

THE KURDS:
Culture and Language Rights

Institut kurde de Paris

August 2004

Kerim Yildiz

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The Kurds: Culture and Language Rights

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The Kurdish Human Rights Project (KHRP) is an independent, non-political, non-governmental human rights organisation founded and based in London, England. KHRP is a registered charity and is committed to the promotion and protection of the human rights of all persons living with the Kurdish regions, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people.

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AIMS

- * To promote awareness of the situation of the Kurds in Iran, Iraq, Syria, Turkey and elsewhere
- * To bring an end to the violation of the rights of the Kurds in these countries
- * To promote the protection of human rights of Kurdish people everywhere

METHODS

- * Monitoring legislation and its application
- * Conducting investigations and producing reports on the human rights situation of Kurds in Iran, Iraq, Syria, Turkey, and in the countries of the former Soviet Union by, amongst other methods, sending trial observers and engaging in fact-finding missions
- * Using such reports to promote awareness of the plight of the Kurds on the part of committees established under human rights treaties to monitor compliance of states
- * Using such reports to promote awareness of the plight of the Kurds on the part of the European Parliament, the Parliamentary Assembly of the Council of Europe, national parliamentary bodies and inter-governmental organisations including the United Nations
- * Liaison with other independent human rights organisations working in the same field and co-operating with lawyers, journalists and others concerned with human rights
- * Assisting individuals with their applications before the European Court of Human Rights
- * Offering assistance to indigenous human rights groups and lawyers in the form of advice and training seminars on international human rights mechanisms

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Foreword

by Robert Dunbar

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The denial of cultural and linguistic rights has many consequences, but the most immediate and painful are those felt by the individual who belongs to a cultural or linguistic minority. Such an individual is forced by such policies to live a diminished and often a materially disadvantaged life. The individual is often excluded by such policies from the same basic public services, as well as educational, employment and other opportunities that members of the majority enjoy. Quite simply, the individual is usually robbed by such policies of the same life chances that members of the majority enjoy.

These outcomes are most stark for members of minorities who have no or an inadequate command of the majority or State language. In such circumstances, the denial of public services through the minority language can have serious adverse consequences. They cannot, for example, count on receiving medical and other care in the language that they understand, with obvious adverse consequences for their health and well being. They cannot participate fully and effectively in the political process, with obvious adverse consequences for their rights as citizens. If they have to defend themselves or secure their rights in Court, they cannot participate effectively, with obvious adverse consequences in terms of basic procedural fairness and substantive outcomes. The huge weight of evidence from educationalists suggests that such persons encounter very serious difficulties in the education system—one which is operated in a language they do not understand—with obvious adverse consequences for their intellectual development and employment prospects. Indeed, the evidence now shows that such persons even have a more difficult time in acquiring the majority or State language than they might have had if they had received their early childhood education through the medium of their mother tongue.

Even where members of the minority do speak the majority or State language, they nonetheless are unable to develop their identity as fully and as effectively as members of the majority because they are denied access through the medium of their language and culture to many of the most important institutions that foster and develop such identity, such as schools, institutions of further and higher education, the media, and so forth. They are denied access to their own literatures, their own histories, to the ability to represent and interpret their world through their own eyes. In short, societies which deny cultural and linguistic rights send a clear message to minorities: they are not valued and accepted. As a result, they are diminished, marginalised and alienated.

As this report makes clear, this is the reality which millions of Kurds are condemned to suffer by virtue of the linguistic and cultural policies of the States in which they live. The grave consequences, in terms of access to justice, equality of opportunity and full human development are tragic and disgraceful. To the extent that such policies condemn members of minorities to restricted lives, to the status of outsiders in their own homes and villages and towns and cities, to the status of second class citizens within their own States, it can be no surprise that such policies lead to social discord and even violence. The lesson of the history of the treatment of linguistic and cultural minorities is surely that it is not the conferral of cultural and linguistic rights, but rather the denial of such rights, which threatens the integrity and stability and peace of States. Furthermore, the robbing of large numbers of citizens of the ability to fully develop their talents, skills and identities can only impoverish the societies in which they live, both directly—again, the denial of cultural and linguistic rights tends to ensure that “human capital” is insufficiently developed, meaning lower standards of living for members of the minority and less productive societies—and indirectly—the creativity and energy which diversity tends to foster is quashed. Finally, societies that deny cultural and linguistic rights also tend to deny other basic civil and political rights—societies that are threatened by different identities tend to feel threatened by different ideas and opinions.

Given the foregoing, why is it that States still pursue policies which deny minorities their cultural and linguistic rights? As this study clearly indicates, the denial of such rights to the Kurds is in large part a product of ideologies

of nationalism and of the nation-State. It is both ironic and tragic that such ideologies owe much to European influences on the societies in which Kurds live, and that the older indigenous traditions of interculturalism, multilingualism and tolerance, which once dictated a much different approach to minority questions in the region, have been moved aside.

This irony and tragedy is heightened by the fact that Europe is slowly moving away from the ideologies of nationalism and of the nation-State, and this development, which is reflected in broader trends in international law, is also ably traced in this study. European integration, together with ever greater levels of interdependence, cross-border movements of goods, services, peoples and ideas, have forced us to reconsider older certainties. As a result, there is a growing realisation that the recognition of cultural and linguistic rights is not only intimately connected to broader human rights issues and with the dignity and integrity of the individual, but also that such recognition is the only basis for peace, stability and security within and between States. There is also a growing awareness that the sort of diversity which cultural and linguistic rights tends to foster is in itself valuable; that it creates more dynamic, open and interesting societies. Such ideas, and the legal norms which they inspire, are, as is demonstrated in this study, becoming ever more relevant for both the Kurds and the States in which they reside. A recognition of the cultural and linguistic rights of the Kurds would not only be in keeping with broader international developments, but would, as noted, in many ways be a return to deep roots in a region which is culturally and linguistically rich and vibrant.

I welcome this report, and I recommend it highly; in addition to being a very valuable storehouse of information, it will make an important contribution to the advancement of these ideas.

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I – Introduction

The Kurds are believed to be descendants of Indo-European peoples who settled amongst tribes living in the Zagros mountain range around four thousand years ago. Although the term 'Kurdistan' has never designated a Kurdish state, it has been used to describe this geographical area since the Turkish Saljuk Prince Saandjar created a province with this name in the twelfth century. The majority of Kurds still live in this area, which covers southern Turkey, northern Iraq, western Iran and northern Syria. There are currently around 24 – 27 million Kurds living in the Middle East today. Although the four states have refused to ascertain the size of their Kurdish population, scholars estimate there are 13 million Kurds in Turkey, 4.2 million in Iraq, 5.7 million in Iran and just over 1 million in Syria. As such Kurds constitute about 23 per cent of Turkey's population, 23 per cent of Iraq's, 10 per cent of Iran's and just over 6 per cent of Syria's.¹ There are smaller Kurdish populations in Lebanon, Armenia and Azerbaijan, and the Kurdish diaspora can be found in Europe, Canada and Australia.

The mountains have both protected Kurdish culture from external threat and have also prevented its unification. The Kurds do not share a single common language but speak a number of different dialects. Kermanji is spoken by most northern Kurds and Sorani is spoken by most Kurds in the southeast. Sub-dialects include Kirmanshahi, Leki, Gurani and Zaza. In spite of this they have cultivated a cultural identity over two thousand years, of which their language remains the most crucial aspect.

For the second time in under a century, the fate of the Kurds has been subordinated to the aspirations of states which stake geopolitical claims to the territories in which they live. In the aftermath of World War I Kurdistan was divided between the four nation-states of Turkey, Iraq, Iran and Syria. As a large minority in each, the Kurds were perceived as a threat to internal and external security as their distinct identity, marked chiefly by language, could provide the basis for separatist movements and therefore had to be extirpated. Policies targeting aspects of Kurdish culture, especially its

language, immediately attained prominence amongst the measures adopted in pursuit of national unity. Not only did Kurdish culture and language become highly politicised objects of negotiation, invoked throughout the twentieth century by these Governments and Kurdish political leaders, but they retain a central role in the suppression of the Kurds to this day.

Eighty years on, the Kurds in Turkey and Iraq find themselves at the forefront of another defining period in European and Middle Eastern history. Turkey's protection of the cultural and linguistic rights of its Kurdish population is essential for Turkey's accession to the European Union; however, the Kurds in Turkey remain severely repressed, as do those in Iran and Syria. The Iraqi Kurds have been at the forefront of post-war negotiations which are restructuring Iraq as a federal state. In June 2004, the Iraq Interim Government was announced and on 28 June assumed full sovereignty for Iraq. In December 2004 the European Council will judge Turkey's readiness for EU membership. It is therefore timely to evaluate the current status of the Kurds' cultural and linguistic rights in Turkey, Iraq, Iran, and Syria.

II - Treatment of Kurdish Culture and Language in the Twentieth Century

The fate of the Kurds was set on a new course by the international developments which occurred in the immediate aftermath of World War I. The section of Kurdistan now contained within the Islamic Republic of Iran continued to be controlled by the Qajar Empire, while the portion previously under the control of the Ottoman Empire was divided between the three new states of Turkey, Iraq and Syria. The Kurds in each were a large minority and were perceived as a threat to internal stability in the eyes of the new regimes. The leaders of these new states inherited loosely integrated territories with heterogeneous populations and, seeking to create more stable entities, they devised policies designed to impose order upon their diverse populations under unifying religious or nationalist ideologies. This involved the promulgation of an officially designated identity to be assumed by all citizens. In each of these states the Kurds were a major minority and as such had a distinct identity from that being promoted to unify these new states. The ruling regimes perceived their Kurdish populations as a threat to national unity that had to be neutralised. Policies of cultural and linguistic assimilation have constituted a major feature of the authorities' suppression of the Kurds.

Each state has adopted deliberate and in some cases extreme policies of oppression regarding manifestations of Kurdish culture and the use of Kurdish language both in the public sphere and in private, and in relation to a variety of activities and modes of expression. Press freedom was curtailed as successive regimes established increasingly centralised governance after World War I. The publishing of materials either in the Kurdish language or with Kurdish themes has continued however, not only on a clandestine basis but also at the behest of the regimes for political expediency during periods of liberalisation or instability. However, the states have frequently responded to perceived

threats posed by Kurdish opposition movements to both their internal and external security by clamping down on the print media. This has been done by persecuting those involved in its production, distribution and consumption by using legislation and extra-legal methods of suppression. The broadcast media, which emerged as a new and powerful vehicle both for Kurdish communication and state control, has occupied a key site in which these aspects of Kurdish identity are contested. The expression of Kurdish cultural identity in other media, such as film and music, has been politicised in a similar manner. The use of Kurdish names, both personal and topographic, has been suppressed in the context of promulgating the official national identity, and the Kurdish language has been banned not only within the national education system but also in relation to private schools.

Kurdish culture and language have played a crucial role in the relationships between the Kurds and their host states throughout the twentieth century. Kurdish opposition movements have demanded either toleration of or active support for freedom of cultural expression. While there are obvious similarities between several of the major policies of cultural and linguistic assimilation deployed by each state in relation to its Kurdish population, the approach adopted by each has been determined by its external political relations as well as its domestic pursuit of security. Limited concessions in relation to Kurdish culture and language have been made solely to protect the interests of the ruling regimes rather than to increase the Kurds' freedom to express their cultural identity. Consideration of preceding decades of suppression serves to contextualise the current status of Kurdish culture and language in the four states.

2.1 Turkey - 1918 to 1999

The first opportunity for the Kurds to establish an independent state followed the collapse of the Ottoman Empire and the end of World War I in 1918. The Allies were at this time newly preoccupied with the accommodation of minority groups as a means of securing political goals, rather than ensuring individual and group protection. Woodrow Wilson explicitly recognised the

rights of Turkey's Kurdish population in his speech on the Fourteen Points for World Peace, delivered on January 1918. In Point Twelve he asserted that non-Turkish nationalities "now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development." As such the Allies recognised the Kurds as a distinct group with legitimate claims to independence.

This opportunity was realised within the Treaty of Sèvres, concluded between Turkey and the Principle Allied Powers on 20 August 1920. Section III of the Treaty, entitled 'Kurdistan', envisaged the creation of a Kurdish state. Article 62 provided that,

"A Commission sitting at Constantinople and composed of three members appointed by the British, French and Italian Governments respectively shall draft within six months from the coming into force of the present Treaty a scheme of local autonomy for the predominantly Kurdish areas lying southeast of the Euphrates, south of the southern boundary of Armenia as it may be hereafter determined, and north of the frontiers of Turkey with Syria and Mesopotamia... The scheme shall contain full safeguards for the protection of the Assyro-Chaldeans and other racial or religious minorities within these areas..."

Despite committing the borders of Kurdistan to future determination, the Treaty did provide in Article 64 that:

"If within one year from the coming into force of the present treaty the Kurdish people within the areas defined in Article 62 shall address themselves to the Council of the League of Nations in such a manner as to show that a majority of the population of these areas desires independence from Turkey, and if the Council then considers that these peoples are capable of such independence and recommends that it should be granted to them, Turkey hereby agrees to execute such recommendations, and to renounce all rights and title over these areas..."

The fate of this historical opportunity was sealed when Mustafa Kemal, known as Atatürk (meaning 'father of the Turks'), overthrew the Turkish administration which had signed the Treaty. He waged a War of Independence on behalf of non-Arab Muslims of the Arab Ottoman Empire against the French, Greeks and Armenians, who staked competing claims for parts of the former Ottoman territories. His success resulted in the establishment of the Republic of Turkey in 1923. The Treaty, which was seen as totally unfeasible by Turks, was not ratified by the new administration.

Atatürk intended to learn from the mistakes made by the Ottoman Empire in relation to governance of its population. The Empire had been very loosely integrated due to its ethnically, linguistically and culturally heterogeneous population. The aspirations of different minorities were both an internal source of unrest and a source of vulnerability when manipulated by foreign forces which sought to destabilise the Empire. Atatürk resolved to create a highly centralised, secular nation state, the territorial integrity of which would be ensured by a new, purely Turkish national identity. Therefore, his plan for achieving the security of the new Republic was premised upon manufacturing identity: it depended upon the creation of a homogenous population of Turks from the heterogeneous population which existed.

The Kurds were the largest minority within the new Republic. They had fought alongside the Turks in the War of Independence under the banner of Muslim brotherhood and naturally expected this loyalty to result in recognition along the lines envisaged by the Treaty of Sèvres. Atatürk had no intention of making such a concession and promoted his nationalist ideology before the League of Nations at the Conference of Lausanne in the winter of 1922. The Kurds were deeply concerned and sent representatives to request recognition of their right to autonomy as established at Sèvres. Some of the diplomats were not totally unsympathetic to their pleas: the British Foreign Secretary Lord George Curzon, told the Turkish representative İsmet İnönü that,

"The whole of our information show that the Kurds, with their own independent history, customs, manners and character, ought to be an autonomous race..."²

The Kurds' attempts were however to no avail. The Treaty of Lausanne, concluded between Turkey and the Allies on 24 July 1923, contained no mention of a Kurdish state. Indeed, in contrast to the Treaty of Sèvres, the Kurds were not mentioned by name at all. The Treaty restored to Turkey the territory subject to the Treaty of Sèvres, and divided the rest of Kurdistan between Iran, the French Mandate of Syria and the newly created British Mandate of Iraq. Articles 37 to 45 of the Treaty provide for the protection of minorities. Crucially, most of these protect only Turkey's non-Muslim minorities. As such the Treaty recognises only a small subsection of Turkey's religious minorities and accordingly only guarantees rights to the Greek, Jewish and Armenian populations. Precisely because of the legitimacy of their claims, the Kurds were intentionally excluded from the protection given to minorities in order to safeguard the unity and territorial integrity of Turkey.

Nonetheless, the Treaty imposes upon Turkey obligations which are of direct relevance to the Kurds' ability to retain their distinct cultural identity through the medium of their language. Article 38(1) provides that,

The Turkish Government undertakes to accord to *all* inhabitants of Turkey full and complete protection of their life and liberty, without distinction of birth nationality, language, race and religion...

Article 39(4) states that,

No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings.

Finally, Article 39(5) provides that,

Notwithstanding the existence of the official language, adequate facilities shall be given to *Turkish nationals of non-Turkish speech* for the oral use of their own language before the Courts.

Crucially, the Allies did attempt to entrench these guarantees. Article 37 states that,

Turkey undertakes that the stipulations contained in Articles 38 to 44 shall be recognised as fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them.

These provisions were manifestly incompatible with the means by which Atatürk resolved to implement his Turkish ideology. The very existence of the Kurds became synonymous with separatism and as such was interpreted as a direct threat to the territorial integrity of the state. Atatürk's main goal in pursuit of the ideal Turkish state became the dissolution of the Kurdish population which inhabited the provinces in the Southeast. Therefore, and in spite of the guarantee of Article 37, these provisions were almost immediately dishonoured in practice: Article 39, by the variety of policies which laid the foundations for Atatürk's 'dil devrimi' (meaning 'language revolution'); and Article 38, by a relentless programme of village displacement in the Kurdish Southeast. The aim in both cases was the total suppression of the Kurds' distinct identity as manifested in their culture and language.

Turkish topographical names began to replace Kurdish ones, the use of the words 'Kurds' and 'Kurdistan' were prohibited, and references to them were removed from Turkish history books and official publications: indeed, from 1938, the Kurds themselves were described simply as 'Mountain Turks' or 'Turks from the East'.³ The first Constitution passed in 1924 established the Turkish state's total control over identity, an ideological monopoly affirmed in Turkey's two subsequent Constitutions of 1964 and 1982: Article 88 provided that, "In Turkey, from the point of view of citizenship, everyone is a Turk without regard to race or religion." Celebrating Newroz was treated as a serious offence punishable by long-term imprisonment. Kurdish folklore was banned and gramophone recordings of Kurdish music were destroyed. In March that year an official Decree banned Kurdish schools, organisations and publications. Atatürk banned all institutions and publications which were not compatible with his linguistic hegemony. Turkish was the sole language of

the courts and Kurdish was officially banned, including within the education system. The Act of the Unification of the Education System was passed later that year, explicitly placing all schools under the control of the state and thus ensuring that they would promote his ideology.⁴ This indicated a dramatic shift in Kemalist thinking: whereas only two years before, a draft autonomy law had allowed for "encouragement of the Kurdish language,"⁵ Kurdish was now being totally expunged from Turkish public and private life in direct contravention of Article 39 of the Treaty of Lausanne.

A major effect of this harsh new resolve to banish the Kurdish language, as the main component of a distinct identity which undermined the security of the new Republic, was the exclusion of Kurds from the education system. The prohibition of schools in which Kurdish was the medium of instruction drastically limited the number of Kurds who could benefit from education, as many did not know Turkish. Coupled with an education tax that was levied only in Kurdistan, these policies revealed that exclusion from education had been recognised as a means of comprehensively disempowering the Kurds and that, more generally, the education system had been seized upon as an institution in which policies of repression could be effectively implemented.⁶ A report of the Inspector General of the First Inspectorate, responsible for the vilayets of the Kurdish Southeast, advocated the creation of Turkish language boarding schools for Kurdish children, where intense assimilation would ensure the eradication of their Kurdish cultural identity.⁷

In 1925 these early attempts to eradicate Kurdish identity from the young Republic provoked the first great Kurdish rebellion, which was led by Shaikh Said and members of the Kurdish intelligentsia and religious leaders as well as members of the military. Although this uprising did not present a serious military threat to Turkey, it did constitute a milestone in the histories of both the relationship between Turkey and its Kurdish population and of the Republic itself. It prompted the formulation of policies specifically aimed at destroying Kurdish identity and in doing so catalysed the emerging tendency towards an authoritarian style of governance, a feature which have characterised the Turkish state ever since. On 21 April 1925 İsmet İnönü, who was installed as Prime Minister at the outset of the Shaikh Said rebellion, announced that,

“We are openly nationalist...Besides the Turkish majority, none of the other [ethnic] elements shall have any impact. We shall at any price, Turkicise those who live in our country, and destroy those who rise up against the Turks and Turkdom.”⁸

Atatürk's programme of 'Turkification' was reinvigorated by the enactment of new legislation which punished manifestations of distinct ethnic identity. The Turkish Penal Code was enacted on 1 March 1926. Articles 141 and 142 prohibited organisations and propaganda “seeking to destroy or weaken nationalist feeling.”⁹ Judicial interpretation of these provisions expanded their scope to encompass any expression of Kurdish identity so that they could be used to convict anyone who did not conceal this identity. This criminalisation of identity itself is still a crucial aspect of Turkey's suppression of its Kurdish population. Secondary legislation strengthened these fundamental principles. That year the Ministry of Education issued a proclamation which banned the use of terms describing minority communities and the areas they inhabited such as Kurd and Kurdistan.¹⁰

As the major feature of Kurdish identity, the Kurdish language became the focus of Atatürk's language revolution, which began officially on 28 May 1928. The two main strands of this revolution were the creation of a Turkish alphabet and promotion of the idea of a purely Turkish language. The new Hawar alphabet replaced the traditional Arabic script with the Latin alphabet plus several new letters to provide for distinctly Turkish phonemes. This was officially introduced on 1 November 1928 when the Grand National Assembly passed the Law on the Adoption and Application of the Turkish Alphabet.¹¹ This law remains in force today. Article 2 obliges all companies, associations, private societies and state run establishments to conduct their written correspondence using the Turkish alphabet. Article 4 provides that all notices, proclamations, advertisements, cinema promotions, newspapers, publications and magazines must be printed in Turkish. From 1 January 1929 it was illegal to write Turkish using Arabic script.

Although the new Turkish alphabet was ostensibly developed in order to destroy the cultural legacy of the Ottoman Empire, it was another means of suppressing Kurdish culture. In effect the law of January 1929 banned writing

in the Kurdish alphabet because the 'Kurdish' letters q, w and x do not feature in the Turkish alphabet.

The methods used to crush the Sheikh Said Revolt included the Turkish Government's first practice of mass displacement and village destruction in the Kurdish Southeast. The aim was to destroy Kurdish society altogether by subjecting the Kurds to intense cultural and linguistic assimilation. The Law of Resettlement of 1934 introduced a tripartite approach to this practice by dividing the country into three zones which has been mirrored by subsequent policies. One was the mountainous Kurdish regions which were too difficult for the Government to effectively control: its inhabitants were evacuated due to security concerns. These villages were destroyed to prevent the return of their Kurdish inhabitants. The second zone consisted of districts of the country with a Turkish majority, to which Kurdish emigrants would be relocated. The third zone, the inhabitants of which were predominantly non-Turkish, was repopulated with Turks¹². Later, the Kurdish names of villages and topographical features were also Turkified. Article 2(d)(2) of the Provincial Administration Law of 1949, as amended by Law No. 7267 of 1959, provides that "Village names that are not Turkish and give rise to confusion are to be changed in the shortest possible time by the Interior Ministry after receiving the opinion of the Provincial Permanent Committee."¹³ This law is still in force today and, although the Minister of the Interior stated in 1996 that this process would be reversed, this promise has not to date been fulfilled. Not only topographical names but personal names came under strict regulation during this period: the Surname Regulation of 1934 was used to prohibit the registration of children under Kurdish names.¹⁴

Atatürk's legacy

Atatürk's concept of the Republic had emphasised its unity and territorial integrity, and had also crucially defined the Kurds as a clear threat to these fundamental features of the Turkish state. The total suppression of the Kurdish identity was central to the laws passed after Atatürk's death in 1938 which sought to affirm the continuing governance of his ideology (hereafter referred to as "Kemalism"). The Press Law of 1950 is a prime example, and as amended

is still in force today. It contained harsh restrictions on publications, which were broadly defined in Article 3 as “the display, distribution, broadcast, sale and supply of published matter in locations accessible to the public”. The next year, the Law Concerning Crimes Committed against Atatürk was enacted, and the same law is still in force today¹⁵. It provided in Article 1 that anyone who publicly insults or curses the memory of Atatürk shall be imprisoned with a heavy prison sentence of between one and three years.

Turkey began to actively suppress information which confirmed the existence of the Kurdish population in the Southeast. The first instance occurred in 1959, when the Turkish Army initiated a large scale program of adult literacy training for its recruits with the assistance of experts from Georgetown University who were provided by U.S.A.I.D. The rate of failure was high amongst participants whose first language was not Turkish, especially amongst those whose mother-tongue was Kurdish. The experts proceeded to investigate the matter. Shortly before they were to process the information they had gathered, the army confiscated all data which had been collected. Only one of the experts ever referred to the event in later work.¹⁶

Another instance of such suppression occurred in the early 1960s. The Ministry of Works and Settlement and the Ministry of Village Affairs conducted The Village Inventory, a nationwide survey concerning questions of language and religion. Immediately after the data for one province was released, the entire survey was suppressed.¹⁷ Since then, no official data has been gathered or disseminated. Although official censuses included questions regarding mother-tongue and second languages until 1985, data collected before 1965 on these issues is not regarded as accurate; moreover, data collected after that date was not published.¹⁸

Turkey's first military coup toppled the Government of Prime Minister Adnan Menderes on May 27, 1960. The Constitution adopted in 1961 displayed the junta's distrust of democracy and attempted to limit the powers of the Grand National Assembly and the Government by increasing the autonomy of state institutions and recognising civil rights. Article 54 reiterated previous constitutional provisions by stating that, “Every individual who is bound to the Turkish state by ties of citizenship is a Turk.” In 1961 Law No. 235 amended

two provisions of the Turkish Penal Code in order to increase penalties which could be imposed upon expression incompatible with Kemalism. Article 158 was altered to provide that,

Whoever insults the President of the Republic face-to-face or through cursing shall face a heavy penalty of not more than three years... Even if the name of the President of the Republic is not directly mentioned, allusion and hint shall be considered as an attack made directly against the President if there is presumptive evidence beyond a reasonable doubt that the attack was made against the President of Turkey.

Article 159 had an even broader ambit, providing that,

Those who publicly insult or ridicule the moral personality of Turkishness, the Republic, the Parliament, the Government, State Ministers, the military or security forces of the state, or the Judiciary will be punished with a penalty of no less than one year and no more than six years of maximum security imprisonment....

These provisions were extensively invoked to punish both those who expressed their Kurdish identity or criticised the official oppression of this identity by discussing Turkey's treatment of the Kurdish issue. Criminalisation of Kurdish identity has severe consequences in Turkey, as in all four states in which the subordination of the judiciary to the will of the ruling regime precludes the possibility of a fair trial in contentious cases. Moreover, any form of detention by the police is accompanied by a serious risk of torture.¹⁹

The continuing exclusion and persecution of the Kurds was proving no impediment to Europe's progressive recognition of Turkey as a viable partner. This relationship entered a new era when the Ankara Agreement established an association between Turkey and the European Economic Community on 12 September 1963.

New laws continued to be promulgated in the spirit of Atatürk's early reforms.

Article 58 of the Law Concerning Fundamental Provisions on Elections and Voter Registries provided that 'It is forbidden to use any other language or script than Turkish in propaganda disseminated in radio or television as well as in other election propaganda.'²⁰ In May 1964 the state passed Law No. 2954, taking firm control of all broadcasting by creating a nation-wide state broadcasting institution in the form of the Turkish Radio and Television Corporation (the TRT). This established a monopoly which ensured the exclusion of the Kurds from all forms of broadcasting.

The education system was brought under renewed Kemalist control by the Basic Law of National Education which was passed in 1973 and is still in force today.²¹ This states that the "overall objective of the Turkish education system" is to train all members of the Turkish nation,

... as citizens who believe in Atatürk's reform and principles and Atatürk's conception of nationalism as expressed in the Constitution; who endorse, protect and develop the national, moral, humanitarian, spiritual and cultural values of the Turkish nation; who care for and relentlessly promote their families, country and nation.

This Law also provides that the Education Ministry can make recommendations on the utility of books proposed for inclusion in the curriculum and in libraries: those deemed to be without utility are in effect banned. Since then the National Security Council has enforced these principles by issuing directives which introduce courses on the military, religion and the 'history of the revolution' as compulsory elements of the curriculum.²²

Teachers and academics who did not follow the Kemalist line became targets for harassment. The Turkish sociologist Dr. İsmail Beşikçi is one of the few academics in Turkey who questions and uncompromisingly discusses the social, cultural and political impact of Kemalist ideology of the Turkish State upon the Kurdish population. He has done so by means of academic ethnographic research which, since the publication of his book called *The Social Changes of the Kurdish Nomadic Tribes in East Anatolia* in 1967, has led to his relentless persecution by the Turkish authorities. Beşikçi was sacked from his position of

Assistant Professor of Sociology, was struck off the register of teachers and was prevented from carrying out research. His academic articles and books have been censored, confiscated and banned. Since 1971 over one hundred charges have been brought against him, resulting in sentences totalling over seventy-six years of imprisonment, under numerous pieces of criminal legislation.

The latter half of the 1970s saw Turkey teetering on the brink of anarchy. Many radical political organisations representing the left and the right were formed during this unstable period. The Kurdistan Workers' Party, (the PKK) was formed in 1974, from the Ankara Democratic Patriotic Association of Higher Education (known as APOCUS). Its leader, Abdullah Öcalan, was at that time a student of political science at Ankara University.

This political and civil instability precipitated another military coup. On 12 September 1980, General Kenan Evren, Chief of the Turkish General Staff, and a junta of four other military officials took over the Government, dissolved the Grand National Assembly and suspended the 1961 Constitution, imposing a three year period of martial law. All political parties, trade unions and civil society associations were dissolved.

The military regime instituted its hardline Kemalist ideals within the fabric of the state. The National Security Council created other bodies which subjected many aspects of life in Turkey to a high degree of surveillance. One of these bodies was the Turkish Academic Council (the YÖK) which scrutinised all university faculties, dictated their curricula and monitored their staff and students. It ordered the destruction of books incompatible with the new regime and prescribed thousands of new books as compulsory elements in the curricula. The YÖK also promulgated criteria for admissions, receiving qualifications and disciplinary procedures for both students and staff. Professors who did not adjust were removed from their positions and arrested.

In 1981 Law No 2370 amended several provisions of the Turkish Penal Code in order to punish expressions of Kurdish identity. Article 311 provided harsh fines and prison sentences for those who incited crime, which of course included the expression of Kurdish identity. In particular it stipulated that,

If the incitement occurs by various means of *mass media, sound tapes, records, films, papers, periodicals, or with other press instruments, or by writings written by hand and then multiplied and printed or distributed, or by signs or written announcements hung*, the heavy imprisonment and fines... will be doubled.

Article 312 also provided for the punishment of those who spoke in favour of Kurdish rights or encouraged others to do so: those who were alleged to openly incite people to enmity and hatred by pointing to class, racial, religious, confessional, or regional differences also faced imprisonment and heavy fines.

The Constitution of 1982

The National Security Council drafted a new constitution which decreased the autonomy of institutions such as the universities, the judiciary, and trade unions and severely curtailed civil liberties such as the rights to freedom of expression and association. The Constitution was put to a national referendum on November 7, 1982. At this time all political parties were closed and many politicians were either in prison or banned from political activity. Public criticism of the constitutional draft was forbidden. The referendum accordingly produced the intended result by securing approval from 91.4 per cent of the Turkish voters.²³

This Constitution, as amended in October 2001, is still in force today. The Preamble incontestably reiterates the exclusion of Kurdish from the protection of the rights enshrined therein and also lays the basis for their renewed persecution by stating that,

No protection shall be given to thoughts or opinions that run counter to Turkish national interests, the fundamental principle of the existence of the indivisibility of the Turkish state and territory, the historical and moral values of Turkishness, or the nationalism, principles, reforms, and modernism of Atatürk, and that as required by the principle of secularism there shall be absolutely

no interference of sacred religious feeling in the affairs of state and politics;

Article 3 provides simply that the Turkish State, with its territory and nation, is an indivisible entity, and that its language is Turkish. This provision, which is irrevocably entrenched according to Article 4, has its origins in Atatürk's language revolution. It entrenches the perception of the fundamental political trinity of territorial integrity, a unified nation and the official language. This trinity of principles has serious consequences for the Kurds: it is used to justify accusations of separatism simply in relation to the use of the Kurdish language. These principles appear throughout the Constitution and throughout the Turkish legal system.

Article 66 reiterates previous constitutional provisions by stating that, "Everyone bound to the Turkish state through the bond of citizenship is a Turk." In practice this totally undermines Article 10, which guarantees the equality of all individuals "without any discrimination before the law, irrespective of *language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations.*" The fact that language heads this list of grounds upon which persons cannot be subject to discrimination has simply been ignored in relation to the Kurds. Also, Turkey chooses to interpret the accommodation of linguistic and ethnic difference as discriminatory: in this light, this provision actually eliminates the possibility of recognising the Kurds' distinct cultural identity.

Article 26, concerning freedom of expression and the dissemination of thought, stated that,

Everyone has the right to express and disseminate his thought and opinion by speech, in writing, or in pictures or through other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities....

It goes on to provide however that the exercise of these freedoms may be restricted for the purposes of preventing crime and punishing offenders. The

provisions of the Turkish Penal Code bring expressions of Kurdish cultural identity clearly within this restriction. The Article goes on to provide that no language prohibited by law shall be used in the expression and dissemination of thought. Any written or printed documents, phonograph records, cassettes, video tapes, and other means of expression used in contravention of this provision can be seized on the decision of a judge or, in cases where delay is deemed prejudicial, by the competent authority designated by law.

Article 27, entitled Freedom of Science and Arts, provided that, "Everyone has the right to study and teach freely, explain, disseminate science and arts and to carry out research in these fields." It went on to stipulate that, "The right to disseminate shall not be exercised for the purpose of changing the provisions of Articles 1, 2, 3, of this constitution..." which contain provisions central to the Kemalist concept of the Republic.

Article 28, erroneously titled Freedom of the Press, states that "Publication shall not be made in any language prohibited by law" and as such removes all Kurdish language expression from the protection afforded by this Article. After stating that the limitations within both Articles 26 and 27 of the Constitution are applicable to the freedom of the press, it provides that,

Anyone who writes or prints any news or articles which threaten the internal or external security of the State or the indivisible integrity of the State with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified State secrets and anyone who prints or transmits such news or articles to others for the above purposes, shall be held responsible under the law relevant to these offences. Distribution may be suspended as a preventive measure by the decision of a judge, or in the event delay is deemed prejudicial, by the competent authority designated by law...

Periodical and non-periodical publications may be seized by a decision of a judge in cases of ongoing investigation or prosecution of offences prescribed by law, and, in situations where delay could endanger the indivisible integrity of the State with its territory and nation, national security, public order or public morals and for the prevention of offence

by order of the competent authority designated by law...

Periodicals published in Turkey *may be temporarily suspended* by court sentence if they are found to include material which contravenes the indivisible integrity of the State with its territory and nation, the fundamental principles of the Republic, national security, or public morals. *Any publication which clearly bears the characteristics of being a continuation of a suspended periodical is prohibited and shall be seized* following a decision by a competent judge.

Article 42 provides that no language other than Turkish shall be taught as a mother-tongue to Turkish citizens at any training or education institutions. This provision has been used to exclude Kurdish language from every aspect of the education system. It also reveals the Kemalist ambition of controlling the identity of all citizens in the fundamental respect of their mother-tongue, and to pursue the artificial manufacture of Turks from various ethnic constituents in order to fortify the ideology of a culturally homogeneous Turkish state. Art 134 follows this theme by providing that,

The Atatürk High Institution of Culture, Language and History shall be established as a public corporate body, under the moral aegis of Atatürk, under the supervision of and with the support of the President of the Republic, attached to the Office of the Prime Minister, and composed of the Atatürk Centre of Research, the Turkish Language Society, the Turkish Historical Society and the Atatürk Cultural Centre, in order to conduct scientific research, to produce publications and to disseminate information in the thought, principles and reforms of Atatürk, Turkish culture, Turkish history and the Turkish language...

This extreme commitment to the promotion of Turkish culture must be contrasted with the legal persecution of the Kurdish culture. Article 174 affirms the commitment of the National Security Council to retain Atatürk's ideology by providing that no provision of the Constitution can be interpreted so as to render unconstitutional a number of his key Reform Laws, which aimed to raise Turkish society "above the level of contemporary civilisation"

and safeguard the secular character of the Republic. The entrenchment of the Law on the Unification of the Educational System 1924 and the Law on the Adoption and Application of the Turkish Alphabet 1928 in particular provide further constitutional basis for the exclusion and persecution of the Kurdish language from everyday life.

Legislation passed during the period of military rule

Article 15 of the Constitution was used by the National Security Council to claim immunity from judicial review for all laws adopted in the period during which the country was under military rule from 12 September 1980 to 6 December 1983. This ensured that the generals could voluntarily return the country to democracy without jeopardising the security of their vision of the state. Accordingly, this period saw intense legislative activity that resulted in the enactment of laws which, like the Constitution, reasserted Atatürk's vision of the Republic and reinstated his methods of achieving it. The laws promulgated directly, although non-explicitly, targeted the Kurdish population by specifically banning expressions of their culture and language. The most significant of these was the Law on Publications in Languages other than Turkish of 1983.²⁴ Article 2 forbade the use of languages other than the first official language of states recognised by Turkey for the expression, dissemination and publication of opinions. Since the Kurds do not possess a state, this provision banned the Kurdish language in all contexts. Under this law, even children who spoke in their mother-tongue within their own homes committed an offence.

The Political Parties Law was enacted in 1982.²⁵ Article 81 provided that parties cannot claim that minorities based on national, religious, confessional, racial, or language differences exist in the Turkish Republic. It also provided that parties could not use a language other than Turkish in relation to a virtually exhaustive list of activities:

...in writing and printing party statute or program, at congresses, at meetings in open air or indoor gatherings; at meetings, and in propaganda; cannot use or distribute placards, pictures,

phonograph records, voice and visual tapes, brochures and statements written in a language other than Turkish; cannot remain indifferent to these actions and acts committed by others; however, it is possible to translate party statutes and programs into foreign languages *other than those forbidden by law*.

The purpose of the Law on the Establishment of the Atatürk Culture, Language and History Society was “to bring out the pure beauty and richness of the Turkish language, [and] ensure it reaches an exalted place amongst the languages of the world...”²⁶ When read with other legislation, this law has the effect of bolstering the proscription of languages other than Turkish. Article 5 of the Law on Associations of 1983 effectively prevents the establishment of any organisation with the purpose of developing the Kurdish language of culture, and transgression can result in immediate closure and penalisation of the founders.²⁷

A major reform was made to the Press Law of 1950 by Law 2950. Article 16, entitled “Criminal responsibility for crimes committed by means of the press”, now ensured that in all cases someone would be found to take the responsibility for ‘criminal’ expression. The direct discrimination against Kurdish expression is confirmed by the provision that if a publication is made in any language prohibited by law, articles which provide for the conversion of punishment into monetary fines shall not be applied. Paragraph 1 provides that responsibility for crimes committed in periodicals belongs, together with the person who caused the crime, whether the writer, news writer, artist, or caricaturist, to the periodical’s responsible editor. Paragraph 3 attributes responsibility for such expression to the publisher if the editor cannot be found guilty. Regarding books, Paragraph 4 attributes responsibility to the publisher together with the writer, translator, or artist, but again if all else fails, the responsibility belongs to the seller and distributor. Article 31 of that Law prevents the import of Kurdish books in circumvention of the ban by providing that,

The entry or distribution into Turkey of works published in a foreign country that contradict the indivisible unity of the state with its territory and nation, national hegemony, the existence of the Republic, national security, public order, general law and order,

the common good, general morality or health can be outlawed by a decision of the Council of Ministers.

Supplementary Article 1 was inserted into the Press Law to give the public prosecutor the power to ban the distribution of a newspaper or magazine if he perceives that certain offences are being committed, and to make a written order for the confiscation of printing works, before acquiring the permission of a magistrate. It also provides for the confiscation of printing works in the event of a successful prosecution of a newspaper or periodical for various offences. Supplementary Article 2 allows a court to close a periodical for three days to one month if it contains an article which violates the Articles of the Turkish Penal Code discussed above or otherwise threatens to undermine national security.

The EU was involved in negotiations with the National Security Council throughout this period and was closely involved in the restoration of democracy in 1983. They criticised the denial of minority rights to the Kurds as well as the open-ended definition of terrorism.²⁸ However, this criticism did not prevent the continued passage of laws which reconfirmed the state's intention to suppress Kurdish cultural identity in even the most peaceful means of expression. No. 3233 of 1985 amended the Police Duty and Responsibility Law of 1934²⁹ to provide that,

If the police are in possession of incontrovertible evidence and by order of the district's highest civil servant, *areas where plays are conducted, presentations given, films or videos shown* that will damage the indivisible unity of the state with its territory and nation, constitutional order, or general security or common morality *can be closed by the police or have their activities stopped*. If the reason for the closing or ceasing activities requires a legal investigation by the state, the investigation file shall be immediately given to the judiciary...

This law assisted in banning Kurdish language films. The Law on Works of Cinema, Video and Music was passed in 1986.³⁰ This Law has been used extensively to prevent the dissemination and enjoyment of traditional and

contemporary Kurdish culture through these mediums. Its provisions strictly govern works made in these media according to the purposes of this law listed in Article 1, the very first of which is to “bring order from the point of view of national unity, integrity and its perpetuation in cinema and musical life...” Article 3 provides that no such works may constitute an offence “from the point of view of the indivisible unity of the state, its country and people; national sovereignty, the republic, national security, public order, the public good and general morality and health.” Article 9 provides that any work which contravenes these provisions will be banned and those responsible prosecuted. Yilmaz Güney, the Kurdish actor, director, writer and political activist, produced many films in Turkey, always using the Turkish language, many of which were banned due to their allegedly anti-Turkish content. One such film was *Yol* (meaning “The Road”) which won the *Palme d’Or* at Cannes in 1982 but was banned in Turkey in 1983.³¹ Güney’s imprisonment and extra judicial persecution eventually forced him to flee to Europe where he lived in exile until his death in 1984. When asked in 1984 why he had never produced a film using the Kurdish language, he replied, “very simple, because the Kurdish language is legally proscribed in Turkey.”³² Self-censorship of this kind is the intended effect of Turkey’s repressive policy towards Kurdish expression, and must always be born in mind when assessing the work of the Kurdish artistic communities active within the four states.

The most notorious law enacted within this period was the State of Emergency Law, commonly known by its Turkish acronym as ‘OHAL’.³³ This would allow the state to take control of the areas in the south in which the PKK were based. It provided for the establishment of a civil administration and the appointment of a Regional Governor.³⁴ All powers of the state of emergency were vested within this office, with a number of ancillary powers being delegated to local Governors. Both the exercise of state of emergency powers by the Regional Governor and statutory orders issued under the Law conferring power to local governors also enjoyed immunity from constitutional review. Section 11 of OHAL prohibited the publication and distribution of newspapers, magazines, books and other printed matter within, or their importation into, the designated area. It also created measures enabling authorities to “restrict and prohibit all kinds of speech, writing, pictures, film, records and audio and visual tapes and publications made through sound.” As recently as June 2002,

three regular Kurdish publications which were produced and sold in the west of Turkey could not be legally distributed in the southeast. These were *Azadiya Welat*, a weekly newspaper; *Pine*, a weekly comic strip; and *Roja Welat*, a fortnightly political magazine published in both Turkish and Kurdish.³⁵ The OHAL legislation was also invoked to prevent the opening of branches of Kurdish cultural associations, which were allowed elsewhere in the country.³⁶

The civil war raged in the Southeast as the Turkish army tried to eradicate the PKK guerrillas. On 19 July 1987, the OHAL legislation was invoked and a state of emergency declared in relation to the majority of the Kurdish provinces, including Bingöl, Diyarbakır, Hakkari, Bitlis, Mardin, Siirt, Tunceli, Van, Sırnak and Batman. The state of emergency was characterised by an oppressive military presence, regular checkpoints, curfews and lack of recourse to the courts. The legislation conferred widespread powers to suppress the Kurdish culture by limiting freedom of expression, confiscating the means of producing the mass media and providing a host of measures with which to punish the perpetrators. Three branches of the Mesopotamian Cultural Centre in the Southeast were closed down under OHAL legislation and hundreds of legal cases brought against their staff.³⁷ Between 1993 and 1998 the Governor of Diyarbakır banned a list of two hundred and fifty music cassettes within his jurisdiction using powers conferred by the state of emergency law.³⁸ Furthermore, his list was not made public, encouraging broad self-censorship. OHAL also provided an environment in which peaceful manifestations of Kurdish culture could easily be persecuted using such extra-judicial measures as torture, disappearances and extra-judicial killings.

Ünsal Öztürk, the owner of Yurt Kitap Yayın Publishing House in Ankara, has been repeatedly imprisoned since 1988 for publishing books written by Dr. İsmail Beşikçi. His publishing house has been raided repeatedly, and books have been ripped from the printing presses and “dumped like rubbish to be thrown away.”³⁹ Of the eighty-five books he had published by 1998, forty-one had been confiscated by the State. Öztürk was charged with sixty-three offences in relation to one batch of Beşikçi’s books on the grounds that he agreed with the allegedly anti-Turkish arguments expressed in Beşikçi’s books. Indeed, Öztürk made no secret of this: during one court hearing he declared that he stood by every one of Beşikçi’s books, that he was committed to publishing them and

that he saw the reality of the Kurds and believed their situation should be open for discussion. On this occasion exorbitant fines were imposed which he could not afford to pay, and consequently he was imprisoned.

The civil war waged under the auspices of OHAL was a major factor in the EU's rejection of Turkey's first application for membership in 1989. Popular uprisings, demonstrations as well as fierce resistance by the PKK also forced Turkey to reconsider the Kurdish issue. As a result, it eased some restrictions on the expression of Kurdish culture. In 1991, and in spite of stiff opposition within the Grand National Assembly, Prime Minister Turgut Özal succeeded in abolishing the Law Regarding Publications in Languages Other than Turkish of 1985 which had banned the use of written and spoken Kurdish.⁴⁰ Kurdish intellectuals, journalists and writers rallied around their publishing houses in order to exploit what appeared to be the lifting of the seventy year old ban on their language. A draft bill was formulated which asserted that Turkish is the sole official language of the country but that other languages and dialects could be used in private speech and in folk music.⁴¹ However, this was never passed and the exact effect of the annulment was never clarified. Consequently there remained an area in which the repression of Kurdish expression could be pursued.

Furthermore, this reform was accompanied by the enactment of new laws that increased repression of Kurdish language and culture yet more. In April 1991 Özal was responsible for the passage of the Anti-Terror Law in replacement of Articles 141, 142 and 163 of the Turkish Penal Code.⁴² Although apparently devised as a means of quelling the activities of the PKK it created unprecedented scope for the persecution of any expression of Kurdish identity by providing an extremely broad definition of terrorism:

Terrorism is any kind of action conducted by one or several persons belonging to an organisation with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State, with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State,

eliminating fundamental rights or freedoms, or damaging the internal and external security of the State, public order or general health by any one method of pressure, force and violence, terrorisation, intimidation, oppression or threat.

Using the classic Kemalist interpretation of the Kurds as a separatist threat, this definition was initially designed and subsequently invoked to classify any peaceful expression of Kurdish identity as terrorism. The requisite aim was imputed to any expression of pro-Kurdish views, the word Kurd, any aspect of the Kurdish culture and use of the Kurdish language which were accordingly deemed to be acts of terror. Articles 7 and 8 formed the basis of indictments.

Paragraph 1 of Article 7 provided for the punishment of the founders, organisers or directors' of activities or organisations which are deemed to fall within the wide scope of Article 1. The rest of the Article provides for the punishment of those who are assisting such organisations or members of an organisation. The dissemination of propaganda in relation to such organisations would attract a sentence of one to five years imprisonment as well as a heavy fine, even if the acts constituted another offence. Punishment was doubled in relation to activities carried out in "buildings belonging to associations, foundations, political parties, companies, trade unions and professional organisations and their branches, or in bars or offices or their annexes, or in educational institutions or hostels." Those associations, foundations, trade unions and the like determined to be supporting terrorism would have their activities halted, be shut down and have their assets confiscated. If the offence of propaganda referred to in the preceding paragraph was committed by means of periodicals, as defined in Article 3 of the Press Law No. 5680, the owners of such periodicals shall also be punished by a fine.

Article 8 was perhaps the most notorious piece of anti-Kurdish legislation in the Turkish legal system. Paragraph 1 provided that, "No one shall, *by any means* or with *any intention or idea*, make oral or written propaganda or hold assemblies, demonstrations or manifestations against the indivisible integrity of the State of the Turkish Republic, its territories and the nation." Those carrying out such activity would be sentenced to imprisonment of between two and five years and a heavy fine. Recidivists could only be punished by

imprisonment.

Paragraph 2 provided that in relation to the offence of disseminating propaganda via periodicals, as defined in Article 3 of Press Law No. 5680, the owners of such periodicals would be punished by a heavy fine. Responsible editors of these periodicals would be sentenced to imprisonment of between six months and two years and to half of that fine. This provision was intended to put such periodicals under extreme economic pressure which would, eventually, force them to close.

Twenty-three books by Dr. İsmail Beşikçi were banned under Article 8 due to their discussion of Turkey's treatment of its Kurdish population. In one of these books, *The Huge Plane Tree*, Dr. Beşikçi discussed the murder of the Kurdish playwright Musa Anter, who was murdered at the age of eighty by a Turkish Death Squad in September 1992: the court alleged that this discussion constituted separatist propaganda.

Secondary legislation banned increasingly trivial expressions of Kurdish culture. A Decree issued by the Minister of the Interior in May 1991 prohibited the juxtaposition - in any context - of the colours red, yellow and green, the colours of the Kurdish tricolour flag.⁴³ Authorities have invoked this Decree to have window displays be removed, flower beds be dug up and, perhaps most ludicrously of all, the traffic lights in Batman to be changed to red, yellow and blue.

Özgür Gündem

Undeterred by the enactment of the Anti-Terror Law, Yaşar Kaya established the newspaper *Özgür Gündem* (meaning 'Free Agenda') in Istanbul on 31 May 1992. It was a left-wing daily paper sympathetic to Kurdish claims and was published in Turkish. The staff working in the Istanbul headquarters and in regional offices were predominantly Kurds. Unlike other Turkish newspapers it published accounts which differed from the official version promulgated by the Turkish state. In particular it investigated human rights abuses perpetrated during the conflict in the Southeast of Turkey. Accordingly it became an

invaluable source of information for local, regional and international human rights organisations.

This agenda immediately attracted the attention of the Turkish authorities and it was placed under the close scrutiny of the National Security Council. On 2 October 1992 an indictment was filed against the paper under Articles 7 and 8 of the Anti-Terror Law and Supplementary Article 2 of the Press Law, due to an article, entitled *From the Dialogue of Arms to Political Dialogue*, which had been published on 24 September. Although this case was not concluded until December 1993 the paper only survived until 15 January 1993. Kaya and his staff were indicted under the Turkish Penal Code, the Anti-Terror Law and the Press Law resulting in the confiscation of thirty-nine issues of the paper and the imposition of heavy fines intended to bankrupt the paper. Correspondents were detained in police custody fifty-five times, and their homes were ransacked by police who confiscated recording equipment. Parallel to this judicial persecution was a shocking campaign of state sponsored violence and extra judicial killing against those involved with the paper: four writers and correspondents of the paper were assassinated and three correspondents were tortured in detention. Four distributors and newsagents were murdered and a further three were seriously wounded in attempt made on their lives. Arson was also used to endanger lives and destroy property.

When it was forced to close, *Özgür Gündem* was succeeded by the weekly paper *Özgür Ülke* (meaning 'Free Country') which was to all intents and purposes the same paper operating under a new name. This paper was immediately subjected to the same relentless legalised persecution with the same result. Its successors have been subjected to unrestrained punitive treatment, both judicial and extra-legal. Those who distribute or purchase *Özgür Gündem* continued to be subjected to intimidation, threats and physical abuse, often by plain clothed policemen. These attacks occur with such frequency that they are known to the Kurds as "normal attacks". From 1992 to 1993 thirteen writers, twelve distributors and a number of other staff were murdered: one such victim was Adnan Isık, a distributor of the newspaper who was murdered in Van on 28 November 1993. On 3 December 1994 bombs exploded simultaneously in three of the papers offices in Istanbul and Ankara: the four-storey headquarters in Istanbul were destroyed and Ersin Yıldız, a member of staff, was killed.

To this day new incarnations in the 'Özgür Gündem' chain open in the wake of those which have succumbed to the state's judicial and extra-judicial persecution. Two hundred and fifteen official criminal proceedings have been initiated against these papers to date, and at the time of writing a number of lawsuits were pending without official notification.⁴⁴

The Turkish Government has attempted to prevent displays of Kurdish culture beyond its borders. The Turkish Embassy in Washington DC had protested against an exhibition of photographs of Kurdistan held in the Cathedral of St. John the Divine in New York in 1988.⁴⁵ The Turkish Government even attempted to ensure the implementation of this policy in relation to its Kurdish citizens who had moved abroad, often as refugees and exiles from its own abusive treatment. In 1988 that the Turkish Embassy in Germany asked the Government to prevent Turkish Kurds from registering their children under Kurdish names.⁴⁶ At home, the Ministry for the Interior issued Decrees banning the registration of children with Kurdish names on 15 October 1986, 7 August 1990 and 30 March 1992.⁴⁷

Turkey was however keen to convince the EU of its commitment to the pursuit of candidacy and the Kurds successfully took advantage of this agenda in several cases. The Mesopotamian Cultural Centre was opened in Istanbul in 1991. As its name suggests, it covers a variety of cultures, but Kurdish is its main focus. It organises both traditional and contemporary cultural and artistic events and activities involving theatre, cinema, music, dance, art, photography and folklore. It also produces Kurdish language publications, music cassettes and CDs. The Kurdish Institute in Istanbul was also established a year later by Kurdish and Turkish intellectuals with the aims of facilitating research into Kurdish language, culture and literature and was allowed to open despite the fact that its aims blatantly contravened the broad restrictions set out in Article 5 of the Law on Associations. It is a highly respected institution which is often invited to official state functions. The Kurdish material that it publishes, including the first comprehensive Turkish-Kurdish dictionary, are not banned.

While the mass media continued to face severe oppression, other forms of expression seemed to benefit from increased tolerance. In 1991 Ümit Elçi, a

Turkish director of Kurdish decent, filmed the seventeenth-century Kurdish literary epic *Mem u Zin*. The story of two tragically separated lovers, it is seen an allegory of the tragic fate of the Kurds who have also been separated and denied. Although Ümit Elçi made the film in Turkish it was subsequently dubbed into Kurdish.

This remarkable tactical tolerance was not uniform. In 1992 Edip Polat, a Kurdish biologist, published a book entitled *The Kurds and Kurdistan in the Language of Science*. In this work, he challenged institutional insistence upon the use of Turkish as the sole language of botanical taxonomy and denoted flora and fauna found in the Kurdish region by adding the adjective “kurdicum” to their Latin names. Polat was charged in three consecutive indictments under Article 8 of the Anti Terror Law for the offence of creating propaganda against the integrity of the state. The first two prosecutions failed in the face of his defence that the book was of a purely scientific nature but the third attempt resulted in a prison sentence of one year as well as a heavy fine.⁴⁸

There were more violent examples of Turkey’s ongoing refusal to acknowledge Kurdish cultural identity. Turkish security forces reacted brutally to peaceful demonstrations organised as part of Newroz in 1991, killing hundreds of civilians. The following year, the Kurdish Newroz celebrations were again met with violence: an estimated 100 people were killed, over 2000 were arrested and hundreds more were wounded. Members of the European Common Market condemned the killing of Kurdish civilians by the Turkish state. The German Government in particular condemned the Turkish Government for using German-supplied equipment against civilians. However, these condemnations did not deter the Turkish Government from continuing to wage civil war against the PKK under the auspices of OHAL.

From the time of Turkey’s first radio station transmission in 1927 until 1993, the state held a legal monopoly on broadcasting, in the form of the state-owned TRT. The National Security Council reaffirmed this monopoly in the Law on Radio and Television of 1983.⁴⁹ Amendment of Article 133 of the Constitution on 10 July 1993 removed the obstacles for private broadcasters. The Kurds would not however be able to benefit from this liberalisation due to provisions limiting Kurdish expression within the Constitution, the Anti Terror Law and

the Turkish Penal Code. In 1994 the Turkish Grand National Assembly created the Supreme Board of Broadcasting to regulate all private broadcasters.

This law specifically, but as usual non-explicitly, banned the use of Kurdish in the broadcast media by passing the Law on the Establishment and Broadcasting of Radio Stations and Television Channels⁵⁰ (the RTÜK Law). This created an official supervisory committee, the Supreme Board of Broadcasting (the RTÜK) to regulate radio and television stations and their broadcasts. Its remit includes the power to issue and revoke licences and to formulate sanctions for violation of the substantive provisions of this Law.⁵¹ It regulates broadcasters in accordance with the constitutional provisions protecting territorial integrity and Turkish cultural identity as reiterated in the Broadcasting Standards enumerated in Article 4. Kurdish stations opened in defiance of this clear deterrent and played video clips of Kurdish songs and street interviews with Kurdish speakers in spite of inevitable suspensions and fines.

While Turkey attempted to prohibit Kurdish broadcasting within its borders, a group of Kurds in Europe was approaching television regulators with the proposal for a Kurdish language satellite station. On 14 October 1994 the Independent Television Commission in London licensed MED-TV to provide a satellite television service from the UK for a period of ten years, and the station began broadcasting on 15 May 1995. The controllers of the station issued a statement proclaiming that,

For the first time in history, the Kurdish people can now see their own lives, their own reality, reflected on television screens across the world. MED-TV hopes to assist in the regeneration of the Kurdish language and the identity of this dispossessed nation whilst informing the Kurdish public of the world, national and international events.⁵²

It was owned by private investors including the Kurdish business sector in Europe and the Kurdish Foundation Trust, which provides funding in pursuit of these aims:

To assist in the development of the cultural identity of the

Kurdish people and the Kurdish language throughout the world; to establish, promote and maintain media facilities and resources to educate and inform the Kurdish people; and to work for the relief of poverty and suffering amongst the Kurdish people.⁵³

Programming for children was an important section of the daily schedule. This included educational features such as *Good Day, Teacher*, which began with the admonition to “read, write and speak in Kurdish.” This programme essentially provided the classroom Kurdish language lessons which was not available to Kurds within Turkey. Cultural programming was also an important part of the schedule. This included traditional and contemporary theatre, poetry reading and music. It also featured biographies of Kurdish artists and historical figures and programmes about Kurdish life in the Kurdish regions and in Europe. It also brought classic literature of other countries to the Kurds in their own language for the first time. In order to reach Kurds in different countries, including those who had been subjected to linguistic assimilation, it broadcast in Turkish, Kurmanji, Assyrian, Chaldeans, Arabic, English, Lori, Zazaki and Sorani. Live studio debate which elicited viewer participation via telephone as well as features where viewers’ letters were read out welcomed mother-tongue communication.

The effect in Turkey, and in the Kurdish regions of other countries, was striking. Kurds in the western cities, who had been expelled from their homes under policies of displacement, transformed homes with a satellite dish into community cinemas. In the Southeast, cafes as well as private homes installed satellite dishes. Shows were recorded and circulated on video amongst those who could not afford receiving equipment.

On 24 December 1994 Turkish Daily News reported that, “the outlawed PKK has now become involved in the field of visual communication, through television which can reach thousands or even millions of spectators.”⁵⁴ The head of the RTÜK said that the matter would be referred to the relevant authorities: this comment appeared unusual as the RTÜK is the authority, but simply confirms that the National Security Council would determine the course of action. Med TV has maintained that the PKK has been one of a few parties to respond to invitations from the channel to air its views in front of the camera; such

invitations have also been extended to the Turkish Government, and have been refused.

Together with the journalists, broadcasters, owners and contributors to the channel, those suspected of receiving the transmissions were harassed with judicial and extra-judicial measures. The police and army were used to enforce a ban on receiving equipment. Retailers were raided, had their stock confiscated and were warned to stop supplying eager Kurdish customers. The owners of coffee houses were also threatened and warned not to buy dishes.

Turkey exerted extreme diplomatic pressure upon Britain and ultimately, the ITC revoked the license. On 30 July 1999 the station resumed broadcasting from Paris and Belgium under the new name Medya TV. Turkey succeeded in convincing the Belgian Government that the station was an instrument of terrorism. On 13 February 2004 the French Appeal Court confirmed the decision of the French Licensing Authority (the CSA) to revoke the license on the grounds that it was the successor organisation to Med TV which had been the instrument of a terrorist organisation. A new channel, Roj TV, began broadcasting on 1 March 2004.

Reforms made in pursuit of accession to the European Union

Relations between Turkey and the European Union continued to progress, on the basis of the Ankara Agreement of 1963. The European Parliament made human rights in Turkey its most widely publicised agenda item during its 1995 - 1996 session. It provided the impetus for the package of seventeen amendments made in the 1982 Constitution enacted in July 1995. On 1 January 1996, the Customs Union between the European Union and Turkey came into effect, thereby creating the closest economic and political relationship between the EU and any non-member country. At a meeting with European leaders in November 1996, Prime Minister Tansu Çiller proclaimed that Turkey would be a 'bridge of peace' within the framework of Europe. She claimed that Turkey would provide Europe with an example of different cultures co-existing together, and as such would act as a guarantor of a Europe in which "cultures do not clash and everyone lives under the umbrella of

cohabitation and human rights.”⁵⁵ Nonetheless Turkey was not included in the list of potential candidates for EU membership announced at the 1997 European Council summit in Luxembourg. Finally the EU recognised Turkey as a potential candidate for membership within the Union at the Helsinki Summit of December 1999.

In Section VIII the present status of the cultural and linguistic rights of the Kurds will be considered in relation to reforms made by Turkey in pursuit of EU accession. It is however necessary to introduce at this stage the relevant legal reforms themselves as well as the political and legal commitments that underpin them. This summary will be accompanied by a review of the authoritative EU pronouncements on the effect of Turkey’s reforms on the cultural and linguistic rights of the Kurds.

Overview of the EU accession period – 1999 to 2004

All States wishing to accede to the EU must fulfil fundamental political and economic specifications which are essential for their effective integration within the Union. The EU increasingly emphasises the need for candidate states to adopt international norms concerning minority protection. Accordingly the political criteria for accession, formulated by the European Council in Copenhagen in June 1993, stipulate that candidate countries must have achieved “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.” The Commission monitors Turkey’s fulfilment of the economic and political criteria for accession and submits annual ‘Regular Reports on Turkey’s Progress Towards Accession’ to the Council: these reports provide the basis for the Council to take decisions on the conduct of the negotiations.⁵⁶ In the section entitled ‘Human Rights and the Protection of Minorities’, these Reports explicitly criticise Turkey’s failure to fulfil the political criteria in relation to its Kurdish population. All six Regular Reports issued by the Commission to date strongly assert that Turkey’s law and policy must be reformed in relation to cultural and linguistic rights of the Kurds as a means of achieving stability in the country and meeting EU standards. In this respect it repeatedly remarks that Turkey still refuses to sign the Council of Europe Framework Convention on National Minorities

and to recognise all of its minorities rather than only those protected by the Treaty of Lausanne 1923.

The Commission's first Regular Report, issued in 1998, stated that a non-military solution to Turkey's southeast should include recognition of Kurdish cultural identity and greater tolerance of the expression of that identity. In its 1999 Regular Report⁵⁷ the Commission quoted with approval a passage, concerning Turkish citizens of Kurdish origin, from a report issued in January 1999 by the Council of Europe Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe:

"... the essential point is that any such group should have the opportunity and material resources to use and sustain its natural and cultural traditions in circumstances and under conditions now clearly and reasonably defined by two important Council of Europe Conventions: the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, as well as by Assembly Recommendation 1201 (1993) on an Additional Protocol on the Rights of National Minorities to the European Convention of Human Rights."

Turkey signed the ICCPR and ICESCR on 15 August 2000 but made no attempt to begin the process of reforming domestic law in accordance with the demands of the Copenhagen criteria. In its 2000 Regular Report⁵⁸ the Commission commented that the situation had not improved for those belonging to minority groups outside the scope of the Treaty of Lausanne 1923 particularly in the areas of broadcasting and teaching. Noting that in domestic legislation no language other than Turkish can be used for the purposes of broadcasting and teaching, the Commission stated that neither legislation nor practice should prevent the enjoyment of cultural rights for all Turks, irrespective of their ethnic origin. It continued,

"Regardless of whether or not Turkey is willing to consider any ethnic groups with a cultural identity and common traditions as 'national minorities', members of such groups are clearly still largely denied certain basic rights. Cultural rights for all Turks,

irrespective of their ethnic origin, such as the right to broadcast in their mother-tongue, to learn their mother-tongue or to receive instruction in their mother-tongue, are not guaranteed... In addition, these citizens are not given opportunities to express their views on such issues.

In the case of Turkish citizens of Kurdish origin, it should be mentioned that the expression of pro-Kurdish views is still vigorously fought by the Turkish State... Since the last Regular Report, several newspapers and magazines have been forbidden and certain pro-Kurdish associations have been closed in the region under emergency rule.

The question of cultural rights is of particular importance for the improvement of the situation in the Southeast, especially as the security situation there has largely improved and as Turkey is embarking on a socio-economic development programme in the region."

Despite these formidable criticisms, the EU continued to facilitate Turkey's progress towards accession: crucially, both key documents in Turkey's pre-accession strategy contained clear stipulations regarding cultural and linguistic rights. The European Commission Accession Partnership Document for Turkey was approved on 4 December 2000. This emphasised the need for Turkey not only to adopt but to implement extensive political reforms, including constitutional guarantees of the rights to freedom of expression, assembly, religion and the cultural rights of all citizens. The Document recognises both short and medium-term priorities for legislative reforms pursuant to the fulfilment of the political criteria. The short-term priorities included strengthening legal and constitutional guarantees of the right to freedom of expression; strengthening legal and constitutional guarantees of the right to freedom of association and peaceful assembly; encouraging the development of civil society; and removing any legal provisions which forbid the use by Turkish citizens of their mother-tongue in television and radio broadcasting: although the Kurds are subsumed under general discussions of minorities rather than being named explicitly, the latter priority in particular affirms that Turkey's

viability as a candidate for accession depends upon its accommodation of the cultural and linguistic rights of its Kurdish population.

The medium-term priorities included guaranteeing full enjoyment by all individuals of all human rights and fundamental freedoms without any discrimination and irrespective of, *inter alia*, language; ratifying the International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol and the International Convention on Economic, Social and Cultural Rights (ICESCR); *ensuring cultural diversity and guaranteeing cultural rights for all citizens irrespective of their origin*, and abolishing any legal provisions, including in the field of education, which prevent the enjoyment of these rights.

After the approval of the Commission's Accession Partnership for Turkey, the Turkish government announced its National Programme for the Adoption of the *Acquis* on 19 March 2001. This document established the roadmap for Turkey's route to accession in relation to fundamental accession criteria regarding democratisation, human rights, liberal economic policies and common market policies.⁵⁹ In it, Turkey pledged to take measures for the effective implementation of reforms that would harmonise Turkish law with the universal norms manifest in the EU *Acquis* and the practices in EU Member States, *particularly* in the area of democracy and human rights. In pursuit of this it anticipated the adoption or reform of almost 200 pieces of legislation and declared that it would accede to all relevant international instruments. Regarding the Copenhagen political criteria, it stated that priority would be given to constitutional amendments as these would establish the framework for reform of specific pieces of primary legislation. In the section entitled Cultural Life and Individual Freedoms, Turkey made the fundamental reservation that has intentionally undermined the effective formulation and implementation of legal reforms in this area:

"The official language and the formal education language of the Republic of Turkey is Turkish. This, however, does not prohibit the free use of different languages, dialects and tongues by Turkish citizens in their daily lives. This freedom may not be abused for the purposes of separatism and division."

Despite the reservation this statement aroused great opposition within the Grand National Assembly. The right-wing political party the Nationalist Movement Party (the MHP) rejected EU demand for language rights for the Kurds and instead demanded a stronger role for the Turkish language within the country. In August Müjdat Kayayerli of the MHP told the Turkish daily newspaper *Cumhuriyet* that EU demands in this area would split Turkey with a "cultural divide." According to the paper the MHP were preparing a law proposal which would increase Turkish lessons in Kurdish regions and other regions inhabited by minorities. Furthermore, Turkish in daily life is to be reinforced, amongst other things by the Turkification of street names.⁶⁰ It was in this atmosphere that the Grand National Assembly began debating a set of 37 constitutional amendments on September 17. Just over two weeks later - on the eve of the EU's annual assessments of prospects for membership of applicants - it passed 34 of the proposals by a landslide of 474 votes to 16. The general theme was set by the amendments to Articles 13 and 14. Article 13 has previously provided that,

Fundamental rights and freedoms may be restricted by law, in conformity with the letter and spirit of the Constitution, with *the aims of safeguarding the indivisible integrity of the State with its territory and nation, national sovereignty, the Republic, national security, public order, general peace, the public interest, public morals and public health*, and also for specific reasons set for in the relevant Articles.

Since amendment it now reads,

Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant Articles of the Constitution without infringing upon their essence. These Articles shall not be in conflict with the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular republic and the principles of proportionality.

Since "*the relevant Articles of the Constitution*" protect all the same aims which

were cited in the original version, this amendment does not constitute real reform. Similarly, Article 14 originally read,

None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the State with its territory and nation, of endangering the existence of the Turkish State and Republic, of destroying fundamental rights and freedoms, of placing the Government of the state under the control of an individual or a group of people, or establishing the hegemony of one social class over others, or creating discrimination on the basis of language, race, religion or sect, or of establishing by any other means a system of government based on these concepts or ideas.

The amended version reads,

None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the State with its territory and nation, and endangering the existence of the secular order of the Turkish Republic based upon human rights.

Not only do the permissible restrictions on the rights and freedoms guaranteed by the Constitution remain extremely broad but the amendments reiterate principles which have been used to justify discriminatory restriction of the rights as exercised by the Kurds.

In a speech to the Parliamentary Assembly on 24 October, Gunther Verheugen stated that "the actual human rights situation as it affects individuals has not improved."⁶¹ The following month, the Commission's 2001 Regular Report⁶² concurred with Verheugen's criticism, stating that there had been no improvement in the ability of members of ethnic groups with a cultural identity and common traditions to express their linguistic and cultural identity. It emphasised that, in spite of the Constitutional reforms, changes in the existing restrictive legislation and practices would be needed to provide *effective* protection against interference with the right to communicate in languages

other than Turkish. In relation to minority protection the Commission stated once again that the actual situation has not improved for persons belonging to groups outside the scope of the 1923 Lausanne Treaty to express their cultural and linguistic identity, notably in relation to education and broadcasting. It also noted that the Constitutional reforms had included no amendment to Article 42 in order to provide for education in languages other than Turkish.

In early 2002 Turkey finally began to make the legal reforms required by the political criteria by passing two Laws which purported to harmonise domestic law with EU standards. The first 'Harmonisation Package' was enacted on 1 February 2002 with the second following a month later. Amendments to provisions within the Turkish Penal Code and the Anti-Terror Law which criminalise expression of Kurdish identity were hedged with qualifications, and did not represent genuine reform. In May, a new Press Law was passed which introduced new restrictions on freedom of expression. These highly qualified reforms made it difficult to believe in Turkey's commitment to the fulfilling the Copenhagen criteria in good faith. The Turkish population too was also divided in relation to the required reforms. A survey published in the newspaper *Sabah* on 23 May 2002 revealed that only 32.4 per cent supported Turkey's accession to the EU. Of these, 49.8 per cent believed that accession should be accomplished without making any concessions: 39.4 per cent believed that the Kurdish language should remain banned within the education system, while 50.1 per cent wanted to retain the ban on broadcasting in the Kurdish language.⁶³ Turkey finally addressed the EU's key issues of minority language teaching and broadcasting in the Third Harmonisation Package, enacted in August 2002, within limited provisions which have proved almost impossible to implement.

The state of emergency which existed in relation to the Kurdish provinces since 1987 was lifted in relation to seven provinces in June and finally in relation to the last two provinces of Diyarbakır and Şırnak in November 2002. The emergency rule had been extended on more than forty occasions, making it the longest period of extraordinary rule in Turkish history. Much of the infrastructure of emergency rule remained in place and the Governors have been unwilling to relinquish their extensive control over the everyday lives of the inhabitants of these provinces. The psychological impact of "the sense of

oppression and also of unchecked power”⁶⁴ created by the State of Emergency will be slow to fade.

In January 2003 Turkey permitted the OSCE High Commissioner on National Minorities of the OSCE to visit the country for the first time with the aim of establishing dialogue concerning the country’s national minorities. It also enacted four further Harmonisation Packages. In its 2003 Regular Report the Commission noted that no dialogue had followed the High Commissioner’s visit. Turkey ratified the ICCPR and ICESCR on 23 December 2003, three years after signing the instruments. Upon doing so it deposited reservations in relation to Articles which specifically provided protection to minorities.

On 20 May 2003 the European Parliamentary Commission on Foreign Affairs, Human Rights, Common Security and Defence Policy presented its Report on Turkey’s application for membership of the European Union.⁶⁵ This made repeated demands in relation to the rights of the Kurdish population. In particular it highlighted the detrimental effects upon Turkey’s accession process of the country’s continuing refusal to accommodate cultural and linguistic rights. It stressed that the changes required were so fundamental that Turkey must totally receive the identity of the Turkish state by creating a new Constitution which respects “the rights of *all* individuals *and of minorities* balanced against their collective rights in accordance with customary European standards” (paragraph 11). The Committee voiced sharp criticism over the effects of Turkey’s defensive attitude to the alliance between the Iraqi Kurds and the USA. It noted that the fact that there were Kurds “living in different countries including Turkey must not prevent Turkey from finding a more relaxed and constructive relationship with its own citizens of Kurdish origin...”(paragraph 32). It called on Turkey to ensure diversity and guarantee cultural rights for all citizens irrespective of their origin, including effective access to private broadcast media, and to provide “education in Kurdish and other non-Turkish languages through implementation of existing measures and the removal of remaining restrictions”(paragraph 34). With regard to Turkey’s external relations, the Committee *demand*ed “cooperation with its neighbours Iran, Syria and Iraq in order to respect and safeguard the borders while enabling their respective citizens of Kurdish origin to develop their human, cultural and economic relations” (paragraph 49).

Originally Turkish language policy had the dual role of homogenising peoples from diverse ethnic, linguistic and religious backgrounds and of creating a modern, secular society. These goals have however become entrenched as essential to the very identity of the Turkish state. The fact that discussion of language policy, necessarily in the context of the country's minorities, extends to the very founding principles of the Republic has had disastrous consequences for the Kurds. Now this issue is at the heart of political reforms which must be implemented by Turkey if its quest for accession to the EU is to be successful. In December 2004 the twenty-five Member States of the EU will decide whether Turkey has met these political and economic criteria for membership. Turkey's treatment of the cultural and linguistic rights of the Kurds will be judged on this date.

2.2 Iraq -1920 to 2003

The three former Ottoman provinces of Mosul, Baghdad and Basra were occupied by the British after the collapse of the Empire. In 1919 Sheik Mahmoud Barzani, the prominent Kurdish nationalist leader, took over the area around Suleimaniya and was popularly proclaimed King of an independent Kurdish state in the predominantly Kurdish vilayet of Mosul. The British understood that the Kurds would not readily relinquish their aspirations of nationhood by accepting assimilation into the new Arab state, and indeed tolerated the Sheik Mahmoud's state for five years. Accordingly, the Allies agreed in Article 64 of the Treaty of Sèvres to recognise the aspirations of these Kurdish aspirations to join the Kurdish state envisaged in Article 62 by providing that,

... no objection will be raised by the Principal Allied Powers should the Kurds inhabiting that part of Kurdistan which has hitherto been included in the vilayet of Mosul seek voluntary adhesion to such an independent Kurdish State.

During this period, Kurdish intellectuals in Sheik Mahmoud's state established schools and published a range of newspapers including *Umed-i Istiqlal* ('Hope for Independence'), *Roji Kurdistan* ('Kurdistan Appeal') and *Bang-i Heq* ('Appeal

for Justice'). The British too published a Kurdish language newspaper, *Tegeyishtini Rasti* ('The Comprehension of Truth') and *Peshkawtin* ('Progress') and two British officials in particular, Major Soane and Major Noel, took it upon themselves to make substantial contributions to the cultivation of the Kurdish language. Soane's efforts were particularly notable, and included the production of a textbook in the Kurdish language and a Kurdish grammar book. He even hosted a competition in which he elicited Kurdish articles, the best of which would be published in *Peshkawtin* and awarded a monetary prize.⁶⁶

The new state of Iraq was officially created from these three vilayets when the League of Nations designated it a Class A Mandate of Britain at the Versailles Peace Conference in 1920. The mandate system was established by the Principle Allied and Associated Powers in conjunction with the League under Article 22 of the League's Covenant. According to the International Court of Justice, "The Mandate was created, in the interest of the inhabitants of the territory, and of humanity in general, as an international institution with an international object – a sacred trust of civilisation."⁶⁷ As such, Britain was responsible for fulfilling the aims of the mandate system, which included ensuring the well-being and development of the peoples in the territory and securing guarantees from the authorities regarding performance of international obligations.

The Kurds resisted amalgamation within the new state. In 1921 the British held a referendum seeking to gain approval for their appointment of the deposed Syrian King Faisal as King of Iraq. The Kurdish majority in the city of Kirkuk voted against him, while those in the Kurdish heartland city of Suleimaniya boycotted the referendum entirely. Britain did recognise the Kurds as a people with legitimate claims to some degree of autonomy within Iraq but continued to endure increasingly fierce Kurdish opposition. In 1922 Shiek Barzani led a second armed revolt against the British in Suleimaniya. This time the rebellion was crushed, the Sheik was exiled to India and the Kurdish state was placed under the firm control of the Government.

In December 1925 the League approved the attachment of Mosul to the State of Iraq on two conditions: one was that the British Mandate should last another twenty-five years; the other was that:

“Regard must be paid to the desires expressed by the Kurds that officials, of the Kurdish race should be appointed for the administration of their country, the dispensation of justice, and teaching in the schools, and that Kurdish should be the official language of all these services.”⁶⁸

Accordingly the Local Languages Law was passed in 1926, allowing the Kurds of Arbil and Suleimaniya to use their own language in the education system at primary school level, and also for the printing of books. The Kurds responded by establishing cultural societies in which their identity was cultivated and promoted. These proliferated in 1926 and 1927, when they began to adopt increasingly political agendas. The British targeted the societies in organised police operations, and by the end of 1927 all had been closed.

The Iraqi authorities too opposed the Kurds' attempts to develop their culture. Kurdish scholars, in particular Colonel Tofiq Wahby, modified the Arab-Persian alphabet with the addition of diacritics in order to accommodate distinctly Kurdish phonemes. The Ministry of Culture refused to recognise this, stating that no “foreign accents” could be placed upon “holy Arabic letters” as these were the script in which the Qur'an was written.⁶⁹ It was not until the Hashemite monarchy was overthrown in 1958 that the Iraqi state accepted this script: until then, its school books and press had continued to be published in Arabic, while the Kurds had been using the adapted version.

Britain granted Iraq independence earlier than envisaged, by the Anglo-Iraq Treaty of 1930. The Kurds rebelled in protest at the failure of both the British and the Iraqis to fulfil the League's recommendations of 1925. Their continuing resistance succeeded in convincing the League of Nations' permanent mandate Commission that the termination of Britain's mandate must be made subject to a commitment by the new leadership to accommodate its Kurdish population.

Iraq joined the international community as an independent state in October 1932 on the basis of the Declaration it made on 30 May 1932. As well as guarantees of equality and non-discrimination, this document included special provisions which sought to accommodate the Kurds' distinct identity. There

were to be no restrictions on the use of any particular language in private, commerce, religion, press and all public offices and meetings. In particular, the declaration provided that Kurdish would be the official language, along with Arabic, in Mosul, Kirkuk, Arbil and Suleimaniya. Linguistic, religious and ethnic minorities were permitted to establish organisations such as schools and education institutes in which they could teach their own language. Areas in which such a minority constituted a substantial portion of the population would benefit from provisions regarding teaching in the minority language as well as in the official language of Arabic. Such areas would also receive an equitable share of public funds for educational, religious and charitable purposes. A number of these guarantees were entrenched by Article 10 of the Declaration, which prohibited their amendment or abolition unless this was authorised by a majority vote from the members of the League of Nations.

World War II provided an impetus for the introduction of Kurdish language broadcasting, not as a concession to the Kurds but as a necessary means of spreading propaganda. The Iraqi Government established the first radio station in 1936 but it was not until 1939 that it included fifteen minutes of Kurdish language programming in its daily schedule.⁷⁰ The British initiated Kurdish language broadcasting at the beginning of World War II on their wartime station in al-Sharq al-Adna at Jaffa, and later in Baghdad.⁷¹ Generally, the length of Kurdish transmissions gradually increased throughout the war and after it ended, Radio Baghdad continued to operate a Kurdish Section and publish a monthly journal in Arabic and Kurdish called *Ere Beghdaye* (meaning 'This is Baghdad') for eight years.⁷² During this period, the Kurdish leader Mullah Mohammah Barzani had established the first Kurdish political party in Iraq, the Kurdish Democratic Party, and was leading an armed revolt against the Government.

At this time the Kurdish language was banned from the secondary schools of Iraqi Kurdistan. The eminent Kurdish linguist Jamal Nebez was at the time teaching maths and physics in two secondary schools in Kirkuk, but also assisted interested students to learn their mother-tongue. Measures were taken against him both within the disciplinary system of the schools and by the authorities, who removed him from his position and sent him into exile in the south eastern Arab town of Basra.⁷³ It was permissible to study the Kurdish

language at both the Universities of Baghdad and Suleimaniya, and later at the University of Hawler; but to make philological comparisons between Kurdish and Iranian languages was strictly prohibited under this and all successive leaderships.

In July 1958 General Abd al-Karim Qasim led a military coup and removed the weak Hashemite Monarchy which had been installed by the British. They founded the Republic of Iraq and provided the first official recognition of the Kurds as a distinct national group. Article 3 of the provisional Constitution adopted on 7 July 1958 proclaimed that Arabs and Kurds were "partners" in the state of Iraq; the flag of the Republic bore an Iraqi sword crossed with a Kurdish dagger. Qasim's leadership took a pragmatic approach to the Kurdish language and began to use the Kurdish version of the Arabic alphabet which had been used by the Kurdish press since it was devised by Colonel Wahby. The Government also permitted the teaching of the Kurdish language and, most significantly, allowed it to be used as the medium of instruction, in all educational institutions both in the Kurdish region and in the rest of Iraq.

However, the new Government also introduced censorship for the first time, and in doing so laid the foundations for increasingly suppressive control of the media which gradually escalated over successive decades. The Kurdish Section of Radio Baghdad became an important source of propaganda in the new state, its broadcasts reaching the Kurds of neighbouring countries as well as those in Iraq. Television was however still a new phenomenon: although in 1956 Iraq had become the first Arab Middle-Eastern state to introduce television broadcasting, this media did not become widespread for several years. Radio Baghdad countered broadcasts made by the clandestine radio station of the Kurdish autonomous movement of 1961-1975 by consistently increasing the airtime of Kurdish broadcasts.

Qasim held on to power until 8 February 1963, when his administration was overthrown by the Arab Ba'ath Socialist party, led by Ali Salih al-Saadi and Colonel Ahmad Hasan al-Bakr. Their coup was staged partly in response to Qasim's failure to regain power in the Kurdish regions in the north of the country, and also played a major role in the gradual decentralisation of power from the Government to the army. Although it made overtures to the Kurds

and promised to provide them with some kind of autonomy, the new regime launched a military offensive against them and implemented a policy of Arabisation in the oil-rich Kurdish area of Kirkuk. It did however make further concessions to the Kurds in the field of media and the first television stations outside Baghdad were established in the predominantly Kurdish towns of Kirkuk and Mosul in 1967 and 1968 respectively. Although all programmes were broadcast in Arabic, the Government issued a Decree on Cultural Rights of the Kurds on 9 March 1969 which pledged to “increase Kurdish programmes on Kirkuk television until a special Kurdish television station is established.” The Kurds themselves took this opportunity to become involved in the production of these programmes. The Kurdish playwright Fasal Jaf produced several plays for television, the most important of which was *Sorise Newroz* (meaning ‘Revolutionary Newroz’), and also made animations for TV Kirkuk. There were however numerous complaints that the commitment made by the Government under the Decree was not consistently honoured in practice.

During the 1960s, the Kurds themselves established many cultural associations including Komela tirpa Dersime (Dersim Cultural Association), Tipe huneriye Hewelere (Association of Hewler Artists), Komel u huner u wejeyi Kurdi (Association for Kurdish Literature, Art and Society) and Tipa sanoyen nuh (Youth Theatre Association). The Kurdish towns of Hewler and Suleymaniya in particular became centres of Kurdish culture, strongly resisting every Government attempt at cultural Arabisation. Intellectuals congregated there and the inhabitants supported the artistic community, with theatre proving particularly popular.⁷⁴

On 17 July 1968 the regime was overthrown by a hard-line Ba’ath party which introduced a new era of media control in order to establish a total monopoly over information. It attempted to seal Iraq off from outside influences and prevent information from reaching its people and within the country it imposed a harsh regime of censorship. It extended the traditional limited state monopoly over publishing to include all types of book, but private publishing was assisted in order to spread propaganda. The party’s ideology permeated all media, including the Kurdish language radio broadcasts which by this time covered a diverse selection of topics, including plays, stories, history, Kurdish grammar as well as specialised programs for children, women and farmers.

Programming was now totally under the control of the party, and accordingly even this variety did not represent a true concession to Kurdish culture.

Saddam Hussein, whose power had been growing for almost a decade, quickly emerged as the most important party official. He took power on 16 July 1969 and in doing so ushered in a new era for Iraq as well as the Kurds.

Legal recognition of Kurdish culture and language during the 1970s

The Provisional Constitution of 16 July 1970 enshrined recognition of the 'Kurdish people' as one of the major national groups in Iraq with distinct rights. Article 5(b) provided that the Iraqi people consisted of two main ethnic groups, namely Arabs and Kurds, and recognised "the ethnic rights of the Kurdish people, as well as the legitimate rights of all other minorities, within a framework of Iraqi unity." Article 7(b) guaranteed the official status of the Kurdish language and provided that all citizens were equal before the law without any discrimination on account of sex, race, language, social origin or religion. Article 26 guaranteed freedom of expression and publication "within the limits of the law," but the Ministry of Guidance ensured adherence to "the nationalist and progressive line of the revolution" by imposing a regime of strict censorship. Self-imposed censorship due to fear of repercussions was also an increasingly effective means of ensuring the total dominance of the Ba'ath ideology.

The Ba'ath party had been unable to defeat the Kurds despite renewed attempts under the new administration in 1968. Saddam Hussein pushed through the Autonomy Agreement with the Kurds, which was signed on 11 March 1970. On paper, it was politically, economically and culturally far-reaching. This agreement purported to recognise Kurdish national rights and the economic and cultural development of the Kurdish areas within a unified Iraq within provisions which the Government was obliged to implement over a period of four years.

The Agreement guaranteed cultural and linguistic freedom which would be secured through educational establishments and the public dissemination of

information and literature. Kurdish would be the official language, alongside Arabic, in areas with a majority Kurdish population. Kurdish would be taught in all schools and educational institutions, including the military and police colleges. Measures would also be taken to redress educational disadvantages such as the establishment of more schools and the provision of scholarships for Kurdish students. The Government would actively support the dissemination of Kurdish political, scientific and cultural literature – even that which was specifically “expressive of the national and nationalist ambitions of the Kurdish people.” Kurdish writers would be assisted in forming a federation, having their work published and developing their artistic and scientific talents. The Agreement provided for the founding of a Kurdish publishing and printing house and a Directorate General of Kurdish Culture, a weekly newspaper and monthly magazine, as well as a television station broadcasting exclusively in Kurdish. In addition, Kurds could set up their own student, youth, women’s and teacher’ organisations affiliated with Iraq counterparts.

A number of these obligations were fulfilled. The state established the Kurdish Cultural House later that year, which published *Roshinbiri No* (meaning ‘New Culture’), a Kurdish and Arabic language monthly magazine, as well as Kurdish language books. The weekly Baghdad based newspaper *Hawkari* (meaning ‘Co-operation’) was devoted to Kurdish culture and language. The state also established a Kurdish Academy for the development of the Kurdish language.

These developments were however viewed by the state as nominal gestures and many were not implemented, particularly in the case of television broadcasting. A year after the Autonomy Agreement the Union of Kurdish Teachers reported that Kurdish language broadcasts were regularly obstructed.⁷⁵ In 1972 there were complaints that no ostensible attempts had been made to establish a Kurdish station despite the regime’s expansion of the Arabic television network. In its absence, very few Kurdish language broadcasts were being made on Kirkuk Television.

The 1970 Agreement did however have positive effects for Kurdish culture regardless of the intentions of the Ba’ath party, due to the efforts of the Kurds themselves. A great number of Kurdish intellectuals rediscovered their Kurdish identity during this period. Until this point, many had been living

in other parts of Iraq and were thoroughly integrated into Arab discourse. There was also a remarkable proliferation of Kurdish teachers, professors, historians, journalists and scientists keen to participate in the state sponsored promotion of their culture. Hundreds of publications appeared in this fertile environment.⁷⁶

Progress towards political autonomy based upon the 1970 Agreement quickly foundered however. The Ba'ath party was not willing to adhere to its commitments. It refused to hold the census which would determine appropriate boundaries of the autonomous area because it intended to retain the oil fields surrounding the predominantly Kurdish town of Kirkuk. Generally the Kurds had no confidence in the Government's commitment to fulfilling its pledges. For its part, the Ba'ath party felt deeply threatened by the Kurds' relations with Iran.

In 1974 the Government promulgated the Law for Autonomy in the Area of Kurdistan⁷⁷ unilaterally. This document has never been accepted by the Kurds. It purported to establish an effectively self governing region but on terms far weaker than those demanded by the Kurds. It retained central control over the administration of justice, security and public order. In terms of cultural rights, it reiterated the status of Kurdish as the official language and the language of education alongside Arabic. All authorities in the area had to be Kurds or were at least to be fluent in the Kurdish language. Education and culture were among the areas of competence delegated to the Executive Council, the administrative body for the region.

The Government persisted in implementing the Autonomy Law despite its total rejection by the Kurds. The Cooperation House, a second publishing organ, was founded and took over the publishing of *Hawkari*, which it remodelled as the party's means of disseminating propaganda to the Kurds. In 1976 the Kurdish Cultural and Publishing House was established and the following year the General Secretariat for Culture and Youth in the Autonomous Area was formed. It published books in both Kurdish and Arabic for use in the region and also assisted in the private publication of others.⁷⁸ The Directorate General of Kurdish Studies held a monopoly over the publishing of school textbooks, but similarly it subsidised the production of other publications. According

to Neriman, 40.2 per cent of books published between 1920 and 1986 were produced with Governmental assistance.⁷⁹ This can be explained by the fact that, due to the Ba'ath party's incredibly strict and comprehensive regime of censorship, private publishers had in practice no choice but to assist in the dissemination of propaganda for the regime.

In 1974 armed conflict between the Kurds and the regime escalated into civil war. Baghdad negotiated the Algiers Accord with Tehran, and the Shah of Iran - the Iraqi Kurds' principle patron - withdrew his support resulting in the collapse of the Kurdish Autonomist Movement 1975. Ideological divisions within the KDP led to the formation of the PUK in 1975 under Jalal Talabani. Politically, the two parties acted independently of each other in relation to Iran and Baghdad, and they also fought bitterly between themselves.

The Ba'ath party persecuted all expressions of the Kurds' distinct linguistic and cultural identity made independently of the infrastructure of the cultural controls established under the 1970 and 1974 Agreements. Individual examples of this treatment abound. In 1979 the Kurdish singer Nawroz made his national debut with the song *Ne, Jane* on the Kurdish Section of Baghdad Radio. It became a popular song of resistance which was copied on cassette and circulated in the Kurdish regions. This attracted the attention of the Ba'ath regime, which banned the cassettes and arrested Nawroz later that year. He was tortured for twenty-two days while in detention and was warned that further political activity would incur the death penalty.

In 1979 Saddam Hussein instigated a violent crackdown on all journalists, including not only those who voiced subversive opinions but also those loyal to the Ba'ath party. When tensions between Iraq and neighbouring Iran erupted into war in September 1980, Kurdish parties revived their armed struggle against Baghdad in response to these and other atrocities committed against the Kurds by the Ba'ath Party. The Iraqi Government could not afford to risk the opening of a second hostile front in Kurdistan while it was concentrating its defences on the Iranian border and was forced to tolerate the growing strength of the Kurdish resistance. When in 1986 Iran fostered a truce between the PUK and the KDP, the prospect of their concerted military union under the patronage of Iran led Saddam Hussein to take drastic action.

In 1987 he installed his cousin Ali-Hassan al-Majid as governor of the Ba'ath Party Northern Bureau and vested in him almost unlimited power in order to crush the Kurdish opposition.⁸⁰ Majid led eight military assaults against the civilian Kurdish population, collectively known as the Anfal Campaigns, in which he deployed not only conventional means but chemical weapons against the civilian Kurdish population.⁸¹ The most notorious instance of his brutality was the aerial assault on the Kurdish town of Halabja on 16 March 1988, in which almost 5000 people were killed by poison gas in a matter of hours. The international community did nothing to prevent or punish the perpetrators of this act. Not until the aftermath of Gulf War I did it begin to address the military campaigns perpetrated against the Kurds. Special Rapporteur to Iraq Max van der Stoep recognised in 1992 that "it would seem beyond doubt that these policies, and the Anfal campaign in particular, bear the marks of genocide-type design," and that "the Anfal Operations constituted genocide type-activities which did in fact destroy part of this [Kurdish] population and which continue to have an impact on the lives of the people as a whole."⁸²

The Kurdistan Regional Government of 1992

Iraq's short-lived invasion of Kuwait in August 1990 ended in the ceasefire of 3 March 1991. Iraq's defeat precipitated a remarkable *intifada* which began with the Shia Muslims in the south and quickly spread north to the Kurdish regions and by 19 March virtually all of Iraqi Kurdistan including Suleimaniya, Arbil, Dohuk and Kirkuk was under Kurdish control. The regime responded with characteristic brutality. The scale of this counter-offensive provoked a massive exodus of around 1.8 million refugees, the horrors of the Anfal campaign still fresh in their minds. Their desperate situation was made worse by the refusal of Iran and Turkey to open their borders, let alone offer asylum. The UN Security Council responded by passing Resolution 688, on the basis of which the USA announced on 16 April that a combined task force of American, French and British troops would establish a safe haven in the area already covered by the no-fly zone north of the 36th parallel.

This was the beginning of the political reformation of Iraqi Kurdistan. By the end of September, 90 per cent of the Iraqi Kurds had returned to their homes.⁸³

While making it clear that they were not attempting to establish wholly independent structures or to lay the foundations for secession, the Kurdish political parties instituted elections for a governing body. The electoral area consisted of the four regions of Suleimaniya, Arbil, Dohuk and Kirkuk, and the electoral register was based upon the 1957 census. The KDP and PUK emerged as almost equal contenders in the parliament, which was to lead to problems. The Kurdistan National Assembly held its inaugural session on 4 June 1992, in the official Kurdish dialects of Sorani and Kermanji. The Council of Ministers convened the following month. Their Ministries covered principally those areas of competence which legitimately fall within the concept of local self-government rather than those associated with a nation state. In October the Assembly stated that it had unanimously decided "to define its legal relationship with Baghdad, at this juncture in history, on the basis of a federal union within a democratic and parliamentary Iraq which believes in a multi-party system and which respects human rights as recognised by international covenants and treaties"⁸⁴. Domestic human rights monitors were established and international groups were also invited to the region.

Kurdish print media immediately proliferated beyond the reach of the Ba'ath regime, and over two hundred newspapers and magazines soon circulated in the region. Currently there are two major printing companies in the region - Araz in Arbil and Ferat in Dohuk - which produce Kurdish material for the domestic market and for the Kurdish markets in Syria and Turkey as well as for the inhabitants of Iraqi Kurdistan. On 22 April 1997 the central library in Suleimaniya hosted a celebration of the 99th anniversary of the first Kurdish newspaper *Kurdistan*, published by exiles in Cairo in 1898, and honoured the first Kurdish journalists who dedicated themselves to establishing a Kurdish media culture.⁸⁵

The broadcast media flourished in the early days of autonomy. The Kurds were able to show their own versions of Kurdish history and politics for the first time, but many still feared reprisal from Baghdad and refused to appear on such broadcasts. Previously undisclosed footage of the regime's campaign of genocide against the Kurds was broadcast on the television stations in Iraqi Kurdistan, which were controlled at first by the PUK. In 1992 channels were established by the KDP and the Kurdistan Regional Government. By 1993 a

private production company was making programmes which were used by these stations and also circulated in Europe on video. The free development of Kurdish television broadcasting was however impeded by the political controls imposed by the Allies, which prevented the importing of much needed technical equipment.⁸⁶

The KDP broadcasts the local terrestrial channel Kurdistan TV from Arbil and there are more than twenty local broadcasters. The two satellite channels, Kurdistan Satellite Television based in Salahuddin and Kurdsat based in Suleimaniya, are the voice pieces of the KDP and the PUK respectively. The internet has been available in the region free from state interference since it was introduced.

Radio broadcasting reflected the variety within the region: a host of political parties and groups are responsible for over a dozen radio stations which broadcast in Kurdish from within Iraqi Kurdistan.⁸⁷ The region also receives numerous broadcasts from abroad: indeed the Kurdish Section of the Voice of America, which has operated since 25 April 1992, cites the Iraqi Kurds as its most vociferous and responsive Kurdish audience.⁸⁸

Before 1991 the Kurdish region had one university in Salahuddin and 804 schools.⁸⁹ There are now more than 2700 schools in the region, and the three universities in Salahuddin, Suleimaniya and Dohuk have a combined enrolment of more than 15,000 students of an ethnically diverse background. After 1991 the Ba'ath has made repeated attempts to extend its propaganda to the Kurdish education system, which the Kurds have of course rejected. As recently as August 2002 Saddam Hussein instructed Fahd Salem al-Shaqra (the Education Minister) to deliver more than four million textbooks to schools in Arbil, Suleimaniya and Dohuk in preparation for the 2002-2003 school year. These books included Kurdish-language publications as well as Arabic-language literature and grammar texts as well as what the regime claimed was the first Arabic-Kurdish dictionary, and all were virulently supportive of the Ba'ath regime.⁹⁰

The division of power between the PUK and KDP caused problems almost immediately. In 1994 fighting broke out between the factions and the

parliament of the Kurdistan Regional Government was forced to dissolve in 1996. However, the US sponsored negotiations between the two parties and by July 1998 President Bill Clinton declared that both leaders had,

“... made positive, forward looking statements on political reconciliation. We will continue our efforts to reach a permanent reconciliation in order to help the people of northern Iraq find the permanent, stable settlement which they deserve, and to minimize the opportunities for Baghdad and Tehran to insert themselves into the conflict and threaten Iraqi citizens in this region.”⁹¹

In September 1998 Barzani and Talabani met in Washington where they concluded the Final Statement of the Leaders Meeting, an historic accord in which they made a number of significant unified pledges. On 8 September 2002 the two leaders signed a pact which implemented the terms of the Final Statement of 1998 and established a joint committee which would draft two major documents formulated by the KDP earlier that year. These were the prospective Constitutions of the Federal Republic of Iraq and of the Iraqi Kurdistan Region, an integral but autonomous part of this new state.

The preamble of the proposed Constitution of the Federal Republic of Iraq states that federalism is the most appropriate system of government for Iraq because ‘it affords the Kurdish people the enjoyment of their legitimate national rights and internal independence within the region of Kurdistan and within the framework of a single Iraqi state and without disrupting the unity of that state.’ The new Iraq is envisaged as comprising an Arab region and a Kurdish region which, according to Article 3, will cover an area larger than had been governed autonomously since 1991. Article 4 affirms the national rights of the Kurdish people and the legitimate rights of minorities within the framework of the Federal Republic of Iraq. Article 8 provides that Kurdish will be the official language for the Kurdish region. Part III provides for a Federal Legislative Authority divided between a National Assembly and an Assembly of the Regions.

The Constitution of the Iraqi Kurdistan Region, which was drafted in fulfilment

of the obligations regarding Regional Constitutional Structure set out in Part IV of the proposed Iraqi Constitution, guarantees the rights of the Kurdish majority and of several national minorities. It Article 4 provides that the Kurdish region comprised the Kurds and the national minorities of Turkmen, Assyrians, Chaldeans and Arabs. These minorities will also be represented in the Council of Ministers. Article 74 provided that any law or secondary legislation which undermines or limits the legitimate rights of the Kurdish people or the citizens of the Kurdistan region, or if they contradict the terms of this Constitution, shall be null and void.

The last decade of the Ba'ath regime

The cultural and linguistic rights of the Kurds outside the Kurdish autonomous region continued to exist only to the extent that they enabled efficient dissemination of the Ba'ath party's ideology. When the UN Special Rapporteur for Iraq Max van der Stoep visited the country in 1993 the regime did invite him visit the Kurdish region. He found that in Iraq all media were used almost exclusively as instruments to propagate the "nationalist and progressive line of the revolution' based on Ba'ath ideology."⁹² He observed that "a multi-cultural society such as Iraq might reasonably be expected to have its diversity reflected through the media". While it did not allow autonomous expressions of identity the Ba'ath party did of course continue to exploit expressions of minority culture as means of gaining legitimacy in the eyes of different sections of the population. Television broadcasts showed people in Kurdish national costume, performing Kurdish dances, and singing in Kurdish, but always in the context of praising Saddam Hussein or conveying the ideology of the Ba'ath regime.⁹³

The media operated under a strict command and control regime and there were no independent or commercial publications or broadcasts. The state controlled Iraqi News Agency processed acceptable bulletins for use by all media. Print media was controlled as part of the extensive media empire of Saddam Hussein's son Uday, who was also the head of the National Union of Journalists. All news and entertainment broadcasts on television or radio were censored by the central Ministry of Information. There were two terrestrial

television stations, Republic of Iraq TV and Youth Television. The Iraq Satellite Channel was the only station which broadcast internationally. These three stations broadcast vetted current affairs, a little entertainment and extensive sports coverage, but earned the popular nickname "Boots and Rifle TV" due to their excessive emphasis upon military images. The major radio station, Radio Voice of Iraq, was broadcast not only in Arabic, the official language of the state, but also in the languages of minorities, including Kurdish.

The internet was made available to the public in July 2000, when the Government opened the first internet café in Baghdad. Private access to and ownership of a modem remained illegal however and the limited public access remained too expensive for most people. The sole service provider, uruklink.net, was administered by the State Company for Internet Services and accordingly only a limited number sites with approved content were accessible - those "contrary to Islamic principles", concerning human rights, hosted by opposition groups, offering free email accounts or which contained material of a sexual nature were blocked. In spite of this censorship, those involved in Kurdish sites received threats from the Ba'ath regime. On 5 July 2001 R. M. Ahmad, an employee of the United Kingdom based news site KurdishMedia.com, received an email from Saddam Hussein's eldest son Odi. It read as follows:

"This is a warning to the recipient of this Email, Mr. Ahmad. In the name of the Republic of Iraq, we wish to inform you that we have the means of finding out where you are presently living. For months now, we have been monitoring your activities on the Net, which have been against the State of Iraq. We demand that you end activities which are hostile to your homeland. Our young and willing agents have the means to stop people like yourself at any time and any place that we desire.... Down with the USA and the UK and all their agents."⁹⁴

KurdishMedia.com immediately contacted the United Nations seeking an explanation from the permanent representative of Iraq, but none was forthcoming.

Satellite dishes, modems and fax machines were means of transgressing the barriers that the regime guarded so jealously and consequently ownership of such equipment was illegal. Satellite dishes would initially be seized by the police and the owner would be warned, but recidivism risked prison sentences of up to one year and at times of political tension police helicopters would scan for dishes in order to prevent reception of an uncensored version of events transmitted from abroad. In 1999 a Cabinet decision declared that selected satellite channels would soon be available throughout Iraq. In 2002 the Campaign for the Protection of Journalists reported that the Government had indeed started to allow limited access to satellite broadcasts of sport and entertainment from other Arabic stations on a subscription basis, but this appeared to have been motivated by profit rather than to expand access to information as the cost was prohibitively high for most Iraqis.⁹⁵ When on 8 November 2002 the UN Security Council unanimously adopted Resolution 1441, outlining the inspection regime for Iraq's disarmament, Saddam Hussein reiterated that ownership of receiving equipment was banned.

By 2001 the Ba'ath party had commissioned the assassination of over five hundred writers, scholars and journalists since coming to power in 1968.⁹⁶ A shocking example of the regime's brutality came on 26 March 2001, when the eighty-nine year old Kurdish scholar Jamil Rozhbayani was murdered in his home in Baghdad. It was no ordinary assassination: Rozhbayani was found brutally butchered by an axe, and his unpublished memoirs were missing. He had published widely on the subjects of Kurdish history, language and literature and had been involved in the production of numerous Kurdish magazines, newspapers and radio programmes both in Iraq and Iran. A few days before his murder he had received a visit from Al Moukhabarat, the notorious Iraqi intelligence service, which had delivered a threat from Saddam Hussein regarding Rozhbayani's recent articles on the regime's Arabisation policy.⁹⁷

From 1997 until the waging of war in 2003, the Ba'ath party implemented this policy in relation to Khanaqin, Mandali and the predominantly Kurdish oil-rich Kirkuk region at both institutional and personal levels. All schools teaching in Kurdish in Kirkuk were closed down. In October 2002 the Iraqi newspaper *Birayati* reported that the last two schools outside the Kurdish autonomous region which taught Kurdish, located in Maxmur, a major

permanent Kurdish refugee camp in Northern Iraq, had been closed down and the pupils transferred to nearby schools which taught only Arabic.⁹⁸ Non-Arabs, including not just Kurds but also Turkmen and Assyrians, were expelled from their homes and replaced by Arab families from the south: as of May 1999 at least 15,000 families comprising at least 91,000 people had been expelled in this way. The policy also forced people to adopt Arab names and to change their ethnic identity in official documentation. A Directive issued in September 2001 stipulated that all non-Arabs over the age of eighteen must change their "affiliations" to Arabic ones.⁹⁹ Few resisted this policy, having experienced such brutal reprisals for resistance in the recent past. Mohamed Omar's experience exemplifies the treatment of those Kurds who did: he was imprisoned when he refused to "correct" his identity from Kurdish to Arab, and his family were deported to a town 300 miles away. When Uria Mustafa, a Kurd from Kirkuk, refused to officially renounce his identity his brother was imprisoned and he and his family were expelled from their home which was given to a Ba'ath party civil servant. Kurds are now a minority in a town which had an Arab population of just 10 per cent before implementation of the policy began.¹⁰⁰

This policy correlates with reports of discrimination faced by Kurds who have attempted to register children under Kurdish names. The Registry Office in Maxmur refused to issue birth certificates for the son and daughter of two families who wished to register them under the Kurdish names Aschiti and Safin respectively. The official who dealt with their applications allegedly tore up the forms and made racist comments upon seeing the Kurdish names, which he replaced with the Arabic names Sabur and Fatima.¹⁰¹ There were also disturbing reports that in the graveyards of Maxmur the names of the Kurdish deceased have been erased from tombstones and replaced with Arabic ones.¹⁰²

Culture and language have played a prominent role in the Kurdish struggle for recognition in Iraq. During the past eight decades succeeding regimes have been uniform in their refusals to make a genuine effort to accommodate these aspects of Kurdish identity. Instead their approach has been dependent upon the expropriation and exploitation of these constituents of Kurdish identity as a means of eradicating, rather than resolving, the persistence of

Kurdish claims. Throughout and in spite of the negotiations of the 1970's Saddam Hussein maintained a utilitarian approach to the Kurdish culture and language: Kurdish cultural identity was made the subject of guarantees which were ultimately implemented solely to fulfil the agenda of the Ba'ath party. This intransigence characterised all aspects of Hussein's regime and, arguably, ultimately contributed to its downfall in April 2004.

2.3 Iran - 1906 to 1997

The first Constitution of Iran, adopted in 1906 by the Qajar dynasty (1779 - 1925), proclaimed that Persian was the official language of the multilingual country, although it was not until the Pahlavi Dynasty came to power in 1925 that the central Government was able to implement this stipulation effectively. In 1920 Mohammad Ali Foroughi, representative of Iran at the League of Nations, sent the Iranian Ministry of Foreign Affairs a confidential report which detailed the League's discussion of the Kurdish question in Iran and also included his own assessment of the dangers to Iran of the achievement of independence by the Kurds in Turkey. He advised the Government that in order to integrate the Kurdish minority, not by coercive means, but by promoting the Persian culture, in particular its language and literature. "By lucky chance," he observed, "Kurdish is not a literary language and our minorities do not have the literary and cultural capability and they will be easily absorbed in the Persian language, literature and culture."¹⁰³

In 1923, Government offices were instructed to use Persian in all written and oral communication. A Circular sent by the Central Office of Education of Azerbaijan Province to the education offices of the region, including that of the Kurdish city of Mahabad, provided that,

"On orders of the Prime Minister it has been prescribed to introduce the Persian language in all the provinces especially in the schools. You may therefore notify all the schools under your jurisdiction to fully abide by this and conduct all their affairs in the Persian language... and the members of your office must

follow the same while talking.”¹⁰⁴

The Pahlavi Dynasty (1925 – 1979)

The Pahlavi dynasty was established when Reza Khan led a successful coup against the Qajar dynasty and declared himself King of Persia (1925 - 1941). Like Kemal Atatürk in Turkey, he aimed to establish a highly centralised system of governance in order to marshal the loosely integrated tribal society which he had inherited. He also sought to assimilate the country's ethnic groups in order to produce a homogenous Persian society. Language played an important role both in the problem and its solution: the Shah resolved to eradicate the linguistic diversity of Iran, constituted by Kurdish, Turkish, Arabic, Lur and Baluchi, by declaring that Persian was the only permissible language for use in the education system, public office and the mass media. Printing and publishing in any language but Persian was illegal, and printing presses throughout the country were placed under police surveillance. An exception was made for religious works, some of which were printed in Kurdish in Sanandaj during the 1920s.¹⁰⁵ After the first radio transmission was made by the state on 24 April 1940 the authorities seized the broadcast media as “the most effective agency... for the promotion of culture and national unity.”¹⁰⁶ Scholars were enlisted to support to the Shah's linguistic policy. Academics from the University of Tehran claimed that Persian was not only the sole language in Iran but the most exalted in the world. Other manifestations of non-Persian cultural identity were also subject to repression: regional costumes were banned on penalty of fines or imprisonment.

There was deep concern that the Kurdish population would follow the example set by the Kurds in Turkey and seek to assert their independence. The Shah sought to prevent the development of Kurdish nationalism by fragmenting the Kurdish region and suppressing the Kurdish culture. He divided it into three administrative units, each directly attached to Tehran, and the title Kurdistan was banned. The Lutheran Orient Mission in Azerbaijan province was forced to remove it from its monthly English language journal, *Kurdistan Missionary*. The cultural offensive was intensified: Mahmud Afshar, editor of the Persian magazine *Ayanda*, voiced the popular belief that,

“Whenever this course, i.e., Persianisation (farsi shudan) of the Iranian Kurds is achieved, there will be no danger to us if Ottoman Kurdistan becomes independent.”¹⁰⁷

All Kurdish cultural traditions, dress, literature, music and dance were banned. The testimonies of contemporary Kurdish poets reveal the harshness of these new policies and also their psychological impact. Hemin recalled that “thousands of Kurds in schools and offices and even in the street were arrested, tortured and disgraced on charges of speaking in Kurdish.”¹⁰⁸ The poet Hazhar wrote in his bibliography that he and his father put their Kurdish books in a metal box and buried them, only unearthing them to read at twilight. The poet Khala Min admitted that he dared not record his poems but instead memorised them. Even then he would recite them only to his closets friends. On one occasion Hazhar was present at a small private gathering in a mosque school to which Khala Min gave such a recital. When at a later date Hazhar approached the poet to compliment him on that previous performance, Khala Min denied all knowledge of it and indeed of having composed any poems.¹⁰⁹

In 1941 the Soviet, British and American Allied Armies entered Iran and Reza Shah abdicated the throne. Although his successor Mohammed Reza Shah (1941 – 1979) continued the process of Persianisation, policies of cultural repression were relaxed slightly due to Iran’s vulnerability and its wish not to further alienate the Kurds, who had formed close links with the Soviet forces. Kurdish editors and publishers launched the weekly *Kahistan* (meaning ‘The Highlands’) in Tehran in 1945, which continued to be published until 1960. This had Kurdish subject matter, reporting on the grievances of the Kurdish people, featuring Kurdish poems and carrying articles on Kurdish history and literature although it was forced to adhere to the Persian language policy. The publication *Mad* (meaning ‘Media’), launched in Tehran in 1945, was a Kurdish studies journal which fared less well, producing only two issues.

Although the Soviet forces occupied the north of the country, the Kurds retained a large degree of control over the area around Mahabad and in September 1942, taking advantage of democratic rights which had been granted to the growing number of political parties in the country since the invasion, its inhabitants established the first Kurdish political movement:

the Komala-i Jiyanawi Kurdistan (meaning 'Committee for the Revival of Kurdistan'). While a Komala Memorandum of 30 November 1944 was willing to leave the issue of political status until it could be discussed at a post-war peace conference, it adamantly sought language rights in relation to education and administration.¹¹⁰

In 1945 Qazi Mohammed, an eminent intellectual and religious figure, was admitted as the president of Komala, but later that year its members formed the Kurdish Democratic Party (KDPI). It presented a manifesto based upon eight key demands which, like those presented by its predecessor, sought language rights in relation to education and administration.

The Kurdish Republic (January - December 1946)

Due to Iran's weakness the Kurds were able to implement their vision, albeit for a short time. In December 1945 the first Kurdish Republic was proclaimed in Mahabad, and Qazi Mohammed was elected President. On 15 December 1945 the Kurdish People's Government was established in Mahabad and a National Parliament was formed on 22 January 1946. Despite its brevity, the Republic sparked a remarkable development in Kurdish language and literature. Kurdish became the official language in the administration and in the schools, which used translated Persian textbooks. Kurdish culture thrived, assisted by revenue generated by the trade between the Republic and the U.S.S.R. A national theatre was established and Kurdish writers and poets were honoured. The Republic was given a printing press and paper by Azerbaijan, prompting fierce protests from the Iranian Government to the Soviet Union.¹¹¹ Several Kurdish periodicals appeared regularly, notably the KDP paper and a literary journal, both called *Kurdistan*, a women's paper called *Halala* (meaning 'The Tulip'), and other literary magazines including *Gir Gali*, *Hiwa-I Nishtiman* and *Mindalan-i Kurd*.¹¹² The Republic established its own radio station on April 30 1946, and loudspeakers were installed throughout the town so that inhabitants could hear its programs which included news, commentaries, music and speeches.¹¹³ The Republic also had a television production unit but this was unable to produce more than two programmes a week due to a lack of facilities and trained personnel.¹¹⁴ When the Iranian

Army toppled the Republic on 15 December 1946, Kurdish books were burned in the streets, all written material was destroyed, the printing presses were seized and broadcasting equipment confiscated.

In 1949 a broadcast by Iraqi Kurdish leader Mullah Mustafa Barzani on Baku Radio from the Soviet Republic of Azerbaijan, in which he called for the unity and liberation of the Kurdish people in Iran, catalysed a regeneration of Kurdish broadcasting in Iran. This new phase was characterised by the tactical use of Kurdish broadcasting by the USA, which was suspicious of the USSR's exploitation of Kurdish dissent for its own gains. In 1949 the *New York Times* reported of measures "being taken to prepare a programme in Kurdish and to operating Kurdish speaking areas"¹¹⁵ and the following year the Iranian Government agreed to let the Voice of America conduct local broadcasts for the purpose of countering Soviet propaganda.¹¹⁶ In 1951 the Iranian Government responded by installing a powerful transmitter in Sanandaj to broadcast propaganda in Persian and Kurdish. In 1955 the Iranian Army began transmitting local broadcasts from Mahabad which featured Kurdish music and poetry readings as propaganda.¹¹⁷

In 1952 the General Office of Publications and Propaganda published one issue of *Baghistan: Historical and Cultural Studies of the Kurdish-inhabited Regions*, and two courses in the Kurdish language were offered by the Department of Linguistics in Tehran University. Television was introduced in 1958 by a private company in Tehran, which initially operated under strict governmental supervision and later as a nationalised corporation. Under both the Pahlavi monarchy and under the revolutionary Islamic Government, Tehran was the centre for most television production and Persian was the language of all broadcasts.

After census figures concerning the languages spoken in Iran were released for the first time in 1960, *Kayhan*, the Tehran based daily newspaper carried out interviews with philologists who sought to undermine the revelation of the heterogeneous nature of Iran's ethnic composition. In the issue of 6 February 1960, S. Kiya claimed that there was only one true language in Iran, and in the issue of 19 February 1960 Dr. Safa claimed that, with the exception of some "Turkish dialects" which had "regretfully" become the speech of some

Iranians, all other dialects had "Iranian roots."¹¹⁸ In the late 1960s the Ministry of Culture and Art commissioned three experts, two of them linguistics from Tehran University, to prepare reports on renewed promotion of the Persian language. Despite the fact that the Kurdish language was not recognised as a distinct language in its own right, it was taught in some Iranian universities at this time.

Even when the Shah was in firm control of the country he responded to potential developments in the Kurdish region by the increasing Kurdish broadcasting and producing limited publications in the Kurdish language. These concessions were made solely as a means of disseminating propaganda and did not envisage the permission of the Kurds' own cultivation of their language and culture. An example of this came when the Government sought to expand television broadcasting in the 1970s by establishing stations. These functioned solely as relay centres from the central Tehran stations however, and only occasionally hosted closely monitored productions for the local Kurdish population.

The revolution of 1979

The socio-economic changes which occurred during the 1960s and 1970s created conditions in which ethnicity became the central constituent of Kurdish identity in Iran.¹¹⁹ This found forceful expression in the demise of the Pahlavi monarchy. In 1978 strong Shi'ia opposition to the Shah under the exiled Muslim cleric Ayatollah Khomeini led Iran to the brink of civil war. Exiled PDKI members returned to lead a distinct Kurdish revolt against the monarchy. In seeking to spread its messages to the Kurdish population, Kurdish students, teachers and Government employees commandeered the previously well-guarded reprographic facilities in public offices and schools in order to produce Kurdish language periodicals and leaflets in support of the revolution.

The Shah fled on 16 January 1979, leaving Prime Minister Shapour Bakhtiar and the Supreme Army Councils unable to contain the revolution. The exiled cleric Ayatollah Khomeini returned to Iran and hundreds of supporters of

the Shah were executed. A national referendum was held which offered the population the stark choice between accepting or rejecting an Islamic Republic. On 1 April the Ayatollah confirmed the foregone conclusion by declaring Iran an Islamic Republic and himself as its supreme spiritual leader.

Kurdish leaders sought the realisation of national rights for all nations in the form of autonomy within a federal Islamic Republic of Iran. Khomeini rejected the Kurds' expansive claim to territory and warned them that any separatist aspirations would attract swift and crushing reprisals. He countered their demands by offering full cultural and linguistic rights, specific Constitutional minority guarantees and the appointment of senior Kurdish officials to administrative positions in the Kurdish regions. Neither this nor subsequent negotiations conducted during the first year of the Republic succeeded in producing a settlement acceptable to both sides.

The new Constitution was adopted on 24 October 1979 and is still in force to this day. Conservative Islamic clerics had convinced Khomeini to reject a draft which provided in Article 5 that "Persians, Turks, Kurds, Arabs, Baluchis, Turkomans and others will enjoy equal rights,"¹²⁰ and the final draft contained no reference to ethnic minorities. It declared that in the new Republic, as in the preceding Iranian state, "Persian ethnicity defines the identity of the sovereign, the conditions of citizenship and hence the boundaries of the state and civil society."¹²¹ The Ayatollah explained this in terms of the unity of the *umma*, the Islamic community, in which there exists no distinction between Muslims. On the basis of this doctrine he asserted that, "There is no difference between Muslims who speak different languages..." and added that, "It is very probably that such problems have been created by those who do not wish Muslim countries to be united."¹²² By providing this rationale, the Ayatollah thereby established that to acknowledge ethnic minorities was an offence against Islam.

The protection of minority cultural rights guaranteed by Article 13 extends only to religious minorities, of which only Zoroastrians, Jews and Christians are recognised. Accordingly the Kurds could seek no Constitutional protection either as members of an ethnic minority or as Sunni Muslims. Article 14 cites Islamic authority for non-discrimination, but again this only applies in terms

of religious difference:

In accordance with the sacred verse "God does not forbid you to deal kindly and justly with those who have not fought against you because of your religion and who have not expelled you from your homes" [60:8], the Government of the Islamic Republic of Iran and all Muslims are duty-bound to treat non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity, and to respect their human rights. This principle applies to all who refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran.

The last sentence acts as a crucial reservation which was invoked to remove the Kurds from the Article's protection. The official adoption by the new Islamic regime of Persianisation is affirmed by Article 15, which establishes that,

The Official Language and script of Iran, the lingua franca of its people, is Persian. Official documents, correspondence, and texts, as well as text-books, must be in this language and script. However, the use of regional and tribal languages in the press and mass media, as well as for teaching of their literature in schools, is allowed in addition to Persian.

The concession in the last clause has been implemented in the spirit of the previous regimes, and as such the Kurdish language has been used to spread the official ideology. In practice Kurdish media has been subject to strict censorship and is frequently suppressed, and there is no evidence that Kurdish literature is taught in Iranian schools. In the preamble to the Iranian Constitution the section entitled 'Mass-Communication Media' stipulates that,

The mass-communication media, radio and television, must serve the diffusion of Islamic culture in pursuit of the evolutionary course of the Islamic Revolution. To this end, the media should be used as a forum for healthy encounter of different ideas, but they *must strictly refrain from diffusion, and propagation of destructive and anti-Islamic practices.*

Article 24 provides that, "Publications and the press have freedom of expression except when it is detrimental to the fundamental principles of Islam or the rights of the public. The details of this exception will be specified by law." Article 175 of the Constitution provides that, "The freedom of expression and dissemination of thoughts in the Radio and Television of the Islamic Republic of Iran must be guaranteed in keeping with the Islamic criteria and the best interests of the country." Vaguely worded and contradictory legal restrictions were enacted to exceed the scope of restrictions established within the Constitution. The main repository of such restrictions was the Penal Code, which prohibits a wide range of activities for the purpose of national security.

The right of equality before the law is guaranteed in Article 3(14) and Article 19 provides that, "All people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights, and colour, race, language, and the like do not bestow any privilege." In practice this denial of positive discrimination of the basic of minority traits reaffirms the privilege of the Persian culture of the majority.

Iranian security forces embarked upon a widespread offensive against the civilian population, subjecting towns and villages of the Kurdish region to heavy bombing raids, but were unable to establish effective control over the Kurdish region. The ensuing military campaign against the Kurds was intensified when hostilities between Iran and Iraq escalated into war in September the following year, and was maintained throughout the duration of the war. Accordingly this decade saw an unprecedented assault on the Kurds of Iran. Human Rights Watch has reported that more than 271 Kurdish villages were destroyed between 1980 and 1992 and their inhabitants dispersed. The ruined areas seeded with mines to prevent their repopulation.¹²³

In the early years of the Republic Kurdish political parties using mimeography to publish their material in the rural areas under Kurdish control and several major Kurdish towns had active printing presses.¹²⁴ The regime was forced to counter propaganda aimed at the Iranian Kurds in the context of Iran's war with Iraq. Amongst these sources were several Iranian Kurdish opposition parties who began broadcasting to the Kurdish population from exile in Europe in the early 1980s.¹²⁵ Accordingly the regime was forced to reach the Kurds using their

language and the Roman script in which Kurdish is written. In an attempt to spread the official brand of Shi'ism to the predominantly Sunni Muslim Kurds, the Government translated religious works into Kurdish. A general relaxation of the strict policy against private Kurdish tuition was apparent in the early years of the Republic when Kurdish language classes were reported to operate unimpeded within private language schools; however, such classes still had to be delivered in Persian, and these initiatives had ceased altogether by 1982.¹²⁶ In the spring of 1985 the first issue of the regular journal *Sirwe*, a monthly Kurdish cultural magazine, was privately published in the Kurdish language in Orumiyeh. At this time the state also began producing the Kurdish language journal *Awine*. Both are subject to tight control by the Propaganda Office of the Islamic Republic.¹²⁷ A major development occurred in 1986 when Kurdish became a language of external television broadcasting together with Persian and the other two major minority languages of Arabic and Turkoman. By the early 1990s local production of programmes in the Kurdish language had increased.

The first Congress on Kurdish Culture and Literature was held in Mahabad on 25-27 September 1986, attended by Kurdish writers and intellectuals from all over Iran. Cultural associations have gained popularity amongst the Kurdish youth, and are cited as making a major contribution to the ongoing struggle of the Kurds in Iran. Theatre festivals and literary conventions have been held, books produced, Kurdish cinema and poetry studied and creative writing and Kurdish language classes held under the auspices of these club.¹²⁸

The reformist movement of 1997

The liberal Muhammed Khatami was a popular choice amongst Kurdish voters during the 1997 presidential elections due to his reformist ideology, with 76 per cent of voters in the Kurdish region supporting his candidacy.¹²⁹ (In Iran, Kurdish parliamentarians must hold their seats as independent candidates and may not form pro-Kurdish parties.) On 23 May 1997 Khatami was elected President and his supporters won a strong Parliamentary majority at the expense of conservative factions. The liberal press quickly emerged as the backbone of his reformist movement. The stringent laws restricting the

issuance of new publishing licenses were relaxed and more than five hundred new licenses were issued in less than six months. For almost two years, the Iranian press enjoyed an unprecedented freedom to reflect public opinion. However, this was not a general lifting of restriction upon theses deemed to be subversive by the regime. Kurdish artists and academics whose work concerns any aspect of their ethnic identity receive similar treatment to those who promote political alternatives to the conservative regime since the Kurds are seen as a separatist threat. The Kurdish historian Karimullah Tavahodi, who had previously been courted by the State, was subjected to persecution for this reason. Having been awarded official prizes for the first four volumes of a major academic work, he was detained upon publication of the fifth volume, and the work itself was banned in January 1997 due to its portrayal of the Kurds' struggle for cultural autonomy. Tavahodi was eventually sentenced to one year in prison under provisions within the Penal Code. These prohibit a wide range of activities ostensibly in order to protect national security, and are frequently invoked to punish independent expressions of Kurdish identity.¹³⁰

The emergence of the reformist press resulted in a landslide victory for the reformists in the local elections of February 1999. Khatami was re-elected again with Kurdish support but the Kurds have since been discouraged by his failure to promote their interests in the face of the regime's conservative representatives. In 2001 the KDPI's parliamentary representative openly criticised him for failing to adopt any strong policy towards the Kurds.¹³¹ Even the reformist press has not covered Iran's Kurdish question.

The regime soon reasserted legal repression by exploiting its power over the courts to block the media suggesting that the liberalisation had not signified an evolving tolerance. Pro-Kurdish publications were amongst those targeted. The daily newspaper *Rouz-e-No* which appeared in August 2002 was quickly banned by Tehran's conservative dominated Press Court on the grounds that it was a continuation of *Norooz*, which remained banned at the end of that year.¹³²

State television and radio remained under conservative control, and as such the Kurds have no opportunity to make their own broadcasts. New satellite and electronic media are providing the Kurds of Iran with opportunities to

cultivate their culture and language. The Kurds in Iran have been vociferous fans of Med TV since it began broadcasting in 1995, apparently without serious interference.¹³³

Overall, cultural assimilation has remained the motive behind all policies relating to Kurdish language and cultural under both the Monarchies and the present Islamic regime. Relaxation has been a result of the need to protect the territorial integrity of the state in the face of Kurdish alliances with foreign powers, rather than of a true intention to accommodate the Kurds' cultural identity.

2.4 Syria - 1920 to 2000

On April 25 1920 the Allied Supreme Council declared the territories which are now Syria and Lebanon to be Mandates of France. During the period of French rule the Kurds enjoyed a large degree of cultural and linguistic freedom and were also recruited into the army and held positions in administration. Their political demands were however not given serious consideration by the authorities. On 23 June 1928 a Kurdish delegation presented the Constituent Assembly of Syria with a petition detailing their wishes. As well as making fundamental political demands the petition demanded the recognition of Kurdish as an official language in the Kurdish region in addition to Arabic and as the medium of teaching in the public education system. In practice the authorities tolerated the first of these demands, but deemed the second to be both unfeasible due to a lack of appropriate Kurdish language educational materials and unjustifiable due to an alleged lack of popular demand. The French authorities were aware that both Atatürk's Government in the new Republic of Turkey and the British administration which governed the predominantly Kurdish vilayet of Mosul were opposed to the establishment of autonomous Kurdish regions in their respective territories. Consequently, the French were unwilling to make concessions to Syria's Kurdish population which could encourage nationalist aspirations within the country and possibly also in neighbouring states. When Mustafa Boti, a young Kurdish writer, was refused permission to establish a private Kurdish school he was told

that France's commitment to the Middle East prevented her from becoming involved in such an "adventure."¹³⁴ This reasoning highlights official awareness that mother-tongue education was crucial to the preservation of Kurdish identity and, potentially, to the cultivation of national awareness which might lead to separatist claims.

Kurdish publications were however tolerated in the early years of the Mandate and for a time Syria was home to important development of the Kurdish language. The Bedr Khan brothers, who had escaped from the hostile environment of the new Turkish Republic, established themselves in Damascus where they developed the Kermanji dialect in Latin script, which they used in their journal *Hawar*. This publication was banned by the authorities in 1937 as part the general clamp down imposed on the Kurdish media when the Kurds supported the Syrian nationalist struggle for independence. It did however reappear during World War II after the British invaded Syria and Lebanon on 8 June 1941, along with other Kurdish language magazines such as *Ster*, *Roja Nu* and *Ronahi*.

In 1946 France was forced to withdraw from Syria under British duress, with the result that independence was achieved on 17 April that year. Kurdish language publications continued to be tolerated until Syria united with Egypt a decade later. Increasing importance was attached to the cultivation of Kurdish civil society and cultural education. Clubs and associations were established in pursuit of these aims and the promotion of literacy in the Kurdish language became central to their agenda. They also sought to raise the Kurdish population's awareness of its culture and history through teaching and publications. Because such activities necessarily promoted Kurdish national awareness Kurdish political parties in Syria stress to this day the crucial role played by those early associations in the creation of a Kurdish political movement.¹³⁵ The civil society which they nurtured provided an environment in which the first Kurdish political party could be established in response to growing Arab nationalism. When the Kurdish Democratic Party of Syria (the KDPS) was inaugurated in July 1957 it called for recognition of the Kurds as a distinct ethnic group with cultural rights, and for democratic government in Damascus.¹³⁶ It also highlighted the economic underdevelopment in the Kurdish provinces and exposed discriminatory practices against Kurds which

had emerged in the fields of education and recruitment to the police, military academies and other civil services.

The Kurds were subjected to serious repression first when Syria and Egypt joined to form the United Arab Republic on 1 February 1958. The KDPS leaders, who had all opposed this union, were soon arrested and all Kurdish political parties banned. Furthermore, previously tolerated activities were suddenly outlawed as Arab nationalism permeated public and private life: accordingly, the possession of Kurdish language materials and gramophone recordings of Kurdish music became a criminal offence punishable with imprisonment. Kurdish publications have been officially prohibited since this time.¹³⁷

Although the Republic survived for only three years, aggressive Arab nationalism had taken root in Syria with disastrous consequences for the Kurds. When the Syrian Arab Republic was formed in September 1961 following the military coup which forced Syria to secede from the Union, repression of the Kurds intensified.

On 23 August 1962 Decree No. 93 responded to the growing numbers of Kurds in Jazira by calling for an extraordinary population census to be held in the governate of al-Hasakeh with the alleged aim of identifying "alien infiltrators" who had illegally crossed the Turkish border in the 1920s to escape poverty and repression. The census, carried out on 5 October 1962, required all non-Arabs in that area – in practice, only Kurds – to prove that they had been resident in Syria since before 1945. The Syrian Government prevented access to official documents needed to satisfy the census criteria, and the time constraint made it even more difficult to gather requisite evidence. The Kurds were declared to be "ajanib" (resident foreigners) or "maktumin" (meaning literally 'concealed'). The former group was issued identity cards which ensured that they were denied the most fundamental civil, political, economic and social rights. The latter group were not issued any identity documents and were not recorded in the census. At the time approximately 120,000 Kurds were denied citizenship, as were their descendants and descendants of male non-citizens even where their mothers were recognised as Syrian citizens.¹³⁸ Thus, the total number of Kurds who are currently affected by the census is at least 200,000, but some estimates place that number at 360,000. Both of these figures stand in stark

contrast with the estimation made by the Syrian Government in 1996 which put the figure at precisely 67,465.¹³⁹

In 1962, President Nazim al-Qudsi began to implement a comprehensive policy of Arabisation of the Kurdish region, which had the largest population of non-Arabs in Syria, under the slogan of "saving the Arabism of the Jazira". He began to create an "al-hizam al-arabi" (meaning 'Arab belt') along 375 kilometres of the Turkish Syrian border from Ras-al'Ain along the border as far as Iraq, and then southwards along the pan-handle along the Iraqi border. The objectives of altering the ethnic composition of the area and appropriating its natural resources were achieved by deporting over one hundred thousand rural Kurds and replacing them with Arabs; names of Kurdish villages and towns were similarly replaced by Arabic versions. Although this policy was briefly abandoned in 1966 when Syria sought to counter overtures being made by the Iraqi Ba'ath regime to its Kurdish autonomists, the programme was actively implemented for fourteen years. When the Government abandoned the policy of Arab resettlement in 1976 it did not remove the Arabs already there, nor did it re-instate the Kurds who had been relocated.

A State of Emergency was declared on 8 March 1963 and is still in force today. It was governed by the provisions contained within a Decree passed on 22 December 1962. Article 4(a) provided for restriction of fundamental freedoms of individuals with respect to association, residence, travel and movement; for preventative arrest of anyone suspected of endangering public security and order; and for the investigation of persons and places in pursuit of these aims. Moreover it delegated the duty to perform any of these tasks to 'every person'. The Kurds, already under great suspicion, were therefore placed under even greater risk of detention and arrest. Not only political activity but also peaceful expression of Kurdish cultural identity attracted the attention of the security forces.

The Ba'ath party's plans for the Kurds were comprehensively formulated in a booklet written by General Muhammad Talab Hilal, the Chief of Police in Hasaka, in 1963. Entitled "A Study of the Jazira Province from National, Social and Political Aspects", it contained a *twelve point* plan for the Arabisation of the Kurds and their provinces. Kurdish was described as an unintelligible language

which was used to conceal treason and separatist plotting. Although Hilal proposed to deprive the Kurds of educational institutions he claimed that the Arabisation of education alone would not achieve full cultural assimilation, and prescribed the total denial of Kurdish linguistic rights. He proposed to totally disenfranchise those who could not speak Arabic and to ensure their cultural assimilation by expelling the inhabitants of Kurdish provinces and subsidising Arab regeneration of the area. The document also suggested launching a pervasive anti-Kurdish campaign amongst the Arab population, and also creating tension within Kurdish communities by suggesting that some members were of Arab lineage.

In November 1970 Lieutenant General Hafiz al-Assad led a Ba'ath military coup and was elected President in March 1971. Asad quickly created a police state in which all political opponents were either oppressed or eliminated and all independent debate was stifled. No independent or private media existed and the sole function of newspapers, television and radio was the proliferation of the Ba'ath party's ideology.

During the 1980s Syria was involved in a serious dispute with its neighbour Turkey over the Euphrates water system. Syria put pressure on Turkey by offering sanctuary to the PKK from 1983 to 1998, and also made concessions to its own Kurdish population at this time in relation to its culture and language. Kurdish could be spoken freely in the street and Kurdish music could be performed. The Kurdish language was however still strictly banned from the education system. Newroz events organised by the PKK were free from interference, but those events organised by Syrian Kurdish parties were still often banned. A Decree issued in 1986 which specifically forbids the speaking of Kurdish at private celebrations as well as in the work place is still in force.¹⁴⁰ In 1987 the Culture Minister Najjar al-'Attar forbade the playing and circulation of Kurdish music cassettes and videos. This policy has undergone periods of relaxation and renewal according to changes in the prevailing official perception of the Kurds' status as a potential threat.

Kurdish names became increasingly popular amongst Syria's Kurdish population when the PKK intensified its resistance across the border in the southeast of Turkey in the early 1990s. The Ba'ath regime perceived this as the

manifestation of a rise in nationalist sentiment amongst its Kurdish population which might lead to cross-border alliances which could in turn threaten the territorial integrity of the state. The authorities reacted by banning the use of Kurdish names. In 1992 the Minister for the Interior issued Decree No.122 in relation to the Kurdish province of al-Hasaka. This required parents wishing to register their new born child with a 'non-Arab' name to seek authorisation from local branches of the security forces.¹⁴¹ Only names which can be written using Arabic script will receive authorisation and as such permission is refused in relation to Kurdish names on the basis that these often contain the phonemes which cannot be written in Arabic script. This Decree has resulted in the non-registration of "dozens" of Kurdish children.¹⁴² The acceptance of such applications can be assured by bribes, suggesting that unscrupulous officials are eager to exploit the vulnerability of Kurds which arises due to the discrimination to which they are subjected in the public sphere.

According to Human Rights Watch, Kurds in Syria have had to struggle to obtain permission to celebrate Newroz, and in the past this celebration has been met with violent repression. A report written in 1994 by officials from two embassies based in Damascus concurred by stating that Newroz events are tolerated as long as they do not become political demonstrations protesting the treatment of the Kurds. Human Rights Watch reported that the Republican Guard opened fire on those involved in Newroz celebrations in Damascus in 1995 when the festivities had culminated in a peaceful procession from the Kurdish quarter of the city to the national palace, in which participants demanded rights for those Kurds who had been denied their nationality. One interviewee told the same organisation that the authorities often sought to deter people from participating in Newroz celebrations by spreading rumours of bomb threats.¹⁴³

An Order issued in 1995 prohibited the use of non-Arabic names for business in the al-Hasaka governate.¹⁴⁴ A Decree previously issued in 1986 had banned the Kurdish language from the work place, public office, cinemas and cafes.¹⁴⁵ A decision of the President of the Executive Bureau in 1995 prohibited the licensing of stores, hotels, bars, nightclubs, cafes and restaurants in al-Hasaka with non-Arabic names; any places with such names already were given one week to change them or face closure and fines.¹⁴⁶ A further Circular issued

in relation to this province in 1996 imposed further restrictions upon the use of non-Arabic languages in public and in the work places there.¹⁴⁷ Since the population of al-Hasaka is predominantly Kurdish these instructions are clearly aimed directly at the Kurdish language. In contrast, many business signs are written both in Armenian and Russian with an Arabic translation.¹⁴⁸

In December 1997 the Minister for Local Administration officially prescribed the use of new Arabic names in relation to fifty-five villages and forty-nine farmsteads in the Ras al-'Ayn and Darbasiya districts of al-Hasaka.¹⁴⁹ Although his order was formally implemented by a Circular, the following month the original names were still used by inhabitants.¹⁵⁰

Increasing tension between the Turkey and Syria led to the amassment of troops on either side of their common border in 1998. Conflict was avoided when the two states reached an agreement. The PKK were expelled and repression of the Kurdish culture and language increased once again. A Decree issued in 1998 and still in force stipulates more specifically that non-Arabic songs may not be sung at celebrations such as weddings and festivals. Despite their private nature such events must receive permission in the form of a licence from the police security division forty-eight hours before the event. The granting of a license is contingent upon the provision of a formal statement by the organisers which guarantees that no non-Arabic songs will be sung. Even after such assurances have been given and a license has been obtained, there may be a security presence at the event.

Ten days after President Hafez al-Assad died on 10 June 2000, the Ba'ath Party nominated his son Bashar as his replacement. A referendum was held to decide the matter, in which Bashar was the only candidate. In July he was inaugurated as President after receiving 97 per cent of the votes. Despite retaining the mechanism of his father's police state, the new President hinted in his inauguration speech at a more tolerant policy regarding media freedom. This did not in effect lead to the lifting of restrictions upon the Kurdish media. Also, the regulations issued in relation to the Kurdish provinces during the 1980s and 1990s still govern the expression of Kurdish cultural identity and the use of the Kurdish language.

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III - The Cultural and Linguistic Rights of the Kurds under International Law

The Kurds' use of their language and manifestation of their culture is guaranteed by a wide range of international and regional instruments adopted under the auspices of the United Nations General Assembly, of which all four states are members.¹⁵¹ In addition to these, the Kurds in Turkey can avail themselves to the rights guaranteed within instruments adopted by the European organisations of which Turkey is a member, which include the Council of Europe and the OSCE.

3.1 The types of obligations which guarantee these rights

There are two principle types of instrument in which these rights may be found. International treaties such as the ICCPR and the ECHR create legally binding obligations upon States Parties. Instruments such as the UNGA Minorities Declaration and the European Charter for Regional and Minority Languages, are expressions of political commitments undertaken by the states under the auspices of organisations and political processes within which the protection of human rights and the rights of members of minorities have particular importance. These instruments do not create legally binding obligations but instead create political commitments. This is an important distinction since it affects the legal enforceability of the standards created. This should not however be understood as a reason to disregard these instruments, nor to perceive the rights and obligations contained therein as weak. On the contrary, the OSCE has strongly asserted the importance of such instruments created under its auspices:

“The distinction is between ‘legal’ and ‘political’, and not

between 'binding' and 'non-binding'. This means that the OSCE commitments are more than a simple declaration of will or good intention, but a political promise to comply with these standards."¹⁵²

3.2 The special nature of obligations relating to the protection of national minorities

Instruments that provide for the protection of minorities often do so within provisions which appear heavily qualified and give State Parties a wide margin of discretion regarding the extent and method of their implementation. This should not however be seen as imposing weak obligations upon states or as allowing a lack of commitment to the protection of minorities. The purpose of such formulations is to enable the state to accommodate the particular circumstances which arise in relation to a particular minority within its territory. The statement made by the Committee on Migration, Refugees and Demography was made in relation to the Council of Europe's Framework Convention but provides an insight into the rationale of minority rights instruments on a wider scale:

"[The] numerous conditions and reservations included in several articles... ("if those persons so request", "where such a request corresponds to a real need", "where there is sufficient demand", etc) in fact mean that the Convention determines that practical decisions in the field of implementation of minority rights must be a result of constructive dialogue between national Governments and minorities."¹⁵³

This crucial consultative aspect of minority protection is especially relevant for the Kurds, whose very existence has been officially ignored and denied despite the four states' efforts to eradicate their distinct identity. The Committee continued by affirming that, "Mechanisms of implementation crucially depend upon how much, and in which practical forms of arrangements, these rights are demanded in practice."¹⁵⁴ As such, the minority's particular demands must

be addressed within this consultative process so that States' attempts to fulfil obligations relating to their protection actually fulfil their needs. The members of the minority themselves are in the best position to understand what this must entail. States Parties undertake serious obligations not only with regards to the fulfilment of the substantive provisions of the instruments but also to the facilitation of constructive dialogue with the minority which alone will enable the formulation of effective solutions to minority demands.

3.3 The justiciability of cultural rights

Many instruments adopted at both international and regional levels guarantee the Kurds' ability to express their cultural and linguistic identity. The rights which guarantee this ability are classified as either civil or political on the one hand - such as the right to freedom of expression - and economic, social or cultural on the other hand - such as the right to education.

There has been much debate concerning the comparative nature of these two sets of rights in both political and legal fora. There has in the past been a widespread belief that only civil and political rights are justiciable, and that economic, social and cultural rights are vague norms which merely posit policy aspirations and which cannot as such be readily enforced by their bearers. Those who ascribe to this view find support in the fact that economic, social and cultural rights have been made less justiciable than civil and political rights in the two International Covenants adopted under the auspices of the UN. While an Optional Protocol allowing for individual petitions was adopted in relation to the ICESCR, no comparable instrument was created for the enforcement of the rights in the ICESCR. This is however due to the political concerns of States Parties rather than to the inherent nature of these rights. Economic, social and cultural rights were derided by the West as instruments of communism during the Cold War and rejected by developing countries which feared that these would create unattainable financial goals for which the West might hold them accountable.

The Committee on Economic, Social and Cultural Rights has countered such

arguments by clarifying the content of the rights in the ICESCR and the obligations which they entail for States Parties. First, it has established that a minimum threshold exists below which concrete provision of the rights must not fall.¹⁵⁵ Secondly, it has affirmed that all human rights impose upon States Parties three types or levels of obligation: these are to respect, protect and fulfil the right in question. The obligation to fulfil incorporates both the obligation to facilitate and the obligation to provide. In its General Comment No. 13 on the right to education as enshrined in Article 13 of the ICESCR, the Committee clarified the content of these levels of obligation:

“The obligation to respect requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The obligation to fulfil (facilitate) requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education. Finally, States parties have an obligation to fulfil (provide) the right to education. As a general rule, States parties are obliged to fulfil (provide) a specific right in the Covenant when an individual or group is unable, for reasons beyond their control, to realize the right themselves by the means at their disposal. However, the extent of this obligation is always subject to the text of the Covenant.”¹⁵⁶

Further compelling arguments seriously discredit the view that cultural rights are not ‘real’ rights per se. First, human rights do not derive their theoretical status from their justiciability but from their nature as fundamental rights which all persons bear. Secondly, both the ICCPR and the ICESCR are legally binding human rights instruments of equal power, and accordingly the right which they contain should therefore be recognised as equally justiciable. Thirdly, the distinction between the two sets of rights is not impermeable as detractors of cultural rights would claim: as the UN repeatedly stresses, human rights are indivisible, interrelated and interdependent. The fundamental cultural right to education is a case in point because, as discussed below, it provides the means by which all other rights are attained.

3.4 The Kurds as bearers of individual rights

Two types of guarantee protect the Kurds' cultural and linguistic rights. The first type protects rights and freedoms in relation to all individuals simply by virtue of being human. These are found in the classic human rights instruments created under the auspices of the UN after 1945. This system of human rights protection has, until recently, been premised upon the liberal notion that protecting the rights of individuals and guaranteeing against discrimination is sufficient to ensure that both individuals and minorities are protected.

Of the rights to which all Kurds are entitled as individuals, the right to freedom from discrimination offers protection on the basis of the certain characteristics possessed which distinguish the Kurds as a group. It does so by guaranteeing that every individual shall be free from any discrimination, either in relation to his or her enjoyment of the other rights guaranteed by the specific instrument, or in general. Provisions which guarantee the right to freedom from discrimination often provide an illustrative, though not exhaustive, list of the possible grounds upon which discrimination can occur. The lists include language and national origin discrimination to which Kurds are subjected to within the four states.

The other major individual right of great significance for the Kurds in relation to their culture and language is the right to freedom of expression. The classic formulation of this right within Article 19 of the ICCPR encompasses the dissemination and reception of all types of information. The right of members of a minority to enjoy their culture, as guaranteed by Article 27 of the ICCPR, is significantly enhanced by this right. When read in conjunction with the extremely wide concept of minority 'culture', as authorised by UNESCO, these two rights protect a very wide variety of activity. Indeed, they oblige the four states to permit the very expressions of Kurdish cultural identity, in all its forms, which is suppressed and punished. A variety of other rights and provisions provide significant support and protection for such activities and will accordingly be considered below.

3.5 The Kurds as the bearers of minority rights

The second type of guarantee under international law protects the rights and freedoms of persons by virtue of their membership within a minority group. This formulation first appeared in Article 27 of the ICCPR, which is discussed in detail below in Chapter V. This area of international law remained undeveloped for a long period during which the international community sought to protect minorities by guaranteeing the equality of individuals within the framework of the territorial integrity of states. The rights of minorities again became prominent in international legal discourse after the end of the Cold War when fierce ethnic conflicts revealed that this policy was totally inadequate. The fear that acknowledging minority groups would lead to the disintegration of sovereign states was eclipsed by the realisation that denying them was having precisely that effect. The events of the early 1990s precipitated a paradigm shift in liberal thought: the concept of democracy is now recognised to involve a social consensus which is not merely majoritarian.¹⁵⁷ The international community also came to recognise that national integration had not been impeded by cultural and linguistic diversity per se but by the harsh way in which this was dealt with at the domestic level. These realisations resulted in the General Assembly's Declaration on the Rights of Persons belonging to National or Ethnic, Religious or Linguistic Minorities which, along with instruments adopted by the Council of Europe and the OSCE, constituted the foundation of an emerging system of minority protection. A key feature of this system was the respect for and accommodation of the cultural identity of minorities through the provision of cultural and linguistic rights.

In order for an individual Kurd to benefit from the protection given by instruments which protect minorities, the Kurds as a group must constitute a minority of a recognised type in relation to the State Party. Although the 'minority' has never been formally defined under international law, reviewing various contemporary proposals reveals the recurrence of salient elements. According to the classic definition of a minority proposed in 1979 by Francesco Cappotorti, Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in his Study on the Rights of Persons belonging to Ethnic, Religious and Linguistic Minorities, a minority

is:

“[A] group which is numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing to those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.”¹⁵⁸

Within Europe, both the Council of Europe and the OSCE have provided authoritative declarations concerning the characteristics of a minority. In 1993 the Parliamentary Assembly of the Council of Europe provided a five point definition of a national minority as a group of persons within a State who:

- (a) reside in the territory of the State and are citizens thereof;
- (b) maintain long-standing, firm and lasting ties with that State;
- (c) display distinctive ethnic, cultural, religious or linguistic characteristics;
- (d) are sufficiently representative, although smaller in number than the rest of the population of the State or of a region of that State;
- (e) are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.¹⁵⁹

The OSCE's first High Commissioner for National Minorities Max van der Stoel delivered his views on the issue at the opening of the OSCE Minorities seminar in Warsaw in 1994:

“[T]he existence of a minority is a question of fact and not of definition. In this connection I would like to quote the Copenhagen Document of 1990 which... states that ‘To belong to a minority is a matter of a person's individual choice’... First of all, a minority is a group with linguistic, ethnic or cultural characteristics which distinguish it from the majority. Secondly,

a minority is a group which usually not only seeks to maintain its identity but also tries to give stronger expression to that identity."¹⁶⁰

Objective criteria for the existence of a minority emerge from these sources: the group is distinguished from the rest of the population by ethnic, religious or linguistic characteristics; it is a numerical minority in relation to the majority group within the population; and it occupies a position of non-dominance in relation to this majority group. The subjective element is that the group should wish to retain its separate identity and the mere continued existence of a group implies the fulfilment of this criterion. This emphasis upon the factual, subjective nature of their existence affirms that it is not for the four Governments to confirm or deny, to ignore or to conceal the existence of a minority by exclusively recognising only other types of minority.

The Kurds clearly fulfil these salient criteria which constitute the contemporary definition of a minority within each of the four states according to authoritative sources. Their distinct ethnic and linguistic characteristics clearly persist in spite of the sustained efforts of successive Governments. The four states have refused to ascertain the size of their Kurdish population, but according to authoritative estimates there are 13 million Kurds in Turkey, 4.2 million in Iraq, 5.7 million in Iran and just over 1 million in Syria. As such Kurds constitute about 23 per cent of the Turkey's population, 23 per cent of Iraq's, 10 per cent of Iran's and just over 6 per cent of Syria's.¹⁶¹ Their position of non-dominance in each is beyond any doubt: the four States have sought to ensure their political, economic and social exclusion, and discrimination is entrenched within the legal systems either in the form of laws as well as in the approach of those bodies charged with their implementation. The subjective criteria is fulfilled both implicitly, by the continued existence of a distinct Kurdish population within each state, and explicitly, by the repeated expression of desire to manifest this identity despite persistent and often brutal suppression by these states.

Only individuals belonging to certain types of minority receive the protection of these minority instruments. The minorities protected by Article 27 of the International Covenant of Civil and Political Rights and Article 30 of

the Convention on the Rights of the Child are ethnic, religious or linguistic. Of the non-binding obligations upon the States under consideration, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and the Council of Europe's Framework Convention for the Protection of National Minorities add the criterion of groups constituting a national minority. As such, the Kurds must at least constitute either an ethnic or linguistic minority as well as a national minority in order to benefit from the protection afforded by these instruments.

The *travaux preparatoires* of the ICCPR confirm that 'ethnic' is the broadest term available with which to describe a minority, but no definition of the term has been adopted in international law.¹⁶² A comprehensive definition of an ethnic group is:

"...a collectivity within a larger society having real or putative common ancestry, memories of a shared past, and a cultural focus of one or more symbolic elements defined as the epitome of their peoplehood. Examples of such symbolic elements are: kinship patterns, physical contiguity (as in localism or sectionalism), religious affiliation, language or dialect forms, tribal affiliation, nationality, phenotypical features, or any combination of these. A necessary accompaniment is some consciousness of kind among members of the group."¹⁶³

The examples of symbolic elements can be understood simply as elements of a common culture. In that case, and if one dispenses with the criterion that an ethnic group may only exist in relation to a larger society, the definition of an ethnic group which emerges contains six constituents:

- i) a common proper name which expresses the 'essence' of the community;
- ii) a myth of a common ancestry that includes the idea of a common origin in time and place and that gives such a group's sense of fictive kinship;
- iii) shared historical memories of a common past including heroes, events, and their commemoration;

- iv) one or more elements of a common culture which normally include language, religion or customs;
- v) a link with a homeland, not necessarily its current physical occupation by the entire group but also its symbolic attachment to the ancestral land;
- vi) a sense of solidarity on the part of members of the group.¹⁶⁴

The Kurds fulfil all six of these criteria, both collectively and within each State. Their name constitutes both self awareness and external recognition. Their myth of common ancestry is common to all Kurds, regardless of their true ancestry. Their shared historical memories are constituted not only by the events of the twentieth century which have divided and oppressed them, but by older heroes and myths such as the events which are commemorated every March by the festival of Newroz. They share elements of a common culture, the most notable of which is their language. The Kurds have a deep symbolic attachment to Kurdistan, the territory which existed before its division in the early twentieth century. It now only exists due to the Kurds continued habitation of the areas it once covered within the territories of the four states. This is in spite of the fact that each State has attempted to destroy this symbolic attachment of its Kurdish population to the portion of their homeland within its territory by disrupting physical attachment by displacing them to other areas. The solidarity between members of the Kurdish population within each of the four states exists not only due to elements and effects of their common culture as explained above but sadly also because of their common plight. As such, the Kurds undeniably constitute an ethnic minority within each of the four states. Moreover, this solidarity exists on a wider scale due to the aforementioned factors. This has been expressed by Kendal Nezan, a Kurd who is the President of the Kurdish Institute in Paris:

“Not very long ago, as I was attending a pan-Kurdish conference in Moscow in July 1990, I saw Kurdish shepherds and peasants who had come from Kirghizstan, from the Chinese borders, from Kazakhstan and Causcasia, and who were having discussions with Kurds from Turkey or Kurds from the Kurds Dagh region of Syria, on the Mediterranean coast. In spite of the total lack of contact, in

spite of the huge distances that separated their homelands, these people were laughing at the same jokes and mentioning the same proverbs in the course of their conversation. They also shared a number of traditions of welcome and hospitality, and were moved by the same songs. Maybe being a Kurd means exactly that: to share, despite borders and geographical distances, the same basic cultural identity forged by centuries of history."¹⁶⁵

By virtue of their status as an ethnic minority within each of the four states they also constitute a minority based upon language, which is one of the most significant elements of common culture. National minorities were the subject of the definitions proposed by the Parliamentary Assembly of the Council of Europe in 1993 and the High Commissioner for National Minorities in 1994, and both the Council of Europe and the OCSE have recognised the Kurds as a minority of this type.

The Kurds therefore clearly constitute an ethnic, linguistic and national minority in each of the four states. Accordingly, they may claim the protection of international minority provisions and instruments to which their host states are party, irrespective of these states' refusal to acknowledge their Kurdish populations as the relevant type of minority.

3.6 The Kurds as bearers of people's rights

The Kurds may also be able to gain protection of their cultural and linguistic rights by availing themselves as a people to the right of self-determination as enshrined in Article 1(2) of the UN Charter. The common article 1(1) of the ICCRP and the ICESCR provides that:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Although there is ongoing controversy as to the exact nature of the concept

'people' precisely because it provides the basis for secession, it may be argued that the Kurds do constitute a people on the same grounds as those upon which they constitute an ethnic minority as discussed above. The concern of the four states to safeguard their territorial integrity has been the fundamental motivate for the suppression of Kurdish populations. These states recognise their Kurdish populations in terms of an indigenous separatist threat, which they perceive to be inherent to distinct Kurdish identity. As such, the states counter Kurdish claims to the right of self-determination by invoking fundamental principles of international law which protect the territorial integrity of sovereign states. However, these arguments have no force regarding forms of internal self-determination which concern internal state structures and institutions. There is arguably an emerging tendency to recognise a certain right to internal self-determination for minorities. Evidence of this trend can be found in the jurisprudence of the Arbitration Commission for Yugoslavia, established by the EU in 1991. In its second opinion of 11 January 1992, regarding the situation of Serbian minorities in Croatia and Bosnia, the Commission reasoned that the fact that the Serbian minority did not have the right to secede and join Serbia did not mean it had no right to self-determination. The Commission emphasised that this right is not simply a principle of transition but also a fundamental principle of governance as it is designed to protect the distinct identities of various groups within the population. This rationale echoes the provisions made for the Kurds by the League of Nations when Kurdistan was divided after World War I. The denial earlier in the twentieth century of such measures to ensure a degree of cultural and linguistic autonomy to the Kurds could be remedied using the principle of internal self-determination which has been refused the Kurds on the grounds that it may create fuel separatist aspirations. Other states have granted certain forms of internal self-determination to their minorities in the forms of territorial autonomy, decentralisation and federalism: such measures could include the delegation to the minority of relevant areas of administrative and policy such as education.

IV –International Legal Obligations which Guarantee the Cultural and Linguistic Rights of the Kurds

All four states are members of and States Parties to a number of international instruments created under the auspices of the UN which create binding legal obligations with regard to the linguistic and cultural rights of their Kurdish populations.¹⁶⁶ These include the Universal Declaration of Human Rights (1948),¹⁶⁷ the International Covenant of Civil and Political Rights (1966),¹⁶⁸ the International Covenant of Economic, Social and Cultural Rights (1966),¹⁶⁹ the International Convention on the Elimination of All Forms of Racial Discrimination (1969)¹⁷⁰ and the Convention on the Rights of the Child (1989).¹⁷¹ The Kurds in Turkey also benefit from a number of the obligations established within binding multilateral agreements adopted at a regional level including the Treaty of Lausanne (1923) and the European Convention on Human Rights (1950) and First Protocol to the Convention.

4.1 The Universal Declaration of Human Rights

This Declaration was adopted by General Assembly Resolution 217 A (III) of 10 December 1948. Like all declarations, it did not create binding obligations for those States which are party to it, but had recommendatory status. Declarations constitute important evidence of state practice and affirm commitment to norms which may eventually attain the status of customary international law. This declaration however has acquired a higher status and may be seen as customary international law.

Article 2 provides that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin,

property, birth or other status. Article 7 provides that all are equal before the law and are entitled without any discrimination to equal protection of the law. Furthermore it provides that all are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 12 provides that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Article 15 guarantees to everyone the right to a nationality. Many rights and benefits under domestic law flow from this status, including the right to education.

Article 19 guarantees the right to freedom of opinion and expression and provides that this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Article 20 guarantees the right to freedom of peaceful assembly and association.

Article 26 guarantees the universal right to education. Paragraph 2 provides that education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms, that it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and that it shall further the activities of the United Nations for the maintenance of peace. Significantly, paragraph 3 provides that parents have a prior right to choose the kind of education that shall be given to their children.

Article 27(1) guarantees the universal right to free participation in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Paragraph 2 guarantees that everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 29(2) provides that in the exercise of rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the

purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

4.2 The International Covenant of Civil and Political Rights

In accordance with the purposes and principles of the Charter of the United Nations, Article 1 of the Covenant recognises that all peoples have the right of self-determination. By virtue of that right they may freely determine their political status and freely pursue their economic, social and cultural development. According to General Comment 12 of the Human Rights Committee, the right of self-determination "is of particular importance because its realisation is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights. It is for that reason that States set forth the right of self-determination in a provision of positive law in both Covenants and placed this provision as Article 1 apart from and before all of the other rights in the two Covenants."¹⁷²

Under Article 2(1), which closely resembles Article 2 of the Universal Declaration, State Parties undertake to respect and to ensure that the rights recognised in the present Covenant are granted without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 expands upon this by establishing a free standing non-discrimination provision which operates generally. It provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law, and that the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 17 (1) provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful

attacks on his honour and reputation. In its General Comment 16¹⁷³ the Human Rights Committee stated that, "this right is required to be guaranteed against all such interferences and attacks whether they emanate from State authorities or from natural or legal persons." (paragraph 1) Crucially it clarified "the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances." (paragraph 4)

Paragraph 1 of Article 19 guarantees the right to hold opinions without interference, to which the Covenant permits no exception or restriction. Paragraph 2 establishes the remarkably broad right to freedom of expression. This right is of paramount importance to the Kurds as it fundamentally underpins their right to freely enjoy their culture. It encompasses the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media. The Human Rights Committee has declared that the right was violated by restrictions imposed upon the permissible languages in the context of outdoor commercial advertising.¹⁷⁴ The rights enshrined in Article 19 are subject to the restrictions listed in Paragraph 3. Restrictions may be imposed on the exercise of this right: the restrictions must be "provided by law"; they may only be imposed for one of the purposes set out in subparagraphs (a) and (b) of paragraph 3; and they must be justified as being "necessary" for that State Party for one of those purposes. In General Comment 10¹⁷⁵ the Human Rights Committee stressed that even when a State Party imposes these permissible restrictions on the exercise of freedom of expression, these may not be applied so as to put the right itself in jeopardy. (paragraph 4)

Article 20 of the Covenant states that any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. Article 20(2) provides that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Articles 21 and 22 respectively guarantee the rights of peaceful assembly and the right to freedom of association with others. The permissible restrictions to

these four rights must be provided by law and be necessary for, inter alia, the protection of national security or of public order.

Article 24 provides protection specifically for children. The Human Rights Committee declared in its General Comment 17¹⁷⁶ that “implementation of this provision entails the adoption of special measures, in addition to the measures that States are required to take under Article 2 to ensure that everyone enjoys the rights provided for in the Covenant” (paragraph 1). The Committee noted that such measures to be taken, although intended primarily to ensure that children fully enjoy the other rights enunciated in the Covenant, may also be economic, social and cultural: it went on to state that, “In the cultural field, every possible measure should be taken to foster the development of their personality and to provide them with a level of education that will enable them to enjoy the rights recognised in the Covenant, particularly the right to freedom of opinion and expression.” (paragraph 3)

Paragraph 2 of Article 24 provides that every child shall be registered immediately after birth. In the Committee’s opinion, this provision should be interpreted as being closely linked to the provision concerning the right to special measures of protection and it is designed to promote recognition of the child’s legal personality. (paragraph 7) Paragraph 3 of the Article provides that every child shall have a name and the right to acquire a nationality. According to the Committee, States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. (paragraph 8)

Article 27 provides that “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” According to the Committee’s General Comment 23¹⁷⁷ this article establishes and recognises a right which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant (paragraph 1). It stressed that, “The protection of these rights is directed towards ensuring the survival and continued development of the cultural and social identity of the minorities

concerned, thus enriching the fabric of society as a whole.” (paragraph 9) Accordingly, the Committee observed that these rights must be protected as such and should not be confused with other personal rights conferred on one and all under the Covenant. The Committee stressed that the Covenant distinguishes the rights protected under Article 27 from those guaranteed under Articles 2(1) and 26: the entitlement under Article 2(1) to enjoy the rights under the Covenant without discrimination applies to all individuals within the territory or under the jurisdiction of the State whether or not those persons belong to a minority. A distinct right is provided under Article 26 for equality before the law, equal protection of the law, and non-discrimination regarding the exercise of all rights. (paragraph 4). The terms used in Article 27 indicate that the persons designed to be protected are those who belong to a group and who share in common a culture, a religion and, or, a language: the Committee affirmed that those terms also indicate that the individuals designed to be protected need not be citizens of the State party. (paragraph 5.1) The Committee discussed the right of individuals belonging to a linguistic minority to use their language among themselves, in private or in public, and stated that this is distinct from other language rights protected under the Covenant, noting in particular that it should be distinguished from the general right to freedom of expression protected under Article 19 which is available to all persons, irrespective of whether they belong to minorities or not. Further, it noted that the right protected under article 27 should be distinguished from the right under Article 14(3)(f) which entitles an accused person to an interpreter when he or she cannot understand or speak the language used in the courts: this does not however confer the right to use or speak a language of choice in court proceedings. (paragraph 5.3) The Committee commented that although Article 27 is expressed in negative terms it nonetheless recognises the existence of a true ‘right’ and that consequently a state party is obliged to ensure that the existence and the exercise of this right are protected against denial or violation. Protection is required not only against violations of this right by the State party itself, through both its official institutions and through extra-legal methods, but also against violations perpetrated by those acting in a private capacity. (paragraph 6.1)

Of great significance is the Committee’s affirmation that, although the rights protected under Article 27 are individual rights they are premised upon the

ability of the minority group to maintain its culture, language or religion: that is, for the members to do so in community with each other. Accordingly, it stated that 'positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group.' It noted that such positive measures must respect the provisions of articles 2(1) and 26 of the Covenant both as regards the treatment between different minorities and the treatment of persons belonging to them and the remaining part of the population, but asserted that as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under Article 27, they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria. (paragraph 6.2)

The exact content of the right to 'enjoy their own culture' is not defined in the Covenant, nor is the term 'culture'. The content may be deduced from provisions within other international instruments, such as Articles 13 and 14 of the ICESCR (discussed below) which guarantee the right to education and Article 15 of that Covenant which guarantees the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications. The UNESCO General Conference has decreed that "culture is not merely the accumulation of works of knowledge which an elite produces, collects and preserves."¹⁷⁸ There would be no reason to protect the right to enjoy only inherited aspects of culture as this would arrest its natural development. Therefore, culture must be interpreted more widely as including popular and contemporary culture. Consequently the right to enjoy culture enshrined in Article 27, along with rights pertaining to culture enshrined in the provisions of other legal and political instruments, guarantees the right to enjoy contemporary and popular aspects of their evolving culture as well as its traditional or elitist aspects.

4.3 The International Covenant of Economic, Social and Cultural Rights

Article 1(1) provides that all peoples have the right of self-determination

in terms identical to those used in Article 1(1) of the ICCPR. Article 2(2) establishes that the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 4 stipulates that States Parties may restrict such rights with only such limitations as are determined by law and only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society. The Committee noted that a State party which closes a university or other educational institution on grounds such as national security or the preservation of public order has the burden of justifying such a serious measure in relation to each of these elements. It also emphasised that this limitations clause is intended to protect the rights of individuals rather than permit the imposition of limitations by the State.

Article 13(1) guarantees the right of everyone to education. It provides that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace. Article 13(1) adds to the right enshrined in Article 26(2) of the Universal Declaration of Human Rights in three respects by providing that education shall be directed to the human personality's sense of dignity, shall 'enable all persons to participate effectively in a free society' and shall promote understanding among all nations, ethnic and racial groups.

In 1999 the Committee on Economic, Social and Cultural Rights clarified the right to education in General Comment 13.¹⁷⁹ The Committee declared that the right to education is "both a human right in itself and an indispensable means of realizing other human rights." (paragraph 1) Regarding those educational objectives common to Article 26(2) of the Universal Declaration and Article 13 (1) of the ICESCR, the Committee observed that "perhaps the most fundamental is that education shall be directed to the full development

of the human personality.” (paragraph 4) It noted that while the precise and appropriate application of the terms depend upon the conditions prevailing in a particular State Party, education in all its forms and at all levels shall exhibit four interrelated and essential features. The first is the availability of education, which could be ensured by allowing private schools to operate. (paragraph 50) The second is the accessibility of education, in economic terms and without the impediment of discrimination. The third is acceptability, to students and, in appropriate cases, to parents, of the form and substance of education including curricula and teaching methods. The Committee stated that States Parties must facilitate the acceptability of education by taking positive measures to ensure that education is culturally appropriate for minorities and indigenous peoples, and of good quality for all. (paragraph 50) The final essential feature of education is its adaptability: the Committee stated that education must be adaptable to the needs of changing societies and communities and responsive to the needs of students from diverse cultural backgrounds. (paragraph 6) Crucially, the Committee observed that the best interest of the student is the primary criteria to be applied when assessing the appropriate application of these interrelated and essential features. (paragraph 7)

Article 13(3) guarantees the liberty of parents and guardians to send their children to schools other than those provided by the state as long as these conform to ‘such minimum educational standards as may be laid down or approved by the State’. The Committee stated that this must to be read in conjunction with the complementary provision in Article 13 (4): this provides for the liberty of individuals and bodies to establish and direct educational institutions, subject to the principles set forth in Paragraph (1) and to the requirement that such institutions conform to minimum standards concerning admission, curricula and the recognition of certificates as established by the State. Significantly the Committee declared that this right encompasses the ability to establish and direct all types of educational institutions including nurseries, universities and institutions for adult education. (paragraph 30)

The Committee also made the significant observation that the right to education can only be enjoyed if it is underpinned by the academic freedom of all staff and students. In doing so it paid particular attention to institutions of higher education because, ‘in the Committee’s experience, staff and students

in higher education are especially vulnerable to political and other pressures which undermine academic freedom.' It emphasised, however, that staff and students throughout the education sector are entitled to academic freedom and many of the following observations have general application. (paragraph 38)

"Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing. Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognised human rights applicable to other individuals in the same jurisdiction." (paragraph 39)

"The enjoyment of academic freedom requires the autonomy of institutions of higher education. Autonomy is that degree of self-governance necessary for effective decision-making by institutions of higher education in relation to their academic work, standards, management and related activities." (paragraph 40)

The Committee emphasised that the "progressive" realisation of the right to education does not undermine the legally binding status of the correlative obligations incumbent upon States Parties. It declared that progressive realisation means that States Parties have a specific and continuing obligation "to move as expeditiously and effectively as possible" towards the full realisation of Article 13 and that steps taken must be "deliberate, concrete and targeted" towards the full realisation of the right to education.

The Committee noted that violations of Article 13 include a number of common features: the introduction or failure to repeal legislation which discriminates against individuals or groups, on any of the prohibited grounds, in the field of education; the failure to take measures which address de facto educational

discrimination; the use of curricula inconsistent with the educational objectives set out in Article 13 (1); the prohibition of private educational institutions; the denial of academic freedom of staff and students; and the closure of educational institutions in times of political tension in non-conformity with Article 4. (paragraph 59)

Article 15(1) guarantees the right of everyone to take part in cultural life, to enjoy the benefits of scientific progress and its applications and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. Paragraph (2) establishes that the steps to be taken by the States Parties to the present Covenant to achieve the full realisation of this right shall include those necessary for the conservation, the development and the diffusion of science and culture. Paragraph (3) obliges the States Parties to respect the freedom indispensable for scientific research and creative activity. Paragraph (4) provides that the States Parties to the present Covenant recognise the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

4.4 The International Convention on the Elimination of All Forms of Racial Discrimination

Article 1(1) defines racial discrimination as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. Having considered reports from States parties concerning information about the ways in which individuals are identified as being members of a particular racial or ethnic group or groups, the Committee on the Elimination of Racial Discrimination stated that “such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned.”¹⁸⁰

Under Article 2(1) States Parties undertake to eliminate racial discrimination in all forms and to promote understanding between all races. Measures to be taken in pursuit of this goal include abolishing laws and punishing persons or groups who perpetrate discrimination.

Article 5 provides that, in compliance with the fundamental obligations laid down in Article 2, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of all persons, without distinction as to race, colour, or national or ethnic origin, to equality before the law, including the right to nationality, the right to freedom of thought, conscience and religion, the right to freedom of opinion and expression and the right to freedom of peaceful assembly and association (5(d)). The fundamental cultural rights to education and training and to equal participation in cultural activities are highlighted in Article 5(e). The Committee has noted that Article 5 does not of itself create civil, political, economic, social or cultural rights, but assumes the existence and recognition of these rights, and that the rights and freedoms mentioned in Article 5 do not constitute an exhaustive list.¹⁸¹ (paragraph 1)

Article 7 provides,

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which led to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

4.5 The Convention on the Rights of the Child

Article 2(1) imposes upon States Parties the obligation to respect and ensure

the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status of the child, his parents or legal guardian.

Article 3(1) provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. Article 6(2) provides that States Parties shall ensure to the maximum extent possible the development of the child.

Article 7(1) provides, *inter alia*, that the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality. Paragraph 2 provides that States Parties shall ensure the implementation of these rights in accordance with their national law. Article 8(1) clarifies the content of those rights by guaranteeing the child's right to preserve his or her identity, which includes his or her nationality, name and family relations as recognised by law without unlawful interference.

Article 13(1) guarantees to the child the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice. Article 15(1) imposes the obligation upon States Parties to recognise the rights of the child to freedom of association and to freedom of peaceful assembly. Paragraph 2 of these Articles provides that the exercise of these rights may be subject only to those restrictions provided by law and necessary for, *inter alia*, the protection of national security or public order.

Article 17 acknowledges the important role of the mass media in the well-being of the child. It provides that States Parties shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall encourage the mass media to disseminate information

and material of social and cultural benefit to the child and in accordance with the spirit of Article 29; shall encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources; and shall encourage the production and dissemination of children's books. Of particular significance is the obligation to encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous.

Article 28 guarantees the right of the child to education. With a view to achieving this right progressively and on the basis of equal opportunity, States Parties shall, in particular, attempt to reduce drop out rates, ensure that education is accessible to all and ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

Under Article 29(1) States Parties agree that the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential; to the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; to the development of respect for, inter alia, the child's parents, his or her own cultural identity, language and values; and to the preparation of the child for responsible life in a free society in the spirit of understanding, peace, tolerance, equality of sexes and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin. Paragraph 2 provides that no part of Articles 28 or 29 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions.

It was in relation to Article 29(1) that the Committee on the Rights of the Child issued its first General Comment, entitled 'The Aims of Education'.¹⁸² The Committee noted that the Article "insists upon the need for education to be child-centred, child friendly and empowering." (paragraph 2) It stated that,

"Part of the importance of this provision lies precisely in its

recognition of the need for a balanced approach to education and one which succeeds in reconciling diverse values through dialogue and bridging many of the differences that have historically separated groups of people from one another.” (paragraph 4)

It repeatedly stressed that education should be given a central role in all campaigns against racism and discrimination, and observed the central role which the media must play both in promoting the values and aims reflected in Article 29(1). (paragraph 11)

Article 30 provides that a child belonging to an ethnic or linguistic minority shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture or to use his or her own language. Under Article 31(1) States Parties recognise the right of the child to participate freely in cultural life and the arts. Paragraph 2 provides that States Parties shall respect and promote this right and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Under Article 40 (1) States Parties recognise the right of every child accused of having infringed the penal law to a number of minimum guarantees, one of which is the free assistance of an interpreter if the child cannot understand or speak the language used. This right is supported by a number of other provisions within this Article, including the right to be informed promptly and directly of the charges against him or her; and the right to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance.

Regional Legal Obligations Undertaken by Turkey

Turkey is bound by a number of additional legal obligations which have relevance for the cultural and linguistic rights of its Kurdish population.

4.6 The Treaty of Lausanne

Section III of the Treaty is entitled Protection of Minorities. Under Article 37, Turkey undertakes that the stipulations contained in Articles 38 to 44 shall be recognised as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them. The Treaty guarantees fundamental and non-derogable linguistic rights to Turkey's Kurdish population. Article 38 imposes upon the Turkish Government the obligation to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion. Article 39(4) provides that no restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings. Article 39(5) establishes that, notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the courts.

4.7 The European Convention on Human Rights

Article 5(2) guarantees that everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him. Article 6, which guarantees the right to a fair trial, provides in paragraph (3)(a) that everyone charged with a criminal offence is guaranteed a number of minimum rights, including to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him. Furthermore, 6(3)(e) guarantees the free assistance of an interpreter if the accused cannot understand or speak the language used in court.

In the case of *Luedicke, Belkacem and Koc v. Federal Republic of Germany* (Nos. 6210/73, 6877/75 and 7132/75, 28 November 1978) the Court ruled that the right to an interpreter includes the translation or interpretation of all documents and statements which he must understand in order for the entire

proceedings instituted against him to constitute a fair trial. In *Kamasinski v. Austria* (No. 9783/82, 19 December 1989) the Court confirmed that the right to free assistance of an interpreter applies to documentary material, pre-trial proceedings and oral statements made at the trial hearing, and that the assistance must enable him to understand the case against him and to defend himself by being able to express his version of events to the Court. For the right to be effective, the obligation upon the state concerns not only the appointment of an interpreter but also to the adequacy of the interpretation provided.

Article 8(1) guarantees the right to respect for one's private and family life, home and correspondence. In *Stjerna v. Finland* (No. 18131/91, 25 November 1994) the Court observed that although the Article does not contain an express reference to personal names, a name does concern one's private or family life as it constitutes a means of personal identification and a link to one's family. The Court recognised that legal restrictions on the right to change one's name may be justified in the public interest for example, to ensure the accurate registration of the population or to safeguard the means of personal identification, but that such an interest is not sufficient to justify the removal the issue of personal names from the scope of private and family life. The Court and Commission have also accepted that this Article protects against measures which can threaten ethnic identity. In *Chapman v. UK* (No. 27238/95, 18 January 2001) the Court noted that the vulnerable position of a minority means that special consideration should be given to their needs and their different lifestyle and that Article 8 imposes a positive obligation to accommodate their way of life.

Article 11(1) guarantees the right to freedom of peaceful assembly and to freedom of association with others. These guarantees, which enable the Kurds to manifest their culture and express their views, are underpinned by the right to freedom of expression in Article 10(1). This encompasses the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. 10(2) provides that the exercise of these freedoms may be subject to restrictions prescribed by law which are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder

or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for the protection of information received in confidence and for the maintenance of judicial independence. The Court has clarified that this right includes commercial and political speech (*Lingens v. Austria*, No. 9815/82, 8 July 1986), that it protects not only the substance but also the form in which such ideas and information are conveyed (*Oberschlick v. Austria*, No. 11662/85, 23 May 1991, para. 57; *Autronic AG v. Switzerland*, No. 12726/87, 22 May 1990, para. 47). In *Handyside v. United Kingdom* (No. 5493/72, 7 December 1976) the Court provided the following interpretation of Article 10 of the ECHR: "Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man... This means that... every 'formality', 'condition', 'restriction' or 'penalty' imposed in this sphere must be proportionate to the legitimate aim pursued." It stated that this right covers not only ideas which are welcomed or considered inoffensive but also those that are upsetting, shocking or worrying: the pluralism, tolerance and openness which are necessary to democratic societies demand this. (paragraph 49)

The Court has not yet had cause to consider whether this right guarantees the freedom to choose one's language of expression. The Commission has ruled on the scope of the right in relation to minority languages on one occasion, in the case of *Fryske Nasjonale Partij and other v. Netherlands* (No. 11100/84, 9 EHHR 261). It found that the Article did not 'guarantee linguistic freedom as such' and in particular did not guarantee the right to use the language of one's choice specifically in relation to administrative matters. The Commission did note however that the applicant had not demonstrated that he had been prevented from using the minority language in other circumstances: this might imply that interference in the applicant's use of the language in other contexts may constitute a violation of Article 10. It must also be noted that this case was decided before the deliverance of recent judgements concerning Article 10 and before the Council of Europe concluded its two treaties concerning the linguistic rights of minorities. As such, the decision delivered in relation to that case might be different were it delivered today.

The case of *Informationsverein Lentia v. Austria* (Nos. 13914/88 and 15041/89,

24 November 1993) concerns the application of Article 10 in relation to radio and television broadcasting. The applicants' complaint concerned the Austrian Broadcasting Act by which the state established a broadcasting monopoly. The applicants' claimed that Austria's refusal to license non-commercial radio programmes in German and Slovene violated Article 10. They also claimed it constituted a violation of Article 14 in conjunction with Article 10, as the refusal constituted discrimination of the Slovenian minority's right to access broadcasting. They argued was that Austrian law did not provide for the representation of ethnic minorities and that the programmes intended for these minorities were insufficient. Although neither the Commission nor the Court ruled upon Article 14, the Commission ruled that the complaint of its violation was admissible. Both the Commission and the Court held that Article 10 had been breached. In its judgement the Court emphasised the importance role of pluralist media generally within a democracy:

"The Court has frequently stressed the fundamental role of freedom of expression in a democratic society, in particular where, through the press, it serves to impart information and ideas of general interest, which the public is moreover entitled to receive. Such an undertaking cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is ultimate guarantor. This observation is especially valid in relation to audio-visual media, whose programmes are often broadcast very widely." (paragraph 113)

The case of *VgT Verein Geger Tierfabriken v. Switzerland* (No. 24699/94, 28 June 2001) concerned the refusal of a local broadcasting license which had been sought in order broadcast the views of national minorities living in the area. The applicant alleged a violation of Article 10 and discrimination on the basis of language in violation of Article 14 in conjunction with Article 10. The Commission ruled that such a refusal should not be manifestly arbitrary or discriminatory and that to be consistent with the Convention licensing systems must respect the "the requirements of pluralism, tolerance and broadmindedness, without which there is no democratic society." (paragraph 140) The Commission rejected the applicant's Article 14 claim on the basis of failure to prove that the refusal had been based upon the allocation of

broadcasting time for linguistic minorities. It did however mention that such a refusal might indeed violate Article 14 in other circumstances: this might be the case if, for example, the refusal resulted in a considerable proportion of the inhabitants of an area being deprived of broadcasting in their native tongue. The Commission has ruled on a number of occasions that while Article 10 does not guarantee a general and unfettered right for an individual or organisation to have access to a broadcasting slot, it has indicated that the denial of broadcasting time to one or more specific groups may, in particular circumstances raise a problem under Article 10 either alone or in conjunction with Article 14 (*Lingens v. Austria*, No. 9815/82, 8 July 1986).

The Court has found Turkey guilty of violating the right to freedom of expression in more than twenty cases, many of which concerned the exercise of this right through the press and other printed media. In one of a series of cases brought to the Court by KHRP, the case of *Özgür Gündem v. Turkey* (No. 23144/93, 16 March 2000) concerned the sustained and deliberate campaign against *Özgür Gündem*, the daily Turkish language newspaper which reflected Kurdish opinion, and many people associated with it. Turkey's brutal campaign to silence the paper, which included extra-judicial methods such as killings, violent attacks, raids on offices as well as criminal prosecutions, eventually forced the publication to close down. The applicant claimed that this behaviour constituted a violation of Article 10 and of Article 14 in conjunction with Article 10. The Court held that while the measures imposed by virtue of the aforementioned domestic laws were "prescribed by law" and "pursued the legitimate aims" of protecting national security and territorial integrity and of preventing crime and disorder, most of them were not "necessary in a democratic society" as required by 10(2). It stated that Article 10 even protects writing which that amount to propaganda or are "highly critical of the authorities and attribute... unlawful conduct to the security forces... in colourful and pejorative terms." (paragraph 45) It concluded that the violation was a particularly serious one because it resulted in a newspaper actually having to cease publication, "a result which may indeed have been intended by the authorities." (paragraph 242)

It must be noted that this case involved a large number of individuals and a wide range of incidents. In upholding the applicants' claims the Court

condemned not an isolated violation but a pattern of behaviour and as such condemned a deeply entrenched policy of the Turkish state. Although this condemnation officially related to freedom of expression enshrined in Article 10, the context was clearly Turkey's violent repression of particularly Kurdish expression. The Commission declared as unfounded the applicants' claim that the violation was committed due to the racial background of the paper in breach of Article 14. It implied that this treatment derived instead from "the official perception... of the newspaper as supporting an illegal terrorist organisation." (paragraph 252) It thereby refused to consider whether these brutal manifestations of Turkey's official perception were based upon racial discrimination.

In *Başkaya & Okçuoğlu v. Turkey* (Nos. 23536/94 and 24408/94, 8 July 1999) the leftist writer Fikret Başkaya claimed that Turkey had violated Article 10 when in 1993 a State Security Court sentenced him to eighteen months in prison due to his book, 'The Bankruptcy of the Paradigm', in which he argued that the suppression of Kurdish identity is central to Kemalism and is the source of its defining military character. The European Court upheld his allegation, delivering a judgement broad enough to condemn most of Turkey's repression of freedom of expression. In relation to Turkey's invocation of Article 8 of the Anti-Terror Law in relation to Başkaya's book, it stated that "there is little scope under the Convention for restrictions on political speech" unless exercising of the right to free speech could actually be proven to have incited violence. (paragraph 62)

Article 14 provides that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. Crucially, the Article provides for the prohibition of discrimination in relation to the rights assured by the Convention and Protocols: it does not have an autonomous nature but applies in conjunction with another article of the Convention. In *Rasmussen v. Denmark* (8777/79, 28 November 1984) the Court made clear that:

"Article 14 complements the other substantive provisions of the

Convention and the Protocols. It has no independent existence since it has effect solely in relation to the “enjoyment and freedoms” safeguarded by those provisions. [...] There can be no room for its application unless the facts at issue fall within the ambit of one or more of the latter.” (para.29)

The Court has however expressed the need for a broad interpretation of the protection provided by Article 14 (see *Thlimmenos v. Greece*, No. 34369/97, 6 April 2000). According to the Court’s jurisprudence, a difference in treatment is discriminatory under Article 14 if it “has no objective and reasonable justification”, that is if it does not pursue a “legitimate aim” or if there is not a “reasonable relationship of proportionality between the means employed and the aim sought to be realised”. States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (see *Karlheinz Schmidt v. Germany*, No. 13580/88, 18 July 1994; *Salgueiro da Silva Mouta v. Portugal*, No. 33290/96, 12 December 1999; and *Fretté v. France*, No. 36515/97, 26 February 2002).

It must be noted that, perhaps due to the highly sensitive nature of the differences which give rise to discrimination, the Court rarely upholds a violation of Article 14. Indeed, it has never done so in relation to any case brought against Turkey by the Kurdish Human Rights Project to date. The fact that the majority of these cases have been brought on behalf of Kurds who are victims of Turkey’s clearly discriminatory policies illustrates the Court’s reticence to countenance evidence adduced in this area. The recent case of *Nachova and Others v. Bulgaria* (Nos. 43577/98 and 43579/98, 26 February 2004) may however signal a radical change in the Court’s jurisprudence in relation to cases brought under this Article. This case concerned the killing of two Roma men by the Bulgarian security forces. In holding that there had been a violation of the Article 14 of the Convention in conjunction with Article 2, the Court considered relevant the fact that the present case was not the first brought against Bulgaria in which the Roma have been alleged to be the victims of racial discrimination at the hands of State agents (see *Velikova v Bulgaria*, No. 41488/98, 18.5.2000; *Anguelova v Bulgaria*, No. 38361/97, 13.6.2002; *M.C. v Bulgaria*, No. 39272/98, 4.12.2003). This reasoning renders the case of critical importance to Kurdish applicants from Turkey, as the Court may in

future more willingly acknowledge an accretion of evidence and allegations, even if previous applicants have been unsuccessful in proving their individual complaints of discrimination.

Turkey is party to Protocol 1 to the Convention which contains three Articles of relevance to the cultural and linguistic rights of its Kurdish population. Article 1 provides that every natural or legal person is entitled to the peaceful enjoyment of his possessions, and that no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. This has a bearing on the confiscation of Kurdish language materials and their means of production and equipment used to receive satellite transmissions.

Article 2 provides that no person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions. The Court determined that this "aims at safeguarding the possibility of pluralism in education... essential for the preservation of the "democratic society" as conceived by the Convention..." (*Kjeldsen, Busk, Madsen and Pedersen v. Denmark*, Series A. No. 23, 1976). The Travaux Préparatoires of the First Protocol show that a proposal for an express reference in Article 2 to parental rights concerning the education of their children was withdrawn before being voted upon. However, the Court's description of the European Convention as a living instrument which must be interpreted in the light of changing conditions could allow a change in interpretation according to circumstances. In the *Belgian Linguistics Case* the Court held that Article 2 does not in itself guarantee choice of the language of education and that its negative formulation meant that States Parties were not obliged to establish or subsidise any particular type of education. The Court did however emphasise that the state's pursuit of "linguistic unity" would not provide objective justification for the prevention of private mother-tongue education, and would amount to a violation of Article 2 of the First Protocol, and Article 8 of the Convention, in conjunction with Article 14 (*Belgian Linguistics Case (No.2)* (1968) 1 ECHR 252).

Protocol 12 to the Convention contains a free standing non-discrimination provision which constitutes a major development in relation to Article 14 of the Convention. Turkey has not signed this Protocol.

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V - International Commitments

Protecting the Cultural and Linguistic Rights of the Kurds

By membership in the General Assembly of the UN, all four States are committed to the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (1992), which creates obligations specifically regarding cultural and linguistic rights of minorities. They are also committed to the Vienna Declaration and Programme of Action, adopted at the World Conference of Human Rights in 1993; to the Cairo Declaration of the Organisation of the Islamic Conference; and to regional UNESCO Declarations concluded in Sana'a and Sophia in 1996 and 1997 respectively. The Kurds in Turkey and Syria benefit from the obligations within the Barcelona Declaration (1995), adopted under the auspices of the EU, while the Kurds of Syria and Iraq benefit from the commitments undertaken within the Arab Charter on Human Rights. The Kurds in Turkey also benefit from obligations which Turkey has undertaken as a member of the Organisation for Security and Cooperation in Europe, including the Copenhagen Document adopted at the Second Conference on the Human Dimension of the OSCE in 1990.¹⁸³ It will be argued that Turkey is also committed to the provisions of the Council of Europe's Framework Convention for the Protection of National Minorities (1995) and also the European Charter for Regional or Minority Languages (1992) by virtue of its duties regarding accession to the EU.

5.1 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities

This Declaration was adopted by the General Assembly of the UN, without a vote, on 18 December 1992. Like all declarations, it does not create binding obligations for those States which are party to it, but has recommendatory

status and is evidence of consensus regarding minimum standards in the given area. As such it constitutes important evidence of state practice and affirms commitment to norms which may eventually attain the status of customary international law.

Article 1(1) provides that States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity. They are obliged to adopt appropriate legislative and other measures in order to achieve these ends.

Article 2(1) stipulates that persons belonging to such minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination. This Article also provides that, inter alia, these persons have the right to participate effectively in cultural, religious, social, economic and public life (Paragraph 2), the right to establish and maintain their own associations (Paragraph 4) and the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities as well as contacts with citizens of other States with whom they share national or ethnic, religious or linguistic bonds. (paragraph 5)

Article 3(1) provides that such persons may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group and without any discrimination. Paragraph 2 of this Article provides that no disadvantage shall befall a beneficiary as a result of the exercise or non-exercise of the rights guaranteed by the Declaration, meaning that the right cannot be lost through non-exercise.

Article 4(1) provides that States shall take measures where required to ensure that such persons may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law. Paragraphs 2, 3 and 4 make a number of significant recommendations to States Parties: to take measures to create favourable conditions which enable such persons to express their characteristics and to develop their culture,

language, religion, traditions and customs (paragraph 2); to take appropriate measures in order to provide such persons with an adequate opportunities to learn their mother-tongue or to have instruction in their mother-tongue (paragraph 3); to take measures in the field of education in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory (paragraph 4).

The Declaration also establishes a number of provisions which refer to the participation of minorities in the policy making process. Article 5(1) provides that national policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities. Article 2(3) provides that persons belonging to minorities have the right to participate effectively at national and, where appropriate, regional levels in decisions making processes which concern them.

5.2 Vienna Declaration and Programme of Action

On 25 June 1993, representatives of 171 States adopted by consensus the Vienna Declaration and Programme of Action of the World Conference on Human Rights. The conference was marked by an unprecedented degree of participation by Government delegates and the international human rights community.

Article 5 emphasises that, "While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms." Article 15 recognises that, "The speedy and comprehensive elimination of all forms of racism and racial discrimination, xenophobia and related intolerance is a priority task for the international community." Article 19 reaffirms the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the UNGA Minorities Declaration of 1992.

It reiterated that the persons belonging to minorities have the right to enjoy their own culture and to use their own language in private and in public, freely and without interference or any form of discrimination. In relation to freedom of information and of the media, Article 39 underlines the importance of objective, responsible and impartial information concerning human rights and humanitarian issues. It encourages the increased involvement of a free media in pursuit of this goal. Part II of the Declaration includes more detailed provisions concerning the right to education, the rights of the child and forms of intolerance such as discrimination.

5.3 The UNESCO Declarations on Independent and Pluralistic Media

UNESCO defends freedom of expression in all its fields of its competence and as such has special concern for students, educators, teachers, universities, scientists, intellectuals, writers, artists. From 1991 to 1997, UNESCO held five regional seminars concerning independent and pluralistic media. These were attended by journalists and media practitioners who reviewed the problems facing the independent and pluralist media in their regions. The resultant Final Declarations consequently cover issues essential to those in the field. The Declaration which resulted from the European Seminar on Promoting Independent and Pluralistic Media held in Sophia, Bulgaria, from 10 to 13 September 1997, applies to Turkey; and Iraq, Iran and Syria are covered by the Declaration adopted at the Seminar on Promoting Independent and Pluralistic Arab Media, held in Sana'a, Yemen, from 7 to 11 January 1996.

Of great significance to the Kurds in Turkey is the recognition within the Sophia Declaration of the need to develop better recruitment policies within media which encourage journalists and journalism from ethnic and minority communities (Article 11), and to prevent excessive concentration of media ownership, public or private, along with any other controls which reduce pluralism (Article 13). Of particular significance in the light of current legal reforms undertaken in pursuit of EU membership is the stipulation in Article 2 to review, revise and repeal all of those laws, regulations and measures that

limit the exercise of these fundamental rights. Other improvements were sought regarding the development of long-term sustainable funding for all independent media and the introduction of new communication technologies, such as the internet, which increase the free flow of information.

The Sana'a Declaration also contains significant provisions which protect the Kurds' cultural and linguistic rights, including the obligation to end to all forms of social, economic or political discrimination in broadcasting, in the allocation of frequencies, in printing, in newspaper and magazine distribution and in newsprint production and allocation. Other significant obligations include the development of independent print and electronic media in order to encourage pluralism and editorial independence; the removal of economic barriers to the establishment and operation of news media outlets; and the commitment to hear cases against those involved in the media under civil codes and procedures, rather than under criminal legislation and procedure.

5.4 The Barcelona Declaration

The European Union is engaged in the facilitation of trade and developmental cooperation between its organs, the fifteen Member States and twelve Mediterranean Partners of which Turkey and Syria are two. In November 1995 the Conference of EU and Mediterranean Foreign Ministers in Barcelona initiated a new phase of regional cooperation known as the Barcelona Process or the Euro-Mediterranean Partnership. The Declaration adopted at the conference concerned not only political and economical partnership but also social and cultural cooperation. Among other things States parties agreed to encourage exchanges between those active in development within the framework of national laws: leaders of political and civil society, the cultural and religious world, universities, the research community, the media, organisations, the trade unions and public and private enterprises. It recognises that close interaction between the media would benefit cultural understanding. The European Union agreed to actively promote such interaction, in particular through the ongoing MED-Media programme and to organise an annual meeting of national media representatives.

5.5 The Cairo Declaration on Human Rights in Islam

All four states are members of the Organisation of the Islamic Conference, an intergovernmental group established in Rabat, Morocco on 25 September 1969.¹⁸⁴ The Cairo Declaration on Human Rights in Islam was adopted at the nineteenth annual Islamic Conference of Foreign Ministers in Cairo on 5 August 1990. All rights contained therein are made subject to Islamic Shari'ah law according to Article 24, and Article 25 confirms this by stating that, "The Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the Articles of this Declaration." The principle of non-discrimination can be construed from Article 1 as can a wide right to education under Article 9. The right to enjoy the fruits of one's scientific, literary, artistic or technical labour is also protected under Article 16, as is the right to protection of the moral and material benefits of such work. Fomentation of nationalistic hatred and incitement to any form of racial discrimination are prohibited by Article 22(d).

5.6 The Arab Charter on Human Rights

Syria and Iraq are members of the League of Arab States and are bound by the Charter, adopted by the Council of the League by Resolution 5437 on 15 September 1994.¹⁸⁵ The Charter guarantees basic civil and political rights found in the ICCPR, including the right of peoples to self-determination in Article 1 and non-discrimination in Article 2. Conspicuously absent from the Charter is the right to freedom of expression. Article 36 however provides that everyone has the right to participate in cultural life, as well as the right to enjoy literary and artistic works and to be given opportunities to develop their artistic, intellectual and creative talents. Article 37 provides that minorities shall not be deprived of their right to enjoy their culture: this formulation is therefore unique as it grants the right not to individual members of minorities but to the minorities themselves.

Regional Commitments Undertaken by Turkey

5.7 The Copenhagen Document of the Second Conference on the Human Dimension

This instrument has significance for members of the OSCE as a political document which establishes minimum standards in a wide range of areas. Paragraph 30 provides a platform for subsequent provisions which guarantee rights to national minorities by focusing upon the issue of institutionalised discrimination against minorities:

“The participating States recognise that the questions relating to national minorities can only be satisfactorily resolved in a democratic political framework based on the rule of law, with a functioning independent judiciary. This framework guarantees full respect for human rights and fundamental freedoms, equal rights and status for all citizens, the free expression of all their legitimate interests and aspirations, political pluralism, social tolerance and the implementation of legal rules that place effective restraints on the abuse of governmental power.”

It also affirms that States Parties “recognise the important roles performed by a host of non-governmental organisations and associations in the promotion of tolerance, cultural diversity and the resolution of questions relating to national minorities.” Paragraph 31 provides that members of national minorities have the right to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law, and recognises that States Parties will adopt, where necessary, special measures to ensure that members of national minorities enjoy full equality with other citizens and enjoyment of human rights and fundamental freedoms.

Paragraph 32 affirms other authoritative pronouncements by providing that one’s membership within a national minority is a matter of individual choice and that no disadvantage may arise from the exercise of such choice.

It guarantees to such persons a number of rights which can be exercised and enjoyed individually as well as in community with other members of their group (paragraph 32.6). These include:

- the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. (paragraph 32)
- to use freely their mother-tongue in private as well as in public (paragraph 32.1)
- to establish and maintain their own educational, cultural and religious institutions, organisations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation (paragraph 32.2)
- to establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs (paragraph 32.4)
- to disseminate, have access to and exchange information in their mother-tongue (paragraph 32.5)
- to establish and maintain organisations or associations within their country and to participate in international non-governmental organisations (paragraph 32.6)

Other paragraphs which provide relevant protection for the Kurds include 40.3, which demands the promotion of understanding and tolerance, particularly in the fields of education, culture and information; and 40.4, by which states are committed to endeavour to ensure that the objectives of education include the resolution of problems deriving from racial prejudice and hatred and to the development of respect for different civilizations and cultures

Obligations construed from Regular Reports of the European Commission on Turkey's Progress Towards Accession

Further obligations arise for Turkey in respect of its Kurdish population due to the process of attaining candidacy for accession to the EU. The political criteria for accession, formulated by the European Council in Copenhagen in June 1993, stipulate that candidate countries must have achieved, inter alia, "human rights and respect for and protection of minorities." The centrepiece of Turkey's pre-accession strategy is the Accession Partnership between the EU and Turkey, adopted in March 2001, which establishes short and medium-term priorities for legislative reforms for the fulfilment of the Copenhagen political criteria.

The short-term priorities - which were to be met by March 2002 - included the expansion of freedom of expression and the removal of any legal provisions which forbid the use by Turkish citizens of their mother-tongue in television and radio broadcasting. The medium-term priorities include ensuring cultural diversity and guaranteeing cultural rights for all citizens irrespective of their origin; guaranteeing full enjoyment by all individuals of all human rights and fundamental freedoms without any discrimination and irrespective of language; abolishing any legal provisions, including those existing in the field of education, which prevent the enjoyment of these rights; and ratifying the two International Covenants of 1966.

Crucially, the Accession Partnership did not define cultural rights or specify the measures by which Turkey must guarantee them. The two International Covenants contain guarantees of relevance to the cultural and linguistic rights, as discussed above. Article 27 of the ICCPR guarantees to persons belonging to minorities the rights to use their language and to enjoy their culture; and Article 13 of the ICESCR guarantees the right to education while Article 15 guarantees the right to take part in cultural life. In blatant contempt for EU demands regarding minority protection, Turkey deposited reservations with

regard to all three of these Articles upon ratification.

However, the fact that the Accession Partnership explicitly cites the obligation to guarantee cultural rights in addition to the duty to ratify the two International Covenants indicates that the content of cultural rights as envisaged by the EU exceeds that of those enshrined in the Covenants. There are four instruments which guarantee more comprehensive cultural rights than either of the two Covenants. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, and the Copenhagen Document of the OSCE, both discussed above, are international commitments to which Turkey has been bound since their promulgation. However, two legally binding instruments created by the Council of Europe exceed even the aforementioned Declaration and Document in their detailed exposition of extensive minority cultural rights: these are the European Charter for Regional and Minority Languages of 1992 and the Framework Convention for the Protection of National Minorities of 1995. The Regular Reports on Turkey's Progress Towards Accession, issued annually by the Commission on Turkey's Progress Towards Accession, explicitly criticise Turkey's failure to sign and ratify these two instruments in the context of its treatment of its Kurdish population. In the six Regular Reports on Turkey issued by the Commission to date, domestic law and practice concerning the cultural and linguistic rights of the Kurds have been repeatedly highlighted as areas which must be reformed.

In its 1998 Regular Report on Turkey's Progress Towards Accession, the Commission on Turkey's Progress Towards Accession noted that despite the repeal of the Law on Publications in Languages other than Turkish the Kurdish language was still banned in the contexts of political communication, education and broadcasting on both television and radio. In its 1999 Regular Report the Commission observed that while Turkey had still not made attempts to accommodate its Kurdish population, "any minority group should have the opportunity and material resources to use and sustain its natural and cultural traditions in circumstances and under conditions now clearly and reasonably defined by the two Council of Europe Conventions." In its 2000 Regular Report the Commission noted with concern that Turkey had still not signed the Framework Convention and still did not recognise minorities other than those enumerated within the Treaty of Lausanne. Crucially, the Commission

highlighted the content of cultural rights by stating that, "Cultural rights for all Turks, irrespective of their ethnic origin, such as the right to broadcast in their mother-tongue, to learn their mother-tongue or to receive instruction in their mother-tongue, are not guaranteed..." In relation to this the Commission observed that while Turkey had now signed the ICCPR and the ICESCR, there remained "major human rights instruments" which Turkey had not yet signed and again specifically referred to the Framework Convention.

In its 2001 Regular Report the Commission observed that in spite of constitutional amendments purporting to widen freedom of expression the actual situation had still not improved for persons who belong to groups outside the scope of the 1923 Lausanne Treaty, notably in relation to education and broadcasting. It also commented upon the lack of progress specifically in the area of mother-tongue education. In criticising the lack of improvement in the ability of members of ethnic groups to express their cultural and linguistic identity, the Commission noted once again that Turkey had not signed the Framework Convention and still did not recognise minorities other than those defined in the 1923 Lausanne Peace Treaty. In its 2002 Regular Report the Commission observed that, despite the reforms introduced by the three reform packages there had only been a limited improvement in the ability of ethnic groups to express their linguistic and cultural identity: in the respect it noted once again that Turkey had failed to ratify the Framework Convention and continued refuse to recognise minorities other than those listed in the Treaty of Lausanne. In its 2003 Regular Report the Commission again criticised Turkey's implementation of its most recent reform packages which affected those cultural rights established in the Framework Convention and European Charter and also in relation to freedom of expression: it noted that there had been no progress in the implementation of reforms concerning the learning of languages and dialects traditionally used by Turkish citizens in their daily lives; it also noted that, in spite of all legal reforms purporting to increase freedom of expression, the use of languages and dialects other than Turkish in the areas of film, the arts, festivals, cultural events, radio broadcasts and personal names was still subject to legal restrictions and judicial prosecution.

These specific references and recommendations constitute undeniable political pressure upon Turkey to incorporate the broad cultural rights

protected within the two Council of Europe conventions into its fulfilment of the Copenhagen political criteria for accession in addition to the duty to ratify these instruments. Furthermore, recent recommendations made by OSCE underline the importance of these two instruments for Turkey independent of the highly politicised process of accession to the EU. Intense discussion of national minorities at the Human Dimension Implementation Meeting in Warsaw from the 6 – 17 October 2003 resulted in a number of recommendations to Member States, including the ratification of both the Framework Convention and European Charter.¹⁸⁶

The provisions of these two instruments will be considered as providing authoritative clarification of Turkey's obligations regarding the cultural rights of the Kurds which derive from the Copenhagen political criteria for accession.

5.8 Council of Europe Framework Convention for the Protection of National Minorities

The Framework Convention is the first legally binding multilateral instrument which addresses the issue of minority rights, and contains many provisions which protect the cultural and linguistic rights of the Kurds.¹⁸⁷ The Preamble of the Convention reiterates in relation to Europe a principle that has been recognised in several other international instruments: that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity. It states that tolerance and dialogue create an environment in which cultural diversity can be a source of social enrichment rather than one of division.

Article 1 reiterates the well established principle according to which the protection of national minorities, and of the rights and freedoms of persons belonging to those minorities, is recognised as integral to international protection of human rights. Article 3(1) provides that every person belonging

to a national minority shall have the right to choose to be treated or not to be treated as a member of the minority, and that no discrimination shall result from such a choice, while 3(2) provides that such persons may exercise their rights individually as well as in community with others.

Article 4(1) stipulates that positive measures are necessary to ensure the effective protection of national minorities in addition to the implementation of the principle of non-discrimination. Article 4(2) provides that States Parties must take adequate measures to promote full and effective equality between members of national minorities and members of the majority in all areas of economic, social, political and cultural life. Article 5(1) requires States Parties to promote the conditions necessary for members of national minorities to maintain and develop their culture and to preserve the essential elements of their identity, including their language, traditions and cultural heritage. Article 5(2) requires States Parties to refrain from implementing policies or practices designed to assimilate members of national minorities against their will.

Article 6(2) requires States Parties to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity. Article 16 requires States Parties to refrain from taking measures which alter the proportions of the population in areas inhabited by members of national minorities and which are aimed at restricting their rights and freedoms guaranteed by the Convention.

Under Article 9 States Parties undertake to recognise that the right to freedom of expression of every person belonging to a national minority encompasses the freedom to hold opinions and to receive and impart information and ideas in the minority language without interference by public authorities and regardless of frontiers. This Article also provides for the rights of minorities in relation to the media. It therefore contains provisions which flesh out the demands and recommendations made by the EU in relation to this major short-term priority for legal reform in pursuit of the Copenhagen political criteria, as established in the Accession Partnership between the EU and Turkey in March 2001. States Parties shall ensure that; within the framework of domestic legal systems, persons belonging to a national minority are not discriminated

against in their access to the printed and broadcast media. Parties are also committed to adopting adequate measures in order to facilitate access to the media for persons belonging to national minorities specifically in order to promote tolerance and permit cultural pluralism.

Article 10 states that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing. It continues by providing that in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to create conditions facilitating the use of the minority language in relation to the administrative authorities. It concludes by providing that every person belonging to a national minority must be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.

Article 11 provides that the Parties undertake to recognise that every person belonging to a national minority has the right to use his or her surname and first names in the minority language. Significantly, it includes the right to their official recognition. The Parties also agree to recognise that every person belonging to a national minority has the right to use their mother-tongue in signs, inscriptions and other information of a private nature visible to the public. This Article also allows the use and display of traditional topographical names for the public in the minority language if there is sufficient demand.

States Parties make commitments in relation to mother-tongue education under Articles 13 and 14. Accordingly, these Articles contain provisions which flesh out the major medium-term priority for legal reform, established by the European Commission Accession Partnership Document for Turkey of December 2000, which mandates the abolition of laws which prevent any citizen's – specifically, Kurdish citizens' - enjoyment of their cultural rights, specifically in relation to the education system. Article 13 provides that, within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to

manage their own private educational and training establishments. Article 14 obliges Parties to recognise that every person belonging to a national minority has the right to learn his or her minority language and that in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if there is sufficient demand, the Parties shall endeavour to ensure that persons belonging to those minorities have adequate opportunities to learn their mother-tongue or to receive instruction in this language. It notes that this article shall be implemented without prejudice to teaching of or through the official language. Furthermore, Article 12 provides that the Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority. In this context the Parties shall provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities.

Under Article 17 Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity or a common cultural heritage.

5.9 European Charter for Regional or Minority Languages

The Commission of the European Communities has made fewer references to this instrument in relation to Turkey's fulfilment of the cultural rights of the Kurds pursuant to the Copenhagen political criteria. The Charter has however been ratified by a growing number of EU Member States and may accordingly be considered as clarifying the positive support which Turkey must provide in fulfilment of its obligations relating to the cultural and linguistic rights of the Kurds.

According to the Council of Europe, the Charter was adopted to ensure the respect of "an inalienable and commonly recognised right to use a regional or

minority language in private and public life.”¹⁸⁸ The Preamble of the Charter confirms that the right to use a regional or minority language in private and public life is an inalienable right conforming to the principles embodied in the United Nations International Covenant on Civil and Political Rights, and according to the spirit of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁸⁹ In part II the Charter enunciates objectives and principles which States Parties undertake to apply to all the regional or minority languages spoken within their territory. These include respect for the geographical area of each language; promotion, facilitation and encouragement of the use of regional or minority languages in speech and writing, in public and private life; teaching and study of the language; and promotion of study and research into such languages at universities or equivalent institutions. Part III establishes detailed measures to promote the use of regional or minority languages in public life in the fields of education (Article 8), the judicial authorities (Article 9), administrative and public services (Article 10), the media (Article 11), cultural activities and facilities (Article 12), economic and social life (Article 13) and trans-frontier exchanges (Article 14).

Furthermore, Article 7 provides that the Parties undertake to eliminate any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language which is intended to endanger its survival. It states that the adoption of special measures in favour of regional or minority languages, which either promotes equality between its speakers and the rest of the population or takes due account of their specific needs, is not to be considered an act of discrimination against the users of more widely-used languages. This is of particular significance to Turkey, which maintains that accommodation of minorities constitutes such discrimination. Finally this Article provides that, in formulating policies concerning regional or minority languages, Parties must consider the needs and wishes expressed by the speakers of such languages: to this end they are encouraged to establish bodies for the purpose of advising the authorities on all matters pertaining to regional or minority languages.

VI - Recent Authoritative Pronouncements on the Four States' Implementation of their Relevant Obligations

A range of international procedures and mechanisms monitor the implementation by Turkey, Iraq, Iran and Syria of obligations which derive from the cultural and linguistic rights of their Kurdish populations. Treaty mechanisms are available to individuals in those states that have signed the relevant treaty. Non-treaty mechanisms are available to individuals by virtue of their state's membership of organisations that are concerned with the protection of human rights. Both types of mechanism perform two main functions: fact finding, which may be carried out in relation to issues which give cause for concern either on a periodic or an ad hoc basis; and monitoring human rights situations, in relation to either particular States Parties or particular themes. In addition to these functions, treaty mechanisms receive reports from States Parties which should detail their attempts to implement their obligations.

Recent Concluding Observation of International Treaty Bodies

Legally binding human rights treaties adopted under the auspices of the UN create Committees which supervise the States Parties' implementation of obligations assumed under the relevant treaty. The Committees are composed of members who are elected by the States Parties to each treaty, or by ECOSOC in the case of the ICESCR. The availability of these Committees to a state depends upon its ratification of the relevant human rights treaty. The main function of

the Committees is to report on the implementation of treaty obligations by States Parties. This is based upon the examination of State reports, the regular submission of which is established as a legally binding obligation by such treaties. A Committee examines a State's report at a public meeting which may be attended by representatives who answer questions posed by members of the Committee. After examining a State's report in the light of all information, including that supplied by external sources such as relevant UN agencies and NGOs, the Committee adopts Concluding Observations on the report which identify areas of concern make recommendations for action.

The concluding observations made by relevant Committees delivered in response to the most recent submissions made by the four states provide authoritative clarification of the current practical status of the cultural and linguistic rights of the Kurds. This is the case in relation to Turkey and Iraq in spite of the recent events which have dramatically altered the current and prospective situations in these states. Although Turkey has undertaken many legislative reforms in pursuit of accession to the EU, these are being undermined by ingrained official attitudes. Many of Iraq's most recent reports to treaty bodies were submitted in the period during which the Security Council embargo, war with Iran and the conflict following Iraq's invasion of Kuwait resulted in the widespread denial and violation of human rights. The Committees also noted that "the northern territory" – meaning Iraqi Kurdistan – was not administered by the Iraqi authorities, and expressed concern at the consequent lack of information in relation to that area relevant to the implementation of the relevant Conventions. The concluding observations published by these Committees are however useful in highlighting contemporary issues within Iraq which will be inherited by the Transitional National Government and eventually the Government of Iraq.

With regards to Iran, numerous, explicit or implicit, limitations or restrictions imposed in order to preserve Islamic values also seriously impede the enjoyment of some human rights protected under the various treaties.

Some general remarks may be made regarding the concluding observations issued in relation to all four states. Committees have noted that these states' common practice of combining a number of late reports in one document

frustrates the formulation of accurate observations. Reports have often been essentially legalistic and consequently lacking in sufficient information concerning the practical implementation of the relevant treaty. Sufficient discussion of factors and difficulties impeding such implementation has often been omitted from the reports. Many Committees commented upon the lack of data and data collection agencies with respect to insufficient and inaccurate information regarding minorities. Poor dissemination of the obligations and rights created by such treaties has also been the subject of frequent criticism. Many concluding observations expressed regret that the report in question did not follow the reporting guidelines established by the relevant Committee and as such were not sufficiently comprehensive to enable accurate appraisals. All Committees noted the need to involve all relevant bodies concerned with the implementation of treaty obligations and commented that non-governmental organisations must be given a more significant role in increasing public awareness in this respect.

6.1 Human Rights Committee

Article 40 of the ICCPR obliges States Parties to submit reports on the measures which they have taken affecting the rights guaranteed by the Convention. The Human Rights Committee was established in order to monitor the implementation of the ICCPR by States Parties by considering these reports. The first report must be submitted without one year of the entry into force of the ICCPR in relation to the State Party, and thereafter reports must be submitted only at the request of the Committee.

Turkey ratified the ICCPR on 23 December 2003 and as such its first report is due by the end of 2004.

The Committee gave its concluding observations to Iraq's most recent report on the 19 November 1997.¹⁹⁰ The Committee expressed concern regarding the situation of members of religious and ethnic minorities, as well as other groups which are the subject of discrimination in Iraq, in particular the Kurds and the Shi'ite people in the Southern Marshes (paragraph 20). Iraq's fifth

report, due on 4 April 2000, was never submitted.

The Committee gave its concluding observations to Iran's most recent report, which comprised its ninth, tenth, eleventh and twelfth periodic reports, on the 3 August 1993.¹⁹¹ In relation to its principal subjects of concern, the Committee noted the lack of information regarding the demographic and ethnic composition of the Iranian population: the Committee recalled that detailed information on ethnic, religious and linguistic groups and on the demographic composition of the population had been promised by the representative of the State party when the seventh report was considered by the Committee in 1983. (paragraph 273) The Committee wished to be informed about the treatment and the situation of ethnic, religious and linguistic minorities in relation to Articles 4, 5, 6 and 7 of the Convention, referring in particular to the situation of the Kurds amongst all of Iran's ethnic minorities. (paragraph 274) It recommended that Iran should include information about the demographic composition of the population and the ethnic, linguistic and religious groups in the territory of the State Party, and that it should explain how they participated in the political, economic, social and cultural life of the country. It also requested information regarding concrete measures taken by the Government to guarantee to individuals belonging to those groups the enjoyment without discrimination of the rights enumerated in Article 5 of the Convention (paragraph 276). Iran's third and fourth reports, respectively due on the 31 December 1994 and 1999, have not yet been submitted.

The Committee gave its concluding observations in relation to Syria's second periodic report, due in 1984, on 24 April 2001.¹⁹² The Committee urged Syria to take urgent steps to find a solution to the statelessness of thousands of Kurds and to allow Kurdish children born in Syria to acquire Syrian nationality, the denial of which deprives them of cultural rights such as education as well as civil, political, economic and social rights. The third periodic report of the Syrian Arab Republic, due on 1 April 2003, has not yet been submitted.

6.2 Committee on Economic, Social and Cultural Rights

Unlike the other major human rights treaty bodies, the Committee on Economic, Social and Cultural Rights was not established by its corresponding instrument, the ICESCR. Instead, ECOSOC created the Committee in 1985 following the poor performance of the two previous bodies entrusted with monitoring the Covenant. States Parties must submit reports in accordance with the provisions of Articles 16 and 17 of the Convention and those subsequently established by ECOSOC. The first report is to be submitted within two years of the entry into force of the Convention for the State Party and thereafter once every five years.

Turkey ratified the ICESCR on 23 December 2003 and as such its first report is due by the end of 2005.

The Committee gave its concluding observations to Iraq's most recent report on the 12 December 1997.¹⁹³ The Committee expressed concern about reports of discrimination against members of certain minorities, especially the Kurds, with respect to their enjoyment of rights under the Covenant. Discrimination existed in relation to the allocation of resources between rural and urban areas: the new administration in Iraq will inherit both the wide discrepancy between the standards of living in these two areas and also the problems caused by the resulting imbalance. The Committee reiterated previous concerns concerning the lack of information regarding the implementation of Article 13 of the Covenant in several respects including the denial of academic freedom and excessive Governmental control over minority language radio programmes (paragraph 24). The Committee recommended that the independence of the existing Iraqi Human Rights Commission should be ensured, and that it should be empowered to receive and investigate complaints from individuals of violations of their human rights, including their economic, social and cultural rights (paragraph 28). In recommending that, in accordance with Article 2(2) of the Covenant, measures should be taken in order to guarantee that the rights enunciated in the Covenant are "exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status", the Committee made particular

reference to Iraq's treatment of its Kurdish population (paragraph 29). Iraq's fourth periodic report, due on 30 June 2000, was never submitted.

The Committee gave its concluding observations to Iran's most recent report on the 9 June 1993.¹⁹⁴ The Committee's principal subjects of concern included the insufficiency of the education offered to the children belonging to the Kurds (paragraph 5(d)); the situation of the Kurds in the context of disparities between the enjoyment by different ethnic and economic groups of their right to education and their enjoyment of cultural activities (paragraph 5(g)). The Committee invited Iran to undertake necessary steps, both legislative and practical, in order to ensure that the rights enunciated in the Covenant could be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, especially in the case of ethnic or religious minorities (paragraph 8). Iran's second and third reports, due on 30 June 1995 and 2000, have not yet been submitted.

The Committee gave its concluding observations to Syria's most recent report on the 24 September 2001.¹⁹⁵ The Committee voiced deep concern regarding discrimination against 'certain minority groups in the Syrian Arab Republic on the basis of their non-Arab heritage, including those groups that have been living in the territory of the State party for many generations' (paragraph 13). This is a reference to the Kurdish population which still suffers due to the ongoing effects of 1962 census: the Committee must be criticised for failing to mention the Kurds by name. The Committee strongly recommended that Syria take effective measures to combat discrimination against minority groups, in particular the Kurds. In respect to measures which should be taken to improve the situation of the Kurds, the Committee recommended improving birth registration and school attendance and allowing for the use of their languages and other expressions of their culture (paragraph 30).

6.3 Committee on the Rights of the Child

This Committee was established under Article 43 of the Convention for the purpose of examining the progress made by States Parties in achieving the

realisation of the obligations undertaken therein.

The Committee gave its concluding observations to Turkey's most recent report on 9 July 2001.¹⁹⁶ It commented that Turkey's narrow definition of minority groups according to the Treaty of Lausanne has impeded certain group's enjoyment of their human rights protected under the Convention (paragraph 10). The Committee explicitly clarified this concern when it noted the reservations to articles 17, 29 and 30 of the Convention: it stated that "in particular in the fields of education and, freedom of expression and the right to enjoy their own culture and use their own language, these reservations may have a negative impact on children belonging to ethnic groups which are not recognised as minorities under the Treaty of Lausanne of 1923, in particular children of Kurdish origin" (paragraph 11). Of particular significance with respect to the right of the Kurds to limited internal self-determination as discussed above, the Committee encouraged Turkey to decentralize some aspects of decision-making "in particular with regard to health and education, in order to improve coordination also with the local authorities and with the private and voluntary sectors, especially in the south-eastern region" (paragraph 16). It reminded Turkey of its obligation to allocate the maximum available resources for the implementation of the rights recognised in the Convention, including the economic, social and cultural rights of children, and for children belonging to the most vulnerable groups in society (paragraph 18). The Committee was particularly concerned that the principle of non-discrimination (Article 2 of the Convention) was not fully implemented for children belonging to minorities not recognised under the Treaty of Lausanne of 1923, "in particular children of Kurdish origin... and children living in the south-eastern region and in rural areas, especially with regard to their access to adequate health and educational facilities" (paragraph 29). It noted with concern that approximately 25 per cent of children below five years of age are not registered and that these rates are higher in the Southeast where parents have difficulty obtaining access to registry offices (paragraph 29). It failed to mention that this issue is exacerbated by the fact that registry officials impede the registration of children who are given Kurdish names. Similarly, while it commented upon the poor attendance at school and the high drop-out rates (paragraph 56), it failed to mention that a major contributing factor to this phenomenon is the fact that instruction is delivered using the Turkish

language with the effect of marginalising Kurdish children. The Committee urged Turkey to direct education towards the aims mentioned in Article 29(1) of the Convention and the Committee's General Comment on the aims of education. Turkey's second report, due on the 3 May 2002, has not yet been submitted.

The Committee made its concluding observations in relation to Iraq's latest report on 26 October 1998.¹⁹⁷ It recommended the prioritisation of budget which ensured the protection of the economic, social and cultural rights of children, especially taking into account Articles 2, 3 and 4 of the Convention. In this regard, the Committee recommended that the State Party seek to eliminate the disparities between urban and rural areas and between provinces. (paragraph 13) The Committee also noted that although the right to non-discrimination was reflected in the Constitution and in other domestic legislation, such legislation did not explicitly prohibit discrimination on the basis of, inter alia, national or ethnic origin. Iraq's second report, due on the 14 July 2001, was never submitted.

The Committee made its conclusion observations in relation to Iran's latest report on 28 June 2000.¹⁹⁸ It began by noting significant gaps in information relating to Iran's implementation of general principles, particularly those of non-discrimination and the best interests of the child (paragraph 2). The Committee concurred with the recent findings of the Committee on the Elimination of Racial Discrimination by voicing its concern at the large disparities in the enjoyment of rights by those in provinces predominantly inhabited by persons belonging to ethnic minorities, especially in Sistan and Baluchestan, Lorestan, West Azarbaijan, Ardabil and Hormozgan. (paragraph 23). The Committee was also concerned that the aims of education as presented within Iran's report did not adequately reflect the aims outlined in Article 29 of the Convention, particularly in regard to the development and respect for human rights and tolerance, and provision for ethnic minorities (paragraph 47).

The Committee made its conclusion observations in relation to Syria's latest report on 24 January 1997.¹⁹⁹ Regarding the implementation of Article 4 of the Convention, the Committee noted with concern the inadequacy of measures

taken to ensure the implementation of children's economic, social and cultural rights to the maximum extent of the State's available resources, with particular emphasis on health and education. The Committee was particularly concerned at the insufficient policies, measures and programmes for the protection of the rights of the most vulnerable children, including children belonging to minority groups (paragraph 14). It noted that the situation of Syrian-born Kurdish children is a matter of concern in the light of Article 7 of the Convention (paragraph 15). In this regard the Committee underlined that the right to be registered and to acquire a nationality should be guaranteed to all children under the Syrian Arab Republic's jurisdiction without discrimination of any kind, irrespective, in particular, of the child's or his or her parents' or legal guardians' race, religion or ethnic origin, in line with article 2 of the Convention (paragraph 27).

6.4 Committee on the Elimination of Racial Discrimination

This Committee was established by Article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination. States parties to the CERD must report periodically to the Committee according to the provisions of Article 9.

Turkey's first report was due on 16 September 2003, but has not been submitted.

When the Committee made its concluding observations in relation to Iraq's latest report on 12 April 2001²⁰⁰ it 'noted with interest that the State party remains committed to the declaration of 1970 which recognised the ethnic, cultural and administrative rights of Kurdish citizens in the areas in which they constituted a majority, as well as to the Iraqi Kurdistan Regional Autonomy Act of 1974 by which the Autonomous Region was established as a separate administrative unit endowed with distinct personality.' The Committee must be criticised for giving credence to the Ba'ath regime's propaganda. One of the Committee's principal subjects of concern were allegations that non-Arabs living in the Kirkuk and Khanaquin areas, especially the Kurds, Turkmen

and Assyrians, were subjected to forced relocation and denied equal access to education (paragraph 12). Iraq's fifteenth, sixteenth and seventeenth reports, the latter due on 13 February 2003, were never submitted.

The Committee made its concluding observations in relation to Iran's latest report on 10 December 2003.²⁰¹ It reiterated previous concerns over the fact that the definition of racial discrimination contained in Article 19 of the Constitution does not fully conform to Article 1(1) of the Convention (paragraph 11). While the Committee noted that the Iranian constitution provided that the teaching of minority languages and literature in schools is permitted, it requested that the State party include more information in its next periodic report concerning the practical measures adopted to give adequate opportunities to persons belonging to minorities to learn their mother-tongue and to use it as a medium of instruction (paragraph 13). The Committee noted with concern discrimination faced by certain minorities and that certain provisions of the State party's legislation appear to be discriminatory on both ethnic and religious grounds (paragraph 14). Iran's next periodic report is due on 4 January 2006.

The Committee made its concluding observations in relation to Syria's latest report, which comprised its twelfth, thirteenth, fourteenth and fifteenth reports, on 7 July 1999.²⁰² While the Committee acknowledged the State party's efforts to protect the rights of ethnic national minorities, particularly Armenians, Palestinians and Jews, it remained concerned about the status of the Kurds who had been denied citizenship by the 1962 census. Syria's sixteenth and seventeenth reports, respectively due on 21 May 2000 and 2002, have not been submitted.

6.5 Individual Communications Under the ICCPR and the CERD

It is possible for individuals to submit communications to the Human Rights Committee and the Committee for the Elimination of Racial Discrimination concerning the violation of their rights as guaranteed by the ICCPR and the

CERD.

Article 14 of CERD allows States to make a declaration in which they recognise the competence of the Committee to hear communications from individuals. None of the four States has made such a declaration.

The Optional Protocol to the ICCPR Covenant creates a similar competence for the Human Rights Committee. Turkey signed Optional Protocol on 3 February 2004, being the first of the four states to do so. The Foreign Ministry claimed that preparations were already under way for its ratification.

Recent Reports of International Non-Treaty Bodies

These are political bodies comprising state representatives which have the power to examine Member States of the relevant governmental body.

6.6 UN Commission on Human Rights

The Commission on Human Rights has created both the Sub-Commission on the Protection and the Promotion of Human Rights and a number of ancillary mechanisms - known collectively as special procedures - to gain assistance with its work and to continue monitoring issues of concern with its six week annual session in Geneva. Although they may be constituted in any manner, special procedures are commonly either an individual, called a Special Rapporteur, or representative or an independent expert or a group of individuals, called a Working Group. Both Special Rapporteurs and Working Groups are mandated to examine, monitor and publicly report on either human rights situations in specific countries or territories (known as country mechanisms or mandates) or on major phenomena of human rights violations worldwide (known as thematic mechanisms mandates).

Iraq is the only one of the four states under consideration to which a Special Rapporteur has been dedicated. The UN created a Special Rapporteur on the Situation of Human Rights in Iraq in 1991 in response to the human rights abuses perpetuated by the Ba'ath regime against those involved in the rebellion of 1991 and against the thousands of refugees who fled its repercussions. A UN Resolution of 2003 then extended the mandate by one year. All Rapporteurs' mandates require them to be invited by the country in question. Iraq agreed to allow Special Rapporteur to Iraq Max van der Stoep to visit the country in 1992 but refused to permit him to visit the recently autonomous Kurdish region. On 11 February 1992 a delegation representing twenty-nine organisations from that region petitioned him to visit to witness the widespread human rights violations committed by the Iraqi Government, particularly as part of the ongoing policy of Arabisation.²⁰³ The Rapporteur however refused, adhering to the terms of his mandate. Van der Stoep did however see enough to write a highly critical report on the human rights situation in the rest of the country. Special Rapporteur Andreas Mavrommatis, who succeeded van der Stoep in 1999, was invited to visit Iraq in 2002. He also did not travel to the northern Kurdish region.

There exist several Special Rapporteurs with thematic mandates relevant to the cultural and linguistic rights of the Kurds. They may carry out research in pursuit of their thematic mandates by visiting a specific state if they receive permission from the state concerned. These country reports offer a unique authoritative insight into states' implementation of treaty obligations relating to specific rights. Two recent reports highlight the current status of the cultural and linguistic rights of the Kurds.

Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression

The Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, created in 1993, gathers information on discrimination and threats or use of violence and harassment against persons seeking to exercise, or promote the exercise, of the right to freedom of opinion and expression.

Special Rapporteur Ambeyi Ligabo visited Iran from 4 to 10 November 2003 following the extension by Iran of an open invitation to United Nations thematic human rights monitoring mechanisms on 2 July 2002.²⁰⁴ His report, issued on 12 of January 2004, confirmed that the situation had not improved since the previous Special Rapporteur Abid Hussain visited Iran in 1996. Ligabo found a decline in respect for freedom of expression in Iran, with an increase in the number of newspapers being closed and journalists being imprisoned. The systematic repression of all critical opinion as regards political and religious institutions has ushered in a climate of fear and encouraged self-censorship. He stated the revolutionary courts should no longer have authority over crimes of opinion and he called on the authorities to end prison sentences for crimes of opinion and press offences. This confirms that Iran is a harsh environment for Kurds seeking to express their cultural identity.

Special Rapporteur on the Promotion and Protection of the Right to Education

The mandate of this Special Rapporteur, created in 1998, is to focus on the progressive right to education especially with regards to access to primary school education, the difficulties encountered by states in implementing this right and also the elimination of discrimination in education.

From 3 to 10 February 2003 Special Rapporteur Katarina Tomasevski visited Turkey to assess the status of this right in the light of Turkey's implementation of programmes of legal reform in pursuit of satisfying the political criteria for EU accession. She found Turkey in a 'deep and multifaceted crisis' and reported that 'all facets of this crisis are reflected in education.'²⁰⁵ In assessing the areas in which this crisis was felt most acutely, the resultant report was an indictment of Turkey's treatment of its Kurdish population.

She quoted with approval a report commissioned by the International Labour Association in November 2001, which found that education was not readily accessible to children from 'migrants' communities, including those composed of internally displaced Kurds from the Southeast due to the exclusive use of Turkish in the education system.²⁰⁶ She reiterated the wisdom within the Convention of the Right of the Child according to which mother-tongue

education is in the best interests of the child. She also quoted a recent policy document produced by the National Ministry for Education of Turkey.²⁰⁷ The Special Rapporteur concluded that these objectives could be best fulfilled by providing mother-tongue education. In positing new principles for education, this document stated that “differences between students shall be taken into account,” and prioritised “learning how to learn”.²⁰⁸ She stated that,

“A huge obstacle to discussing language from the human rights viewpoint is the automatic labels derived from particular political agendas. Thus, advocacy for mother-tongue education is inevitably ascribed to being pro-Kurdish, although more than 30 languages are spoken in Turkey... The mention of mother-tongue education is further seen as jeopardising territorial integrity, which removes the subject matter from the realm of education to that of national security. Seeing multilingualism as an asset rather than a threat raises eyebrows.”²⁰⁹

She highlighted the indictment of students who were at the time petitioning their universities for optional Kurdish language lessons: in this respect she noted with particular concern the removal of the issue of teaching and learning foreign languages from the realm of academia to the jurisdiction of State Security Courts, which adjudicated the cases on the basis of support for illegal organisations. She recognised that this response was a manifestation of a far deeper problem:

“The boundaries between national security and education are apparently fluid and issues that pertain to education can be decided on national-security grounds rather than on their educational merits. One can imagine that languages other than Kurdish would not have triggered a threat to national security... The consequence is self censorship so as not to risk crossing that fluid boundary, or taking a risk – as is typical for students worldwide – with the likelihood of victimisation.”²¹⁰

Tomasevski’s report provoked angry responses from Turkey. At the fifty-ninth session of the Commission on Human Rights *Türkekel Kurttekin*, the

Permanent Representative of Turkey to the United Nations, accused her of grossly misrepresenting facts, making unfounded allegations and drawing simplistic conclusions.²¹¹ He claimed that these features not only raised serious doubts about the objectivity of her report but also about the impartiality, integrity and independence of thematic procedures in general. He concluded by stating that such conduct by the Special Rapportuer would not serve the purpose of promoting human rights. Such an unrestrained outburst reveals the cultivated paranoia of the Turkish state and its unwillingness to engage in constructive dialogue concerning its perception of its Kurdish issue.

6.7 Working Groups

There are a number of working groups with mandates of relevance to the cultural and linguistic rights of the Kurds, the most significant of which is the Working Group on Minorities. This was established in 1995 pursuant to Economic and Social Council resolution 1995/31 of 25 July 1995. It is a subsidiary organ of the Sub-Commission on the Promotion and Protection of Human Rights (previously called the Sub-Commission on Prevention of Discrimination and Protection of Minorities). The Working Group on Minorities meets in Geneva, once a year, for five working days. The Working Group functions as a forum for dialogue: it promotes greater awareness of the differing perspectives on minority issues and aims to cultivate understanding and mutual respect among minorities and between minorities and Governments. It can also act as a mechanism for hearing suggestions and making recommendations for the peaceful and constructive solution to problems involving minorities through the promotion and protection of their rights. Recent discussions have focused upon a proposed Optional Protocol to the ICESCR which would allow those whose economic, social and cultural rights had been violated to submit complaints to a supervisory body.

Recent Pronouncements on the Implementation of Turkey's Relevant Obligations

Turkey's accommodation of the cultural and linguistic rights of its Kurdish population is subject to additional monitoring mechanisms by virtue of Turkey's membership in the Organisation for Security and Cooperation in Europe and the Council of Europe.

6.8 Organisation for Security and Cooperation in Europe

Since the signing of the Helsinki Final Act in 1975 the OSCE (formerly the CSCE) has accumulated a substantial body of commitments in the field of human rights, democracy, the rule of law and national minorities. These commitments are adopted within the Human Dimension of the OSCE's work. The OSCE has established a number of permanent institutions to assist participating States in implementing commitments undertaken under the auspices of the OSCE in this area. These institutions are the Office for Democratic Institutions and Human Rights, the Representative on the Freedom of the Media and the High Commissioner on National Minorities, and they play an increasingly important role within the Organisation.

From 6 to 10 July 2002, over 300 members of Parliament from 55 different States convened in Berlin for the 11th annual session of the Parliamentary Assembly of the OSCE. The discussions focussed upon the political, economic and humanitarian aspects of international struggle against terrorism and adopted a report drawn up by Svend J. Robinson, on behalf of the Commission on Democracy, Human Rights and Humanitarian Questions, entitled 'Confronting Terrorism: A Global Challenge for the Twenty-First Century'. In it, Robinson specifically proposed to 'encourage the participating States to contribute to international efforts to put an end to long standing injustices existing in the Middle East, including the full respect of the rights of Palestinians and Kurdish minorities and the right of all the states of the

region to live in peace and security'. He noted Turkey's denial of the Kurds' cultural and linguistic rights and the repression of demands for its fulfilment of obligations imposed by the EU in these areas.

6.9 Representative on the Freedom of the Media

The previous OSCE Representative on Freedom of the Media, Freimut Duve, organised the conference on 'Freedom of the Media and the Internet' which was held in Amsterdam on 13 to 14 June 2003. Experts from international organisations, NGOs, academia and the media discussed growing concerns on the subject of freedom of expression on the Internet, and concluded by the conference by adopting the Amsterdam Recommendations. These emphasise that, "Access to the public domain is important for both technical and cultural innovation..." and that as such it should be fostered by all states. With regards to freedom of expression, they establish that, "Any means of censorship that are unacceptable within the 'classic media' must not be used for online media."

6.10 High Commissioner on National Minorities

The position of the High Commissioner on National Minorities was created by the Helsinki Decisions of July 1992 to be "an instrument of conflict prevention at the earliest possible stage". It was created largely to prevent the situation in the former Yugoslavia being repeated in other European countries making the transition to democracy.

In addressing the substance of tensions involving national minorities, the HCNM approaches the issues as an independent, impartial and cooperative actor. While the HCNM is not a supervisory mechanism, he employs the international standards to which each State has agreed as his principal framework of analysis and the foundation of his specific recommendations.

The High Commissioner attempts to establish diplomatic dialogue with

Member States of the OSCE on the situation of national minorities living within their territories. He had become involved in over a dozen States on this basis before Turkey finally agreed to allow him to visit the country in January 2003. However the most recent EU Regular Report on Turkey's Progress Towards Accession, published on 5 November 2003, noted that no progress had been made pursuant to this visit. This suggests that Turkey's agreement to permit the High Commissioner to visit was yet another superficial gesture which it had no immediate intention of honouring.

In 1996 the first High Commissioner Max van der Stoep decided that research into linguistic rights would assist him in fulfilling his mandate. He envisaged that such a study would raise governmental awareness of the importance of this issue and of the possibilities for the protection of linguistic rights as a means of ensuring domestic security and the respect for human rights generally. Accordingly a survey of the relevant policies of OSCE Member States resulted in the publication of the 'Report on the Linguistic Rights of Persons Belonging to National Minorities in the OSCE Area' on 1 March 1999. This is a comparative analysis of the laws and policies of all the participating states, according to their own answers to nine questions, on the basis of international and regional standards. The questions sought information on four fundamental aspects of linguistic rights:

- the status of particular languages within the state;
- the extent of the rights of and possibilities for persons belonging to national minorities to use their language with the administrative and judicial authorities of the state;
- the role of minority languages in the educational curriculum, in particular the extent to which students have the opportunity to learn minority languages and cultures and the extent to which they may receive their education in their minority languages;
- and the access for persons belonging to national minorities to public media in their language.

Turkey's responses were based exclusively upon the narrow definition of national minorities which it succeeded in entrenching within the Treaty of Lausanne 1923: accordingly, its answers only referred to its non-Muslim

Armenian, Greek and Jewish religious minorities. Therefore, it was able to answer the questions in a positive manner and, moreover, to avoid making conspicuously negative disclosures such as those made by other States which represented their actual policy and practice more accurately. Altogether, Turkey's response constituted a gross misrepresentation of its true treatment of its national minorities and frustrated the intention of the report to give a fair and balanced appraisal of the treatment of national minorities within the OSCE region.

The international OSCE conference on the 'Use of Minority Languages in the Broadcast Media' was held in Baden, Austria, on 24-25 October 2003. There the current High Commissioner Rolf Ekéus launched a comprehensive survey of current state practice and legislation on minority language broadcasting. The results will only truly reflect Turkey's progress in pursuit of accession to the EU if the practical implementation of these legal reforms is accurately assessed: this depends upon the willingness of Turkey to adopt a wider interpretation of national minority than that found in the Treaty of Lausanne.

6.11 The Council of Europe

The Commission on Turkey's Progress Towards Accession continuously assesses Turkey's progress in both legislative and practical terms and produces annual reports which are published in the last quarter of the year. These are considered elsewhere in the report. Similarly, the pronouncements of the European Court of Human Rights are considered in Section V, above

6.12 The European Commission against Racism and Intolerance

The European Commission against Racism and Intolerance (ECRI) was set up in 1994 at the first Summit meeting of Heads of State and Government of the Member States of Council of Europe in order to combat the growing problems of racism, xenophobia, anti-Semitism and intolerance which threatened human

rights and democratic values in Europe. The task given to the Committee was to review the effectiveness of Member States' legislation, policies and practical measures to combat racism, xenophobia, anti-Semitism and intolerance; to propose further action at local, national and European level; to formulate general policy recommendations to Member States; and to study international legal instruments applicable in the matter with a view to their reinforcement.

One aspect of the activities developed by the Committee to fulfil its terms of reference is its country-by-country analysis of the situation in each of the Member States in order to provide individual Governments with helpful and concrete proposals.

Turkey was analysed in the Committee's seventh series of country-specific reports. The report was published on 9 November 1999. As such, the report provides an authoritative statement of the situation within the country at the time when Turkey was accepted as a candidate for EU Accession. Some of the key issues identified within the report as meriting particular attention included:

- the need to acknowledge the cultural and linguistic diversity of different ethnic groups within the framework of Turkish society, and to allow for the free expression of such diversity by those who wish to define themselves on the basis of a common ethnic or cultural identity;
- the need to sign and ratify international conventions in the field of combating racism and discrimination;
- the need to monitor the new aspects of the phenomenon of migration into Turkey and to take appropriate measures to deal with the developing situation;
- the need to make appropriate legislative changes and to adopt a wide range of policy, educational and awareness-raising measures to promote tolerance in society as a whole;

- the need to safeguard and uphold human rights in the context of the fight against racism and intolerance, especially in those areas of the country under a state of emergency and with regard to the mainly Kurdish civilians of those areas.

In the paragraphs 27 to 29, entitled 'Pluralism', the Committee went beyond discussion of the minority groups recognised by the Treaty of Lausanne. It referred expressly to the Turkey's suppression of Kurdish identity and denial of Kurdish cultural and linguistic rights:

"... forms of intolerance may also be manifested against groups and against the expression of their ethnic, cultural or religious background. ECRI is concerned that policies which attempt to resolve issues of ethnic differences by denying expressions of difference may be detrimental to members of ethnic groups who wish to express their own language, customs and sense of community publicly while still acknowledging their State citizenship and contributing as citizens to the society of which they are a part.

This concern appears to be particularly pertinent as regards expressions of ethnic identity which have been a long-standing point of contention: for example, the issue of Kurdish identity is currently a subject of much public discussion. Generally, the approach taken in the past has been to suppress such expressions...

ECRI feels that a more open attitude towards cultural and linguistic plurality within Turkey might contribute to resolving some of the problems faced by the country today by allowing more space for a non-violent public as well as private expression of cultural and ethnic identity."

A significant observation was that the minorities protected by the Treaty of Lausanne have dramatically decreased: the Greek minority comprised more than 120,000 when the Treaty was adopted in 1923 but comprises

approximately 4000 members today (paragraph 26). These statistics provide concrete evidence that the already limited scope of minority protection contained within the Treaty- established specifically in order to exclude the Kurds from its scope - now protects an even smaller number of individuals. This is not to suggest that the Greek community no long deserves minority protection. It does incontestably prove that, now more than ever, the Treaty does not form a sound basis for interpreting Turkey's protection of minorities. Nonetheless, Turkey persistently adheres to the interpretation of its existing minorities contained within the Treaty, and official information given in response to international monitoring mechanisms continues to be provided on its basis.

On 1999 ECRI began a follow-up procedure to its country reports, examining what action Governments may have taken on the proposals they contained, up-dating their contents and focusing in greater depth on specific issues of concern. To date, no such follow up has taken place in relation to Turkey. The next analysis by the Committee will therefore provide an authoritative assessment of the actual effects of the Constitutional amendments and Harmonisation Packages upon racism and intolerance in Turkey.

VII - Assessment of the Current Treatment of the Cultural and Linguistic Rights of the Kurds in the Four States

7.1 The Republic of Turkey

The treatment of Kurdish press and printed media

In May 1999 the Human Rights Association of Turkey reported that there were 134 people in prison for offences relating to freedom of expression and opinion, eighty-four of whom were journalists. In July the European Court of Human Rights concluded in eleven cases that Turkey had violated the right to freedom of expression as enshrined in Article 10 of the European Convention of Human Rights. In deciding these cases the Court referred both to the essential role of the press in ensuring the proper functioning of political democracy and to the importance of freedom of artistic expression.

In September President Demirel approved a law which postponed prosecutions and punishment for offences committed through the press and broadcasting. This law provides that sentences may be suspended for a three-year parole period and that if offences are repeated during that time the original sentence comes back into effect. According to the Ministry of Justice twenty one people, including the Turkish scholar İsmail Beşikçi, were released before the end of the month. The reform did not however apply to journalists who had been convicted for being members of an illegal organisation, usually due to expressing pro-Kurdish views or even simply providing objective coverage of Kurdish news.

In its second 'Regular Report on Turkey's Progress Towards Accession', published on 13 October, the EU Commission reported that, although the parole law of September was an encouraging sign, the situation regarding freedom of the press had not improved, and that both domestic and international human rights organisations were reporting widespread harassment of individual journalists by the authorities and their agents.²¹²

Developments in 2000

The Turkish Courts emerged as a conservative force which seemed intent upon impeding the liberalisation recommended so strongly by the EU Commission. Fresh proceedings were brought against the writer Fikret Başkaya for allegedly questioning Turkey's treatment of Abdullah Öcalan, the leader of the PKK. This resulted in his conviction under Article 8 of the Anti-Terror Law and the imposition of a sentence of one year imprisonment. On the basis of this conviction he applied for the second time to the European Court of Human Rights, claiming that his right to freedom of expression under Article 10 had been violated. His application was declared admissible early in 2003.

On 20 September the Constitutional Court of Turkey repealed the law adopted in September 1999 which postponed prosecutions and punishments for offences committed through the press and broadcasting because it was too limited in scope and was therefore contrary to the principle of equality before the law. Since this law had been cited in the 1999 Regular Report on Turkey's Progress Towards Accession as a positive development, the Court requested that the Grand National Assembly propose a replacement.

In its Regular Report on Turkey's Progress Towards Accession published on 8 November 2000, the EU Commission reported that there was still a serious problem regarding freedom of expression. Existing Turkish legislation was still interpreted so as to violate the freedom of expression as guaranteed by the European Convention of Human Rights, and noted that this had been confirmed by the European Court of Human Rights in *Özgür Gündem v. Turkey* (No. 23144/93, 16 March 2000) and *Sener v. Turkey* (No. 26680/95, 18 July 2000). In particular the Commission noted that according to official sources,

there were currently forty journalists in prison. The Commission emphasised that, "Turkish Courts continue to restrict the expression of views with which the state disagrees, notably when it concerns the situation of the population of Kurdish origin." It concluded by stating that nothing less than the complete revision of Turkish law and practice would enable Turkey to meet the political criteria for accession to the EU regarding freedom of expression:

"An overall reform of both legislation and practice in this field is urgently needed to avoid further violations. In the meantime, judges and prosecutors should strictly respect the case law of the European Court of Human Rights, which notably establishes that criminal liability should be confined to statements inciting violence."²¹³

By the end of the year, these recommendations still had not been adopted by the courts. In December the Istanbul State Security Court No. 4 banned all publishing or broadcasting of information which portrayed Turkey "in a state of weakness." Newspapers and journalists complained that this judgement was an 'act of censorship aimed at banning the publication of pictures and news.'²¹⁴

In the first half of 2001, Turkey still lacked practical commitment to strengthening the right to freedom of expression of its citizens generally and the Kurds specifically. Two laws in particular continued to be widely used by public prosecutors and judges to restrict freedom of expression: the Penal Code, notably Articles 159 relating to insults to parliament, the army, the republic and the judiciary, and 312, concerning incitement to racial, ethnic or religious enmity; and the Articles 7 and 8 of the Anti-Terror Law, concerning the dissemination of separatist propaganda.

The package of thirty-four Constitutional amendments which came into force on 17 October 2001 finally introduced reforms in the area of freedom of expression. The amendments to Articles 26 and 28 removed the Constitutional provision forbidding the use of languages prohibited by law. However, the amendments did not restrict the remarkably broad restrictions upon freedom of expression which are invoked against peaceful expressions of Kurdish

cultural identity. Therefore, Article 26 provides that the exercise of these freedoms may be restricted for the purposes of, inter alia, protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime and punishing offenders. Similarly, Article 28 now provides that:

“Anyone who writes or prints any news or articles which threaten the internal or external security of the state of the indivisible integrity of the state with its territory and nation, which tend to incite offence, riot or insurrection, or which refer to classified state secrets, and anyone who prints or transmits such news or articles to others for the above purposes, shall be held responsible under the law relevant to these offences. Distribution may be suspended as a preventative measure by the decision of a judge, or in the event delay is deemed prejudicial, by the competent authority designated by law.”

These Constitutional amendments did not send a strong reformist signal to those charged with implementing the laws and as such resulted in no ostensible change. In any case, the Law Regarding the Adoption and Application of the Turkish Alphabet could still be used to prohibit printed media being published in the Kurdish language: it provides in Articles 4 and 5 that a long list of printed materials including newspapers, magazines, books and other publications must be printed using the Turkish alphabet. Failure to adhere to this stipulation can result in the confiscation of the material in question and may lead to the author's indictment.²¹⁵

Doubts over Turkey's commitment to the freedom of pro-Kurdish expression were confirmed by the continuing persecution of the writer Fikret Başkaya. Shortly before he began to serve the prison sentence imposed on him in 1999, Başkaya gave a newspaper interview in which he criticised a non-profit group for being 'apolitical'. While he was serving that prison sentence in 2001, he was convicted for a third time under Article 8, on this occasion because the prosecutor convinced the court that the 'APO' in 'apolitical' was a covert reference to Abdullah Öcalan, who is nicknamed Apo.

In its Regular Report on Turkey's Progress Towards Accession published on 13 November 2001, the EU Commission noted serious problems remained regarding the exercise of the right to freedom of expression, and that a significant number of journalists, intellectuals, writers and politicians had been detained for expressing views and opinions. It reported that, according to some official sources, there were around 9000 people in prison for crimes relating to freedom of expression and thought. Specifically, official data for the year 2000 revealed that 261 people had been sentenced under Articles 159 and 312 of the Penal Code and that 324 had been sentenced under the Anti-Terror Law. In reply to a Parliamentary question the Minister of the Interior himself had announced that 1309 books and periodicals had been confiscated in 2001. In relation to the Constitutional amendments, the Commission stated that,

“It is of particular importance, taking into account the aims of the reforms, that the new formulation of the restrictions in Articles 14 and 26 are translated into the new legislation and practice in such a way as to provide an effective guarantee for freedom of expression, including the use of languages other than Turkish.”²¹⁶

The Commission noted that the removal of the provision in Article 28 of the Constitution, which stated that “publications shall not be made in any language prohibited by law”, was encouraging for the potential freedom of the press but repeated that legislative changes were needed for the amendment to become fully effective:

“The content of these legislative changes will be crucial for the enjoyment of this right. As the general restrictions of Article 26 also apply to the expression and dissemination of thought and opinions in writing and other media, it is important that the implementing legislation and practice ensure effective protection of the freedom of the press.”

In 2002 Turkey responded to these demands by passing three Harmonisation Packages in order to implement the Constitutional amendments adopted in October 2001. The First Harmonisation Package, passed on 6 February, amended Article 159 and 312 of the Penal Code and Articles 7 and 8 of the

Anti-Terror Law.²¹⁷ Prison sentences available under Article 159 were reduced and the possibility of imposing fines for criticising Turkish laws was removed. Crucially however, the extremely broad definition of the offence remained the same. To the prohibition in Article 312 of “incitement to hatred on the basis of differences of social class, race, religion, sect or region -”, was added “- in a way that may be dangerous for public order.” According to the Turkish authorities, this amendment narrowed the scope of the offence. Another new paragraph inserted into that Article introduced a new criminal offence of insulting “part of the people degradingly and in a way that hurts human dignity”, which is punishable by up to two years imprisonment. Changes to Articles 7 and 8 of the Anti-Terror Law introduced the notion of propaganda in connection with the terrorist organisation in a way that encourages the use of terrorist methods. The minimum fines for publishers found guilty of the offence of terrorist propaganda were dramatically increased from 100 million to 3 billion Turkish Lira. Overall, these amendments actually increase the repressive measures available.

Although the Second Harmonisation Package, passed on 26 March 2002, did modify the Press Law it did little to ease existing restrictions on freedom of the press. Instead it introduced the possibility of confiscating printing equipment of publications deemed to be acting against the integrity of the nation, the order of the republic or national security. The maximum suspension period that could be imposed upon the publishers of such a publication was however reduced, as was the maximum prison sentence that could be imposed upon those who continue to publish suspended periodicals.

Immediate indications of the impact of this Harmonisation Package were not encouraging. On 25 May the Association of Turkish Editors published a report which indicated that forty books by thirty-nine writers had been banned or subjected to investigation since the start of the year. In June 2002 a fact finding mission sent to Turkey by the Kurdish Human Rights Project found that there were three regular publications which use the Kurdish language: *Azadiya Welat*, the only weekly Kurdish language publication newspaper in Turkey; *Pine*, a weekly comic strip; and *Roja Welat*, a fortnightly political magazine published in both Turkish and Kurdish. At the time these could be sold freely in the west of Turkey but were prohibited in the southeast under the state of emergency

law.²¹⁸ The mission found that four or five publishing houses published novels, poetry and dictionaries in Kurdish, and that these materials were available to buy in the southeast as well as the rest of Turkey.²¹⁹

The Third Harmonisation Package, passed on 3 August 2002, made another amendment to Article 159 of the Penal Code by introducing the element of intent into the crime of insulting or deriding the institutions cited therein.²²⁰ The notion of intent is however open to interpretation and as such the effect of this amendment depends upon the will of the public prosecutors and courts which apply it. Significantly, the grounds upon which penalties can be imposed were not modified, and as such, remained extraordinarily wide.

The Package also modified the Press Law by replacing prison sentences for crimes relating to the press with exorbitant fines ranging from one billion Turkish Lira to 100 billion. It dramatically increased the level of fines which could be imposed upon publishers who failed to provide to the authorities an extensive dossier of information regarding publications and those implicated in their production. This requirement would enable the authorities to monitor the production of Kurdish materials and to subject those involved to prison sentences and harsh fines. On 14 August Prime Minister Necdet Sezer petitioned the Constitution Court to abrogate this amendment on the grounds that the level of fines introduced was disproportionate and incompatible with the Constitutional principles of freedom of the press and the freedom and dissemination of thought and opinion. His appeal had no effect.

In a case that attracted widespread international criticism, the Turkish publisher Abdullah Keskin was convicted in July of separatist propaganda under Article 8 of the Anti-Terror Law for publishing a Turkish-language edition of Jonathan C. Randal's book *After Such Knowledge, What Forgiveness? My Encounters in Kurdistan*. State prosecutors had objected to passages in the book referring to Kurdistan. Istanbul State Security Court imposed a six month prison sentence, which was converted to a fine. The book, which was confiscated on 15 January 2002, was banned after the trial.

The Kurdish theme of a publication need not be overtly political to attract suppressive measures. *Serbesi* was a Turkish language intellectual and

scientific review independent of any political line which contained articles concerning the Kurds and Kurdistan. Most of its issues were confiscated by the police and Ahmet Zeki Okçuoğlu, its chief editor, was repeatedly harassed by the invocation of both legal and extra legal measures. *Serbese* was finally banned in August by a State Security Court on the grounds that it contained separatist propaganda.²²¹ Similarly, a book of Kurdish poetry by Azad Yaşar was withdrawn from circulation and the author was investigated on suspicion of aiming to divide the country. These instances of suppression indicate that despite the Constitutional reforms any Kurdish theme is still likely to be declared indicative of criminal activity.

In September the Parliamentary Assembly of the Council of Europe asked the Turkish judiciary to retry the eighteen cases – including that of Fikret Başkaya – the verdicts of which had, according to the European Court of Human rights, violated the right to freedom of expression.²²² The Assembly declared that Turkey must implement the judgement of the European Court in order to restore these applicants' civil and political rights. It also called upon the Grand National Assembly of Turkey to review Article 8 of the Anti-Terror Law.²²³

Earlier in the year the Government had passed the Conditional Release and Postponement of Punishments, known as the Amnesty Law, in order to decrease the overcrowding within Turkish prisons. Indeed, between May and September 43,576 prisoners were released under this law. Intellectuals and journalists imprisoned for crimes relating to freedom of expression and 'social conscience' did not however benefit from this law.²²⁴

In its Regular Report on Turkey's Progress Towards Accession published on 9 October 2002, the Commission noted that several cases had been brought before the Turkish Courts on the basis of the legal reforms introduced by the First Harmonisation Package. The resulting case law revealed little consistency in the implementation of the amendments: while a number of cases had resulted in acquittal, similar cases resulted in heavy sentences.²²⁵ The Commission noted that this had a detrimental effect on legal certainty. Although the Commission did not analyse the facts of the cases, it seems likely that the inconsistency represented discriminatory application of the law to Kurdish defendants. The judicial authorities reported that the amendments to the Penal Code had led

the Supreme Court to overrule fifty judgements made under Article 159 and twenty-four made under Article 312. The Commission noted however that although there had been fewer cases brought under Articles 159 and 312 there had been a shift towards bringing cases under other provisions. Article 169 of the Turkish Penal Code, which forbade support for criminal organisations, had for example been widely used to suppress freedom of expression in recent months. Journalists and other members of the press corps continued to be subjected to extra-judicial measures including harassment and censorship as well as to prosecution under those Articles. It commented that the lack of an organised press union further weakened the independence of the press. The Commission emphasised the fact that legislative reforms were meaningless unless those who implement them do so in the spirit of the reforms, stating that,

“The interpretation of legislation is crucial to ensuring actual freedom of expression. There are as yet no signs that the interpretation of the law by judges consistently takes into account the rights of the defendant under the European Convention of Human Rights.”

The Commission’s sources indicate that there were around one hundred cases pending against journalists, writers and publishers for their exercise of the right to freedom of expression.²²⁶

These figures confirm that crucially, despite reforms in the field of legislation, the attitude of those who apply the law had not changed. A report produced by the Commission for the Freedom of Publishing, a sub-committee of the Turkish Union of Publishers, documents increases both in the number of cases brought against writers and publishers and in the number of publications suspended or shut down in the 2001 and 2002.²²⁷ The report revealed that legal action was taken against seventy-seven books, fifty-seven authors and thirty-eight publishers in 2002.²²⁸ These figures represent a substantial increase in the prosecution of writers and publishers from 2001 to 2002. According to the statistics of the Publishers Association of Turkey, the number of books banned during this period had risen from 42 to 67, the number of authors successfully prosecuted increased from 38 to 48 and the number of publishers

successfully prosecuted rose from 23 to 35.²²⁹

On 2 January 2003 the Grand National Assembly passed the Fourth Harmonisation Package.²³⁰ This amended Article 15 of the Press Law by introducing provisions purporting to protect the editors, writers and owners of periodicals from being forced to reveal their sources. This amendment is unlikely to benefit editors, writers and owners of publication made using the Kurdish language or which concern Kurdish themes: in their case public prosecutors and the courts have always automatically made incriminating inferences.

The newspaper *Deng* (meaning 'Voice') is published in both Kurdish and Turkish and contains articles concerning the relationship between the Kurds and the Turkish state. As of January 2003, each issue had been confiscated on the basis of dividing the Turkish nation via written propaganda.²³¹

The possibility of importing Kurdish printed materials from abroad provides the Kurds of Turkey with an invaluable opportunity to circumvent the restrictions imposed upon domestic publishing. However, it is subject to strict regulations contained within the Press Law.²³² Article 31 stipulates that a decision of the Council of Ministers may prevent the importing or distribution of works printed in foreign countries which violate the indivisible integrity of the state, its country and people, national sovereignty, the existence of the Republic, national security, public order, general morality and health. Furthermore, the Ministry for the Interior can ban the distribution of or confiscate imported publications already in circulation without recourse to the Council of Ministers. Finally, the Article provides that those who knowingly import, distribute, publish or translate such items in spite of their banned status shall be imprisoned or fined. Major border gates are under close surveillance in order to prevent an influx of Kurdish books from Kurdish regions, especially Iraqi Kurdistan, where they are produced free from restrictions. These gates are therefore sites of general scrutiny, and Kurdish books published in Turkey may also be seized here. In March 2003 customs officials in İpsala, one of Turkey's most important border gates, hindered the progress of a book entitled *Barzani and the Kurdish National Liberation Movement* on the grounds that it was 'harmful' to Turkey. Later that year Ahmet Zeki Okçuoglu

and Bedri Vatansever, respectively the managers of Doz and Can publishing houses, were charged with inciting people to hatred under Article 312 of the Turkish Penal Code on the basis that the book referred to Kurdistan. Vahdettin İnce, who had translated the work from Arabic, was charged with the same offence. The three were however acquitted on 10 November. This suggests that at least some courts are attempting to implement the spirit of the reforms even if many public prosecutors are stubbornly retaining Turkey's traditional mentality towards publications with a Kurdish theme. However, on 23 March the Court of Cassation sentenced M. Nuri Karakoyun, the publisher of *Azadiya Welat*, to three years and nine months imprisonment and a heavy fine due to an article relating to the PKK which had been published on 1 September 2001.²³³ Also that month the writer Mehmet Bayrak was prosecuted under Article 312 of the Turkish Penal Code on the basis of two of his books, *Kurdish Women from Past to Present* and *Kurdish Music, Dances and Songs*. These were all published in Turkish, but their recognition of the Kurdish culture rendered them criminal.²³⁴

Seven months after the Recommendation by the Parliamentary Assembly of the Council of Europe, Turkey began to take steps to implement the judgement handed down in 1999 by the European Court of Human Rights in relation to the writer Fikret Başkaya. On 10 April it requested a retrial of the 1993 case in which Başkaya was found guilty of an offence under Article 8 of the Anti-Terror Law on the basis of his book *The Bankruptcy of the Paradigm*. However on 14 April, within one week of instituting this process, a brand new indictment was filed against him - again on the grounds that *The Bankruptcy of the Paradigm* constituted a violation of Article 8 of the Anti-Terror Law: this new case was identical to the one concluded in 1993 which the European Court of Human Rights had found to violate Başkaya's right to freedom of expression under Article 10 under the European Court of Human Rights. One week later, on 22 April, yet another new indictment was filed against him, this time due to his book *Writings Against the Flow*, which discussed the Sivas massacre of 1993 when fundamentalists burned down a hotel killing a gathering of thirty-seven intellectuals. This case was brought under a different provision, Article 159 of the Turkish Penal Code, which forbids insult to the state, due to statements in which Başkaya declared Turkey to be a "torture republic." As a result of these two new proceedings, Başkaya books were totally banned in Turkey for the

first time.

On 8 May Judge Hasan Dinç ordered the confiscation of the regional monthly magazine *Dersim*. This was named after the mountainous Kurdish region, officially renamed Tunceli by the Turkish authorities, which has been the epicentre of the first major Kurdish resistance movement to occur after the Sheik Sahid rebellion of 1925.²³⁵ Five articles published in the second issue concerned the bloody two years' Siege of Dersim, which commenced when the Tunceli Law placed the region under military rule in 1935. On 11 November 2003 Kemal Mutlu, the magazine's owner, and Ali Ekbar Coşkun, its editor in chief, stood trial at İzmir State Security Court for inciting hatred and hostility. In blatant contravention to the right to a fair trial guaranteed under international law, neither man was informed of the exact accusations which formed the basis of an indictment which could result in up to three years imprisonment.

During the period from January 2003 until the Sixth Harmonisation Package was passed on 20 July, Turkish courts delivered sentences totalling over 189 years for the expression of opinion.²³⁶ This Package appeared to introduce two major reforms which would significantly undermine the restrictions on the right to freedom of expression which permeated Turkish law. The most remarkable of these was the annulment of Article 8 of the Anti-Terror Law.²³⁷ President Necdet Sezer vetoed this annulment on 30 June, but was overridden by the Grand National Assembly on 17 July. However many alternative provisions, including those within the Turkish Penal Code, could still be invoked to achieve the same repression of any expression of a distinctly Kurdish identity: this had already been proven by the two new indictments served against Fikret Başkaya as soon as his 'retrial' commenced in April.

The Package also instituted the Recommendation made by the Parliamentary Assembly of the Council of Europe in September by requiring the retrial of all applicants who had been vindicated by the European Court of Human Rights. Again, the 'retrial' of Fikret Başkaya in April is compelling proof that such an amendment will not have the ostensibly intended results of exonerating those whose exercise of the right to freedom of expression had resulted in conviction.

Turkey's supposed dedication to expanding the right to freedom of expression was further undermined by the prosecution of the fifteen individuals who had formally signed as publishers of the book *Freedom of Expression*, a collection of dissident writings published in 2000. One of those charged was Mehmet Atilla Maraş, the former Chair of the Turkish Writer's Union. His new position as Chair of the Freedom of Expression Subcommittee of the Parliamentary Human Rights Committee put him in the remarkable position of appearing as an expert observer in his own case.²³⁸

Practical restrictions on the circulation of Kurdish publications have been eased since the State of Emergency was lifted in its entirety on 30 November 2002: in theory, twenty-nine newspapers and magazines which had been banned under OHAL are now available in the Kurdish provinces. In June 2003 the Kurdish Human Rights Project sent a fact-finding mission to the southeast of Turkey in order to investigate the real impact of the lifting of OHAL. The mission discovered a degree of freedom to publish materials either using the Kurdish language or with a Kurdish subject in the west of Turkey but that, despite the lifting of OHAL legislation severe restrictions remained in relation to the production and distribution of such materials in Kurdish region of the southeast. Distributors in particular face severe intimidation and abuse by police who are evidently keen to prevent the circulation of Kurdish publications. It was told by Selahattin Demirtaş, Chair of the Diyarbakır branch of the Human Rights Association of Turkey, that ten cases of arrest and torture of local news agents had been reported since the state of emergency had been lifted. One of the victims was a seventeen year old boy who was beaten and subjected to a mock execution for distributing *Yenidem Özgür Gündem* in Diyarbakır. It can be stated generally that while those involved in the production of Kurdish materials are subjected to heavy fines and criminal prosecutions, those who distribute or purchase such materials are subjected to intimidation, threats and physical abuse, often perpetrated by plain clothed policemen. This must be recognised as a part of a concerted campaign of intimidation perpetrated with the intention of weakening public support for such publications.²³⁹ In November Remzi Ayyün, a distributor of *Özgür Gündem*, received a call on 1 November from a person claiming to be a police officer who threatened him with death if he continued to distribute the paper. The next day he was threatened by plain clothed police officers,

and was detained on 4 November after publicising his experience in a press statement.²⁴⁰ On 4 January 2004 Hamdullah Aktan from Mersin was beaten by police officers after buying a copy of *Özgür Gündem*. Aktan stated, "I was stopped and subjected to ID control by two police officers... My house was raided that night and I was detained by police officers including those who had checked my ID. They blindfolded me and put me in a car. They hit my head and kidneys for half an hour... I was taken out of the car. Then they started to kick my stomach and asked me the name of the person I worked for, why I read *Özgür Gündem*, how I could manage to buy this newspaper although I was very poor. They told me not to read that newspaper again." Altan was beaten for a further three hours before the police officers returned him to his neighbourhood without being charged, a conclusion which strongly implies that the intention of his captors had simply been to terrify him.²⁴¹

The Seventh Harmonisation Package, which entered into force on 7 August, which introduced yet more piecemeal changes to laws invoked to restrict freedom of expression.²⁴² The minimum sentence available under Article 159 of the Turkish Penal Code for the crime of insulting or deriding state institutions was reduced from one year to six month, and the scope of Article 169 was narrowed by the removal of the remarkably broad provision which prohibited "actions which facilitated the operation of terrorist organisations in any manner whatsoever." The replacement of "terrorist methods" by "resorting to violence or other terrorist means" in Article 7 introduced no practical change: the significant change made to this Article was made in relation to the levels of punishment which could be imposed for violation of its provisions: although prison sentences remained at the high level to which they had been raised in 2002, fines were increased to ten times their previous size. Article 426 of the Press Law which bans publications deemed to violate moral principles, was also amended by the addition of a paragraph which exempted scientific works, artistic works and "works of literary value". Continuing persecution during Turkey's reform period of those involved in such works with a Kurdish theme strongly suggests that these will not be included within this amendment or the wider reforms.

On 17 October 2003 the office of *Özgür Gündem* in Elazığ was raided on the allegation that illegal publications were being kept on the premises. Cuma

Karataş and İrfan Aydın, two members of staff, and Ali Konar, a distributor, were detained in the raid only to be released later that day. Newspapers, journals and books were also confiscated.

In its Regular Report on Turkey's Progress Towards Accession published on 5 November 2003, the Commission noted that the implementation of amended Articles 159 and 312 of the Penal Code and Article 7 of the Anti-Terror Law was "not uniform" and that heavy penalties, including imprisonment, continued to be imposed upon journalists, authors and publishers who criticise state institutions and policies or published statements of certain political groups. It observed with concern the range of alternative laws which remained at the disposal of prosecutors who wish to restrict freedom of expression. It also noted that while official data suggested that prosecutions under the Press Law had diminished, there had been many reports of continued confiscation of publications and printing equipment, suspensions of publishing houses and imposition of heavy fines upon publishers and printers. It emphasised that,

"The ongoing process of reviewing legislation related to freedom of the press should be pursued in a comprehensive manner, encompassing all legislation that impacts upon the freedom of the press."²⁴³

This reiterates recognition that repressive measures permeate Turkish law: the most notable are those which reinforce the Constitutional principles of the integrity of the state which were designed to aid the persecution of Kurdish expression. Ragip Zarakulu, spokesperson for the Commission for the Freedom of Publishing, affirmed that throughout 2003 Kurdish books continued to be particular targets for repression in spite of the reforms.

In December 2003 the writer Songül Keskin was indicted for creating 'separatist propaganda' under Article 8 of the Anti-Terror Law in relation to the content of his book 'Kurdish Uprisings and the History of Kurdistan'. It is hard not to interpret Keskin's subsequent acquittal as a cynical assertion that the reforms concerning freedom of expression include Kurdish writers and themes, coming as it does in the aftermath of yet another damning progress report by the EU: this is confirmed by the fact that the owner of the Avesta

publishing house which published the book was fined 3.9 billion Turkish Lira.²⁴⁴ This outcome constitutes evidence of the Turkish state's ongoing policy of targeting the means of producing print media and affirms its continuing intention to suppress Kurdish expression with excessive fines. In December 2003 the International Publishers Association and the International PEN wrote a joint communication to the Cemil Çicek, the Turkish Justice Minister, in order to voice grave concerns over even more proposed amendments to the Press Law which countenanced increasing the minimum level of fines yet again: the two groups rightly claimed that the minimum level under discussion was "excessive" and had the potential to bankrupt many establishments involved in the production of print media.²⁴⁵

In 2004 there appears to be no change in the treatment of the Kurdish press and individuals involved in it. On the night of 12 February 2004 Kadri Bagdu, who distributes *Yeniden Özgür Gündem* in Adana, was detained after his home was raided by police. Distributors of other Kurdish publications also continue to be harassed. In January 2004 Akif İnan, a distributor of *Azadiya Welat*, was threatened by police officers. He stated that, "On 6 January two persons stopped me and wanted to check my ID. When I wanted to see their IDs they told that they were police officers... they aimed their guns and said 'Here are our IDs. We are police officers, we will kill you.'" İnan was then driven to Çınar Security Directorate where officials recorded his identity and confiscated a copy of *Azadiya Welat* in his possession before releasing him. The same two police officers allegedly threatened İnan to death on 8 January.²⁴⁶ İnan's experience is similar to that of many who attempt to receive information delivered by pro-Kurdish media. Later in February two more distributors of *Yenidem Özgür Gündem* were violently abused by the police in shocking incidents. Yusuf Orak was hospitalised after being viciously beaten by police using truncheons and wooden beams. He was rushed to Adana State Security Hospital but staff refused to give him proper treatment due to police intervention. Eventually he succeeded in receiving treatment at Adana Forensic Institution.²⁴⁷ Veysi Karageci was hit by a police car before its occupants took him into detention at Karaduvar Police Station where they proceeded to beat him during interrogation.²⁴⁸ Again, neither man was charged.

On 17 February Ankara Penal Court of First Instance No.15 continued to hear

the case initiated against Fikret Başkaya under Article 159 of the Turkish Penal Code on 22 April 2003, concerning his book *Writings Against the Flow*. The cases against Özden Bayram and İsmet Erdoğan, the managers of Maki Publishing House which published this book, were also heard. No reason was given for the withdrawal of a legal expert who was to give evidence in the trial.

In March Ünsal Öztürk, owner of the Yurt Kitap Yayın Publishing House in Ankara, applied to Ankara State Security Court No.1 for permission to publish twenty-three books by the Kurdish sociologist Dr. İsmail Beşikçi which had over the years been banned under Article 8(2) of the Anti-Terror Law. Finding his application refused by this Court, Öztürk applied to Ankara State Security Court No.2. This court repealed the ban in relation to only eight of the books, stating simply that the remaining fifteen - which contained overt criticism of Turkey's treatment of the Kurds - still violated current legislation.²⁴⁹ In relation to his book *An Intellectual, an Organisation and the Kurdish Question*, the court noted that the ban had been imposed not only on the basis of Article 8(2) but also because the book violated the Law to Protect the Memory of Atatürk.²⁵⁰ This verdict constitutes judicial admission that Turkey's reforms regarding freedom of expression have been totally superficial due to the harsh restrictions which permeate the entire body of Turkish law.

The treatment of Kurdish broadcast media

In 1994 the Law on the Establishment and Broadcasting of Radio Stations and Television Channels²⁵¹ (the RTÜK Law) created an official supervisory committee, the Supreme Board of Broadcasting (the RTÜK) to regulate all broadcasts except those made by the TRT, Turkey's autonomous state-owned broadcasting corporation.²⁵² Under Article 8, its remit includes the power to issue and revoke licences and to formulate sanctions for violation of the substantive provisions of this Law. Article 4 provides,

Radio, television and data broadcasts shall be conducted within a spirit of public service, in compliance with the supremacy of the law, the general principles of the Constitution, fundamental rights and freedoms, national security and general moral values.

The broadcasts shall be in the Turkish language. However, it may also be broadcast for the purpose of teaching foreign languages which may have contributed to the formation of universal culture and scientific works or transmitting music or news in those languages.

The clauses concerning the Constitution and national security refer to provisions used to ban the Kurdish language and expression of Kurdish themes: they ensure that the “public service” would not extend to the country’s Kurdish population, many of whom cannot speak or understand Turkish, and that the Kurds’ fundamental rights and freedoms would not be accommodated. This is underpinned by the central stipulation that all broadcasts shall be in the Turkish language. The exception made in relation to certain ‘foreign languages’ has not been subject to judicial interpretation, but is understood as the basis for permitting limited teaching of widely used languages such as English and French. Many Kurdish lawyers are convinced that this phrase was deliberately formulated in order to provide yet another basis for the exclusion of the Kurdish language from the broadcast media.²⁵³ Turkey has consistently claimed that Kurdish is merely a collection of Turkish dialects. The phrase “foreign languages” therefore excludes from this provision, notwithstanding the fact that the Kurdish language can not be said to have “contributed to the formation of universal culture and scientific works”.

Article 4 of the RTÜK Law establishes twenty-six Broadcasting Standards which the RTÜK must enforce in relation to all licensed broadcasters. These promote Turkish culture and seek to preserve the unified Turkish state. The first Standards use phrases similar to those enshrined in the Constitution and in the Turkish Penal Code which prohibit expressions of Kurdish identity on the grounds that they serve separatist motives or incite unrest. Highlighting a selection of these Standards serves to illustrate the mentality behind the RTÜK Law and the principles which are to be promoted by all broadcasters in Turkey.

- a) *Broadcasts shall not violate the existence and independence of the Turkish Republic, the territorial and national integrity of the State, the reforms and principles of Atatürk.* This basic Broadcasting Standard has been

used to ban the expression of Kurdish identity in broadcasting through both language and content.

- b) *Broadcasts shall not instigate the community to violence, terror, ethnic discrimination and shall not incite hate and hostility by making discrimination in the community in terms of the diversities of the social class, race, language, religion, sect and territory and shall not give rise to feelings of hatred in the community.* This reasserts the Turkish policy according to which the mere acknowledgement of different groups is discrimination, and is reiterated in Standard (v) which provides that 'broadcasts shall not encourage the use of violence or incite feelings of racial hatred'
- g) *Broadcasts shall serve for the improvement of the general objectives and basic principles of the Turkish national education system and the national culture. The Turkish education system is a deeply nationalistic institution.* This provision ensures that this status will not be undermined by the broadcast media
- k) *...any item that leads people to commit a crime or raise the feeling of fear shall not be broadcast.* This provision can be used to make broadcasters responsible for other expressions of Kurdish identity.
- y) Broadcasts shall not reflect the fearful and intimidating features of criminal organisations. Expressions of Kurdish identity and those which are made using the Kurdish language are frequently alleged by the authorities to be made on behalf of the PKK.

The RTÜK may therefore exercise virtually unlimited discretion to determine that any broadcast featuring a Kurdish theme or which is made using the Kurdish language infringes these Broadcasting Standards. This ability is bolstered by the broad powers of the RTÜK which are established in Article 8. These include, inter alia: the duty to establish regulations for allocation of channels and frequency bands and determine the license fees (Article 8(g)); the power to verify the compliance of broadcasts with the provisions of Article

4 above by setting up monitoring systems for radio and television broadcasts (Article 8(h)); and the authority to impose sanctions such as suspensions, bans and fines in cases of violation of the provisions of the RTÜK Law (Article 8(i)). These all provide further ways for it to monitor Kurdish broadcasters and frustrate their operation by economic and bureaucratic means.

The RTÜK Law created conditions in which the total ban on Kurdish expression, which existed until Turgut Özal annulled Law 2932 in 1991, could be reasserted in relation to the broadcast media. Since the state monopoly on broadcasting was abolished in 1993, Kurdish broadcasters have attempted to capitalise on Özal's annulment by playing Kurdish music videos and airing Kurdish language interviews with inhabitants of the Southeast. The RTÜK has persistently sanctioned such stations on the grounds that these activities violate the Broadcasting Standards listed in Article 4 of the RTÜK Law.

Due to its autonomous status the TRT could circumvent this ban for certain purposes. In practice the only station which used this prerogative was the military radio station Dicle Sesi (meaning 'Voice of the Tigris'). The armed forces used this station to broadcast propaganda in Kurdish to the southeast where many Kurds have not received formal education and have consequently never been exposed to Turkish. In relation to this station the Minister responsible for the southeast expressed a pragmatic approach to the Kurds, rarely admitted by the state, when he said "To explain your own facts to these people you have to reach them in their own language, customs and usage, and traditions."²⁵⁴

The right of minorities to broadcast in their mother-tongue has been repeatedly cited by the EU Commission on Turkey's Progress Towards Accession in its 'Regular Reports on Turkey's Progress Towards Accession' as an essential cultural right which Turkey must guarantee. This is however totally incompatible with Turkey's Constitution and laws. The initial Bill which proposed reforms to the RTÜK Law in June 2001 actually curtailed freedom of expression and limited the ownership of broadcast media. President Necdet Sezer vetoed the law on the grounds that it was violated several Constitutional principles: in doing so he highlighted the fundamental contradictions between the principle constituents of Turkish nationhood and admitting any recognition

of minorities other than those three recognised in the Treaty of Lausanne.

Meanwhile ten stations received broadcasting bans of up to one year in August alone, mainly for airing comments on current events which were deemed unacceptable. An example is Gun TV, an independent local TV station based in Diyarbakır. Although it broadcasts in Turkish it plays some Kurdish music. In June the RTÜK suspended its broadcasts allegedly because they had been interfering with police radio but seventeen other cases have previously been brought against the owner under Article 8 of the Anti-Terror Law on the basis that the Kurdish songs it broadcast were separatist propaganda.²⁵⁵ Radio İmaj in Ankara also received a seven day ban for playing Kurdish music.

The amendment of Article 26 of the constitution within the package of reforms passed in October removed the restriction according to which no language prohibited by law could be used for any expression or dissemination of thought. This reform constituted the essential first step towards Turkey's purported fulfilment of the EU requirement of minority language broadcasting.²⁵⁶

The EU published its 'Regular Report on Turkey's Progress Towards Accession' on November 13 2001. It noted that the general implementation of the RTÜK Law remained a matter of concern, and cited several instances of penalties imposed upon various stations by the RTÜK. Reporting on cultural rights in the sub-section on Minority Rights and the Protection of Minorities, the Commission noted that the actual situation had not improved for persons belonging to groups outside the scope of the 1923 Lausanne Treaty, including the Kurds. Finally it commented that in spite of the amendments to Articles 26 and 28 of the Constitution the use of the Kurdish language in broadcasting was limited to the occasional airing of songs and street interviews with Kurds: as noted, the broadcast of such material is deemed to breach Broadcasting Standards and as such rarely escapes penalties imposed by the RTÜK.

The First Harmonisation Package, passed on 6 February 2002, amended Article 8 of the Anti-Terror Law by reducing the maximum suspension for radio or TV channels for propaganda against the unity of the State from fifteen to seven days.²⁵⁷ Fines were however increased and the notion of disseminating separatist propaganda' was introduced specifically in relation to broadcasting

for the first time.

The RTÜK was keen to assert the retention of its punitive powers in spite of these initial reforms. Early in February Nevzat Bingöl, the owner of Gun TV, was charged under the newly amended Article 8 for 'disseminating separatist propaganda' for having broadcast one Kurdish song. On 12 February, before Bingöl's trial had been concluded, the RTÜK imposed an excessive year long broadcasting ban on the station: the fact that this was lifted the following month confirms that the RTÜK was attempting to assert itself as a stern regulator regardless of the EU demands for mother-tongue broadcasting: it continued to do so by imposing a record number of bans on radio and television stations the following month.

In May the Government resubmitted, unchanged, the highly restrictive radio and television broadcasting law which had proposed a year earlier.²⁵⁸ Having exhausted his right to veto in relation to this law when it was first submitted President Sezer was now forced to sign the Bill, which was duly passed by the Grand National Assembly. This Law imposed tighter restrictions on freedom of expression, by prohibiting broadcasts that 'violate the existence and independence of the Turkish Republic, the territorial and national integrity of the State, the reforms and principles of Atatürk,' or 'instigate the community to violence, terror, or ethnic discrimination.' It also dramatically raised the penalties which could be imposed upon those who violated these provisions, which would have a devastating economic impact upon the smaller private broadcasting companies: the RTÜK admitted as much when it stressed that previous level of fines had been too lenient to act as an effective deterrent for broadcasters who transgressed the Broadcasting Standards. It claimed that this it had forced it to issue a great number of suspensions, and welcomed the amendments as liberalising. Another amendment concerned the composition of the RTÜK and as such affected its independence: this provides for a total of nine members, five of which are appointed by Parliament and four of whom are appointed by the Cabinet on the proposal of the National Security Council and one of its subsidiary organs, the Administrative Board for Higher Education. This ensures that the military may retain strict control over the composition of the RTÜK and will be able to direct its application of the RTÜK Law. The journalist's association proposes the remaining member of the RTÜK, but

even this is not a truly independent representative of the Turkish media. Furthermore, only a handful of large companies dominate the country's mainstream media. Doğan Medya is the most powerful media group in the country, owning eight newspapers and two television stations and reportedly controlling approximately 40 per cent of advertising revenue and 80 per cent of newspaper distribution.²⁵⁹ Such a monopoly further restricts Kurdish media, and is likely to present a further impediment in relation to the media freedom ostensibly envisaged by Turkey's legal reforms.

If it was truly representative of the Turkish media the RTÜK could perform a crucial function as a checking mechanism. It was not created in order to perform this function, but to extend the National Security Council's monopoly, held before 1993 in relation to all media in the form of the TRT, to the private broadcasters. As such it, has taken a harshly repressive approach to its policing of the broadcast media. The amendments introduced by the Law of May 2002 merely reassert and strengthen its ability to perform this function.

Unable to prevent the passage of that Law, Sezer petitioned the Constitutional Court for its annulment. In June 2002 the Court issued a suspension, pending final judgement, in relation to two Articles concerning the composition of the RTÜK and to the ownership of shares in private companies. At the time of writing the final judgement of the Constitutional Court had not yet been delivered.

In the summer of 2002 the coalition Government found itself on the brink of crisis due to its commitment to fulfil the Copenhagen political criteria in relation to Kurdish language broadcasting and the education. Vice President Murat Sökmenoğlu and parliamentarian Cemal Enginyurt, both members of the right wing Nationalist Action Party declared that they would resign from the Government if any alliance was forged between parties outside the coalition regarding these issues. It was within this volatile political climate that the Grand National Assembly pushed through the Third Harmonisation Package in August.²⁶⁰ Article 8(A) amended Paragraph 1 of Article 4 of the 1994 RTÜK by adding the declaration that:

Furthermore, there may be broadcasts in the different languages

and dialects used traditionally by Turkish citizens in their daily lives. Such broadcasts shall not contradict the fundamental principles of the Turkish Republic enshrined in the Constitution and the indivisible integrity of the state with its territory and nation.

This provision ostensibly initiated the long awaited reforms which would permit minorities to broadcast in their own language. The scope of the first sentence is wide enough to include the Kurdish language which has continued to be used by the Kurds in their daily lives despite continuous and comprehensive oppression by the Turkish state. In fact the wording of this clause suggests Kurdish could not be excluded from the ambit of this amendment as it must either be a language or a dialect. The true intention of the reform is however revealed in the second sentence, which immediately removes the Kurds from the scope of the provision by premising the reform on the principle of the indivisible integrity of the state: this is evidence of the persisting attitude according to which any expression of Kurdish identity, especially the Kurdish language, is indistinguishable from separatist aspirations.

No explanation was given as to how the RTÜK would apply this provision in conjunction with the Broadcasting Standards within Article 4 of the RTÜK Law which remain despite the reform introduced by the Third Harmonisation Package. The reference within the new paragraph to "the fundamental principles of the Turkish Republic enshrined in the Constitution and the indivisible integrity of the state with its territory and nation" affirms that the principles enshrined in the Broadcasting Standards are intended to prevail over the apparent intention of the reform.

The Package delegated to the RTÜK the difficult duty of formulating implementing legislation which met the Copenhagen political criteria and also adhered to the nationalist principles which entrench discrimination against the Kurds. That the reconciliation of these aims would have to be achieved in one piece of secondary legislation raises serious doubts regarding Turkey's commitment to honouring the reforms prescribed in relation to EU accession: what is actually needed is a fundamental reform which goes to the root the principles upon which the Republic is based.

In its 'Regular Report on Turkey's Progress Towards Accession' published on 9 October 2002, the EU Commission noted that many cases had been brought against broadcasters on the basis of the legal reforms introduced by the First Harmonisation Package. It noted that Turkey's lack of commitment was exerting a detrimental effect on legal certainty, observing that cases brought since the reforms had revealed little consistency regarding the implementation of the amendments: while a number of cases had resulted in acquittal, similar cases resulted in heavy sentences. Although the Commission did not analyse the facts of the cases, it seems likely that the inconsistency was due to discriminatory application of the law. Such practice is endemic in relation to Kurds. Judicial authorities reported that the amendments to the Penal Code had led the Supreme Court to overrule fifty judgements made under Article 159 and twenty-four made under Article 312: the Commission responded to this claim by noting that the decrease in cases brought under Articles 159 and 312 could be explained by the use of alternative provisions which had escaped amendment within the recent high profile reforms. Article 169 of the Turkish Penal Code, which forbade support for criminal organisations, had for example been extensively invoked to suppress freedom of expression in recent months.²⁶¹

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The Implementing Regulation of December 2002

On 18 December, one month after that highly critical report was published, the RTÜK finally issued the Decree on the Languages of Radio and Television Broadcasts.²⁶² Article 5 provided that, "Broadcasts can also be made in the different languages and dialects traditionally used by Turkish citizens in their daily lives." Consideration of other provisions reveals that it introduced a number of significant restrictions on content and length of broadcasts which would drastically limit the possibility of broadcasting in Kurdish which had been introduced by the Third Harmonisation Package.

Television broadcasts made under the reform would be made only by the four channels of the Turkish Broadcasting Corporation (the TRT) and would not exceed thirty minutes per day and a total of two hours per week. Radio broadcasts made under the reform would be made by the 'Voice of

Turkey' and would not exceed forty-five minutes per day and a total of four hours per week. After the Grand National Assembly's annulment of its constitutional monopoly in 1993 this status would allow the state to continue broadcasting free from the regulatory constraints which would be imposed upon in private broadcasters, and which came the following year in the RTÜK Law. By restricting the opportunity ostensibly created by the Third Harmonisation Package to the TRT – and thus keeping it within the realm of state activity rather than delegating it to private broadcasters - the Decree ensures that minority language broadcasting would be made in the circumstances which prevailed before 1993.

The extreme tension surrounding the notion of minority language broadcasting is highlighted by the fact that the Decree recasts the ostensible opportunity created by the Third Harmonisation Package as an obligation incumbent on the TRT. Although the TRT is autonomous and therefore operates beyond the scope of regulation by the RTÜK, it is bound by the constitutional provisions which also form the basis of the key Broadcasting Standards in the RTÜK Law of 1994. It can only be assumed that the RTÜK imposed this obligation as a desperate attempt to convince monitors such as the EU of Turkey's commitment to the implementation of the Decree, despite its conflict with the most fundamental principles of the state, and despite the fact that the state broadcaster could not legally abide by its terms.

Programmes broadcast on television must include subtitles and programmes broadcast on radio must be immediately re-broadcast in Turkish. This provision reasserts the primacy of the Turkish language and also prevents the Kurds from using the Decree, ostensibly designed to give greater freedom of expression in terms of the medium of broadcasts, to exercise fully their right to freedom of expression.

Television programmes will not have a separate studio design and presenters must appear in contemporary dress. These stipulations not only prevent expression of Kurdish distinct identity though traditional costume, and symbolic studio design but removes the possibility of broadcasting

from the Kurdish regions in other countries and thereby consolidating a Kurdish nation across borders.

All programmes must target an adult audience. This prevents the production of programmes directed at Kurdish children, which could assist them in learning their mother-tongue in their formative years and thereby circumvent the ban which exists within the education system.

Programmes may only concern music, culture and news. The culture, including music, would of course be Turkish and the news would be the official line of the Turkish state.

Programmes may not teach the language in which the broadcast is being made. This inevitable provision prevents the broadcasting reforms from being used to circumvent restrictions on the use of Kurdish in education: although that area is currently undergoing parallel reforms pursuant to EU demands, the authorities were keen to guard against loopholes.

The mentality behind this regulation is affirmed by the assertion in Article 8 that broadcasting cannot contravene the fundamental character of the Republic and the indivisible integrity of the State. In the light of the official ideology of Turkish nationhood this provision undermines the ostensible spirit of the regulation.

This attempt to create legislation to implement the spirit of the reform seemed formulated in order to fail. The Diyarbakır Bar Association immediately initiated a legal case at the Council of State for the annulment of the Regulation on two grounds.²⁶³ The first was that it was contrary to the aim and spirit of the Third Harmonisation Law which it purported to implement – that is, fulfilment of the Copenhagen political criteria of minority language broadcasting. The second was that the restriction of the new law to the state-owned stations the TRT was contrary to Articles 4 and 5 of the Constitution. Article 4 entrenches several Articles as irrevocable, including Article 2, which states that,

The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights...

Article 5 lists the Fundamental Aims and Duties of the State, which include inter alia,

...ensuring the welfare, peace, and happiness of the individual and society; striving for the removal of political, social and economic obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social state governed by the rule of law; and providing the conditions required for the development of the individual's material and spiritual existence.

The Secretariat General for European Union Affairs responded to the crisis by preparing draft amendments to Article 4 of the RTÜK Law which would allow the RTÜK to legally permit the TRT to broadcast as required by the Copenhagen criteria. The TRT however proved utterly intransigent. In February 2003 Yücel Yener, former General Director of the TRT, announced that the station could not commence broadcasting in Kurdish because there were no presenters who spoke the Kermanji or Zaza dialects of the language. The Kurdish Institute in Istanbul responded immediately by declaring that it could supply one hundred and fifty Kurdish language instructors who could now, in theory, legally provide presenters with private tuition in Kurdish private language courses under the Third Harmonisation Package, adding that it had formulated the curriculum and devised materials for such classes.²⁶⁴ The RTÜK publicly criticised the TRT for impeding implementation of the legal reforms by refusing to make a broadcast in the different languages and dialects used traditionally by Turkish citizens in their daily lives.

On 12 June 2003 the TRT took decisive action by contesting the lawfulness of the Decree at the Upper Administrative Court, the highest administration court in Turkey. It claimed that the obligations imposed upon it by the Decree were incompatible with its mandate and autonomous status. The Court upheld this claim.²⁶⁵ In doing so it not only affirmed that the autonomy of the TRT

precluded its control by a regulatory body but, in effect, agreed that the purpose of the Decree – to permit of minority language broadcasting in order to enable Turkey’s accession to the EU - was subordinate to the constitutionally entrenched principles of Turkish statehood.

This judgement played a decisive role in the reform process as it confirmed that the public state broadcaster could not legally implement the reform introduced by the Third Harmonisation Package, Turkey had no choice but to extend the reform to private stations. It did so within the Sixth Harmonisation Package, which was hurriedly compiled within one week and entered into force on 20 July 2003.²⁶⁶ Article 14 made the necessary amendment to Article 4 of the RTÜK law by stating,

In addition, public and private radio and television corporations may broadcast in different languages and dialects used traditionally by the Turkish citizens in their daily lives.

The RTÜK was now forced to formulate a new piece of implementing legislation which satisfied the two fundamentally conflicting objectives which underlie this and other reforms seeking to expand the linguistic rights of the Kurds and which, in doing so, characterise the dilemma that Turkey currently faces in its pursuit of EU membership. On one hand, Turkey has been keen to rush through legislative changes in order to fulfil the Copenhagen political criteria for accession to the EU: indeed, it has passed thirty one Constitutional amendments and seven major harmonisation laws in the space of just two years. On the other hand the conservative, nationalist elements within the state – led by the National Security Council - remain totally unwilling to compromise.

Throughout this period the RTÜK continued to use its powers under the RTÜK Law to restrict expressions of Kurdish identity within broadcasting. During the first six months of 2003 it issued fifty nine warnings and eleven suspensions and in the first nine months it banned twelve radio and TV channels based in the Southeast for a total of three hundred and sixty days.²⁶⁷ The radio station Radyo Dünya, based in Adana in the southeast, was banned from broadcasting for one month after playing Kurdish songs as part of a programme called ‘The

History of the Kurdish Language and Literature' between 27 December 2002 and 5 January 2003.²⁶⁸ Early in 2003 Gun TV received a fourteen month ban for broadcasting a song by the Kurdish singer Sivan Perwer and a further one month ban in June for presenting written slogans in the style employed by Medya TV.²⁶⁹ These figures confirmed the RTÜK's continuing reluctance to exercise its supervisory powers in conformity with the spirit of the reforms.

On 5 November 2003 the EU issued its latest Regular Report on Turkey's Progress Towards Accession. It noted that the reforms permitting radio and television broadcasts in languages other than Turkish, now fifteen months old, had not yet led to any concrete results as there had been no broadcasts in languages traditionally used by Turkish citizens in their daily lives. It noted that the RTÜK continued to implement the RTÜK Law in a punitive fashion throughout the reporting period by imposing heavy fines and broadcasting bans upon stations accused of violating principles of the State. The report highlighted a case in which the RTÜK applied the Broadcasting Standards in an inconsistent and undoubtedly discriminatory manner. Cinar Television, a private broadcaster based in the Kurdish province of Van, was closed for one month in June for broadcasting the speech made by the President of the Rights and Freedoms Party (HAK-PAR) during his recent visit to the area: the unregulated TRT broadcast the same speech without impediment.²⁷⁰ The EU must be criticised for failing to note this clearly discriminatory treatment of a private Kurdish broadcaster. On 19 December 2003 Alvaro Gil-Robels, the Council of Europe's Commissioner for Human Rights, presented the report based on his visit to Turkey in June to the Committee of Ministers and the Parliamentary Assembly. Like all other EU monitors to date, he noted with concern that the RTÜK was not exercising its supervisory powers in conformity with reforms regarding freedom of expression and minority language broadcasting.²⁷¹

The Implementing Regulation of January 2004

Late in 2003 a consensus was finally reached regarding a suitable replacement for the Decree and the Regulation on Broadcasting in Traditionally Used Languages and Dialects on Radio and TV Stations finally entered into force on

25 January 2004, fourteen months after the original implementing regulation, and almost a year and a half after the enactment of the Harmonisation Package which theoretically legalised Kurdish language broadcasting. Although many of the provisions are the same as those in the Decree of November 2002, new provisions do not represent progressive reform but cause fresh concern over Turkey's commitment to implement EU demands regarding minority language broadcasting.

Private regional and local broadcasters may take advantage of the Regulation, only after the State Institute of Statistics has ascertained regional audience figures. This provision alone has totally undermines the reform. Fatih Karacaş, the Chairman of the RTÜK, justified this stipulation on the grounds that "We do not know which dialect is spoken intensely in which region" and that it is "pointless to broadcast in a language that is not used in a particular region."²⁷² It appears unlikely that accurately determining linguistic demography cannot be the genuine motives behind this requirement for the following reasons.

The Turkish state does not publish data concerning this issue. In June 2001 the Council of Europe stated that it could obtain no official figures concerning the total number of Turkish citizens of Kurdish origin. Crucially, it noted that although the population census of 1990 sought data concerning the mother-tongue of all citizens, 'it is not certain that the information collected on this issue was complete and reliable.'²⁷³

The Turkish state has suppressed genuine research into this issue on at least two occasions: the study initiated in conjunction with the Turkish Army's large scale program of adult literacy training for its recruits in 1959; and 'The Village Inventory', a nation wide survey concerning questions of language and religion, conducted by the Ministry of Works and Settlement and the Ministry of Village Affairs in the early 1960s.

If the authorities genuinely wished to obtain the information cited, they could easily do so from two branches of the state's security apparatus which have conducted activities specifically based upon knowledge of regional linguistic distribution within the Kurdish regions: the Turkish military has broadcast

Dicle Se, mentioned above, to the population of the southeast in the Kurdish language, while the Gendarmerie has given Kurdish language training to its officers based in the Southeast.

For these reasons, enlisting the State Institute of Statistics in spite of these sources can only be interpreted either as a delaying tactic or more possibly, according to Turkey's tendency as noted by the Council of Europe in 2001, as a means of misrepresenting the situation concerning the languages spoken in the Kurdish provinces.

Each station may broadcast in only one language other than Turkish. This provision prevents broadcasting adopting the approach used by Medya TV, which is to broadcast programmes in the dialects of Kurds from all over the Kurdish region in an attempt to create channels of communication and foster unity.

The maximum duration permissible for broadcasting such programmes on radio and television are sixty minutes per day and five hours per week, and forty-five minutes per day and four hours per week respectively. Despite the fact that it has been raised, this maximum limit is still shamefully low in relation to local stations broadcasting to the provinces with a Kurdish audience, many of whom cannot speak or easily understand Turkish.

The new Regulation has precipitated a legal and political furore to equal that caused by the Decree it replaced. It has been condemned not only by human rights associations but by the Government itself: in December 2003 Abdullah Gül, Turkey's Foreign Minister, informed the Office of the Prime Minister that the new Regulation did not successfully implement the Third Harmonisation Law of August 2002 and consequently did not fulfil the Copenhagen political criteria.²⁷⁴ Immediately after the publication of the Regulation, the Diyarbakır Bar Association initiated a court case against the Regulation, just as it had done in relation to its predecessor. At a press conference organised by the Association on 28 January Chairman Sezgin Tanrikulu stated that the Regulation infringed the fundamental principles of equality, the rule of law and separation of the powers. Moreover, Tanrikulu stated that, rather than paving the way for broadcasting in minority languages, the Decree actually

“aims to make Turkish the main language of broadcasting and development of Turkish for daily use.”²⁷⁵ At this stage, it is hard to envisage a successful piece of implementing legislation without a major reform of the most fundamental tenets of the Turkish state.

Kurdish electronic media

The Press Law passed in May 2002 introduced censorship of the internet by providing that sites must be submitted to the authorities for approval before being launched online.²⁷⁶ Access to a number of Kurdish websites from the Kurdish region, including the online edition of the daily newspaper *Özgür Politika* and the Kurdish satellite station Medya TV, has been officially blocked by Turkish Telecom. Extra legal methods including hacking have disrupted a number of other sites.²⁷⁷ Earlier in 2003 the Government attempted to remove all Kurdish websites from international web directories on the grounds that they are the instruments of terrorist organisations. This provoked outrage from the organisers of the Open Directory Project, the world’s largest web directory. Helin Welat, responsible for several Kurdish websites, emphasised the significance of the internet for the Kurds as a divided people excluded from the media, and of the important role played by the organisations such as the Open Directory Project which promote freedom of expression on the internet.²⁷⁸

Furthermore, laws which restrict and criminalise freedom of expression are now being applied to the internet. In October 2003 Ankara Penal Court No. 4 banned *özgürpolitika.org* under Article 155 of the Turkish Penal Code. This precedent, which seriously undermines the current reforms being made in the area of freedom of expression, has been followed by other courts in Ankara and Istanbul.²⁷⁹

The status of the Kurdish language in the education system

Article 42 of the Constitution forms the basis for the ban of the Kurdish language from the education system. It states that,

No language other than Turkish shall be taught as a mother-tongue to Turkish citizens at any institutions of training or education. Foreign languages to be taught in institutions of training or education and the rules to be followed shall be determined by law. The provisions of international treaties are reserved.

The main effect of Article 42 is to remove the possibility of learning Kurdish as a subject in the public education system. It has been interpreted as providing that only Turkish can be used as the medium of instruction in Turkish schools. The Kurds are denied rights granted to other minorities in relation to education which enable the use of Kurdish as the medium of instruction and as a subject in private schools by the concluding reference in Article 42 to the provisions of international treaties. This refers to the Treaty of Lausanne of 1923, under this which Turkey agreed to recognise only its non-Muslim Greek, Armenian and Jewish minorities. This reservation consequently has the effect of providing that members of these three minorities may be taught their own languages through the medium of their mother-tongue; the Law on Private Educational Institutions concurs by providing that only non-Muslim minorities may open private schools.²⁸⁰

Although Article 42 permits foreign languages to be taught as a subject within schools and other educational establishments, the possibility of learning Kurdish as a foreign language was swiftly removed by the Law on Foreign Language Education and Training of 1983. Article 2(c) provides that,

Foreign languages to be taught in Turkey shall be determined on a decision of the National Council of Ministers, seeking the opinion of the National Security Council.²⁸¹

In 1992 the Council of Ministers determined the list of foreign languages permitted to be taught in Turkey. It decreed that both "state and private language courses may be given in Turkey only in the English, French, German, Russian, Italian, Spanish, Arabic, Japanese, and Chinese languages."²⁸² Significantly, Article 2(a) provides that Turkish citizens may not be taught their mother-tongue in any language other than Turkish. Although this provision does not necessarily exclude the possibility of learning one's mother-tongue it

represents a preposterous ambition by the Turkish authorities.

Although the courts have classified Kurdish as a foreign language in cases concerning parents who have given their children Kurdish names, they do not officially recognise Kurdish as a language, but instead as a collection of Turkish dialects which have been corrupted due to historical proximity of some Turkish citizens to Persian-speaking territories. In 1989 the Decree Law on the Organisation and Duties of the Ministry of Culture gave the Director General for Research and the Development of and Popular Culture the responsibilities of researching and teaching different "Turkish dialects" and establishing institutes for this purpose.²⁸³ In 1994 the Ministry of Education stated that the permissible "Turkish dialects" were Azeri, Gagavuz, Cossack, Kirghiz, Uzbek, Tartar and Turkoman,²⁸⁴ and therefore reconfirmed that the language of the Kurdish population, along with those of Turkey's Laz and Roma minorities, are excluded from the education system.

Article 42 has founded the total exclusion of Kurdish from the Turkish education system: both as the subject and as the medium of teaching; from state run and private institutions; and at primary, secondary and tertiary levels. Secondary legislation continued to reinforce the ban. In 1997 Meral Aksener, the Minister of the Interior, issued a confidential Circular to the prefects, gendarmerie and security headquarters of the eight provinces in the southeast ordering action to be taken "against those who establish research organisations in order to disseminate the Kurdish language and offer literacy courses in Kurdish."²⁸⁵

Minority language education was one of the major areas identified by the EU as priorities for Turkey's legal reform in fulfilment of the Copenhagen political criteria for accession. This area, along with minority language broadcasting, has been the area in which Turkey has proven most reluctant to initiate reform. In June 2001 it undertook a major programme of reforms of the education system. Despite the demands of the EU, this did not include any reforms concerning languages which were permissible to be taught or to be used as the medium of teaching. Conspicuously absent from the package of thirty-four Constitutional amendments passed in October that year was a reform of Article 42 Constitution. In November a group of students at Istanbul

University responded to Turkey's shocking lack of commitment to this central accession issue by signing a petition which demanded the introduction of optional Kurdish lessons at the university. Their announcement of this petition at a press conference initiated what quickly became a widespread two point campaign. University students around Turkey demanded the option of taking Kurdish language classes as part of their curriculum. Other activities included using the Kurdish language during lectures, in debates and conferences, in theatre performances, on posters and banners and in written tests. The university students were joined by schoolchildren who demanded education through the medium of Kurdish, or at the very least to be taught the Kurdish language as a subject.

The students' enthusiasm was matched by the authorities' ruthlessness. The Higher Education Council (the YÖK) responded immediately by declaring that the students were to be punished for their 'separatist activities' with penalties ranging from disciplinary hearings to expulsion. By 14 February students at twenty-four universities around Turkey had attempted to deliver 11,837 petitions. 1,359 had been taken into custody, 143 had been remanded in custody, 46 had been suspended from their university or school and 44 had lost scholarships.²⁸⁶ The Human Rights Association of Turkey condemned the attitude of the YÖK as a violation of basic rights: it stated that punishment for requesting education in a native language was incomprehensible in light of ongoing reforms intended to fulfil the Copenhagen political criteria for accession to the EU.²⁸⁷

Further support for minority language teaching received harsh treatment. In June 2002 legal proceedings were brought against leading members of Eğitim-Sen, Turkey's major teachers' trade union, because banners proclaiming that "Mother Languages do not Divide, they Unite" and that "Mother Languages are a right which cannot be Denied" were raised at the organisation's First Ordinary Congress. Six members were transferred from the Southeast to teaching posts in distant regions and the promotion of eight others was suspended for one year. Others who have spoken in support of mother-tongue education have faced similar treatment. One individual was convicted of supporting an illegal organisation by Van State Security Court after he made a speech discussing the negative effect upon children of education which excludes their mother-

tongue.²⁸⁸

In August 2002 the Third Harmonisation Package renamed the Law on Foreign Language Education and Training of 1983, the Law on Foreign Language Education and Teaching and the Learning of Different Languages and Dialects of Turkish Citizens. Article 1 now read,

The Purpose of this law is to regulate the procedures pertaining to the teaching of foreign languages in educational institutes, schools instructing in a foreign language and the learning of different languages and dialects traditionally used by Turkish citizens in their daily lives.

The scope of the amendment was in fact more limited than this amendment suggested.

The crucial amendment to the Law was made to Article 2(a), providing that,

Private courses subject to the Law on Private Educational Institutions No. 625 dated 8 June 1965 can be opened to enable the learning of the different languages and dialects used traditionally by Turkish citizens in their daily lives.

As such, the application of the whole legal reform which Turkey had formulated in fulfilment of the Copenhagen political criteria was dramatically limited and did not apply to public education. The reason for the retention of Article 42 in its original form was now clear. The amendment included the inevitable proviso that such courses could not be against the indivisible integrity of the state with its territory and nation and the fundamental principles of the Turkish republic enshrined in the Constitution. Significantly the amendment did not alter Article 2(c) of the Law and as such the National Security Council will still ultimately determine which foreign languages can be taught in Turkey. The Harmonisation Package delegated to the Ministry of Education the duty of preparing a regulation which would implement the reform.

It appears that the authorities attempted to redress the negative impact of this

disappointing reform, resulting in the miraculous acquittal of a number of the students who had been charged under the Turkish Penal Code for submitting petitions demanding Kurdish education. In acquitting the students, the Courts delivered several judgements which are extremely significant for the Kurdish population. In seeking to determine whether the plaintiffs' demand to be learn their native Kurdish language in an elective course at university would cause the social polarisation alleged in the indictment submitted by the Public Prosecutor, the Administrative Court in Diyarbakır described "an approach which legitimates the restriction of learning and speaking of languages other than the official ones" as "totalitarian". It went on to state that the "understanding, according to which the bigger social units should or might assimilate the smaller ones, has a meaning that legitimises the unjust intervention into human nature." It concluded that such a demand could not in fact lead to social polarisation as prophesised by the authorities, but noted that "there is nothing wrong in an individual demand from the public education institutions to learn scientifically his or her native language that is inseparable and the most important part of his or her identity and personality." Throughout the decision the court emphasised that the state should fight against illegal organisations without violating personal rights and freedoms.²⁸⁹

The Regulation of September 2002

The Regulation Regarding the Learning of Different Languages and Dialects traditionally spoken by Turkish Citizens in their Daily Lives was published in the Official Gazette on 20 September 2002.²⁹⁰ Although the Minister of Education is empowered to authorise secondary legislation originating in his Department, the current Minister Necdet Tekin did so only after consulting Ali Doğan, the State Minister responsible for Human Rights, Aysel Celikel, the Minister of Justice, and Muzaffer Ecemiş, the Minister of Interior Affairs,²⁹¹ together constituting an authorisation panel the identity of which only serves to confirm the nature of this regulation in the eyes of the authorities.

Tekin emphasised that the Regulation ensured that such languages would be taught in conformity, as he put it, with the interests of the Turkish state and stated, "Naturally, we will not allow the exploitation of these courses or the use

of these courses as political tools.” He explicitly stressed that the regulation did not solely govern the teaching of Kurdish language but the teaching of all languages and dialects used by the Turkish citizens.²⁹² It established criteria regarding teachers, students, premises and even permissible attire in relation to the private language courses which could be opened according to the reforms introduced by the Harmonisation Package. The provisions within this regulation combine to produce a right which is at best very limited and at worst so full of restrictions that it would not fulfil the law reform as intended.

Article 2. Language schools must ensure that classrooms are at a different location to those in which other languages are taught. This requires established schools to find additional premises elsewhere, thereby imposing a considerable extra cost which will inevitably be relayed to potential students.

Article 5. The aims of the course are... in accordance with the general aims and fundamental tenets. This reiterates the general aim of education in Turkey as established within the Constitution and the relevant laws discussed above. It affirms that these courses, although private, operate under strict centralised control which governs the public education system. It also implicitly imports the policy of equating expression of Kurdish identity with separatist aspirations, implying that the penal laws which criminalise such expression will be applied to those who establish or run courses in contravention of this provision.

Article 6. Permission to open institutions and commence teaching must be sought from the Ministry of Education. This is made conditional on the fulfilment of requirements within the Law on Private Education Institutes.²⁹³ This facilitates the monitoring of such courses, their location and all those involved. It also adds another layer of bureaucracy which may be exploited as a delaying tactic to prevent courses opening even after the relevant local education authorities have approved applications. It also ensures centralised control.

Article 7. Teachers must be Turkish citizens and must hold the standard teaching qualifications and will work under the auspices of the Ministry

of Education... There are no Kurdish departments in any Turkish universities which could give prospective teachers for these courses the requisite qualification. Asked in an interview whether or not the YÖK would permit Turkish universities to create departments offering Kurdish language tuition, Tekin simply replied that, "The demand for these courses will become known when these courses start being offered. Should there be demand for these courses, the Ministry of National Education will meet this demand. The issue of the opening of Kurdish sections in the universities falls within the sphere of the Supreme Education Council. I have no knowledge about this issue."²⁹⁴ This last claim is surprising considering the widespread student campaigns of 2002 which demanded Kurdish language tuition.

Acknowledging that foreign universities and institutes contain departments which provide courses in Kurdish studies, Tekin claimed that the Ministry would consider graduates of foreign institutions accredited in Turkey. However, the Turkish nationality requirement drastically restricts this pool of potential teachers because it is very unlikely that Kurds would go abroad to acquire qualifications in their own language at such institutions. It is also unlikely that Kurdish classes given in accommodating host states such as Sweden are held in institutions accredited by the Turkish authorities: indeed, the Turkish state has in the past tried to stop such courses being given.²⁹⁵

Article 7....Other personnel must be Turkish citizens, must have graduated from primary school and must not have criminal convictions for any crimes - explicitly offences against the state - or have been deprived of public rights. Turkey does not intend to become a 'safe haven' for those seeking to participate in the regeneration of the Kurdish language. The first stipulation will exclude Kurds from other regions such as Iraq, Iran and Syria who may seek to exercise the cultural rights denied to them by their States. It also excludes members of the diaspora who campaign for Kurdish cultural rights in Europe and elsewhere. The second stipulation ensures that staff have been subjected to linguistic and social assimilation within the mainstream Turkish education system at a crucial early stage. The third provision ensures that the

courses cannot acquire a supplementary staff whose dedication to preserving their language and culture has led to prosecution under numerous laws criminalising the peaceful expression of Kurdish cultural identity.

Article 8. Students must be Turkish citizens and must have graduated from primary school. Those under eighteen years of age must have parental permission. Upper primary school children may only attend classes at the weekend or in the summer holidays, and must have parental permission. The first provision ensures that Kurdish children will still not be able to learn their mother-tongue during their crucial formative years: this is affirmed by the apparent exclusion of lower primary school children from this provision. The second stipulation may be interpreted not as deference to parental autonomy but as a means of gathering data concerning those who support Kurdish language teaching. The final provision ensures that upper primary school children can only study Kurdish in addition to their state prescribed curriculum: not only does this practically marginalise the Kurdish language by implying that it is unworthy of inclusion in the regular school timetable, but dramatically increases the workload of younger students and reduces leisure time which is necessary to the development and well being of younger children.

Article 9. The list of enrolees shall be given to the local directorate of national education at the beginning of every term. This allows centralised monitoring of all those involved to operate at a local level.

Article 10. The teaching programme to be used on the course shall be approved by the Ministry. According to Tekin the Ministry was searching for staff to create a special commission to formulate a standard curriculum. The fact that this commission would operate within the auspices of the YÖK, which is an instrument of the National Security Council, confirms the intention to retain total control over the process of implementing this regulation.²⁹⁶

The Ministry of National Education claimed that it currently had

no personnel familiar enough with the Kurdish language to prepare courses in the Kurdish language. This problem seems no more than a delaying tactic in view of two sources of staff which were readily available to the state. The Turkish Gendarmerie has provided Kurdish language tuition for personnel stationed in the Kurdish regions since the conflict began between the state and the PKK in the early 1980s. Alternatively the Ministry could have approached the Kurdish Institute in Istanbul for assistance. Early in 2003 the Institute responded to similar problems allegedly encountered by the RTÜK by offering to supply one hundred and fifty Kurdish language instructors and a comprehensive curriculum complete with a set of grammar books which it had created.²⁹⁷

Article 11. Examination of courses shall be carried out by the Ministry of National Education. If necessary, experts may be appointed in addition to the inspectors. The YÖK will work closely with the Higher Education Board to ensure that teacher training meets official standards. Professor İsmail Bircan, the Deputy Undersecretary of the Ministry of Education, stated that, "The inspection of Kurdish courses is not going to be that much different from the inspection of other courses. However, in order to raise the standards of inspections we are going to train up 4,000 primary school inspectors and make them 'education inspectors'... Naturally, as these inspectors will be well trained there will not be any problem when it comes to making inspections."²⁹⁸

The restrictions imposed upon the scope of the reform by the Regulation of September 2002 were totally incompatible with the spirit of the Harmonisation Package of August 2002. Applications to establish Kurdish language courses were rejected by the authorities on the grounds that, in the continuing absence of official curricula formulated by the Ministry of Education, their proposed curricula had allegedly focused upon culture and history rather than the teaching of languages and dialects. The stringent regulatory requirements – in particular the nationality and qualification requirements – also prevented the classes from being granted permission. Hasan Süküroğlu, director of the private language school 'English Fast' in Ankara, immediately took up the opportunity to establish Kurdish languages classes in September 2002 but was forced to

abandon his plans, stating, 'It is not like teaching English; it is impossible to meet many of the established criteria.'²⁹⁹ The financial implications of the criteria were the major deterrent for Sukuroglu: 'We would have opened separate branches if we had the demand. But without sufficient demand, we cannot afford such a big investment,' he said. The financial implications of private language tuition must also be seen as responsible for the alleged lack of demand for Kurdish language courses in the major cities. It seems unlikely that Sukuroglu's experiences represent a lack of interest on behalf of the Kurds in his area: the reception of Medya TV by Kurds who had been removed to the cities revealed that they desperately wanted to enjoy their culture and use their language. In contrast to his experiences, the directors of proposed language courses in the predominantly Kurdish southeast of Turkey have not cited economic consideration as an obstacle, and neither have the potential enrollees. The difficulties encountered there have been those unexpectedly and deliberately imposed by the local regulating authorities and the Ministry of Education even when requirements of the Regulation have been fulfilled.

On April 17 2003 Aydin Ünesi applied to open a language school teaching three Kurdish dialects, Kurmandji, Sorani, and Zazaci, in the province of Batman. He eventually received permission from the local education authorities, after satisfying a number of bureaucratic criteria. The doors of his six classrooms had to be widened by five centimetres when a preliminary inspection established that they failed to meet safety regulations. Unesi was also required to devote a corner of the school to be devoted to Atatürk and hang his portrait in every classroom. Despite making these alterations, Unesi was still waiting for permission from the Ministry of Education in Ankara in November 2003.³⁰⁰

Under the ongoing scrutiny of the EU Committee charged with overseeing its progress towards accession, Turkey was forced to take action in order to remedy the embarrassing failure of its reform. It introduced two amendments within the Seventh Harmonisation Package of 8 August 2003.³⁰¹ Article 23 amended Article 2(c) of the Law on Foreign Language Education and Teaching and the Learning of Different Languages and Dialects of Turkish Citizens³⁰² so that the Council of Ministers could in future decide which foreign languages may be taught without having to seek the permission of the National Security Council. The economic barrier was lowered by the amendment to Article 2 of

the Regulation of September 2002 which provided that such courses could be held at the facilities of existing language courses. These piecemeal reforms had no effect. The first impetus for real practical reform evidently came in the form of the latest EU Regular Report on Turkey's Progress Towards Accession, issued on 5 November 2003. In it, the Commission noted that since the Regulation had been passed no progress had been made regarding the implementation of the Harmonisation Package of August 2002. It also noted that in ratifying the ICESCR, Turkey had deposited a reservation in relation to Article 13, in order to limit the right of parents to choose schools for their children.³⁰³

Even this forceful criticism had no immediate effect. By the time Omer Kurt applied to the Sanliurfa Directorate of the Ministry of Education to open the 'Kurdish Languages and Dialects Centre' on 20 December 2002, around two hundred and fifty people from many professions had already enrolled in his proposed course. The Directorate responded by telling Kurt to change the name to 'Private Urfa Local Languages and Dialects Centre'. Despite obeying this rather trivial stipulation, his application was rejected on 3 March 2003, allegedly on the basis of the word 'centre'. After making the necessary amendment, Kurt was refused permission once again, this time due to the word 'Language'. Undeterred, Kurt applied a third time, under the title 'Kurdish Dialects Teaching Course.' He eventually received approval from this local Directorate, subject to the unexpected reservation that only eighty students could enrol in the course, but waited in vain for permission to arrive from the Ministry of Education itself.

Aydin Unesi began registration for his courses on 5 November 2003, hoping that proof of popular interest might catalyse the authorisation process: around two hundred prospective participants enrolled, most of whom were university students who had petitioned for optional Kurdish language courses. However, he then received notice that the absence of an emergency staircase violated safety regulations. According to Unesi the staircase did exist, but he had simply not mentioned it in his application since such information was not sought. "My conviction that the courses are being deliberately blocked is strengthening because what the officials are asking for are minor things," said Unesi in November 2003. He stated that he was determined to remain positive about the process because now the ability to teach and learn Kurdish "is a right

granted by law.” According to Husnu Ondul, president of the Human Rights Association of Turkey, eight other schools in the southeast were still facing similar delays caused by deliberate imposition of bureaucratic obstacles.³⁰⁴ These economic, legal and bureaucratic obstacles existed not in spite of the law reforms, but because of them.

A few of those who had applied to open courses teaching the Kurdish language finally received permission towards the end of the year. Omer Kurt finally received permission on 8 December, but this was subject to the unexpected condition that only eighty of the 250 enrolees could be registered for the course.

Hansek Guven opened the Van Private Kurdish Language Learning Centre later in November to great support. The only obstacle he had encountered was the prohibition of its sign, which was written in Kurdish, being hung outside the Centre. Guven circumvented this by making a Turkish sign for the exterior and re-hanging the original inside. Kurdish people assembled in the street outside, overjoyed that their language might be taught, learnt and spoken openly with the authorisation of the Turkish state which had for so long imprisoned them for expressing their cultural and linguistic identity. Turan Özgüner, the Chair of the Van Cultural Centre, Mesut Atabay, Chair of the Van branch of the Prisoners Association, and officials from the DEHAP political party made speeches in support of mother-tongue teaching. Guven stated, “There has been a lot of interest. All the representatives of NGOs in Van, people we had not seen or knew came and visited us. There has been a wave of happiness. People have been yearning for their language.”³⁰⁵ On the basis of the support already received Guven planned to open other branches of the Centre. Nezir Öcek, an applicant to the Kurdish language course, said “After getting the diploma, my aim is to open up courses not only in Van but in other towns and villages to educate our people on this matter. We want to make the world accept our language which has been denied for years.”

These few successful applicants were limited to celebrating their achievement of permission: they could not begin teaching because the Ministry of Education had still failed to produce the official curriculum compulsory for all schools operating under the Regulation. Even these celebrations were harshly

curtailed: thirty people who had celebrated the opening of the Van Private Kurdish Language Learning Centre, including Ozguner, Atabay, and DEHAP Chairmen Hasan Özgüneş and Saime Sürme, were arrested for staging an unlawful demonstration. Van Penal Court of First Instance continued to hear the case on 18 February 2004.

On 5 December 2003 the Ministry finally issued the Programme on Education on the Kurdish Language which established the curriculum for such language classes, fifteen months after such courses were legalised by the Regulation of September 2002. This constitutes official recognition of Kurdish as a language and not simply a corrupted Turkish dialect.

On this date the Ministry issued new implementing legislation pursuant to the changes introduced by the Seventh Harmonisation Package in August. The Regulation on Teaching Different languages and Dialects that the Turkish Citizens Use Traditionally in their Daily Lives, which annuls the regulation of September 2002, does not appear to introduce new restrictions to those which already exist.³⁰⁶ However, its practical effect upon the economic, legal, procedural obstacles which frustrated attempts to open Kurdish language courses remains to be seen.

Kurdish names

According to article 16(4) of the Law on Civil Registration children with names considered “inappropriate to our national culture, our rules of morality and our usage and customs” could not be legally registered.³⁰⁷ The denial of registration has serious consequences for the child’s ability to exercise its fundamental rights. Transgressors were indicted under various anti separatist provisions of the Turkish Penal Code and faced severe penalties unless they agreed to name their child with a Turkish substitute. According to this provision Kurdish parents must choose between transmitting their culture to their children and thereby jeopardising their children’s ability to access essential public services such as the education system and health services.

Article 16(4) does not give officials any discretion regarding the registry of

children. However it lacks of explicit reference to Kurdish names, in a manner typical of the Turkish state's ongoing refusal to directly acknowledge the Kurdish population in legislation formulated to limit their freedom. It is also vaguely worded, typical of provisions throughout Turkish law which attempt to penalise the widest possible array of Kurdish activity and expression. These general characteristics have the purpose of creating room for interpretation, which official may sometimes exploit at their discretion. While this has the correlative effect of enabling parents to shop around to find a Registry Office which agrees to register their child with a Kurdish name, such attempts to exploit the open texture of 16(4) are not always successful. When Fahrettin Gökdemir went to Maltepe Registry Office in Istanbul after the Office in Ardahan refused to register his daughter with the Kurdish name Ronahi, they instead registered the child with the Turkish name Eda. Mr Gokdemir was forced to accept this name since registration is a requisite for enrolment at school, and his daughter's first term was due to commence.³⁰⁸

The Judgement of the Supreme Court of Appeals, 2000

The most liberal interpretation of Article 16(4) was delivered by the Supreme Court of Appeals on 31 March 2000 in a case in which Kurdish parents had been prosecuted after giving their child a Kurdish name. The Court held that the Article had not in fact been formulated with the intention of purging the Turkish population of foreign names. Without explicitly mentioning the Kurds, the judgement departed from the constitutionally entrenched ideology of a pure Turkish identity by recognising that Eastern and Southern Anatolia are "a part of the motherland where people of various ethnic origins live, not of just one ethnic origin." It did not however recognise the Kurds' distinct identity, stating instead that "in addition to Turkish words as people's names there are names derived from words in foreign languages like Arabic and Persian that have taken root in our national culture and traditions." Nonetheless it declared that "there is also no doubt that such an entrenched situation constitutes part of our national culture and customs."³⁰⁹

The Effects of the Judgement

It seemed as though the sovereignty of Kurds over the expression of an intimate area of their cultural heritage had been firmly guaranteed by the highest civil court in the country. The executive was however quick to crush this potential reform. In December 2001 Rüstü Kazım Yücelen, the Minister for the Interior, issued a Directive which overrode the judgement of the Supreme Court of Appeals. This reasserted the ban on Kurdish names, referring to similar Directives issued by the Ministry on 15 October 1986, 7 August 1990 and 30 March 1992.³¹⁰

Therefore, uncertainty continued to prevail in this area of Kurdish culture. Even when Kurdish parents found a Registry Office willing to register their child with a Kurdish name, those involved subsequently face criminal proceedings at the hands of the Public Prosecutor. After Ahmet Yılmaz succeeded in registering his child with the Kurdish name Bazan (meaning 'knowledge') at the Registry Office in Pertek district of Tunceli, the State Prosecutor launched proceedings against both him and the Head of the Office, İlyas Sayit, in order to have the registration revoked.³¹¹

In February representatives of the Government responded to the concluding observation delivered by the Committee of the Rights of the Child in response to Turkey's most recent report submitted in relation to the Convention on the Rights of the Child. They acknowledged that there was indeed a problem concerning birth registration but did not cite the intentional effects of its Decrees and Circulars emanating from the Ministry of the Interior on the ability and willingness of Registry Offices to register children under the Kurdish names given by their parents. Instead, they stated that the problem existed for a number of reasons, including for example the desire to allow their sons to avoid compulsory military service or simply because of communication problems in certain regions.

A fact-finding mission sent by the Kurdish Human Rights Project to Turkey in June 2002 received much evidence to the effect that local registrars still refuse to register children with Kurdish names in spite of the judgement of 2000.³¹² That same month, the Ministry for the Interior explicitly ordered Registry

Offices to inform the Public Prosecutor of individuals who sought to register their children with Kurdish names. The Ministry also instructed each regional Governor to establish a Names Commission which would provide authoritative declarations on the compatibility of contested names with the Constitutional principle of the indivisible unity of the state.³¹³ The also received testimony of the widespread practice amongst Turkish officials in the southeast of substituting Turkish names with the Kurdish ones given in applications for birth certificates without parental consultation. Kurdish families have been undeterred by the ongoing lack of transparency and risk of prosecution.

Later in June the 18th Civil Penal Court in Kurtalan rejected a case initiated by the Public Prosecutor against parents who sought to register their child the under the Kurdish name Helin. In this instance, the registry office had replaced their chosen name with a Turkish one. The Court held that a name is a Constitutional right, and accordingly it may not be erased by registry officials even if it contravenes national culture and moral rules.³¹⁴ As such it overrode one of the express stipulations within Article 16(4) by subordinating the notion of the cultural homogeneity to the reality of ethnic variety.

It is not unusual for Registry Office authorities who agree to register children under Kurdish names to be prosecuted. In July Kadriye Asku, the Head of the Registry Office for Ardahan, was charged under Article 169 of the Turkish Penal Code with the offence of supporting an illegal organisation when he authorised the registration of three children with Kurdish names. The applications were initially processed by his employee Sengül Gök, who was also charged with abuse of office. Both were eventually found not guilty by Ardahan Criminal Court.³¹⁵

The executive and administrative branches of the Turkish state continued to oppose the judicial reforms by issuing decrees and circulars which asserted the ban on Kurdish names. A particular device employed by both the Ministry of the Interior and local authorities are official lists of names deemed unacceptable under Article 16(4). It appears that these lists are intended for internal guidance only and that they are not made public: this lack of transparency not only serves to encourage self censorship amongst the Kurdish population but gives the registration authorities another excuse for claiming the excuse

to refuse to register those with Kurdish names. Selin Artik was told by Avcılar Registry Office that insistence to register his son with the Kurdish name Barth would result in his official investigation. The reason given was that this name was not on the list approved by the Turkish Language Institute but Artik was not shown the alleged list.³¹⁶

Although these lists remain concealed, their contents may be guessed by studying those names which have incurred prosecution. In May 2002 the Civil Court in Diçle held that of twenty three names under which several families had been allowed to register their children, only Bayer, Serhat and Bavañ were compatible with the stipulations of Article 16(4) because, according to the Turkish Language Institute, they are Persian in origin.³¹⁷ The Registry Office in the Bakikroy district of Istanbul refused to register Bülent Öz's son with the Kurdish name Rozerin, which means 'yellow sun' - the central motif on the Kurdish flag - it did allow him to register the child with the Kurdish name Zilan, which means 'bud'.³¹⁸ This case suggests that lists may contain names which have overtly political connotations. A further indication as to the content of lists was given by the indictment under which the parents of families in the town of Diçle were charged with infringing Article 16(4) in December 2001, on the allegation that several of the names given to their children were used by the PKK as codenames for its members.³¹⁹ Similarly, after Günsel Karabil was prohibited from registering his son with the Kurdish name Roger at the Registry Office in Balçova district of Ismir, police from the local anti-terror unit apprehended him at his home and took him to their local headquarters. Here they interrogated him for over six hours regarding his alleged support for the ideology of the PKK before the Public Prosecutor authorised his release.³²⁰ This detention may be seen as a means of gathering information about the PKK; it may however be yet another instance of intimidation based upon the equation of the peaceful expression of Kurdish cultural identity.

In September Berdan Acun petitioned the European Court of Human Rights after authorities in Diyarbakır turned down several requests by his family to give their child the Kurdish name Hajar Pola (meaning 'silent and calm child').³²¹ If this case is successful the impetus for legal change in this area may come not from accession based requirements for the protection of minority cultural and linguistic rights but from an explicit judgement of the Court.

Overall, there was a steady increase in the number of applications to the courts by Registry Offices and the Ministry of the Interior seeking clarification as to whether certain Kurdish names infringe the stipulations within Article 16(4): the number rose from forty-five in 2000, to one hundred and twenty-five in 2001, to one hundred and sixty in 2002.³²²

Early in 2003 another judgement was delivered by a court in Patnos, Ağrı challenged the continuing attempts of the executive to restrict this area of Kurdish expression. The court rejected the case initiated by the Public Prosecutor against Nurettin Uygur when he attempted to register his child with the Kurdish name Serna. The Court reiterate the rationale of the judgement delivered by the Supreme Court of Appeals in March 2000 by stating "The fact that a word is of foreign origin... may not be an obstacle for being the name of a person." More significantly it challenged Turkish ideology by asserting in relation to the so-called "foreign origin" of Kurdish cultural attributes that "it is obvious that this may not harm the public conscience."³²³

This judgement renewed hope of judicial reform in the area which might in turn catalyse legislative change. When Filiz Korkmaz, a civil servant employed at the Registry Office in Marsin, applied to register her own child with the Kurdish name Rojbin she intended to challenge both the legal basis for the discretion claimed in relation to the Law on Civil Registration by Registry Office staff, and the Constitutional basis of Circulars issued by the Ministry of the Interior which sought to prevent the registration of Kurdish names. She also sought to challenge the legality of the Names Commissions and the evaluation of any name according to its compatibility with the Constitution. Furthermore, Korkmaz denied that the existence of the list of prohibited names was regularly invoked at her Office to justify refusals to register particular Kurdish names.

The results of her scheme were disappointing. Her Office refused to register her child with the Kurdish name she had chosen and shortly afterwards Korkmaz herself was investigated and received an official warning.³²⁴ It seems likely that the Public Prosecutor declined to indict her after the investigation because Korkmaz had made allegations which would be upheld in court.

In August a fact finding mission sent by the Kurdish Human Rights Project to the Southeast of Turkey learned that the Minister for the Interior had recently issued a Circular in which he condoned a range of unofficial methods for restricting the application of the Law on Civil Registration. At this time, therefore, the situation regarding the use of Kurdish personal names was unclear both for the authorities and for Kurdish parents due to persistent attempts to ban the practice. This confusion is a typical effect of the Government's lack of true commitment to making a comprehensive reform.

The reform of September 2003

On 23 September the Minister for the Interior finally intervened to clarify the correct application of the Law on Civil Registration. The Minister publicly stated that, "Our citizens may use names according to their traditions and customs provided they are in line with ethical rules, do not offend public opinion and are written in accordance with the Turkish alphabet."³²⁵ Since official cultivation of the public conscience via the education system and media includes degrading and criminalising the Kurds, the second restriction undermines the purported liberalisation of the reform even before the linguistic restriction was revealed. The letters 'x', 'w' and 'q' exist in the Kurdish alphabet but not in the Turkish alphabet. As such the ban was reaffirmed in relation to Kurdish names such as Xebet, Axgin and Berwanda.

Undeterred by the Minister's pronouncement leaders and members of the pro-Kurdish parties DEHAP (People's Free Democratic Party) and Özgür Toplum (Free Society Party) sought judicial rulings on this new development. They filed petitions before courts in Istanbul, Ankara and Adana seeking to adopt Kurdish names which include these non-Turkish letters. Ferhat Yegin, Vice President of Özgür Toplum, applied to adopt the Kurdish name Qualferat (meaning 'wise') in order to challenge the ongoing ban which he rightly criticised as "not in conformity with the spirit of the amendment" introduced in September.³²⁶ Cavit Torun, the Parliamentary Deputy for the ruling AKP (Justice and Development Party) responded to this by saying that Kurdish names must simply be accommodated using Turkish letters.³²⁷

A hopeful sign came when the Public Prosecutor did not oppose Yegin's application, indicating that he saw no legal grounds against it. Unfortunately, the courts resolved the situation in favour of the Government. On 21 November 2003 a court in Hakkari concurred with Torun by rejecting the applications submitted by officials of the provincial branch of DEHAP. Yegin's application was rejected in December on the grounds that using letters which are not part of the Turkish alphabet is unconstitutional.³²⁸

The suppression of Kurdish topographical names has also been reaffirmed in the past few years. A Turkish court banned the use of Kurdish street names in 2000 and in early 2001 Prime Minister Ecevit issued a Circular in which he directed Ministries to omit any reference to Kurdish place names.³²⁹

Kurdish music and film

Although the production of Kurdish music has apparently become a booming business it has remained under close scrutiny and continuing repression. There is general awareness that music known to be Kurdish in origin or which is sung in the Kurdish language attracts the attention of the authorities. The treatment of Kurdish music constitutes a prime example of the link made by the Turkish authorities between Kurdish cultural expression and separatism. The recording of Kurdish folk music was in theory legalised when the general ban on the expression using languages other than Turkish was lifted in 1991. Not only those involved in its production, but those who listen to it are often charged with violating legislation which purports to protect Turkey's territorial integrity such as the Anti Terror Law and the Turkish Penal Code. The authorities deploy both judicial and extra judicial measures in relation to this medium as a means of persecuting Kurds who peacefully exercise their right to expression their cultural identity in this medium. Strict control is also maintained by the supervisory body, the Supervisory Council for Cinema, Video and Music Productions, which has the power to issue sanctions in relation to works which contravene the Law on Works of Cinema, Video and Music. Provisions in his law are frequently invoked in order to punish those involved in the dissemination or simple enjoyment of traditional and contemporary Kurdish culture through these mediums.³³⁰

The aforementioned Law governs works according to the purposes of this law listed in Article 1, the very first of which is to “bring order from the point of view of national unity, integrity and its perpetuation in cinema and musical life...” Article 3 prohibits works which constitute an offence from, “the point of view of the indivisible unity of the state, its country and people; national sovereignty, the republic, national security, public order, the public good...” Article 9 provides that any work which contravenes these provisions will be banned and those responsible prosecuted.

In practice permission must be sought prior to the production of music tapes and its award is often made conditional upon the removal of a specific word or phrase. This has occurred repeatedly in relation to the words ‘Kurd’ and ‘Kurdistan’. Permission may be refused altogether if song has any overtly political content, depending upon the prevailing atmosphere. Even cassettes which have received permission may subsequently be banned and their producers prosecuted.³³¹

This state of affairs has continued despite Turkey’s recent Constitutional and legal reforms, made in accordance with the Copenhagen political criteria for accession to the EU, which have purported to expand the scope of freedom of expression. By early 2002, Articles 26 and 28 of the Constitution had been amended, and the First Harmonisation Package had amended Articles 7 and 8 of the Anti-Terror Law and also Articles 159 and 312 of the Turkish Penal Code. These harsh criminal laws are even invoked to punish individuals who simply listen to Kurdish music in public. Kurdish bus drivers are frequently subjected to persecution on the grounds that by possessing or playing cassettes of Kurdish music they are disseminating separatist propaganda to their passengers. Although Human Rights Watch reported in 1999 that Kurdish music was freely played on long distance buses, a significant number of reports reveal that bus drivers are abused by police and prosecuted for such activities. In April 2002 Ahmet Murat Korkut’s bus was stopped by officials on the Diyarbakır - Elazığ highway ostensibly for the purpose of carrying out a random identity check. The officials proceeded to search his bus and his Kurdish albums were found and confiscated. A criminal investigation was initiated against him, culminating in a charge under Article 25 of the State of Emergency Law.

In October 2002 the Regular Report on Turkey's Progress Towards Accession stated that seventeen music cassettes were currently banned in the remaining two provinces which were still governed under emergency legislation.³³² Next month OHAL was lifted in relation to the remaining provinces; however, several reports have established that many practices which operated under the state of emergency continue since its official abolition. The medium of Kurdish music continued to be exploited as a means of suppressing Kurdish cultural identity. In June 2003 the Governor of Van banned the sale, distribution and playing of albums by Koma Azad and Hüseyim Ömer on the grounds that these were against national customs and general morality as well as constituting separatist propaganda for an illegal organisation.³³³

One case appeared to confirm that the legal reforms purporting to expand the right to freedom of expression might enable the Kurds to make films about their experiences or to use the medium of their mother-tongue. The film *Büyül Adam, Küçük Aşk* (meaning 'Big Man, Small Love') by producer Hanhan İpecki is the story of a young Kurdish orphan who causes a retired Turkish judge to question his acceptance of the national ban on the Kurdish language. The fact that it was made with a £20,000 grant from the Ministry of Culture and went on general release throughout Turkey is made even more remarkable by the fact that the child is orphaned when her guardian is killed along with two Kurdish rebels in a brutal police raid. Most significantly of all, the film includes pieces of Kurdish dialogue with Turkish subtitles.³³⁴ The film enjoyed popularity with Turkish cinema goers and received acclaim at the national Golden Orange Film Festival, where it won four awards including Best Picture. This is the second film featuring the Kurdish language to have gone on general release in Turkey. In March 2001 the film 'A Time for Drunken Horses' by the Iranian Kurdish director Rahman Ghobadi became the first film made in the Kurdish language to be screened publicly in Turkey. Despite a restricted release which allowed it to be shown only in one cinema in Istanbul an audience of over 7000 came in its first week, attracted by its novel subject matter as much as the film's worldwide acclaim.³³⁵ It seems possible that this medium of Kurdish expression has benefited from more tolerance in line with the legal reforms concerning freedom of expression as it is easier to monitor than the press and printed media and is less pervasive than broadcasting.

The hopes which arose from this apparent reform were short lived. The police approached the Supervisory Council for Cinema, Video and Music Productions asking it to revoke the film's license on the grounds that it presented the state as adopting a "chauvanistic" approach towards the issue of Kurdish identity and was also an offensive portrayal of the Turkish the police. On 2 March the Culture Minister İstemihan Talay announced that the Supervisory Council had banned *Büyül Adam, Küçük Aşk*. İpecki was charged in April under Article 159(1) of the Turkish Penal Code for slandering the security forces.³³⁶ Talay claimed that the grant was awarded on the basis of an original script which exhibited "good and noble aims" but that the "devious" İpecki, had radically altered it after securing financial assistance.³³⁷ Although the Supervisory Council lifted its nationwide ban in June, many Governors in the Southeast imposed regional bans within their own jurisdictions.

By April the Second, Third and Fourth Harmonisation Packages had made further amendments to the provisions of the Turkish Penal Code. Later that month Diyarbakır State Security Court handed down a suspended sentence of forty-five months imprisonment to minibus driver Sulhattin Önen who had played a cassette of Kurdish of songs in spite of the fact that the tape was legally authorized for publication.³³⁸ In June a Kurdish wedding in Karacali where Kurdish songs were being sung was violently interrupted by gun men who wounded the groom and a number of guests, and continued to fire at vehicles which departed to take the victims to hospital.³³⁹ Two people were shot dead later in the year in similar circumstances at a wedding in the conservative town of Adapazarı simply because a song was sung in Kurdish.³⁴⁰ On 9 February 2004 three musicians who had played Kurdish music at a wedding were detained by the police for questioning but were released the next day.³⁴¹ This intimidating treatment is particularly unpleasant when viewed in conjunction with the killings which had recently occurred in similar circumstances. At very least it is intended to create an oppressive atmosphere in which Kurds censor expression of their cultural identity. At worst, it could be seen as concurrence with the mentality of those who perpetrated the attacks on a peaceful Kurdish celebration.

In July, the notorious Article 8 of the Anti-Terror law was annulled. Continuing repression of Kurdish culture in all media proves that this abolition was

merely symbolic. The same month, Diyarbakır State Security Court sentenced Abdullah Yağın to forty-five months imprisonment by for playing Kurdish music in his bus on the grounds that by doing so he was allegedly encouraging his passengers to support an illegal organisation.³⁴² In August the Governor of Muş banned one hundred and twenty three Kurdish music videos and albums, again alleging that these were actually propaganda for an illegal organisation.³⁴³ The following month the Foundation reported that the production, distribution and sale of nine albums, including four by Sivan Perwer, were banned in Van and in the Yüksekova district of Hakkari, again on the grounds that they were propaganda for an illegal organisation.³⁴⁴ That month, Halil Demir, a bus driver in Suruç district of Urfa, was playing Kurdish music on his bus when a plain clothed policeman emerged from the passengers on board and began cursing and beating him. This officer ordered Demir to stop the bus when they reached a police checkpoint. There Demir received the heavy fine of 32 billion Turkish Lira, allegedly because he had exceeded the permissible number of passengers on board, in spite of the fact that his bus was actually below capacity.³⁴⁵

In August 2003 the Law on Works of Cinema, Video and Music was amended by the Sixth Harmonisation package passed.³⁴⁶ Previously the law required these works to comply with “national culture and custom and usage” whereas now they must comply with “the Republic’s basic principles mentioned in the Constitution, inseparable integrity of the State with its country, nation and basic interest.” The Supervisory board can still ban a work that violates these provisions and prosecute the artist while police can close down plays, films or videos “that will harm the indivisible integrity of the state, its country and people, the Constitutional order, general security and morality” on the order of the highest local authority. In the past these powers have been frequently invoked against cultural associations and civil society organisations to prevent the showing of films. The removal of the member appointed by the National Security Council from the Supervisory Council for Cinema, Video and Music Productions may be seen as a sign of improvement.

Individuals continue to be persecuted on the basis of listening to Kurdish music in spite of these reforms. On 1 October two Kurdish men, Sahin Turan and Mustafa Kılıtutar, were listening to Kurdish music while constructing a school in the Oltan region in Ankara. Suddenly, the men were beset by a

group of more than forty people, some of whom were armed with clubs and other crude weapons. The group was led by Ali Ada, the Mayor of the True Path Party. The Vice Director of the school Ahmet Turgut, who attempted to convince the mob to leave the men alone, was assaulted by Ada when he reasoned that using the Kurdish language posed no problem. The gendarmerie intervened and detained thirteen people for further questioning, including Turan and Kilictutar. Many of those involved were hospitalised due to the injuries which they had sustained. Turgut was subsequently removed from his position and transferred to a rural school.

Singers of Kurdish origin have been popular in Turkey when they have conceded to sing in Turkish. İbrahim Tatlıses, a Kurd from Urfa, is one of the most successful singers in the Middle East, having won massive popularity for developing a musical style known as 'Arabesque', which fuses Middle Eastern and Western rhythms. Tatlıses has not sung in Kurdish before a large Turkish audience nor on television, always claiming that the time was not right. He has nonetheless faced repeated allegations from far right political organisations of promoting separatism despite the fact that he only began recording some of his songs in Kurdish in the last few years. The fact that he was arrested upon returning to Turkey after an excursion to Northern Iraq to sing Kurdish songs at a wedding suggests that he may also be under the scrutiny of the Turkish authorities.

Tatlıses' tactic of appropriating Kurdish songs and translating them for the Turkish market has attracted strong criticism from other Kurdish musicians. Some condemn his manipulation of Kurdish culture in pursuit of a wider audience as cowardly and greedy. In 1985, he re-recorded Tahsin Taha's Kurdish anthem *Rabe Jutyar!* (meaning 'Farmers Rise Up!') using new Turkish lyrics and the new title *Beyaz Gül* (meaning 'White Rose'). The Kurdish singer Nawroz responded by stating that it is the responsibility of those with knowledge of Kurdish anthems to conduct research into the practice of such re-recording and to "seek out and reclaim these stolen songs and to prove their origins to the whole world."³⁴⁷

Early in December 2003 however, Tatlıses sang a song in his native tongue live on national television for the first time. Right wing political parties immediately

responded by stating that singers such as Tatlıses were “instruments of internal and foreign treason seeking to destroy the foundations of unity.” İsmail Türk, a leading member of the nationalist Great Unity Party (BBP) stated, “The people can pardon him if a proclamation is made that [the Kurds] are against all forms of terrorism and separatism, and that they will protect the indivisible integrity of our country.” Members of Ülkücü, the youth section of the right wing Nationalist Action Party, staged a large protest in Istanbul in which banners were flown bearing warnings such as ‘Do not make our patience run out, we might visit you one night unexpectedly’; one promised, ‘We will hang you.’ Participants accused Tatlıses of inciting separatism and called him a “black stain” and appealed for a boycott of his records and cassettes.³⁴⁸ In a subsequent television interview Tatlıses welcomed current reforms purporting to legalise broadcasts in the Kurdish language. Shortly afterwards on 14 December police arrested three Ülkücü members who were lying in wait near a television studio in Istanbul while Tatlıses was recording an interview inside. All three were charged with attempted murder after confessing that they had planned to kill Tatlıses for singing in Kurdish.

Preservation and Celebration of Kurdish Culture

Individuals and associations continue to be harassed for preserving, cultivating and disseminating the Kurdish culture. Although the state has made high profile concessions in an attempt to satisfy its European monitors that it is indeed allowing the Kurdish population to enjoy its culture, those participating in cultural activities organised by Kurds are still punished using the Anti-Terror Law and the Turkish Penal Code. Such activities are also proscribed according to the terms of laws which govern culture according to the fundamental principles of the state, such as the Law on the Establishment of the Atatürk Culture, Language and History Society³⁴⁹ and the Decree on the Organisation and Duties of the Ministry of Culture.³⁵⁰

The events of Newroz 2000 exemplify the recent situation regarding the comparative treatment of Kurdish and official cultural events. In this year the authorities granted permission for a major celebration a few miles outside of Diyarbakır for the first time and more than 80,000 Kurds were able to

congregate without intimidation or detention by the police. Elsewhere in the Southeast however, the police detained several hundred “unauthorized demonstrators” in Mersin, Sanliurfa, Siirt, and Adana. In Istanbul municipal authorities denied permission for celebration on the grounds that there is no letter ‘w’ in the Turkish alphabet.³⁵¹

In relation to events celebrating Kurdish culture hosted by Kurdish cultural centres or other organisations, Article 10 of the Law on Associations establishes that institutes must inform the Governor or District Governor 72 hours in advance of holding any public event outside their premises, and that the Governor must reply at least 24 hours before the event.³⁵² The Law on Demonstrations and Public Meetings contains a similar provision.³⁵³ According to the Contemporary Lawyer’s Association in Istanbul, the duty to notify is interpreted by the authorities as a duty to seek permission. Accordingly, they often impose strict requirements in relation to Kurdish events. Alternatively, they ban them altogether under one of the many provisions which are used to prevent Kurdish expression and activities, such as those found in the Turkish Penal Code and the Anti-Terror Law.³⁵⁴ Article 17 of the Law on Associations contained an expansive provision which empowered the Governor or District Governor to ban or postpone a public meeting if there was a strong possibility of the occurrence of incidents which would seriously disrupt public order or violate national security requirements; if it was necessary for the protection of the indivisible integrity of the state, its country and people; and if it would incite acts intended to destroy the fundamental qualities of the republic. Since its amendment by the Second Harmonisation Package in March 2002, Article 17 of the Law Associations entitles the Governor or District Governor to ban or postpone a public meeting for the purpose of national security, public order, the prevention of crime, or the protection of the health, morality and freedoms of others.³⁵⁵

The Van Cultural Centre was established in November 2000 with the aim of carrying out research into Kurdish and other regional cultures. Its application for registration was repeatedly refused by the Ministry of Commerce in Ankara, and was finally only granted when references to Kurdish were removed from the memorandum of association and replaced by references to the Anatolian culture in general.³⁵⁶ Nonetheless, its main focus has been the preservation

and development of traditional Kurdish music, and it regularly organises performance at weddings.

One month after the Constitutional amendments of October 2001 purported to expand the scope of freedom of expression, Kurdish cultural centres and publications were the focus of an organised operation by the police. On 29 November 2001 the Kurdish Institute and the Mesopotamian Culture Centre were raided as part of a large scale police operation carried out in relation to the branches of twenty legal pro-Kurdish and leftist publications and associations located in Istanbul. The Mesopotamian Cultural Centre was the first to be stormed by police claiming to possess search warrants issued by state security courts. Also raided were the Mem Basin publishing house, the Zend Foundation for Science, Culture and Education, the Youth Culture Centre, the Anatolian Youth Centre and the Dicle Women's Cultural Centre. The offices of *Yenidem Özgür Gündem* and *Azadiya Welat* newspapers and the offices of the journals *Özgür Halk*, *Özgür Kadinin Sesi* and *Jiyana Rewsen* were subjected to similar treatment. During the raids, files, books, documents and computers were confiscated. Police reportedly told staff at the Women's Culture Centre in Dicle, "You receive instructions from İmralı," the Turkish island where Abdullah Öcalan, leader of the PKK, is imprisoned.³⁵⁷ Twenty one people were arrested, including Hasan Kaya, the Chairman of the Kurdish Institute and Hakan Kemaloglu, an administrator at *Yenidem Özgür Gündem* newspaper. All were held at the Anti-Terror Branch of Istanbul Police Headquarters except Yücel Filizler, who had disappeared. Istanbul State Security Court issued warrants for the raids based on an alleged "civil disobedience campaign" which it claimed was initiated by the PKK. The equation of attempts to protect culture with civil disobedience does not bode well for the effect of reforms which purport to extend basic human rights to Turkey's Kurdish population.

In 2002 such centres were put under renewed pressure as part of the general clamp down on Kurdish culture in reaction to the campaign initiated by university students for optional Kurdish language courses. The Van Cultural Centre was temporarily closed by the Regional Governor for hosting a course of musical tuition in playing the saz, a traditional instrument, without the requisite permission. The Kurdish Institute in Istanbul was served a closure order in January allegedly because a blackboard found in a back room allegedly

served as evidence that the Institute was offering illegal Kurdish education courses.³⁵⁸

In 2003 regional Governors banned Newroz celebrations in the towns of Balıkesir, Bitlis, Çanakkale, İçel, İstanbul, Kars, Kahramanmaraş, Şırnak, Yalova, Iğdır, Erzurum, Kırşehir, Sakarya, Kayseri, Muğla, and Gebze. Police detained hundreds of Kurds who attempted to celebrate, dispersing crowds with tear gas and beating participants.

In June 2003 a fact-finding mission sent by the Kurdish Human Rights Project to the Southeast of Turkey learnt that the Mesopotamian Cultural Centre had been closed down in 1998 for violating a bylaw which states that places open to the public must be at least 200 metres from high schools. The mission found however that there were a number of bars and restaurants even closer to the high school than the Centre. It appeared that bureaucracy had once again been invoked in order to frustrate attempts to promote Kurdish culture. Indeed, when in the Centre had tried to find an alternative venue for its activities in 1988, local authorities found numerous reasons to reject their application. Earlier in the year the Van Cultural Centre and the Kurdish Institute in İstanbul had been subjected to harassment in conjunction with the student campaign. These and other testimonies led the mission to conclude that the preservation of traditional Kurdish culture and language is still likely to be met with obstruction, and that active promotion and dissemination are likely to incur punishment.

Later in June the Art Bridges to the East festival was held in Hakkari. Actors in the play 'Gavan' were called to testify before the Public Prosecutor because certain scenery violated the Decree of 1991 which bans the juxtaposition of the three colours - green, yellow and red - of the Kurdish tricolour.³⁵⁹

Kurds who attempt to make use of other states' tolerance by organising or participating in cultural events abroad risk harsh punishment upon their return to Turkey. Fifteen people involved in a Kurdish Festival held in Germany in early 2003, including musicians and leaders of pro-Kurdish political parties, were detained and questioned at state security and anti-terror institutions in Ankara in September.³⁶⁰

In the fourth and sixth harmonisation packages of January and July 2003 the Grand National Assembly eased restrictions in relation to the right to form and join associations and for these associations to engage in particular activities: the reforms have the potential to increase the Kurds' ability to exercise their cultural and linguistic rights. It revoked the legal provision which prohibited individuals convicted under Article 312 of the Turkish Penal Code (incitement to racial, ethnic, or religious enmity) from forming or joining associations for a period of time. It also expanded university students' rights to form associations by allowing artistic, cultural, and scientific student associations. The reforms also reduced the time in which the Ministry of Interior must process applications for new associations from 90 days to 60 days. Associations are now allowed to use non-Turkish languages for all purposes other than official, written communication with the Government; may issue statements without prior approval from local government officials; and may establish multiple branches.

The immediate effect of these laws was disappointing. On 22 October 2003 the Van Culture Centre organised a concert by the Kurdish group Koma Rewsen as part of a local arts festival. The regional Governor permitted the festival but passed the application to the Van Security Directorate which prohibited the concert. Turan Özgüner, the Director of the Center, announced that Security Directorate officials had informed him that the ban was issued due to the use of the Kurdish letter 'w' and the word 'kom' (meaning 'group') in promotional posters and the application form. Tuncer Saginc, Chairman of the Centre's External Events Committee, was told, "Kurdish is banned. Why did you write 'kom' instead of group? Go and ask the Ministry of Culture. Your aim is not to organise a concert."³⁶¹ Furthermore Özgüner revealed that the officials had offered to revoke the ban on condition that he publicly denied that Kurdish issues were the reason for the ban: he refused, resulting in the prohibition not only of the concert but of the entire festival.

In the autumn of 2003 however the Turkish authorities allowed two major events celebrating Kurdish culture. The first of these was a concert by the popular Kurdish singer Cıwan Haco, which was held in on 12 October in Batman following the star's return to Turkey after twenty-three years. The concert was by far the biggest ever held in the Southeast, attended by an audience of

around 100,000 Kurdish fans. Haco told the daily newspaper *Radikal* that he had not previously been able to sing in his native tongue “because of the lack of liberty as regards the language.” The security forces present at the concert did not intervene when Haco sang in Kurdish.³⁶² This significant concession did not however set a firm precedent in favour of all Kurdish concerts: local events organised by Kurds continued to be disrupted. In October Günes Cultural and Art Centre in Diyarbakır collaborated to organise a ‘Peace Festival’. As part of this, the Kurdish band Koma Tîreja Roje staged a concert on 28 October. Police suspended the concert while the group were singing the Kurdish song *Beritan*. Diyarbakır Security Directorate allowed the concert to continue only because the band agreed not to sing any more Kurdish songs.

In November the Turkish authorities made an unprecedented concession. A conference held as part of Diyarbakır Municipality’s first Literature Festival in early November 2003 set a historical precedent by deliberately moving the centre of Kurdish literature back to Kurdistan from Europe, where the Kurdish diaspora have continued its cultivation. While the three day conference was entitled ‘Multi-Culturalism in Middle Eastern Literature’ its actual themes were traditional, folkloric and modern Kurdish literature and the Kurdish language. One hundred and fifty Kurdish, Arabic and Turkish intellectuals, writers and academics from Iran, Iraq, Syria, Turkey and Europe, attended a programme of seminars and debates. This event broke new ground not only in relation to the Kurds’ freedom of expression but also in relation to their freedom to associate with colleagues from the Kurdish regions in the other four states: this is astounding in terms of Turkey’s previous suppression of cross-border communication and exchanges being made between members of its Kurdish population and those in the other countries. The entire proceedings were conducted in the Kurdish dialects of the participants, and the event culminated in a press conference, symbolically hosted by representatives from the four Kurdish regions: Sefik Beyaz, Chairman of the Kurdish Institute in Diyarbakır, represented Northern Kurdistan; Nezire Ehmed, a poet from Northern Iraq, represented Southern Kurdistan; Denham Adbulfetah, a Kurdish linguist from Syria, represented Western Kurdistan; and Velat Benge, Chairman of the Kurdish Institute in Tehran, represented Eastern Kurdistan. Beyaz presented the resultant Declaration, which stated that the conference had achieved its goal of assembling Kurdish intellectuals from all four host states and had

therefore laid the foundation for greater collaboration between the Kurdish intellectual, artistic and academic communities of different countries which had been deliberately kept separate for so long by their host states. It voiced hope for the development of a common grammar and terminology so that Kurdish intellectuals could write in a common language. Feridan Celik, the mayor of Diyarbakır, who had opened the Conference with a speech in Kurdish, closed the conference by announcing the forthcoming publication of the twenty-eight lectures which had been presented. Regarding the attitude of the Turkish authorities, it is hard to say which is more surprising, that permission was granted for the conference in the first instance or that armed police who tried to enter the building on the second day retreated after being locked out by the participants.³⁶³

It soon transpired that the conference had been an extraordinary exception rather than a true precedent. A concert by the Kurdish band Koma Gulen Xerzan was organised by Eğitim-Sen, Turkey's major teachers union, for 15 November 2003 in Diyarbakır. According to Abdullah Demirtaş, the Chairman of the Diyarbakır branch of Eğitim-Sen, the organisation's first application for the concert was declined on 11 November on the grounds that the names of the members of the group had not been provided. The second application, which included the names, was declined on the grounds that the name of the group featured the "non-Turkish" letter 'x'.³⁶⁴ In a similar case, the Prefecture and Police Department in Van refused to authorise a concert by Kurdish rock group Koma Rewsen because of posters featuring the name of the band, which included the Kurdish word 'kom' and letter 'w'.³⁶⁵

On 22 December the Supreme Court of appeals struck down a previous ruling which had banned the display of Kurdish posters. Justice Minister Cimel Çicek stated that the ruling had made significant contribution to the accession process. He also took the opportunity to state that it would take time for reforms made in pursuit of accession to the EU to become effective: "The law operates a little bit slowly, but in the end, it meets expectations and it eliminates hesitations and objections. The court concerned made such a decision."³⁶⁶ This statement suggests that finally, at this late stage in Turkey's accession process, real pressure is being exerted upon the courts to show willingness to implement the reforms. However, the official attitude towards the Kurds' enjoyment of

their culture does not appear to have changed significantly throughout the process of legislative harmonisations with the standards prescribed by the EU Copenhagen political criteria for accession.

The use of Kurdish in the Judicial System

Article 252 of the Turkish Code of Criminal Procedure provides that an accused who does not understand Turkish will be informed by an interpreter of the final accusations of the Public Prosecutor and arguments of the defence council. However, this provision is not consistently applied in practice. In 2000 a Kurdish woman was actually prosecuted when she registered herself in Mersin as a Kurdish - Turkish interpreter, although she was later acquitted in court. Furthermore, the Code does not entitle the accused to give documentary or oral evidence in Kurdish, nor does it contain any provisions regarding witnesses who cannot speak Turkish.

There is widespread and consistent testimony that even the basic guarantee within Article 252 is not honoured, and that instead no provision is made for the use of the Kurdish language in civil or criminal courts, administrative tribunals and quasi-judicial bodies. Evidence given by monolingual Kurds is often disregarded and it is recorded that evidence is given in a language which was not understood by the court. Ad hoc solutions may be sought by judges, who sometimes make an open appeal for anyone present who has the requisite abilities to act as a translator. Even a willing volunteer with some aptitude in both Turkish and Kurdish is unlikely to possess the skills required to make an accurate translation.

On 8 January 2001 twenty-eight Kurdish children from the Kurdish town of Viranşehir were arrested on charges of aiding and abetting an illegal organisation after they participated in an unauthorised demonstration against Turkey's 'F-Type' prison crisis during which they were accused of shouting PKK slogans.³⁶⁷ They were neither given access to translators at the time of their arrest nor during the detention which followed. The only evidence against the thirteen children who were eventually brought to trial appears to have been constituted by confessions made in circumstances in which they did

not understand the nature of the allegations made against them due to the lack of translators and of the most basic legal assistance. Kurdish interpreters were not provided at their trial before Diyarbakır State Security Court.³⁶⁸ In February 2002 representatives of the Government replied to the concluding observations delivered by the Committee of the Rights of the Child in response to Turkey's most recent report under the Convention of the Rights of the Child. They voluntarily raised the arrests of the children in order to challenge international criticism of Turkey which had resulted from the widespread media coverage of the case. They emphasised that the incident did not deserve the "immense amount of publicity" which it had been given. They were keen to stress explicitly that the children were not arrested due to their Kurdish origin but because they had participated in a demonstration which had been held without requesting permission. According to the Summary Report of the meeting, the Turkish representatives admitted that the demonstration appeared to have been an innocent one and that the children had been apprehended "albeit for a very short time, by an overzealous, somewhat over conscientious officer."³⁶⁹ Unfortunately the Committee failed to comment that that officially sanctioned overzealousness characterises the behaviour of Turkish police towards the Kurds.

Perhaps even more shocking than the case of the Viranşehir children is that of a young Kurdish woman called Fatma Toprak. In 1996 Toprak was charged with aiding a terrorist organisation under Article 125 of the Penal Code and was detained for seven years, during which she was subjected to extreme suffering at the hands of her captors. When her case was finally brought before a court in October 2003 she was immediately excluded from her own trial because she could only speak Kurdish and in spite of the fact that she was actually accompanied by a translator. The judge told her "as from now I will not summon you again before the court... You have been protesting against us for seven years by not speaking in Turkish, we will protest against you by no longer summoning you to trial."³⁷⁰ This appalling instance of linguistic discrimination clearly demonstrates how language is used to compound state sponsored degradation of Kurdish individuals.

The use of Kurdish in communication with the Police

Institutional racism within the Turkish police has both internal and external effects which result in discrimination against the use of the Kurdish language. Kurdish speaking officers are forced to suppress their mother-tongue for fear of persecution and of losing their jobs.³⁷¹ The Gendarmerie has provided Kurdish language training for personnel operating in the Southeast since the beginning of conflict between the state and the PKK in the early 1980s.³⁷² However, this has not meant that personnel have used this ability to the benefit of Kurds with whom they come into contact. In October 2002 the security authorities were reportedly searching for Kurdish speaking police to work in the Kurdish Southeast of the country in conjunction with the Sixth Harmonisation Package. This reform has apparently failed to produce results. Kurds who are not fluent or literate in Turkish are seldom provided with translators when taken into custody, questioned, charged with offences or asked to sign statements.

Meanwhile, the police continue to show their disdain for Kurds. Humiliating treatment is often accompanied by demands regarding the exclusive use of the official language. On 16 March 2001, four Kurdish children aged from nine to twelve were arrested and detained for lighting a Newroz bonfire. The children, who could only speak Kurdish, were ordered to speak Turkish by officers who told them it was forbidden to speak Kurdish in a police station. The children later reported that the police had beaten them, asked whether they loved Ocalan, had aimed their guns at them and forced them to sing the Turkish national anthem.³⁷³ Ayşe Coşkun had been trying to see her son Murat, who being detained in Kürkçüler Prison, for almost three weeks before she was finally granted permission on 10 January 2004. On her arrival at the prison, she and her sister were photographed, forced to undress their underwear in order to be searched, and were prevented from speaking in Kurdish between themselves and with her son.³⁷⁴

The use of Kurdish in Public Services

The health care system operates on a national rather than regional basis. Few of its staff are from the Kurdish provinces or are acquainted with Kurdish.³⁷⁵

Many Kurds receive inadequate health care because few people in the medical profession speak Kurdish as their mother-tongue and have been given no training in the language in order to communicate with Kurdish patients. Doctors can be unwilling to make efforts to secure anything more than the most basic health care to monolingual Kurdish speakers: since the state does not provide measures to overcome this language barrier, it is left to the individual doctor to decide whether or not to find a translator nearby to assist with a particular case. Even in cases where the doctor is willing to do so and they find someone who knows both Turkish and Kurdish, this person is unlikely to possess actual translation skills: they may proceed to process information without the necessary degree of precision. Accordingly, many medical consultations may commence on the basis of inaccurate information despite the good faith of all involved.

Early in 2001 Mekiye Polat, a thirty year old Kurdish woman who speaks no Turkish, was transferred from a hospital in Diyarbakır as it lacked the equipment necessary for her operation. In Ankara she was however refused treatment by Dr. İlker Töral, the ear, nose and throat specialist who was to perform the operation, because he claimed that she could not communicate her symptoms in an understandable way. Furthermore, the doctor rejected an offer from the patient's husband to act as interpreter. Before discharging her he wrote in Mrs Polat's medical records, "She is not reliable because she does not speak Turkish. The reason for her being transferred was not understood. Treatment should be provided at her home address."

Several doctors at the University Clinic in Diyarbakır, where Mrs Polat eventually managed to receive the necessary treatment, expressed personal shock in relation to Polat's experience and professional criticism of Doctor Töral. Dr. M. Emin Uluğ, head of the Medical Association in Diyarbakır, stated that that it was not the task of the doctor to ascertain the reliability of a patient but rather to examine and treat the patient. Ear, nose and throat specialist Professor N. Sözen confirmed that there are effective hearing tests which require no knowledge or ability in a particular language on behalf of the patient. Professor Sözen concluded by stating that the refusal of treatment due to a patient's lack of linguistic ability is not in accordance with medical ethics: "A patient can visit a doctor anywhere in the world who doesn't speak his or

her language. Turkish patients travel to America for treatment and take an interpreter with them."³⁷⁶ In 2002 the Kurdish Human Rights Project reported that this problem was acute both within Kurdish provinces of the southeast of Turkey and in the urban centres of the west to which thousands of Kurds have been deliberately displaced.³⁷⁷ There is no evidence of an official policy directed at resolving these problems.

Kurdish women like Mekiye Polat are particularly vulnerable to the effects of the exclusion of the Kurdish language from the health care system as they are less likely to receive enough education to gain a comprehensive knowledge of Turkish. This problem can have particularly serious repercussions in the areas of ante-natal and post-natal care. Those who have received sufficient education in order to have acquaintance with both Kurdish and Turkish are usually men: women are often too uncomfortable to accept their assistance in cases of female health problems.

The use of Kurdish in Political Communication

The use of the Kurdish language is prohibited in relation to all political discourse and activities, including internal meetings and documents as well as public activities. This ban attempts to exclude the sizeable monolingual Kurdish electorate from the political process by prohibiting the dissemination of information in the only language they understand. It also has the effect of disrupting the operation of Kurdish parties the manifestos of which are of great relevance to the Kurdish population.

The Kurdish language has not in theory been a language prohibited by law since Turgut Özal annulled the Law Regarding Publications in Languages Other than Turkish in 1991. The continuing ban of the Kurdish language in the political context is constituted by provisions which either demand the use of the Turkish language or alphabet in political scenarios or which reiterate constitutional principles of territorial integrity in relation to the political process. As always the standard provisions within the Turkish Penal Code and the Anti-Terror Law can also be invoked.

Provisions of the first sort can be found in the Political Parties Law. Article 43(3) of this Law prohibits the use of any language other than Turkey, orally and in writing, during the selection of candidates. Article 58 of the Law Concerning Fundamental Provisions on Elections and Electoral Registers stipulates that the Turkish language and alphabet must be used in the dissemination of all election propaganda, specifically mentioning the broadcast media.³⁷⁸ Article 81 - which provides that parties cannot claim that minorities based on national, religious, confessional, racial, or language differences exist in the Turkish Republic - also stipulates that political parties' rules, regulations and programmes, banners, placards, audio and visual recordings, and brochures and bulletins must be in Turkish. It also establishes that Turkish must be used at all congresses, public meetings, rallies and propaganda.³⁷⁹ Provisions such as these prevent even non-political use of the Kurdish language by political parties. Accordingly a calendar published by the pro-Kurdish political party HADEP in 2000 was confiscated and the local party leaders were prosecuted because the word peace was translated into in thirteen languages one of which was Kurdish.³⁸⁰

The second type of provision is also found in the Political Parties Law. Article 78(a) provides that "Political parties may not adopt the aim of endangering the existence of the Turkish State and Republic, destroying the fundamental rights and freedoms, creating distinctions on the basis of language, race, colour, religion and religious sect or establishing a state based on these concepts and views, and may not carry out activities directed towards these aims, and may not encourage others to do so." This unusual prohibition derives from the official ideology which claims that there are in fact no distinctions but simply one unified, homogenous Turkish identity. Any attempt to address issues arising from these distinctions - such as the effects on this ideology on the Kurdish population - is treated as discriminatory or, in the case of the Kurds, as separatist. Article 81(a) specifically concerns Turkey's denial of minorities beyond the three listed in the Treaty of Lausanne, by prohibiting political parties from making the "claim that there are minorities based on national or religious cultures or religious sects or race or different in language on the territory of the Turkish Republic." Article 78(b) reinforces this by prohibiting political parties from being based upon a particular region, community, group or religion. Furthermore, Article 81(b) prohibits political parties from aiming

to protect and develop languages and cultures other than the Turkish language and culture and “thereby creating minorities and leading to the destruction of the integrity of the people of the Turkish Republic.” This confirms once again the inferred link between Kurdish culture and separatism, and reiterates the official conceit according to which minorities do not actually exist but are a political device.

The authorities were keen to assert that reforms introduced by the Third Harmonisation Package on 3 August 2002 which purported to legalise the use of minority languages in relation to broadcasting and private language tuition did not pave the way for the use of minority languages in other contexts. The political context was of particular concern at this time because Turkish politicians were preparing for the forthcoming national parliamentary elections in November. Accordingly, on 8 August the Central Electoral Commission in Ankara issued regulations which reiterated that no language other than Turkish may be used in electoral campaigns in either spoken or written form. This sent a strong message to those involved in election campaigning in the Kurdish regions where politicians would naturally use Kurdish in order to communicate with the large monolingual Kurdish electorate. The August regulation ensured that they were harshly punished for doing so. While standing as the candidate for the Republican People’s Party in Kozlu in the province of Batman, Orhan Ekmen was investigated because he welcomed the audience at a campaign event in Kurdish and used Kurdish sayings during his presentation.³⁸¹ After a meeting of the Hakkari branch of pro-Kurdish political party DEHAP later that month, its chairman were indicted along with six members of the party.³⁸² In early November the Urfa Penal Court of First Instance sentenced Ibrahim Guclu, deputy chairman of the Rights and Freedoms Party (HAK-PAR), to six months imprisonment because he made a speech in Kurdish during his election campaign. The court issued the same sentence to Abdülmelik Fikret, chairman of HAK-PAR, on the grounds that he had spoken Kurdish during a press conference in Urfa on 9 May 2002.

In January 2003 an investigation was launched against Mehmet Abbasoğlu, the Chairman of DEHAP, and Orhan Miroglu, Party Assembly member of HADEP, for violating the Law on Political Parties when deputy candidates greeted people in Kurdish at the opening ceremony of an electoral bureau in

Midyat district of Mardin.³⁸³ Abbasoglu reasoned, “Those who participate in our meetings mostly speak Kurdish and do not know Turkish. It is natural to greet people in Kurdish. Nothing can be more natural than that.” He contended that his indictment highlighted Turkey’s resistance to fulfilling the Copenhagen political criteria for accession to the EU and implementing the legal reforms it had passed in pursuit of this aim: “They cannot implement their laws they themselves have passed. It is utterly funny,” said the Chairman. In February the Third Criminal Court of Diyarbakır found the entire executive board of the Diyarbakır branch of the Human Rights Foundation of Turkey of guilty of a breach of the Law on Associations. Its members had been indicted because they had written the word ‘Newroz’ with a ‘w’, a letter which does not exist in the Turkish alphabet.³⁸⁴ Mustafa Yıldız, the district chairman of DEHAP, was fined one billion Turkish Lira and imprisoned for seven days after speeches were delivered in Kurdish at the opening ceremony of the party’s new branch in the Gevas district of Van.³⁸⁵ Party officials at the Agri branch of the pro-Kurdish Free Party were charged under Article 81 of the Political Parties Law because members carried a placard which bore the Kurdish translation of Atatürk’s famous motto “Peace in the country, peace in the world” at the party’s first congress 6 September 2003.³⁸⁶

The use of written Kurdish in other circumstances

Apart from the provisions within the Turkish Penal Code and the Anti-Terror Law which can be invoked to punish the peaceful expression of Kurdish cultural identity, an array of laws reinforces the ban on written Kurdish relation to a wide variety of specific circumstances. These laws simply provide extra means with which to persecute Kurds who use their own language and to disrupt their activities and enterprises. This is particularly serious regarding the many monolingual Kurdish speakers in the Southeast.

Article 2 of the Law Regarding the Adoption and Application of the Turkish Alphabet obliges all companies, associations, private societies and state run establishments to conduct their written correspondence using the Turkish alphabet.³⁸⁷ Article 4 of this Law provides that all notices, proclamations, advertisements, cinema promotions, newspapers, publications and magazines

must be printed in Turkish. This Law is one of eight reform laws enacted in the early years of the Republic which may not be interpreted as unconstitutional according to Article 174 of the Constitution.

Article 6 of the Law on Associations, which regulates businesses and voluntary sector bodies, prohibited the use of languages forbidden by law in memorandums of association, regulations, publications, banners, signs, placards, brochures, pamphlets and declarations issued by such associations. It also prohibits the use of oral Kurdish in their audio or visual tapes and at any of their meetings.³⁸⁸ Despite the fact that this Article became formally obsolete when Kurdish ceased to be a language forbidden by law upon the annulment of Law 2932 in 1991, it was amended by the Third Harmonisation Package in August 2002 to provide that these organisations shall use Turkish in their official business.³⁸⁹

The Law Concerning the Compulsory Use of Turkish Language in Economic Enterprises and Corporations was passed in 1926 and has never been repealed. Article 1 requires all institutions within the Turkish nation to keep all agreements, contracts, correspondence and accounts in Turkish.³⁹⁰ Article 3 allows foreign institutions to have copies of these documents in their own language but that they must be accompanied by a Turkish translation which is the only official, legally valid document.

Summary

The Kurds of Turkey still face extreme difficulties in freely exercising their full range of cultural and linguistic rights. This state of affairs persists in spite of the numerous international and regional instruments to which Turkey is party, and also the major reforms made to this area as mandated by the EU. Turkey's lack of commitment to this issue is proven by the practical and formal impediments which have frustrated the implementation of these reforms. Reactions to public declarations of support for the reforms which enable the Kurds to exercise their cultural and linguistic rights also confirms that vigorous opposition to these changes exists within Turkish society.

Since 1999 the Kurds in Turkey have continued to be prevented from exercising basic cultural and linguistic rights and have still faced harassment when attempting to do so. The use of Kurdish personal names continues to be prohibited and frequently attracts investigation or prosecution. Kurdish music and videos continues to be banned in the Southeast despite the lifting of the state of emergency, and individuals deemed to be playing Kurdish music to an audience have received harsh judicial and extra-judicial reprimands. The banning of the film *Büyül Adam, Küçük Aşk* is just one instance of the priority still given by regulating bodies to the protection of the reputation and fundamental tenets of an authoritarian state at the expense of the Kurds' ability to exercise their cultural and linguistic rights. Unlike certain large scale state-endorsed cultural events, those initiated by the Kurds themselves have continued to be impeded or totally blocked by bureaucratic requirements. The Kurdish language is still rarely used or even tolerated by the police, the judiciary and other essential public services. One serious effect of this is that Kurds are denied access to effective medical treatment, and more generally Kurds remain at high risk of discriminatory treatment whenever they come into contact with these institutions.

Since the time of writing, the reforms introduced by the Third Harmonisation Package in relation to the major cultural rights of Kurdish mother-tongue education and broadcasting, have finally been implemented. On 1 April 2004 teaching began at both Aydın Unesi's Kurdish language centre in Batman and Omer Kurt's 'Kurdish Dialects Teaching Course' in Sanliurfa, and the TRT began its schedule of Kurdish language broadcast on 9 June 2004.³⁹¹ Although KHRP welcomes the eventual implementation of the reforms of August 2002, it stresses that the long delay must be recognised as symptomatic of a lack of dedication to the fundamental task of addressing the entrenched ideology which pervades the institutions of the Turkish state. Throughout the reform period, Kurdish attempts to exercise their cultural and linguistic rights have continued to be suppressed by the security forces, the legal system, institutions of local governance and centralised public regulatory bodies. This provides conclusive confirmation that even the most far reaching legal reforms may be no more than purely symbolic unless and until they occur in parallel with true political commitment to the reform of the underlying attitudes which perpetuate discrimination.

7.2 The Republic of Iraq

The cultural and linguistic rights of the Kurds in Iraq can now only be discussed within the context of the legal and political restructuring of Iraq. The structure of the state will be decisive in relation to Kurds living within the Kurdish autonomous region, and the accommodation of linguistic and ethnic minorities will be of equal importance to those living elsewhere in Iraq. Progress has now been made in these respects and the Kurds do appear to have secured crucial guarantees, despite the deep divisions along political, religious and ethnic lines which continue to characterise the ongoing process.

Background to Political Arrangements during the early Transitional Period

After coalition troops marched into Baghdad on 9 April 2003, the Coalition Provisional Authority (the CPA) was established under the auspices of UN Security Council Resolutions 1483, 1500 and 1511 in order to govern Iraq in the transitional period during which plans for the transfer of sovereignty back to a democratically elected Iraqi leadership would be finalised. The scope of its powers were set out in Regulation 1 issued by the CPA Administrator Lieutenant Paul Bremner on 16 May 2003.³⁹² On 13 July 2003 the CPA created the Iraqi Governing Council (the IGC) as the principle body of the Iraqi interim administration envisaged by Paragraph 9 of UN Security Council Resolution 1483: according to CPA Regulation 6, its relationship with the CPA was one of coordination and consultation³⁹³ but the IGC has operated under the leadership of the CPA.

The Kurds made a positive start in ensuring the protection of their interests within the new Iraq. Members of the IGC were selected from representatives of the seven most prominent Iraqi opposition groups, and the Kurds were amply rewarded for their co-operation during the invasion, obtaining five of the twenty five places available.³⁹⁴ Amongst these five were Jalal Talabani, leader of the PUK, and Masoud Barzani, leader of the KDP; indeed Talabani was the first member to serve in the rotating presidency of the IGC. The cabinet of Ministers nominated by the IGC on 1 September 2003 contained five Kurds

one of whom, Hoshyar Zubari, attained the prestigious role of Foreign Minister,³⁹⁵ fellow Kurd Nisrin Mustafa al-Burwari, who became Minister for Public Works, was the only female member appointed to the cabinet.

The main duty of the IGC was to draft an interim constitution, and it formed a Committee to recommend methods for the performance of this task in a report due in September 2003. This Committee was however unable to produce a satisfactory result. Concerns over the effectiveness of the Council due to internal disagreements and over its legitimacy in the eyes of the Iraqi population led the CPA to accelerate the transfer of sovereignty, and on 15 November 2003 an agreement was concluded between the CPA and the IGC which established the schedule for the restoration of full Iraqi sovereignty, the creation of a permanent constitution and the holding of free national elections.

Deadlines established by the Agreement of 15 November 2003

By 28 February 2004 the Council were to approve a transitional administrative law, an interim constitution that defines the structures of a transitional government and the procedures for electing delegates to a panel which would draft the permanent constitution of Iraq. This law would guarantee certain basic rights to all Iraqis during the transitional period, including freedom of expression and freedom of the press. The law would expire only after a permanent constitution has been approved and elections held. Members of the Iraq Governing Council subsequently signed the Transitional Administrative Law on 8 March 2004.

By 31 May 2004 local caucuses would be convened in each of Iraq's eighteen governates in order to elect delegates for an Iraqi Transitional National Assembly (the National Assembly). By 30 June 2004 this Assembly would elect its leaders and assume full sovereignty for Iraq. Along with the Council, the CPA would be dissolved and its responsibilities as an occupying power, as specified in the UN Security Council resolutions, would end; it would however continue to be closely involved with the new Iraqi security forces, under arrangements formulated with the Council and the National Assembly. On 28 June 2004,

the full sovereignty of Iraq was transferred to the interim government.

By 15 March 2005 elections would be held in order to elect members of the panel which would draft the new permanent constitution of Iraq. The resultant document, which must be approved by a national referendum, will establish procedures regulating the national elections for the Iraqi Transitional Government, to be held by 31 December 2005. The National Assembly would be dissolved upon the assumption of power by the new Government.

Early possibilities for the Kurdish language

The Coalition Provisional Authority acted quickly to regulate the burgeoning print media which proliferated in aftermath of the invasion of Iraq. On 8 June 2003 the CPA issued Order 11 which delegated the responsibility for licensing telecommunications services and equipment to the Ministry for Transportation and Communication.³⁹⁶ On 10 June 2003 it issued a Public Notice Towards a Responsible Iraqi Media which warned that fines would be imposed upon anyone who abused the right to freedom of expression via the media.³⁹⁷ The CPA initially hired a private defence contractor, SAIC, to establish a national radio and television station, the Iraqi Media Network (the IMN), from the remains of the previous national broadcasting apparatus. The IMN held a monopoly over all terrestrial television broadcasting in Iraq, but attempts to establish broadcasting have been encountered both technical and political obstacles.

The earliest comprehensive assessment of the media in post war Iraq was made by the BBC World Service Trust, which carried out an audit regarding the Iraqi media between April and June 2003. It found that although the situation regarding the mass media in Iraq had not yet stabilised since the Ba'ath regime was overthrown, there had been an "energetic growth of the written media" in June 2003.³⁹⁸ The PUK's *al-Ittihad* and the KDP's *Taakhi*, both published in Arabic, were distributed in Baghdad. The Union of Journalists from Kurdistan claimed however that Kurdish media was not free of persecution. It reported that in May 2003 the weekly Kurdish language newspaper *Serder Hal*, which circulated in Baghdad, had been suffering from extreme interference at the

hands of “anti-democratic circles”: distributors, salesmen and shopkeepers received threats and were told not to bring the paper to Kirkuk.³⁹⁹

In terms of independent access to external media sources, satellite dishes became freely available, albeit at a high price, allowing access to Roj TV, the recently established successor to Medya TV, as well as to Kurdish satellite stations broadcasting from Iraqi Kurdistan. Although the internet had still “barely penetrated into Iraqi culture and society” due to the Ba’ath party’s prohibition on private access, it is expected to become a major vehicle of communication and expression for all Iraqis, but especially those whose voices were suppressed during the reign of Saddam Hussein.⁴⁰⁰

More recently, on 20 March 2004, the CPA issued Orders 65 and 66 which respectively created the Iraqi Communications and Media Commission and provided for the regulation of the Iraqi Public Service Broadcasting.⁴⁰¹ Both of these orders recognise the role played by a vibrant media in accommodating a culturally diverse population, ensuring that it is well informed and educated, and facilitating the proper functioning of civil society. It appears from these that the Kurdish media will be given the freedom to flourish throughout Iraq.

Under the Ba’ath regime mother-tongue education had been denied to the Kurds outside the Kurdish autonomous region according to the policy of Arabisation. Many of Kirkuk’s Kurdish inhabitants who had been expelled by the Ba’ath party under this policy returned after Coalition forces took over the city on 10 April 2003 in order to reclaim their homes. Amongst their immediate demands was the provision of mother-tongue education: on 15 September 2003 around two hundred Kurds participated in a demonstration in which they demanded that the CPA and Kirkuk Municipal Council establish Kurdish schools in time for the start of the academic year the following month.⁴⁰²

The re-launch of the Arab dinar on 12 October 2003 dealt a severe blow to those who had hoped that the new Iraqi currency would reflect proposals envisaging the official recognition of both Kurdish and Arab nationalities. This move was seen as evidence of the second class status of the Kurdish language, and possibly of the Kurds, in the new state and precipitated fierce popular criticism of the Kurdish representatives within the Iraqi Governing Council.⁴⁰³

Legal Protection of the Kurdish language during the Transitional Period

On Monday 9 March the Cabinet of the Iraqi Governing Council signed the Transitional Administrative Law and thereby established the basic law that took effect after the sovereignty was returned to Iraq on 28 June 2004. Two of the Fundamental Principles of the Law reveal the influence wielded by the Kurds' throughout the process of establishing a political blueprint for the new Iraq. Article 4 provides that,

The system of government in Iraq shall be republican, federal, democratic, and pluralistic, and powers shall be shared between the federal Government and the regional governments, governorates, municipalities, and local administrations. The federal system shall be based upon geographic and historical realities and the separation of powers, and not upon origin, race, ethnicity, nationality, or confession.

The second clause represents efforts to accommodate the Kurds without having to prioritise ethnicity over religion. The status and functions of the Kurdistan Regional Government are enshrined in Articles 53 and 54. It will be the administrative authority for the areas of Dohuk, Suleimaniya, Kirkuk, Diyala and Neneveh and will exercise legislative jurisdiction over matters not retained by the Iraqi Transitional Government by Articles 25 and 43(D): of these, the retention of control over telecommunications policy is of direct relevance to the cultural and linguistic rights of the Kurds and other minorities and means that the final constitution should provide strong guarantees in this area. Article 55 provides that groups of governorates elsewhere in Iraq will be permitted to form regional authorities in addition to the federal authorities. Article 56 provides that elections for both the Kurdistan Regional Government and these Governorate Councils must be held no later than 31 January 2005.

Although Article 7 guarantees the role of Islam and the recognition of the Arab nationality in the new state, Article 9 guarantees major cultural and linguistic rights for the Kurds of Iraq, and also for other ethnic groups within the new state by providing that,

The Arabic language and the Kurdish language are the two official languages of Iraq. The right of Iraqis to educate their children in their mother-tongue, such as Turcoman, Syriac, or Armenian, in government educational institutions in accordance with educational guidelines, or in any other language in private educational institutions, shall be guaranteed. The scope of the term "official language" and the means of applying the provisions of this Article shall be defined by law and shall include:

- (1) Publication of the official gazette, in the two languages;
- (2) Speech and expression in official settings, such as the National Assembly, the Council of Ministers, courts, and official conferences, in either of the two languages;
- (3) Recognition and publication of official documents and correspondence in the two languages;
- (4) Opening schools that teach in the two languages, in accordance with educational guidelines;
- (5) Use of both languages in any other settings enjoyed by the principle of equality (such as bank notes, passports, and stamps);
- (6) Use of both languages in the federal institutions and agencies in the Kurdistan region.

These provisions allay major Kurdish concerns which had arisen in relation to the status of their language since Iraq's 'liberation' in April, and ensure that the Kurdish language will enjoy widespread official recognition during the transitional period. Other provisions of direct relevance to the Kurds' ability to express their cultural identity are the prohibition of discrimination on the basis of nationality in Article 12 and on the grounds of ethnic origin and language for the purpose of voting in elections in Article 20(b), and the prohibition in Article 15 of detention for political beliefs, such as those

frequently inferred from the simple expression of Kurdish cultural identity under the previous regime.

Summary

The cultural and linguistic rights of the Kurds living in Iraq have occupied a central position in the negotiations over the content of the interim constitution. The Kurds have succeeded in formally securing significant guarantees which offer them the scope and types of protection mandated by the international instruments to which Iraq is party. This has been achieved by the recognition of Kurdish as one of the two official languages of the new state, attributing to the language a symbolic status which is unlikely to be retracted or diminished within the forthcoming permanent constitution, and which carries immediate practical advantages. These include its joint use in all official settings, documents as well as "in any other settings enjoined by the principle of equality." (Article 7(5)) A general provision of Transitional Administrative Law with great practical importance for Kurds throughout Iraq is that which enables all Iraqi citizens to exercise the prime cultural right to mother-tongue education. Furthermore, executive promotion by the CPA of free, pluralistic and responsible media also evinces commitment to the development of an environment – in relation to both the public sphere and civil society – which is free from discrimination on the grounds of cultural and linguistic identity.

It therefore appears that the new regime will respect, protect and fulfil the cultural and linguistic rights held by the Kurds. Since the time of writing, power has been handed back from the CPA to the interim government and sovereignty restored to the people of Iraq. KHRP commends the interim and transitional governments to dedicate themselves to the implementation of all guarantees enshrined in the transitional administrative law: this will facilitate the creation of an environment in which the human rights of all Iraqis will be respected. In this context, it is hoped that Kurds living throughout Iraq will for the first time be able to exercise freely their cultural and linguistic rights.

7.3 The Islamic Republic of Iran

Treatment of the Kurdish Press and Printed Media

According to Reporters Sans Frontiers Iran remained 'the biggest prison for journalists in the Middle East' in 2003. The reformists protested against the suppression of the media but were unable to restrain prosecutors and judiciary under the control of hardliners. The Union of Journalists from Kurdistan reported in 2003 that while non-dissident media may receive positive support, dissident media is totally repressed. Kurdish media too can receive active support if it promotes the clerical line, but receives even harsher repression if it is seen as dissenting.⁴⁰⁴

Despite the fact that it was featured cultural matters, the pro-Kurdish Persian-language magazine *Rafeh* was banned in October 2002 after only three issues. Its publishers, sociology students at Tehran University, were charged with separatist propaganda, confirming that even peaceful expression of Kurdish cultural identity is justified on grounds of protecting the territorial integrity of the state.⁴⁰⁵

In October 2003 the newspaper *Shargh* reported that Sanandaj Revolutionary Court had closed down *Avay-e-Kurdistan* (meaning 'Voice of Kurdistan'), a weekly Kurdish language magazine that had published just four issues. The judiciary gave no explanation for banning the magazine, although the fact that it was published by Ali Nemat Zadeh, a former parliamentarian, suggests that the closure was intended to repress the expression of pro-Kurdish political views. According to *Shargh* this closure was the first time a Kurdish language newspaper has been banned in Iran.⁴⁰⁶

In its latest report to the UN Committee on the Elimination of Racial Discrimination the Government noted state sponsored book fairs held in the Kurdish provinces, of which there have been ten from 1999 to 2001, and the section of the Tehran International Book Fair dedicated to ethnic minorities.⁴⁰⁷ As such, the publishing of Kurdish books is tolerated, but their content is

strictly censored by the Ministry for Islamic Guidance. The censoring process may result in the total prohibition of the book and the investigation of its author. The aforementioned report also claims that Kurdish language journals and periodicals receive the same paper allocations and subsidies as do other publications; however, a 2003 KHRP fact-finding mission to Iran heard allegations that Farsi publications enjoy privileges over Kurdish ones.⁴⁰⁸

Kurdish broadcast and electronic media

The Union of Journalists from Kurdistan reports that non-dissident media is supported by the National Broadcasting Corporation. This applies in the case of Kurdish media too, which can receive active support if it promotes the conservative Islamic ideology, but receives even harsher repression if it deviates. Censored programmes are broadcast in Kurdish on both radio and television.⁴⁰⁹

Satellite broadcasts by exiled opposition parties against the Government resulted in a brief crackdown on receiving equipment in 2001 during which hundreds of dishes were confiscated. In December 2002 Parliament passed a bill which overturned a largely ignored ban which had been imposed upon satellite dishes in 1995, and provided instead for regulation of their private ownership and use. Iranian Kurds were reportedly enthusiastic supporters of Medya TV and have telephoned live programmes in spite of state sponsored surveillance. Programmes broadcast by Medya TV were recorded on video and circulated amongst those in the Kurdish community who did not have receiving equipment.⁴¹⁰ It can reasonably be expected that the newly established Roj TV will have the same reception.

In 2002 it was reported that the internet was free from censorship and available in a number of high schools, universities and cafes across the country. It is a major forum for the reformist movement, and as such conservative officials have stressed the need to regulate content and use of this medium due to its political and moral content, but these do not appear to have been implemented.

The status of the Kurdish Language in the education system

The Iranian education system does not offer the Kurdish language as either the medium or subject of instruction. Article 15 of the Constitution provides that Persian is the official language of the Iranian state and accordingly children are taught to be literate in Persian from their first year at school. In fifth grade children start to study Arabic in accordance with Article 16, which states that Arabic must be taught after elementary level in all classes and in all areas of study. Kurdish children are not even allowed to speak their mother-tongue in the classroom. In 2002 the Kurdish Media website reported the circulation of a Government memorandum which totally prohibited staff from speaking Kurdish in schools.⁴¹¹

Although Article 15 of also provides that literature may be taught in its original regional and tribal language in addition to Persian, there is no evidence that Kurdish literature is being taught at all. Furthermore, the Constitution recognises only non-Muslim minorities, and since the majority of Kurds in Iran are Sunni Muslims, they do not benefit from the Constitutional provision which gives these minorities some degree of educational autonomy.

The Government is keen to acknowledge its efforts to accommodate the special needs of the Kurds in the education system, but only mentions developments at a tertiary level. In December 2003 Iran's latest report to the UN Committee on the Elimination of Racial Discrimination notes the establishment of two universities in the Kurdish provincial capitals.⁴¹² Indeed, in 1999 the Iranian newspaper Hamshahari had reported that Kurdish language classes at beginners and advanced level had commenced in the Literature Department of Shahid Beheshti University in Tehran.⁴¹³ However, a fact finding mission sent by the Kurdish Human Rights Project to Iran in 2003 reported that while English and Farsi language courses are offered at university, the Kurdish dialect of Sorani is not, casting doubt on the practical implementation of the Government's limited claims.⁴¹⁴ In any case, the policy towards the teaching of and use of the Kurdish language at primary and secondary levels, during which mother-tongue education is most important, appears to remain unchanged.

Kurdish film

Iran is notable for its world acclaimed Kurdish cinematographers who have intentionally brought the story of their people to international audiences. The Kurdish director Samira Makhmalbaf participated in the Cannes International Film Festival in 1998 with her first film 'The Apple'. At 17 years old, she was the youngest director ever to have an official selection at Cannes. At the age of twenty her second film, *Takht-e Siyah* (meaning 'Blackboards'), attracted international attention at Cannes in 2000, where it won the Grand Jury Prize. It is set amongst the villages of Iranian Kurdistan along the border of Iraq which were bombed by Iraqi aircraft during the Anfal campaign. It tells the story of Kurdish villagers who have been driven out of their homes by the aerial bombardment, and of teachers who attempt to educate the local children. Makhmalbaf has stated, "I want Kurdish people above all to see this film...I consider myself to be part of the Kurdish people. I tried to portray the speech of the mountains of Kurdistan, and the smiling faces of the brave Kurdish villagers, in the film. It's the Kurdish people who will best be able to interpret the film."⁴¹⁵

Bahman Ghobadi, a Kurd from the town of Baneh near the Iraqi border, has made two feature length films concerning the Kurdish people. After making several short films, he made his feature length directorial debut with 'A Time for Drunken Horses' in order to bring the Kurds' story to a wider audience. Children from a local family act out the story of Ayoub, a Kurdish child who joins the adults who smuggle truck tyres across the border to Iraq in order to raise money to fund his brother's operation. The route is perilous, and the smugglers must brave mine fields, border guards and freezing temperatures. The film's title derives from the pack horses which are fed alcohol to keep them warm during the journey through the snow covered mountains. The film was popular not only with the Iranian audience but achieved success at the Cannes International Film Festival in 2000, where it won the highly coveted Camera d'Or. The context of Ghobadi's latest film 'Marooned in Iraq' is the flight of thousands terrified Kurds from Saddam Hussein's reprisal for the rebellion of early 1991. It concerns an Iranian Kurdish singer who discovers that his former wife, Hanareh, is trapped in a refugee camp in Iraq. Ghobadi used her name as a metaphor for the Kurds desire for a homeland, which has bound

them together as closely as seeds in a pomegranate, or 'hanareh' as it is known in Kurdish.

However, other aspects of Kurdish culture are not treated with such remarkable tolerance. The celebration of Newroz is usually subject to restrictions and participants may be subjected to harassment or even arrest. In 2001 Iranian security forces attacked those involved in the festival in towns throughout the Kurdish region, resulting in the arrest of over one hundred Kurds and the injury of many more.⁴¹⁶

Summary

The Kurds living in Iran may not exercise the full range of their cultural and linguistic rights, confirming Iran's limited approach to the fulfilment of its extensive international obligations in this area. The teaching of and use of the Kurdish language within the education system remains prohibited in practice. Although Kurdish publishing is tolerated, the censoring process has in several instances resulted in the prohibition of the publication in question and the investigation of those involved in its production. Furthermore, it is clear that the Kurds face legal and practical restraints in relation to their cultural and linguistic rights from which members of other ethnic minorities are free. There are instances in which the Kurds are able to exercise these rights: Kurdish broadcasts are aired by the state, foreign Kurdish satellite broadcasts and websites may be accessed and Kurdish film makers have been allowed to produce films to an extent unprecedented in the other three states. KHRP urges the Government to expand this area of tolerance to encompass the full range of cultural and linguistic rights which are guaranteed to the Kurds under obligations undertaken by Iran.

7.4 The Syrian Arab Republic

Treatment of Kurdish press and printed media

The political liberalisation promised by Bashar al-Asad upon his inauguration led to a period of unprecedented flourishing of civil society and media debate known as the Damascus Spring. This was quickly crushed, and the passage of a new press law in 2001 curtailed the possibility of an expansion of Kurdish media. The Press Law of 2001 provides that licenses for periodicals, which must be obtained from the President, will be refused if they are incompatible with the public interest. It also criminalises publishing “falsehoods” and “fabricated reports” - that is, anything which undermines the regime. Decree No. 50 of 2002 replaced the 1949 General Law on Printed Matter, a reform proclaimed to increase freedom of expression. However this actually brought print media even more tightly under governmental control.⁴¹⁷ Newspapers can be privately owned and distributed, but in the past regulations have been issued which provide for the take over of particular publications by state companies which distribute them and take a high percentage of the profits.

Within this environment it is increasingly difficult to produce printed materials in the Kurdish language. Commercial printers and publishers refuse to do so due to the risk of having their licenses revoked. According to recent reports, Syrian legal restrictions regarding the printing of such material were tightened in the summer of 2002 when the maximum sentence for this offence was raised to five years.⁴¹⁸ The Kurdish writer Pir Rustem was forced to approach printers in Turkey with his two latest books because no printer in Syria would risk incurring these penalties.⁴¹⁹ Penal laws of a more general nature are also used to restrict the freedom of Kurdish publication. The Revolution Protection Law No. 6 of 7 January 1965 provides that offences which are considered to undermine the socialist state system, including any sort of expression or publication, are punishable by lifelong hard labour. This law has a particularly harsh effect upon Kurdish expression.

Books of Kurdish traditional stories, folklore and songs and others written in

the Kurdish language do however circulate, having been smuggled into Syria from the Kurdish regions in other countries. A Kurdish cultural association located in Beirut functions solely as a publishing house for the Syrian Kurdish literary market. Its books, and others from the autonomous Kurdish region in Iraq, are distributed to bookstores willing to sell the books due to their high value to the Kurdish community.⁴²⁰ In selling such imported Kurdish books, owners accept a tangible risk. In 2002 Muhammed Hannu, the owner of a Kurdish book shop in Aleppo, was taken into custody by security officials where he was detained for seven days. Although Hannu was finally released without charge he was threatened with the closure of his shop unless he 'cooperated'.⁴²¹

In 2002 Kurdish language publications appeared in a few of the major bookshops in Damascus. Although most of these were fiction, publications by the PUK, one of the two major parties in Iraqi Kurdistan, were also being sold. This may mean that even political works in Kurdish will be tolerated as long as they focus on this subject in relation to other countries.⁴²²

Kurdish broadcast and electronic media

Although there are no formal restrictions imposed specifically upon broadcasting and publishing in Kurdish, the Union of Journalists from Kurdistan claims that Kurds are in practice totally barred from operating public media.⁴²³

In January 2002 the regime's official daily newspaper *Al Ba'ath* reported that the Government had agreed to permit limited private broadcasting. The cabinet had added a clause to a media law dating back to 1951 in order to allow commercial radio stations limited to broadcasting music and advertising. This might enable the broadcasting of Kurdish music. However the requirement of cabinet approval for licenses may frustrate this, and at the time of writing there have been no reports of any Kurdish radio stations having acquired a license. In the absence of broadcasts from within Syria, the inhabitants of Jazira have listened to stations transmitting from Iraqi Kurdistan without state interference.⁴²⁴

Although the Government threatened to bring the ownership of satellite dishes under strict control, it has not acted accordingly. Instead dishes are tolerated, and their numbers have increased. This presents the Kurds with an opportunity to access channels such as Medya TV broadcasting from Europe and those broadcasting from Iraqi Kurdistan.

The Government is the sole internet provider. Bashar al-Assad intended to increase the availability of this medium and upon inauguration he announced that he wanted to install more than 200,000 points of connection by 2001. Now there are a handful of licensed cafes where users may surf freely but at a cost which prohibits most people from using them. Most people in Syria are restricted to the public connections which are mainly found in universities, research institutes and businesses, and these are heavily censored. Hotmail, Yahoo and other sites which provide private email accounts are blocked as are sites of organisations, including international human rights NGOs, which criticise the regime's poor human rights record. The sites of opposition political parties are also blocked and as such the sites of Kurdish political sites cannot be accessed in Syria. Several news and current affairs sites are similarly blocked, as are Kurdish sites generally.

The status of the Kurdish language in the education system

Part III of the Syrian Constitution, entitled 'Educational and Cultural Principles,' explicitly establishes that the purpose of education is the creation and fortification of the Arab state. Article 21 states that:

The educational and cultural system aims at creating a socialist nationalist Arab generation which is scientifically minded and attached to its history and land, proud of its heritage, and filled with the spirit of struggle to achieve its nation's objectives of unity, freedom, and socialism, and to serve humanity and its progress.

Article 22 clarifies that 'The educational system shall ensure the continued progress of the people and shall meet the needs of their continued social, economic and cultural development.' Arabic, the official language of the state

according to Article 4 of the Constitution, is also the language of instruction within the education system. A Secret Decree issued in 1989 prohibited the teaching of Kurdish in schools and universities as well the use of Kurdish in these institutions and in all official establishments.⁴²⁵ A Decision issued by the Minister of the Interior in 1992 reiterated the prohibition of teaching Kurdish literacy.⁴²⁶ Private schools teaching Kurdish may not be established, whereas the state tolerates the operation of those which teach the languages of the other three major minorities - Armenian, Assyrian, and Jewish - and also those teaching Farsi, Turkish and Circassian.⁴²⁷

Kurdish is learnt primarily within the family, and private tuition also occurs in people's homes. In 2002 the Human Rights Association of Syria issued a questionnaire to three hundred Kurds regarding their ability to speak and write in their mother-tongue. Two hundred and thirty-eight reported that they spoke Kurdish fluently due to its use within the privacy of their homes. Nonetheless, the lack of formal teaching has meant that many fluent Kurds are illiterate in their mother-tongue.⁴²⁸

This situation has caused deep resentment. On 25 June 2003, two hundred Kurdish children commemorated the International Day of the Child by participating in a peaceful demonstration which called for education in Kurdish as well as highlighting the continuing hardship endured by the estimated 250,000 Kurds who have been denied Syrian nationality. Demonstrations of this kind are extremely rare in Syria due to the severe repression of freedom of expression, thought and opinion contrary to the regime. The organisers had composed a statement which described the difficulties faced in registering Kurdish names and also the discrimination faced by Kurdish children at school. They intended to deliver this to officials at the UNICEF headquarters, where their march would culminate. This goal was not however realised: the demonstration was forcibly dispersed by approximately 400 police officers, who brutally beat both adults and children. Seven Kurdish men who had orchestrated the demonstration were arrested on charges of attempting to unite part of Syrian territory with that of a foreign state and of membership of an illegal organisation, confirming that the regime equates demands for Kurdish cultural and linguistic rights with separatist agenda which threatens the territorial integrity of the State. The men were detained for several months,

during which time they were reportedly tortured, before they appeared before a State Security Court on 11 of December 2003.

Kurdish political parties maintain their distinctively educational agenda in the absence of an opportunity to engage in the political process.⁴²⁹ The Human Rights Association of Syria noted in November 2003 that in doing so these parties have fulfilled a necessary function by facilitating Kurdish education, but that the inclusion of such activities on their agendas 'potentially places the practice of teaching and learning Kurdish within the realms of illegal political activity.'⁴³⁰ It must be stressed that it is the Syrian state, rather than the Kurds, which has politicised Kurdish culture and language. Kurdish attempts to resist this suppression must not be seen as inherently subversive, whether they are made by political parties or by individuals. The Kurdish author and poet Ibraheem Nasan was detained without charge early in 2003 for distributing educational and cultural material in the Kurdish language. This merely serves to confirm the state's deliberately punitive approach towards the preservation of Kurdish culture.

Kurdish music

Cassette recordings of Kurdish music and songs, even those with a political theme, can currently be bought freely in the Kurdish regions and within the Kurdish quarters of Damascus. Vendors who play these tapes openly on their stalls are more cautious regarding those which are overtly political. The fear that such music is likely to attract unfavourable attention from the authorities is justified by occasional raids.

Early in September 2002 the authorities permitted a concert by İbrahim Tatlıses, the popular Kurdish singer from Turkey, to be held in Aleppo. Although Tatlıses sang three songs in Kurdish without interference the security forces maintained a high profile at the event and reacted violently to normal crowd behaviour.

The Kurdish singer Rashid Sufi was involved in the organisation of a family new years celebration on the last day of 2003 in the Kurdish area of Kirbani.

After a license for the party had been obtained, the head of the security issued a summons for Sufi, evidently expecting the singer to attempt to circumvent the terms of the declaration upon which permission had been granted. When Sufi refused to sign a second declaration Aleppo Security Court revoked the license altogether rather than trust him to honour his word.⁴³¹

Kurdish Cultural Centres and events

Centres dedicated to the preservation of the Kurdish culture continue to open from time to time, often by Kurdish political parties, but are usually closed down. When the Jaladet Baderkhan Cultural Centre in Qamshli was closed in March 2000 its members and associates were subjected to state sanctioned harassment to the extent that several left the country in fear of their lives. In 2001 Habib Ibraheem, a member of the Yeketi political party opened a Kurdish cultural centre with the intention of hosting lectures by popular Arabic writers and other public figures for the purpose of promoting Syrian-Kurdish dialogue. The authorities interrupted one such lecture and dispersed the event. The club itself was closed down and two of its members were subsequently arrested and subjected to torture while in detention.⁴³² A Cultural Institute in Qamishli, the opening of which was announced on 17 July 2003, is dedicated to the Kurdish poet Cigerxwen and proposes to promote his poetry and to teach the Kurdish language.⁴³³ At the time of writing there have been no reports of harassment by the authorities, but such an outcome seems particularly likely due to the fact that Kurdish language instruction is strictly banned in Syria. The suppression of Kurdish cultural centres must be contrasted with the toleration of those operated by Syria's other minority groups: Armenians, Assyrians and Jews are permitted to cultivate and practice their traditions in cultural clubs and associations free from state intervention.

Summary

It is clear that Kurdish cultural and linguistic rights remain severely curtailed in Syria. The current state of affairs evinces an ongoing lack of commitment by Syria to the wide range of applicable international obligations to which it is bound

in relation to its Kurdish population. Printing of Kurdish language materials may result in the revocation of licenses, the imposition of prison sentences as well as extra judicial harassment. Even the tolerance of those who sell illegally imported Kurdish language books is not consistent, and those who do so may be targeted by the security forces. The state does not provide Kurdish language broadcasts and Kurdish websites remain blocked. Decrees are still in force which ban Kurdish from the education system, constituting treatment which is clearly discriminatory in comparison to that of other minority languages. Kurds and Kurdish organisations which assist others to exercise their cultural and linguistic rights encounter obstruction and harassment. As recently as June 2003, the Syrian state brutally expressed its refusal to countenance demands for Kurdish cultural and linguistic rights. It is clear that Kurds face legal and practical obstacles in relation to these rights from which members of other ethnic minorities are free. KHRP deplores the harsh treatment of those who openly advocate the respect of Kurdish cultural and linguistic rights. It urges the Syrian Government to reform its attitude towards the Kurds, firstly by restoring to them all the rights denied to them by the extraordinary census of 1962. The Kurds of Syria must no longer be excluded from the protections guaranteed to them by the numerous international and regional instruments to which Syria is bound. Without this fundamental reappraisal, any reforms to discrete areas, such as the Kurds' ability to exercise their cultural and linguistic rights, are unlikely to be more than superficial concessions and may lack the political backing which ensures effective practical implementation.

VIII - Recommendations

It is clear that Turkey, Iran and Syria continue to deny the Kurds the full freedom to exercise their cultural and linguistic rights by maintaining entrenched discriminatory attitudes towards those who are not members of the 'official' ethnic majority, and the Kurds in particular. This situation is exacerbated by the pervasive lack of freedom to manifest any identity or view which is deemed to contradict or undermine the ideology of the ruling regime.

The Transitional Administrative Law of Iraq purports to recognise a diverse society in which the different identities may be expressed and ideas may flow freely. In this instrument, the Kurds' ability to exercise their cultural and linguistic rights has been explicitly guaranteed. However, not until the permanent constitution of Iraq is adopted will guarantees will be irrevocably assured.

A number of general recommendations may therefore be made to all four states before more particular recommendations are given to individual Governments and relevant organisations.

8.1 To all Four Governments

Regarding their conception of the relationship between the State and its minorities

- * Formulate and practically implement a conception of the State in which minorities may be recognised without necessarily compromising the territorial integrity of the state.
- * Recognise that the protection of minorities is integral to the protection of territorial integrity of the state and as such is fundamental to ensuring both domestic and international security.

- * Fulfil basic democratic requirements concerning the accommodation of minorities such as those formulated by the EU Arbitration Commission for Yugoslavia in 1991 and reiterated in subsequent international and regional instruments.

Regarding their accommodation of their heterogeneous populations

- * Abandon outdated cultural and linguistic policies seeking to implement nationalist ideology by promoting the idea of one official identity to the exclusion of others.
- * Revise the official interpretation of the concept of the minority so that all minority groups may benefit from appropriate recognition, tolerance and assistance.
- * Commission and publish objective and accurate research into the composition of their populations in order to ascertain the existence, features and practical needs of different minority groups.
- * Abandon the notions that non-discrimination is achieved by ignoring relevant differences, and that accommodating the ethnic and linguistic features of minorities constitutes discrimination.

Regarding International Obligations and Commitments

- * Honour the provisions of international and regional instruments which guarantee the cultural and linguistic rights of Kurdish citizens both as individuals and members of an ethnic and linguistic minority.
- * Respect, protect and fulfil the cultural and linguistic rights of the Kurds in ways appropriate to the needs of their Kurdish populations. These needs must be accurately ascertained via meaningful dialogue with the Kurds.

- * Implement the right to freedom of expression, as enshrined in Article 19 of the ICCPR in a way that enhances the right of Kurds to enjoy their culture and use their language as enshrined in Article 27 of the ICCPR.
- * Cooperate with international monitoring mechanisms, such as the special procedures which operate under the auspices of the United Nations, by giving accurate information regarding the ethnic composition of the population and the implementation of constitutional and other legal provisions which purport to protect the Kurds' right to express their cultural and linguistic identity.
- * Facilitate the use of the Kurdish language in relation to all public services and judicial and administrative authorities.
- * Consider giving the Kurdish language de facto joint official status in the Kurdish provinces.
- * Cease criminalising the peaceful expression of cultural and linguistic identity.
- * Tolerate and positively assist private associations to cultivate, develop and disseminate information relating to all aspects of minority culture and to operate free from judicial and extra-judicial impediments.

Regarding the Media

- * Ensure that the public media provides a public service to all sections of the population.
- * Tolerate and positively assist attempts by the private media to represent and accommodate the demographic composition of the country. Engage with those involved in the private media, including representatives of minority media, in order to review and formulate

policy in this area.

- * Pass legislation preventing the formation of monopolies which exclude minorities from the private media.

Regarding the Education System

- * Ensure that the public education system provides a service which allows all participants to develop to their full potential. The universal accessibility of education must not be undermined by discrimination based upon the ethnic identity of students. Education must be acceptable to members of ethnic minorities who wish to learn about their culture as well as the official or dominant culture of the state. It must be recognise the cultural diversity of the population and the potentially beneficial role played by this feature in the functioning society.
- * Ensure that public education provided in the Kurdish provinces is of the same standard as that provided elsewhere in the country. Teachers should be recruited from the local population so that they are familiar with and respectfully of the culture and language of their pupils. At primary level Kurdish must be the medium of teaching and instruction in the language must also be provided, if necessary in parallel with the official or dominant language.
- * Consider how best to promote awareness and tolerance of the composition of population within the public education system.
- * Maximise the availability of education appropriate to the needs of members of minorities by allowing and assisting them to establish and operate private schools.
- * Provide official recognition for the qualifications issued by private minority schools so that their award may lead to further education and employment.

8.2 To the Government of the Republic of Turkey

- * Draft a new Constitution which is free from outdated references to Atatürk's conception of the Turkish state, and which does not implement his Reform Laws.
- * Abandon the narrow formulation of a national minority found within the Treaty of Lausanne of 1923.
- * Remove reservations to provisions in international instruments which have been deposited upon ratification with the intention of limiting the cultural and linguistic rights of the Kurds in terms of the Constitution and the Treaty of Lausanne. Notably Article 27 of the ICCPR, Articles 13 and 15 of the ICESCR and Article 17 and 29 of the CRC.

8.3 To the Iraqi Governing Council

- * Ensure that guarantees concerning the cultural and linguistic rights of the Kurds which are enshrined within the Transitional Administrative Law of 9 March 2004 are protected within the permanent constitution of Iraq.

8.4 To the Government of the Islamic Republic of Iran

- * Give Constitutional recognition not only to religious minority groups but to ethnic minorities.

8.5 To the Government of the Syrian Arab Republic

- * Restore full citizenship to the thousands of Kurds to whom it has

been denied on the basis of the 1962 census, and the cultural rights which have been denied on its basis.

8.6 To the United Nations

- * Encourage treaty bodies to state constructively and forcefully their criticisms of states' practices in relation to the cultural and linguistic rights of their Kurdish populations.
- * Encourage the special procedures to carry out accurate assessments of the practical status of the Kurds' cultural and linguistic rights. Encourage these assessments to include, where appropriate, constructive criticism of failures in these areas and identification of reasons for such failures.
- * Continue committing resources to the research into and development of an Optional Protocol to the ICESCR which facilitates complaints by individuals of the violations of their economic, social and cultural rights.
- * Promote awareness of the Declarations on Independent and Pluralistic Media concluded at Sana'a and Sophia under the auspices of UNESCO and encourage the Governments to consider these as authoritative guides to areas requiring improvement and to engage with those involved in the domestic media in order to review and formulate policy. This dialogue must include representatives of minority media.

8.7 To the Organisation of the Islamic Conference

- * Encourage the application of guarantees contained within the Cairo Declaration on Human Rights in Islam in a way which is compatible with the provision on non-discrimination.

- * Initiate constructive discussion on the subject of ethnic, linguistic and national minorities so that Member States may consider how best to practically recognise and accommodate their needs.
- * Encourage Member States to gather accurate data on all relevant aspects of the composition of their populations.
- * Initiate research into the development of a regional instrument dedicated to the protection of minorities.

8.8 To the European Union

- * Continue to exert pressure upon Turkey to implement in good faith all legal reforms made pursuant to the Copenhagen political criteria for accession to the EU in the area of minority rights.
- * Rigorously evaluate Turkey's attempts to accede to the EU on the basis of actual changes in practice, rather than solely considering formal reforms made to laws. This is mandatory if Turkey's practical progress and political will are to be accurately assessed during this critical period. Also, this alone will ensure that the EU retains its integrity as an institution committed to ensuring the protection of human rights.
- * Ensure that the Regular Report on Turkey's Progress Towards Accession due in November 2004 provides an accurate assessment of the true effects of Turkey's latest attempts to fulfil both commitments undertaken in the National Programme adopted in March 2001 concerning the reform of linguistic policies, and all commitments undertaken in the area of minority cultural and linguistic rights.
- * Ensure that the decision regarding Turkey's accession to the EU, to be passed by the Member States in December 2004, is based upon

an accurate appraisal of Turkey's fulfilment of the relevant criteria rather than upon external political considerations. All Member States must genuinely assess Turkey's ability to guarantee the cultural and linguistic rights of the Kurdish population in all areas of public and private life.

8.9 To the OSCE

- * Ensure that the human dimension of its work continues to emphasise that the accommodation of national minorities is integral to the pursuit of regional security.
- * Support the Representative on the Freedom of Media and the High Commissioner for National Minorities in facilitating dialogue and providing fora for the conclusion of multilateral agreements in this area.
- * Ensure that the European Commission against Racism and Intolerance implements its follow up procedure in relation to the recent highly critical report produced in relation to Turkey.
- * Create effective monitoring procedures which ensure that diplomatic dialogue between Turkey and the High Commission for National Minorities is capitalised upon.

IX - Conclusion

It is clear that in none of the four states are the cultural and linguistic rights guaranteed to the Kurds - as individuals, members of an ethnic or linguistic 'minority' and as a people - currently protected fully by permanent guarantees as required under international law.

As individuals the Kurds enjoy these guarantees by virtue of the right to freedom of expression, the uniquely empowering cultural right to education, and the right to participation in cultural life. Kurdish children receive additional protection under provisions such as Article 24 of the ICCPR and those within the Convention on the Rights of the Child, which include the right to education and the right of children of ethnic or linguistic minorities to enjoy their own culture and to use their own language. As members of an ethnic or linguistic 'minority', Article 27 of the ICCPR entitles Kurds, in community with each other as well as individually, to enjoy their own culture and to use their own language. As a people, their right of self-determination under the common Article 1 to the ICCPR and ICESCR entitles them to freely pursue their social and cultural development.

In all four states, the issue of Kurdish claims based on cultural and linguistic identity remains one of extreme political sensitivity. The Kurds in Iraq have recently secured explicit and extensive protection of these rights by means of the Transitional Administrative Law of March 2004: however, these strong guarantees have yet to be entrenched within a permanent constitution. While KHRP welcomes the recognition of the importance of protecting cultural and linguistic rights within an ethnically heterogeneous country such as Iraq, it urges that this is enshrined within the constitution of Iraq which is to be drafted in 2005. Meanwhile, the exercise by Kurds' in the other three states of their cultural and linguistic rights still carries the very real dangers of legal prosecution and extra legal persecution. KHRP appeals to these three Governments to implement the numerous international and regional obligations which they have undertaken in relation to these rights.

Fundamentally, KHRP calls upon all four Governments to take concerted action to reform the entrenched ideologies which underlie persisting official attitudes towards their Kurdish populations and which affect the application of all relevant domestic laws as well as the implementation of international and regional legal and political obligations which protect the cultural and linguistic rights of the Kurds. The chaotic and faltering progress of Turkey's attempts to implement the far reaching reforms made in fulfilment of the Copenhagen political criteria for EU accession provides strong evidence of the inevitable frustration which occurs when reforms are made in an intolerant political and social environment. KHRP urges the Governments to commit to reforming the ideologies which impede progress, in order to facilitate effective implementation of the full range of cultural and linguistic rights guaranteed to the Kurds.

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