

# **PERMANENT PEOPLES' TRIBUNAL**

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**Session on**

**Alleged violations of international law and international humanitarian law by the  
Turkish Republic and its officials in their relations with the Kurdish people and  
their organisations**

(Paris, 15-16 March 2018)

**JUDGMENT**

*General Secretariat:*

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## I. INTRODUCTION

The request to consider the evidence related to the conflict between the Turkish State and the Kurdish people was first submitted to the PPT in July 2017.

The terms of reference:

a) a specific focus on the most recent period and events, with consideration of the historical and broader geopolitical background;

b) to consider the severity of the conflict and the respective responsibilities for systematic violations of fundamental individual and peoples' rights of the Kurdish population, as well as denial of their right to self-determination;

c) an assessment of the responsibilities of the main actors in the conflict according to the principles and binding provisions and instruments of international law.

In compliance with the terms of reference of its statute, the Secretariat of the PPT activated the procedures of verification of the contents of the request, as well as of the qualification of the proponents, to assess specifically whether the request could be considered within the competences of the PPT, and whether it corresponded to the broader doctrinal perspective of the Charter of the same PPT, the Universal Declaration of Peoples Rights (Algiers, 1976), and of its successive interpretations across the more than 40 previously assessed cases.

Following the declaration of the acceptability of the request by the Presidency of the PPT, the Secretariat activated the instruction phase to assure the most complete and coherent documentation and coordination for the public hearings, to support a formal act of accusation<sup>1</sup> to be submitted in due time to allow its notification to the concerned parties.

According to the PPT's statute, both the opening of the procedure, as well as the final act of accusation have been notified through certified mail to the accused party's Embassy in Paris, with the request to exercise, in their preferred form, the right of defense (Annexe 1).

The public hearing of the reports, witnesses, experts included in the agenda of the PPT Session (see Annex 2 for the program) was held over two full days at the Bourse du Travail, March 15-16, 2018.

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<sup>1</sup> <http://tribunal-turkey-kurds.org/index.php/in/>

**The panel of the 7 international Judges included, in alphabetical order:**

**Teresa Almeida CRAVO**

Assistant Professor in International Relations at the Faculty of Economics of the University of Coimbra and a Researcher at the Centre for Social Studies. She is currently co-coordinator of the PhD Programme Democracy in the XXIst Century and coordinator of the Master's degree in International Relations – Peace, Security and Development Studies, both at the University of Coimbra. She holds a PhD from the Department of Politics and International Studies of the University of Cambridge. In the last years, Teresa has been a Visiting Fellow at the University of Westminster, in the UK, at the University of Monash, in Australia, and a Predoctoral Fellow and later an Associate at the Belfer Center for Science and International Affairs, at the John F. Kennedy School of Government at Harvard University. Her research interests include peace and conflict, security and development, interventionism, and foreign policy, particularly within the Lusophone context.

**Madjid BENCHIKH**

Professor Emeritus of the University of Cergy-Pontoise (Paris-Val d'Oise) where he also directed the Doctoral School of Law and Humanities.

He was Dean and President of the Scientific Council of the Faculty of Law of Algiers. He coordinated the creation of the Amnesty International section in Algeria of which he was the first president. He was a founding member of the Permanent Peoples' Tribunal. He has taught in several universities in Algeria and in Europe and published several books including "International Public Law" (Casbah Editions 2016, Algiers). He has organized various struggles to denounce violations of democratic freedoms and human rights in Algeria or in other countries.

**Luciana CASTELLINA**

Journalist and writer, she has been an exponent of the Italian Communist Party and the Unity Party for the communism, for various legislatures deputy of the Italian Parliament and several times member of the European Parliament. Former Vice-president of the EU Commission on Latin and Central America, she is honorary President of the Arci association and member of the Permanent Peoples' Tribunal.

**Domenico GALLO**

Magistrate, he has been serving in the Court of Cassation since 2007, recently taking on the role of President of the Chamber. He was elected Senator in 1994. He has actively participated in the association life and civil society movements active on the theme of peace and the defense of human rights. He has edited numerous publications on issues related to institutional and human rights issues. In 2013 he published "Da sudditi a cittadini il percorso della democrazia" (Ega). He collaborates with the newspapers Il Manifesto and Il fatto quotidiano.

**Denis HALLIDAY**

He was the United Nations Humanitarian Coordinator in Iraq from 1 September 1997 until 1998. He was previously Deputy Resident Representative to Singapore of the United Nations Development Programme. He holds an M.A. in Economics, Geography and Public Administration from Trinity College, Dublin. After a 34-year career at the United Nations, where he had reached Assistant Secretary General level, Halliday resigned in 1998 over UN sanctions that cut off food supplies to Iraq, characterizing them as "genocidal." Laureate of the Gandhi International Peace Award, he is member of the Permanent Peoples' Tribunal.

**Norman PAECH**

Born in Bremerhaven, Germany, he is a lawyer and professor emeritus of political science and public law at the University of Hamburg.

**Philippe TEXIER**

President of the Permanent Peoples' Tribunal. He is an honorary judge at the Cassation Court of France. He was a member of the Committee on Economic, Social and Cultural Rights of the United Nations High Commission for Human Rights from 1987 to 2008 and its Chairperson from 2008 to 2009. He was director of the Human Rights Division of ONUSAL (UN Mission in El Salvador) from 1991 to 1992, and an independent expert of the Human Rights Commission in Haiti from 1988 to 1990.

The General Secretariat is composed of Gianni TOGNONI and Simona Fraudatario.

## II. A BRIEF HISTORICAL AND GEOPOLITICAL NOTE

In accordance with its terms of reference, this Session of the PPT focused solely on the most recent period of the conflict of the Kurdish people with Turkey, and on the analysis and assessment of the violations of the rights formally recognized by the international Conventions of the post Second World War period.

Two obvious but fundamental remarks are, however necessary, to better interpret and qualify the overall meaning of the facts which have been submitted to the PPT.

Firstly, the well known – though often either forgotten or taken as irreversible – roots of the present situation of fragmentation of the Kurdish people and of the violation of their right to self-determination go back to the decisions taken by the then winning powers of the post First World War period. The state borders of the dismantled Ottoman Empire were traced in the complete absence of any possibility for the Kurdish people to express, in institutional and political form, the great complexity of their ethnic, religious, historical, and cultural identities.

The resulting political framework and its concrete manifestation on the ground have contributed to the whole area's instability and have had particularly heavy consequences for the Kurdish people, who have been divided, dispersed and fragmented as minorities in various and very different states, and often denied any form of autonomy.

This arbitrary decision, dictated at the time by the interests of the political and economic actors involved in the exploitation of the enormous oil resources of the area, led to the concession of sovereignty to scarcely inhabited areas, and to the denial of any form of autonomy to those more intensely populated and with an ancient identity such as the Kurdistan. The dramatic consequences of that original violation are all too well known.

Secondly, though it is clearly not the task nor the competence of this PPT to enter the debate of whether or how to meaningfully address the impact of this historical decision – it is, indeed, up to the peoples and subjects of rights to find their protagonist role – it is equally clear that a full understanding of the internal conflict examined in this Session between the Kurdish people and the present state of Turkey would not be possible without a living memory of the past recalled above.

It is therefore with this historical and geopolitical past in mind, and the acknowledgement of its present consequences, that have become even more explicit and tragic with Turkey's wider strategy in the region (and with such direct implications for the Kurdish population of Syria), that this PPT judges the evidence presented, and also gives recommendations for a more peaceful and just future.

### III. THE FACTS

The relationship between the Turkish Republic and its Military Forces and the Kurds has a protracted and fraught history. Although the potential number of violations perpetrated during such a long-time frame of several decades is vast, the Prosecutors who brought the charges before the Permanent Peoples' Tribunal (PPT), Jan Fermon and Sara Montinaro, requested it to focus solely on:

- (1) War crimes committed in the period between 1 June 2015 and 31 December 2017, in several cities of South East Anatolia, where the majority of inhabitants were Kurdish;
- (2) State crimes, such as bombings, assassinations or kidnappings, committed since 2003, in Turkey and abroad, against representatives of the Kurdish movement, their press organs and institutions.

The Prosecution requested the PPT to find the Turkish Republic, as a subject of public international law, primarily responsible for such crimes. The justification lies in the allegation that various Turkish State organisations have engaged in a concerted way, over long periods of time, in the commission of crimes against the Kurds with a common criminal aim. Thus, today's alleged perpetrators are merely perpetuating a long-standing and continuous practice of the State organs they embody, which extends to many administrations with different political or religious orientations. Imputing said crimes to only particular individuals would be a denial of the continuity of these practices across time and space, and, therefore, inadequate.

In addition, the refusal on the part of the Turkish State to allow for independent investigations of these allegations and to collaborate in the identification of direct perpetrators prevents the establishment of individual criminal responsibility beyond the two individuals accused by the Prosecution of being liable for said crimes: President Recep Tayyip Erdogan and General Adem Huduti.

President Erdogan stands accused of seeking a confrontation with the Kurds, whilst stirring up nationalistic and chauvinistic tendencies in Turkish society and branding the Kurds indiscriminately as "terrorists", thus setting up the State's security apparatus to use extreme force and disproportionate violence in their operations, and further reinforcing and legitimising their actions.

General Huduti stands accused, as the head of Turkey's second army and the main architect behind military operations in its borders with Syria and Iraq, of leading the military operations against the Kurds in South East Anatolian cities, between 1 January 2015 and 15 July 2016, which resulted in widespread civilian casualties and massive destruction of civilian infrastructure, including the devastation of entire neighbourhoods and centuries-old historic and cultural monuments.

The Prosecution has stated that all the events and facts presented originate in the denial by the Turkish Republic of the right to self-determination of the Kurdish people within the State. It notes that the Kurds have been systematically excluded from the economic and political decision-making process, their culture and language banned from public usage, and their political parties, media, journalists, and activists targeted. It has argued that this systematic denial of the Kurdish presence has led to armed conflict between the State and the Kurdish Workers Party (PPK) and is a direct cause of the violent confrontation in the Kurdish cities of South East Anatolia and the crimes committed against Kurds both inside and outside Turkey. The Prosecution has, therefore, requested that the PPT establishes that the root cause of the War and State crimes alleged was the denial of the right to self-determination of the Kurdish people.

The PPT was chosen to consider the charges presented by the Prosecution in the absence of other effective remedies. Many cases have been taken to the European Court of Human Rights without Turkey responding in any meaningful way; others have been trapped in the need to exhaust domestic judicial remedies demanded by the European Court and the lack of Turkish authorities' cooperation; Turkey did not sign the Treaty of Rome and there is no realistic expectation that the UN Security Council would refer the situation to the International Criminal Court. Furthermore, by branding the Kurdish armed struggle as "terrorism", Turkey has thus far placed itself outside the scope of international humanitarian law and outside the definition of war crimes punishable under Turkish national law.

Extrajudicial assassinations and disappearances could be pursued under international law, but only in terms of individual responsibility, whereas the Prosecution makes the case for the need to charge the Turkish State itself, as, State structures have played an indispensable role in the commission of such acts.

In the absence of an international or domestic judicial body that can exercise jurisdiction over these crimes, the PPT has been called upon to consider the evidence presented, produce a judgment, and to make recommendations, on:

- (1) The acknowledgment of the denial and violation by the Turkish State of the right to self-determination of the Kurdish people as a root cause of these crimes (see Section IV);
- (2) The existence of an internal armed conflict between the Turkish State and the PKK (see Section V);
- (3) The commission of war crimes against Kurds in South East Anatolia between 1 June 2015 and 31 December 2017;
- (4) The liability of the Turkish State, as well as of President Erdogan for war crimes committed during that period, and the liability of General Huduti for the period between 1 January 2015 and 15 July 2016;
- (5) The commission of state crimes against Kurds, in Turkey and abroad, since 2003;
- (6) The liability of the Turkish State and of President Erdogan for these state crimes;

### **Kurdish People's Right to Self-Determination**

The six first witnesses before the PPT – Bill Bowring, Hamid Bozarslan, Ahmed Yildirim, Ahmed Pelda, Rojan Hazim and Nazan Ustundag – confirmed in their analysis how Turkey's centralism has been built on the "imposition of Turkishness" and consequent exclusion of Kurdish identity and presence in the country's political, economic and cultural life. Most manifestations of the Kurdish people's right to self-determination have been understood as a threat and met with State repression.

A recurrent understanding voiced by the witnesses was that the Peace Process between the Turkish State and the PKK, which lasted from 2012 (with Abdullah Öcalan calling for a cease-fire in March 2013) until April 2015 (when the government ceased to attend peace talks), was not entered in good faith by President Erdogan, who had initiated a series of distraction tactics early on, in order not to follow the reconciliation plan. Early government talk regarding self-determination proved to be empty. The war in neighbouring Syria further destabilised the possibility for peace. The State did not want the Kurds to play a part in this conflict. The fighting in and around Kobane, when Turkey stopped supplies reaching the Kurdish forces combating ISIS, effectively terminated attempts at Peace and led to the State "Collapse Plan", which was proposed at a National Security Council meeting on October 30, 2014.

## War crimes

The evidence on the events in the Kurdish Cities of South-east Anatolia refers specifically to : Cizre, Sirnak, Nusaybin and Sur (Diyarbakir). These cities were exposed during 2015-2016 to a destructive process prior to physical obliteration and killing, evacuation and permanent removal of the Kurdish population.

This “Collapse Plan” called for Kurdish settlements to be destroyed, repopulation suppressed and pacification to be obtained by mass destruction, arrests and evacuations. During this Plan of suppression, many thousands of Kurds were killed, wounded and arrested with some 150-300,000 survivors removed prior to bombing. This plan employed in the four cities mentioned above was intended to paralyse and neutralise the PKK Kurdish response during 2015-2016.

State provocations began with unsupported Turkish troops being exposed and defeated. An HDP rally was bombed. Meantime, the AKP lost electoral support and State aggression towards the Kurds increased. Provocations continued, such as a mid 2015 attack on a group of young people gathered to rebuild a school in Kobane with fatalities and many wounded. The State was deemed responsible. State assassinations grew in number and frequency. State jets were used against both ISIS and PKK fighters. Tanks were employed and more airstrikes completed the termination of any hope of peace between the Kurds and the State.

Police actions were employed including in Sirnak and neighbouring districts. Curfews were declared in 9 provinces and 35 districts. In Sur and Nusaybin, hundreds died and basic human rights for 1.6 million were affected.

This destruction and the repression of local community leaders led to significant AKP gains in the November 2015 general election. By the end of the year, Turkish forces targeted urban areas with 24-hour curfews, military rule and artillery fire. (A chronology of these and related events is attached as Annex.)

An account of the events that took place in Cizre, the Sur district of Diyarbakir as provided by the Prosecutor are attached as Annex. This Annex describes and illustrates the military and police aggression committed by the Turkish State and underlines the question before the Tribunal whether the conflict between the State and the Kurds in particular the PPK constitutes armed conflict in the context of International Law.

These tactics on the part of the Turkish government were confirmed by the various eye witnesses before the PPT: Faysal Sariyildiz, Leyla Imret, Fatma Demir, Erhan Dinc, Sabiha Gunduz, Serkan Tutak, Fatma Sik Barut, Ercan Ayboga, Hamit Otun, Emine Otun, Ayse Ciftci and Faruk Encu. Their testimony recounted random bombings of civilian infrastructure during curfews, intentional shooting of civilians – including those bearing a white flag, setting buildings with civilians in them on fire, deliberately withholding ambulance assistance, purposefully preventing humanitarian aid from reaching civilians trapped, cutting electricity and targeting water tanks to force displacement, complete destruction of their homes and neighbourhoods, and bombing of important Kurdish cultural and historical sites.

These accounts were corroborated by international witnesses Ezio Menzione – who referred to the prolonged curfews as “sieges” under continuous bombings – and Frédérique Geerdink – who gave testimony of her investigation of the Turkish State bombing of a commercial convoy in Roboski.

These testimonies were accompanied by photographs and videos of the cities identified here. It is clear, by the level of destruction narrated and also by the evidence provided, that the Turkish authorities engaged in



heavy militarised operations, far beyond what a police action would look like (as claimed), causing massive and intentional suffering, devastation and displacement amongst the Kurdish people.

### **State crimes**

The crimes reported in this part involve targeted killings, extrajudicial executions and forced disappearances perpetrated by the various branches of security and intelligence services of Turkey.

Reports and accounts from the witnesses present at the court – Ahmet Nesin, Kendal Nezan, Hatip Dicle, Ferda Cetin, Zubeyir Aydar, Cuneyt Canis, Sanar Yurdatapan, Nursel Kilic, Murat Polat, Yuksel Koc, Mahmut Sakar – confirm the proposition that the behaviour of the Turkish State is politically motivated and designed to spread fear amongst the most active defenders of the Kurdish right to self-determination and to participation in Turkish public life.

The persistent lack of criminal responsibility for such crimes makes evident not only a clear absence of willingness to investigate them seriously, and to prosecute the responsible parties, but also confirms the accusation of organised impunity, sanctioned by the State.

International witnesses Nils Anderson, Antoine Comte and David Philips, as well as reports from international agencies, corroborated these accounts.

#### IV. THE RIGHT OF SELF-DETERMINATION

The very core of the conflict between the Kurdish people and the Turkish Republic and the root cause of the many violations of international law by the Turkish military forces is the constant and systematic denial of the right to self-determination of the Kurdish people. The principle of self-determination has been expressed in various international documents since the second world war and has reached the status of mandatory international law in the meantime. Its incorporation in common article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESC) of 1966, in force since 1976, demonstrates the central importance of the right of self-determination for peaceful relationships between peoples and states.

The Kurdish People is the subject and bearer of the right of self-determination, both as a people which is ethnically homogenous and based in a defined settlement area and as a minority in the states between which its settlement area has been divided. The fact that the Kurdish People only settles in the individual states as an ethnic minority does not reduce its right of self-determination to mere individual protection of individual members. The Kurdish People in all states is entitled to it as a collective right.

The content of the right of self-determination aims to preserve the identity of the Kurdish people and to protect its existence in the future. It can, in some cases, come into conflict with the right of the states to territorial integrity. The two rights can be reconciled if the claim to self-determination is restricted to the so-called internal right of self-determination, which is granted and practised within the pre-defined state borders. This right of self-determination within the borders of the states concerned encompasses firstly all previously denied rights of the Kurdish people to its own language, education, training, press, radio, television and literature, whether under its own supervision or as a recognised part of the state sector. The institutional safeguarding of these rights also requires state funding to be made available. State funding must also be provided for the reconstruction of homes, villages, infrastructure and agricultural, industrial and business establishments, which have been destroyed, in order to facilitate the return of the more than 4 million refugees.

The political framework of the right of self-determination includes not only the freedom to establish political organisations, parties and foundations and to be able to make use of the right of assembly and right to demonstrate without discrimination but also the creation of a system of self-administration. This may include, for example, its own parliament with legislative power, its own jurisdiction, its own security forces (police) and other local authorities. The scope of the transfer of state functions to the self-administration of the Kurdish people is not prescribed by law but depends on political negotiations. The greater the proportion of functions transferred, the more necessary it becomes to grant financial and fiscal autonomy.

It is important to establish a state organisation for equal participation in the social and political processes of the state as a whole, which at present is completely absent. It must be ensured both that the central state has an influence on policy and self-administration of the Kurdish people and vice versa. Whether, in this context, the concept of autonomy or federalism is chosen is once again a political question rather than a legal one and has not been a topic in the deliberations of the jury.

In the event that the government cannot decide on any of the possible solutions but continues a policy of repression, military oppression and breach of human rights, the 'internal' right to self-determination will extend once again to 'external' right to self-determination with the consequence of secession to sovereignty. Until the early nineties of the last century this has been the task of the Kurdish movement. Currently, however, this option has been abandoned and is only a legal possibility if war and systematic denial of human rights continues.