

SUBMISSION
AND
LIST OF ISSUES TO BE TAKEN UP IN
CONNECTION WITH THE CONSIDERATION OF
TURKEY'S INITIAL REPORT CONCERNING
THE RIGHTS COVERED BY ARTICLES 1-15 OF
THE INTERNATIONAL COVENANT ON
ECONOMIC SOCIAL AND CULTURAL RIGHTS

FOR THE PRE SESSIONAL WORKING GROUP TO
THE 44TH SESSION OF THE COMMITTEE ON
ECONOMIC SOCIAL AND CULTURAL RIGHTS

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 and registered charity founded in 1992 and based in London, England. KHRP is committed to the promotion and protection of the human rights of all persons living within the Kurdish regions of Turkey, Iran, Iraq, Syria and elsewhere, irrespective of race, religion, sex, political persuasion or other belief or opinion.

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

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

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

KHRP employs ten permanent members of staff in England, and Kurdistan, Iraq. Its UK office is located in central London, where it is not subject to the

intimidation and censorship faced by Non-Governmental Organisations (NGOs) in the Kurdish regions. It has formed partnerships with such NGOs as The Corner House and Human Rights Watch to send fact-finding missions to the aforementioned regions, and works with the Bar Human Rights Committee of England and Wales to conduct trial observation missions to these regions. KHRP is both a registered charity and limited company, and is funded through charitable trusts and donation.

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INTRODUCTION

1. This submission to the United Nations Committee on Economic, Social and Cultural Rights ('the Committee') concerns Turkey's observance of the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR). The observations and comments are taken from KHRP's regular work with people, primarily of Kurdish origin. This paper cites extensive research and legal casework to demonstrate significant areas where the Turkish Government has failed sufficiently to meet its obligations under the ICESCR, in spite of statements that it makes in its initial report submitted in June 2008. Throughout this submission, we respectfully suggest questions that the Committee may wish to pose to Turkey during its examination of Turkey's initial report.
2. KHRP gives full permission for this submission to be placed on the website of the Office of the High Commissioner for Human Rights and for it to be referred to by Committee members as a source of information during discussions with the Turkish Government.

GENERAL INFORMATION

Proposed questions for list of issues

- Please indicate the extent and manner of the participation of civil society in the preparation of Turkey's initial report on the Implementation of the Covenant on Economic, Social and Cultural Rights 2008.
- Please indicate plans for full implementation of the International Covenant on Economic Social and Cultural Rights.
- Please indicate what plans there are to address the specific problems with implementation of the International Convention on Economic Social and Cultural Rights in relation to the Kurdish population.

ARTICLE 1 – RIGHT OF SELF-DETERMINATION

Proposed questions for list of issues

- Please provide information on the steps the Turkish Government is taking to promote the right of Kurdish people to self-determination.
- Please provide details of any policies and measures being pursued by the Turkish Government to ensure that Kurdish people are proportionately represented in national and regional political parties and are otherwise able to meaningfully participate in and contribute to policy and decision-making processes.
- Please provide information on the steps that the Turkish Government is taking to improve consultation with Kurdish communities in relation to policies and infrastructure projects that will affect the south east.
- Please provide details about the people arrested under laws prohibiting written Kurdish in election campaigns and the proportion of those people who are Kurdish.

The right of self-determination of the Kurdish peoples

1. The Turkish Constitution was designed, in 1982, in conformity with Turkey's strict adherence to a single Turkish nationalism. By failing to recognise any other ethnic identity except Turkish, Turkey refuses to

grant its ethnic minorities their right of self-determination.¹ For the Kurds, who make up approximately 23 per cent of Turkey's population, this refusal is felt through Turkey's embargo of their cultural and political freedoms.

2. The boldest way by which the Turkish Government denies Kurdish people their right of self-determination is through the criminalisation of political organisations and civil society institutions which advocate Kurdish rights and freedoms.² By aligning political sympathies for the Kurdish people with a separatist threat, the Turkish Government has been able to use anti-terror laws to outlaw pro-Kurdish parties,³ expunge their members from parliament and authorise their subsequent arrest.⁴ Since the early 1970s the Turkish Government has instigated a policy of systematically banning peaceful and legitimate Kurdish political parties.⁵ This long-standing policy has had a constraining effect upon the ability of Kurdish parties to participate in the Turkish political system.
3. A second exclusionary device takes the form of prohibitions on written Kurdish languages in election campaigns.⁶ Laws which formerly prohibited spoken Kurdish have, in the past, justified the imprisonment of members of Kurdish political parties.⁷ The number of Kurdish people arrested under the present prohibition on written Kurdish is unknown. A corollary effect of this language restriction is the preclusion of Kurdish citizens from participating in the election process, many of whom cannot read Turkish.

¹ See, for example, Esin Öricü, "The Turkish Constitution Revamped", 8.2 *European Public law* (2002), 201-218.

² A KHRP fact-finding mission to Turkey in July 2007 found that the anti-terror laws had been used to close down five Kurdish newspapers in one month alone. (KHRP Fact-Finding Mission Report, *Reform and Regression: Freedom of the Media in Turkey* (KHRP, London, October 2007), p.57

³ Anti-terror laws allow for the proscription of "terrorist organisations". Five out of the 12 organisations listed by the Director General of Police as "active terrorist organisations" are Kurdish groups, including the PKK (Kurdistan Workers' Party), KONGRA-GEL (People's Congress of Kurdistan), Kurdistan Devrim Partisi (PŞK) (Kurdistan Revolution party), Kurdistan Demokrat Partisi/Bakur (PDK/Bakur) (Kurdistan Democrat Party/ North).

⁴ See the party closure against the DTP in December 2009.

⁵ See, for example, KHRP Fact-Finding Mission Report, *Reform and Regression: Freedom of the Media in Turkey* (KHRP, London, October 2007)

⁶ Article 58 of the Law on Basic Provisions on Elections and Voters Registers bans the use of any language other than the Turkish language, in the election processes. In addition, Art 81(c) of the Political Parties Law provides that "Political parties cannot use a language other than Turkish in writing and printing party statutes or programs, at congresses, indoors or outside; at demonstrations, and in propaganda; cannot use or distribute placards, pictures, phonograph records, voice and visual tapes, brochures and statements written in a language other than Turkish; cannot remain indifferent to these actions and acts committed by others. However, it is possible to translate party statutes and programs into foreign languages other than those forbidden by law."

⁷ For instance, in 2007 executives of HAK-PAR (Rights and Freedoms Party) were imprisoned for speaking in the Kurdish language at the first Ordinary Congress of the Party and for sending invitations to the President of Turkey in Kurdish and Turkish (at <http://www.ihd.org.tr/eana.html>, 23 September 2007)

4. Without democratic decentralisation in the Kurdish regions, the ability of Kurdish people to contribute to the formulation of national policies is extremely limited. The establishment of a properly representative decentralised body or bodies in the Kurdish region is essential for the realisation of Article 1 of the ICESCR by Kurdish Turks.

The effect of large scale infrastructure projects on economic social and cultural rights in the south-east of Turkey

5. The Turkish Government has announced that it will resume construction of the Ilisu Dam, despite the withdrawal of European funding.⁸ The Ilisu Dam forms part of the Southeast Anatolia Project (GAP), which is a network of 22 dams and 19 power plants. It alone stands to flood the culturally important ancient town of Hasankeyf, as well as hundreds of other unexplored archaeological sites and 68 villages. The impact of the construction of the Ilisu dam negatively affects the ability of the Kurdish people in the region to freely pursue their economic, social and cultural development.
6. The two professed goals of the GAP project are harvesting energy⁹ and creating more irrigated farm land, thereby increasing employment rates and standards of living.¹⁰ Studies of the future sites and experience from currently operating dams indicate, however, that the project will be unable to achieve these economic goals. Furthermore, Kurdish villagers and farmers will be unable to benefit from any economic growth because they will be displaced from their homes to the shanty towns of nearby cities such as Diyarbakir and Hakkari, which already suffer from poor infrastructure, over-population, unemployment and poverty.
7. KHRP's belief is that the Ilisu dam forms part of a wider goal of cultural assimilation aimed at diminishing Kurdish culture whilst simultaneously strengthening Turkish security over the region. This underlying rationale was clearly stated in a leaked memo in 1993 from the then president of Turkey, Turgut Ozal. It provides that "with the evacuation of mountain settlements, the terrorist organisation (PKK) will have been isolated. Security forces should immediately move in and establish control in such areas. To prevent the locals' return to the

⁸ Agence France Presse (AFP), "Turkey to build disputed dam despite Euro snub", April 20, 2010

⁹ The dam would generate 27 billion kilowatt hours of electricity. This figure takes no account of abstraction of water for irrigation. Olcay Unver, "The Southeastern Anatolia Project (GAP): An Overview", In Turkish Embassy, *Water and Development in Southeastern Anatolia: essays on the Ilisu Dam and GAP*, London 2000, pp 15-16.

¹⁰ The dam would irrigate 1.7 million hectares of land in order to grow cash crops and encourage the growth of agro-industries, such as food processing for export. Per Southeastern Anatolia Regional Development Administration www.gap.gov.tr Sahan, E., Mason, S., Gilli, A., Zogg, A., "Southeastern Anatolia Project in Turkey – GAP", Swiss Federal Institute of Technology Zurich, 2000.

region, the building of a large number of dams in appropriate places is an alternative.”¹¹ The UK Defence Forum has noted that “from the outset, the Southeast Anatolia project has had profound security implications’ and that ‘it is no coincidence that the project is situated in the Kurdish region of Turkey’.¹² According to the World Archaeological Congress, the Ilisu dam project amounts “to a form of ethnic cleansing”, in which supporting governments and companies will be complicit.¹³

8. Neither the affected communities, nor the cities hosting those displaced, have been involved in any meaningful consultation about the dam project. Although the Turkish Government’s State Hydraulics Works Department professes local support, numerous fact-finding missions undertaken over the years by KHRP and its partners in the region, have found that many villagers have not even been informed about the project, while others are adamantly against the project.¹⁴
9. One of the reasons for the absence of local involvement in the consultation process is that it takes place within a context of oppression, torture and other human rights violations instigated by the Turkish state. Against this background, most villagers are too afraid to speak out against the dam project. KHRP’s 2009 mission to the dam region discovered that farmers, for instance, are frightened to make public their grievances because of the village guards.¹⁵ When villagers received a notice in 2007 inviting them to negotiate the compensation awards for their house and land, very few were reported to have responded. Those who did take up the invitation were ordered into a police station and told that they had no rights of negotiation and that the dam was going to be built.¹⁶ Under the present conditions, this consultation process falls manifestly below the standards of meaningful engagement, participation and empowerment required by the right of self-determination.

¹¹ KHRP speech by Anna Irvin, “The Human Rights Impact of Mass Displacement Caused by the Construction of the Ilisu Dam,” 3 July 2008.

¹² Marsh, N., “Wars Downstream”, UK defence Forum, www.ukdf.org.uk/ts5.htm

¹³ World Archaeological Congress. “Withdrawal of Support for Ilisu Dam Project”. Press Statement, 14th November 2001.

¹⁴ National University of Ireland, Galway and the Kurdish Human Rights Project, “*The Cultural and Environmental Impact of large Dams in Southeast Turkey: fact-finding Mission Report*,” London February 2005. Hasankeyf even has its own local initiative to save the town from flooding. City officials from nearby Batman are also unsupportive of the project, as they are unable to cope with thousands of displaced farmers.

¹⁵ Interview with lawyer, Mehmet Emin Basar, Batman, during KHRP; and Corner House Fact-finding Mission to the Ilisu Dam Region, October 2009.

¹⁶ Corner House Fact-finding Mission to the Ilisu Dam Region, October 2009; and see ECGD “Stakeholders’ Attitudes to Involuntary Resettlement in the Context of the Ilisu Dam Project, Turkey”. London, 1999, para 3.6.

ARTICLE 2 – NON-DISCRIMINATION

Proposed questions for list of issues

- Please provide information as to how Turkey proposes to gather information about its ethnic or linguistic groups as a first step to identifying the existence of racial discrimination.
- Please provide information as to any steps taken by Turkey to provide a legal framework which can adequately investigate and address allegations of human rights abuses based on ethnicity.
- Please explain Turkey's refusal to ratify the Covenants on minority rights; including, the Framework Convention on National Minorities, the Convention against Discrimination in Education, the European Charter for regional or Minority Languages and the European Convention on Nationality and, specifically, how its refusal to ratify the aforementioned Conventions is compatible with the aim of safeguarding minority rights.
- Please explain what steps Turkey is taking in order to remove its reservations to Article 27 of the ICCPR and to Article 13 of the ICESCR.
- What steps, including legislative measures, is the Turkish Government taking to address issues of substantive inequality and systematic discrimination against Kurdish people?
- Please explain Turkey's current position in relation to negotiation and adoption of an Optional Protocol to the ICESCR and how this position is compatible with the principle that victims should be entitled to an "effective remedy" for human rights violations.
- Please explain Turkey's current position in relation to negotiation and adoption of Protocol 12 to the ECHR and how this position is compatible with its adherence to the principle of non-discrimination.

Non-discrimination

10. There is no comprehensive law on non-discrimination in Turkey. The existing legal framework is fragmented and refrains from incorporating sound and effective measures aimed at eradicating discrimination against the Kurds. A first step towards this goal requires that statistical information about Turkey's ethnic or linguistic groups is obtained. As yet the Turkish authorities have failed to conduct any such census or other comprehensive survey along these lines.

Legal framework

11. The legal framework outlined by Turkey in its report,¹⁷ is not pertinent to securing Article 2; namely, that the substantive rights enunciated in the Covenant are exercised without discrimination. As such, Turkey has failed to address the crucial question about how its legislative framework guarantees that the legal rights are applied in a non-discriminatory manner.
12. The only legislative provision outlined in Turkey's report which has as its specific rationale the elimination of discrimination is Article 216 of the Penal Code, which is concerned with the incitement of racial hatred. However, this provision has not been applied to oral, written or other expressions which target the Kurdish population. Further, the European Commission has criticised its discriminatory application by certain public prosecutors in order to prosecute personalities expressing "pro-Kurdish views", rather than to punish racist remarks.¹⁸

Exclusion of Kurds from definition of "minority"

13. Turkish official policy on minorities is based on the Lausanne Treaty signed on 24 July 1923, which provides protection only for non-Muslim minorities.¹⁹ Since the majority of Kurds follow Sunni Islam,²⁰ they are excluded from minority protection. In contra-distinction to religious minorities, such as Greek-Orthodox, Armenian and Jewish peoples, the Kurdish identity is not recognised by the Turkish legal framework. As a result, Turkey's most significant minority population are denied the rights available to non-Muslim minorities.
14. A Government-commissioned report by the Human Rights Advisory Board found that Turkey's minority definition was too restrictive and advised that the law should recognise that minorities exist where communities are "ethnically, linguistically and religiously different."²¹ The authors of the report, Professor Baskin Oran and Professor Ibrahim Özden Kaboglu, subsequently faced protracted criminal proceedings under Articles 216 (incitement of racial hatred) and 301 of the Penal

¹⁷ Economic and Social Council, "Implementation of the International Covenant on Economic, Social and Cultural Rights: Initial reports submitted by States parties under articles 16 and 17 of the Covenant, Turkey," 25 June 2008 at p 9.

¹⁸ European Commission, *European Commission against Racism and Intolerance Third Report on Turkey*, CRI(2005), 25 June 2004; and Today's Zaman, "Ethnic Tensions Rise in Aegean Town of Altnova" 3 October 2008

¹⁹ See s.3 of the Treaty of Lausanne 1923.

²⁰ David McDowell, *A Modern History of the Kurds*, IB Tauris and Co. Ltd., London, 2004 pp 1-2

²¹ The Human Rights Advisory Board, "The Minority Rights and Cultural Rights Working Group Report," October 2004, presented to the Prime Ministry on 22 October 2004.

Code, (denigration of the Turkish nation) in connection with the views expressed in their report.²²

15. The Parliamentary Assembly of the Council of Europe in its Recommendation 1201 (1993) proposes the following definition: "... the expression "national minority" refers to a group of persons in a State who: a) reside in the territory of that State and are citizens thereof, b) maintain long-standing, firm and lasting ties with that state, c) display distinctive ethnic, cultural, religious or linguistic characteristics, d) are sufficiently representative, although smaller in number than the rest of the population of the State or of a region of that State, and e) are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language."²³ Turkey should adopt this definition in order to give effect to Article 2 of the ICESCR. In May 2003, the European Parliamentary Commission on Foreign Affairs, Human Rights, Common Security and Defence Policy condemned Turkey's refusal to accommodate the linguistic and cultural rights of the Kurds and stressed the need for Constitutional reform.²⁴ This sentiment has since been echoed by other European bodies.²⁵

International cooperation

16. Although Turkey has become a party to relevant international instruments, it has been reticent to sign up to binding international standards in the field of minority rights. Article 27 of the ICCPR prohibits State Parties from denying national minorities "in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." Although Turkey ratified this Treaty in September 2003, it submitted a reservation stating that Article 27 would be implemented in accordance with the Turkish Constitution and the Treaty of Lausanne 1923. The effect of Turkey's reservation is to exclude the application of Article 27 for Kurdish people. Under the Vienna Convention on the Law of Treaties a state cannot issue a reservation "incompatible with the object and purpose of the Covenant".²⁶
17. Turkey has made a similar reservation to Article 13 of the ICESCR, which provides for the liberty of parents to ensure religious and moral

²² KHRP Trial Observation Report, *Suppressing Academic Debate: The Turkish Penal Code*. KHRP, London, June 2006.

²³ Council of Europe, "Parliamentary Assembly, Recommendation 1201," (1 February 1993)

²⁴ The European Parliamentary Commission on Foreign Affairs, Human Rights, Common Security and Defence Policy, "Report on Turkey's application for membership of the European Union" (COM(2002)700 –C%-0104/2003-2000/2014(COS))

²⁵ The Council of Europe Parliamentary Committee, "Parliamentary Assembly Resolution 1622," 2008; European Commission against Racism and Intolerance, "Third Report on Turkey", 25 June 2004.

²⁶ Article 19(c)

education in conformity with their own convictions and for the liberty of individuals and bodies to establish and direct educational institutions under certain conditions. The effect of Turkey's reservation is that education rights must be applied in conformity with its constitutional provisions which prohibit the use of languages other than Turkish in state schooling. This outcome clearly undermines the purpose of Article 13.

18. Turkey has so far resisted pressure to accede to the Framework Convention on National Minorities ("FCNM"). Its accession to this convention is important, especially in light of Turkey's reservation to Article 27 ICCPR, because it is the first and only multilateral binding treaty on minority rights. The Parliamentary Assembly of the Council of Europe (PACE) has repeatedly called on Turkey to ratify the Convention, stating that "persistent failure to sign or ratify this instrument and to implement its standards should be the subject of particular attention in the monitoring procedures conducted by Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities of Europe, as appropriate."²⁷
19. Nor has Turkey ratified the Convention against Discrimination in Education, the European Charter for regional or Minority Languages or the European Convention on Nationality. In the context of Turkey's historical and current treatment of the Kurds, its reluctance to sign up to international standards on minority rights casts serious doubts on the sincerity of its undertakings to respect the rights of minorities under its jurisdiction.
20. Turkey has not signed or ratified Protocol 12 to the ECHR, which guarantees a free-standing right to equality. Protocol 12 is designed to advance the ECHR's protection of equality beyond the relatively limited guarantee in Article 14, which guarantees a right to non-discrimination only in the enjoyment of other rights under the Convention. For Article 14 to apply, therefore, it must be established that the difference in treatment falls within the scope of one of the other Convention rights. Moreover, its scope is wide: beyond the obligation not to discriminate in relation to "rights set forth by law" in Article 1.1 of Protocol 12, there is an obligation of non-discrimination by public authorities, in Article 1.2, irrespective of whether any other right is engaged. The rights enshrined in Protocol 12 are rights which the Turkish Government has accepted through its international commitments to human rights instruments. These commitments should be effectively implemented in its domestic law through a free standing right of non-discrimination.

²⁷ PACE, "Rights of National Minorities", Recommendation 1623 (2003)1.

21. To date, Turkey has not adopted a positive and constructive role in respect of the negotiation and adoption of an optional protocol to the *ICESR*. An optional protocol would provide individuals and groups with a forum in which they may seek public accountability and, potentially, relief in respect of violations of their economic, social and cultural rights internationally, if they have been denied access to justice domestically. In light of the lack of available remedies in Turkey's domestic laws for breaches of economic, cultural and social rights, adoption of the optional protocol would provide victims with an important avenue for redress where their rights may have been breached.

ARTICLE 3 – GENDER EQUALITY

Proposed questions for list of issues

- Please provide information about the steps taken to ensure that the training and in-service training programmes for security forces foster communication with Kurdish women and children.
- Please provide information about the steps taken by the General Directorate on the Status of Women to implement its “National Action Plan” to combat domestic violence against Kurdish women.
- Please provide information about specific measures implemented to educate Kurdish victims of domestic violence about their legal rights and avenues of redress.
- Please provide information about how Turkey plans to address current deficiencies in its Municipality Law No. 5393
- Please provide information about the steps Turkey is taking to provide education in Kurdish alongside Turkish, as an effort to increase access to education for Kurdish people.
- Please provide information about Turkey’s strategy to achieve an equal spread of health care facilities among the various regions in Turkey.
- Please provide data on the distribution of mental health service providers among provinces and how Turkey plans to make them accessible to Kurdish women.
- Please outline the steps Turkey is taking to deal with the issue of family-forced honour suicides, including how it is gathering accurate

data on this issue and in what ways it is supporting local women's groups.

- Please provide information about the steps Turkey is taking to ensure that courts are not applying discretionary measures and mitigating punishments for honour crimes.
- Please provide information about how the "National Action Plan for Combating Domestic Violence against Women" will be implemented with respect to the Kurdish community, bearing in mind that the perpetrators of domestic violence are predominantly illiterate or otherwise poorly educated.
- Please provide recent data about the impact of speaking Turkish on socio-economic indicators in relation to Kurdish people. If no such data is available, please indicate the steps that Turkey is taking to conduct research in this area.

Improving legislation with a view to ensuring gender equality and eliminating violence against women

Constitutional Amendments and Legislative Reforms

22. Turkey has put in place a series of legal reforms in order to achieve compliance with Article 2 of CEDAW, such as amending Article 10 of its Constitution, to provide for equality between men and women. There is no evidence, however, that discrimination against women has reduced in Turkey since the reforms.

Basic indicators related to women

Women and economy

23. By Turkey's own admission "in Turkey the employment of women continues to be an issue".²⁸ The female labour force participation rate in Turkey is still significantly lower than that of males and is on the decline. The female labour force participation rate is even lower among Kurdish women than the general female labour force participation rate in Turkey. According to the Turkish Statistical Institute, approximately six per cent of the 3.2 million women aged 15 and older in the predominantly Kurdish region of Southeast Anatolia are employed compared to the 16 per cent employment rate of women generally in

²⁸ Economic and Social Council, "Implementation of the International Covenant on Economic, Social and Cultural Rights: Initial reports submitted by States parties under articles 16 and 17 of the Covenant. Turkey," 25 June 2008, para. 90.

Turkey.²⁹ Further, the six per cent employment rate in Southeast Anatolia must be viewed cautiously because most of these Kurdish women are employed as unpaid family or agricultural workers, for which female workers are not significantly compensated and which require skills that are not transferrable to employment in an urban setting.

24. This disparity in participation in the labour force is primarily attributable to inequalities in access to education. As a result, the standard of Turkish language speaking and other marketable skills amongst Kurdish women is relatively poor, which is reflected in their opportunities for skilled employment and social mobility.³⁰ These inequalities have been brought to the fore by the currently high levels of rural-to-urban migration in Southeast Anatolia. Socio-economic factors, such as the shrinking share of agriculture in the national economy, have forced many Kurdish women away from their agrarian environments into an urban society in which they are unable to compete due to their lack of marketable job skills and substandard Turkish. As a result, Kurdish women in urban areas are relegated to unskilled labour and are discriminated against in the areas of housing services, education, and healthcare.³¹

25. Although the Turkish government has attempted to address the issue of low employment among Kurdish women in South-east Anatolia through the introduction of, for instance, the Project on “Empowerment of Women and Women NGOs in the Least Developed Regions of Turkey” and ÇATOMs, these projects have had limited success.³² Some Kurdish women are unable to take advantage of these services due to the long distances they must travel, the high volume of domestic work to which they are expected to complete and submission to male decision makers. Without a cohesive strategy to increase access to, and the standard of, education in the Kurdish regions, the exclusion of Kurdish women from the labour force will continue to escalate.

²⁹ See Turkish Statistical Institute, “Population By Population Group and Sex: The Characteristics of the Population By Provinces,” 2000 Population Census

³⁰ Ferhat Şellı and Aygül Fazlıoğlu, *Social Parameters of Woman Labour in the GAP Region*, Second International Conference in Women’s Studies, Eastern Mediterranean University, Centre for Women’s Studies, 26-28 April 2006, at 13; Van Women Association, Assessment Data of the Applications Received in 2008..

³¹ 38 per cent of women who applied to the Women’s Rights Information and Implementation Centre of the Diyarbakir Bar Association did not benefit from any social security insurance and 35 per cent of women did not have any source of income. (Statistical Data of the Applications received in 2008 by Women’s Rights Information and Implementation Centre of the Diyarbakir Bar Association)

³² See NGO Draft Shadow Report for the Review of the Turkish Government under the Un International Convention on the Elimination of all Forms of racial Discrimination against Women (CEDAW), July 2009, para 46

Women and education

26. Illiteracy among Kurdish women is significantly higher than among women in Turkey generally. In Turkey, the illiteracy rate among women is roughly 20 per cent, whilst in the Southeast Anatolian region whose residents are mostly Kurdish, the illiteracy rate is roughly 40 per cent.³³ While this is not indicative of a clear bifurcation in education levels between women in Turkey who speak Turkish and those who do not, it is an indication of the inequalities which Kurdish women face compared to Turkish-speaking women in Turkey.
27. The discrimination faced by Kurdish women with regard to access to education stems from Article 42 of Turkey's Constitution, which provides that only Turkish may be taught as the mother tongue in Turkish educational institutions.³⁴ A study in Turkey examining the influence of speaking Turkish on socio-economic indicators found that 90 per cent of women in the eastern and southern Turkish regions who do not speak Turkish did not finish primary school, are illiterate and are employed either as agricultural or unpaid family workers.³⁵ This study further concluded that since Kurdish women and girls speak Kurdish at home, any restriction on educational opportunities will subsequently restrict any opportunities to learn Turkish and integrate into mainstream society. Although the KHRP recognises that this information precedes Turkey's ratification of the Convention, there is a dearth of more up-to-date information about the impact of speaking Turkish on socio-economic indicators in relation to Kurdish people.
28. The Turkish government has undertaken initiatives which purport to increase the education levels of girls in the Southeast. These include, for instance, the campaign "Let's Go to School, Girls!" and the establishment of Primary Education Schools. No statistics have been provided, however, which show whether the campaigns have been effective at equalising access to educational opportunities. Moreover, these initiatives effectively undermine the cultural rights of women to be educated in Kurdish.

³³ Turkey's Prime Ministry State Planning Organisation, *Ranking of Provinces and Regions in Terms of Socioeconomic Development Indicators*, cited by Ferhat Şellı and Aygül Fazlıoğlu, *Social Parameters of Woman Labour in the GAP Region*, Second International Conference in Women's Studies, Eastern Mediterranean University, Centre for Women's Studies, 26-28 April 2006, at 5.

³⁴ The CEDAW Committee expressed these concerns in UN Committee on the Elimination of Discrimination against Women, "Concluding Comments: Turkey" (CEDAW/C/TUR/4-5), 15 February 2005, at 6.

³⁵ Jeroen Smits and Aye Gündüz-Hoşgör, 'Linguistic Capital: Language as a socio-economic resource among Kurdish and Arabic women in Turkey,' 26(5) *Ethnic and Racial Studies* 26:5 (September 2003), 829–853, at 849–50.

Women and health

29. Health indicators of the Kurdish region of Southeast Anatolia lag behind the country's averages in infant and maternal mortality rates and disease incidence.³⁶ The fertility rate in Southeast Anatolia is almost double Turkey's Total Fertility Rate.³⁷ In order to improve health in the Kurdish regions, the barriers facing Kurdish women needing to access health services must be overcome. These are the lower distribution of health care providers among the Kurdish regions and the lower standard of education among Kurdish women.
30. According to the Turkish Statistical Institute, there is one physician or health care practitioner in the Southeast Anatolian province of Mardin for every 1523 people, whilst in the Western province of Ankara, there exists one physician or practitioner for every 257 people.³⁸ In the Southeast Anatolia province of Sirnak, there is one midwife for every 1597 women, whilst in Ankara, there is one midwife for every 720 people.³⁹ Another study by Hacettepe University in Ankara found that midwives are concentrated in the Western regions of Turkey; 18.5 percent of midwives are employed in Turkey's largest cities, Istanbul, Izmir, and Ankara, while only 14.5 per cent work in the twenty-three provinces of Eastern Turkey.⁴⁰
31. Second, the lower standard of education among women of Kurdish origin is a barrier to access to health clinics.⁴¹ The 2003 Turkey Demographic and Health Survey found that almost all women with at least a high school-level education used pre-natal care, whilst only 53 per cent of women with less than a primary education utilised pre-natal care.⁴² Similarly, it found that only 56.7 per cent of women with less than a primary education used family planning methods or contraception, compared to 74.5 per cent of women with at least a high school education.⁴³ Education increases autonomy and confidence in

³⁶ Ferhat Şelli and Aygül Fazlıoğlu, *Social Parameters of Woman Labour in the GAP Region*, Second International Conference in Women's Studies, Eastern Mediterranean University, Centre for Women's Studies, 26-28 April 2006, at 7.

³⁷ Ferhat Şelli and Aygül Fazlıoğlu, *Social Parameters of Woman Labour in the GAP Region*, Second International Conference in Women's Studies, Eastern Mediterranean University, Centre for Women's Studies, 26-28 April 2006, at 8.

³⁸ Turkish Statistical Institute, "Distribution of Health Personnel of Turkey by Provinces," Healthcare Providers, Social Security & Health, 2006.

³⁹ Turkish Statistical Institute, "Distribution of Health Personnel of Turkey by Provinces," Healthcare Providers, Social Security & Health, 2006.

⁴⁰ Yusuf Celik and David R. Hotchkiss, 'The socio-economic determinants of maternal health care utilization in Turkey.,' *50 Social Science & Medicine* 50(2000), 1798.1797–1806, at 1798.

⁴¹ Hacettepe University, Ministry of Health, "Turkey Demographic and Health Survey" 2003

⁴² "Chapter 10 – Antenatal Care and Delivery Assistance," *Turkey Demographic and Health Survey TDHS-2003*, 119, <<http://www.hips.hacettepe.edu.tr/tnsa2003/data/English/chapter10.pdf>>.

⁴³ Turkish Statistical Institute, "Total Fertility Rate," Gender, Life, and Family; "Chapter 5 – Family Planning," *Turkish Demographic and Health Survey, TDHS-2003*, at 64, <<http://www.hips.hacettepe.edu.tr/tnsa2003/data/English/chapter05.pdf>>.

decision making regarding health and increases the probability that women will seek out health care to produce better health.⁴⁴

32. A corollary of the lower standard of education in the Kurdish region is the lack of awareness among Kurdish women of the benefits of reproductive health services and their inability to communicate with providers of those services in Turkish. Nor is information about family planning disseminated in any languages other than Turkish.
33. Access to mental health services is a particularly pressing issue for Kurdish women due to the historical setting of political instability.⁴⁵ A KHRP study found that the increasing number of suicides among Kurdish women is attributable to a lack of mental health services in the Kurdish regions.⁴⁶ The Turkish Statistical Institute has not published data on the distribution of mental health service providers among provinces. The only published statistics relate to the distribution of traditional health care providers such as physicians, dentists, pharmacists, and nurses.⁴⁷

Violence against women

34. Turkey has taken positive steps towards making appropriate legal reforms aimed at addressing violence against women and to bolster women's rights in the context of domestic violence by, for instance, amendments to its Penal Code and the introduction of Law No.4320 for the Protection of the Family. However, it has failed to take adequate steps to ensure full and effective implementation of its reforms at the level of law enforcement.
35. According to a nationwide survey published in 2009 only 2.1 per cent of women in Turkey and 0.8 per cent of women in Eastern Turkey said that they would call the police, go to court or go to the Association for the Protection of Women if their spouse beat them.⁴⁸ Furthermore, data

⁴⁴ See Yusuf Celik and David R. Hotchkiss, "The socio-economic determinants of maternal health care utilization in Turkey," 50 *Social Science & Medicine*, 50 (2000), pgs. 1797–1806; S. Raghupathy, S. 1996. "Education and the use of maternal health care in Thailand," 43(4) *Soc. Sci. Med.* 43 (4), (1996), 459–471; K. Streatfield, K.M. Singarimbun, M., I. Diamond, I., 1990. "Maternal education and child immunization," 27(3) *Demography* 27 (3), 447–455.

⁴⁵ Presentation by Ayten Adlim, "Multiple Oppression & Women's Access to Healthcare," International Free Women's Foundation, Netherlands, Sept 2005.

⁴⁶ Kurdish Human Rights Project, European Parliament Project: The Increase in Kurdish Women Committing Suicide, [undated], at <http://www.khrp.org/component/option,com_docman/task,doc_view/gid,126/> (last accessed 17 July 2009).

⁴⁷ See Turkish Statistical Institute, "Distribution of Health Personnel of Turkey by Provinces," Healthcare Providers, Social Security & Health, 2006.

⁴⁸ Altınay, Ayşe Gül and Arat, Yeşim (2009) *Violence against women in Turkey: a nationwide survey*. See http://research.sabanciuniv.edu/11418/1/Violence_Against_Women_in_Turkey.pdf, (last accessed 24 July 2009)

from Van Women's Association in 2008 indicates that 70 per cent of women who applied to their centre did not apply anywhere to seek a remedy for their problems, 22 per cent applied to health institutions and local authorities and only 2.5 per cent of women applied to the police station. Two main factors contribute to the lack of legal enforcement of domestic violence in Turkey.

36. First, pervasive cultural attitudes and male dominated environments have rendered the legislative reforms ineffective at enforcement level. Women's rights groups still struggle to defend women against "community attitudes, which are tolerant of violence against women and are shared by judges, senior government officials and opinion leaders in society".⁴⁹ Owing to a cultural attitude of indifference towards domestic violence, police officers decline to investigate allegations of domestic violence,⁵⁰ prosecutors decline to prosecute and protective orders against abusive men are not adequately enforced.⁵¹ These flaws in the implementation of Turkish law reforms were highlighted by the ECtHRs in *Opuz v Turkey*. In that case Turkey was found to have violated Articles 2, 3 and 14 of the ECHR due to the failure of the police and courts to deal with the applicant's and her mother's reports of domestic violence and requests for protective measures under the Law for the Protection of the Family.⁵² In-house training programmes for security officials who have direct contact with victims of violence is a positive step towards changing cultural attitudes, to make an effective change educative and training measures must be implemented bottom up, however, starting with school children and their parents through to the judiciary.
37. The severity of the situation is exacerbated for Kurdish women who do not speak Turkish. These women are at a significant disadvantage in receiving redress as law enforcement officials, being appendages of the state, speak exclusively Turkish. Their inability to communicate with law enforcement officials deters many Kurdish women from bringing domestic violence allegations to the attention of the police and, additionally, through their fear of being subjected to violence at the hands of the officials.⁵³ Turkey has failed to provide for mechanisms that work at ground level to help to overcome the language barriers for Kurdish women, such as the provision of interpreters.

⁴⁹ KHRP Fact-Finding Mission Report, *Human Rights in the Kurdish Region of Turkey: three Pressing Concerns*, August 2009.

⁵⁰ Ibid.

⁵¹ "The Opinion of the Purple Roof Women's Shelter Foundation on the implementation of Law No. 4320", submitted to *Opuz v Turkey*, App no. 33401/02, para 192, 2009.

⁵² ECtHR, *Opuz v Turkey*, App no. 33401/02, para 192, 2009.

⁵³ KHRP Fact-Finding Mission Report, *Human Rights in the Kurdish Region of Turkey: Three Pressing Concerns*, August 2009.

38. A second obstacle to the effective implementation of Turkey's reforms is the lack of awareness of Kurdish women of their legal rights. Turkey omits to enumerate any measures to raise awareness of women's substantive rights and how to access the remedies available to them. Spots and short films on violence against women may increase general awareness of the issues on domestic violence in Turkish society, but it is not clear that they will increase women's knowledge of the legal avenues available to them if they become a victim of domestic violence. Once again Kurdish women who do not speak Turkish are particularly disadvantaged since these awareness campaigns are conducted only in Turkish.
39. As mentioned in its Report, the Municipality Law No.5393 gives local authorities the authority to render women's services and requires municipalities with over 50 000 inhabitants to create a shelter. There are four main deficiencies with this piece of legislation. First, there are not enough shelters in the Kurdish regions: in the Southeast province of Van where many Kurds reside, there is only one state-run women's shelter which can house up to 17 women for periods of three to six months.⁵⁴ Second, the Municipality Law lacks teeth: when asked what penalties a qualifying municipality would suffer if it did not build a woman's shelter pursuant to the Law, Mural Zorluoğlu, the Head of Department of Directorate General for Regional Authorities, stated that a warning was the only penalty in place.⁵⁵ Third, there is a dearth of guidelines for the construction of these shelters: some municipalities are willing to build shelters but are unable to move forward due to lack of guidance from the central government.⁵⁶ Lastly, municipalities are prevented from constructing much-needed shelters due to lack of funds.
40. Honour killings remain a salient issue, which disproportionately affects Kurdish women in Turkey. In 2006, a report compiled by the police titled 'Custom and Honour Crimes' found that over the past five years 1,091 people have been killed in honour crimes in Turkey, 65 per cent of which were women.⁵⁷ The vast majority of victims were from poor families.⁵⁸ The report revealed that 'honour killings' are more

⁵⁴ Kurdish Human Rights Project, *The Increase in Kurdish Women Committing Suicide*, 3 October 2007 at 8, at <http://www.khrp.org/component/option,com_docman/task,doc_view/gid,126/> (last accessed 17 July 2009).

⁵⁵ UK Border Agency, "Interview with Mural Zorluoglu, Head of Department of Directorate General for Regional Authorities, Ministry of the Interior," *Report of Fact Finding Mission, 11-20 February 2008, Turkey*. (London: UK Home Office, 23 July 2008), at 116.

⁵⁶ 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.

⁵⁷ Kurdish Women's Rights Watch, *Turkey: 'Honour' Killings, A scourge which is hard to eradicate*, 25 August 2006.

⁵⁸ *Ibid.*

common in the western urban areas of Turkey.⁵⁹ When the victims and perpetrators were examined, however, the report noted that the majority involved in ‘honour killings’ were nonetheless people originating from the Southeast (suggesting that the perpetrators and victims were predominantly Kurdish).⁶⁰ The report suggested that this pattern could be attributed to the difficulties that individuals from the Southeast experienced when moving from rural to urban areas—while some members of the family may embrace a lifestyle in these cities that goes against their traditional upbringing and beliefs, others may react with violence, using force to maintain traditional practices.⁶¹

41. A fact finding mission by KHRP in May 2009 found that a significant number of women in the Southeast also reported threats of ‘honour killings’ from family members. KA-MER, the leading woman’s organisation in the southeast, reported to the mission that from 2003-2007 a total of 198 women from eastern and south-eastern Anatolia contacted their organisation to report that a family member had threatened them with ‘honour killings.’⁶² Among these reported cases, three of the women died from injuries sustained in attacks, one committed suicide, and 27 were pressured to commit suicide. Often it was the father or husband who decided the fate of these women. The organisation further reported that 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.⁶³
42. Given the findings in both the 2006 police report ‘Custom and Honour Crimes’ and the findings of KA-MER shared with KHRP during their fact finding mission in May 2009, there appears to be a need for Turkey to provide education against ‘honour killings’ to the Kurdish community. Efforts on behalf of the General Directorate on the Status of Women must be specifically tailored to address challenges that are unique to the Kurdish community, through for example educational literature or broadcasts in Kurdish, whilst simultaneously bearing in mind that the perpetrators of these crimes are poorly educated.
43. An unfortunate consequence of the reforms to the Penal Code to implement severe punishments for honour and custom killings is that families are forcing women to commit suicide in an attempt to spare male relatives from life imprisonment.⁶⁴ In the largely Kurdish province of Batman in Southeast Turkey, three-quarters of all suicides

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² KHRP Fact-Finding Mission Report, *Human Rights in the Kurdish Region of Turkey: Three Pressing Concerns*, August 2009.

⁶³ Ibid.

⁶⁴ *Ibid* at 9.

are committed by women. This problem is peculiar to the regional: in other parts of the world men are three times more likely than women to commit suicide.⁶⁵ A KHRP report commissioned by the European Parliament described these 'honour suicides' as usually consisting of the family locking the woman in a room and instigating their spouse's death through methods such as a noose, pistol, or rat poison. The woman would be entrapped in the room until she had committed suicide.⁶⁶ Mustafa Peker, Batman's chief prosecutor, highlighted difficulties in investigating such crimes, despite their high-volume and highly suspicious nature.⁶⁷

44. Although there is evidence that the judiciary have been adopting a proactive attitude towards cases involving honour killings and applying the proper sentence of life imprisonment,⁶⁸ mitigation of sentences for honour crimes is still practiced by the Turkish judiciary.⁶⁹ 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.'⁷⁰

45. At present, the organisations which are best informed and placed in relation to tackling suicides among Kurdish women are local women's NGOs. The Turkish government has failed to provide the much-needed support that these local NGOs require. Instead, because these organisations work in the Kurdish regions, and often have largely Kurdish staff, they are often viewed by the government as part of the terrorist and separatist movement.⁷¹

⁶⁵ 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 3 July 2009).

⁶⁶ Kurdish Human Rights Project, *European Parliament Project: The Kurdish Women Committing Suicide*, at 9, [undated], at <http://www.khrp.org/component/option,com_docman/task,doc_view/gid,126/> (last accessed 17 July 2009).

⁶⁷ *Ibid.*

⁶⁸ Associated Foreign Press, 'Full family jailed for honour killing act,' *Hürriyet Daily News*, 14 January 2009 at <<http://arama.hurriyet.com.tr/arsivnews.aspx?id=10771619>> (last accessed 23 July 2009).

⁶⁹ '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.

⁷⁰ World Organisation against Torture (OMCT). *Violence against Women in Turkey: A Report to the Committee Against Torture*, 2003, 353-354

(http://www.omct.org/pdf/VAW/Publications/2003/Eng_2003_09_Turkey.pdf).

⁷¹ *Ibid.*, at 13.

46. The Monitoring Committee for Violence against Women is welcomed. In order to conduct effective and accurate research it must recognise Kurdish women as a minority group. Without such data, it will be impossible for Turkey to address the causes of domestic violence and comply with its obligations under CEDAW and the ICESCR.
47. Cases brought by the KHRP to the ECtHRs indicate that violence perpetrated by state actors remains a salient problem.⁷² The escalation of violence by state agents against Kurdish women is a partial consequence of the recent scaling up of punitive measures for torture: as a substitute for torturing Kurdish men in formal detention, state agents have resorted to using violence against Kurdish women as a means of demoralising the community and also specific individuals. Detection is particularly problematic in the Kurdish community owing to the stigma attached to such crimes and the corollary unwillingness to report them.
48. If Kurdish women do choose to report sexual violence by state agents, they face numerous obstacles in pursuing criminal claims against the state. A KHRP-led delegation observed several trials prosecuting gendarmes who had allegedly committed physical and sexual violence against Kurdish women.⁷³ One such case involved Şükran Esen, a Kurdish woman who had allegedly been tortured and raped on three occasions by gendarmes who unofficially detained her. The Prosecutor had indicted 405 gendarmes for the crime, which significantly lessened the probability that the guilty perpetrator would be convicted. The victim's attorney requested that the court order the indicted gendarmes to be arrested for fear that the guilty ones would flee; instead, the court allowed the indictment of forty additional gendarmes. Further, the victim's attorney drew attention to the fact that the Chief Commander of the Gendarmerie, who had been found guilty of torture in the ECtHR case of *Aydin*, had still not been removed from his post. This failure by Turkey to implement fully the ECtHR's judgment in *Aydin* is symptomatic of the culture of impunity for torturers in Turkey.⁷⁴
49. The KHRP-led delegation also found that a lack of proper recording of detentions (and in particular of "unofficial" detentions) prevented Kurdish women from successfully bringing to justice state agents responsible for their torture and ill treatment whilst in detention. The

⁷² ECtHR, *Aydin v. Turkey*. Appl. no. 23178/94, judgment of 27 September 1997; See also Margaret Owen, *Women's Rights in Turkey and Kurdish Cultural Rights*. European Union Turkey Civic Commission (Paper: Brussels 2005).

⁷³ Margaret Owen, *Trial Observation Report, Turkey's Shame: Sexual Violence Without Redress – The Plight of Kurdish Women*. KHRP: December 2003, at 10-21.

⁷⁴ Margaret Owen, edited by Kerim Yildiz. *Trial Observation Report, Turkey's Shame: Sexual Violence Without Redress – The Plight of Kurdish Women*. KHRP: December 2003, at 21

Human Rights Association of Turkey (İHD) reported to the delegation that 99 per cent of detentions went unrecorded. Furthermore, reports indicate that state officials intentionally conceal crimes of violence against Kurdish women perpetrated by state officials.⁷⁵ By concealing, or in the alternative concealing, illegal detentions and violence against Kurdish women by state agents, the Turkish government is in violation of relevant international conventions and *jus cogens* norms.

ARTICLE 8 – RIGHT TO TRADE UNIONS

Proposed questions for list of issues

- Please provide information as to how the Turkish Government proposes to bring its domestic legislation in line with Article 8 of the ICSECR, in particular with the right to form trade unions.
- Please provide information as to how the Turkish Government proposes to bring its domestic legislation in line with the right to strike, in particular without discriminating on certain areas of employment.
- Please provide information as to any steps the Turkish Government plan to take to allow Kurdish trade unions to operate.
- Please provide information on whether any policies are being developed in order to encourage the participation of trade unions.

Legal provisions regarding the right to organise

50. Several pieces of Turkish domestic legislation constitute a fundamental impediment to the safeguarding of trade union rights. This is largely due to the failure to inject momentum into a reform process that would bring domestic legislation in line with Turkey's obligations under international covenants. Three of the most significant pieces of domestic legislation in this field in reality place severe limitations on both the definition of the types of workers who are eligible for rights and the scope of the rights which are to be applied.

51. The Trade Unions Act (no.2821) and the Collective Labour Agreements, Strike and Lockout Act (no. 2822) contain provisions which curtail the functioning of trade unions, in breach of the principles of the right to organise. For example, to be recognised as a bargaining entity, unions must represent over 50 per cent of workers

⁷⁵See Erol Önderoğlu, "Newspaper Confiscated for Reporting Allegations of Police Rape," *Bianet*, 10 July 2009, <<http://bianet.org/english/gender/115773-newspaper-confiscated-for-reporting-allegations-of-police-rape>> (last accessed 13 July 2009).

within an enterprise, and 10 per cent of the workers within the relevant industry as a whole. Only one trade union must exist and conduct collective bargaining for each enterprise.

The rights of the trade union (right to strike and lockout)

52. The Collective Labour Agreements, Strike and Lockout Act stipulates that unions take a series of steps before striking, including negotiations and non-binding mediation. Key forms of striking, such as solidarity, warning and general strikes (involving multiple unions over a geographical area) are prohibited, whilst the Government retains far-reaching powers to postpone strikes if it deems necessary. Article 29 of the Act prohibits strikes and lockouts in certain areas: a) rescuing life and property, b) Funeral and mortuary; c) Production of coal for water, electricity, gas and coal power plants; exploration, production, refining and distribution of natural gas and petroleum; petrochemical works, production of which starts from naphtha or natural gas; d) Banking and public notaries; e) Fire fighting, land, sea, railway urban transportation and other public transportation on rail. Article 30 goes further and declared strikes and lockouts in certain areas unlawful: a) Any health institution, such as a hospital, clinic, sanatorium, health centre, dispensary, chemist's shop or pharmacy, or establishment for the preparation of vaccine or serum: Provided that the foregoing shall not be deemed to include any establishment manufacturing medicines; b) Educational and training institutions or day nursery and old-age retirement homes; c) Cemeteries; d) Any establishment run directly by the Ministry of National Defence, the General Command of Gendarmerie or the Command of Coast Guard. Furthermore, the Law for the Public Employees Trade Unions (PETU; Act no.4688), which was enacted in 2001 and represents the legal base governing public sector trade union rights, does not recognise the right to strike and bargain collectively. It also takes a very narrow position on the types of public sector workers who are eligible to join trade unions. Under the Act, several key categories of public sector workers, including lawyers, civilian civil servants, employees at penal institutions, special security personnel, public persons in 'positions of trust', and senior personnel within higher education are prohibited from joining unions.

53. The Turkish Government continues in practice to conduct activities that impede the exercise of the right to associate freely, bargain collectively and to strike. The formation and organisation of trade unions, particularly in the public sector, as well as the practice of union activities such as strikes and protests are routinely constrained by state interference. This often takes the form of disciplinary action, malicious prosecutions or fines against individual union members or leaders. In 2006, two public sector unions were pressured with lawsuits to force

them to change their constitutions. In some cases, these have resulted in cases being taken to the European Court of Human Rights. In February 2006 the European Court of Human Rights ruled that the dissolution in 1995 of Tüm Haber-Sen, an affiliate of the KESK was unlawful.⁷⁶ The practice of prosecuting unionists is widespread. During 2006 a total of nine trade union members were fined a total of 1,476 Turkish Lira, roughly \$1,110; 36 were subject to ongoing 'disciplinary inquiries'; and 132 had been given disciplinary punishments, all because of their participation in unions.⁷⁷ A representative of the teachers' union Eğitim-Sen told KHRP mission members in March 2008 that the union had 140 cases pending against its members, for the most part on the basis of statements made during demonstrations.⁷⁸

Kurdish trade unions

54. Restriction of trade union activities and labour rights by the Turkish authorities has a particularly negative impact on the country's Kurdish population. Kurdish trade unionists have been subjected to allegations of involvement in terrorism, as is the case with many Kurdish politicians, socialists, lawyers and anyone else who argues for rights for the Kurds or working people. Furthermore, union activities must be carried out in Turkish, weakening the ability of Kurds to organise on their own terms. Eğitim-Sen was forced to remove a clause in its constitution supporting the right to education in one's mother tongue.⁷⁹ Kurds are also particularly vulnerable to the practice of 'internal exile' of activists, the compulsory transfer of an employee to a part of the country far from home, without the possibility of being accompanied by spouse or family. An unspoken but well understood element of this practice is that it involves uprooting a person generally of Kurdish origin, ethnicity and language group and transferring him to a Turkish-speaking area where they will be more or less isolated.⁸⁰

⁷⁶ Judgment of *Tüm Haber Sen and Ginar v. Turkey* (Application no. 28602/95), European Court of Human Rights, 21 February 2006.

⁷⁷ ITUC, '2007 Annual Survey of Violations of Trade Union Rights: Turkey,' <http://survey07.ituc-csi.org/getcountry.php?IDCountry=TUR&IDLang=EN> (last accessed 30 October 2008).

⁷⁸ KHRP Fact-Finding Mission, *Return to a State of Emergency? Protecting Human Rights in South-East Turkey*, (KHRP, London, June 2008), 55.

⁷⁹ International Confederation of Free Trade Unions, 'Turkey: Annual Survey of Violations of Trade Union Rights (2006),' <http://www.icftu.org/displaydocument.asp?Index=991223980&Language=EN> (last accessed 21 October 2008).

⁸⁰ KHRP Fact-Finding Mission, *Return to a State of Emergency? Protecting Human Rights in South-East Turkey*, (KHRP, London, June 2008), 55.

ARTICLE 10 – PROTECTION OF FAMILY

Proposed questions for list of issues

- Please provide information on how many children have been tried as adults if accused of terrorist offences.
- Please provide up-to date disaggregated statistics on the extent of child labour.
- Please provide information on how many Kurdish children are currently detained in prison.
- Please provide statistics on the number of marriages where one or both partners are under the age of 18.
- Please provide information on how many children are currently in care in Turkey and the proportion of those children that are Kurdish.
- Please provide information about how Turkey's safeguards apply to children facing corporal punishment.
- Please provide information as to proposals for legislative reform to ensure that Turkey complies with its obligations under Article 10 of the present Covenant.
- Please provide information about the steps Turkey has taken and is taking to treat children as a vulnerable group requiring special protection.
- Please provide information as to how the Turkish government intends to secure the proper education of children held in prison.
- Please provide information about the steps Turkey is taking to ensure the thorough implementation of the Child Protection law in all regions of the country.
- Please provide details of the number of Kurdish children failing to complete secondary education.
- Please provide a comprehensive assessment of the situation of Kurdish families and children in Turkey and, specifically, about the social welfare and support mechanisms available to them.

- Please enunciate the steps Turkey is taking to help address the problems faced by Kurdish children that flow from, or compounded by, the current political situation.

Protection of family

55. Since issues regarding Kurdish women have been outlined under Article 3 to correspond with Turkey's report, they shall not be raised in this section. As a result, this section focuses upon the problems experienced by Kurdish children and its impact upon the family.
56. The recommendations of the Committee on the Rights of the Child have been implemented correctly. On 14 July 2009, a report was completed by the CRC under the coordination of the Agency for Social Services and Child Protection (SHCEK) with the aim of explaining the legislative changes Turkey had made in relation the rights of children.⁸¹ Concerns have been raised about whether the recommendations have been implemented correctly, if at all, and if both children and families are actually being afforded the protection warranted by the ICESCR.

Legal arrangements on the age of majority

57. Children are subject to the same laws as adults within Turkey, in particular in relation to anti-terrorism legislation. The new Anti-Terror legislation (TMK) stipulates that children aged 15 to 18 who are charged under its provisions are to be treated as adults. By failing to properly protect children Turkey is failing in its duties under Article 10(3) of the ICESCR.

Measures taken for facilitation of family-building, and continuity, reinforcement and protection of the family

58. The continued policy of the Turkish state which does not distinguish between its citizens ethnic/cultural/linguistic origins makes it difficult to gather information or data on any specific sub-group of the Kurdish population, including children. This problem is magnified by the fact that many of the international organisations working in Turkey that KHRP has contacted, do not distinguish between the Turkish and Kurdish population within their work.⁸² Due to this dearth of information, it is impossible to produce a comprehensive assessment of the situation of Kurdish families in Turkey and the impact of any measures taken to facilitate their protection.

⁸¹ CRC/C/TKY/2-3, as received on 14 July 2009

⁸² Kerim Yildiz, Rachel Bernu and Julianne Stevenson, "Fact-Finding Mission & Research Report: The Situation of Kurdish Children in Turkey", January 2010 p 16

Special measures taken in Turkey for the protection of children and adolescents from economic and social abuse

59. The economic disadvantage of the Kurdish population in Turkey directly affects the well-being of Kurdish children. Serious economic challenges include a lack of adequate state-provided housing, insufficient compensation for those displaced from their homes, inadequate health-care and standard of education, and the continued prevalence of child-labour.
60. Labour Law No. 4857 regulates the minimum working age for children as well as the protection of pregnant employees in a variety of industries. This legislation provides that children under the age of 15 may not be employed, but a 14 year old may be employed if they have completed primary education and employment does not obstruct their physical, mental and moral development.⁸³ The rights of children are further protected by the provisions preventing them from working underground, such as in mines. Children are further prohibited from working during night-time. Research conducted by the Turkish Statistical Institute (TURKSTAT) found that a total 5 per cent of the children aged between 6 and 17 in Turkey were employed, meaning 958 000 children were employed in 1999.
61. Whilst this figure has fallen since the original research was carried out in 1994 it is still an alarmingly high figure, more so considering that only 31.5 per cent of these children were still attending school. This data indicates that many Turkish children may not be receiving the education there are entitled to, due to the fact that they are starting work at a premature age. This is despite the fact that Article 13 and 14 of the *ICESCR* guarantee children the right to education for eight years, both at primary and secondary level.

Measures taken for children in need of protection

62. Children in Turkey are generally not treated as a vulnerable group needing special protection. Kurdish children especially face discrimination because of their ethnicity, and lack of adequate protection to live free from human rights violations.⁸⁴
63. Kurdish children are at a heightened risk of displacement. The history of armed conflict in the Kurdish region has meant that violent clashes between armed opposition groups and the state security forces remain

⁸³ Labour Law No.4857, 25134 of 22 May 2003, Article 71

⁸⁴ Kerim Yildiz, Rachel Bernu and Julianne Stevenson, "Fact-Finding Mission & Research Report: The Situation of Kurdish Children in Turkey", January 2010 p. 17

frequent. The conflict thereby continues to affect all of those living in the Kurdish region, especially children: More than 3.5 million people were displaced in the 1990s and as a result, there are children who have grown up as displaced persons.⁸⁵

64. Children in particular need of protection are those in the detention and in the judicial system. III-treatment of children in detention and in the judicial system since 2008 has increased: more than 2700 children are in detention and over 700 children were convicted and imprisoned under anti-terror charges in 2008.⁸⁶
65. Another vulnerable group is female children in Turkey: This group faces a number of gender-based human rights violations, including their inability to go to or complete school, physical and sexual violence in the home, non-consensual early marriage, forced prostitution and other forms of trafficking, and honour killings.
66. Although Turkey has introduced legislation such as the Child Protection Law as part of the EU accession process, the legislation has not been implemented effectively. The Police Powers Law 2007 undermines the positive reforms made thus far. Their coming into force has resulted in police being given excessive powers and children being subject to violence from the police both on the streets and in police custody.
67. There are few civil society organisations within Turkey that focus primarily of children's rights. Although Kurdish children are not the only group affected by the legal, political and economic failures highlighted, they suffer disproportionately as a result.
68. The political instability prevalent in the Kurdish region of Turkey affects the physical and emotional well being of Kurdish children. A solution must be reached regarding the Kurdish issue, since many of the problems faced by Kurdish children are heightened by existing social and political tensions stemming from the current situation. For example, the continued lack of Kurdish-language education for children, the manipulation of the green card health scheme for political ends, and the continued prevalence of violence within the Kurdish community.⁸⁷

⁸⁵ Ibid.

⁸⁶ Kerim Yildiz, Rachel Bernu and Julianne Stevenson, "Fact-Finding Mission & Research Report: The Situation of Kurdish Children in Turkey", January 2010 p. 16

⁸⁷ Kerim Yildiz, Rachel Bernu and Julianne Stevenson, "Fact-Finding Mission & Research Report: The Situation of Kurdish Children in Turkey", January 2010 p. 18

Anti-terror laws violate children's rights

69. In 2005 the new Turkish penal code was adopted, and was viewed as a key condition for the start of European Union membership talks.⁸⁸ The penal code ensured that those under the ages of 18 will not be tried before an adult court, and will instead be brought before the Juvenile Courts. However, despite these safeguards preventing children from being tried as adults in relation to charges of terrorism children can still be tried as adults.
70. The present situation is that children aged 15-18 will bear criminal liability for their actions but will still stand trial in the Juvenile Courts. However, this is not the case in relation to children within this age bracket who are charged with terrorism related offences. Under Article 9 of the Anti-Terror Law in Turkey children may be tried as adults following amendments to Turkish anti-terrorism legislation.
71. This was a major concern for the Turkish Committee on the Rights of the Child, as it meant that children were standing trial as adults.⁸⁹ Children under the age of 18 are being tried in adult courts if they are suspected of having committed an offence under the Turkish Anti-Terror Law. The majority of children charged with such offences are of Kurdish origin.
72. The current law also provides that children who commit crimes with adults must still be tried separately. However, if the court deems it necessary then the child may be subject to the same proceedings as the adult,⁹⁰ which has led to allegations that the law itself is meaningless.⁹¹
73. A further problem is that children who are sentenced to a term of imprisonment are denied their right to education. There are no education facilities in the prisons. Children will not only be denied the right to education, but furthermore, will either discontinue their education all together (if they were sentenced to a long period of time) or they will have to continue where they left, often being several years older than their class fellows.

⁸⁸ Speech by EU Commissioner Rehn - Accession negotiations with Turkey: fulfilling the criteria http://www.eu-un.europa.eu/articles/en/article_5364_en.htm

⁸⁹ 'Children being jailed under anti-terror laws', International Freedom of Expression Exchange: The Global Network for Free Expression (2009), at http://www.ifex.org/turkey/2009/03/04/children_being_jailed_under_anti/ (last accessed April 2010).

⁹⁰ Child Protection Law Article 17

⁹¹ 'Turkish jurists: stone-throwing children victims of laws, not judges', Hürriyet Daily News 20 April 2010, at <http://www.hurriyetdailynews.com/n.php?n=stone-throwing-children-not-victim-of-judges-says-jurists-2010-04-20> (Last accessed April 2010).

74. By sentencing and imprisoning children Turkey is violating its obligation to safeguard the family. Children are taken out of the family. Furthermore, it is often very difficult for the family to visit due to lack of financial support or long distances.

ARTICLE 11 –ADEQUATE STANDARD OF LIVING

Proposed questions for list of issues

- Please provide up to date information about the distribution of national income by regions and provinces since 2001.
- Please outline the steps Turkey has taken to ensure the economic recovery of the Southeast outlining how it has ensured that these steps do not have negative impacts on the economic, social and cultural rights of Kurds living there.
- Please provide information as to what laws Turkey plans to implement in order to provide a definition of IDPs.
- Please provide information on what Turkey's policy is on the recognition and definition of IDPs.
- Please provide information on how Turkey has been dealing with the problem of implementation of Law No. 5233.
- Please provide details of how Turkey plans to adequately recognise and compensate IDPs.
- Please provide statistical information on how Turkey will take into account the increased costs of relocation to a city, economic losses for loss of income and the right to work and benefit from the land.
- Please provide statistical information on the suggested compensation packages.
- Please provide statistical information on the compensation that has already been provided by the Turkish government.

Improving income distribution and fight against poverty

75. Turkey states that it has made improvements in the indicators for income distribution and Table 17 supports this finding. However, according to the "Regional Economic View Report", prepared by the Union of South-eastern Municipalities (GABB), segregationist

economic policies executed by the government in the east and south-east of Turkey have in the past played a significant role in increasing poverty and unemployment in those regions.⁹² Since Annexes XI and XII are not attached to Turkey's report and the Turkish Statistical Institute has refused to release data about the distribution of national income by regions and provinces since 2001, it is difficult to analyse whether its policies have since changed. According to rankings using a social and economic development (SEDI) index, the southeast continues to rank bottom in areas of health, education and other areas of government spending.⁹³ State banks continue to withhold credit to undeveloped regions.⁹⁴

76. The GABB report, which covers 21 provinces in east and south-east Turkey, found that the gross national product per person in these provinces was just 21 per cent of the EU average. According to the report, four per cent of the 2 165 000 women over the age of 15 in the region were unemployed. Furthermore, 46 per cent of all the green card⁹⁵ users in Turkey live in these 21 provinces.

The right to adequate housing

77. Since the mid-1990s the Turkish Government has purported to resolve the situation of internally displaced people (IDP) in Turkey through monetary compensation and limited programmes for return. These include the Law on Compensation for Damage Arising from Terrorism or the Struggle to Combat Terrorism (The Compensation Law No. 5233)⁹⁶ and the Return to Village and Rehabilitation Project (RVRP). Legal and practical difficulties in their implementation has, however, meant that the rate of return is extremely low and returning IDPs receive little government support. KHRP's fact-finding missions to Diyarbakir and Van in 2005 and 2006 confirmed that returns are practically non-existent.⁹⁷ The Turkish Government has consistently understated the number of IDPs in Turkey.

78. Those IDPs who do attempt to return have been met with a series of obstacles, primarily the village guards. As an unregulated armed force, the village guards pose a huge threat to returning IDPs. Further, the

⁹² Hurriyet Daily News "Gap project did not help Southeast, says report" See <http://www.hurriyet.com.tr/english/domestic/10659117.asp> (last accessed 03 February 2009)

⁹³ M. Ozaslan et al. "Regional Disparities and Territorial Indicators in Turkey," 2006

⁹⁴ Rauf Naqishbendi, "Kurdistan Regional Government- the Impediment to Real Economic Growth," The American Chronicle, August 17, 2008

⁹⁵ Green cards are given to people with a low income in order that they benefit from free health-care and social services.

⁹⁶ Law pertaining to compensation of damages resulting from terrorism or the struggle to combat terrorism. Law no. 5233, 17 July 2004

⁹⁷ The Situation of Kurdish Children in Turkey – Fact-Finding Mission & Research Report, KHRP, 2010

Government Project of Village Return and Rehabilitation and of Centralised Villages has reinstated Turkish control over the area and linked disparate villages through a program of major road-building for easy military access. In addition, most IDPs (whether in the cities or in the villages to where they have returned) experience a lack of public infrastructure. The campaign of village destruction in the 1980s and 1990s drove many Kurdish peoples to cities such as Diyarbakir and Hakkari,⁹⁸ which were ill-equipped to house such numbers.

79. Law No 5233, which was enacted on 17 July 2004, covers the compensation for damage resulting from terrorism or efforts to counter terrorism. However, Law 5233 is not designed to compensate for non-pecuniary damages and the restricted application of the law in regard to 'reasons of terror' or 'combating terror' appears to be contradictory to the general aim of the law. For example, damages that are excluded from the law and which are not going to be compensated by the State include damages which occurred as a result of economic and social migration, rather than terrorism, or as a result of voluntarily migration which was not motivated by security concerns.⁹⁹ This clearly does not come within the requirements of the Convention and puts IDPs at a disadvantage.

80. The Ilisu Dam, if completed would displace over 78 000 people, the majority of whom are Kurdish.¹⁰⁰ Most would find themselves in the slums of Diyarbakir and Hakkari, which are ill equipped to house them. The likelihood of their return is negligible: by flooding vast areas of land and making further tracts uninhabitable, the building of dams constitutes the most permanent and irrefutable denial of people's application to return.¹⁰¹

81. Moreover, the compensation packages proposed by the Turkish government for resettlement in its Resettlement Action Plan (RAP) are wholly inadequate. First, compensation awards are based upon the value of the land and any property owned, which is outweighed by the cost of relocation to a town.¹⁰² Second, the RAP does not ensure that

⁹⁸ For an idea of the scale of growth, between 1991 and 1996, the city of Diyarbakir nearly quadrupled from 350 000 to 1.5 million. (see Mark Muller and Sharon Linzey "*The Internationally Displaced Kurds of Turkey*," KHRP, London 2007, p.97).

⁹⁹ Article 2(d)

¹⁰⁰ According to the Initiative to Keep Hasankeyf Alive, this figure could be as high as 100 000 if pastoral groups who use the area are taken into account (Interview with İpek Taş of the Initiative Keep Hasankeyf Alive, October 2009)

¹⁰¹ National University of Ireland, Galway and the Kurdish Human Rights Project, "*The Cultural and Environmental Impact of Large Dams in Southeast Turkey: Fact-Finding Mission Report*", London, February 2005.

¹⁰² The inhabitants of Ilisu village, living nearest to the dam site, received expropriation notices in Over 500 people are challenging the terms of their compensation through the courts.¹⁰² Although the State has offered to provide houses to those evicted, the evictees cannot pay for the houses with the compensation offered.¹⁰²

those who benefit economically from the land will receive compensation for their losses because land in the region is owned by landlords, whereas most farmers do not own any land. Lastly, the RAP does not account for villagers who have already been displaced because of conflicts, who will have no where to return to after their villages are flooded. Any compensation owing to such persons will be received by the village guards living in their homes.¹⁰³

82. While Turkey as a whole has considerable housing problems created by rapid urbanisation, Kurdish children suffer disproportionately from poverty and poor housing.¹⁰⁴ Living conditions are a particularly urgent concern for those Kurdish families who were displaced from their homes as a result of the conflict between the armed opposition groups and state security forces. In general, government efforts to improve housing conditions have been inadequate. In some cases, housing problems have even been dramatically exacerbated by 'urban renewal' programmes which pay little heed to deprived families who are displaced in the process.¹⁰⁵

ARTICLE 12 – PHYSICAL AND MENTAL HEALTH

Proposed questions for list of issues

- Please explain how the government intends to improve the quality and safety of water throughout Turkey, with specific reference to eastern Turkey.
- Please provide statistics on the number of prisoners suffering from physical or mental health problems.
- Please provide statistics on the number of prisoners who were referred to a doctor or mental health assessor during their time in prison.
- Please explain how Turkey intends to combat the high infant mortality rates in less developed parts of the country.

¹⁰³ The village guard system was established by the Turkish government in the mid-1980's to act as a local militia in towns and villages. It has been widely condemned inside and outside of Turkey for human rights violations. Throughout the period since the major hostilities officially ended, the government has repeatedly stated that it plans to end the system: there are between 50 000 to 90 000 village guards currently employed by the State. See, "*Human Rights in the Kurdish Region of Turkey: Three pressing Concerns*," KHRP, London, August 2009.

¹⁰⁴ *The Situation of Kurdish Children in Turkey* – Fact-Finding Mission & Research Report, KHRP, 2010

¹⁰⁵ *The Situation of Kurdish Children in Turkey* – Fact-Finding Mission & Research Report, KHRP, 2010

- Please explain the decrease in MOH hospitals and provide statistics on the continuous decline of MOH hospitals.
- Please provide information on what steps Turkey is taking to ensure there is no overcrowding in the MOH hospitals.
- Please provide statistics on how many women from the eastern part of the country receive medical assistance during childbirth.
- Please provide information on any policies Turkey has on combating suicides.
- Please provide statistics of the suicide rate in east Turkey.
- Please provide information on the survey on conflict on mental health.
- Please provide statistics of mental health problems throughout the different regions of the country.
- Please explain how you intend to lower the seemingly increasing number of suicides in eastern Turkey.
- Please provide information as to what steps Turkey is planning on providing medical treatment for all prisoners.
- Please provide information on what steps Turkey is taking in order to ensure that Mr. Abdullah Öcalan's mental health condition does not deteriorate.

The right to the highest attainable standard of physical and mental health

83. Contained within Article 12 are four particular instances where the state must take steps to ensure the right to physical and mental health is enjoyed. These instances are reducing the still-born and infant mortality rate, improving environmental and industrial hygiene, preventing, treating and controlling diseases and the creation of facilities and conditions allowing medical service and medical attention to be administered.
84. By giving distinct examples of the state's obligations the *ICESCR* has imposed on the state a responsibility to provide reasonable conditions for its citizens to live in.
85. There have been particular concerns raised about the accessibility of water in Turkey, the poor infrastructure in the south-east of the country and problems persist about the quality of physical and mental

health available for internally displaced people. In addition the standards of Turkish prisons is an area of grave concern, as despite the crimes they may have committed Article 12 guarantees the right to physical and mental health be enjoyed by everyone.

Medical care in south-east Turkey and high rates of child mortality

86. The above evidence from Turkey's report suggests that in rural areas the supply of drinking water is not as high as in more urban areas. Further evidence taken from the same report suggests that medical care in the south-east part of the country may not be of a sufficient standard, especially when comparing it to the rest of Turkey.
87. All statistics suggest that rural areas of Turkey have higher rates of infant mortality, and this is particularly prevalent in eastern Turkey. The Ministry of Health (MOH) is effectively the only provider of public health facilities in Turkey, yet between 2001 and 2004 the number of MOH hospitals decreased but the number of beds available increased, suggesting possible overcrowding. In the same period the number of private hospitals steadily increased, meaning for those who could afford private health care more options are now available. However, in 2000-2002 the number of maternal care-fertility planning centres also fell,¹⁰⁶ possibly contributing to a lack of education concerning child birth.
88. The decrease in such clinics may have been felt most acutely in rural areas as there is a significantly higher infant mortality rates in these areas. As previously mentioned the figures are again particularly high in eastern Turkey. These figures do not appear coincidental when contrasted with figures showing in eastern Turkey mothers are far more likely to receive assistance during child birth from relatives than from medical professionals.
89. Despite the figures in child mortality decreasing significantly in Turkey these statistics only take account of deaths occurring in hospital, and therefore excludes deaths within the home. Due to the high level of people in eastern Turkey who do not seek qualified medical assistance when giving birth it is plausible that the amount of deaths actually recorded within this region is actually an even higher percentage than that recorded.

¹⁰⁶ The Ministry of Health of Turkey, Turkey Health Report of February 2004: SB-HM-2004/01, 37

90. IDPs suffer disproportionately high levels of psychological problems as a result of the reality and threat of violence, combined with the severe social dislocation associated with displacement.¹⁰⁷

Access to safe water

91. Article 11 of the *ICESCR* provides that the adequate standard of living includes adequate, food, clothing and housing. However, the use of the word 'includes' is crucial in this context as it means the list is not exhaustive, and as such the right to water inevitably falls into the category of what constitutes an adequate living standard.
92. The state must pay special attention to ensuring that minority groups and indigenous peoples have access to water, as it is groups such as these who have traditionally struggled in securing this right. Whilst the Turkish government may fail to recognise the Kurds as a minority group they do qualify as indigenous people and steps must therefore be taken to ensure they have access to water.
93. The Kurds in Turkey have traditionally occupied the east of Turkey, a rural area and relying heavily on agriculture. Research conducted in Turkey during 1990-2005 concerning access to drinking water compiled data on both urban and rural areas of the country. The results showed that in urban areas 64.1 per cent of people had access to piped drinking water in their house compared with 16.5 per cent in rural areas. In comparison, the majority of people living in rural areas (60.6 per cent) received their drinking water from piped surface water.¹⁰⁸
94. The research also focused on access to drinking water within villages and found the amount of people with an insufficient unit for drinking water had fallen between 1990 and 2005. However, alarmingly the figure did rise significantly from 2003-2005, suggesting that rural areas are again struggling to receive suitable water supplies.¹⁰⁹
95. The table referred to above which is provided by Turkey at para. 504 shows that Turkey is failing to comply with Article 11.

Internally displaced people

96. As mentioned above the availability of medical care in east Turkey is not so frequently available compared with the rest of the country. This

¹⁰⁷ *The Internally Displaced Kurds of Turkey* Mark Muller and Sharon Linzey, KHRP London 2007, pg. 97

¹⁰⁸ Implementation of the International Covenant on Economic, Social and Cultural Rights; Initial reports submitted by States parties under article 16 and 17 of the Convention; Turkey; General Directorate of Rural Services 2006; para 504

¹⁰⁹ General Directorate of Rural Services 2006

is partly due to the lack of development. This is the Kurdish area and an area where internally displaced people are found. Many of them face social marginalisation and suffer from the lack of resources available.

97. In Turkey physical health is associated with living a healthy life, and many Turkish people may not seek medical assistance should they suffer from mental health problems. However, there are many more reported cases of women suffering from such problems in comparison to men.¹¹⁰
98. Turkey's report shows that western Turkey actually has far more reported cases of people suffering from mental health disorders. This may be attributable to increased awareness of the problems associated with mental health issues, as well as a willingness and opportunity to visit medical professionals should the need arise. As shown by the statistics above on Turkey's report¹¹¹ many people in eastern Turkey do not always consult medical assistance or advice.
99. Despite the statistics there are concerns about the number of suicides amongst young women in Turkey, and this has been attributed to a range of factors including forced marriage, domestic violence and experiencing sexual and psychological torture.¹¹² The lack of health care, in particular psychological care may assist in suicide prevention, but at present such care is just not available.
100. This alarming trend may suggest that people living in eastern Turkey struggle to access psychological help should they require it. This may be down to a lack of social acceptance, but higher figures in west Turkey suggest people in more developed areas are willing to seek assistance. This could suggest then that it may be due to either a lack of awareness on the subject or a lack of facilities available, or perhaps a combination of the two.

Prison conditions

101. The Committee for the Prevention of Torture has visited Turkey in order to assess whether its prison conditions meet international standards and that detainees are treated in accordance with the Convention. A major concern are the F-type prisons which are high security prisons, because prisoners are held in constant solitary confinement, which violates basic human rights.

¹¹⁰ The Ministry of Health of Turkey, Turkey Health Report of February 2004: SB-HM-2004/01, 22

¹¹¹ Implementation of the International Covenant on Economic, Social and Cultural Rights; Initial reports submitted by States parties under article 16 and 17 of the Convention; Turkey; General Directorate of Rural Services 2006;

¹¹² KHRP Report, *The Internally Displaced Kurds of Turkey: Ongoing Issues of Responsibility, Redress and Resettlement*, (KHRP, London, September 2007), 98

102. KHRP's fact finding mission conducted in 2008 found instances where doctors have made political prisoners wait longer to receive treatment than other prisoners. For example, in the case of Suphiye İsmail, who eventually had to wait eight days before having his leg amputated after stepping on an anti-personnel mine.¹¹³ This is an example of a prisoner being denied the highest attainable standard of physical health. Suffering from such conditions in prison can also contribute to prisoners suffering mental anguish and would constitute violations of Article 12 of the *ICESCR*.
103. One of the most high profile prisoners in Turkey today is Mr. Abdullah Öcalan, the founder of the PKK. He has been imprisoned for life and since he was sentenced in 1999 has been in solitary confinement on İmralı Island, 70 kilometres south of Istanbul and situated off mainland Turkey. He receives visits from his brother and sister, but these are infrequent and are reported as being difficult to arrange and coordinate, furthermore, the visits were restricted to 30 minute timeslots.¹¹⁴
104. The extreme conditions and isolation have resulted in Mr. Öcalan suffering from a deterioration of his mental faculties since his incarceration. He is kept in such solitary confinement that he is not even allowed to shake the hands of his visitors, and this lack of human contact is extremely damaging to his mental health. Issues with his health were also noted by the CPT when they visited Turkey in 2010.
105. Mr. Öcalan's present situation means that not only is Turkey failing to allow him to enjoy the highest attainable standard of mental health but they are also contributing to the problem. His mental faculties are suffering greatly due to the extreme conditions he is confined to, and the by continuing to uphold these conditions the Turkish government are aiding the deterioration of his mental faculties, which is contrary to its obligations under the *ICESCR*.

¹¹³ KHRP FFM Report, *Closed Ranks: Transparency and Accountability in Turkey's Prison System*, (KHRP, London, April, 2009), 33

¹¹⁴ Bill Bowing et al, 'Conditions of Detention in Turkey: Blocking Admission to the EU', 1 Haldane Society of Socialist Lawyers (2009), 34

ARTICLE 13 - RIGHT TO EDUCATION

Proposed questions for list of issues

- Please provide information about the specific measures which will be implemented to educate Kurds about their legal rights and avenues of redress.
- Please provide statistics on how many schools teach in the Kurdish language.
- Please provide information on steps taken by the Turkish government to increase access to equal education for the Kurdish minority.
- Please provide information about the percentage of Kurdish children who have, to date, taken part in the Ministry of National Education's campaigns to learn Turkish.
- Please provide information on Turkey's policy to educate everyone equally.
- Please provide information as to how Turkey is taking steps to ensure that there are opportunities for Kurds to be taught in Kurdish.
- Please provide information as to what steps Turkey is taking to ensure sufficient Turkish education to Kurds.
- Please provide information as to how Turkey proposes to educate children in prison.
- Please provide information as to what the children will be educated in whilst held in prison.

Right to education

106. According to Article 13 of the *ICESCR* the State Parties recognise the right of everyone to education. Article 14 of the *FCNM* requires states to recognise that every person belonging to a national minority has the right to learn his or her minority language. Article 14 also requires states to provide adequate opportunities for minorities to be taught in their language or to receive instructions in their language, in areas inhabited by minorities traditionally or in substantial numbers, if there is sufficient demand, as far as possible and within the framework of their education systems. States should facilitate the establishment of

centres for minority-language education curriculum development and assessment.¹¹⁵

107. The idea of mother tongue education is that a learner is taught the fundamental concepts of a topic in their first language, with the idea being that children absorb knowledge more easily when it is explained in a familiar language. Whereas if taught in an unfamiliar language, as many non Turkish speaking Kurdish children are, results in the child just learning the words and not absorbing the information. This issue is considered so important that Turkish children living in Germany can chose the subject of Turkish, a decision welcomed by the Turkish Prime Minister Recep Tayyip Erdoğan, who even asserted that assimilation was a crime against humanity and that children must be educated in their native language.¹¹⁶ However, such laws are still not implemented in Turkey to allow education of Kurdish children in public schools.
108. Current legislation provides that no language other than Turkish can be used to teach pupils in any educational institution, and Kurdish teachers attending a course in Denmark were even prohibited from attending a course aimed at training them in how to teach in Kurdish. These rules appear to be a massive restriction on the right to freedom of expression, as preventing education in Kurdish prevents information from received and imparted both by Kurdish teachers and to Kurdish children.
109. Women and men do not have the same literacy rate.¹¹⁷ According to data released by the United Nations Development Programme (UNDP), the literacy rate is 87.4 per cent in all Turkey, and 95.3 per cent among men and 79.6 per cent among women in all Turkey.¹¹⁸ The Ministry of National Education and the UNICEF campaign 'Haydi Kızlar Okula' – Let's Go to School Girls set a target of 100 per cent of girls aged 6 to 14 going to school, to ensure gender equality in access to primary education.¹¹⁹

¹¹⁵ The Hague Recommendations regarding the education rights of national minorities, recommendation no. 21.

¹¹⁶ Karwan B, 'Mother-tongue education in Turkish', Kurdistan Commentary 6 December 2009, at <http://kurdistancommentary.wordpress.com/2009/12/06/mother-tongue-education-in-kurdish/> (last accessed April 2010)

¹¹⁷ According to data released by the United National Development Programme (UNDP), the literacy rate is 87.4 per cent for all Turkey; 95.3 per cent among men and 79.6 per cent among women in all Turkey.

¹¹⁸ UNDP Human Development Report 2007/2008, URL: http://www.undp.org.tr/publicationsDocuments/NHDR_En.pdf, accessed 10 September 2008.

¹¹⁹ For more information about the campaign see the official website of the campaign, URL: www.haydikizlarokula.org.

110. According to UNICEF, between 2003 and 2006, 231,879 girls and 114,734 boys were enrolled at schools within this campaign.¹²⁰ It should be emphasised that none of these programmes specifically target minority children. There is no disaggregated ethnic data collection in Turkey therefore it is not possible to give definite numbers about the literacy rate among minorities, however figures from south-east and central-eastern Turkey, which are mostly populated by Kurds, are worth examination. According to the national census conducted in 2000, the literacy rate is 73.3 per cent in the South-east and 76.1 per cent in the central-eastern region, which is much lower than the national figures. The literacy rate among women in these regions – 60.3 per cent in southeast Turkey and 63.6 per cent in the central-eastern region – is also lower compared to the national one.

111. In 2005, poverty among children under the age of 15 was 28 per cent for Turkey.¹²¹ According to International Labour Organization (ILO) figures from 2006, in Turkey 945,000 children aged 6 to 14 are not studying at any school. Of these, 194,000 said they could not afford school expenses, while 22,000 of them had to work and therefore could not study.¹²² Among these children, thousands are seasonal workers. They come from all over Turkey, but particularly southeast and eastern Turkey, which are mostly populated by Kurds.

ARTICLE 14 – THE PRINCIPLE OF COMPULSORY PRIMARY EDUCATION FREE OF CHARGE

Proposed questions for list of issues

- Please provide up to date statistics on how many children under the age of 18 do not attend school.
- Please explain how the Turkish government plans to tackle the problem that more girls than boys are failing to enrol in primary education, with particular attention paid to possible cultural and regional beliefs that may be contributing to the problem.
- Please provide statistics on the amount of girls failing to enrol in primary education.

¹²⁰ UNICEF, 'Programlar 2006–2010: Kaliteli Eğitim', URL: http://www.unicef.org/turkey/pr_2010/ge77.html#ge77a, accessed 24 May 2008.

¹²¹ UNICEF in Turkey: Country Profile, URL: http://www.unicef.org/turkey/ut/ut2_2010.html#nt8, accessed 2 September 2008.

¹²² ILO and Turkish Statistical Institute, Working Child 2006, Ankara, Turkish Statistical Institute, October 2007, Table3.12

- Please explain how the Turkish government proposes to address problems associated with rural areas and low schooling rates will be tackled.
- Please provide information about how effective schemes that are already in place have been thus far.

Compulsory primary education in Turkey

112. Whilst the figure of children enrolled in primary education has remained steady during 2002-2007 there is still a rate of around 3.5 per cent of children either not attending school or, worse still, not enrolled in primary education.
113. The figures also indicate that more girls are not enrolled in primary education than boys.¹²³ The statistics compiled in the following years even shows a slight decrease in the number of females enrolled in primary education, indicating the problem may be getting worse.¹²⁴ This may be due to cultural and regional beliefs about female education and needs to be addressed, as the Turkish constitution guarantees that all are entitled to a primary education of at least eight years.¹²⁵
114. Problems persist in rural areas of Turkey as well, where the number of schools within walking distance is minimal. Initiatives have been started to combat these problems, including 'Let's go to School, Girls', which aims at increasing the schooling rate amongst girls. A campaign titled 'Bussed Primary Education' was also introduced to enable more children to be transported to schools within city centre by bus, which may be of particular assistance to those living in rural areas.

ARTICLE 15 – CULTURAL RIGHTS

Proposed questions for list of issues

- Please provide information as to how the Turkish Government proposes to enforce Articles 24 – 32 and Articles 62 and 63 of the Constitution effectively without discrimination.
- Please provide information as to how the Turkish government proposes to safeguard Kurdish culture.

¹²³ The Ministry of National Education, National Education Statistics 2006-2007: ISSN 1300-0993, 49

¹²⁴ The Ministry of National Education, National Education Statistics 2008-2009: ISSN 1300-0993, 53

¹²⁵ Law No.4306 on Eight-year Compulsory and Uninterrupted Education.

- Please provide information on policies the Turkish government is proposing to take in order to support the freedom of expression of Kurdish magazines.
- Please provide information as to how the Turkish Government proposes to protect the Kurdish heritage of Hasankeyf from possible floods.
- Please provide statistical information on the expected flooding of the Ilisu Dam.
- Please provide information on what is declared protected heritage in the south east of the country.
- Please provide information on how many place-names are named in Kurdish.
- Please provide information on how the Turkish Government proposes to re-install Kurdish street names.
- Please provide information on how the Turkish government proposes to bring its domestic legislation in conformity with the Convention, in particular, the Articles listed below.
- Please justify the provisions of Article 7(2) of the Anti-Terror Law 5816 concerning 'propagandizing and helping terrorist organisations', as these can prevent the Kurdish population from publishing literature on the grounds that it amounts to terrorist propaganda.
- Please provide details of the number of people within the media who have been, or are facing, prosecution under Law 5816, with specific information concerning the number of Kurds and non-Kurds.

Cultural policy of Turkey

115. The Turkish Government claims that its cultural policy is based on tolerance and diversity. Furthermore, they state that this is safeguarded by the freedom of religion and conscience, freedom of thought and opinion, freedom of expression and dissemination of thought, freedom of science and arts, freedom of press, protection of the historical, natural and cultural heritage, and the promotion of arts and artists. Although these rights are guaranteed in the Turkish Constitution, they are not enforced in such a way in practice. Recent European Court of Human Rights decisions found violations under these rights, which is evidence of the contrary (*Savign v Turkey* (13304/03)). Freedom of expression is not applied in the same manner

to the Kurdish language as it is to the Turkish language. Furthermore, the Turkish Government links Kurdish associations to terror groups.

116. Such discrimination is also found in the area of expression of Kurdish culture. Celebrations such as Newroz, the Kurdish new-year celebration, are limited and overseen by the authorities. The Government's refusal to support such cultural issues results in violence and arbitrary detention.
117. Kurdish culture is also found in the Kurdish alphabet which is different to the Turkish alphabet. The Kurdish alphabet has the additional letters of "Q, W, X", which are prohibited in Turkey. Although such letters can be used in Kurdish names people will be unable to register them for official use. The recent case of *Kemal Taşkin and Others v Turkey*¹²⁶ highlights these issues the Kurdish people struggle with.
118. Although the Turkish Government claims to have a strong policy on the preservation of cultural heritage this is applied in a discriminatory manner. Kurdish place-names and street names were changed and replaced with Turkish names. These have never been changed back to their original meaning.
119. Through the building of the Ilisu Dam Kurdish heritage, such as Hasankeyf will be flooded and destroyed. The Turkish Government is not affording any protection. Furthermore, inhabitants are being given a compensation packet which will not even cover their basic needs.

Media

120. Freedom of expression in Turkey is primarily regulated through the Turkish Constitution, the Turkish Penal Code, the Press Law and the Anti-Terror Law. Each contains provisions that either purposefully restricts freedom of expression or are vaguely worded and can be used by courts to limit this freedom, and all of which have the potential to facilitate violations of this covenant.
121. Article 28 of the Turkish Constitution, amended on 17 October 2001, concerns the freedom of the press in Turkey, and contains several potentially problematic provisions. Article 28.6 gives judges the power to seize publications in cases where an investigation or prosecution of offences prescribed by law is taking place. Article 28.8 allows publications to be temporarily suspended by court sentence if they are found to 'contain material which contravenes the indivisible integrity

¹²⁶ ECtHR, Appl. No. 30206/04, 37038/04, 43681/04, 45376/04, 12881/05, 28697/05, 32797/05 and 45609/05, judgment of 2 February 2010.

of the state with its territory and nation, the fundamental principles of the Republic, national security and public morals’.

122. Article 125 of the Turkish Penal Code orders prison sentences of up to two years for defamation, with a minimum sentence of at least one year if the offence was committed against a public official carrying out their duty, or was committed in response to, or referencing, the defamed individual’s religious beliefs. The article is frequently used against artists, caricaturists, journalists, intellectuals and criticised for being a substitute of Article 301.
123. Article 215 forbids openly praising crime or criminals, and in practice has made the mere public mention of certain individuals’ names a criminal offence. Its application has frequently targeted Turkey’s Kurdish population, with those publicly making reference to the imprisoned leader of the *Partiya Karkeren Kurdistan* (Kurdistan Workers’ Party, PKK), Abdullah Öcalan. Many people are charged under this article for their comments on leading figures of the Turkish revolutionary movement of 1960s such as Ibrahim Kaypakkaya, Deniz Gezmiş, Yusuf Aslan and Hüseyin İnan.
124. Article 216 prohibits the incitement of the population to enmity, hatred or degradation based on a group’s social class, race, religion, sectarian, gender or regional differences. This provision is not clearly worded and has often been used to criminalise dissenting views from minority groups rather than being used properly to punish racist remarks. For example many complaints made by the leaders of Jewish Community are turned down systematically on the grounds that “direct harm” has not occurred.¹²⁷
125. Article 217 prohibits inciting the public to disobey the law and is frequently used to prosecute and convict those expressing non-violent opinions on Kurdish issues. Mahmut Alınak was convicted under this article for his speech in a meeting organised by the student Association of Kafkas University. In his speech he called public to carry out civil disobedience activities.¹²⁸
126. Article 218 raises the prison sentence for offences under Articles 214-217 if the offending statements were communicated through the media. (Article 214 forbids openly inciting another person to carry out a crime).

¹²⁷¹²⁷ Yavuz Baydar “If Turkey belongs to Turks, the first is a `hammer of justice`” Today’s Zaman, 16 April 2010

¹²⁸ Erol Önderoğlu “Bianet Medya Gözlem Raporu/2008 3 (1)” Bianet, 31 October 2008

127. Article 220/8 punishes those who make propaganda for the organization or its objectives. The article is interpreted very broadly by the courts and used systematically against non-violent expressions.
128. Article 226 orders prison sentences between six months and two years for anyone printing, displaying or broadcasting images that are determined to be obscene. This is another vaguely worded provision, with 'obscenity' being a subjective term.
129. Article 299 punishes those found to have defamed the president with up to four years in prison. This reduces the scope for journalists to criticise the president or contest or debate policymaking.
130. Article 300 prohibits the denigration of the Turkish flag, representations of the flag or the national anthem. Those found guilty can be sentenced to between six months to two years in prison, with the sentence increasing by one third if the offence was committed in a foreign country.
131. Article 301 prohibits the denigration of the 'Turkish Nation, the State of the Turkish Republic or the Institutions and Organs of the State'. In 2008, in the wake of the killing of the journalist Hrant Dink in 2007, efforts were made to refine Article 301.
132. Article 318 prohibits 'propaganda which results in discouraging people from performing military service'. This can penalise journalists reporting or debating matters related to the military.
133. Amendments to the Anti-Terror Law which were passed through parliament on 29 June 2006, introduced Article 7.2, which forbids 'propaganda' for an illegal organisation. This Article makes no distinction between supporting the political aims that a 'terrorist' organisation might have, and promoting that organisation and its violent methods and actions. The law is also complicated by the term 'propaganda', which is another vague concept and which lacks an established legal definition in European case law.
134. The Turkish Press Law was passed on 26 June 2004 'to arrange freedom of the press and the implementation of this freedom'. The new law strengthened some aspects of freedom of expression, such as right of journalists to maintain the anonymity of their sources. However, it reinforces other controversial laws by giving a judge the power to confiscate all copies of a publication while investigations are ongoing regarding breaches of Article 7 of the Anti-Terror Law 5816, Concerning Crimes Committed against Atatürk.

135. Law 5816 '*Atatürk Aleyhine İşlenen Suçlar Hakkında Kanun*' ('Concerning Crimes Committed Against Atatürk'), has remained in force since its passage in 1951, and makes it a criminal offence to denigrate the memory of Mustafa Kemal Atatürk.
136. Law 2820, The Political Parties Law, forbids the use of languages other than Turkish in the field of politics except making oral propaganda. This has heavily restricted freedom of expression, particularly for Kurdish political parties.
137. The Political Parties Law was imposed by the military junta in 1982 and has not been repealed. Article 81 of the Political Parties Law forbids parties from using any language other than Turkish in their written material. The article has been amended in April 2010 and oral political propaganda in the run-up for elections can be made in languages other than Turkish.
138. Broadcasting in different languages and dialects traditionally used by Turkish citizens was allowed in June 2003 as part of the EU harmonisation packages. Pursuant to this, the Supreme Council for Radio and Television finally took the important step of permitting some television and radio broadcasting in Kurdish. This, however, was severely restricted 3 February 2010, the Radio and Television Higher Board in Turkey (RTÜK) made a decision to allow broadcasting in different dialects and languages. RTÜK has granted permission to a total of 14 radio and TV stations. Broadcasting in Kurdish, Zazaki and Arabic is now possible without any time limitations. Despite this success the Government has limited the use of another language to a total of 14 radio and TV stations, still imposing limitations on their use.