

'W' & Torture
Two Trial Observations



Kurdish Human Rights Project
Bar Human Rights Committee
Human Rights Association

September 2002



Institut kurde de Paris

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This report was written by Peter Lowrie and Richard Heller. The report was edited by Kerim Yildiz and Angela Debnath.

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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 within 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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The Bar Human Rights Committee (BHRC) is the international human rights arm of the Bar of England and Wales. It is an independent body primarily concerned with the protection of the rights of advocates and judges around the world. It is also concerned with defending the rule of law and internationally recognised legal standards relating to the right to a fair trial. The remit of the Bar Human Rights Committee extends to all countries of the world, apart from its own jurisdiction of England & Wales.

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02/K - 'W' and Torture: Two Trial Observations - A KHRP, BHRC, and IHD Joint Publication

Dear Friends,

We are very pleased to enclose the following new publication:
'W' and Torture: Two Trial Observations

In July 2002 two London based Barristers, Richard Heller and Peter Lowrie, travelled to Turkey as a KHRP and BHRC delegation to attend and observe two important and contrasting trials. Firstly the delegation travelled to Diyarbakir to observe the 'W' trial as part of the ongoing reportage of the denial of Kurdish language rights. The defendants in the action are members of the Human Rights Association of Turkey (IHD), an organisation with which the KHRP and BHRC have close links. The case concerns IHD Diyarbakir Branch's use of the word 'Newroz' (the Kurdish spelling) as opposed to the Turkish version, 'Nevruz'.

The delegation then went on to observe the ongoing efforts of IHD lawyers (including several of those charged in the 'W' trial) in their representation of alleged victims of torture. The delegation focused on torture in two aspects of the mission. Firstly, they visited the Diyarbakir office of the Human Rights Foundation of Turkey (TIHV) which is one of five treatment and rehabilitation centres for torture victims in different parts of the country. Secondly, the delegation travelled to Sirnak to observe proceedings in which five security personnel and six doctors have been indicted in relation to allegations of torture on six Kurdish civilians. The delegation therefore had the opportunity to assess recent statistics on allegations of torture in Southeast Turkey, hear accounts of torture first hand from victims, and assess the efforts of the legal process to address the problem of impunity and tolerance.

The delegation was able to observe the pressures on human rights lawyers who were defendants one day and representatives the next. On a wider scale the delegation was able to assess the implications of the unilateral ceasefire in people's daily lives and whether or not the human rights situation has improved in 2002. Specifically with regard to the ongoing problem of torture, the delegation was able to assess the present frequency of allegations of torture in Diyarbakir. The Turkish authorities have often been encouraged by international human rights organizations to improve the judicial machinery in place to deal with allegations of torture. Observing the ongoing trial in Sirnak presented the delegation an opportunity to give an overview of the problems facing victims of torture who assert their right to justice and to formulate suggestions on how this gross violation of human rights must be addressed.

We hope you find this publication useful. If you require additional copies, or know of any one who would benefit from copies, please do not hesitate to contact us.

Yours faithfully,



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Foreword

In July 2002, the KHRP and the Bar Human Rights Committee of England and Wales sent a delegation to South East Turkey to observe two important trials in order to investigate concerns that the prosecutions do not meet internationally recognised standards of justice. The first trial, held at the Diyarbakir State Security Court, addresses the area of language rights as it concerns the defendants' illegal use of the Kurdish spelling of a word. The second trial, held in Sirnak, investigates allegations of torture. In the face of widespread allegations and numerous NGO reports documenting the ongoing practice of torture in Turkey, it is apparent that there are inherent structural and legal limitations to the effective operation of the rule of law in the country despite the three reform packages passed this year by the Turkish Parliament.

Accession to the European Union (EU) remains one of the Turkish Government's primary objectives during this first decade of the twenty-first century. It has long recognized (although perhaps never expressly) that it must dramatically improve its human rights record before accession can become a reality. All applicant states wishing to gain membership to the EU must guarantee "democracy, the rule of law, human rights, and respect for and protection of minorities." Despite the assurances of the Turkish Government that the human rights of the Kurdish population are being rigorously observed, the continued use of anti-terror legislation to imprison those pursuing legitimate activities, and the number of people still complaining of the use of torture when in police detention would suggest otherwise. This report explores the two areas of language rights and torture, and while it is not supposed to represent a comprehensive study of both areas, it goes some way towards highlighting quite how far Turkey still has to travel on the road to Strasbourg.

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Introduction

In July 2002 two London based Barristers, Richard Heller and Peter Lowrie, travelled to Turkey as a KHRP and BHRC delegation to attend and observe two important and contrasting trials. Firstly the delegation travelled to Diyarbakir to observe the 'W' trial as part of the ongoing reportage of the denial of Kurdish language rights. The defendants in this action are members of the Human Rights Association of Turkey (IHD), an organization with which the KHRP and BHRC have close links. While in Diyarbakir the delegation had the opportunity to hold meetings with unions, the Human Rights Foundation, HADEP, the Diyarbakir Bar Association, the Human Rights Committee and individual Kurdish lawyers. The delegation then travelled to Sirnak to observe the ongoing efforts of lawyers from the Human Rights Association (including several of those charged in the 'W' trial) in their representation of alleged victims of torture. The delegation was one of the first to visit Sirnak since the unilateral ceasefire declared in 1999.

The delegation was able to observe the pressures on human rights lawyers who were defendants one day and representatives the next. The contrast between the approach of the authorities to proceedings against Kurdish lawyers and those against civil servants accused of torture was a marked one. On a wider scale the delegation was able to assess the implications of the unilateral ceasefire in people's daily lives and whether or not the human rights situation has improved in 2002. Specifically with regard to the ongoing problem of torture, the delegation was able to assess the present frequency of allegations of torture in Diyarbakir. The Turkish authorities have often been encouraged by international human rights organizations to improve the judicial machinery in place to deal with allegations of torture. Observing the ongoing trial in Sirnak presented an opportunity to give an overview of the problems facing victims of torture who assert their right to justice.

Section 1

Turkey's International Obligations*

1.1 The European Convention on Human Rights

Turkey ratified the European Convention in 1954 and accepted the right of individual petition in 1987, and the Convention has been incorporated into Turkish domestic law.

Article 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

(please see Section 3)

Article 6: the right to a fair trial

1. *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law...*
2. *Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to law.*
3. *Everyone charged with a criminal offence has the following minimum rights:*

* See also KHRP Report: *Denial of a Language: Kurdish Language Rights in Turkey*, published in August 2002.

- a. *to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;*
- b. *to have adequate time and facilities for the preparation of his defence;*
- c. *to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
- d. *to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
- e. *to have the free assistance of an interpreter if he cannot understand or speak the language used in court.*

Article 6 is perhaps the most frequently quoted article, but it undoubtedly underpins the whole Convention. None of the other the other rights contained in the Convention can be upheld or guaranteed without an independent or impartial system of justice.

Article 10: freedom of expression

1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...*
2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions and penalties as are prescribed by law and 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 rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The European Court of Human Rights has not yet had cause to determine whether the rights to freedom of expression conferred by Article 10 include the right to choose one's language of expression, although Human Rights commentators consider that it would be remarkable if the Court were not to do so if presented with such a case.¹

It is not the existence or the wording of these laws that in itself causes alarm, but it is the manner in which they are used. The European Court has consistently found Turkey to be in violation of Article 10 following the prosecution of individuals under the above laws.

Article 11: freedom of association

1. *Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join unions for the protection of his interests.*
2. *No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.*

¹ The Commission determined in *Fryske Nasjonale Partij and others v. Netherlands*, 9 E.H.R.R. 261 that Article 10 did not guarantee the right to use a minority language in certain settings. The case concerned the use of a minority language in contesting Dutch parliamentary elections.

1.2 The Rights of Human Rights Defenders*

On the 9th of December 1999 the UN General Assembly adopted Resolution 53/144, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms. It is helpful to look at Articles 5, 6 and 7.

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;*
- (b) To form, join and participate in non-governmental organizations, associations or groups;*
- (c) To communicate with non-governmental or intergovernmental organizations.*

Article 6

Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access as to how those*

* See also KHRP Report 'Peace is not Difficult: Observing the Trial of Nazmi Gur, Secretary General of the Human Rights Association of Turkey (IHD)', published in April 2000.

rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

(b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to their views, information and knowledge on all human rights and fundamental freedoms;

(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to these matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Turkey is a member of the United Nations, and the Declaration on the Protection of Human Rights Defenders was adopted unanimously without a vote. It was quite apparent from the meetings the delegation had (please see later section) that Turkey is making little effort to comply with these provisions.

Section 2

The 'W' Case

2.1 Background

On 15/03/02 the Diyarbakir branch of the Human Rights Association of Turkey decided to organize a reception at the Journalists Association Club on 20/03/02 to celebrate 'Newroz'. An invitation in the form of a flier was printed for limited distribution in which the word 'Newroz' was used, and as a result seven members of the Association were indicted for having committed an offence in contravention of Law No. 2908.

2.2 The Indictment

The indictment read as follows:

"It has been ascertained that the accused, who are administrators of the Diyarbakir branch of the Human Rights Association, took a unanimous decision no. 186 on 15.03.2002 to organize a reception regarding Nevruz celebrations at the Journalists Association Club on 20.03.2002 between 18.30 and 20.30, in the decision taken they used the formulation Newroz. Since this was in the character of a brochure and leaflet written in a language other than Turkish as determined in Article 6 of the Law on Associations it is requested that the accused be tried in your court and convicted separately in accordance with the provisions of Law No. 3005, Article 64/1 of the Turkish Penal Code, Article 77/1 of Law No. 2908."

Those named on the indictment were as follows:

- 1) Osman BAYDEMIR, Diyarbakir branch Chairman of the Human Rights Association.
- 2) Fikret SARACOGLU, Diyarbakir branch Secretary of the Human Rights Association.
- 3) Selahattin DEMIRTAS, Diyarbakir branch Treasurer of the Human Rights Association.
- 4) Abdulkadir AYDIN, member of Diyarbakir branch Human Rights Association.
- 5) Reyhan YALCINDAG, member of Diyarbakir branch Human Rights Association.
- 6) Danis BESTAS, member of Diyarbakir branch Human Rights Association.
- 7) Pirozhan DOGRUL, member of Diyarbakir branch Human Rights Association.

The case was listed for its first hearing on 03/07/02 in the Criminal Court of First Instance in Diyarbakir.

2.3 What is Newroz?

Newroz translates from the Kurdish language as 'New Day', and refers to the first day of Spring, which is traditionally the time at which the Kurdish calendar begins. It is said that this tradition dates back to the seventh century B.C when on the 21st March 612 B.C Kawa the Blacksmith killed the Assyrian tyrant Dehak (sometimes referred to as Dehaq) and thus liberated the Kurds of the Middle East. Kawa is said to have lit a huge fire on the mountaintops to announce the news that Dehak was dead and the people were free. Today, the Kurdish people light a fire on the 21st March as a symbol of liberation.

The celebration of Newroz was in fact illegal in Turkey until 1995 at which time the then Prime Minister, Tansu Ciller, declared that '*Newruz*' was a day of Turkish celebration and had always been so. This was despite the fact that the Turkish security forces killed 109 Kurdish civilians during the 1992 Newroz celebrations.

2.4 The Hearing

The delegation arrived at court having been warned to expect a lengthy wait before the case was called on, but in fact only waited for approximately 20 minutes before filing into the courtroom. In addition to the KHRP and BHRC delegation, there was also a French delegation, consisting of three lawyers and two representatives from 'Medicins de Monde'. There were also two Americans who lectured in the field of human rights, and several journalists from local and national newspapers. In total there were about 30 people taking their place in the courtroom. There were not enough chairs for everyone to sit and so some just stood where they could find space.

Of the seven defendants charged, six attended, one having been excused due to illness and frailty. They stood behind a wooden railing which acted as the dock, and which contained no seating. However, about ten minutes into the hearing, a security guard dragged a bench from outside for them to sit on. This was seemingly at the direction of the Judge and our interpreter informed us that it was extremely unusual. The courtroom itself had no air conditioning, and with the windows open in 40 degrees Celsius heat, it would be demanding to stand up for any great length of time.

The Judge sat on a raised platform, with the Prosecutor seated about 4-5 feet to her right hand side. They both wore black gowns with a red collar and gold trim. The only difference, which was not immediately obvious, was that the gold trim was a slightly different pattern.

This was in contrast to the defence lawyers who wore totally different gowns, and who were all huddled around a small table to the left of the courtroom. The table was just about large enough to accommodate 1 lawyer and his papers, but at the start of the hearing there were 4 defence lawyers, but this increased to 6 during the course of proceedings. We were unable to ascertain whether those who were late were expected to play any formal part in the hearing, but the Judge seemed unconcerned by their late entry in any event.

The hearing was commenced with a brief statement by the Prosecutor outlining the charges. Everything he said appeared to be transcribed verbatim by a typist sitting beneath the Judge. The noise of the typewriter was truly astonishing, and the acoustics of the court were so poor that it actually made it difficult to hear the Prosecutor's voice.

Once the Prosecutor had finished it was the turn of the Defendants to make a brief statement in their defence. Osman Baydemir was first. It immediately became obvious that his words were not to form part of the court record. He spoke for about 15 minutes, and once he had finished the Judge summarized what had been said for the typist to take down. This process was repeated for each defendant.

Two of the defence lawyers then made submissions on behalf of their clients, and as with their clients, the Judge summarized what had been said for the benefit of the typist.

The case was then adjourned until the 20th August 2002 for its next hearing.

2.5 The Defence

The essence of the defence put forward was simple – whether the government likes it or not, the letter 'W' is a part of Turkish life. Whilst it may not be an actual letter of the Turkish alphabet, it is a letter which forms a part of everyday Turkish life. The example Osman Baydemir advanced was the Internet, and the fact that the web address for the Turkish government begins with not just one 'W', but with three.

The absurdity of the proceedings were then highlighted by the typist, who when taking down the Judge's summary of Mr. Baydemir's speech, had to turn and ask whether she should type a 'W' as a 'W', or as a 'V'. When dealing with the subject of the charge, the Judge told the typist to write 'Newroz' as 'Nevruz', of course not accepting that 'Newroz' is a word, but when it came to the issue of typing the government's web

address, there was very little alternative to typing the letter 'W'. It was naturally pointed out in submissions that every Turkish keyboard and typewriter has the letter 'W' on it.

2.6 Breaches of the Convention

Article 6

During a brief adjournment in the 'W' trial the Judge and Prosecutor were seen to be talking in the Courtroom. It is essential that a prosecutor is not considered to have played any role in influencing a Judge's decision outside of open court. Whilst, of course, it is not possible to say what they had been discussing, it certainly raises question marks over the integrity of the proceedings. In *Incal v Turkey*², the European Court of Human Rights stated that not only must justice be done, but also that it be seen to be done:

"Even appearances can be of a certain importance. What is at stake is the confidence which the courts in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused."

Of all those the delegation spoke to who had been involved in criminal proceedings, one of the principal complaints was the length of time it took for cases to be concluded. It appeared that most cases took two to three years from start to finish. The defendants in this case gave a similar time estimate. Taking account of the types of cases and the general paucity of evidence required to bring the case, that length of time cannot be considered reasonable under paragraph 1.

There can be no doubt that the Defence do not enjoy an equality of arms with the Prosecution. Not only are the seating positions and different robes causes for concern, but more importantly, the lack of verbatim transcription of what has been said by the defendants and their lawyers is particularly concerning.

² Appl. No. 22678/93, judgment of 9 June 1998

Article 10

Prior to 1991, under Law 2932, it was prohibited to use any language other than Turkish as a mother tongue. This law was repealed in 1991, but the government still uses a number of Turkish domestic laws to punish those who seek freedom of expression - Articles 155, 158, 159 and 312 of the Turkish Penal Code, Section 8 of the 1991 Anti-Terror Law (Law No. 3713) and Law No. 5816 concerning crimes committed against Ataturk. Article 312(2) of the Penal Code, which prohibits '*inciting people to enmity and hatred by pointing to class, racial, religious, confessional or regional differences*', and Section 8 of the Anti-Terror Law, which outlaws '*propaganda against the state's indivisibility*' are used against those seeking to highlight the Kurdish problem.

Quite clearly, it cannot be considered that there is freedom of expression in Turkey, and as this case demonstrates, Turkey continues to be in breach of Article 10.

Section 3

TORTURE

3.1 Introduction

The practice of torture and ill-treatment in custody has been one of the most serious and continuing breaches of human rights in Turkey in recent years, so much so that the UN Special Rapporteur on Torture stated that it had been practised systematically³ in Turkey up to and including the first half of the 1990's.⁴ The UN Committee against Torture

“considers that torture is practiced systematically when it is apparent that torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question.”⁵

Improvements in 1998 and 1999 led to a conclusion that, *“continuing problems cannot be attributed to a formal policy of the government.”⁶* Between November 1999 and June 2001 Amnesty International carried out several missions to Turkey focusing on the problem of torture and came to the conclusion that torture continued to be used systematically.⁷

³ The word 'systematic' was *“used in at least three meanings: first, to indicate that the practice was approved of and tolerated, if not expected, at the highest political level; second, in the sense that it was a pervasive technique of law enforcement agencies for the purpose of investigation, securing confessions and intimidation, regardless of approval or disapproval at the higher levels of the public service or by the government's political leadership and, third, to indicate that it consisted of techniques applied, in any individual case, in a deliberate manner to break the will of detainees.”*

⁴ This was after a visit to Turkey in 1999. E/CN.4/1999/61/Add.1, para. 102

⁵ A/48/44/Add.1, para. 39.

⁶ E/CN.4/1999/61/Add.1, para. 107.

⁷ Amnesty International: Turkey; An end to torture and impunity is overdue! *“In view of the geographic spread of torture allegations, the range of potential victims and the number of testimonies received by AI... the organization concludes that in spite of all declarations of intention by the Turkish government, torture continues to be practiced systematically in at least the sense of the definition from the Committee against Torture...”*

The KHRP and BHRC delegation of July 2002 focused on torture in two aspects of the mission. Firstly the delegation visited the Diyarbakir office of the Human Rights Foundation of Turkey (TIHV) one of five treatment and rehabilitation centers for torture victims in different parts of the country.⁸ Secondly the delegation traveled to Sirnak to observe proceedings in which five security personnel and six doctors have been indicted in relation to allegations of torture on six Kurdish civilians. The delegation therefore had the opportunity to assess recent statistics on allegations of torture in SE Turkey, hear accounts of torture first hand from victims, and assess the efforts of the legal process to address the problem of impunity and tolerance.

3.2 Legal Framework

Article 17 of the Turkish Constitution provides that “*no one shall be subjected to torture or treatment incompatible with human dignity.*”

Article 90 of the Turkish Constitution provides that “*International agreements duly put into effect carry the force of law.*”

Turkey is a state party to most of the important instruments for the prohibition of torture including;

UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)

The Convention on the Rights of the Child (CRC)

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention)

The European Convention for the Prevention of Torture

⁸ The others are in Istanbul, Ankara, Izmir and Adana

3.3 The Human Rights Foundation Treatment and Rehabilitation Centre.

The Human Rights Foundation of Turkey established the Project for the Treatment and Rehabilitation of Torture Survivors in 1990. By the beginning of 2000 a total of 4696 people had applied to the centres with a further 1023 people applying during 2000. These centres are an impressive means not only to assist those recovering from the trauma of torture but also as a conduit for the compiling of evidence to contribute to the essential job of proving individual instances of torture. The centres compile extensive information regarding those who apply. For instance in 2000 of the 1023 applicants 36 were relatives of victims and 15 had insufficient information. Annual reports provide statistical analysis of applicants according to their age group, place of birth, educational level, employment status, channel of contact, place of torture affliction, detention period, torture methods, physical complaints, physical diagnosis, psychiatric diagnosis and treatment method. The recognized twin aims of the centres are the rehabilitation of victims and documenting incidents.

The centre in Diyarbakir was opened in 1998 and has 1 social worker and 2 doctors working full time. The centre itself was raided on 7th September 2001 by security forces. All patient files and employee files were seized and held for a month. The centre, similarly to all human rights orientated establishments the delegation visited, continues under the constant fear of harassment. In 2002 there have been two separate proceedings instituted against the foundation: firstly alleging that the foundation had been established illegally; and secondly charging the foundation with illegal acts in having treated applicants.⁹

The centre reports 175 applications from victims of torture in 2001. Up to the first week of July in 2002 there had already been 101 applications. These statistics would seem to indicate that far from decreasing, the frequency of torture allegations in southeast Turkey is increasing.¹⁰

⁹ These proceedings were dropped during 2002. The latter charges reflected the search warrant issued in relation to the raid on 7/9/01 in which the treatment of torture victims was described as an 'illegal activity'.

¹⁰ The director of the Diyarbakir branch was reported that these statistics must be seen in the light of the fact that many victims are too frightened to apply to the centres. In this sense reported statistics are the tip of the iceberg.

3.4 Trial Observation in Sirnak

3.4.1 Travelling to Sirnak

The delegation travelling to Sirnak was subjected to the now familiar harassment and delay tactics. The bus carrying the lawyers from the Human Rights Association, the KHRP and BHRC delegation, and members of the press was delayed at three checkpoints most notably for almost 90 minutes at the first. Occupants of the bus had ID extensively checked and were asked if they had special permission from the governor to enter Sirnak. This can only be seen as an attempt to delay the lawyers and place extra pressure on the complainants.

3.4.2 Background

The case itself related to a security operation carried out by the Anti-Terror Department of the Sirnak Security Directorate which took place on 21/3/00. The complainants were arrested during this operation. The complainants were all taken from their homes late at night and most were ill-treated from the moment of their seizure. A typical experience was that of Kamuran Kabul. He was arrested by men known to him¹¹ wearing ski-masks. He was blindfolded and taken to the Security Directorate. He was stripped, kicked and punched, subjected to electric shock treatment on his genitals and forced to sign many documents while still blindfolded. He was sodomised with a truncheon and hung on a Palestinian hook and members of his family were threatened in his presence. Under this coercion he gave the names of other complainants as PKK members. He says he knew they were not linked to the organization. He spent eleven days in custody prior to any appearance in court. During his incarceration he was seen by doctors (as were all the complainants) but the medical records do not record signs of torture. Directly after the period of torture and before appearing in court the complainants were seen by the Prosecutor. The Prosecutor was again involved whenever Mardin Prison would not

¹¹ He owned a kiosk in the town and recognized their voices as those of customers.

admit the prisoners because of the marks on their bodies. A further medical examination was carried out at which the Prosecutor was present. During these subsequent medical examinations the complainants allege the doctors were informed of the torture and methods that had been used. These medical reports recorded '*no sign of beating or violence*'.¹² Interviews were carried out by the Human Rights Committee with the complainants while still in custody on 19/4/00. This led to documents being lodged with the Diyarbakir and Sirnak Prosecutor's Office setting out the allegations as above and requesting that a public prosecution be lodged against the police officers who inflicted the torture and the doctors who drew up reports concealing this torture.

3.4.3 The Hearing

The case was heard at Sirnak State Security Court. Only the appellants (alleged victims) and their legal representatives appeared before the court.¹³ Four similarly robed figures held court from the front. It was ascertained that one of these was a prosecutor. It was impossible initially to get any firm impression of which one this was.¹⁴ None of the defendants were required to attend and indeed none did. It was indicated that some of the defendants had written to the court to deny the charges.¹⁵ Lawyers acting on behalf of the applicants had three submissions:

- i) The trial to be transferred to another city.¹⁶
- ii) The Defendants to be arrested and required to attend court and answer the charges made against them.

¹² Report no. 245, 31.03.00 & no. 255, 03.04.00, no.3 Health Center as stated in complainant's statement of complaint to the Public Prosecutor's Office.

¹³ This is to be contrasted with trials launched against Human Rights lawyers such as the 'W' trial above at which the defendants are always required to attend except for medical reasons.

¹⁴ The impression remains that the judicial and prosecutorial functions are so synonymous and indistinguishable that it is simply an aesthetic exercise to even imply that both roles happen separately. The court gives the impression of being presided over by four judges (or indeed four prosecutors).

¹⁵ None had been required to by the court.

¹⁶ In this regard the fact that the applicants were subjected to travelling to Sirnak was stated as relevant, though presumably the safety of the applicants may also be an issue.

- iii) The matter to be properly investigated.

The judgment of the court was as follows:

- i) The matter was adjourned to 12/9/02 to determine whether the defendants should be arrested and whether transfer should take place.¹⁷
- ii) The allegations were to be investigated.¹⁸
- iii) The addresses of the accused were to be provided to the court by the Ministry of Interior.
- iv) Photographs were to be taken of the accused and provided to the court.

3.5 Issues Arising from the Torture Allegations

3.5.1 Prolonged Police Custody

In this case the victims were held for 11 days in total (four days passed before being brought before a judge). The length of detention periods and lack of access to the courts can only make torture more likely by providing the context and opportunity for it to happen.¹⁹ While the maximum period allowed for custody has been reduced,²⁰ it still does not comply with international standards²¹. Torture often happens in the first days of

¹⁷ This was not reserving judgment on these issues; the future court would consider the issues if and when raised on the next occasion. There was no reason given (or apparent) for why these questions were not determined by the court having heard extended submissions.

¹⁸ This is in relation to incidents which occurred during March 2000. The Human Rights Committee started efforts to inspire a prosecution within months of the alleged events. The case was transferred between three jurisdictions and prosecutors initially ruled against a prosecution being instigated.

¹⁹ For detainees falling within the jurisdiction of the State Security Courts in provinces under a state of emergency detention can be extended for up to 10 days without access to the courts, a prosecutor or a legal representative.

²⁰ In March 1997

²¹ Article 5 (3) of the European Convention provides the right to be brought promptly before a judge.

custody (as in the Sirnak case) after which even if the detainees are brought before a court they are too frightened to make allegations of abuse.

3.5.2 The Role of Doctors

Doctors have a prominent role in the Sirnak case and unusually are named defendants on the indictment in relation to their alleged failure to properly record the signs of torture in numerous medical reports. Such recording and certification is not only essential to assist the investigation and prosecution of instances of torture, it would also be a powerful tool to stop torture from happening or continuing. In the Sirnak case the torture continued after medical reports; the impunity of the torturers may well have been reduced by accurate medical reports. The compliance of doctors with the security forces has often been reported to be based on intimidation.²² If this is not successful the perpetrators merely seek a more favourable report from a more compliant Doctor.²³ This atmosphere of intimidation has resulted in a degree of complicity on the part of some doctors such as in the instant case. In any event it is tactically necessary to indict all involved in the promulgation of torture in order to challenge the culture of impunity.²⁴ In the instant case medical examinations took place in the presence of Prosecutors. This is one of the most worrying aspects of the role doctors play in the continuance of torture as a systematic abuse of human rights in Turkey.

²² PHR Report 'Systematic Torture in Turkey and the Coercion of Physicians to Conceal Evidence'; "...the torturers cover up their acts by repeatedly threatening physicians with personal and professional repercussions if they report evidence of torture. The end result of this repression is that physicians refrain entirely from using the word 'torture' in their medical reports, and law enforcement officials responsible for the abuse escape punishment for their actions." (Page 1)

Doctors have long been a target of the security forces; in the emergency zones physicians and other health officials have been killed, tortured and imprisoned on the pretext that they are providing medical assistance to suspected terrorists.

²³ The Amnesty International Report, "Turkey: An end to torture and impunity is overdue!" tells of Seher Durgac who was repeatedly tortured by heavy beating, electric shocks and rape threats when she was held for six days. When a doctor wrote a report confirming her torture allegations, police officers took her to another doctor who wrote a report stating that she had not been tortured.

²⁴ Presumably doctors coerced to the appropriate degree would be afforded a legal defence to the charge.

3.5.3 The Role of Prosecutors

The continuing and multifaceted role of Prosecutors in the continuation of the practice of torture and the impunity of its perpetrators is nothing short of disgraceful. Considering the important moral and ethical role a State Prosecutor plays in any civilized society the actions of Prosecutors in the Sirnak case are a damning indictment of the state approach to this most serious of human rights abuses.

- (i) Prosecutors were present at medical examinations during which the evidence of torture would have been as apparent to them as the doctors who are charged in the case. This involves them directly and criminally in the covering up process. It is also open to speculate to what extent their presence ensured the nature and content of the false reports.
- (ii) Prosecutors were present at the early court hearings during which no mention was made of torture and at the conclusion of which the victims were sent back to custody and into the control of the torturers.
- (iii) Consequently Prosecutors did not report the evidence of their own eyes or in any way investigate complaints once they were raised by the victims.

The role of the Prosecutor as an ethical minister of justice is the cornerstone of any rights driven criminal justice system and is implicit in the right to a fair trial and equality of arms under Article 6 of the European Convention. From observing the trial in Sirnak the delegation can only come to the conclusion that prosecutors in Turkey are entirely complicit in the practice of torture. Not just ordinary civil servants, prosecutors are representatives of the state and if they are implicated, so is the state itself. The failure to investigate complaints of torture establishes the Turkish legal system as one which tolerates the ongoing practice of torture in Turkey.

3.5.4 The Failure to Investigate

The instances of torture forming the basis of the Sirnak 'prosecutions' occurred in March 2000. Complaints were raised only weeks later. It has taken until July 2002 for a Turkish court to accept for the first time that the complaints should be investigated. The efforts of the Human Rights Committee and the individual lawyers representing the victims have been blocked at every turn by a legal system which is loathe to involve itself in the criminalisation of members of the security services. The evidence has been gathered by the applicants. The indictment has been created and lodged by the applicants. Torture is illegal under Turkish law²⁵ and should be charged and investigated as any other crime. The failure of the Turkish legal system to do so was recognized by the Council of Europe Committee of Ministers in 1999 when it called on the Turkish authorities,

*"...rapidly to complete the announced reform of the present system of criminal proceedings against members of the security services, in particular by abolishing the special powers of the local administrative councils in engaging criminal proceedings, and to reform the prosecutor's office in order to ensure that prosecutors will in the future have the independence and necessary means to ensure identification and punishment of agents of the security forces who abuse their powers so as to violate human rights."*²⁶

It is clear that prosecutors have not been so empowered and in fact are an essential aspect of the system which protects those guilty of torture.

The failure of the authorities to act in the Sirnak case is a bleak indication of the State's policy towards the ongoing practice of torture. The length of time it has taken the applicant's lawyers to instigate a partial investigation is clearly a breach of the European

²⁵ Article 243 of the Turkish penal code (charged against several of the defendants in the Sirnak case) states, "A civil servant or other public employee who resorts to torture or cruel, inhuman or degrading treatment in order to make a person confess a crime, to prevent a victim, plaintiff, somebody participating in a trial or a witness from reporting incidents, to prevent them from filing a formal complaint or because they filed a formal complaint or for any other reason, shall be sentenced to a heavy prison penalty of up to eight years and permanent or temporary disqualification from service".

²⁶ Interim resolution DH (99) 434.

Convention.²⁷ More than two years after the original complaints the Turkish legal system is yet to properly investigate or require the attendance of the defendants at court.²⁸ This complete lack of commitment to bringing the perpetrators of torture to justice is in fact an implicit encouragement to them in the continuance of their inhuman practices.

[**UPDATE:** On 12 September 2002, the Sirnak State Security Court acquitted all of the defendants in the torture trial. The following is an excerpt from the translated judgment:

"From the evidence gathered and submitted: It has been established that the parties did not make any statement pertaining to having been mistreated when taken in front of the Public Prosecutor or the duty judge. The parties were also not able to identify who had carried out the alleged acts on account of their being blindfolded. There is also a possibility that the lesions recorded in the medical reports could have occurred in different circumstances and there is insufficient evidence to convict the accused. The report issued by the Izmir Medical Association on 08.12.2000 was only based on testimony and was issued long after the incident. It has therefore not been given any credence. The accused have thus been acquitted due to a lack of substantive, concrete, persuasive evidence."]

²⁷ *Aksoy v Turkey*, Judgment of 18 December 1996, para 99 (duty to investigate when signs of torture visible on detainee, even if no complaint); UN declaration against Torture, article 9: *"Wherever there is reasonable grounds to believe that an act of torture as defined in Article 1 has been committed, the competent authorities of the state concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint."* See KHRP Report, "Akksoy v. Turkey & Aydin v. Turkey: Case Reports on the Practice of Torture in Turkey, Volume II" 1997.

²⁸ This is in stark contrast to the courts approach to charges brought against human rights lawyers who are always required to come to court.

Section 4

MEETINGS

4.1 Introduction

Over the course of three days, the delegation met with the Diyarbakir branches of a number of different organizations. The delegation also met teachers, civil servants, politicians, doctors, lawyers and human rights campaigners - all of the people spoken to had their own story to tell, but all had a common theme to which harassment and oppression were central.

It is generally considered that the position in the South East has improved since the unilateral ceasefire in 1999, although what that actually means in reality was interpreted in a number of different ways by those met by the delegation. All agreed on one thing though – that it was better to have the ceasefire, than not.

One of the things the delegation was interested to know was how many of the people met had experienced problems with the State and the Police directly. As the meetings went on, it became quite clear that all those spoken to had suffered in one way or another, and the question of ‘who has been arrested or detained’ became one of ‘who has not’.

4.2 The Education Union: Diyarbakir Branch

In attendance:

- Ihsan Babaoplu (Section Secretary)
- Ziyad Ceylan (Member of the Board)
- Medeni Alpkaya (Member of the Board)
- Serdal Savarci (Head of the Office)
- Medeni Tutsi (Speaker for *KESK* – Civil Servant Labour Union)

Article 42 of the Constitution provides that Turkish must be the main language of education:

"No language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of training or education."

When the delegation arrived at the offices of the Education Union they were met by a number of people and ushered into what appeared to be some type of common room. One of the first sights one is greeted by is a large glass framed board which displays a number of A4 sized photographs. Above the board, written in Turkish, is 'Martyrs are our honour'. The photographs are of members of the Union, who have disappeared, and are believed dead. The word 'martyr' has in modern times come to be associated with terrorism, but these people are simply teachers campaigning for cultural recognition.

This particular branch has been closed down 3 times in recent years, but they have simply reopened using a slightly different name on each occasion. The biggest problem they face is not actually knowing what material they can or cannot distribute to their members. They explained that newspapers, books and magazines can be banned by decree overnight, and the following day the police will attend their offices and close them down for being in possession of prohibited material.

All of those present were keen to emphasise that as a Union they did not have any particular political motivation other than being pro-democracy. They all expressed a general lack of faith in the electoral procedure and many have taken part in demonstrations against 'anti-democracy'. Whilst the Union's objectives were naturally concerned with the individual rights and economic considerations of its members, the focal point of their aspirations is education in Kurdish in all subjects.

As a direct result of their campaign for education to be provided in the Kurdish language, a majority of the members have been arrested and tortured. It was not possible to

ascertain exactly what percentage had been arrested, although all those present had been detained by the police at least once in the last three years. Medani ALPKAYA explained that he had been arrested eleven times in the last two years and charged with various offences, but as yet had never been convicted.

One teacher had been arrested for speaking in Kurdish to a parent at a Parent Teacher Evening, because that parent could not speak Turkish. On another occasion, a group of seven teachers were arrested, having met up one evening to discuss Kurdish literature. Two teachers were recently sacked from their positions, having been arrested for sending invitations to their wedding in Kurdish. Other teachers were arrested and held for 4 days for sending invitations in Turkish and Kurdish to celebrate 'Teachers Day' on the 5th of October last year. The formulation of the charge is usually "discriminating against the honour of Turkey" under Article No. 159.

All those present currently face their own set of charges following a police raid last year. They say that the police usually search for magazines and newspapers that have been banned. On this particular occasion, their offices were virtually ransacked. There had been a photograph of an old woman hanging on the wall of one of the rooms. The photograph had been taken from a magazine, and on the back of that photo was another photo of a convicted terrorist. As a result they have all been charged with "logistically supporting terrorism".

4.3 HADEP (pro-Kurdish People's Democracy Party)

In attendance: Ali ORKUT (Head of HADEP, Diyarbakir Branch)

HADEP describe themselves as a mainstream political party, although to the Government they are simply an inflammatory propaganda machine (in 1999 the Chief Prosecutor of the High Court of Appeals sought the closure of HADEP, alleging an "organic relationship" between HADEP and the PKK). Mr. Orkut emphasized throughout the

meeting that HADEP's policies concern the governing of Turkey on the whole, but the Government have tried to marginalize them as a single issue party. HADEP have been trying to forge links with other democratic parties in the hope of establishing a coalition that can genuinely challenge for power. In the meantime though, their main wish is for Turkey to be integrated into the European Union, and then force change.

There are 40,000 members of HADEP, and according to Mr. Orkut they proved to be the party of choice for 64% of the electorate in the recent by-elections. However, for Mr. Orkut, those votes may as well have been cast into a bin, rather than a ballot box, because the Government has ensured that of the 60 municipalities they won in reality, they have only been given seats in 37.

The fact that HADEP won any municipalities at all is a small miracle in itself. During the election period they were prevented from campaigning in a traditional sense – they hung no banners, they made no speeches, they held no press conferences.

In the last three years the HADEP offices in Diyarbakir have been raided by Police on nine separate occasions, and NGO's with which HADEP formerly had links have been closed down, such as the Association of Arrested People, the Students Association, the Mesopotamia Cultural Association and the Tigris Women and Culture Association. Mr. Orkut, himself, has 80 cases outstanding against him, and he estimated that 2 of every 5 working days are spent in Court. This, of course, means that the amount of time he is able to spend on party business is greatly reduced. He explained that the majority of cases that are commenced against him are usually dropped, but that he had spent 4 months in prison last year for holding a press conference.

When asked whether he felt the situation in the South-East had improved since 1999, he echoed the sentiments of many of the people the delegation spoke to:

“I used to wonder when I would be shot, now I just wonder when I will be arrested – to that extent, the situation has improved.”

4.4 Offices of Bestas & Bestas (Law Firm)

In attendance: Mesut BESTAS (Criminal Lawyer)

Mesut BESTAS is a criminal lawyer in a firm he runs with his wife (also a defendant in the 'W' trial). The majority of his time is spent in the State Security Court.

He has been instrumental in attempting to set up a branch of the 'Judicial Research of the Public Foundation', which already has branches in Istanbul and Ankara established in 1994. The objectives of the Foundation centre on the following areas:

- Creating awareness of the workings of the Judicial system amongst the public.
- Undertaking research of judicial subjects.
- The rehabilitation of those who have been subjected to torture.
- To conduct a series of seminars and conferences in relation to public justice.

They have applied to the Foundations Directorate to open a branch in Diyarbakir, but they have been refused on each occasion. He says that they will continue to apply each year, and that he is hopeful that the opening of a branch will eventually be sanctioned, although he was unable to say when that might be.

He believes that conditions for lawyers have improved over the last few years, and he, himself, has not been arrested since 1993, at which time he spent 1 month in custody having been suspected of being a supporter of the PKK. He explains that most lawyers who represent suspected terrorists are targeted by the police, although he says that he no longer fears for his life when carrying a file relating to a torture case. Mesut said that

three years ago lawyers who represented members of the PKK would simply be shot as they walked down the street.

In the State Security Court, the main problem faced by lawyers is that Judges do not respect them, and will often interrupt them or cut their speeches short. That situation appears to be exacerbated by the lack of any cordiality from the Prosecutors, with whom Defence lawyers do not enjoy a friendly relationship.

When asked whether he was concerned about the proceedings against his wife (the 'W' trial), he simply smiled – it was nothing new.

4.5 Diyarbakir Bar Association

In attendance: Tahir ELCI (Member of the Board)
Fikret AKTEM (Member of the Association)
Fahri KARAKOYUNLU (Member of the Board)
Arif ALTUNKALEM (Member of the Board)
Mahmut VEFA (Secretary of the Association)

There are 411 members of the Diyarbakir Bar Association, 50 of whom are currently involved in criminal proceedings as defendants. They say that every member of the Bar Association has spent time in custody, usually under spurious allegations of supporting terrorism. They all believe that the authorities use court proceedings as a means of harassment and intimidation, rather than in an attempt to enforce or uphold the law. That view would appear to be confirmed by the fact that only 4 members of the association have ever been convicted, despite the huge number of charges that have been forthcoming against them. If anything, rather than acting as a deterrent to these lawyers, it only seems to strengthen their resolve.

None of them express any faith in the judicial process, and most believe that the State Security Court is a violation of justice. However, they did say that there had been a softening in the approach of Judges to Defence lawyers in the last year, but that there was still a long way to go before there was anything resembling parity between Prosecution and Defence, and that in reality this was unlikely to ever happen given the makeup of the court.

From the personal experience of those present, Judges paid little regard to the existence of the European Court of Human Rights, and most found that the mere mention of Strasbourg was met with a geographical reminder from the Judge that they were in Turkey.

4.6 Human Rights Foundation of Turkey

In attendance: Sezgin TANRIKULU (Diyarbakir Representative)
 Emin YUKSEL (Doctor)

The Human Rights Association of Turkey was established in 1990 and has branches in five different cities – Ankara, Istanbul, Diyarbakir, Ismir and Adana. The Foundation receives financial support from a number of organizations outside Turkey, including the UN, the Red Cross and SIPAK.

The Foundation is principally involved in the rehabilitation of victims of torture, but it also provides legal assistance where possible. An annual report is produced, which documents all incidents of torture of which they are directly aware, and deals generally with the 'Human Rights' position in Turkey.

As stated in Section 2, the branch in Diyarbakir opened in 1998 and has one social worker and two doctors who work there on a full-time basis. In addition the foundation

receives assistance from a number of other doctors on a locum basis. However, those doctors have pressure applied from their superiors not to have contact with the foundation, and in some cases find themselves posted to remote regions to ensure that. They also find themselves becoming victims of torture if they report their findings or treat applicants to the foundation.

In 2001, the Diyarbakir branch received 175 applications from victims of torture. In the first six months of this year, it had already received 101 applications. Those present believed that they would have many more applications if people weren't scared to approach them. In September 2001, the Diyarbakir offices were raided by police, and files were seized which contained the names of all their applicants.

Dr. Yuksel explained that almost everyone who is arrested and taken to the Police Station will be tortured. He described a number of the methods of torture used – blindfolding, use of pressure hoses, beating to the soles of the feet and genitals, crucifixion, application of electric shocks, forced eating of unknown substances, bodily insertion of batons and truncheons. It then transpired that he, himself, had been subjected to most of the methods described above when he was detained in custody, whilst a medical student, for helping victims of torture.

When an applicant approaches the foundation they undergo a three stage process. Firstly, they will be interviewed by a social worker. Secondly, they will be taken to the health centre where they will see a doctor, and thirdly, they will then be taken to see a psychiatrist. Dr. Yuksel explained that victims of torture require not only medical assistance, but that they also require economic, psychological and sociological rehabilitation. Understandably, this can take some time, and whilst in most cases the foundation treats their applicants for between 6 months and a year, some will be treated for up to three years.

The Government denies that the torture of detainees in police stations still occurs, and as such, views the foundation as a source of concern. Prosecutors have commenced

proceedings against the foundation stating that it was established illegally, and those proceedings are currently ongoing.

4.7 Human Rights Association of Turkey (Diyarbakir Branch)

In attendance: Osman BAYDEMIR (Lawyer - Branch Chairman)
Reyhan YALCINDAG (Lawyer - Member of the Association)
Ayla AKUT (Lawyer - Member of the Association)

The Human Rights Association in Diyarbakir has 8 members who are lawyers. They complain that they do not have enough lawyers to keep up with the amount of cases against them. In the first six months of this year one hundred and fifteen cases have been brought against the association and/or its members. Of those cases 9 are being heard in the State Security Court, 18 have been dropped for not being serious enough, 7 have been dropped due to a lack of evidence, 16 await the decision of the prosecutor as to how to proceed and the remainder are in the process of being determined.

The members of the association do not seem that bothered by the number of cases against them because they say that usually about 80% of them are dropped. Approximately 60-65% of cases against the Association are heard in the Criminal Court of First Instance, and the charge usually relates to "violation of the law of association" i.e. holding a press conference without permission.

In the Heavy Criminal Court (the next tier up), the most common type of charge brought against them is one of "damaging or attacking the honour of the government or the military" under Article No. 159, i.e. informing the public of a human rights violation. These cases are generally transferred up to the State Security Court.

Of all the people we met involved in the field of human rights, Osman Baydemir was fairly unique. He verges on celebrity status in Diyarbakir, and his prominence as a lawyer has resulted in him being charged with offences against the State on a regular basis. In the last two years alone he has been the defendant in approximately one hundred and fifty cases. He explained what happens when the Human Rights Association informs the public of a human rights violation as follows:

“The Directorate of Security prepares a file against us and they send it to either the Criminal Court of First Instance, or the State Security Court. The Prosecution will then tell the Security Services that I am the guilty person, and that they should take me to Court. The staff from Security Services come to my office and they ‘invite’ me to Court. Sometimes though Police officers will come and take me directly to the Police Station. Of course, the minimum result is that I end up in the Prosecution Office and I have to explain my defence for 1 hour, or maybe even half a day. Then, either the Prosecution will ‘drop down’ the case or they will prepare a file and send it to court. If the case is ‘dropped down’ it may be completely dropped, but sometimes not, so that the file is not completely closed. What that means is that we have to attend court every time we are asked to.

Once a file has been opened the case will usually last for between one year and a year and a half. Firstly, we constantly face the threat of punishment because we are active in the field of human rights, but secondly, it kills my time because I am constantly answering charges in court and it means that I can’t leave the city if I want to because special penalties can be imposed for not attending court, and I will probably be arrested.

As frequently as I address human rights issues is as frequently as I will be in court. I have had to make my defence in the Prosecutor’s Office 29 times already this year, and that is in addition to having to attend court in relation to all my other cases. Of every five working days, I spend two in court as the defendant. I have not been imprisoned following the end of a case yet, but that does not ensure that I will not be in the future. I have never been found guilty once, but the whole process is a punishment to me. All the

Prosecutors and Judges know who I am and some even start to laugh now when they see me. When I am at Court I wear my advocate's robes to defend my client and then I have to take them off because I am the defendant in the next case. Prosecutors see me at Court and inform me for the first time that they have a fresh file against me, so I have to run in and out of the Criminal Court of First Instance and the State Security Court answering charges against me. Sometimes I don't even know why I am there and I start giving my defence to one case when I am actually in another. Sometimes it may be funny, but some cases carry a serious risk of punishment.

One such case involves our visit to a village near Sirnak. We had heard that the village had been evacuated and that atrocities had been committed there. We decided to go and see for ourselves what had occurred. We managed to speak to a villager, Rashim, who was one of the only witnesses to what had happened there. Because he no longer had a home we decided to take him back to Diyarbakir, but he was found on our bus when we were stopped by the Security Services. He was subsequently charged with an offence, and when I decided that I would represent him I too was charged. Now, both the witness and myself have been charged with an offence under Article 169, which stipulates that we should be committed to prison for between three and five years if we are found guilty. The file for this case has been transferred from Sirnak to the State Security Court in Diyarbakir."

However, despite all this, the members of the Association are determined to continue with their work, and will continue to do so until it becomes a physical impossibility.

4.8 A Chance Meeting

On the plane from Diyarbakir to Istanbul, the man sitting to the delegation's right engaged them in conversation. He claimed that he worked for the Ministry of the Interior, and that he had been carrying out an inspection of the Emergency Governor's office in Diyarbakir for the last six weeks. He also claimed to have been the Emergency

Governor in Bitlis (one of the first State of Emergency regions) during the early 1990's. He, perhaps unsurprisingly, declined to provide his name, but he nevertheless made a number of interesting comments.

When discussing how the delegation's journey to Sirnak had been so delayed and impeded by roadblocks, he provided an insight into their usefulness. He explained that in the last ten years, only one known terrorist had actually been apprehended at a roadblock. The reason for this, he said, is simple – all those who do not wish to be stopped by the police or gendarma do not travel on routes that have roadblocks. What purpose then could roadblocks serve other than acting as a form of oppression and harassment? An answer was not forthcoming.

When asked about the number of people still being subjected to torture when in police custody, he stated quite matter-of-factly: "Torture no longer takes place, because there is no reason for it". Whether or not he was right, he wasn't able to explain what reason there had been beforehand. He did, however, say that the police had to find out who was a terrorist – it is difficult to determine whether he was wilfully missing the point or not.

In clearly wishing to avoid discussion on the Kurdish issue, he summed up Turkey's problems in one word – 'mistrust'. He said that the people don't trust the military or the government; the government doesn't trust the military or the people, and the military doesn't trust the people or the government. He couldn't offer a solution to that problem.

Conclusion

The overwhelming inference from having observed proceedings in the 'W' case and from having met with so many different people who had had remarkably similar experiences, was that the government are determined to gag those who seek meaningful discussion on the Kurdish issue. It appears that the criminal courts are used as a vehicle for oppression, and the integrity of the rule of law has been compromised as a result.

It is not thought useful here to enumerate every single aspect of the authorities' failure to address the problem of torture. What the delegation observed was a complete failure of the legal process to protect detainees from ill-treatment which is then compounded by an unwillingness and inability to prosecute those responsible for it. The individual is unprotected, the perpetrator undeterred. A piece-meal approach seems no longer relevant when the problem is so prevalent and institutionalized.

The changes needed to protect people while in custody have been oft repeated: detainees must have access to a lawyer; the fact of an individual's detention must be open and recorded; independent medical practitioners must be able to give truthful reports without fear of reprisal; periods in custody must be shortened; detention records must be open to scrutiny; interrogations must be recorded or video-taped. It is the responsibility of the government to control the actions of individual civil servants through the rule of law. Put simply, the Turkish government must galvanize the legal and judicial process in order to control the military.

In order to observe its obligations under Article 3 the Turkish government must also ensure the swift and effective investigation and prosecution of those accused of torture. Prosecutors must be empowered to act on complaints swiftly and to instigate investigations even in the absence of express complaints. The onus cannot be on the fearful torture victim to instigate the prosecutorial process. Witnesses must be protected, those accused must be suspended from duty and victims must be protected from reprisals. The extent of the challenge dictates that only an independent judicial body headed at

ministerial level and with its own specifically trained prosecuting and investigating staff can hope to face the impunity of the security forces with any hope of success. Torture of detainees in Turkey would seem to be as rife now as ever before.

The challenge facing the authorities is that which they face across a range of issues: revitalizing the legal process to restrict the actions of the military. It is to be hoped that while torture remains denied and unchallenged by the Turkish Government its efforts to attain full membership of the EU will have little success.

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Appendix A

Indictment – ‘W’ Trial

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Preliminary no. 2002/3207

Principal no. 2002/

Indictment no. 2002/

Indictment

To the Criminal Court of First Instance
Diyarbakır

Plaintiff: Public Law

Accused:

- 1- Osman Baydemir: son of Mehmet and Azize, born in 1971, registered in Elidolu village, Diyarbakır city, Diyarbakır branch chairman of the Human Rights Association.
- 2- Fikret Saraçoğlu: son of Celal and Methiye, born in 1951, registered in İnönü neighbourhood, Siirt, Diyarbakır branch secretary of the Human Rights Association.
- 3- Selahattin Demirtaş: son of Tahir and Şadiye, born in 1973, registered in Atik, Palu district, Elazığ province, Diyarbakır branch treasurer, Human Rights Association.
- 4- Abdülkadir Aydın: son of Selahattin and Nuri, born in 1956, registered in Kooperatifler, Diyarbakır city, member of Diyarbakır branch Human Rights Association.
- 5- Reyhan Yalçındağ: daughter of Mehmet and Aysel, born in 1974, registered in Altıoluk, Maden, Elazığ, member of Diyarbakır branch Human Rights Association.
- 6- Mesut Danış Betaş: son of Mehmet and Medine, born in 1967, registered in Akdoğmuş, Eruh, Siirt, member of Diyarbakır branch Human Rights Association.
- 7- Pirozhan Doğrul: son of Fahrettin and Hediye, born in 1955, registered in Eskiocak village, Silvan, member of Diyarbakır branch Human Rights Association.

Offence: Contravention of Law no. 2908

Date of Offence: 15.03.2002

Preliminary document examined:

It has been ascertained that the accused, who are administrators of the Diyarbakır branch of the Human Rights Association, took a unanimous decision no. 186 on 15.03.2002 to organise a reception regarding Nevruz celebrations at the Journalists Association Club on 20.3.2002 between 18.30 and 20.30, in the decision taken they used the formulation Newroz. Since

this was in the character of a brochure and leaflet written in a language other than Turkish as determined in article 6 of the Law on Associations it is requested that the accused be tried in your court and convicted separately in accordance with the provisions of law no. 3005, article 64/1 of the Turkish Penal Code, article 77/1 of law no. 2908. 27.03.2002

Mustafa Çelenk 40789

Public Prosecutor

Institut Kurde de Paris

Appendix B

Indictment – Torture Trial

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T.R.
Şırnak
Public Prosecutor's Office

Preliminary No. 2000/676
Principal No. 2001/610
Indictment No. 2001/216

Şırnak

22.06.2001

Indictment
To the High Criminal Court
Şırnak

Plaintiff: Public Law

Wounded party complainants:

- 1- Mehmet Kartal: son of Ibrahim and Azime, born in 1956, registered in Gazipaşa neighbourhood, Şırnak, currently domiciled at Yeşilyurt neighbourhood, Benzer sok. no. 33, Şırnak.
- 2- Mehmet Baysal: son of Abdulaziz and Suphiye, born in 1981, registered in Cumhuriyet neighbourhood, Şırnak, currently domiciled at Gazipaşa neighbourhood, Adak sok. unnumbered, Şırnak.
- 3- Mehmet Ebuzeyitoğlu: son of Salih and Mahbup, born in 1953, registered in Belveren, Şırnak, domiciled at Yeşilyurt neighbourhood, Sema Küçüksöz cad, Güven sok. no. 14, Şırnak.
- 4- Derviş Algül: son of Abdullah and Hizni, born in 1964, registered in Gazipaşa neighbourhood, Şırnak, currently domiciled at Yeşilyurt neighbourhood, Yenişehir cad. Fırın sok. unnumbered, Şırnak.
- 5- Kamuran Kabul: son of Şihmus and Sultan, born in 1975, registered in Gazipaşa neighbourhood, Şırnak, currently domiciled in same neighbourhood, Kömürcüler sok. unnumbered, Şırnak.
- 6- Hacı Inan: son of Abdulbaki and Meryem, born in 1979, registered in Gazipaşa neighbourhood, Şırnak, currently domiciled in same neighbourhood, Sema sok. no.6, Şırnak.

Counsel: Lawyers: Cihan Aydın, Ayla Akad, Osman Baydemir and Metin Kılavuz from the Diyarbakır Bar.

- 7- Mahmut Bulduş: son of Hasan and Rahim, born in 1964, registered in Alkemer, Şırnak, currently domiciled at B.Evler neighbourhood, Dilber

sok. no. 56, Şırnak. Represented by: Mesut Beştaş from the Diyarbakır Bar.

Accused:

- 1- Uğur Selçuk Şener: son of Tahsin and Saniye, born in 1969, registered in Sağlık neighbourhood, İçel city, currently Commissioner in Anti-Terror Department, Istanbul Security Department.
- 2- Bülent Yılmaz: son of Hüsamettin and Tevrat, born in 1966, registered in Y. Bademözü, Horasan, Erzurum, currently branch director in Anti-Terror Department, Şırnak.
- 3- Faruk Yakıcı: son of Feyzullah and Münüre, born in 1962, registered in Gündüzbey, Yeşilyurt, Malatya, currently police officer in Security Directorate, Bağcılar district, Istanbul.
- 4- Ahmet Gök: son of Ali Osman and Safiye, born in 1972, registered in Kızılorta, Sandıklı, Afyon, currently police officer in Ankara Security Directorate.
- 5- Abdulkadir Yüce: son of Mahmut and Atife, born in 1973, registered in Tekeli, Oltu, Erzurum, currently police officer in Bursa Security Directorate.
- 6- Hatice Taslak: daughter of Kazım and Maksude, born in 1971, registered in Vardallı neighbourhood, Beşikdüzü, Trabzon, currently domiciled at Tekser Sitesi Judicial Residences, doctor in Şırnak State Hospital.
- 7- Erhan Kaştan: son of Hidayet and Naciye, born in 1974, registered in Demirciler, Serik, Antalya, currently doctor in Şırnak State Hospital.
- 8- Nuran Akmirza: daughter of Hüseyin and Cennet, born in 1972, registered in Apa village, Çumra, Konya, currently doctor in no. 2 Health Centre, Şırnak.
- 9- Vildan Baki: daughter of Sabahattin and Edibe, born in 1974, registered in Cumhuriyet neighbourhood, Yüreğir, Adana, currently doctor in Şırnak State Hospital.
- 10- Bülent Sarı: son of Sefen and Nazlı, born in 1974, registered in Çayağzı, Kırşehir city, currently doctor in no. 2 Health Centre, Şırnak.
- 11- Gelincik Semra Özten: daughter of Fahri Cengiz and Ayşe, born in 1973, registered in Örnekalın, Maçka, Trabzon, doctor in Şırnak State Hospital.

Offence: torture and mistreatment of accused in order to get them to confess their crimes (regarding accused Uğur Selçuk, Bülent, Faruk, Ahmet and A.Kadir);

Drawing up report in contravention of facts (regarding accused Hatice, Erhan, Nuran, Vildan, Bülent and Gelincik Semra)
Date of offence: 21.03.2000-03.04.2000 (for all accused)
Articles: 243/1, 33 and 39 of Turkish Penal Code (seven counts for accused Uğur Selçuk, Bülent, Faruk, Ahmet and A.Kadir);
339/1, 80, 31, 33 and 39 of Turkish Penal Code (seven counts for accused Nuran and Vildan);
339/1, 80, 31, 33 and 39 of Turkish Penal Code (for accused Bülent and Hatice);
339/1, 31, 33 and 39 of Turkish Penal Code (for accused Semra and Erhan);

Evidence:

- 1- allegations of complainants
- 2- statements of accused
- 3- duty documents of doctors dated 03.10.2000
- 4- duty documents of police dated 26.09.2000
- 5- registration records of accused
- 6- legal records of accused
- 7- report of the Forensic Department presidency dated 16.10.2000 (regarding complainants Mehmet Kartal and Derviş Algül)
- 8- reports of Diyarbakır Forensic Department Directorate of 26.10.2000 and 19.01.2001 (regarding the other complainants)
- 9- photocopies of reports compiled by accused doctors and contents of file.

Preliminary documents and appendices examined

An operation was carried out by officers from the Anti-Terror Department of the Şırnak Security Directorate directed at members of the PKK terror organisation in Şırnak city on 21.03.2000, arresting Mehmet Kartal, Mahmut Bulduş, Derviş Algül, Kamuran Kabul and Hacı İnan of the complainants, Mehmet Ebuzeyitoğlu being arrested subsequently on 23.05[3?].2000 and Mehmet Baysal on 28.03.2000, at the end of the detention period the accused were sent to the Şırnak Public Prosecutor's office, where after their statements had been taken they were sent to the Şırnak Criminal Court with a request for a remand in custody, a decision being taken to remand the accused; Kamuran Kabul accepted the accusation in the police station, at the prosecutor's office and in the presence of the judge, as for the other

complainants they rejected their declarations in the police station in the prosecutor's office and in the presence of the judge; an objection by the complainants was rejected by the Şırnak Criminal Court of First Instance, the documents were sent to the Diyarbakır State Security Court [DGM] Prosecutor's Office, where public prosecutions were opened under article 125 of the Turkish Penal Code regarding Mehmet Baysal, Mehmet Ebuzeyitoğlu, Mahmut Bulduş and Kamuran Kabul and under article 168/2 regarding Mehmet Kartal, Derviş Algül and Hacı Inan, and a decision made by the DGM to keep them in custody.

In an application made by the complainants' lawyers on 18.04.2000 it was alleged that the police had carried out torture and ill treatment and that the accused doctors had provided reports concealing this situation in contravention of the truth. An investigation by our Public Prosecutor's office concluded that the allegations were abstract, taking a decision not to prosecute no. 2000/213 dated 18.07.2000 on the grounds that there was no concrete evidence to justify an investigation. Following an appeal by the complainants' lawyers the decision not to prosecute taken by our prosecutor's office was overturned by the presidency of the Siirt High Criminal Court on 01.09.2000.

In the resulting investigation statements were taken from each of the complainants separately and in these statements they alleged that, in summary, during their detention they had been subjected to torture and mistreatment, being hosed with pressurised water, that electric current had been administered to their sexual organs and little toes, that they had been punched, made to lie naked on a wet floor and suspended, claimed that in the daily judicial reports during the detention period this was not noted and complained about the accused.

According to a report of the Diyarbakır Forensic Department Directorate, to which the complainants were referred, dated 26.10.2000, Mehmet Baysal, Mehmet Ebuzeyitoğlu and Mahmut Bulduş had not been subjected to torture or mistreatment, whereas, following a judicial investigation a decision should be made regarding Hacı Inan, while it was stated that as the result of an investigation Kamuran Kabul had not been subjected to mistreatment and torture, and after Mehmet Kartal and Derviş Algül had been referred to the Istanbul Forensic Office Presidency it was stated that the lesions on the complainants had come about as a result of blunt trauma and that their lives had not been in danger and that they had been injured in a way that meant they would be off work for two days.

The accused police officers, in summary, stated that they had not tortured or ill-treated the complainants, that they had obtained reports throughout the

detention period, and that there was no evidence in these reports, whereas the accused doctors stated that they had totally undressed the complainants and examined them in privacy and had taken their declarations while compiling the reports in accordance with procedure and stated that they rejected the accusations.

Since it has been ascertained from the file that the accused police officers carried out torture and mistreatment of the complainants in order to get them to confess their crimes and that the accused doctors committed an offence by compiling reports in contravention of the facts it is requested that the accused be tried and convicted in accordance with the articles detailed above.

Şırnak Public Prosecutor
No. *illegible*

Gülseren Özyurt
Air Personnel Lieutenant
Head of Personnel Department

Photocopy of original

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Appendix C

Torture Trial –

Document Related to Preliminary Investigations

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Lawyer Cihan Aydın
Lawyer Ayla Akat
Lawyer Metin Kılavuz
Lawyer Osman Baydemir
Aliemri 4. Sok Şafak Apt.
Kat: 2/6, Diyarbakır
Tel: 0412-223 3033
Fax: 0412-223 5737
To the Şırnak Public Prosecutor's Office via the
Diyarbakır Public Prosecutor's Office

Those making a formal complaint:

Kamuran Kabul, Hacı Inan, Mehmet Kartal, Derviş Algül, Mehmet Ebuzeytoğlu,
Mehmet Baysal – Midyat Special Type Closed Prison.

Counsel: Lawyers Cihan Aydın, Metin Kılavuz, Osman Baydemir, Ayla Akat –
Aliemri 4. Sok. Şafak Apt. Kat: 2/6 Diyarbakır.

Perpetrators: Police officers at Şırnak Security Directorate who tortured and
mistreated the accused while statements were being taken and doctors who
drew up reports contrary to reality.

Offence: Torture and mistreatment of defendants in custody, uttering insults and
threats etc (for the security forces), drawing up untrue reports concealing torture
(for doctors)

Facts: Clients Kamuran Kabul, Hacı Inan, Mehmet Kartal and Derviş Algül were
detained on 21 March 2000, Mehmet Ebuzeytoğlu was detained on 24.03.2000
and Mehmet Baysal was detained on 27.03.2000, all being taken from their
homes in Şırnak city in an unlawful manner late at night to the Şırnak Security
Directorate by the security forces. Our clients made the following statements to
us on 19.04.2000 in Midyat Special Type Closed Prison.

Kamuran Kabul: "I run a small kiosk in Şırnak city. I sell small items and
newspapers. At about 05.00 on 21.03.2000 while I was asleep there was a
knock at my door. On opening the door persons wearing ski masks and
special forces uniforms came in and after roughly searching the house
(certain magazines freely on sale were found) they blindfolded me and put
me in an armoured vehicle. I recognised two of them from their voices. One
was a police officer named Faruk from the Security Directorate and the
other was a plainclothes officer named Yusuf Tanrı. I recognised their
voices because they were constantly buying newspapers and such like
from me. They swore constantly at me in the vehicle and kicked and
punched me. They took me straight to the Security Directorate. I knew it
was the Security Directorate from the route as I was born and grew up in
Şırnak and from what I could see under the blindfold. I was placed in an

approximately 4 square metre cell on arrival at the security Directorate. After about an hour they came and took me away. I must state at this point that while at the Security Directorate I was blindfolded. They asked me why I read the magazines they found during the search and I said they were legal publications. They then asked me to strip. I undressed down to my underpants. When I didn't want to take them off they kicked and punched me. I was frightened and took them off. They laid me down on something metal, tied my hands and feet and poured a liquid over me. They then tied a cable to my little toe and my penis and began to give me electric shocks. From time to time they moved the cables over various parts of my body and when I screamed one of the police officers shouted 'goal!' They subsequently hosed me with cold water and then took me back to my cell. About an hour later they took me back to the place where they had tortured me. First they started to kick and beat me. One of my teeth was broken and my left eardrum burst. They again stripped me naked. They hit my sexual organ and testicles with an object, raped me with a truncheon and twisted my testicles. They took me back to the cell. After a while they came for me again. They again gave me electric shocks and raped me with a truncheon and hung me on the Palestinian hook. They insisted I say something, even if it was a lie. They took me to a cell and while I was there I heard my wife's voice. While trying to commit suicide with the cord of my track suit they took me from the cell to Superintendent Selçuk's office. He lifted my blindfold and told me to tell him something 'otherwise I'll kill you'. When I said I didn't know anything he said: 'Bring his old woman'. They blindfolded me and brought my wife and asked her name. He threatened me, saying: 'Either you'll talk or we'll do to your wife what we did to you.' Whereupon I was forced to give the names of M. Salih Yayan, Abdurrahman Acar, Mehmet Ebuzeytoğlu, Mehmet Baysal and M. Selim Basan, whom I knew previously but had no relationship with the organisation. My eyes were constantly blindfolded during my 11 days in police custody. While blindfolded they made me sign many documents.

If I am not mistaken it was on the fourth day after being detained that they took me to a doctor. Before they threatened me, saying: 'If you say you've been tortured we'll take you back and do it worse'. I was frightened and didn't tell the doctor I'd been tortured. There was swelling in my feet and swelling and bruising under my eyes. When the doctor asked the reason I said my feet were due to rheumatism and my eyes due to a fall. The doctor wrote me a prescription for 'Felden Gel' but they didn't give me this medication.

They subsequently warned me again as regards not saying anything on the subject of torture before being taken to the Prosecutor and then they took us to Court. We were unable to tell the prosecutor or the judge that we had been tortured out of fear. I was remanded in custody and taken to Şırnak prison. After three days they transferred us to Mardin prison. However, due to our having marks of torture on various parts of our body they said they would be unable to accept us and sent us (11 and me) back to Şırnak

prison. As soon as we got back to Şırnak we were taken to the doctor accompanied by the prosecutor on 03.04.2000. This time we informed the doctor that we had been tortured and of the kind of torture to which we had been subjected. But I don't know what kind of report was written by the doctor. I am making a formal complaint regarding those who tortured me."

Doctors' Reports drawn up regarding Kamuran Kabul (place, date, registration no. content)

Report no. 112, 21.03.2000, No. 2 Health Centre – no sign of beating or violence.

Report no. 189, 24.03.2000, No. 3 Health Centre - no sign of beating or violence.

Report no. 198, 27.03.2000, No. 3 Health Centre - no sign of beating or violence.

Report no. 217, 29.03.2000, No. 3 Health Centre - no sign of beating or violence.

Report no. 236, 31.03.2000, No. 3 Health Centre - no sign of beating or violence.

Report no. 254, 03.04.2000, No. 3 Health Centre – 'general situation good, conscious, in physical examination lessening change of colour on both feet linked to edemic swelling, tenderness of testes, no other visible lesions.'

While client Kamuran Kabul was in police custody he was subjected to mistreatment and torture such as electric shock, pressurised water, twisting of the testicles, beating, insults and threats, rape with truncheon, prevented from going to toilet, deprived of food and water, stripped, blindfolded etc.

Derviş Algül: "I was taken into custody on 21 March 2000 at about 2 or 3 in the morning by police raiding my house in Şırnak city. There was a loud knock at my door. As soon as I opened the door some people covered my eyes with their hands and then immediately blindfolded me. I was therefore unable to see any of the people who took me into custody. They then put me in a vehicle blindfolded with my hands tied. After waiting for a while in the vehicle it moved off. They started to swear at me and punch me in the vehicle. I don't know where they took me, but there was the sound of walkie-talkies. They put me in a very small cell. I was held for three days in this cell without being asked anything. On the first day they didn't give me anything to eat. On the second day they gave me a little bread and helva [sesame oil based sweet]. They me to the toilet twice a day, morning and evening. Sometimes only once a day. At the end of the third day they took me to make a statement. They asked me questions regarding certain persons. When I said I didn't know anything about these people they told me to strip. Out of fear I complied. They began to hit me on the palms with a truncheon. They swore at me and uttered threats throughout the process

of taking a statement. They laid me down on my back and tied my hands and my feet. After raising my feet into the air they began to hit them with a truncheon. I must have fainted as they loosened my feet and hands and began to kick me. I came round. They dragged me to my feet and put something wet and rough (like salt) on the soles of my feet and my hands. They told me to rub my hands and my feet, which I did. They then hosed me with cold pressurised water. After rubbing ointment into my back and my legs they took me back to the cell. After being in the cell for two or three hours I felt the need to go to the toilet. I banged the door and called for someone to come. After a while some people came and took me to the toilet. As soon as I sat down nearly a handful of blood spilt from my anus. I can't exactly remember but 3 or 4 days later they took me and several others to the No. 3 Health Centre in Şırnak. On the way they warned us not to say anything about being tortured. The doctor examined us and when he asked if we had been tortured I said no out of fear.

They took us back to the first place we had been held. A day or a day and a half later they took me again to give a statement, or more precisely to torture. As on the first occasion they asked me about certain names. When I said I didn't know anything they again laid me down for falaka. They began to beat the soles of my feet and palms of my hands with truncheons. One of them said in Kurdish 'If you don't acknowledge these and don't give us names we'll bring your son Aslan and kill him in front of you.' They again hosed me with cold pressurised water. They rubbed ointment into my back and other places and put wet, rough powder into my hands and told me to rub it into my hands and feet. They then took me back to the cell. Two or three days later they again took me to torture. They threatened me, saying: 'Either you'll talk or we'll kill you'. When I said I didn't know anything they again told me to strip. They began to punch me and kick me. They then took my photo and made me sign many documents while blindfolded and took my fingerprints. A few days later we were taken to court. The officials there asked me if we had been tortured. We didn't say anything out of fear. I was subsequently remanded in custody and taken to prison. On the second night in prison I collapsed and threw up blood. They took me to Şırnak State Hospital. After some interventions they took me back. A few days later they took us to Mardin Prison. However, as there were marks of torture on our bodies the Prison Administration told us they could not admit us in this state and sent us back to Şırnak Prison. As soon as we arrived back in Şırnak we were taken to a doctor. I had a large bruise on my left calf. When the doctor asked I said it was the result of torture. I don't know what the doctor wrote in his report. I was constantly blindfolded during the 11 days I was held in custody. I therefore didn't see who tortured me, but I am making a formal complaint about them."

Doctors' Reports drawn up regarding Derviş Algül (place, date, registration no. content)

Report no. 116, 21.03.2000 no. 2 Health Centre: no sign of beating or violence.

Report no. 183, 24.03.2000 no. 3 Health Centre: no sign of beating or violence.

Report no. 193, 27.03.2000 no. 3 Health Centre: no sign of beating or violence.

Report no. 218, 29.03.2000 no. 3 Health Centre: no sign of beating or violence.

Report no. 241, 31.03.2000 no. 3 Health Centre: no sign of beating or violence.

Report no. 257, 03.04.2000 no. 3 Health Centre: "general situation good, conscious, 3 cm diameter lesion along femur lateral, bruising purple in the middle yellow on the edges, healing, at least 2 or 3 days old. No other lesions found."

During the 11 days client Derviş Algül remained in police custody he was subjected to mistreatment and torture such as falaka, pressurised water, beating, insults and threats, prevented from going to toilet, given limited food and water, stripped, blindfolded etc.

3- Hacı İnan: At around 03.30 on the night of 21.03.2000 while I was asleep there was a knock at my door. As soon as I opened the door armed, masked persons came in with their shoes on. They were swearing and shouting. My children were crying out of fear. After they had carried out a search they blindfolded me and put me in a vehicle. When I asked why they were taking me away they replied: 'You will find out at the Security Directorate.' They took me to the Anti-Terror branch at the Security Directorate. As soon as I arrived they stripped me naked, laid me on a metal table blindfolded and bound my hands and feet. They poured a liquid over me. They tied two electric cable to me, one to my little toe, the other to my sexual organ. Before giving shocks they turned the music on loudly and then began. After a long time inflicting electric shocks they began to hose my body with pressurised cold water. Following this they laid me on the floor and squeezed my testicles and sexual organ. This torture went on for hours. They then took me semiconscious back to the cell. After remaining about a day in the cell they took me back to torture. After being stripped naked they hosed me with pressurised cold water, in particular my sexual organ. They made me do a traditional folk dance naked. Then they poured something over me and I started to itch. They began to punch, kick and hit me with a truncheon. They hit me around the head in particular. After this torture they threw me in a cell. After a time that I don't exactly recall they took me to a doctor. On the way to the Health Centre they threatened us, saying: 'Don't say anything to anybody or you'll die'. The doctor (the doctor at the Tekser Health Centre) looked at us without using any gadgets. He didn't ask me anything. They subsequently took us back to the custody centre. I was very thirsty as they hadn't given us water for

days. They took me to torture again. They told me to rub a salt-like powder they put on the floor into my hands. I did this and they then beat the palms of my hands with truncheons. They squeezed my testicles and hosed me with pressurised water. They wanted me to swear at the other detainees and when I refused to do this they beat me. This and similar tortures continued for 7 days. Three days before going to court they stopped the torture. While in custody I was blindfolded. They constantly uttered death threats, saying they would bring my mother and sister and rape them. I didn't see these persons as I was blindfolded. I was made to sign many documents without knowing the content. We were subsequently taken to court. However the prosecutor and judge did not ask us if we had been tortured. We were remanded in custody and taken to the Şırnak Prison. After a while we were taken with a group of detainees to Mardin Prison. However, as there were marks of torture on our bodies they did not accept us and sent us back to Şırnak. After a doctor's check up in the presence of the prosecutor we were sent to Mardin Prison and from there to Midyat Prison, where we are currently being held. I didn't see the people who tortured me but I am making a formal complaint about them.

Doctors' Reports drawn up regarding Hacı İnan (place, date, registration no. content):

Report no. 118, 21.03.2000, no. 2 Health Centre: general situation good, conscious (.....) slight limp in right knee due to past fracture (.....) bruising on palm of hand.

Report no. 186, 24.03.2000, no. 3 Health Centre: no sign of beating or violence.

Report no. 201, 27.03.2000, no. 3 Health Centre: no sign of beating or violence.

Report no. 212, 29.03.2000, no. 3 Health Centre: no sign of beating or violence.

Report no. 247, 31.03.2000, no. 3 Health Centre: no sign of beating or violence.

Report no. 263, 04.04.2000, no. 3 Health Centre: no sign of beating or violence.

Client Hacı İnan was subjected to torture and mistreatment such as electric shock, pressurised water, twisting of testicles, falaka, beating, insults, threats and swearing, access to toilet prevented, limited food and drink, stripped, blindfolded etc. during the period he was in custody.

4- Mehmet Kartal: "Between 06.00 and 07.00 on 21 March 2000 there was a knock at my door. I opened the door. 7 or 8 plainclothes persons said they were going to carry out a search in the house. They made me look at the wall and stopped me looking left or right. They searched the house but were unable to find anything incriminating. They subsequently handcuffed and blindfolded me, and, without giving any reason, said they were taking

me to the Security Directorate. They took me away. While I was in custody they constantly insulted me. On my fourth day in custody a police officer kicked and beat me. Immediately after this beating I was stripped and hosed with pressurised water. After being kept on a concrete floor for half an hour I was taken into interrogation. Then they again hosed me with pressurised water. After a while they told me to put my clothes on and they took me to a cell. I didn't see who tortured me as I was blindfolded. I was later taken to the Prosecutor. On the way I was warned by the police not to say anything to the Prosecutor regarding what I had experienced in custody. For this reason I was unable to tell the Prosecutor I had been tortured. The Prosecutor and Judge did not ask me a question about this. After seeing the Prosecutor I was taken in front of a judge who remanded me in custody. I was then taken with the other persons who'd been taken to the Prosecutor with me to Şırnak Prison. A while later they sent us to Mardin Prison. However, as there were marks of torture on our bodies they did not accept us and we were sent back to Şırnak. After a doctor's check up in the presence of the prosecutor we were again sent to Mardin Prison. However, I don't know if a report was drawn up as a result of this examination. If there was I don't know its content. I am at present on remand in Midyat Prison."

Doctors' Reports drawn up regarding Mehmet Kartal (place, date, registration no. content):

Report no. 120, 21.03.2000, no. 2 Health Centre: no sign of beating or violence.

Report no. 188, 24.03.2000, no. 3 Health Centre: no sign of beating or violence.

Report no. 196, 27.03.2000, no. 3 Health Centre: no sign of beating or violence.

Report no. 219, 29.03.2000, no. 3 Health Centre: no sign of beating or violence.

Report no. 243, 31.03.2000, no. 3 Health Centre: no sign of beating or violence.

Report no. 256, 03.04.2000, no. 3 Health Centre: "general situation good, conscious, in physical examination 3 cm diameter bruising on left eyelid, 2 or 3 days old, healing. No other lesion found."

Client Mehmet Kartal was subjected to torture and mistreatment such as pressurised water, beating, insults, threats and swearing, stripping, blindfolding etc. during the period he was in custody.

5- Mehmet Ebuzeitoğlu: "At between 03.00 and 04.00 on 24.03.2000 seven or eight plainclothes and uniformed masked men with only their eyes visible raided my house. As soon as they came in they turned my son Ömer and myself towards the wall, sat us down and prevented us looking around. They searched the house but were unable to find anything incriminating.

They told me to put on my clothes and said they were taking me away without giving any reason. They took me to an armoured vehicle 200 metres from my house. I was not blindfolded at that time. As soon as I reached the vehicle they blindfolded me with a piece of cloth and put me in the vehicle. On the first day I was taken to the Security Directorate all my clothes were immediately removed and, as far as I could tell from the sound, water from plastic bottles was poured over me. After waiting for an hour they allowed me to get dressed. I was blindfolded at this time. Also, I was insulted while being taken to the toilet. I was subsequently taken to the Prosecutor with other people who had been detained. The Prosecutor sent us to court and we were remanded in custody. After the custody decision we were taken to Mardin Prison. However, as some of us had clear marks of torture, in particular the marks on Kamuran Kabul's body were very noticeable, Mardin Prison did not admit us. We were taken to Şırnak and had another doctor's examination. After this examination, at which the prosecutor was present, we were sent to Mardin Prison. After staying there for a while we were transferred to Midyat Prison.

Doctors' Reports drawn up regarding Mehmet Ebuzeyitoğlu (place, date, registration no. content):

Report no. 8364, 25.03.2000, Şırnak State Hospital: no sign of beating or violence.

Report no. 8589, 27.03.2000, Şırnak State Hospital: no sign of beating or violence.

Report no. 8835, 29.03.2000, Şırnak State Hospital: no sign of beating or violence.

Report no. 245, 31.03.2000, no. 3 Health Centre: no sign of beating or violence.

Report no. 255, 03.04.2000, no. 3 Health Centre: no sign of beating or violence.

Client Mehmet Ebuzeyitoğlu was subjected to torture and mistreatment such as being stripped, having cold water poured over him, insults, threats and swearing, blindfolding etc. during the period he was in custody.

Mehmet Baysal: "I am a pump attendant at the Son Petrol Tourism Petrol station. At around 02.00 on 27.03.2000 the Superintendent of the Anti-Terror Branch (I recognised his voice) rang and asked if my boss was there. I replied that my boss wouldn't be there at that time. About 15 minutes later the Superintendent came with a few police officers and took me to my house. After a search had been carried out there (nothing incriminating found) they blindfolded me and put me in a vehicle. They threatened and swore at me and beat me in the vehicle on the way to Şırnak Security Directorate. As soon as I got there they took me down to the basement floors blindfolded. They told me to take off all my clothes. I was frightened and did so. For about an hour they hosed me with pressurised

cold water. They then started to kick and punch me. This lasted 15-20 minutes. They asked me about certain people and when I said I didn't know them they laid me on my back and tied me from my armpits and calves. They gave me electric shocks to my little toe and sexual organ. They again asked some names and when I said I didn't know them they again inflicted electric shocks. This torture lasted about an hour. They told me to dress, which I did, and they took me back to the cell. I didn't see the faces of the people who tortured me, as I was blindfolded. But I would recognise their voices. They made me sign many documents while blindfolded without reading them and without permitting me to read them. They threatened me before being taken to the doctor, saying: 'If you say anything we'll kill you'. They took me to the doctor a few times. Although there was swelling and bruising on my face and various parts of my body the doctor didn't ask the reason for this and I couldn't tell him out of fear. Once or twice during examination there were police with us.

I was subsequently taken to court. Neither the prosecutor nor the judge asked whether we had been tortured. As the police waited at the prosecutor's door I was too frightened to say. We had been taken to court under very harsh conditions.

Doctors' Reports drawn up regarding Mehmet Baysal (place, date, registration no. content):

Report no. 8604, 23.03.2000, Şırnak State Hospital: no sign of beating or violence.

Report no. 261, 03.04.2000, no. 3 Health Centre: "states he has pain in the ears, general situation good, conscious, testes sensitive to the touch, in the examination no sign of beating or violence encountered.

Client Mehmet Baysal was subjected to torture, mistreatment and inhumane treatment such as being stripped naked, electric shock, pressurised cold water, insults, threats and swearing, being left hungry and thirsty, blindfolding etc. during the period he was in custody.

As a result of this torture and mistreatment our clients were forced to sign many documents, the content of which they had absolutely no information, and were remanded in custody and sent to prison based on these documents. It is not known how these statements were obtained as some of the clients know no Turkish. More correctly they were asked to sign a scenario prepared by the police, and they signed on account of the pressure put on them by the torture.

Just as the torture suffered by our clients does not comply with any understanding of law or humanity it is also in contravention of national and international agreements. It is clearly stated in article 135-a of the Code of Criminal Procedure that statements obtained using methods listed under the heading banned methods of questioning shall not be admissible.

Article 3 of the European Convention on Human Rights also prohibits all manner of torture, inhuman or degrading treatment.

Our clients were taken to a doctor on various dates that we have detailed above. However they had been threatened by the police not to mention the torture to which they had been subjected. The same threats were also uttered before they were sent to the Prosecutor's Office. Both the doctors and the prosecutor and judge ignored the pitiful situations of the clients and did not even ask whether they had been tortured (despite the visible signs of torture on their faces and bodies). Therefore, despite the fact that the clients were examined on several occasions by doctors when the signs of torture were fresh and easy to ascertain reports were drawn up to the effect that "no sign of beating or violence was seen". This adds further credibility to the declarations of our clients in this regard. On account of these threats, the duress they were under and the fear that they would face further torture prevented them telling the doctor, prosecutor and judge of the torture they had suffered. The doctor, prosecutor and judge ignored the signs of torture and mistreatment on various parts of the clients' bodies. It is an evident and undeniable conclusion to draw that the clients suffered such severe torture that even three days after (03.04.2000) the signs could be seen with the naked eye without need for a laboratory examination, and that the initial doctor's reports were far from the truth. Also, despite the fact that most of the clients were subjected to electric shock treatment they were not thoroughly examined in order to ascertain this method of torture. The examination that took place was merely designed to establish visible findings and no check was carried out to establish what damage this torture had caused to internal organs.

Conclusion and Request: In light of the above declarations we respectfully request that the police officers who inflicted torture and degrading treatment on our clients throughout the period of custody and the doctors who drew up and signed reports concealing this torture, despite the visible signs of torture on the faces and bodies of the clients, be ascertained and the necessary public prosecution be lodged, and that in accordance with the statements of our clients they be subject to a full medical check-up at a properly equipped centre and forensic reports drawn up.

Appendices:

Copy of power of attorney

Doctors' Reports regarding all clients drawn up on various dates

Copies of interviews we carried out with clients in Midyat Special Type Closed Prison on 19.04.2000

Representatives of Complainants-Wounded Parties

Lawyers Cihan Aydın, Metin Kılavuz, Osman Baydemir and Ayla Akat

Appendix D

Domestic Legislation - Excerpts

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THE CONSTITUTION OF THE REPUBLIC OF TURKEY

ARTICLE 17. Everyone has the right to life and the right to protect and develop his material and spiritual entity. The physical integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law; and shall not be subjected to scientific or medical experiments without his or her consent. No one shall be subjected to torture or ill-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity.

Cases such as the execution of death penalties under court sentences, the act of killing in self-defence, occurrences of death as a result of the use of a weapon permitted by law as a necessary measure during apprehension, the execution of warrants of arrest, the prevention of the escape of lawfully arrested or convicted persons, the quelling of riot or insurrection, or carrying out the orders of authorized bodies during martial law or state of emergency, are outside of the scope of the provision of paragraph 1.

ARTICLE 42. No one shall be deprived of the right of learning and education.

The scope of the right to education shall be defined and regulated by law.

Training and education shall be conducted along the lines of the principles and reforms of Atatürk, on the basis of contemporary science and educational methods, under the supervision and control of the state. Institutions of training and education contravening these provisions shall not be established.

The freedom of training and education does not relieve the individual from loyalty to the Constitution.

Primary education is compulsory for all citizens of both sexes and is free of charge in state schools.

The principles governing the functioning of private primary and secondary schools shall be regulated by law in keeping with the standards set for state schools.

The state shall provide scholarships and other means of assistance to enable students of merit lacking financial means to continue their education. The state shall take necessary measures to rehabilitate those in need of special training so as to render such people useful to society.

Training, education, research, and study are the only activities that shall be pursued at institutions of training and education. These activities shall not be obstructed in any way.

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 and education and the rules to be followed by schools conducting training and education in a foreign language shall be determined by law. The provisions of international treaties are reserved.

ARTICLE 90. The ratification of treaties concluded with foreign states and international organisations on behalf of the Republic of Turkey, shall be subject to adoption by the Turkish Grand National Assembly by a law approving the ratification.

Agreements regulating economic, commercial and technical relations, and covering a period of no more than one year, may be put into effect through promulgation, provided they do not entail any financial commitment by the state, and provided they do not infringe upon the status of individuals or upon the property rights of Turkish citizens abroad. In such cases, these agreements must be brought to the knowledge of the Turkish Grand National Assembly within two months of their promulgation.

Agreements in connection with the implementation of an international treaty, and economic, commercial, technical, or administrative agreements which are concluded depending on an authorisation given by law shall not require approval by the Turkish Grand National Assembly. However, agreements concluded under the provision of this paragraph and affecting the economic, or commercial relations and private rights of individuals shall not be put into effect unless promulgated.

Agreements resulting in amendments to Turkish laws shall be subject to the provisions of the first paragraph.

International agreements duly put into effect carry the force of law. No appeal to the Constitutional Court can be made with regard to these agreements, on the ground that they are unconstitutional.

TURKISH PENAL CODE

Article 155. Whoever, in circumstances other than those indicated in the foregoing Articles, publishes editorials to incite people to violate the laws of Turkey or endangers the security of the country, or makes publications or suggestions to cause unwillingness of the people to render military service or renders speeches to this effect in public meetings or in places where people have gathered, shall be imprisoned for two months to two years and shall be punished by a heavy fine of 4 500 to 36 000 Lira (CHECK).

Article 158. Whoever insults the President of Turkey in his presence, or engages in aggressive publication against the President of Turkey, shall be punished by heavy imprisonment for not less than three years.

Whoever uses aggressive language against the President of Turkey in his absence, shall be imprisoned for one to three years.

Where the aggression is done by allusion or hint, without mentioning the name of the President of Turkey, if there is presumptive evidence beyond reasonable doubt that the aggression was directed toward the person of the President of Turkey, the aggression shall be considered as expressly made against the President.

Whoever acts indecently or disrespectfully toward, or whoever makes indecent or disrespectful publications about the office or the person of the President of Turkey, shall be punished by imprisonment for six months to three years.

Article 159. Whoever overtly insults or vilifies the Turkish nation, the Republic, the Grand National Assembly, or the moral personality of the Government or the military or security forces of the State or the moral personality of judicial authorities, or overtly engages in aggressive acts which arouse suspicion about the legitimacy of the Grand National Assembly, shall be punished by imprisonment for one to three years.

If the name of the victim of the crimes specified in paragraph one is not explicitly mentioned, or if the words involving insult or aggression are not made explicit, in case there is undoubted presumptive evidence to the effect that one of the persons mentioned in paragraph one was insulted or degraded, it shall be treated as if the victim's name was explicitly mentioned and the words of insult, degradations or aggression were explicitly uttered.

Whoever overtly curses the laws of the Turkish Republic or the decisions of the Grand National Assembly, shall be punished by imprisonment from 15 days to 6 months imprisonment.

Where the act of insult or vilification is committed in a foreign country by a Turk, the punishment shall be increased by not less than one third.

Article 312. Whoever openly praises or speaks favourably of an action, which, by law, is a felony; or incites people to disobey laws, shall be punished by imprisonment for six months to two years.

Whoever openly incites people to vengeance and enmity against each other based on differences of social class, race, religion, religious sect or region in such a way as to constitute danger to public security shall be punished by imprisonment for 1 year to 3 years.

Whoever insults a part of the people in a way that is humiliating and damages their honour shall be punished in accordance with paragraph one.

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TURKISH ANTI TERROR LAW (Law No. 3713)

TEXT OF THE LAW AMENDING ARTICLE 8

(Law No. 4126)

Unofficial Translation

"Article 8- No one may engage in written and oral propaganda aimed at disrupting the indivisible integrity of the State of the Turkish Republic, country, and nation Meetings, demonstrations and marches with this aim may not be engaged in. Those who engage in such deeds will be sentenced to from one to three years in prison and given a heavy fine of from TL 100 million to TL 300 million. In case the offense is repeated, punishment will not be limited to a fine.

If propaganda stated in the first paragraph is carried out by means of periodicals specified in Article Three of Press Law No.5680, and if periodical appears less often than once a month, the owners will be punished with a fine equivalent to 90 % of the average value of sale amount of sales during the previous month. However, this amount cannot be less than TL 100 million. The legally responsible directors of these periodicals are to receive a fine half the size of that given to the owners and a prison sentence of between six months and two years.

If the propaganda specified in the first paragraph is carried out through mass media other than periodicals specified in the second paragraph or other printed materials, the legally responsible (editors) and the owners of the mass media concerned will be imprisoned from six months to two years, and will be fined between TL 100 million and TL 300 million. Furthermore, if this propaganda is carried out via radio or television, the court can decide to prohibit broadcasting by the relevant radio and TV station from one to 15 days.

If acts specified in the first paragraph are carried out through the mass media specified in the second and third paragraphs, punishment will be increased by between one third and a half."

THE LAW CONCERNING CRIMES COMMITTED AGAINST ATATÜRK NO. 5816, ADOPTED ON JULY 25, 1951

Article 1

Anyone who publicly insults or curses the memory of Atatürk shall be imprisoned with a heavy sentence of between one and three years.

A heavy sentence of between one and five years shall be given to anyone who destroys, breaks, ruins, or defaces a statue, bust, or monuments representing Atatürk or the grave of Atatürk.

Anyone who encourages others to commit the offences outlined in the paragraphs above will be punished as if committing the crime.

Article 2

If the offences outlined in the above article are committed by two or more persons in a group in public areas or areas open to the public or by means of the press, the sentence shall be increased by half. If the offences outlined in the second paragraph of Article 1 are committed using violence or with the attempted use of violence, the sentence shall be doubled.

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Appendix E

UN Resolution on the Declaration on the Right and Responsibility of Individuals - Excerpts

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**Declaration on the Right and Responsibility of Individuals,
Groups and Organs of Society to Promote and Protect Universally
Recognized Human Rights and Fundamental Freedoms**

United Nations General Assembly resolution 53/144

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organizations, associations or groups;
- (c) To communicate with non-governmental or intergovernmental organizations.

Article 6

Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- (b) As provided in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

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**'W' & Torture:
Two Trial Observations**

Institut kurde de Paris

**Kurdish Human Rights Project
Bar Human Rights Committee
Human Rights Association**

September 2002

'W' & Torture: Two Trial Observations

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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 within 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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The Bar Human Rights Committee (BHRC) is the international human rights arm of the Bar of England and Wales. It is an independent body primarily concerned with the protection of the rights of advocates and judges around the world. It is also concerned with defending the rule of law and internationally recognised legal standards relating to the right to a fair trial. The remit of the Bar Human Rights Committee extends to all countries of the world, apart from its own jurisdiction of England & Wales.

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The Human Rights Association (IHD) was established by 98 human rights defenders on 17 July 1986. IHD strives for the creation of social, political and cultural conditions that are in line with the democratic standards and human dignity in Turkey. During 15 years of existence, the IHD has organised more than 70 symposium/conference and public debates on several human rights issues and more than 15 campaigns on specific issues ranging from freedom of opinion to the abolishment of death penalty.

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