

FROM SUPPRESSION TO SECESSION: KURDS, HUMAN RIGHTS AND THE RIGHT TO SELF- DETERMINATION IN TURKEY

*Rez Gardi**

I.	INTRODUCTION.....	62
II.	WHO ARE THE KURDS?.....	63
	A. <i>Historical Characteristics</i>	63
	B. <i>Twentieth Century Treatment</i>	64
	C. <i>The Kurds Today</i>	65
III.	KURDS IN TURKEY.....	66
	A. <i>Historical Treatment & Movements of Kurds in Turkey</i>	66
	B. <i>Kurds as A Minority Group in Turkey</i>	68
	1. Turkish Reform of Minority Rights for European Union Membership.....	70
	C. <i>The Birth of the PKK & Kurdish Independence Movements</i>	70
	D. <i>Continuing Armed Conflict in Turkey</i>	72
IV.	HUMAN RIGHTS LAW ANALYSIS.....	74
	A. <i>Universal Declaration of Human Rights</i>	75
	B. <i>International Covenant on Civil and Political Rights</i>	76
	C. <i>International Covenant on Economic, Social, and Cultural Rights</i>	77
	D. <i>European Convention on Human Rights</i>	79
	E. <i>Turkish Constitution</i>	80
	F. <i>Other Instruments</i>	83
V.	HUMAN RIGHTS VIOLATIONS AGAINST KURDS IN TURKEY.....	83
VI.	THE RIGHT TO SELF-DETERMINATION.....	86
	A. <i>Self-Determination Under International Law</i>	86
	B. <i>The Requirement of A Distinct Group</i>	89
	1. The Territorial Approach.....	89
	2. The Characteristic Approach.....	90
	C. <i>Minorities</i>	91

* Rez was born in a United Nations (U.N.) refugee camp in Pakistan as her Kurdish family escaped persecution in their home land of Kurdistan. Arriving to New Zealand with nothing, Rez has sought to use her difficult start in life as motivation to succeed. Rez graduated from the University of Auckland with a Bachelor of Laws (Honors) and a Bachelor of Arts double majoring in international relations and criminology. She is New Zealand's first Kurdish female lawyer and was awarded the Young New Zealander of the Year in 2017 for her services to human rights. With an understandable passion for human rights, Rez hopes to focus her legal career on fighting for justice and equality for underprivileged and marginalised people which she is doing through her role as a global refugee youth advocate. Rez works as a Solicitor at New Zealand's premier law firm Chapman Tripp in the litigation team and has previously worked at the U.N. Office in Nairobi as a human rights intern and as an assistant to the Deputy Chief of Protocol in the Prime Minister's Office in the Kurdistan Regional Government.

D. <i>Indigenous Peoples</i>	93
VII. APPLICATION OF THE RIGHT TO SELF-DETERMINATION	94
A. <i>Historical Application of Self-Determination</i>	94
B. <i>Turkey's Stance on Self-Determination</i>	95
C. <i>Turkey's Constitutional Court and the Right to Self-Determination</i>	97
D. <i>Application of Self-Determination to Kurds</i>	100
E. <i>The Demands for Self-Determination</i>	103
VIII. THE FUTURE FOR KURDS.....	104
A. <i>Recommendations for Turkey</i>	104
B. <i>The Exercise of Self-Determination</i>	105
1. <i>Earned Sovereignty</i>	105
IX. CONCLUSION	107
X. APPENDIX.....	108

I. INTRODUCTION

“Kurds are the largest ethnic and linguistic minority in Turkey.”¹ Kurds are perceived as a threat to Turkish national unity. Turkey has suppressed many attempts by the Kurds to ameliorate the protection of their human rights and stifled any plight for the recognition of their minority rights. The Kurds have no friends. Today’s great powers, as those of yesterday, benefit from a status quo that maintains the Kurds in their helpless position. My purpose in this paper is to argue for changing this status quo.

This paper will first introduce who the Kurds are and the area they inhabit to establish that the Kurds are a distinct group separate to the Turkish, Persian and Arab nations that occupied them. The distinctiveness of Kurds is a fundamental notion underlying the right to self-determination. Second, the treatment of Kurds by the Turkish Government will be detailed. In doing so, this paper recognises the lack of accountability and systemic culture of oppression that underscores the reality for Kurds in Turkey.

The third section will adopt a human rights law analysis to elucidate the existing safeguards for minority rights and the right to self-determination under international law. Section four will then highlight the failure of Turkish law to comply with the aforementioned international standards to protect Kurdish rights as a minority group and to recognise their claim to self-determination. To date, Turkey has prioritised a unitary

1. *Turkey-Kurds*, MINORITY RTS. GROUP INT’L: WORLD DIRECTORY MINORITIES & INDIGENOUS PEOPLES, <http://minorityrights.org/minorities/kurds-2/> (last visited Oct. 29, 2017).

state approach leading to the disenfranchisement of Kurds and the persistent violation of their fundamental rights.²

The fifth section will employ a legal analysis of the right to self-determination under international law and articulate the necessary tests and criteria for a successful claim to self-determination by a group. The concept of a distinct group, a minority and indigenous peoples will then be discussed.

The sixth section of this paper will address Turkey's stance on self-determination and will then apply self-determination to Kurds. By claiming their right to self-determination, Kurds can effectively combat the systemic oppression and abuse of their fundamental rights by Turkey. Indeed, this paper determines that Kurds need to have an active role in their governance, which places them at the centre as champions of change. The final section recommends a strategy for the Kurds in Bakur to gradually achieve an independent Kurdistan through the "earned sovereignty" approach.

II. WHO ARE THE KURDS?

"*Kurdun heval ninin bes ciya* ([t]he Kurds have no friends but the mountains)."³ Before embarking on an analysis of the problem in issue, what is meant by the "Kurds" and "Kurdistan" must be defined and used consistently throughout this paper. This section also demonstrates that Kurds are a distinct group who, by virtue of their distinctness, have rights as a separate group and have a claim to self-determination.⁴

A. *Historical Characteristics*

In the ancient lands of Mesopotamia in the Middle East, there exists a geographical region where the Kurds form a prominent majority—Kurdistan. Kurdistan encompasses the area from the southern end of the Tigris and Euphrates Rivers, and the Northern Zagros and Eastern Taurus mountain ranges.⁵

2. See generally HUMAN RIGHTS WATCH, VIOLATIONS OF FREE EXPRESSION IN TURKEY (1999) (providing an example of the Kurds' fundamental rights being violated through suppression).

3. ROBERT L. BRENNEMAN, AS STRONG AS THE MOUNTAINS: A KURDISH CULTURAL JOURNEY 58 (2007).

4. Ieva Vezbergaitė, *Self-Determination of the Kurdish People: Undermining the Unity of the «Turkish Nation»?*, 3 (Univ. of Fribourg, Working Paper No. 9, 2015).

5. See *Where is "Kurdistan"?*, KURDISH PROJECT, <https://thekurdishproject.org/kurdistan-map/> (last visited Dec. 16, 2017).

Kurds, who are of Aryan descent, are a unique ethnic group distinct from the neighbouring Arabs, Persians and Turks.⁶ The Kurds speak their own language deriving from the Iranian branch of the Indo-European group of languages.⁷ An independent Kurdistan has long been the dream of Kurds.

B. Twentieth Century Treatment

The triumph over the Ottoman Empire during the First World War led to the creation of the modern Middle East by the Allies.⁸ In 1920, the Ottoman Empire and the United Kingdom stipulated the Treaty of Sèvres, which assured Kurdish independence.⁹

However, Mustafa Kemal Atatürk's victory at the Turkish War of Independence barred the ratification of the Treaty of Sèvres and the Allies reneged on their promise of Kurdish independence.¹⁰ In 1923, the Treaty of Sèvres was nullified and the Treaty of Lausanne superseded, containing no reference to Kurdistan.¹¹ Atatürk's nationalist movement led to the occupation of the Kurdish regions and the region was split between the four newly emerged states—Turkey, Syria, Iraq and Persia (now Iran).¹² However, the Kurds have not acquiesced to domination quietly. Since the

6. *History: Who Are the Kurds, and Where Do They Live?*, ROJAVA SOLIDARITY SEATTLE, <https://www.rojavasolidarityseattle.com/history> (last visited Oct. 29, 2017).

7. *Id.*

8. Philip Mansel, *The Great Powers and the End of the Ottoman Empire*, HIST. TODAY, <http://www.historytoday.com/philip-mansel/great-powers-and-end-ottoman-empire> (last visited Oct. 29, 2017).

9. Chris Trueman, *The Treaty of Sevres*, HIST. LEARNING SITE (Mar. 17, 2015), <http://www.historylearningsite.co.uk/modern-world-history-1918-to-1980/the-treaty-of-sevres/>; *Treaty of Sèvres*, BRITANNICA, <https://www.britannica.com/event/Treaty-of-Sevres> (last visited Oct. 29, 2017).

10. Trueman, *supra* note 9.

11. *Treaty of Sèvres*, *supra* note 9; N.Y. CARNEGIE ENDOWMENT FOR INT'L PEACE, THE TREATIES OF PEACE 1919–1923 959–1022 (vol. 2 1924) (referencing art. 39) [hereinafter *Treaty of Lausanne*].

12. GEORGE BLACK, HUMAN RIGHTS WATCH, GENOCIDE IN IRAQ: THE ANFAL CAMPAIGN AGAINST THE KURDS 24 (1993); Nick Danforth, *Stop Blaming Colonial Borders for the Middle East's Problems*, ATLANTIC (Sept. 11, 2013), <https://www.theatlantic.com/international/archive/2013/09/stop-blaming-colonial-borders-for-the-middle-east-s-problems/279561/> (stating that some Kurdish and Middle Eastern commentators have recognised that these borders were drawn arbitrarily and without consideration of the traditional boundaries of the region).

early 1920s, there have been a myriad of Kurdish rebellions in Bakur: Koçkiri, Sheikh Said, Dersim, and Ararat.¹³

In 1927, the Kurds, backed by the United Kingdom (U.K.), declared independence and formed the ‘Republic of Ararat’.¹⁴ However, this self-proclaimed state was short-lived and the Turkish military conquered it in 1930.¹⁵ Between 1937 and 1938, an estimated 50,000–70,000 Kurds were killed and thousands were exiled in a dire crackdown on Kurdish rebellion.¹⁶

C. *The Kurds Today*

Today, Kurdistan comprises a region partitioned between four different sovereign nations—northern Iraq (‘*Bashur*’), southeastern Turkey (‘*Bakur*’), northwestern Iran (‘*Rojhalat*’) and northeastern Syria (‘*Rojava*’).¹⁷

Kurds, estimated to have a population of approximately 25–30 million people, are the world’s largest ethnic group without a state.¹⁸ Kurdistan remains divided by the repressive colonialism of these states who have stifled any attempts by the Kurds of securing freedom against domination and their struggles for the recognition of minority rights.¹⁹ The Kurds have endlessly “faced oppression, discrimination, assimilation, ethnic cleansing and genocide” at the hands of their oppressors.²⁰ As encapsulated cogently, “the Kurds are one of the most persecuted minorities of our time.”²¹

13. Robert Olson, *The Kurdish Rebellions of Sheikh Said (1925), Mt. Ararat (1930), and Dersim (1937–38): Their Impact on the Development of the Turkish Air Force and on Kurdish and Turkish Nationalism*, 40 *DIE WELT DES ISLAMIS* 67, 67 (2000).

14. FACTS ON FILE LIBRARY OF WORLD HISTORY, *ENCYCLOPEDIA OF THE PEOPLES OF AFRICA AND THE MIDDLE EAST* 385 (Jamie Stokes ed. 2009).

15. *Id.*

16. DAVID MCDOWALL, *A MODERN HISTORY OF THE KURDS* 209 (I. B. Tauris & Co. Ltd., 3d ed. 2004); Ruwayda Mustafah, *Why Did Erdogan Apologise for the Dersim Massacre?*, HUFFPOST: WORLDPOST, https://www.huffingtonpost.com/ruwayda-mustafah/why-did-erdogan-apologise_b_1113732.html (last visited Nov. 5, 2017).

17. See Appendix 1 for a contemporary map of Kurdistan.

18. MICHAEL M. GUNTER, *HISTORICAL DICTIONARY OF THE KURDS* 1 (Jon Woronoff ed., 2d ed. 2011).

19. See THE CTR. OF HALABJA AGAINST ANFALIZATION & GENOCIDE OF THE KURDS (CHAK), “ANFAL”: THE IRAQI STATE’S GENOCIDE AGAINST THE KURDS 7 (2007) [hereinafter Chak].

20. *Id.*

21. Dominique Callimanopulos, *Kurdish Repression in Turkey*, *CULTURAL SURVIVAL Q. MAG.* (June 1982), <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/kurdish-repression-turkey>.

I believe that the current state of Kurdish populations continues the oppression of the Kurds by occupying colonialist states which denies their fundamental rights. This paper will thus seek to remedy this situation and argue the case for Kurdish self-determination.

III. KURDS IN TURKEY

“The Turks are the only lords of this country, its only owners. Those who are not of pure Turkish stock have in this country only one right, that of being servants, of being slaves. Let friend and foe, and even the mountains know this truth!”²²

Kurds are the largest ethnic and linguistic minority in Turkey and “are concentrated in [the] provinces of the southeast, the same [region] that their ancestors inhabited . . . in fifth century B.C.”²³ Although there are no accurate statistics on Kurdish populations, as Turkish censuses do not identify Kurds as a separate ethnic group, it is estimated that half of the world’s Kurdish population are located in Turkey.²⁴ Due to the size of the Kurds in Turkey, they are perceived as the ultimate threat to Turkish national unity and have been subject to various efforts to thwart their progress. The purpose of this section, therefore, is to understand how Kurds are treated in Turkey. In doing so, I highlight that because of such treatment, the case for self-determination of Kurds is urgent.

A. *Historical Treatment & Movements of Kurds in Turkey*

Since the aftermath of the First World War, “Kurds in Turkey have been the victims of persistent [abuses] of their linguistic, ethnic, cultural, religious, economic and political rights by successive Turkish Governments.”²⁵

In an attempt to eradicate all vestige of Kurdish existence, extreme measures were adopted in the 1920s. In 1924, a “mandate [outlawed] Kurdish schools, organisations and publications,” the use and teaching of the Kurdish language entirely and the wearing of Kurdish dress as part of a policy of compulsory assimilation.²⁶ All “Kurdish insignia were

22. Martin van Bruinessen, *Genocide in Kurdistan?: The Suppression of the Dersim Rebellion in Turkey (1937–38) and the Chemical War Against the Iraqi Kurds (1988)*, in GENOCIDE: CONCEPTUAL & HISTORICAL DIMENSIONS 141, 154 (George Andreopoulos ed., 1994).

23. Eric Hooglund, *The Society and Its Environment*, in TURKEY: A COUNTRY STUDY 71, 98 (Helen Chapin Metz ed., 5th ed. 1996).

24. *Id.*

25. Callimanopoulos, *supra* note 21.

26. *Id.*

outlawed.”²⁷ The Turkish Government (the Government) even banned the words “Kurds,” “Kurdistan,” and “Kurdish” from usage and the Kurdish language was banned by law.²⁸ The mere acknowledgement of Kurdish existence was illegal.²⁹

Kurdish language suppression has been one of the Government's key strategies for assimilating the Kurds.³⁰ The use of Kurdish was deemed a threat to Turkey's unity and indivisibility and the use of the Kurdish language has historically been perceived as a sign of separatist intentions.³¹ The Government perceived that the use of Kurdish language would strengthen the identity of Kurds, increasing moves towards separatism and threatening political unity.³² It has been argued that speaking one's mother-tongue language is an important component linked to the manifestation of one's identity, a sense of belonging and affiliation as identity is embodied in language, culture and tradition.³³

Turkey demonstrated a deliberate intent to destroy Kurds, as evidenced by the policy of assimilation directed at them and their language. The policy should be more appropriately termed ethnocide—the eradication of Kurdish ethnic identity.³⁴ The Government categorised Kurds as “Mountain Turks.”³⁵ Ismet Inönü, former President of Turkey, encapsulated the attitude towards Kurds when he publicly announced, “We shall, at any price, Turkicize those who live in our country, and destroy those who rise up against the Turks and Turckdom.”³⁶ Notwithstanding vigorous attempts over a long period to disseminate the Turkish language

27. *Id.*

28. *Id.*

29. *Id.*

30. Michael Chittenden, *Turkey and the Kurds: Conflict with the Kurdistan Workers' Party and Implications for Turkey-United States Relations*, GLOBAL SECURITY STUD., Summer 2016, at 31, 32.

31. *Culture and Language Rights – Mother-Tongue Education in the Kurdish Regions*, KURDISH HUM. RTS. PROJECT 1, 8 (July 2011), http://www.observatori.org/paises/pais_66/documentos/Mother%20Tongue%20Education%20in%20Kurdish%20Regions.%20KHRP%20Briefing%20Paper.%20July%202011.pdf [hereinafter *Mother-Tongue Education*].

32. *Id.* at 12.

33. *Id.* at 11.

34. *Genocide and Ethnocide*, ENCYCLOPEDIA.COM, <http://www.encyclopedia.com/social-sciences/encyclopedias-almanacs-transcripts-and-maps/genocide-and-ethnocide#B> (last visited Oct. 29, 2017).

35. YASEMIN ÇELİK, CONTEMPORARY TURKISH FOREIGN POLICY 3 (1999).

36. van Bruinessen, *supra* note 22, at 151.

amongst the Kurds, a majority of Kurds have preserved their native tongue.³⁷

The Kurds have sought the inclusion of Kurdish as a language of instruction and as a subject in public schools.³⁸ Presently, Kurdish is still prohibited as a language of instruction in both public and private schools but is allowed in some schools as a subject.³⁹ The freedom to use mother tongue language by minority groups is an essential means for expressing their cultural identity, yet, as illustrated in this section, the Kurds were repeatedly bereft of this right.

B. Kurds as A Minority Group in Turkey

The recognition of a group as a minority is pivotal to the rights and protection they are afforded. This section aims to elucidate Turkey's approach to the identification and status of Kurds as a minority group, legally and politically. The failure to recognise Kurds as a minority contributes to the ongoing human rights violations by Turkey and thus self-determination is the best solution to ensure their protection as a minority group.

While the genesis of the conflict between the state and Kurds stems from the Ottoman era, the political and legal underpinning of Turkey's stance pertinent to their Kurdish minority arose in the start of the Republican epoch.⁴⁰ From its inception, the Republic of Turkey built a new state ideology to shape a modern nation on European premises of a single secular national identity.⁴¹ The notion of Turkish identity was premised on social and cultural conditioning rather than ethnicity. All Muslims were Turkish notwithstanding their ethnicity.⁴² This ideological perspective defined Islam as the "homogenising glue of the Turkish nation" and was used as a restraint to countervail the influence of Kurdish nationalism.⁴³

37. Sevda Arslan, *Language Policy in Turkey and Its Effect on the Kurdish Language* (Aug. 2015) (unpublished M.A. thesis, Western Michigan University) (on file with the Graduate College at ScholarWorks, Western Michigan University).

38. *Mother-Tongue Education*, *supra* note 31, at 13.

39. *Id.*

40. See Mesut Yegen, *The Kurdish Question in Turkish State Discourse*, 34 J. CONTEMP. HIST. 555, 555 (1999).

41. ROBERT OLSON, *THE EMERGENCE OF KURDISH NATIONALISM AND THE SHEIKH SAID REBELLION, 1880–1925* 5 (1st ed. 1989).

42. Yegen, *supra* note 40, at 557.

43. Ana Dević & Marija Krstić, *The Incentives and Actors of Protests in Turkey and Bosnia-Herzegovina in 2013*, in 'EVERYWHERE TAKSIM': SOWING THE SEEDS FOR A NEW TURKEY AT GEZI 59, 61 (Isabel David & Kumru F. Toktamış eds. 2015).

Turkish policy towards the Kurdish minority is encapsulated by the term denial: denial that Kurds exist in Turkey and denial that Kurds are a distinct group to Turks. This denial has been an underlying notion since the establishment of modern-day Turkey.⁴⁴ During the negotiations for the Treaty of Lausanne, the Allies sought the inclusion of all minorities, including ethnic minorities, within the Treaty's terms.⁴⁵ However, Turkey rejected any distinct status for non-Turkish Muslims and defined minorities on the basis of religion excluding Turkey's numerous ethnic, linguistic and cultural minorities, specifically the Kurds.⁴⁶ It only recognised official minority status for non-Muslim religious minorities, for example, Greek Christians, Armenian Christians and Jews.⁴⁷

Problematically, the Treaty of Lausanne only safeguards rights for non-Muslim minorities and fails to consider in any way the cultural, linguistic or ethnic minorities in Turkey, of which the Kurds make up the greatest proportion of.⁴⁸ A report by the Human Rights Advisory Board mandated by the government found that the minority definition used in the Treaty was too restrictive and recommended that the law be amended to recognise that minorities exist where groups are ethnically, linguistically and religiously different.⁴⁹ Shortly after, the authors of the report faced criminal proceedings under Articles 216 (incitement of racial hatred) and 301 (denigration of the Turkish nation) of the Penal Code due to their stance in the report.⁵⁰

Despite Turkey's refusal to acknowledge the existence of Kurds as a distinct ethnicity or to give Kurds formal recognition as minorities, Turkey offered the semblance of protection of their minority rights through the affirmative obligations under the Treaty of Lausanne.⁵¹ Article 39 assured "[n]o restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings."⁵² It further

44. INT'L HUM. RTS. L. GROUP, WASHINGTON, D.C.: THE COMM'N ON SEC. & COOPERATION IN EUR., CRIMINALIZING PARLIAMENTARY SPEECH IN TURKEY 8 (1994).

45. HUM. RTS. ADVISORY BOARD, THE MINORITY RIGHTS AND CULTURAL RIGHTS WORKING GROUP REPORT: OCTOBER 2004 I (2004) [hereinafter WORKING GROUP REPORT].

46. *Id.*

47. Treaty of Lausanne, *supra* note 11 (referencing art. 39).

48. *Id.*

49. WORKING GROUP REPORT, *supra* note 45, at 2.

50. EDWARD GRIEVES, KURDISH HUMAN RIGHTS PROJECT, SUPPRESSING ACADEMIC DEBATE: THE TURKISH PENAL CODE - TRIAL OBSERVATION REPORT 1, 22 (Joanna Hunt et al. eds., 2006).

51. *See* Treaty of Lausanne, *supra* note 11.

52. *Id.* at 971 (referencing art. 39).

guaranteed: “adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts.”⁵³

Turkey has continuously breached the Treaty of Lausanne.⁵⁴ However, even strict adherence to it would not comply with contemporary international standards and the changing expectations; it does not afford proper legal protection to minorities in Turkey.

1. Turkish Reform of Minority Rights for European Union Membership

Turkey formally applied for full membership of the European Union (EU) in April 1987, and was recognised as a candidate for EU accession in 1997.⁵⁵ In its endeavour to satisfy the minority protection element of the EU membership criteria stipulated at the June 1993 European Council in Copenhagen (Copenhagen Criteria), Turkey legislated various constitutional and legislative reform laws.⁵⁶ These reforms sought to grant ethnic and linguistic minorities some language rights, at least in theory.⁵⁷

The reforms precipitated greater freedom of expression; ended the ban of publications and broadcasting in Kurdish and ushered a series of laws for teaching Kurdish as an elective subject in schools.⁵⁸ However, Turkey has avoided any express reference that might indicate official recognition of its minorities. By demanding restrictive conditions, the Government has made the implementation of their limited minority rights essentially impossible.

C. *The Birth of the PKK & Kurdish Independence Movements*

Due to the dissatisfaction with the lack of change and progress, many Kurds have taken matters into their own hands to fight the repression by Turkey and protect their identity. While many Kurdish groups have emerged in the plight to ameliorate their rights in Turkey, the Kurdistan Workers' Party *Partiya Karkerên Kurdistan* (PKK) has been the most persistent in their activism.

53. *Id.*

54. WORKING GROUP REPORT, *supra* note 45, at 2.

55. *European Neighbourhood Policy and Enlargement Negotiations: Turkey*, EUR. COMMISSION, https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/turkey_en (last visited Nov. 4, 2017).

56. European Commission Press Release IP/04/1180, The Commission, Commission Recommends to Start Negotiations with Turkey Under Certain Conditions (Oct. 6, 2004).

57. *Id.*; HUMAN RIGHTS WATCH, TURKEY: HUMAN RIGHTS AND THE EUROPEAN UNION ACCESSION PARTNERSHIP (2000).

58. Dević & Krstić, *supra* note 43.

In 1978, Abdullah Öcalan founded the PKK, an armed left-wing organisation based in Bakur.⁵⁹ The PKK's ideology was initially based on revolutionary Marxism-Leninism and Kurdish nationalism.⁶⁰ At its inception, the PKK sought to create an independent, socialist Kurdish state comprised of all its constituents—Bakur, Bashur, Rojhalat and Rojava—to be known as Kurdistan.⁶¹ However, since Öcalan's capture and imprisonment in 1999, the PKK's objective has been moderated to asserting cultural and political rights as well as self-determination for the Kurds in Bakur; the urge for the establishment of a fully independent state has been abandoned.⁶²

Öcalan's imprisonment has become a defining factor of the Kurdish struggle. Many PKK members, supporters and sympathisers have insisted that Öcalan's freedom would epitomise the freedom of Kurds.⁶³ However, the reality is that the prospect of Öcalan's release from prison, absent a special amnesty, is non-existent.⁶⁴ Öcalan is no longer facing death row as the Turkish legislature revoked the death penalty in 2002 as part of the array of reforms in preparation for EU accession.⁶⁵ Thus, his sentence was reduced to life imprisonment.⁶⁶ In 2005, in his appeal regarding the fairness of his trial, the European Court of Human Rights ruled in his favour, however, Turkey rejected its findings on the grounds that the ruling was not binding on Turkey.⁶⁷

During his time in prison, Öcalan's ideology underwent a transformational shift and he led the PKK to adopt a new political platform of "Democratic Confederalism."⁶⁸ According to Öcalan, Democratic Confederalism is not modelled on or controlled by a state system; it is a non-state social paradigm.⁶⁹ He states "[t]his kind of rule or administration

59. Tom Anderson & Eliza Egret, *Democratic Confederalism in Kurdistan*, CORP. WATCH (Apr. 18, 2016, 16:05), <https://corporatewatch.org/news/2016/apr/18/democratic-confederalism-kurdistan>.

60. *Id.*

61. *Id.*

62. 8 HUSSEIN TAHIRI, *THE STRUCTURE OF KURDISH SOCIETY AND THE STRUGGLE FOR A KURDISH STATE* 243 (2007).

63. Aliza Marcus, *Turkey's PKK: Rise, Fall, Rise Again?*, *WORLD POL'Y J.*, Spring 2007, at 75, 83.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. ADEM UZUN, "LIVING FREEDOM": THE EVOLUTION OF THE KURDISH CONFLICT IN TURKEY AND THE EFFORTS TO RESOLVE IT 22 (Véronique Dudouet & Luxshi Vimalarajah eds., 2014).

69. *Id.* at 21.

can be called a non-state political administration or a democracy without a state.”⁷⁰ Democratic Confederalism centres on grass-roots participation and decision-making within the communities.⁷¹ He asserted that we should not leave history to the United Nations (U.N.) concept of the nation-state but should instead formulate alternative modes of ordering.⁷²

Over time, the PKK has grown more diverse and today is better understood as a party-complex—a configuration of parties and organisations encompassing numerous parties and their guerrilla forces.⁷³ In 2007, the Association of Communities in Kurdistan—*Koma Civakên Kurdistan* (KCK)—was established in accordance with the new political trajectory.⁷⁴ KCK is a societal organisation of Kurds from all regions embodying Öcalan’s Democratic Confederalism and presents itself as an alternative to the concept of the nation-state.⁷⁵ The KCK is essentially a network of village, city and regional councils across Kurdish zones whose legislative body is called the Kurdistan People’s Congress—*Kongra-Gel*.⁷⁶

With a focus on organising from the bottom up through village, town, and city council assemblies, the Democratic Confederalism is a movement “which struggles to establish its own democracy, neither grounded on the existing nation-states nor seeing them as the obstacle.”⁷⁷ Öcalan envisages the KCK as model for the resolution of Kurdish problems through a new political paradigm.⁷⁸

D. Continuing Armed Conflict in Turkey

Since its inception, the PKK has successfully mobilised a great proportion of the Kurdish population in Bakur.⁷⁹ The first armed

70. ABDULLAH ÖCALAN, DEMOCRATIC CONFEDERALISM 21 (Int’l Initiative, trans., 1st ed. 2011).

71. *Id.* at 26.

72. See ABDULLAH ÖCALAN, PRISON WRITINGS III: THE ROAD MAP TO NEGOTIATIONS 83–89 (Havin Guneser, trans., 1st ed. 2012).

73. Joost Jongerden & Ahmet Hamdi Akkaya, *Democratic Confederalism As A Kurdish Spring: The PKK and the Quest for Radical Democracy*, in THE KURDISH SPRING: GEOPOLITICAL CHANGES AND THE KURDS 163, 165–66 (Mohammed M. A. Ahmed & Michael M. Gunter eds., 2013).

74. *Id.* at 166.

75. *Id.*

76. *Id.* at 166, n.10.

77. PAUL WHITE, THE PKK: COMING DOWN FROM THE MOUNTAINS 130 (2015).

78. UZUN, *supra* note 68.

79. Ofra Bengio, *The Kurds in A Volatile Middle East*, MIDEAST SECURITY & POL’Y STUD., Feb. 27, 2017, at 1, 12.

insurgency launched by the PKK against Turkey began in 1984.⁸⁰ Ever since, there have been various periods of ceasefires ranging in length and subsequent revocations of the ceasefire when the PKK believed their attempts to negotiate with the Government about the long-disenfranchised Kurdish minority were continuously ignored.⁸¹ On July 25, 2015, the PKK announced the end of the most recent ceasefire stating that Ankara had welched on its promises.⁸² Violence subsequently spread in the wake of resurgence throughout Turkey by the PKK and the Government.⁸³

Since the war between the PKK and Turkey began in 1984, over 40,000 people have been killed and the Government forcibly evacuated more than 3000 Kurdish villages, resulting in the destitution of 3 million people.⁸⁴

The changing international circumstances that arose out of the 9/11 terrorist attacks had severe repercussions internationally. It had immense impact on the EU's engagement regarding the PKK and Turkey.⁸⁵ "[T]he European Council [proclaimed] the 'fight against terrorism' as a priority objective and [released] a list of 'persons, groups and entities involved in terrorist acts.'"⁸⁶ PKK is now listed as a terrorist organisation by a number of states and organisations internationally, including the EU⁸⁷ and the United States (U.S.).⁸⁸

Despite that the armed insurgency instigated by the PKK being a result of—rather than cause of—the war between Turkey and the Kurds, the violence has overshadowed the roots of the war, allowing Turkey to frame it solely as counter-terrorism.⁸⁹ This allows Turkey to disguise its human

80. John Pike, *Kurdistan Workers' Party*, FED'N AM. SCIENTISTS: INTELLIGENCE RESOURCE PROGRAM, <https://fas.org/irp/world/para/pkk.htm> (last updated May 21, 2004).

81. See generally Gareth Jenkins, *PKK Changes Battlefield Tactics to Force Turkey into Negotiations*, TERRORISM FOCUS, Oct. 24, 2007.

82. *PKK Group Says Turkish Ceasefire Over*, RUDAW: MIDDLE E. (Dec. 7, 2015), <http://www.rudaw.net/english/middleeast/turkey/120720151>.

83. *PKK Ends Unilateral Cease-Fire with Turkey*, ALJAZEERA AM. (Nov. 5, 2015, 12:08 PM), <http://america.aljazeera.com/articles/2015/11/5/pkk-ends-unilateral-ceasefire-with-turkey.html>.

84. *Id.*; *Turkey-Kurds*, *supra* note 1.

85. Dilek Kurban, *Europe As an Agent of Change: The Role of the European Court of Human Rights and the EU in Turkey's Kurdish Policies*, STIFUNG WISSENSCHAFT UND POLITIK: GERMAN INST. FOR INT'L & SEC. AFFAIRS, Oct. 2014, at 1, 18.

86. *Id.* (citing 2001 O.J. (L 344) 93).

87. 2009 O.J. (L 151) 45.

88. *Foreign Terrorist Organizations*, U.S. DEP'T STATE, <https://www.state.gov/j/ct/rls/other/des/123085.htm> (last visited Nov. 5, 2017).

89. Kurban, *supra* note 85, at 5.

rights violations in Bakur behind the cover of counter-terrorism.⁹⁰ Instead of addressing the rights of Kurdish minorities, Turkey's persistent focus on enforcing counter-terrorism policies against the PKK equates to a refusal to address the root causes of the conflict. An unescapable cycle currently exists whereby the Government attempts to quash Kurdish insurgency, despite the fact that this insurgency is itself a reaction to Turkey's lack of recognition of Kurdish rights.

This section has demonstrated that despite the actions of Kurdish independence movements, Kurds in Turkey have been consistently oppressed, targeted and marginalised as a minority both historically and today. Kurds are still not recognised and protected as a minority by Turkey despite Turkey's semblance of commitment to reform. Hence, it must be recognised that the panacea to the conflict is likely linked to better human rights for Kurds in Turkey and this can be achieved through self-determination.

IV. HUMAN RIGHTS LAW ANALYSIS

"Behind all law is someone's story; someone whose blood, if you read closely, leaks through the lines. Text does not beget text; life does. The question—a question of politics and history and therefore law—is whose experience grounds what law?"⁹¹

This section adopts a human rights law analysis as an attempt to remedy the situation for Kurds in Turkey. Key international instruments will be examined to identify Turkey's international obligations to protect minorities. Lastly, the shortcomings of Turkish law in protecting its minorities will be analysed to support the case that self-determination is the best solution for Kurdish minorities whose rights have been abused.

Under international law, Turkey is obliged to guarantee rights to its minority population.⁹² It is a party to many international conventions and instruments that oblige Turkey to protect and promote minority rights.⁹³ The rights which are of particular concern to Kurdish minorities in Turkey and which are systematically abused are the right to self-determination,

90. *Turkey: UN Human Rights Council Should Address Continuous Deterioration of Freedom of Expression and Other Human Rights*, HUM. RTS. WATCH (May 17, 2017, 6:13 AM), <https://www.hrw.org/news/2017/05/17/turkey-un-human-rights-council-should-address-continuous-deterioration-freedom>.

91. Catharine A. MacKinnon, *Crimes of War, Crimes of Peace*, 4 UCLA WOMEN'S L.J. 59, 59 (1993).

92. KURDISH HUMAN RIGHTS PROJECT, KURDISH HUMAN RIGHTS PROJECT SUBMISSION TO THE COMMITTEE ON ECONOMIC SOCIAL AND CULTURAL RIGHTS 11, ¶ 13 (May 2010) [hereinafter KHRP].

93. *Id.* at 12, ¶¶ 15–16.

right to education, right to take part in cultural life, freedom of expression, freedom of association, right to life and the right not to be subject to torture or degrading behaviour.⁹⁴

While Turkey is state party to various international instruments, it has been reticent to become a party to binding international standards protecting minority rights.⁹⁵ However, many fundamental rights safeguarding minority culture and language are identified in various key international instruments to which Turkey is a party, so it cannot escape international law frameworks entirely.⁹⁶

International human rights law is governed by “the International Bill of Human Rights which comprises the Universal Declaration of Human Rights [UDHR], the International Covenant on Economic, Social, and Cultural Rights [ICESCR], and the International Covenant on Civil and Political Rights [ICCPR] and its two Optional Protocols.”⁹⁷ Turkey is a party to all these international human rights instruments as well as the European Convention on Human Rights.⁹⁸

A. *Universal Declaration of Human Rights*

“The UDHR is a milestone document,” the first in history, to encapsulate the fundamental human rights to be universally protected.⁹⁹ Drafted by representatives from all regions globally with differing legal and cultural backgrounds, the UDHR was manifested “as a common standard of achievements for all peoples and all nations.”¹⁰⁰

In essence, the UDHR guarantees free participation in the cultural life of the community.¹⁰¹ It guarantees the right to education and recognises it

94. *See id.* at 12–13, ¶¶ 16–17.

95. *Id.* at para. 16, p. 12.

96. *See id.* at 11–14, ¶¶ 13–21.

97. *Fact Sheet No.2 (Rev.1), The International Bill of Human Rights*, UNITED NATIONS OFF. HIGH COMMISSIONER, <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf> (last visited Oct. 31, 2017).

98. EUROPEAN COMM’N, 2015 PROGRESS REPORT ON TURKEY 5 (2015), https://ec.europa.eu/neighbourhoodenlargement/sites/near/files/pdf/key_documents/2015/20151110_report_turkey.pdf [hereinafter 2015 PROGRESS REPORT]; *Ratification of International Human Rights Treaties - Turkey*, U. MINN.: HUM. RTS. LIBR., <http://hrlibrary.umn.edu/research/ratification-turkey.html> (last visited Nov. 5, 2017).

99. *Universal Declaration of Human Rights*, UNITED NATIONS, <http://www.un.org/en/universal-declaration-human-rights/> (last visited Nov. 4, 2017) (alteration in original).

100. *Id.*

101. G.A. Res. 217 (III) A, *Universal Declaration of Human Rights*, at art. 27(1) (Dec. 10, 1948).

as an instrument to “promote understanding, tolerance and friendship among all nations, racial or religious groups.”¹⁰² The UDHR guarantees the right to freedom of expression, including “seek[ing], receiv[ing] and impart[ing] information and ideas through any media”¹⁰³ “Turkey was among the [forty-eight] countries that voted for and signed the [UDHR].”¹⁰⁴ While the UDHR is not a binding treaty and only has recommendatory status, it is mostly like to be seen as evidence of state practice and thus binding as customary international law on states.

B. *International Covenant on Civil and Political Rights*

The ICCPR requires state parties to respect the civil and political rights of individuals in their nation.¹⁰⁵ The ICCPR ensures the right of all peoples to retain their cultural and religious heritage and way of life.¹⁰⁶ It protects the fundamental right to equality.¹⁰⁷ It prohibits discrimination or adverse distinctions based on race, language, religion, political or cultural opinions, national or social origin.¹⁰⁸

The ICCPR and the ICESCR, guarantee the right to self-determination, namely the freedom to determine political status and economic, social and cultural development in Article 1.¹⁰⁹ State parties are obliged to promote the realisation of the right to self-determination and respect it in conformity with the provisions of the U.N. Charter.¹¹⁰ The right to self-determination is a fundamental provision empowering minorities to determine how they are governed.

In addition, it also guarantees individuals from minority groups culture and language rights. The ICCPR prohibits state parties from denying their minorities the right “in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”¹¹¹ The ICCPR guarantees the right to freedom of

102. *Id.* art. 26.

103. *Id.* art. 19.

104. Marlies Casier, *Contesting the ‘Truth’ of Turkey’s Human Rights Situation: State-Association Interactions in and Outside the Southeast*, EUR. J. TURKISH STUD., no. 10, 2009, at 1, 3.

105. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

106. *Id.* art. 26.

107. *Id.*

108. *Id.*

109. *Id.* art. 1; International Covenant on Economic, Social and Cultural Rights art. 1, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].

110. ICCPR, *supra* note 105, at art. 1(3).

111. *Id.* art. 27.

expression, including seeking, receiving and imparting information and ideas through any media.¹¹²

While Turkey ratified the ICCPR in September 2003, it issued a reservation to Article 27 that this Article would be implemented pursuant to the Turkish Constitution and the Treaty of Lausanne 1923.¹¹³ The effect of Turkey's reservation in practice means the exclusion of its application to Kurds.

C. *International Covenant on Economic, Social, and Cultural Rights*

The ICESCR, another international instrument that Turkey ratified in 2003, guarantees the universal right to take part in cultural life.¹¹⁴ “The right . . . to take part in cultural life is ‘intrinsically linked’ to the right to education [in Article 13,] which [empowers] individuals and communities [to] pass on their . . . language and other cultural references”¹¹⁵ To realise these rights, individuals must be able to express themselves in the language of their choice,¹¹⁶ and to seek, receive and impart information on all manifestations of culture in the language of their choice.¹¹⁷

Crucially, states must employ measures and “spare no effort” so that education for minorities is carried out in their own language.¹¹⁸ This arises from states’ obligations “to recognize, respect and protect minority cultures as an essential component of the identity of the states themselves.”¹¹⁹ The ICESCR recognises education as a vehicle that should be used for strengthening adherence with other fundamental rights and freedoms.¹²⁰

The Committee on Economic, Social and Cultural Rights (CESCR) requires states to ensure their education systems are available, acceptable, accessible and adaptable.¹²¹ Essentially, this means that the burden is on

112. *Id.* art. 19(2).

113. LAWYERS’ RIGHTS WATCH CAN. & THE OBSERVATORY FOR THE PROT. OF HUMAN RIGHTS DEF., BRIEFING TO THE HUMAN RIGHTS COMMITTEE, 106TH SESSION (15 OCT. – 2 NOV.) GENEVA 2 (2012).

114. ICESCR, *supra* note 109, at art. 15(a).

115. U.N., Econ. & Soc. Council, Comm. On Economic, Social, and Cultural Rights General Comment No. 21, at para. 2, U.N. Doc. E/C.12/GC/21 (2009).

116. *Id.* at para. 15(a).

117. *Id.* at para. 16(b).

118. *Id.* at para. 27.

119. *Id.* at para. 32.

120. ICESCR, *supra* note 109, at art. 13(1).

121. U.N., Econ. & Soc. Council, Comm. On Economic, Social, and Cultural Rights General Comment No. 13: The Right to Education (Art. 13 of the Covenant), at para. 6(a)–(d), U.N. Doc. E/C.12/1999/10 (1999). [hereinafter General Comment No. 13].

the state to take affirmative action in ensuring “education is culturally appropriate for minorities”¹²² The state must ensure education is accessible to everyone without discrimination both in theory and in practice, and that it is accessible physically and economically.¹²³ It needs to be adaptable to the demands of fluid and ever-changing societies and communities as well as meet the needs of all people within their diverse social and cultural circumstances.¹²⁴ These standards posit a strong case for mother-tongue education.

The ICESCR emphasises the principles of non-discrimination and, crucially, underline that the right to education must “enable all persons to effectively participate in a free society”¹²⁵ States should promote understanding amongst all ethnic, racial and religious groups and ensure that equal educational opportunities are afforded to all minorities.¹²⁶

Despite Turkey being a signatory to the ICESCR, it has issued reservations to interpret and apply the ICESCR provisions regarding academic freedom consistent with the Turkey Constitution.¹²⁷ Specifically, Turkey’s Constitution states that Turkish is the only official language of the State and denies the right to education in other languages.¹²⁸ While states are permitted to choose one or more national or official languages, they are not permitted to exclude, outside the spheres of public life, the freedom to express oneself in a language of one’s own choice.¹²⁹

The CESCR has voiced its concern over Turkey’s reservation and recommended that Turkey withdraw its reservations to the ICESCR.¹³⁰ The CESCR has further recommended that Turkey apply and interpret the ICESCR taking into consideration the jurisprudence of the CESCR.¹³¹ Pertinent to the Vienna Convention on the Law of Treaties, state parties cannot submit a reservation that is “incompatible with the object and

122. *Id.* at para. 50.

123. *Id.* at para. 6(b).

124. *Id.* at para. 6(d).

125. ICESCR, *supra* note 109, at art. 13(1).

126. General Comment No. 13, *supra* note 121, at para. 30.

127. *Id.* at para. 43.

128. TÜRKİYE CUMHURİYETİ ANAYASASI [THE REPUBLIC OF TURKEY CONSTITUTION], art. 3, 42 (1982).

129. Ballantyne, Davidson & McIntyre v. Canada, CCPR/C/47/D/359/1989 & 385/1989/Rev. 1 (Mar. 31, 1993).

130. Comm. On Econ., Soc. & Cultural Rts., Rep. on Its Forty-Sixth Session, at (C)(6), U.N. Doc E/C.12/TUR/CO/1 (2011).

131. *Id.*

purpose of the [Covenant].”¹³² This would be true of the reservations Turkey has made to the ICCPR and ICESCR. While Turkey has made reservations to certain provisions of the ICCPR and ICESCR, the reservations would only be applicable to the rights found in those provisions; they would not apply to the same rights that also make up customary international law.¹³³ States are bound to customary international law.¹³⁴

Turkey has still not taken positive measures in the negotiation and adoption of an optional protocol to the ICESCR. The adoption of an optional protocol would provide an avenue for victims seeking public accountability and the possibility of relief in relation to the violations of individual economic, social and cultural rights at an international level, if they are denied access to justice domestically.¹³⁵

D. *European Convention on Human Rights*

Turkey is a party to the European Convention on Human Rights (ECHR).¹³⁶ The ECHR is pivotal: individuals subject to Turkey’s domestic law have direct recourse, depending on meeting specific criteria, to subject to the jurisdiction of the ECtHR to complain of a violation of their rights under the ECHR.¹³⁷

The right to equality is fundamental. However, Turkey has been reluctant to ratify Protocol 12 to the ECHR, which protects the free-standing right to equality, despite signing it in 2001.¹³⁸ The purpose of Protocol 12 is to promote equality beyond the limited scope afforded by Article 14.¹³⁹ Effectively, Protocol 12 supplements Article 14. Article 14 serves as a general prohibition against discrimination; however, it can only

132. Vienna Convention on the Law of Treaties (with Annex) art. 19(c), May 23, 1969, 1155 U.N.T.S. 331.

133. *Id.* art. 21(1); KHRP, *supra* note 92, at 10.

134. *Customary International Humanitarian Law: Questions & Answers*, INT’L COMMITTEE RED CROSS (Aug. 15, 2005), <https://www.icrc.org/eng/resources/documents/misc/customary-law-q-and-a-150805.htm>.

135. KHRP, *supra* note 92, at 14, ¶ 21.

136. Convention for the Protection of Human Rights and Fundamental Freedoms n.1, Nov. 4, 1950, 213 U.N.T.S. 221.

137. KHRP, *supra* note 92, at 13, ¶ 20; *Human Rights*, REPUBLIC TURK. MINISTRY FOREIGN AFF., <http://www.mfa.gov.tr/%C4%B0nsan-haklar%C4%B1.en.mfa> (last visited Oct. 15, 2017).

138. KHRP, *supra* note 92, at 13, ¶ 20.

139. *Id.*

be invoked if a circumstance is within the ambit of a right stipulated under the ECHR.¹⁴⁰

Article 14 imposes an obligation “on the State and public authorities, acting within the scope of convention rights, not to discriminate on the [enumerated] grounds or any other status, . . . [without justification].”¹⁴¹ The possibility of justifying discrimination is a weakness which could diminish the force of the principle.

Some academics have criticised that the ECtHR habitually elects to decide cases based on other Articles rather than Article 14 even where discrimination is crucial to the case.¹⁴² Article 14 is not a stand-alone right and is only applicable in accordance with another provision under the ECHR, thus limiting its potential application.¹⁴³ It is much narrower in its scope of application than the ICCPR equivalent in Article 26.¹⁴⁴ Such weaknesses mark the failure of the ECtHR to embrace a substantive conception of equality which would confront systematic disadvantage and oppression.¹⁴⁵ This failure underlies Judge Bonello’s dissenting judgment in *Anguelova v. Bulgaria*:

Kurds, coloureds, Muslims, Roma and others are again and again killed, tortured or maimed, but the Court is not persuaded that their race, colour, nationality or place of origin has anything to do with it. Misfortunes punctually visit disadvantaged minority groups, but only as the result of well-disposed coincidence.¹⁴⁶

While studies of the ECtHR jurisprudence found that the ECtHR had taken steps to protect the marginalised in Europe, it still treads carefully. The studies show that Article 3 and Article 8 were predominantly used for the protection of the marginalised, rather than Article 14.¹⁴⁷

E. Turkish Constitution

Turkey’s ideology is based on the premise that the citizens’ first duty is to safeguard the integrity of the Republic. This is incompatible with the

140. *Id.*

141. Rory O’Connell, *Cinderella Comes to the Ball: Art 14 and the Right to Non-Discrimination in the ECHR*, 29 LEGAL STUD.: J. SOC’Y LEGAL SCHOLARS 211, 211 (2009).

142. *Id.* at 214.

143. *Id.* at 212.

144. *Id.*

145. *Id.* at 214.

146. *Anguelova v. Bulgaria*, 2002-IV Eur. Ct. H.R. 355.

147. O’Connell, *supra* note 141, at 214.

inclusive and pluralistic culture of democratic tolerance advocated by international human rights standards. The emphasis of international norms is on the notion that it is the responsibility of nation states to safeguard the rights of its citizens. However, the cultural ideology of Kemalist Turkey demonstrates the opposite of these international standards.¹⁴⁸

The fundamental law of Turkey is *Türkiye Cumhuriyeti Anayasası* (the Constitution).¹⁴⁹ As required by international standards, Article 10 of the Constitution states, everyone is equal before the law without distinction as to “language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such [grounds].”¹⁵⁰ However, when read in light of the Treaty of Lausanne, the prohibition against discrimination is rendered ineffective in practice in regards to Kurds who are not recognised as a minority group under the Treaty of Lausanne.¹⁵¹

Article 3 identifies Turkish as the only official language, despite Kurds constituting a significant proportion of the Turkish population.¹⁵² Article 42 emphasises this restriction further, stating “[n]o language other than Turkish shall be taught as a mother tongue to Turkish citizens at any institutions of . . . education.”¹⁵³ The requirement that education shall “be conducted along the lines of the principles and reforms of Atatürk . . . under the supervision and control of the State,” means that even a reformist administration wanting to advocate for the use of mother-tongue education is constitutionally bound to embrace a nationalist Turkish State.¹⁵⁴

Turkey’s Constitution fails to address minorities and makes no reference to the word “minority” at all. In Turkey, no legal framework exists to date for the protection of minorities, whether directly through legislation explicitly protecting minority rights or indirectly through anti-discrimination laws.¹⁵⁵

The lack of a Turkish legal framework on non-discrimination and minority rights has not been overlooked and has been routinely condemned by U.N. monitoring bodies.¹⁵⁶ European bodies have also denounced Turkey’s refusal to safeguard the rights of Kurdish minorities and urged for

148. Thomas W. Smith, *Leveraging Norms: The ECHR and Turkey’s Human Rights Reforms*, in UNIV. OF PA. PRESS, HUMAN RIGHTS IN TURKEY 262, 264 (Zehra F. Kabasakal Arat ed., 2011).

149. See THE REPUBLIC OF TURKEY CONSTITUTION, pmbl. (1982).

150. *Id.* art 10.

151. KHRP, *supra* note 92, at 11, ¶ 13.

152. THE REPUBLIC OF TURKEY CONSTITUTION, art. 3 (1982).

153. *Id.* art. 42.

154. *Mother-Tongue Education*, *supra* note 31, at 7.

155. KHRP, *supra* note 92, at 10–11, ¶¶ 10–13.

156. *Id.* at 10, ¶ 10.

Constitutional reform.¹⁵⁷ The CESCR has urged Turkey to enact legislation to protect against discrimination consistent with the ICESCR and its General Comment on non-discrimination.¹⁵⁸ The CESCR has also raised concerns about the lack of a legislative framework for the recognition of all minority groups in Turkey, and the protection of their rights.¹⁵⁹ Indeed, the CESCR formally called on Turkey to recognise all minorities within its territory and bestow full opportunities for minorities to enjoy economic, social and cultural rights.¹⁶⁰

While the implementation of rights consistent with international norms has considerably improved recently, there are still immense shortcomings to be addressed.¹⁶¹ Rights standards within international and European treaties are not fully implemented. There is an urgent need for Turkey to adopt a comprehensive legal framework on combating discrimination and protecting minorities in accordance with international standards. Turkey must adopt a more inclusive definition of minorities that meets international standards and that includes all minorities, not only non-Muslim minorities as currently under the Treaty of Lausanne. The Parliamentary Assembly of the Council of Europe (PACE) has already proposed the following definition for minorities:

A group of persons in a state who:

- a) Reside in the territory of that State and are citizens thereof . . . ;
- b) Maintain long standing, firm and lasting ties with that state;
- c) Display distinctive ethnic, cultural, religious or linguistic characteristics;
- d) Are sufficiently representative, although smaller in number than the rest of the population of the state . . . ; and
- e) Are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language.¹⁶²

Turkey should adopt this definition of minorities to give effect to Article 2 of the ICCPR and ICESCR and ensure that Kurds as well as other minorities are captured under definition.

157. *Id.* at 12, ¶ 15.

158. General Comment No. 13, *supra* note 121, at para. 2.

159. KHRP, *supra* note 92, at 11, ¶¶ 11–12.

160. *See generally* General Comment No. 13, *supra* note 121, at para. 2.

161. 2015 PROGRESS REPORT, *supra* note 98, at 5. The European Commission stated that while Turkey's Constitution guarantees the protection of human rights, the enforcement of rights arising from the ECHR and the case law of ECtHR is not entirely ensured. *Id.*

162. EUR. PARL. ASS., 44th Sess., Doc. No. 1201 (Feb. 1, 1993).

F. *Other Instruments*

There are several other key international instruments that Turkey has either failed to ratify or has ratified but failed to meet which are fundamental to the protection of Kurds.

Despite international pressure, Turkey has not acceded to the Framework Convention on National Minorities (FCNM). Turkey's ratification of FCNM is crucial, particularly due to Turkey's reservation to Article 27 of the ICCPR and also considering the FCNM is the only multilateral binding treaty concerning minority rights specifically.¹⁶³ PACE has persistently urged Turkey to accede to the FCNM.¹⁶⁴

Additionally, Turkey has not ratified the U.N. Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education 1960, the European Charter for Regional or Minority Languages or the European Convention on Nationality.¹⁶⁵ In light of Turkey's historical and present relationship with its minority population, its unwillingness to implement international standards on minority protection and rights questions sheds uncertainty on the genuineness of its pledge to respect and uphold minority rights within its jurisdiction.

Using a human rights law analysis, it is thus clear that Turkey is failing to uphold and sustain international human rights standards in relation to Kurds in its territory. This status quo cannot go on any longer and hence I argue that self-determination is the most appropriate legal framework to change this.

V. HUMAN RIGHTS VIOLATIONS AGAINST KURDS IN TURKEY

“[T]here's really no such thing as the ‘voiceless’. There are only the deliberately silenced, or the preferably unheard.”¹⁶⁶ Turkey is failing to comply with their international human rights obligations in guaranteeing fundamental rights for minorities under their national legal framework, both in theory and practice. As Kurban has stated: “The crux of the Kurdish issue remains the structural inequalities against the Kurds These inequalities are deeply rooted in Turkey's authoritarian political regime and

163. KHRP, *supra* note 92, at 13, ¶ 18.

164. KURDISH HUMAN RIGHTS PROJECT, KHRP SHADOW REPORT FOR THE REVIEW OF THE TURKISH GOVERNMENT UNDER CERD 39 (2009).

165. U.N. EDUC. SCI. CULTURAL ORG., Universal Periodic Review, on Its Twenty-First Session (Jan. 27, 2015); Council of Eur., Cong. of Local and Reg'l Authorities, *Local Democracy in Turkey*, Rec. 229 (Nov. 20, 2007), <https://rm.coe.int/1680719b53.pdf>.

166. Arundhati Roy, *Peace & the New Corporate Liberation Theology*, CTR. FOR PEACE & CONFLICT STUD., no. 04/2, 2004, at 1, 1.

can only be addressed through structural reforms aimed at establishing substantive democracy and the rule of law.”¹⁶⁷

This fundamentally stems from Turkey’s persistent reluctance to recognise minority groups, largely due to an ingrained fear of disunity of the nation state. Turkey’s refusal to officially recognise minority rights renders the guarantees stipulated in the Constitution futile. This is exacerbated by the broad restrictions entrenched in the Constitution on protecting Turkey’s indivisibility and unity, an instrument which could be exploited to stifle any perceived indication of separatist intention by the Kurds.¹⁶⁸

The escalation of violence in the Kurdish regions of Turkey has raised significant concerns over human rights violations. The ECtHR has found that since September 2014 Turkey “violated the ECHR in [ninety-two] cases [pertaining] mainly to the right to life, prohibition of torture, right to a fair trial, right to respect for family life, freedom of expression, freedom of thought, conscience and religion and right to liberty and security.”¹⁶⁹

The fundamental rights of Kurds need to be strengthened in Turkey both in law and in practice. Turkey insists that it places great significance on the preservation of cultural heritage. It claims that tolerance and diversity are core notions underlying its policy and that these are protected by the fundamental rights to “freedom of religion and conscience, freedom of thought and opinion, freedom of expression and dissemination of thought,” freedom of press, “protection of the historical, natural and cultural heritage, and the promotion of arts.”¹⁷⁰ While human rights are safeguarded in theory under the Constitution, in practice these rights are applied discriminatorily when they concern Kurds.¹⁷¹ Existing violations of human rights in Turkey include:

167. Kurban, *supra* note 85, at 6.

168. *Mother-Tongue Education*, *supra* note 31, at 7.

169. 2015 PROGRESS REPORT, *supra* note 98, at 61.

170. KHRP, *supra* note 92, at 46, ¶ 115.

171. *Id.* at 46–47, ¶ 115.

- a) The lack of protection of Kurdish language and cultural rights;
- b) The exploitation of terrorism laws used to imprison members and sympathisers of legal Kurdish parties, students and journalists, for which there is usually insufficient evidence of violent activity;
- c) The lack of accountability to date for breaches for thousands of causes of torture, forced disappearances and the death of civilians by state officials throughout the 1990s within the background of the conflict between the Government and the PKK.¹⁷²

As discussed in Section III above, Turkey still denies the constitutional existence of Kurds and has systematically failed to protect its Kurdish minority population. A plethora of reports by various organisations dedicated to observing human rights compliance provide conclusive evidence of the extent to which malpractice and discriminatory laws have contributed to mass human rights violations against the Kurds.¹⁷³ The apparatus of the state has contributed to an atmosphere of lawlessness and impunity of the abuse of human rights violations against the Kurds.

ECtHR has consistently condemned Turkey for its abysmal human rights record.¹⁷⁴ During the ECtHR's fifty-year history, Turkey has had the highest number of violation judgments against it; more than any of the other forty-six signatory states to the ECtHR.¹⁷⁵ Turkey was ranked the highest for convictions for rights violations by the ECtHR from 1959 to 2011.¹⁷⁶ Many cases before ECtHR and the European Commission have a concerned trend of extensive and systematic human rights abuses against Kurds by the Turkish state and its agents.¹⁷⁷

The cases are predominately focused geographically and ethnically, in Kurdish regions and related to either Kurdish victims or Kurdish cause supporters.¹⁷⁸ In the decade following 1999, Turkey was found in breach of human rights in essentially all of the 1700 cases brought against it before

172. *See id.* at 1–50.

173. *See, e.g., id.*

174. *See* EUROPEAN COURT OF HUMAN RIGHTS, ANNUAL REPORT 2011 78 (2012) (noting human rights cases against Turkey).

175. KURDISH HUMAN RIGHTS PROJECT, IMPACT REPORT 28 (2009) [hereinafter KHRP IMPACT REPORT]

176. *Turkey Ranks First in Violations in Between 1959–2011*, BIANET: ENG. (May 15, 2012, 8:18), <http://bianet.org/english/human-rights/138337-turkey-ranks-first-in-violations-in-between-1959-2011>.

177. *See, e.g., Aksoy v. Turkey*, 1996-VI Eur. Ct. H.R. 2260 (discussing torture of a member of PKK in Bakur).

178. KHRP IMPACT REPORT, *supra* note 175, at 63.

the ECtHR.¹⁷⁹ The ubiquitousness of human rights violations against Kurds are indicative of widespread practice and illustrate how human rights violations by Turkey are carried out disproportionately against the Kurdish minority.

Notwithstanding the prevalence of human rights violation cases against it, Turkey continues to routinely engage in repressive measures in the face of what it deems a threat to the state's unity: the manifestation of Kurdish cultural and linguistic identity and their plight for rights and self-determination.¹⁸⁰ Turkey's insistence on linguistic and cultural unity and the goal of establishing an immensely homogeneous state make it difficult, to recognise a legitimate space for ethnic diversity and thus lie at the root of the conflict.¹⁸¹

Turkey has repeatedly, and continues to, violate the human rights of Kurds living in its territory. Turkey thus fails to meet international human rights standards both in theory and law, and in practice. Hence, I will now argue that the right to self-determination is the best solution for Kurds to determine their future and end the injustice against them.

VI. THE RIGHT TO SELF-DETERMINATION

“Self-determination is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril.”¹⁸² Given their common background, history, language and culture, Kurds qualify as a distinct group in Turkey and have the right to self-determination. The right to self-determination needs to be recognised under both Turkish law and international law. This section will analyse self-determination as a fundamental principle under international law. It will set out the legal criteria which must be satisfied for a claim to self-determination, namely what constitutes a people, to make the case that Kurds meet the legal definition of a distinct “people” and thus have a right to self-determination.

A. *Self-Determination Under International Law*

The right of nations to self-determination is a fundamental principle in international law.¹⁸³ It is considered a rule of customary international law

179. Casier, *supra* note 104, at 5.

180. Jongerden & Akkaya, *supra* note 73, at 170.

181. Ergun Özbudun, *Turkey's Constitutional Reform and the 2010 Constitutional Referendum*, MEDITERRANEAN Y.B. 191, 192 (2011).

182. Hurst Hannum, *Legal Aspects of Self-Determination*, ENCYCLOPEDIA PRINCETONIENSIS, <https://pesd.princeton.edu/?q=node/254> (last visited Nov. 4, 2017).

183. JAN KLABBERS, INTERNATIONAL LAW 117 (2013).

and is deemed as an *erga omnes* principle by the International Court of Justice (ICJ).¹⁸⁴

Self-determination was introduced by Woodrow Wilson after World War I.¹⁸⁵ Wilson likened self-determination to the American ideal of democracy and advocated it as the “foreign extension of American norms of political fairness.”¹⁸⁶ It has since been recognised as a universal right of peoples to be free from domination by oppressors.¹⁸⁷ The U.N. Charter states that nations, based on respect for the principle of equal rights and fair equality of opportunity, have the right to freely choose their sovereignty and international political status with no interference.¹⁸⁸ The notion of self-determination is deemed an “inalienable” right of all peoples or an “essential condition” for the effective guarantee and the observance of individual human rights.¹⁸⁹

The right to self-determination can be defined as “the capacity of people to control and participate in decision making in determining their political status, in pursuing their economic, social, and cultural development, and disposing of their natural wealth and resources.”¹⁹⁰ States are required to implement this right and to facilitate its realisation.¹⁹¹ This obligation became more pressing when the U.N. Human Rights Committee (HRC) required state parties to the ICCPR and the ICESCR to report on “the constitutional and political processes which in practice allow the exercise of this right.”¹⁹²

Under international law, the right of distinct “peoples” within sovereign states to self-determination is recognised and their cultural, physiological, linguistic and religious differences from other groups in a given territory may be determinative of their status as a “peoples.”¹⁹³

184. *Id.*

185. Hannum, *supra* note 182.

186. Lea Brilmayer, *Secession and Self-Determination: A Territorial Interpretation*, 16 YALE J. INT'L L. 177, 180 (1991).

187. Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46, 53 (1992).

188. U.N. Charter art. 2.

189. U.N., Off. High Commissioner for Hum. Rts., Human Rights Committee General Comment 12: Article 1 (The Right to Self-Determination of Peoples), at para. 1–2, U.N. Doc. HRI/GEN/I/Rev.9 (Vol. I), (Mar. 13, 1984) [hereinafter General Comment No. 12].

190. Derya Bayir, *Turkey, the Kurds, and the Legal Contours of the Right to Self-Determination*, 1 KURDISH STUD. 5, 6 (2013).

191. General Comment No. 12, *supra* note 189, at para. 6.

192. *Id.* at para. 4.

193. Ian Brownlie, *The Rights of Peoples in Modern International Law*, 9 BULL. AUSTRALIAN SOC'Y LEGAL PHIL. 104, 105 (1985).

International treaties have upheld the right by reference to it as the right of peoples to self-determination.¹⁹⁴ Article 1(1) of the ICCPR and the ICESCR stipulate, “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.”¹⁹⁵ Article 1(3) of the ICCPR and ICESCR say that State Parties “shall promote the realisation of the right of self-determination, and shall respect that right”¹⁹⁶

Generally, under international law, no state or group of people have the right to violate the territorial integrity and sovereignty of another state. A state’s sovereignty is pivotal. However, “self-determination [can override] territorial integrity when a [state] has: i) violated the “economic, social, and cultural development” of a people . . . ; and ii) the people have a valid territorial claim to the area that they wish to claim.”¹⁹⁷

Many issues stem from the ambiguity around the right to self-determination. It is unclear how the decision in relation to self-determination is to be made, how the right is realised, or what the outcome should be—whether it should be independence, federation, protection, some form of autonomy or full assimilation. Neither the U.N. Charter nor the international treaties define what constitutes a nation for the purposes of the right to self-determination.

There are irreconcilable definitions and legal criteria for deciding which groups have a legitimate claim to self-determination. Professor Alfredsson argues that the term “nation” was replaced with “peoples” by the U.N. for a practical rationale as the former was too ethnically loaded, although the two terms can be used interchangeably.¹⁹⁸ International law implies the solution is all in the label; if a group is labelled a “people” then the right to self-determination exists, if a group is labelled a “minority” then it does not.¹⁹⁹ Ultimately, these definitions can have severe legal

194. *Self Determination (International Law)*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/self_determination_international_law (last visited Nov. 5, 2017).

195. ICCPR, *supra* note 105, at art. 1(1); ICESCR, *supra* note 109, at art. 1(1).

196. ICCPR, *supra* note 105, at art. 1(3); ICESCR, *supra* note 109, at art. 1(3).

197. Philip S. Hadji, *The Case for Kurdish Statehood in Iraq*, 41 CASE W. RES. J. INT’L L. 513, 521 (2009).

198. Ulrike Barten, *What’s in A Name? Peoples, Minorities, Indigenous Peoples, Tribal Groups and Nations* 14 J. ETHNOPOLITICS & MINORITY ISSUES EUR. 1, 13 (2015) (citing Gudmundur Alfredsson, *Minorities, Indigenous and Tribal Peoples, and Peoples: Definitions of Terms as a Matter of International Law* 163, 170, in MARTINUS NIHOFF PUBLISHERS, MINORITIES, PEOPLES AND SELF-DETERMINATION (Nazila Ghanea & Alexandra Xanthaki eds., 2005).

199. *Id.* at 2 (citing Karin Lehmann, *To Define or Not to Define: The Definitional Debate Revisited*, 31 AM. INDIAN L. REV. 509, 515–16 (2007)).

repercussions.²⁰⁰ The failure of states to grant a group rights is an issue requiring better classification of groups.²⁰¹ Specifically, in relation to minorities, the lack of an encompassing definition is misused as a justification for not granting them the appropriate rights.²⁰²

B. *The Requirement of A Distinct Group*

For a group of people to attain the right to self-determination, they have to be sufficiently “distinct” as a people.²⁰³ The criteria for whether a people can attain this distinctiveness can be split into objective elements and subjective elements.²⁰⁴ The traditional two-prong test first examines the objective elements of the group to ascertain the extent of the shared “common racial background, ethnicity, language, religion, history and cultural heritage” of the group.²⁰⁵ Secondly, to satisfy the subjective prong of the test, the group members have to individually perceive themselves collectively as a distinct “people.”²⁰⁶ Some academics within international law discourse have defined peoples and nations using two very different methods: the “territorial approach” and the “characteristics approach.”²⁰⁷ Each of these methods will be discussed in turn.

1. The Territorial Approach

The territorial approach focuses on persons within a defined territory, often the territory of a nation-state and identified them as a “people.”²⁰⁸ “A people [means] one territory or one state with one people.”²⁰⁹ In using the territorial approach to defining a “people,” it is necessary to distinguish three key elements associated with self-determination: “the situation on the ground [or the reality], the theory and the practice.”²¹⁰ While you would expect reality and state practice to intersect, it is not always so with this approach.

200. *Id.*

201. *Id.*

202. *Id.*

203. Barten, *supra* note 198, at 2.

204. Hadji, *supra* note 197, at 521.

205. *Id.*

206. *Id.*

207. Barten, *supra* note 198, at 3.

208. *Id.*

209. *Id.*

210. *Id.*

“The [notion] of self-determination was stipulated in the U.N. Charter and [enacted within] the context of the decolonisation of Africa.”²¹¹ The situation on the ground in Africa is clear in that sense that prior, during and following decolonisation, all concerned states were multi-national.²¹² Crucially, prior to decolonisation, the colonies were also multinational.²¹³ At this point, practice during decolonisation was to endow the right of self-determination to peoples based on territorial grounds.²¹⁴

Following the first ripple of decolonisation, the right to self-determination was denied to groups in the recently independent states on the basis that they had already implemented that right in achieving independence.²¹⁵ “Theoretically, [the right to] self-determination became international law [when it was elucidated] in the U.N. Charter.”²¹⁶ “However, General Assembly Resolution 1541 [fleshed out] self-determination and decolonisation.”²¹⁷ U.N. resolutions and international treaties clarify that it is possible for any one territory to have several peoples existing within its parameters, specifically by referring to “a territory and its peoples.”²¹⁸

2. The Characteristic Approach

In contrast, the characteristics approach identifies a “people” by reference to the common characteristics of its constituent members.²¹⁹ “This means many peoples could exist within the same territory.”²²⁰ Under this approach, group composition and common characteristics ascertain the group’s category and whether they qualify for particular rights.²²¹ According to UNESCO, the common characteristics determining a “people” can be, but are not limited to, “a common historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious or ideological affinity, territorial connection, and common economic life.”²²²

211. *Id.*

212. Barten, *supra* note 198, at 3.

213. *Id.*

214. *Id.*

215. *Id.* at 4.

216. *Id.*

217. Barten, *supra* note 198, at 4.

218. See G.A. Res. 1541 (XV) (Dec. 15, 1960); Barten, *supra* note 198, at 4.

219. Barten, *supra* note 198, at 5.

220. *Id.* at 3.

221. *Id.* at 5.

222. U.N. Educ., Sci. & Cultural Org., *International Meeting of Experts on Further Study of the Concept of the Rights of Peoples*, ¶ 22, U.N. Doc. SHS-89/CONF.602/7 (Feb. 22, 1990) [hereinafter

To be identified as a “people,” the group needs to be “more than a mere association of individuals within the [s]tate,” however there is no prerequisite about how large the group must be.²²³ Furthermore, UNESCO stipulated that holistically the group “must have the will to be identified as a people . . . or the consciousness of being a people” and “have institutions or other means of expressing its common characteristics and will for identity.”²²⁴ While the UNESCO criteria were written by experts and continues to have force in academia, it has never been adopted internationally.²²⁵

A “people” can be determined by either of the aforementioned approaches. Pursuant to the territorial approach, every state that has seceded, following the Declaration on the Granting of Independence to Colonial Countries and Peoples, has breached international law.²²⁶ “The territorial approach does not [accept] secession, [because] there can only be one people in one state.”²²⁷ In reality, we know that most states are not homogenous and are actually comprised of more than one group—who may be different culturally, ethnically and/or religiously.²²⁸ Therefore, I argue that an approach that takes all common characteristics into consideration when defining a “people” is pivotal if international law is to be relevant or applicable practically. The characteristics approach, which looks at the defining characteristics of a people, is very similar to the way minorities are defined.²²⁹

C. Minorities

International law is lacking in terms of providing a clear binding definition of the term “minority.”²³⁰ Today, the most prevalent definition of a minority continues to be the definition Francesco Capotorti, the then U.N. Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, proposed in 1977 in relation to Article 27 of the ICCPR:

UNESCO Int’l Meeting]; Barten, *supra* note 198, at 5.

223. UNESCO Int’l Meeting, *supra* note 222.

224. *Id.*

225. Barten, *supra* note 198, at 5.

226. *Id.* at 6.

227. *Id.*

228. *Id.*

229. *Id.*

230. Barten, *supra* note 198, at 6.

A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.²³¹

The territorial approach has limited relevance in defining a minority; it is relevant primarily in considering whether a group is settled predominantly in a region or whether its constituent members are dispersed over regions as this can affect their rights.²³² For example, if the Kurds are deemed a minority then the territorial approach is relevant to determining that its members are spread across four states and consequently this affects the realisation of their rights.

The implication for minorities in practice is that even if a binding definition was adopted, the existence of a minority simply due to a legal definition is not in itself sufficient. A state needs to recognise the group as a minority and their rights. While there is no condition that a state must recognise the minority for the theoretical definition, practically, without state recognition, definitions are rendered meaningless. Thus, there is an apparent gap between practice and theory. Generally, the view was that a definition of the term “minority” was a *sine qua non* to ensuring the international protection of minorities is a workable regime in practice; there are, however, proponents of the idea that theory is superfluous and what matters is that minorities realise their rights.²³³

The former United Nations Working Group on Minorities stipulated that individuals of an ethnic group may seek protection under minority rights and they may, when acting as part of a group, assert claims pertinent to the right to self-determination.²³⁴

A determinative factor in minorities realising their rights is the state in which they live in. While minority rights derive from international law, the

231. Francesco Capotorti, Special Rapporteur of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, ¶ 568, U.N. Doc. E/CN.4/Sub.2/384/Rev.1 (1979).

232. Barten, *supra* note 198, at 7.

233. European Comm’n for Democracy Through Law (Venice Commission), *Report on Non-Citizens and Minority Rights*, 69th Sess., Study No. 294/2004, CDL-AD(2007)001 (Dec. 15–16, 2006), [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2007\)001-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)001-e).

234. U.N., Econ. & Soc. Council, Comm. on Human Rights, Comment. of the Working Group on Minorities to the U.N. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, ¶ 15, U.N. Doc. E/CN.4/Sub.2/AC.5/2005/2 (Apr. 4, 2005).

state maintains responsibility for guaranteeing them. Without state recognition, minorities are bereft of their minority rights.²³⁵

D. *Indigenous Peoples*

In international law, the crux of the definition of an “indigenous people” is whether a group considers itself as distinct from other groups, whether there is a shared common ancestry with the occupants of a given territory before its domination by another group or series of groups, whether they live in a specific geographic area, and whether they share a language, culture, and history.²³⁶ A people’s indigenous status stems from them inhabiting a region before other settlers moved in as a result of conquest, occupation, colonisation endangering the indigenous peoples’ livelihoods and very existence.²³⁷

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) recognises indigenous peoples’ right to unrestricted self-determination.²³⁸ The right to self-determination includes the right “to freely determine their political status and freely pursue their economic, social and cultural development.”²³⁹ Article 4 ensures indigenous peoples’ right “to autonomy or self-government in matters relating to their internal and local affairs,” and Article 5 safeguards their right “to maintain and strengthen their distinct political, legal, economic, social and cultural institutions.”²⁴⁰ Article 26 states that “[i]ndigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired,” and it requires states to give legal recognition to these territories.²⁴¹

In addition to UNDRIP, international human rights law contained in other treaties and international legal materials such as the ICCPR and

235. Barten, *supra* note 198, at 8.

236. Hannibal Travis, *The Cultural and Intellectual Property Interests of the Indigenous Peoples of Turkey and Iraq*, 15 TEX. WESLEYAN L. REV. 415, 423–24 (2009).

237. See José R. Martínez Cobo, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Study of the Problem of Discrimination Against Indigenous Populations, ¶ 137, U.N. Doc. E/CN.4/Sub.2/1986/7/Add.4 (1987); *Fact Sheet No.9 (Rev.1), The Rights of Indigenous Peoples*, UNITED NATIONS OFF. HIGH COMMISSIONER, <http://www.ohchr.org/Documents/Publications/FactSheet9rev.1en.pdf> (last visited Nov. 5, 2017).

238. G.A. Res. 61/295, annex, United Nations Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

239. *Id.* art. 3.

240. *Id.* arts. 4–5.

241. *Id.* art. 26.

ICESCR also guarantee indigenous peoples the right of cultural and religious self-determination.²⁴²

The right to self-determination is guaranteed in international law; however, the legal requirements, definitions and categorisation of groups are pertinent to establishing a claim to self-determination. The law on self-determination is appropriate to apply to the Kurds in Turkey who have been denied their fundamental rights and I will apply it in the following section.

VII. APPLICATION OF THE RIGHT TO SELF-DETERMINATION

“Self-determination denotes the legal right of people to decide their own destiny in the international order.”²⁴³ The right to self-determination has been guaranteed for distinct “peoples” and indigenous peoples, however, the same right does not extend to minority groups.²⁴⁴ I believe there is a compelling case for applying self-determination to Kurds and that the test for self-determination can be substantiated regardless of which category is used. Kurds satisfy the criteria for a “peoples”—a minority and indigenous peoples—and have the right to self-determination. In this section the historical application of self-determination will be examined and then Turkey’s stance on self-determination. Lastly, I will apply self-determination to Kurds and stipulate the specific demands of self-determination by Kurds.

A. *Historical Application of Self-Determination*

Self-determination rights have been bestowed through various forms such as independence or at the very least autonomy to many peoples whom were subject to Ottoman imperialism including, the Armenians, Israelis, Lebanese, Iraqis, Syrians, Jordanians, and Saudi Arabians.²⁴⁵

The right to self-determination has also been extended to many peoples that were living within nation states that were established following World War II.²⁴⁶ When the principle of self-determination was first introduced following the Great War, it was applied solely to nations and envisaged in its internal form.²⁴⁷ However since World War II, there has been a shift in the way the right is perceived and it has become a right for peoples. The way self-determination has been stipulated through

242. *Id.*

243. *Self-Determination (International Law)*, *supra* note 194.

244. Barten, *supra* note 198, at 1.

245. Travis, *supra* note 236, at 483.

246. *Id.*

247. Barten, *supra* note 198, at 13.

international law more recently, it appears it is mostly applicable to peoples and indigenous peoples; there is limited discourse around the right of minorities to self-determination.

“The [nexus] between minority rights and the right to self-determination [is legitimised pursuant to the fulfilment] of the principle of substantive equality, human rights, the right to identity and culture, and self-determination’s [significance] for democratic governance.”²⁴⁸ Self-determination can be realised through numerous avenues ranging from actual participatory democracy to legal pluralism in which rights such as the right to cultural, linguistic, and political autonomy are exerted.²⁴⁹ An analysis of the principle of self-determination, historically, illustrates an indissoluble connection between indispensability for minority protection and the right to self-determination. This connection became increasingly apparent in the International Committee of Jurists’ advisory report in relation to Åland Islands where the protection of minorities and the right to self-determination were deemed as embracing “a common object to assure to some national [g]roup the maintenance and free development of its social, ethnical or religious characteristics.”²⁵⁰

B. Turkey’s Stance on Self-Determination

In Turkey, there is currently no reference to the right to self-determination in the Turkish Constitution or any other legislation. Even where rights exist in international law, the realisation of those rights depend on the state. Without Turkey’s recognition, Kurdish are bereft of their rights. In the international arena, Turkey’s political and legal stance regarding the right to self-determination and minority rights has been unreceptive to changes in international law.

Turkey has a tendency to refuse to adopt or ratify internationally binding instruments that entail rights of people to self-determination, reassert the rights of minority groups as a separate legal category, or are international documents predominantly dealing with minority rights.²⁵¹ Turkey has not adopted “the European Charter for Regional or Minority Languages, 1992, the Framework Convention on National Minorities, 1995,

248. Bayir, *supra* note 190, at 7–8 n.13–14.

249. *Id.* at 8.

250. *Report of the International Committee of Jurists Entrusted by the Council of the League of Nations with the Task of Giving an Advisory Opinion upon the Legal Aspects of the Åland Islands Question*, League of Nations O.J., Spec. Supp. 3, at 6 (1920).

251. See Berdal Aral, *Fifty Years on: Turkey’s Voting Orientation at the UN General Assembly, 1948–97*, MIDDLE E. STUD., Mar. 2004, at 137, 144.

or the ECHR's Optional Protocol 12 on discrimination."²⁵² Furthermore, Turkey has not ratified the U.N. Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005, which is concerned with "[t]he protection and promotion of the diversity of cultural expressions . . . the recognition of equal dignity of and respect for all cultures, including the cultures of persons belonging to minorities and indigenous peoples."²⁵³

Even when it has adopted international binding instruments, Turkey has been sure to make reservations in the face of anything that would constitute minority protection, reserving its right to interpret and apply the provisions of any treaty or document in accordance with the Constitution of the Republic of Turkey and the Treaty of Lausanne.²⁵⁴ Practically, this means it limits the application of any international protection to those identified in the Constitution as minorities such as the Greeks, Armenian and Jews, and rejects the potential application to the unrecognised minorities in Turkey, such as the Kurds, Alevis and Romas.

Turkey's reservations to Article 1(1), which appear both in the ICESCR and the ICCPR, state that it will perform its obligations under those Covenants in accordance with the obligations under the U.N. Charter.²⁵⁵ Ultimately, Turkey accepts "self-determination" as a "principle," however, denies "self-determination" as a "right" and confines its application to colonial territories.²⁵⁶ Through its denial of the right to self-determination as a "right," Turkey seeks to evade its legal implications, which require states to take action towards fulfilling the right to self-determination.²⁵⁷

Turkey has persistently denied the relevance of self-determination to democracy. A study on Turkey's voting patterns in the U.N. General Assembly revealed that Turkey also routinely denied the relevance of self-determination to groups within states.²⁵⁸ During voting in the U.N. General Assembly for strategies connecting the right of peoples to self-determination and protection of substantive human rights, Turkey either voted against or remained absent.²⁵⁹

252. Bayir, *supra* note 190, at 13 n.36.

253. Convention on the Protection and Promotion of the Diversity of Cultural Expressions (with annex) art. 2, ¶ 3, Oct. 20, 2005, 2440 U.N.T.S. 311.

254. Bayir, *supra* note 190, at 13–14.

255. *Id.* at 14.

256. *Id.*

257. *Id.*

258. *Id.* at 13.

259. Aral, *supra* note 251, at 144.

Turkey has also voted against, or abstained from voting for, any resolution before the General Assembly advocating the protection of cultural rights or the collective facets of human rights.²⁶⁰ Turkey's attitude to the right to self-determination demonstrates that it takes case-specific and very political stances. There have been scenarios where Turkey has willingly backed the right to self-determination, for example in the case of Northern Cyprus, or has manifested support for the exercise of self-determination, for example in the case of Kosovo.²⁶¹ The Turkish Ministry of Foreign Affairs' said it would render its full support in "developing a positive and constructive dialogue between Kosovo and Serbia" in response to the ICJ's advisory opinion that Kosovo's Declaration of Independence is legal under international law.²⁶² Turkey's support of self-determination in the context of Kosovo may be attributed to the equivocal nature of the ICJ's advisory opinion.

The most prevalent method the Government has used to persistently deny the Kurds their right to self-determination is the criminalisation of political and civil society organisations promoting Kurdish rights and freedoms.²⁶³ The Government, through associating political support for the Kurds with separatism, has taken advantage of the anti-terror laws to prohibit pro-Kurdish parties, remove them from positions in the political system and justify their subsequent arrest.²⁶⁴ This strategy of outlawing peaceful and genuine Kurdish political parties, systematically, has been used by the government from the early 1970s and has curbed the ability of Kurdish parties to effectively and meaningfully participate in the Turkish political system.²⁶⁵

C. *Turkey's Constitutional Court and the Right to Self-Determination*

Within the Turkish legal system, the perspective on the right to self-determination is encapsulated by the judgments of Turkey's highest court,

260. Bayir, *supra* note 190, at 13.

261. Aral, *supra* note 251, at 142.

262. No: 163, 22 July 2010, *Press Release Regarding the ICJ's (International Court of Justice) Decision on Kosovo's Declaration of Independence*, REPUBLIC TURK. MINISTRY FOREIGN AFF. (July 22, 2010), http://www.mfa.gov.tr/no_-163_-22-july-2010_-press-release-regarding-the-icj_s_-international-court-of-justice_-decision-on-kosovo_s-declaration-of-independence.en.mfa.

263. Bayir, *supra* note 190, at 10–11.

264. *Id.* at 11 n.29.

265. See Berna Öney, *Mainstream Parties' Strategies on the Ethnic Dimension in New Democracies: The Case of Kurdish Opening-Up Process in Turkey*, 56–57 (June 7, 2015) (unpublished Ph.D. dissertation) (on file with the Carl Von Ossietzky Universität Oldenburg).

the Turkish Constitutional Court—*Anayasa Mahkemesi* (AYM) on political party closures.

These cases arose when a series of Kurdish political parties were closed down for insisting on the right to self-determination and striving for rights including legal protection of their culture and language.²⁶⁶ They urged for a resolution to the “Kurdish problem” with proposals ranging “from federation, territorial autonomy to devolution of power.”²⁶⁷ The AYM’s main rationale for the closure of Kurdish political parties was grounded in Article 3 of the Constitution which states, “The Turkish State, with its territory and nation, in an indivisible entity.”²⁶⁸ Article 3 is considered so important that it cannot be amended nor can its amendment even be proposed, as set out in Article 4.²⁶⁹

The phrase “the state’s indivisible unity with its nation and territory” [has been labelled a substitute] for the unitary state system.²⁷⁰ The phrase is repeated throughout the Constitution and is identified as “one of the fundamental aims of the state in [Article 5].”²⁷¹ Articles 14, 26 and 28 stipulate that “the state’s indivisible unity with its nation and territory” can trump fundamental rights and freedoms for its protection.²⁷² Anything contrary to the state’s indivisible integrity with its nation and territory is banned.²⁷³ Ultimately, Article 3 preserves the notion of “one state, one nation, one language, one country.”²⁷⁴

Under Article 80 of the Law on Political Parties 1983, political parties are prohibited from legally demanding and taking action to change the unitary nature of Turkey.²⁷⁵ This provision has routinely been used to collapse pro-Kurdish parties that promote decentralisation.²⁷⁶ Article 81 states that political parties shall not “maintain that there are minorities in the territory of Turkey based on differences of national or religious culture, or race, or language,” and shall not “harm national unity by way of creating minorities in the territory of the Republic of Turkey through protecting,

266. Bayir, *supra* note 190, at 10–11.

267. *Id.* at 15.

268. *Id.* at 15–16; THE REPUBLIC OF TURKEY CONSTITUTION, art. 3 (1982).

269. Bayir, *supra* note 190, at 15 n.41.

270. *Id.* at 15.

271. *Id.* at 15 n.42.

272. *Id.*

273. *Id.* at 15.

274. Bayir, *supra* note 190, at 16.

275. *Id.* at 15.

276. Michael M. Gunter, *Turkey: The Politics of a New Democratic Constitution*, MIDDLE E. POL’Y, Spring 2012, at 119, 120.

developing or spreading languages and cultures other than the Turkish language or culture.”²⁷⁷

The AYM has denied the relevance of minority protection and the right to self-determination to Kurds and has denied their connection to the safeguarding of human rights and to democracy overall.²⁷⁸ Essentially, the AYM’s narrow interpretation of the unitary state system has been used as a lawful justification in undermining Kurds’ demands.²⁷⁹

The AYM’s judgments identify, as one of the aims of the unitary state concept, the need to prevent the creation of a minority in Turkey.²⁸⁰ In one judgment, the AYM declared that there is sole sovereignty in a unitary system, and thus there ought to be only one nation.²⁸¹ The concept of federalism and autonomous regions are incompatible with this notion as they allow for many sovereignties belonging to various nations.

Sovereignty is a right belonging to the Turkish nation, and not the people. The Kurds’ only right to sovereignty is being part of the sovereign Turkey. Thus, separatist ideologies aimed at the creation of a Kurdish nation bestowed with sovereignty are unlawful.²⁸²

To date, the AYM has only referred to the right to self-determination in its “external aspect [implying] secession.”²⁸³ As a result, by equating self-determination to secession, the AYM has made any claim for the right to self-determination illegal.²⁸⁴ The AYM has asserted that discussing “ethnic differences in a national and a unitary state is [outlawed] by international law.”²⁸⁵ Furthermore, “to differentiate between Turks and Kurds, and seek the . . . right to self-determination for the Kurds . . . [also] constitutes a breach of international law.”²⁸⁶ Controversially, it has neglected the internal aspect of self-determination entirely.

Turkey’s vehement stance towards the closure of any political parties has been condemned on many occasions by the ECtHR as being in breach of the ECHR.²⁸⁷ The ECtHR disagrees with Turkey that an alternate system within a sovereign state such as a federation, autonomous region or the like

277. *Id.*

278. Bayir, *supra* note 190, at 11.

279. *Id.*

280. *Id.* at 16.

281. *Id.*

282. *Id.* at 17.

283. Bayir, *supra* note 190, at 20.

284. *Id.*

285. *Id.* at 23.

286. *Id.*

287. *Id.* at 17.

are contrary to democracy.²⁸⁸ Instead, the ECtHR has advocated that they are in fact consistent with the interpretation of the ECHR.²⁸⁹ In its judgment of *Socialist Party v. Turkey*, the ECtHR held: “It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself.”²⁹⁰ Statements that Kurds have a right to self-determination are not undemocratic; they are the epitome of democracy.

In contrast to international norms, the AYM has interpreted the right to self-determination as a “one-off” right to be claimed at a “particular period” rather than as an on-going right.²⁹¹ The AYM stated, “The right to self-determination is not a new concept It was dropped from the agenda of the Turkish Nation with the Lausanne Treaty.”²⁹²

The reference to the right being dropped is relevant to the Kurds as the AYM asserts that they have “used their ‘one-off’ right to self-determination in Lausanne . . . by agreeing to live within the Turkish state.”²⁹³ The AYM thus denies that the Kurds have any other right to self-determination.²⁹⁴ More recently, the AYM has taken a more extreme view in its judgment asserting that there has been no oppression of or any bans against Kurds and held “the allegation that Kurdish people in Turkey are “oppressed and exploited on the basis of ethnicity” to be a “fictitious hypotheses.”²⁹⁵

D. Application of Self-Determination to Kurds

The Kurds meet the objective elements required to attain the legal right of self-determination based on their common language, religion, ethnicity, history, and culture. The Kurds share the common language of Kurdish. While there are four distinctive dialects, the dialects are similar enough that they are all referred to as “Kurdish.”²⁹⁶ The Kurds in Bakur

288. Bayir, *supra* note 190, at 17.

289. *Id.*

290. *Socialist Party v. Turkey*, 27 EHRR 51, 85 (1998).

291. Bayir, *supra* note 190, at 21.

292. *Id.*

293. *Id.*

294. *Id.*

295. *Id.* at 23–24.

296. Alexander Dawoody, *The Kurdish Quest for Autonomy and Iraq's Statehood*, 41 J. ASIAN & AFR. STUD. 483, 484 (2006).

share a common religion—being predominantly Sunni Muslim.²⁹⁷ Lastly, the Kurds are a distinct ethnicity with a common history.²⁹⁸ They are a distinct ethnicity that “dates back to 2000 BC when the first vanguard of Indo-European-speaking people arrived and settled” in the area known as “Kurdistan.”²⁹⁹ The Kurds’ struggle for autonomy over thousands of years shows that, notwithstanding all the turmoil and upheaval in the region, the Kurds are connected by their heritage and common history than by any arbitrary borders.

The Kurds also meet the subjective elements of self-determination, as they perceive themselves collectively as Kurds. The Kurds do not identify themselves as Turkish and want to have their own Kurdish state. They have fought endlessly for their rights and freedoms. Given that the Kurds see themselves collectively as Kurds and have been fighting for autonomy, there is little doubt that they satisfy the subjective element of self-determination.

Pertinent to the definition of “indigenous peoples” in international law, Kurds satisfy this criterion also. Kurds consider themselves a distinct group from other groups living in their territory, namely Turks in Bakur, but also Assyrians, Chaldeans, Iranians and Arabs in Bashur, Rojhalat and Rojava.³⁰⁰ As the Kurds date back to the twelfth century and occupied a village deemed one of the oldest villages in the Middle East, prior to the establishment of modern day Iraq, Turkey, Syria and Iran, there is evidence of a shared common ancestry before its domination a series of groups.³⁰¹ Furthermore, there is a plethora of evidence corroborating that the Kurds live in a specific geographic area they call “Kurdistan,” that they all speak Kurdish whether one dialect or another and that they share a rich culture and history.³⁰² By all accounts, there is compelling evidence to suggest that the Kurds meet the criteria to be deemed “indigenous peoples” and should thus be guaranteed the same rights to self-determination.

Axiomatically, the Kurds also meet the criteria for being a minority people. They are a group numerically inferior to the dominant ethnically Turkish population in Turkey, maintain a non-dominant position and, while

297. *Kurdish Religions*, KURDISH PROJECT, <https://thekurdishproject.org/history-and-culture/kurdistan-religion/> (last visited Nov. 6, 2017).

298. Dawoody, *supra* note 296, at 485.

299. *Id.* at 484.

300. *Id.* at 485; Zack Beauchamp, *6 Essential Facts About Iraq’s Kurds*, VOX (Aug. 12, 2014, 2:20 PM), <https://www.vox.com/2014/8/12/5991425/kurds-iraq-kurdistan-peshmerga>.

301. See Dawoody, *supra* note 296, at 484; See Fehim Tastekin, *KRG Trench Divides Syrian, Iraqi Kurds*, AL-MONITOR (Apr. 21, 2014), <https://www.al-monitor.com/pulse/originals/2014/04/kr-g-trench-divides-syrian-iraqi-kurds.html>.

302. Dawoody, *supra* note 296, at 485.

being nationals of the Turkish State, possess ethnic and linguistic characteristics which differentiate them from the rest of the population. There is strong evidence of a sense of solidarity as envisaged through the majority support of the PKK which is aimed at ameliorating their minority status and preserving their culture, traditions and language.

The Kurds as a group, whether deemed indigenous peoples or minority people, ought to have the right to decide on the form of their national self-determination. This may take the form of autonomy, federalism, confederalism or independence.

While originally the PKK sought external self-determination as the only solution to Turkey's Kurdish question, as the reality of the quest sunk in they abandoned their secessionist policy.³⁰³ The PKK eventually transformed their demands to one which could be embraced within the current nation state structure but which guaranteed territorial and cultural autonomy for the Kurds.³⁰⁴ As mentioned earlier, Öcalan now suggests a structure beyond the bounds of the rigid nation-state, consisting of a democratic republic, democratic autonomy, and democratic confederalism.³⁰⁵

The Kurds have a legitimate territorial claim to the right to self-determination. Kurds have inhabited the same territory for thousands of years. They have survived and retained their distinct culture in the face of genocide, assimilation, human rights abuses, and suppression at the hands of their oppressors. They have remained on their homeland despite efforts to remove them.

When the Treaty of Lausanne failed to include an independent Kurdistan, Kurds did not acquiesce silently.³⁰⁶ They have persistently fought for autonomy and independence across all four regions.³⁰⁷ Kurds have a valid claim to the territory.

303. Bayir, *supra* note 190, at 9.

304. *Id.*

305. See Ahmet Hamdi Akkaya & Joost Jongerden, *Confederalism and Autonomy in Turkey: The Kurdistan Workers' Party and the Reinvention of Democracy*, in *THE KURDISH QUESTION IN TURKEY: NEW PERSPECTIVES ON VIOLENCE, REPRESENTATION AND RECONCILIATION* 186, 187 (Cengiz Gunes & Welat Zeydanlioğlu eds., 2014).

306. *See id.*

307. *Id.*

E. The Demands for Self-Determination

On January 11, 2012, various Kurdish political organisations gathered in Amed and declared their position vis-à-vis the Constitution.³⁰⁸ They demanded Turkey constitutionally recognise their right to self-determination and the realisation of their right through regional autonomy under the current state structure and further demanded the protection of their cultural and linguistic rights.³⁰⁹ Specifically, their demands are as follows:

- a) The recognition and guarantee of Kurdish peoples' identity;
- b) Compliance with international standards pertinent to the rights to associate and form political parties using the terms 'Kurd' and 'Kurdistan' in party names;
- c) The recognition of Kurdish as an official language of Turkey, the guarantee of the free use of the Kurdish language in every aspect of life—private and public, and the guarantee of education in the Kurdish language; and
- d) Provision of political status for the Kurdish people on the geography of Kurdistan to guarantee their right to self-determination.³¹⁰

In 2013, the Amed Conference for Democracy and Peace took place with members across the Kurdish political spectrum congregating to form a resolution on the position of Kurds.³¹¹ They urged for Kurds to be granted the right to self-determination through autonomy, federation, or independence on the basis of their own decisions and approval.³¹² Additionally, they reiterated the demands previously outlined that the new constitution ought to grant their ethno-cultural rights and expressed that a solution to the Kurdish problem cannot be attained without determining Kurds' legal status.³¹³ Therefore, they seek a contemporary democratic constitution that guarantees the right to full political mobilisation, the use of

308. Bayir, *supra* note 190, at 10.

309. *Id.*

310. *Id.* at 10 n.25.

311. Songul Karabulut, *How to Involve Society in the Peace Process*, in KURDISTAN NAT'L CONGRESS, PEACE PROCESS IN TURKEY 7 (July 2013), http://www.kongrakurdistan.net/en/wp-content/uploads/KNK_peaceprocessjuly2013.pdf.

312. *Id.*

313. *See id.*

Kurdish as a means of instruction and the recognition of Kurdish as an official language of Turkey constitutionally.³¹⁴

The demands by the Kurds require *de jure* recognition of the Kurds by the Government as a distinct ethnic group. Furthermore, these Kurdish demands constitute a challenge to the Turkish legal system, particularly when taking into consideration that, to date, a myriad of political parties have been shut down specifically in relation to their claims for the exercise of the right to self-determination for the Kurds.³¹⁵

In the absence of democratic decentralisation in Bakur, the ability of Kurds to participate meaningfully in the creation of national policies and laws is immensely limited. The creation of a truly representative decentralised body or bodies in Bakur is fundamental for the realisation of the right to self-determination by Kurds as elucidated by Article 1 of the ICCPR and the ICESCR.³¹⁶

VIII. THE FUTURE FOR KURDS

This section postulates recommendations for Turkey to implement in order to meet its legal obligations of protecting Kurds. Furthermore, a strategy is recommended for the Kurds in Bakur to claim their right to self-determination through declaring a federal state and the prospect of a Kurdish state is touched on.

A. Recommendations for Turkey

No lasting solution to the Kurdish question can be achieved unless Kurds gain legal status in Turkey as a distinct and separate group. The failure to recognise Kurds as a distinct group and the persistent violation of their human rights epitomises the Government's embedded culture of oppression and the marginalisation of Kurds. The lack of a legislative framework to safeguard minority rights and protect against discrimination as well as the lack of access to justice domestically reinforce a culture of repression against Kurds.

Despite being involved in the EU accession process since 1991, Turkey has failed to address its gross mistreatment of the Kurds. To achieve lasting peace, it is crucial for Turkey to commit to a genuine democratic transition by confronting abuses of rights, anti-democratic and discriminatory practices, and the inequalities which have perpetuated decades of conflict.

314. Bayir, *supra* note 190, at 10 n.26.

315. *Id.* at 10–11.

316. KHRP, *supra* note 92, at 8, ¶ 4.

Turkey must amend its Constitution to strengthen democracy and the protection of human rights. The Constitution must be consistent with international law by recognising all minorities within Turkey and protecting their rights. Further, the Constitution must replicate the ICCPR and ICESCR in protecting the right to self-determination of peoples. Turkey must meet the requirements of the international conventions it is a party to, as identified earlier in this paper. If Turkey has appropriate legal mechanisms in place, there can be a more legitimate space for Kurds to exercise their rights and to claim self-determination. However, given Turkey's reluctance and lack of commitment to effectuate concrete changes towards an acceptable standard of human rights and minority protection, the Kurds cannot rely on the amelioration of their rights any time soon. They must take urgent action.

B. The Exercise of Self-Determination

Pertinent to ongoing human rights abuses, pressure against politically active Kurds, and, in light of the progress made by the Kurds in other regions, the Kurds in Bakur should claim their right to self-determination immediately. Given its constituents have succeeded in claiming self-determination—in Bashur by establishing an autonomous region in the last decade, and more recently by the Kurds in Rojava by declaring a federal state³¹⁷—Kurds in Bakur should also declare a federal state. By doing so, the Kurds will have more than just a seat at the table; they can organise themselves, participate, and engage in decision-making. By empowering Kurds, they can be champions of change for their own lives.

1. Earned Sovereignty

Once Kurds in Bakur have claimed self-determination in its internal form, they can work towards external self-determination—the formation of an independent state through secession from Turkey. Immediate secession is not a viable option presently as it may undermine stability in the already fragile region and thus jeopardise the prospect of sufficient international support to merit recognition.

The most feasible approach based on the probability of lasting success and reduction of short-term violence is through the “earned sovereignty” doctrine. “Earned sovereignty” “entails the conditional and progressive devolution of sovereign powers and authority from a state to a substate

317. See Rodi Said, *Syria's Kurds Rebuked for Seeking Autonomous Region*, REUTERS (Mar. 17, 2016, 7:23 AM), <https://www.reuters.com/article/us-mideast-crisis-syria-federalism/syrias-kurds-rebuked-for-seeking-autonomous-region-idUSKCN0WJ1EP>.

entity under international supervision.”³¹⁸ Under “earned sovereignty,” Kurds in Bakur can eventually transition from Turkish authority to an independent Kurdish state and facilitate a peaceful end to armed struggle. The successful execution of “earned sovereignty” in ethnic conflicts across the globe, for example in Montenegro, Kosovo, and Northern Ireland, indicate its potential application to Kurds in Bakur.³¹⁹

“Earned sovereignty” has three main elements: shared sovereignty; institution building; and determination of the final status of the substate entity and its relationship to the parent state.³²⁰ Each will be discussed in turn.

The first element allows for the state and substate entity to simultaneously exercise sovereign authority.³²¹ Through already-existing organisations such as *Kongra-Gel*,³²² KCK,³²³ and others, and by establishing a federal state, Kurds in Bakur can demonstrate self-government and satisfy the requirement for shared sovereignty in Turkey.³²⁴

The second element requires the substate to collaborate with the international community to establish the political infrastructure and government institutions required to manage the greater authority that comes with effectively governing a sovereign state.³²⁵ Kurds have already established political infrastructures to facilitate grass-roots participation as well as a legislative body. With international support, the existing institutions can be bolstered and more can be established.

The third element can be determined via referendum or negotiations between the parent state and substate entity, however, the determination of final status for the substate entity relies on recognition by the international community.³²⁶ Although recognition is not an element of “earned sovereignty,” lack of recognition would hinder Kurdistan’s political and economic ties with other nation-states. Working with the international

318. Paul R. Williams & Francesca Jannotti Pecci, *Earned Sovereignty: Bridging the Gap Between Sovereignty and Self-Determination*, 40 STAN. J. INT’L L. 347, 350–54 (2004).

319. Hadji, *supra* note 197, at 515.

320. Williams & Pecci, *supra* note 318, at 355–56.

321. *Id.* at 355.

322. *Kongra-Gel (KGK) / Kurdistan People’s Congress / PKK*, TERRORISM RES. & ANALYSIS CONSORTIUM, <https://www.trackingterrorism.org/group/kongra-gel-kgk-kurdistanpeople%E2%80%99s-congress-pkk> (last visited Nov. 5, 2017).

323. Serkan Kekevi, *System of Group of Communities in Kurdistan (KCK): An Assessment of State, Federalism, KCK Practices and International Developments*, 10 J. STUD. SOC. SCI. 112, 112 (2015).

324. Williams & Pecci, *supra* note 318, at 357.

325. *Id.* at 355.

326. *Id.* at 355–56.

community to achieve independence is a powerful tool for attracting more support within the international arena. This support is crucial in the situation where the parent state does not recognise the substate entity, as evidenced by Kosovo's successful secession.³²⁷

Through the "earned sovereignty" approach, Kurds in Bakur can achieve their dream of a Kurdish state and end their suffering at the hands of Turkey. I believe this is the most appropriate solution for Kurds to take to remedy their situation in Turkey.

IX. CONCLUSION

The oppression of Kurds is not a new phenomenon. Kurds have been victims of persistent abuses of their fundamental rights, discrimination, assimilation and genocide—all aimed at the eradication of their existence. Notwithstanding their history of persecution, Kurds have not backed down. Since they were stripped of their right to independence by the Treaty of Lausanne, Kurds have made concerted efforts to fight for their rights and have persevered in their plight for independence. Turkey has actively stifled any attempts by the Kurds to seek protection of their rights and consistently refused to recognise Kurds as a minority.

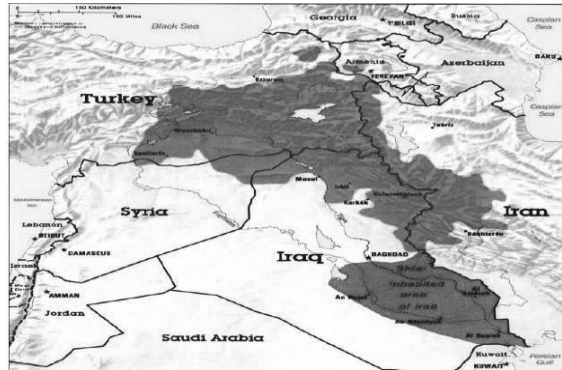
In order to end the injustice suffered by Kurds and to afford them adequate protection as a people, Turkey needs to legally recognise Kurds as a minority. Turkey's law has fundamental shortcomings in safeguarding human rights, rights for minorities and recognising the right to self-determination. There is a culture of systemic oppression of Kurds. Turkey needs a transformation of its laws to comply with international standards. Despite condemnation from international bodies and the EU, Turkey has failed to effectuate real changes. The truth remains that there will be no solution to the Kurdish issue unless Kurds act urgently and for themselves.

By claiming their right to self-determination, Kurds can escape the cycle of suppression and determine their own future. Kurds must play a central role in their own governance without interference. Once Kurds have asserted their right to self-determination, Kurdistan is achievable if strategically pursued through the "earned sovereignty" approach.

327. Hadji, *supra* note 197, at 537.

X. APPENDIX

Marked red on the map of Kurdistan is the Kurdish territory divided among the states of Iraq, Iran, Turkey, and Syria.³²⁸



328. CHAK, *supra* note 19, at 7.