



REPORT

**of the international fact-finding mission
to investigate rights violations
of population in southeast Turkey
committed in & by the implementation
of the country's security policy**

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PART ONE: introduction

I. The Mission

1. The international fact-finding mission to investigate rights violations of Kurdish people in south-east Turkey committed in implementation of Turkey's security policies was initiated jointly by the European Grassroots Antiracist Movement (EGAM) and Elie Wiesel Network (EWN) of European parliamentarians for the prevention of mass atrocities and genocide and against genocide denial.
2. The mission was established following reports of grave rights violations committed against the Kurdish population in numerous communities in south-east Turkey and was implemented in October 2016, with site-visits to south-east Turkey organized between 20th and 23rd October.
3. Members of the mission were: parliamentarians Frank Engel, European Parliament, Luxembourg; Julie Ward, European Parliament, United Kingdom; Klaus Buchner, European Parliament, Germany and Dennis Gratz, Federal Parliament, Bosnia and Herzegovina, human rights defenders Benjamin Abtan, EGAM, Europe; Đorđe Bojović, EGAM, Europe; Mario Mažić, YIHR, Croatia; Ivan Novosel, Human Rights House, Croatia; Albert Selimi, YIHR, Kosovo; Milana Bakhaeva, Memorial, Russia; Magdalena Czyz, Open Republic, Poland; Murat Celikkan, Hafiza Merkezi, Turkey; Ayse Gunaysu, IHD, Turkey and Meral Cildir, IHD, Turkey, journalists Clara Barata, Portugal; John Hunt, United Kingdom and Tania Bozaninou, Greece, photographer Romain Champalaune and video-maker Pierre-Antoine Pluquet.
4. The mission's mandate is of non-institutional nature, being initiated and implemented by non-governmental networks and organizations. The mission's mandate is not associated to any particular government or inter-governmental organization. The parliamentarians-members of the Elie Wiesel Network partook in the mission in their individual capacities, not acting on behalf of the European Parliament or national parliaments. The human rights defenders partook in the mission on behalf or as representatives of their respective organizations – members or partners of EGAM and/or EWN.
5. The overriding objective of the mission is to serve as a *human rights alert* to the Turkish authorities, international community and human rights institutions with a view of contributing to ending the occurrence of such violations on one hand and ending impunity as well as contributing to providing access to justice for victims on another.

II. Methodology and research focus

6. The mission was not limited to investigating violations of particular provisions of human rights mechanisms or particular human rights mechanisms. Rather, the mission's mandate was aimed at mapping and understanding the implications of the ongoing Turkey's security policies on the whole body of international human rights law; violations of civic, cultural, political, economic and social rights of targeted Kurdish communities.
7. The mission's mandate was not limited to documenting individual cases of rights violations. The mission was initiated with an objective of reaching an understanding of patterns of violations. Besides this understanding, the mission sought to interpret the patterns and individual violations as potentially desired outcomes of Turkey's security policies specifically targeting the Kurdish population.

8. The research methodology had five specific components: (i) prior to organizing the visit to Turkey, the mission analyzed reports by the media, NGOs and international organizations on basis of which it defined the focus of the mission's country visit; (ii) during the country visit, the mission met with over 100 victims, relatives of victims and witnesses of rights violations in Diyarbakir (Sur) and Nusaybin who shared their knowledge and/or experiences of violations; (iii) the mission met with over 30 representatives of local/municipal institutions, organizations and party officials; most notably the elected officials on municipal and local/regional administration levels. Regrettably, the security forces and the Diyarbakir Governor's Office avoided meeting the mission's representatives; (iv) the mission organized visits to sites of combat in Diyarbakir (Sur) and Nusaybin; (v) the mission analyzed the collected data, reports, statements, observations and other evidence after the country visit against the human rights principles and developed its interpretations on the nature of violations.
9. The findings, concerns, conclusions and recommendations expressed herein were discussed among and are shared by the members of the mission. The report was prepared by the Youth Initiative for Human Rights – Croatia on behalf of the mission.

III. Applicable human rights law

10. Turkey is a party to a number of international human rights mechanisms (see Annex I) and is thus obliged to protect, promote and respect civic, cultural, political, economic and social rights enshrined in these mechanisms of its entire population and all other persons under its jurisdiction.
11. Some of the violations documented by the mission also represent *jus cogens* violations or derogations of peremptory rights norms.

IV. Context around the implementation of Turkey's security policy

12. With the results of the June 2015 elections the President and the Government of Turkey ended the two and a half year peace process and went on elections on November the same year again. With the ending of the peace process, the government of Turkey started to implement a security policy that unlawfully restricts fundamental rights and freedoms in southeastern Turkey. Regarding this shift in policy, since August 2015, blanket, round-the-clock curfews have been declared as a part of military operations carrying out in the cities and districts largely populated by Kurds. The authorities justified the imposition of curfews by the autonomy demand of the Kurdish politicians and expect the residents to obey the curfew on behalf of their security.
13. In July 2016, after the attempted coup in Turkey, the Turkish authorities adopted a series of decrees with the force of law (firstly the "Kanun Hükmünde Kararname", KHK/667). This decree as well as those that followed resulted in derogation of the ECHR. The Council of Europe Commissioner for Human Rights as well as other human rights institutions repeatedly raised concerns about the disproportionality of derogations and the actual situation. Turkey basically imposed emergency rule through these measures.
14. The emergency rule and the implementation of the KHK resulted in a widespread *de facto* suspension of rule of law safeguards, implementation of systematic purges in the public sector, detainment of tens of thousands of individuals without due process, partial suspension of local democracy and imposition of specifically aligned curfews and security actions.

PART TWO: rights violations

V. Suspension of rule of law and ill-treatment of persons subjected to detentions and criminal processes

15. Since the end of the peace process, the Turkish judicial authorities have been intensively prosecuting persons for the alleged crimes resulting from their membership in unions and organizations as well as for the alleged links to a 'terrorist' organization.
16. According to available data from unions, international human rights organizations and Turkish authorities, over 30.000 persons were detained. The rights to legal remedy and right to a fair trial have been violated or suspended by illegal treatment of these persons who often have not been subjected to adequate and timely legal review, were detained pre-charge and held for long periods (often over 30 days), have not been adequately informed on the charges or focus of investigations, have been refused the right to legal counsel and other.
17. According to unions and international human rights organizations, the detained persons were subjected to ill-treatment, including torture and denial of food and were denied access to their families for periods of days.
18. The mission notes that the international organizations documented cases in which some of the detainees were held in unofficial and undisclosed locations.
19. According to the same data, some 70.000 persons were subjected to criminal investigations and thus face legal insecurity.

VI. Purges in the public sector

20. In post-coup period, elected Kurdish public officials mainly in the regions with a high percentage of Kurdish population have been revoked and trustees have been named. The officials were sacked arbitrarily, on the allegations of links to a 'terrorist' organization, without due process and investigations. Some have been subjected to criminal charges and some were detained.
21. Over 15.000 persons from the education sector were sacked or suspended within a period of a year, more intensively after the coup attempt.
22. In Diyarbakir and the region, teachers were sacked for their membership in unions or for speaking about the deprivations of educational rights in curfew-imposed areas.
23. Vast majority of these teachers (up to 90% according to the unions) are of Kurdish origin. In the Diyarbakir region, more than 2.800 teachers were temporarily hired, often non-Kurdish, which substantially changed the ethnic and demographic composition of the regional educational workforce.
24. Turkey's authorities also imposed similar purges in the judicial sector among judges and prosecutors. This has additionally decreased the capacities of Turkish judiciary to timely and adequately prosecute the rising number of cases.
25. The mission notes that the Council of Europe Commissioner for Human Rights assessed that the manner in which the public sector purges take place in Turkey might interfere

with Article 8 of ECHR, since the sacked individuals were often not informed on the nature of charges against them or on the nature of administrative inquiry and calls for transparency in setting and imposing criteria for individual administrative processes.

26. Additionally to the purges in the public sector, the Turkish authorities imposed a crackdown on journalists and the media, proportionally targeting Kurdish and independent journalists, editors and outlets. This crackdown is implemented in a manner similar to purges in the public sector, where the accusations of targeted journalists are arbitrary and are not based on adequate investigations.

VII. Rights violations by security forces

27. According to the data since August 16, 2015, there have been at least 111 curfews declared by governors or sub-governors in at least 35 districts of 9 Kurdish cities. According to the 2014 population census, at least 1 million 671 thousand people have been affected directly by these curfews.
28. The curfews were imposed on the population by measures of force, through actions of police, military and special forces. The mission notes that there were oppositions against the curfews from the local population, as well as from PKK. However, after visiting Sur and Nusaybin, interviewing victims and witnesses, as well as after studying and analyzing available reports from various sources, the mission noted both the disproportionate and excessive use of force targeting both those opposing the curfews and the civilian population.
29. This resulted with a situation in which the residents, including civilians, were denied access to health, education and social services.
30. The areas where heavy fighting occurred and where particularly destructive security operations were implemented, such as Sur and Nusaybin are still walled-off and the access to civilian population (owners of property and residents of these districts) is still denied.
31. The residents that the mission interviewed noted that the remains and bodies of killed fighters and civilians are still in the walled-off areas and the families were for days and months denied to retrieve the bodies of their family members or relatives. The residents claim that this is still the same in some cases.
32. The mission notes that the manner of implementation of Turkish authorities' security operations targeted not only the fighters opposing the curfews, but equally directly the civilian population.
33. Based on the information the mission received through interviewing residents of these districts, the mission notes that the illegitimate property expropriation took place. While the mission notes that the Turkish authorities do offer a possibility of compensation for damaged property, the decisions seem to be of political nature since the authorities require the applicants to claim that the destruction of property happened as a result of the actions of the 'terrorist' even so the property had actually been destroyed by the actions of the Turkish security and military forces.

PART THREE: conclusions and recommendations

VIII. Conclusions

34. Re: Suspension of rule of law and ill-treatment of persons subjected to detentions and criminal processes:

It is the assessment of the mission that the Turkish authorities, by imposing this kind of state of emergency and conducting criminal investigations, detentions and arrests in above-described manner, by exposing the detainees and prisoners to ill-treatment including torture have de facto created a situation of intolerable legal insecurity. Moreover, it is the assessment of the mission that the authorities are actually misusing the judiciary mechanisms and institutes to conduct a process of illegitimate and illegal persecution of persons on arbitrary basis and with disregard to human rights of targeted persons and Turkey's international legal obligations. The mission hereby concludes that the manner of suspension of due process and adequate legal conduct in conjunction with ill-treatment in the imposition of security policy results in numerous and systematic violations of basic civic and political rights of targeted population.

35. Re: Purges in the public sector:

It is the assessment of the mission that the purges in the public sector go well beyond a reasonable and proportionate response to the actual security situation caused by the suspension of the peace process and introduction of emergency rule in the time after the coup attempt. The manner in which the purges are conducted, especially noting the lack of due process and transparency of administrative measures as well as their largely discriminatory nature particularly targeting the Kurdish population point to a conclusion, that this mission adopts, that the purges are motivated politically and ethnically and not simply by the needs stemming from the security situation. The mission also concludes that the purges result in violations of not just individual rights and freedoms of the targeted persons, but have a profound social and political implications, unfairly disadvantaging the collective rights and freedoms of the Kurdish population. Finally, the mission concludes that the suspension of the elected officials on the basis of arbitrary decisions results in de facto suspension of local democracy.

36. Re: Rights violations by security forces:

It is the assessment of the mission that the imposition of curfews done in the above-described manner is illegitimate and illegal since it creates a situation of utmost insecurity for the civilian population and results in grave violations of fundamental rights of the population, including direct violations of right to life. The curfews also deny access to basic health, education and social services for the population. On the basis of argument that the authorities have not prepared a system of support for the civilian population in imposition of curfews and implementation of its highly forceful security policies, the mission is ready to conclude that the Turkish authorities had actually desired to cause a situation of insecurity and rights violations of civilian population. The mission hereby concludes that the force used by the security and military forces is both disproportionate and excessive, as well as targeting the civilian population in an unacceptable manner, violating Turkey's international obligations.

IX. Recommendations

37. The mission recommends the Turkish authorities to:

- a. Immediately release all journalists, academics, teachers, unionists, activists, lawyers, judges, students and others who have been detained on illegitimate and illegal grounds.
- b. Immediately end suspensions of public servants and officials who were suspended without reasonable explanations or with illegitimate, unfounded explanations and re-instate sacked public servants and officials who were sacked without reasonable explanations or with illegitimate, unfounded explanations.
- c. Immediately release and reinstate all MPs, elected local officials and representatives who were sacked, suspended or even detained in a campaign directly violating the principles of (local) democracy.
- d. Immediately end suspensions of public servants and officials who were suspended without reasonable explanations or with illegitimate, unfounded explanations and re-instate sacked public servants and officials who were sacked without reasonable explanations or with illegitimate, unfounded explanations.
- e. Immediately reverse course on all policies, actions and operations that are obstructing media freedom, both concerning individual journalists and media organizations.
- f. Pass other measures that will reinstate the rule of law in line with the standards of human rights that Turkey is bound to protect and respect.
 - i. Suppression of Article 301 of Turkey's Penal Code so that it is no longer used to imprison or detain journalists, teachers, human rights defenders and others for criticizing the Government, especially the acts of human rights violations.
 - ii. Revision of the Anti-Terrorism Law in a way it is not used to suppress the freedom of expression of opposition politicians, journalists and human rights defenders.
 - iii. Immediately retrieve or at least revise the nature of emergency rule in a way that it ends the violations of rights of curfew-affected populations and ensure respect of their civic, political, cultural, economic and social rights.
- g. Immediately impose adequate measures to stop the operations, actions and policies resulting in or directly causing discrimination, violence and violation of rights of Kurdish population and other minorities.
- h. Immediately restrict implementation of violent actions with a view of reaching an agreement on a cease-fire.
- i. Immediately resume the peace process.

- j. Impose necessary policies and conduct actions that will immediately stop subjecting the detainees and prisoners to ill-treatment including torture.
 - k. Immediately allow the detainees and prisoners rights to legal counsel and legal defense.
 - l. Immediately ensure the access of families to the bodies of their members killed in the security operations.
 - m. Implement judicial/legal review of actions of security and military forces and prosecute all individuals responsible for grave violations of human rights of civilian population, including persons from the ranks of security and military forces and institutions.
38. The mission recommends the international community, specifically European countries and the European Union to:
- a. Urge the Turkish authorities to immediately release and re-instate or re-integrate all journalists, academics, teachers, unionists, activists, lawyers, judges, students and others who have been detained, sacked or suspended.
 - b. Urge the Turkish authorities to immediately release and reinstate all MPs, elected local officials and representatives who were sacked, suspended or detained.
 - c. Condemn the policies and actions of Turkish authorities resulting in systematic and widespread rights violations and urge them to impose both restorative and retributive justice policies, in line with the international norms.
 - d. Strongly urge the Turkish authorities to stop all actions, operations and policies resulting in or directly causing discrimination, violence and violation of rights of minorities, especially the Kurdish population.
 - e. Strongly and directly urge the Turkish authorities to respect its obligations under the international human rights law and international humanitarian law.
 - f. Urge and support all parties in Turkey to resume the peace process.
 - g. If needed, impose sanctions on Turkey conditioned on reinstatement of rule of law and ending illegitimate systematic rights abuses.
 - h. Strongly support Turkey's democracy and human rights defenders through financial programs, legal assistance, political and diplomatic actions and other adequate measures.
 - i. Strongly support the European civil society stakeholders supporting and working with the pro-democracy and pro-human rights civil society in Turkey.
 - j. Urge the Turkish authorities to implement effective measures to ensure access to justice for individuals and groups whose fundamental rights have been violated by the implementation of Turkish security policy.

X. Addressees

The mission asks the following institutions and human rights mechanisms to study the violations documented in this report and take appropriate actions in line with their mandates:

Turkey

- Office of the President
- Office of the Prime Minister
- Cabinet of the Minister of Foreign Affairs
- Parliamentary Committee for Human Rights / National Minorities

International Community

- European Parliament
- European national parliaments
- High Representative of the Union for Foreign Affairs and Security Policy
- European ministers of foreign affairs

Council of Europe

- Commissioner for Human Rights
- European Committee for Prevention of Torture

Organization for Security and Cooperation in Europe

- Office for Democratic Institutions and Human Rights

United Nations

- Human Rights Committee
- Committee on Economic, Social and Cultural Rights
- Committee against Torture
- Subcommittee on Prevention of Torture
- Committee on Enforced Disappearance
- High Commissioner for Human Rights
- Human Rights Council
- Working Group on Arbitrary Detention
- Working Group on Enforced or Involuntary Disappearances
- Special Rapporteur in the field of Cultural Rights
- Special Rapporteur on Extrajudicial Summary or Arbitrary Executions
- Special Rapporteur on Human Rights of Internally Displaced Persons
- Special Rapporteur on Minority Issues
- Special Rapporteur on contemporary forms of Racism, Racial Discrimination, Xenophobia and related Intolerance
- Special Rapporteur on the promotion and protection of Human Rights while countering terrorism
- Special Rapporteur on Torture and other Cruel, Inhumane or Degrading Treatment or Punishment

International Criminal Court

- Office of the Prosecutor

Annex I

Turkey is party to the following treaties and human rights mechanisms relevant to violations identified in this report:

United Nations:

- CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
- CAT-OP - Optional Protocol of the Convention against Torture
- CCPR - International Covenant on Civil and Political Rights
- CCPR-OP2-DP - Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty
- CED - Convention for the Protection of All Persons from Enforced Disappearance
- CEDAW - Convention on the Elimination of All Forms of Discrimination against Women
- CERD - International Convention on the Elimination of All Forms of Racial Discrimination
- CESC - International Covenant on Economic, Social and Cultural Rights
- CRC - Convention on the Rights of the Child
- CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Council of Europe:

- Statute of the Council of Europe
- Convention for the Protection of Human Rights and Fundamental Freedoms
- Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms
- European Convention on Social and Medical Assistance
- Protocol to the European Convention on Social and Medical Assistance
- European Cultural Convention
- European Charter of Local Self-Government
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- European Convention on the Exercise of Children's Rights

