

**REPORT AND RECOMMENDATIONS**

**ON THE KURDISH QUESTION**

**IN TURKEY,**

**BY THE INTERNATIONAL**

**DELEGATION OF HUMAN RIGHTS**

**LAWYERS**

**JANUARY 2005**

## **ACKNOWLEDGEMENTS**

We, the members of the International Delegation of Human Rights Lawyers, hereby wish to express our sincere gratitude to every individual and/or members of the International Initiative who contributed to, and facilitated, the visit to Ankara and Istanbul in Turkey in January 2005.

The delegation also wish to thank and acknowledge the undermentioned parties, organisations and associations, and in particular the respective spokespersons thereof, without whose contribution this report would not have been possible:

The AK Parti, in particular its Vice Chairman, Mr Mir Dengir Firat MP;

The European Union Commission in the Turkish Parliament, in particular its Chairman, Yasar Yakis

The Human Rights Association in Ankara, in particular its President Advocate Yusuf Alatas

The Union of the Turkish Bars in Ankara, in particular its President Özdemir Özok

Mazlum-Der, in particular its President, Ayhan Bilgen;

Dehap (Demokratik Halk Partisi), and in particular its Vice President, Mr Dr. Naci Kutlay

Human Rights Association (Insan Haklar Dernegi, the IHD) in Istanbul, in particular Advocate Eren Keskin

Goc-Der

Yakay-Der

Tay-Der

Tohav, in particular its President Advocate Senaz Turan

Legal Representatives of Mr Abdullah Ocalan

Kongra-Gel

Ms Ayse Aslan

Seydi Firat

Yuksel Genc

Yasar Timur

Ms Fatma Ocalan

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## 1 **INTRODUCTION**

1.1 The Kurdish people are the oldest indigenous people living in the land between the Tigris and the Euphrates River, which they refer to as Mesopotamia, with their own culture and their own language which they have nurtured and protected over the years. The land presently occupied by the Kurdish people straddles the countries of Turkey, Iraq, Iran and Syria. In these countries they constitute a minority. The rights afforded to the Kurdish people differ from country to country, for example in Turkey there were / are attempts to integrate them into the Turkish communities, whereas in Iran and Syria they enjoy some degree of local autonomy. In Iraq they have now, following the elections, for the first time become part of government after years of domination under Saddam Hussein's ruling political party. The Kurdish people in Turkey have been fighting for the right to self-determination for a period in excess of 20 years. This fight was led by Abdullah Ocalan, who is regarded as the leader of the Kurdish people in Turkey.

1.2 In February 1999 Abdullah Ocalan was abducted in Kenya in circumstances shrouded in secrecy, and handed over to the Turkish authority where he stood trial for treason. He was convicted and sentenced to death by a semi-military tribunal. This death sentence was later commuted to life imprisonment.

Since his arrest and his subsequent sentence, he has been kept in a prison on an island called Imrali. He is the only prisoner on that island, being guarded constantly under tight security conditions.

- 1.3 He appealed to the European Court of Human Rights against his aforesaid conviction and sentence, on the ground that he had an unfair trial in that he was abducted, tortured, refused access to lawyers at the time of his arrest, interrogated, tried by a semi-military court and imprisoned under conditions that violated human rights and international law.
  
- 1.4 This appeal was heard by the European Court of Human Rights at Strasborg in June 2004 in the matter of Abdullah Ocalan v The Republic of Turkey. This hearing, being open to the public, was attended by a number of international human rights lawyers. Present also was an organisation called the International Initiative comprising a number of prominent non-governmental organisations and individuals. Its objective is to call for peace in the conflict zones of Turkey, predominantly inhabited by the Kurdish people, as well as for the release of Abdullah Ocalan. The European Court of Human Rights has reserved judgment in the matter, which his expected to be handed down in the first half of 2005.

- 1.5 The lawyers, in consultation with the International Initiative, decided that an international delegation should be formed to visit Turkey as well as the prison on Imrali island in order to obtain first hand information concerning the Kurdish issue and the imprisonment of Abdullah Ocalan.

## 2 **THE DELEGATION**

The members of the delegation were the following persons:

- 2.1 Professor Norman Paech, university lecturer, and member of the European Association of Lawyers for Democracy and Human Rights, as well as representing the Union of Democratic Lawyers in the Federal Republic of Germany;
- 2.2 Advocate Rainer Ahues, a practising lawyer in Germany and member of the Republican Lawyers Association, Germany;
- 2.3 Dr Rolf Gössner, a practising lawyer and President of the German Section of the International League of Human Rights;
- 2.4 Advocate Heide Schneider-Sonnemann, a practising lawyer in Germany;
- 2.5 The Honourable Mr Justice Essa Moosa, a High Court Judge from the Republic of South Africa; and

2.6 Advocate Joey Moses, a practising lawyer in the Republic of South Africa and member of the National Association of Democratic Lawyers (NADEL), in South Africa, and convenor of NADEL's Human Rights Research and Advocacy Project.

### 3 **THE MANDATE OF THE DELEGATION**

3.1 The first objective of the delegation was, in relation to the Kurdish question in Turkey, to ascertain what sort of political solution the present government is considering and suggesting in order to protect and guarantee the constitutional and internationally recognised human rights of the Kurdish people living in Turkey..

3.2 The second objective of the delegation was to visit Abdullah Ocalan in the prison on the island of Imrali in order, *inter alia*, to hear his side and views and to gain an impression of the conditions of his detention.

### 4 **THE RESPECTIVE ROLEPLAYERS**

#### 4.1 **The AK Parti**

We met with the governing political party, namely AK Parti. It's Vice President, together with his legal advisors, addressed us and fielded certain questions posed by members of our delegation.

From his input, it was clear that his party and, by definition, the government of Turkey (they being the ruling political party), is of the view that:

- The Kurdish question is a Turkish reality which must be dealt with;
- The Turkish government is indeed dealing with the Kurdish question and engaging all relevant role-players in that respect;
- In this regard, major progress has been made to incorporate and accommodate the Kurds within the Turkish society generally; and
- The issue of the imprisonment and criminal prosecution of Abdullah Ocalan is a separate issue, and totally distinguishable from the Kurdish question. Abdullah Ocalan is a criminal who must be prosecuted for his crimes. The solution of the Kurdish question is not necessarily dependant on him and/or whether he is prosecuted by the Turkish government or not.

According to the Vice President to the AK Parti, Dengir Mir Firat, he conceded that there is a Kurdish Question in Turkey. According to him, however, reflecting the view of his party, the



Kurdish Question should be separated from the issue of Abdullah Ocalan: one is a social question, the other a criminal question.

The following views were expressed: Turkey has experienced 15 years of clashes between the Kurds and the Turks, and within this period the PKK demanded language rights and cultural rights for the Kurds. He conceded that most of these demands were legitimate. Recently, however, most of these questions were resolved but all of these issues and rights could not be executed because of the armed struggle waged by PKK against Turkish forces. At the end of these clashes, the PKK has lost the battle. After that period of armed struggle, the era of democracy has started. In the course of these struggles, the Kurdish people have learnt that these rights can be obtained through democratic struggle.

A second indicator of the changed political environment is what he has referred to as the local elections of 28 March 2004 where their party, the AK Parti, one the third largest amount of votes in locations predominantly occupied by Kurdish people. He and his party therefore regards this election as a clear message by the Kurdish people that they can get their rights through democratic struggle. According to him, Abdullah Ocalan is not a prisoner of war in terms of Turkish law; he is an ordinary criminal.

He is of the opinion that, within a period of 2 years, his party as the ruling party in government has introduced and executed changes which may be looked at as “*revolutions*”. They are therefore adamant that even if the Turkish government is not successful in gaining European Union membership, they would in fact change the Copenhagen Criteria (which set out the minimum criteria for becoming an EU member) to the Ankara Criteria.

#### 4.2 **The European Union Commission in the Turkish Parliament**

On Monday, 17 January 2005 we also met the European Union Commission in the Turkish Parliament. The Chairman of this Commission is Mr Yasar Yakis, who, together with two of his colleagues, courteously welcomed the delegation and made an introductory input regarding their role and objectives. According to him, their role is confined to commenting on draft legislation only, and more particularly on whether those laws are in compliance with the laws of the European Union. The implementation of laws, ie Turkish laws, is not their domain. That falls under the jurisdiction of another committee which is chaired by the Deputy Prime Minister and the Minister of the Interior as well as the Minister of Justice.

The Chairman referred us to recent developments in human rights in Turkey. In this regard, he pointed out that over the last couple of years several laws, mainly in the field of human rights

legislation, were passed by the Turkish parliament, especially since the Justice and Worker Party came to power (ie AK Parti). As a result, various Turkish laws had to be addressed and amended, so as to be in harmony with other legislation that might have been affected by the newly introduced human rights law. It is within this framework that the death penalty was abolished in Turkey, which meant that the penal code of Turkey, insofar as the references to death penalty are concerned, had to be modified.

Other examples referred to by this Commission, which indicate Turkish commitment to human rights, include:

- The adherence to and implementation of Protocol No 6, which signals to a large extent the commencement of European Union Human Rights Law in Turkey;
- Turkey also signed Protocol No 13, in terms whereof the death penalty would not be applicable in all circumstances, ie total abolition thereof, in contrast to Protocol No 6 where the death penalty is also abolished with the only exception being in the situation of war. The fact that they have signed Protocol No 13 therefore represents a progressive step for the Turkish government.
- They have also recommended that the duties of the National Security Council, especially its power, be

modified. The Secretariat had the right to ask all kinds of information from all the Ministries. Thus they wielded a lot of power, whereas they were supposed to be merely an advisory body to parliament.

- All military expenses were also made subject to parliamentary scrutiny.
- There is also a visible broadening of the implementation of fundamental freedoms and rights of all citizens, eg the right to gather and freedom of expression, as well as a law which was passed allowing broadcasting in languages other than Turkish over the national media, for example Turkish, Kurdish and Arabic. This, however, has not been extended to the school situation, ostensibly because Turkey is a unitary state;
- They have accepted the Rome Statute, in terms whereof the International Criminal Court was established, and have therefore accepted the jurisdiction of the International Criminal Court.

Their aim is generally to advise the Turkish government as to whether there is general compliance with laws and other legal requirements of the European Union. This is viewed as important, particularly now that Turkey is on the brink of applying

for, and hopefully getting, European Union membership. Their view is similar to that expressed by the ruling party. According to them, to promote a separate Kurdish culture would be tantamount to encouraging division within the broader Turkish society which, so the argument goes, would be in broad conflict with the relevant European Union human rights legislation.

#### 4.3 **The Human Rights Association in Ankara**

On 18 January 2005 the delegation visited the offices of the Human Rights Association in Ankara where we were kindly and warmly welcomed by its president, Advocate Yusuf Alatas and staff members of the organisation. According to Adv Alatas the Association was established in 1986, at a time when there was a military coup in Turkey which was also characterised by massive human rights violations. These include the banning of opposition political parties and associations, and the imprisonment of many political activists. It was in that context that 97 founding members came together to form this organisation. It consists of 34 branches throughout Turkey with approximately 18 000 members.

The Association deals with and focuses on all parts / aspects of human rights without necessarily discriminating and/or differentiating between various social groups. Thus their focus would not only be on the Kurdish issue or on Abdullah Ocalan only. It will encompass all human rights aspects and the focus

would therefore be on all human rights violations, if any. Since its formation, his organisation had been the target of State oppression. Thus far, 13 senior members of his organisation have been killed. In 1999 an unknown person came into the building and into their offices (in the same office where we met with this delegation) and one of their senior leaders was shot, at close range several times, by this unknown assailant. This leader was struck by approximately 13 bullets but miraculously managed to survive until this day. He has subsequently left Ankara and is disabled as a result of the gunshot wounds.

Their organisation does not get, nor accept, any contributions from State institutions and/or State sponsored institutions. They are a member of the International Human Rights Association and have good relations with international human rights NGO's such as Amnesty International, Human Rights Watch and the International Federation of Human Rights.

They have, from the very beginning, opposed the conditions of Abdullah Ocalan's imprisonment on Imrali where he is totally isolated on a small island and prevented from time to time to having access to his lawyers and family members. As a result, their Association has challenged the solitary confinement and the conditions of his imprisonment as a violation of his human rights.

As an Association, they see the resolution of the Kurdish question in Turkey as integral to and dependant on the resolution of the question of the imprisonment of Abdullah Ocalan. The resolution of Abdullah Ocalan's continued imprisonment and the conditions of his imprisonment is critical for internal peace in Turkey. In the circumstances, their Association is of the view that political amnesty should be granted to Abdullah Ocalan. They are, in fact, prepared to launch such an application. Part of their demands include a fundamental change in the laws of Turkey as well as the recognition of a Kurdish identity in Turkey.

They are of the view that, despite the changes that have recently been introduced under the new ruling political party, these changes are not fundamental changes but are merely symbolic. One example referred to is the question of Kurdish language courses which were permitted in terms of the law but, because of past practises on the part of the State, people still fear that action may be taken against them if they practice and/or allow the practice of Kurdish languages. As a result, the people, mainly the Kurds, do not want to send their children to these schools. In addition, parents may not register their children who are under the age of 10 for these courses.

It was put to this representative that, according to the representatives of both the AK Parti and the European Commission in the Turkish Parliament, Abdullah Ocalan is

responsible for the killing of 30 000 people and is therefore nothing but a mere criminal and ought to be treated as such. His association's view is that the issue of Abdullah Ocalan is not independent of the resolution of the Kurdish question. Furthermore, it is not only Abdullah Ocalan who is to be blamed for the clashes / conflict between Kurdish people and the State forces. The State therefore is equally to be blamed for the violence that occurred as a result of the clashes between the two opposing forces. As an organisation they had also witnessed the trial of Abdullah Ocalan in Turkey. They therefore know that he has not been tried fairly. They are therefore hopeful that the European Court of Human Rights would rule that he did not receive a fair trial and that, for those reasons, he should be retried. In the event of the ECHR ruling that he must be retried, then their Association would definitely like to be involved in that process..

#### 4.4 **The Union of the Turkish Bars in Ankara**

The delegation also met and was warmly received by Advocate Özdemir Özok, the President of the Union of Turkish Bars in Ankara on Monday, 18 January 2005. It is his organisation's view that there are many political prisoners in Turkey. It's better to focus on the general prison conditions of prisoners generally, rather than focussing specifically on Abdullah Ocalan. Inasmuch as there should be focus generally on the requirement of a fair



trial, he conceded that there is a particular focus on fair trial requirements in the case of Abdullah Ocalan.

As far as his organisation is concerned, they were always in favour of democracy and lawful struggle according to lawful means. They were always opposed to struggle based on violence and the use of force. The Turkish Republic was established in 1923 on the basis of equal citizenship. Despite this, there have been numerous and serious violations of human rights. It is in this context that their organisation has always supported the struggle for democracy. It is their belief that there is nothing more sacred than human life. It is also based on that perspective that their organisation has always been critical and has in fact criticised the struggle led by Abdullah Ocalan and his organisation (PKK) as a basis of violence.

After the 1980 *coup d'etat* in Turkey, their union (of advocates) had publicly opposed the anti-democratic executions, repression and actions by the Turkish State. The main purpose of their union is to reach a democratic state through lawful means. The only way to achieve this is through education and negotiations. There are about 52 000 lawyers in Turkey, who are invariably members of 75 bar associations. If there is less than 30 lawyers in an area, they cannot form a baros in that area. 18 000 out of the aforesaid total of lawyers are based and practising in Istanbul, 8 500 in Ankara and about 4 500 in Ismir.

He conceded that the case of Abdullah Ocalan is a very special case. Ocalan is not an ordinary person or an ordinary convict. He is a leader, a person of importance with hundreds and thousands of sympathisers. As lawyers, they have to question the State's actions, especially where those actions infringe basic and internationally recognised human rights. But the human rights lawyers can also be criticised. There was a complaint by Ocalan's lawyers a few weeks ago about the restriction on their visits to Ocalan in Imrali Prison. His Association took it up by approaching the Ministry of Justice. Following this it is his view, and by implication that of his Association, that everyone (arrested person / prisoner) is entitled to be visited by his / her lawyer before and during their trial. But after the trial the work of the lawyers is done. That right, according to him, therefore falls away. In the case of Ocalan's lawyers, the problem is exacerbated by the fact that his lawyers talk to the public to convey Ocalan's views.

Another problem, according to him, with human rights lawyers, especially in the Turkish context, is that they restrict themselves to one person and to one section of the population, namely the Kurdish question. In that manner, they come across more as lobbyists rather than lawyers. He is therefore critical about the general approach of human rights advocates. A question of law must be dealt with objectively. Once you lose your objectivity and

become too emotionally involved, that can lead to you as a lawyer compromising your client's best interests.

Although it is his view that those opposed to the existing State must do so within the letter of the law, he conceded however that it is sometimes difficult, if not impossible, to address certain problems, especially problems of a socio-political nature, within the context of the prevailing law of the land. In such instances, and when people approach you with such problems, as lawyers they need to develop the law. Democracy as such is also a thing that must be developed every day and as things are changing in Turkey the lawyers will be the first to be asked to develop the law accordingly.

#### 4.5 **Mazlum-Der**

The next organisation the delegation visited was Mazlum-Der, an organisation of human rights and solidarity for oppressed people. The President of this organisation is Mr Ayhan Bilgen. We have been advised that this is the second largest organisation in Turkey. As an organisation they consist of about 18 branches with total membership of approximately 5 000. Part of their activities include public demonstrations to draw attention to human rights violations by the State. Recently, as part of their campaigns, they focussed on the intellectual initiatives that look at

the Kurdish question and how to resolve it through mutual dialogue.

Presently, they operate two projects, namely:

- dealing with refugees from the east, ie Afghanistan, Iraq and Iran; and
- education and training of people in prominent positions such as Imams. Such education and training is mostly in human rights.

According to him, the main problem concerning the Kurdish question is that the State defines the Kurdish question itself. The State then decides that it cannot deal with a “*terrorist organisation*” in resolving that question. As a general example, he referred to television broadcasting in Turkey, wherein it is at once notable that no names of any Kurds nor any Kurdish language would be used. That would be exceptional. If private TV channels would use Kurdish names or broadcast the Kurdish programmes, they could be prosecuted or other oppressive action will be taken against them.

The delegation was also informed that recently (a few months ago), the Turkish government issued a draft project for the transformation of local authorities. In terms of this process, more

power would be transferred to local authorities. Consequently local authorities would be vested with more power, which would represent a significant shift from the centralisation of power from central government to decentralisation thereof to local government. This was a very important development in Turkish politics. This process, however, was suddenly stopped because it was said by those who oppose it that should the State give more power now, the Kurdish would want more.

The importance and sensitive aspect of this was that this process was already adopted by parliament but it was the State who opposed it. Thus, the State uses the Kurdish question and the fear related thereto to stop those processes of transformation and decentralisation of power to local authorities. The delegation was advised that in Turkey the State and the Government are two separate entities. The State would be more militaristic in its composition, operation and orientation.

The solution which is proposed by their organisation is that Government should give more recognition to, and seek closer co-operation with, civil society organisations and NGO's generally. The problem, however, is that Government considers civil organisations as a danger towards them. Two examples were given in this regard.

- (1) The first was that the State and the Government did not allow NGO's in Turkey to contribute towards the Tsunami relief for the victims there, which the NGO's considered to be important from a humane as well as religious point of view. Many of the victims were also of Muslim religious persuasion. The government decreed that only government and State institutions could make these contributions.
  
- (2) Another example was that an author / activist by the name of Fikrit Baycan was prosecuted by order of the Minister of Justice because he referred to and uses the word "*torture generals of the 1980's*" in his book published in 1993. In contrast, the torture generals which he identified and to which he referred were not prosecuted. He subsequently died in prison in 2003 in Mus. He suffered from cancer. The Turkish authorities knew that. Despite this, they refused to release him. He was 33 years old.

It is his organisation's view that Government is the public representatives of the people. If they do not act according to the people's demands, they will not be re-elected. The Government, however, is not strong enough to challenge the State.

#### 4.6 **Dehap (Demokratik Halk Partisi)**

The next organisation the delegation met (also in Ankara on 18 January 2005) was Dehap where we were addressed by its Vice Chairman, Naci Kutlay, and two other members. This is a political party which focuses, amongst other things, on resettlement and particularly the massive resettlement of predominantly Kurdish people living in the villages and which are forcibly displaced as a result of the armed conflict in those areas between State forces and guerrilla forces. Approximately 4 million Kurds who have traditionally lived in the villages have now moved to the cities in the west as a result of this internal displacement. The obvious problem is that only a few of them are or will be able to get jobs. The biggest challenge is to try to have these people return to their villages. This is an almost impossible task because all these villages have virtually been destroyed by the so-called Village Guards or the military.

They, as an organisation, also acknowledge the recent changes in Turkish law concerning the improvement of certain rights for Kurdish people. In a sense it is important changes that have taken place. But these changes are also very limited. For example, the suppression of Kurdish language continues, despite these changes. The practice of this right is still impossible. In practice there are eight language courses. 30 minutes per week

is allocated to the Kurdish language but only the Turkish translations as officially approved by the Turkish authorities are allowed. This 30 minute break per week allocated for Kurdish language is therefore also generally regarded as Turkish propaganda in Kurdish. Kurdish TV channels are not allowed to broadcast in Kurdish. As an example, a TV station was closed down for one month for allowing a Kurdish song.

The real problem, according to them, is the approach of government itself. They (the Government) think all these changes are enough and they want to make people believe that they have introduced enough changes. These changes are therefore seen as merely symbolic and create the impression that real changes are taking place now that Turkey is in the process of applying for EU membership.

In relation to the resettlement of the Kurdish villagers who literally fled from their villages to the cities in the west, this Turkish State, instead of solving the problem genuinely, has only created the impression for purposes of the outside world that they have solved the problem. They (the State and government) have created a scheme in terms whereof villagers who had been displaced as a result of conflict, and whose houses and possession were destroyed, can apply for Government assistance in the form of resettlement assistance. The Government will therefore, so it is said, financially assist these families to return to



the villages and to resettle there. They will however only get this assistance on condition that they will become part of, and members of, the so-called Village Guard. Furthermore, they will only get this financial assistance (in excess of EU2000) if they state that they were forced out of their houses, which were destroyed, by the PKK terrorists, ie the Kurdish guerrilla movement.

It is their view that the Turkish Government introduced these regulations to prevent the people from returning to their villages and therefore is a very superficial attempt at solving the massive problem of resettlement. They urge the Turkish government to co-operate with international organisations such as the United Nations and the Red Cross. The question of land mines in the villages is also a very important issue which is not addressed by the Turkish government. The fact is that no compensation is given to any victims of these landmines. There is also no co-operation with the international community. Their view is that these victims must be compensated by the State. There is also still a constitutional court case pending against Dehab bought by the Turkish government on the basis that, in promoting only one culture, ie Kurdish culture, they are a source of divisiveness and in fact operating against the national laws which stand for and promote a uniform culture.

#### 4.7 **Human Rights Association (Insan Haklari Dernegi, the IHD) in Istanbul**

The delegation also met representatives of the Human Rights Association (Insan Haklari Dernegi, the IHD) in Istanbul on 19 January 2005. It was acknowledged by these representatives that there had certainly been changes, particularly legal changes, in Turkey which they, as an organisation, cannot deny. According to them, these changes were more of a superficial nature without addressing the fundamental issues in Turkish society, more particularly the controlling influence of the military and its general role in the Turkish State.

The military, so it was alleged, plays a substantial role in the economy of Turkey with evidence indicating that the military is involved in approximately 38 branches of the economy. So, for example, it has been discovered that the military is a shareholder in big business entities such as Axabankm, Oyak and Anker. To make it appear less auspicious and legal, the investment in a big company would be done by and under the auspices of an association of army officials. It would turn out that it is not actually only an association but that a large part of the company is in fact owned by the military, which would be similar to a large industrial military complex. Another fact brought to the attention of the delegation that was Imrali Prison (where Abdullah Ocalan is being detained) is not managed by the Department of Justice but

directly by the Turkish military. The military also plays a dominant role in the National Security Council which is a controlling force in Turkish politics.

The delegation was also advised about the existence of two kinds of arrests in Turkey, namely the official arrests where no direct torture would be applied to arrested persons, but they would be indirectly tortured by refusing them food, water etc; and unofficial arrests where the arrested person would be subjected to all forms of torture. This has resulted in the fact that people are very scared to talk openly about members of their families and/or acquaintances who have been arrested for fear of being arrested and tortured themselves. This in itself has led to a so-called culture of silence. It was in this context that their organisation has decided to embark on a campaign to encourage people not to remain silent anymore and to come forward and to reveal any kind of information which they may have about arrests and torturing of any person at the hands of any State institution (police, military etc).

They recognise that they are not a political organisation. They regard their struggle as going beyond the standards laid down by the European Union but acknowledge the importance thereof.

#### 4.8 Goc-Der

On 19 January 2005 the delegation also met with Goc-Der, which is the Immigrants Association for Social Co-Operation and Culture, which is based in Istanbul. Their Organisation's struggle is directed towards achieving and protecting the rights of ethnic minorities and communities. These will include the Kurdish people, but also other minorities. These other minorities are also subjected to serious human rights abuses, yet their complaints and/or calls for assistance are rarely heard and/or given attention to. The hope was expressed that the delegation could facilitate some form of intervention that could alleviate their plight.

According to the official Government figures and statistics, Istanbul is the biggest Turkish city with the most Kurdish citizens. It is estimated that approximately 3 million Kurds live in Istanbul, with the vast majority of them living in conditions of extreme poverty in the slums in and around the city of Istanbul. Most of these people come from the north of Turkey, which is generally known as the war zone. They would migrate to Istanbul essentially in search of better living conditions. This, however, exacerbates the already very serious overcrowding problem in Istanbul. Most of those people coming from the north of Turkey cannot speak Turkish and therefore would be unable to communicate with people in Istanbul, for example they won't be

able to go shopping, they won't be able to communicate with doctors etc. Between 40% and 50% of the children from these people from Kurdish towns are in the streets. That caused many of them to get involved in criminal activities. It is their view, however, that these people are not simply criminals as presented by the police, but the product of the political problems in Turkey.

As a result of these problems, the Turkish Parliament has passed a law in terms whereof people could apply for grants, in the form of resettlement grants, which would assist them in resettling in their places of origin. Despite the fact that people have applied for these grants, no one according to them were given or has received any grants from the State. This process is still continuing. It is their belief that the question of migration towards the cities, the impoverished Kurdish community as well as other minority groups cannot be resolved without resolving the Kurdish question. Their organisation is also very sceptical about the nature of the Turkish Parliament in passing such a Bill at this time, whilst Turkey is in the process of applying for European Union membership. This Bill also follows after various cases by Turkish citizens have been brought in the European Court of Human Rights against the Turkish State and many of those decisions having gone against the Turkish State. They have expressed serious doubt as to the genuineness of the objectives as set out in the bill. They do not deny that positive changes have been introduced by the government, but there is also a large

measure of exaggeration on the part of Government. Nothing substantial has improved.

Their biggest problem and concern as an Organisation is that they have been the subject of severe repression over the last 2 to 3 years because they are regarded as terrorist supporters by the Turkish State. There are still cases pending against a few of their members. One of the senior members of the organisation present, informed the delegation that in 1998 at approximately 01h00 the police entered and raided his house without any warrant and without having the courtesy to take off their shoes (which is generally regarded as a form of extreme disrespect). They thereupon took him to the anti-terror unit of the police. Eventually they let him go without any charge being laid against him.

#### 4.9 **Yakay-Der**

The next organisation with whom the delegation had a meeting, also on 19 January 2005, was Yakay-der. It was established as a result of the long and dedicated struggle organised by what has become known as the "Saturday Mothers". These were mainly women who had protest demonstrations every Saturday in front of the Galatasaray School in Taksim for about two years. They were mothers who lost their children in the struggle against Turkish oppression. They were also later joined by people who

had lost relatives in that struggle. These protests by the Saturday Mothers ended in 2000 because of the increased oppression by the State. Their association was banned in 2000. This organisation was then started.

The objectives of the organisation are:

- To investigate the unknown killings of known opponents of the State and the disappearance of such people under very suspicious situations and circumstances;
- To investigate and try to find out who are responsible for the unknown killings and/or disappearances of such activists, and to bring them to book, ie to make certain that they are arrested, prosecuted and punished; and
- Also to work with the families of those who have been killed or who have disappeared.

Their biggest obstacle is that in many cases of disappearance of people it has not been reported. Recently, they received reports from one of their clients that members of their family were arrested by the police but that they could find no trace of those members so arrested.

Between 1993 and 1998 the repression and oppression of people opposed to the Turkish State were intensified. This was done:

- by unknown gunmen shooting and killing people generally known to opposed to the State, yet no arrests nor any prosecution would follow subsequent to such shootings and killings;
- people with radios, who are usually associated with being used by members of the security forces would “*arrest*” such people who are generally regarded as opposing the Turkish government. Following such arrest, these people would not return, no trace of them would be found, nor their bodies. In this regard, mass graves were discovered recently.

Recently the Turkish Parliament has adopted a bill in terms whereof victims of violence can be restituted / compensated for the damages that they have suffered. This would include the loss of family members and the losses suffered by those who were forcefully displaced.

However, there are seemingly insurmountable problems presented by this bill. Firstly, the bill restricts any family who wants to claim compensation to a specific period of one year. In other words, such families must lodge their applications for



compensation with a year as prescribed by the bill, ie between July 2004 until July 2005. No claims or any other compensation would be considered which fall outside this period. The other serious difficulty is that the bill requires such families (victims) to prove that they have suffered any damages. In other words, these families must prove that a family member had been killed. They must then furthermore prove that the killing was done unlawfully, and furthermore they must then prove that the State (a member of the security forces and/or police) was responsible for such killing. That is seemingly, according to the members of this organisation, an insurmountable difficulty to prove because all these operations were conducted secretly, no one would know what happened and, in many instances, no trace could be found of any of these victims / family members who were “*arrested*” and disappeared.

It seems that this bill was modelled along similar lines as the Truth & Reconciliation Bill in South Africa. As pointed out during this meeting, there are however fundamental differences. In South Africa explicit provision was made for amnesty for those members of the security forces who would come forward and make full disclosure, ie who would openly and truthfully confess to his or her deeds under the apartheid government. There is no similar provision in the Turkish bill. In South Africa, victims were also not required to prove that they were entitled to restitution.

#### 4.10 **Tay-Der**

The delegation also met Tay-Der which stands for The Relatives of Prisoners. Their work is similar to that of Yakay-der but their main focus would be the prisoner, both those who have not been convicted and sentenced, and those who have been convicted and sentenced. They provide assistance in terms of legal services, financial assistance and psychological support. They also work closely with Mazlum-Der with whom they have been involved in a campaign in terms of which representations were made to the Ministry of Justice by submitting a draft new legal framework for Turkey. This draft bill was submitted through the various bar associations, but no response has been received. The Ministry of Justice also did not want to meet with them. As an organisation they also propose certain amendments to the criminal laws and restitution laws.

They are on record for campaigning for the closure of the Imrali Prison, where Abdullah Ocalan is being detained in solitary confinement. As an organisation they are against his conditions of imprisonment, including the fact that he is isolated in conditions of this type of prison. It is their view that it is not only the prisoners who are being kept and detained in prisons such as Imrali Prison, who are severely punished, but more importantly the families of those prisoners because they are invariably denied the right to visit or have contact with such prisoner.

#### 4.11 Tohav

The delegation also met with representatives of Tohav, which stands for the Foundation for Social & Legal Studies. This organisation is an impartial NGO and member of civil society which was apparently founded in 1994 by 46 Kurdish lawyers. Today there are approximately 200 members, all of whom are members who are from Istanbul, Ankara, Izmir, Diyarbakir, Batman, Van and Malatya bar associations. Its activities are funded mainly by the United Nations, which activities include:

- A torture and rehabilitation centre where doctors, nurses, psychiatrists and physiotherapists would also render their services on a voluntary basis to predominantly prisoners or ex-prisoners and victims of torture;
- The rendering of legal aid to people in Turkey who wish to challenge Turkey in the European Court of Human Rights (which must be merit based); and
- Working towards finding a solution of the Kurdish question.

In this regard, they organise training seminars focussing, *inter alia*, on concepts such as democracy, minorities and minority rights, and the United Nations standards of human rights as

compared to that in Turkey, and through public awareness programmes. They see the Kurdish issue as part of the broader issue of human rights and respect for human rights.

The big issue confronting them is that of political prisoners in what is called the F-types of prisons (ie maximum security prisons as explained to us). The majority of prisoners are political prisoners, more particularly guerrillas of the erstwhile PKK organisation. Over the last three months, approximately 2500 political prisoners have been released of a total of approximately 5000 political prisoners. These political prisoners are from across the political spectrum, all of whom are in opposition to the ruling Turkish government and State. Presently, there is still a very big armed group who are willing and able to wage a guerrilla war against the Turkish security forces.

They see the resolution of the Kurdish question, of which Abdullah Ocalan is integral, as an important prerequisite for the cessation of armed conflict and/or hostilities between the guerrilla forces and State security forces. The Kurdish question can be solved within the broader context of the promotion and application of human rights in Turkey, especially the application of the European Union Standards of Human Rights. Their organisation is obviously in support of that and actively promote a broader human rights awareness.

#### 4.12 Legal Representatives of Mr Abdullah Ocalan

The delegation also met with the lawyers representing Abdullah Ocalan. The allegations by members of the AK Parti, the European Commission in the Turkish Parliament as well as the Bar Association of Turkey (the union) were put to them. They feel that, as the lawyers of record for Abdullah Ocalan, they are entitled to represent him at any stage, be it before his arrest, after his arrest, being his trial, after he has been tried, before his conviction or after he was convicted. The attorney / client relationship does not come to an end once the court has found one's client guilty and sentenced him to a term of imprisonment. That relationship endures for as long as you have a mandate from that client to represent him or her.

In the Ocalan case, their mandate was expressly continued after the judgment and sentence by the Military Tribunal which was set up to try and convict Abdullah Ocalan. They, on the instructions of their client, lodged an appeal with the European Court of Human Rights. That appeal is still pending since the judgment of the court is still being awaited.

As such, and as his lawyers, they are entitled to visit and have consultations with him. For his part, he is entitled to have access to his lawyers. He is also entitled to have access to his medical

doctors as well as to his religious councillor and family members. All of these rights are severely restricted and sometimes blatantly refused. In the prison where their client, Abdullah Ocalan is kept, is on an island called Imrali Island. That, from a practical point of view, means that the lawyers, family members, religious councillor and medical practitioner must travel to the island by boat, which is invariably provided by the prison authorities (the state) since no villagers are allowed in or near this island.

This island, we were informed, is guarded 24 hours per day and is surrounded by land mines in the sea surrounding the island. Visits to Imrali Island and to Abdullah Ocalan, who is the only prisoner being kept there, must necessarily be arranged with the prison authorities and they invariably have the final say as to whether anyone can visit the prisoner or not. Many reasons were given in the past for refusing anyone, including the lawyers and family members of Ocalan, to visit and go and consult with him. These included stormy weather, unavailability of boats or security reasons. The fact that the prison authorities are in possession of a boat which could sail to and from the island in any weather conditions, and furthermore that prison officials are travelling to and from the island on a daily basis by boat, make the reasons so given sound as excuses for preventing both the lawyers and the family from having access to their client and family member, and from preventing the prisoner, Abdullah Ocalan, from having access to his lawyers and family members. This, they feel, is in

blatant violation of his human rights. They also feel, as lawyers, that they have not committed any criminal offence by relaying many messages to their client's family and/or supporters since they are the only contact which he has with the outside world. They feel that had they committed any criminal offence the Turkish state would not have hesitated to arrest, charge and imprison all of them. Something which they have not done. They feel that they are acted well within their mandate and their rights in relation to their client, Abdullah Ocalan.

#### 4.13 **Kongra-Gel**

The delegation also received, and had regard to, submissions by Kongra-Gel. Kongra-Gel regard themselves as the genuine representative organisation exile on behalf of the Kurdish people in four parts of Kurdistan. Kongra-Gel is willing to engage the Turkish, Iranian, Syrian and Iraqi Governments on mutually agreed terms and to start peaceful negotiations for a peaceful settlement of the Kurdish. They regard the freedom of Abdullah Ocalan as absolutely integral to a solution of the Kurdish question not only in Turkey but also in Iran, Syria and Iraq. Abdullah Ocalan was forcefully and unlawfully abducted from Kenya on 15 February 1999. He has been brought before a semi-military tribunal especially created to try him. It was, according to them, a mere formality that they would convict Abdullah Ocalan and impose the maximum penalty, ie the death penalty, which they

did. Although this sentence, ie the death penalty, was later commuted to life imprisonment, it is their view that the whole procedure was a travesty of justice and that is why the strongly supported the view that this decision by the Turkish military court must be taken on appeal to the European Court of Human Rights. That decision in that court is still pending.

Kongra-gel regards the allegations that Abdullah Ocalan is a mere criminal who was responsible for the death of more than 30 000 people and must therefore remain punished, as ludicrous in the circumstances. According to them, he waged a legitimate war against a very oppressive Turkish military regime which did not care at all about the lives and living conditions and general plight of the Kurdish people. It is their view that it is the Turkish military regime and its officials who ought to stand trial for the hundreds of thousands of Kurdish people who were killed at their hands and who just disappeared, mysteriously, after many of them were taken into custody (arrested).

The notorious Village Guards established by the Turkish government to control opposition by Kurdish people in the villages has caused the destruction of many villages, leaving thousands of villagers displaced without home and property, and many of them were killed in skirmishes with these village guards.



For as long as Abdullah Ocalan is not free, the Kurdish people and its culture oppressed and the severe repression and oppression of the Kurdish people, especially in the villages, continue, there can and will be no lasting peace in Turkey. The Kurdish question is a reality in Turkey which can be solved through peaceful means. The resolution of the Kurdish question and Abdullah Ocalan's conditions of imprisonment must be central to, and a prerequisite of, Turkish admission as a member of the European Union. Kongra-Gel is certainly willing to enter into such peaceful dialogue with the Turkish government. Kongra-gel is on record as having extended such an invitation to the Turkish government. They expressed the view that the work of this delegation may lay a foundation for such an initiative and that the initiative will be supported and the invitation accepted by the Turkish government.

Kongra-Gel advised the delegation that the Anti-Torture Committee of the European Council has already recommended the lifting of his imprisonment in isolation and a measurable improvement of his conditions of detention. But neither Turkey nor the European Council have so far followed the recommendation of the Committee. In terms of the more severe conditions of his imprisonment in isolation and the blocking of visits by members of his family and lawyers, nothing has changed. At the end of 2004 the lawyers' office defending Ocalan was searched and all the documents in it confiscated, which has restricted the

ability of his legal representatives to defend the rights of the client.

Since Kongra-Gel announced the ending of the ceasefire, as military attacks on areas in which Kurdish people live were continuing, military clashes have escalated. Many areas of Kurdish habitation have been adversely affected by this. The village guard system has not been abolished, contrary to what was announced. Pressure is being put on people returning to their villages to become village guards themselves. Only people who sign a statement that their houses and property were destroyed by the PKK can get compensation. The number of people going back to the villages is therefore extremely small.

## 5 **INDIVIDUALS**

### 5.1 **Ms Ayse Aslan, Seydi Firat, Yuksel Genc and Yasar Timur**

The delegation also met Ms Ayse Aslam, who was sentenced to 12 years imprisonment. She was also recently released after having served approximately three quarters of her sentence. She was part of the Tay-Der group with whom the delegation also met.

The delegation also met Seydi Firat, Yuksel Gene and Yasar Timur. These were also ex-PKK guerrillas who, according to them, had come from the mountains together with a large number

of other guerrillas as members of the Peace Group, to lay down their arms and to start the process of negotiation with the Turkish state, in good faith. This gesture, in terms whereof the guerrillas would stop their military type of action and in fact come out of the mountains and lay down their arms was in accordance with, and in support of, Abdullah Ocalan's call for a peaceful solution to the Kurdish question in Turkey. They regard the Kurdish question as a reality in Turkey, which in itself cannot be separated from the release of Abdullah Ocalan. The Kurds have an identity of their own and are entitled to legitimately assert that identity. What they want, according to them, is a peaceful solution of the Kurdish question. Instead, what has happened when they laid down their arms and indicated their willingness to negotiate was that they were arrested, charged and sentenced to between 5 and 10 years for being members of a banned organisation. They were also released from imprisonment recently.

Despite the fact that they feel betrayed by members of the Turkish State, particularly the security forces, who created the impression that they were also willing to negotiate but instead caused them to be arrested, charged and sentenced, they now still feel that they must fulfil their original mission, namely to call on the government of Turkey to start the process of negotiation to bring about democracy in Turkey by peaceful means. This delegation, they felt, could play a very pivotal role in that regard.

## 5.2 **Fatma Ocalan**

The delegation was also fortunate in being able to meet the sister of Abdullah Ocalan, Ms Fatima Ocalan. That was on the day that she was allowed to visit him, ie 19 January 2005. The delegation met with her upon her return from her visit to her brother at Imrali Prison. She was very concerned about the state of health of her brother, which she described as very bad. His health conditions had deteriorated since the last time she saw him. She also informed the delegation that Mr Ocalan had learned about the delegation and that he has expressed the hope that the delegation would be able to impress upon the Turkish state and the government the importance of a negotiated settlement whereby democracy can be achieved in Turkey by peaceful means.

## 6 **PROBLEMS EXPERIENCED BY THE DELEGATION**

A serious setback experienced by the delegation was when one of its senior members, the Honourable Mr Justice Essa Moosa, a 69 year old former human rights lawyer and anti-apartheid activist in South Africa, was being denied entry to Turkey, despite having a valid visa. Judge Moosa, who arrived at Dubai airport in the early hours of Monday morning, 17 January 2004, from a flight from Cape Town, was left stranded at the airport for two days after officials informed him that he required a letter of permission from the Turkish Minister of Interior before

he would be allowed to enter Turkey. The Judge managed to get a flight the Tuesday afternoon and arrived in Istanbul in the evening of Tuesday 18 January 2005. He was allowed entry into the country and went through customs without any queries and/or references to any so-called letter from the Turkish Minister of Interior. It remains unclear on which authority the officials at Dubai Airport refused permission to Judge Moosa to fly to Istanbul. This type of action by the Dubai officials is deeply regretted and deplored. It is unfortunate that the learned Judge was therefore precluded from attending the meetings in Ankara, with the AK Parti, the European Union Commission in the Turkish Parliament and the organisations.

The other setback experienced by the delegation was the unavailability of the Minister of Justice for a meeting with the delegation. The delegation was and remains of the opinion that the Minister is an important source of information with regards to the allegations made, especially by the NGO's with whom the delegation met. The Minister could also provide important information with regards to the allegation in relation to Mr Abdullah Ocalan. The delegation was unfortunately precluded from obtaining that information as a result of the Minister's unavailability to meet the delegation.

A serious setback experienced by the delegation was the refusal by the Minister of Justice for the delegation to visit the prison on Imrali Island so that the delegation could ascertain what the conditions of imprisonment of Mr Abdullah Ocalan entail. The delegation would also have been able

to enquire from Mr Abdullah Ocalan himself about the conditions of imprisonment there, as well as his views in relation to his state of health and his access to his lawyers, family and medical practitioner. The delegation would also have had the opportunity to speak to the officials at the Imrali Prison. That opportunity was unfortunately not availed to the delegation.

## 7 **FINDINGS**

The delegation is indebted to everyone and all the institutions/organisations who made themselves available for meetings with the delegation, and more importantly for their input, which the delegation considers to be invaluable. The delegation has experienced all the input, discussions and exchange of ideas to be frank and open. The overall impression of the delegation is that there was an overwhelming display, on the part of everyone, of a willingness to embrace the concept of human rights in Turkey and a genuine desire to address the Kurdish issue.

There is a reluctance on the part of the ruling political party and the European Union Commission in the Turkish Parliament to consider the detention and imprisonment of Abdullah Ocalan as being integral to the resolution of the Kurdish conflict. According to both, the two are separate issues: the Kurdish question being a political issue and the matter of Abdullah Ocalan being a strictly criminal matter. It is our view, however, that the majority of the respondents with whom we interacted

seemed to be of the view that the Kurdish question and its resolution is inextricably linked to that of Abdullah Ocalan.

There have been tremendous legal reforms in Turkey which represent progressive steps by the ruling political party and the Turkish government towards implementation and recognition of human rights. However, many of these legal reforms have not been implemented so that those people whom it intends to assist did not and do not really experience any improvement in their living conditions. The changes which therefore have been introduced have not improved the lot of the people on the ground.

It is unfortunate that the delegation was not allowed to visit Abdullah Ocalan in prison on the island of Imrali. It is our view that the reason for such refusal on "*security grounds*" was caused primarily by the fact that the military, and not the Ministry of Justice, seems to be in control of the prison on Imrali Island.

The continued imprisonment of Mr Abdullah Ocalan on Imrali Island in conditions of solitary confinement is a source of serious concern for the delegation. This is underscored by the recommendations which have already been made by the Anti-Torture Committee of the European Council to the effect that the conditions of his imprisonment must immediately be improved and his solitary confinement must be stopped forthwith. This Committee has in fact found that his conditions of

imprisonment amount to “*white torture*”, which is a method for breaking the personality and will of political prisoners.

The health condition of Mr Abdullah Ocalan is also a source of serious concern, which furthermore underscores the undesirability of his further and continued imprisonment, in isolation, on Imrali Island. The delegation found that, based on the version of Ms Fatima Ocalan, that his health condition is indeed deteriorating to such an extent that it must be addressed immediately. This can be addressed more effectively if Mr Ocalan is removed from the prison on Imrali Island to facilitate easier and speedy access to his medical doctor / specialist.

In the circumstances, the delegation found that Section 125 of the Turkish Penal Code, generally regarded as the empowering statute authorising the present conditions of imprisonment of Mr Abdullah Ocalan, is irreconcilable and in fact in direct conflict with international human rights instruments and more particularly the EU’s Convention for the Protection of Human Rights and Fundamental Freedoms. Accordingly, Article 1, Part B of Law 4771 of 3 August 2002 of Turkey, which makes provision for imprisonment of a person whose death penalty has been commuted, under harsh conditions, is patently in conflict with Article 3 of the Convention which prohibits torture and/or inhumane or degrading treatment or punishment.

The delegation cannot agree with the view expressed by the AK Parti and the EU Commission in the Turkish Parliament that Mr Ocalan is a



normal criminal whose case must be kept separate from the Kurdish question. The delegation is of the view that, in terms of international law, the Kurdish people are entitled to exercise their right to self-determination. Abdullah Ocalan has historically led that struggle by the Kurdish people. It is unfortunate that the parties (the State as well as the Kurdish people) had to resort to violence in an attempt to address and solve the Kurdish question. Abdullah Ocalan was therefore, and remains, an indispensable part of the Kurdish issue. His imprisonment and conditions of his detention can therefore not be separated from effectively addressing the Kurdish question in a genuine attempt to solve it. Although there is seemingly a willingness to acknowledge the fact that the Kurdish question is a reality in Turkey, the steps that have been initiated and implemented so far indicate that there is a lack of political will to effect fundamental change in Turkey so as to address the plight of the Kurdish people and other minority groups in Turkey. Official policy is still far from being willing to recognise the identity of the Kurds as a people with the same rights and freedoms as others.

Despite various progressive legal reforms, the Kurdish language is still suppressed through harassment, bans, prosecutions and numerous other obstacles. There is no separate Kurdish radio, nor are there any separate Kurdish TV transmitters. The transmission of Kurdish cultural events such as songs, is continually met with broadcasting bans. The two half hour broadcasts in Kurdish over weekends, on State television, are widely regarded as propaganda which has simply been translated into Kurdish. In addition, Article 81 of the Law on Parties on Turkey is

still in force, prohibiting political parties to use any other language than Turkish, notwithstanding the fact that it may be for publishing their programmes, statutes or their material, or whether it is in closed sessions or at public events.

Despite the legal reforms introduced under the present ruling political party, the solution of the Kurdish question has not been seriously addressed or considered by Government, the military or the mainstream political parties in Turkey. The Kurdish people are still oppressed and still being deprived of their basic human rights. They are not allowed to exercise their cultural and language rights.

People in the villages are living under harsh conditions. This is exacerbated by the continued military operations and conflict in these areas. It is also exacerbated by the reported illegal activities of the Village Guards in these areas. People's lives are furthermore threatened by the presence of an undisclosed and unidentified number of land mines in these conflict ridden areas. The destruction of these villages, as well as peoples homes, amounts to a form of violent displacement of the village people, causing them to migrate to the cities in search of better living conditions.

The conditions under which people, the majority whereof have been forcefully and violently displaced from their villages, live in the cities, however, are seemingly not better because of serious overcrowding and high unemployment rates within the cities. It is exacerbated by a lack of

adequate and/or sufficient housing and their inability to communicate with the city dwellers in Turkish. This, in turn, creates fertile ground for young children to become involved in illegal / criminal activities.

Turkey's negotiations and application for EU membership were viewed generally as an historic opportunity for the implementation and advancement of human rights in Turkey. Our general impression gained from the people whom we have met is that, in spite of these progressive changes that have taken place, human rights violations still persist in Turkey. There are still restrictions of basic rights and freedoms such as restrictions on language and cultural rights, freedom of expression, especially in regard to press and broadcasting, as well as suppression of peoples' right to freedom of association and organisation, and peoples' right to religious freedom. Those who are seen to be opposing the Government are invariably labelled as "*terrorist supporters*" and, as a result, are persecuted, arrested and tortured. In some instances, those who were arrested simply disappeared.

Various Turkish citizens aggrieved by human rights violations have approached the European Court of Human Rights and have obtained judgment against the Turkish government, especially with regard to allegations of torture. Turkey has also been ordered by this Court to pay substantial compensation to victims. Most of these cases and judgments relate, however, to the period between 1993 and 1996 and before the present ruling political party took over, when there were many cases of torture and extra-judicial killings and people disappeared and

villages were destroyed. Recent cases, however, which have been brought to and heard by the European Court of Human Rights have also confirmed that human rights abuses and violations still continue in Turkey. Since the AK Parti took over as the ruling party in Turkey however, notably fewer cases have been taken by its citizens to the European Court of Human Rights. There were therefore progressive changes introduced and implemented, but it is generally felt that the pace of change in Turkey must be accelerated.

## 8 **RECOMMENDATIONS**

The delegation recommends that Turkey's application for membership of the European Union must be favourably considered by the other high contracting parties to the EU (the member States), subject to the undermentioned conditions:

- 8.1 Duly authorised representatives of the Turkish Government must enter into dialogue with duly authorised representatives of the Kurdish people, in particular Mr Abdullah Ocalan, to create the conditions for peaceful negotiations and settlement of the Kurdish question in Turkey.
- 8.2 There must be an immediate cessation of armed hostilities on the side of both parties;

- 8.3 Demilitarisation of governmental institutions and other organs of the Turkish State and Government must continue and the military must be made accountable to Parliament of a democratically elected Turkish State, and the immediate disbanding of the Village Guards;
- 8.4 The decentralisation of power must also be encouraged and must continue, more particularly decentralisation of power from central government to local government;
- 8.5 The creation of a Truth and Reconciliation Commission which makes provision for an amnesty process for those involved in the conflict between the Turkish State and the Kurdish Liberation Movement before the ceasefire. It should also make provision for victim compensation / reparation to facilitate reconciliation amongst all the people of Turkey. Such a Commission should be conceived as part of the bridge building process designed to help lead the Turkish nation, in all its cultural manifestations, away from a deeply divided past to a future based on the recognition of human rights and democracy. That was indeed the very substance of the Truth & Reconciliation Commission in South Africa. The objectives of the Truth & Reconciliation Commission in South Africa are captured in the preamble of the Promotion of National United and Reconciliation Act, No 34 of 1995, the Act that created the Truth & Reconciliation Commission in South Africa. The purpose of the Act was *“to provide for the*

*investigation and the establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed during the period from 1 March 1960 to the cut off date contemplated in the Constitution, within or outside the Republic, emanating from the conflicts of the pasts, and the fate or whereabouts of the victims of such violations; the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective committed in the course of the conflicts of the past during the said period; affording victims an opportunity to relate the violations they suffered; the taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity of, victims of violations of human rights; reporting to the Nation about such violations and victims; the making of recommendations aimed at the prevention of the commission of gross violations of human rights; and for the said purposes to provide for the establishment of a Truth and Reconciliation Commission, comprising a Committee on Human Rights Violations, a Committee on Amnesty and a Committee on Reparation and Rehabilitation; and to confer certain powers on, assign certain functions to, and impose certain duties upon that Commission and those Committees; and to provide for matters connected therewith”;*

- 8.6 This recommendation, its feasibility and practical implications must be explored within the Turkish context and established as a matter of urgency;
- 8.7 The unconditional release of all political prisoners, including and particularly Mr Abdullah Ocalan;
- 8.8 The closure of the prison on Imrali Island;
- 8.9 Pending the release of Mr Abdullah Ocalan, for purposes of settlement negotiations between the parties, the immediate and unrestricted access by his lawyers to him as their client, the immediate and unconditional access of his medical practitioner to him and the immediate and unconditional access of his family and religious councillor of his choice;
- 8.10 The creation and establishment of an independent monitoring body / directorate to attend to and monitor complaints of arrested persons, detainees, prisoners and/or their relatives and/or families, with the necessary powers to investigate such complaints and to order remedial and/or preventative steps to be taken;
- 8.11 The immediate abolition of the Village Guard system;

8.12 The unconditional return of all exiles, refugees, combatants within Turkey and those in exile as a result of their opposition to the Turkish State, and to make provision for their rehabilitation and reintegration into civil society.

8.13 A creation of a European Commission to monitor the implementation of the abovestated conditions, in particular human rights reform in Turkey in which both NGO's from Turkey and from EU member states will participate. This Commission will focus *inter alia* on the plight of those whose family members have disappeared in suspicious circumstances, on the plight of the displaced Kurdish villagers and on mechanisms and procedures for their possible humane resettlement, the disbanding of the Village Guard system and addressing the issues of the land mines in and around the villages (which could be done in consultation with other UN structures and the Red Cross).

**Members of the Committee:**

**Name:**

The Hon. Mr Justice Essa Moosa  
Professor Norman Paech  
Advocate Joey Moses  
Advocate Rainer Ahues  
Dr Rolf Gössner  
Advocate Heide Schneider-Sonnemann

**Signature:**