Conference

The Kurdish Question in Turkey

Conference Report

2013

Contents

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Published in 2013 by the Law School, Queen's University Belfast.

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THE SCHOOL OF LAW at Queen's University Belfast has a proud heritage dating back to 1845. The School remains a top-flight institution, which is perennially in the top-ten UK law schools (ranking 7th the RAE 2008) and the leading law school on this island.

THE HUMAN RIGHT'S CENTRE at Queen's University Belfast supports a community of researchers who have a well-developed reputation for leading scholarship in the area of human rights law. Under the auspices of the Human Rights Centre, staff have developed research which has informed and continues to impact human rights debates, policy formation and judicial reasoning.

INSTITUTE FOR THE STUDY OF CONFLICT TRANSFORMATION AND SOCIAL JUSTICE (ISCTSJ) at Queen's University Belfast was set up in August 2012. The purpose of the Institute is to facilitate sustained interdisciplinary collaboration in research and teaching and to provide strategic focus to support world class research in this field. The Institute promotes cross-School, cross-Faculty and inter-institutional co-operation that leads to high quality publications and it engages research users and other practitioners to enhance the non-academic impact of the work being undertaken.

THE POSTGRADUATE STUDENT CENTRE at Queen's University Belfast offers a unique facility for postgraduate students, providing a range of facilities, training opportunities and support, as well as events and workshops to maximise the postgraduate experience and assist postgraduates to develop a range of transferable skills. As part of its Postgraduate Researcher Development Programme, it offers financial support to student-led initiatives.

THE KURDISH FEDERATION IN UK (FED-BIR) was established to protect and develop further the social, economic, political and cultural rights of the Kurdish people. Guided by principles of international law, the mission of the FED-BIR is to alleviate problems of the Kurdish society resulting from migration as well as to promote and inform the British public and institutions about the struggle of the Kurdish people for their existence, language, culture and national identity.

THE KURDISH ACADEMIC FORUM aspires to contribute to the advancement of knowledge on the Kurds and the Kurdish Question in the Middle East. It aims: to provide a free platform where academic research on the Kurds and the Kurdish Question can be presented; to encourage and support the production and

dissemination of research on Kurdish culture, history and politics; to raise public awareness of the on-going developments affecting the Kurds; and to increase networking opportunities for students, academics and researchers.

THE LIPMAN-MILIBAND TRUST was established in 1974. It is a progressive charity whose mission is to help support the practice and dissemination of socialist education and research.

OVERVIEW

On Wednesday 17 April 2013 the Law School and the ISCTSJ at Queen's University Belfast hosted a one-day conference entitled 'The Kurdish Question in Turkey'. The aim of this multi-disciplinary conference was to bring together legal experts, academics, politicians, journalists and grass-roots activists to ignite debate on the Kurdish question in Turkey, particularly from a human rights perspective. The 'question' concerns the Turkish-Kurdish conflict. A dispute concerning the rights of Kurds in Turkey, which has spanned over three decades and involved systematic violations of civil, political and socio-economic rights.

The conference dealt with three issues – 'Democracy Deferred, the Continuing Challenges – Political Trials, Identity and Human Rights', 'Victimization of Kurds by the Current Turkish Law' and 'Constructive and Peaceful Solution to the Kurdish Question in Turkey'. Eleven speakers presented on these issues to an audience of over 80 participants. The conference, which occurred within weeks of the latest PKK ceasefire, came at a particularly propitious time, thus leading to a number of lively discussions.

This conference report provides a reference for the issues discussed. It includes a written copy of the papers presented, screenshots of the PowerPoint presentations used during the conference and links to select audio-visual records of the event.

CONFERENCE AIM

The dispute around the rights of Kurds in Turkey has for many years been the most serious conflict in Europe. For decades the Turkish State has systematically and often violently oppressed its Kurdish citizens, and the Kurds have responded with non-violent and violent forms of protest. The actions of both State and non-State actors have cost the lives of approximately 40,000 people (including Turkish soldiers, Kurdish guerrillas and civilians). According to Turkish and international human rights organisations, between 2 and 3 million people have been internally displaced due to the conflict. The Kurds' demands for the recognition of their democratic rights and for respect for their national, cultural and political identity have often been responded to with mass arrests and excessive use of force by the Turkish Government. For example, over 10,000 Kurdish politicians, human rights activists and trade unionists have been arrested since 2011. While negotiations are underway for a new Constitution in Turkey and an on-going campaign exists for accession to the European Union, there continues to be considerable harassment of those who advocate for Kurdish rights. On the whole, the Kurd's and their supporters' right to life, right to freedom from torture and inhuman treatment, right to liberty, right to fair trial, right to freedom of expression, freedom of assembly and association and right to freedom of press are routinely violated in Turkey, as noted in the reports prepared by the European Commission and the International Crisis Group, to name a few.

In March 2013, leader of the Kurdistan People's Party (PKK), Abduallah Öcalan called for a ceasefire and for negotiations with the Turkish government to commence. The specifics of this process are currently being ironed out, but this gesture has sparked hope for a final resolution to this brutal thirty-year conflict.

This timely conference, seeks to bring together legal experts, academics, politicians, and grass–roots activists to ignite debate on the Kurdish question in Turkey, particularly from a human rights perspective. Despite the scale of this conflict, it has received little attention from researchers within the UK and Ireland. This conference seeks to assist in remedying that.

CONFERENCE AGENDA

09:00 – 09:20	*Registration and tea/coffee*
09:20 – 09:30	**Welcome Speech**
09:30 – 11.15	**Panel Discussion I: Democracy Deferred, the Continuing Challenges – Political Trials, Identity and Human Rights**
11:15 – 11:30	*Break (tea/coffee)*
11:30 – 13:00	**Panel Discussion II: Victimization of Kurds by the Current Turkish Law Part I**
13:00 – 14:00	*Lunch*
14:00 – 15:00	**Panel Discussion III: Victimization of Kurds by the Current Turkish Law Part II**
15:00 – 15:15	*Break (tea/coffee)*
15:15 – 17:15	**Panel Discussion IV: Constructive and Peaceful Solution to the Kurdish Question in Turkey**
17:15 – 17:30	**Closing Remarks**

CONFERENCE PROCEEDINGS

Welcome Speech

PROFESSOR BRICE DICKSON has been a Professor of International and Comparative Law at Queen's since March 2005. Having graduated from the University of Oxford with undergraduate and postgraduate law degrees, he was called to the Bar of Northern Ireland in 1976. Since then he has lectured in the law faculties of University of Leicester (1979-1991) and University of Ulster (1991-1999). Outside of academia he helped to found the Committee on the Administration of Justice (a civil liberties group) and he assisted in the re-establishment of Amnesty International in Northern Ireland. He also served as the Chief Commissioner to the Northern Ireland Human Rights Commission between 1999 and 2005. He currently sits on the British Council's Governance and Northern Ireland Advisory Committees.

Welcome: Thank you all for coming, particularly to those who have travelled some distance or are visiting Queen's for the first time.

My task in opening this event is made easier by the fact that we are at the conjuncture to two notable events. In Northern Ireland we have just celebrated the 15 year anniversary of the peace settlement for Northern Ireland, the Belfast (Good Friday) Agreement 1998. There was a great deal of commentary and analysis on that anniversary. Most of it was positive. We did remind ourselves that we have come a great distance in the last 15 years, but that there was still some way to go. One of the best documents that emerged from that avalanche of commentary was the Northern Ireland Peace Monitoring Report, which was produced by the Community Relations Council, which is available on their website. It is a marvellous compendium of information about the progress that has been made, or not made, in relation to a wide range of areas concerning society in Northern Ireland. I am looking forward to the day when we all can meet in Turkey to consider a similar report on the progress that has been made in the peace settlement there.

The other event that we are marking today is, we hope, the beginning or continuation of the nascent peace process in Turkey itself. We all are aware of the statement that Abdullah Öcalan, the Kurdish leader, made back on 21 March 2013, on the occasion of the Kurdish New Year. In this statement he called for a ceasefire in the long running struggle against oppression in Turkey. There was one phrase in his statement that resonated with me. He said "the weapons should fall silent, politics should speak." That sums up very well what has happened in Northern Ireland in the

last 20 years. A few of us in the room can remember the first IRA ceasefire in 1994 and the jubilation there was, particularly in Republican areas on Northern Ireland on that day of the ceasefire. That was 1994, almost 20 years ago. The ceasefire broke down after 18 months and it took some time for a further ceasefire to be put in place. The Good Friday Agreement, itself, was not reached until 1998. So there was a three or four year gap between the first ceasefire and the peace settlement. We have had to wait a further 15 years for further progress to be made on peace, and we are not there yet. But, the fact is, we are in Northern Ireland in a State where politics speaks. The gun and the bomb no longer speak. In fact, we are in this pleasantly ironic situation, that the extent to which there is continuing violence, from dissident Republicans for the most part, it cements the peace process. It is the thing which makes politicians come together and stand together to make sure the peace works and we do not relapse into a state of violence. I look forward to the day we can say that about Turkey.

This is a happy time to be holding this event. I am looking forward to hearing from the range of experts that we have in the room. We are going to be looking at the current state of play in Turkey on the Kurdish question and the extent of the injustices that still need to be remedied. The progress has been made, or still needs to be made on constitutional reform in Turkey and all the elements that need to be put in place for a long-term peaceful solution to the Kurdish question.

I am not going to say that this is an occasion on which our friends from Turkey can learn lessons from the Northern Ireland peace process, because all conflicts/peace processes are different. It is very unwise to draw direct parallels. A couple of people in the room, including myself, did spend sometime over year ago trying to get a large research grant from one of the UK's leading research councils to look at the Northern Irish conflict and the Turkish conflict to see what lessons could be learned. Unfortunately we did not get that large grant. I still think it was a lost opportunity for that research council to gain kudos for making a small contribution to the peace process in Turkey. Be that as it may, we are here today, and it is a great opportunity, to share views and ideas about how to move forward in Turkey.

Panel Discussion I: Democracy Deferred, the Continuing Challenges – Political Trials, Identity and Human Rights

ERCAN KANAR is a distinguished lawyer in Turkey. He was born in 1950 in Gaziantep, Turkey. He was suspended from high school on the basis of his political views. He was arrested and imprisoned after the 1971 Military Coup in Turkey. After he was released he had become a trade union representative and founded the *Resistance for Freedom's Journal*. Following the 1980 Military Coup in Turkey, he legally represented political prisoners before Martial Court. He is a founder and long-standing member of the Human Rights Association in Turkey. During the 1990s he held positions including Deputy Chair and Chair of the Human Rights Association. He has also been a columnist for many newspapers and journals. As a result of these writings he has been subjected to prosecution.

His paper is entitled 'The Practice of Legislation and Judiciary in Terms of Languages and People's Liberties'.

Abstract: This paper explores how the judiciary functions as a biased mechanism of the Government of Turkey. Rather than protecting the rights and freedoms of different cultures and languages, the judiciary acts as the protector of the Government's core structure and interests. The legal system particularly operates with a vengeful mentality to those to oppose and question the status quo. This paper highlights how articles, clauses, the power of public authorities and political nature of the judiciary have been designed to establish the "one language, one race and one religion" mentality.

Paper: My title is political trials and identity. I want to try and explain the title with an on-going example – the Union of Communities in Kurdistan trials (KCK trials). These trials are the most serious development in Turkish courts in recent years. They provide an example of the increased use of anti-terror law to prosecute journalists, lawyers, academics, writers and politicians, despite there being no evidence of the suspects being linked to terrorism or having planned violent acts. The targets of such cases have almost entirely been the premiers of peace and represent the minority views of Kurdish and pro-Kurdish intellectuals. In order to persecute an alleged terrorist organiser of crimes in Turkey, the Turkish Criminal Procedural Order and anti-terror laws provide special authorisation for prosecutors. The prosecutor's counter-terrorism policy allows the use of extraordinary extensive powers, which interfere with rights and freedoms, without appropriate evidence or justification. Most notably the suspect being investigated for terror related offences may be held in police custody for up to four days. The investigation file may be classified until the

submission of the indictment to the court. The powers to detain the suspect are more extensive also.

The definition of terrorism, as interpreted by the Turkish courts, has made it possible for prosecutors and judges to consider that the new creating of authorities for human rights in court may itself be construed as a form of supporting evidence of membership with terrorist groups. In this context, those who take steps to promote and protect human rights are particularly vulnerable to administrative and legal harassment. The State sanctions repressive practices. These practices have proven to be critical in the State's strategy and have become routine, especially in Ankara, Istanbul and south-eastern Turkey. This strategy is illustrated through several large-scale operations against organised groups who oppose the government, military and ultra-nationalist groups. These operations are particularly common against Kurdish groups.

In parallel, those involved in Turkish human rights groups that monitor or record abuses have been targeted by the prosecutor as criminal groups. Between 2009 and 2012, this parallel went from bad to worse. Inquiries made by the human rights community have been subjected to severe oppression. Those who have spoken out on sensitive human rights issues are lawyers, trade unionists, journalists, intellectuals, academics, writers and family members of victims of serious violations. These sensitive issues include expressing alternative identities of the Kurdish society within State institutions.

Since 2009, the KCK trials have been in operation. Not only has the oppression of human rights defenders increased, but many face harsh punishments as the Turkish authorities believe that their actions are illegal. The prosecutors and courts target individuals on the basis of the demonstrations they have attended or speeches they have made. Kurds have often committed to non-violent expressions to counter Turkish propaganda; this has been interpreted as aiding and abetting terrorist organisations. The legal framework makes no distinction between an armed PKK combatant and activists calling for a reasonable solution.

Many of the Kurdish people in Turkey now languish in jail, following repeated raids by the police and special branches, on the basis of their political views and choices. A large number of prosecutions have been brought against individuals, which have violated their right to freedom of expression. Many critical journalists, political activists and artists have faced prosecution for speaking out against the prosecution of Kurds in Turkey or for criticising the armed forces. In addition to prosecutions, there are various articles of the Penal Code that allow opinions expressed to be challenged under anti-terrorism legislation. Thus the prosecution of individuals has continued.

We are seeing Turkish policy moving in a way that will never allow pro-Kurdish expressions to be legal. While there is a clear distinction between individuals plotting violence or providing logistical support to armed groups, the prosecutors and courts do not allow for a distinction. Instead all elements of pro-Kurdish society have been targeted, including lawyers, journalists, academics and politicians of the Peace and Democracy Party (BDP). This has made normal life impossible in Turkey today. The continuing master plan against the Kurdish people is staining an entire Turkish society and undermining the political system as a whole.

Turkey is claiming to be an open, democratic State governed by the rule of law where the legal system is free from political difference. The problem lies in Turkey's anti-terrorism law, whose sweeping definition of what constitutes a terrorist suspect has led to people being criminalised for making political choices or expressing their views. It is a truly blemished situation where people can face prosecution for simply being a member of a political party, for example the BDP. The BDP have been accused of and criminalised for being suspected of having links to banned groups. As a result they have been denied their political identity and will, to practice their political actions in a democratic party.

At the present time, hopes of political reconciliation in the search for a solution to the Turkish-Kurdish conflict have been raised, as Turkish leaders seem ready to enter into serious talks with the Kurdish leaders. This is something which had seemed completely unthinkable, if not impossible. Nevertheless, it is hard to see how these talks can ever succeed, while Turkey is intent on criminalising great sections of its population, including leading members of its political profession. It is feared that all democratic politics will never exist in Turkey until reforms its current anti-terrorism law, which ensures that colonial imperialism dominates.

Additional Notes: The Turkish judicial system functions as a property mechanism of the Government of Turkey. Rather than protecting the rights and freedoms of different cultures and languages, the judicial system acts as the protector of the government's core structure and interests. The legal system particularly, operates with a vengeful mentality to those to oppose and question the status quo. Many articles and clauses have been designed to establish a "one language, one race, one religion' mentality, hence Articles 3, 66, 42 and 134 clearly illustrate this. For example, many villages with original names in Kurdish, Georgian, Tataric, Circassian, Laz and Arabic have all been changed to Turkish names under the Provincial Administration Law. The State Council also operates within this manner, i.e. the Diyarbakir Sur may was removed from his position when he wanted to implement a 'many languages' practice to the region which has 72% Kurdish speakers. Moreover the November 2011 arrests of nearly 50 Kurdish Lawyers under the KCK investigations and January 2013 arrests of 9 lawyers on its own is a scandal. It clearly shows that these are not criminal offences committed by the

lawyers, but it is a political motive by the current government to label it is a criminal offense.

The judicial system in Turkey is not a representative of rights and law, it functions with the same mentally that of the government. However, we as lawyers, the representatives of people and rights, will carrying on fighting for rights and we hope that the legal system in Turkey will one day turn to become the representative of its people.

MARGARET OWEN OBE is a UK Barrister with degrees in law from the University of Cambridge, and in Social Administration from the London School of Economics. In recent years she has focused on women's human rights, particularly in the context of conflict and post-conflict scenarios, peace building, and restorative justice. This was inspired by her former work as an Immigration and Asylum lawyer, and as Head of Law and Policy Division at the International Planned Parent Federation (IPPF). She is the founder and Director of Widows for Peace through Democracy, an international NGO with ECOSOC consultative status at the UN. This organisation addresses the needs and roles of widows and wives of the missing during and after conflict. She is also a founder member of Gender Action on Peace and Security (GAPS-UK), which works to build on the UNSCR 1325, with particular focus on gender issues in relation to conflict resolution and peace building. She has also been an adviser on Women's and Children's Rights to the Kurdish Human Rights Project (KHRP), and has monitored elections and observed and reported on several trials of Kurdish politicians, lawyers, academics, journalists, and women peace activists in Turkey. She has extensive experience in countries where the status of women is low, and regularly hosts meetings on gender and human rights issues at the UN Commission on the Status of Women. She also trains women's groups on ways to use international legal mechanisms to bring about change in national policies.

Her paper is entitled 'Democracy Deferred, the Continuing Challenges – Political Trials, Identity and Human Rights'.

Abstract: This paper draws from Owen's experience as a trial monitor in Turkey to highlight the deficiencies that exist, including the existence of 'political trials', within Turkey's judicial system.

Paper: Political trials are as old as antiquity. Over the centuries oppressive regimes have exploited and manipulated laws and the machinery of their justice systems to intimidate, silence and eliminate from public life anyone they perceive as being a threat to their authority.

Socrates, Jesus of Nazareth, Joan of Arc (and many unnamed, forgotten women tried as witches), Nelson Mandela, the Ethiopian journalist Eskinder Nega now jailed for 18 years, have all been victims of "political trials". Such unacceptable and abhorrent deployment of the justice system occurs in both so-called democratic states as well as in autocratic ones, and in the West as well as in the East. Use of the legal system to imprison political opponents has an irresistible attraction to governments fighting internal foes, such as liberation movements, minority rights campaigners, or civil society groups who challenge their government's actions and policies which they regard as breaching basic universal standards of human rights. Operating within their own jurisdiction, regimes who use the legal process as an

instrument of power and persecution are able to avoid international "naming and shaming" by arguing that these proceedings are domestic, and that "sovereignty" prohibits any interference or protest from the international community, even though there are prima facie reasons for asserting that these processes are contrary to international and regional laws.

Where there is no truly independent judiciary, where all the actors in the justice system, from the most junior policeman, up to the prosecutors and the judges are simply the servants of the political party in power, defendants have little hope of obtaining a "fair trial". Moreover, the very laws themselves may be open to wide interpretations so as to provide some legal justification for the courts to enforce racial, gender, class, and caste inequality, and refuse those charged even the basic rights to defend themselves – for example, rights to use their mother tongue, to have the opportunity to read the indictments in time to prepare a defence and be represented by a lawyer and the right to bail. Also, a prosecution's interpretation of articles in the Constitution may likewise provide grounds for conviction and imprisonment for crimes against the State.

In Turkey today there are now more than 10,000 political prisoners, mainly Kurds, whose numbers include politicians, democratically elected mayors, journalists, academics, trade unionists, NGO members, women's groups, human rights defenders and peace activists, many in pre-trial detention, who have committed no crime, but are convicted and incarcerated because they dare to campaign for their rights: to their cultural identity; their mother tongue; to freedom of association and expression; to equality and participation in decision making, in parliament and in local government. Among these innocent people, many already convicted others facing trials – long drawn out, inexcusably adjourned time after time – are many women. Children too, some as young as 12, are in prison.

As a UK barrister, with a focus on women and children's rights, especially in the context of conflict and post-conflict scenarios, I have been observing trials of Kurds in Turkey for more than a decade. But the two on-going trials, one in Diyarbakir, and the other in Istanbul provide the most graphic dramatic example of a "political trial."

In Diyarbakir in 2011, over 100 eminent Kurdish politicians, Peace and Democracy (BDP) members, lawyers, and civil society personnel were charged with criminal offences, for supporting terrorism and being members of an illegal organization, the Kurdish Communities Union (KCK). This is alleged by the Prosecutor to be the urban arm of the PKK. The defendants included the highly esteemed vice-president of IHD (Human Rights Association) Muharrem Erbey. Few of the defendants were given bail, and the trial is continually adjourned, the next hearing is May 6th. These people have been in prison for nearly 3 years.

On March 28th this year, outside Istanbul, at Silivri prison court, I observed for the fourth time (having attended the first and second hearings) the trial of 46 Kurdish and Turkish lawyers, who are the lawyers for the Kurdish leader, Abdulla Öcalan. This trial is now adjourned for a 5th hearing on June 20th when the imprisoned lawyers will have served some 500 days in pre-trial detention. In all these trials the defendants were refused permission to use their mother tongue. At the November trial, when a defendant spoke in Kurdish, the Judge turned off the microphone recording that "the defendant spoke in an unknown language". The essence of the case against each of the defendants is the same, that in their capacity as lawyers for Ocalan, at various times they acted as his "couriers" conveying his instructions to the PKK and were actively involved in the management of an illegal organization named in the indictment as the "leadership committee". There is no evidence that such an organization actually exists.

But on the eve of my arrival in Istanbul this March, the situation inside Turkey had changed in two important and historical ways. They were such that we, the international observers, were full of hope that we would see the charges dropped and the lawyers released.

First, the AKP had started peace talks with Öcalan and on the instructions of the Kurdish leader, the PKK had agreed to withdraw its forces from the Turkish territory.

Secondly, on January 24th Turkey's parliament passed a law allowing Kurds to use their own language in court, a further sign, surely, that the government was now seriously exploring how to end the violence, start listening to the other side, and begin the processes for forging a lasting peace.

The passing of the language law was of vital importance. Language is the manifestation of our cultural identity. Forbidding a people to use their mother tongue, prohibiting its use in schools, in courts, in public arenas represents a cultural genocide. Language rights have always been a priority in the Kurds demands for their rights, along with the release of their leader, reform of the constitution, and representation in parliament. Forbidding education in Kurdish deprives thousands of Kurdish children of their rights to education and breaches Turkey's obligations under the Convention on the Rights of the Child (CRC), and under other UN human rights conventions. There were tears in many eyes when at last a Kurdish lawyer could be heard standing up in a Turkish court and speaking in Kurdish, and the microphone was not turned off. "For a hundred years we have waited for this moment" said one of the defendants. Never mind that anyone speaking in Kurdish would have to bear the costs of the interpreter and translators, this was indeed progress.

Alas, however, at the end of the day, in spite of highly charged and eloquent speeches from the defendant lawyers, their lawyers, and members of the Bars of Istanbul and Izmir, deploring the processes that had bought these lawyers to court

for simply "doing their job as lawyers", arguing that there was not a shred of evidence in the indictments to show there was any case to answer, and that much of the evidence submitted in any case was inadmissible, the Judge did not drop the charges, and while giving bail to four of the defendants, the remaining 22 lawyers were returned to prison, and the hearing adjourned for another 3 months.

We, members of the international legal community have prepared various reports criticizing the apparent breaches of Articles 5, 6 and 8 of the European Convention on Human Rights (ECHR) (both in relation to the defendants themselves and in relation to the breach of confidentiality of other clients of the accused lawyers); and under article 8 (in relation to the invasion of family life resulting from the searches of the defendants' homes and offices and intercepts of private conversations they had with their professional colleagues, their clients and their families).

We censured the methods used to gather evidence such as the unlawful use of telephone intercepts, bugging and wire-tapping in private homes, offices and when the lawyers were speaking with their client, Öcalan. We protested the refusal to bail the defendants and the illegal seizure of files, computer discs, and documents. We also criticized the Turkish authorities' failure to respect the UN Basic Principles on the Role of Lawyers adopted in 1990, and the apparent identification of the lawyers with the clients they represented. Furthermore, these trials of these lawyers are illegal under Turkey's own domestic law. Under a 1926 Law no prosecution of lawyers can take place without permission of the Justice Minister. No request was ever made by the prosecutor, yet\another indication of illegality.

Access to justice and an independent judiciary are among the basic foundation blocks of a democratic state. By arresting and imprisoning the lawyers, the Turkish state not only denies the lawyers the right to practice their profession, but it denies many of its citizens access to justice. For today the lawyers who are defending the lawyers are themselves in danger of arrest and detention if they too will be identified with the crimes of which their clients are accused!

For there to be a constructive and peaceful solution to the Kurdish question in Turkey, the AKP must stop wearing two heads. If it is serious about using diplomacy and dialogue, rather than the violence of the gun, it must stop its persecution and harassment of its Kurdish population, release its political prisoners, and bring its representatives to the peace table so that justice can be restored, wrongs righted, and a new Constitution drafted in consultation with Kurdish CSOs.

Finally, in this regard, I note that Turkey has yet to develop a National Action Plan to implement UN SCR 1325 and subsequent SCRs relating to gender issues in conflict resolution and prevention. These Resolutions form part of international law. Women's contributions are crucial for peace and reconciliation. As in all conflicts, whether internal as in Turkey, or across borders, women and children often are the

most victimized, the least heard, and the last to receive justice. I am thinking here of the many Kurdish women who have been widowed, or are wives, daughters, mothers of those "disappeared", possibly in prisons or lying in mass graves. If there is to be a lasting peace, reconciliation, and a rebuilding of a new more equal and democratic society, these issues need to be addressed now. They cannot wait. Kurdish women have faced multiple disadvantages, as women, as members of a minority, and if they are widows or wives of the missing, they carry further burden.

Inequality, poverty and exclusion fuels conflicts. We want there to be peace where Kurds, proud of their ancient history, culture, language, and identity can fully participate as equals at all levels of society in Turkey. The rights of minorities, of women, of children, must be upheld. Human rights are universal and unalienable. We pray for peace in Turkey, and the overhaul of the justice system so that it can properly protect the citizen from the misplaced power of the State, rather than be the servant of the state used to oppress the citizen.

Additional Comments: The KCK trials began two years ago, but are an *opera bouffe* – so far removed from any trial system that we know. There are 10,000 political prisoners in Turkey today, of great variety. Now, the lawyers are being prosecuted by a fascist, chauvinist and racist state – this undermines democracy.

Prosecuting lawyers makes Turkey into a pariah State – one that is nowhere near EU standards. Yet the UK refuses to make any protest in relation to human rights offences in Turkey. At a recent presentation of his report on 'Human Rights and Democracy' it was notable that Turkey was not on William Hague's list. When challenged by the speaker about what steps he was taking with relation to the situation in Turkey, and also the Tamils in Sri Lanka, Mr. Hague brushed over the Turkey question, addressing only the question of the Tamils.

The trials breach international human rights standards, not just domestic standards. There has been no consent from the Ministry of Justice and the trials are in breach of the European Convention on Human Rights, as well as a UN Declaration protecting the rights of lawyers. Abdullah Öcalan's lawyer is on trial simply for representing his client – that is, he is on trial simply for doing his job. No bail is available to him.

Of the original 46 arrested, 22 are still in jail. Come June 20th they will have been in jail for 500 days, without bail. This number includes those who, upon hearing that there were warrants out for their arrest, voluntarily returned to Turkey to face the charges. Are these people really likely to abscond if given bail?

The arrests breached Article 8 of the European Charter; many of the arrests were made in the middle of the night and those arrested had had their houses bugged – without warrants. How can this be happening at a time when there is a supposed

peace process and when the Prime Minister is supposedly in talks with Abdullah Öcalan?

Furthermore, in relation to the UN Resolution 1325, concerning women's voices, Turkey doesn't even have an action plan.

Turkey needs to release the lawyers. It needs to redraft the constitution to include civil societies and the Kurds need to be listened to. In Turkey, there is no justice system; the justice system is *unjust*. There is no independent judiciary and all are actors in the process, from the police to the judges – they are all state servants. In the courts, 3 judges sit at the front of the room, and it is the speaker's opinion that the flanking judges are simply playing solitaire on their laptops. The judges in Turkey are incapable of delivering or implementing the Copenhagen Criteria for entry to the EU. We must hope that they'll realise the need for change in the process of training and selecting judges.

Turkey must also address Article 301, the anti-terror penal law, which is used to harass and prosecute Kurds and amounts to cultural genocide.

DESMOND FERNANDES is a policy analyst, member of the Campaign Against Criminalising Communities (CAMPACC), and a former Senior Lecturer in Human Geography and Genocide Studies at De Montfort University, England. He has published widely in a number of journals including *The Thailand Environment Institute Quarterly, Socialist Lawyer,L'Appel du Kurdistan, Armenian Forum, Kurdistan Aktuell,* and *Law, Social Justice and Global Development.* He has also released a number of books dealing with the issue of genocide in Turkey.

His paper is entitled 'Kurdish Genocide/Politicide in Turkey: Democracy Deferred and the Continuing Challenges – Political Trials, Identity and Human Rights'.

Abstract: Since the very earliest years of the establishment of the modern state of Turkey, Kurds have been subjected to an ongoing genocide – a genocide that has included phases of physical, cultural (including of linguistic), constructive and political genocide. Kurds have also been subjected to politicide. Democracy has been deferred as such politicidal and genocidal targeting of the Kurdish 'Other' has sought to culturally, politically and physically marginalise and extinguish Kurdish 'identity' and Kurdish 'human' and 'political rights'. As part of the framework in which genocide and politicide has been effected against Kurds, political trials have also been used over the years to 'legitimise' the nature of the targeting that has taken place. In the presentation, genocide and politicide in socio-legal terms is first defined. The nature of the genocide and politicide of Kurds in Turkey – as identified by analysts and organisations – in recent years will be identified. Continuing challenges may be seen by the way in which the spectre of politicide and genocide (in its linguistic and other forms) still remains, and political show trials still continue, despite talk by the ruling AKP government about 'democratic reform' and despite the current peace process that is taking place.

Key Points of Paper:

- Kurds have been subjected to political and social genocide since outset of Turkish state – as a result they have been denied the possibility of self-determination.
- Political isolation; political trials isolating leaders of Kurdish groups amounts to ethnic cleansing.
- The Government have been escaping human rights duties by using excuse of suppressing activists, anti-terrorist actions etc.
- Political marginalisation of Kurds and political trials are a government strategy to punish those supporting the Kurds.
- Political prisoners are arguing for legal rights – for example to have Kurdish existence acknowledged and to have education in Kurdish (as recently as 2002, government denied existence of Kurds as separate people).

- Kurdish identity targeted as opposition to government – as a result democracy has been deferred.

- 14 April 2009 - 152 people arrested in KCK operations.
- Military operations intensified including abuse and rape of Kurdish women.
- There has been a political conspiracy to strike out against the call for political equality.
- The government distorts the facts and ignores the reality of the Kurdish people and their society.

- 2012 – more than 10,000 Kurdish political prisoners.
- KCK trials are the Turkish Government's attempts to criminalise Kurdish activists and persecute Kurds by passing 'anti-terror' laws.
- KCK suspects being tried – despite alleged peace protest.
- No legal protections for Kurds – process, if anything, has intensified rather than lessened, despite peace process.
- There have been attacks on political leadership and Kurdish media against many HR lawyers, journalists and politicians in jail – yet Turkey claims to be an open, democratic State.
- In show trials, evidence has been proven to be fabricated but the courts refuse to accept this.
- As a result a climate of terrorisation exists.

- There is no just justice system in Turkey and thus there is no independent judiciary.
- Police, prison officers, judges are all servants of the State.
- Therefore the justice system is incapable of implementing the obligations it has to act on in order to get into the EU.
- Kurdish people are being denied freedom of speech – it is an indictable crime to insult the Turkish State.

- Labour party and student groups have been targeted.
- In the sledgehammer trials, the prosecutors' evidence was fabricated. As a result the defendants were framed and given lengthy jail sentences.
- Turkish courts were complicit in this forgery; also violated attorney/client confidentiality via microphones on courtrooms' ceilings etc.
- There is no due process causing prisoners to be detained in violation of international law.

- The Turks claim that the debate regarding Turkey's entry into the EU is based on prejudice against Muslim countries, rather than a human rights issue regarding Kurds.

- Many Turkish people are not keen to comply with the obligations of the ECHR – this is necessary to hold them to account internationally.
- Since 1947 Turkey has been a member of NATO – yet these abuses go on; indeed, some prejudice has been facilitated by NATO.

- There cannot be a proper peace unless civil society organisations and groups are consulted and made part of it.
- At present there is no gender equality, which is essential in a human rights society where the rule of law exists.

Panel Discussion I: Question and Answers Session

Q. What do you think of the Ergenekon trials? So many people and elected parliamentarians are being held for long periods of time with no evidence. How do you view this?

A. (**Desmond Fernandes) -** The trials are all-embracing and used to target any perceived groups – from the Labour party to student politicians and journalists. I'm sure you're aware that the prosecution have been relying on evidence which is clearly fabricated. It is clear that the police are guilty of planting evidence and framing defendants. In one case, key incriminating evidence was found despite the police searching the wrong house, in a sham trial. There have been incidences of forged handwriting and even defendants not having been present in the country at the time of the alleged offences.

There were also the forged documents used to frame the defendants in the case of the Microsoft 2007 CDs, which an independent expert verified could not have been created pre-2006, having traced the Cambria and Calibri fonts. These CDs were used as evidence of guilt, and yet the independent analyst found that the excel files etc used as evidence had not even been invented when the files were supposedly created; there was no legitimate way these CDs could have been created in 2003, except through time travel.

It is evident that the courts have been complicit in these forgeries, and the court in this case refused to even acknowledge the analyst's evidence. Across the board, bail has been refused, Judges themselves have lodged complaints against defendants and their lawyers, and defendants' wives have been indicted. In one instance, 34 defendants were forced to retire *before* the verdict was returned in their cases. Many defendants are languishing in jail, and the UK won't even consider Turkey to be an issue.

Q. Forty-five years ago in America, there was a lot of debate surrounding the question of Turkey being allowed entry to the EU, and many Turkish graduate students said that it was an important moral issue. What should the proper stance be? Should you be saying to Turkey "you can't be part of the EU because what you're doing is wrong"? Or should we include Turkey, in order to advance the conditions there?

A. (Margaret Owen) – That's a very important question. The situation is shifting now, and lots of people in Turkey are now not keen to try to show how they can comply with the EU.

I, working with Women's Rights, want Turkey to sit at the table, not just *when* they can comply, *but as long as they've got a package* – as a way of continuing to hold them accountable judicially. We need them at the table. One of the hugely important human rights violations that the Kurdish people are suffering - as they want to be accepted as Kurdish – is the banning of their language. Language is so fundamental to culture and to the identity of the Kurdish people. Banning their language in education amounts to cultural genocide. There is no provision for learning Turkish as a second language in schools in some places. Not being allowed to use your mother-tongue is an incredible insult and offence to one's cultural upbringing and history.

On 26th March 2013 in Istanbul, a law was passed for the first time allowing the use of Kurdish in courts if the defendant was more comfortable using that language. One lawyer, commenting on this, said that it brought tears to his eyes to be able to speak Kurdish in court. However, interpreters and translators are required, and must be supplied and paid for by the defence, and interpreters working on a pro bono basis are not permitted. All notes must be translated into Turkish.

The question of why Kurdish can't be used in school is an important one. Language is an essential ingredient to be complied with in seeking to join the EU. The USA is also pushing for Turkey to join the EU, but as with the UK, this is for alternative reasons.

We must bring Turkey to task.

A. (Desmond Fernandes) – We must remember that, whilst Turkey is off the table in relation to the EU, since 1947 it has been a core NATO member, and in the 1970s and 1980s it lifted the anti-terror legislation straight from Germany. The NATO countries have been working together to counter colonial problems, such as the Algerian issue in France and now the Kurdish problem in Turkey. We should note that this is facilitated by NATO, and by Turkey's central position in that.

Q. In on-going negotiations is enough being advanced for the inclusion of women and other societies? Can peace happen without the inclusion of other groups?

A. (Margaret Owen) – No, absolutely not! Peace can't happen unless civil society is consulted and is part of it; both for women and others. When there has been such a long conflict, here 30 years, there have been thousands killed and thousands missing; there are women missing sons, husbands and brothers, and the government has never responded to their letters.

We are still discovering mass graves.

It's also a question of compensation – many were forcibly evicted from their homes and villages and their livestock taken.

There can be no peace without reconciliation and restoration. There can be no real peace unless there are real human rights and gender equality is essential for a democratic society with the rule of law, real equality and human rights. This is very important and very worrying.

But the answer is no. The lady says no.

Comment from audience member: "I was shipped to Ankara in 2004/05 with work – I was supposed to advise the European Commission on a package of reforms. There is a problem with people like me going in as advisors and having the wool pulled over our eyes by officials. I tried to persuade the EU to put in a report on a useful way to involve Turkish and Kurdish NGOs in the implementation on the ground of what was in the packages, as I had no clue and I'm not sure that the others did. To move forward the Council of Europe and other European bodies must include people from Turkish and Kurdish NGOs who have an understanding of and can report on the situation. I tried to make this recommendation to the EU, but was removed from my position."

Responding comment: "Unfortunately, all the NGOs in Turkey are viewed as 'terrorists'."

Panel Discussion II: Victimization of Kurds by the Current Turkish Law Part I

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His paper is entitled 'Internal Displacement in Turkey: Shortcomings in International Oversight and the Domestic Implementation of Human Rights Law'.

Abstract: Recent developments in Turkey appear to signal a renewed effort to bring an end to the conflict and, perhaps, to resolve the long-standing grievances of Kurds. In addition to the issue of constitutional recognition, political actors must sooner or later face the immense challenge of dealing with the legacy of more than 20 years of conflict. Peace-building in Turkey will require that steps be taken to address the social, political, economic and psychological impact of conflict and of widespread violations of human rights. The situation of the more than 1 million 'internally displaced persons' in Turkey is a key indicator to progress. In recent years the Turkish government has proven increasingly willing to engage with international experts and has recognised the need to provide assistance to its IDPs. However, Turkey's large-scale, protracted displacement has brought to light the de-politicising effects of international law in this area, inadequacies of the judicial oversight provided at Strasbourg, and the limited effect of domestic measures focussed on economic solutions. In the absence of a holistic approach to its causes and consequences, the problem of internal displacement will continue to exacerbate social conflict and mistrust towards the State. This paper will identify shortcomings to the international oversight of internal displacement in Turkey and examine what further measures are required to resolve the needs of the displaced.

Paper: The recent acknowledgement that Turkish officials have been holding discussions with PKK leader Abdullah Oçalan, and the announcement of a PKK ceasefire at the Newroz gathering in Diyarbakır, offers a fresh opening on the Kurdish question. While there is much uncertainty as to whether this emerging political process can and will deliver lasting results, political actors in Turkey must eventually face up to the legacy of the long-running conflict between the PKK and

State security forces. Dealing with the causes and consequences of the conflict will be crucial to resolving the Kurdish question. In particular, it will require the design and implementation of initiatives capable of addressing the social, political, economic and psychological impact of the conflict and of violations of the civilian population. The situation of Turkey's internally displaced persons (IDPs) is an important and pressing issue in this context. As the combined result of forced displacement by State, lack of security, the socio-economic conditions in the conflict region, inability to farm due to controlled movement in the region, and pressure from non-State actors, among others, more than 1 million people fled their homes and remain displaced within Turkey.[1] Repairing the harm caused to Turkey's large-scale IDP problem will be an important indicator of any transition to peace and will serve the fundamental goal of addressing mistrust of the State.

The European Court of Human Rights (ECtHR) played a pivotal role in exposing and addressing widespread violations of human rights during the conflict, and often was the only forum to which victims could turn for the protection and vindication of their rights, and to be heard. It was through the ECtHR that the issue of internal displacement in Turkey came to international attention, as a series of allegations of destruction of villages and hamlets by Turkish security forces were upheld against the State. In the face of repeated judgments finding violations, the Turkish authorities maintained a policy of denial and adopted a variety of strategies to frustrate the efforts of the ECtHR to examine the cases before it. The capture and arrest of Oçalan in February 1999 and the formal recognition of Turkey's candidate status at the Helsinki summit of the European Council in December 1999 led to considerably improved relations, while the subsequent easing of the conflict provided an opportunity to engage the Turkish authorities on how to deal with the displaced. The acceptance of a fact-finding visit by the UN Secretary-General's Special Representative on Internal Displacement, Francis Deng, in June 2002, was a turning-point. Within two years of the visit, the ECtHR held that a domestic compensation scheme was an effective remedy for Turkey's IDPs, and directed the applicants in more than 1500 pending cases to seek domestic redress.[2]

Internal displacement is an inherently difficult issue for a human rights system such as the ECHR to get to grips with. Owing to a number of structural limitations, there are grounds to question whether the ECtHR is capable of dealing with this very particular type of human rights problem. Moreover, as the main legal institution dealing the issue, the ECtHR was confronted with a large-scale, conflict-induced displacement at a time of ongoing conflict. Further problems resulted from the distinct geographic focus of displacement in Turkey, occurring within a region under State of Emergency Rule (OHAL, *Olağanüstü Hal*) for a period of 15 years and within

[1] Internal Displacement Monitoring Centre / Norwegian Refugee Council, *Global Overview 2011: People Internally Displaced by Violence and Conflict* (April 2012), p. 16, p. 71 and p. 90.
[2] *İçyer v. Turkey* (Ad) (18888/02) 12 January 2006.

which a broad range of emergency powers enabled restrictions on rights and provided a basis for controlled and forced movement. The ECtHR received more than 2000 individual applications at a time when there were no comparable cases under international human rights law to guide the ECHR bodies' assessment. Furthermore, efforts to achieve solutions since 1999 have been hampered by intermittent clashes in the South-east and cross-border security operations. This paper will examine the role and effectiveness of the ECtHR in addressing displacement in Turkey and responding to these various challenges. The investigation will first examine the response of the ECtHR to the village destruction cases and thereafter focus on the issue of internal displacement.

Forced Displacement before the European Court of Human Rights

The ECtHR performed a critical function in assessing the protection of human rights during the conflict in Turkey. Together with allegations of unlawful killings, enforced disappearances, torture and various other conflict-related applications, the ECtHR received thousands of individual petitions complaining of village destructions and forced displacement in Turkey from 1992 onwards. These were the first complaints submitted before an international human rights court alleging that human rights had been violated as a result of a practice or policy of forced displacement. The repetition, nature and scale of the allegations overtly challenged the ability of the ECHR system to respond effectively and exposed the 'inherent limitations' of the right to individual petition.[3] Put simply, the ECtHR was not adequately equipped to handle this exceptional group of complaints. This section will consider the response of the ECtHR to an alleged pattern of village destruction through an assessment of issues relating to access, fact-finding, friendly settlement agreements, reparations and enforcement.

i. Access and the Role of the ECHR in Turkey

The ECHR applications were intentionally framed so as to situate the individual claims within an alleged State policy. The allegations stressed the impact of the conflict upon the civilian population, the severity of military operations and the lack of accountability in the emergency region. In the typical 'village destruction' cases, applicants alleged that members of the security forces or village guards[4] came to their villages and hamlets, often in isolated rural areas, and systematically destroyed homes, possessions, livestock and farming equipment, causing them to abandon their homes and communities. The vast majority of applications related to incidents occurring in 1993 (31%) and 1994 (66%), the height of the conflict. The incidents allegedly occurred across ten provinces within the State of Emergency region, but, again, a clear pattern emerges. The vast majority of the complaints related to

[3] Reidy *et al,* 'Gross Violations of Human Rights: Invoking the European Convention on Human Rights in the Case of Turkey' (1997) 15:2 *N.Q.H.R.* 161-173, 172.

[4] The village guards system requires villagers to work alongside security forces in military operations and to defend villages against the PKK.

incidents in the provinces of Diyarbakır and Tunceli, and more specific patterns can also be observed within each province. The ECHR claims painted a striking picture in terms of method, geography, and time.

An alleged denial of redress underpinned the claims of a systematic or administrative practice. Applications were submitted to Strasbourg before the conclusion of domestic investigations. In some cases, ECHR applications were submitted in the absence of any domestic complaint as the applicants' representatives, lawyers from the Kurdish Human Rights Project and the Turkish Human Rights Association, sought to create 'a bridge of petitions' to Strasbourg[5] and draw attention to a breakdown of the rule of law. This idea of direct access contradicts the subsidiary nature of IHRL, as enshrined in the rule requiring prior exhaustion of domestic remedies. The exhaustion of domestic remedies rule is designed to prevent 'domestic courts being superseded by the international organs', and creates a protective barrier against a deluge of complaints.[6] By successfully claiming a lack of effective domestic investigations and redress for victims of alleged village destructions, the applicants' representatives succeeded in securing an exceptional level of access. Individuals were permitted to complaint directly to Strasbourg, with the effect that the European Commission on Human Rights (ECommHR) and ECtHR assumed the role of first instance tribunal, providing a unique form of oversight of the Turkish conflict.

The ECtHR justified its decision on access owing to a lack of meaningful investigations and lack of progress with investigations in *Akdivar*.[7] In *Selçuk and Asker*, it held that the failure to investigate the allegations until the ECHR applications were forwarded by the ECommHR to the Government (despite the receipt of domestic petitions) created a reasonable belief that it was 'pointless' for the applicants to pursue domestic redress.[8] In *Menteş*, administrative claims were found to have reasonable prospects of success only where claimants submitted the damage was caused by the PKK or during clashes between security forces and the PKK.[9] A strict reliance on the 'social risk' doctrine, a form of objective State liability resulting from a failure to maintain public order and safety, appeared to exclude redress with respect to allegations of intentional acts of destruction by members of the security forces.

[5] A term used by Mehmet Nur Terzi, a member of the Izmir Bar's International Law and International Relations Committee, speaking of his plan regarding the filing of incommunicado detention complaints under the ECHR; Human Rights Watch, 'Violations of the Right of Petition to the European Commission on Human Rights', Vol. 8 No. 4 (April 1996), p. 31.

[6] Cançado Trindade, A.A., *The Application of the Rule of Exhaustion of Local Remedies in International Law: Its Rationale in the International Protection of Individual Rights (Cambridge University Press, 1983), p. 3.*

[7] *Akdivar and Others v. Turkey* [GC] (21893/93) 16 September 1996, (1997) 23 *E.H.R.R.* 143.

[8] *Selçuk and Asker v. Turkey* (23184-5/94) 24 April 1998, (1998) 26 *E.H.R.R.477, para. 70.*

[9] *Menteş and Others v. Turkey* [GC] (23186/94) 28 November 1997, (1998) 26 *E.H.R.R.* 595, para. 55.

The individual failures identified in those cases raised the general issue of the standards required of States facing internal conflict. The Grand Chamber accepted in *Akdıvar* that as a result of the 'severe civil strife' in the OHAL region, 'there may be obstacles to the proper functioning of the system of the administration of justice'.[10] The ECtHR was nonetheless reluctant to apply any margin of appreciation to the State on this basis. Of particular significance, the ECtHR found evidence of a 'general reluctance of the authorities to admit that this type of illicit behaviour by members of the security forces had occurred'.[11] The ECommHR and the ECtHR waived the obligation to exhaust domestic remedies in *Akdivar*, and went as far as to declare admissible the applications in *Menteş*, for instance, despite the absence of *any* domestic petitions. Particular care was taken to limit the effect of such decisions:

> The Court would emphasise that its ruling is confined to the particular circumstances of the present case. It is not to be interpreted as a general statement that remedies are ineffective in this area of Turkey or that applicants are absolved from the obligation (...) to have normal recourse to the system of remedies which are available and functioning.[12]

In spite of the apparent failures of the investigative system in the OHAL region, neither the former ECommHR nor the ECtHR deemed it necessary to examine the existence of an administrative practice. The effectiveness of domestic remedies was examined only as regards individual applicants.

The special treatment of claims emanating from South-east Turkey was a controversial issue at Strasbourg. Delegates and judges found sympathy in various cases with the investigative difficulties encountered by the Turkish authorities owing to the security situation. The decision in *Menteş* was particularly divisive, with six of the seven separate or dissenting opinions attached to the Grand Chamber judgment referring to the exhaustion ruling. Judges Gotchev and Jambrek took a pragmatic view and warned that the difficulties for the administration of justice in the region would similarly affect the Strasbourg bodies in their examination of the cases. Judges de Meyer and Russo were unwilling to accept claims by applicants who had not sought domestic redress, while Judge Gotchev queried how the Turkish Government could establish the effectiveness of administrative claims if the issue was not brought before the domestic courts. Altiparmak takes this position further, arguing that as a result of the ruling in *Menteş* it was 'highly implausible' that

[10] *Akdivar*, para. 70. The ECtHR continued: 'In particular, the difficulties in securing probative evidence for the purposes of domestic legal proceedings, inherent in such a troubled situation, may make the pursuit of judicial remedies futile and the administrative inquiries on which such remedies depend may be prevented from taking place.'

[11] Ibid., para. 71.

[12] Ibid., para. 77.

domestic claims would be pursued, therefore denying the courts the opportunity 'to rectify their previous deficiencies'.[13]

There is no doubting the difficult position of the ECommHR and ECtHR in relation to the issue of domestic remedies. It is difficult to conceive of a finding that the investigative difficulties in the OHAL region could oust the State's obligation to investigate alleged violations. On the other hand, to have enforced a rigid application of the exhaustion rule in the particular circumstances of the village destruction cases would have created a significant blind-spot in the protection offered under the ECHR. Nonetheless, Zwaak argued in 1997 that the failure to find an administrative practice in the OHAL region was a missed opportunity to send 'a clear message to the Turkish Government that the present human rights situation (...) does not meet the standards of the Council of Europe' and to encourage other States to pursue an inter-State claim.[14] The KHRP team also questioned how the ECHR organs could avoid an administrative practice judgment given their own repeated findings that domestic remedies were ineffective. The Turkish Government, for its part, argued in each successive case that remedies were effective, thereby disregarding the findings of the ECtHR.

At this initial stage of the ECHR cases, it is clear that the ECtHR saw fit to massage the rules on access in light of the local conditions. In successive cases the ECtHR uncovered a fundamental disregard for the obligation to investigate alleged violations of human rights in the OHAL region. Findings were limited to each individual case, restricting the scope of the findings against the State and somewhat contradicting the ECtHR's own findings throughout successive village destruction cases. As a direct result of the ECtHR's assumption of the role of *ad hoc* tribunal for the OHAL region, the ECtHR began to be viewed as the only institution willing to uphold human rights. To this day there is greater awareness of the ECHR system than of domestic avenues of redress among IDPs in Turkey,[15] an unfortunate consequence of the internationalisation of forced displacement in Turkey.

ii. Fact-Finding

The ECHR bodies continued to innovate by launching an unprecedented programme of in-country fact-finding regarding a total of 16 village destruction cases. Having found a lack of effective investigations at the local level, and as warned by Judges Gotchev and Jambrek, this distant international court faced the challenge of

[13] Altiparmak, K., 'Turkish Cases Relating to Terrorism before the European Court of Human Rights: Procedural Issues' (2001) 5 *J.Civ.Lib.* 30-48, 46.

[14] Zwaak, L.F., 'The European Court of Human Rights has the Turkish Security Forces Held Responsible for Violations of Human Rights: The Case of Akdivar and Others' (1997) 10:1 *L.J.I.L* 99-110, 109-110.

[15] Çelik reports that 79% of IDPs in Turkey are aware of the ECtHR, whereas only 53.4% are aware of a domestic compensation scheme. Çelik, A.B., 'State, Non-Governmental and International Organizations in the Possible Peace Process in Turkey's Conflict-Induced Displacement' (2012) 26:1 *Journal of Refugee Studies.*

establishing facts for itself. Fact-finding was perhaps the most important aspect of the ECHR oversight of the Turkish conflict. The cases investigated in this manner related to 16 separate incidents, occurring in the provinces of Bingöl (1 case), Diyarbakır (11 cases), Mardin (2 cases), Muş (1 case) and Şırnak (1 case), and to incidents occurring in 1992 (2 cases), 1993 (11 cases) and 1994 (3 cases). The scale of review, in terms of fact-finding investigations, was relatively small when compared to the overall scale of the complaints. Fact-finding in an adversarial setting has a clear objective: to determine the facts as they apply to the relevant incident and attribute responsibility where a State failure is established. Various scholars have ascribed significance to fact-finding in terms of creating a narrative, for the exposure of illegitimate acts or institutional failures, and as an advocacy tool to maximise the impact of judgments. ECHR fact-finding was significant for providing, for the first time, an independent record of events in South-east Turkey. Fact-finding in this context should also be viewed as a remedy in itself, providing the opportunity for applicants to be heard and to participate in an international, independent process involving the questioning of State officials.

The ECommHR and ECtHR, as expected, encountered a number of problems to fact-finding in Turkey. Material differences between written and oral evidence of applicant and government witnesses, lack of clarity regarding dates, a lack of compelling powers, and the consecutive interpretation of oral evidence in Turkish, Kurdish, English and French, all added to the challenge. Moreover, the evaluation of evidence was criticized by one Turkish Representative to Strasbourg, who claimed that the burden of proof had been reversed, to the effect that the State had to prove its innocence.[16] Here we see a crucial issue - the flexibility inherent in fact-finding and the relationship with the credibility of the process.

A total of 201 individual testimonies were heard over 45 days of hearings in these 16 cases. Oral evidence was received from applicants and their relatives, villagers, members of the security forces, public prosecutors, mayors, doctors, lawyers, one judge and one provincial governor. Although criticized by Turkish authorities for being manipulated by applicants and their representatives, there is clear evidence throughout that the ECHR organs looked for hearsay, conspiracy or animosity against state officials or public authorities, and exaggeration, among witnesses called for the applicants. Further caution was taken to examine possible PKK responsibility, the basic premise of the government's response to the claims. The evidence was assessed first from the applicants' perspective. Where applicants were judged to have given credible and reliable accounts supported by eye-witness testimony, the government bore the responsibility of rebutting their claims. It was accepted throughout that the government had sole access to crucial evidence.

[16] Gündüz argues that 'a hostile party can easily use human rights as a pretext to stir up domestic dissent and discontent', and alleged that the ECHR bodies had 'politicized what ought to be judicial functions'. Gündüz, A., 'Human Rights and Turkey's Future in Europe' (2001) 45:1 *Orbis* 15-30, 16.

Applicants were, therefore, not to be defeated by lack of official compliance with the proceedings. In many respects fact-finding enshrined the empowerment of the individual under the ECHR. Fact-finding was crucial for the applicants. In cases where fact-finding was not pursued, the ECtHR found procedural or remedial violations only.

One of the main limitations of the fact-finding process lay in the individual, case-by-case examination of facts. The fact-finding reports, a number of which ran into hundreds of pages and provided a near-forensic analysis of the events in question, documented the severity of the treatment of applicants and gave a clear account of the vulnerability of the displaced in the immediate aftermath. Lack of time and resources, however, meant that the ECtHR was unable to follow-through and establish facts or the truth of security force acts on a larger scale. The ECtHR recognized the limitations of its' efforts in *İpek*, for instance, commenting that the destruction appeared to have occurred 'within the framework of a larger operation being conducted over the surrounding area.'[17] The ECHR fact-finding process therefore had a limited value in terms of creating a broader narrative, causing the KHRP team to complain of the limited capacity of the hearings 'to take evidence of alleged patterns of abuses that may be claimed to exist.'[18] Again, the Turkish cases exposed structural limitations to the ECHR system, even where there was a willingness to innovate, and the limits to what a human rights court can deliver in such circumstances.

iii. State Responsibility, Reparations and Enforcement

The structural limitations of the ECHR system are most evident from the substantive findings in the village destruction judgments. The ECommHR and ECtHR were prepared to recognize 'serious' and 'grave' violations of the right to peaceful enjoyment of possessions (Article 1 of Protocol No. 1) and the right to private and family life and home (Article 8). These findings signalled to Turkey that it was in breach of the minimum guarantees of the ECHR and vindicated those applicants that had pursued ECHR claims in spite of a climate of fear and official discouragement by local actors. The individual petition system, however, had long proven weak in enabling applicants to establish systematic or generalised breaches under the ECHR, and the Turkish cases were no exception. The ECHR organs refused to be drawn on the obvious patterns brought to light by their own repeated judgments. The ECHR organs recognized that destructions had 'obliged' applicants and their families to leave their homes and hamlets / villages, but at no point did they seek to conceptualize the violations as forced eviction, removal or displacement. Neither did they clearly set out the standards of behaviour expected of the State, either in terms of protecting against displacement or when undertaking 'evacuations' to protect citizens. A jurisprudential black hole therefore exists at the core of the decisions. As

[17] *İpek v. Turkey* (25760/94) 17 February 2004, para. 137.
[18] Reidy *et al.*, 171.

to the claims of discrimination and an administrative practice of destructions, the response was simply that the claims had not been proven on the facts. Individual claims were unable to get to the general situation, whether a disregard for human rights, denial of redress, or practice of village destruction.

The impact of the finding of violations was further curtailed by the limited scheme of reparations ordered by the ECtHR. The ECHR merely provides that the finding of violations by the ECtHR can lead to an order of 'just satisfaction', a system of compensatory redress. In this important regard the ECtHR was ill-equipped to engage with the needs of victims. Throughout the village destruction cases, applicants were awarded pecuniary damages for a broad range of economic losses incurred, including houses, barns, stables, household goods, land, orchards, vineyards, trees, livestock, loss of income, personal items, house contents, foodstuffs, firewood, and for the costs of alternative accommodation and of obtaining damage assessments. Non-pecuniary damages were awarded on account of the 'seriousness of the violations', including the deliberate nature of the destruction and the 'subsequent relocation' of applicants from their homes and hamlets or villages. Requests for punitive damages were dismissed, as is common practice under the ECHR,[19] as were requests for the 'restoration' of rights by way of re-settlement. The individualized judgments, combined with the limitations of the framework on remedies, served to minimise the nature and extent of the obligations on the State flowing from the ECHR decisions.

A further shortcoming of the ECHR system lies with the effect given to the ECtHR judgments through the execution process, as overseen by the Committee of Ministers (CoM). The resolutions adopted by the CoM following the village destruction judgments were guided by a concern for future-oriented reform rather than for accountability for past violations. Four 'interim' resolutions have been adopted on 'Actions of the Security Forces in Turkey' between 1999 and 2008, the most recent of which covered 175 judgments on the merits and 69 friendly settlements relating to unlawful killings, enforced disappearances, torture and ill-treatment, and village destructions. The CoM took the somewhat unusual decision to collectivise the Turkish conflict case-law for the purpose of execution. The issue of village destruction was thus subsumed within a general procedure, which Cali argues has 'reduced the questions of legal reform, acknowledgement of wrongdoing, and accountability to technical and bureaucratic improvements.'[20] The CoM resolutions designate three priority areas to Turkish compliance: reinforcing the regulatory framework for the action of the security forces; improving the professional training of the members of the security forces; and ensuring the effectiveness of

[19] Shelton, D.L., *Remedies in International Human Rights Law* (Oxford University press, 2005), p. 360.

[20] Cali, B., The Logics of Supranational Human Rights Litigation, Official Acknowledgement and Human Rights Reform: The Southeast Turkey Cases before the European Court of Human Rights, 1996-2006' (2010) 35:2 *Law and Social Inquiry 311-337*, 313.

domestic remedies in all cases of alleged abuse. The concern of the CoM to address the structural problems in relation to security force accountability was a welcome approach. But in no way did the CoM identify the need to ensure return, or other forms of redress, following the destruction of homes and property, nor should a holistic approach to dealing with past violations have been excluded.

iv. Diplomacy Intervenes: Friendly Settlements and the End of Fact-Finding

The initial approach of the ECHR bodies on access and the need to establish facts soon gave way to pragmatism in the handling of cases. There are clear signs that the abolition of the ECommHR, as part of the transition from the two-tier system to the full-time ECtHR under Protocol No. 11, marked the end of a pro-active oversight of the ECHR rights. To some extent, of course, the changing domestic situation from 1999 onwards was responsible for a revised approach by the ECtHR when dealing with the Turkish cases. One way in which the ECtHR responded to the changing local conditions was to push for friendly settlement agreements in preference to examining all cases through to hearings on the merits. The ECtHR adopted a strategic policy of overseeing 'friendly settlement'[21] negotiations as part of discussions between the Council of Europe and Turkey on the abolition of the death penalty following Oçalan's capture in 1999. Courell comments that friendly settlements were viewed by the ECtHR as a means of 'promoting dialogue and understanding' with the Turkish authorities, and the encouragement of friendly settlements was based upon the view that:

> political persuasion and a certain amount of compromise would more effectively promote human rights than a flood of negative judgments that would essentially depend on the cooperation of the government for their implementation.[22]

The friendly settlement procedure has a number of controversial aspects. Krüger and Nørgaard have submitted that there are no limitations on the types of claims that may be resolved through friendly settlements.[23] The terms of settlements agreed regarding Article 2 and 3 complaints have at times been inadequate, of which the 1982 inter-State cases against Turkey is a prime example.[24] Refusal by an applicant to accept an agreement will often lead to a reduced just satisfaction award by the ECtHR if the allegations are upheld. It has thus been claimed that applicants may be

[21] 'Friendly settlements' are a means of case-management whereby applications are resolved through *ex gratia* payments by the State following confidential and informal discussions.
[22] Courell, A.M., 'The Friendly Settlement Procedure under the European Convention on Human Rights' (Unpublished Doctoral Thesis, European University Institute, Florence, September 2006), p. 136.
[23] Krüger, H. and Nørgaard, C.A., 'Reflections concerning Friendly Settlements under the European Convention on Human Rights' in: Matscher, F. and Petzold, H. (eds.), *Protecting Human Rights: The European Dimension, Studies in Honour of Gerald J Wiardu* (Carl Heymans; 1998), p. 329-334, at 332.
[24] Courell, p. 57.

vindicated through a merits judgment, 'but at a price',[25] and Kurdish lawyers have criticized the 'policy of forcing friendly settlements upon litigants'.[26]

A total of 18 striking-out decisions, involving 20 applications and 57 applicants, were given on the basis of friendly settlements regarding village destruction cases. A number of the settlements are significant for the fact that no judgments on the merits were given regarding the relevant districts (four cases).[27] The use of the friendly settlement procedure in such cases limited the scope of review into the alleged practice of village destructions, contributing to a gap in the record at Strasbourg. For applicants, the friendly settlement procedure usually brought a relatively speedy resolution of their applications. State acknowledgement of responsibility was not, however, a prerequisite. The first 10 friendly settlements were largely neutral on responsibility and focussed on the payment of sums. In two cases the Turkish Government issued statements of regret regarding disappearance from unacknowledged detention and death of the applicant's wife and son, respectively, without any reference to the alleged acts of destruction.[28] The six cases in which the Turkish Government did accept responsibility came with the caveat that the relevant acts were mere 'individual cases of destruction'. Such settlements included a pledge that 'all necessary measures' would be taken to ensure non-repetition, especially of the failure to conduct effective investigations, albeit in the absence of any form of oversight to hold the State to its word.

A clear indication of the pragmatism of the full-time ECtHR came with the decision to bring an end to fact-finding investigations in the village destruction cases. The decision not to conduct fact-finding in the leading case of *Matyar*[29] had the effect of limiting the scale of State responsibility examined under the ECHR and shifting the burden of proof onto applicants. The reasoning offered by the ECtHR was brief, noting that the material facts were disputed by the parties, and adding that due to the time passed and lack of documentary evidence 'a fact-finding investigation, involving the hearing of witnesses, would not effectively assist in resolving the issues.'[30] The claims in *Matyar* concerned an incident occurring in July 1993, and almost three years had passed before the case was declared admissible.[31] The ECtHR had deliberated in private on four occasions between 7 March 2000 and 31 January 2002, suggesting a level of disagreement as to the best course of action and adding to the delay. ECHR fact-finding in the Turkish cases was generally conducted after similar delays and had proven possible in other, similar cases. Moreover, the

[25] Ibid., p. 141.
[26] Ibid., p. 45.
[27] *Cagirga* (Cizre, Diyarbakır); *Dilek* (Yayladere, Bingöl); *Başak* (Kayaballı, Mardin); *Çardakçı* (Yüksekova, Diyarbakır).
[28] *Aydın* and *Siddik Yasa*.
[29] *Matyar v. Turkey* (23423/94) 21 February 2002.
[30] Ibid., para. 7.
[31] *Matyar v. Turkey* (Ad) (23423/94) 13 May 1996.

significant delays in this case were a direct result of a failure to effectively prioritise and process applications.

The *Matyar* decision prompted fears of a significant new restriction on the nature of review under the ECHR, and thus the protection of individual rights. Dembour argued that the *Matyar* case represented a step too far in the battle to reduce the ECtHR's workload and 'would hold potentially disastrous political consequences'.[32] Sardaro submits that the *Matyar* decision was not unreasonable given that fact-finding is resource-intensive and in light of inconsistencies in the applicants' statements, and dismisses as 'idle' the suggestion that an *obligation* to fact-find arises where documents submitted by a party are inadequate.[33] The potential implications of *Matyar*, however, provoked Sardaro to launch a scathing attack against the prospect of the ECtHR becoming complicit in a 'denial of justice':

> decisions not to establish fact-finding missions to ascertain the disputed facts should remain limited to exceptional and clearly defined circumstances. Should the European Court embark on an extensive and indiscriminate application of the *Matyar* jurisprudence, the protection system would risk becoming a mockery capable only of perpetuating, at the international level, the same denial of justice rendered to the victims of serious human rights violations at the domestic level.[34]

The subsequent record of the ECtHR appears to indicate a preference against fact-finding in individual cases. The decision not to fact-find in village destruction cases was often based on a perceived failure of applicants to provide sufficient and convincing evidence to support their allegations. It seems reasonable to suggest that such cases had in fact been held back by the Registry at Strasbourg while others, featuring compelling and credible evidence, were prioritised for fact-finding. There are, however, instances where the decision not to fact-find created a gap in the protection offered under the ECHR. In six cases relating to alleged incidents in the Ovacık and Hozat districts of Tunceli in October 1994, the ECtHR observed a failure of the applicants to rebut the statements of other villagers to the effect that there had been 'a robust terrorist campaign causing people to leave their homes.'[35] A total of 364 ECHR applications concerned incidents in Tunceli, in 41 villages and 12 hamlets across four districts, and it was alleged that village destructions had occurred in 35 villages and 10 hamlets in Ovacık and Hozat districts in October 1994 alone. Villager-testimony given during previous fact-finding hearings had established a problem of intra-village rivalries and animosity, and NGO reports had documented

[32] Dembour, M-B., '"Finishing Off" Cases: The Radical Solution to the Problem of the Expanding ECtHR Caseload' (2002) 5 *E.H.R.L.R.* 604-623, 619-620.
[33] Sardaro, P., 'Jus non Dicere for Allegations of Serious Violations of Human Rights: Questionable Trends in the Recent Case Law of the Strasbourg Court' (2003) 6 *E.H.R.L.R.* 601-630, 619.
[34] Ibid., 620.
[35] Noted by the ECtHR in: *Keser, Artun, Ağtaş, Saylı, Öztoprak, Kumru Yılmaz.*

the use of heavy weapons during attacks on villages in Ovacık and Hozat districts. Without a fact-finding investigation, the events in Tunceli, particularly those of 1994, are a significant and extremely unfortunate omission from the factual record generated under the ECHR.

Internal Displacement: Developing Initiatives on Domestic Redress

Symbolic movement on dealing with the displaced at the domestic level first appeared in 1999. The Return to Village and Rehabilitation Project (RVRP), an initiative announced in the Turkish Assembly in 1999 following a PKK ceasefire, was the first sign of action by the Turkish authorities to facilitate return and create sustainable living standards for IDPs. Although the RVRP was important in demonstrating official recognition of the needs of the displaced, the UN Representative on IDPs, the Parliamentary Assembly of the Council of Europe, academics and NGOs were all critical of major deficiencies in the project, including a non-litigation clause, the alleged conditional nature of return and prioritisation of those willing to join the village guards, lack of provision for economic assistance, and lack of effective implementation. Emphasising the lack of consultation and of reliable data by which to develop an effective approach to the problem, in the landmark *Doğan* judgment the European Court considered the measures to address the situation of IDPs 'inadequate and ineffective'.[36] Giving guidance as to the required measures of compliance, and citing the UN Guiding Principles on Internal Displacement, the Court found violations of the rights to family life, peaceful enjoyment of possessions, and effective remedies, of IDPs.

Within a month of *Doğan,* the Turkish Assembly adopted the 'Law on Compensation of Losses resulting from Terrorism and the Fight against Terrorism' (Compensation Law).[37] The Compensation Law is the cornerstone of Turkey's efforts to deal with internal displacement, and was no doubt adopted for the benefit of the EU Accession process. Although designed to provide remedies for IDPs, more than 1.500 of whom had cases pending before the ECtHR at the material time, the title of the law reflects the continued refusal to acknowledge direct responsibility for their plight. The Compensation Law is premised on 'social risk', a form of objective liability by the State for harm caused during the conflict. It is no more than a domestic friendly settlement process, albeit on a large-scale. The lack of official acknowledgement of State responsibility, with the displacement explained away as a side-effect of the conflict, is significant given the ambitious aims listed in the preamble: 'to deepen trust in the State, to strengthen the State-citizen relationship, to contribute to social peace and the fight against terrorism.' The Compensation Law adopts a compensatory, rather than human rights, framework, and unfortunately provides nothing by which to achieve these important and ambitious goals. This is evident from the description throughout of 'damages', which are available regarding three

[36] *Doğan and Others v. Turkey* (8803-11/02; 8813/02; 8815-19/02) 29 June 2004, 41 *E.H.R.R.* 15.
[37] Law No. 5233, 17 July 2004.

categories of losses: 'all types of damage caused to livestock, trees, agricultural products and any moveable or immoveable property'; 'damage resulting from injury, physical disability, deaths and expenditure incurred for medical treatment and funeral expenses', and; 'material damage suffered by those who could not gain access to their property because of the acts carried out within the context of the fight against terrorism'.[38]

In *İçyer* in January 2006, the ECtHR gave, for the first time, a positive analysis of domestic remedies in Turkey. In a case regarding inability of the applicants to return to their homes, the Government submitted to the ECtHR that 170,000 applications had been lodged with Damage Assessment Commissions set up in 76 provinces, including the applications of some 800 persons with pending ECHR applications.[39] It also submitted 440 decisions of the Tunceli and Diyarbakır Commissions as evidence of awards made for denial of access to property and resulting loss of income. In a relatively brief admissibility decision, the ECtHR on this basis upheld the accessibility of compensation and the prospects of success for applicants. Significantly, this enabled the ECtHR to clear the 1,500 pending 'village returns' applications from its docket, the applicants being directed to instead seek domestic redress. In the past the ECtHR had taken care to stress the duty on the State to investigate allegations of village destruction. This issue of accountability was nowhere to be seen in the analysis of the State's duty to its 'IDPs', demonstrating the de-politicising effect of the IDP discourse in relation to State responsibility.

Since the *İçyer* decision, the implementation of the Compensation Law has been subjected to criticism from the EU Commission, academics and a range of international and domestic NGOs. A joint report by the Norwegian Refugee Council, the Internal Displacement Monitoring Centre and the Turkish Economic and Social Studies Foundation in May 2006,[40] four months after the *İçyer* decision and a full two years prior to the CoM's closure of the issue, acknowledged the efforts of the Turkish Government and welcomed the increased international cooperation. It also cited a range of specific concerns. Among others, the report referred to high rates of rejections, the evidentiary burden on claimants, a lack of resources given to the Assessment Commissions, and the undue weight attributed to evidence of gendarmes provided to the Commissions.[41] In December 2006, Human Rights Watch suggested the need for a review of the system due to a 'restrictive and inconsistent' approach to awards, and commented:

[38] Section 7. Persons who have been awarded compensation by the ECtHR in respect of such damage are explicitly excluded under Article 2 (c).
[39] *İçyer*, para. 13.
[40] Kurban *et al, Overcoming a Legacy of Mistrust: Towards Reconciliation Between the State and the Displaced* (NRC/IDMC/TESEV; May 2006).
[41] Ibid., p. 33-40.

> the sheer capriciousness of the system as currently operated, far from contributing to the stated purpose of the law – reconciliation and 'healing of wounds' – seems likely to stoke jealousy and a sense of grievance in the local population.[42]

In spite of the concerns of various international bodies, the CoM closed its supervision of compliance with *Doğan* in June 2008,[43] with the effect that there is no rights-based follow-up or running oversight of the implementation of the Compensation Law. This also leaves us in the unusual position whereby the EU continues to express concern about respect for human rights and the effectiveness of a law the ECtHR has judged to be human rights-compliant.[44] In addition to the lack of proactive monitoring of compliance, a key problem with the ECtHR rests with its inability to address the need for remedies beyond orders of 'just satisfaction'.

Reparations: The Missing Link

The RVRP and Compensation Law expose a fundamental problem with Turkey's efforts to date to provide redress and support to IDPs. The Compensation Law alone is patently insufficient to deal with the displaced and to address head-on the need for justice or a holistic scheme of reparations. It is equally insufficient to deliver social peace and re-establish mistrust in the State. In July 2007 the Council of Europe Commissioner for Human Rights, Thomas Hammerberg, issued a viewpoint, 'Victims of Human Rights Deserve More', in which he linked the duties on States to investigate complaints and ensure access to justice under Article 13 ECHR to the meaning of reparations as explained in the 2006 UN Basic Principles on Remedies and Reparations.[45] It is to the Basic Principles we must turn for guidance on what is needed to provide effective redress to Turkey's IDPs.

The Basic Principles conceive of reparations as entailing five elements: compensation, restitution, satisfaction, rehabilitation, and guarantees of non-repetition. Having focussed exclusively on compensation as a remedy, the Turkish government has been criticised for adopting '*ad hoc*, sporadic, and disconnected measures to ease international pressure and expedite the EU accession process.'[46]

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[42] HRW, 'Unjust, Restrictive and Inconsistent: The Impact of Turkey's Compensation Law with Respect to Internally Displaced People' (20 December 2006), p. 36-37.

[43] Resolution DH(2008)60, 'Execution of the Judgment of the European Court of Human Rights in *Doğan and Others v. Turkey*' (25 June 2008).

[44] On 8 July 2011 the ECtHR rejected a further series of challenges to the Compensation Law: *Akbayır and Others v. Turkey* (Ad) (3041508); *Fidanten and Others v. Turkey* (Ad) (27501/06); *Bingölbalı and Others v. Turkey* (Ad) (18443/08); *Boğuş and Others v. Turkey* (Ad) (54788/09).

[45] 'The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights and Serious Violations of International Humanitarian Law', adopted by UNGA Resolution 60/147, A/RES/60/147 (16 December 2005).

[46] Kurban, D., 'Reparations and Displacement in Turkey: Lessons Learned from the Compensation Law' (ICTJ/Brookings, July 2012), p. 8.

Furthermore, the IDP-discourse can itself create problems. The domestic initiatives in IDPs in Turkey are premised on development and a 'de-politicised discourse'[47] which conceals the issue of identity and the underlying causes to internal displacement and, thereby, accountability for causing the displacement. As yet, there has been no official acknowledgement of responsibility for forced displacement, nor any effort to ensure public disclosure of the truth or public apology (satisfaction). To ensure an effective and lasting system of return for IDPs (restitution), the State must finally respond to international calls for the abolition of the village guard system, ensure IDP consultation in reconstruction efforts, and begin clearing landmines in the South-east. Such measures will also contribute to guarantees of non-repetition, together with continued human rights training of security forces and accountability reforms. It is only with a PKK ceasefire in place and genuine political dialogue that the full range of reparations can realistically be implemented. Each of the five aspects of reparations should be incorporated as part of broad domestic initiatives either to deal with internal displacement alone or as part of a comprehensive programme to deal with the past. Turkey's large-scale, protracted displacement cannot be resolved through compensation. Nor can it be resolved without measures capable of addressing the underlying causes. The preamble to the Compensation Law is written in the correct spirit, but without the means of delivering. Progress on the Kurdish issue requires concerted and considered efforts to face up to the legacy of the conflict and to deliver full reparations.

Conclusion

This brief assessment of internal displacement in Turkey attests to the difficulties involved in ensuring the effective implementation of human rights in times of conflict. The experience of the ECtHR demonstrates clearly the limitations of what human rights courts can achieve in such contexts. During the Turkish conflict the ECtHR was the key legal actor, providing a unique form of oversight of human rights in the OHAL region and assuming the role of fact-finder in cases of serious and grave violations of rights. Individual petitions were unable to get to the bigger picture. Although the ECtHR opened-up the scope of review when addressing the situation of 'IDPs', it could not press for holistic approaches to the problem within the terms of the Convention. Ambitious steps will be required to respond appropriately to the needs of the displaced. It is difficult to countenance an effective peace in Turkey without genuine efforts to resolve the social, political, economic and psychological effects of Turkey's large-scale and protracted displacement. The phenomenon of internal displacement is intimately connected to the broader social-political reality in Turkey. The hope is that internal displacement will be recognised as a key element of any transition to peace.

[47] Ayata, B. and Yükseker, D., 'A Belated Awakening: National and International Responses to the Internal Displacement of Kurds in Turkey' (2005) 32 *New Perspectives on Turkey* 5-42, 6.

PowerPoint Presentation:

Internal Displacement in Turkey: Shortcomings in International Oversight and Domestic Implementation of Human Rights

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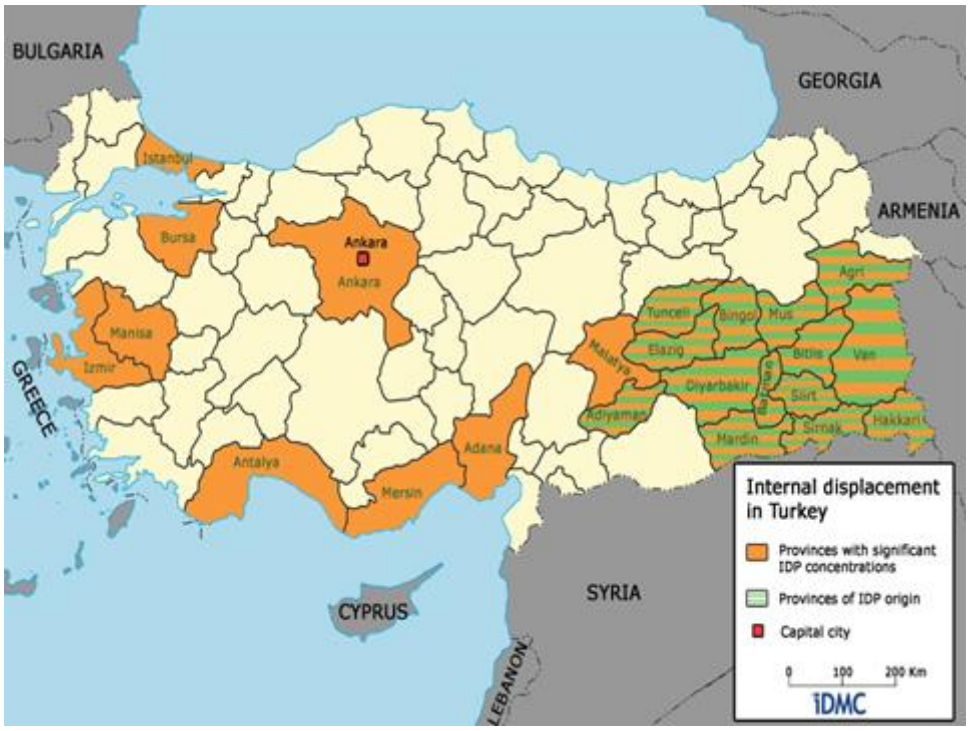
17 April 2013



Forced Displacement and the ECHR

- Testing the limits of the ECHR system
  - In excess of 2000 individual applications
  - Alleged systematic practice of 'village destruction'
  - Denial of redress for violations in the emergency region
- Special oversight
  - 'A bridge of petitions'
  - First instance fact-finding
- State responsibility
  - Individualised violations
  - Forced displacement?
  - Limitations of 'just satisfaction'

Forced Displacement and the ECHR

- Diplomacy and the Full-Time Court
  - Increased use of 'friendly settlements'
  - The end of ECHR fact-finding (*Matyar*, 2002)
- Political Enforcement
  - 4 Interim resolutions on actions of the security forces
  - The CoM 'reduced the questions of legal reform, acknowledgement of wrongdoing, and accountability to technical and bureaucratic improvements'

Internal Displacement

- Law on Compensation of Losses Resulting from Terrorism and the Fight against Terrorism (17 July 2004)
  - Cornerstone of Turkish authorities' efforts to deal with the displaced
  - Preamble: 'to deepen trust in the State, to strengthen the State-citizen relationship, to contribute to social peace and the fight against terrorism'
  - Domestic friendly settlement scheme
- EU Commission 2005 Annual Report
  - 'Considerable uncertainty and delay'
  - Eligibility criteria
  - Evidential burden on claimants
  - Level of compensation to be paid

The Compensation Law

- The ECHR
  - *İçyer*, an effective remedy for IDPs (January 2006)
  - CoM closed examination of IDPs in June 2008
  - *Akbayır* Group (July 2011)
- Internal Displacement Monitoring Centre / Norwegian Refugee Council (May 2006)
- Human Rights Watch (December 2006)
  - '...the sheer capriciousness of the system as currently operated, far from contributing to the stated purpose of the law – reconciliation and 'healing of wounds' – seems likely to stoke jealousy and a sense of grievance in the local population'

The Missing Link: Reparations

- UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, UNGA Res 60/147, 21 March 2006
  - Restitution
  - Compensation
  - Rehabilitation
  - Satisfaction
  - Guarantees of non-repetition

- ...the law does not investigate how displacement took place, what happened and who instigated it... There is no concern for helping IDPs have peace with the state. We cannot have societal peace, and reach social justice by paying compensation because we can reach these only by acknowledging mistakes. When we talk to the applicants, we see that especially in the cases of death, they do not want compensation. They want truth-finding and acknowledgment. There is nothing about this in the Law. (President of TOHAV, Istanbul, September 2006)
- Source: Çelik, A.B., 'State, Non-Governmental and International Organizations in the Possible Peace Process in Turkey's Conflict-Induced Displacement' (2012) 26:1 *Journal of Refugee Studies*

HANNAH RUSSELL is currently undertaking doctoral research entitled 'The Right to Life and European Conflicts' at the Law School in Queen's University Belfast. This research explores the effectiveness of Article 2 of the European Convention on Human Rights in the context of the conflicts in the Basque Country, Chechnya, Northern Ireland and South-east Turkey. She has a Law degree (LLB) from Trinity College Dublin and a LLM in Human Rights Law and Criminal Justice (Cross Border) from Queen's University Belfast/Irish Centre for Human Rights, Galway. Prior to starting her doctoral research, she worked as a legal researcher for Disability Action (NI), Al-Marsad – Arab Human Rights Centre in Golan Heights, the Cambodian Centre for Human Rights, the Northern Ireland Human Rights Commission and the Women's Centre for Legal Aid and Counselling (Palestine).

Her paper is entitled 'A Culture of Denial: An Exploration of the Right to Life and the Kurdish Question in Turkey'.

Abstract: Focusing on the right to life, it addresses Turkey's approach in dealing with, or failing to deal with, the atrocities that have occurred during the Turkish-Kurdish conflict. It highlights the obligations that Turkey is subject to within domestic and international law, with particular focus on the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights. It considers a number of reoccurring issues, which have raised serious questions of Turkey's commitment to upholding the right to life in the context of the Turkish-Kurdish conflict. These include excessive use of force, cases of disappearance, failures to effectively investigate and the use of targeted killings. The paper concludes by assessing the role that the European Court of Human Rights has played in holding Turkey to account and what this means for the conflict overall.

Paper: It should be said from the beginning that while this paper provides a legal analysis of Turkey's record regarding the right to life in the context of the Turkish-Kurdish conflict, it is not presented with ignorance of the pain, suffering and tragedy involved in the cases that will be discussed. Also, while it focuses on Turkey's record before the ECtHR, an institution that deals with State actions, it is not presented with disregard for the atrocities that have occurred at the hands of both State and non-State actors during this conflict.

This paper considers Turkey and the right to life in the context of the Turkish-Kurdish conflict. In doing so, it presents a number of statistics and assesses the situation with regard to domestic and international law. It draws heavily from Article 2 of the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights.

Statistics

The Kurdish conflict in Turkey has raised a number of issues with regard to the right to life in relation to extra-judicial killings, forced disappearances, lack of effective investigation and collusion. Since 1984 it is estimated that approximately 42,000 people have been killed (as a result of State and non-State actions) and 253 mass graves have been created.[1] A significant, but undefined number, has also disappeared, presumed dead.

Violations by State

Many of the individuals behind those figures have had their right to life violated in some shape or form by the actions or inactions of the Turkish authorities. From a purely legal standpoint these numbers should be a shock as the right to life is fairly well protected within Turkish domestic law and Turkey has ratified its support of most right to life related international standards. However, as is a common story, what is set out on paper does not always transcend to practice.

Domestic Law

At a domestic level, in addition to national homicide laws, Article 17(1) of the Constitution of the Republic of Turkey 1982 expressly recognises the right to life. However, Article 15(1) of the Constitution does provide for derogation from this right in 'times of war, mobilisation, martial law, or state of emergency.' The terminology used here appears to indicate that the conflict surrounding the Kurdish question fits within these exceptional circumstances for derogation from Article 17(1). Yet Article 15(2) provides that 'the individual's right to life… shall be inviolable except where death occurs through lawful act of warfare.' Thus imposing a similar limit as is contained within international laws.

European and International Law

Turkey has ratified most international law provisions related to the right to life. While Turkey has not accepted all legal manifestations of the right to life, it is strongly protected within the domestic, regional and international laws that do apply to this State.

[1] Kerim Yildiz and Susan Carolyn Breau, *The Kurdish Conflict: International Humanitarian Law and Post-Conflict Mechanisms* (Taylor and Francis, 2010), at 16; Human Rights Association (Diyarbakir Branch), 'East and Southeast Anatolia Region of Human Rights Violations 2006-2012' (Human Rights Association, 2012).

What Is Right To Life?

When we talk about the right to life we are referring to the right to live your life without being unjustly killed or being exposed to the threat of being unjustly killed.[2] Violations can occur in situations where a person has been killed or where a life-threating incident has occurred.[3] In considering right to life claims, the courts will assess whether a State has failed to fulfil its obligations set out within the right to life and if this failure is justified.[4]

Obligations and Exceptions

Turkey, as a member of the Council of Europe since August 1949, and a candidate for accession to the European Union, has ratified the ECHR and Protocols No 6 and 13 of the ECHR. Thus upholding the right to life and abolishing the death penalty, which is now a condition of its Council of Europe and EU membership. In addition, Turkey, which joined the United Nations in 1945, has ratified most of the legal provisions safeguarding the right to life within international humanitarian and human rights law without any relevant reservations. That is with the exception of the Additional Protocols to the Geneva Convention IV and the Rome Statute. As Turkey is not yet a member of the European Union it is not subject to the provisions of the Charter of Fundamental Rights of the European Union 2004. It is interesting to note that Turkey has signed, but not ratified the Hague Regulations 1907. However, since the Hague Regulations form the foundations of international customary law which applies to all States, this is irrelevant. Therefore, while Turkey has not accepted all legal manifestations of the right to life, it is strongly protected within the domestic, regional and international laws that do apply to this State. In ratifying right to life provisions, such as Article 2 of the ECHR, Turkey has committed itself to uphold a number of obligations, with limited exceptions. The obligations include protecting the right to life by law,[5] refraining from unjustified killings,[6] protecting against real and immediate risks[7] and thoroughly investigating deaths.[8] The exceptions focus on not using force that is no more than absolutely necessary.[9] Yet Turkey has violated these obligations and exceptions on a regular basis in its dealings with the Turkish-Kurdish conflict. Consequently, the atrocities that have occurred in Turkey constitute grave and systematic violations of these laws.

[2] *Ilhan v Turkey*, Application No 22277/93, Judgment 27 June 2000, at para 76-77.
[3] *Ilhan v Turkey*, Application No 22277/93, Judgment 27 June 2000, at para 76-77.
[4] *McCann v United Kingdom* (1995) 21 EHRR 97.
[5] Article 2(1), European Convention on Human Rights 1950.
[6] *McCann v United Kingdom* (1995) 21 EHRR 97.
[7] *Osman v United Kingdom* (2000) 29 EHRR 245, at para 116.
[8] *McCann v United Kingdom* (1995) 21 EHRR 97, at para 161; *Shanaghan v United Kingdom*, Application No 37715/97, Judgment of 4 May 2001; *Oneryildiz v Turkey* (2005) 41 EHRR 325, at para 91.
[9] Article 2(2), European Convention on Human Rights 1950.

Turkey, Right to Life and ECHR

Turning focus to Turkey's record before the ECtHR, surprisingly only 8.4% of Turkey's violations between 1959 and 2011 have involved Article 2 of the European Convention on Human Rights.[10] It is submitted that this is not a fair representation of the extent of right to life violations that have occurred in Turkey concerning the Kurdish conflict. This could be due to a number of reasons. First, the often inhibiting burden of proof that is placed on applicants.[11] Second, the lack of evidence available due to collusion and inadequate examinations of evidence by the State.[12] Third, a lack of engagement with the ECtHR due to intimidation.[13] Fourth, due to practical barriers to the court. For example, lack of knowledge of the system, lack of finances and/or lack of expertise.[14]

From the cases that have been considered by the ECtHR, a number of reoccurring issues have arisen which have raised serious questions of Turkey's commitment to upholding the right to life.

Use of Force

It is common for State agents to use force in dealing with the Kurdish question in Turkey. States are allowed to use force, but only in instances where the use of force is absolutely necessary given the surrounding circumstances and the force used is proportionate.[15] In addition, by reading Articles 1 and 2 of the ECHR together,[16] Turkey is under an obligation to ensure reasonable precautions are in place. This

[10] *See* 'Overview 1959-2011' (Council of Europe, 2012). Available at http://www.echr.coe.int/NR/rdonlyres/8031883C-6F90-4A5E-A979-2EC5273B38AC/0/APERCU_19592011_EN.pdf (accessed 14 April 2013).

[11] *Yasa v Turkey*, Application No 22495/93, Judgment 9 July 1997; *Tanrikulu v Turkey*, Application No 23763/94, Judgment of 24 September 1999.

[12] *See for example Orhan v Turkey*, Application No 25656/94, Judgment of 18 June 2002. This case concerns the destruction of a Kurdish village by Turkish authorities. While giving evidence the State agents claimed to not remember the events clearly.

[13] *Elici and Others v Turkey*, Application Nos 23145/93 and 25091/94, Judgment of 13 November 2003, at para 702.

[14] Brice Dickson has written about the challenges facing applicants from Northern Ireland in their earlier cases. He touched upon inadequate formulation and mismanagement of applications being a problem. Arguably this could extend to any applicant or legal team engaging human rights and the ECtHR for the first time. *See* Brice Dickson, *The European Convention on Human Rights and the Conflict in Northern Ireland* (Oxford University Press, 2010), at 23 and 51.

[15] Article 2(2) of the European Convention on Human Rights 1950; Article 2(4) of the United Nations Charter 1945; United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 'Basic Principles on the Use of Force and Firearms by Law Enforcement Officials', 27 August to 7 September 1990. Article 2(4) of the United Nations Charter 1945 states that "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations." Essentially, this provision states that States should not use force without good reason and do so in a way which respects international law.

[16] Article 1 of the European Convention on Human Rights 1950 requires a State to "secure" the rights and freedoms of everyone in their jurisdiction.

includes effectively training its agents on using force and adequately planning operations.[17]

Turkey has been found to violate Article 2 in this regard on a number of occasions. This has included using excessive use of force during demonstrations,[18] house searches,[19] displacement and destruction operations,[20] and against individuals in State custody.[21] For example, it has had domestic laws in place which allow for excessive use of force. During state of emergencies, the last one which extended from 1987-2002, emergency laws have been implemented which allow for excessive use of force. Outside of such situations, Article 11 of the Smuggling (Prevention and Inspection) Act 1932 (Law No 1918) allows a State agent to shoot to kill, as long as warning shots are fired.[22] Whether the agent feels that their own life is at risk is irrelevant. Furthermore, Article 27(2) of the Turkish Criminal Code 2004 states that a death resulting from actions of State agents brought on by "excusable excitement, fear or anxiety"[23] is acceptable. Each of these laws ignores the absolutely necessary threshold.

Disappearance Cases

An indeterminable number of individuals have disappeared never to be heard of again during the Turkish-Kurdish conflict. There have been reports of individuals being taken from their homes, disappearing at checkpoints and being victims of death squads.[24] The relatives of these individuals in the majority of cases claim that these disappearances have been the result of direct State actions, actions covertly

[17] *Ergi v Turkey*, Application No 23818/94, Judgment of 9 July 1997.
[18] *Aydan v Turkey,* Application No 16281/10, Judgment of 12 March 2013.
[19] *Ergi v Turkey*, Application No 23818/94, Judgment of 9 July 1997.
[20] *Ergi v Turkey*, Application No 23818/94, Judgment of 9 July 1997.
[21] *Dink v Turkey*, Application No 2668/07, Judgment of 14 September 2010. *See also* Kerim Yildiz and Susan Carolyn Breau, *The Kurdish Conflict: International Humanitarian Law and Post-Conflict Mechanisms* (Taylor and Francis, 2010).
[22] *Beyazgül v Turkey*, Application No 27849/03, Judgment of 22 September 2009. The applicant's husband was killed by Turkish forces while smuggling fuel across the Turkish-Iranian border. Turkey was found to have violated Article 2 on the grounds of excessive use of force (shot to kill after firing warning shots with no regard for whether the victim was armed) and an ineffective investigation.
[23] *Aydan v Turkey,* Application No 16281/10, Judgment of 12 March 2013. The applicants' husband/son, an innocent passer-by, was shot by a Turkish gendarme on the fringes of a violent demonstration. Turkey was found to be in violation of Article 2 on the grounds that it was not established that the force used to disperse the demonstrators, which had caused the victim's death, had been necessary. Turkey was found to have failed to secure the victim's right to life and carried out an inadequate investigation into the death.
[24] *Temizöz* case. A domestic case that has been on-going since 2009. It investigated the involvement of a gendarmerie officer, three PKK informers and three village guards who are suspected of forming a criminal gang which is responsible for the killing and disappearance of twenty people in and around the Cizre district of Sirnak province between 1993 and 1995. The trial has a number of inadequacies regarding the gathering of evidence, lack of protection for witnesses and excessive delays. However, it does provide some evidence of the existence of State sponsored death squads. *See also* Kerim Yildiz and Susan Carolyn Breau, *The Kurdish Conflict: International Humanitarian Law and Post-Conflict Mechanisms* (Taylor and Francis, 2010); Dorian Jones, 'Turkish Kurds still search for disappeared', *Deutsche Welle*, 3 October 2012. Available at http://www.dw.de/turkish-kurds-still-search-for-disappeared/a-16280699 (accessed 17 January 2013).

supported by the State or due to inaction of the State towards death threats. It should be noted that a State is under an obligation to take preventative measures, be it to investigate or provide protection, where their agents have become aware of real and immediate threats to the life of an individual.[25] Furthermore, in such cases, most of those that have disappeared under suspicious circumstances are individuals who have at some point been accused of being sympathetic towards the PKK. These claims are not always true, but the non-derogable nature of the right to life and its demand for proportionality make an individual's political views and convictions irrelevant when it comes to a threat to the right to life.

Generally, the ECtHR requires hard, direct evidence of State involvement.[26] Yet the Court does allow for inferences to be drawn where there is some evidence of the whereabouts of the disappeared individual. For example, in cases where there were eye witness accounts which reported that the disappeared individuals had been held in State detention and ill-treated after their disappearance.[27] Despite the State's denial that it had anything to with the disappearances, the Court has been satisfied that there was enough consistency in the circumstantial evidence to draw inferences that the individuals had disappeared as a result of State actions and that they should be presumed dead, thus constituting a violation of Article 2. As a result of such successful cases Turkey has been found responsible for a number of disappeared individuals and for failing to protect those that were known to be under threat. Turkey has also been found to have breached Article 2 for not adequately investigating the whereabouts of disappeared individuals. As many testimonials suggest, family members of disappeared persons have been met with a "wall of silence" to their requests for information and investigation.[28]

Failure to Investigate

Turkey's general approach to investigating deaths in relation to the Kurdish conflict has been a policy of 'deny, deny, deny.' There is often a denial of any State involvement. There can be a denial of entertaining an investigation to prove that there was no State involvement. Or there is often a denial of the applicant's right of access to information.[29] As a result it became near impossible for applicants to

[25] *Tanrikulu v Turkey*, Application No 23763/94, Judgment of 24 September 1999; *Kilic (Cemil) v Turkey*, Application No 22492/93, Judgment of 28 March 2000.
[26] *Kurt v Turkey*, Application No 24276/94, Judgment of 22 January 1997; *Tanrikulu v Turkey*, Application No 23763/94, Judgment of 24 September 1999.
[27] *Cakici v Turkey*, Application No 23657/94, Judgment of 14 September 1998; *Ertak v Turkey*, Application No 20764/92, Judgment of 9 May 2000; *Akedniz v Turkey*, Application No 25165/94, Judgment of 31 May 2005.
[28] Dorian Jones, 'Turkish Kurds still search for disappeared', *Deutsche Welle*, 3 October 2012. Available at <http://www.dw.de/turkish-kurds-still-search-for-disappeared/a-16280699> accessed 17 January 2013.
[29] *Ahmet Ozkan and Others v Turkey*, Application No 21689/93, Judgment of 6 April 2004. Case concerning an alleged raid of the village Ormanici by State forces looking for members of the PKK. During the raid two children were killed and all of the village's men were taken into detention and ill-treated, resulting in one death. Turkey denied that the alleged incidents had been intended, but were

gather the evidence required to satisfy the high burden of proof demanded by Article 2. The Court has also been met with two completely different sides to the same story with no obvious consolidation of the facts. In addition, any domestic investigations conducted by Turkey into suspicious deaths concerning the Turkish-Kurdish conflict, are often inadequate. Making it increasingly difficult to satisfy the six month time limit[30] and requirement to exhaust all domestic remedies set by the ECtHR. Carla Buckely in her writings has found 22 types of inadequacies in Turkey's investigations. These have included undue delays, a limited scope of investigation, inadequate forensic and autopsy examinations, engaging biased and ill-equipped bodies as judge and jury, and employing inappropriate investigators.[31] Consequently, impunity within Turkey has flourished.

In recognising this, the ECtHR has eased its admissibility criteria regarding time limits and exhausting domestic remedies in circumstances where the remedies available are ineffective or incapable of functioning.[32] It has also looked to its American counterpart – the Inter-American Court for Human Rights – for inspiration. Accordingly, the ECtHR took an unprecedented step, within the European context,

instead collateral damage from a gun fight that broke out between insurgents and the State forces. The European Commission for Human Rights launched a fact-finding mission and took statements from witnesses and State officials. On the basis of that evidence, the European Court of Human Rights ruled that a violation of Articles 2, 3, 5 and 8 of ECHR had occurred. In relation to Article 2, the Court ruled that the State force's response to gun fire from insurgents was absolutely necessary and thus justified under Article 2(2) of the ECHR. With regard to the deaths, Turkey was found to have breached Article 2 by not launching effective investigations. It was also found to be liable for the death of the villager who had died in detention, as there was enough evidence to suggest that he had contracted pneumonia as a result of ill-treatment. *See also Timurtas v Turkey*, Application No 23531/94, Judgment of 8 March 1999; *Tanrikulu v Turkey*, Application No 23763/94, Judgment of 24 September 1999; *Dulas v Turkey*, Application No 25801/94, Judgment of 30 January 2001; *Orhan v Turkey*, Application No 25656/94, Judgment of 18 June 2002; *Ipek v Turkey*, Application No 25760/94, Judgment of 17 February 2004.

[30] Soon to be four months if proposed Protocol No 15 of the European Convention of Human Rights is enacted.

[31] Carla Buckley, 'The European Convention on Human Rights and the Right to Life in Turkey' (2001) 1(1) *Human Rights Law Review* 35, at 48-51.

[32] In such cases the applicant can apply to the court within six months of becoming aware of the lack of any effective investigation, without having to have exhausted all domestic remedies. *See Varnava and Others v Turkey*, Application Nos 16064/90, 16065/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, Judgment of 18 September 2009. A further exception is provided with regard to continuing situations, such as disappearance cases, or cases where new developments have occurred long after an investigation into a violation of the right to life has ended. In such cases, a case can be brought as long as it is within a reasonable period of time. *See Abuyeva and Others v Russia*, Application No 27065/05, Judgment of 2 December 2010; *Kerimova v Russia*, Application No 17170/04, 20792/04, 22448/04, 23360/04, 5681/05 and 5684/05, Judgment of 3 May 2011, at para 198/203. This period will be determined by the surrounding circumstances (for example availability of witnesses and evidence) and the discretion of the court. *See Varnava and Others v Turkey*, Application Nos 16064/90, 16065/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, Judgment of 18 September 2009, at para 161. The Court has recently stressed that the time limits imposed will be calculated in accordance with the ECHR's criteria, not the conditions laid down by the domestic law of each respondent State. *See Sabri Günes v Turkey*, Application No 27396/06, Judgment of 29 June 2012.

and launched fact-finding hearings within Turkey.[33] By 2009, out of the 92 fact-finding missions launched by the ECtHR, 66% concerned Turkey.[34] Turkey's response to these missions is one of contempt.[35] For the applicants it provided some justice. However, a continuing bone of contention with the ECtHR's approach is its refusal to acknowledge the systematic violations that are occurring at the hands of the State in the Turkish-Kurdish conflict. That is that the violations are spurred on by State practice directed at Kurds within Turkish society. Despite a significant number of similar or repetitive cases coming before the court with regard to the Turkish-Kurdish conflict, the Court has refused to reach a self-initiated conclusion that systematic violations are occurring. It has instead opted to treat each case as a separate entity. The burden lies with the applicant to allege and prove that systematic violations are occurring. Realistically this evidence will only be obtained with some form of collaboration with State agents, either officially or unofficially. This is unlikely to occur given Turkey's culture of denial and targeting those that show any form of support for Kurds.[36]

Targeted Killings

Targeted killings often form part of covert operation by State agents, which are denied or covered up.[37] As a result it has been difficult to prove their existence. With regard to the Kurdish question in Turkey, it has been alleged that the use of targeted killings is rife against suspected PKK rebels and suspected sympathisers with the Kurdish cause. As a result the right to life of Kurdish villagers, students, journalists,

[33] These missions were initially conducted by the European Commission on Human Rights, but have been conducted by the ECtHR since 1998 with the dissolution of the Commission. This was enforced by Protocol No 11 of the European Convention on Human Rights which came into force on 1 November 1998.

[34] Philip Leach, Costas Paraskeva and Gordana Uzelac, 'International Human Rights and Fact-Finding: An Analysis of the fact-finding missions conducted by the European Commission and Court of Human Rights' (Human Rights and Social Justice Research Institute at London Metropolitan University, February 2009), at 24.

[35] Basak Cali, 'The Logics of Supranational Human Rights Litigation, Official Acknowledgment, and Human Rights Reform: The Southeast Turkey Cases Before the European Court of Human Rights, 1996-2006' (2010) 35(2), *Law and Social Inquiry* 311, at 327.

[36] As Brice Dickson has commented proving such a claim is extremely difficult, as it requires evidence that there is "official tolerance" of the violations at a "high level of government." *See* Brice Dickson, *The European Convention on Human Rights and the Conflict in Northern Ireland* (Oxford University Press, 2010), at 146. *See Donnelly and Others v United Kingdom* (1975) 64 DR 4. Seven applicants in this case alleged that they were beaten while in police custody. The purpose of the case was to emphasise that the complaints were a result of systematic malpractice and not just isolated incidents. However, the Commission ruled that the cases were inadmissible on the basis that several of the applicants had received adequate compensation for their ill-treatment via civil proceedings, and other had failed to bring such proceedings in domestic law. *See also Temizöz* case. A domestic case that has been on-going since 2009. It investigated the involvement of a gendarmerie officer, three PKK informers and three village guards who are suspected of forming a criminal gang which is responsible for the killing and disappearance of twenty people in and around the Cizre district of Sirnak province between 1993 and 1995. The trial has a number of inadequacies regarding the gathering of evidence, lack of protection for witnesses and excessive delays.

[37] Philip Alston, 'Using International Law to Combat Unlawful Targeted Killings' in Ulrich Fastenrath and Bruno Simma, *From Bilateralism to Community Interest: Essays in Honour of Judge Bruno Simma* (Oxford University Press, 2011), at 1149.

members of political parties, lawyers, activists and armed rebels have been on the receiving end.[38] The UN has reported that the 'largest number of casualties reported appear to be as a result of killings during raids and military operations against the Kurdish Workers Party (PKK).'[39] Other sources have reported that these raids have been conducted by death squads, State actors or collaborators who have been tasked with killing off those who are known or suspected to have Kurdish allegiance.[40]

An emerging concern with regard to targeted killings is the use of drones by the Turkish authorities. Since November 2007, American controlled drones have indirectly been used in the Turkish-Kurdish conflict. Turkey has an agreement with America, that it will allow American-controlled drones, which monitor Iraq, to be launched from its airbases in exchange for surveillance information.[41] This information has been used by Turkey to launch attacks against suspected PKK insurgents,[42] often leading to the death of civilians. In December 2011 a caravan of 38 men, children and mules smuggling gasoline across the Turkish-Iraqi border were killed by the bombs of Turkish military aircraft. The Turkish military had been alerted to suspicious activity by American drones and with no further investigation or regard for proportionate force reached the conclusion that the individuals on the ground were members of the PKK.[43] An investigation has been launched into this attack by a

[38] Nader Entessar, *Kurdish Ethnonationalism* (Lynne Rienner Publishers, 1992); Kevin McKiernan, *The Kurds: A People in Search of their Homeland* (St Martin's Press, 2006); Abduallah Öcalan, *War and Peace in Kurdistan* (Transmedia Publishing, 2011); Abdullah Öcalan, *Prison Writings: The PKK and the Kurdish Question in the 21st Century* (TMP Distribution, 2011).

[39] E/CN.4/1997/60/Add.1, 'Questions of Violation of Human Rights and Fundamental Freedoms in any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories', 23 December 1996, at para 478.

[40] *Temizöz* case. A domestic case that has been on-going since 2009. It investigated the involvement of a gendarmerie officer, three PKK informers and three village guards who are suspected of forming a criminal gang which is responsible for the killing and disappearance of twenty people in and around the Cizre district of Sirnak province between 1993 and 1995. The trial has a number of inadequacies regarding the gathering of evidence, lack of protection for witnesses and excessive delays. However, it does provide some evidence of the existence of State sponsored death squads. *See also* Martin Van Bruinessen, 'Turkey's Death Squads' (1996) 26 *Middle East Report* 20. Available at http://www.merip.org/mer/mer199/turkeys-death-squads (accessed 14 April 2013).

[41] Adam Entous and Joe Parkinson, 'Turkey's attack on civilians tied to US military drone', *The Wall Street Journal*, 16 March 2012. Available at http://online.wsj.com/article/SB10001424052702303877604577380480677575646.html (accessed 2 March 2012).

[42] Craig Whitlock, 'Pentagon agrees to sell three attack helicopters to Turkey', *The Washington Post*, 1 November 2011. Available at http://www.washingtonpost.com/world/national-security/pentagon-agrees-to-sell-three-attack-helicopters-to-turkey/2011/11/01/gIQAm9BadM_story.html (accessed 2 March 2013); Adam Entous and Joe Parkinson, 'Turkey's attack on civilians tied to US military drone', *The Wall Street Journal*, 16 March 2012. Available at http://online.wsj.com/article/SB10001424052702303877604577380480677575646.html (accessed 2 March 2012).

[43] Adam Entous and Joe Parkinson, 'Turkey's attack on civilians tied to US military drone', *The Wall Street Journal*, 16 March 2012. Available at http://online.wsj.com/article/SB10001424052702303877604577380480677575646.html (accessed 2 March 2012); Lale Kemal, 'Uludere and making peace', *Today's Zaman*, 25 February 2013. Available

Turkish Parliamentary Commission and a criminal claim has been brought to the Turkish national courts. Human Rights Watch has reported that both investigations lack transparency, have been subject to unreasonable delays and have not received the full cooperation of the Turkish authorities.[44] This tragedy provides evidence that Turkey employs the tactic of targeted killings in its conflict against the PKK without regard for its right to life obligations.

The ECtHR has commented on the frequency of the loss of life in Turkey, but has fallen short of expressly stating that targeted killings have taken place.[45] The Court has, however, taken advantage of the opportunity to drive home the obligations contained within Article 2 of the ECHR.[46] In doing so it has found Turkey guilty of using excessive force, failing to protect against real and immediate threats to life, failing to provide effective domestic remedies, such as effective investigations, and on occasion directly responsible for deaths.

Future?

As Basak Cali sets out in her writings, Turkey's response to rulings against the State has been disregarded as disloyalty to the State or has been covered up with compensation. It is rare for any change to have resulted, other than for the State to alter its strategies in the hope that it does not get caught out the next time.[47]

There have been some positives to come from the cases brought before the ECtHR. They have helped to confirm the violations of human rights law that have occurred at the hands of the Turkish authorities against Kurds. Prior to this, due to the lack of effective domestic investigation, these violations were only classified as allegations. They have provided a number of individuals with a voice which they were previously denied. They have drawn attention from those untouched by the conflict, though unfortunately not the extent that you would expect. State records have improved to some extent, though they continue to leave out more damning issues, such as disappearances and intentional killings. There has been some form of normalisation. For example, the 'Return to Village and Rehabilitation Project' and the 2004

at http://www.todayszaman.com/columnistDetail_getNewsById.action?newsId=308096 (accessed 2 March 2013).

[44] 'Turkey: No Justice for Airstrike Victims', *Human Rights Watch*, 27 December 2012. Available at http://www.hrw.org/news/2012/12/27/turkey-no-justice-airstrike-victims (accessed 14 April 2013).

[45] *Kaya v Turkey*, Application No 22729/93, Judgment of 19 February 1998; *Koku v Turkey*, Judgment of 27305/95, Judgment of 31 May 2005.

[46] *See for example Kaya v Turkey*, Application No 22729/93, Judgment of 19 February 1998; *Mahmut Kaya v Turkey*, Application No 22535/93, Judgment of 28 March 2000; *Salman v Turkey*, Application No 21986/93, Judgment of 27 June 2000; *Ipek v Turkey*, Application No 25760/94, Judgment of 17, February 2004; *Koku v Turkey*, Judgment of 27305/95, Judgment of 31 May 2005.

[47] Basak Cali, 'The Logics of Supranational Human Rights Litigation, Official Acknowledgment, and Human Rights Reform: The Southeast Turkey Cases Before the European Court of Human Rights, 1996-2006' (2010) 35(2), *Law and Social Inquiry* 311, at 316.

compensation law.[48] Though the Turkish authorities have fallen short of holding those guilty of atrocities to account or introducing extensive reforms to ensure such violations do not happen again. As a result, the ECtHR's case law only acts as a stopgap and only does so for the select few; it falls short of effectively addressing the Turkish-Kurdish conflict.

The main obstacle standing in the ECtHR's way is the lack of an enforcement mechanism. However, due to the global politics involved, the lack of such a mechanism allows the ECtHR to exist. While it is an imperfect model with frustrating limitations, it is an important one. As the Court's fact-finding missions are testament to. There is also the issue that given the dynamics of conflict such as this one, no matter what is decided externally, the resolution for can only come from within. A PKK representative has hinted at what this required at its foundations. He stated that "the Turkish state has killed a lot of people. Thousands of civilians lost their lives to unknown assailants. Villages were destroyed and people went missing. [The PKK] have also killed. Both sides have a lot to forgive."[49]

In conclusion, Turkey has implemented and ratified a variety of laws which respect the right to life. Yet, it has systematically contravened these laws in its actions and subsequent domestic laws in its dealing with the Turkish-Kurdish conflict. Frustratingly, despite continued condemnation from the ECtHR this looks set to continue. That is, depending on whether the status quo is changed by the most recent ceasefire. For now, the culture of denial remains.

[48] The Court views the Compensation of Losses Resulting from Terrorism and from Measures Taken Against Terrorism 2004, as an effective domestic remedy. *See Icyer v Turkey*, Application No 18888/02, Judgment of 12 January 2006.

[49] Richard Hall, 'Kurdish rebels prepare for peace', *Al Jazerra*, 11 April 2013. Available at http://www.aljazeera.com/indepth/features/2013/04/2013411175654331966.html (accessed 13 April 2013).

PowerPoint Presentation:

A CULTURE OF DENIAL:
AN EXPLORATION OF THE RIGHT TO LIFE AND THE KURDISH QUESTION IN TURKEY

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STATISTICS

Throughout Turkey during the period **1984-2010**:

- Approximately **42,044** killed – includes **6,653** State forces, **29,704** PKK militants and **5,687** civilians
- **3 million** Kurds displaced
- Over **3,000** Kurdish villages destroyed
- **253** mass graves with an estimated **3,248** Kurdish victims

VIOLATIONS BY STATE

- Targeted killings
- Forced Disappearances
- Lack of effective investigation
- Collusion
- Excessive use of force against demonstrators/sympathisers
- Ill-treatment/torture during State custody
- Village Demolitions/Forced Displacement

WHERE IS RIGHT TO LIFE PROTECTED? DOMESTIC LAW

- National homicide laws
- Article 17(1), Constitution of the Republic of Turkey 1982:

  "Everyone has the right to life and the right to protect and develop his material and spiritual entity"

- Article 15, Constitution of the Republic of Turkey 1982:

  1) In times of war, mobilization, martial law, or state of emergency, the exercise of fundamental rights and freedoms can be partially or entirely suspended...

  2) Even under circumstances indicated in the first paragraph, the individual's right to life, and the integrity of his or her material and spiritual entity shall be inviolable except where death occurs through lawful act of warfare...

WHERE IS RIGHT TO LIFE PROTECTED? INTERNATIONAL LAW

- **Turkey has ratified/voted in favour of:**
  - Art 3, Geneva Convention IV 1949
  - Art 3, Universal Declaration of Human Rights 1948
  - Art 2, Genocide Convention 1948
  - Art 2, European Convention on Human Rights 1950
  - Protocols 6 (1983) & 13 (2002), European Convention on Human Rights
  - Art 33, Refugee Convention 1951
  - Art 6(1), International Covenant on Civil and Political Rights 1966
  - Second Protocol to ICCPR 1989
  - Art 6, Convention the Rights of the Child 1989
  - Art 10, Convention on the Rights of Persons with Disabilities 2006
- **Turkey has signed, but not ratified:**
  - Art 23, Hague Regulations 1907
- **Turkey has not signed/ratified or is ineligible for:**
  - Art 4(2), Additional Protocol II to the Geneva Conventions 1977
  - Arts 6-8, Rome Statute of the International Criminal Court 1998
  - Art 2, EU Charter of Fundamental Rights 2007

WHAT IS RIGHT TO LIFE?

- Right to live your life without being unjustly killed or being exposed to the threat of being unjustly killed
- A violation of the right to life can occur in instances where:
  a) a person has been killed, or
  b) a life-threatening attack or incident has occurred and the person survives
- Courts will assess whether:
  a) a State has failed to fulfil its obligations set out within right to life
  b) this failure can be justified under a number of strictly construed exceptions

OBLIGATIONS AND EXCEPTIONS

Obligations

- Right to life must be **protected by law**
- Duty to refrain from **unjustified killing**
- Duty to protect people against **real and immediate risks**
- Duty to **thoroughly investigate** deaths

Exceptions

Use of force which is **no more than absolutely necessary**:

- In defence of any person from unlawful violence,
- In order to effect a lawful arrest or to prevent the escape of a person lawfully detained, or
- In action lawfully taken for the purpose of quelling a riot or insurrection

TURKEY BEFORE EUROPEAN COURT OF HUMAN RIGHTS

- **Biggest violator** of ECHR – **2,747** judgments against it (1959-2011)
- **16,900** of ECtHR's cases related to Turkey in 2012
- **8.4%** cases related to right to life (1959-2011)
- Fair representation of number of violations of right to life?

USE OF FORCE

- Force used must be **absolutely necessary** - Article 2(2) ECHR, Article 2(4) UN Charter, UN Basic Principles on Use of Force 1990
- Force used must be **proportionate** – *Aydan v Turkey* (2013)
- **Reasonable precautions** must be in place (training/adequate planning) – *Ergi v Turkey* (1997)

DISAPPEARANCES

- **Indeterminable number** of disappeared
- Allegedly the result of **State actions**, actions **covertly supported by the State** or due to **State inaction**
- State obligated to take **preventative measures** where real and immediate risk – *Tanrikulu v Turkey* (1999)
- **Inferences can be drawn** where some evidence as to whereabouts of individual – *Cakici v Turkey* (1998); *Ertak v Turkey* (2000); *Akedniz v Turkey* (2005)

FAILURE TO INVESTIGATE

Turkey's history with regard to investigating deaths:

- **Denial** of State involvement
- **Denial** of effective investigation
- **Denial** of access to information

ECtHR's reaction to Turkey's denial of right to effective investigation:

- Introduced **fact-finding missions**

Related cases:

- *Timurtas v Turkey* (1999); *Tanrikulu v Turkey* (1999); *Dulas v Turkey* (2001); *Orhan v Turkey* (2002); *Ipek v Turkey* (2004); *Ahmet Ozkan and Others v Turkey* (2004); *Aydan v Turkey* (2013)

TARGETED KILLINGS

- Usually carried out as part of covert operations – **hard to prove**
- Use of **death squads** – *Temizoz* case (ongoing domestic case)
- Use of **drones** – Roboski massacre (2011)
- ECtHR acknowledges frequency of loss of life in Turkey, but **falls short of declaring any of these deaths to be targeted killings** – *Kaya v Turkey* (1998); *Koku v Turkey* (2005)

FUTURE?

- **Positives** of ECtHR's jurisprudence:
  - **Confirm** Turkey has violated the right to life
  - Provided select individuals with a **voice**
  - Drawn **global attention** to the conflict
  - **State records** have improved to some extent
  - Some form of **normalisation** – Return to Village and Rehabilitation Project/Compensation of Losses Resulting from Terrorism and from Measures Taken Against Terrorism Act 2004
- Overall ECtHR's jurisprudence only acts as a stopgap and **cultural of denial remains**

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His paper is entitled 'The Use of the Kurdish Language before the Public Authorities'.

Abstract: This paper critically examines the legal status of the use of the Kurdish language before public authorities in the light of the current Constitutional reforms in Turkey. The paper challenges the definition of the minority in the Turkish law in the light of international and regional minority rights instruments. It focuses on the 1982 Turkish Constitution and legal reforms required by Turkey's proposed accession to the European Union. The paper concludes that while the reforms have introduced some positive changes, the reforms are more symbolic and far from being the required fundamental constitutional changes.

Key Points of Paper:

Kurdish Language Rights

- Language facilitates group identity and culture.
- International and regional law endorse language – eg Article 5 of UNESCO and the Copenhagen Criteria.
- The Lausanne Peace Treaty (Articles 39 (4) & (5)) gives the Kurds the right to speak Kurdish in private and in public oral trials. But despite the LPT granting Kurds autonomy, the government was not in favour of granting Kurds their minority rights and denial of the existence of Kurds persisted. For example, only Turks appointed to administrative posts; personal and local Kurdish names changed to Turkish ones; children taken from families and forced to learn Turkish in an assimilation programme.

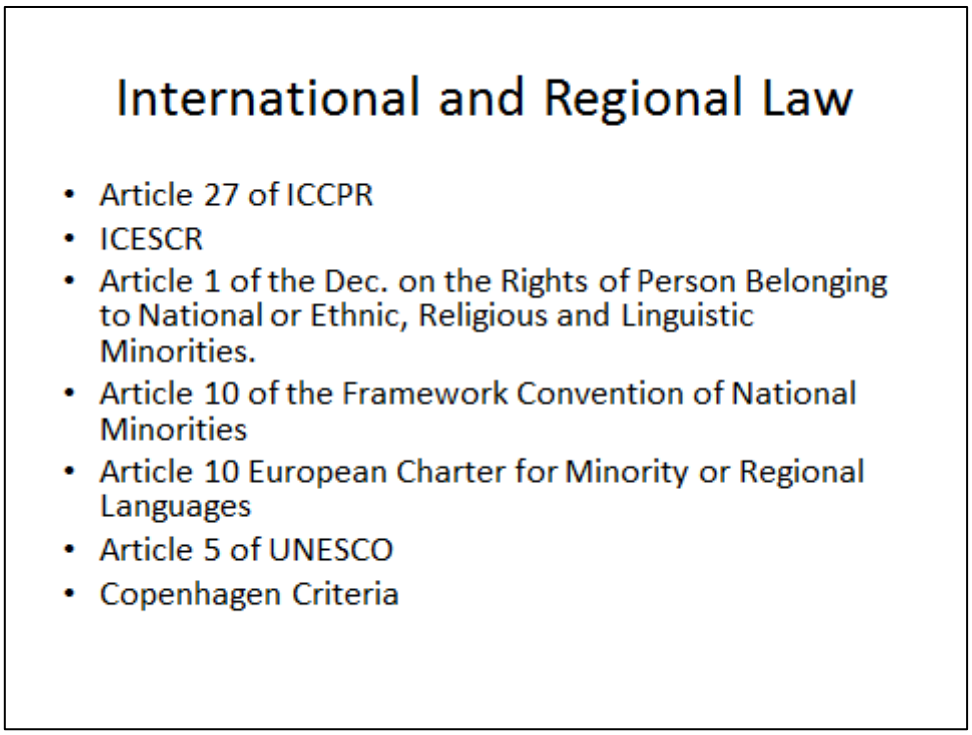
The 1982 Constitution

- Focuses on the Turkishness of Turkey – made it illegal to express any opinion acknowledging a separate identity.
- Article 42 states that no language other than Turkish shall be taught at any constitution (contrast this with European constitutions regarding language, for example Spain and Ireland).
- Amendments in Turkish constitution regarding language in 2002 & 2003 make no mention of Kurdish – just "different languages and dialects".
- Measures nullifying legislative reforms have been passed – the public authorities prohibit the use of minority language. For example: teachers must be Turkish; journalists are prosecuted and convicted if they object to state action; restrictions have been put on broadcasting; State claims that the State Broadcast Channel has been broadcasting 24 hours per day in 'Kurdish' – but the language is a combination of Arabic and Turkish – not Kurdish; families forced to re-name their children with Turkish names; students who demanded Kurdish education at university were suspended; public display of any language other than Turkish is banned.
- Denial of the Kurdish language is on-going: in 2010 the Deputy Prime Minister said, "Kurdish is not a language of civilisation".
- *Farik Kaplan* case – two months ago – sentenced to 6 months in prison for sending a postcard to celebrate the Kurdish New Year.
- Can speak Kurdish language in a legal trial – BUT the judge has discretion to dismiss a defence in the mother tongue if he thinks it would prolong the trial – this violates Article 6 ECHR: defendants should be allowed to use their own language throughout proceedings.
- Political prisoners' demands to a defence in Kurdish were disallowed, despite the defendants' willingness to pay for interpreters.

Conclusion

- The reforms are merely symbolic – a far cry from constitutional changes. For a general and permanent solution, there is a need for a new civil and democratic constitution.

PowerPoint Presentation:



The Legal Status of Kurds in Turkey

- Denial of the existence of Kurds on the base of Lausanne Peace Treaty:
- Advocates of the Republic of Turkey argue that Lausanne Peace treaty defines minority on the basis of religion and omits linguistic and ethnic minorities.

Challenging an Interpretation of Lausanne Peace Treaty

The Kurds were defined as co-founders of the State in Lausanne. Three main reason:

1. *Travaux Preparatories* of establishment of the Republic confirmed this interpretation. E.g. Erzurum and Sivas Congress, Amasya Circular Letter, National Pact, the Declaration of the Great Assembly.

2. 1921 Constitution recognized Kurdish identity and granted them an autonomy.

- The 1921 Constitution did not make any reference to Turks as a nation nor proposed that citizens of Turkey were Turks. It simply stated that the "sovereignty is , without any condition and reservation, belongs to people."

3. Contrary State argument Article 39 of LPT expand extension to linguistic minority.

- Article 39(4)of LPT grants the right to utilize non-Turkish languages in many features of public life, such as "**in private** intercourse, in commerce, in religion, in the press, or in publication of any kind" to all citizens.
- Article 39(5) also imposes positive rights on the state to provide facilities for the use of non – official languages in **oral trial defense**, for those who can not speak the official language.

Conclusion

- The delegation that represented the Republic in the LPT was not in favor of granting the Kurds their minority rights, because they considered the Kurds as the founder of the Republic.
- **This is the main reason why Kurdish deputies approved this suggestion as they believed that minority status would make them a subordinate group and therefore would undermine their co-founder position**

The Denial of Existence of the Kurds

- Shortly after the ratification of the LPT the policy of the Republic shifted from multiculturalism to homogenization, which is based on Turkification. Several methods have been employed to achieve this:

- 1. In the Kurdish region, the Turks were appointed to fill administrative posts.
- 2. Personal names and the names of Kurdish places were changed to Turkish one.
- 3. The use of Kurdish language was prohibited and the reference to the words Kurds and "Kurdistan" were removed from the books, official documents and publication.

- 4.In the name of national unity, the policy of forced assimilation were pursued by the State. Kurdish schools were closed down and Kurdish children were taken away from their parents and placed in Turkish boarding schools as a means to erase the Kurdish language and educate them in Turkish in order to accelerate assimilation.

1982 Constitution

- The 1982 Constitution, which was drafted by the military, endorsed the **"Turkishness of Turkey" policy by identifying an essential principle of the State as "the independence and integrity of the Turkish Nation, the indivisibility of the country, the Republic and Democracy**..." This effectively made it illegal to express any idea that could be interpreted by the authorities as amounting to a recognition of a separate, Kurdish, ethnic identity.

- Article 3 of the 1982 constitution stated that the language of the Republic is Turkish. Article 4 of the Constitution maintained that article 3 neither to be amended or proposed to be amended.
- Article 42 "No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education."
-

Comparison of Constituions

1921 Constitution

- "sovereignty is , without any condition and reservation, belongs to ***people***"

1982 Constitution

- "sovereignty is, without any condition and reservation , belongs to ***Turkish nation.***"

Comparison with European Constitution

- Article 6 of Italy Cost:
- "The Republic shall safeguard linguistic minorities by means of special provisions."

- Article 8 of the Constitution of Ireland:
- (1) The Irish language as the national language is the first official language.
- (2) The English language is recognized as a second official language.

- Ariticle 3 of Spanish Constitution
- (1) Castilian is the official Spanish language of the state.

- (2) The other languages of Spain will also be official in the respective autonomous communities, in accordance with their Statutes.

Reforms Towards Accession with the European Union

Three main amendments made in the Constitution:

1. In 2001, Restriction on the use of any **"language prohibited by law"** in the expression and dissemination of thought was removed from article 26 of the Constitution.

- 2. In 2002, amendments in broadcasting law allows "broadcasting in different languages and dialects Turkish citizens **traditionally use in their daily lives.**
- In 2003 amendments provides for such broadcasting by "public and private radio and private television station.

3. In 2002 amendments also provided for the opening of private language courses, teaching "**different languages and dialects traditionally used by Turkish citizens in their daily lives**."

Nullifying Legislative Reforms

- Education:
- The regulation makes the teaching of Kurdish Language impossible:
- 1.Teachers should have a Bachelor's degree
- 2.Teachers must be Turkish citizens.

MEDIA

- Many journalist subjected to prosecution and conviction as the result of an expansive interpretation of **"the indivisible integrity of the State with its territory and nation**." "World Biggest Prison for Media": 76 Journalist is jailed.
- In 2007, Anatolia Radio was initially suspended for 6 months and then suspended without limitation for playing a Kurdish song.

Restriction on Broadcasting

- Direct state control over broadcasts:

1. Controlling their content: Teaching minority languages and children program are prohibited.
2. Broadcaster needs a State authorization
3. Simultaneous and subsequent translation into Turkish for TV and radio programmes

State Broadcast Channel

- Since 2008, Broadcasting 24 hours in Kurdish.
- Translation requirement is not applicable.
- 60 Kurdish words were banned to be used in State Broadcasting Channel so far.

Some Examples of Case Law

- 1.By the end of 2001, at **the time when the constitutional reform was made** an action was brought by the Prosecutor against eight families for giving Kurdish names to their children on the basis that Kurdish names are not "**appropriate for national culture, moral values and customs."** The families were forced to rename their children with Turkish names.

- 2. Temel v Turkey 2009: Students were suspended from the university for signing a petition to demand Kurdish education in university.
- This harsh reaction was found to be unreasonable and disproportionate by EC+HR on the grounds that the request for Kurdish language could not lead to polarization within the university.

3. In 2006, Mayor of Hakkari was prosecuted for issuing calendar in Kurdish and English language: Threat to the visibility of the State

4. In December 2007, Osman Baydemir *the Kurdish Mayor of Diyarbakir commented*, "there are **30 lawsuits filed against me**, all of which are related to the **use of the Kurdish Language**."

5.In February 2009, Ahmet Turk, *then the head of the now defunct DTP,* spoke Kurdish in Turkish Parliament to celebrate International mother day. TRT quickly cut the live broadcast.

6. 15 December 2010: the dumpsters which is written on Sur Municipality in Kurdish were immediately seized by the Police following the decision of the Kurtalan Penal Court of Peace: **It violates the "Law on Revolution" which bans the display of any language other than in Public.**

Violation of International law

- 7. On February 2010, Three students were sentenced 6 years and 3 months imprisonment sentenced for roles in a boycott of classes and read out a public statement demanding mother tongue education by No.4 Diyarbakir Heavy Penal Court.
- Contrary to Temel v Turkey judgment

Violation of International Law

- The Sur municipalities decided to provide multilingual municipal service on the grounds that 72% of people who live in district speak Kurdish in their daily lives, whereas 24 % of people speak Turkish.

Consequences: the dismissal of the mayor of the district and the dissolution of the council

- In Diergaardt v Namibia, the civil servants were instructed not to reply to the claimant, who was a member of a minority. It was argued that there is no discrimination against the use of Afrikaans by public authorities since all the languages, apart from English, which is official language, are prohibited.
- HRC held that the justification is given on the basis of an official language policy to prohibit the use of a minority language by public authorities is not sufficient and reasonable.

On going denial of Kurdish Language

- In Nov 2010 Diyarbakir 6th Criminal Court: "Unknown Language"
- In December 2010: "Suppose to be Kurdish or so-called Kurdish"
- In March 2012 Arinc, the Deputy Prime Minister: Kurdish is not a language of civilisation.

Recent Reform 2012 and 2013

- 1. Law No. 6287(9) offered an selective courses in "**living languages and its dialects"** for two hours a week in public schools only in secondary school level .

Criticism:

- Selective courses can only be taken in the secondary school.
- No books and material are prepared or provided.
- No Graduate Kurdish Language Department is existed.
- Only two universities provide selective course in Kurdish language. Bilgi and Bilkent
- Only one university provides Master Programme in Kurdish.
- In contrast to private school, there is no requirement of being graduated from the Kurdoloji department. Teacher are selected from people who are graduated from the Turkish language and Literature department on the basis that candidates confirm that s/he can teach.

2. Amendment in Political Party Law: 5th January 2013

- **ARTICLE 81** - Political Parties;
- a. Preventing existing of minority.
- **b)** Cannot aim at damaging national integrity and can have no activity in this respect creating minorities in the territory of Turkish Republic by means of **protection, development or spread of other languages and cultures other than Turkish ones.**

- **c)** In writing and distribution of their regulations and programmes, in their congress, indoor or outdoor gatherings, meetings, propaganda they **can not use any language other than Turkish(can use Turkish and its dialects); they cannot(use a language which people of reggion will undersant) use and distribute banners,signboards,records,bands of voice and video leaflets and statements in the languages other than Turkish; They can not be indifferent to these deeds by others.**

- Faik Kaplan Case: 6 months imprisonment: Distributing Kurdish postcard to honour Kurdish New year.
- Violation of Political Party Law 117 which states that political parties cannot use any other language apart from Turkish.
- The supreme court upheld the conviction on 07/01/2013.

Sevahir Bayindir's case

- Welcoming her comrades in the Annual Meeting in Kurdish.
- 6 months imprisoned sentence was quashed by the Ankara's Court of First Instance on the basis of new amendments in article 81(C) of Political Parties.(2nd April 2013)

Hamit Geylani's case

- Speaking 27 seconds Kurdish .
- Malatya's Court of First Instance upheld 5 months imprisonment sentence despite the amendments made in aritlce 81(C) of Political Parties. (05/04/2013)

3.Kurdish Language is in the trial

- Law No. 6411 (4a), 4(b): "A detainee may make his oral defence in a language that more confident to express himself."
- Give wide discretionary to judge: if the judge believes that the defendant choice of use would prolong the time of hearing, the judge can dismiss to the request of defence in mother tongue.
- Not allowed to defence themselves in;

a. interrogation and investigation process.

b. Detention in police station.

Do not provide a right to written submission in mother tongue to the court or any other prosecutor or police.

Witness and third part of the hearing cannot benefit from this right.

Criticism

- Discriminative: Detainee who cant pay numeration of an interpreter cant benefit form this right. Compare this with person who can speak only German or English.
- This is against the concept of not guilty unless it is proved: Detainee has to pay for accusation that he is not convicted for it yet. In the criminal law there is no concept of payment for defence.

- Against article 6ECHR: Criminal proceedings consists of different stages and therefore the right use of mother language only in the hearing could be contrary to article 6, as the detainee is not allowed to use his language from the beginning to the end of the proceedings.
- The ECHR in Kamasinski v Austria held that the assistance of a free interpreter should not only be provided for oral hearing at the trial but also to "documentary material and the pre-trial proceedings."

- Demands of Political Prisoners to defence in Kurdish was not allowed by
- No. 15 Istanbul Heavy Penal Court (13/3/2013)
- No.7 Diyarbakir Heavy Penal Court (20/3/2013)

Reason for failure of the Reform

- Reforms are symbolic
- **Many Article of Constitution still ban the use of Kurdish:**

1. General provisions of the Constitution of Turkish Republic,

- Provision 3,4 and 14 of the Constitution of Turkish Republic,
- No.5237 TCC 257 (misfeasance) imprisonment from 1year to 3 years
- No.805 law on obligatory use of Turkish in commercial institutions

- 2. Article 2 of No.1355 law on adoption of Turkish letters and their application which regulates criminal sanction in the article 222 of No.5237 Turkish Criminal Code(imprisonment from 2 months to 6 months)

- No.5237 TCC 257 (misfeasance) imprisonment from 1year to 3 years
- No.805 law on obligatory use of Turkish in commercial institutions
- E.g. **Due to an invitation and bill in Kurdish;** for TCC 257/1 **1 year to 3 years**, as for 222/1, **2 months to 6 months** imprisonment is demanded.

Conclusion

- Reforms implicitly provided limited and conditional rights to Kurds without naming them.
- Despite the reforms are positive steps, reforms are more symbolic and far from being the fundamental constitutional changes.
- This tendency to stich up of situation for a short period of time should be stopped by the State.
- For general and permanent solution :There is a need for a new civil and democratic Constitution.

Panel Discussion II: Question and Answers Session

Q. Can you clarify the analysis of the facts presented in the paper on Kurdish language rights?

A. (Deniz Arbet Nejbir) – That reforms in 2001 and 2012-13 were insufficient to perpetuate the change required. Constitutional reform and reinterpretation is needed to provide the fundamental alterations needed for real change.

Q. You commented that there are restrictions on teaching ie you have to have a BA degree and be a Turkish citizen. How hard are these conditions for a Kurd to satisfy?

A. (Deniz Arbet Nejbir) – It is a requirement for the teaching of Kurdish that one have a bachelor's degree in the language. However, there is no undergraduate department in Turkey which teaches this degree, thus the qualification is unattainable.

Government does not want to have Kurdish teachers in schools – the State's main concern is creating a Turkish nation. As a result, the government has derogated from its minority provisions.

Q. Who are the disappeared/displaced? Are they educated people, leaders, academics etc or are they 'ordinary' people?

A. (Darren Dinsmore) – There is a danger of homogenising the victims of internal displacement - these people are young, old, educated and uneducated, the people with disabilities. The EU is trying now to go and hear from the displaced to provide them with voices and make them more visible – but this has been too long coming.

A. (Hannah Russell) – Concerning the disappeared, the number of victims is unknown, but we can determine that they are from a wide range of backgrounds. Activists, journalists, politicians, but also 'ordinary' people have disappeared.

Q. Are international institutions the appropriate mechanisms to deal with the Kurdish question or are they prisoners of international relations?

A. (Darren Dinsmore) – The ECtHR is procedurally limited, and has experienced difficulties in engaging the broader principles of democracy and law. While its technical approach may avert accusations of politicisation, it does not always work. There are signs, however, of diplomacy and pragmatism from the ECrtHR. While the Court could have done more regarding the applications it addressed, a more concerted international response would have obviated the need for the Court to

address these issues in the first place. Ultimately, the efficacy of any decision still relies on the Court's relationship with the state, prosecutors and judiciary.

The Council of Europe has not shown the political will to follow through on the HR issues in Turkey. Admittedly, there is a limit to what the ECtHR can do about the torture, unlawful killing and disappearances - but the Court should have dealt with generalised practice rather than just isolated cases.

A. (Hannah Russell) – Regarding whether the ECtHR and other institutions are appropriate mechanisms to deal with such issues – they are within their own limitations. It is a politically charged situation, and as has already been commented on, they are limited by diplomacy and pragmatism. However, that does not mean that they do not have a role to play. Such institutions, particularly the ECtHR have proven to be important for conducting investigations, clarifying the facts and applying pressure. It is true that the real change needs to come about at a domestic level, but this can be assisted through continued and increased engagement with such institutions. Do not forget that other institutions outside of Europe should be called upon, such as the United Nations treaty bodies. However, this is with the understanding that these institutions are also limited by politics and do not always play by their own rules.

Q. Would you not agree that the issues are political and that some changes in the last 10-15 years have been significant? For example, a newspaper now publishes a supplement in the Kurdish language. Is there perhaps more happening politically than a narrow, legal understanding presumes?

A. (Deniz Arbet Nejbir) - While certainly a political issue, fundamental legal change (via a new Constitution) is needed to facilitate change on a large scale. We need a new, democratic constitution.

Panel Discussion III: Victimization of Kurds by the Current Turkish Law Part II

PROFESSOR NAZAN USTUNDAG is an Assistant Professor in the Department of Sociology at Bogazici University, Istanbul. She received her PhD from the Sociology Department at Indiana University in Bloomington. Her dissertation research concerned the constitution of migrant women's subjectivities and narratives in urban margins as they are formed at the intersection of state violence, patriarchal violence and the violence of capitalism. She is currently working on the manifestations of State violence on materiality; on Kurdistan's geography, bodies, documents and things. At Boğaziçi University she teaches undergraduate and graduate courses on social theory, theories of modernity, narrative methods, ethnography of the State, State and violence, and social materiality. Besides her academic work, she regularly publishes commentaries on current political events in newspapers and journals. She is also a founding member of the Peace Parliament in Turkey and a member of the oppositional Kurdish political party, the Peace and Democracy Party (BDP).

Her paper is entitled 'The Experience of Children in the Turkish-Kurdish Conflict'.

Abstract: Her paper focuses on the experience of children in the Turkish-Kurdish conflict and the violations of their rights which have occurred as a result of this conflict.

Key Points of the Paper:

Overview

- Being a Kurdish child in Turkey was never easy but, as a result of terror, violence and forced displacement, children have needed special legal attention since the mid-2000s.
- Children who took to the streets and protested by throwing stones at the police and army have been soaked by water and gas.
- Children of those who were forcibly displaced and did not directly experience the 'dirty war' of the 1990s are nevertheless aware of it and have a deep political consciousness of having been wronged and discriminated against. They have changed the ethics and the aesthetics of political protests.
- The Turkish State systematically targets and victimises children. They are seen as the State's 'concern' AND its enemy.

Social Policy

- Social policy has targeted Kurdish children by:
  - Giving money to families so long as the children remain at school (the schools are discriminatory).
  - Pressurising families to take children off the streets.
  - The recruiting of children by religious organisations.
  - Citing and listing their problems as 'medical' (ie trauma and disease) – rather than due to political activity.

The Terrorism Act

- Children are prosecuted as if they were adults - some sentenced to up to ten years in prison.
- One child arrested in 2010 burnt himself to death.

Addressing the Problem

- The problem cannot be solved through legal means as it's a political, not a legal problem.
- The colonial regime of Turkey is at its most visible and grotesque at a sexual level: children have been assaulted and raped by civil servants and army officials. There have been no satisfactory results in lawsuits.
- The peace process is primarily concerned with how political actors will be integrated into the system – it's not concerned with children.

- The issues to be addressed include:

  1. How to share power between Kurds, Turks and different sections of society?
  2. How to rebuild the social culture which has been damaged by state violence and involve the politicised women and children in the peace process?
  3. Repair damaged relationships – legally, socially and politically
  4. How to build systems of accountability and ensure crimes are not committed again?
  5. How social policy can help de-politicise these children?
  6. How past crimes regarding killing of children will be dealt with?
  7. How will they make a woman and children0centred security reform?

- From a social perspective, the peace process is very complicated – Turkey will face very similar problems to those NI has faced.

REYHAN YALCINDAG BAYDEMIR graduated from the Law Faculty at Ankara University. She is a human rights lawyer who has represented victims of human rights abuses before the Turkish courts and the European Court of Human Rights. She is the former Vice President and General President of the Human Rights Association (HRA), which is the oldest and one of the most renowned human rights organisations in Turkey. She was also a member of the Executive Committee of the Mediterranean Human Rights Network between 2004 and 2006. She is currently a member of the Diyarbakir Bar Council and part of the Honorary Council for the Human Rights Association.

Her paper is entitled 'A Woman's Struggle: Using Gender Lenses to Understand the Plight of Women Rights Defenders in the Kurdish Region of Turkey'.

Abstract: This paper explores the hitherto untold experiences of women human rights defenders in East and South East Turkey. As in other situations of violent conflict and gendered and ethnic oppression, women in the Kurdish region of Turkey have been disproportionately affected from curtailed access to education, decent employment, loss of livelihoods. For decades they have experienced military conflict, internal displacement and the attendant social, economic and political strains, which often work to circumscribe women's lives and render them more vulnerable to gendered control, both by the state and its security forces and their families and communities. Under these circumstances, becoming active as human rights defenders requires courage.

Paper: First of all, I need to state that I am so glad and excited to be here. Within this period in which everyone debates the 'peaceful solution of the Kurdish problem in Turkey', participating in such a conference in Belfast, which has serious experiences, is very meaningful and important.

In fact, I came here from the hearth of a land where peace, justice and facing the past are as necessary as water and bread. During the history of the republic founded 90 years ago, dominant ideology ignored everyone except for itself. A new Republic founded according to a constitutional reality in which Kurds, Alevis and non-Muslims (Armenians, Assyrians, Greeks) were non-existent. Shortly, in this geography, the Turkish Republic always canonised militarism as male-based mentality, Sunnism as a religious sect and resorted to the elimination, assimilation and ignoring of 'others' with all sorts of tools.

Although Kurds were fundamental co-founders of the first assembly in 1920, Kurds never surrendered to the cruelty, assimilation and deceiving they were subjected right after the proclamation of the Republic in 1923. They always applied different resistance methods. Over the last 30 years, as you know, an armed conflict situation continued. Therefore, Kurds' lands were destructed, 4,000 villages were destroyed, 4

million Kurds became homeless and exposed to forced migration, women were raped in custody, 5,000 civilians were killed by extra-judicial killings, and thousands were disappeared under custody. This is because Kurds did not give up their resistance, their mother tongue and national identity, this cost too much. Prior to this last period that could be identified as the transition from 'armed struggle to unarmed struggle', Kurds attempted to revolt 28 times during the history of the Republic, but all of them were resulted with bloody massacres. However, they responded to all the cruelties with resistance. Therefore, we could say that Kurds' struggle for freedom and democracy was one of the most difficult struggles in the history of humanity. The last century was a century in which Kurds were exposed to massacres, harassment and death, but I believe that this century that we are in will be the century of Kurds' liberty.

In the last Newroz celebration one of the common celebrations of the Middle East and Central Asia, which is acknowledged as an 'awakening of nature', the manifest of 'unarmed democratic struggle' of Mr Öcalan has historic importance. Kurds have resorted to armed methods to survive, not to be assimilated, but to defend their mother tongue. They have resorted to armed methods not because they love it, but because there was no other choice. As a result of this, all crimes against humanity were applied to them and no case launched against the perpetrators. Thus impunity applied. From my experience within the human rights movement, I can say that many parts of Kurdistan the lands are witnesses themselves. Hundreds of mass graves are still waiting to be opened by ourselves and public prosecutors.

A short comment to one of our friends here – not only women's relatives are in the mass graves, Kurdish women are in the mass graves. Women have also been victims of disappearances and extrajudicial killings. So the women's movement has to be in the peace process now!

However, there is a fundamental nuance separating the Kurdish movement from other experiences, and it is women who are the most distinct symbol of resistance and struggle. The Kurdish movement never defended such an ideology of postponing women's liberty question after the revolution. On the contrary, they believe that without women's liberty, society, and even the world, will not be free. Therefore, the women's role and experiences in the Kurdish struggle is indispensable during the course of an unarmed struggle. A paternal-minded State with a male-dominant perspective has been proceeding in the course of the AKP's ruling for the last 11 years in the same way. Women always seem to be the 'other' sex. From primary school books to public spots, the role of women has been appreciated in a sexist way. Moreover, the equality of women and men never came to existence either in working life, education or in the public sphere.

Committing killings under the name of 'honour' is still continuing and women are being murdered by their husband, ex-husband, boyfriend, ex-boyfriend, uncle,

brother and father. Like former ruling parties, the AKP does not favour and does not recognise women as individuals, instead it favours the family. In spite of the law of violence against women, which was legislated after pressure from women's organisations, problems of implementation continue to exist. Women who apply to the Public Prosecutor's offices for protection are still being murdered in the middle of the streets. Therefore, a serious problem of mentality and equality amongst men and women, and violence against women still exists. On the other hand, it has a crucial importance in the building of justice and peace because it is far from any kind of rulership. In that, rulers have been the reason for the war and men have been gaining rulership in power. Just as torture and assimilation, any kind of violence committed against women and killings of women are crimes against humanity.

This picture shows the summary of 'gendercide' generally. During the course of the AKP government, violence against women increased 1,400% and instead of providing gender equality. The Prime Minister has a mentality of calling women to have first 3 then 5 children, providing women with a role that is not an initiator, but conventional. Even though the AKP representatives have become famous with such offerings as - 'pregnancy after sexual assault should never be over, assaulted women should give birth, and the government takes care of the children.' These offerings seem to leave aside the abortion law, at the moment, though there are serious reactions from women's organisations. With other laws and regulations, the AKP government informs a woman's father or husband via SMS if a woman's pregnancy test is positive. In a country where approximately 3-4 women are being killed every day, identifying this problem as 'jealousy, love-murder, or divorce' is hiding the fact. The reality is the fact that the mentality ignoring women and femicides are political. The fact is that perpetrators do not receive the punishment they deserve and take advantage of amnesties and reduced sentences. Once again, for the last four years, advocates of the opposition, human rights defenders, politicians, academics, journalists and mayors were arrested under the name of KCK Operations. Most of the detainees are women, thus showing that Kurdish women do not only struggle against general political problems, but also struggle for the freedom of women.

You may not believe, but I am going to share a few parts of the KCK cases' main indictments. It has 180 aspects and is still on-going before the Diyarbakir Criminal Court. Women are facing investigation for:

- calling for a 40% women quota
- organising workshops related to violence against women
- for participating in International Women's Day demonstrations
- For organising activities related to November 25, week of violence against women (such as press releases, distribution of brochures etc)
- For carrying out work at women's shelters within the scope of the municipality etc.

Therefore, against such government mentality, to carry out work related to women is a situation requiring sacrifice and determination.

Today, the perception of the fact that the Kurdish women's movement is more common than throughout Turkey does not reflect the truth. Women are murdered under the name of 'honour' throughout Turkey. The only difference is the history of the 30 year struggle during which women have been rendered as pioneers, insurgents and activists. Therefore, Kurdish women who wriggled out of the 'mere victim' identity are being represented in the frontlines of meetings, neighbourhood works, mayorships, aldermanships, NGOs (for women and co-ed), Parliament and unions.

Turkey, 72 years ago, was the world's second in women's representation. Today, it is one of the last in the world and EU rankings. The BDP is the only party applying the women's quota and co-chairmanship. The BDP is now applying a sex quota of 50:50. Today, the BDP is the only party possessing the most women deputies, mayors and councillors in the Grand National Assembly of Turkey. Nearly, to say that the fact that women are rendered as visible on behalf of Kurds in assemblies and municipalities would not be an exaggeration, when looked at the available data.

Consequently, saying this is possible. While Kurds are struggling for their mother tongue and identities, the Kurdish women are conducting the struggle of equality of women at the same time. Women shelters have been made by BDP municipalities, except for some exceptions. Hence, with the reality of women exposed to sexual assault, discrimination at home, school and the workplace, bride exchange and child bride – today Kurdish women have changed from a 'mere victim' situation into 'pioneers and insurgents'. I want to share that women provide themselves with the maximum role in the course of peace and solution too. With Mr Öcalan's new democracy manifesto, Kurds are stating loudly that 'this is not an end, in contrast, this is a new inception.' Accordingly, the assurance of peace and real justice is again required by women, as women are the most suffering victims of the conflict and warfare. In this context, we believe that this experience will shed light on our route. For example, today in Turkey just 11 of the 63 'sensible people' are women, and this has led to serious criticism. UN Resolution 1325 (2000) dictates that women should be represented in any field of providing peace, including peace talks. Though, in a peace facilitator coalition, which should appeal to 7 regions of Turkey, women have become the minority. I think that an equal representation here is extremely important. But that is not all, as I said, this period is a new inception. To provide a true peace, a sense of justice should be fixed as well. In other words, I believe that true peace's assurance is facing the past fairly and revealing the truths. Because I believe women will not give up a sense of justice, my faith towards a bright future is absolute.

A huge struggle of the past for Kurdish women is also part of the general struggle of the Kurdish people. So those who ignore the rights of Kurds' rights are also against

women. Three months ago in Paris, three Kurdish women activists were killed and still the case has not been launched as it is one of the most political murder cases of this century. So this also proves that women have a big role in the Kurdish freedom movement.

Lastly, I must say that the Kurdish women are a guarantee of the Kurdish freedom movement and future as:

1) Women lead the struggle against State violence,
2) Women lead the struggle against violence of capitalist modernism,
3) Women lead the struggle against patriarchal violence and

all at the same time!

Panel Discussion III: Question and Answers Session

Q. Could you please clarify whether there are any moves to get Turkey to work with NGOs to develop a plan on UN Resolution 1325, and to look at women and girls and hear their voices?

A. (Reyhan Yalcindag Baydemir) – This is one of our criticisms against the mentality of the AKP. A Women's Movement for Peace has started. We need a truth and reconciliation commission for the past.

In relation to 1325 and other organisations and also the Women's Movement for Peace – we insist on the processes established in the UN resolution, but also a fair committee for the past and for the on-going peace process. We would say that sexist and patriarchal society is a big part of our struggle.

Q. In relation to religious organisations recruiting children; can you provide more details? Is this cultural enforcement?

A. (Reyhan Yalcindag Baydemir) – These organisations support intelligent children and give them opportunities for higher education. This is a key cornerstone of the religious organisation of the movement; they are supporting children in school and providing dormitories and the facilities for the children to pursue education. This is a very long-established system, especially in relation to high school children, but recently it is going far beyond.

Q. Are you talking about depoliticising?

A. (Reyhan Yalcindag Baydemir) – There are various religious sects all over Kurdistan. However, this new system which has been passed is allowing kids to pursue religious education in school, but also obliges all kids to take religious classes on the Prophet's life etc., as opposed to electives. This is all part of depoliticising and reforming the children's religious culture. The Turkish Prime Minister has explicitly said that he wants a religious youth.

Q. And if this was done 30-40 years ago would there be a Kurdish issue?

A. (Reyhan Yalcindag Baydemir) – Yes.

Q. So is your criticism just about the religiosity of government?

A. (Reyhan Yalcindag Baydemir) – Not at all. My criticism is of a new regime targeting children who are neglected by the State. Children are emerging as the new social category to be regulated. The vocabulary of disease is regularly applied to

them. I am criticising the regime that is regulating children's lives and using children to help depoliticise society.

Q. At the UN a few weeks ago the Turkish Minister for Women's flowery speech never mentioned Kurdish girls being discriminated against. Has Turkey ratified CEDAW? Have you thought of using the Optional Protocol as a way of questioning governments and holding them accountable?

A. (Reyhan Yalcindag Baydemir) – Let's start from the beginning. We have no minister responsible for women, as, in 2011, the AKP changed the name of the ministry from the Ministry for Women and Social Studies to the Ministry for Family – there is now no mention of women. The mentality in Turkey is that we do not have women – only 'family'. Violence against women has increased but this is not acknowledged by the government.

In Turkey there are several international mechanisms but there is the problem of mentality and implementation after CEDAW. Whilst Turkey is party to the ECHR, we must note that it has the most cases before the court itself. Turkey has signed on the children issue but there are many obstacles. For example, my son spoke no Turkish until he was 5 years old, but now he no longer remembers any Kurdish. Even one day is very important.

Q. Could you please describe the attitude of men generally towards women? Is there lots of chauvinism? Is there education in relation to what women suffer?

A. (Nazan Ustundag) - The PKK are very good at promoting equality and rights and women's organisations. Things have progressed, I would say. More female NGOs are being founded, both within and outside politics – and there are independent women's councils and parliaments. There is a growing consciousness within the Kurdish population and within politicised Turkey of the equality of the women's place. A few weeks ago we expressed concern in relation to 1325 and promoted the implementation of such.

Q. You are against state incentives to families who sent their children to 'religious' schools. Why is this?

A. (Nazan Ustundag) – Because these policies define the problem in a specific way. They are defining the problem of children as a problem of education or trauma or stress, but really it's a problem of discrimination, assimilation, forced education and denial of language. This is an exclusive way of seeing and defining the problem.

Q. Amnesty International reported on the Freedom of Expression in Turkey, and one example given was that of the Peace Mothers, and the problems faced

trying to get answers and demonstrations against a lack of education. Can you comment on that and on Peace Mothers generally?

A. (Reyhan Yalcindag Baydemir) – The judicial system is very anti basic freedoms and anti the Peace Mothers. These women have lost their heritage and their children – they have suffered immensely – yet their demands for peace are not supported by the courts.

I'm a lawyer for Peace Mothers. As an example, there is a new case against them on the basis of a march in 2012. So yes, there is a process of democratisation, BUT the system still discriminates against them. Peace Mothers can only define themselves by speaking. This is also a simple example of how the government AKP represses all speakers, even old ladies who have suffered; these women, even when they're demanding peace, are not being supported by Turkish courts.

Panel Discussion IV: Constructive and Peaceful Solution to the Kurdish Question in Turkey

PROFESSOR DR SEVTAP YOKUŞ was born in 1966. She completed her PhD on the topic of Public Law in 1995 at the Social Science Institute of Istanbul University. She started to work as lecturer on Constitutional Law in 1997 at the Law Faculty of University of Kocaeli. She obtained the title of Associate Professor of Constitutional Law at the same university in 2004. She is the author of the books entitled *The Impact of the European Convention on Human Rights on the State of Emergency Regime in Turkey*, *Abuse of Rights and Freedoms* and *The Changing Balances of the Government in Turkey*. She also has many articles about human rights and constitutional law published in a range of journals.

Her paper is entitled 'The New Constitution – What Democratic Legitimacy? What's Missing?'

Abstract: This paper assesses the introduction of a new constitution and the impact this will have on the pursuit for conflict resolution in Turkey. It looks at the ideology behind the current Constitution and how it fits within a 'regime of freedom'. It concludes by considering the positive aspects of introducing a new Constitution and how this could be used to build social peace.

Paper: It is meaningful to start the discussions of a new constitution with the question of why is there a requirement for a new constitution. In this way, the idea of the new constitution will be clear and in relation to that, it will also be clear which methods shall be followed.

A democratic constitution in Turkey is an important step in resolution of many social-political problems in democratic ways. A civil constitution might still create a positive psychological impact on the individuals in Turkey, in a country that is administered with a military coup constitution for many years. With a new constitution, an opportunity to get rid of many constitutional clauses, that have been an obstacle to a democratic progress for so long, will be created.

There are vital reasons for conducting a debate on the new constitution. The questions that should be asked are why we need a new constitution and whether the new targeted constitution will meet those requirements. Accordingly; a new constitution for Turkey can only be "new" if it can prevent the conflict that blocks social peace and a solution, or at least as a first step, to prevent further divisions.

When constitutions in Turkey are investigated from a historical perspective, it can be seen that the politics of uniformication of individuals have been followed since the Republic, and all the legal rules, particularly the constitutions, provide a ground in this direction. Political conditions, and the created legal order, have led to an increasingly fragmented society. The political environment since the establishment of the Republic, has developed a concept of a uniform and acceptable citizen and therefore “marginalised” the remaining sections of the society. In this sense, even the 1961 Constitution has actually played an important role in serving to the social division by means of institutionalizing the military tutelage, despite its liberal content and emphasis on the freedom of the individual. The implementation period of the 1961 Constitution has also been a period fully fitting of the bureaucratic caste. The bureaucratic caste based on the military, has identified and developed an acceptable citizen prototype with a “modern” naming at individual level. An acceptable citizen is someone who is Turk, Sunni and secular, strictly following the values of Turkish Republic and ideology set by Ataturk. People who do not fit into this prototype, Kurds to begin with, are seen as a threat to the regime. The 1982 Constitution, which has been in use for almost 30 years, is built upon the principal of protecting the government precisely for this reason. In this respect almost all the prohibitions have been developed in the context of “the indivisible integrity of the State with its territory and nation” and “secular republic”.

The 1982 Constitution, with its authoritarian content and totalitarian reflection at its implementation, has maximised the social divisions. The 1982 Constitution, due to the prohibitions in its content, has destroyed a mind-set which is in favour of the spirit of freedom. Due to its exclusions of segments of society, through the prohibitionist and a sharpness based on denial inside its content and its conflicting segments, conflicts are deepened. The Constitution, with its exceptional regime that opens the door to a different layout, has led to an unlawful order.

The content of 1982 Constitution, which destroys freedoms, has been discussed since its entrance into force. The 12 September Constitution is the one prepared to provide the aimed. The Constitution has been prepared in accordance with the law that was created before itself and named as the laws of September 12. It is a Constitution that reflects the will of the de-facto power caused by the military coup. This will, in the process of preparation, has dominated the content of the Constitution. During the preparation phase, the final form of the clauses were given by the National Security Council, the discussions against it were prohibited, and transformed into an imposition at the referendum stage. “The Beginning” which creates the basic philosophy of the Constitution, the State was clearly blessed.

Even though the "sacred Turkish state” phrase from “The Beginning” has been removed from the scope of the constitutional amendments in 1995, “The Beginning” is still in force based on the same philosophy and the same content. Moreover, “The

Beginning", according to the 4th article of the Constitution, seems to be within the scope of the clauses that cannot be changed and cannot be offered to be changed.

Ideology of the Constitution

The philosophical preference of the Constitution of 1982 is not away from all the ideologies and creates a constitutional structure that allows ideological pluralism. However, this is mainly expected from democratic constitutions. The term "Colourless Constitution" comes from this. The philosophy of "Military Coup Constitution of 1982" and the ideology of this philosophy, starting with "The Beginning" section of the Constitution, has affected all the clauses. Accordingly, the main axis of the Constitution of 1982 contains the official ideology of Kemalism, nationalism and political statism. This ideology aimed at the uniform citizen facing towards the individual. As an extension of this ideology, the Turkish-Islamic synthesis model provided for individuals sets the mode of application of the principle of secularism. Therefore the acceptance of religion is only envisaged as much as it serves the main ideology.

The September 12 Constitution, which was prepared as a continuation of the 1982 coup, was created as if the state of emergency period would be indefinite. The main purpose was to make the way of thought that dominated the September 12 permanent through the Constitution. To do this, all measures have been taken. In fact, the legal arrangements that were previously taken out of the Constitution and put into implementation, and afterwards taken into protection via temporary clauses, which were made permanent as well, has defined the legal structure. Many laws such as State of Emergency Law, Election Law, Political Parties Law, Law on Associations, the Law on Meetings and Demonstrations, the laws that will determine social and political life, were created during the period of September 12. The Constitution has institutionalized this order created through legislation and also gives immunity to this order.

The ideology of Kemalism and the understanding of nationalism of Atatürk, which are the main axes of the ideology that define the philosophy of the Constitution, fed into various clauses of the Constitution.

"The Beginning" of the Constitution reflects the philosophy that prevails the content. "The Beginning" of the 1982 Constitution embodies the spirit of the dominant ideology with the following statements: In the first paragraph "... this Constitution, the founder of the Republic of Turkey ...." and the fifth paragraph continues "No activity… Turkish national interests ....."

Nationalism which is one of the main axes of the ideology on which the Constitution is based, is expressed in the form of Ataturk nationalism and according to the official statements this understanding of nationalism does not contain any reference to

ethnic origin or race. It means that you need to understand the definition of citizenship in a Constitution like that. However, the different clauses of the Constitution refute this thesis from inside. The 26/3 and 28/3 clauses of the Constitution, that are repealed by the constitutional amendments of 2001, were among such clauses. Furthermore, in clause 42/9 which is still in force, it is also clear that the Turkishness phrase in the Constitution is based on ethnical meaning. The Turkishness phrase in the Clause 134 is also directed completely towards its ethnical meaning.

Clauses of the Constitution, legislations, court decisions, and considered together with implementation, it can be more clearly seen that the Turkishness phrase is based on an ethnic basis. The most direct example of this was Law 2932, which prohibits languages other than Turkish. The fact that this clause was repealed does not alter the ethnic meaning of the Turkishness phrase. The decisions of the Constitutional Court, are shifting towards the definition of ethnic community. For instance, the Turkishness interpretation of the Act 81 of Political Parties law.

"The indivisible integrity of the state" which is formulated as an extension of nationalism and takes the prohibitive role for the all the fundamental rights and freedoms, accepts the nation as something heterogeneous and far away from being pluralistic. The statements in this way appear in “The Beginning” of the seventh paragraph of the Constitution "all Turkish citizens ...." This approach has been materializing in the decisions to close political parties by the Constitutional Court.

Things like secularism, in accordance with the constitutional ideology and the Turkish-Islamic synthesis, are making up a dimension of the Constitution’s ideology. Some clauses of the Constitution are serving to unify the official ideology, together with the religion. They are also being used to organise and maintain the official religion in this way. The Constitution makes a number of initial statements related to this at the beginning. According to the fifth and sixth paragraphs of “The Beginning”. These statements illustrate the mentioned ideological dimension - the fact that religious instruction is made mandatory at primary and secondary schools by the Constitution (Article 24/4); the fact that Ministry of Religious Affairs is part of the general administration; and also in accordance with the Clause 136 of the Constitution, which contains a vision of making the national solidarity and integrity as the main aim. All these clauses are results of efforts for the unification of religion with the official ideology.

Political statism and glorification of the state are among the basis of ideology of Constitution. Democratic constitutions are based on limiting of the government, against individuals’ rights and freedoms; whereas the 1982 Constitution is a Constitution enshrining the State. This principal is clearly stated in the first paragraph of “The Beginning”. "The Holy State" phrase before the Constitutional amendment was replaced with the "Great Turkish State" after the 1995 amendment. This

amendment, obviously, did not carry a meaning that is different from the previous. It did not create a change in the target of protection of the state against the citizen rather than vice-a-versa.

In line with the requirement of implementing the official ideology, the web of constitutional prohibitions with regards to rights and freedoms, have been used and are still being used as the implementation tools of the ideology that the Constitution defines. The Constitution has made the area of rights and freedoms unusable, in order to place the ideology that it contains, and also to make permanent the homogeneous society that it wants to create. In accordance with the ideology contained within the Constitution, "the indivisible integrity of the State with its territory and nation," and "secular republic" are defined as the reasons for the ban of all the rights and freedoms. Even though Clause 14 of the Constitution defines these reasons for the ban as applicable to all rights and freedoms, usage of some rights and freedoms has still emerged as part of the relevant clauses. In fact, even the freedom of scientific research and publication is surrounded with reasons of the mentioned ban that is required by the ideology of the Constitution (Clause 130 of the Constitution).

Constitution with regard to The Regime of Freedom

The 1982 Constitution has reflected its major aim as the protection of the individual against the State in all its articles. In this respect, the regulation of rights and freedoms, which forms the basis of the constitutional State, is the most problematic area. Through its highly restrictive regime, the use of rights and freedom has become impossible.

With its form before 2001, the Article 13 of 1982 Constitution contains the general limitation clause, and through the causes determined with regard to this clause, all the rights and freedoms in the Constitution could be limited. Article 14 contains the reasons of prohibition and these prohibiting causes are valid for all of the rights and freedoms in the Constitution. This clause has been limitedly amended in 2001; it keeps its main feature as a general prohibitive clause. Article 15 is the clause of suspension as expressed in the European Convention on Human Rights. In addition to these clauses, rights and freedoms are limited due to the clauses set forth in the related article. The most important change made in 2001 in terms of limitation regime, rights and freedoms are limited only through the causes set forth in the related article by eliminating the causes of the general limitation in Article 13. However, the limitation causes removed from Article 13 have been placed into other related articles regulating rights and freedoms, particularly freedom of expression.

Apart from the limitations and prohibitions, and even the suspensions in the Constitution, the limitation and prohibitions in the legal regulations concerning rights and freedoms have made the use of rights and freedoms impossible.

Despite the list of rights and freedoms contained in the 1982 Constitution, the European Court of Human Rights has clearly revealed the fact that such areas are unusable. In fact, such low-scale improvement efforts on the legal establishment of the rights and freedoms area in Turkey have resulted from the force of such international assignations.

Due to the commencement of European Union accession process, numerous changes in the law including particularly the Constitution have been implemented in order to fulfil the political criteria set for Turkey. But here the real target was to make homework, rather than imposing a more democratic-liberal legal regulation. For this reason, almost all of the changes have remained symbolic and have not been put into practice. In fact, a number of contradictions and confusions have been created in the laws, so that they would not be put into practice. The practice of positive constitutional amendments could have been possible in parallel to these laws with positive changes, rather than those laws converted to create confusion. As a result, the Constitution has remained in force with some positive changes, which were not put into practice, but most importantly with its original non-democratic structure in which legal regulations abolish the freedoms.

The democratic constitutions in our era are social consensus-based and human rights-oriented. The balances in the universe has changed, the area of freedoms have gained different content. The 1982 Constitution not only owns a primitive spirit in the face of the requirements of the era, but it is also a serious obstacle in front of the democratic openings. It has fed the conflict atmosphere through its extraordinary regime pushed beyond the law, prepared the unresolvable ground for the problems beyond the law. The prohibitionist tradition created by it has caused mental patterns even at the level of individuals.

The extraordinary regime was pushed out of the Constitution through 1982 Constitution. The State of Emergency Law, as the 12 September law, and in the Clause of State of Emergency Decree have not even been checked for compatibility with the Constitution in force. The disposals of State of Emergency were excluded from the judicial authorities. The use of the authorities in the practice was in significant excess. The ineffectiveness of legal paths has been proved by the acceptance of the applications from the region by the European Court of Human Rights, although the applications have not met the requirement of depleting the domestic law. Again, the European Court of Human Rights has ordered intense human rights violations including mainly the prohibition of torture and security of person as the right of life. Human rights violations have not only prepared the ground for the conflicts, but they have also become the reason of bringing the conflicts into the present with intense sufferings.

The Prospects from New Constitution on the Basis of Social Peace

In Turkey, there is in an “acute” conflict beyond the conflicts happening at the highest level. This is a result of many social groups, ethnic and religious reasons. We are faced with a society with various demands divided from each other enough to make a lot of different endpoints due to these conflicts. In these circumstances the quest for a new constitution means a special case for the construction of the constitution in a divided society. Thus, there is a need to give answers to a couple of questions.

The content of a new constitution needs to place social peace within the main goal of correcting all the negativities created by the Constitution in force. Thus, its prohibitionist, denying and fragmenting content should be replaced with liberal and open it to all sorts of diversities in a unified form. The question of “what kind of constitution” is a prerequisite for a new constitution. The content of a large number of studies on the new constitution, until this day, conflict with the required rights and freedoms. It can said that the different proposals made ahead of the 1982 Constitution and the democratic formations have been intended. What the new constitution drafts and reports bring up as new is important. The necessity of targeting innovation has been expressed, even during the studies on the new constitution.

An on-going problem, in terms of the principles that emerged during the course of the new constitution, is the difficulty to reach a compromise on the issues of innovations in the Constitution. The identity and cultural rights, secularism and local autonomy as a channel of direct democracy are among the leading difficult issues that require compromise. This lack of consensus makes it difficult to develop a common formula on issues specified in the new constitution.

Constitutions aim to meet the political needs in the period that they appear. Thus, every new constitution reflects the political reality of the period that the constitution is regulated. The political agenda in Turkey can be summarised as a political and social situation - social peace is targeted and legal obligations are required to tackle the difficulties encountered in creating an atmosphere of social peace. The social and political needs in Turkey urge a number of legal transformations and innovations. From this perspective, it is possible to pinpoint a number of major and necessary topics that require discussion at a legal level. These include:

A constitution must be created where freedom is for real. In this sense, it is necessary to arrange the freedoms as wide as possible. Providing an atmosphere where all excluded and “marginalised” social groups are included and where they can express themselves freely is the summary answer to the question of “what kind of constitution.” For example, the obstacles of education in the mother tongue which has turned into a tragedy for a significant part of society should be kept away from

political debate and should be eliminated by means of legal regulations. Moreover, it should be purified from the definition of ethnic-based citizenship, which we are confronted with as the subject of a political conflict, and needs to be overcome through new constitutional regulations.

A narrowing of the central government must be introduced by putting the local into front - the development of local-regional governance instead of non-democratic structures and through this way, opening the channels of direct democracy. In this context, this requires reassessing the organisation and the functioning of government at all levels to create the conditions necessary to ensure full transparency, particularly with regard to constitutional legal regulations as the creation of "new."

Can a new constitution created as specified by the content be a positive start for the solution of the conflict? The answer to this question, roughly - it is possible, if there is a preparatory process involving all the social groups. In these current conditions, it seems difficult to achieve this. In addition, this necessity makes the method of preparation for the new constitution at least as important as the content. First of all, the construction of a new constitution to ensure the highest level of consensus and the constitution of a democratic-participatory method, in order to acquire the meaning of the social contract must be determined.

Another important issue with regard to the method, throughout the preparation of new constitution, it is important to abolish the use of legislation to eliminate freedoms, which can also be called as "road cleanings." In particular, freedom of expression and association, including a series of new constitutional law on the free discussion environment that prevents the modification, conversion is mandatory. Law on Political Parties and the Electoral Act, primarily among the laws need to be changed. Moreover, for example, the Political Parties Law, in the renewal of the Constitution in force contains contradictions. The Parliament is composed, but missing due to the laws of the provisions of the Criminal and in such conditions; the renewal of the Constitution is on the agenda.

Extracting the legal regulations is much easier for the central government, which presents the wish of totally new Constitution. Works and efforts in this way may be the way to build confidence in the new constitution. While determining the method for the new Constitution, the experiences of different similar countries must be benefited. Without doubt, other samples cannot be expected to be matched fully but at least this might provide the avoidance of mistakes occurred in the past. In this sense, while the new Constitution is aimed for the start towards social peace, the required measures must also be taken in order to conduct the discussions on a new constitution in a peaceful way. The power representing a majority of the society is expected to stay away from pragmatic style of behaviour, yet instead it must be stable and reassuring.

The development of a scientific language on the constitutional debates developed on the basis of social peace seems to be mandatory method. Otherwise it means to be away from subjective assessments, or “sensitivities”, as its common expression in Turkey. The development of objective criteria for the democratic development level can only be possible with a scientific language. Therefore, a scientific-academic examination of the experiences of different countries and the adaptation of those in Turkey will be extremely important. In this context, exclusively the Northern Ireland, South Africa and Spain samples are valuable examples for the process of building peace and solutions, with regard to the constitutional developments.

HAVIN GUNESER is an engineer, journalist and women's rights activist. She is a spokesperson for the International Initiative 'Freedom for Abdullah Öcalan – Peace in Kurdistan'.

Her paper is entitled 'Constructive and Peaceful Solution to the Kurdish Question in Turkey'

Abstract: This paper maps out the important aspects of the *Road Map* written by Abdullah Öcalan in 2009. It also gives a broad outline of Öcalan's solution project, not only for Turkey, but for the Middle East in general.

PowerPoint Presentation:

Constructive and Peaceful Solution to the Kurdish Question in Turkey

- Brief information on International Initiative
- Who is Abdullah Öcalan?
- Will not speak on the Question but on the Solution proposed by the Kurdish side

What is the International Initiative "Freedom for Abdullah Öcalan – Peace in Kurdistan" ?

- multi-national peace initiative
- founded 1999 with the support of several Nobel Peace Prize winners
  Máiréad Maguire, Adolfo Perez Esquivel, Jose Ramos-Horta

  and many other personalities
  Dario Fo, Jose Saramago, Noam Chomsky, Angela Davis, Alice Walker …
  (complete list at www.freedom-for-ocalan.com)

The Vision of the International Initiative

- A just peace for Kurds and Turks
- A political solution through talks and negotiations
- Freedom for Öcalan and political prisoners in Turkey

Today, more and more people share this vision

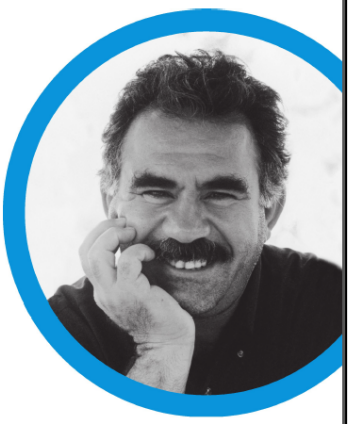
Activities of the International Inititative

- informs about imprisonment conditions
- translated and published books and brochures in English, German, Spanish, French, Italian, Dutch, Portuguese etc.
- campaigns for Öcalan's freedom as a key step to peace and democracy

❖

Who is Abdullah Öcalan?

- Founder of the PKK
- Person responsible for ideological and organizational transformation since 1973
- Political prisoner held in total isolation

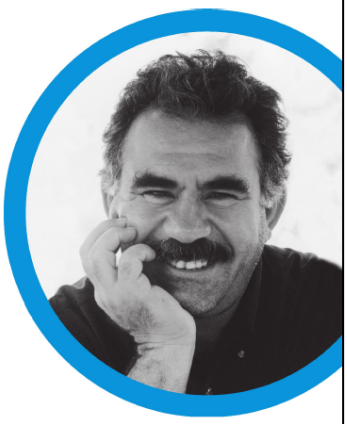


Facts on the isolation

- Imrali is a 25km² island in the Marmara sea
- Öcalan for more than 10 years the only prisoner
- now 6 Kurdish prisoners
- guarded by >1000 Turkish soldiers
- no contact with lawyers since 27 July 2011
- most lawyers in prison

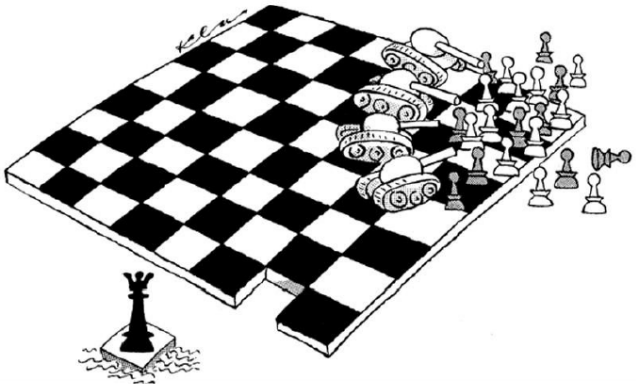
Who is Abdullah Öcalan?

- Ability to gain acceptance for unpopular or surprising steps
- Author of more than 60 books
- Architect of peace process
- True internationalist
- Highly popular Kurdish leader and growing in stature



Representative of Kurds

- Signature campaign in 2005-2006: 3,5 million signatures for Öcalan as political representative
- Countless demonstrations for his release



Ideological transformation of "PKK" after 1999

1978-1993

- Marxist-Leninist ideology
- strategy of protracted people's war
- aim of united, independent, socialist Kurdistan

1999 – to date

- democratic confederalism
- strategy of legitimate self-defence
- anti-statist, aim of democratic autonomy
- feminism

Vision: Radical Democracy

- self-organisation and self-determination of all societal groups (gender, ethnic, religious, class, profession)
- creating an alternative ***to*** the state, not an alternative state
- no geographical limitation, model for the whole Middle East

Vision: Radical Democracy

- Democratic Republic
- Democratic Confederalism
- Democratic Autonomy

they should not be evaluated only in terms of the present judicial and state terminology

Democratic Republic

- A project for those countries that dominate Kurdistan
- Here the idea of state still exists
- Citizenship Rights
- Individual and Collective Rights
- A need to establish a link between Democratic Republic and Democratic Autonomy

Democratic Autonomy

Not a representative but direct involvement in decision making at the local level

- In production
- Education
- Social relations
- Active participation in politics
- Self-defence

through libertarian municipality, local councils and other self-organization of groups

Democratic Confederalism

- Requires comprehensive restructuring of the society
- Not trapped in the idea of state
- Not an alternative state but alternative to the state
- Organizing itself bottom up in the form of assemblies
- Envisaged not only for Kurdistan but for the whole Middle East

Why Present Talks?

Maybe a few points on the Question..

- Nation-states a failure around the world but especially in the Middle East
- Kurdish people's division between four countries approved and their existence denied not only as a Turkish State policy but a world-wide policy
- Kurdish people demanding their rights in Iran, Iraq, Syria and Turkey and are a dynamic and revolutionary force of change

Why Present Talks?

- Turkish State can not continue to exist as a nation-state: Its one-nation, one-flag, one-religion ideology has failed and has lead to countless tragedies for all concerned
- At the brink of total collapse
- No more bloodshed
- Common vision: democracy for all

❖

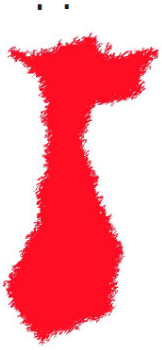
"Peace process"

- Öcalan recognised by friend and foe as key person
- was involved in all talks since 1993
- made the Kurdish movement "peace ready"
- unchallenged as negotiations leader of the Kurdish side

The Imrali-Oslo Process

- Talks between National Intelligence Service (MİT), Öcalan, PKK and KONGRA-GEL
- Parallel talks in Imrali with Öcalan a Oslo with the PKK
- Protocol agreed on in May 2011
- Protocol not approved by Erdoğan
- Protocol first published in *Bugün, 9* February 2012

http://gundem.bugun.com.tr/pkk-ile-mit-in-oslo-anlasmasi-183684-haberi.aspx



Content of the protocol (I)

1. ..... compromise on the necessity for the conclusion of all future works on a constitutional and legal basis.
2. Parties shall convey their opinions and suggestions about the draft documents, including the "Draft of Principles of Democratic Solutions to Main Social Problems in Turkey", "Draft of Principles of Just Peace in Relations between the State and the Society in Turkey" and "Draft for the Democratic Solution of the Kurdish Question and Action Plan for Just Peace"

Content of the Protocol (II)

3. An end to harassment and pressure on members of the press, detentions of political and legal representatives of the Kurdish people and release of people arrested as part of the political, so-called KCK operations would be great steps to facilitate the process and move ahead in solving the Kurdish question. In this regard, the Turkish side shall first guarantee to release the Kurdish politicians arrested after the Newroz celebrations.

4. Parties should negotiate over the names for Constitutional Council, Peace Council and Truth and Justice Commission

Content of the protocol (III)

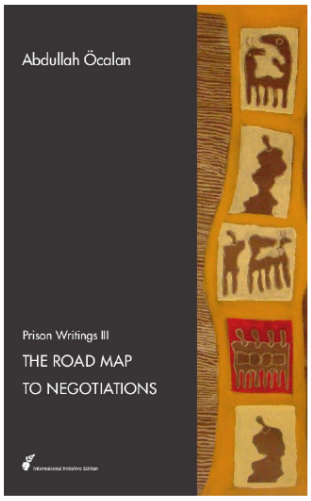
5. It is a necessity that all the military, political and diplomatic operations must end and both political sides should develop compulsory precautions to solve the Kurdish problem ultimately.

6. Both sides decided that they are going to meet in the second half of June 2011 to discuss the topics of the agenda…

On 27 July 2011 Öcalan withdrew himself from talks because this protocol was not implemented and talks failed and fierce fighting began.

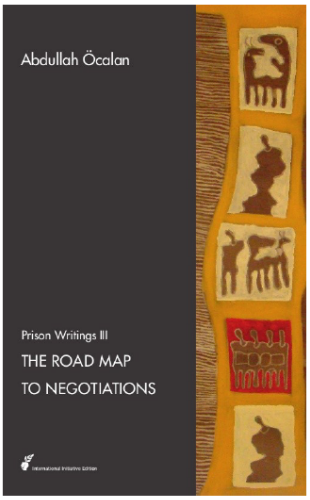
The Road Map

- written in 2009 during the talks
- outlines the Kurdish sides' positions
- vision for the whole Middle East
- blueprint for the "Oslo Protocol" and current talks
- anticipates a compromise



The Road Map

- Still the document that determines the current talks
- Proposes a solution to the Kurdish Question
- A historical, ideological and philosophical analysis of Turkey
- But raises issues that are far more general and widespread in the modern world system - Wallerstein



The Road Map: Action Plan

First Phase

- PKK declares a permanent no-action period. Parties should tightly control their own forces. General public must be prepared.

The Road Map: Action Plan

Second Phase

- A Truth and Reconciliation Commission should be established by the government and approved by the parliament
- The Commission should remove legal obstacles
- Then the PKK can withdraw its extralegal structures outside Turkey
- The release of those detained and convicted of PKK activity and withdrawal of PKK armed forces must be planned jointly

The Road Map: Action Plan

Third Phase

- When constitutional and legal Steps to Democratization are taken there will be no need to resort back to arms
- All those who were in exile, especially those in the PKK, can begin to return home
- As KCK gains legal status PKK will have no need to engage in any activity within Turkey
- Öcalan's situation must be bettered in order for the process to become successful finally leading to his release

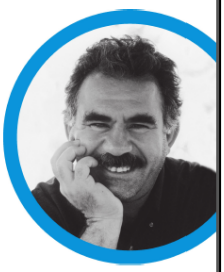
❖

What can we do?

- Europe can open its social, cultural, political areas as well as its media in order to change the prejudices established here too
- Lift bans on PKK in Europe
- Help educate and peace ready the Turkish public
- Support the Signature Campaign for the Freedom for Öcalan

Current Signature Campaign

"We support the demand 'Freedom for Abdullah Öcalan and the political prisoners in Turkey'. Öcalan's freedom will mark a breakthrough for the democratization of Turkey and peace in Kurdistan."



(Text of the "Free Öcalan" signature campaign)
www.freeocalan.org

Thank you for listening

(and please support the campaign!)

www.freeocalan.org

NAZMI GÜR was born on 15 March 1965 in Şırnak. He graduated from the Faculty of Law in Near East University, North Cyprus. He has served as President and General Secretary of the Human Rights Association's Van Branch for many years. He has held various executive positions in HADEP, DEHAP and DTP. Between 2009 and 2011 he acted as a representative of the former Democratic Society Party (DTP) and its successor, the Peace and Democracy Party (BDP), in Washington DC. In June 2011 he was elected as a member of the Turkish Parliament as part of the BDP representing the Van Region. Since July 2011 he has taken on the role of Deputy Co-Chair and Head of the Foreign Affairs Commission of the BDP.

His paper is entitled 'Democratic Autonomy towards a Lasting Peace and Stability Project'.

Abstract: This paper discusses the Democratic Autonomy Project, a project of peace, stability and collective existence. It proposes that not only administrative reforms are required, but also measures to re-determine social relationships and the affairs of state. It submits that these reforms should be oriented towards the needs of the present era – taking account of women's rights, environmental affairs, religious, youth and all other identity issues.

Paper: As other experiences across a divided world have showed us, it makes sense that any decent solution, namely peace, cannot be achieved by just one side winning and the other side losing. The period towards a solution obviously needs a concerted result, that is to say it needs a comprehensive agreement. A fair-minded and ingenious agreement is the best opportunity for the reorganisation of the relationship between the State and its citizens. However, starting with the 1921 Constitution in Turkey we have seen all constitutions since 1924 made without the full participation of the citizen population. The Constitutions, which were written far from social and political reality, were a contributing cause in the 1960 and 1980 coups. The Constitutions were set up and ultimately destroyed by the coups. Today, we are unfortunately still making political solutions under the shadow of the military coup's constitution. Any kind of opposition in Turkey is suppressed by the ideological ruling power.

In the aftermath of the Cold War in Eastern Europe and the Middle East, authoritarian regimes collapsed one after each other. Despite coming from different resistance movements, people fought back against those oppressive regimes. Resistance, in isolation, is not strong enough in itself to establish a democratic and free country. What kind of approach is used in order to establish or make possible the new political paradigm, which takes place after removing the old regime, is very important. As seen in Libya and Egypt, despite replacing an old regime and having external help, the expected improvement in the democratic consciousness has not quickly been established. Therefore, it cannot be taken for granted that when a

dictatorship is overthrown, a permanent stability can immediately be put in place. The core questions, namely what, how and who, would need to be established when replacing the old regime.

Since the Sykes-Picot Treaty signed between the United Kingdom and France in 16 May 1916, the Kurdish people have been divided into four parts. Since then, in those four parts of Kurdistan, there has been systematic bloodshed and massacres carried out namely by Turkey, Iraq, Iran and Syria. Against these oppressions the Kurds have fought back, and just in Turkey, there have been twenty-nine conflicts, and it so happens that the twenty-ninth resistance is still continuing. However, the latest Kurdish resistance movement, which is going on (or has gone on) for the last 30 years, as a result of carefully observing other struggles, has resulted in it not just being a resistance struggle, but also a signpost to follow a new political and social paradigm for people over the whole region.

The Democratic Autonomy Project is primarily a project of peace and stability. We are talking about a project which has been influenced by the experience of a thousand years. The Democratic Autonomy Project is a collective existence project that it is not only exclusively about administrative reforms, but also includes measures to re-determine social relationships and the affairs of state by orienting towards the needs of our era and takes account of women's rights, environmental affairs, religious, youth and all other identity issues.

Decentralisation is a widespread administrative restructuring in Europe, but our Democratic Autonomy Project differentiates itself by positive discrimination for women. There is not an ostensible or nominal approach to the representation of women because the political representation of women will be based on the system from the ground to the top. From politics to art, women should have their say and so the system can show her complexion so that social progress can be possible. The Democratic Autonomy is enabling women to set up their own structures and in this way and in this context it aims to abolish the hegemony of men.

Another factor in the Middle East is that religion has a strong effect on social lives. As the Peace and Democracy Party (BDP), our approach to the matter of religion is neither like the constitution of the 1980 military coup which discriminates in favour of only one religion nor like the sect of a religion nor overstating any religion at the core of politics. Sunnis or Alevis, Caferis, Orthodoxy, Jews or Yezidi are just some of the religious identities to be found. It is prescribed that every religion would be held rights and the opportunity to perform their own spiritual ceremonies by the city councils' guarantee. So far our local authorities have undertaken the restoration of some churches and built the Alevi spiritual houses (Cem Evleri), by doing these measures we take a step forward in this issue. It is an important point that we need a systematic approach. That is why the Democratic Autonomy would be a permanent base to do this.

We apply the same genuine methodology to ethnic identities. Either in Kurdistan or in Turkey, there are obviously several ethnic identities. The Democratic Autonomy has the political principle that indicates there should be no way to establish any hegemony on one ethnic identity by another. Every ethnic identity has the right to have representation in the relevant city council. Education in their own language will be provided.

In the Sur Municipality in Diyarbakir in 2006, “Multiple Languages Services” was set up and it aimed at providing language services to local ethnic groups. Unfortunately, the Ankara government put a block on this service and immediately discharged the president of this municipality from his duties. Despite this, the same president, in the election of 2009 was reelected by many more votes and is still in charge. Now, there are 99 members of our party which were elected across eight cities that are now confronting the oppression of Ankara. Governors appointed by Ankara have much more influence than the elected municipal presidents.

The Democratic Autonomy Project would eliminate the appointment of governors and decentralize power from the government in Ankara; the elected local government would be empowered as long as people desired it. Basically, the idea is that as the power of central government becomes smaller the local people would gain more opportunities to become involved in the local exercise of power. Either from an administrative point of view, or from a political view, everyone would be equal in context of the law and other rights.

For a democratic and new Turkey, BDP chiefly advocates this decentralisation. The ideal method for governing in the modern time is that instead of the policy of one sided policies from Ankara, the economic, social project and cultural expressions and security measures should be undertaken by the local councils and local governments. The main element to make possible this ideal mode of government is to abolish the oldest oppression, which is masculine hegemony. This is not an easy measure to implement. However, as an attempt to obtain an ideal lifestyle and method of government, the proposal is to target the widest representation and freedom. The concept of freedom does not just involve an individual’s rights - it is also related to the collective rights of the community.

The Democratic and Peace Party has undertaken this work despite the extraordinary political conditions. The political ground is based on the coups’ realities and the social consequences of the Turkish nationalist movement that has made us “Other”, and the reaction to this politics has built new alternatives. In this context the BDP is a party of everyone else who feels excluded from the ideological mechanism. Because of this we don’t agree with those foreign media and academic papers who describe our political affiliations as “pro-Kurd”. The BDP advocate for the rights of socialists, liberalists, conservatizes, Alevi, Sunni, Yezidi, Kurds, Turks, Arabs and of course, non-Muslims.

Our party tries to make sure that catering for all different sectors of society is our political concern, for instance, every Friday we go to Mosque for a regular prayer. We want to make sure that the spiritual rights, which Sunnis enjoy, should be available for everyone to practice in their religious life, for example Alevis and non-Muslims. The protection of environment and ecologic life, and the fair share of economy and social resources, are some of the main issues we work on.

The Democratic Autonomy Project does not just concern Kurdish issues but it also includes all of the country. This project is aimed at resolving not just the Kurdish issue in general, but it also tries to resolve our democratic problems. Our philosophy is to renew and transform ourselves. To conclude, our party and the Democratic Autonomy Project, which offer a new paradigm of democratic principles and freedom, have been summarized in the above paragraphs.

Panel IV: Question and Answers Session

Q. What do you see as needing to happen next?

A. (Nazmi Gur) – Turkey must be defined as a multi-national State. Öcalan must be seen as the leader of the Kurds. The BDP must be allowed to take initiatives in the important peace discussions. The PKK may have to change its name. It must be stated clearly and loudly that armed struggle is no longer the route forward and belongs to the past. The younger generation and women who can represent people must be allowed a more active role. This is a new phase in the history of the Kurdish people and the BDP's role in reform is very important.

Q. What is the Oslo process and what is its link to the current peace process?

A. (Havin Guneser) – The Oslo Process is that whereby the State requested Öcalan to write down his solution which he did – his 'road-map'. This goes through historical, political and religious questions related to Turkey, which has implications outside of the Kurdish question. There has been strong pressure from Europe that the Kurds should leave Öcalan as a leader behind – but why should they? Kurds have a right to choose their own leader. There are parallels with Mandela in South Africa here. The Kurds are not trying to establish a parallel State but wanting to live together. There are 3.5 million signatures recognising Öcalan as their leader: he has the full support of the Kurdish people but he must be free in order to lead them.

Q. What is the involvement of other political parties and other organisations in the peace process?

A. (Nazmi Gur) – The role of the BDP is very important because it participates in Parliament, talks to government about the issues and is ready to prepare a legal framework to the Kurdish question – like the Good Friday Agreement. NGOs can play supportive roles but the peace process must be thrashed out by the political parties. The Kurds are giving up the armed struggle but not their demands – they are simply hoping to achieve them by peaceful means.

Closing Remarks

Closing by Professor Brice Dickson: We are very grateful to everybody who has contributed. I am often struck by how the conflict in Turkey is a forgotten conflict. You see virtually nothing about the killings, the injustices and the political process in Turkey in the Western press. In recent months we have heard about Turkey, but it has been in relation to Syria or Iraq. It has not been in relation to the peace process. It is very much a forgotten conflict, but at least today, we have been reminded of some of the salient features of the conflict and of the opportunity that now exists to move on with the peace process. I am very encouraged by Nazmi Gur's optimism, and let's hope that he is right and that things do develop in a very positive way.

There were many false dawns in the Northern Irish peace process, but we eventually got there. There is a dispute in Northern Ireland as to why we got there, and how we got there. I am firmly of the view that we got there despite the violence, but there are those who think that we got there because of the violence. For me, a prerequisite for the peace process was the absence of violence and let's hope that the ceasefires in Turkey, on all sides, continue and are held.

To conclude, thank you to our speakers, the chairs, volunteers and our funders. Finally, thank you to all of those who attended – for giving up your time and for staying the course. I hope you have all learned a lot, as I have today, and that you go away better informed and inspired to work more on this important conflict.

Link to Audio-Visual Presentations

A select number of audio-visual presentations from the conference are available to view at any of the links below:

HRConferenceQUB YouTube Channel –
http://www.youtube.com/user/HRConferenceQUB

HRConferenceQUB Vimeo – https://vimeo.com/channels/526710

QUBLawSchool YouTube Channel –
http://www.youtube.com/user/qublawschool