

# Indictment

## Summary

The Prosecution submits to the Permanent Peoples Tribunal – Session on Turkey and the Kurds, to be held in Paris (France) on 15 – 16 March 2018 evidence that:

- The Turkish Republic has committed in the period of 1<sup>st</sup> June 2015 to 1 January 2017 war crimes during the confrontations that occurred during that period in several cities in South East Anatolia with a majority of Kurdish inhabitants.
- The Turkish Republic has organised, ordered an/or facilitated common crimes such as bomb attacks, targeted assassinations, kidnappings etc. both on the national Turkish soil and abroad i.a. in various European countries, crimes that were committed against representatives, press organs and institutions representing the Kurdish people living in Turkey.

The Prosecution will request the Tribunal to find the Turkish Republic as a legal entity of public international law responsible for such wrongful acts and to make recommendations to all other States on how to hold the Turkish Republic and its leaders accountable for these acts.

## Introductory remarks

### Root causes of the conflict

All the events and facts that will be submitted by the Prosecution to the PPT find their roots in one common breeding ground: the denial by the Turkish State of the right to self-determination of the Kurdish people.

The right to self-determination is often mistakenly narrowed down to the right of secession from an existing State.

In fact, the right to self-determination is a much broader concept and is laid down in common art. 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which reads:

- 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
- 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*

Self-determination is about the possibility for people to access levers of political and economic power.

The Turkish State has systematically organised the exclusion of its Kurdish citizens from the political and economic decision-making process. Attempts were made to destroy the Kurdish culture e.g. by banning for decades all use of Kurdish language in public life. Kurdish political parties have been systematically banned and their leaders and activists jailed, fined etc. Kurdish media have been banned, seized and numerous journalists imprisoned. These discriminatory acts have led to various forms of resistance of the Kurdish people, including insurrectional movements. The systematic denial of the Kurdish people living in Turkey of organised participation in the political, economic and cultural life of the country is the main root cause of the armed conflict between the Turkish State and a part of the Kurdish people organised around the Kurdish Workers Party PKK.

As explained hereafter the denial of the right to self-determination of the Kurdish people was also the direct cause of the confrontation in the Kurdish cities in the second half of 2015 and the beginning of 2016.

The Prosecution does not request the Tribunal to make any specific findings on the way in which self-determination for the Kurdish people should be achieved in the future (independence, cultural autonomy, federal or confederal states ...). Different opinions on the matter have historically existed and still exist today amongst the Kurdish people. And the solution of that problem can only result from a political negotiation that aims to end the conflict and to establish a just and lasting peace.

**It will therefore be sufficient that the Tribunal establishes that the root cause of the other violations that are to be examined is the denial by the Turkish State of the right of self-determination of the Kurdish people.**

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### Choice of events.

Unfortunately, the Turkish Republic and in particular its security forces, military, police, paramilitary, have committed for decades very serious violations of basic rights of the Kurdish citizens in Turkey. Those massive violations of fundamental rights, including violations of the right to life, systematic and endemic torture and ill treatment, violations of freedom of expression, peaceful assembly and organisation, freedom of expression and in particular of the press have been documented extensively by human rights organisation, both in Turkey such as the Human Rights Association IHD and the Human Rights Foundation IHV and internationally such as Amnesty International, the International Federation of Human Rights etc.

Turkey ratified the European Convention on Human Rights as early as 1954. Statistics provided by the European Court of Human Rights<sup>1</sup> illustrate the scale of violations of fundamental rights in Turkey. Out of 17.307 judgments finding at least one violation of a treaty obligation and given by The European Court of Human Rights between 1957 and 2017, 2988 decisions were rendered in cases against Turkey. That is more than 17 % of all cases that lead to a judgment finding violations. Turkey is also the champion out of 47 countries in absolute figures. A more detailed qualitative study leads to even more worrying results. Out of 504 cases in which a violation of the right to life was found, 136 concern Turkey. Out of 746 judgements that found a lack of investigation regarding unlawful deprivation of life 209 are Turkish cases. Out of 2194 decisions in total finding violations of the

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<sup>1</sup> [http://www.echr.coe.int/Documents/Stats\\_violation\\_1959\\_2017\\_ENG.pdf](http://www.echr.coe.int/Documents/Stats_violation_1959_2017_ENG.pdf)

prohibition of torture and inhuman or degrading treatment 347 concern Turkey. And regarding the lack of effective investigation into torture allegations Turkey holds a score of 210 violations out of 791 decisions in total. And of course, these violations are only the ones who made it all the way to the ECTHR.

Because of the massive number of violations, it is impossible to submit to the Permanent Peoples Tribunal even a significant fraction of all these abuses.

And there are two other reasons not to defer all these violations to the PPT. First, as illustrated above, Kurdish Turkish victims of human rights violations have a remedy in the form of an individual petition to the European Court of Human Rights. Whether that remedy is effective can be discussed. There are reasons to think that the mechanism of the ECtHR only provides partial relief for the victims of violations. The tremendous difficulties to bring a case before the Turkish judicial instances due to the chilling effect of the apparent unwillingness or inefficiency of the Turkish judicial system, the harassment and intimidation of lawyers and alleged victims, the futility and inefficiency of the police-investigations etc. make it very difficult for victims to exhaust internal judicial remedies, a requirement to have access to the ECtHR. Furthermore, recent developments in Turkey such as the massive arrest and removal from office of judges and prosecutors accused of being “terrorists” undermines further the possibilities for alleged victims of human rights violations to bring cases in the national courts and to exhaust internal remedies. Turkey does not seem very much impressed either by the numerous decisions of the ECtHR. Over the years the violations do not decrease, on the contrary. And that indifference towards the ECtHR on behalf of Turkey does not seem to result in other Council of Europe States taking effective action to force Turkey to put an end to these practices. However, a formal remedy within the official legal system exists and the tradition is that mainly violations over which no official judicial body has jurisdiction are submitted to Tribunals of Opinion. Furthermore, as will be commented more in detail hereafter, the Prosecution in the PPT lacks the resources and access to evidence collection in such a large number of cases.

Therefore, it was decided to submit to this session of the Permanent Peoples Tribunal events with a limited scope, both from the point of view of the period during which they occurred as from the point of view of the nature of the facts.

Firstly, the Prosecution will submit evidence of war crimes committed essentially at the end of 2015 and the beginning of 2016 in the main cities of South East Anatolia. At that time the Turkish military and police conducted big scale war operations in those cities.

Turkey did not sign the Rome Statute and the perspective of the UN Security Council referring the situation in Turkey to the ICC is not realistic at this stage. Therefor the International Criminal Court does not have jurisdiction over such crimes. The use of universal jurisdiction for war crimes has been severely limited throughout Europe in the last 10 years. In most European countries national courts now have limited jurisdiction and only in very specific circumstances over war crimes committed by foreign nationals abroad. And although war crimes are punishable under Turkish national law, Turkey has systematically branded the fight of the Kurdish people as “terrorism” and does not recognize that the conflict with the Kurds is an armed conflict as defined by international law, ruled by the laws of war. Therefor there is no official judicial body, national or international that can or is willing to exercise jurisdiction over war crimes committed in Turkey by Turkish officials against Kurds.

The PPT is therefore the only body to which such facts can be submitted at this stage.

Regarding the second series of facts that will be submitted to the PPT, state (organised or inspired) crimes such as extrajudicial killings, forced disappearances etc. the situation is slightly different. Of

course, such crimes can be investigated and tried by Turkish judicial bodies when committed in Turkey or by other national courts when the crimes were committed outside Turkey. However, such proceedings can only investigate the criminal liability of individual perpetrators (including of course the responsibility of officials who ordered, instigated or facilitated such crimes). This limitation, which is inherent to the inexistence of criminal liability for entities of public international law, leads however to the loss of a dimension while such acts are not only the work of individuals. Indeed, various bodies of the Turkish State have been involved in coordinated action that led to the criminal acts submitted to the Tribunal. Pointing at the responsibility of individuals within those structures, while it is clear that the structures **as such** play an indispensable role in the commission of such acts, regardless of the individuals who manage such structures is therefore not sufficient.

Finding of responsibilities that are sought.

#### *Liability of the Turkish State.*

The Prosecution invites the Tribunal primarily to establish the liability of the Turkish State, as an entity of public international law, for the war crimes and state crimes that will be discussed.

Criminal liability for war crimes or common crimes such as assassinations or bomb attacks lies in criminal law essentially with the individuals that are involved in such crimes. On the next level of “organisation” almost all legal systems have provisions in criminal law on participation of physical persons in various forms of criminal organisations or conspiracies.

Some legal systems more recently established on an even further level criminal responsibility of corporate legal entities. It was indeed considered that organisations as such could show criminal behaviour in situations where the participation of a large number of individuals is necessary to commit the crimes.

Criminal responsibility of States, subjects of public international law, could be construed for the same reasons as criminal responsibility of corporate legal entities was established. States can, just like e.g. corporations, be complex organisations necessary to pursue in continuous way criminal activities. Such a situation can occur e.g. when various State organisations in a concerted way engage over long periods of time in the commission of state crimes with a common criminal aim.

Such a situation exists in Turkey.

First of all, the crimes committed against the Kurdish people occurred over a very long period of time, over several decades, under different types of administrations, elected governments as well as governments resulting from military coups, governments of different political orientations, from militant secular (such as the administrations in the 1990's) to religiously inspired (such as the present AKP administration).

While of course specific crimes such as those committed in the South East Anatolian cities in 2015-2016 were perpetrated by specific individuals, members of the military, the Jandarma, the police or para-military militias who fought on the side of the Turkish forces, were ordered by specific military commanders and political leaders, it would show a somehow simplistic view to impute said crimes only to these individuals. Doing so would indeed not do justice to a more complex reality in which

the present perpetrators are perpetuating a long standing and continuous practice of the state organs they embody.

It is therefore necessary to render the complexity of that reality that the Tribunal holds the Turkish State as a subject of international public law, as primarily responsible for those crimes. The crimes that are discussed are not only the responsibility of the present Turkish President and cabinet members, the military commanders who conducted the operations etc. while the crimes are in continuity of those committed by all their predecessors. A change of personnel is therefore not enough to stop the commission of these crimes. Even strong political opponents have combined their efforts to commit these crimes. General Adem Huduti, head of Turkey's second army, responsible for its borders with Syria and Iraq, who lead the military operations against Kurds in 2015-2016 and was praised for this by President Erdogan, other AKP officials, leaders of other nationalistic political parties, is today detained on suspicion of being one of the architects of the failed military coup of July 2016 and branded as a "Feto-terrorist" referring to his supposed loyalty to the exiled opposition leader Fetullah Gulen.

There is a second reason why the Prosecution requires the Tribunal to concentrate on the responsibility of the Turkish State as such.

At present the Turkish State did not allow any independent investigation into the events of 2015-2016. That is also a tradition as can be seen from the numerous cases in which the European Court of Human Rights found that Turkey violated the right of its citizens to an effective inquiry into allegations of torture or ill treatment or in cases of alleged violations of the right to life. It is therefore at present, without a minimal cooperation and transparency on behalf of the Turkish authorities, extremely difficult if not impossible to identify and establish individual criminal responsibility of direct perpetrators of the crimes and to reconstruct the line of command between the top level and the forces on the ground. That is why the Prosecution will only request the Tribunal to take into consideration the liability of a limited number of individuals that have a clear responsibility in the facts.

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### *Liability of individuals.*

#### President Recep Tayyip Erdoğan

The Turkish State President bears responsibility for the crimes committed in the South East Anatolian cities in 2015-2016 while:

- He was the main political responsible for the evolution that led to the confrontations of 2015-2016. He deliberately sought that confrontation to stir up nationalistic and chauvinistic tendencies in Turkish society and to create fear amongst certain parts of the population in a conspiracy to discredit and pressure the forces in Turkish society that are in favour of a negotiated solution of the conflict with the Kurds and to roll back those forces in the elections of November 2015 after the relative success of the same forces in the elections of June 2015.
- Through his statements branding indiscriminately the Kurds living in the conflict areas as well as their chosen representatives as "terrorists" the Turkish President incited military and police forces to use extreme and totally disproportionate violence in the operations and

legitimised the indiscriminate use of force both against armed Kurdish fighters but also against the civilian population.

### General Adem Huduti

He was the head of Turkey's second army, responsible for its borders with Syria and Iraq, who led the military operations against Kurds in 2015-2016. He was the main architect of the combined operation of military forces, Jandarma, police and para military militias.

He organised the use of completely disproportionate military force, including the use of tanks, artillery etc. against a limited number of Kurdish militants with mostly light armament (essentially rifles, a very limited number of rocket launchers and a small quantity of primitive explosives) resulting in important losses in civilian lives and massive destruction of civilian infrastructure, including the deliberate devastation of entire neighbourhoods and even cities, centuries old historical monuments, houses, collective infrastructures etc.

### Events that occurred in the Kurdish cities in the South East of Turkey since the summer of 2015.

Between 2012 and 2015 the Kurdish Workers Party PKK and the Turkish government were involved in a peace process that aimed to end the armed conflict between Turkey and the PKK which started in 1984.

The talks resulted in an appeal made by the imprisoned historic PKK leader Abdullah Ocalan, read out to the public in Diyarbakir on 21 March 2013. The letter called a cease-fire that included disarmament and withdrawal from Turkish soil of Kurdish fighters and calling an end to armed struggle.

The peace process that began in early 2013 has come to a standstill in the spring of 2015 with the government's distraction tactics. From the beginning, the Turkish side did not have an honest approach to the process. If the reconciliation plan defined at Imrali had been followed, the question would have been largely solved in 2013.

The evolution of the war in Syria and the Turkish position towards that war further destabilised the situation. While supporting openly a program of regime change in Damascus, including by supporting some of the jihadi groups that fought the regular Syrian army, Ankara did not want the Kurds to play any active role in this conflict. When extremist groups attacked the Kurdish held Syrian city of Kobane, the Turkish government blocked initially all supplying of the Kurdish fighters in Kobane. As a result, protests erupted in various cities in Turkey regarding the lack of support for the Kurds from the Turkish government. During those protests youth build some primitive barricades in some of the Kurdish Turkish cities both as a form of protest and to hinder police actions against those protests. On Saturday **27 September 2014**, three police officers were killed in an encounter with PKK militants after Turkey would not allow members of the PKK to travel to Syria and the besieged town of Kobane to fight ISIS. Between **6th and 8th October 2014**, forty-two civilians were killed during anti-government protests by Kurdish

groups throughout Turkey. The protesters denounced Ankara's position during the Islamic State's siege of Kobane.

The successes of the Kurds in Rojava and northern Syria, the victory of the Battle of Kobani, the development of a climate in favor of the Kurds both inside the country and abroad have put pressure on the government that had no intention of solving the problem. Concretely, the decision to end the process was made at the meeting of the National Security Council on October 30, 2014. However, there were elections in the spring and so it was decided to implement the plan after the elections. It was later known that at the meeting of the Security Council in question the "Collapse Plan" had been proposed and that this plan had been accepted. It was a large-scale plan that had been proposed, a plan in which they had defined how to carry out all attacks against the Kurdish liberation movement by drawing heavily on the plans that Sri Lanka and Russia had respectively used against Tamils and Chechens.

Some excerpts of the plan:

*"The areas of settlements on which a blockade will be applied will have to be destroyed, the possibilities of repopulations will be suppressed. Settlement areas will be pacified through mass destruction, arrests and massive evacuations. "*

*"During operations of the suppression plan, between 10 and 15 thousand people will be neutralized, nearly 8 miles will be wounded, between 5 and 7 will be arrested and nearly 150-300 thousand will be moved from the places of settlements that will be bombed. All of these things will paralyze the terrorist organization and lead to dysfunction."*

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During the 2015-2016 period, this plan was applied to several Kurdish cities including Cizre, Sirnak, Nusaybin, Sur.

The government ended the meetings on April 5, 2015. In keeping with the decision they made, they had to withdraw from the discussions and formally end the process. For this, they resorted to provocations.

The first provocation took place on April 12, 2015 at Agri. A military operation entered an area where there were guerrilla units. The soldiers had been sent there without any support. The objective of their hierarchy was to cause heavy losses in their own ranks and to exploit the death of the soldiers. But thanks to the intervention of the villagers, the event ended without major incidents.

Then a bomb exploded at the HDP meeting in Diyarbakir on June 5, 2015. But that was still not enough.

On **7 June 2015** the Turkish general election provided major gain to the pro-Kurdish HDP (13% of votes, +7.5%) and notable decrease for President Erdogan's AKP (41% of votes, -9%).

The AKP lost its absolute majority while the pro-Kurdish party HDP won for the first time 80 seats in Parliament, despite an intense campaign of physical and verbal violence against its members and supporters. This increased the aggressiveness of the attitude of the Turkish authorities and the AKP in particular against Kurds and their representatives and organisations.<sup>2</sup>

A third provocation was organized on July 20, 2015, young people from all over Turkey gathered in Suruç to build a school in Kobani. These young people who had gathered under the supervision and protection of the State were hit by an explosion detonated by an ISIS member. Many believe that the State was involved in this attack or had at least looked away. In this attack, 31 people lost their lives and 104 were injured.

Finally, two policemen were killed at their homes in Ceylanpinar in the night of July 22, 2015. The event was amplified by the government and was considered an act of war. As part of the events in Ceylanpinar, 9 people were arrested. 4 of them were accused of being the perpetrators of the killings and 5 others for providing assistance. These people were exposed to public opinion as the perpetrators in these events, they were detained and tried. But recently, at the hearing on March 1, 2018, which was held in front of the 2nd chamber of the court of the heavy sentences of Urfa, all the accused were acquitted and the case was classified "Failli mechul" (author unknown)<sup>3</sup>. There is a strong belief in Turkey: "If the light is not made on an event and if this same event is classified "Failli mechul", it means that there is certainly a state institution behind all. It can now be more clearly understood that the assassinations were perpetrated by "obscure" forces with the aim of providing an excuse for the government to end the peace process.

On the morning of July 24, two days after the Ceylanpinar incident, government forces attacked on all fronts and the war began.

That day after launching attacks on ISIS positions in Syria in the early morning, over 20 fighter jets took off from Diyarbakır at around 22:30 local time, targeting both Kurdistan Workers' Party (PKK) targets in Northern Iraq and ISIS targets in Syria. The guerrilla positions were bombed for 16 hours uninterrupted by 75 fighter planes.

Attackers of unknown origin fired on F-16 fighter jets in Diyarbakır's main Air Base while they were taking off. As a result, police officers and soldiers secured the area while the jets continued to conduct their operation. The jets returned to their hangars after they returned. The perpetrators could not be identified.

The airstrikes were heavily criticised by the PKK, which accused the government of ending the so called "Solution process".

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<sup>2</sup> Peoples' Democratic Party Foreign Affairs Commission Information file on violence in Turkey, 11 September 2015 : information-file-on-crisis-in-turkey-en.pdf

<sup>3</sup>

[http://www.cumhuriyet.com.tr/haber/turkiye/935930/Cozum\\_surecini\\_bitiren\\_Ceylanpinar\\_daki\\_iki\\_polisin\\_cinayeti\\_davasida\\_beraatle\\_sonuclandi.html](http://www.cumhuriyet.com.tr/haber/turkiye/935930/Cozum_surecini_bitiren_Ceylanpinar_daki_iki_polisin_cinayeti_davasida_beraatle_sonuclandi.html)



On **24 July**, Turkish tanks also reportedly bombarded a village west of Kobane (Syria), targeting Syrian Kurdish People's Protection Units (YPG), resulting in four YPG fighters being injured.

Thus, the Turkish military began a large-scale military Operation "Martyr Yalçın" against PKK and ISIS, resulting in the resumption of full-scale hostilities between the Turkish State and the PKK.

**On 25 July**, Prime Minister Ahmet Davutoğlu announced that he had given the order to carry out a third wave air operation against ISIL targets, alongside a second wave in Iraq against the PKK. Davutoğlu called the airstrikes a part of a broad 'process' and expressed support for the main opposition Republican People's Party's call for an extraordinary convention of the Grand National Assembly, which was in recess.

The **25 July** wave began at around 10:20 local time on 25 July, with 70 F-16 fighter jets taking off from Diyarbakır to strike both PKK targets in Northern Iraq and ISIL targets in Syria. Activity was also reported at Incirlik Air Base, while unmanned drones taking off from Batman Air Base assessed the damage to PKK targets.

The operations were heavily directed towards the PKK camps in Northern Iraq, targeting over 400 positions. The **25 July** wave itself was conducted in three different waves, with close to 70 fighter jets taking part in the first two and 25 taking part in the third. The targets encompassed over 300 kilometres, with many of the targets being identified as the PKK's main training and storage camps. The PKK reported that a senior official of the PKK had been killed while three other militants had been injured.

In fact, the attack of July 24 had been organized well in advance. Because the 24th of July was the anniversary date of the Treaty of Lausanne, which divided Kurdistan into four parts. It was not a coincidence that the war resumed on that date. This is part of a plan that was prepared well before.

In the following days numerous people were arrested in several cities and some of them were imprisoned. Moreover, about 100 websites that belonged to opponent media outlets were blocked.

The Kurdish population was very disappointed with the fact that the Turkish authorities had put an end to the cease fire and as a result of this to the complete peace process. Many of the local authorities in the South East of the country were now held by elected representatives of the pro-Kurdish HDP party. Many of their Kurdish voters had great expectations regarding the result of the peace process. They expected that as an outcome of that process the violence would end and that Kurds would be able to participate in an organised way in managing their affairs and that of their communities.

In the following days, many Kurdish municipalities made public statements requesting that the peace process should be immediately resumed. As an act of protest and civil disobedience they also declared "**self-administration**" for the communities they represented and started organising meetings of citizens per neighbourhood to elect representatives.

In reaction to this the Turkish authorities started an intense campaign of repression and demonization.

During this period calls for mediation, foremost from HDP MPs, received no response from the government. On the contrary on 11 August, Erdoğan said: "Whoever is making these declarations will pay a heavy price. They will pay both a legal price and the other kind of price" giving the message that the process would become harsher.

The HDP representatives were called "terrorists" or "accomplices of terrorists". The governors removed from office local elected representatives, mayors etc. and appointed alternative authorities which were not elected at all and had no democratic legitimacy.

The police forces increased significantly their visible presence in the cities. Special Police teams, Special teams of the Jandarma were brought into the cities and armoured personnel carriers, the so called "panzers" appeared on the streets. The police started also conducting (mainly during night-time) raids in neighbourhoods known for their sympathy for the Kurdish movement to arrest local organisers, dismissed officials etc.

On **7<sup>th</sup> August 2015** in the Başak neighbourhood of Silopi district of Şırnak province, as a result of the police opening fire, there was a clash and as a result of that, three people died and ten were wounded. In the same clash, one police officer died<sup>4</sup>.

In order to defend the neighbourhoods against the above-mentioned raids, a youth organisation called **YDG-H** (Yurtsever Devrimci Gençlik Hareket) meaning "Patriotic Revolutionary Youth Movement", made a statement saying that this pressure had to end. They proclaimed a self-defence system for the organization of a self-government based on the construction of a system they called "democratic autonomy". In this way the so-called "first resistance phase" started.<sup>5</sup>

The barricades and trenches, already built during the protests on Kobane's, were manned again and new ones were built on the access roads to some parts of the cities. The aim of these barricades was to keep the armoured police vehicles out of the neighbourhoods while without these panzers it would be more difficult for the police to conduct their raids.

The Government reacted by creating an exceptional situation where legal assurances disappeared and constitutional tenets and fundamental rights were suspended without a formal declaration of a state of emergency.

On August 24th, President Erdoğan called for a snap election to be held on November 1<sup>st</sup>. During the following election campaign, the AKP and President Erdoğan heavily insisted on what he called "the fight against terrorism" always amalgamating the Kurdish PKK and ISIL.

In the meanwhile, even before President Erdoğan had called for new elections, the governors started imposing curfews on cities and neighbourhoods where the movement for "self-

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<sup>4</sup> Newspaper Articles:

[http://www.cumhuriyet.com.tr/haber/turkiye/339505/Silopi\\_yaniyor\\_3\\_olu\\_10\\_a\\_yakin\\_yarali.html](http://www.cumhuriyet.com.tr/haber/turkiye/339505/Silopi_yaniyor_3_olu_10_a_yakin_yarali.html)

<sup>5</sup> Newspaper Articles: <https://anfturkce.net/guncel/yps-unutmak-lhanettir-unutmayacagiz-100107>

administration” stood strong. The curfews were imposed without any legal basis in Turkish law that allowed to do so.

The **first curfew** was imposed in the city of Varto as early as **16 August**.

As of **October 2016**, a total of **114 curfews** had been declared, in 9 provinces and at least 35 districts. In Diyarbakır 63, Mardin 18, Şırnak 13, Hakkâri 11, Muş, Batman and Bingöl two and in Dersim one. Again, as of October 2016, since curfews began in August 2015 in Cizre, Silopi, İdil, Şırnak, Yüksekova, Nusaybin and Sur, a total of 863 people had died and the right to life and right to access health of at least 1 million 671 thousand people was adversely affected<sup>6</sup>.

The Parliamentary Assembly of the Council of Europe, found that 1.6 million people had been affected by the curfews and at least 355 000 persons had been displaced. The official figures provided to the Council of Europe on 20 May 2016 regarding the total number of displaced persons from seven districts out of the 22 districts affected (Centre, Cizre, Silopi and İdil in Şırnak, Sur in Diyarbakır, Nusaybin in Mardin, and Yüksekova in Hakkari) was 280 500 for a total population of 590 083<sup>7</sup>.

According to the data of HRFT Documentation Center, since August 16, 2015 (which is the date of first declared curfew) until April 20, 2016 at least 338 civilians lost their lives in regions and periods of time where curfews were officially declared. Amongst them 78 are children, 69 are female and 30 are over the age 60. It is estimated that at least 76 civilians lost their lives because they were not given access to medical assistance. Again at least 200 civilians lost their lives while they were within the boundaries of their homes/indoor areas. 182 of these people were killed due to gunfire or missile impacts and 18 of them lost their lives due to the direct stress effect of curfews on their health conditions. Moreover, 147 of these people who lost their lives within the boundaries of their homes/indoor areas were killed in the Cizre District alone.<sup>8</sup>

Ambulances and medical staff were prevented from entering the curfew zones to rescue victims, be they wounded fighters or unarmed civilians, and are exposed to fire if they try to do so. Authorities justified this conduct by arguing that the security situation does not allow for medical staff to work safely.<sup>9</sup>

During the campaign the repression against community organisers and elected local representatives continued and even increased. A vilification campaign was conducted in particular against the HDP, depicted as the legal branch of PKK and therefor a terrorist organisation.

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<sup>6</sup> According to data from the TİHV Documentation Centre in a report covering the period between 11 December 2015 and 8 January 2016: <http://tihv.org.tr/16-agustos-2015-16-agustos-2016-tarihleri-arasinda-sokaga-cikma-yasaklari-ve-yasamini-yitiren-siviller-bilgi-notu>

<sup>7</sup> Council of Europe: Commissioner for Human Rights, *Memorandum on the Human Rights Implications of Anti-Terrorism Operations in South-Eastern Turkey*, 2 December 2016, CommDH(2016)39, available at: <http://www.refworld.org/docid/58c68e9f4.html> [accessed 17 February 2018]

<sup>8</sup> Human Rights Foundation of Turkey: <http://en.tihv.org.tr/wp-content/uploads/2016/04/HRFT-Curfews-Fact-Sheet-20-April-2016.pdf>

<sup>9</sup> Euro-Mediterranean Human Rights Network (EMHRN), *EuroMed Rights and FIDH High-level Solidarity Mission To Turkey, 20-24 January 2016*, 24 January 2016, available at: <http://www.refworld.org/docid/56fcca9a4.html> [accessed 17 February 2018]

As will be seen later this resulted in a significant decrease of votes for the HDP and an increase for the ruling AKP, but not enough to keep HDP under the electoral threshold of 10%. The November 2015 Turkish general election provided indeed a major gain to the AKP (49,5% of votes, +8.6%) and decrease for HDP (10,7% of votes, -2.4%).

The Turkish authorities reacted to the fact that HDP remained strongly present in the new parliament with a tremendous military build-up and outright acts of war in the cities as will be seen hereafter.

What followed was a very long period of very sharp tension between Turkey and the Kurdish population which resulted in the middle of December 2015 in very heavy war operations conducted by Turkish forces in several Kurdish cities of South East Anatolia. From then on, the conflict between the PKK and government forces escalated in an unprecedented manner, with a renewed eradication strategy by security forces that began to target large urban areas with total, round-the-clock curfews, military rule and heavy artillery fire.

Hundreds of peaceful activists, journalists, HDP local representatives, lawyers, human rights defenders were arrested and charged for terrorism related offences. Dozens of newspapers and online media and several TV channels were suspended or blocked.

Numerous allegations of human rights violations occurring in the Southeastern region and elsewhere, from the right to life to the right to health, education, and freedom of expression and assembly, have been reported by local human rights associations, media and health professionals. This degradation has led to the worst human rights situation in the country in many years.<sup>10</sup>

#### **Chronology of key political events in 2015-2016<sup>11</sup>:**

- **28 February 2015: Dolmabahçe agreement, culminating a 2-year process of negotiations between the PKK and the Turkish government**
- **Break-up of the peace negotiations in March - April**
- **5 June 2015: Bombing in Diyarbakır against a gathering of HDP supporters: 5 victims**
- **General elections on 7 June: AKP loses the absolute majority and HDP wins 13% (80 seats) in Parliament**
- **20 July 2015: Suroç bombing against Kurdish activists kills 33**
- **2 policemen killed by the PKK in Ceylanpınar, Şanlıurfa on 22 July 2015**
- **Escalation of the conflict, security forces start bombing bases of the PKK guerrilla in Northern Iraq on 26 July**

<sup>10</sup> Euro-Mediterranean Human Rights Network (EMHRN), *EuroMed Rights and FIDH High-level Solidarity Mission To Turkey, 20-24 January 2016*, 24 January 2016, available at: <http://www.refworld.org/docid/56fcca9a4.html> [accessed 17 February 2018]

<sup>11</sup> Euro-Mediterranean Human Rights Network (EMHRN), *EuroMed Rights and FIDH High-level Solidarity Mission To Turkey, 20-24 January 2016*, 24 January 2016, available at: <http://www.refworld.org/docid/56fcca9a4.html> [accessed 16 February 2018]

- **Beginning of a wave of mass arrests of Kurdish activists and pro-Kurdish militants, intellectuals and journalists**
- **Round-the-clock curfews are being imposed from 10 August on 7 cities and 20 districts, for varied durations, up to several months;**
- **In the middle of August the KCK made a statement announcing that self-government was proclaimed in some city;**
- **11 August Erdoğan declared: "Whoever is making these declarations will pay a heavy price. They will pay both a legal price and the other kind of price"**
- **04 September start the 1<sup>st</sup> curfew in Cizre;**
- **10 October 2015: bombing in Ankara of a 'Peace gathering' of HDP, various NGOs, trade unions and peace activists leaves 100 dead**
- **1st November 2015: General elections, AKP regains absolute majority but HDP maintains above the 10% threshold**
- **28 November 2015: assassination of M. Tahir Elçi, President of the Diyarbakır Bar Association, IHD member, founder of the HRFT and a prominent human rights defender**
- **First week of December the teachers received a sms in Cizre about a "training outside the city"**
- **The 14<sup>th</sup> of December started another curfew;**
- **11 January 2016: over 1100 academics of Turkey and elsewhere sign a statement entitled "We won't be a party to this crime". President Erdogan reacts by calling them the 'fifth column for terrorists'. He asks for their punishment. Administrative investigations are opened against all signatories, a smear campaign develops and some face threats and judicial proceedings, while some others are dismissed from their positions.**

According to the information gathered by the Human Rights Foundation of Turkey Documentation Center, between 16 August 2015 and 1 January 2018, at least 289 officially confirmed round-the-clock [all day long] and/or open-ended curfews were imposed in 11 cities and at least 49 districts of Turkey: DİYARBAKIR (159 times), MARDİN (48 times), HAKKÂRİ (23 times), ŞIRNAK (13 times), BİTLİS (14 times), MUŞ (7 times), BİNGÖL (7 times), TUNCELİ (6 times), BATMAN (6 times), ELAZIĞ (2 times) and SİİRT (4 times).



In addition to these, as of 11 August 2017, at least partial 13 curfews were declared in various villages and flatlands of Şemdinli district of Hakkâri, and Hizan, Güroymak, Mutki, Tatvan and Central districts of Bitlis. Those curfews were implemented only in between designated hours) and are not included in abovementioned data.

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It is estimated that, according to the 2014 population census, at least 1 million 809 thousand residents have been affected by these curfews. Their fundamental rights such as the right to liberty and security of person; right to privacy, family, home or correspondence; freedom of assembly and association; freedom of religion; freedom to receive and impart information; right to protection of property; right to education and especially the right to life, right to health and prohibition of torture were violated.<sup>12</sup>

Hereafter the events in the cities of Cizre and the Sur district of the city of Diyarbakir will be discussed more in detail.

### Applicable legal framework to the conflict: international humanitarian law and the laws of war or national criminal law?

However at this stage it is necessary to discuss the question of the applicable legal framework.

The Government has described the operations in the cities as police actions against terrorist activity. Numerous factors however indicate that this qualification is not correct and that the Government conducted outright war operations against the Kurdish cities and its inhabitants

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<sup>12</sup> Curfews in Turkey between the dates 16th August 2015 and January 2018 THIV <http://en.tihv.org.tr/curfews-in-turkey-between-the-dates-16-august-2015-1-january-2018/>

to which international humanitarian law and the laws of war apply and not national criminal law. Crimes committed by either parties could then amount to war crimes as defined by international law

In order to find that war crimes were committed by the Turkish State, the Tribunal has to examine the question whether the conflict between the Turkish State and the Kurds, in particular the guerrilla of the Kurdish Workers Party PKK, is in general an armed conflict in the sense of international law. That question will be primarily dealt with in annex 1 to the present indictment which contains all the arguments of the Prosecution in support of the fact that an armed conflict in the sense of international law exists between Turkey and the Kurdish insurgents.

Subsequently the Tribunal has to examine whether the clashes in the South East Anatolian cities in the second half of 2015 and the first part of 2016 have to be considered as a part of that conflict.

The Turkish State has consistently spoken about its operations as “police action against terrorists” denying thus implicitly the existence of an armed conflict as defined by international law.

When a conflict reaches the level of an armed conflict, international humanitarian law is applied. At that moment the paradigm changes fundamentally. While the use of force in times of peace is in principle not permitted, it is in principle allowed in times of armed conflict.

In 2003, the International Committee of the Red Cross argued at the 28th International Conference of the Red Cross on "international humanitarian law and the challenges of international armed conflict" and on the difference between terrorism and armed conflict:

"Every armed conflict requires a certain level of violence and, among other things, the existence of counterparties. The term "party to an armed conflict" is generally applied to armed forces or to armed groups that have a certain degree of organization, a policy structure and thus the ability to apply international humanitarian law. The logic itself that underlies international humanitarian law requires the existence of identifiable parties in the sense mentioned above because this whole rules (...) establishes the equality of rights and obligations in international humanitarian law " <sup>13 14</sup>  
(translated from French)

In the context of IHL, the notion "dissident forces or other armed groups" refers to groups that are party to the armed conflict which means groups that are capable of waging a real war, and this in the long term. The international courts and the International Criminal Court have repeatedly expressed themselves as to whether an organization can be regarded as an armed group or force, based on the criteria set out in the comments and case law on the Geneva Conventions, in essence a form of organization that includes:

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<sup>13</sup> RICR, 2004, pp. 267-268

<sup>14</sup> « *Tout conflit armé exige une certaine intensité de violence et, entre autres, l'existence de parties adverses. Le terme de parties à un conflit armé s'applique généralement à des forces armées ou à des groupes armés ayant un certain niveau d'organisation, une structure de commandement et donc, la capacité de mettre en œuvre le droit international humanitaire. La logique même qui sous-tend le droit international humanitaire exige l'existence de parties identifiables au sens ci-dessus parce que cet ensemble de règles [...] établit l'égalité des droits et des obligations entre elles en droit international humanitaire* »

- the possibility to carry out continuous and coherent military operations (which presupposes a sufficient number of fighters, quality of armaments and discipline)
- the ability for the leadership to respect the IHR by the troops by a responsible order (i.e. a command structure capable of enforcing its orders).

As already stated, the concept of "armed conflict" is a factual description of a situation. The hostilities must have exceeded a certain threshold, there must be a certain duration and the intensity of the skirmishes must be such that the law of war applies.

In the case law of the ICTY<sup>15</sup>, an armed conflict is identified taking into consideration the following elements: the number of casualties, the seriousness of the damage, the use by the protagonists of weapons of war, and the displacements of the population resulting from all this.

The conflict between the PKK and the Turkish state is regarded by most observers but also by members of the international community as a non-international armed conflict within the meaning of art. 1.1 of the Additional Protocol II to the Geneva Conventions as of Art. 8 (c) of the Rome Statute of the International Criminal Court:

- The International Crisis Group, an internationally respected organization, reports on the situation in Turkey as an armed conflict.<sup>16</sup>
- In this connection, the *Centre international pour la Paix et les Droits de l'Homme* is talking about an armed conflict (conflit armé) which, according to the opinion of this non-governmental organization based in Geneva, has been going on for over thirty years.<sup>17</sup>
- The British Home Office has always been critical of Turkey and qualified the conflict there as armed conflict ("armed conflict").<sup>18</sup>
- The same applies to the Ministers of Foreign Affairs and Justice in the Netherlands. The Dutch government already ruled in 1999 that a war is being fought in Turkey<sup>19</sup>
- According to the authoritative Academy Of International Humanitarian Law And Human Rights, part of the University of Geneva, the Turkish government in Turkey is engaged in an armed conflict with the PKK, although the Academy notes that the government consistently dismissed and still does so today as 'police actions'<sup>20</sup> : "*Although the Turkish*

<sup>15</sup> ICTY, case IT-03-66-T, Limaj et al., 30 Nov. 2005, §§ 135 ss.

<sup>16</sup> International Crisis Group, Turkey and the PKK: Saving the Peace Process, 6 November 2014, p. i: "Importantly, the two sides, having realised that neither can beat the other outright, say they want to end the armed conflict" & Turkey: Ending the PKK insurgency, 20 September 2011, p. i: "Neither should allow itself to be swept away by armed conflict that has already killed more than 30,000 since 1984."

<sup>17</sup> Centre international pour la Paix et les Droits de l'Homme (CIPADH), La Résurgence De La Question Kurde, 7 August 2015, <http://www.cipadh.org/fr/>: "La situation des Kurdes en Turquie a profondément changé en raison du conflit armé qui s'est étendu entre le PKK et Ankara pendant trente années."

<sup>18</sup> UK Home Office, Country of Origin Information Report; Turkey, 9 augustus 2010, par. 19.17, [https://www.ecoi.net/file\\_upload/1226\\_1281534260\\_turkey-100810.pdf](https://www.ecoi.net/file_upload/1226_1281534260_turkey-100810.pdf): "In considering the ongoing armed conflict with the Kurdish insurgent group the PKK, the Economist in an article entitled 'A never-ending fight: The Turkish army continues its long battle with kurdisch rebels' dated 20 May 2010 reported that "[o]ver the past month clashes between the army and the PKK have escalated."

<sup>19</sup> Tweede Kamer, Vragen gesteld door de leden der Kamer met de daarop door de regering gegeven antwoorden, Vergaderjaar 1998-1999, Aanhangsel, p. 3191: "Het Ministerie van Buitenlandse Zaken zal naar verwachting in juli een geactualiseerd algemeen ambtsbericht over de situatie in Turkije uitbrengen. Hierin zal onder meer aandacht worden besteed aan de positie van de Koerdische bevolkingsgroep, het gewapend conflict met de PKK en de positie van de pro-Koerdische politieke partij Hadep."

<sup>20</sup> Geneva Academy Of International Humanitarian Law And Human Rights, 5 april 2016, Turkey: Applicable international law, Turkey and the conflict with the Kurdistan Workers' Party,



*Government defines its operations against the Kurdistan Workers' Party (PKK) as " police operations ", the situation is one of an armed conflict or a non-international character. In addition, incursions by Turkish forces into Iraq, which targeted PKK bases in the north of the country, form part of the non-international conflict between Turkey and the PKK. To the extent that there are objects to any incursion, this would also result in a separate, international armed conflict between Turkey and Iraq."*

- That is also the position of the Rule of Armed Conflicts project (Rulac), a specialized research project of the aforementioned Académie de Droit International Humanitarian et de Droits Humains from Geneva. The aim of this project is precisely to categorize conflicts on the basis of the criteria of international law. This project has more specifically studied the situation after the termination of the ceasefire that started in 2013 and ended in July 2015. The two criteria that are important are used: the intensity of the conflict and the degree of organization of the non-state party, the PKK. Rulac decides that a non-international armed conflict raged in Turkey during the period under review.

<sup>21</sup>

- Eric DAVID, Professor Emeritus International Law at the Université Libre de Bruxelles and chairman of the "Centre de droit international" of the same university, who will be heard as a witness by the Tribunal, has prepared a report at the request of the defence in a case in which alleged PKK members were prosecuted before a Belgian Court for participating in the activities of a terrorist organization. His conclusion (point 19 of the report) reads as follows: "In the light of all these elements, I am concluding that the situation of repeated violence between the PKK and Turkey can reasonably be regarded as an" armed conflict "within the meaning of the IHL. "(free translation from French)<sup>22</sup>

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## Were the confrontations in the South East Anatolian cities in 2015-2016 related to the armed conflict?

As exposed above the confrontations that took place in the South Anatolian cities in 2015 were the result of civil protest against what was perceived by the Kurdish population as the unilateral cancellation by the Turkish authorities of the cease fire and the peace process. That civil protest started mainly with civil disobedience (the declarations of self-administration and the organisation of protest amongst the population). At that point of the events there was no military confrontation between the Turkish State and a Kurdish counterpart. Police actions against such a civil protest are in principle not parts of an armed conflict.

However, in this specific situation the following circumstances must be taken into consideration:

1. The protests of the population were the logical continuation of developments in the armed conflict. The main demands that triggered the protests were on one hand the immediate resumption of the peace process and respect for the ceasefire and on the other hand self-administration for the Kurdish people in the cities. That self-administration was the most important demand of the Kurdish side in the peace process. The termination of the peace

<sup>21</sup> <http://www.rulac.org/browse/conflicts/non-international-armed-conflict-in-turkey#collapse3accord>

<sup>22</sup> « C'est pour l'ensemble de ces raisons que le soussigné conclut qu'on peut raisonnablement qualifier la situation de violences répétées entre le PKK et la Turquie de « conflit armé » au sens du DIH. »

process therefor also ended the perspective to realize the right to self-determination of the Kurdish people through a negotiated agreement resulting in just and lasting peace. The protest are therefore the logical result and the continuation of a process that is an integral and essential part of the armed conflict.

2. The Turkish authorities have systematically called the protesters “terrorists” or “accomplices of the terrorists”. The Turkish authorities have in the past, as seen above qualified the fight against the Kurdish insurgency as a “fight against terrorism” while applying to the situation wartime legislation. By using this qualifier also for the civil protesters in the cities, the Turkish authorities themselves have clearly indicated to consider the police actions against those protesters as an integral part of the conflict with the Kurdish insurgency.
3. The Turkish authorities very heavily militarised the confrontations in the cities by using not only special forces but also artillery and heavy weaponry, causing massive destruction which goes far beyond the destruction normally caused by a police operation while the Kurdish forces, limited to a few hundred militants in the whole confrontation area, that intervened in the later stage of the confrontations only had a very limited number of light weapons. These facts are i.a. illustrated by the following pictures and will be further proven by witness statements and documentary evidence:

**Use of tanks and artillery:**





**The level of destruction**









**For all these reasons, the crimes committed during these confrontations can be considered as having been committed within the framework of the non-international armed conflict between Turkey and Kurdish insurgents.**

### The events in the city of CIZRE



Cizre is a town in Şırnak Province in the Southeastern Anatolia Region of Turkey, on the border with Syria, just to the northwest of the Turkish-Syrian-Iraqi tripoint. It is populated by a majority of Kurds in addition to Assyrian/Syriac people, Arabs (and Armenians previous to the Armenian Genocide). Cizre is located in a valley, surrounded by hills and the population is almost 120.000 persons.

Barricades start to appear in Cizre at the end of 2014, in support and solidarity of the Kobane resistance against ISIS attacks. As said, the barricades were a form of protests but also an instrument to protect the peoples protests against police raids and repression.

The barricades were build by the “Patriotic Revolutionary Youth Movement” YDG-H (Yurtsever Devrimci Gençlik Hareket); as the name suggest, a youth organisation involved in the political struggle for the Kurdish issue.

Several sources mention that, as a result of the police forces’ aggressive behaviour towards the citizens in Cudi<sup>23</sup> neighborhood (arbitrary raids and detentions), in which four people were killed, the local youth had dug trenches. Cizre’s co-mayor and Ercan Demir, Chief of the Police in Cizre (“İlçe Emniyet Müdürü”) negotiated and after a promise that no more arbitrary raids

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<sup>23</sup> Cudi is a Cizre neighbourhood.

and detentions would take place, the machines of the municipality refilled the trenches. However, as soon as the barricaded streets were accessible again, the police forces entered the neighbourhoods again with armed vehicles and started randomly firing in the area. Many people were injured, and one boy named Umit Kurt (14) got killed on 6 January 2015.<sup>24</sup>

Police claimed that the boy was armed and that he was shooting at them, but ballistics investigation, conducted later, showed that the boy had not shot any gun while no traces of powder were found on his hands and no gun was found close to the boy's body.<sup>25</sup>

New negotiations between representatives of the population and the authorities started after these events. Hatip Dicle<sup>26</sup> addressed the people of Cizre, reading out a message of Abdullah Öcalan about the necessity to protect the peace process. Dicle stated that the youth should stick to the non-protest decision in order to secure the peace process, in spite of the recent events in Kobane and Cizre.<sup>27</sup>

Other lethal incidents happened in the following months, and all of this, including the growing tension in the region due to the war in Syria, contributed to creating a feeling of tension and fear amongst the population of the area.

In accordance with Provincial Administration Law no 5442 Article 11/C<sup>28 29</sup>, a first curfew has been declared in Cizre district by the governor of Şırnak on 4 September 2015 at 20.00. It lasted until 12 September 2015. The second curfew was imposed on 13-14 September 2015 and a third one on 14-15 November 2015. The longest and continuous curfew was implemented between **14 December 2015- 03 March 2016** and lasted for 79 days.<sup>30</sup>

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<sup>24</sup> <https://m.bianet.org/bianet/siyaset/161338-cizre-de-14-yasindaki-umit-kurt-polisin-actigi-ates-%20sonucu-oldu>

<sup>25</sup> Newspaper T24: <http://t24.com.tr/haber/cizrede-oldurulen-umit-kurtun-balistik-raporu-polisleri-yalanladi,294137>

<sup>26</sup> Hatip Dicle is the co-president of the Democratic Society Congress (DTK- "Demokratik Toplum Kongresi"). He visited Öcalan as a part of the Imrali Delegation. During the peace process Hatip Dicle was one of the people negotiating with the Government.

<sup>27</sup> Newspaper article: <http://www.hurriyet.com.tr/hatip-dicle-cizreliere-ocalan-in-mesajini-ilette-27969349>

Newspaper: <http://diclehaber50.com/news/content/view/439761?page=3&key=f2b7fad2fc3f84654b937cd18d84> Video: <https://www.youtube.com/watch?v=qVDb4impFs0>

<sup>28</sup> "Article 11 of Act No. 5442 Law on Provincial Administration : A)The governor shall be the superior of all general and special law enforcement forces and organizations. He shall take necessary measures to prevent crimes from being committed, protect public order and security. For this purpose, he shall employ the general and special law enforcement forces of the State; the superiors and officers of such organizations shall be obliged to immediately execute the orders issued by the governor.

B) B) The governor shall secure the border and coasts of the country, and execute all affairs relating to border and coastal security according to the provisions in force.C) C) The governor shall have the duty, inter alia, to secure peace and security, personal immunity, safety of private property, public well-being and the authority of preventive law enforcement. The governor shall take necessary decisions and measures to this end. Provisions of Article 66 shall apply to those who do not comply with such decisions and measures."

<sup>29</sup> The Diyarbakir Bar association argues that this law is insufficient to infringe on a massive scale on rights guaranteed by the Turkish Constitution and international human rights instruments to which Turkey adhered.

[https://www.diyarbakirbarosu.org.tr/filemanager/cizre%20raporu%20ingilizce%20\(1\).pdf](https://www.diyarbakirbarosu.org.tr/filemanager/cizre%20raporu%20ingilizce%20(1).pdf)

<sup>30</sup> In according with Cizre Field Report: <http://en.tihv.org.tr/wp-content/uploads/2017/10/Cizre-Field-Report.pdf>





Picture of Cizre after the last curfew, in March 2016.

According to a report published by the Diyarbakir Bar Association Ahmet ADANUR (Cizre District Governor) stated that *"The need of operation has emerged in order to neutralize the armed groups and remove trenches and barricades. The curfew and the length of the curfew are determined by the Governor upon briefing from security offices. The length of the period could change according to observations and assessments."*<sup>31</sup>

Most reports regarding the first curfew gave a number of casualties of 21. However, a report dated 20.10.2015 and prepared by the Türkiye İnsan Hakları Derneği - Human Rights Association of Turkey (İHD), TİHV (Türkiye İnsan Hakları Vakfı – Human Rights Foundation of Turkey, Diyarbakir Tabip Odası - Diyarbakir Chamber of Physicians (DTO) and Pratisyen Hekimler Derneği - Association of General Practitioners (PHD) raised the figure to 22, including the death of Mülkiye Geçgel, who suffered a wound caused by firearms during the curfew.

After the first curfew in Cizre the Commissioner for Human Rights of the Council of Europe, expressed his concerns regarding the situation in Cizre, underlining how *"public life, including essential services such as healthcare, and means of communication had been severely disrupted, and that entry and exit from the city had been barred, amid reports of disproportionate use of force by security forces against civilians"* and *"called for access to be granted to independent observers, in particular, the national human rights structures in Turkey"*<sup>32</sup>.

Between 4 September and 12 September 2015, according to the report drafted by Mr. Tahir ELÇİ (President of Diyarbakir Bar Assoc.) and published on 21st September 2015, *"all main roads which provide entrance and exit to Cizre including the roads which pass from Turkey to Iraq and the International Silk Road, were blocked by military barricades; barricades were covered with barbed wires and security officers took up their positions behind sandbags. In the first few days of the curfew, vehicles were allowed to pass partially and after control."*

<sup>31</sup> Curfew in Cizre A survey report of events:

[https://www.diyarbakirbarosu.org.tr/filemanager/cizre%20raporu%20ingilizce%20\(1\).pdf](https://www.diyarbakirbarosu.org.tr/filemanager/cizre%20raporu%20ingilizce%20(1).pdf)

<sup>32</sup> Council of Europe: Commissioner for Human Rights, Memorandum on the Human Rights Implications of Anti-Terrorism Operations in South-Eastern Turkey, 2 December 2016, CommDH(2016)39, available at: <http://www.refworld.org/docid/58c68e9f4.html> [accessed 17 February 2018]

*The armoured military or police vehicles and tanks besieged all around the town including highways which provides entrance and exit to Cizre. Our committee has observed on their limited visit on 5 September 2015 that all the barrels of tanks and armoured vehicles which were located on high hills and all dominant points were aimed at the city. During the curfew, it was not possible to enter or exit the town.*

*From the 4 September to 12 September during the curfew, all networks of cell phone operators were cut on the instruction of the Governor of Şırnak. During this time all communication means connecting Cizre to the outside world had been cut with a very few exceptions."*<sup>33</sup>

*According to Amnesty International the "operations by police and the military in these areas have been characterised by the abusive use of force, including firing heavy weaponry in residential neighbourhoods"*<sup>34</sup>.

Amnesty International (while erroneously describing the operations as "law enforcement") underlines that: *"The operations appear to be conducted with the intention of killing – rather than arresting -- members of the YDG-H, ignoring the requirement that intentional lethal force only is used when strictly unavoidable to protect life. Evidence also points to the fact that security forces have been reckless in their use of firearms, using heavy weapons in built-up areas in a way that is likely to cause casualties to unarmed residents. In the course of on the ground research following an earlier curfew in Cizre from 4 – 12 September 2015, Amnesty International found evidence that several deaths may have been caused by snipers at locations far from where clashes were taking place. Among those killed were children, women and elderly people, who are very unlikely to have been involved in armed clashes. More recently reported deaths have also followed this same troubling pattern. Investigations into deaths have failed to show any sign of progress. International standards protecting the right to life require that **lethal force by law enforcement agents, and particularly their use of firearms, be limited to self-defence or defence of others against imminent threat of death or serious injury. Intentional lethal use of firearms may only be made when strictly unavoidable to protect life. (Principle 9, UN Basic Principles on the Use of Force and Firearms).** While it is difficult to paint an accurate picture of the scale of the violations in the areas under curfew, there is little doubt that the Turkish authorities are putting lives at risk by using lethal force excessively and recklessly. The Turkish authorities must rethink both the aims and the methods of their law enforcement operations"*<sup>35</sup>.

On the 16th of September, two days after the end of the first curfew, **President Recep Tayyip Erdogan** said in a television interview: *"The state has taken the steps that had to be taken. The governors have the authority. If one is to go on the street, he is a terrorist. The operation has to be able to be conducted freely. If my citizens wants serenity, they will have it. |...| The more steps we took, the more some people felt disturbed. Why was the terrorist organization in search of representatives? Let us have a place in this as well, they said. First, they entered*

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<sup>33</sup> CURFEW IN CIZRE A SURVEY REPORT OF EVENTS:

[https://www.diyarbakirbarosu.org.tr/filemanager/cizre%20raporu%20ingilizce%20\(1\).pdf](https://www.diyarbakirbarosu.org.tr/filemanager/cizre%20raporu%20ingilizce%20(1).pdf)

<sup>34</sup> Amnesty International, Turkey: *End abusive operations under indefinite curfews* , 21 January 2016, available at: <http://www.refworld.org/docid/56a07f7e4.html> [accessed 16 February 2018]

<sup>35</sup> Amnesty International, Turkey: *End abusive operations under indefinite curfews* , 21 January 2016, available at: <http://www.refworld.org/docid/56a07f7e4.html> [accessed 16 February 2018]

*parliament independently, then as a group. Then what is this situation now? The terrorist manifestations that are taking place in several parts of our country are disturbing our people. We took precautions for this.” And also “ Cizre was the clearest example of this”, concluding “There is a decision we took earlier about this parallel terrorist organization: to pave the road for operations against all legal and illegal organizations that are threatening our national security. Our government has made all the legal arrangements for this. This is being followed up in all fields and we have started getting positive outcomes already. If you noticed, they are all fleeing out of the country. If you didn’t commit any crime, then why are you fleeing? Because they don’t know what’s playing in the background. Our justice and our police are continuing the fight against them.”<sup>36</sup>*

Human rights organisations referred to a recent internal circular of the military encouraging forces on the ground by stating they should not fear prosecution as the institution would back them anyways. This suggests the authorities not only are aware of the violations committed but are also ready to cover them. As such, Human rights organisations pointed to a centralized, planned and fully deliberate policy implemented by the Ministries of Interior and Defense<sup>37</sup>.

After the first curfew the situation in Cizre gradually became again more tense, since there was an escalation of tension and fear.

A gradually militarization of the city was going on since September, but only after the national election on the 1st of November there was a constant inflow of police and military forces in the area. The Human Rights Foundation of Turkey reported on government side the participation of *“Police Anti-terror Combat Team, Police Special Forces, Gendarmerie Special Forces, Military Forces and Riot Polices.’ Also, there are some unofficial teams which are both by themselves and publicly defined as JITEM, Esedullah, Hançer [Dagger] Teams etc...<sup>38</sup>”*.

In particular, in the middle of November a new wave of arrival in the city of tanks, panzer and other kinds of armed vehicles lining up on the top of the hills around Cizre city occurred.

Local newspapers report that on the 16th of December Special units forces (military, police special forces and gendarmerie special forces - ten thousand strong) from Isparta, Bolu and Sivas had been send to Cizre and Silopi for a major operation under command of two brigadiers of the Cakirsogut Gendarmerie brigade and the Silopi brigade. According to these sources, the military is also present and is leading the operation in coordination with the other forces.<sup>39</sup>

An Amnesty International report published on the 21th of January 2016 states that *“The law enforcement and military operations conducted in areas under curfew has been characterised*

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<sup>36</sup> Article: <http://t24.com.tr/haber/erdogan-bunlar-lafa-geldigi-zaman-saz-lafa-geldigi-zaman-caz,309896>

<sup>37</sup> Euro-Mediterranean Human Rights Network (EMHRN), EuroMed Rights and FIDH High-level Solidarity Mission To Turkey, 20-24 January 2016 , 24 January 2016, available at: <http://www.refworld.org/docid/56fcc9a4.html> [accessed 17 February 2018]

<sup>38</sup> THIV report on Cizre: <http://en.tihv.org.tr/recent-fact-sheet-on-curfews-in-turkey-between-the-dates-16-august-2015-5-february-2016/>

<sup>39</sup> Newspaper: <http://www.sozcu.com.tr/2015/gundem/iki-ilcede-dev-operasyon-1010848/>

Newspaper: <http://www.internethaber.com/dev-pkk-operasyonu-10-bin-kisilik-ekip-iste-ayrintilar-1495264h.htm>

by the use of heavy weaponry and sniper fire by the police and army, putting the lives of trapped residents at risk", and in order to allow that, "details provided by the Minister of the Interior to parliamentarians from the ruling AK Party during a 8-10 January retreat ... that a total of **6,182 soldiers** and **7,889 police** took part in the operations"<sup>40</sup>.

The premeditated and organised nature of the subsequent operations appears clearly from the fact that at the end of the first week of December, teachers (which represent the majority of government workers and 80 % of which come originally from Western Turkey) received an SMS calling them to participate in a training program that started on 14 December and which was to be conducted in their hometowns

**"Our teachers can (are suggested to) follow these seminars in their hometowns. We demand our teachers to avoid the coach station and find alternative ways to exit the Town."**

Therefore, 1.298 teachers from Cizre and the surrounding villages, left the district.<sup>41</sup>

Few days later the longest and bloodiest curfew declared in Cizre started.

A document, dated **13 December 2015**, classified as "**secret**", signed by the Prime Minister M. AHMET DAVUTOGLU gives instructions for the organisation of the curfew in the cities of Cizre and Silopi.

Below we produce the translation of the original document:

<p><b>SECRET</b></p> <p><b>TURKISH REPUBLIC PRIME MINISTRY</b></p> <p><b>Directorate General for Security</b></p> <p>Number:</p> <p>Subject: Sirnak peace and freedom operation</p> <p style="text-align: right;">Date: 13/12/2015</p> <p>The state of the Republic of Turkey is carrying out operations effectively and resolutely, within the framework of the democratic rules of law, against the rural and urban structure of the separatist</p>
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<sup>40</sup> Amnesty International, *Turkey: End abusive operations under indefinite curfews*, 21 January 2016, available at: <http://www.refworld.org/docid/56a07f7e4.html> [accessed 16 February 2018];

- Human Rights Foundation of Turkey, [http://en.tihv.org.tr/fact-sheet-on-declared-curfews-between-august-16th-2015-and-march-18th-2016-and-civilians-who-lost-their-lives/#\\_ftn1](http://en.tihv.org.tr/fact-sheet-on-declared-curfews-between-august-16th-2015-and-march-18th-2016-and-civilians-who-lost-their-lives/#_ftn1)

<sup>41</sup> [http://www.bbc.com/turkce/haberler/2015/12/151214\\_cizre\\_silopi](http://www.bbc.com/turkce/haberler/2015/12/151214_cizre_silopi)

terror organization, that has been threatening the national security and the public order, targeting the security forces and the life and property security of the citizens. It has been confirmed by our security and intelligence units that the separatist terror organization “PKK”, in particular using their urban structure, has;

- Been carrying out attacks that directly target the security forces and, in the first place, the right to life of our civilians, the right to freedom and security, the right of property and other fundamental rights and liberties alike,
- Been carrying out, by means of their armed forces, activities like blocking roads, verifying identities, racketeering and abduction, with the aim to impose a political and social pressure upon the region’s people; and has not been permitting individuals, groups, communities, civil society organizations or political parties with different political, religious or world views to exist and forcing them to migrate, using systematic attacks,
- Been restraining our civilians from continuing their daily lives and profiting from fundamental civil services such as education and health, through acts like building mine and explosive loaded barricades and digging trenches, in the districts of Cizre and Silopi being in the first place, in our Province of Sirnak.

For these reasons, in order to establish a climate of peace in which our civilians will be able to exercise their fundamental rights and liberties, and the public order in a permanent way, in our Province of Sirnak, especially in the district centers of Cizre and Silopi, I request these requirements regarding;

1. The assignment of the Turkish Armed Forces with all of their means and capabilities for operational purposes, as a reference to the governors force request, within the framework of the provisions of the 5442 numbered Provincial Administration Law, in the districts of Cizre and Silopi and all other critical provinces/districts where it is deemed necessary,
- 2.The enforcement of the operations that will be executed in our province of Sirnak, within the command of the therefore dispatched senior commander of our military units, in the districts of Cizre and Silopi in the first place, within the framework of the provisions of the 5442 numbered Provincial Administration Law, under responsibility and coordination of the Governor of Sirnak,
3. The usage of all components assigned for the operation (the Turkish Land Forces, the Special Forces, the Gendarmerie General Command, the General Directorate of Security and the Security Forces Command) according to the plan that will be made by the Operation Commander,
4. The announcement of a curfew by the Governor of Sirnak for the timeframe that is deemed necessary for the operations and the necessary precautions to be taken in order to provide the fundamental needs of our civilians, to provide the compulsory health services, to close off Ipek Road for as long as the operation requires and to secure a controlled traffic flow,
5. The reinforcement of the State Hospitals in Sirnak, Cizre and Silopi with specialists, medical staff and equipment for an uninterrupted twenty four hour service, by the Minister of Health, starting on 14th December; the assignment of ambulance planes and helicopters in Mardin Airport and the continuation of these precautions throughout the duration of the operation,

6. The temporarily closure of the schools in Cizre and Silopi by the Governor of Sirnak in coordination with the Ministry of Education, from the 14th December 2015 on,
7. The assignment of a sufficient amount of judges and prosecutors in the legal services of both districts, in order to assign one prosecutor on duty in all neighborhoods (nine neighborhoods in total), by the Ministry of Justice, from the 14th December 2015 on,
8. The precautions to be taken by The Ministry of Transport, Maritime Affairs and Transportation in order to ensure Mardin Airport and Serafettin Elçi Airport to continuously stay open throughout the duration of the operation,
9. The running of the operation centers assigned for the operation with the presence and cooperation of representatives of the National Intelligence Organization, the General Directorate of Security, the Gendarmerie General Command and the Prosecutors Office,
10. The waging of the procedures regarding the estimation and compensation of the damage in that might occur as a result of the operation, in the framework that applies, by the Governor of Sirnak,
11. The urgent provision of the Turkish Armed Forces, the Governor's Office, the Gendarmerie General Command and the General Directorate of Security with financial resources for all of their needs regarding this operation,
12. The assignment of experienced staff to the Governor's office of Sirnak, Cizre and Silopi, by the Ministry of Interior,
13. The conduct of press, public relation and strategic communication activities regarding the operation by, the Office of Public Relations Coordination, and therefore the assignment of more staff to the Governor's Office of Sirnak; and the support of the public organizations in this field, regarding strategic communication to be given to the Office of Public Relations,
14. Not allowing any actions to take place that would distance our citizens from the State and that could be subject of exploitation by the terrorist organization, during the operation and the application of the measures representing the State's authority; showing the affection of our State and making our citizens feel that the State is on their side, to be fulfilled.

Signed by AHMET DAVUTOGLU

#### LIST OF DIVISION

Order:

- General Staff of the Republic of Turkey
- National Intelligence Organization's Office
- Office of Public Relations

- Ministry of Justice
- Ministry of Interior
- (General Directorate of Security)
- (Gendarmerie General Command)
- (Governor's Office of Sirnak)
- Ministry of Finance

Information:

- Ministry of Defense

The document shows clearly the magnitude of the planned operation, the involvement of the Turkish Armed Forces leaving little doubt as to the fact that the operation goes far beyond a law enforcement action.

The curfew that started on 14 December 2015

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The curfew was imposed on several neighbourhoods, in particular, Cudi, Nur, Sur and Yafes. But all the city was affected by this military operation.

The curfew was announced by a declaration of the Governor of Sirnak, Ali Ihsan Su<sup>42</sup>:

**English translation:**

**Press release 14.12.2015**

**In accordance with the Article 11/C of Provincial Administration Law no 5442 a curfew is declared on 14.12.2015 at 23:00 in our Cizre and Silopi cities in order to counteract members of Separatist Terrorist Organizations, eliminate barricades and ditches trapped with mines and explosives by members of separatist terrorist organization and to provide security for life and property to our citizens and public order.**

**Separatist Terrorist Organizations have carried out attacks with mines, explosive-trapped barricades and trenches aimed at our citizens', fundamental rights and freedom such as the right to live, freedom, security and property. These acts have caused pecuniary and non pecuniary damages to our citizens, disrupted daily lives and hindered the acces to basic public services and mainly health services.**

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<sup>42</sup> Report of THIV: <http://en.tihv.org.tr/wp-content/uploads/2017/10/Cizre-Field-Report.pdf>

**In the district centers of Cizre and Silopi, with the intention of providing an atmosphere of peace and public order where our citizens can enjoy their fundamental rights and freedom, all kinds of moral and financial support will be provided to our citizens. In this sense, I ask my citizens to feel reassured and offer my sincerest love and respect to all of our citizens.**

**Respectfully announced to the public.  
14.12.2015 Governor of Şırnak”**

The day after the curfew was announced, the Prime Minister Ahmet Davutoğlu spoke to the press: *"Several of our districts have been cleansed of terror elements through successful operations. Inshallah, a secure environment will also be established in Cizre and Silopi. The operations there are only directed at the terror organisation"* <sup>43</sup>

On 13 or 14 December, as results from a recent commemorative declaration describing the birth of the group, the so-called "second phase of resistance to self-management" was started, through the establishment of the YPS.

According to the statement *"The aggressive and military-backed, war-principled way in which the resistance that was developed through our people's self-administrative organizations such as the neighbourhood councils, the communes and the YDG-H type youth movements were received, has caused the process to evolve completely into a military fight and war. In such an environment, the founding of the YPS by our people, which is their local self-defence body, has turned into a resistance epos that would last ten months in total, from its very beginning"* and underline that *"components of the military and the police were put in action, such as the Police Special Forces (PÖH), the Gendarmerie Special Forces (JÖH), the Bordeaux Helmets, the Blue Helmets etc. ... A strategy was used, using all these forces and methods of warfare, in which all areas of resistances were surrounded first and then targeted for annihilation."*<sup>44</sup>

On the 16 December, in a public speech, the Prime Minister Davatoglu declared *"The Special Operations Gendarmerie (JÖH) and Special Operations Police (PÖH) teams will work together. The operations will be carried out with air support. Addresses that were previously chosen by the intelligence services will be entered simultaneously. If necessary, troops from the land forces will also provide support"* stating that *"the button on the operation was pushed, to ensure 'unconditional' and 'literally' safety with 10,000 teams"* and then that *"If necessary house by house, street by street and neighbourhood by neighbourhood will be cleansed."*<sup>45</sup>

At the start of the operation the electricity supply in several districts of the city was cut i.a. by the destruction by state forces of local distribution cabins. The water distribution system was also cut. State forces fired also into water reservoirs placed on the roofs of the houses.

On 18 December, a serious water shortage was felt.

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<sup>43</sup> <http://www.imctv.com.tr/davutoglu-cizre-ve-silopi-ozgurluk-alani-haline-getirecegiz/>

<sup>44</sup> Newspaper article: <https://anfturkce.net/guncel/yps-unutmak-lhanettir-unutmayacagiz-100107>

<sup>45</sup> Article: <https://www.haberler.com/buyuk-operasyon-icin-dugmeye-basildi-7972536-haberi/>



The same day, a public employee, İrfan Uysal was ordered to reopen the water central valve of the water distribution system. İrfan Uysal declared that this operation was organized with the knowledge of and after consultations with the police. While opening the valve he was shot by an armoured vehicle and was wounded, losing an arm<sup>46</sup>.

At the same time, in parallel, the YDG-H, previously involved in demonstrations on the streets, started to organize themselves in order to protect the people from arbitrary attacks. The barricades and trenches, as mentioned above, were already present in the city. But due to the increase in the militarization of the territory, in the middle of December, the YDG-H established the YPS as a Civil Protection Units.

On December 20, the activities of the police showed a significant increase.

### **Targeting civilians**

According to HRFT documentation centre, a constant number of civilian killings were recorded over the following days<sup>47</sup> resulting from a pattern of attacks by State forces. Güler Yamalak, 8 months pregnant, was shot in her belly by a sniper whilst trying to get her child to a doctor. She got dragged back into the house by family members. After long efforts and phone calls, they managed to get a permit to bring her to a hospital. She was saved but lost her child<sup>48</sup>.

Civilians began to be targeted while doing their daily chores, even in neighbourhoods where there were no barricades, trenches or clashes.

Cahide Cikal, died after being hit by a shrapnel shell in her kitchen, in a neighbourhood (Kale Mahallesi) where previously and at the moment there were no conflicts.<sup>49</sup>

Several dossiers report similar events that took place in the following days.

A delegation of TIHV, IHD and SES reported that they “... *could make some observations and communicate with the people on the street. According to this report it was clear that “Families never came face to face with state security forces at the barricades. The barricades could be removed through dialogue. People were killed mostly by snipers and armoured vehicles that were deployed on the hills outside the city. ...”*

Some of the civilians that were killed in Cizre by snipers are:

- Güler Yamalak, 20/12/2015 (pregnant, targeted on her belly, lost baby)
- Miray Ince (baby Miray), 26/12/2015
- Aziz Yural, 30/12/2016
- Cabbar Taskin, 01/12/2016
- Biseng Garan, 06/01/2016

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<sup>46</sup> Cizre Report, pag. 63 e 64.

<sup>47</sup> CURFEWS IN TURKEY ACCORDING TO HRFT DOCUMENTATION CENTER (16.08.2015 - 22.03.2016)

<sup>48</sup> CIZRE 2ND CURFEW (December 2015-March 2016) HDP CIZRE REPORT (p. 35)

<sup>49</sup> CIZRE 2ND CURFEW (December 2015-March 2016) HDP CIZRE REPORT (p. 27)

- Veysi Elçi, 12/01/2016
- Mehmet Kaplan, 18/01/2016

According to the Human Rights Foundation of Turkey document “Curfews-Table-18-March-2016”, the number of civilians killed in Cizre during the 79th days curfew, is 160 (34 children, 32 women, 14 people over the age 60). Besides, there are at least 59 bodies that were buried without waiting for the identification process.<sup>50</sup>

### Access to health and medical treatment

A joint Euromed and FIDH mission reported regarding the sanitary situation and the access to health and medical treatment: *“the overall situation in areas affected by the armed conflict and the curfews is adverse to health: houses are in very poor conditions due to bombings, corpses are left in the streets and there is limited or no access to health facilities and personnel. The curfews and the fighting have heavily disrupted health services and made access to health very difficult for inhabitants of the concerned areas. Daily and routine care, for example to pregnant women and chronically ill persons (for example of diabetics), is highly disrupted or even impossible. The eviction or escape of hundreds of thousands of people also makes medical follow-up difficult and can have long-term effects on health (it is the case as children are not vaccinated, for example).*

*The death of fighters and civilians in many cases directly results from limited or no access to health services. **Ambulances and medical staff are not allowed to enter zones under curfew.** In some cases, doctors have mentioned that they managed to ‘sneak in’ on their personal capacity and rescue people, and to take ill or injured persons out to treat them. [...] **To make the situation even more complex, human rights organisations reported that in many districts, security forces are using health facilities as their headquarters or barracks, and that armed forces sometimes fire from these buildings, making them de facto inaccessible to people in need of health assistance and endangering the lives of medical staff as well. In Cizre, 2 floors of the hospital are occupied by security forces, while the rest of the building is supposedly still working as a hospital, although the doctors’ room was recently bombed. [...]***

*The Human Rights Association of Şırnak reported that several injured young people from Cizre and Silopi were detained and brought to Şırnak for interrogation and prosecution. Several observers also reported that injured people were left to die on the streets, while persons trying to rescue them (medical personnel or citizens) were fired at or detained.*

*Indeed, as mentioned above, even interim measures ordered by the European Court of Human Rights regarding injured people were not applied and people died. **This is a clear violation of international humanitarian law and international human rights law.***

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<sup>50</sup> XLS [HRFT-Curfews-Table-18-March-2016.xlsx](#) - TİHV

*The State has an obligation to support and enable access to health to all without discrimination, and security forces as well as non-state fighters must guarantee that the wounded are spared and medically treated whatever their status of wounded (combatants) or civilians. **Medical staff members are also victims of violence**, either as “collateral victims” or because they are directly targeted. Furthermore, one doctor was recently detained in Mardin and is now facing trial, while another 6 medical workers face judicial investigation for “propaganda of a terrorist organisation” for exercising their duties.*

*Medical staff that cares for the injured irrespective of their side in the conflict faces pressure and harassment from their hierarchy within the Ministry of Health. Professionals, as well as institutions (such as the Dicle University Hospital), have been subjected to smear campaigns depicting them as “supporters of terrorists” for treating injured fighters of PKK as well as governmental forces.<sup>51</sup>*

**Physicians for Human Rights (PHR) report:** “ Since July 2015 numerous health care workers have been charged with the crimes of making terrorist propaganda and being part of an illegal organization. Those not formally charged have been subjected to administrative inquiries by the Ministry of Health for participating in protests calling for peace in the southeast, making statements to the media about the need for peace, and, in some cases, for providing medical treatment in areas under curfew to alleged members of armed opposition groups.”<sup>52</sup>

*Turkish authorities have charged health care workers using both provisions of the Turkish Penal Code and of the Law on Fighting Terrorism.*

*The Law on Fighting Terrorism defines selected provisions in the Turkish Penal Code as “terrorist offences” and prescribes specific criminal procedures for addressing them when committed on behalf of a terrorist organization, as defined by Article 1 of the Law on Fighting Terrorism.*

*Provisions often used include:*

- *Article 220 of the Turkish Penal Code: “A person who makes propaganda through the medium of press and media about the goals of an organization which has been established in order to commit crimes” can be imprisoned for three to nine years;*
- *Article 7(2) of the Law on Fighting Terrorism: “Those who assist members of organizations constituted in the manner described above or make propaganda in connection with such organizations shall be punished with imprisonment of between one and five years.”*
- *Article 7(1) of the Law on Fighting Terrorism includes Articles 313, 314, and 315, which include offences committed as part of an illegal organization, which are then*

<sup>51</sup> Euro-Mediterranean Human Rights Network (EMHRN), Turkey Human Rights under Curfew, Report of a *EuroMed Rights and FIDH High-level Solidarity Mission To Turkey, 20-24 January 2016*, 24 January 2016, p.7, available at: <http://www.refworld.org/docid/56fcca9a4.html> [accessed 22 February 2018]

<sup>52</sup> Southeastern Turkey: Health Care Under Siege “A hospital that was damaged by clashes during a 79-day curfew from December 14, 2015 to March 2, 2016 in the city of Cizre in southeastern Turkey”.

*criminalized under the Law on Fighting Terrorism when committed for an organization defined by Article 1 of the Law.*

The city was completely under siege and surrounded by security forces. Civilians were trapped in their houses. No efforts were made by the State to organise humanitarian corridors to evacuate the civilians.

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On the 29th of December there was a huge explosion in the Nur neighbourhood and 3 police agents were killed. After this event, the situation became worse.

After two weeks of curfew, most of the upper floors of houses had been hit by shells<sup>53</sup> and snipers were posted on the roofs.

*"The attacks intensifying. Shelling continued in the town, as did the constant fire from armoured vehicles. **On 1 January 2016**, the 19th day of the curfew, those who thought the curfew would be of around two weeks duration, like the previous ones, left the neighbourhoods and went to the town centre, close to the municipality. Although talks were held with security officials regarding citizens who had been forced to leave their homes being put up in the Education Support Building, security officials told Cizre Co-Mayor Kadir Kunur that if citizens were placed there they would intervene harshly. A very small proportion of those who left the neighbourhood went to the Konak neighbourhood on the other side of the Tigris or to Şirnak city. **Three people were wounded after people were fired on as they left Cudi neighbourhood en masse. 6 people were also reported wounded in various ways.**"<sup>54</sup>*

While people remained trapped and were targeted even when they tried to leave the city or the neighbourhoods under siege, some decided to seek refuge and safety in the basement of the buildings.

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<sup>53</sup> Cizre Report (p.71)

<sup>54</sup> Cizre Report (p.75)

## Targeting civilians carrying white flags

On the **6th of January**, following a warning from the police to leave their house, the Garan family was targeted. 12-year-old Bişeng Garan was killed as the family tried to leave a basement carrying white flags with the knowledge of the police.<sup>55</sup>

This act clearly constitutes a war crime as defined in article 8 (2) (e) (i) of the Rome Statute:

*“Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:*

*(i)*

*Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;”*

Subsequently the conflict in the city continued to deteriorate.

On **15 January**, government forces are able to force the barricades and enter the Nur district. But killing incidents continued to happen everywhere in the city; civilians continue to be targeted even in different neighbourhoods without clashes. In particular, from the data collected, it emerges that a large number of the killed, was hit in vital points of the body and reached by one or two shots of firearms, enough to be lethal.

On **20 January** a delegation (30-35 people) of civilians, journalists and local representatives, among whom Cizre Co-Mayor Kadir Kunur and MP Faysal Sariyildiz, are targeted in broad daylight whilst trying to help the wounded and recover of the bodies. After they had taken the bodies of Serhat Altun, Ahmet Tunç and Mehmet Kaplan and four wounded civilians, they left Cudi and headed towards Nusaybin Street (Cizre city centre). Although the delegation carried a white flag and was clearly identifiable as a humanitarian mission, the group was fired at by an armoured vehicle. This resulted in the deaths of two people and the wounding of **IMC TV reporter Refik Tekin**.

The local authorities had been informed and the delegation had been given the permit to move the bodies and wounded. In addition, a special application had been made to the ECHR, which had given an order of precaution on this specific request. So, MP Sariyildiz called the HDP group representative Idris Baluken, who on his turn contacted the minister of Interior Affairs but got ignored several times. Also, the governor decided to only respond via WhatsApp.

In this regards, HDP group representative Idris Baluken declared: *"We had made several phone calls with MP Sariyildiz. He had informed the **authorities** among whom the **governor** and had*

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<sup>55</sup> Cizre Report (p. 77)

*been told that they wouldn't experience any difficulties getting the bodies and wounded out of Cudi. Here in Ankara we had also informed the **minister of Interior Affairs**. They gave them the permit and there wouldn't be any trouble they had said. After a parliament sitting that day, we went to see the minister personally and he there expressed his worries concerning this event. He said he would take care of it. We then got the news that the delegation still couldn't move. After not leaving the minister's office for another few hours, we heard that our friends had been taken to the municipality. In the meantime, two of them had died."*

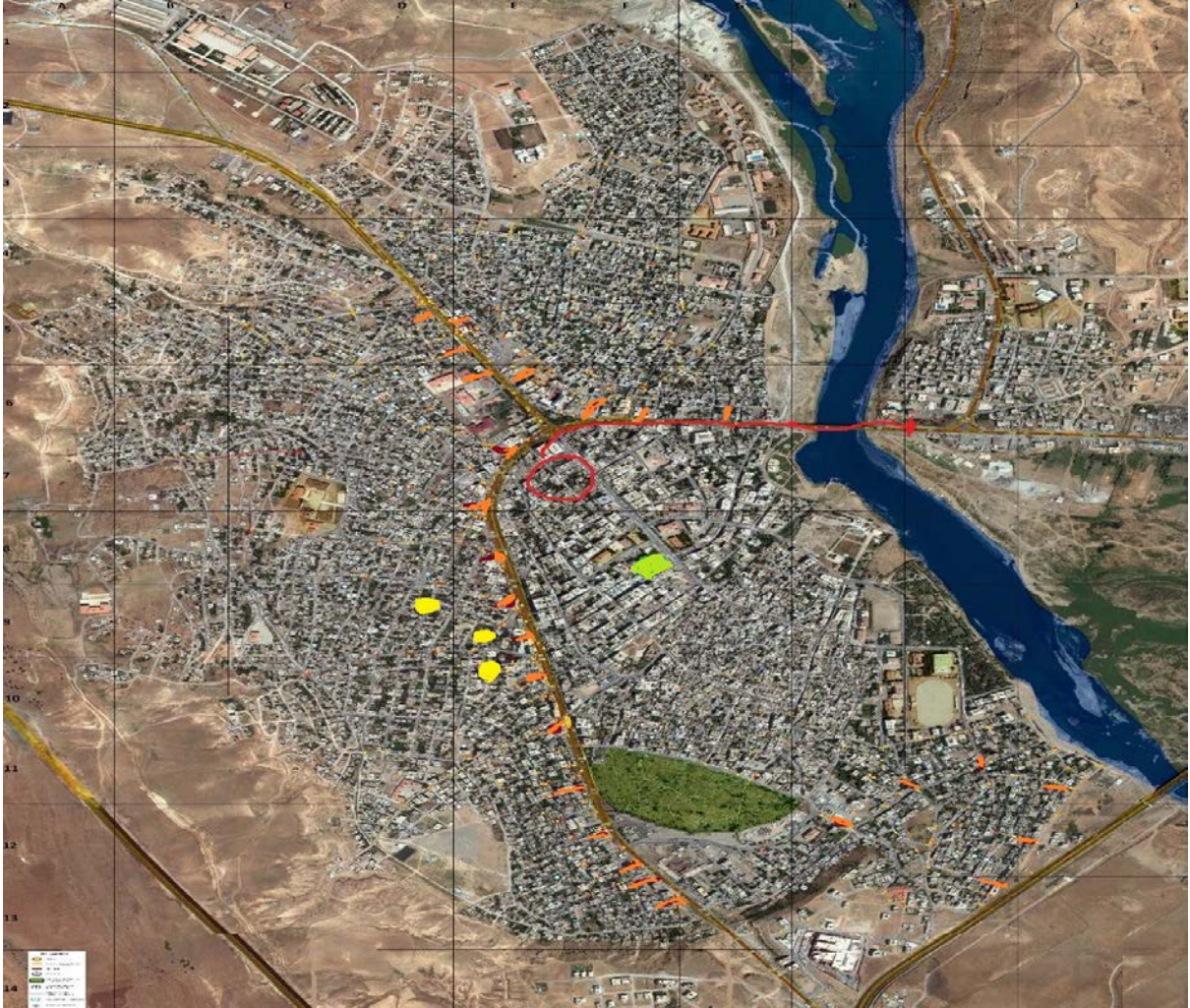
There is a video showing the attack conducted by an armoured vehicle on the group.

This constitutes clearly a war crime as defined in article 8 (2) (e) (i) of the Rome Statute cited above but also a the warcrime of *"Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;"* as defined by article 8 (2) (e) (iii).

### **The attacks on basement shelters.**

During this conflict, 3 series of incidents require a special attention. Due to the intensification of the armed conflict, people started to take refuge in basements.

Hereafter three attacks on basement were persons were seeking shelter from the violence will be further discussed in detail.



**Legend: Yellow - basements Orange - barricades Green - Municipality**

### 1<sup>st</sup> basement

On the 22 January the existence of the first basement became known.

The 1st Basement was located in Bostanci street n. 23, in Cudi neighbourhood under a 5-storey apartment block that was partially demolished after being hit by a mortar shell. This building was located 150 and 200 meters from the nearest barricades.

The HDP Şırnak MP Faysal Sarıyıldız was informed that from the 31 persons blocked inside the basement two had died and that many were wounded. He forwarded this information to the authorities and made it public through his twitter account.

From that moment on communications between the persons in the basement and the MP Faysal Sarıyıldız were organised daily.

On 25 January in the light of the detailed information received from those in the basement, the correct address had been shared with all the authorities, first and foremost the Cizre district governor.

On the same day Selami Yılmaz, one of the people hiding in the basement, died. Negotiations in Ankara between HDP MPs and Interior Minister Efkan Ala regarding ambulances being sent to the basement did not produce a result either.

Faysal Sariyıldız reported on the meetings taking place in Ankara to DBP Assembly member Mehmet Yavuzel, who was one of those in the basement, in a short exchange of messages:

(Faysal Sariyıldız)

**13:49:27** Friend, they are not allowing a delegation. Our colleagues are still with the minister. We asked at least for them to stop firing.

**13:51:14** A person who said that it was his house, called and said the address was 'Bostancı st, n.23"

**13:51:32** We immediately forwarded this to our colleagues who are with the minister.

**13:52:36** I'm sending your messages immediately.

**13:52:46** I'm sending this one, too.

Mehmet Yavuzel

**13:55:52** Aren't you coming to collect us in that delegation?

**13:56:02** The apartment is being demolished over our heads.

In a continuing exchange of messages on the same day, Mehmet Yavuzel told Faysal Sariyıldız that they were in a desperate situation and asked for a solution to be found immediately.

Mehmet Yavuzel

**14:23:19** Let me say that for two days now some things are being said but now it is evening again and we haven't understood anything.... Tonight they could wipe us out. At least, the attitude to the building which we are in shows this clearly. You should know this.

If something concrete could be said to us as soon as possible. Let us at least know if we are to live or die.

(Faysal Sariyıldız)

**14:24:38** My friend, I am forwarding your message to the colleagues at the ministry and to our co-presidents.

Mehmet Yavuzel

**14:29:24** No, there is no such thing ... Let them come if we can come why should we insist.



Do we really want deaths to occur? At least if a few of you could come and take us one by one... N. B: They have begun to shell us again...

(Faysal Sariyıldız)

**14:13:28** The minister rang the governor while our colleagues were with him, saying: "if that building collapses there will be trouble. Don't let it happen." Nothing is clear as to what the method will be. But if it continues like this and we don't get a result by this evening, I will set out with the mothers tomorrow. The colleagues say: 'if we don't get a result here, definitely do not go out," but at 09:30 tomorrow morning I will definitely come.

**14:14:10** Is the building still being fired on?

Mehmet Tunç

**14:19:51** A mortar hitting the chimney really scared us. Anyway, it exploded on the third floor, and all the dust from the stoves came into the basement. They are shelling the house.

**14:20:56** And very badly.

After two hours:

Mehmet Tunç

**16:51:51** Very bad and they are getting closer.

**16:52:27** It doesn't seem like the world has heard the voice of Cizre, but what is there left to do for me? What can I do if I've upset some friends? I'm not well. There is a seriously wounded girl here, called Soltan. She is constantly "saying don't leave me, dad" and it's killing me. There is a thirteen-year-old boy who keeps asking for water, but we can't give him water as he has internal bleeding. Our heart is with you, comrade, I can't go downstairs, so tomorrow it should definitely be done.

(Faysal Sariyıldız)

**16:55:17** Be careful, don't go outside. We will not be part of this crime against humanity. We will definitely set out with the mothers tomorrow.

**16:52:27** It seems the world has heard the voice of Cizre. If not, what can we do? If I've upset you, comrade, there is a seriously wounded girl called Soltan, she is constantly saying don't leave me, dad. I'm distressed here. There is a thirteen-year-old boy who keeps asking for water, but we can't give him water as he has internal bleeding. Our heart is with you, comrade, I can't go down, so it should definitely be tomorrow.

(Faysal Sariyıldız)

**16:55:17** Be careful, don't go outside. We will not be part of this crime against humanity. We will definitely set out with the mothers tomorrow.

On 26 January HDP MP Faysal Sariyıldız again tried to reach the place where the basement was situated along with a group of 15 family members of people known to be in the basement. They were stopped by the security forces in front of the Cizre Municipal building.

The same day Faysal Sariyıldız is informed by the people in the basement that the building is constantly being hit and the 2nd and 3rd floors are damaged very badly. The ceiling is said to no longer hold.

At the same time, in a public speech President Erdogan said to the governors: *"When you deem necessary, put aside the situation and act with your own mentality."* He hereby reassures that no one will be held responsible for their actions, no consequences.<sup>56</sup>

On 27 January HDP Group chair İdris Baluken, HDP Adana MP Meral Daniş Beştaş and HDP Urfa MP Osman Baydemir met the Interior Ministry. As a result of the HDP members' efforts, permission was granted for the wounded to be collected from the basement. Following the meetings in Ankara, Şırnak MP Faysal Sariyıldız met the district governor of Cizre and sought guarantees that ambulances could go to the basement to collect the wounded.

However, a short time later it appeared that instead of ambulances, armoured vehicles had gone to the area where the building was situated, that armoured vehicles stopped the ambulances and that health teams had been taken to the Police HQ in Konak neighbourhood. When the ambulances approached the area where the basements were situated, shots were fired from the armoured vehicles to give the impression there were clashes.

This situation was to continue in the following days.

The Şırnak governor's office issued a written statement in the evening regarding the 24 wounded. In the statement, it was said that: *"as a result of the organisation's barricades with booby trap bombs, trenches and their armed attacks on our ambulances and health teams our ambulances were unable to reach the address in question."*

*Our ambulances were brought to the closest possible place and, if there were injured, they were asked to be brought to this point, but despite all our efforts, a positive response was not forthcoming from the injured and the callers."*

On **27 January** Cizre People's Assembly co-chair Mehmet Tunç was connected to Med Nuçe Television, making the following statement regarding ambulances:

"The situation is really critical. They are intervening in the house. Let me inform colleagues of what will happen next. At the moment we have 5 corpses alongside us. People are facing execution or extermination. The situation is critical. At the moment I am upstairs. The sound of gunfire can be heard....The ambulance didn't reach us.

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<sup>56</sup> Cizre Report Turkiye (p.249)

They are firing at the building from armoured vehicles. The door has been torn down. Everything is visible. The entire street can be seen.

The situation is really critical.... Speak to Faysal. It's as if they are inside the building. ... Our security of life is not important. From now on these people have no security of life left. Whatever will happen, let it happen.

If I go down they will probably firebomb. At the moment I'm on the second floor.... You can't hear anything except the sound of gunfire.. ...We have just exchanged messages with our friends.

They said: 4 municipal employees have set out to reach you. But just at the time they are about to leave it seems as if they are trying to finish the job with execution or a plot. So we connected to you and we said let's inform you of the latest situation.

This is the situation. Panzer 104 is visible. From the door I see an armoured vehicle is only ten metres away and it has completely demolished the door."

Baki GÜL (Med Nuçe Speaker): Can you see the ambulance?

Mehmet TUNÇ:

No, we've never seen an ambulance... We should at least get those who are alive out of here and leave the wounded. If the colleagues approve it we can leave this house. But while leaving there is the possibility of being shot by snipers. So we will either wait to be executed in the basement or leave the house and become targets of snipers. So colleagues, we must make a decision now. ...either we go to the basement and await execution, or we leave the building, at least 5 or 6 friends are okay, I mean they can get up. If we leave even if 1 or 2 people are shot dead at least 3-4 will have a chance of survival. I don't know the situation of the governor, or the district governor. But at the moment the forces here are firing at the house with the intention of destroying it."

Cizre People's Assembly co-chair Mehmet Tunç also made this appeal to public opinion in Europe and Turkey in a phone call to the 12th International Kurdish Conference being held on the same day in the **European Parliament on 27 January 2016**:

**English translation:**

*"...The fine for breaking the curfew is 100 TL, but we go out and they give us a death sentence.*

*They are firing mortars. In Cizre they are using heavy artillery, mortars, everything.*

*A great massacre is taking place in Cizre and we are facing a huge genocide. All the houses have been bombarded. Tanks are being used. The AKP government and the Republic of Turkey*

are using weapons, which are supposed to be used against the enemy, against its own people in the 21st century. A tragedy is taking place in Cizre.

For 60 days the people have been hungry and thirsty.

Only ten thousand people are left out of a population of 120,000. The people have been forced to leave. Such policies were also used in the 1990s. 4 thousand villages were emptied and the people settled in districts like Cizre.

They emptied the villages saying the PKK would be finished off.

But now they say they will empty cities and finish off the PKK. I call on our friends in the European Parliament. A real tragedy is taking place in Cizre. 28 people were wounded in one house. Four of the wounded died. Of the 24, Nusret Bayar (she died soon after the phone call), Veli Çiçek and Sultan Irmak are graves. All the water has gone. We go out to get water and we are hit by snipers. We can't go out. The four-storey building has been demolished by mortars. In order to get a connection, I am in that demolished building. And the situation is critical. For this reason, we say to our friends there. Please stop this savagery. You have the power to stop this massacre in Cizre. You have the power to warn the AKP government and lift the blockade on Cizre. Otherwise, in the event of a massacre taking place, we will see you as an accomplice..." .

On **28 January** the ambulances were despatched 4 times, but permission was not given by the security forces for the ambulances to access the site, claiming a clash was taking place.

Minister of Health Muezzinoglu declared "We have ambulances waiting around the corner. If they would have been honest they would have taken the wounded out and brought them to the ambulances, who are placed only 500 m away. But they're not honest, it's propaganda they're trying to make over the so-called wounded."<sup>57</sup>

In the same day, then Prime Minister Davutoğlu made the following statement regarding the basements in Cizre: "Since the subject has come to the notice of our Interior Ministry our ministers and myself have followed it. All efforts have been made for our ambulances to access the scene of the incident. Everyone must be sincere. We are engaged in combatting terror, but whoever is wounded we will take all measures to get them to hospital. First, we'll treat them then we'll try them. No one can claim that while fighting terrorism in Turkey extra-judicial acts have taken place. If the injured in question are to be reached, which we want, then first of all terror centres must make sincere calls for them to surrender. We are monitoring developments, wherever there is a wounded person efforts will be made to reach them."<sup>58</sup>

Contrary to these claims of Prime Minister Ahmet Davutoğlu, on **28.01.2016** DBP party assembly member Mehmet Yavuzel was connected by phone to the Med Nuçe Television channel, saying that for 6 days the authorities had strung them along by saying "we

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<sup>57</sup> <http://aa.com.tr/tr/saglik/saglik-bakani-muezzinoglundan-cizre-aciklamasi/511727?amp=1>

<sup>58</sup> <https://www.birgun.net/haber-detay/davutoglu-ndan-havalimaninda-cizre-aciklamasi-ambulanslarin-olay-yerine-ulastirilmesi-icin-calismalar-yapiliyor-102132.html>

are sending ambulances, which cannot get there because of clashes", and misleading the public.

Mehmet Yavuzel said the following regarding what they were going through in the basement, and the situation of the wounded:

*"...At this moment there are 19 wounded. 5 of them are in a serious condition. The others are unable to walk. There are also 6 dead bodies, people who've been murdered. Some of the people here are KJA activists, some are DEM-GENÇ, there are university students, civilians. For 5 days I know ambulances have been coming.*

*They say they'll take us, I don't know what else. Every time they send the ambulances back, saying there's a clash. So we have understood this: the fact that they send the ambulances, then prevent them getting here, shows they have different intentions. At least that is the conclusion that emerges.*

*Now today the Constitutional Court has taken another decision: 'there may be armed people amongst them, military people'. As they are so interested they should come and look. We are already surrounded. Next to and behind the building there are armoured vehicles. They're playing janissary music.*

*We can hear them 24 hours a day. Reconnaissance flights come over. Then they say these things, which are solely designed to deceive the Turkish people and public. Public opinion should know this. For 5 days the same things, the same lies are being uttered. For 2 days people here have had no liquids. People will die because of this. They should be aware of this.*

*Our people who are waiting outside Cizre should know this. Our people in Cizre should know this. Our people living in Europe should know this. There are 6 civilian corpses next to me. And 19 wounded, they cannot get any liquids. They are all on top of each other. Has there ever been such a scene in human history?*

*The area of this building is being bombed every day. Three floors have collapsed. Every time a bomb falls the place fills with dust and people here cannot breathe. Today a youth has probably died from thirst and cold during the bombing. (As he speaks the groans of the wounded can be heard).*

*Ferhat Karaduman is gravely ill and may die at any moment. Sultan Irmak, Serhat Saltikalp, Mustafa Gazyak. They may also die at any time. As I said they have had no liquid for 2 days. They say: 'safe area'. 'Bring them to a safe area'.*

*People cannot go 20 metres to get water. People who can hardly walk cannot go and get water. The building is being bombed from all sides. 20, 50 times a day. People are tired of explaining the situation. We can no longer find anything to say.*

*All public opinion should know that what has gone on for the last 6 days has been a delaying tactic. That is, by doing this they want the people here to die. Or they want the security forces to finish the job. If they are delaying it means they have different plans.*

*So public opinion and our people should know this. Our people waiting outside Cizre, all the educated people in the whole of Kurdistan, young people, women, likewise our people in Europe should know.*

*These people have not had liquid for 2 days. If this goes on for 2 more days, even if they are healthy they will die. And no one will be able to explain, so our people should come to the neighbourhoods of Cizre without worry, recognising no obstacle. They should come and take their children."*

On the **29th January** President Erdogan, answering a question from journalists, declare: *“They’re lying that no ambulances were sent. The ambulances were there, maybe there were just no wounded.”*<sup>59</sup>

In the same day, from the basement they send a message in which was written *‘we have a phone with a camera, but we don’t use it because when it is switched on the battery runs out. We will try and if we can send them we will.’* Then they used a normal phone, one which had a long lasting battery, to send the names of 25 people who were still alive. 16 of them wounded and 9 uninjured but exhausted. According to this, the names of the people trapped in the **1st Basement**, are: Mehmet Yavuzel, Rohat Aktaş, Feride Yıldız, Ferhat Saltıkalp, Ali Fırat Kalkan, Mustafa Vartiyak, Mustafa Aslan, Tahir Çiçek, Rıdvan Ekinci, Dersim Aksay, İslam Balıkesir, Serdar Pişkin, Ferhat Karaduman, Sultan Irmak, Sercan Uğur and Fehmi Dinç were wounded, while Hacer Aslan, Gülistan Üstün, Sakine Şiray, Berjin Demirkaya, Ramazan İşçi, Mahmut Duymak, Kasım Yana, Osman Gökhan and İzzet Gündüz were worn out from hunger and thirst.

On **29 January** those in the basement told to MP Faysal Sarıyıldız that the security forces had got quite close to the building, that their shoes were visible and their conversations had been heard.

On **30 January**, after receiving guarantees from the **Crisis and Coordination Desk** established by coordination of the Prime Ministry, Interior Ministry and Health Ministry, the health teams and ambulances waiting at the Cizre municipality set out for the basement at around 09.30.

Ambulances from the Health Ministry were accompanied the municipal ambulances. The ambulances and health teams went to within 150 – 200 metres of the basements and waited for approval from the **Crisis and Coordination Desk**. From the desk the HDP delegation was told that if the wounded emerged from the basement within 15 minutes, approval would be sent for their collection. The delegation maintained constant telephone contact with the wounded in the basement while awaiting approval. After a delay of about half an hour, while waiting for approval from the **Crisis and Coordination Desk** a loud explosion and the sound of gunfire was heard from the basement, which were heard over the telephone. The screams of the wounded were heard, and they said: *“They are firing at us, a bomb has been thrown in, they’re going to kill us. Help, what do they say.”* These moments were recorded.

A dialogue that took place between DBP PM member Mehmet Yavuzel, who was wounded and later died in the raid, and Meral Daniş Beştaş while the ambulance was moving and at the moment of the raid: (This dialogue was also listened into simultaneously by government officials by means of tele-conferencing.)

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<sup>59</sup> Cizre Report Türkiye (p.112)

### First transcription

**Meral Daniş Beştaş:** At the moment we are monitoring the ambulance. It's on the way.

**Mehmet Yavuzel:** Yes.

**Meral Daniş Beştaş:** Let it arrive, then we will call you.

**Mehmet Yavuzel:** Okay. It's quiet here....

**Meral Daniş Beştaş:** Okay, okay. I will call you once the ambulance arrives.

**Mehmet Yavuzel:** Just so you know, it's quiet here.

### Second transcription

**Meral Daniş Beştaş:** We've just spoken to the ministry. Everyone will be on the phone.

**Mehmet Yavuzel:** Yes.

**Meral Daniş Beştaş:** Get prepared. They have just given approval, but...

**Mehmet Yavuzel:** Okay.

**Meral Daniş Beştaş:** When we call you, you will go out.

### Third transcription

**Meral Daniş Beştaş:** Have the noises stopped? The sound of the police.

**Mehmet Yavuzel:** Ha, they're here, in the corridor.

**Meral Daniş Beştaş:** They are in front of the door from which you will exit.

**Mehmet Yavuzel:** Yes, they're inside.

**Meral Daniş Beştaş:** They're inside.

**Mehmet Yavuzel:** Maybe they can hear your voice. The phone is on. Is the Interior Minister with you?

**Meral Daniş Beştaş:** At the moment that telephone...(Just at that moment there is the sound of an explosion, gunfire and screams from those in the basement)

### Fourth transcription

**Meral Daniş Beştaş:** Hello

**Mehmet Yavuzel:** My ears are bad, I can't hear.

**Meral Daniş Beştaş:** Your ears are bad. Can you hear me?

**Mehmet Yavuzel:** Very little.

**Meral Daniş Beştaş:** Very little. I'm shouting at the moment, shouting. If you're not in a position to leave we'll have to find another formula.

**Mehmet Yavuzel:** We're under rubble. How can I explain!

**Meral Daniş Beştaş:** Okay, okay, so you're not in a position to get out.

**Mehmet Yavuzel:** we're under the rubble, rubble!

**Meral Daniş Beştaş:** Okay, okay, keep the telephone on. They can't leave, they can't get out.

Despite government officials saying the necessary humanitarian interventions would be made immediately, no positive development occurred while there was telephone contact between the wounded and the delegation. Following the attack, only two telephone conversations took place at intervals. During these calls the wounded said they were under rubble, that they were having difficulty breathing, that they were unable to move and would be unable to leave the building without support. Those stranded in the first basement said another person had died during the telephone conversation.

**Following this conversation, the telephone connection was entirely broken.**

Along with these developments, in telephone conversations made by the HDP delegation with the Prime Ministry, Interior Ministry and Crisis and Coordination Centre it was stated that the situation was of the utmost seriousness, that there were grave concerns regarding all the wounded and that those who were unable to move had to be taken from the building by health teams. Despite insisting for hours, they were informed by the Crisis and Coordination Centre that a rescue or health team would not be able to go there and that it would not be permitted. After a time, the HDP delegation's demand for two municipal employees and health workers to verify the truth of this information on the ground and administer first aid to the wounded was rejected by government officials, but after persistent talks with the Interior Ministry the demand was granted and two officers from the Cizre municipality and two health workers set off to reach the basement. However, this attempt failed on account of increasing gunfire and explosions. When the Health Ministry and Cizre district governor said it was not possible to guarantee the safety of these people, this attempt did not produce a result. While saying that since the officials could not ask the security forces to cease firing, such a thing was impossible, they said the municipal and health personnel would only be able to pass through the line of fire. As the firing continued, both the 112 ambulance, and the Cizre municipal ambulance and the health personnel had to withdraw around 3 pm.

On 31 **January** a ten-person women's delegation consisting of relatives of those in the basement headed towards the basement carrying white flags with the intention of rescuing the wounded and of retrieving dead bodies. Those who approached the building were detained.

On the 2 **February** a statement was made by the **Yekîneyên Parastina Sivîl - Civil Defence Units (YPS)**, which was involved in clashes with the security forces in Cizre, to the effect that



they did not have any forces in the area where the basement was situated and that no clash had occurred there<sup>60</sup>.

In according with the pre-investigation report on Cizre, made by Sebnem Korur Financi on the 3rd March 2016, *"When arriving at the first basement, an object likely to be a tank bullet was noticed on the window sill. [...] On the left hand side, many burned bones and bone particles were found next to the wall. Amidst these particles, a piece was recognized to be mandible. When the length of the eyeglasses (belonging to an adult), as seen on the photograph, were compared to the measurements of the mandible, taking into account the loss of size as a result of a fire, it had to be accepted that the mandible was still not proportionate with the frame, thus did not belong to an adult but to a child around the ages of 10-12."*<sup>61</sup>

According to statements by Human Rights Watch *"The evidence suggests, however, that the basements were fully surrounded by the security forces at the time the alleged killings took place. Furthermore, the authorities have given no compelling explanation as to why it was not possible in these circumstances to detain individuals alive or to evacuate allegedly injured people and civilians who were among those sheltering in the basements. The government has not claimed that those sheltering in the basements violently resisted while being evacuated.*

*The picture of what happened after the alleged killings is also incomplete. Municipal workers told Human Rights Watch that they transported the bodies to the morgue in body bags after the military and police ordered them to collect the bodies from streets near the buildings where the three basements were located.*

*The municipal workers also said some of the bodies were burned, in some cases so charred as to be unrecognizable, and that others were missing limbs and heads. An imam who saw some of the bodies gave a similar account. Human Rights Watch also saw eight of the autopsy reports on the recovered bodies, which indicated that six bodies lacked body parts and four were burned. The autopsy reports note that such findings could be consistent with an explosion though did not explain why some were partially "carbonized", and in three cases determined people had been shot dead.*

*The Istanbul Forensic Medical Institute is conducting DNA testing to establish the identity of the dead.*"<sup>62</sup>

The report further states that on **January 28**, Human Rights Watch executive director, Kenneth Roth, met with a senior government minister in Ankara and reminded the Turkish government about its obligation to permit injured people access to medical treatment, regardless of their identity, and asked for detailed information on whether the basement was surrounded by security forces and if the area was entirely under their control. The minister did not answer Roth's question but claimed that those in the basements were providing "contradictory information." He did not explain what he meant by this. The minister also said those in the

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<sup>60</sup>Article:<http://diclehaber50.com/news/content/view/497454?page=4&key=c4f60ee8111bf32c1b270ddb2b9e977c?page=1&key=c4f60ee8111bf32c1b270ddb2b9e977c>

<sup>61</sup> Forensic Dossier: <https://tihv.org.tr/wp-content/uploads/2016/03/3-Mart-2016-Cizre-%c3%b6n-rapor.pdf>

<sup>62</sup> <https://www.hrw.org/news/2016/07/11/turkey-state-blocks-probes-southeast-killings>

*basements did not want the ambulances provided by the state and were seeking to escape from the basements without being caught.*

Pictures of wounded and death send by persons in the basement



Pictures taken after the attacks on the basements







## 2<sup>nd</sup> Basement

A few days later, on the **4th February**, information was made available through the television channel Özgür Gün TV, that sixty-two people, most of them wounded, were forced to take refuge in the basement of a building located in Narin Street n. 6, always in Cudi neighbourhood, close to the 1st basement.

Amongst those in the basement was Mehmet Tunç who had escaped from the attack on the first basement later taking refuge in the second basement 150-200 metres away<sup>63</sup> Tunc called

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<sup>63</sup> Cizre People's Assembly co-chair Mehmet Tunç had called the Kurdish Conference held at the European Parliament on 27 January, explaining what was happening in the first basement and making an appeal for international awareness. Since the area was entirely isolated and blockaded and communications were limited, although it is not certain what happened, most probably Mehmet Tunç left the first basement on the evening of 27 January or on 28 January and took refuge in the second basement. Hence, when Mehmet Yavuzel and Rohat Aktaş sent the names and photographs of those in the first basement to Faysal Sariyıldız, Mehmet Tunç was not amongst them. Mehmet Tunç was not wounded. When Mehmet Tunç left the building in which the basement was situated armoured vehicles were firing at it from the entrance to the street or from places where the building was visible. From what has been explained, it is apparent that the building was not completely encircled. We have also learned from his family that as Mehmet Tunç was not wounded and could move freely, he decided with a few friends to chance his arm try to leave the basement. As he was the co-chair of the People's Assembly he was worried that he would be killed by the state or held responsible for what happened and be thrown in prison. So as he wasn't injured he thought: "if I leave I might survive" However, due to the heavy bombardment he was unable to return to the basement and had to take refuge in the second basement nearby. Two of the 4 or 5 people who were with

on telephone the TV channel to unveil the existence of the second basement. Mehmet Tunç explained what occurred in the following way:

"...As a fire broke out on the second floor and mortars and tank shells had made holes in the building, all the old furniture and sofas and possessions from the house are in the basement, we are facing a Madımak Hotel incident.

This is a shame for humanity. ...

And this smoke has completely filled the building and the fire has begun to slowly come in through the holes. Although I'm trying to wet the sofas a great fire is coming down from above.

I know that at this moment there are fires everywhere in Cizre.

If we look from the Alize Künefe or the other side of the Nusaybin road, everyone who looks from three sides will see this fire. For that reason, I am calling on all humanity.

At least, rather than ambulances, the fire brigade should come and put out the fire. Otherwise there are people here without feet, gravely wounded people and children who will be burnt. I have no doubt that this will go down in history as Turkey's, as the whole of humanity's, even the United Nations' shame. ....

The householder left 17 demijohns of water downstairs, presumably for a day. In the last four days we have finished 5 or 6 of them. I have given them to the friends and they have finished them.

They are wounded people, they drink water. I have poured some on the radiators to dampen them, but upstairs is ablaze ... The fire broke out because of grenade launchers, tanks and mortar shells ... If only we had a video cell phone so that you and the whole world could see these sights, the house which is ablaze".

On **5 February** Mehmet Tunç was connected to Med Nuçe television, saying incendiary weapons were being used against the second basement.

He said:

"Here conventional or incendiary weapons are being used. Last night we used four or five demijohns of water to prevent the whole house being burnt, but 9 people lost their lives. Şervan Adıgüzel, Ercan Pişkin, Muhammed Öztürk, Nizar Isırgan, Cengiz Samsak, Ramazan Çendek and others we don't know, their faces were completely burnt. I am underlining this: when tomorrow or another day these bodies are found the AKP government will endeavour to bury them quickly because they know what they have done is shameful.

Chemical or incendiary weapons (flamethrowers) were used.

Mehmet Tunç were shot dead. The others were able to take refuge in the building called the second basement. Mehmet Tunç died in that basement.

The house turned into a fireball. My hand and face are burnt. The faces of those who died have puffed up. When we removed their clothes we saw they were charred. I couldn't touch those who died, who were slaughtered. Those who were wounded have puffed, swollen faces and I am as sure as I am of my name that banned weapons were used.

I, therefore, call on the United Nations, to existing humanity, to say that there must be an examination made. They must examine what weapons these people were killed by. I don't think it was by fire. The fire was small. It's true that it reached the house, but as we were putting it out inside it suddenly turned into a fireball. This was a weapon and we saw people burning.

In my bag I had nearly 100 doctor's masks, just in case. These masks have gone black, with a flammable smell. Perhaps they will intervene now. These dead, murdered people should definitely not be buried by their families.

The United Nations should analyse them to see what banned weapons did this to these poor people. There are 13 and 14-year-olds in the basements. It's as if there are armed people there and they are burning and destroying the basements. They are just burning the basements and destroying them, but people are dying! ... I spoke to İdris Baluken too.

The fourth floor has collapsed, these people here could all die. At the moment there are 28- 29 wounded and 9 corpses. Ekrem Söğülgen, Mehmet Aslan and the faces of 14 year old children have been burnt. Savaş Balcan, Fidan, Felek Çağdavul young student girls of 13-14. Yasemin Çakmak.

They are all middle school graduates.

Arin Pişkin, as I count them there are close to 28, some of them are unable to say their names because their faces are entirely burnt. Our fear is that with an intervention with a different weapon, with pepper gas, that these people will be slaughtered. I have been saying this for 60 days.

It is not too late, these people can be saved. Perhaps it is true, there are at the moment hundreds of people under rubble in Cizre. Maybe there are dozens of basements like this. This is just the tip of the iceberg. By chance, we came to this basement. These people are involved in a race against death. There are people in a really serious condition. They have suffered burns and there is no way to treat them ..."

It was stated that the police, who surrounded the building with armoured vehicles, made constant calls on the wounded to surrender, saying those who complied would be taken to hospital by ambulance. 16-year-old Abdullah Gün, who went outside looking for an ambulance and left the building, was shot dead. Since his body could not be identified for 15

days, correspondence was sent by the Silopi Public Prosecutor's office to the District Governor's office for it to be buried in a common grave.

On **6 February** the Şırnak Governor's office made a statement regarding the second basement, claiming: "Terrorists *who fled the building set it alight.*"<sup>64</sup>

On **7 February** Cizre People's Assembly co-chair Mehmet Tunç spoke by telephone for the last time on Med Nuçe Television, explaining the savagery what had happened in the second basement, replying to the allegation made by the Şırnak Governor's office regarding the building being set alight by people who fled:

"At the moment there are 51 people in this basement and I estimate that there are dozens of such basements in Cudi, Nur and Sur neighbourhoods. Some are wounded, some have serious burns. If these people are not treated their faces and hands will be detached. We applied emollient cream last night but this morning we saw that the cream had stuck to people's faces ... When we listen to FM radio they say people set themselves alight. So we need an urgent delegation of doctors and lawyers to come to Cizre to examine the wounded and the dead. Although we tried to keep the dead bodies in the basement, due to the smell we have had to put them outside.

We know that tomorrow or in the future guns will be placed next to the bodies and they will tell the press: 'they were terrorists, members of an armed organisation,' but these people were killed in the basement by flame throwers.

Wounded friends are still with us.

No one should be buried before they are examined, because for days we have seen the AKP burying these bodies hurriedly in order to portray itself as in the right to the UN and the world. Our people are also remaining silent, therefore from now on no bodies should be buried in Cizre."

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The same day, on the **7 of February**, there was a **huge explosion** in the city, heard by all the people living in the area.

TRT's news item concerning the 60 people 'rendered ineffective' was denied the next day by then Prime Minister, Ahmet Davutoğlu. The HDP's constantly asked question regarding the whereabouts of the remaining people which remained without answer.

Between 9th and 10th of February, the number of corpses brought to the Cizre state hospital was thirty nine. On 11 February thirty-one more bodies were brought to the Cizre state hospital.<sup>65</sup>

<sup>64</sup> Article: [http://www.bbc.com/turkce/haberler/2016/02/160204\\_cizre\\_dokuz\\_kisi\\_olum\\_aciklamalar](http://www.bbc.com/turkce/haberler/2016/02/160204_cizre_dokuz_kisi_olum_aciklamalar)

<sup>65</sup> Cizre Report (p.122)



After the end of the curfew, the place where was located the building was completely destroyed and parts of bodies were found by citizens in the rubble and on the banks of the Tigris river.



### 3th Basement:

57

On **10 February** the existence of a **third basement** in which wounded people had taken refuge was announced in the press.

The 3th Basement was located between Narin Street and Akdeniz Street, in Sur neighbourhood, in Akdeniz Street n. 16.

HDP Milas former district co-chair Derya Koç was connected to İMC TV broadcast<sup>66</sup>, explaining how they had taken refuge in a basement, and that a bombardment had continued for 3 days, that 20 people had been burnt after two people had poured petrol on them, and that they had fled to the top floor. Koç said there were 25 people on the top floor, while she named those stranded in the basement as Lokman Bilgiç, Murat Kekin, Sinan Kaya, İbrahim İvrendi, Fırat Malgaz, Orhan Tunç, Meryem Akyol, Mürsel Dalmış, Star Öztürk, Murat Tunç, Abdüselam Turgut, Fatma Demir, Emel Ayhan, Mesut Özer, Abdullah Özgür, Agit Aydın, Barış Gasir, Sahip Edip and a person called Ferhat whose surname was not known.

Emel Ayhan (16) and Fırat Malgaz<sup>67</sup> made contact with the HDP Information Desk on the evening of **10 February**. Fırat Malgaz said on the phone:

<sup>66</sup> TV Channel program: [https://www.youtube.com/watch?v=\\_77x88kYSEc](https://www.youtube.com/watch?v=_77x88kYSEc)

<sup>67</sup> Fırat Malgaz, who succeeded in escaping from the basement, was later stopped at a checkpoint, detained and remanded in custody.

“There are friends here who have lost legs, an eye and some who are seriously injured. We cannot breathe on account of some gas put in the drains. We had to cover up the wash basins.

We witnessed those people being burned alive and heard their screams. If ambulances are not sent and we are not taken out of here, they will definitely execute us. We expect our people to be aware of this.”

On **10 February** HDP Milas former district co-chair Derya Koç was connected to Med Nuçe TV and explained what was happening in the third basement:

“At this moment I will start from the beginning. Firstly, there were a few people staying here. Then 20-25 friends were wounded by bomb fragments. We settled them in here and were staying together.

To meet certain needs, we went up to the top floor. There were close to 20 friends downstairs. While they were all downstairs they came and poured petrol on them and burnt them. We could not respond to their calls. We could hear their groans but couldn’t act. While we were upstairs they attacked again with grenade launchers, machine guns and mortars.

There are 25 of us here. Half are wounded, and half have minor wounds. Now we have to wait. Attacks on the building are continuing, they have been going on for a week, but they have intensified in the last three days.

They have begun to come with heavier weapons.

At the moment we are still waiting. There were around 20 of us there. They were slightly wounded, we were there with them. We were waiting. We were thinking that one day the noises would cease and we would leave. But they came and burnt our friends alive. If no one comes to help, our wounded friends here may breathe their last at any moment. There is no way we can go down to the basement.

It’s still on fire.

It started this morning at 8. Our friends have been on fire for an hour and a half. It has died down but there are no sounds coming from there. Our friends all breathed their last breath there. They were all burnt alive. My only call is for them to cease firing. Stop the noise.”

The next day, on **11 February**, Derya Koç's corpse was brought to the cold storage depot at the Habur Customs Directorate for a post mortem. It was ascertained that she had died as the result of a firearms wound.

Two people survived to third basement. Below, their testimony:

"We were hungry, the wounded were serious. The last Thursday a massacre was carried out.

On Wednesday our friends were burnt in the third basement.

On Tuesday they sorted out the trench. We couldn't descend to the basement. We had given up hope. Even if they had survived they couldn't have got upstairs. They poured petrol on them and burnt them.

Wednesday about 7 or 8 they cleaned up the trench.

The soldiers stopped right in front of the basement and fired a lava shell into the basement and fired machine guns. We were stuck at the back. We wanted Orhan Tunç to survive as he had a 15-day-old baby. We did not mind dying if he survived.

Two people came down and poured petrol, then they opened fire. As the friends were injured they couldn't intervene. One friend only had a minor abrasion. He survived. After the fire they shot close to 10 gas shells. We only heard the sound. As soon as we stuck out our heads they opened fire.

We were next door on the top floor. The soldiers did not even get out of their vehicles. They just threw the petrol into the basement in plastic bottles. In the evening at about 8 or 9 six people came up to the top floor where we were. There were 25 or 26 of us. We were all civilians, Cizre's civilian population.... There was Adil Küçük, he had a child. He was with us.

There were people there who had been unable to leave the neighbourhood. There was 14-year-old Mesut. Of the 25 people, 20 were wounded. There were some with minor injuries. Derya's wound was small... The youngest was 14 years old. He was scared, there was no dialogue, we couldn't speak. Night and day we were silent, because the soldiers were very close. Two of our friends had lost their arms. There was just flesh left. They couldn't speak, they just asked for water. One of our friend's leg and arm had been completely severed."

Another man who survived the third basement told a similar story:

"It was **11 February**. A tracked armoured vehicle came into the street where our building was. Two more friends who were above were wounded in the arm as a result of these attacks. One of their arms was almost severed.

Then they opened fire with heavy machine guns on the house. A hole was pierced in the basement. We could not move because of the intensity of the attack. A piece of shrapnel hit a friend's knee. It was almost severed.

It went on for close to 3 or 4 hours. They were pummeling us violently.

Of the wounded I was in the best condition. When it stopped I checked on the friends. When I touched a friend's leg, he said: *'don't touch, it's going to fall off.'*

I took him to the base of the wall.

Two people came down from the top floor to check on us. The tracked vehicle went past a couple of times without firing. The door of the vehicle opened and plastic bottles without tops were thrown into the holes that had been opened in the walls.

They threw in about 15 bottles of petrol. They threw them in at random. When we smelt the petrol we understood their intentions. Where we were lying they couldn't see us through the holes.

We closed the window above us with beams. We had previously covered the front of it in order not to be seen. The petrol in the bottles spilt on the beams. Then they threw in lighters. The hole that had been opened was above us to the left. When the fire started we couldn't move.

The basement gradually began to burn. The beams and our first aid bags caught fire. Our blankets were over us. One friend under the beams was overcome by smoke. I got up and tried to put out the fire. I threw the burning beams to one side. We got it partially under control.

We could not completely extinguish it and smoke were still coming out, because we were frightened that if we extinguished it completely they would set it alight again. For this reason I threw a blanket onto it in order for smoke to billow out. Two of our friends were uninjured, they went upstairs to inform those thereof the situation. One of them was a woman.

While on the stairs the woman was hit and killed by snipers. The other friend went upstairs and informed them of the situation. The friends upstairs tried to retrieve us a few times, but could not do so on account of the attacks.

About **3 pm** the soldiers came back.

This time they fired more than 10 gas shells into the hole. I tried to help those who were affected by the gas. We covered them with blankets. We closed their eyes and I told them to breathe through their noses. One of the women friends told me to go upstairs, saying: *'tell them to get us, or they will slaughter us'*.

I went up. From the hole in the wall on the second floor, I passed into the other house. They called out to me. *'Don't go towards the construction site'*.

I explained the situation.

I said that the friends who were not wounded should collect the wounded from below. We brought five friends up.

The corpses remained in the basement. Between **4 and 4.30 pm** we assessed the situation. A woman friend said they had called Faysal Sariyıldız and been connected to the TV and asked for an ambulance.

She said: *'they will collect us at 7 in the evening.'*

They said: *'We will send the seriously wounded in the ambulance and meanwhile we will leave.'*

They said the ambulance would come at 7 or 8 in the morning. (...)

It was said that the ambulance couldn't come in the evening but would come at 9 the next morning. I said that 9 would be very late.

I said: *'They should come earlier, or they will kill us.'*

There was no sound of an ambulance.

We slept there, then at 6 in the morning, we heard the sound of a tracked vehicle.

They surrounded us. I couldn't move. Our friends shouted: *'Don't fire. We're civilians.'*

They went ahead. Other friends followed them. I didn't go. There was the lift cavity. I climbed the drain pipes to the upper room on the second floor.

There were mattresses. I put them on top of me. Two other people came. As they tried to lift the mattresses I reached out for my penknife.

I realised they were our friends. The other friend went under the bedstead. Another got in a chest. The sound of gunfire came from outside. I realised the friends outside had been raked with gunfire. It lasted a minute. I heard a friend scream, then there was the sound of a bomb. It was a man's voice. We were listening.

We heard the sound of 4 or 5 hand grenades. After that the voices ceased. It was about 9:00 am. It had been said that an ambulance would come around 9. Instead they slaughtered us at exactly 9. The voices of the soldiers could be heard: *'There are 29 bodies in the building and one in the mosque.'*

One of the bodies retrieved from the third basement belonged to Mustafa Gasyak, who was 16. Multiple fractures were found in Mustafa Gasyak's body. The corpse was found to be 105 cm in length and charring was ascertained in the broken bone ends related to burning. The cause of death in the post-mortem was given as bone, soft tissue and organ dissolution linked to burning.





In the same day, on the **11th of February**, the **Interior Minister Efkan Ala** announced that **operational activities in Cizre had ended**<sup>68</sup>.

In the same day, on the social network appeared the pictures below:



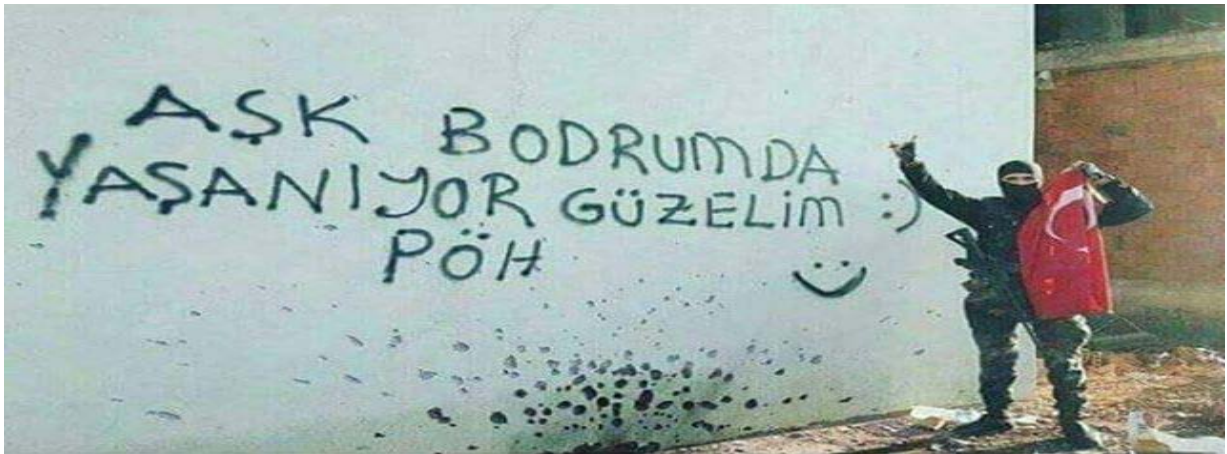
<sup>68</sup> Newspaper article: <https://bianet.org/bianet/insan-haklari/172017-efkan-ala-cizre-de-operasyonlar-sona-erdi>

### After the operations: destroying the evidence

The curfew continued for twenty days more after the operations had ended.

The justification given for the continuation of the curfew was the continuing searches and the possibility of booby traps and mines in certain areas. This process was described by authoritative voices of the state as a "cleansing".

The 20-day period of 'no conflict' was a period when the security forces entered almost every house, one by one, setting some alight, when valuables in the houses were looted, white goods were rendered unusable, and foodstuffs were destroyed. Also during this period, the walls of houses and streets were filled with sexist, racist and hostile graffiti.



"Love is made best in the basement, sweetie" signed by PÖH (Special Police Teams)

A total of 242 civilians dead, of which, only in Cizre District, 137 of these people, lost their lives within the boundaries of their homes were collected.<sup>69</sup>

According to the data of HRFT Documentation Center, since August 16th, 2015 (which is the date of first declared curfew) until March 18th, 2016 there are at least 59 bodies from Cizre that are buried without waiting for the identification process<sup>70</sup>.

In addition to that, on the 5th February 2016, according to a Human Rights Foundation of Turkey's report, there were at least 79 unidentified bodies<sup>71</sup>.

<sup>69</sup> [http://en.tihv.org.tr/fact-sheet-on-declared-curfews-between-august-16th-2015-and-march-18th-2016-and-civilians-who-lost-their-lives/#\\_ftn1](http://en.tihv.org.tr/fact-sheet-on-declared-curfews-between-august-16th-2015-and-march-18th-2016-and-civilians-who-lost-their-lives/#_ftn1)

<sup>70</sup> According to data from HRFT Documentation Center <http://en.tihv.org.tr/fact-sheet-on-declared-curfews-between-august-16th-2015-and-march-18th-2016-and-civilians-who-lost-their-lives/>

<sup>71</sup> <http://en.tihv.org.tr/recent-fact-sheet-on-curfews-in-turkey-between-the-dates-16-august-2015-5-february-2016/>



As far as is known, 31 people died in the first basement, 62 in the second basement and 50 in the third basement. It is known that a total of 177 bodies were carried from the area.

As the integrity of most of the bodies are damaged, identification was not possible, especially of the people whose bodies were taken from the basements of Cizre. Moreover, there has been changes in the Regulation for Implementation of Forensic Medicine Institution Law on January 7th and 16th, 2016 and again on Regulation on Transfer and Burial of Corpses on January 16th, 2016 that allowed the bodies to be buried collectively to common graves or unknown places without waiting for the necessary period of time which made the identification process even harder<sup>72</sup>.

On the 22 March 2016, according to the data of Human Rights Foundation of Turkey Documentation Center, the names of the people who lost their lives since August 16th 2015 until March 17th 2016 in Cizre are:

**1** Cemile Çağırğa (10) **2** Özgür Taşkın (18) **3** Meryem Süne(53) **4** Bünyamin İrci(14) **5** Muhammed Tahir Yaramış (35 days old) **6** Eşref Edin (56) **7** Selman Ağar (10) **8** Mehmet Emin Levent (29) **9** Osman Çağlı(18) **10** Sait Çağdavul (21) **11** Şahin Açık (74) **12** Mehmet Erdoğan (75) **13** Mehmet Sait Nayici (16) **14** Zeynep Taşkın (19) **15** Maşallah Edin (35) **16** Hacı Ata Borçin (75) **17** Gadban Bülbül (78) **18** Mehmet Dökmen (71) **19** Bahattin Sevinik (50) **20** Suphi Sarak (50) **21** İbrahim Çiçek (79) **22** Mülkiye Geçgel (48) **23** Resul Ekinci(65) **24** Hediye Şen(30) **25** Doğan Aslan(24) **26** İbrahim Akan(15) **27** Selahattin Bozkurt(70) **28** Yılmaz Erz(42) **29** Lütfü Aksoy(25) **30**.Zeynep Yılmaz(40) **31** Cahide Çikal(35) **32** Mehmet Tekin(35) **33** Doğan İşi(18) **34** Mehmet Saçan(38) **35** Emine Duman(75) **36** Azime Aşan(59) **37** Dikran Sayaca(25) **38** Ferdi Kalkan(20) **39** Abdulmecit Yanık(27) **40** Hacı Özdal(25) **41** Miray İnce(3 months old) **42**.Ramazan İnce (80) **43**.Kumru Işık(85) **44**.Hüseyin Ertene(16) **45**.Hüseyin Selçuk(5) **46**.Abdülaziz Yural(28) **47**.Zeynep Demir(65) **48**.Ali Tetik(34) **49**.Kazım Tongğ(51) **50**.Cabbar Taşkın(40) **51**.Sezai Burçin(43) **52**.Hediye Erden(60) **53**.Besna Zırığ(50) **54**.Fatma Acet(40) **55**.Bişeng Goran(12) **56**.Nidar Sümer(17) **57**.Halis Sümer(45) **58**.Osman Tekin(50) **59**.Tayfur Yaşlı(19) **60**.Şivan Cebraıl Mungan(24) **61**.Murat Ekici(22) **62**.Murat Egül(24) **63**.Ahmet Zırığ(35) **64**.Şükrü Coşkun(20) **65**.Nebi Katlav(22) **66**.Ali Bağdur(25) **67**.Mehmet Hacı Tongut(32) **68**.Mehmet Şirin Erdiñç **69**.Garip Mubarız (18) **70**.Veysi/Hacı Elçi(30) **71**.Abdulmenaf Yılmaz(50) **72**.Yakup Isırgan **73**.Mehmet Şahin(77) **74**.Emame Şahin (77) **75**.Yusuf Akalın(12) **76**.Büşra Akalın(10) **77**.Veli Müjde(38) **78**.Abdullah İvedi(25) **79**.Hayrettin Şınık(10) **80**.Mehmet Rıdvan Kaymaz(36) **81**.Hüseyin Paksoy(16) **82**.Mehmet Kaplan(35) **83**.Serhat Altun(23) **84**.Abdülhamit Poçal **85**.Selman Erdoğan **86**.Ahmet Tunç(50) **87**.Cihan Karaman(23) **88**.Rüzgar Yıldızgörer(25) **89**.Selami Yılmaz(25) **90**.Nusreddin Bayar(20) **91**.Sultan Irmak(16) **92**.Selim Turay(22) **93**.Şervan Kenan Adıgüzel **94**.Mehmet Özkul(adult) **95**.Nizar Isırgan**96**.Cengiz Sansak **97**.Ramazan Çömlek **98**.Zerin Uca(22) **99**.Sahip Edin(30's) **100**.Abdullah Gün(16) **101**.Yunus Meral **102**.Tahir Akdoğan(16) **103**.Mevlüde Özalp **104**.Fehmi Fakah Dinç(adult) **105**.Fatma Demir(adult) **106**.Barış Gasir(adult) **107**.Sabri Sezgin(18) **108**.Abdülselam Turgut(adult) **109**.Mahsum Erdoğan **110**.Muharrem Erbek(23) **111**.Sinan Kaya(22) **112**.Mehmet Kulbay(22) **113**.Burhan Taşdelen **114**.Aydın Erol **115**.Ferhat

<sup>72</sup> According to data from Human Rights Foundation of Turkey [http://en.tihv.org.tr/fact-sheet-on-declared-curfews-between-august-16th-2015-and-march-18th-2016-and-civilians-who-lost-their-lives/#\\_ftn1](http://en.tihv.org.tr/fact-sheet-on-declared-curfews-between-august-16th-2015-and-march-18th-2016-and-civilians-who-lost-their-lives/#_ftn1)

Karaduman(16) **116.**Nursel Dalmış(18) **117.**Murat Şimşek(16) **118.**Abbas Güllübahçe **119.**Tuğba Eminoğlu **120.**Erdal Şahin(29) **121.**Rohat Aktaş(adult) **122.**Adil Küçük(adult) **123.**Mahmut Duymak(51) **124.**Umut Ürek **125.**Ramazan İşçi **126.**Metin Karane **127.**Dersim Aksoy **128.**İslam Balıkesir **129.**Ömer Baran(25) **130.**Mustafa Gasyak(16) **131.**Ali Fırat Kalkan **132.**Kasım Yana(18) **133.**İzzet Gündüz(adult) **134.**Berjin Demirkaya **135.**Sakine Şiray(adult) **136.**Ekrem Sevilgen(17) **137.**Serdar Özbek(32) **138.**Mehmet Benzer(19) **139.**Tajdin Nerse(22) **140.**Mehmet Dalmış(31) **141.**Mehmet Yavuzel(adult) **142.**Rıdvan Ekinci **143.**Bişeng Kolanç **144.**Cihat Altun(22) **145.**Mehmet Yılmaz(23) **146.**Cüneyt Kızıltay **147.**Güler Eroğlu(20) **148.**Mehmet Edin **149.**Star Özkül **150.**Hasan Ayaz(14) **151.**Yılmaz Geçim(15) **152.**Mesut Özer(17) **153.**Cengiz Gerem(15) **154.**Derya Koç(adult) **155.**Azad Yılmaz(19) **156.**Hakkı Külte(13) **157.**Çimen Tankan **158.**İsmail Çetin **159.**Murat Erdin **160.**Hasan Tağ(adult) **161.**Agit Küçük **162.**Harun Barın **163.**Hülya Aktaş(adult) **164.**Cemile Erden(28) **165.**Mehmet Tunç(yetişkin) **166.**Orhan Tunç **167.**Veysi Bademkiran(17) **168.**Yasemin Çıkmaz(17) **169.**İbrahim Temel **170.**Yakup Yalçın **171.**Felek Çağdavul **172.**Fırat Malgaz **173.**Yakup Dadak **174.**Ramazan Aydın **175.**Lokman Bilgiç **176.**Hüseyin Kaya **177.**M. Emin İdim(child) **178.**Tahir Çiçek(child) **179.**Aydın Güner(adult) **180.**Abdullah Özgül **181.**Meryem Akyol **182.**Ramazan Biriman **183.**Hüseyin Kayaalp(16)

**Besides,** there are at least 59 bodies that are buried without waiting for the identification process.

On the **29th July 2016,** the **YPS General Coordination** published a statement declaring that sixty-six YPS members had lost their lives, each identified by name<sup>73</sup>.

On the 2nd of March the curfew in Cizre was limited to the hours of darkness.

Below, a picture of some of the security forces working in the city of Cizre at the end of the operation.

<sup>73</sup> Article: <http://barisicinaktivite.com/11030-2-yps-cizrede-yasamini-yitirenlerin-kimlik-bilgilerini-acikladi/>  
ANF: <https://anfturkce.net/kurdistan/yps-cizre-sehitlerinin-kimlik-bilgilerini-acikladi-75485>



The facts listed above, and the attached evidence clearly show that warcrimes have been committed in Cizre,

in particular several grave breaches of the Geneva Conventions of 12 August 1949 as defined by art. 8 2 (a) of the Rome Statute, namely,

- (i) Wilful killing;**
- (ii) Torture or inhuman treatment, including biological experiments;**
- (iii) Wilfully causing great suffering, or serious injury to body or health;**
- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;**

**As well as**

**In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, as defined by art. 8 2 (c) of the Rome Statute namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:**

- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;**

**As well as**

**other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, as defined by art. 8 2 (e) of the Rome Statute namely, any of the following acts:**

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;**
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;**
- (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;**
- (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;**

## The events in the District of Sur in Diyarbakir city

Sur is the name given to the old city of Diyarbakir within the old city walls. The first settlement in the area is dated 5000 BC and since Diyarbakir has been a very important meeting point at the intersection of East and West. It is a multilingual, multi-cultural and multi-layered city.

There were 569 registered historical buildings in Sur. Many of these were destroyed in the conflict as explained hereafter.

Sur consists of 15 neighbourhoods and in 2015 had a total population of 50.341.<sup>74</sup>

### *Forced displacement*<sup>75</sup>

In Surici totally five times curfews have been declared by the governor between beginning in September 2015 and lasting several days. Particularly the six neighbourhoods Cevat Paşa, Dabanoğlu, Fatih Paşa, Hasırlı, Cemal Yılmaz ve Savaş have been affected by these 24-hour blockades through the security forces. The last curfew dating on December 11, 2015 is valid for five neighbourhoods. Armed skirmishes, curfew and blockades set up by special police forces and the gendarmerie, continued in five neighbourhoods, and were extended to the neighbourhoods of Ziya Gökalp, Süleyman Nazif, Abdaldede, Lalebey and Alipasha from 27 January 2016 to 03 February 2016. The Diyarbakir governor's office declared on the 10 March 2016 that operations had come to an end.

During these curfews similar attacks as those described above on the population of Cizre occurred in Sur.

Hereafter however the emphasis will be on a different type of problem: the chain of successive and complementary actions by the authorities that have led to the forced displacement of more than 20.000 inhabitants of Sur.

The successive steps that have led to this result were:

- The systematic destruction of buildings, including historical buildings, houses, mosques etc. by artillery bombardments during the clashes in Sur with Kurdish militants in the period of 9 September 2015 to 10 March 2016
- The decision taken by the Council of Ministers on 21 March 2016 to expropriate 6292 out of 7714 parcels in Sur.

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<sup>74</sup> Nevin Soyukaya, Archaeologist, Former head of the UNESCO World Heritage Site "DIYARBAKIR FORTRESS AND HEVSEL GARDENS CULTURAL LANDSCAPE", DAMAGE ASSESSMENT REPORT, Conflict Period and following Demolition of the Old city (SURIÇİ) of DIYARBAKIR, August 1, 2017

<sup>75</sup> Unless otherwise indicated all data in this part are drawn from Nevin Soyukaya, Archaeologist, Former head of the UNESCO World Heritage Site "DIYARBAKIR FORTRESS AND HEVSEL GARDENS CULTURAL LANDSCAPE", DAMAGE ASSESSMENT REPORT, Conflict Period and following Demolition of the Old city (SURIÇİ) of DIYARBAKIR, August 1, 2017

- The continued destruction of buildings under the pretext of cleaning the area of debris after March 10, 2016 leading to the total demolition of several districts turning large parts of the old city into flatlands.
- The modification of the Urban Conservation Plan by the Ministry of Environment and Urbanization in December 2016 paving the road for speculative so-called urban renewal plans that denature and distort completely the city and in particular its historical center.

**The systematic destruction of buildings, including historical buildings, houses, mosques etc. by artillery bombardments during the clashes in Sur with Kurdish militants in the period of 9 September 2015 to 10 March 2016**

Tanks were positioned around the districts of Sur in which curfews were declared. Initially the State Forces attempted to break through the barricades and trenches in one point, not far from the area where many historical monuments such as the Armenian Church are situated.

This led to heavy fighting in which State Forces opposed heavy weapons, mainly artillery mounted on tanks, to mainly light weapons in the hands of a limited number of Kurdish fighters. These clashes resulted in considerable destruction in that area.

On 10 December 2015 the curfew was lifted for a limited number of hours. As a result of this that thousands of inhabitants of the districts under curfew left their houses and became refugees in their own town. The authorities took no measures to provide food, shelter, medical assistance etc. to these refugees. This resulted in the almost complete depopulation of this part of the city. Nevertheless a limited number of civilians did not leave their houses for various reasons.

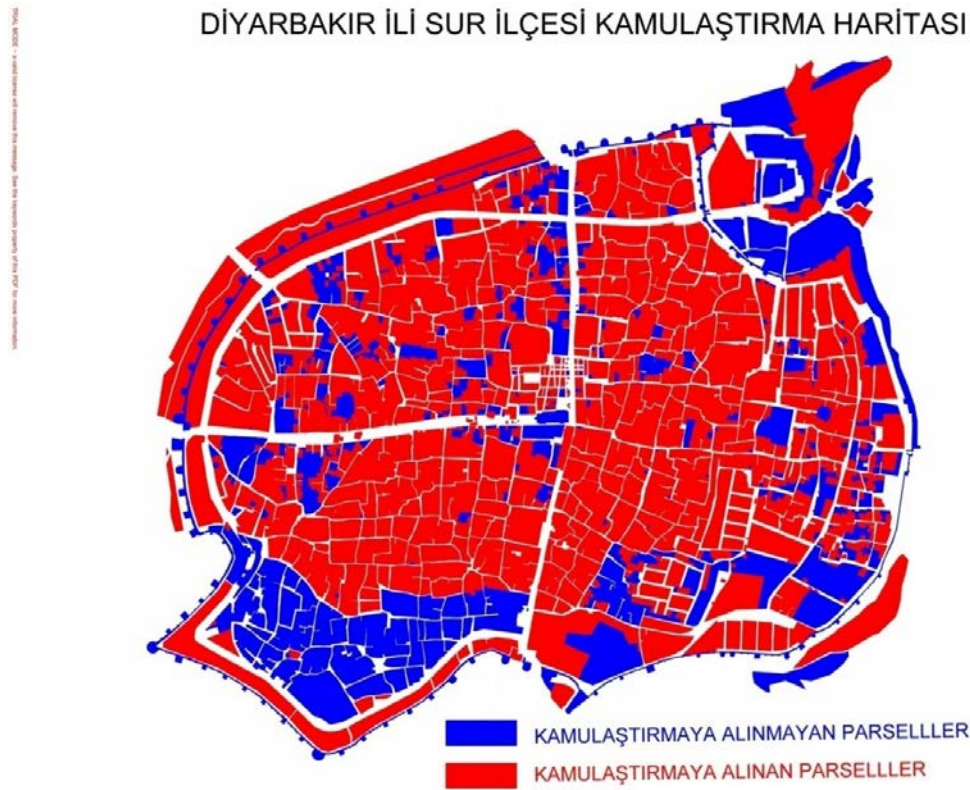
After a few hours the curfew was re-established and witnesses report that from that moment on the systematic shelling of houses everywhere in Sur by artillery mounted on tanks started. According to the witnesses houses were shelled story by story, including in areas where there were no or very limited clashes on the barricades.

That systematic destruction process continued later, after the fighting stopped. Satellite images from 10 May 2016, shortly after the end of the fighting, show that 10 hectares of buildings were completely destroyed (this will double later as seen hereafter to 20 hectares).

**The decision taken by the Council of Ministers on 21 March 2016 to expropriate 6292 out of 7714 parcels in Sur.**

After the end of state operations, on 21 March 2016 the Council of Ministers took a decision on the expropriation of 6292 out of 7714 parcels in Suriçi based on the article 27 of the law on expropriation. By this decision, 82% of the parcels in Suriçi shall be expropriated by the Turkish government. A large part of the remaining 18% is in the possession of the Housing Development Administration TOKI and the Treasury, i.e. of the Turkish state. As a result, Suriçi will be entirely passed into public ownership. This also means that the residents of these five affected neighborhoods will not be able to return.

Map of the area to be expropriated. Red indicates the parcels marked for expropriation. Blue parcels were previously already in the hands of the State:



**The continued destruction of buildings under the pretext of cleaning the area of debris after March 10, 2016 leading to the total demolition of several districts turning large parts of the old city into flatlands.**

Under the pretext of cleaning up the rubble and creating roads necessary for security reasons the authorities continued the destruction of several districts in a period of more than 1 year after the end of the fighting.

This evolution is clearly illustrated by the following images:

On 10 May 10 ha are completely destroyed.



From the satellite image of August 16, 2016 below it has been assessed that a total of 1519 buildings and other constructions have been destroyed completely, among them registered civil and monumental buildings. The destruction covers 20 ha (double of the surface destroyed at the end on 10 May 2016).





Picture taken from a commercial flight on 4 April 2017



Inside the walled city 19 April 2017



Picture taken from a commercial flight 4 May 2017 showing ongoing destruction



**The modification of the Urban Conservation Plan by the Ministry of Environment and Urbanization in December 2016 paving the road for speculative so-called urban renewal plans that denature and distort completely the city and in particular its historical center.**

Urban Conservation plans have subsequently been modified. The Diyarbakir branch of the Chambers of Architects and Engineers of Turkey has examined those plans and found 17 different violations of urban and conservation norms. The most important conclusion is that all the changes introduced are all justified on grounds of security and thus planning is

reduced to an instrument of defence. The new houses that are built in the area are inaccessible to the original population of the destroyed districts.

The sequence of events and decisions of the Turkish authorities resulted in the forced displacement of 20.000 to 50.000 people from Sur. This amounts to a form of collective punishment of these persons for their supposed participation in § or sympathy for what started as an action of civil disobedience against the termination of the peace process by the Turkish State and the continued violation of the right of the Kurds to self-determination.

**This constitutes:**

- **a grave breach of the Geneva Conventions of 12 August 1949, namely the war crime of causing extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly as defined in art. 8 2 (A) (iv) of the Rome Statute**
- **as well as the war crime of unlawful deportation or transfer as defined in art. 8 2 (A) (vii) of the Rome Statute**
- **as well as the war crime of Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand as defined in art. 8 2 (e) (vii) of the Rome Statute**
- **as well as the war crime of destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict as defined in art. 8 2 (e) (xii) of the Rome Statute;**

*Destruction of world heritage*

Suriçi district as a whole, was registered as “Diyarbakir Urban Archeological Site” in 1988. Since the first master plan to protect this area could not be implemented, a new draft of the master plan was prepared and put into action in 2012. Following adoption of the new master plan, Diyarbakir Metropolitan Municipality started to work for recognition of Diyarbakir Fortress and Hevsel Gardens as world heritage by the UNESCO as of 2012. In parallel to this, a “Site Management Plan” and conveyed to World Heritage Center in August 2014. During the 39th meeting that took place in 4th of July, 2014, World Heritage Center approved Diyarbakir Fortress and Hevsel Gardens as a cultural landscape that is the world heritage. Diyarbakir Fortress, İçkale, Anzele Water Body and Hevsel Gardens are considered as the heritage zone while Sur and Tigris Valley area were registered as the buffer area.

The Sur buffer area is since then protected by international laws as well as by the Turkish Cultural and Natural Heritage Protection Act no. 2863. These international agreements signed by Turkey: UNESCO Universal Declaration on Cultural Diversity (2001), The Convention for the Safeguarding of Intangible Cultural Heritage (Paris, 2003), Convention Concerning the Protection of the World Cultural and Natural Heritage (Paris, 1972), Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 1954), Venice Charter (1964) and The Declaration of Amsterdam (1975).

A report drafted by the Diyarbakir Metropolitan Municipality<sup>76</sup> reports e.g. the following damages to historical buildings:

- Kurşunlu Mosque, which is a registered intangible cultural heritage located in Fatihpaşa neighbourhood, suffered irrevocable damage at its northern front walls as well as its' stoop pillars located within the mosque. A fire destroyed the sanctuary and created distortions in walls, decorations and ornaments were destroyed as a result of the fire. Moreover, the fountain of the mosque that was reconstructed is now totally destroyed (Photos 1 & 2).



COURTYARD OF KURŞUNLU MOSQUE



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<sup>76</sup> Diyarbakir Metropolitan municipality, "Cultural heritage Damage Assessment report on Sur, Diyarbakir, 30 March 2016, p. 4-5

- Sheikh Muhattar Mosque, that is quite well-known with its Minaret on the Four-Pillars was equally damaged. Two of four carrier pillars of the minaret were targeted by heavy weaponry and carrier lintels of the minaret were also damaged.

The MINARET ON FOUR PILLARS (ON THE LEFT)



Moreover, visual evidence also shows that walls of the mosque were partially destroyed to facilitate entrance of armoured vehicles into the street.



- With the same pretext, registered historical shops were destroyed which are located at Yeni Kapı Street which adjoin the biggest Armenian church in the Middle East, Saint Giragos and Chaldean Church next to it and thus the historical texture of the street was also destroyed too.



The Yenikapı street, with an original width of 8m before the demolition, has been turned into a 15 m wide street.

- One of 7 public baths/hamams in Suriçi which could survive up until today, Pasha Hamam, was damaged in the early days of armed clashes. Afterwards the cooling section of the hamam was totally destroyed as a result of a fire outbreak.
- Another registered historical building, an example of traditional civil architecture, turned into Mehmed Uzun Museum House by Diyarbakir Metropolitan Municipality was partially destroyed. Amongst the part destroyed, there is also kabaltı (street veil) section, which represents one of rare examples of traditional street texture of Diyarbakir which enabling pedestrians to walk under the physical structure. Furthermore, it is also detected that a series of other historical civil architecture examples were partially or totally destroyed. As a result of devastations, the area characterised as “Urban Archeological Site” has lost its’ unique street and physical structure fabric in a way that cannot be restored.



Other destructions are reported by Nevin Soyukaya, Archaeologist <sup>77</sup>:

- Aerial photographs underline that the Hasırlı Mosque, located at parcel no. 235/19 has been completely destroyed and the debris removed, without a trace left in its place.

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<sup>77</sup> Nevin Soyukaya, Archaeologist, Former head of the UNESCO World Heritage Site “DIYARBAKIR FORTRESS AND HEVSEL GARDENS CULTURAL LANDSCAPE”, DAMAGE ASSESSMENT REPORT, Conflict Period and following Demolition of the Old city (SURIÇİ) of DIYARBAKIR, August 1, 2017



- **Armenian Catholic Church:** The bell tower, south courtyard wall and pool in the courtyard have been destroyed completely and the main entrance door and church outbuilding located to the west of the church have been destroyed partly. Also a wide road through the area has been opened.



After restoration in 2014





March 2016



May 2016

Nevin Soyukaya, Archaeologist, Former head of the UNESCO World Heritage Site reports<sup>78</sup>:

*“The Diyarbakir governor’s office declared on the 10 March 2016 that operations had come to an end. The governor of Diyarbakir declared the end of the operations in the affected area on March 10, 2016. But before the completion of the operations in February 2016 heavy equipment and bulldozers of state institutions have started with demolition in the area under curfew and the excavation of debris. A part of the debris has been dumped at a site of the Diyarbakir Dicle University and afterwards it has been covered with soil. This illegal action has been documented by the Environment Conversation Department of the Diyarbakir Metropolitan Municipality on February 29, 2016. In an area registered as urban conservation site and buffer zone of a World Heritage Site demolition and excavation of debris have been executed without assessing the state of the operations and clashes, without obtaining permission from the responsible Diyarbakir Region Conservation Board of Cultural Assets. The necessary permissions for the removal of the excavation were taken out only about a month later. The Conservation Board of Cultural Assets has stated in its decision with the no. 3873, dated 23 March 2016, that “the removal of debris obstructing streetways may be allowed under the supervision of the experts of the museum directorate; if debris from partially of completely destroyed registered buildings is encountered, then all significant construction elements should be kept at the original site in a proper way, under the supervision of the museum experts, for later assessment. An aerial photograph taken and handed by a citizen on April 4, 2016, and two satellite images commissioned by the Diyarbakir Metropolitan Municipality on May 10 and August 16, 2016, it could be determined obviously that this*

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<sup>78</sup> Nevin Soyukaya, Archaeologist, Former head of the UNESCO World Heritage Site “DIYARBAKIR FORTRESS AND HEVSEL GARDENS CULTURAL LANDSCAPE”, DAMAGE ASSESSMENT REPORT, Conflict Period and following Demolition of the Old city (SURIÇI) of DIYARBAKIR, August 1, 2017

*decision has not been followed by the state institutions in the affected area. Hundreds of buildings have been destroyed, roads have been broadened, areas have been erased and squares created and schools have been turned into police/military posts. The wide roads now connect these police/military posts. By conducting the demolition under the observation of the local personnel of the directorate of the Ministry for Culture and Tourism it has been aimed to give a legitimate situation. The demolition actions, which have violated the Urban Conservation Plan and the World Heritage Site Management Plan, have been conducted without the permission of the responsible municipality, responsible for enforcing these plans, and the information of the Site Management. Suriçi as an urban conservation site is object to the Law on the Conservation of Cultural Assets (No. 2863) and as part of the World Heritage Site under the conservation of international laws. For the destruction of any registered buildings, it is necessary that;*

- 1) from the Conservation Board of Cultural Assets for each monument separately a decision is taken which states the imminent danger of collapse,*
- 2) the technical personnel of the directorate for construction control at the relevant municipality prepare a report permitting the demolition of each individual building, which state a risk for life and propriety, according to the Article 39 of the Law on Zoning (Town Planning) numbered 3194.*
- 3) after the documentation on the claimed risk of collapse the relevant commission of the city council approves the demolition.*

*However, for the demolished buildings in the blockaded neighbourhoods, neither any technical assessment has been made nor any required permissions have been obtained from the Conservation Council for Cultural Assets and the relevant municipality. Today the actions and procedure continue which violate the national and international rules and regulations and lead to further destruction of the affected area. Without any design of surveys, restoration and restitution plans for the affected registered buildings, the remainings of qualitative building elements have been excavated with heavy equipment and dumped outside of Suriçi by personnel which have no expertise on this subject.”*

*Nevin Soyukaya <sup>79</sup> concludes: “The destruction of historical Suriçi took place in two different periods. The first was the period of armed conflict lasting from 9 September 2015 to 10 March 2016, the second period is characterized by systematic demolition and annihilation started on March 10, 2016 after the stop of the state operations an still continues. In the first stage heavy weapons, artillery, tanks, bombs and explosives were used. But the irreversible damage was inflicted in the second stage when demolition and excavations uprooted even the foundations of the buildings.”*

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<sup>79</sup> Nevin Soyukaya, Archaeologist, Former head of the UNESCO World Heritage Site “DIYARBAKIR FORTRESS AND HEVSEL GARDENS CULTURAL LANDSCAPE”, DAMAGE ASSESSMENT REPORT, Conflict Period and following Demolition of the Old city (SURIÇI) of DIYARBAKIR, August 1, 201, p. 11

**The Turkish State and its operatives have therefore committed the war crime as defined in art. 8 2 (e) (iv) of the Rome Statute of intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments,... not being military objectives.**

State crimes committed both on the Turkish national territory and in other countries by Turkish State agents.

For decades Turkish State bodies have been involved in crimes committed against Kurdish individuals and organisations.

The most recent example of such a crime was the murder of 3 Kurdish female activists, Fidan Doğan, Sakine Cansız and Leyla Şaylemez in Paris on 9 January 2013. The investigation has shown the implication in this crime of top officials of the Turkish secret service MIT.

But this crime is certainly not an isolated incident. Various branches of the security and intelligence services of Turkey have been involved in similar crimes committed both in Turkey and abroad.

The crimes are of various nature.

Targeted killings, extrajudicial executions and forced disappearances were a real plague in Turkey in the 1990's.

According to the Human Rights Association (İHD), there have been 940 cases of enforced disappearance in Turkey. In addition to that, the İHD believes 3,248 people who were murdered in extrajudicial killings are buried in 253 separate burial places.<sup>80</sup>

The UN Human Rights Council Working Group on Enforced or Involuntary Disappearances reports to have transmitted 202 allegations of enforced or involuntary disappearances to the Government of Turkey, of which 79 were still outstanding in July 2017.<sup>81</sup> In its report the working group points to the culture and even the organisation of impunity: *“there has hardly been a single case of criminal responsibility or civil liability for an act of enforced disappearance”*.

Further in the report the Working Group specifies: *“According to information received during the visit, investigation into a number of criminal cases involving an element of enforced disappearance has not yet been initiated or is still ongoing, despite the fact that in some cases more than 20 years have passed since the disappearances occurred. It is self-evident that finding evidence or any useful element for the investigation at this stage is quite difficult. The Working Group has received information that criminal investigations have been*

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<sup>80</sup> “Kayıplar Bulunsun; Failer Yargılansın ve Cezalandırılınsın!” İHD, May 17, 2017, <http://www.ihd.org.tr/kayıplar-bulunsun-failer-cezalandırılınsın/>

<sup>81</sup> UN General Assembly, the Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Turkey, July 27, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/166/87/PDF/G1616687.pdf?OpenElement>

*opened in 14 cases concerning the enforced disappearances of about 80 persons. Seven of these cases, concerning the disappearance of 34 people, reportedly resulted in acquittals; five of them, concerning the disappearance of 47 individuals, are pending; while only two cases, concerning two individuals, resulted in a decision of conviction. There are various reasons for the almost complete lack of criminal responsibility for acts of enforced disappearance. .... the Working Group has perceived a palpable lack of interest in seriously investigating, prosecuting and adjudicating these cases, as if going forward with them would harm the interests of the State which should be instead preserved."*

*"The combination of all these factors makes convictions for acts of enforced disappearance virtually impossible and results in de facto immunity from criminal responsibility for perpetrators of crimes of enforced disappearance. The recent acquittals in a number of emblematic cases exemplify this pattern of impunity."*

One of the most emblematic killings was the execution of the Kurdish intellectual and poet Musa Anter on 20 September 1992. The report published by a Commission of Inquiry of the Turkish Grand National Assembly after the so-called Susurluk incident<sup>82</sup> clearly indicates that operatives of the Turkish State, especially of the so called Jitem (Security and intelligence department of the Jandarma) were responsible for the killing. The Jandarma denied for many years even the existence of the JITEM.

Apart from kidnapping and murder there are also clear indications that state operatives or members of clandestine groups supported and/or condoned by the Turkish State were involved in other types of criminal action such as bomb attacks, arson. Some of these attacks, perpetrated by persons that remain "unknown", were directed against Kurdish organisations, media etc. That was the case with the bomb attack on December 3, 2014, committed against Özgür Ülke newspaper technical headquarters located in İstanbul's Kadirga district, central office in Cağaloğlu and bureau in Ankara.

Around 15 days after the bombing, Özgür Ülke newspaper published an article about a top-secret document signed by then-PM Tansu Çiller.

The document cited the following with direct reference to the newspaper:

*"The activities of media outlets supporting the separatist and annihilating [organizations] has recently turned into an overt threat against the future of the [Turkish] state and its moral values. In order to wipe out this threat against the unity of country and nation, precautions need to be taken..."<sup>83</sup>*

A similar bomb attack on the offices of the pro-Kurdish Democracy Party (DEP) on 18 February 1994. In October 1991 for the first time a pro-Kurdish political party, Hep, entered

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<sup>82</sup> In November 1992 a car accident happened in Susurluk. In the car a parliamentarian, the former Deputy Director of Istanbul Security, a well-known right-wing extremist and drug trafficker wanted by Interpol were killed. The wanted criminal was in possession of a diplomatic passport signed by the Minister of Interior personally. A public scandal regarding the close relationship between the Turkish government, the armed forces, and organized crime in the fight against the Kurds and other opponents broke out and led to a Parliamentary investigation.

<sup>83</sup> <https://bianet.org/english/minorities/160490-20-years-of-impunity-in-ozgur-ulke-newspaper-bombing>

the Turkish National Assembly. Soon the Hep was banned. In May 1993 the former HEP MP's founded the DEP. The DEP advocated a political solution for the Kurdish question and negotiations with the PKK. The government demonized the DEP as an "extended arm of the PKK". A massive campaign against DEP candidates in the South East was waged prior to the elections of 27 March 1994. As a result of the violence the DEP withdrew on 25 February from the elections. On 2 March the Parliament repealed the immunity of the DEP parliamentarians on the accusation of separatist activities, a capital offence. After a campaign of the government to "remove the PKK from parliament" the DEP was banned on 16 June 1994 by the Constitutional Court.

**These are just examples of State organised, condoned, instigated violent crimes committed with the aim of seriously intimidating the Kurdish population and seriously destabilising or destroying the legitimate representatives and institutions of the Kurds living in Turkey in order to deprive the Kurdish people from its right to self-determination as defined in the common article 1 of the UN Covenants cited above. The Turkish State has to be held accountable for these crimes.**

**Operatives of the Turkish State committed also so-called false flag actions: attacks on civilians which were then attributed to the PKK. The aim of these actions was double: spread fear amongst the population and demonize the PKK by creating the false impression that this organisation was responsible for such crimes.**

**Finally, the Turkish State has not only organised or committed such crimes on the Turkish national territory but has also exported this activity to other countries.**

**The recent murder of three Kurdish women in Paris is the clearest example of this activity.**

**The Turkish State should be held accountable for this activity on the basis of the Principles on Responsibility of States for Internationally Wrongful Acts, established by the International Law Commission and annexed to UN General Assembly Resolution 56/83 of 12 December 2001.**

Therefore, The Prosecution requests the Permanent Peoples Tribunal, Session on Turkey and the Kurds to:

Hold the Turkish Republic as an subject of public international law responsible for the crimes as defined above.

Hold the Turkish State President Recep Tayip Erdogan responsible for the war crimes described above committed in the South East Anatolian cities between 1 January 2015 and 31 December 2017 as well as for crimes committed since he took office as Prime Minister in 2003 in Turkey and abroad by agents of the Turkish State against representatives of the Kurdish movement, their organisations, press organs etc. for having been in command and control of operations conducted during the period he held consecutively the offices of Prime Minister and President in particular for initiating the so-called Collapse Plan.

Hold General Adem Huduti responsible for the war crimes described above committed in the South East Anatolian cities between 1 January 2015 and 15 July 2016 (date at which he allegedly participated in an attempt to commit a military coup and was subsequently arrested) for having exercised supreme command over the military operations conducted during this period in said cities.

For the Prosecution,

Jan FERMON

## Annex 1: Position of the Prosecution on the applicable legal framework to the conflict between Turkey and the Kurdish armed resistance: international humanitarian law and the laws of war or national criminal law?

In order to find that war crimes were committed by the Turkish State, the Tribunal has to examine the question whether the conflict between the Turkish State and the Kurds, in particular the guerrilla of the Kurdish Workers Party PKK, is in general an armed conflict in the sense of international law.

Subsequently the Tribunal has to examine whether the clashes in the South East Anatolian cities in the second half of 2015 and the first part of 2016 have to be considered as a part of that conflict.

The Turkish State has consistently spoken about its operations as “police action against terrorists” denying thus implicitly the existence of an armed conflict as defined by international law.

When a conflict reaches the level of an armed conflict, international humanitarian law is applied. At that moment the paradigm changes fundamentally. While the use of force in times of peace is in principle not permitted, it is in principle allowed in times of armed conflict.

The need to preserve this specificity is absolutely necessary to prevent the risk of abusive use of the concept of "terrorism" in order to de-legitimize the opponent. This risk is particularly high in situations where there is an armed conflict.

The International Red Cross in Geneva, the cradle of international humanitarian law, also states that it is necessary to retain both legal frameworks and to apply them correctly:

*“A crucial difference between IHL and the legal regime governing terrorism is that IHL is based on premise that certain acts of violence in war – against military objectives and personnel – are not prohibited. Any act of "terrorism", however, is by definition prohibited and criminal. The two legal regimes should not be blurred given the different logic and rules that apply. This is particularly important in situations of non-international armed conflict, where a "terrorist" designation may act as an additional disincentive for organized armed groups to respect IHL (they are already subject to criminal prosecution under domestic law).”<sup>84</sup>*

It is not always easy to judge whether there is an armed conflict on a given territory, particularly if this concerns a non-international conflict. One should be careful in this regard with the definitions used by the State concerned.

*“The classification of situations of armed violence is also often linked to political considerations, as the parties involved in endeavor to interpret the facts in accordance with their interests. On the basis of discretion allowed by the general terms of the legal categories, it is not unusual, for instance, for States to refuse to admit that they are involved in an armed conflict. They prefer to play down the intensity of the situation by claiming to carry out an operation to maintain public order. In doing so, they deny the applicability of humanitarian law”<sup>85</sup>*

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<sup>84</sup> ICRC, Challenges for IHL - terrorism: overview, 29 October 2010, Overview,

<https://www.icrc.org/eng/war-and-law/contemporary-challenges-for-ihl/terrorism/overview-terrorism.htm>.

<sup>85</sup> Sylvain Vité. *Typology of armed conflicts in international humanitarian law: legal concepts and actual situations*. International Review of the Red Cross, March 2009, p. 94.

The conventions of Geneva, more specifically the common Article 3, which also applies to non-international armed conflicts, and which is regarded as international humanitarian customary law (*ius cogens*), do not contain a definition of "armed conflict". Art. 1 of the Second Additional Protocol to the Geneva Conventions of 8 June 1977 does contain such a definition, but only applicable to the armed conflicts to which this Protocol applies, in particular conflicts

*"between the armed forces of a High Contracting Party and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol."*

Protocol II also contains a negative definition to make the distinction:

*"This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts."*

Turkey has not ratified this Protocol so that it does not apply to this conflict as such.

The Rome Statute, which is the most recent instrument and defines the current state of international customary law, uses a broader definition than that of Protocol II. In terms of scope, it refers to the common article 3 of the Geneva Conventions and adds:

*"Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:"*

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Moreover, the conditions that the parties in an armed conflict must meet are less strict:

*"Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups."*

The question about the possible armed conflict between the Turkish State and the Kurdish guerrilla should be dealt with on the basis of the common Article 3 of the Geneva Conventions and Article 8§2 (f) of the Rome Statute, and not on the basis of the Protocol II at the Geneva conventions.

Turkey has ratified the Geneva Conventions, but not the Rome Statute. However, to decide on what is to be regarded as an "armed conflict" that does not matter.

In 2003, the International Committee of the Red Cross argued at the 28th International Conference of the Red Cross on "international humanitarian law and the challenges of international armed conflict" and on the difference between terrorism and armed conflict:

"Every armed conflict requires a certain level of violence and, among other things, the existence of counterparties. The term "party to an armed conflict" is generally applied to armed forces or to armed groups that have a certain degree of organization, a policy structure and thus the ability to



apply international humanitarian law. The logic itself that underlies international humanitarian law requires the existence of identifiable parties in the sense mentioned above because this whole rules (...) establishes the equality of rights and obligations in international humanitarian law " <sup>86</sup>  
<sup>87</sup>(translated from French)

In the context of IHL, the notion "dissident forces or other armed groups" refers to groups that are party to the armed conflict which means groups that are capable of waging a real war, and this in the long term. The international courts and the International Criminal Court have repeatedly expressed themselves as to whether an organization can be regarded as an armed group or force, based on the criteria set out in the comments and case law on the Geneva Conventions, in essence a form of organization that includes:

- the possibility to carry out continuous and coherent military operations (which presupposes a sufficient number of fighters, quality of armaments and discipline)
- the ability for the leadership to respect the IHR by the troops by a responsible order (i.e. a command structure capable of enforcing its orders).

As already stated, the concept of "armed conflict" is a factual description of a situation. The hostilities must have exceeded a certain threshold, there must be a certain duration and the intensity of the skirmishes must be such that the law of war applies.

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In the case law of the ICTY<sup>88</sup>, an armed conflict is identified taking into consideration the following elements: the number of casualties, the seriousness of the damage, the use by the protagonists of weapons of war, and the displacements of the population resulting from all this.

The conflict between the PKK and the Turkish state is regarded by most observers but also by members of the international community as a non-international armed conflict within the meaning of art. 1.1 of the Additional Protocol II to the Geneva Conventions as of Art. 8 (c) of the Rome Statute of the International Criminal Court:

- The International Crisis Group, an internationally respected organization, reports on the situation in Turkey as an armed conflict. <sup>89</sup>
- In this connection, the *Centre international pour la Paix et les Droits de l'Homme* is talking about an armed conflict (conflit armé) which, according to the opinion of this non-governmental organization based in Geneva, has been going on for over thirty years. <sup>90</sup>

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<sup>86</sup> RICR, 2004, pp. 267-268

<sup>87</sup> « *Tout conflit armé exige une certaine intensité de violence et, entre autres, l'existence de parties adverses. Le terme de parties à un conflit armé s'applique généralement à des forces armées ou à des groupes armés ayant un certain niveau d'organisation, une structure de commandement et donc, la capacité de mettre en œuvre le droit international humanitaire. La logique même qui sous-tend le droit international humanitaire exige l'existence de parties identifiables au sens ci-dessus parce que cet ensemble de règles [...] établit l'égalité des droits et des obligations entre elles en droit international humanitaire* »

<sup>88</sup> ICTY, case IT-03-66-T, Limaj et al., 30 Nov. 2005, §§ 135 ss.

<sup>89</sup> International Crisis Group, Turkey and the PKK: Saving the Peace Process, 6 November 2014, p. i: "Importantly, the two sides, having realised that neither can beat the other outright, say they want to end the armed conflict" & Turkey: Ending the PKK insurgency, 20 September 2011, p. i: "Neither should allow itself to be swept away by armed conflict that has already killed more than 30,000 since 1984."

<sup>90</sup> Centre international pour la Paix et les Droits de l'Homme (CIPADH), La Résurgence De La Question Kurde, 7 August 2015, <http://www.cipadh.org/fr>: "La situation des Kurdes en Turquie a profondément changé en raison du conflit armé qui s'est étendu entre le PKK et Ankara pendant trente années."

- The British Home Office has always been critical of Turkey and qualified the conflict there as armed conflict ("armed conflict").<sup>91</sup>
- The same applies to the Ministers of Foreign Affairs and Justice in the Netherlands. The Dutch government already ruled in 1999 that a war is being fought in Turkey<sup>92</sup>
- According to the authoritative Academy Of International Humanitarian Law And Human Rights, part of the University of Geneva, the Turkish government in Turkey is engaged in an armed conflict with the PKK, although the Academy notes that the government consistently dismissed and still does so today as 'police actions'<sup>93</sup> : *"Although the Turkish Government defines its operations against the Kurdistan Workers' Party (PKK) as" police operations ", the situation is one of an armed conflict or a non-international character. In addition, incursions by Turkish forces into Iraq, which targeted PKK bases in the north of the country, form part of the non-international conflict between Turkey and the PKK. To the extent that there are objects to any incursion, this would also result in a separate, international armed conflict between Turkey and Iraq."*
- That is also the position of the Rule of Armed Conflicts project (Rulac), a specialized research project of the aforementioned Académie de Droit International Humanitarian et de Droits Humains from Geneva. The aim of this project is precisely to categorize conflicts on the basis of the criteria of international law. This project has more specifically studied the situation after the termination of the ceasefire that started in 2013 and ended in July 2015. The two criteria that are important are used: the intensity of the conflict and the degree of organization of the non-state party, the PKK. Rulac decides that a non-international armed conflict raged in Turkey during the period under review.<sup>94</sup>
- Eric DAVID, Professor Emeritus International Law at the Université Libre de Bruxelles and chairman of the "Centre de droit international" of the same university, who will be heard as a witness by the Tribunal, has prepared a report at the request of the defence in a case in which alleged PKK members were prosecuted before a Belgian Court for participating in the activities of a terrorist organization. His conclusion (point 19 of the report) reads as follows: "In the light of all these elements, I am concluding that the situation of repeated violence between the PKK and Turkey can reasonably be regarded as an" armed conflict "within the meaning of the IHL. "(free translation from French)<sup>95</sup>

<sup>91</sup> UK Home Office, Country of Origin Information Report; Turkey, 9 augustus 2010, par. 19.17, [https://www.ecoi.net/file\\_upload/1226\\_1281534260\\_turkey-100810.pdf](https://www.ecoi.net/file_upload/1226_1281534260_turkey-100810.pdf): "In considering the ongoing armed conflict with the Kurdish insurgent group the PKK, the Economist in an article entitled 'A never-ending fight: The Turkish army continues its long battle with kurdish rebels' dated 20 May 2010 reported that "[o]ver the past month clashes between the army and the PKK have escalated."

<sup>92</sup> Tweede Kamer, Vragen gesteld door de leden der Kamer met de daarop door de regering gegeven antwoorden, Vergaderjaar 1998-1999, Aangangsel, p. 3191: "Het Ministerie van Buitenlandse Zaken zal naar verwachting in juli een geactualiseerd algemeen ambtsbericht over de situatie in Turkije uitbrengen. Hierin zal onder meer aandacht worden besteed aan de positie van de Koerdische bevolkingsgroep, het gewapend conflict met de PKK en de positie van de pro-Koerdische politieke partij Hadep."

<sup>93</sup> Geneva Academy Of International Humanitarian Law And Human Rights, 5 april 2016, Turkey: Applicable international law, Turkey and the conflict with the Kurdistan Workers' Party,

<sup>94</sup> <http://www.rulac.org/browse/conflicts/non-international-armed-conflict-in-turkey#collapse3accord>

<sup>95</sup> « C'est pour l'ensemble de ces raisons que le soussigné conclut qu'on peut raisonnablement qualifier la situation de violences répétées entre le PKK et la Turquie de « conflit armé » au sens du DIH. »

## Does the conflict between Turkey and the PKK meet the required level of intensity?

- Number of victims

The vast majority of the estimates speak about 40,000 deaths as a result of the armed conflict between Turkey and the PKK since 1984. Since the end of the ceasefire, at the end of 2015, at least 2000 deaths occurred.

The Office of United Nations High Commissioner for Human Rights states on 10 March 2017<sup>96</sup>:

*“Between July 2015 and December 2016, some 2,000 people were reportedly killed in the context of security operations in South-East Turkey. According to information received, this would include close to 800 members of the security forces, and approximately 1,200 local residents, of which an unspecified number may have been involved in violent or non-violent actions against the State.”*

- The magnitude of the damage

In the same report the Office of the United Nations High Commissioner for Human Rights, a study has been carried out into the current situation in Turkish Kurdistan.<sup>97</sup>

The conclusion of the report is as follows:

*“OHCHR is particularly alarmed about the results of satellite imagery analysis, which indicate an enormous scale of destruction of the housing stock by heavy weaponry. It is also concerned about the post-security operation policies of expropriation (such as the Council of Ministers’ March 2016 decision to expropriate up to 100 per cent of all land plots in Diyarbakır’s Sur area) and the destruction of large urban areas (also seen in Diyarbakır’s Sur).”*

But in the past, this tactic was also applied by the Turkish army. For example, there is a total destruction of more than 3000 Kurdish villages over the years. The following table gives a clear picture of the number of destroyed villages.<sup>98</sup>

1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
109	295	874	1,531	243	68	23	30	30	–	3

A Turkish soldier states the following<sup>99</sup> (free translation of the article from Turkish):

*«The mission of our battalion was to burn villages, for the duration of our mission we burned about 30 villages, villages that are linked to the provinces Hazro, Lice, Hani and Kulp. Once we*

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<sup>96</sup> Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in South-East Turkey , July 2015 to December 2016

<sup>97</sup> [http://www.ohchr.org/Documents/Countries/TR/OHCHR\\_South-East\\_TurkeyReport\\_10March2017.pdf](http://www.ohchr.org/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf)

<sup>98</sup> Kurdish Human Rights Project, “Internally Displaced Persons: The Kurds in Turkey”, 2002.

<sup>99</sup> <http://www.insanhaber.com/guncel/askerden-itiraf-biz-koy-yakma-taburuyduk-h70231.html>

arrived in the villages, our commanders sent us in groups of 2 or 3 in houses to order the residents to leave their homes saying that we were going to burn the houses. "

- Use of war material by the protagonists and the scale of hostilities

Over the entire period of the armed conflict, several military offensives have been set up by the Turkish army and the various components of the Turkish armed forces against the PKK and the HPG.

This involved very heavy weapons and artillery. Many examples of this can be found by a simple search on the internet.

- Kurdish fighters killed by Turkish forces:

<https://www.yahoo.com/news/nearly-400-kurdish-rebels-killed-2-weeks-airstrikes-111810300.html?ref=gs>

- Kandil's population insists that Turkey stop its bombing immediately.  
<https://anfenglish.com/kurdistan/people-of-qandil-urge-turkey-to-stop-bombardments-immediately>
- Destruction of hospital by Turkish bombing  
<http://www.breitbart.com/national-security/2015/07/31/kurds-claim-turkish-airstrikes-pkk-destroyed-health-clinic-in-iraqi-kurdistan/>
- Attacks by HPG on armored vehicles and tanks of the Turkish army.  
<https://youtu.be/Yb8PX1BpwHc>, <https://youtu.be/fCeK5vsJ6lc> (in which it is clearly seen that deliberately only military targets are being attacked),  
<https://youtu.be/4m4ZFFTJ47o>
- Attacks by HPG on Turkish army bases  
<https://youtu.be/IV9vjUFRoh8> [https://youtu.be/roHPAt\\_sHe8](https://youtu.be/roHPAt_sHe8)
- HPG guerrillas shoot down Turkish army helicopter with anti-aircraft missile  
<https://youtu.be/gLXjfYDdYUo>, <https://youtu.be/Q-q2GIPnwq0>
- On 20 December 2015 Radio France International reports on the conflict in the South East Anatolian cities as follows *"In September 2015, the Turkish army started a large-scale operation with the aim of driving away the militants of the PKK. A total of 10,000 soldiers were mobilized for this offensive of unprecedented proportions. The offensive was aimed at Cizre and Silopi two border cities at the Syrian / Iraq border. Cizre and Silopi are two cities where the fighting between the supporters of the PKK and the Turkish army are concentrated. Whole districts of the cities in the province of Sirnak were transformed into a war zone. About 10,000 soldiers and police officers and many tanks have been deployed to drive the PKK fighters away. "*<sup>100</sup> (free translation from French)<sup>101</sup>

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<sup>100</sup> <http://www.rfi.fr/europe/20151220-vaste-offensive-armee-turque-contre-militants-pkk>

<sup>101</sup> « En septembre 2015, l'armée turque a lancé une opération d'envergure avec pour objectif de déloger des militants du PKK. Au total, 10 000 hommes ont été mobilisés pour cette offensive d'une ampleur inédite qui se concentre sur deux villes

- Turkish military offensives in Iraq and Syria against PKK:

The existence of military offensives and bombing in Iraq also allows to view the conflict as an armed conflict.

The first cross-border military offensives date back to 1983, both ground offensives and air offensives. More than 25 operations were carried out until 2010.

For example, on March 21, 1995, the New York Times already reports on the deployment of 35,000 troops of ground troops and fighter planes in an attack by the Turkish army on PKK positions in Iraq.<sup>102</sup>

CNN reported on 16 December 2007 about a Turkish air strike on PKK positions in the Qandil mountains using long-range missiles.<sup>103</sup> This of course goes beyond the scope of a police operation.

<http://www.hurriyet.com.tr/turkish-army-says-pkk-death-toll-rises-to-230-8322845>

<http://www.independent.co.uk/news/world/middle-east/the-new-invasion-of-iraq-786142.html>

<http://www.spiegel.de/international/world/ankara-s-intentions-what-is-behind-turkey-s-invasion-of-northern-iraq-a-537554.html>

<http://aa.com.tr/en/politics/turkey-military-operations-kill-260-pkk-terrorists/20709>

- Displacement of the population

According to a study conducted by the Hacettepe University in Ankara, at the request of the Turkish government, there are 1,200,000 "internally displaced persons" because of the armed conflict in Turkish Kurdistan.<sup>104</sup>

The February 2017 report of the UN High Commissioner for Human Rights, on the basis of research by Amnesty International, reports that 355,000 to 500,000 new IDP (internally displaced

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*près de la frontière syrienne et irakienne. Cizre et Silopi sont les deux villes où se concentrent les combats entre les partisans du PKK et l'armée turque. Des quartiers entiers de ces villes dans la province de Sirnak, ont été transformés en zone de guerre. Quelque 10 000 militaires et policiers et de nombreux chars ont été déployés pour y déloger les combattants du PKK »*

<sup>102</sup> <http://www.nytimes.com/1995/03/21/world/turks-mount-big-attack-on-kurdish-rebels-in-iraq.htm>

<sup>103</sup> <http://edition.cnn.com/2007/WORLD/europe/12/16/turkey.kurds/>

<sup>104</sup> <http://www.internal-displacement.org/europe-the-caucasus-and-central-asia/turkey/summary/>

persons) were carried out by the military operations between July 2015 and December 2016.<sup>105</sup>

In addition, there are also refugees from Turkey in Iraq. 10,000 refugees are staying in the Makhmour camp in Iraq.<sup>106</sup>

In addition, tens of thousands of Kurds have fled to Europe.

- Long-term nature of the conflict

Article 8§2, paragraph e) and f) of the Rome Statute require that the conflict be of a "long-term" nature:

*"Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups."*

We note in this definition that an essential element in assessing whether an armed conflict exists is the duration of the conflict.

The conflict in Turkey between the PKK and the Turkish government started in 1984. It is still raging in full force today, despite a number of cease-fire periods in the past.

Professor E. David's report confirms this duration.

### Is the PKK (or its armed branch the HPG) an armed force as defined by international law?

The fundamental criteria used by international jurisprudence when assessing an organization as "armed force" or armed group within the meaning of IHL are that it must concern a group that achieves a certain degree of organization (no separate cells without central management) and that it must be able to plan and carry out a military confrontation over a longer period of time. A detailed analysis of these conditions is contained in the judgment of the ICTY in Limaj et al.

The criteria contained in the Limaj judgment are indications of the existence of an armed group, but no conditions which must be met cumulatively. On the basis of these criteria it can be established that the PKK, at least its armed branch, met all the criteria which the Tribunal withheld as evidence of this character for the Kosovan UCK.

The ICTY regarded the UCK as a party in an armed conflict taking into account the following elements:

- the UCK had a military staff.
- And used communication tools to inform the public and the international community about

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<sup>105</sup> Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in South-East Turkey July 2015 to December 2016, February 2017, p. 14.

<sup>106</sup> UN Office for the Coordination of Humanitarian Affairs, Iraq - Erbil Governorate, Makhmur District (As of 9 August 2014), 09/08/2014

their actions

- The UCK acted in clandestinity for security reasons but was nevertheless able to coordinate their actions

- The UCK had a command structure hierarchy and a disciplinary system,
- the recruits received military training
- there were negotiations with the EU and foreign diplomatic missions
- they gave safe passage to journalists and observers.

- The HPG (Hezen Parastina Gel) in the organizational structure of the Kurdish movement / HPG - PKK relations

The HPG is a military structure that acts within policy objectives adopted by political bodies that are representative of important parts of the Kurdish people. On 23 January 2000 the HPG was established to replace the former ARGK (army of the liberation of the people of Kurdistan). The role now assigned to the HPG was no longer to fight for the independence of Kurdistan but to act in accordance with the principle of self-defense as described by the United Nations. In March 2005, the PKK was re-established with a new identity. The PKK would henceforth be the ideological center of the KCK, an equally new umbrella structure that had to unite various Kurdish organizations in accordance with the new paradigm of PKK leader Öcalan. The HPG recognizes in its statutes the authority, on the one hand, of the Kongra-Gel, the legislative structure of the KCK and on the other hand of the executive board of the KCK.

- The HPG is led by a responsible command structure.

Within the HPG there is a complete internal structure of command and hierarchy that meets the requirements of International Law: a certain organization of the armed groups, sufficient to conduct continuous military operations in concert and to impose a discipline on behalf of a de facto authority that can enforce International Humanitarian Law.

The HPG has official documents that have also been published and clearly show the structure, the hierarchy and the discipline.

Central command

The HPG have a complex command structure.

The HPG conference (HPG Konferansi) meets every two years. She unites the members of the Council (see below) and elected delegates from the local units. The conference prefers the Council (HPG Meclisi) composed of 41 members. The Council in its turn chooses the command council of 13 members (Komuta Konseyi) . The Command Council elects with a 2/3 majority the Commander-in-Chief of the HPG.

The daily operational command is exercised by a General Staff (Anakarargah Komutanligi) under the leadership of the Supreme Commander. Murat Karayilan is the commander-in-chief of the HPG.

Local command structures

The General Staff designates local command structures according to necessity. For obvious reasons, the composition and identity of those structures are not made public. In the context of the conflict in Iraq (where the risk is lower), however, local commanders of the HPG have spoken to the press:

- Egid Givian, regional commander of the HPG, commented on the battle in Sinjar in a video published on Youtube.
- General Tekosher Zagros , commander of the HPG in Makhmour, discussed the fighting there.
- Commander Yaşar Berçelan discusses the military situation in Sinjar.
- Commander Cudi Rohilat, responsible for the Shengal region, comments on the situation there.

From the elements that are explained below, it appears that the HPG:

- Has the ability to coordinate its forces to deal with large-scale military operations.
  - Is able to simultaneously conduct extensive continuous operations in different countries of the Middle East. This sometimes involves own operations (in Turkey or Iraq) or support for operations by other armed groups. The HPG thus assisted the Kurdish Syrians and supported the offensives of the YPG (Units for the Protection of the People, Armed Forces of the PYD) on various occasions, including in Kobané in 2014.
  - Since the beginning of the offensive in July 2014 of the terrorist organization Islamic State in Iraq and in Syria occurred as a force capable of slowing the jihadist advance, while even the Iraqi troops could barely resist. In August 2014, the PKK and the YPG worldwide acclaim as a result of their evacuation operation of 200 000 Yezidis circled in the Sinjar Mountains in Iraq and left to their fate by the Peshmergas.
  - Is able to enter into peace negotiations and in this context concludes agreements to end the firing which is then effectively observed on the ground by the HPG forces.
- Military activities on such a scale can only be the work of a highly structured military organization and also provide an indication of the intensity of the conflict.

- The HPG have internal regulations  
The HPG and its predecessor ARGK have, since 1995, at least been subject to regulations and codes of conduct adopted either by political bodies to which they recognize authority or by the leading structures of the HPG itself. All of these documents can be consulted on the internet site "theirwords.org" of the Swiss NGO Geneva Call <sup>107</sup>.

All these texts contain, in addition to general considerations and analyzes concerning the political and military situation at the time of their adoption and their influence on the tasks of the HPG, also very precise rules of conduct intended to apply international humanitarian law. to fit.

- During the 5th Congress of the PKK in 1995, resolutions were adopted with precise guidelines for the conduct of hostilities. <sup>108</sup>

The 5th Congress of the PKK declares to comply with the Geneva Conventions and the Additional Protocols and declares them applicable to the conflict.

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<sup>107</sup> [http://theirwords.org/?country=TUR&ansa=108&document\\_type=2](http://theirwords.org/?country=TUR&ansa=108&document_type=2)

<sup>108</sup> [http://theirwords.org/media/transfer/doc/ut\\_tr\\_pkk\\_hpg\\_1995\\_07-aebf7c10072070be75858618879b7c88.pdf](http://theirwords.org/media/transfer/doc/ut_tr_pkk_hpg_1995_07-aebf7c10072070be75858618879b7c88.pdf) en [http://theirwords.org/media/transfer/doc/ut\\_tr\\_pkk\\_hpg\\_1995\\_08-e3abdf0daa63a611ad4bb65a9337f55d.pdf](http://theirwords.org/media/transfer/doc/ut_tr_pkk_hpg_1995_08-e3abdf0daa63a611ad4bb65a9337f55d.pdf)



- The participation of young people under the age of 16 in combat units or active units is prohibited.
- Highly detailed rules regarding the treatment of Turkish prisoners of war in accordance with International Humanitarian Law are laid down.
- An initial draft of the military code of criminal law which lays down the various types of criminal offenses and the division of the power to sanction these offenses between a Military Court and the command organs is assumed.

- In 2004 new «Rules for warfare» are adopted by the General Assembly of Kongra-Gel.

- After first recalling the scale of the conflict in the previous 20 years, the text stipulates that the Kurds do not use violence to destabilize the state, but only in the case of "self-defense", which means the right of the Kurdish people to defend against attacks by the Turkish State on its "existence, honor or life". The text attributes this right to "self-defense" in the right to self-determination of the people as determined by International Law.

- The text stipulates that citizens and defenseless persons must be protected, that the lives of prisoners of war must be protected and that the injured must be cared for.

- The text proposes the formation of a joint committee (Kurdish-Turkish) to conduct research into

- War crimes and relies on the law of war. This committee should be given the power to make binding decisions for both parties.

- The age for the participations in the hostilities is then set at 18 years.

- Torture and inhuman treatments are prohibited.

- Etc. ...

- In 2005, the 3rd conference of the HPG adopted a resolution similar to the "Regulations" issued in 2004. This text specifies a number of the rules, inter alia, in relation to compliance with international humanitarian law.

- In May 2006, a communication from the Executive Board of the Koma Komalên Kurdistan to public opinion reiterated these principles and added:

*"The Kurdish side has adopted the principle of waging this war of self-defense in accordance with the right to self-defense, as laid down in UN resolutions and as determined in accordance with international law. As once again confirmed at the 4th General Assembly of Kongra Gel held on April 17-22, no form of violence beyond the limits of legitimate self-defense is approved by us. We reject and label terrorism as all forms of violence that transcend the limits of legitimate self-defense.*

...

*2. It will exercise the necessary supervision to ensure that the defensive war conducted in Kurdistan does not exceed the limits of a war of legitimate self-defense and will make a maximum effort so that the defensive war is conducted in accordance with the international straight.*

3. All forces associated with the Koma Komalên Kurdistan system will, in the course of defensive war, display a more effective stance that avoids forms of action that will harm civilians who are not involved in the war and, in particular, be more effectively intervened and worked to raise the awareness that the use of bombs should be avoided in the cities where social life takes place in Kurdistan such that this should become a binding norm for all combat forces. Our movement also calls upon all forces that are not connected to the Koma Komalên Kurdistan system to act in accordance with this logic. " <sup>109</sup>

- On 7 June 2010, the General Command of the HPG published an update of these rules, supplementing certain aspects of the previous texts (eg the ban on the use of types of mines that could jeopardize the lives of citizens, the ban of the use of fragmentation bombs ...). Mara's text mainly indicates that the conflict of low intensity in which the Kurdish forces acted alone in a state of self-defense or in response to violations by the Turkish army of the truce will be converted into a conflict of average intensity as a result of the military and political attacks by the Turkish State against the Kurdish civilian population, its elected representatives, its organizations, etc.

- These rules are again supplemented and clarified in a document prepared by the "Defense Commission" and addressed to Geneva Call in 2011. <sup>110</sup>

- Internal mechanisms exist to educate the members of the HPG on these regulations and to enforce compliance

- The HPG fighters receive a systematic training during their training with regard to all these documents and the rules contained therein.

- As indicated above, the 5th Congress of the PKK in 1995 had adopted a classification of infringements and established rules regarding the bodies responsible for sanctioning infringements. This authority is based on the breach at a Military Court, the unit committees or other orders.

- The statutes of the KCK adopted in 2005 contain detailed provisions on the legal system that is being set up and provides, among other things, for the establishment of a High Military Court<sup>111</sup>.

- In case of violations of the rules by fighters are taken with regard to judicial and disciplinary sanctions. By way of example, reference can be made to a trial that took place in Iraq in 2010 before the Military Court of the HPG. Two fighters were accused of having placed pressure mines in the Batman region that caused the death of four civilians. The supreme command of the HPG had banned the use of pressure mines (unlike mines that are detonated by the action of a fighter) because they do not allow to distinguish between soldiers and civilians. The two fighters were sentenced to 20 and 24 years in custody and were excluded from the HPG as a disciplinary measure. <sup>112</sup>

- The existence of military training, uniforms.  
The HPG organizes military training for young recruits. The recruits and guerrillas of the HPG wear an identical uniform that makes them easily identifiable.

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<sup>109</sup> [http://theirwords.org/media/transfer/doc/ut\\_tr\\_pkk\\_hpg\\_2006\\_14-19be35b4cc3974da720568a93a184762.pdf](http://theirwords.org/media/transfer/doc/ut_tr_pkk_hpg_2006_14-19be35b4cc3974da720568a93a184762.pdf)

<sup>110</sup> [http://theirwords.org/media/transfer/doc/ut\\_tr\\_pkk\\_hpg\\_2011\\_04\\_eng-c4389828932861eb8ccc1dd849ae7603.pdf](http://theirwords.org/media/transfer/doc/ut_tr_pkk_hpg_2011_04_eng-c4389828932861eb8ccc1dd849ae7603.pdf)

<sup>111</sup> [http://theirwords.org/media/transfer/doc/ut\\_tr\\_pkk\\_hpg\\_2005\\_17-065af3a1e83939c2c9e06daaa1daa4bc.pdf](http://theirwords.org/media/transfer/doc/ut_tr_pkk_hpg_2005_17-065af3a1e83939c2c9e06daaa1daa4bc.pdf)

<sup>112</sup> <http://turkudiyari24.com/tr-TR/Haber/Oku/hpgand39de-batman-davasinda-agir-mahkumiyet-6364>

The academy Mahsum Korkmaz was the military training institute to the military discipline of the PKK in the Lebanese Bekaa Valley since 1986. Since its foundation, the HPG has taken over the same functions.

It is well known that the guerrillas of the HPG are openly dressed in uniform. A simple image search on the Internet allows hundreds of photos of Kurdish guerrillas to be found.<sup>113</sup>

On many videos that were shot and photographs that were realized by journalists who visited the camps and positions of the HPG, it is clear from the above images that the fighters of the HPG do indeed wear a uniform of olive-green clothing of the military type .<sup>114</sup>

- The HPG has a system of courts whose statutes are public and which can sanction compliance with international humanitarian law.

«J- HPG JUDICIARY SYSTEM:

*Article 1: The HPG Judicial system consists of the HPG Supreme Military Court, Regional Military Courts and platforms, which are organised under the HPG Assembly.*

*Article 2: HPG Judicial system, HPG III. Conduct judicial proceedings by regulating organisational and internal functioning in accordance with the Rules of procedure and punishment adopted by the conference.*

*ARTICLE 3: The HPG Judicial System is responsible and liable to the HPG Assembly. In practice, it is responsible to the Command Council, the practitioner of the HPG Assembly.*

*ARTICLE 4: The Supreme Military Court institution regulates administrative and judicial functions as the highest judicial body of the judicial system. The Supreme Military Court institutes criminal proceedings under the Special Crimes heading in the Penal Regulations.*

*ARTICLE 5: Administrative relations of the Regional Military Courts shall be governed by a judicial directive. The objection body of decisions taken by the Regional Military Courts is the Supreme Military Court.*

*Article 6: The decision of the Supreme Military Court shall be appealed to the HPG Assembly.*

*Article 7: Criminal sanctions shall be implemented in accordance with the provisions of the Criminal Law Regulation.*

*Article 8: The Supreme Military Tribunal shall be elected by the election procedure at the HPG Conference. Regional Military Tribunals are elected by state conferences or by approval of absolute majority.”*

As demonstrated above in response to an infringement committed by HPG fighters against the ban on pressure mines in the Batman region, this own legal system of the HPG is effective in case of violations.

- The existence of publications and communication

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<sup>113</sup> [https://www.google.be/search?q=Pkk+guerillas&client=firefox-b&source=Inms&tbn=isch&sa=X&ved=0ahUKEwj93Zu71obTAhWkC8AKHXgMDf8Q\\_AUICCGB&biw=1251&bih=1298](https://www.google.be/search?q=Pkk+guerillas&client=firefox-b&source=Inms&tbn=isch&sa=X&ved=0ahUKEwj93Zu71obTAhWkC8AKHXgMDf8Q_AUICCGB&biw=1251&bih=1298)

<sup>114</sup> France 24, 23 novembre 2015, Rencontre avec des combattants du PKK dans le nord de l'Irak (avec reportage vidéo, <http://www.france24.com/fr/20151113-video-reporters-pkk-guerilla-kurde-irak-turquie-ei-sinjar-peshmerga>, <https://youtu.be/mQSGB7ViWB0>,

The PKK and HPG communicate a lot.

The PKK has a website: <https://www.pkkonline.com/en/>

The HPG also has a website:

[http://www.hezenparastin.com/eng/index.php?option=com\\_content&view=category&id=37&Itemid=300](http://www.hezenparastin.com/eng/index.php?option=com_content&view=category&id=37&Itemid=300)

This website lists the military operations of both the Turkish government and the HPG itself.

The website bears the name "HPG Press Center" and has been translated into five languages. The central administration publishes dozens of press releases.

It can thus be established that the military staff "publishes press releases and communiqués informing the public and the international community of their objectives and activities" as stated by the International Criminal Court concerning the UCC.

Serxwebun: <http://www.serxwebun.org/> is a newspaper that also communicates about the activities of the PKK.

- A force capable of entering into peace negotiations.

The PKK participated in the peace negotiations with the Turkish State in Oslo.

Shuttle diplomacy was conducted between 2006 and 2009, and from 2009 to June 2011, direct talks have even taken place in Oslo, facilitated by the Norwegian Government, namely the then Minister of Foreign Affairs of Norway, Jonas Gahr Støre.

The first peace talks between the Turkish government and the Kurdistan Workers' Party PKK (Partiya Karkerên Kurdistan) took place in Oslo, in 2009. Turkey demanded a definitive disarmament of the PKK, the PKK in turn would only disarm if the government would make more concessions opposite the Kurds. The 'Oslo process' failed due to a lack of confidence. In 2011, the peace process collapsed completely after 13 Turkish soldiers died in an encounter in the province of Diyarbakir. The conflict flared up again and lasted until March 2013, with the cease-fire of the PKK and earlier talks in December 2012.

- The existence of controlled zones by the armed group.

In order to assess the existence of an armed conflict, one of the indicative elements may be the existence of areas controlled by insurgents. Checking areas can be both an indication of the intensity of the conflict and the structured character of the armed group. In that context, it makes no sense to artificially divide the theater of the operations. The movements that the public prosecutor conveniently summarizes under the denominator "PKK" formulate a global political program for all areas where Kurds live. It is therefore logical that activities take place in all these areas. For example, the Kurdish areas in Iraq have been used by the Turkish Kurdish militants for many decades as an integral part of their area of action. Nor is it necessary that the control exercised over these areas is total. In North Iraq, the HPG fully control some areas. Others share control with Iraqi Kurdish forces. In Turkey, in large areas, as is apparent below, there is a situation of shared control where both Turkish forces and Kurdish are present and operate.

The existence of zones where the PKK-HPG exercise a form of control is not denied by Turkish military and governmental officials.

On 8 September 2016 the Turkish Prime Minister Binali Yildirim and Yasar Guler organized the commander of the Jandarma, part of the armed forces, a meeting in Ankara with 81 governors to discuss the war against the PKK. According to reports in the Turkish press, Yasar Guler would have stated, among other things:

*"We have been able to enter certain zones that have escaped our control for more than 30 years. It is a war on life or death in this region, we are going to take 12 zones, including Kars, Bingöl, Tunceli, Diyarbakır, Şırnak, Hakkari and Ağrı where they (the fighters of the HPG) are based, we have very good results. We can not sit still while the terrorists are gathering to attack us. They had already been installed in Kalatepe for a while, but we managed to get them out of there "* <sup>115</sup>  
(freely translated from Turkish)

He would also have stated that up to now it was wrongly denied that there was a war in the country and that anyone who said that would have been reproved. <sup>116</sup>

In his statements Yasar Guler specifically referred to the operations carried out in the region of Cukurca in the province of Hakkari in 2015 - 2016. Yasar Guler mentions the fact that in the context of that operation the PKK camp Ertus was recaptured . <sup>117</sup>

The HPG had already extensively commented on the operations in Hakkari. <sup>118</sup>From these comments the following can be kept:

- The attacks were mainly carried out with fighter planes and helicopters but with little participation of ground troops.
- The operations were not limited to Hakkari but were conducted throughout the Kurdish region but in Hakkari the attack was heavier.
- In Semdinli, the HPG organized a counterattack and closed the roads.
- The fighting in Cukurca took 13 to 14 days.
- The Turkish army has suffered significant losses.
- The Turkish army has indeed succeeded in taking Kaletepe, better known as the Ertus camp.
- The HPG members lose 3 in the battle for the Cilo mountain and the contact with 6 other fighters was broken. The fighting there lasted for 10 days.

<sup>115</sup> <http://www.milliyet.com.tr/cukurca-daki-operasyonla-ilgili-gundem-2308217/> ,  
<http://www.takvim.com.tr/guncel/2016/09/08/org-guler-olum-kalim-savasi-veriliyor>

<sup>116</sup> <http://www.haber7.com/guncel/haber/2114898-cukurcada-olum-kalim-savasi-veriliyor>  
<sup>117</sup> <http://www.sozcu.com.tr/2016/yazarlar/mehmet-turker/olum-kalim-savasi-1386503/>

<sup>117</sup> <http://www.takvim.com.tr/guncel/2016/09/08/org-guler-olum-kalim-savasi-veriliyor> and  
<http://www.cnnturk.com/turkiye/org-yasar-guler-cukurcada-olum-kalim-savasi-veriliyor> and  
<http://www.sabah.com.tr/gundem/2016/09/08/org-guler-cukurcada-cok-onemli-sonuclar-aldik> and  
<sup>118</sup> <http://www.sozcu.com.tr/2016/yazarlar/mehmet-turker/olum-kalim-savasi-1386503/>

<sup>118</sup> <https://anfTurkce.net/kurdistan/malazgirt-yeni-doneme-haziriz-turk-ordusu-darbe-yemeye-devam-edecek>

The aforementioned statements by Yasar Guler were published as front-page news <sup>119</sup> by leading Turkish newspaper Cumhuriyet on 8 September 2016, and CNN Turkey also devoted the same day to it. <sup>120</sup>

The Haber Turk television station and the NTV newspaper pick up Prime Minister Yildirim who said that the government would reclaim the areas that they had not controlled in the last 25 years. <sup>121</sup>

On the website of Turkish President Erdogan the speech was published that he held on 29 March 2017 at a mass meeting to support his campaign in the referendum. He promises during this speech that the areas controlled by the PKK and in particular the mountain Tendürek (between the provinces of Van and Agri), the Cudi mountain (Sirnak province), the Gabar mountain (Sirnak and Sert province) and the Beslter valley ( Sirnak, Sert and Betlis provinces) will soon be recaptured. <sup>122</sup>

Several media in the aftermath of the Kurdish New Year Newroz on 21 March 2017 reported on a large-scale military operation of the Turkish army in which 7000 soldiers take part to recapture the area between Diyarbakir and Bingol. <sup>123</sup>

102

Several cities in Turkey were controlled by the PKK and surrounded by the Turkish army which she eventually recaptured. For example, one can read in an article from "Le Monde" <sup>124</sup>:

*"Nusaybin, the Kurds against the Turks.*

*The Turkish army are preparing for a major offensive against Kurdish fighters in the city of Nusaybin, not far from the Syrian border. (...)*

*A charred tank is characteristic of the entrance to the rebels neighborhood on the left bank. In the continuation of the viaduct, now blocked from this wreck riddled with bullet holes, the Sirin Bulvari - "beautiful avenue" in Turkish-, the artery that runs controlled by the urban guerrillas of the party of the workers of Kurdistan (PKK) , (...)" (Freely translated from French) <sup>125</sup>*

In Iraq, the HPG are present in several regions.

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<sup>119</sup>

[http://www.cumhuriyet.com.tr/haber/turkiye/597398/Jandarma\\_Genel\\_Komutani\\_Cukurca\\_da\\_olum\\_kalim\\_savasi\\_veriliyor.html](http://www.cumhuriyet.com.tr/haber/turkiye/597398/Jandarma_Genel_Komutani_Cukurca_da_olum_kalim_savasi_veriliyor.html)

<sup>120</sup> <http://www.cnnturk.com/turkiye/org-yasar-guler-cukurcada-olum-kalim-savasi-veriliyor>

<sup>121</sup> <http://www.haberturk.com/gundem/haber/1294042-jandarma-genel-komutani-bir-olum-kalim-savasi-veriliyor> and <http://www.ntv.com.tr/turkiye/basbakan-binali-yildirimdan-valilere-uyari,CLL7MMuuc06yqa1R2r4zqA>

<sup>122</sup> <https://www.tccb.gov.tr/haberler/410/73534/yeni-sistem-turkiyenin-hedeflerine-yuruyusunu-hizlandiracak.html>

<sup>123</sup> <https://www.haber61.net/mersin/soylu-22-yildir-23-yildir-girilme-yerlere-tek-tek-giriyoruz-h289520.html> and <http://www.trthaber.com/haber/gundem/22-23-yildir-girilme-yerlere-tek-tek-giriyoruz-306163.html>

<sup>124</sup> A. Kaval, A Nusaybin, les Kurdes face aux Turcs, 22 février 2016, URL : [http://www.lemonde.fr/proche-orient/article/2016/02/22/a-nusaybin-les-kurdes-face-aux-turcs\\_4869426\\_3218.html#dHU221xEiu043TqB.99](http://www.lemonde.fr/proche-orient/article/2016/02/22/a-nusaybin-les-kurdes-face-aux-turcs_4869426_3218.html#dHU221xEiu043TqB.99)

<sup>125</sup> « A Nusaybin, les Kurdes face aux Turcs

*Les forces turques se préparent à une vaste offensive contre les combattants kurdes dans la ville de Nusaybin, à deux pas de la frontière syrienne. (...) Sur la rive gauche, un camion-citerne calciné marque l'entrée des quartiers insurgés de la petite ville-frontière de Nusaybin. Dans le prolongement du viaduc désormais barré par cette épave criblée d'impacts de balles, commence le Sirin Bulvari – « avenue jolie » en turc –, l'artère qui traverse les zones contrôlées par la guérilla urbaine du Parti des travailleurs du Kurdistan (PKK). (...)* »

The HPG carry out extensive military operations on various fronts. In certain areas, the HPG exercise territorial control and protect civilian administrations established in these areas.

The military bases and the region of Qandil

The HPG has a network of military bases in the north of Iraq from which military operations are conducted both in Turkey and in Iraq.

First and foremost, a number of camps are located at the Turkish-Iraq border.

The existence of these camps is confirmed by countless articles, reports, etc. both in the Turkish and in the international press.<sup>126</sup>

A report in "Le Monde"<sup>127</sup> relates for example:

"A final checkpoint of the Kurds in Iraq. The inspection is only superficial. A peshmerga-Kurdish warrior throws a glance into the car, the car continues. On the other side, the walls rise from a miserable village, surrounded by the snow-capped peaks of the Qandil Mountains. (..)

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The villagers are Iraqis, but they depend entirely on the PKK who completely control this region of the mountains. "(Freely translated from French)

The existence of the camps is also confirmed by the numerous attacks by the Turkish Air Force.

For example:

An article from Star's 25.07.2017<sup>128</sup> report on bombing by Turkish F-16 fighter planes on multiple bases of the PKK in northern Iraq. Star publishes a map:

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<sup>126</sup> Haber 3, 17 décembre 2007, <http://www.haber3.com/iste-pkknin-kamlari-harita-315764h.htm>  
France 24, 23 novembre 2015, Rencontre avec des combattants du PKK dans le nord de l'Irak (avec reportage vidéo, <http://www.france24.com/fr/20151113-video-reporters-pkk-guerilla-kurde-irak-turquie-ei-sinjar-peshmerga>  
Le Monde, 23 avril 2008, « Avec les Kurdes du PKK, dans les montagnes d'Irak », [http://www.lemonde.fr/proche-orient/article/2008/04/23/avec-les-kurdes-du-pkk-dans-les-montagnes-d-irak\\_971028\\_3218.html#PP5kXoMkObgfa1f0.99](http://www.lemonde.fr/proche-orient/article/2008/04/23/avec-les-kurdes-du-pkk-dans-les-montagnes-d-irak_971028_3218.html#PP5kXoMkObgfa1f0.99)  
TV5 Monde, 7 août 2015, « Kurdes : "Pour la Turquie, le PKK est plus menaçant que l'EI" », <http://information.tv5monde.com/info/kurdes-pour-la-turquie-pkk-plus-menacant-que-ei-46862>  
Libération, 4 août 2015, Au Kurdistan attaqué : « Montrer au monde la brutalité turque », [http://www.liberation.fr/planete/2015/08/04/au-kurdistan-attaque-montrer-au-monde-la-brutalite-turque\\_1358646](http://www.liberation.fr/planete/2015/08/04/au-kurdistan-attaque-montrer-au-monde-la-brutalite-turque_1358646)  
« Serhildan, le soulèvement du peuple Kurde », reportage de Mireille Court et Chris Den Hond, réalisé en 2004, <https://youtu.be/8KWJoBd29BE>  
VPRO, "De PKK in het Qandil gebergte", [http://www.vpro.nl/speel~POMS\\_VPRO\\_2777037~de-pkk-in-het-qandil-gebergte~.html](http://www.vpro.nl/speel~POMS_VPRO_2777037~de-pkk-in-het-qandil-gebergte~.html)  
New York Times, 5 janvier 2015, "With the P.K.K. in Iraq's Qandil Mountains", [https://atwar.blogs.nytimes.com/2011/01/05/with-the-p-k-k-in-iraqs-qandil-mountains/?\\_r=0](https://atwar.blogs.nytimes.com/2011/01/05/with-the-p-k-k-in-iraqs-qandil-mountains/?_r=0)  
BBC, 26 Avril 2013, "Inside the PKK's headquarters in northern Iraq", <http://www.bbc.com/news/world-europe-22305066>  
<sup>127</sup> C. Hennion, Avec les rebelles kurdes à Qandil, 1er mars 2007, URL : [http://abonnes.lemonde.fr/a-la-une/article/2007/03/01/avec-les-rebelles-kurdes-a-qandil\\_877781\\_3208.html](http://abonnes.lemonde.fr/a-la-une/article/2007/03/01/avec-les-rebelles-kurdes-a-qandil_877781_3208.html)  
<sup>128</sup> <http://www.star.com.tr/guncel/iste-f16larin-kuzey-irakta-vurdugu-pkk-kamlari-haber-1045870/>



An article from 8 September 2015 on NTV reports Turkish air bombardments. 53 fighter planes participated in the bombing. NTV publishes a map with the targets:



The existence of decades of military support sites and camps of the HPG in this region can therefore hardly be denied. 5000 fighters are housed <sup>129</sup>

The Turkish press notes that the PKK is controlling 600 villages in the region and a civilian administration has been installed.<sup>130</sup> The access roads are also fully controlled by the HPG<sup>131</sup>. In this area neither the Regional Kurdish Government nor the central government of Iraq exercise any authority. There is no chaos, however, because the life in the villages is managed by the local population through the system of self-management<sup>132</sup> which is central to the political project of the PKK.

Makhmour is a city in the Mossoul province.

<sup>129</sup> [http://www.lemonde.fr/a-la-une/article/2007/03/01/avec-les-rebelles-kurdes-a-qandil\\_877781\\_3208.html](http://www.lemonde.fr/a-la-une/article/2007/03/01/avec-les-rebelles-kurdes-a-qandil_877781_3208.html) ; <http://www.nytimes.com/2011/01/01/world/middleeast/01kurd.html> ; <https://www.nytimes.com/2014/10/13/world/middleeast/kurdish-rebels-assail-turkish-inaction-on-isis-as-peril-to-peace-talks.html> .

<sup>130</sup> <http://aa.com.tr/en/middle-east/terrorist-pkk-has-bases-in-iraq-s-erbil-local-official/756889>

<sup>131</sup> <https://atwar.blogs.nytimes.com/2011/01/05/with-the-p-k-k-in-iraqs-qandil-mountains/>

<sup>132</sup> <https://atwar.blogs.nytimes.com/2010/08/24/a-kurdish-village-governed-by-none/>



In 1998, the UN established a refugee camp in the suburbs of Makhmour to absorb the Turkish Kurdish refugees who had been arriving since 1994<sup>133</sup>. In that period the war between the PKK and the Turkish army was raging in all its vehemence. The Kurds whose villages were burned down by the Turkish army have fled to Iraq, among others.<sup>134</sup>

The camp is described as "a bastion of the PKK" that indeed seems to have a lot of sympathy among the residents<sup>135</sup>. The HPG had a limited force to protect the camp.<sup>136</sup> A civilian administration for the camp was established. Elections are held each year for the management of the camp and for the council of the municipality, 40% of whom are women.<sup>137</sup>

On 8 August 2014, the so-called Islamic State took over the city of Makhmour.<sup>138</sup>

HPG Supreme Commander Karayilan has made a statement that his troops would participate in the fighting in Makhmour<sup>139</sup>. HPG troops were sent from the Qandil<sup>140</sup> mountain by the supreme command of the HPG to reinforce the HPG detachment that was already in the camp. Women and children were evacuated and IS's attack on the camp was turned down. Subsequently, the HPG troops assisted the forces of the Kurdish Regional Government (KRG) to reclaim the city of Makhmour on IS. HPG troops were on the front line.<sup>141</sup> Massoud Barzani, the President of the Kurdish Autonomous Region in Iraq and also chairman of the Kurdish Democratic Party, visited the commander of the HPG troops in Makhmour, General Tekosher Zagros<sup>142</sup>. This contact was the result of the successful coordination of the HPG and KRG<sup>143</sup> troops.

Turkish media even claim that Makhmour is a training camp for the fighters of the PKK<sup>144</sup>. The entrances and exits of the camp are controlled by checkpoints of the HPG<sup>145</sup>.

In the light of the above, it can not be disputed that:

The HPG has been exercising effective military control over the refugee camp in Makhmour for years.

The HPG participated in installing in that camp a form of civil administration.

The HPG played an essential role in the extensive military confrontation with the Islamic State both in terms of the defense of the refugee camp and for the subsequent conquest of the city.

The HPG maintains an important military presence in Makhmour to this day

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<sup>133</sup> <http://www.unhcr.org/publ/PUBL/43706ee40.pdf>

<sup>134</sup> [https://ofpra.gouv.fr/sites/default/files/atoms/files/1602\\_irk\\_camps\\_de\\_refugies\\_kurdes.pdf](https://ofpra.gouv.fr/sites/default/files/atoms/files/1602_irk_camps_de_refugies_kurdes.pdf)

<sup>135</sup> [http://www.lemonde.fr/proche-orient/article/2009/08/21/au-camp-de-makhmour-en-irak-les-exiles-kurdes-conservent-leur-confiance-a-ocalan-et-revent-de-retourner-en-turquie\\_1230516\\_3218.html](http://www.lemonde.fr/proche-orient/article/2009/08/21/au-camp-de-makhmour-en-irak-les-exiles-kurdes-conservent-leur-confiance-a-ocalan-et-revent-de-retourner-en-turquie_1230516_3218.html)

<sup>136</sup> <https://news.vice.com/article/meet-the-pkk-terrorists-battling-the-islamic-state-on-the-frontlines-of-iraq>

<sup>137</sup> <http://www.kurdishherald.com/issue/003/article05.php>

<sup>138</sup> <https://www.vice.com/fr/article/l-homme-qui-dormait-quand-l-islam-est-arrive-dans-sa-ville-909>

<sup>139</sup> [https://ofpra.gouv.fr/sites/default/files/atoms/files/1602\\_irk\\_camps\\_de\\_refugies\\_kurdes.pdf](https://ofpra.gouv.fr/sites/default/files/atoms/files/1602_irk_camps_de_refugies_kurdes.pdf)

<sup>140</sup> <https://news.vice.com/article/meet-the-pkk-terrorists-battling-the-islamic-state-on-the-frontlines-of-iraq>

<sup>141</sup> <http://www.independent.co.uk/news/world/middle-east/islamic-state-turkish-kurds-help-iraqi-brothers-to-resist-isis-advance-9716600.html#gallery>

<sup>142</sup> [https://wn.com/masoud\\_barzani\\_visits\\_hpg\\_in\\_makhmur,\\_hpg\\_reaches\\_kirkuk](https://wn.com/masoud_barzani_visits_hpg_in_makhmur,_hpg_reaches_kirkuk)

<sup>143</sup> [www.aljazeera.com/news/middleeast/2014/08/iraq-turkey-kurds-fight-islamic-state-201481581133776796.html](http://www.aljazeera.com/news/middleeast/2014/08/iraq-turkey-kurds-fight-islamic-state-201481581133776796.html)

<sup>144</sup> <http://aa.com.tr/en/middle-east/terrorist-pkk-has-bases-in-iraq-s-erbil-local-official/756889>

<sup>145</sup> <https://www.youtube.com/watch?v=WNwsarPIUgY>

This situation is known internationally and a map published in August 2014 by the Coordination Department of the humanitarian affairs of the United Nations itself indicates the camp of Makhmour, where 10 000 refugees live, as "PKK Refugees Camp"<sup>146</sup>

On 16 October 2014, the Iraqi Prime Minister stated: *"The PKK has exercised the function similar to that of an International Humanitarian aid organization in terms of defending the population. I thank them for that."*<sup>147</sup>

## Kirkouk

The HPG is also present in the Kirkuk region. According to various sources, the HPG troops would have sent from Qandil to Kirkuk.<sup>148</sup>

That would have happened in response to an unofficial demand from the central government in Baghdad and from the local government to provide support in the fight against IS<sup>149</sup> during the attack launched by the latter on the city. The fighting took place between 21 and 24 October 2016<sup>150</sup>. According to a war correspondent, the participation of the HPG was decisive to regain the parts of the city occupied by IS<sup>151</sup>.

Jamal Andok, commander of the HPG forces in Kirkuk, gave an interview to ARANEWS in May 2016 explaining the importance of Kirkuk to the PKK, which is why the HPG would continue to protect the city as long as the war continued.<sup>152 153</sup>

Once again, the HPG troops have cooperated with the Iraqi Kurdish peshmer gas to combat IS.<sup>154</sup> On images you can see how the HPG uses armored vehicles and even tanks.<sup>155</sup>

The PKK would also have developed a system of self-government here as a result of a conference held in Kirkuk in January 2016. A council composed of 25 people was elected.<sup>156</sup>

The presence of the PKK in Kirkuk is not recent. In 2007, a Turkish representative of the AKP party protested against the presence of armed HPG fighters in Kirkuk.<sup>157</sup>

## Shengal

The HPG (and the Syrian Kurdish YPG) are also present in the region of Shengal, border region between Syria and Iraq and predominantly inhabited by the religious Yezidi minority. On 3 August 2014 the Sinjar Mountain was surrounded by IS. IS has at that time been guilty of massacres that were denounced by the UN Human Rights Council as "attempts at genocide".

On August 14, 2014, united forces of the HPG and the YPG (erroneously described in the press as "PKK fighters") first broke the encirclement and opened a corridor along which the Yezidi civilian population could be evacuated and humanitarian aid could be supplied. The HPG and YPG

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<sup>146</sup> [http://reliefweb.int/sites/reliefweb.int/files/resources/Erbil\\_Gov\\_Makhmur\\_District.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Erbil_Gov_Makhmur_District.pdf)

<sup>147</sup> <http://www.imctv.com.tr/47500/2014/10/irak-basbakani-pkkye-mutesekkirim>

<sup>148</sup> <https://news.vice.com/article/meet-the-pkk-terrorists-battling-the-islamic-state-on-the-frontlines-of-iraq>

<sup>149</sup> <http://www.basnews.com/index.php/en/news/kurdistan/300190>

<sup>150</sup> [https://fr.wikipedia.org/wiki/Bataille\\_de\\_Kirkouk\\_\(2016\)](https://fr.wikipedia.org/wiki/Bataille_de_Kirkouk_(2016))

<sup>151</sup> <https://twitter.com/lmgaveriaux/status/789763881690423296>

<sup>152</sup> <http://aranews.net/2016/05/pkk-official-ara-news-kurds-unite-defeat-isis-protecting-kirkuk-duty-kurds/>

<sup>153</sup> <http://www.rudaw.net/english/kurdistan/070820151>

<sup>154</sup> <http://www.dw.com/en/kurds-hold-joint-front-against-is-in-kirkuk/a-18073555>

<sup>155</sup> <https://youtu.be/kyk-cxmng14>

<sup>156</sup> <http://www.orsam.org.tr/index.php/Content/Analiz/4846?s=orsam%7Cenglish>

<sup>157</sup> <http://www.hurriyet.com.tr/akp-mp-comez-the-pkk-is-moving-into-kirkuk-5902429>

could count on American air support.<sup>158</sup>

Members of the Yezidi community have testified in the international press that the forces of HPG and YPG had welcomed the mountain with experienced combatants and heavy weapons. »<sup>159</sup>

In October 2014, the Islamic State fighters were able to re-encircle the Sinjar mountain and threatened the Yezidis who remained there with extermination. The central Iraqi army, the troops of the Kurdish Regional Government (more specifically the peshmergas of the Kurdish Democratic Party of President Barzani) in Iraq and the HPG have conducted extensive operations on the ground against the presence of IS.<sup>160</sup>

Since 2014 the troops of the HPG and those of the KRG have been difficult to co-exist in the region. Even the Turkish press has reported the presence of HPG troops in this area and reported rivalries and sometimes even fights with the KRG troops.<sup>161</sup>

These problems have given rise to negotiations and an agreement between the HPG and the KRG on the withdrawal of the HPG from Sinjar. The exclusive control over the area will be transferred to Yezidi forces.<sup>162</sup> These negotiations were conducted at the highest level. The commander of the HPG, Murat Karayilan, declared to the press the date and order that the HPG troops would be withdrawn if the negotiations led to a positive result.<sup>163</sup>

Yezidi associations have also made a public appeal to the PKK not to withdraw from Sinjar.<sup>164</sup>

All these elements show that the HPG has carried out extensive and coordinated military operations in various parts of Iraq for many years and has a form of authority. From all this it also appears that the HPG are a structured force under a responsible military command capable of organizing large scale military operations and effectively transferring the order.

The PKK and HPG are also openly present in other cities of Iraqi Kurdistan (i.a.

Suleymanie) where people manifest and defile under the great acclaim of the population.<sup>165</sup>

- The HPG is a force that has the will and the ability to comply with international humanitarian law and to enforce it in the hostilities.

This is also one of the support criteria that can be used mainly to assess the degree of organization of the non-state warring party.

#### The PKK and the Geneva Convention

- The 5th Congress of the PKK held in 1995 declares to comply with the Geneva Conventions and

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<sup>158</sup> [https://fr.wikipedia.org/wiki/Bataille\\_de\\_Sinjar](https://fr.wikipedia.org/wiki/Bataille_de_Sinjar)

<sup>159</sup> Le Parisien, 19 août 2014, « Sur le mont Sinjar, les Yézidis résistent face aux jihadistes », <http://www.leparisien.fr/espace-premium/actu/sur-le-mont-sinjar-les-yezidis-resistent-face-aux-jihadistes-19-08-2014-4072129.php>, [https://www.washingtonpost.com/news/worldviews/wp/2014/08/11/a-u-s-designated-terrorist-group-is-saving-yazidis-and-battling-the-islamic-state/?utm\\_term=.7ca5b6dea575](https://www.washingtonpost.com/news/worldviews/wp/2014/08/11/a-u-s-designated-terrorist-group-is-saving-yazidis-and-battling-the-islamic-state/?utm_term=.7ca5b6dea575), <https://www.youtube.com/watch?v=vR6FgOK3m7k>, <https://www.youtube.com/watch?v=vR6FgOK3m7k>

<sup>160</sup> Le Monde, 20.12.2014, « Les yézidis du mont Sinjar libérés de la menace djihadiste », [http://www.lemonde.fr/proche-orient/article/2014/12/20/les-yezidis-du-mont-sinjar-liberes-de-la-menace-djihadiste\\_4544162\\_3218.html](http://www.lemonde.fr/proche-orient/article/2014/12/20/les-yezidis-du-mont-sinjar-liberes-de-la-menace-djihadiste_4544162_3218.html)

<sup>161</sup> E.g. Daily Sabah, 3 March 2017, « PKK-linked groups, Peshmerga clash near Iraq's Sinjar », <https://www.dailysabah.com/politics/2017/03/03/pkk-linked-groups-peshmerga-clash-near-iraqs-sinjar> or France Soir, 3 March 2017, « Irak: combats entre des Kurdes syriens et des miliciens yézidis liés au PKK à Sinjar », <http://www.francesoir.fr/politique-monde/irak-combats-entre-des-kurdes-irakiens-et-des-miliciens-yezidis-lies-au-pkk-sinjar>

<sup>162</sup> <http://www.rudaw.net/english/kurdistan/050120176>

<sup>163</sup> Al Monitor, 9 janvier 2017, “Who's fighting whom in Iraq's Sinjar?”, <http://www.al-monitor.com/pulse/ru/contents/articles/originals/2017/01/turkey-iraq-kurdistan-who-is-fighting-for-shengal.html>

<sup>164</sup> <http://www.kurdishquestion.com/article/3771-yazidi-group-calls-for-the-pkk-to-remain-in-sinjar>

<sup>165</sup> <https://youtu.be/jXzd669H0sM>, <https://youtu.be/uQOzPYvkJs>, <https://youtu.be/mQSGB7ViWB0>, <https://youtu.be/Yh-e1mq-nLY>

the additional protocols to these treaties.

- As a result of this statement, the chairman of the PKK, Abdullah Ocalan, sent a statement <sup>166</sup> on 26 January 2005 to the Ministry of Foreign Affairs of the Swiss Federal Government of which Art. 1 was formulated as follows:

*"1. The PKK (Workers' Party of Kurdistan) undertakes to comply with the provisions of the four Geneva Conventions of 1949 and Protocol I of 1977 on the course of hostilities and the protection of the victims of the war in its struggle with the authorities. to live and to regard the obligations arising therefrom as legally valid in its own armed forces and the areas under its control "*

In Article 4, the same statement states:

*"The PKK will disseminate this statement and the rules of the Geneva Convention of 1949 and Protocol I of 1977 to ICT under its armed forces and asks the support of the ICRC with regard to suitable materials. to enforce the rules and punishment of those who violate them, accepting the principle of command responsibility "*

- January 24, 2005, the statement was made public during a press conference. <sup>167</sup>

- Many rules of International Humanitarian Law have been clarified and concretized in the regulations mentioned above.

The commitments entered into with regard to Geneva Call

In addition to the commitment to comply with the Geneva Conventions, the inclusion of numerous concrete rules of international humanitarian law in the codes of conduct and regulations of the HPG, the PKK and the HPG have committed themselves to two very important matters regarding the Swiss NGO Geneva Call. areas: in 2006 with regard to the ban on the use of anti-personnel mines and in 2013 with regard to the protection of the children in the conflict. These commitments were made in the form of a "Deed of commitment" signed by the representatives of Kongra Gel and the HPG on the one hand and the President of Geneva Call and the representative of the government and of the Canton of Geneva on the other. The organization is funded by contributions from various European states, works with the most renowned international specialists (such as the Belgian Prof. Eric David) and was repeatedly praised by the European Parliament<sup>168</sup> and the European Commission<sup>169</sup> for the work that was done on the ground. to promote compliance with international humanitarian law.

- The "Deed of Commitment under the Geneva Convention for the Adoption of Anti-personnel Minors for Cooperation in Mine Action" 150 was signed in Zagros on June 24, 2006. In this document, the HPG undertakes not to use it. making mines whose detonation is caused by the presence or the proximity of - or the contact with a person. The text also provides for Geneva

<sup>166</sup> [http://theirwords.org/media/transfer/doc/sc\\_tr\\_pkk\\_hpg\\_1995\\_06-b6a1feaa089eb4beb4e3c68b4b0d9f58.pdf](http://theirwords.org/media/transfer/doc/sc_tr_pkk_hpg_1995_06-b6a1feaa089eb4beb4e3c68b4b0d9f58.pdf)

<sup>167</sup> [http://theirwords.org/media/transfer/doc/tr\\_pkk\\_hpg\\_1995\\_01-90c5d761c7a40e338ec2bcec99fee78f.pdf](http://theirwords.org/media/transfer/doc/tr_pkk_hpg_1995_01-90c5d761c7a40e338ec2bcec99fee78f.pdf)

<sup>168</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2014-0160&format=XML&language=EN>

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P5-TA-2004-0383&format=XML&language=EN>

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2007-0621&format=XML&language=EN>

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0216&format=XML&language=EN>

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2005-0298&format=XML&language=EN>

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0431&format=XML&language=EN>

<sup>169</sup> See, for example, Catherine Ashton, High Representative for EU Foreign Policy, answer to parliamentary questions E-002982-14 of 13 March 2014 and E-004216-14 of 4 April 2014.

Call or other national or international authorities to be able to monitor compliance in the field of this commitment. The text also provides for the formation of the fighters and the establishment of a disciplinary system to ensure compliance with the commitments made.

- The "Deed of Commitment under Geneva for the Protection of Children of the Armed Conflict" 151 was signed on 5 October 2013 by the representatives of the HPG, Geneva Call and the chanceliere d'état of the Government of the Swiss Republic and the Canton of Geneva. The document provides for a ban on the use of children in hostilities.

- The ambiguity of Turkey's position  
On an international level, Turkey refuses to label its conflict with the PKK as armed conflict. She qualifies it as a fight against terrorism.

On the internal plane, Turkey adopts the exact opposite position. She states that her attitude towards the Kurds is subject to the laws of war.

Article 15 of the Turkish Constitution of 1982 states (free translation from French):

"In the event of war, general mobilization, martial law, or state of emergency, the exercise of fundamental rights and freedoms may be partially or completely suspended or measures contrary to the safeguards with which the Constitution attaches them, to the extent that required by the situation and provided that the obligations under international law are not violated.

However, even in the cases enumerated in the first paragraph, the right of the individual to life, subject to death resulting from deeds in accordance with the law of war, can not be violated, nor the right to physical and spiritual integrity, nor to the freedom of religion, conscience and thought or to the rule prohibiting a person from being forced to reveal or reprimand or condemn her convictions for the sake of this, nor to the rules of non-retroactivity of the punishments and of the presumption of innocence of the the defendant until his final conviction. (amended by Law No. 5170 of 7.5.2004)

When Turkey considers itself in a state of war, general mobilization, martial law or state of emergency, it suspends fundamental rights and applies only the law of war, namely international humanitarian law. This stems from her constitution.

Application of Article 15 of the Constitution.

The uprising of the PKK really starts in August 1984 in the southeast of Turkey. The state of emergency immediately spreads to the whole of the region and to a few nearby provinces.

Since then Turkish government maintains the state of emergency in the mainly Kurdish region.

From 1987, the provinces of southeast Turkey are continuously subjected to the state of emergency. In 1990, 1991, 1992 and 1993, the Turkish authorities had even invoked the "intensity and diversity of the terrorist actions" of the PKK in the south-east of Turkey to meet with the Secretary-General of the Council of Europe, in accordance with Article 15 of the ECHR, to request a derogation from some of the rights included in the ECHR. A new request for

derogation in accordance with Article 15 ECHR was submitted to the Council of Europe in July 2016.

Article 120 of the Constitution includes the "Declaration on the state of emergency on the grounds of acts of generalized violence and serious disturbances of public order" (free translation).

«In the presence of credible indications of acts of generalized violence that aim to overturn the order of democratic freedom introduced by the Constitution or of fundamental rights and freedoms, or of serious disturbances of public order caused by acts of violence, the Council of Ministers, meeting under the chairmanship of the President of the Republic, after having obtained the opinion of the National Security Council, impose a state of emergency in one or more third countries or in the whole of the country for a period not exceeding six months. "

Articles 121 and 122 relate to the "Rules on the Emergency". Article 121 (free translation):

«If the state of emergency has been declared in accordance with the provisions of articles 199 and 120 of the Constitution, the decision shall be published in the Official Gazette and immediately subject to the approval of the Grand National Assembly of Turkey. If the Grand National Assembly of Turkey does not hold a session, it is immediately convened. The Assembly may change the duration of the emergency, extend it for a maximum duration of four months at the request of the Council of Ministers, or cancel the emergency.

The law on the state of emergency determines the financial duties, the duties of work and the obligations in kind that must be imposed on the population in case of declaration of state of emergency in accordance with Article 199, the modalities of limitation or suspension of fundamental rights and freedoms in accordance with the principles of Article 15, the manner and means of introduction of the measures required by the situation, the nature of the powers granted to the state agents, the nature of the changes to be made to the statute of those responsible for the public governments to the specific extent that it applies to all types of emergency, and the applicable procedures in exceptional circumstances.

In a state of emergency, the Council of Ministers, meeting under the chairmanship of the President of the Republic, can take the decrees with the force of law required by the state of emergency. These decrees are published in the Official Gazette and subjected to the Grand National Assembly of Turkey the same day; the Rules of Procedure of the Meeting determine the deadline and the approval procedure. "

Article 122 (free translation):

«The Council of Ministers meeting under the chairmanship of the President of the Republic may, after having obtained the opinion of the National Security Council, invoke the siege in one or more regions of the country or in the whole territory for a duration which can not exceed six months, in the case of the proliferation of acts of violence more serious than those necessitating the declaration of a state of emergency, and which aim at overthrowing the free democratic order recognized by the Constitution, or of fundamental rights and freedoms, or the occurrence of a situation necessitating the war, or in case of insurrection or expansion of a vigorous and

active movement of rebellion against the homeland or the Republic or of violent internal or external activities, affecting the unity of the territory and of the nation compromise. This decision will be published without delay in the Official Gazette and on the same day subject to the approval of the Grand National Assembly of Turkey. If the Grand National Assembly of Turkey does not hold a session, it is immediately convened. The Grand National Assembly of Turkey may, if it deems it necessary, curtail the duration of the state of siege or cancel the state of siege.

In times of martial law, the Council of Ministers, meeting under the chairmanship of the President of the Republic, can issue decree-laws in the matters that force the state of siege.

The decree laws are published in the Official Gazette and are subject to the approval of the Grand National Assembly of Turkey on the same day. The terms and approval procedures are determined by its Internal Regulations.

The granting of the state of siege, for a period that does not exceed four months, is subject to a decision of the Grand National Assembly of Turkey. This limitation to four months does not apply in case of war. (own fat setting)

The law stipulates the applicable provisions, the manner of operations, the relations with the administration and the restrictions and suspensions of freedoms in the event of a state of siege, of general mobilization and of the state of war, as well as the burdens that must be imposed on the citizens. imposed in the event of war or the emergence of a situation that forces the war.

The Commanders of the state of siege perform their functions under the command of the presidency of the general military staff. "

The duration of the state of emergency / state of siege has clearly exceeded the duration of six months, plus four months' extension. Since more than a decade, the exception state (state of emergency) applies in the southeast region of Turkey. It follows from this that Turkey itself acknowledges that it is waging war against the PKK.

**For all the reasons stated above the conflict between the Turkish States and the PKK/HPG is a non-international armed conflict as defined by international law to which International Humanitarian Law and the laws of war apply.**