

TURKEY SHADOW FOLLOW UP REPORT

Submitted by

**The Executive Committee for the NGO Forum on CEDAW – Turkey
&
The Women’s Platform on the Turkish Penal Code**

Introduction

In 2010, the CEDAW Committee requested a follow up report from the Government of Turkey on the issues of “violence against women” and “headscarve” in Paragraph 48 under the title “Follow up to Concluding Observations” of the Concluding Comments of the report subsequent to the 6th Periodic Review of Turkey. The Government of Turkey also drafted an official report on these two issues in 2012.

The Executive Committee for the NGO Forum on CEDAW-Turkey (also called the CEDAW Civil Society Executive Committee in Turkey) and the Women’s Platform on the Turkish Penal Code have drafted this follow up shadow report in order to provide an overview of the developments, as seen from the perspective of civil society, regarding the elimination of violence against women in the period elapsed since 2010.

As referred to in the Government’s interim report, much has been done by the government to prevent violence against women. To mention the most prominent ones, the Government of Turkey first of all played a leading role in signing and ratifying the Council of Europe Convention on Preventing and Combating Violence against Women (the Istanbul Convention). Second, the Government made a new law entitled the Protection of the Family and Prevention of Violence against Women that widened the scope and the role of jurisdiction, expanded the involvement of governmental organizations, and introduced new structures for better methods for the prevention of violence against women. In addition, a new department called ŞÖNİM (the Center for Preventing and Monitoring Violence) within the Ministry of Family and Social Policies has been in the process of being established. Given the boom in the number and frequency of femicide cases¹ and the high percentage of domestic violence,² these and other developments concerning violence against women have been both an indication of significant attention paid to and the priority given by the Government to the problem of violence against women.

Despite the above-mentioned and other positive developments to which women’s rights-based organizations contributed notably through monitoring, lobbying and the like, women’s organizations have a growing concern regarding a backlash in terms of the rights gained as foreseen in the CEDAW principles. This is because of the overall socio-political context in which women’s human rights in Turkey are at present, the situation of which is outlined in this report.

¹ <http://bianet.org/bianet/print/132742-kadin-cinayetleri-14-kat-artti> (15 September 2011)

² http://kadininstatusu.gov.tr/upload/mce/eski_site/tdvaw/Statistics.htm

Relevant articles:

CEDAW Convention Articles 2.f, and 5 (elimination of prejudices and cultural practices), 10, 12:

Concluding Comments Paragraphs 20 and 21 under the heading “Stereotypes, Cultural Practices”:

The 2010 Shadow Report submitted to the CEDAW Committee by the Executive Committee for NGO Forum on CEDAW – Turkey and the Women’s Platform on the Turkish Penal Code underscored two major root causes for the inadequacies in the elimination of all forms of discrimination against women in Turkey:

a) Increasing conservatism and the conservative discourse and policies employed by the government

b) The insufficiency of political commitment for the elimination of all forms of discrimination against women

The same report argued that while there were still shortcomings in legislation, the main problem with legal regulations resulted from problems involved in their implementation, which in turn stemmed from the insufficiency of political will and commitment to address the issue. Furthermore, the report exposed the social policies, starting out with the constitutional amendment in 2010 which identified women as a vulnerable group alongside children, the elderly and the disabled, restricting women’s participation in public life, confining them to traditional family roles and care responsibilities, and envisioning and enacting policies to increase social welfare via confining women to the familial and domestic sphere.

In the two years elapsed since the 2010 shadow report, our criticism of the government and its policies have crystallized. Therefore, we have to reiterate the same concerns and criticisms. The exemplar of such crystallization was the changing of the name of the Women’s Ministry to the Ministry of Family and Social Policies, as women are no longer even named in the discussion. Furthermore, many of the concurrent changes affecting women’s social status have resulted in alarming backlashes as opposed to advancements in women’s rights. For example, the reforms in the education system have pulled the age of starting primary school down to 5, allowing students to continue schooling at religious schools after the first four years and making the last four years of the 12 year compulsory schooling discontinuous. While women’s organizations demand for 12 years of mandatory and uninterrupted education remains unmet, this education policy threatens to increase discrimination against girl children, decrease girls schooling rates, directs girl children to only religious education, and/or causes girl children to be homeschooled, thus indirectly resulting in the establishment of a public order structured around gender segregation, and gender-based discrimination thereof.

Furthermore, within the contexts of increasing conservatism and the dominant patriarchal discourse, women's human rights are being sidelined and contested on the basis of religious values rather than being promoted as inalienable rights. It is possible to enumerate many examples of this phenomenon. However, the most crystallized debate in this connection took place with the government's attempt to ban abortion. Although abortion has been safeguarded as a reproductive right since 1983, the debate on its banning was justified on the basis of male dominant religious values.

The prime minister, who stated that women and men were not equal at a meeting with women's organizations on the same day when Turkey was under review by the CEDAW Committee at the UN Headquarters in July 2010, has claimed at the 2012 International Population and Development Conference organized by the UNFPA and the European Parliamentarians Forum that abortion was murder. Women's rights advocates who have taken a stance in this abortion debate have been declared murder advocates. While the process for changing the abortion laws remains scheduled for the fall when parliament resumes, the overall backlash regarding women's rights and the tendency to shift the women's human rights paradigm from a human rights axis to a traditional religious values framework and a conservative patriarchal family and social order axis is alarming.³

Another visible outcome of the increasing conservatism is the state's increasingly blatant attempt to intervene with women's right to make decisions regarding their own bodies. Since the prime minister asked women to bear at least 3 children in his speech on International Women's Day in 2008, the government has been propagating that women should have more children. Furthermore, the state is also imposing decisions regarding how women are to deliver these three children. The Ministry of Health, which sought to limit the widespread amount of C-section births, has found a remedy by penalizing doctors who perform a C-section "unless it is necessary". In a parallel control mechanism, pregnancy tests and morning after pills have become subject to tracking, and women's access to both have been regulated by what could be deemed moral restrictions.

A Review of Developments around the Issue of Violence against Women

Relevant articles:

CEDAW Committee General Recommendation no. 19 and Articles 2 (e, f), 3, 4 (2), 5, 10, 11/2 (a, d), 12/1, 14/2 (b, c, h), 16/1

Concluding Comments Paragraphs 22, 23, 24 under the heading "Violence against Women"

The most important development around the issue of eliminating violence against women, which was a major component of the government report, is the new Law on the Protection of

³ <http://www.wwhr.org/category/news/32989/rights-activist-ilkkaracan-abortion-bans-hurt-poor-women-most>

the Family and the Prevention of Violence against Women. The shortcomings of the legislation and the lawmaking process are delineated below:

- The law-making process entailed the participation of women's rights organizations. However, neither the draft law that women's rights organizations prepared with consideration of the inadequacies of the previous law no. 4320 on the Protection of the Family and its implementation nor their nonnegotiable demands were finally taken into consideration by the Ministry of Family and Social Policy in the process. Instead, women's organizations proposals were restructured by the Ministry in accordance with the conservative policies of the government. When women's organizations voiced this concern, they were unable to get any substantial response from the Ministry. Due to the Ministry's tenacious approach to treating women's organizations as a bureaucratic institution within the state hierarchy and the Ministry's discriminatory stance by disregarding women's right to make decisions concerning their bodies in the abortion ban attempt, women's organizations have decided to abstain from participating in the process of the drafting of the bylaw of shelters.
- One of the most significant problems with the law that should combat violence against women is the name of the law as it was passed in the parliament. The law was initially entitled the "Law on the Protection of Women and Family Members from Violence". The cabinet, however, changed the name of the draft law and requested only the inclusion of "protection of the family" in the title. This title led to the gravest drawback, because it was a message to judges that they "first protect the family, ensuring that the woman succumbs even if she faces violence so she does not jeopardize the unity of the family". To give a more concrete example, in a trial in which one of the authors of this report served as a lawyer, in which the lawyer objected the ruling with the reason that the decree should make reference to the CEDAW and abide by its principles. As a response to her objection, the family court judge stated, "the priority is on the protection of the family".
- The principle of "gender equality" was left out of the principles of the law, on the grounds that this might also apply to LGBT individuals. This was instead replaced by the following statement: "In the provision of support and services to victims of violence, a human rights-based and gender equality sensitive approach in line with the principles of the social state is adopted in a fair, effective and swift manner."
- The term "sexual orientation and sexual identity," which would enable the protection of LGBT individuals as proposed by women's organizations and made reference to in the Istanbul Convention, was not included in the legislation text.
- Women and children's access to justice is obstructed by practices such as forcing sexual violence victims to undergo gynecological and psychological examinations, forcing a 3.5 year old victim to testify at trial, and the denial of non-public cases and trials to protect the right to privacy.

- Even though the law made reference to the Istanbul Convention grounded in CEDAW principles, the prohibition of reconciliation and mediation was not included in the text. As such, the reconciliation proposals and mediation efforts of security forces, civilian authorities, prosecutors, lawyers and judges were legitimized.⁴ It is possible to find examples of reconciliation and mediation attempts in cases of violence against women in the media; however, an even more disconcerting development is the proposal in a report published by the Supreme Council of Judges and Public Prosecutors to address domestic violence as a crime prosecuted upon complaint in the context of the relevant article of the Turkish Penal Code.⁵
- The jurisdiction of both civilian authorities and security forces was left ambivalent, with abstract definitions such as “appropriate measures” and “in cases where the delay is deemed problematic”. For instance, during the drafting of the present report, on June 19, 2012, Mahmure Karakule was murdered at the age of 19 by her husband. She had been married when she was 13, had two children aged 5 and 18 months, and was pregnant again when she was murdered. She was constantly being subject to physical domestic violence. On the day she was killed, her neighbors called the police due to the husband’s ongoing violence throughout the day, but the police who came to the house left without any intervention. Later her husband aged 31 killed Mahmure, stabbing her 47 times. The husband indicated that he killed his wife because she did not cook the meal he requested; the police attempted to justify their failure to intervene by saying Mahmure did not report the violence and did not request protection.⁶ Research conducted throughout Turkey with a representative sample indicates that the rate of child brides (early marriage under the age of 18) is as high as 40%.⁷ Considering the fact that every day at least two women are killed with flimsy excuses in Turkey, we must strongly reemphasize that any shortcoming, loophole or ambiguity in the law costs women’s lives.
- Even in cases where a protection order is issued, it often falls short of ensuring security of women due to shortcomings in implementation. In cases of complaints of violations of the order, the judiciary falls short in meeting the mandate of the law. The prosecution process remains lengthy, sometimes concluding only after the restraining order has expired. Even though the new law has been in effect since March 2012, no conviction of violations has been reported in the media.
- While it is essential that court officials who make decisions on violence against women should receive on-the-job training and those who are studying law should receive credible information about gender equality, CEDAW and violence as part of their university curriculum, the law in question introduces neither mandatory training nor an initiative to include the relevant curricula in law faculties under the Council of Higher Education.

⁴ <http://www.wwhr.org/category/news/32989/rights-activist-ilkkaracan-abortion-bans-hurt-poor-women-most>

⁵ <http://bianet.org/bianet/insan-haklari/137802-hsyk-niye-siddet-barindiran-aileyi-koruyor>

⁶ <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalEklerDetayV3&ArticleID=1094602&CategoryID=77>

⁷ <http://www.sabancivakfi.org/page/child-brides>

- The establishment, organization, staff and timeline of the “violence monitoring and prevention centers”, a novel structure in the law, was left up in the air without specification. Although it was imperative that the centers we demanded operate 24 hours per day, 7 days per week, with a one-door system established immediately, the law foresees that these centers be established over the course of two years, only as a pilot project. Furthermore, the centers of the General Directorate of Social Services, which in the past used to provide counseling and shelter services for women subjected to violence, have been closed down, and the staff, who had accumulated knowledge and experience in the field, have been appointed to other posts. The unsystematic dissolution of the already insufficient personnel into a restructured organization without necessary infrastructure remains a worrisome development.
- Women’s organizations’ appeal to act as intervening parties in the cases of violence against women and femicide cases was denied. Instead, the Ministry of Family and Social Policy has been designated the intervening party. The rejection of women’s organizations’ demand for intervention implies the forestalling of appeals as well as the application to international courts of femicide cases.
- Our proposal for an indefinite protection order was not included in the law. Currently, the protection order is issued for only a limited amount of time, and the aggrieved party must reapply to renew the order at the end of the term.
- The childcare support for women who obtain a protection order was limited to only a brief period. Since there is no obligation for workplaces with fewer than 150 women employees to open daycare centers, childcare remains an important obstacle for women who have been subject to violence as they strive to start a new life by participating in work life. Thus, many women are forced to return to the house where they were subject to violence.
- Even though the Law on the Protection of the Family and the Prevention of Violence against Women seems to bring many innovations on paper, there are numerous problems in implementation. For instance, one of the most substantial issues for concern is that civilian authorities, who are ascribed with a great deal of responsibility by law, remain unknowledgeable about the issue, and women who apply to these authorities cannot benefit completely from their legal rights. Furthermore, the fact that women’s applications for temporary financial support from district governorships are rejected due to place of residency issues while they stay at a shelter signifies that the pledged economic support is not, in reality, provided. Additionally, it has been observed that relevant judicial units and security forces still violate a number of principles, in particular that of confidentiality.
- According to Municipal Law no. 5393, dated 2005 (article 14.a), municipalities with a population over 50000 are required to open a shelter. According to the straightforward reading of the law, there should have been at least 197 shelters, and according to the EU

standards (one place for 7500 of the population to 10000 of the population)⁸ there should be approximately 9000 shelters overall in Turkey.⁹ Due to the lack of any sanctions, currently there are only 86 women's shelters throughout the country: 55 under the ministry, 28 under local governments (municipalities) and 3 operated by NGOs.¹⁰

- The web site for the General Directorate of the Status of Women, the national machinery, does not include any data or statistics regarding the women killings. The only way to access such information is through parliamentary motions by MPs.

Efforts on the part of the government to eliminate violence against women remain inadequate because the espoused value in these efforts is not women's human rights, but rather the family. Numerous women are "sacrificed" each day in the name of protecting the family.

Furthermore, at the current rock bottom of conservatism in which women's human rights are interpreted through the lens of religious values, the interpretations of religion are also growingly more conservative. Besides, the structural aspect of violence against women and its interaction with culture are being disregarded all together.

The government's approach to women is culminating in an even more entrenched patriarchal structure. The fact that a police officer who is known to have sexually tortured tens of women has recently been promoted to be deputy chief of the Istanbul Police force and the fact that the Ministry of Family and Social Policies has failed to voice any criticism of this promotion are both, unfortunately, indicative of how dominant and powerful patriarchal approaches and practices continue to be in Turkey.

⁸ <http://www.coe.int/equality/>

⁹ <http://www.haberturk.com/yazarlar/elif-safak/595486-catisiz-kalmak>

¹⁰ <http://www2.tbmm.gov.tr/d24/7/7-6740sgc.pdf>