



TURKEY:
Submission to the Human Rights Committee's
Country Report Task Force on Turkey for the Adoption of a List of Issues
For the 104th Session: 12–30 March 2012
by
The Advocates for Human Rights,
a non-governmental organization in special consultative status
pursuant to HRC resolution 5/1 of 18 June 2007

Statement of Interest

1. Founded in 1983, The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. In partnership with the American Bar Association's office in Istanbul and with the Law School of Bahçeşehir University, The Advocates developed and taught a curriculum for lawyers on the effective and sensitive representation of domestic violence clients. In preparation for the curriculum development, The Advocates interviewed lawyers, judges, shelter advocates, psychologists, and others who serve domestic violence clients in Turkey.
2. The Advocates submits the following suggested questions for adoption by the Country Report Task Force on Turkey of the Human Rights Committee. This submission focuses on victim-oriented remedies for gender-based violence that arises out of current or former intimate relationships between the abuser and the victim. It also briefly addresses the related issue of honor-based killings.

Executive Summary

3. Gender-based violence is a serious problem in Turkey. The Committee on the Elimination of Discrimination against Women in 2010 expressed concern “about the continuing prevalence of violence against women, including domestic violence, which affects 39 per cent of women in the territory of” Turkey.¹ The Committee against Torture in January 2011 expressed its continuing concern “at the reported extent of physical and sexual violence against women.”²
4. Domestic violence violates a woman's rights to life and security of the person (Article 6), freedom from torture and ill-treatment (Article 7), equality before the courts (Article 14),

¹ CEDAW Committee Concluding Observations on Turkey, August 2010, para. 22.

² Committee against Torture Concluding Observations on Turkey, January 2011, para. 20.

equal protection before the law (Article 26), and protection of the family (Article 23), among others.

5. Intake procedures are flawed. Police often turn victims away, and there are no free-of-charge advocates to assist victims in completing the necessary forms. The intake procedures do not ensure respect and sensitivity toward women reporting gender-based violence, particularly women from non-Turkish-speaking communities. Procedures do not ensure that women receive support and legal assistance in reporting gender-based violence or in obtaining counseling and other services. Police officers are not required to make a record of every domestic violence claim.

Suggested questions: What measures will the State Party take to ensure that all people who report gender-based violence are treated with dignity and respect and are provided with the support and assistance necessary to avoid and prevent further violence? Will the State Party require every police officer to make a record of every domestic violence claim, and to report those records periodically to a central authority for data analysis?

6. Turkey lacks “a comprehensive national law on violence against women.”³ Law No. 4320 on the Protection of the Family is the legal framework for victims of domestic violence to obtain civil protective orders. Many women face gender-based violence that arises from relationships that fall outside the scope of Law 4320, including dating, cohabitation without marriage, religious marriage, separation (civil marriage without cohabitation), and divorce.

Suggested question: Will the State Party amend its law to expressly state that all victims of gender-based violence, regardless of marital or cohabitation status, are entitled to obtain protective orders?

7. Even women who are currently protected under the terms of Law 4320 do not receive *de facto* protection. Prosecutors and courts impose unwarranted evidentiary and notice requirements, causing unnecessary delay in issuing protective orders. As a result, the legal system places women at heightened risk by sending them back to their attackers at a time when violence is most likely to escalate.

Suggested question: What measures will the State Party take to clarify to prosecutors, magistrate courts, and victims of gender-based violence that protective orders are emergency, ex parte measures, and that no evidence other than the victim’s sworn affidavit is necessary to obtain such orders?

8. Law 4320 unnecessarily constrains judicial discretion to craft appropriate equitable remedies when a magistrate court takes action to protect a woman from gender-based violence. And Law 4320 unnecessarily delays any award of maintenance, thereby hindering a woman’s ability to live independently after requesting a protective order. Maintenance orders are sometimes not enforced, and the law restricts the availability of garnishment of wages from public employees.

Suggested question: Will the State Party amend the law to give magistrate courts greater latitude in crafting appropriate and timely equitable and monetary

³ CEDAW Committee Concluding Observations on Turkey, August 2010, para. 22.

remedies that will prioritize giving victims of gender-based violence the tools and resources to live independently as soon as practicable?

9. The judicial system places a woman's safety at risk. Some courts require a woman seeking a protective order to participate in mediation with her alleged abuser, and the physical infrastructure of courts sometimes places the woman and her alleged abuser in close proximity, without the presence of security personnel, during court proceedings.

Suggested questions: What steps will the State Party take to ensure that victims of gender-based violence are able to opt out of mediation? What steps will the State Party take to ensure that victims of gender-based violence are physically safe in courthouses and in court proceedings involving alleged abusers?

10. Women are deterred and even prevented from escaping living environments that place themselves and their children at risk of violence. Many municipalities lack shelters entirely, while others have inadequate shelter services. Shelters are not required to accept older children. And there are few or no support services to assist women in learning to live independently.

Suggested questions: How will the State Party ensure that shelters and adequate shelter services are available to all victims of gender-based violence and their minor children? What measures will the State Party take to ensure that all victims of gender-based violence have access to training and support services that will assist them in becoming able to live independently?

11. The draft law for the protection of women has the potential to exacerbate gender-based violence. By transferring authority to issue protective orders from magistrate courts to local and inadequately trained administrative authorities, the law creates a danger that decisions will not be impartial and will be influenced by political pressure.

Suggested question: What provisions of the State Party's new law on domestic violence will ensure that the authority empowered to issue protective orders is impartial and educated in the dynamics of domestic violence?

12. The penalties for violating a protective order are not sufficiently strict to deter conduct that places women at risk of further violence.

Suggested question: How will the State Party ensure that the penalties for violating a protective order are sufficient to deter violations of such orders?

I. Turkey's Failure to Adopt a Comprehensive National Law on Violence Against Women Perpetuates Systemic Problems.

A. Flaws in Law 4320 on the Protection of the Family Undermine Women's Right to Life and Security of the Person, to Be Free from Torture, to Equal Protection Before the Law, and to Protection of the Family (Articles 6, 7, 14, 26, 23).

13. The Committee against Torture recently noted with concern "reports that women are rarely inclined to report ill-treatment and violence against them to the police."⁴ Several

⁴ Committee against Torture Concluding Observations on Turkey, January 2011, para. 20; see also HUMAN RIGHTS WATCH, "HE LOVES YOU, HE BEATS YOU": FAMILY VIOLENCE IN TURKEY AND ACCESS TO PROTECTION 10–11

flaws in Law 4320, as discussed in this section, discourage such reports. These and other flaws also create barriers for women who do make reports to obtain protection from further violence.

14. Law 4320 applies only to couples that have been married in a civil ceremony and who are living together. By its terms, therefore, the law does not apply to couples who are married in religious but not civil ceremonies, couples who are dating but not living together, unmarried couples who are living together, or couples who are separated or divorced. Although some police officers, prosecutors, and judges sometimes interpret the law to apply to women in these other relationships, their views are conflicting and inconsistent.⁵ The result, according to one report, is that “access to protection against violence [is] essentially a lottery for many women.”⁶ Human Rights Watch recently “documented several cases in which women needed protection, but did not get a protection order because officials handling their cases took a narrow view of the law.”⁷
15. Law 4320 was designed to allow victims to obtain immediate protection in an efficient manner, but the language in the Corollary to Clause 1 seems to have caused magistrate courts to misunderstand the evidentiary requirements for obtaining a protective order in a way that imperils victim safety. It states, in relevant part: “If the Magistrate’s Court considers that there is a possibility of the victim again being subject to abuse then it can pass an order immediately after the application without need for witnesses or hearing from the other side.” Some magistrate courts have mistakenly interpreted this language to mean that ordinarily, witnesses are required and the other side must appear for a hearing before the court may issue a protective order.⁸ Victim safety is compromised when these courts require evidence beyond the victim’s sworn statement and require that the offender be notified and appear for a hearing before issuing a protective order.
16. Turkey has no standardized form for requesting a protection order.⁹ Nor does Turkish law identify any documents that are needed to obtain a protection order. Women therefore face barriers seeking orders for protection because they do not know what is required to request one. And because there is no standardized form that expressly states Law 4320’s evidentiary requirements, prosecutors and magistrate courts feel empowered to impose (erroneously) additional evidentiary requirements.
17. One of the most dangerous times for domestic violence victims is when they seek intervention from the legal system or leave the violent offender. At these critical times, it is vital that courts have available all possible equitable remedies to ensure and promote

(May 2011), available at <http://www.hrw.org/sites/default/files/reports/turkey0511webcover.pdf> (last accessed 23 Feb. 2012) (reporting that a 2009 study “found that only 8 percent of women who have experienced sexual or physical violence seek help from any institution, NGO, or other source of support,” and that another 2009 study concluded “that only around 3 percent of women told the *muhtar* (elected village or neighborhood official), police, gendarme, a lawyer, or public prosecutor about their experience of domestic violence”).

⁵ HUMAN RIGHTS WATCH, *supra* note 4, at 5.

⁶ *Id.* at 16.

⁷ *Id.* at 17.

⁸ *Id.* at 6, 36–37 (“[J]udges . . . may require medical or other forms of evidence that is not required for an emergency protection order by national law.”).

⁹ Interview with police, June 2011, on file with The Advocates.

victim safety. Clause 1 and the Corollary to Clause 1 clarify that the court has the authority to make certain, enumerated protective rulings, but that similar protective measures may be made only in “extraordinary circumstances.” The corollary unduly restricts the discretion of judges to order creative and appropriate equitable relief that promotes victim safety. For example, even in the absence of extraordinary circumstances, a judge should be able to order that a perpetrator must keep up with mortgage payments, or that a victim be allowed to retain the use of a car to take her children to school.

18. The Corollary to Clause 1 requires that a judge enlist an expert to conduct an investigation and determine the standard of living of both the plaintiff and the defendant in order to set the amount of maintenance. This expert investigation can unnecessarily delay a victim’s ability to obtain maintenance. Any delay between an application for a protective order and an order of maintenance may deter victims from seeking relief in the first place, thereby compromising victim safety.
19. Even without this delay, “[w]hen a woman applies for protection, she simply cannot rely on financial support being ordered or enforced. This constitutes a barrier to applying for protection in the first place.”¹⁰ Authorities often fail to enforce maintenance and child support orders.¹¹ Wage garnishment is available only for public employees, and the law places limits on the availability of garnishment.¹² In a recent study, Human Rights Watch found that “in no case that [it] documented were abusers forced to pay maintenance.”¹³
20. It is unclear whether protective orders issued in one municipality are enforceable in other parts of Turkey.¹⁴ Moreover, protective orders expire after six months, and may be renewed only if there is an additional incident of violence.¹⁵ Six months is not usually enough time for women to develop skills and resources to live independently.
21. Women who appear at police stations to report domestic violence are often forced to disclose such violence in public spaces, including hallways and reception areas.¹⁶ As a result, some women are humiliated and others are discouraged from fully disclosing facts that are relevant to obtaining an order from protection.¹⁷
22. Women are required to complete applications for protection orders in the Turkish language.¹⁸ In many cases, no one is available to assist them in completing these forms. For women whose native language is not Turkish, particularly women in Kurdish regions of Turkey and women who are immigrants, and for women who are not fully literate in

¹⁰ HUMAN RIGHTS WATCH, *supra* note 4, at 27.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Interview with Turkish attorney, June 2011, on file with The Advocates.

¹⁵ HUMAN RIGHTS WATCH, *supra* note 4, at 4–5, 16.

¹⁶ *Id.* at 42.

¹⁷ *Ibid.*

¹⁸ Interview with Turkish court psychologist, June 2011, on file with The Advocates.

Turkish, such assistance is important to ensure that they communicate relevant information to prosecutors and judges.¹⁹

23. The Committee against Torture in January 2011 expressed concern “at the lack of comprehensive official statistics . . . on domestic violence.”²⁰ Police are not required to make a report of every domestic violence claim. Further, “[l]aw enforcement officers often prioritize preserving family unity, and push battered women to reconcile with abusers rather than pursuing criminal investigations or assisting women in getting protection orders.”²¹ Not only do these practices further endanger victims, they make it impossible to know how many incidents of domestic violence are actually reported to the police. Moreover, the lack of accurate records impairs the ability to identify a pattern of domestic violence by a particular perpetrator. Additionally, there is no means to hold police officers accountable for failing to take action when they receive reports of domestic violence. Further, the lack of comprehensive statistics on domestic violence has far-reaching and negative implications for the political will to create dedicated funding for expansion and improvement of victim services.
24. Law 4320 does not define “abuse,” but prosecutors and courts typically limit the scope of Law 4320 to cases in which the victim has been subjected to physical injury. In practice, therefore, the law does not protect women who are subject to sexual abuse or threats of physical harm or bodily injury.

Suggested Questions

- How has the State Party responded to the Committee against Torture’s recommendation to “[u]ndertake all necessary measures to facilitate and encourage women to exercise their right to lodge complaints on domestic violence to the police, including in the building and staffing of shelters, hotlines and other protective measures”²²?
- How has the State Party responded to the CEDAW Committee’s recommendation that the State Party ensure “that women and girls who are victims of violence have access to immediate means of redress and protection, including protection orders”²³?
- What protections are available for unmarried, separated, and divorced women, or for women who are married only in religious ceremonies?
- What efforts has the State Party made to encourage judges to order creative and appropriate equitable relief to promote victim safety?
- On average, how long do the expert investigations as to standard of living take, and what effect do the investigations have on a victim’s ability to obtain maintenance? Do victims have to pay for the expert investigation?

¹⁹ HUMAN RIGHTS WATCH, *supra* note 4, at 29–30. Human Rights Watch further notes that “[i]n predominantly Kurdish southeast Turkey, years of regional conflict have contributed to fundamental mistrust of the state and police, which further deters women from reporting violence.” *Id.* at 5, 25–26.

²⁰ Committee against Torture Concluding Observations on Turkey, January 2011, para. 20.

²¹ HUMAN RIGHTS WATCH, *supra* note 4, at 5.

²² Committee against Torture Concluding Observations on Turkey, January 2011, para. 20, recommendation (a).

²³ CEDAW Committee Concluding Observations on Turkey, August 2010, para. 23.

- What steps has the State Party taken to ensure that magistrate courts issue protective orders immediately, based solely on the victim’s sworn statement, and do not impose additional evidentiary requirements or require the perpetrator to appear for a hearing before issuing the order?
- What steps has the State Party taken to establish monitoring mechanisms to ensure that Law 4320 is fully implemented?
- What efforts has the State Party undertaken to ensure that all judges, prosecutors, and victims of domestic violence understand and accurately apply the legal requirements for obtaining an order for protection?
- What efforts has the State Party undertaken to ensure that judges and prosecutors do not impose unfounded documentation requirements on applications for orders of protection?
- Has the State Party established any protocols for receiving reports of domestic violence that will ensure the privacy of the complainant at police stations, in prosecutor’s offices, and in court administration offices? Do such protocols ensure that victims receive competent assistance in completing and filing a request for protective order and do such protocols ensure that victims receive a list of referral services?
- What steps will the State Party take to ensure that all police officers make a written report of every domestic violence claim and that statistics are kept and disseminated on the reports filed, the protective orders requested and issued, and violations of protective orders?
- What steps has the State Party taken in response to the CEDAW Committee’s recommendation for “the expansion of training activities and programmes for public officials, the judiciary, law enforcement personnel and health-service providers in order to ensure that they can address and combat all forms of violence against women and can provide adequate support to victims”²⁴?
- Will the State Party ensure that police stations, prosecutor’s offices, shelters, district offices, and health institutions have written information on women’s rights in domestic violence cases available in multiple languages, including Turkish, Kurdish, Arabic, and Farsi?
- Has the State Party established and disseminated a protocol for communication between the prosecutor’s office and the victim to be followed when the offender is to be served with a protection order or is to be released from custody?
- What steps has the State Party taken to ensure that domestic violence advocates are available at police stations, at the prosecutor’s office, and in crisis centers?
- What measures has the State Party taken to ensure that victims of domestic violence have access to free-of-charge legal assistance and are aware of such assistance?
- Will the State Party establish a multi-lingual, national, toll-free 24-hour helpline for victims of domestic violence?

²⁴ CEDAW Committee Concluding Observations on Turkey, August 2010, para. 23.

- What measures will the State Party take to make protective orders enforceable throughout Turkey?
- What steps has the State Party taken to ensure that maintenance and child support orders are fully enforced?
- Will the State Party eliminate the limits on garnishment of wages for public employees?
- What mechanisms are available to allow women to extend protective orders beyond six months?
- What efforts has the State Party made to ensure that Law 4320's protections are available for people who are subject to sexual abuse or threats of physical harm or bodily injury?
- What steps has the State Party made in response to the Committee against Torture's recommendation that the State Party "[e]nsure prompt and effective investigations into all allegations of honour killings and violence against women and ensure that perpetrators are brought to justice and punished with penalties appropriate to the nature of their crimes," and "[i]ntroduce a comprehensive system of data collection and statistics on violence against women, including on domestic violence and honour killings, disaggregated by age, ethnicity and minority status, and geographical location"²⁵?

B. The Justice System Fails to Protect Women's Right to Life and Security of the Person, and to Equal Protection Before the Law (Articles 6, 14, 26).

25. Family courts and magistrate courts typically require the parties to participate in mediation. Mediation diminishes the accused's accountability for violent behavior and reflects an assumption that both parties are equally at fault for violence. It also may further endanger victims since, if seen as an alternative to criminal prosecution, it may allow for violent offenders to avoid criminal prosecution and sanctions for their behavior. Finally, mediation is based on an assumption that both parties in a relationship have equal power to negotiate. This is usually not the situation in domestic violence cases and mediation may actually present additional risk of danger to victims.
26. Many court buildings and courtrooms do not ensure the safety of victims. For example, victims and perpetrators must enter and exit through the same doors, they must use the same waiting rooms, and in courtrooms they are sometimes forced to sit in close proximity. Moreover, many court buildings lack adequate security personnel. Victim advocates are sometimes not allowed to accompany victims to court hearings.
27. There is no system to ensure that police, prosecutors, forensic professionals, judges, and other court personnel are trained in gender-based violence, in the dynamics of domestic violence, or in risk- or lethality-assessments.

Suggested Questions

- What measures has the State Party taken to ensure victim safety in court facilities?

²⁵ Committee against Torture Concluding Observations on Turkey, January 2011, para. 20, recommendations (b), (d).

- What efforts will the State Party undertake to ensure that all members of the justice system are fully trained in gender-based violence, in the dynamics of domestic violence, or in risk-assessments?
- What efforts will the State Party make to ensure that victims of gender-based violence are not compelled to participate in mediation with their abusers?
- Will the State Party ensure that fatality reviews are instituted in domestic violence cases?

C. The Absence of Adequate Support Structures Creates Barriers Preventing Women From Realizing Their Right to Life and Security of the Person, to Be Free From Torture, and to Protection of the Family (Articles 6, 7, 23).

28. Turkey has expanded the number of shelters for victims of domestic violence, but shelter availability and quality varies by municipality and by region. In August 2010, the CEDAW Committee expressed concern about “the limited number of shelters (57 available throughout the State party)” and “that such shelters may lack proper facilities and resources.”²⁶ The Committee against Torture in January 2011 expressed concern “at the inadequate number of available shelters for women victims of violence, in spite of relevant provisions in the Municipal Law of 2005.”²⁷ Moreover, government funding for shelters is largely intertwined with municipal district politics. Municipalities represented by individuals who are members of the party in power are far more likely to have funding for shelters than municipalities represented by members of other parties.²⁸
29. Although every town with a population over 50,000 is required to have a shelter,²⁹ there are no mechanisms to enforce this requirement.³⁰
30. Domestic law requires shelters to accept children who are no older than 12 years of age.³¹ As a result, older children lack protection from physical and mental abuse in the home.
31. According to one report, some shelters “exclude certain women, including pregnant and undocumented women, and women with psychological or physical disabilities.”³²
32. “Many women have no means of supporting themselves or their children without relying on their abusers[.]”³³ Turkey has few or no services available to help victims live independently, such as job training and subsidized or transitional housing. The combination of economic dependence and the lack of support services means that many women remain in abusive relationships because they have nowhere else to turn.

²⁶ CEDAW Committee Concluding Observations on Turkey, August 2010, para. 22.

²⁷ Committee against Torture Concluding Observations on Turkey, January 2011, para. 20.

²⁸ Interview with shelter advocate, June 2011, on file with The Advocates.

²⁹ HUMAN RIGHTS WATCH, *supra* note 4, at 6.

³⁰ Susanne Gusten, *Turkish Charity Tells Battered Women How to Save Their Lives -- With a Gun*, NEW YORK TIMES, Jan. 18, 2012, available at <http://www.nytimes.com/2012/01/19/world/europe/turkish-charity-tells-battered-women-how-to-save-their-lives-with-a-gun.html>.

³¹ HUMAN RIGHTS WATCH, *supra* note 4, at 45.

³² *Id.* at 6, 45–46.

³³ *Id.* at 27.

Suggested Questions

- What measures has the State Party taken to ensure that every municipality, regardless of political affiliation, has adequate shelter facilities and crisis centers?
- What penalties or sanctions are imposed on towns with populations over 50,000 that do not have shelters?
- What steps has the State Party taken in response to the CEDAW Committee's recommendation "that the State party establish additional counselling and other support services for victims of violence, including additional shelters, and ensure that adequate resources are allocated in order to implement the necessary measures in this regard"³⁴?
- What steps has the State Party taken in response to the CEDAW Committee's request that the State Party "enhance its cooperation with non-governmental organizations working in the area of violence against women"³⁵?
- How has the State Party responded to the Committee against Torture's recommendation to "[e]nsure that victims [of domestic violence] are provided adequate reparation and compensation, including rehabilitation"³⁶?
- What services does the State Party make available to victims of domestic violence to ensure that they are able to live independently?
- What measures has the State Party taken to ensure that shelters accept all minor children?
- What efforts has the State Party made to establish local gender-based violence coordinated community response boards, which would include law enforcement, social services, the judiciary, health professionals, and women's NGOs?

II. The Draft Law for the Protection of Women Risks Exacerbating Gender-Based Violence.

33. The draft law, as presented in January 2012, would transfer the power to issue restraining orders from the judiciary to local administrative authorities. Local administrative authorities have not had training in the dynamics of domestic violence and are less likely to remain impartial and are more likely to be swayed by political pressure than judges. Therefore, this proposed transfer of power would create an additional barrier for women seeking restraining orders.
34. The penalties in the draft law for breaching a restraining order are 3 and 15 days in detention. These penalties are not sufficiently strict to deter violations.

Suggested Questions

- What provisions in the new law for protection of women will ensure that the authority responsible for issuing restraining orders will be adequately trained and remain impartial?
- What has the State Party done to strengthen penalties for violating restraining orders?

³⁴ CEDAW Committee Concluding Observations on Turkey, August 2010, para. 23.

³⁵ CEDAW Committee Concluding Observations on Turkey, August 2010, para. 23.

³⁶ Committee against Torture Concluding Observations on Turkey, January 2011, para. 20, recommendation (c).