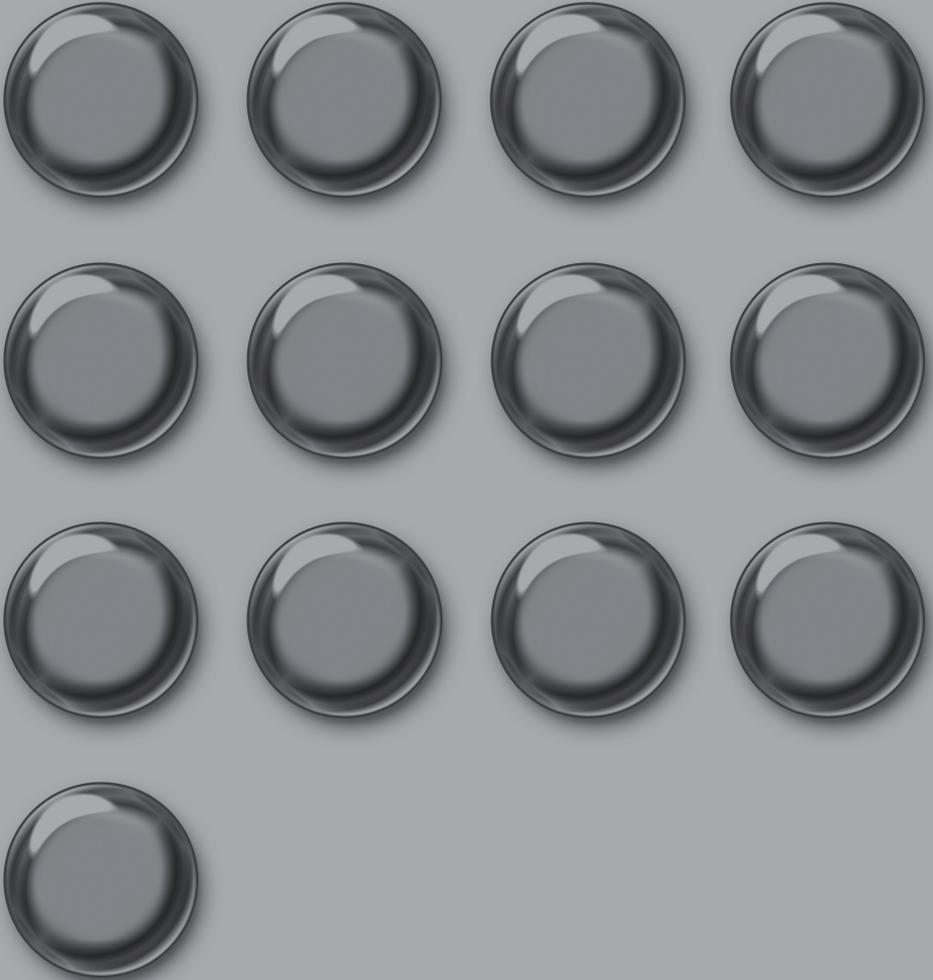


Fact-Finding Mission Report

March 2005

“Thirteen Bullets”

Extra-judicial killings in Southeast Turkey



“THIRTEEN BULLETS”

EXTRA-JUDICIAL KILLINGS IN SOUTHEAST TURKEY

FACT-FINDING MISSION REPORT

MARCH 2005

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

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FOREWORD

The Kurdish Human Rights Project (“KHRP”) sent a fact finding mission to a number of cities in Kurdish region of Turkey, including Van, Diyarbakır, Mardin including its district Kızıltepe and Hakkari between the 16 December 2004 and the 21 December 2004. The mission’s task was to investigate two extra-judicial killings in Hakkari and Kızıltepe and to gauge and give credit to areas of improvement in human rights abuses but also to pin point areas of continuing concern.

The mission members were Bill McGivern, Joanna Wood and Roberta Harvey all barristers from 10-11 Gray’s Inn Square.

The mission met with the İHD (Human Rights Association), Bar Associations of Van, Diyarbakır and Mardin, Lawyers defending cases of alleged extra-judicial killings, family members of the victims of alleged extra-judicial killings and Democratic People Party (DEHAP)¹. The following topics were discussed with each group:

1. Right to legal advice – Breach of Article 6 of the European Convention of Human Rights;
2. Internal Displacement - Breach of Article 8 of the European Convention of Human Rights;
3. Torture - Breach of Article 3 of the European Convention of Human Rights;
4. Kurdish identity - Breach of Article 9 of the European Convention of Human Rights;
5. Women’s rights - Breach of Article 14 of the European Convention of Human Rights;
6. Village Guard System – Breach of Article 4 of the European Convention of Human Rights and;
7. Extra-judicial killings - Breach of Article 2 of the European Convention of Human Rights, in particular of:

- i) Ahmet and Uğur Kaymaz on the 21 November 2004 and;
- ii) Fevzi Can on the 30 October 2004

There can be no doubt that the European Union got it right - in part. There has been an improvement in the previously appalling level of human rights abuses in Southeastern Turkey, through successive legislative reforms since 1997. But do these improvements go far enough and do they truly reflect the situation on the ground in the regions historically most affected?

BACKGROUND

Turkey has been the “political topic” of the moment within the European Union. On the 16 December 2004 the European Leaders agreed to start formal entry talks with Turkey this autumn with a view to them joining as an equal partner in the future.

With a population of 71 million, an estimated 25% of which is Kurdish in origin, Turkey would be the second most populated country in the European Union if given entry. Geographically, politically, economically and culturally the accession of Turkey to the European Union would be one of the greatest challenges it has faced to date.

The European Commission’s 2004 Regular Report stated *“Although torture is no longer systematic, numerous cases of ill-treatment including torture still continue to occur and further efforts will be required to eradicate such practice.”*

It is clear from the information obtained by the mission in relation to the general treatment of Kurdish people that Turkey has a long way to go before it meets the Copenhagen Criteria. These criteria states that countries who wish to join the E.U. should have achieved *“the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities”*

It was also apparent from the discussions with the various groups that the information the mission were given was “sweetened” so as not to thwart the accession talks, one group told us: *“We would say so many more things, however, we do not want to block the current talks”*

The report will address each of the topics discussed individually and provide a summary of the cases of alleged extra-judicial killings.

1. PROHIBITION OF TORTURE AND ILL-TREATMENT

Torture constitutes a violation of Article 17(3) of the Turkish Constitution, Article 243 of the Turkish Criminal Code, Article 135(a) of the Code of Criminal Procedure, Article 23 of the Regulation on Apprehension, Police Custody and Interrogation and Article 3 of the European Convention on Human Rights.

In the twenty years following the 1980 military coup, successive governments maintained a system of detention and interrogation that encouraged torture and protected the perpetrators.

Since 2003 and the Turkish Government’s announcement of a “zero tolerance” policy in respect of torture there have been changes in the law and procedure in relation to shortening the period of pre-trial detention and immediate access to legal representation for all detainees. It is a well known fact that the provision of representation is the most effective safeguard against torture and abuse in custody.

In order for such a “zero tolerance” policy to be effective the İHD Mardin Branch stated that it is not only the legislative procedures that have to change but also those who administer them. Without such developments change becomes academic as the improvements are not felt on the ground.

It was apparent from the discussions the mission had that some police and gendarmes have ignored the changes, denying or delaying the detainees’ access to a lawyer, influencing the content of medical reports prepared on behalf of the detainee and persisting to use force to obtain information.

İHD Van Branch sent leaflets to residents in the district asking them to confirm whether they had been the victims of torture. As of the 17 December 2004, they had received 700 responses in the affirmative.

In an article² by Human Rights Watch (HRW) it is reported that *“In the first 4 months of 2004 the Human Rights Directorate of the Office of the Prime Minister recorded that it has received 50 complaints of torture and ill-treatment in police custody. The Turkish Human Rights Association reported 692 incidents of torture and ill-treatment by police in the first*

6 months of 2004. During the first 8 months of 2004, 597 people applied to the Turkish Human Rights Foundation for medical attention for torture, ill-treatment as well as illness arising from prison conditions”

The İHD and Bar Associations in Van, Hakkari and Mardin stated that the nature of torture used by the authorities has changed. They acknowledged that the use of physical torture on detainees’ has “drastically” declined, whereas, the use of psychological torture has increased. For example, detainees’ are blindfolded, stripped naked, threatened and/ or subjected to electric shock treatment. The reason for this turn around is very simple; the effects are not visible to the naked eye.

One of the most telling comments made by each and every organisation spoken to in relation to the atrocities suffered by the Kurdish people was that psychological torture is not viewed as “real” torture. This shows the level of acceptance of Human Right’s violations developed by Kurdish people.

A number of Kurdish lawyers work almost exclusively in bringing actions against those who torture detainees, however, there appears to be a problem in relation to impunity, very few torture cases result in prosecution and fewer in conviction. Where a conviction is secured, the sentence given rarely reflects the seriousness of the crime.

The Human Rights Watch made the following recommendations to the Turkish Government in relation to the prevention of torture:

1. Make public the investigations of police stations that are carried out by prosecutors and provincial governors, including the methods and findings of such inquiries;
2. Encourage impromptu visits to police stations by independent monitors from Medical and Bar Associations through their participation in the existing system of local human rights boards and;
3. Provide a ministry-level response from Ankara to every substantial torture allegation reported to the government and non-governmental organisations, establish whether the police unit in question has been implementing the relevant laws, regulations and advisory circulars and take remedial action.

It is common sense that if these recommendations were implemented the situation in South East Turkey would improve dramatically, as there would be an independent check

and balance in place. However, given the current situation it is very difficult to imagine how such implementations would be effective.

2. RIGHT TO LIBERTY AND SECURITY

Article 5 v(3) of the European Convention on Human Rights contains the right to be brought promptly before a Judge. The KHRP reports³ that: *"In 2002, the European Court of Human Rights handed down Judgments condemning Turkey for excessively lengthy proceedings in Court. In the case of Aksoy v Turkey, the Court ruled that even with respect to Article 15 of the ECHR which allows derogations from the Convention during times of emergency, a 14 day detention was not justified and left the applicant vulnerable to torture"*

The UN Special Rapporteur has urged the Turkish government that:

"(a) The [Turkish] legislation should be amended to ensure that no one is held without prompt access to a lawyer of his or her choice as required under the law applicable to ordinary crimes or, when compelling reasons dictate, access to another independent lawyer.

*(b) The legislation should be amended to ensure that any extensions of police custody are ordered by a Judge, before whom the detainee should be brought in person; such extensions should not exceed a total of 4 days from the moment of arrest or, in a genuine emergency, seven days, provided that the safeguards referred to in the previous recommendations are in place"*⁴

In order to prevent the torture of detainees they may only be held and questioned for 24 hours before being released. In reality, the mission was informed that this only applies to non-political suspects. Many Kurdish people suspected of being involved in terrorist activities are taken into unofficial detention. No records are kept of such incidents and suspects are generally kept until the authorities have the information they require.

After the information is obtained the suspect is detained for the requisite 24-hour period and then taken straight to Court or imprisoned. The mission were told of a person who was detained unofficially after being suspected of involvement in the PKK⁵. He was taken to a rural area and tortured both physically and psychologically. He was hooded and beaten, had a gun was fired close to his head and was subjected to electric shock treatment.

There was a 7-hour difference between the time the "official" records show detention commencing and the time he was actually detained. This was confirmed by the time the

detainee was taken by the police to see a doctor. The police remained present during the medical examination and the person was documented as being “ok”. The bruising on his body was attributed to him having had a bike accident. The detainee was not taken to hospital immediately, but some 3-month later resulting in the inability to prove the beating and/or electric shock treatment.

The KHRP reports⁶ that *“Although international guidelines explicitly bar police participation in and presence at medical examinations⁷ of alleged torture victims, it is apparent that this practice still continues. In the past it is clear that the police place pressure on doctors to find no evidence of torture, for example by threatening dismissal or relocation if “independent” reports are written.”*

The IHD Mardin Branch also expressed concerns about the access to legal advice and representation to persons detained at the police station. The Fourth Harmonisation Law amended section 16 of the State Security Courts Act to allow detained persons immediate access to a lawyer. In practice, many detainees are refused legal representation by being forced to sign a form stating that that they do not wish to be represented. In such cases if the “would be” legal representative is concerned he can lodge such concerns in writing with the Public Prosecutor asking to be allowed to see the detained person. In most cases access is denied on the basis that the concerns are not bona fides.

3. RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

In the early 1990s at least 3 million Kurdish Villagers were forcibly displaced by security forces in a conflict in the mountains of South East Turkey and 3.500 villages were destroyed.⁸

Example of the displacement in the 1990s are⁹: *Dulaş v Turkey*, the Court found that on the 8 November 1993 gendarmes burnt down the applicant's home and its contents in the village of Çitlibahçe and *Orhan v Turkey* where the Court found that on the 6 and 7 May 1994 Turkish soldiers burned the hamlets of Deveboyu and Gümüşsuyu, destroying the applicant's home and possessions in the process.

Another example of displacement is the case of *Kınay & Kınay v Turkey* (31890/96). On an unspecified date the Mayor of Dirimpınar village told villagers, including the second applicant Makbule Kınay, that their houses would be burned by security forces. On the 18 September 1995, security forces composed of 50-60 village guards arrived in the applicants' village. They conducted a search of Makbule Kınay's house, seized valuables and then set fire to her house. The Government claimed that an investigation was carried out into the applicants' allegations. They maintained that on the 5 December 1997 the Gendarme Commander took statements from the Mayor of Dirimpınar village, who stated that Makbule Kınay moved out of the village of her own free will. The Government also stated that there were no village guards or operations being carried out in the Dirimpınar region at the relevant time.

On the 29 October 2002 the Government submitted a declaration to the Court, regretting the destruction of home and property resulting from the acts of agents of the State, and the subsequent failure to carry out effective investigations. It was accepted that such acts constituted violations of Articles 3, 8 and 13 of the European Convention of Human Rights and Article 1 of Protocol No.1 to the European Convention of Human Rights.

The Government offered to pay ex gratia 59,000 to the applicants to secure a settlement. The offer was accepted.

The Court was satisfied that the settlement was based on respect for human rights and struck the case out of the list.¹⁰

The October 2004 Commission Regular Report¹¹ stated: *“On the ground, the situation of internally displaced persons remains critical. A number of obstacles, including, village guard system and the absence of basic infrastructure, currently prevent displaced people from returning to their villages.”*

In December 2004, The Human Rights Watch¹² state that: *“The Turkish Government has begun a dialogue with the United Nations agencies about future return plans and has developed two important initiatives. The first initiative is a proposed governmental agency to develop policy on Internally detained persons (“IDP”) return, coordinate implementation of the existing “Return to Village and Rehabilitation Program”, in accordance with the United Nations Guiding Principles on Internal Displacement, and to develop a policy for demobilising the village guard corps. The second is a fairly small-scale joint UNDP-Turkish government project for return of internally displaced persons to their homes. [Neither initiative had been implemented when the Human Rights Watch wrote the article].*

The İHD Van Branch stated that a system of compensation was established to assist people who had lost their homes. Whilst this would appear to be the very least that should be offered the reality is that it is impossible to obtain such compensation, as the process of doing so is fraught with difficulty and administrative obstruction.

When displacement occurs all records showing the inhabitants of the village are “lost”. In order to obtain compensation the claimants have to fill in as many as 7 forms and are required to provide documentation proving the village they came from. They then have to prove that they were forced out of the village by the gendarmes or police and not merely reorganised by local parochial authorities. The suggestion put forward by the authorities is that the villagers left of their own volition.

The deadline for the completion of the application forms is July 2005.

It is reported that return to the villages is a “risky” process and those who do so are viewed unsympathetically by the security forces.

The İHD Mardin Branch explained that they currently have 3,000 applications for compensation from displaced people. They have not yet submitted the application forms and plan to do so between January and June 2005, therefore, they were not able to confirm how the applications had been received and/or their success or failure.

4. FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Until 1991 the Kurdish language was banned. Now although not banned it is not recognised and nothing can legitimately be done in Kurdish. For example, a Kurdish detainee will be interviewed by a Turkish police officer whose understanding of the Kurdish language is rudimentary. No interpreters are provided and therefore, inaccuracies in the detainees' statements are commonplace, as their content cannot be checked due to the language difficulty.

The difficulty persists in the Court process as anyone who has a Primary School certificate confirming that they learnt Turkish is believed to have enough understanding not to require an interpreter. If submissions about the level of the person's understanding are made by their lawyer the Judge will ask the person a basic question in Turkish. If the response is provided coherently access to an interpreter is denied. A request for an interpreter can be viewed as a political act. If an interpreter is necessary, they are Court appointed and are often not professionally trained. Mistakes in translation are frequently made making many lawyers question whether interpretation is in their client's best interests.

5. POLITICAL REPRESENTATION OF THE KURDS

Although DEHAP is now recognised as an official party it is still viewed by the authorities as the political wing of the PKK and the party members are not treated the same as any other party members. The President of DEHAP stated that notwithstanding his role as party President he is not relaxed in his position as he could be the subject of an extra judicial killing at any time.

The police record membership of DEHAP. The Vice President explained that before he was elected in his role he had the permission of the State to sell books to teachers and schools. After being elected the State withdrew the permission without any official reason being given.

The Vice President told us that his son, a DEHAP member had been incarcerated in Mardin for the last 15 days. He had attended a funeral of a person who was not affiliated to DEHAP and shouted the phrase: "*The dead are immortal*". This is something that is frequently said at funerals and has no political meaning.

The police were recording the funeral on video and arrested the Vice President's son for attempting to incite the crowd.

An indictment is yet to be prepared in this matter as it has not come to Court.

6. WOMEN'S RIGHTS

Women's rights are enshrined in international conventions, declarations and agreements including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This sets out in detail the obligations of the states parties to secure equality between men and women and to prohibit discrimination. It expressly requires state parties to "take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise. If the state fails to offer protection against discriminatory practices and abuses, or to bring to justice those who commit such abuses and to ensure reparation for the survivors it is in reach of its legal obligations.

A number of states who ratified the Convention did so with reservations. Turkey withdrew its reservations in 1986 to clauses that guarantee women equality in civil law, freedom of movement and domicile and freedom from discrimination in matters relating to marriage and family relations.

Reservations were maintained by Turkey in respect of granting women and men equal nationality rights and allowing international adjudication in the event of a dispute over Turkey's interpretation or application of the women's convention.

"Gender Recommendation 19 of the Committee on the Elimination of Discrimination against Women states:

"Gender based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions is discrimination within the meaning of Article 1 of the Convention."

"The Beijing Platform of Action": this is an optional Protocol to the Women's Convention, Turkey ratified it in 2002. It allows women to seek redress at the international level for violations of their rights under the Women's Convention. Women can now have their complaints heard by the Committee on the Elimination of Discrimination against Women.

All of these have been ratified or agreed by the Turkish Government in 2003.

The Law for the Protection of the Family 1998 states that the Justice of the Peace can be asked to take measures to protect women from violence. Such a request can come

directly from the victim or from a friend, family member or lawyer. Such measures result in a Judge granting a protection order which requires the one using the offending behaviour to leave the family home and comply with any other requirements of the order – for example not to contact the victim.

Amnesty International has raised concerns that only women who are married in a civil ceremony and living with their spouse are protected by the law. Others who are separated from their husbands, people in a homosexual relationship or second wives who may marry in unofficial ceremonies are not afforded the same protection.

Problems do still exist for Kurdish and Turkish women as a result of their perceived role in society and the decades of exclusion and oppression. The 2003 Regular Report stated:

“Violence against women is still widespread in Turkey. According to different reports more than half of the female population are subject to physical and psychological forms of violence within the family environment

The two main problems are:

- i. Domestic Abuse
- ii. Honour Killings.

(i) Domestic Abuse

Most domestic abuse is carried out at the hands of a women’s immediate family, for example by her father, brother, husband or son. The abuse is often justified as ‘punishment’ for women who have infringed traditional codes of honour. State authorities often fail to investigate domestic violence as it is considered to be a “family issue”. Women fear that if they complain they will either face more extreme treatment or ostracism and abandonment by their family.

Organisations have been developed to assist women who are the victims of abuse such as SELİS (Women’s Advisory Service) and KA-MER, however the help does not go far enough. It only really offers an effective “shoulder to cry on”.

(ii) Honour Killings

It is reported that the notion of honour has been “codified into national law, which has

had a significant impact on the lives of women"¹³. A sexual crime against a woman is defined by the Turkish Criminal Code as a "*Felony against public decency and family order*". All other forms of assault are defined as: "*Felonies against individuals*".

If a woman is raped it is the common practice for Courts to reduce any sentence imposed if the accused agrees to marry the victim.

Honour killings have been part of Turkey's patriarchal traditional culture for centuries, and continue to be pervasive in parts of the world. Generally if such killings happen the family do not report the incident to the police as it is felt that the family has been dishonoured enough by what the now deceased had "done".

Where such a crime is reported and the accused found guilty his sentence will be reduced as the act was committed to restore the family honour.

In general it is believed that women are positively discriminated against and that such discrimination has not reduced in spite of the declarations and conventions.

7. VILLAGE GUARD SYSTEM

In the 1980's the village guard system was established to protect villages from being attacked. In theory, membership of the village guard system is voluntary, but in practice it is not so. Village guards normally assist the gendarmes in their security operations. They know the area which is vital in the mountainous regions in south East Turkey.

The village guard system creates a catch 22 situation for villagers. If they do not become guards they run the risk of reprisals from the security forces and guards from neighbouring villages on the auspice of them being members of the PKK. If they do become guards they face the same threat from the PKK.

Amnesty International reports that:¹⁴

"The village of Budaklı (Kerdef) near Midyat in Mardin province did not participate in the village guard system. As a result it was repeatedly targeted by security forces"

The Human Rights Watch¹⁵ also reports that many displaced people have only been allowed to return to their village if they agree to become village guards.

The Human Rights Association in Van¹⁶ writes that villagers are still being forced to become guards. They give an example of a recent situation in Xrabedar. The Gendarme threatened people with displacement and banned them from the village if they did not volunteer to become village guards.

On the 7 December 2004 a number of villagers met with the Governor of Van to discuss the problems with their village. The Governor reported the men as saying that they would like to volunteer to be guards and reiterated that they cannot and would not force people to become guards. One of the residents told the Human Rights Association that the Governor had told them that they had to become guards and that he would pay them to do so. The resident said they were "helpless" and therefore accepted the positions.

The village guard system should be abolished as it is clearly another way in which people can be controlled, their liberty restricted and their rights violated.

8. EXTRA-JUDICIAL KILLINGS

Extra-judicial killings are fundamental violations of human rights. Article 2 of the European Convention of Human Rights - the right to life is the most fundamental right enshrined in the Convention. No derogation is permitted even in times of war or emergency.

The cases in Kızıltepe and Hakkari involve allegations of “innocent” Kurdish people being killed by the military and/or police.

The authorities in both instances have stated that the individuals did not respond to a stop command given by the officers and therefore they opened fire.

(i) Kızıltepe

On the 21 November 2004 Ahmet and Uğur Kaymaz, were killed some 40 to 50 meters from their home in front of the truck used by Ahmet in his job delivering petrol.

The mission met with the Kaymaz family at their home in Kızıltepe. The place where Ahmet and Uğur were killed is now a shrine marked with withered flowers; the truck is where Ahmet last parked it before his death.

The family described how the two had been taking supplies to Ahmet’s truck before having their evening meal. They were dressed in casual clothes with slippers on their feet. Not long after they left the house the remaining family members heard gunshots from outside. The Kaymaz women, mother/grandmother and wife/mother were so frightened that they jumped over their next-door neighbour’s garden wall for help. The incident lasted for 5-6 minutes. When the firing stopped the police came to the neighbour’s house and searched it – nothing was found.

We spoke with 2 independent witnesses, who refused to be named in fear of reprisal. These witnesses will be referred to as “A” and “B” in this report to maintain their anonymity.

“A” lives on the second floor of the neighbouring house. He arrived home at approximately 16.15 on the 21 November 2004. As he washed his hands at the sink in his kitchen he

heard 30-35 bullets being fired. He opened the window to see what was going on. It was dark, but the road was illuminated for most of the time by the headlights of oncoming vehicles.

"A" described seeing Uğur in front of the truck, he did not know who he was until his son said *"that is Uğur, he is in my class in school"*. The road went dark. The next time road was lit by headlights again he saw the bodies of 2 people on the ground. Neither of them had weapons beside them.

"A" told the Public Prosecutor what he saw. She said that she would come to see him and take a statement. She never arrived. "A" was so incensed that he went to see her, to ask why she had given so little regard to what he had to say about the incident. She did not respond.

"B" lives opposite the Kaymaz family. On the 21 November 2004 he was dropped off near his home at approximately 16.15. When he arrived home he changed into his night clothes and asked his sister to prepare him something to eat. His niece told him that there were lights in the back garden. "B" went outside to find out what was going on. He had only taken 4-5 steps outside when a gun was fired over his head and he was told to get to the ground. He saw lots of people dressed in civilian clothes carrying walkie-talkies. He assumed that they must be undercover policemen. "B" was punched in the face with a gun and heard one of the supposed policemen say: *"We have arrested one"* into his walkie-talkie.

One of the other people said: *"Bring him over here, he is dangerous. He is a member of the PKK"*.

"B" is married with 2 children under the age of 5. He lives together with them, his sister and her children.

The "police" made his entire family come out of the house. They were told not to speak and threatened that if they did they would be forced to drink muddy rain water from the ground.

"B" told us that he heard shooting which lasted for 2-3 minutes. He could not see where or at whom the bullets were being fired. He heard one of the "policemen" receive a call on his walkie-talkie saying: *"we have killed 2 people"*.

The "policemen" told "B" that they suspected that he was a member of the PKK and that

he had been at the Kaymaz house before the incident, but had managed to escape.

"B" was taken to the back of the Kaymaz family truck. Whilst he was there he was slapped and told that if he did not talk he would be shot. He heard one of the "policemen" say: *"If he does not talk, shoot him and bring him over here to the other bodies...we will then have killed 3 people."*

"B" did not see the bodies. He tried to explain to the "police" that he lived across the road and that he was a hairdresser. The "police" did not believe him. He was taken to a near by petrol station and kept in an unused store room where he was beaten until he could taste blood in his mouth. He was released from the storeroom after about 10 minutes of detention. He was then taken to the shop on the forecourt of the petrol station where he was kept for an hour with various other civilians who had been passers-by at the time of the incident.

After approximately 30 minutes, uniformed officers arrived at the petrol station. He was then allowed home. One of the uniformed officers said: *"we are very sorry this has happened to you"*.

"B" spoke to the Public Prosecutor about the incident and was asked if he wanted to make an official complaint. He declined saying that he was too scared for his own safety.

The lawyers acting on behalf of Ahmet and Uğur explained that they have been denied access to many of the reports prepared by the Prosecutor and have not received the information they require despite requesting it on numerous occasions.

The mission were shown a copy of the post mortem findings supplied to the lawyers, it is practically illegible. They informed us that they had been told Uğur had 13 bullet wounds to his body and hands, whilst his father had approximately 4 wounds. The report is alleged to show that the bullets were fired at close range given the amount of gunpowder surrounding each entry hole.

The Public Prosecutor told the lawyers that she was waiting for further forensic information to confirm whether Uğur and/or Ahmet had gun powder on their hands as they were both alleged to have been involved in an exchange of fire with the police before they were killed. This will have particular relevance to the case involving Uğur as various weapons and bullets were "found" by his body. The feeling from family members and local villagers is that these items were placed beside his body after he had been shot. The family were very keen for us to see that there were no bullet marks on the van in front

of which the killings occurred or in or around the family home or wall surrounding the property.

Since the death of Ahmet and Uğur their family, friends and fellow villagers protest in Kızıltepe every Sunday. In the days following the incident, the family told us that Uğur's class mates and his brother and sister protested about his death. During this protest, Uğur's sister suffered a fracture to her leg as a result of being beaten by a policeman's asp. No action has been taken in relation to this incident to date.

The Mardin Governor, Temel Koçaklar made two statements about the incident. The first stating that Ahmet and Uğur Kaymaz were killed in a clash and the second stating that they did not listen to calls to stop.

Four policemen have been indicted on charges of involvement in the killings. The Court Case is due to commence on the 21 February 2005.

The indictment tabled by the office of the Mardin Prosecutor said that the security forces went to the house of the Kaymaz family after receiving information from the Gendarmerie that the residence would be used in an attack of the PKK. The document also said that the weapon allegedly found next to the father had been used in an attack against a police station in Mardin on the 7 August 2004.

It is thought that the Court case will be opened on the basis that the killings were not warranted in self-defence. Despite earlier official reports suggesting that the killing happened during an exchange of gunfire a parliamentary report said that there were no signs of conflict at the scene of the incident.

No further comment can be given in relation to this case until the indictment has been received and the case opened. It will then be possible to comment fully on the submissions made by each side.

(ii) Hakkari

At 1am on the 30 October 2004 in Şemdinli, Fevzi Can, a 19-year-old shepherd, was killed at close range by the military.

The military have said that he was a live stock smuggler and was shot after failing to stop when asked to do so. There is no evidence to support this assertion.

The lawyer bringing the case on behalf of Fevzi stated that the circumstances surrounding his death were suspicious. If the military have cause to suspect a person of smuggling they would normally take the "village guards" with them to look for the suspect as they know the area very well. In this case the military went alone.

The Public Prosecutor took 30 hours to arrive on the scene, stating that the weather conditions had prevented his arrival. The Public Prosecutor is alleged to have taken a different approach to visiting the area when villagers had neglected to pay bills and money had to be collected. There is a general obligation on the Public Prosecutor to attend an incident scene as soon as practicable after the incident has occurred. The 30 hour delay is something that can not and has not been adequately accounted for. It appears that there was a substantial amount of evidence "missing" or "unavailable" from the scene. In part this may be due to adverse weather conditions, however, it is also as a result of the Public Prosecutor not conducting an effective/satisfactory investigation. The Public Prosecutor went to see Fevzi's body in the hospital mortuary and took 15 photographs of the injuries he sustained. The photographs showed that he was shot twice to the left hand side of his chest. The bullet wounds were only a few centimetres apart and both pointed in the same direction.

One of the soldiers present at the time of the killing made a complaint against the soldier who killed Fevzi. It is not known whether the soldier is still intending to stand by his account. There is another witness to the killing – a child – who has given a statement to the Public Prosecutor. It is not clear whether the child will give evidence. There is no system of Public Interest Immunity in Turkey, therefore, acting as a witness against the State can be a very risky business, not only for the person giving evidence but for their family members as well.

On the 3 December 2004 the soldier who is thought to be responsible for the death of Fevzi was arrested and charged with his killing. The soldier is called Murat Şener. He was sent to Van military prison. It is reported that one of the village guards heard Murat Şener say before Fevzi's death: *"I will kill someone before leaving Hakkari"*. If this statement is true then it shows that Murat Şener had a plan and knew what he wanted to achieve.

The mission were unable to obtain as much information in relation to this incident as we did about that which occurred in Kızıltepe. This is because the mission were unable to meet with the family or visit the location of the incident due to freezing temperatures and impassable roads.

As a result of this and the fact that an indictment has not yet been drafted and the Court case has not commenced it is difficult for us to make a full comment on the issues in case.

The police took Fevzi's body to the hospital mortuary. The police tried to force Fevzi's family to sign a document confirming that he was a livestock smuggler and had failed to listen to a “stop” warning before releasing his body to them. They refused to and so the body was not released to them for many days.

Given the treatment of this matter from the outset it is difficult to see how there will be a fair trial as it has not been satisfactorily investigated. It would appear that there needs to be a separate investigation into the conduct of the initial investigation process.

After our trip there was another alleged extrajudicial killing in Van on the 26 December 2004. The deceased, Yücel Solmaz was an administrator in a medical centre and a member of the “Medical Workers Union”, which is a progressive Union within the Kurdish regions of Turkey.

The deceased and 4 others had been sight seeing in Van. They were on their way home at approximately 1.30am when their vehicle was stopped by men wearing masks at a check point, very close to the gendarme station. As the vehicle slowed down, the masked men pointed guns at the deceased and his friends. The friends panicked and ran away. The only remaining person in the vehicle was the driver who was shot dead.

During our trip the mission encountered many check points, confirming that they are still widely used in South East Turkey. On all but 2 occasions the mission were stopped for only a few moments for our passports to be checked.

However, on one occasion the mission were stopped outside a military base for approximately 25 minutes whilst our passports were taken away and a soldier trained his gun at close range on to our mini-bus. On the other occasion the military saw fit to request our passports and search our luggage. All of this was still deemed necessary despite it being clear that the soldiers at each checkpoint knew who the mission were and why they were in the region.

One of the soldiers involved in the incident said that there was not choice but to open fire, as the vehicle did not make any attempt to slow down despite the stop sign being given.

CONCLUSION

Without exception all of the people spoken to by the mission agreed that significant progress had been made with regards to the treatment of the Kurdish population, especially as regards the use of physical torture, however, accepted that there is a long way to go before their basic rights and freedoms are totally secured.

It was the mission's impression that the organisations spoken to did not want to give too much information about the reality of what was happening on the ground for fear of jeopardising the accession talks and procedure.

The improvements made to date must be commended, however, the authorities continue to allow and perpetuate gross human violations.

The following issues were highlighted as needing attention:

1. The protection of those seeking to return home to their villages – together with the resolution of compensation payments for such individuals;
2. Tighter controls on the questioning of suspects and detention periods to reduce the potential for torture. The Government could endeavour to establish a internal independent system of monitoring police stations and the detention of suspects.¹⁷
3. Greater protection for women especially those who are not yet married and living together. The Turkish Government should be urged and encouraged to declare its commitment to eradicating violence against women in Turkey and to exercise due diligence in preventing, investigating and punishing acts of all forms of violence against women.¹⁸
4. Abolition of the village guard system as it is apparent that many Kurdish people are being forced to become guards against their will.

The KHRP encourages the international community and the European Union to take the following actions¹⁹:

1. Continue to exert pressure upon Turkey to implement in good faith all legal

reforms made pursuant to the Copenhagen political criteria for accession to the EU in the area of minority rights;

2. Rigorously evaluate Turkey's attempt to accede to the EU on the basis of actual changes in practice, rather than solely considering formal reforms made to laws. This is mandatory if Turkey's practical progress and political will are to be accurately assessed during this critical period. Also, this alone will ensure that the EU retains its integrity as an institution committed to ensuring the protection of human rights;
3. Ensure that the decision regarding Turkey's accession to the EU is based on an accurate appraisal of Turkey's appraisal of turkey's fulfilment of the relevant criteria rather than upon external political considerations. All member states must genuinely assess Turkey's ability to guarantee the cultural, political and civic rights of the Kurdish population in all areas of public and private life and;
4. Monitor Turkey's actual implementation of reforms, specifically, the judgments of the European Court of Human Rights.

It is hoped by the mission that with close monitoring of Turkey by the Europe Union that the atrocities can continue to be reduced. What is very clear is that without such monitoring a true reflection will never be obtained and the situation as documented by the Government may not necessarily be the same as what is being experienced on the ground.

APPENDIX

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS - UNHCHR

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

Whereas the work of law enforcement officials ^{*} is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

Whereas law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

Whereas the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties,

Whereas article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials,

Whereas the Seventh Congress, in its resolution 14, inter alia, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia, welcomed this recommendation made by the Council,

Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct,

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.

2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons,

and the use of such weapons should be carefully controlled.

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

(b) Minimize damage and injury, and respect and preserve human life;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;

(d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Special provisions

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable

in order to protect life.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

(a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;

(b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;

(c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

(e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;

(f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

Policing persons in custody or detention

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

Qualifications, training and counselling

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

Reporting and review procedures

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

26. Obedience to superior orders shall be no defence if law enforcement officials knew

that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

Note:

* In accordance with the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, the term “law enforcement officials” includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

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Kurdish Human Rights Project
KHRP
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