses for vocational training, parenting programmes and reading and writing classes, as well as 22 'Family Counselling Centres' in 21 provinces.¹⁴⁴ However, the Family Counselling Centres are not equipped to deal with extreme cases of child abuse neglect or other forms of torture and ill treatment either in detention or elsewhere. There are also concerns over the safety of children when they are institutionalised for their protection. In 2005, police arrested over a dozen nurses, caretakers, and other employees of the Malatya state orphanage in connection with an investigation into the alleged torture and abuse of children at the institution. On 26 December, a Malatya penal court sentenced nine suspects to one year's imprisonment for negligence and misuse of authority.¹⁴⁵ This illustrates that the rehabilitation facilities that are needed for children who are victims of torture are not available. Indeed, there are no adequate facilities for adults who are victims of torture either.

ARTICLE 15

- (84) Despite significant constitutional amendments prohibiting the use of evidence obtained by torture and contrary to the assertions at

¹⁴³ http://www.shcek.gov.tr/Kuruluslarimiz/tablo_topmerkx.asp; Kerim Yildiz, Rachel Bernu and Julianne Stevenson, KHRP FFM Report, *The situation of Kurdish children in Turkey*, (KHRP January 2010), 113.

¹⁴⁴ Sahin and Beyazova, 'Child Protection Systems in Turkey'; Kerim Yildiz, Rachel Bernu and Julianne Stevenson, KHRP FFM Report, *The situation of Kurdish children in Turkey*, (KHRP January 2010), 113.

¹⁴⁵ US Bureau of Democracy, Human Rights, and Labor, 'Country Reports on Human Rights Practices, 2007: Turkey'; Kerim Yildiz, Rachel Bernu and Julianne Stevenson, KHRP FFM Report, *The situation of Kurdish children in Turkey*, (KHRP January 2010), 113.

paragraph 172 of Turkey's report, such evidence is still used in Turkish courts.

(85) The amendments to the Turkish Criminal Procedure Code in 1992 saw torture and ill treatment declared "prohibited interrogation methods" and further amendments introduced in the new Criminal Procedure Code of 2005 provide that statements made to the security forces may not be used as evidence in court proceedings unless they are signed in the presence of a lawyer or confirmed in front of a judge.¹⁴⁶ The ban has constitutional status by amendment of Article 38.¹⁴⁷

(86) However, victims of torture often allege that at the end of their interrogation in custody they are made to sign a statement in which they "confess" their own guilt or blame others for the offence.¹⁴⁸ Detainees are frequently remanded to prison on the basis of statements declared by them to have been extracted under torture. Such testimony is often read out in court and placed in court files. Similarly as stated above, evidence from children obtained in circumstances which in many cases amount to undue pressure, is routinely admitted in court as evidence against them. In most cases where evidence is obtained as a result of torture, Prosecutors and Courts do not investigate the related torture allegations, dismissing arguments raised to the effect that such statements should not be used as evidence, by the simplistic and straightforwardly erroneous response of some judges that there is

¹⁴⁶ K.Yildiz and F.Piggott, *An Ongoing Practice: Torture in Turkey*, (KHRP 2007) 47-48.

¹⁴⁷ K.Yildiz and F.Piggott, *An Ongoing Practice: Torture in Turkey*, (KHRP 2007) 47-48.

¹⁴⁸ K.Yildiz and F.Piggott, *An Ongoing Practice: Torture in Turkey*, (KHRP 2007) 48.

'no legal provision for the removal of documents constituting evidence from court files'.¹⁴⁹

ARTICLE 16

(87) Turkey has not followed all the recommendations made by the Special Rapporteur on violence against women in their 2007 mission. No adequate reforms have been implemented to stop violence against women. Moreover, forced suicides and murder still occur too often and women continue to be exploited through human trafficking. Human rights defenders and NGOs continue to be repressed and the village programme for IDPs has failed to adequately protect the displaced Kurds, despite the ECtHR's ruling in *Icyer v Turkey*.

Measures to stop violence against women

(88) Turkey has not amended its constitution to include Article 1 of CEDAW.¹⁵⁰ Moreover, with respect to the European Court of Human Rights ruling in *Opuz v Turkey*¹⁵¹, Turkey has also failed to satisfy its obligations under CAT. In this case, the ECtHR found that Turkey was in violation of Articles 2, 3, and 14 of the ECHR due to the failure of the police and courts to deal with the applicant and her mother's reports of domestic violence and requests for protective measures under the Law for the Protection of the Family. Thus, Turkey's failure to investigate and prevent domestic violence violated Article 3 of the

¹⁴⁹ K.Yildiz and F.Piggott, *An Ongoing Practice: Torture in Turkey*, (KHRP 2007) 48.

¹⁵⁰ ¹⁵⁰ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 6.

¹⁵¹ Application No. 33401/02

ECHR with respect to inhumane and degrading treatment. Turkey's failings under the ECHR can therefore be mirrored under CAT where a lack of effective measures to stop violence against women constitutes inhuman and degrading treatment.

- (89) Rather than taking appropriate measures pursuant to the Law for the Protection of the family, police officers often see their role as one of a 'mediator,' rather than a 'law enforcement official,' and encourage women to return home and resolve their issues with their spouse.¹⁵² Police decline to investigate allegations of abuse and institute protective measures, and view domestic violence as a private family matter that should be sorted out amongst family. This is primarily because of pervasive cultural attitudes. Indeed, male dominated environments and non-compliance of law enforcement officials hinder the full implementation of measures to stop violence towards women.¹⁵³ As a result, women's rights groups in Turkey still struggle to defend women against community attitudes, which are tolerant of violence against women and are frequently shared by judges, senior government officials and opinion leaders in society.¹⁵⁴ Various bodies are at fault for this gap between law and practice: police officers do not take allegations of domestic violence seriously; prosecutors do not investigate allegations for insubstantial reasons; protective orders

¹⁵² ¹⁵² KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 9.

¹⁵³ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 9.

¹⁵⁴ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 9.

against men accused of domestic violence, made under the Law on the Protection of the Family, are not sufficiently enforced.¹⁵⁵

(90) While Turkey has partially fulfilled its international obligations by making appropriate legal reforms which purport to eliminate discrimination against women and to increase women's rights in respect of protection against domestic violence such as amending its Penal Code and implementing the Law on the Protection of the Family, it has not taken sufficient measures to ensure the full implementation of these reforms at the level of law enforcement.¹⁵⁶

(91) The Turkish state has been shown to be unable to protect the women who apply to official institutions for protection because they have been exposed to violence.¹⁵⁷ Yet, according to the Constitution, domestic legislation and international obligations, it is the duty of the state to protect these women. Furthermore it is unclear what instruments the Turkish government has put in place to monitor and evaluate the implementation of the Combating Domestic Violence Against Women National Action Plan, given that there are a number of international mechanisms for assessing the efficacy of the measures taken by states to eradicate violence against women, such as the Convention on the

¹⁵⁵ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 9.

¹⁵⁶ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 8.

¹⁵⁷ Bianet: Turkey Not Able to Protect Woman 16 March 2010 < <http://bianet.org/english/gender/120693-turkey-notable-to-protect-women>> (last accessed 10 May 2010); KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 10.

Elimination of All Forms of Discrimination Against Women (CEDAW).¹⁵⁸

- (92) From 2007 to 2010, nine women were killed by the Turkish gendarmerie, 91 women were murdered (purportedly in the name of "honour") 169 women were victims of domestic violence, 226 women committed suicide because of domestic abuse, and 92 women were raped and killed (including by security forces).¹⁵⁹ In cases where a woman is able to obtain a protective measure against an abusive spouse under the Law on the Protection of the Family, there exist problems with enforcing the order, since the spouse is sometimes friends with the local police. Such indifference toward domestic violence and non-enforcement of injunctions undermine women's ability to gain effective protection from domestic violence.¹⁶⁰
- (93) The severity of the situation is exacerbated for Kurdish women who do not speak Turkish. Similar to their experience in accessing other social services, Kurdish women who lack Turkish language skills are at a significant disadvantage in receiving redress for domestic violence since law enforcement officials, as appendages of the state, speak only Turkish.¹⁶¹ Since many Kurdish women are unable to communicate

¹⁵⁸ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 11.

¹⁵⁹ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 11.

¹⁶⁰ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 11.

¹⁶¹ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 12.

with law enforcement officials, they are deterred from bringing domestic violence allegations to the attention of the police and, additionally, fear violence at the hands of law enforcement.¹⁶² The Turkish government has not provided for any mechanisms, such as interpreters, which would increase the ability of Kurdish women to receive protection from their abusers and increase their access to justice.¹⁶³ Hence, legal reforms such as the Law on the Protection of the Family, without additional apparatus to allow non-Turkish speaking minority women to access these reforms, is ineffective since it bars an entire segment of the Turkish population from benefitting from the reforms.¹⁶⁴

- (94) Another obstacle to the full implementation of Turkey's legal reforms is the lack of awareness among Kurdish women of their legal rights.¹⁶⁵ In its Sixth Periodic Report to the Committee for the Elimination of Discrimination against Women (CEDAW), Turkey does not enumerate any substantive awareness-raising measures it has taken to increase women's awareness of the legal remedies available to them.¹⁶⁶ The measures Turkey mentions in its report, such as the 'Stop Violence

¹⁶² KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 12.

¹⁶³ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 12.

¹⁶⁴ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 12.

¹⁶⁵ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 12.

¹⁶⁶ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 12.

against Women Campaign,' may increase the general awareness of the issue of domestic violence in Turkish society, but it is not clear how such measures increase women's knowledge of the legal avenues available to them when they are faced with domestic violence.¹⁶⁷

- (95) To fulfill its obligation to stop violence towards women, Turkey must overcome the indifference towards violence against women so pervasive throughout all levels of the criminal justice system, so that the Law on the Protection of the Family may be fully implemented and so that women may access all the protective measures the law affords.¹⁶⁸ To overcome this attitude, the government should increase gender equality training for law enforcement officials who are the first point of authority for women who are victims of domestic violence.¹⁶⁹ Additionally, Turkey must recognize the Kurds as a minority group, so that relevant data relating to the effects of domestic violence on all women in Turkey may be made available.¹⁷⁰ In its discussion of its Fourth and Fifth combined periodic report, Turkey stated that such surveys on the issue of domestic violence would be taken.¹⁷¹ When Turkey finally undertakes these surveys, they must include Kurdish

¹⁶⁷ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 12.

¹⁶⁸ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 13.

¹⁶⁹ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 13.

¹⁷⁰ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 13.

¹⁷¹ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 13.

women.¹⁷² Without such data, it will be impossible for Turkey to address issues of domestic violence and comply with its obligations under CEDAW.¹⁷³

Identifying, prosecuting and adjudicating cases of forced suicide and disguised murders

- (96) There are many instances where the Turkish criminal justice system has failed to recognise that cases involving the deaths of women are actually instances of forced suicide or disguised murder. The most common omission made by prosecutors and the judiciary is the recognition that an honour killing has been disguised as a murder for example, which has a significant impact on sentencing.¹⁷⁴
- (97) Violence against Kurdish women perpetrated by state actors is a salient problem with instances of physical, sexual, and mental abuse and ill treatment of Kurdish women by Turkish state agents, such as security forces, police, and village guards being reported.¹⁷⁵ Due to recent legal reforms increasing punitive measures for torture, state agents have resorted to using violence against Kurdish women as a

¹⁷² KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 13.

¹⁷³ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 13.

¹⁷⁴ Kearney, KHRP Trial Observation Report, *The Trial of Kerem Cakan: The Turkish Judiciary and Honour Killings*, (KHRP November 2009) 23.

¹⁷⁵ Margaret Owen, *Women's Rights in Turkey and Kurdish Cultural Rights*. European Union Turkey Civic Commission (Paper: Brussels 2005). <<http://www.eutcc.org/articles/8/20/document215.ehtml>> (last accessed 12 May 2010); Kearney, KHRP Trial Observation Report, *The Trial of Kerem Cakan: The Turkish Judiciary and Honour Killings*, (KHRP November 2009) 15.

substitute for torturing Kurdish men.¹⁷⁶ State agents are aware of the stigma attached to such violence, especially for sexual assault, and of the low probability of these women reporting these acts of violence; thus, they are able to use physical and sexual violence against Kurdish women with impunity.¹⁷⁷ This use of sexual violence by state agents against Kurdish women is not only in violation of CEDAW obligations but also the Convention against Torture (CAT) and international *jus cogens* norms. The ECtHR has recognised the severity of such physical and sexual abuse in the KHRP-assisted case, *Aydin v. Turkey*, in which the court ruled that rape is a form of torture.¹⁷⁸

- (98) If Kurdish women do choose to report sexual violence by state agents, they then face extreme difficulty in pursuing criminal claims against the state.¹⁷⁹ Furthermore, it is of great concern that violence against women perpetrated by its agents is ignored by the Turkish government and that the authorities have in some cases taken direct action to conceal allegations of this violence.¹⁸⁰ Under its international obligations, Turkey must investigate all allegations of violence, punish perpetrators whether they are state or non state actors, and have in

¹⁷⁶ Margaret Owen, *Women's Rights in Turkey and Kurdish Cultural Rights*. European Union Turkey Civic Commission (Paper: Brussels 2005). <<http://www.eutcc.org/articles/8/20/document215.ehtml>> (last accessed 12 May 2010); Kearney, KHRP Trial Observation Report, *The Trial of Kerem Cakan: The Turkish Judiciary and Honour Killings*, (KHRP November 2009) 15.

¹⁷⁷ Margaret Owen, *Women's Rights in Turkey and Kurdish Cultural Rights*. European Union Turkey Civic Commission (Paper: Brussels 2005). <<http://www.eutcc.org/articles/8/20/document215.ehtml>> (last accessed 12 May 2010); Kearney, KHRP Trial Observation Report, *The Trial of Kerem Cakan: The Turkish Judiciary and Honour Killings*, (KHRP November 2009) 15.

¹⁷⁸ KHRP case, , Appl. no. 23178/94, *Aydin v. Turkey*, judgment of 27 September 1997.

³⁰ KHRP Trial Observation Report, Margaret Owen, edited by Kerim Yildiz, *Turkey's Shame: Sexual Violence Without Redress – The Plight of Kurdish Women*, (KHRP December 2003) 10-21.

¹⁷⁹ Kearney, KHRP Trial Observation Report, *The Trial of Kerem Cakan: The Turkish Judiciary and Honour Killings*, (KHRP November 2009) 16.

¹⁸⁰ Kearney, KHRP Trial Observation Report, *The Trial of Kerem Cakan: The Turkish Judiciary and Honour Killings*, (KHRP November 2009) 16.

place preventative mechanisms protecting women against such treatment.¹⁸¹

- (99) The steps taken by the Turkish government to combat and bring to justice perpetrators and instigators of honour crimes is welcomed. However there remains the serious problem of the forced suicide of women who would have otherwise been victims of honour crimes.¹⁸² Increasingly, instead of the killing of women alleged to have dishonoured their family, families are forcing women to commit suicide in an attempt to spare male relatives from life imprisonment.¹⁸³ This issue remains to be acknowledged by Turkey.
- (100) In the largely Kurdish province of Batman in Southeast Turkey, three-quarters of all suicides are committed by women. In comparison, in the rest of the world, men are usually three times more likely than women to commit suicide.¹⁸⁴ Mustafa Peker, Batman's chief prosecutor, notes the difficulty in investigating such crimes, despite their high volume

¹⁸¹ Kearney, KHRP Trial Observation Report, *The Trial of Kerem Cakan: The Turkish Judiciary and Honour Killings*, (KHRP November 2009) 16.

¹⁸² KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 33.

¹⁸³ KHRP. European Parliament Project: *The Increase in Kurdish Women Committing Suicide*, (KHRP, London), at 6; KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 33.

¹⁸⁴ Ramita Navai, 'Women told: 'You have dishonoured your family, please kill yourself'', *The Independent* [UK], 27 March 2009 <<http://www.independent.co.uk/news/world/europe/women-told-you-have-dishonoured-your-family-please-kill-yourself-1655373.html>> (last accessed 12 May 2010); KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 34.

and highly suspicious nature.¹⁸⁵ These 'honour suicides' usually consist of the family locking the woman in a room with various methods of death such as a noose, pistol, or rat poison. The woman would be kept in the room until she had committed suicide.¹⁸⁶

- (101) Turkey must take pro-active measures to deal with the issue of family-forced honour suicides, which have increased as a substitute for honour killings.¹⁸⁷ Such measures, in addition to legal reforms, should include social awareness campaigns and support programs for vulnerable women in the Southeast and Eastern regions that are offered in Kurdish and Turkish, in order to target the relevant constituencies and train law enforcement officers and judges on identifying and prosecuting for such crimes.¹⁸⁸ The government should work to collect more accurate data on the Kurdish dimension of this phenomenon, since without accurate data, the government will not be able to deal effectively with this problem.¹⁸⁹ Additionally, Turkey should offer more financial and structural support to the local

¹⁸⁵ Ramita Navai, 'Women told: 'You have dishonoured your family, please kill yourself'', *The Independent* [UK], 27 March 2009 <<http://www.independent.co.uk/news/world/europe/women-told-you-have-dishonoured-your-family-please-kill-yourself-1655373.html>> (last accessed 12 May 2010); KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 34.

¹⁸⁶ KHRP. European Parliament Project; The Increase in Kurdish Women Committing Suicide, at 9; KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 34.

¹⁸⁷ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 34.

¹⁸⁸ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 34.

¹⁸⁹ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 34.

women's NGOs that are best-situated to collect relevant statistics and offer social services to combat this problem.¹⁹⁰

- (102) Despite amendment of its Penal Code to provide for the severest punishment for perpetrators of custom killings, the Turkish government must ensure that courts strictly adhere to these legal reforms and sentence perpetrators of honour killings to the maximum punishment of life imprisonment.¹⁹¹
- (103) The ECtHR found in *Opuz v. Turkey*¹⁹², that mitigation of sentences for honour crimes still existed in the Turkish judiciary.¹⁹³ Under the Turkish Penal Code, the perpetrator of an honour crime may still invoke Article 51, which allows discretionary mitigation of punishments if a crime was committed due to 'unjust provocation' by the victim. Although this Article does not specifically mention 'honour crimes,' judicial precedent demonstrates that courts are willing to mitigate punishments for honour crimes based on defences of 'unjust provocation.'¹⁹⁴ Turkey must monitor courts more closely and ensure

¹⁹⁰ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 34.

¹⁹¹ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 34.

¹⁹² Application No. 33401/02

¹⁹³ 'Research Report on Honour Crimes, prepared by the Diyarbakir Bar Association's Justice For All Project and the Women's Rights Information and Implementation Centre,' cited by *Opuz v. Turkey*, Appl. no. 33401/02, para. 192, ECHR 2009; KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 35.

¹⁹⁴ World Organisation Against Torture (OMCT). *Violence against Women in Turkey: A Report to the Committee Against Torture*, 353-354 (http://www.omct.org/pdf/VAW/Publications/2003/Eng_2003_09_Turkey.pdf); KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 35.

that courts are not applying discretionary measures and mitigating punishments for honour crimes.

(104) While the trend noted above illustrates the increasing prevalence of 'honour suicides', 'honour killings' remain a persistent problem which disproportionately affects Kurdish women in Turkey. A significant number of women in the Southeast report threats of 'honour killings' from family members.¹⁹⁵ Among these cases, there are instances of three of women dying from injuries sustained in attacks, one committed suicide, and 27 were pressured to commit suicide. It was often the father or husband who decided the fate of these women.¹⁹⁶ In these cases, 76 of the decision makers were illiterate and 47 had no education, which suggests a link between underdevelopment and 'honour killings' in the Southeast.¹⁹⁷

(105) Women who are subject to honour killings and forced suicides need to be able to make complaints to the authorities if they are under threat. Despite this, women still experience much greater difficulty in accessing the justice system due to a lack of basic education about the legal system.¹⁹⁸ Given the prevalence of women receiving less education than men, their higher rates of illiteracy, and the lower level

¹⁹⁵ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 36.

¹⁹⁶ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 36.

¹⁹⁷ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 36.

¹⁹⁸ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 39.

of education among women in the Southeast region, Kurdish women often have much less, if not no understanding of their legal rights.¹⁹⁹

Protecting women at risk of violence

- (106) Shelters for women who are victims of domestic violence are an important component in not only providing necessary protection for these women, but also in providing the necessary mental and health services required to rehabilitate victims of domestic violence.²⁰⁰
- (107) In addition to creating penalties for non-compliance with this law, the Turkish government should provide more guidelines for the construction of these shelters, as some municipalities are willing to build shelters but are unable to move forward due to lack of guidance from the central government.²⁰¹ Municipalities are also prevented from constructing much-needed shelters due to a dearth in funding.²⁰²
- (108) Despite the need for an increase in women's shelters, these should however only be viewed as a temporary measure as the Turkish government must work to improve conditions at the structural level to

¹⁹⁹ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 39.

²⁰⁰ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 13.

²⁰¹ UK Border Agency, "Interview with Temucin Tuzecan, Director of 'Stop Violence against Women' Campaign, *Hürriyet* newspaper," *Report of Fact Finding Mission, 11-20 February 2008, Turkey*. (London: UK Home Office, 23 July 2008), at 66-67; KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 14.

²⁰² KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 14.

deter and eliminate incidents of domestic violence through rigorous investigation, prosecution and sentencing of perpetrators, education of law enforcement and other officials, and education and rehabilitation of women through State supported schemes.²⁰³ The government should work to increase gender sensitivity within law enforcement and the criminal justice system, so that women are able to access the available legal avenues to deal with domestic violence and are able to remain in their homes rather than flee to a shelter.²⁰⁴

- (109) While the EU accession process has led to positive changes in the national legal regime, law enforcement agencies continue to lack the capacity, information, and training necessary to effectively implement the State's responsibility towards the prevention of violence against women.²⁰⁵ Even after filing a complaint, women have few options as to what to do next, and in cases of domestic violence end up returning to their husbands despite the abuse.²⁰⁶ Indeed, guesthouses often persuade women to go back to their spouses.²⁰⁷

²⁰³ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 14.

²⁰⁴ KHRP Shadow Report, *NGO Shadow Report for the Review of the Turkish Government under the UN International Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)*, (KHRP, May 2010), 14.

²⁰⁵ Kearney, KHRP Trial Observation Report, *The Trial of Kerem Cakan: The Turkish Judiciary and Honour Killings*, (KHRP November 2009) 24.

²⁰⁶ Kearney, KHRP Trial Observation Report, *The Trial of Kerem Cakan: The Turkish Judiciary and Honour Killings*, (KHRP November 2009) 26.

²⁰⁷ Kearney, KHRP Trial Observation Report, *The Trial of Kerem Cakan: The Turkish Judiciary and Honour Killings*, (KHRP November 2009) 26.

Detention of juveniles and forms of deprivation of liberty

- (110) As illustrated by the information on the arrest and detention of children both within and outside of the criminal justice system above, Turkey has clearly failed to follow the recommendations of the Working Group on Arbitrary Detentions recommendations which are now over three years old.
- (111) Specialised police departments, prosecutors' offices, and courts for juvenile defenders still do not exist in all regions of Turkey. Indeed, especially in the south-east region where the Kurds predominantly live, the criminal justice system does not effectively take into account the different status that juveniles should hold in the justice system. Social workers are unlikely to play a much needed critical role when children are subject to the criminal justice system. Considering that children often do not have access to a lawyer or their family, it seems unlikely that a social worker will have access to the child.

Combating human trafficking

- (112) Women and young girls in particular are most vulnerable to human trafficking in Turkey.²⁰⁸ Not only has Turkey an international obligation to prevent human trafficking, but this fact is confirmed in its domestic law, the 2005 Penal Code, as well. However, there have been reports of trafficking of women and children to and within Turkey for

²⁰⁸ KHRP *Submissions to the Committee on Economic Social and Cultural Rights*, (KHRP 2010), 31.

the purposes of sexual exploitation and labour.²⁰⁹ Police corruption at all levels has contributes to the trafficking problem.²¹⁰ Turkish prosecutors have tended to use other articles that regulate prostitution, rather than the new law on trafficking, which has so far rendered the new law ineffective.²¹¹ This has led to parliament passing two amendments to the Penal Code in December 2006, designed to address this problem by removing forced prostitution from the article regulating prostitution and adding it explicitly to the anti-trafficking article. The amendments were signed into law by the president in December 2006.²¹²

- (113) Forced prostitution has been identified as the main form of sexual exploitation of children.²¹³ There has been a steady increase in the number of forced child prostitutes in both Diyarbakır and İstanbul. The most widely abused group of children are girls between 12 and 18 years old, yet there are also a substantial number of boys who are victims of sexual abuse.²¹⁴ Kurdish women and girls are especially vulnerable, and this is as a result of poverty, lack of education, the patriarchal nature of Turkish society, and their limited knowledge of the Turkish language. Additionally, some are forced into prostitution by their economic circumstances or by members of their family or

²⁰⁹ K.Yildiz, R.Bernu, J.Stevenson, KHRP FFM, *The Situation of Kurdish Children in Turkey* (KHRP January 2010) 105.

²¹⁰ K.Yildiz, R.Bernu, J.Stevenson, KHRP FFM, *The Situation of Kurdish Children in Turkey* (KHRP January 2010) 105.

²¹¹ K.Yildiz, R.Bernu, J.Stevenson, KHRP FFM, *The Situation of Kurdish Children in Turkey* (KHRP January 2010) 105.

²¹² K.Yildiz, R.Bernu, J.Stevenson, KHRP FFM, *The Situation of Kurdish Children in Turkey* (KHRP January 2010) 105.

²¹³ K.Yildiz, R.Bernu, J.Stevenson, KHRP FFM, *The Situation of Kurdish Children in Turkey* (KHRP January 2010) 105.

²¹⁴ K.Yildiz, R.Bernu, J.Stevenson, KHRP FFM, *The Situation of Kurdish Children in Turkey* (KHRP January 2010) 105.

partners.²¹⁵ Women and children from the rural parts of Kurdish areas are sometimes forced into prostitution in the big cities in Turkey.²¹⁶ In some instances, families believe that they are selling them into marriage, but they are actually selling them into prostitution.²¹⁷ Parents in especially destitute areas sometimes feel the need to sell their daughters into prostitution, particularly daughters that will not bring a high bride price.²¹⁸ Once a child has been sold or forced into prostitution, it is extremely difficult to escape. In some instances, security and police officers even guard brothels.²¹⁹ Since the concept of internal trafficking is not commonly used in Turkey, in practice there is no means of escape for those forced into the sex trade.

Measures that protect human defenders and NGOs

- (114) The term 'human rights defender', introduced by the UN in 1998 to supersede narrower phrases like 'human rights activist' and 'human rights professional', refers to anyone who works to uphold the 1948 Universal Declaration of Human Rights. In Turkey, the main human rights NGOs include TIHV, İHD, the Association of Human Rights and Solidarity for Oppressed People (Mazlum-Der) and the Human Rights Institute of Turkey (TIHAK). These organisations conduct monitoring, reporting and lobbying of the government. They also participate in the

²¹⁵ K.Yildiz, R.Bernu, J.Stevenson, KHRP FFM, *The Situation of Kurdish Children in Turkey* (KHRP January 2010) 105.

²¹⁶ K.Yildiz, R.Bernu, J.Stevenson, KHRP FFM, *The Situation of Kurdish Children in Turkey* (KHRP January 2010) 105.

²¹⁷ K.Yildiz, R.Bernu, J.Stevenson, KHRP FFM, *The Situation of Kurdish Children in Turkey* (KHRP January 2010) 105.

²¹⁸ K.Yildiz, R.Bernu, J.Stevenson, KHRP FFM, *The Situation of Kurdish Children in Turkey* (KHRP January 2010) 105.

²¹⁹ K.Yildiz, R.Bernu, J.Stevenson, KHRP FFM, *The Situation of Kurdish Children in Turkey* (KHRP January 2010) 105.

drafting of legislation, provide legal assistance, organise demonstrations, and promote protection of minority rights.²²⁰

- (115) Certain provisions of Turkey's current legislation pave the way for systematic violations of freedom of expression and freedom of association.²²¹ Such laws facilitate the interference in the efforts of human rights defenders to communicate legitimate criticism of the state and its representatives.²²² Further problems are posed by legislation specifically regulating the establishment and functioning of NGOs.²²³ For example, Article 30 of the Law on Associations (No. 5253) restricts the operations of NGOs which have objectives that are prohibited by the constitution or other legislation.²²⁴ Such objectives can include making propaganda on behalf of a terrorist organization, insulting the Turkish nation or a range of other offences whose vague legal definitions pave the way for arbitrary interference in the work of NGOs undertaking any number of legitimate activities.²²⁵ Similarly, Article 56 of the Turkish Civil Code (no. 4721) places restrictions on organisations who commit the loosely-defined offence of contravening 'law and morality'.²²⁶ Under Article 92 of the Turkish Civil Code, foreign NGOs are required to obtain a license from the authorities, and

²²⁰ E.Hughes and S.Karakaş, KHRP FFM, *Human Rights in the Kurdish Region of Turkey*, (KHRP, August 2009) 45.

²²¹ E.Hughes and S.Karakaş, KHRP FFM, *Human Rights in the Kurdish Region of Turkey*, (KHRP, August 2009) 45. .

²²² E.Hughes and S.Karakaş, KHRP FFM, *Human Rights in the Kurdish Region of Turkey*, (KHRP, August 2009) 45.

²²³ E.Hughes and S.Karakaş, KHRP FFM, *Human Rights in the Kurdish Region of Turkey*, (KHRP, August 2009) 45.

²²⁴ E.Hughes and S.Karakaş, KHRP FFM, *Human Rights in the Kurdish Region of Turkey*, (KHRP, August 2009) 45.

²²⁵ E.Hughes and S.Karakaş, KHRP FFM, *Human Rights in the Kurdish Region of Turkey*, (KHRP, August 2009) 45.

²²⁶ E.Hughes and S.Karakaş, KHRP FFM, *Human Rights in the Kurdish Region of Turkey*, (KHRP, August 2009) 45.

this provision has been used to launch several cases, including proceedings against the Diyarbakır branch of the İHD for receiving foreign NGOs, media, and political and student delegations.²²⁷

- (116) The situation of Muharrem Erbey, illustrates the problems faced by human rights defenders whose work is particularly related to the realisation of human rights for Kurds in Turkey. Mr. Erbey who is a lawyer and since the late 1990s has worked on human rights issues in Turkey is respected internationally for the work that he has carried out. He has represented a number of individuals whose cases have come to the European Court on Human Rights. In 2008 he became Vice President of the İHD, one of Turkey's most reputable human rights associations. He is also President of the Diyarbakır Branch of the İHD. He has been the subject of a number of investigations as a result of his work²²⁸ and on 24 December 2009, he was arrested under anti terror legislation for 'being a member of an illegal organisation'.²²⁹ An indictment prepared by prosecutors investigating the KCK/TM, an organization that the prosecution alleges functions as the urban arm of the outlawed Kurdistan Workers' Party (PKK), has been presented to the Diyarbakır 6th High Criminal Court. The document, prepared by the Diyarbakır State Prosecutor's Office, presses charges against 151 Kurdish politicians over 100 of whom are currently in state custody -- including 12 mayors and several executives of the now-closed Democratic Society Party (DTP). The indictment refers to Mr. Erbey's international human rights work including preparation and participation in human rights training organized jointly with KHRP in the region. Prior to his arrest Mr. Erbey had also recently taken part in

²²⁷ E.Hughes and S.Karakaş, KHRP FFM, *Human Rights in the Kurdish Region of Turkey*, (KHRP, August 2009) 45.

²²⁸ E.Hughes and S.Karakaş, KHRP FFM, *Human Rights in the Kurdish Region of Turkey*, (KHRP, August 2009) 49

²²⁹ KHRP Press release 19th February 2010

visits to various European parliaments, including in Sweden, Belgium and the UK, where he spoke on Kurdish rights. He had also participated in a Kurdish film festival staged in Italy in late 2009. In September 2009 he had taken part in a workshop on minority rights in Diyarbakir. At the time of his arrest, the offices of the İHD were searched and documentation seized, including archives on serious human rights violations over the past two decades, including extra judicial killings and disappearances and files relating to cases before the EctHR. In a letter written by Mr. Erbey on 20 January 2010 he stated that his interrogation included questions about:

- (a) projects for securing funds for training programs and seminars on the prevention of child abuse and promotion of women's rights;
 - (b) alleged insults about the (Turkish) State while speaking abroad including in the Swedish, British and Belgian parliaments and the United Nations;
 - (c) participation in a "Workshop for a Civil and Democratic Constitution" organized by the Democratic Society Congress with the participation of civil society institutions;
 - (d) and meetings with Osman Baydemir, the Mayor of Diyarbakir Metropolitan Municipality with whom he works as legal consultant and lawyer .
- (117) During his detention, Erbey was subjected to degrading treatment by the authorities that were aimed at his individual and institutional dignities through practices such as exposure to the press and the public in handcuffs.
- (118) The phones at the Diyarbakir branch of İHD office are routinely tapped and police officers attend every press conference of the

organisation.²³⁰ Once investigations have been launched, maximum effort is made by the authorities to hamper human rights defenders' work. This includes applying probationary measures in place of custodial sentences in accordance with Article 50 of the Turkish Penal Code, which can involve forbidding human rights defenders from going to coffee shops and teahouses, participating in meetings and demonstrations, and taking part in training courses.²³¹ Since the beginning of 2008, the Siirt branch of İHD had been contacted by more than 500 individuals against whom such measures had been applied.²³² Courts also often postpone the announcement of rulings for up to two years in accordance with Article 231 of the Turkish Code of Criminal Procedure, thereby putting enormous psychological pressure on human rights defenders.²³³

- (119) The cases outlined above illustrate the vast gap that exists between some of the more positive reforms that have been put in place in recent years in the context of the EU accession process, and the reality of life for those working on the ground to promote the protection of human rights.²³⁴

²³⁰ E.Hughes and S.Karakaş, KHRP FFM, *Human Rights in the Kurdish Region of Turkey*, (KHRP, August 2009) 49.

²³¹ FFM interview with Vetha Aydın, İHD Siirt branch, 5 May 2009, Siirt; E.Hughes and S.Karakaş, KHRP FFM, *Human Rights in the Kurdish Region of Turkey*, (KHRP, August 2009) 50.

²³² FFM interview with Vetha Aydın, İHD Siirt branch, 5 May 2009, Siirt; E.Hughes and S.Karakaş, KHRP FFM, *Human Rights in the Kurdish Region of Turkey*, (KHRP, August 2009) 50.

²³³ FFM interview with Vetha Aydın, İHD Siirt branch, 5 May 2009, Siirt; E.Hughes and S.Karakaş, KHRP FFM, *Human Rights in the Kurdish Region of Turkey*, (KHRP, August 2009) 50.

²³⁴ E.Hughes and S.Karakaş, KHRP FFM, *Human Rights in the Kurdish Region of Turkey*, (KHRP, August 2009) 50.

Internally Displaced Persons

- (120) In an ostensible effort to combat the Kurdish Workers' Party (PKK) insurgency during the 1980s and 1990s, state security forces forcibly displaced thousands of rural communities in the Kurdish regions of Turkey.²³⁵ Some 3,500 towns and villages were destroyed during this time.²³⁶ Illegal detention, torture and extra-judicial execution by both state forces and village guards also took place.²³⁷ Today, the majority of these villages remain demolished and there are no plans for their reconstruction.²³⁸ Between 3 and 4 million villagers were forced from their homes and are still not allowed to return.²³⁹ Most internally displaced people (IDPs) are unable to return to their homelands because of obstruction by village guards, landmines and poor socio-economic conditions.²⁴⁰
- (121) Following criticism of international bodies regarding the situation of IDPs, Turkey introduced Law No. 5233. KHRP along with numerous other organisations has continued to criticise this law and advocate that it does not provide for fair and proper redress for internally displaced Kurds in Turkey.

²³⁵ KHRP FFM, *The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights – An Update, Fact-Finding Mission Report*, (KHRP December 2006) 13.

²³⁶ KHRP FFM, *The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights – An Update, Fact-Finding Mission Report*, (KHRP December 2006) 13.

²³⁷ KHRP FFM, *The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights – An Update, Fact-Finding Mission Report*, (KHRP December 2006) 13.

²³⁸ KHRP FFM, *The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights – An Update, Fact-Finding Mission Report*, (KHRP December 2006) 13.

²³⁹ KHRP FFM, *The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights – An Update, Fact-Finding Mission Report*, (KHRP December 2006) 13.

²⁴⁰ KHRP FFM, *The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights – An Update, Fact-Finding Mission Report*, (KHRP December 2006) 13.

- (122) A significant issue to be considered in assessing the Compensation Law is the fact that many applicants are excluded from receiving compensation and a further body of potential claims is prevented from being made in the first place.²⁴¹ For example, a number of individuals have been automatically excluded from applying to the commissions for compensation because they have already received some minimal compensation, because they are 'voluntary' evacuees or because they have been convicted under Anti-Terror Law.²⁴²
- (123) Furthermore, the Compensation Law dealing with compensation for material losses, only addresses one aspect of the IDP situation.²⁴³ The Compensation Law fails to provide reparation for non-pecuniary losses such as trauma, it does not contemplate return as a form of compensation, and it fails to address the significant social, economic, cultural and psychological consequences of displacement.²⁴⁴
- (124) Despite the various efforts of the Turkish Government and other parties to address the situation of IDPs in Turkey, internally displaced Kurds continue to face a wide range of difficulties as a direct result of government inaction and discriminatory practices.²⁴⁵ Moreover, there are a range of obstacles to the return of IDPs to their homes, including issues relating to security, access to resources, public services and

²⁴¹ M.Muller and S.Linzey, KHRP FFM, *The Internally Displaced Kurds of Turkey: Ongoing Issues of Responsibility, Redress and Resettlement* (KHRP September 2007) 63.

²⁴² M.Muller and S.Linzey, KHRP FFM, *The Internally Displaced Kurds of Turkey: Ongoing Issues of Responsibility, Redress and Resettlement* (KHRP September 2007) 63.

²⁴³ M.Muller and S.Linzey, KHRP FFM, *The Internally Displaced Kurds of Turkey: Ongoing Issues of Responsibility, Redress and Resettlement* (KHRP September 2007) 85.

²⁴⁴ M.Muller and S.Linzey, KHRP FFM, *The Internally Displaced Kurds of Turkey: Ongoing Issues of Responsibility, Redress and Resettlement* (KHRP September 2007) 85.

²⁴⁵ M.Muller and S.Linzey, KHRP FFM, *The Internally Displaced Kurds of Turkey: Ongoing Issues of Responsibility, Redress and Resettlement* (KHRP September 2007) 86.

infrastructural and economic underdevelopment.²⁴⁶ Women and children are further disadvantaged by their gender and minority.²⁴⁷

(125) As the security forces and the gendarmerie are tasked with protecting national security, a duty which has often operated to the detriment of IDPs in the past, their presence raises concerns as to the safety of the region, both for those currently living in the region and for those considering return as an option.²⁴⁸ Further, there is a real risk of injury or death for anyone entering into or living in the region, given the resurgence of armed clashes since 2004.²⁴⁹

(126) As a result of the severe problems faced by IDPs, the Return to Village and Rehabilitation Project (the 'Project') was launched in March 1999 by the Prime Minister at the time, Bülent Ecevit.²⁵⁰ Its aim was 'to ensure that those who left their villages for security reasons could return to their villages or settle in other suitable places to create sustainable life conditions by constructing necessary social and economic infrastructures'.²⁵¹ The Project covers the 14 south-eastern provinces of Adıyaman, Ağrı, Batman, Bingöl, Bitlis, Diyarbakır,

²⁴⁶ M.Muller and S.Linzey, KHRP FFM, *The Internally Displaced Kurds of Turkey: Ongoing Issues of Responsibility, Redress and Resettlement* (KHRP September 2007) 86.

²⁴⁷ M.Muller and S.Linzey, KHRP FFM, *The Internally Displaced Kurds of Turkey: Ongoing Issues of Responsibility, Redress and Resettlement* (KHRP September 2007) 86.

²⁴⁸ M.Muller and S.Linzey, KHRP FFM, *The Internally Displaced Kurds of Turkey: Ongoing Issues of Responsibility, Redress and Resettlement* (KHRP September 2007) 86.

²⁴⁹ M.Muller and S.Linzey, KHRP FFM, *The Internally Displaced Kurds of Turkey: Ongoing Issues of Responsibility, Redress and Resettlement* (KHRP September 2007) 86.

²⁵⁰ KHRP FFM Report, *The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights – An Update*, (KHRP December 2006) 23.

²⁵¹ KHRP FFM Report, *The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights – An Update*, (KHRP December 2006) 23.

Elazığ, Hakkari, Mardin, Muş, Siirt, Şırnak, Tunceli and Van.²⁵² These are predominantly populated by the Kurds.

- (127) Despite the establishment of the Project, there are still many obstacles which hamper the return of IDPs to their villages, including the continued relative economic underdevelopment of east and south-east Turkey, the absence of basic infrastructure, the lack of capital, limited employment opportunities and the security situation of landmines and village guards.²⁵³ The village guards continue to pose a significant threat to villagers in south-east Turkey, as they are a state-mandated yet largely unregulated armed force and therefore warrant separate consideration.²⁵⁴ The Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, in a letter to the Turkish Minister of Interior on 8 June 2010 highlighted complaints received about the behaviour of village guards, allegedly using their weapons for illegal purposes and has requested information as to whether village guards are included in any proposals for an independent police complaints mechanism. He further highlighted reports of several casualties and injuries caused by undetected mines, in particular severely injuring and sometimes even killing children.²⁵⁵

²⁵² KHRP FFM Report, *The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights – An Update*, (KHRP December 2006) 23.

²⁵³ KHRP FFM Report, *The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights – An Update*, (KHRP December 2006) 25.

²⁵⁴ KHRP FFM Report, *The Status of Internally Displaced Kurds in Turkey: Return and Compensation Rights – An Update*, (KHRP December 2006) 88.

²⁵⁵ M.Muller and S.Linzey, KHRP FFM Report, *The Internally Displaced Kurds of Turkey: Ongoing Issues of Responsibility, Redress and Resettlement* (KHRP September 2007) 88.

OTHER ISSUES

Measures taken to disseminate CAT

- (128) Turkey does not clearly answer whether this has been done or not.²⁵⁶ Further, conclusions and recommendations of the Committee are not available on any of the Turkish governmental websites either in Turkish or Kurdish.
- (129) As to the involvement of civil society organizations in the drafting of the report, KHRP has not received any indication through its extensive network of NGOs in Turkey, of the involvement of civil society organisations in the preparation of the report. Turkey's reply corroborates this, as it indicates that the involvement of such organizations has been limited to its mere reading of reports from different organizations, yet not having engaged in any comprehensive dialogue with them.

Measures taken to protect human rights

- (130) Although Turkey has launched legal reforms aimed at the promotion and protection of human rights, these reforms do not accurately reflect the situation in Turkey. Consequently, there is a considerable gap between the law on paper and the law in practice.
- (131) Even though Turkey states that these legal reforms have been widely acclaimed by the international community, a multitude of international

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bodies and committees have expressed concerns about the human rights situation in Turkey. The EU Commission's progress report on Turkey from 2009 states that efforts to implement and apply the legal framework against torture and ill-treatment have been limited, and that allegations of torture and impunity for perpetrators are still issues of concern.²⁵⁷ The Committee on the Elimination of Discrimination against Women (CEDAW) lists several areas of concern in their consideration of Turkey's report including the situation of various disadvantaged groups of women including Kurdish women.²⁵⁸ The Committee on the Elimination of Racial Discrimination (CERD) and the Committee on the Rights of the Child (CRC) also lists a number of recommendations in their considerations of Turkey's reports to the respective committees.

- (132) Turkey's flawed human rights record is also illustrated by the high number of judgements made in the ECtHR. Between early October 2008 and mid-September 2009 this amounted to 381 judgments.²⁵⁹ Turkey's implementation of these judgments is not consistent and is often delayed.²⁶⁰

²⁵⁷ Commission of the European Communities, 'Turkey 2009 Progress Report', p. 16, at http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf (last accessed September 2010)

²⁵⁸ Committee on the Elimination of Discrimination against Women, 'Concluding observations of the Committee on the Elimination of Discrimination against Women', 10, at <http://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-TUR-CO-6.pdf> (last accessed September 2010)

²⁵⁹ Commission of the European Communities, 'Turkey 2009 Progress Report', 14, at http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf (last accessed September 2010)

²⁶⁰ Commission of the European Communities, 'Turkey 2009 Progress Report', 14, at http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf (last accessed September 2010)

- (133) KHRPs fact-finding missions to Turkey have also documented this pattern of human rights violations in Turkey. One example is the physical and mental abuse of children in detention.²⁶¹ Another example is the casual violence and beatings in the prison system, where so called 'welcome' beatings occur routinely.²⁶²

²⁶¹ KHRP FFM Report, *The situation of Kurdish children in Turkey*, (KHRP, London, January 2010), 142

²⁶² KHRP FFM Report, *Closed Ranks: Transparency and accountability in Turkey's prison system*, (KHRP London, April 2009), 79