

# On the Collateral Impact of Turkey's Authoritarian Turn: Re-securitization of the Kurdish Issue and the Kurds' Struggle for Minority Recognition and Self-Determination

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## *Executive summary*

*Since the collapse of the peace process in 2015, the Turkish Government has sought to turn every move towards Kurdish rights into an existential threat – a process led to the re-securitization of the Kurdish question. Ever since the descent of Turkey into an authoritarian polity has begun in the aftermath of the June 2015 elections, the Kurdish minority has suffered a brutal crackdown marked by high of political imprisonment and greater restrictions on freedom of assembly and association and on electoral aspects of self-determination. This commentary will take a closer look at the dire consequences of the collateral impact of Turkey's authoritarian turn on the Kurdish political movement from the perspectives of minority rights and self-determination.*

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## **Introduction: The Crux of the Kurdish Question**

It is a well-known fact that the Kurdish people in Middle East were promised the possibility of an independent state under the Treaty of Sevres in 1920 – a treaty signed between the Allies of World War I and the Ottoman Empire (see Articles 62-64, Section III Kurdistan). The Treaty of Sevres never saw a genuine implementation and the aspirations for an independent ‘Kurdistan’ hung in the balance when the Treaty of Sevres was opened for renegotiation at Lausanne. In 1923, the Treaty of Lausanne superseded the Treaty of Sevres and, while recognizing the Kurds as a distinct entity, it largely restored the Turkish sovereignty (as well as Iraqi and Syrian) over the Kurdish dominated regions. The noteworthy here is that the Kurdish people in Turkey were not even recognized as a minority under the Treaty of Lausanne which is arguably the most important source shaping Turkey’s interpretation of the international legal order. From a legal point of view, the Kurdish people are still not recognized as a minority in Turkey. Apart from the Lausanne Treaty’s exclusion of Kurdish people as a minority, Turkey has submitted reservations with respect to common Article 1(1) of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which gives ‘all peoples’ the right to self-determination namely to ‘freely determine their political status and freely pursue their economic, social and cultural development.’ Turkey has also a reservation to Article 27 ICCPR, the cornerstone of the international minority rights law, which grants ‘ethnic, religious or linguistic minorities’ the right ‘in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language’.

It is essentially this fact from which the Kurdish conflict in Turkey (or elsewhere in Middle East) originates: What the Kurds are essentially seeking is the constitutional-legal recognition of their entitlement to self-determination and to exercise the rights deriving therefrom (– a pursuit that can be traced back to the Treaty of Zuhab in 1639 which formalized the division of Kurdish inhabited lands



into the Ottoman and Persian Empires). Rather than addressing the crux of 'the Kurdish problem' and engaging with the Kurds' very real and legitimate grievances, owing to the idea of a Turkish identity as the origin of national unity (See Article 3 of the Turkish Constitution), the Turkish state adopted repressive measures towards Kurdish culture and language, and established a military presence in the Kurdish region, leading to the repeated declarations of martial law and state of emergency in the Turkish southeast.

### **The AKP's Authoritarian Turn and the Kurdish Minority**

Fast-forwarding to the Justice and Development Party (AKP)'s ascension to power in 2002, the AKP's ambitious democratization and liberalization agenda - largely owing to the official accession negotiations with the European Union (EU) initially created a high degree of optimism that a solution could be found to the conflict. The AKP openly engaged in the Kurdish question by making concessions such as permitting the opening of Kurdish studies departments in several universities, allowing Kurdish language TV channels and radio stations. These concessions, however, have not satisfied the demands of the Kurds, as they sought *de jure* recognition of their cultural, linguistic and democratic rights. But at least, it increased the hopes within the country.

The optimism reached its peak when the Turkish government started the peace talks with the PKK (Partiya Karkerên Kurdistanê/Kurdistan Workers' Party) in late 2000s and early 2010s. Overall, this was the first time that Kurdish autonomy in Turkey seemed so realistic. Peace negotiations are by their nature fragile, but the subsequent efforts kept the process running for a few years. Senior members of the Peoples' Democratic Party (HDP), the main pro-Kurdish party in Turkey and the AKP government delegation even reached an agreement known as the Dolmabahçe Agreement in February 2015. This was an attempt to establish a monitoring committee to oversee the entire peace process. However, that was as far as the peace process was to progress, before completely collapsing after the June 2015 parliamentary elections. In the election

of 7 June 2015, the AKP lost its absolute majority and the HDP became the first Kurdish party that passed the 10% electoral threshold and maintained a guaranteed position in the Turkish Parliament. Armed with strong popular support, the HDP was not willing to support President Erdoğan's moves towards an authoritarian presidentialism. Soon afterwards, the AKP regained its parliamentary majority in the snap elections on 1 November 2015 and Erdoğan used it to scrap the peace talks with the PKK and moved on to go after the HDP members, which at the time seemed the only obstacle between him and a presidential system.

A concerted public campaign soon followed. In many instances, Erdoğan publicly targeted several HDP lawmakers claiming that by calling for territorial autonomy they commit 'constitutional crimes' and called on the Turkish Parliament to lift their immunity to make them 'pay the price' for supporting terrorism. He went as far as to brand the HDP as a front for the PKK. Throughout this period, numerous Turkish prosecutors followed the President's cue – by opening investigations into numerous HDP members, issuing requests to the Turkish Ministry of Justice and citing a broad range of terrorism-related crimes as well as insulting the President. These steps clearly aimed at eroding the institutional base of the Kurdish movement and severely restricted their right to organize via political parties.

In May 2016, in a rather controversial move, the AKP-led bloc adopted a controversial constitutional amendment lifting the parliamentary immunity of 154 members of the Turkish Parliament, which disproportionately affected the HDP – 55 out of its 59 members were stripped of their immunities and many of them were detained including the HDP co-chair Selahattin Demirtaş. In a legal landmark decision pursuant to Demirtaş's application (No.2), the European Court of Human Rights (ECtHR) found Demirtaş's detention violated a number of fundamental human rights including his right to liberty and security and freedom of expression under Articles 5 and 10. Relatedly, the Court also highlighted that the 2016 constitutional amendment did not 'satisfy the requirement of



foreseeability, since in defending a political viewpoint the applicant could legitimately expect to enjoy the benefit of the constitutional legal framework in place, affording the protection of immunity for political speech and constitutional procedural safeguards' (paras 256-270). Concurrent to these events, the Turkish Government adopted a policy reminiscent of the violence of the 1990s in the Kurdish majority region, which is marked by a campaign of counter-insurgency, the declaration of open-ended curfews and 'temporary security zones', and anti-terrorism operations that killed and displaced a large number of civilians and caused destruction in that region.

This trend against the Kurdish minority reached a new peak via far-reaching emergency powers under the 2016 post-coup state of emergency. Amid a growing onslaught against Kurdish opposition voices, in September 2016, the Turkish Ministry of Education suspended 11,500 schoolteachers deemed to be linked with the PKK and revoked their licenses to teach, over 90 percent of whom were serving in Kurdish-speaking municipalities. Turkey, however, provided little to no evidence, thus giving rise to concerns that they were dismissed as a precautionary measure based on mere suspicion. Soon thereafter, Turkey adopted a very controversial emergency, Decree No. 674 that allowed for the removal and replacement of locally elected officials with trustees appointed by the Turkish Ministry of Interior where a mayor, deputy mayor or member of municipal council has been dismissed or arrested due to the offences of aiding and abetting terrorism and terrorist organizations. An overwhelming number of those replaced had links with the Kurdish movement. Additionally, throughout the post-coup emergency period, Turkish state authorities permanently closed tens of Kurdish language media outlets for 'spreading terrorist propaganda', shuttered privately operated schools teaching Kurdish language, used machinery to raze objects of Kurdish cultural heritage, removed bilingual Turkish-Kurdish street signs and increasingly resorted to the solitary confinement measure for prisoners who use the Kurdish language during family visits.

## **International Law on Minority Rights and Self-Determination**

What does all this tell us in terms of international legal norms on minority rights and self-determination? The substantive protections derived from or integral to minority rights as stipulated in Article 27 ICCPR are multifaceted. At its core, minority rights require States to protect both the ‘physical existence’ and the ‘maintenance and development’ of their minorities. In essence, this set of rights aims to ensure that members of minority are not assimilated against their will, and that their cultural diversity is protected and promoted. All in all, States have positive obligations in this field to create favorable conditions to enable members of minority communities to maintain and develop their cultures, languages, religions, traditions and customs.

Two legal hurdles are worth mentioning here: first, as noted above, Turkey has submitted a reservation to Article 27 ICCPR that purports to limit its scope to non-Muslim communities, excluding the Kurdish minority. While the ICCPR does not prohibit reservations to Article 27 ICCPR and Turkey is not the first State making reservation to the said article, it would suffice to note that there is a large and growing body of scholarship that rightly argues that Turkey’s reservation should be deemed invalid on the basis of the International Law Commission’s 2011 Guide to Practice on Reservations to Treaties. Accordingly, there is little if any ground to challenge the AKP’s severe backsliding in the field of Kurdish minority rights on the basis of Turkey’s reservation to Article 27 ICCPR. The second is that while Article 27 ICCPR is not listed among the list of non-derogable rights, there are nevertheless elements of those rights that “cannot be made subject to lawful derogation under article 4” as all derogations must be “strictly required by the exigencies of the situation”. And when one considers increasing governmental restrictions on Kurdish cultural institutions and the destruction of cultural objects, for example, removing bilingual street signs or disbanding the Kurdish media outlets and Kurdish language schools, it is difficult to see how much of it could constitute a necessary or proportionate measure to deal with



terrorism threats. In short, the Turkish state's authoritarian turn since the July 2015 elections, significantly curtailed the limited progress Kurdish minority rights in denial of well-established international legal standards notwithstanding Turkey's reservation to Article 27 ICCPR and its derogation from this provision in the post 2016 coup period.

As regards Kurdish self-determination, too, there are plausible grounds to argue that Turkey's resorted measures severely impacted upon the right to self-determination, which is both an *erga omnes* and *jus cogens* norm under international law. In essence, this right is about finding ways of maximizing political, social, economic and cultural participation of –minority- communities within the framework of the state. It includes both procedural elements (which requires States to negotiate minority claims for constitutional change in a good faith such as a claim for a territorial autonomy arrangement) and remedial elements (which might enable minorities to obtain legitimization and normative for their legitimate demands such as the disaggregation of sovereignty to autonomous regions). In terms of Kurdish self-determination, Turkey's crackdown on Kurdish political movement in the past years had significantly made it more difficult to advance legitimate Kurdish demands. The lifting of parliamentary impunity in 2016 which disproportionately affected the HDP lawmakers put them at serious risk of being targeted by “extensive sanctions for speech related to their activity as members of the Parliament”, including judicial harassment and arbitrary detention. The highly politicized nature of this crackdown has been endorsed in the Demirtaş's case (No.2), when the ECtHR found that his detention especially during two crucial campaigns, namely the referendum and the presidential election, pursued the predominant ulterior purpose of stifling pluralism and limiting freedom of political debate in violation of Article 18 ECHR (para. 437).

In addition to the continuous political and judicial harassment of the HDP representatives, Turkey also seriously undermined local Kurdish-run institutions. In September 2016 during the protracted post-coup emergency period, Decree No. 674 altered the Law on

Municipalities and paved the way for democratically elected municipal organs to be seized by government appointed trustees, which was rightly described as ‘a suspension of local democracy’.

## **Conclusion**

The nucleus of the arguments uttered in this commentary consists of a threefold conclusion: First, as detailed above, Turkey’s authoritarian crackdown on Kurdish minority clearly run counter to international law. In the immediate aftermath of the June 2015 elections, the AKP Government ended peace talks and refused to take legitimate Kurdish demands seriously. In the following years, it took coercive measures to completely exclude the representative of Kurdish political movement from the national political scene by hobbling the pro-Kurdish HDP, removing elected co-mayors and municipal officials and replacing them with centrally appointed trustees in flagrant denial of international legal standards on minority rights and self-determination. Second, and more specifically, Turkey’s meddling with local Kurdish self-government by replacing elected Kurdish officials fails to take into account the key normative requirements of the right to self-determination. In fact, given the significant hurdles to territorial autonomy in Turkey, strengthened local governments (in the sense of limited administrative autonomy) may constitute a good starting point to a meaningful and lasting self-determination arrangement for the Kurdish people. Third, and more importantly, Turkey has seriously undermined available avenues for Kurdish political participation at the national level. The reformist and visionary side of the Kurdish political movement is severely damaged under Erdogan’s authoritarian regime, and with all the side effects of escalating violence, the Kurdish issue currently seems to hit a deadlock. Much like the wider Turkish society, the only way out for Kurdish minority, too, seems to bide their time in anticipation of a newly democratic Turkey where rule of law and human rights considerations will prevail in the undoing of past injustice towards them.

