

Violence against Women in Turkey

A Report to the Committee against Torture

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1. Preliminary Remarks

The submission of information specifically relating to violence against women to the United Nations Committee against Torture forms part of OMCT's Violence against Women Programme which focuses on integrating a gender perspective into the work of the five "mainstream" United Nations human rights treaty monitoring bodies.

The consolidated second, third and fourth report submitted by Turkey to the Committee against Torture in accordance with article 19(1) of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, covering the period from 24 April to 31 August 2001, describes in great detail the legal system and its reform with the aim of eradicating torture with regard to the implementation of the Convention against Torture. However, no details are provided by the government on the implementation of the Convention in practice, nor does the report provide gender disaggregated information concerning torture and other forms of violence against women. OMCT regrets the lack of information provided as, in reality, violence against women at the hands of state agents as well as private individuals appears to be widespread. United Nations experts, the Council of Europe and numerous international and Turkish NGOs have recently reported on the continuing violations of human rights and increasingly sophisticated methods of torture in Turkey.

In light of the lack of information on gender-based torture and other forms of violence against women in the government report, this report will examine the effects of gender on the form that human rights abuses in Turkey take, the circumstances in which the abuse occurs, the consequences of those abuses, and the accessibility of remedies. The report begins with a discussion of discriminatory legal provisions. The report places particular emphasis on domestic violence, crimes committed against women and girls in the name of honour, virginity testing, forced marriages, the high rate of suicide among girls, prostitution and trafficking of women, as well as rape and other forms of sexual violence committed by state officials against women.

1.1 Turkey's International Obligations

Turkey ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter, the Convention

against Torture) on 2 August 1988. Upon ratification Turkey recognized the competence of the Committee against Torture to receive and process individual communications under articles 21 and 22 of the Convention against Torture.

Turkey is a State Party to the Convention on the Elimination of All Forms of Discrimination against Women. In General Recommendation 19, the Committee on the Elimination of Discrimination against Women concluded that gender-based violence, including torture, is a form of discrimination against women as defined under article 1 of the Convention on the Elimination of All Forms of Discrimination against Women. Turkey ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 29 October 2002. Additionally, Turkey ratified the Convention on the Rights of the Child in 9 September 1994.

On 15 August 2000, Turkey signed the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, neither Convention has yet been ratified. Under article 90 of the Turkish Constitution, international treaties duly ratified, have the force of law, and can be invoked in Turkish courts.

At the regional level, Turkey is a member of the Council of Europe, ratified the European Convention on Human Rights in 1954, and is seeking membership in the European Union. In order to fulfil the commitments incumbent on members of the Council of Europe and to satisfy the membership criteria for accession to the European Union, Turkey has ratified a number of regional human rights treaties including the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. On January 15, 2003, Turkey signed Protocol No. 6 to the European Convention on Human Rights prohibiting capital punishment in peacetime.

At the national level, Article 17 of the Turkish Constitution prohibits “torture and ill-treatment incompatible with human dignity.” Article 243 of Turkey’s Penal Code criminalizes torture, cruel, inhuman or degrading treatment by state officials. On November 22, 2001 the Turkish legislature passed comprehensive legislative bill designed to promote gender equality in civil legislation.

1.2 General Observations

Turkey is a constitutional republic with a unicameral multiparty Parliament of 550 members, elected directly for five-year terms. The Prime Minister is nominated by the President from amongst the members of parliament. The President has substantial powers including the power to appoint members of the Constitutional Court and the Chief of the General Staff. The constitution provides for the separation of powers between the legislature, executive and judiciary. The military considers itself the guardian of the secular order of the state exercises significant influence in Turkish political life, notably through the joint civilian-military National Security Council (MGK) which meets monthly.

In the recent elections of November 3, 2002, the Justice and Development Party (AKP) won an overwhelming majority of the seats in the parliament sweeping aside the incumbent political establishment including former Prime Minister Bulent Ecevit's party which received a mere 1% of the popular vote. The AKP is led by Recep Erdogan, a pro-Islamist former mayor of Istanbul, who, because of a 1998 criminal conviction for having recited a poem deemed to have been "incitement" to religious rebellion, is not allowed to represent his party in the government. In the run up to the elections, the AKP campaigned on a moderate political platform which included promoting democracy, Turkey's bid for EU membership and Turkey's IMF backed economic reform programme.¹ The military and the judiciary remain suspicious of the AKP because of its pro-Islamist leanings.

On August 3, 2002, the Turkish parliament introduced the EU Adaptation Law, a substantial political reform package designed to meet EU criteria in the field of human rights. The adaptation legislation included provisions abolishing the death penalty in peacetime but retaining it in times of war or imminent threat of war. An amendment to Penal Code Article 159 also allows for greater freedom of speech rights, and an amendment to the broadcasting law permits broadcasts in "different languages and dialects which are traditionally used by Turkish citizens in their daily lives." Additionally, a draft law was issued by the Ministry of Justice in October 2002, seeking to prevent the continuing practice torture of detainees by the police forces by granting detainees, arrested for non-political criminal offences, immediate access to a lawyer.

The European Commission, in its *Regular Report on Turkey's Progress towards Accession* welcomed the legal reform efforts but remained critical of Turkey's performance specifically noting that torture in detention continued, that the military continued to exercise disproportionate influence on Turkish political life and that it was still uncertain whether freedom of expression would be respected in practice.² At the European Union summit in December 2002 the EU postponed its decision on a start date for membership negotiations until 2004 arguing that Turkey needed to make further progress in the area of human rights.

2. Status of Women in Turkey

2.1 *Legal Status of Women in Turkey*

The Constitution of Turkey provides, in Article 10, for equality before the law of men and women without discrimination. The Article reads: "All individuals are equal without any discrimination before the law, irrespective of language, race, colour, *sex*, political opinion, philosophical belief, religion and sect, or any other such considerations" (emphasis added). However, there is no legislation in Turkey which punishes discrimination on the basis of sex.

Article 41 of the Constitution was amended in 2001 to provide for the equality of spouses in marriage. The Constitution now provides that "The family is the foundation of Turkish society *and is based on equality between spouses.*" [Emphasis added] This constitutional amendment constitutes the foundation for several important changes in the Civil Code relating to family life which are further discussed below. Article 41 also provides for the protection of the family, especially of the mother and children: "The State shall take the necessary measures and establish the necessary organization to ensure the peace and welfare of the family, especially the protection of the mother and children, and for family planning education and its application." With regard to education, article 42 of the Constitution states: "Primary education is compulsory for all citizens of both sexes and is free of charge in state schools."

OMCT welcomes the efforts of the Turkish legislature to promote gender equality in civil legislation through the sweeping reforms of the Turkish

Civil Code which came into effect on January 1, 2002. Prior to the reforms of 2002, the Turkish civil code had seen few changes since its adoption in 1926 modeled on the Swiss Civil Code of that time. Since the 1950s, women's rights groups in Turkey have struggled to reform the code and have argued that women's legally subordinate position in the family has contributed to continuing and serious violations of women's human rights.³ In 1994, a government commission was formed to prepare a draft of the new civil code and many women's groups began an intense lobbying effort to push through the reforms. In 2001, the entire reform process was almost derailed by the Nationalists and Islamists in parliament who objected to a measure giving women equal division of marital assets in case of divorce. The religious conservatives and Nationalists argued that the equal division of property acquired during marriage would "change the family from a matrimonial union to corporation, destroy love and affection in the family and increase the rate of divorce and consequently ruin Turkish society."⁴ Thanks to the efforts of more than 126 women's groups, the objections of the Islamists and Nationalists were surmounted and the reforms were passed in the form of 1030 new articles covering important amendments to family law.

Under the old civil code the husband enjoyed a position of absolute legal supremacy in the family, with the legally sanctioned authority to make choices over domicile, children, and property. This approach has been abandoned in favor of one that defines the family as a union based on equal partnership. This new concept is also reflected in the language of the new Civil Code. The terms "wife" and "husband" have been replaced by the term "spouse(s)." Moreover, the language of the Code has been considerably simplified and out-of-date legalistic terminology has been replaced with comprehensible, modern terms, making the law more accessible to everyone. Several noteworthy changes to the Code reflect the new approach to gender equality: 1) The husband is no longer the head of the family; spouses are equal partners, jointly running the matrimonial union with equal decision-making powers; 2) Spouses have equal rights over the family abode; 3) Spouses have equal rights over property acquired during marriage; 4) Spouses have equal representative powers; 5) The concept of "illegitimacy" formerly used to designate children born out of wedlock has been abolished; custody of children born outside marriage lies with the mother.⁵ The new Civil Code has also raised the legal minimum age for marriage to 18 (it was formerly 15 for women and 17 for men), gives

the same inheritance rights to children born outside the marriage, gives single parents the right to adopt children, and gives women the right to retain their maiden names when hyphenated with that of their spouses.

While the reform of the Turkish Civil Code constitutes a step forward in terms of establishing gender equality in Turkey it is nevertheless evident that reforms in the legal domain alone are not sufficient to prevent gender discrimination and violations of women's rights. In Turkey, women's lives continue to be shaped by a multiplicity of traditional practices which violate existing laws, including early and forced marriages, polygamous marriages, honour crimes, virginity testing and restrictions on women's freedom of movement. In the eastern and south-eastern regions of Turkey 16.3% of women living in the region were married under age 15.⁶ One in ten women live in polygamous marriages, although the practice of polygamy was banned already under the Civil Code of 1926.⁷ More than half of the women (50.8%) in that region were married without their consent although consent of both parties is a precondition for marriage under Turkish law.⁸ Violations of the new code are not limited to the rural south east of Turkey. In January 2001, shortly after the new code went into effect the Turkish media published a story of a "school in the Europeanized west of the country where more than 20 girls aged between 10 and 13 had been married off in exchange for a bride price."⁹ It is thus evident that the Turkish government must take further proactive steps to insure that the provisions of the new code are enforced and respected by the authorities and that violations of the code are effectively prosecuted.

OMCT also notes with concern that the Turkish Penal Code still contains several discriminatory articles - in particular regarding rape. These articles will be discussed in more depth in section 3.

2.2 Social, Economic and Political Status of Women in Turkey

Societal discrimination and traditional notions of women's role in the family adversely affect the ability of women to take advantage of educational and employment opportunities and, as a result, their rate of economic, social and political participation is low. Turkey is currently experiencing its worst recession since the Second World War¹⁰ with slowing economic growth, rising unemployment rates, now at almost 10%,¹¹

rapid urbanization and persisting regional economic disparities. Because of women's low status in Turkey, they are particularly affected by these factors.

Although women continue to improve their professional standing particularly in urban areas they still lag far behind men. Women make up only 36% of all professional and technical workers, and only 9% of all legislators, senior officials and managers.¹² The ratio of estimated female to male earned income is 0.46¹³ and more than 90% of all property in Turkey is owned by men. A large percentage of women in rural areas are employed in the agricultural, trade, and tourist (hotel, restaurant) sectors where they work as unpaid family help.¹⁴ Despite efforts made by the Turkish government to allow more girls to continue their education through the 8-year compulsory education requirement (implemented in 1998), in rural areas traditional family values place an emphasis on the education of boys rather than girls. Thus the literacy rate for women in rural areas can be as low as 50%.¹⁵ The overall female adult literacy rate is also significantly lower than that of men, 76.5% versus 93.5% respectively.¹⁶ The persistent practice of early marriage in rural areas also restricts women's educational and economic opportunities.

Turkey's rapid urbanization is also affecting women on a number of levels. Turkey is one of the most rapidly urbanizing countries in the region. In 1975, 41.6% of the population in Turkey lived in urban centers. In 2000, more than 65% of Turkey's population was urbanized, and UNDP predicts that at the current rate, close to 80% will be living in cities by 2015.¹⁷ This demographic trend has resulted in a clash between traditional rural values and more modern urban lifestyles, which has affected young women in particular. As young women in cities are increasingly more educated, more exposed to the outside world and demanding more of the freedoms associated with urban life, they are also increasingly in conflict with the older generation of their parents. This has led to a rapid rise in suicides among urban and rural women as well as murders, beatings and other forms of domestic violence.¹⁸

Although there are no legal restrictions on political activity by women, female participation in political life remains very limited. In former Prime Minister Bulent Ecevit's government there were no female ministers in his 35-member cabinet, and only 4.2% of parliamentarians were women.

Currently, there is one woman in the government and only 24 women out of 550 people (4.4%) in parliament.

As a social group, women in Turkey are isolated from political and economic decision-making. OMCT is deeply concerned by the lack of opportunity for Turkish women to make decisions in the political, economic and cultural contexts as this has serious implications for the advancement of women and the full enjoyment of their fundamental rights. Specifically, the unequal gender power relations created by discrimination in education, employment and in political life renders women vulnerable to violence, both in the domestic and the community sphere.

3. Violence Against Women in the Family

3.1 Domestic Violence

Domestic violence is a grave problem in Turkey with as many as 90% of Turkish women experiencing violence at the hands of their husbands and boyfriends.¹⁹ This violence within the home takes both physical and psychological forms. Many women report that their husbands beat them on their wedding night.²⁰ Although the problem of domestic violence is extensive in Turkey, there is no comprehensive legislation concerning domestic violence.²¹

Very few women report domestic violence to the authorities. The few women who do go to the authorities claim that the police are not gender sensitive and attempt to find a compromise between the husband and wife rather than treating the violence as a crime.²² OMCT is currently assisting a victim of domestic from the region of Diyarbakir who tried to file a complaint with the police. However, they refused to register the complaint, instead, they have beaten the woman.

Additionally, when a complaint is successfully filed, the punishments are often weak, sometimes as little as a week in prison, if there is any punishment at all.²³ Within such a system, most women prefer to stay silent than to report the crime to the police and risk retaliation by their husbands, or other members of the family, since the police will not likely take protective measures for the victim.

A new law passed in 1998 strengthens protection orders for domestic violence victims, allowing a variety of measures to be taken, including, ordering the perpetrator “not to use violence or threatening behavior against the other spouse or children . . . , to leave the abode shared with the spouse or children and not to approach the abode . . . or their places of work, not to damage the property of the spouse or children . . . , not to cause distress to the spouse or children . . . using means of communication, to surrender a weapon or other similar instruments to the police, [and] not to arrive at the shared abode while under the influence of alcohol or other intoxicating substances”²⁴ Although this represents a step in the right direction, the application of this law has been unworkable given the prevailing attitudes of law enforcement officers.²⁵

The shelters that exist in Turkey are widely utilized by abused women, indicating the necessity for such mechanisms. Sadly, several shelters have closed in past years due to lack of funding.²⁶ In many regions there are no shelters at all.

3.2 Marital Rape

OMCT notes with concern that there are no specific provisions making marital rape a crime in Turkey.

3.3 Cultural Practices in the Family that Violate the Human Rights of Women and Girls

3.3.1 Bride Price, Arranged and Forced Marriages and Polygamy

In Eastern Turkey, according to a study by Women for Women’s Human Rights (WWHR) interviewing 599 women in the region, the payment of bride prices is a widespread practice.²⁷ According to this tradition, a husband or his family has to pay the family of the bride a certain sum in order to complete the marriage of the two. The majority of women interviewed in the study (61%) said that their husbands had paid a bride price to complete the marriage.²⁸ Interestingly, over three-quarters of the women interviewed indicated that they were against the practice of paying a bride price, mostly because they felt that the practice treated women as though they were property.²⁹

Although the law in Turkey provides that the consent of both the man and the woman is required before a marriage can be concluded, the WWHR study in Eastern Turkey revealed that most women in that region had no choice in who they married. About 60% of all marriages in Eastern Turkey are arranged by the family, and even where the couple arranges the marriage on their own, it is often conditioned on obtaining the family's consent.³⁰ The study also reports that just over half of the women interviewed were married without their consent and just less than half were not consulted at all about their future spouse. This tradition of arranged marriages appears to be changing as many young women and mothers of young women agree that a woman should be able to choose her own spouse.³¹

The study also revealed that 1 in 10 women live in polygamous marriages. Because polygamy is forbidden by law in Turkey since 1926, women in polygamous unions are subject to gross inequalities as only one woman can have a civil marriage and the rights that accompany a civil marriage. All other wives are relegated to religious marriages, which grant them fewer rights.³²

Practices such as bride-price, arranged and forced marriages, and polygamy deny women respect as independent human beings. Such practices also limit the power that women have to direct their own lives because their husband or their family controls them and there is much societal pressure for women to obey their husbands and their parents. Such lack of power can make women vulnerable to violence. In such an atmosphere, it is difficult for women to find a space where they are empowered to speak out against practices that treat them as property, limit their decision-making capacity, or otherwise restrict their ability to take advantage of the rights accorded to them by law in Turkey.

3.3.2 Crimes against Women Committed in the Name of Honour

Some of the most serious violations of human rights which specifically target women are crimes committed in the name of "honour." "Honour crimes" are particularly prevalent in, but not limited to, the Eastern and South-eastern regions of Turkey but they have also been reported in the major Turkish cities, including Istanbul and Izmir and also in Turkish immigrant communities in other countries.³³ The killing of women and

girls occurs when a woman allegedly steps outside her socially prescribed role, especially, but not only, with regard to her sexuality and to her interaction with men outside her family. The killing is usually committed by a male member of the family, frequently a minor, and the punishment is typically minimal if any, because Turkish law enforcement authorities generally condone this practice.

Accurate statistics on the number of “honour crimes” committed in Turkey do not exist, in part because such crimes are not systematically prosecuted by the authorities and thus go unreported. Also, police records in Turkey do not break down homicides into specific types. Nevertheless, women’s rights groups estimate that at least 200 girls and women are murdered each year by their families, although they say that the real numbers may be much greater.³⁴

The practice of “honour killings” and its persistence is a subject of increasing international concern and has received the attention of United Nations experts and civil society. The U.N. General Assembly addressed the issue of “honour crimes” in its resolutions 55/68 and 55/111. In resolution 55/66, the General Assembly expressed deep concern at the persistence of various forms of violence against women and crimes against women in all parts of the world, including crimes committed in the name of “honour,” and reaffirmed that violence against women both violated and impaired or nullified the enjoyment by women of their human rights and fundamental freedoms. In resolution 55/111, the General Assembly called upon governments to investigate promptly and thoroughly crimes committed in the name of passion or in the name of “honour,” to bring those responsible to justice before an independent and impartial judiciary, and to ensure that such killings were neither condoned nor sanctioned by government officials or personnel. In this context it is worth noting that Turkey has officially demonstrated its support for the efforts of the United Nations in eliminating the practice of “honour crimes” by voting in favor of both General Assembly resolutions.

On July 2, 2002, the Secretary-General of the U.N. reported to the General Assembly on measures taken by Member States and activities within the United Nations system on working towards the elimination of honour crimes.³⁵ In his report, the Secretary General noted that several U.N. Human Rights treaty bodies, notably the Committee on the

Elimination of Discrimination Against Women and the Committee on the Rights of the Child, had expressed concern that the Turkish Penal Code contains provisions which discriminate against women and which provide loopholes for perpetrators of “honour crimes.”³⁶ Additionally, he noted that the Human Rights Committee, in adopting general comment 28 on article 3 of the International Covenant on Civil and Political Rights, stated that “honour crimes” which remain unpunished constitute a serious violation of the Covenant, and that laws which imposed more severe penalties on women than men for adultery or other offences also violated the requirement of equal treatment.³⁷

The Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on extrajudicial, summary, or arbitrary executions have both reported on the continuing occurrence of “honour crimes” in Turkey today.³⁸ Specifically, the Special Rapporteur on extrajudicial, summary and arbitrary executions, noted with great concern in her report on her mission to Turkey, that the incidence of crimes committed in the name of “honour” are underreported and rarely prosecuted. She states that “[r]eports from women’s rights groups confirm that only a few cases [of honour killings] come to light, as the local authorities and society in general *condone the crime*. A large number of cases go unreported and the few that are reported hardly ever reach the trial stage. The exceptional cases brought to trial and ending in convictions receive a token punishment.” (emphasis supplied)

The concept of “honour” forms part of an entire system based on a code of behaviour imposed on women and girls. In this system, a man’s honour is understood to be his reputation as a member of the community (seref) or as determined by the chastity of his female family members (namus). A threat to the namus encourages the man to act in defence of their “honour.” When namus has been lost by unchaste conduct, it can only be restored by killing its offender. Cultural and legal norms protect men’s ability to do so. Husbands, fathers or brothers have gone unpunished after murdering their wives, daughters or sisters in order to defend the “honour” of the family or their own “honour.” Alarming, the Special Rapporteur on extrajudicial, summary or arbitrary executions notes that the practice of “honour killings” is so culturally entrenched in Turkey that apart from some women’s rights organizations, all other human rights

NGOs she spoke with did not consider “honour killings” to be a human rights concern but rather a “social issue.”³⁹

The Turkish government has taken some steps to address the needs of women in danger of being victimized by these practices. There are a few government-run women’s shelters in the urban centers, however, and according to the Special Rapporteur on violence against women, these shelters are insufficient and ineffective in guaranteeing the right to life of threatened women.⁴⁰ According to information received by OMCT, in most cases when a potential victim tries to take refuge with the police, instead of sending her to a women’s shelter, or taking other protective measures, they reportedly hand her over to the family, requiring only that the family guarantee not to harm the girl or woman. Family members who threaten the lives of their female relatives are neither arrested nor prosecuted for making such threats.

The Penal Code is inadequate to protect women and girls from “honour” crimes. In fact, OMCT is concerned that the structure of the Turkish Penal Code perpetuates the idea that a woman’s sexuality should be controlled by her family.

Although Turkey’s criminal laws do not explicitly provide for an “honour defence,” several provisions of national law contain defences that have been used in order for perpetrators of the so-called “honour killings” to receive reduced sentences.

Article 462 of the current Penal Code provides that as regards perpetrators who commit offences [homicide and battery] against the wife, husband, sister or offspring, at the time the victim is caught while engaged in the act of adultery or illegal sexual intercourse, or while the victim was about to commit adultery or about to engage in illegal sexual intercourse, or while the victim was in a situation showing, free from any doubt, that he or she has just completed the act of adultery or illegal intercourse; or against another person caught participating in such acts with the aforesaid relatives, or against both, the punishment prescribed for the offence shall be reduced to one-eighth and heavy imprisonment shall be commuted to imprisonment. Although this article can result in the justification of “honour killings,” reports indicate that it is, in reality, rarely used as a defense.⁴¹ Article 51 of the Penal Code is more frequently used in trials for “honour” crimes than article 462 of the Penal Code. Article 51 of the

Penal Code provides that “If a person commits a crime in the heat of anger or under influence of strong grief caused by an unjust provocation, he shall be punished in case the punishment of death is prescribed for the offence, by heavy life imprisonment; and if heavy life imprisonment is prescribed for the offence, by heavy imprisonment for twenty-four years. In other cases the punishment prescribed for the offence shall be reduced by one-fourth. Where provocation is grievous and severe, heavy imprisonment for twenty-four years shall be given instead of punishment by death, and heavy imprisonment for not less than fifteen years shall be given instead of heavy imprisonment. Other punishments shall be reduced by one-half to two-thirds.”

Although the word “honour” is not mentioned in this article, it has been successfully used as a mitigating factor in “honour” crimes cases tried in Turkey. Judicial practice in the regions most affected by the practice of “honour killings” shows an implicit acceptance of an “honour” defence and judges often use their discretion to allow culture and tradition to serve as a mitigating factors. Because of the general social acceptance of honour as an extremely important element of Turkish culture, sentence reductions for the perpetrators of crimes committed in the name of honour are rarely challenged.

Article 453 provides for a reduction of punishment for the murder of a newborn child by the mother or a first-degree relative if the murder was committed in the name of honour.

OMCT welcomes a recent court decision (Kahramanmara Agir Ceza Mahkemesi 2002/375 E., 2003/87) on 27 February 2003. Articles 449 and 450, which provide for higher penalties for murders in the family, were applied in the “honour killings” case of Kahramanmara. The perpetrator was sentenced to life time imprisonment. OMCT hopes that this example will be followed in the future and that it does not remain an exception.

OMCT notes that other manifestations of the concept of “honour” are the practice of virginity testing, as described below, and forced marriages. Moreover, the fact that the Turkish Criminal Code defines sexual violence against women as “Felonies against public decency and family order,” as opposed to other violence against a person, which is defined as “Felonies against Individuals” is based on the notion of “honour.” OMCT notes with

concern that the concept of “honour” silences women who have been the victim of sexual violence.

3.3.3 *Virginity Testing*

Women’s sexuality as a reflection of family honour is also manifested in the practice of virginity testing. Due to beliefs that the reputation of the family is closely connected to the sexual behaviour of female family members, it is considered to be both the right and the responsibility of the family to subject their daughters to virginity testing. Another issue is the amount of money which has to be given to the family of the bride by the groom’s family, and “marriages through mediation of go-betweens.”⁴²

In 1999, a governmental decree was passed to differentiate virginity exams from vaginal or anal exams required by law, as with allegations of rape and sexual conduct with minors. In such cases, a judge may order an examination as essential to the case but written approval from the office of the prosecutor must accompany the order.⁴³ This statute makes clear that virginity testing should not be used “for reasons of disciplinary punishment, against [the woman’s] consent or in a manner which will hurt or torment [the woman].”⁴⁴ However, forced virginity testing by family members continues to be widespread and endorsed by government officials. Women are frequently taken to the hospital for a virginity test by parents who suspect that the woman has lost her virginity, or by husbands who, on the wedding night, suspect that their new wife is not a virgin.⁴⁵ Although the doctors must ask for the woman’s consent before performing the exam, women have little choice but to consent given the circumstances and the social pressure to obey their husband and parents.

In July 2001 Turkey’s Minister of Health, Osman Durmus, announced that nursing and midwife students would have to pass a virginity exam before being admitted to their studies. Any student who was not a virgin would not be accepted.

According to information received, in many “honour killing” trials, the virginity of the victim is tested by forensic scientists. The virginity of the victim is reportedly taken into account during trial and sentencing.

Moreover, the Turkish State itself is reportedly also involved in forcible

virginity control exams. Young girls and women in detention facilities continue to be subjected to virginity tests by state officers as a means of humiliation.⁴⁶

The maintenance of female virginity has traditionally been equated with “family honour,” and continues to be one of the greatest causes of violence against women. Coercive virginity tests are a form of degrading treatment, which are both discriminatory and unsafe, and constitute a violation by State authorities of the bodily integrity, person and dignity of women in Turkey.

A problem closely related to the maintenance of female virginity and family honour is the high rate of suicide among young girls in Turkey. Girls commit suicide in large numbers because they have lost their virginity or because they have been forced into marriage or sent away to special re-education establishments.⁴⁷ Oftentimes, a woman who has somehow violated the family “honour” is given the choice of committing suicide, rather than being killed by a family member, and usually women choose this option.⁴⁸

4. Violence in the Community

4.1 Rape and other Forms of Sexual Violence

As mentioned above, articles 414-424 of the Turkish Criminal Code deal with crimes of sexual assault, entitled “Felonies Against Public Decency and Family Order.” The title of this section of the Code demonstrates that the approach taken by State authorities to the investigation and the prosecution of sexual violence does not stress the violation of the physical and psychological integrity of victim, but rather the harm suffered by the family and the community.

Article 414 states that “whosoever rapes a minor under the age of 15 shall be sentenced to a minimum of five years imprisonment.” If force, violence, threats or abuse of minors is involved then the minimum sentence is 10 years’ imprisonment. According to article 415, “Those who commit an act or action against the honour and chastity of a child who has not completed the age of 15 shall be imprisoned from two to four years and if

this act and action shall be executed under the conditions specified in the second paragraph of the above article, the imprisonment period shall be 3 to 5 years.” Article 416 provides that sexual intercourse with a person between 15 and 18 years, even if consensual, constitutes a crime and carries a punishment of from six months to three years imprisonment. According to article 417, “If the acts and actions specified in the above articles are committed by more than one person or committed by one of the brothers, family members, parents, guardians, teachers, trainers or servants or those to whom the child is left, the penalty foreseen by the law shall be increased by half.”

The Turkish Criminal Code defines rape of a virgin aged 15 or over with a promise of marriage as a crime under article 423(1) providing that anyone taking the virginity of a girl above 15 years of age with the promise of marrying her shall be sentenced to between 6 months and 2 years of imprisonment. If the man marries the woman, the case and the punishment are deferred. However, if the couple divorce within five years and proceedings are initiated and the husband is found guilty, the aforementioned punishment is implemented. The crime is only punishable if the victim was a virgin at the time of the rape.

OMCT is very concerned by the fact that sex crimes committed against non-virgins are perceived to be a less serious offence than those committed against virgins. Moreover, OMCT is gravely concerned by the fact that there shall be no punishment in cases of rape when the perpetrator marries the victim. This provision may lead to a woman being pressured into marrying her rapist in order to preserve her family’s “honour,” thus punishing the victim while the perpetrator is acquitted.

Moreover, according to article 434 of the Turkish Criminal Code, if a group of men abduct, rape, and commit sexual offences against a minor, they commit a crime. However, if one of the men who commit this crime marries the victim, charges against all of them are dropped.

As the Turkish Penal Code currently stands, the definition of rape has been interpreted by Turkish Supreme Court of Appeals as penetration of the vagina by the penis, or as anal rape of a man or woman by the penis.⁴⁹ This definition of rape is very limited as, for example, rape with an object and forced oral sex are not considered rape and provide for a lesser punishment.

4.2 *Prostitution of and Trafficking in Girls*

According to the Directorate General on the Status and Problems of Women,⁵⁰ women and girls in Turkey enter into prostitution due to low wages or sexual harassment in previous jobs, and choose prostitution because it guarantees them economic security. One third were forced into prostitution by husbands and boyfriends.⁵¹

Prostitutes are required to register and undergo regular medical examinations. Only single, Turkish women over the age of 18 may register and registered women cannot marry while registered.⁵² However, most women prostitutes work outside the official system. Unregistered prostitutes are reportedly at the mercy of the police, facing violence and sexual abuse as well as arbitrary detention in police stations.⁵³

During the past decade, Turkey has become a major destination and transit country for trafficking in women and girls for the purposes of prostitution. According to the International Organization for Migration (IOM) and domestic NGOs, most trafficked women and girls in the country are from Albania, Bulgaria, Moldova, Romania, and the Ukraine. According to the IOM, arrests (and in most cases, deportation) of nationals from Moldova, Romania, and Ukraine rose from 6,000 in 1998 to approximately 11,000 in 1999.⁵⁴

Many girls and women come to Turkey believing that they will be legitimately employed as models, entertainers or translators. Once these women and girls arrive in Turkey, they find themselves in debt bondage to their traffickers. Women who attempt to escape are at risk of being beaten, gang-raped, or killed.

The Turkish government does not generally provide protection or social services to victims of trafficking. Victims of trafficking are eligible to use only one of the eight government run battered-women's shelters and in practice, trafficked women are unable to avail themselves of even the minimal protection offered by this one shelter.⁵⁵ Moreover, the government's strategy to deal with trafficking is limited to tightening immigration controls including restricting the avenues to attainment of Turkish citizenship through marriage⁵⁶ and deportation of any foreigner linked to commercial sex-work⁵⁷ without screening to identify trafficked persons.⁵⁸

Turkey has signed but not ratified the Trafficking Protocol supplementing the Convention Against Transnational Organized Crime. The reform legislation of August added criminal code provisions that imposes heavy prison sentences for the smuggling or trafficking of persons.

However, OMCT is extremely concerned by the fact that Turkey does not provide adequate protection, assistance, education or rehabilitation to victims of trafficking. Victims of trafficking are treated as criminals by the Turkish authorities and are often summarily deported to their country of origin.

OMCT believes that by returning women without making a thorough inquiry into the risk of torture that they may face upon their return, Turkey is violating the principle of *non-refoulement*, enshrined in article 3 of the Convention against Torture as well as in other instruments such as the 1951 Convention relating to the Status of Refugees, to which Turkey is a State party. According to article 3 of the Convention against Torture, no State party shall expel, return (*'refouler'*) or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. Before deciding to expel anyone, Turkey has the duty to take into account the human rights situation and the effective state protection against persecution in the state of return in relation to the risk that the individual concerned might face in this context.

5. Violence Perpetrated by the State

5.1 Turkey's Legal Framework

Article 17 of the Turkish Constitution states that: "No one shall be subjected to torture or ill treatment; no one shall be subjected to penalty or treatment incompatible with human dignity." Until quite recently, the Turkish Penal Code provided a very narrow definition of torture, limiting it to acts carried out by civil servants for the purpose of extracting confessions of the criminally accused. The Convention against Torture obliges States parties to prohibit torture regardless of the purpose. On August 26, 1999, the Turkish legislature passed Law No 4449 which broadened the

definition of torture in Article 243 to include acts of torture by civil servants and public employees carried out for any purpose and increased the penalty for torture from the previous maximum of 5 years to 8 years imprisonment. Article 243 now reads: "A civil servant or other public employee who resorts to torture or cruel, inhuman or degrading treatment in order to make a person confess a crime, to prevent a victim, plaintiff, somebody participating in a trial or a witness from reporting incidents, to prevent them from filing a formal complaint or because they filed a formal complaint or for any other reason, shall be sentenced to a heavy prison penalty of up to eight years and permanent or temporary disqualification from service." Law No. 4449 also increased the punishment for ill-treatment; Article 245 of the Penal Code now provides that "those authorized to use force and all police officers who, while performing their duty or executing their superiour's orders, threaten or treat badly or cause bodily injury to a person or who actually beat or wound a person in circumstances other than prescribed by laws and regulations, shall be punished by imprisonment for three months to five years and shall be temporarily disqualified from the civil service."

Article 15 of the Convention against Torture imposes an obligation on States parties to "ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." Under Article 238(2) of the Criminal Procedure Law, statements of suspects obtained by means of torture or other ill-treatment at police stations or at the offices of the prosecutors cannot be used as evidence in trials. In 1992, the Turkish Code of Criminal Procedure was amended to provide that torture and ill-treatment constituted "prohibited interrogation methods."⁵⁹

In an effort to satisfy EU human rights criteria for accession, Turkey adopted constitutional amendments on October 4, 2001 and three legislative reform packages in February, March and August 2002, Acts No. 4744, 4748 and 4771, addressing several human rights issues including capital punishment, pre-trial detention, access to counsel and notification of next of kin when someone is placed in custody. With regards to the prevention of torture, the constitutional amendments of October 2001 included an amendment to Article 19(5) reducing the maximum period of police custody for collective offences to 4 days from a previous maximum of 7

days. The amendment provides for an exception to the 4-day rule in cases of offences falling under the jurisdiction of State Security Courts in regions under a state of emergency. In these cases the period of police custody can be extended to 7 days, whereas the previous rule allowed for a 10 day extension. The amendment imposes an obligation on a judge to hold a hearing before extending the period of custody. In this context it is worth noting that police custody refers to the period immediately following arrest of a suspect when s/he is detained at a police station but before s/he has been brought before a judge for a judicial determination respecting his/her custody status. Normally at the initial hearing the judge will make a determination as to whether to release the detainee or extend the custody period. In the latter case the detainee is transferred from the police station to a prison. The constitutional amendment to Article 19(5) shortening the period of police custody is significant because it is in this initial phase of custody when most instances of torture occur.

Amendments to Article 16 of the Law on the Establishment and Trial Procedures of the State Security Courts have improved access to counsel for detainees suspected of collective offenses falling under the jurisdiction of State Security Courts. The amendments mandate that access to counsel must be provided after 48 hours of detention whereas the previous law allowed for incommunicado detention for up to 4 days. Persons detained for common criminal offences continue to have the right to immediate access to counsel. The right to be assisted by counsel is, however, waivable for all detainees. An amendment to Article 19(6) of the constitution provides that the next of kin of a detained person shall be notified “without delay” of the detention of their relative. This amendment removes prior language of Article 19(6) which provided broad exceptions to the rights of notification.

Other efforts have been made by the Turkish government to prevent torture and ill-treatment. In May 2002, a regulation was adopted forbidding the blindfolding of detainees in police custody. In June 2002, in response to criticisms by the European Committee for the Prevention of Torture, the Director General for Security issued a circular prohibiting the projection of light into the face of suspects during interrogation and providing that interrogation rooms may no longer be painted black. The circular also called on all officials to be vigilant against torture. In August 2002, the legislature provided for the possibility of retrial for criminal and civil

cases to comply with the rulings of the European Court of Human Rights (ECtHR). This law, however, was formulated to apply only to cases filed with the ECtHR after August 2003. The legislature also amended Article 13 of the Civil Servants Law rendering public officials found guilty of torture or ill-treatment personally liable to pay compensation set by the judgments of the ECtHR.⁶⁰

The Turkish Government has instituted training programmes for law enforcement agencies and the judiciary to enhance awareness of and respect for human rights among its civil servants. The curriculum of police officers has been extended from 9 months to 2 years and courses on human rights have been included in the programme. The rulings of the ECtHR are translated and published in the Police Academy magazine, and the country findings of the European Committee for the Prevention of Torture continue to be made public by the Turkish authorities. In December 2001, in an effort to strengthen its human rights monitoring and reporting mechanisms the Turkish government set up the High Human Rights Board consisting of representatives from the Ministries of the Interior, Justice and Human Rights Boards in several provinces.

5.2 Comments on the Legal Framework and its Implementation in Practice

Following his visit to Turkey in November 1998, the UN Special Rapporteur on Torture reported that despite the efforts of the Government, torture persists in Turkey on a widespread scale.⁶¹ Recent reports of the Special Rapporteur on Torture, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the European Committee for the Prevention of Torture, and numerous Turkish and international NGOs have confirmed the widespread and continuing use of torture in Turkey.⁶² Indeed, Turkey's consistently poor human rights record was one of the main reasons it failed to secure a start date during the EU summit meeting in December 2002 for accession talks to begin.

OMCT welcomes the legal reforms described above but remains extremely concerned about the continuing systematic use of torture in Turkey and the lack of good faith and due diligence on the part of Turkish law enforcement authorities in the implementation of these reforms. The

Turkish government must do much more in terms of monitoring compliance and training its civil servants. Moreover, some of the Constitutional and statutory amendments do not go far enough in protecting persons from torture, while still others contain implementing provisions which are ambiguous and perpetuate proscribed practices. OMCT also notes with concern that public officials, including prosecutors and police officers are reported to be unaware of recent legal changes and continue to operate under the old rules.

It is of grave concern that Turkish law still does not guarantee immediate access to counsel for detainees under the jurisdiction of the State Security Courts. Over the past few years, United Nations experts, the European Committee for the Prevention of Torture and others have repeatedly called on Turkey to abolish incommunicado detention at police stations as the single most important step in eradicating torture in Turkey. As described above, the current law still allows for the detention of persons at police stations and gendarmeries for two days without access to lawyers. It is during this period of incommunicado detention that police most frequently torture and mistreat persons in their custody. Moreover the denial of access to counsel for detainees under the jurisdiction of the State Security Courts is reported to have a “knock-on” effect for other detainees, i.e. those arrested for common criminal offences who are also frequently denied their rights to legal assistance.⁶³ Police officers are reported to threaten these detainees with additional charges for political offences if they attempt to assert their right to assistance of counsel.⁶⁴ In many police stations access to counsel is routinely delayed until detainees have given a formal statement, and prosecutors and courts still rely heavily on uncorroborated confessions and “statements” in the prosecution and adjudication of guilt in criminal cases.⁶⁵

In its report on its visit to Turkey from 21 to 27 of March 2002, the CPT confirmed that access to counsel remained a significant problem particularly in the provinces. In Diyarbakir province “countless prisoners interviewed claimed that they had been denied access to a lawyer.”⁶⁶ The fact that the right to assistance of counsel is waivable under Turkish law further exacerbates the problem of incommunicado detention by exposing detainees to the risk of being compelled to waive their rights under duress. The CPT noted in the above report that “practically every person detained over the last nine months in the Anti-Terror Department and the Narcotics

Section at Diyarbakir Police Headquarters (and this amounts to hundreds of persons) was recorded as having waived their rights of access to a lawyer.” The CPT concluded that such a collective waiver was in their eyes “scarcely credible.”⁶⁷

Turkish authorities still have recourse to Article 3(c) of Legislative Decree No. 430 which allows them to remand prisoners, whose statements are needed in the investigation of crimes, to the custody of the police and gendarmeries for renewable periods of up to 10 days. During periods of remanded custody in police stations, detainees are denied access to an attorney and contact with family. Under the authority granted by this decree, prisoners are said to have been held for up to 40 days at police stations where they were subjected to torture and mistreatment.⁶⁸

As previously mentioned, pursuant to the October 2001 amendment of Article 19(6) the Constitution now requires in unambiguous terms that next of kin be notified without delay when a relative is detained: “Notification of the situation of the person arrested or detained shall be made to the next of kin without delay.” This constitutional requirement was implemented in February 2002 through a statutory amendment to Article 128 of the Code of Criminal Procedure. The new language of Article 128 reads: “A relative of the person apprehended or a person designated by him shall be informed without delay, *by decision of the prosecutor*, of the person’s apprehension and of the order to extend the custody period.” [emphasis supplied] The implementing legislation thus appears to eviscerate the Constitutional requirement of immediate notification by imposing an additional deliberative procedure, i.e. the *decision of the prosecutor*, rather than requiring automatic notification by the arresting authorities. Related to the notification requirement is the issue of recording deprivation of liberty. The Regulations on Apprehension, Police Custody and Taking Statements governs procedures at Turkish police stations and gendarmeries for recording the fact of someone’s detention. The trigger for making an entry into a police station log book however, appears to be the fact of placing someone in a cell, rather than the fact of detaining someone at a police station.⁶⁹ This rule (Article 11 of the Regulations) implies that a detainee’s sojourn at a police station will go unrecorded to the extent that he is not placed in a cell, and indeed, may not be recorded at all if he is released without having first been placed in

a cell. Unreported detention deprives detainees of access to counsel, contact with family and the outside world and exposes them to a heightened risk of torture and ill-treatment. Additionally, it impedes the investigation of allegations of abuse since it leaves no official record that detention actually occurred. Unreported detention also contravenes the UN Standard Minimum Rules for the Treatment Prisoners which require the immediate recording of detention.

Impunity for serious human rights abuses including torture and ill-treatment remains a grave problem in Turkey.⁷⁰ In an effort to address this problem the Turkish legislature, on 2 December 1999, reformed the Law on Accountability of Civil Servants and other Public Employees. The old law dating back to the Ottoman period was designed to provide certain immunities to civil servants acting in their official capacity by granting local administrative boards, appointed by provincial governors, the authority to decide whether to prosecute a member of the security forces.⁷¹ The present law unfortunately does not go far enough in curbing impunity and according to UN and Council of Europe experts it continues to perpetuate the “institutional impunity extended to security forces or public employees in cases of crimes committed in connection with their duties.”⁷² Notably, the new law does not get rid of the requirement that prosecutors must get permission from a government official outside the prosecutor’s office before being able to proceed against a civil servant. Rather, echoing the former Ottoman version, the new law still requires prosecutors to seek the permission of the government office whose employee it seeks to investigate. Once the prosecutor notifies the government office, it is up to a senior officer of that office to decide whether the accused employee is to be investigated. In cases where authorization to investigate is granted, the prosecutor has the discretion either drop the case or proceed to trial. The law *places no time limit* on the prosecutor to reach a decision on whether to prosecute the case if authorization by the government official is granted. The fact that this new law remains ineffective in addressing official impunity for acts of torture is confirmed by recent reports that it has been used specifically to block prosecutions of civil servants.⁷³ According to Amnesty International, between the beginning of 1999 and middle of 2000, the governor of Diyarbakir did not give permission to investigate or prosecute a single allegation of torture under either the old or the new version of the law.⁷⁴

Turkish authorities are not making good faith efforts to curb human rights violations using existing legal deterrents. Indeed, figures show that allegations of torture are rarely investigated or prosecuted.⁷⁵ The Turkish Parliamentary Human Rights Commission is reported to have forwarded 451 complaints of torture to prosecutors' offices around the country but received responses in only 69 cases, only one of which resulted in a trial.⁷⁶ In addition, courts have shown extreme reluctance to compel the appearance of public servants, such as police officers and gendarmes for trial and consequently, the few cases that are prosecuted are subject to lengthy delays and frequently dismissed for exceeding the statute of limitations.⁷⁷ During the lengthy pendency of proceedings suspects are rarely suspended from service in the police force or gendarmerie, but rather are allowed to continue exercising their duties and in some cases even promoted.⁷⁸

Despite the enhanced maximum sentences for the crimes of torture (Article 243) and ill-treatment (Article 245) described above, most prosecutions result in sentences at the lower end of the sentencing scale which, incidentally, remained unchanged by the recent legislative amendments, and therefore involve light sentences which are frequently suspended or converted into fines.⁷⁹ Moreover, figures show that most cases are prosecuted under Article 245 for ill-treatment rather than Article 243 relating to torture which carries more severe penalties.⁸⁰ These prosecutorial practices appear to contravene the clear intent of the legislature which was to enhance the deterrent effect of the law.

Additionally, lawyers, human rights advocates and victims of torture are frequently subjected to intimidation and harassment by the Turkish authorities who try to prevent them from seeking redress for rights violations. Recent changes to the Law on Associations have not succeeded in preventing official harassment of Turkish human rights NGOs because the law still imposes cumbersome and restrictive obligations relating to the registration and reporting of NGO activities, exposing them to the risk of frivolous and persecutory law suits. For instance, the Istanbul branch of the Human Rights Association is currently facing 64 law suits more than half of which were brought under the Law on Associations.⁸¹ Other legislation used to investigate and prosecute rights groups for legitimate activities include the Anti-Terror Law, the Law on Demonstrations and provisions of the criminal code.

Women's rights groups are especially at risk of persecutory prosecutions. Eren Keskin, a prominent human rights activist who founded the Legal Aid Project of the Human Rights Association, to assist women who have been raped or sexually abused in police custody is facing 86 lawsuits relating to her human rights activities. Among other things she has been charged with "insulting the state security forces" for publicizing her clients' claims of sexual torture by the police. Following a speech given in Germany on 16 March 2003 on the subject of sexual assaults against women in prison, a journalist, Mr. Altayli stated in a radio broadcast on 8 April that he would gladly assault Ms Keskin sexually at the first opportunity.⁸²

OMCT is especially alarmed by reports that Turkish authorities are increasingly using sophisticated methods of torture designed to evade detection by forensic medical examination and other investigative techniques.⁸³ Turkish authorities continue to intimidate both detainees and medical health professionals not to report evidence of torture and medical examinations of detainees do not always occur outside the presence of law enforcement officials as mandated by regulation. The situation in the eastern part of the country appears to be especially poor. The CPT received numerous reports of detainees who were warned not to report mistreatment to examining physicians and it appears that the presence of law enforcement officials during medical exams is routine.⁸⁴

In part because of the *de jure* and *de facto* obstacles to legal redress faced by victims of torture in Turkey, Turkish citizens are continuing to seek redress for rights violations at the European Court for Human Rights. Between October 1, 2001 and June 30, 2002, 1874 applications were filed against Turkey of which 246 were made under Article 3 of the ECHR relating to the prohibition of torture.⁸⁵ However, the Turkish government has consistently failed to execute the judgments of the ECtHR thus perpetuating the perception that law enforcement officials are immune from prosecution for rights violations. The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has stated that evidence shows that "State agents [in Turkey] have been able to continue to commit grave human rights human rights violations, including extrajudicial executions, with the knowledge that their crimes would not result in investigation or criminal prosecution. This systematic impunity has led to an atmosphere of fear among the population and undermined the citizen's trust in the law enforcement agencies and the justice system."⁸⁶

5.3 Gender-based Torture and other Forms of Cruel, Inhuman, or Degrading Treatment

Women in Turkey are particularly at risk of being subjected to sexual torture. Forms of torture inflicted upon women include electro-shocks to the genitals, standing for long periods of time, being forced to strip and stand naked in front of male guards, forced virginity tests, beatings targeting the genitals and breasts, use of high-pressure water hoses, and sexual abuse including rape and threats of rape. Moreover, threats of rape are often compounded by police taunts that rape will deprive women of their virginity and their honour.

These kinds of torture and ill-treatment of women are part of the broader context of widespread and systematic use of torture or other cruel, inhuman or degrading treatment or punishment by the police and gendarmes in Turkey. Those suspected of holding political beliefs that are unacceptable to the government or military and Kurdish women are more likely to be subjected to arbitrary arrest and detention, and subsequently subjected to torture or cruel, inhuman or degrading treatment or punishment.

OMCT is concerned that discrimination against women and discrimination against the Kurdish people in Turkey contributes the high risk of violence against Kurdish women by the State. Many cases of rape and other forms of sexual violence in custody and by village guards in Kurdish areas have gone unpunished. One of the reasons for this impunity is that the State assumes protection for its own officials and does not investigate or adequately punish acts of violence committed by officials. Another reason is that women and girls frequently do not file complaints of rape and other forms of sexual violence out of shame and fear. Due to the fact that in Turkey a woman's sexuality is a reflection of the family honour, if a woman is not chaste then she may be viewed as a burden in the family, not accepted, subjected to forced marriage, or even killed. Thus, while all victims of torture are confronted with major obstacles when attempting to lodge a complaint or to seek redress, when rape or another form of sexual violence constitute the method of torture, it is even more likely that the victim will not complain out of fear and shame, thus leading to the negation of this violence and to the impunity of the torturer.

*Cases of Violence at the Hands of State Agents*⁸⁷

Yüksel Zengin, Gülbahar Topdemir, and Leyla Narin

Yüksel Zengin, Gülbahar Topdemir, and Leyla Narin reported to the Human Rights Association Diyarbakır Branch that they were tortured in detention. Ms Zengin reported that she was taken to an outdoor place where she was beaten by the police. Ms Topdemir reported that she was threatened with rape and beaten. She also complained that she was forced to listen music with high volume under detention. Ms Narin reported that her eyes were bowed, her throat was squeezed and she was electrocuted while she was detained.

Fahriye Kaya, Ibrahim Kaya ve Yasar Simsek

On 16 January 2002 in the Silvan District of the Diyarbakır province, Ms Fahriye Kaya, who was detained following a house raid resulting in the deaths of two persons, reported to the Diyarbakır Branch of the Human Rights Association that she was threatened with rape and beaten while in detention. She also said that her eyes were bowed during detention. She still remains in prison.

Pelin Çalışkan

A representative of a journal called Atilim, Ms Pelin Çalışkan was detained on 3 March 2002 in Bursa and she reported that she was tortured both physically and psychologically.

M.I.

M.I. who was detained on 7 March 2002 in Diyarbakır reported to the Diyarbakır Branch of the Human Rights Association that she was subject to violence during detention: She stated: *After being taken in custody in the District I was brought to the Directorate for Security in Diyarbakır and put in a cell. After one hour, I was taken to the interrogation room blindfolded. In the interrogation room, they were hitting my head. They were threatening me by saying that “let’s undress her and show to the Commander, let’s rape her then she should not be able to get married.” I*

was subject to this sort of treatment during four days. I was forced to sign a paper while blindfolded. I was to faint. On the fourth day, I was taken to the Emergency Service of the State Hospital in Diyarbakir. I was later taken to the prosecutor's office and was released."

E.A.

Ms E.A. who was detained on 10 April 2002 and released on 12 April 2002 reported the following to the Diyarbakır Branch of the Human Rights Association: *"As soon as I was detained, I was taken to the Health Centre. A nurse searched on me. When I told her that I have faint problems she took the note. From the health centre I was taken to the Gendarmerie station in Ba?ıvar. Four gendarmerie personnel took my statement. During the interrogation they were continuously swearing, and threatening me with torture. I was at the same time being hit systematically. Later, I was taken to a cell. They have not provided any meal. I was referred to the prosecutor's office on 12 April and I was released.*

H.T.

Ms H.T., who was arrested on the grounds of being member of the PKK, reported to the Legal Aid Office of Sexual Abuse and Rape Project that she was subject to torture during four days of detention. She reported that she was undressed, blindfolded, her vagina was watered. She also added that she was forced to sit on feces in the toilet. She was also sexually abused with hands.

Gülden Sönmez and Sevim Anıtkar,

Two women lawyers who are members of the Istanbul Bar Association, Gulden Sonmez and Sevim Anitkar, were subject to attacks and maltreatment by the prison manager and guardians in Metris Prison in İstanbul. It was reported that these two lawyers went to the Prison to see their clients who were tortured in police detention before being sent to prison. After identifying that their clients were tortured, they asked the Prison management to refer them to the Forensic Medicine Department to get the report on the torture. Upon their request, the Prison manager and guardians attacked and hit them.

6. Conclusions and Recommendations

OMCT welcomes Turkey's ratification of major international and regional human rights treaties, including mechanisms that facilitate individual complaints procedures. OMCT is also encouraged by the passage of new laws in Turkey aimed at meeting the human rights requirements for membership in the European Union, including laws specifically designed to improve the status of women. In particular, the Constitution and the Civil Code provides for equality between women and men. However, the Penal Code still contains discriminatory provisions against women.

OMCT is deeply concerned by the lack of opportunity for Turkish women to make decisions in the political, economic and cultural contexts as this has serious implications for the advancement of women and the full enjoyment of their fundamental rights. Specifically, the unequal gender power relations created by discrimination in education, employment and in political life renders women vulnerable to violence, both in the domestic and the community sphere. OMCT would recommend that the government take extensive steps to promote equality of women and men through education and awareness raising campaigns. OMCT further suggests that affirmative action programs be instituted in both political and organizational settings to ensure women's participation at political and economic levels.

Despite the many new laws that have been passed, the government has not fully lived up to its obligation to enforce the laws that protect women's rights, particularly with regard to laws concerning traditional practices such as polygamy, forced marriage, honour crimes, and virginity testing. As effective implementation of laws is central to any effort to promote and protect women's rights, OMCT would urge the government of Turkey to raise awareness about existing laws protecting women's rights and the harms associated with these traditional practices, institute mechanisms to encourage women to report violations of their rights, establish protections for women who report violations of their rights, and train police and judicial personnel, and any other government official having contact with women whose rights have been abused, to handle cases of violations of women's rights with gender sensitivity.

OMCT is particularly troubled by the widespread problem of domestic violence in Turkey, with as many as 90% of women being subjected to violence at the hands of their husbands and boyfriends. In order to effectively combat domestic violence, the government of Turkey must develop and pass a comprehensive law addressing the problem. Such a law should include criminal penalties for men who beat their wives and girlfriends, protections for women who report domestic violence (such as shelters and other social services), establishment of gender sensitive interrogation techniques, training of police officers about the particularities of domestic violence cases, active recruitment of female police officers to handle domestic violence cases, rules protecting women who testify, minimum penalties for persons found guilty of domestic violence, and wide distribution of the law to the women and men of Turkey to ensure that they are aware of their rights.

OMCT is deeply concerned that marital rape is not a specific crime in Turkey and insists that the government of Turkey should specifically criminalize the act of rape within marriage.

The correlation between a woman's sexuality and her family's honour creates a climate of social acceptance for extreme and violent measures taken in order to control the sexual behaviour of women and girls. The most concrete manifestations of this restrictive social code are crimes committed in the name of honour and practices such as virginity testing and forced marriages. Related to these practices is the extremely high rate of suicide among girls and women who justifiably fear retribution as a result of having transgressed social mores or who feel that they have no other choice if they wish to escape from a situation of forced marriage.

OMCT notes that the structure of the Turkish Criminal Code places women's sexuality under the control of the family. While other forms of violence are considered under the title "Felonies against individuals," rape and other forms of sexual violence are classified as "Felonies Against Public Decency and Family Order." Moreover, in this section, several articles refer to the virginity of victims as a constitutive element of the crime.

Although the Turkish Criminal Code does not explicitly provide for a defence based on honour, several provisions of the Code contain defences that are regularly used in order for the perpetrators of crimes committed in the name of honour to receive reduced sentences. Due to the general

acceptance of honour-related crimes by Turkish society, honour is often used by judges as a mitigating factor.

In order to fulfil its duty to exercise “due diligence” in the prevention, investigation and punishment of violence against women and girls and to eradicate crimes committed in the name of honour and practices such as virginity testing and forced marriages, OMCT would urge the government of Turkey to repeal all laws that provide reduced sentences for crimes committed in the name of honour, to enforce existing laws on incitement and assistance to commit murder and persuasion to commit suicide, and to amend all provisions in the criminal code which require the virginity of a victim as an essential element of the crime. Virginity testing should be prohibited, both in private and public establishments. The government must address attitudes that justify honour killings through education and awareness raising campaigns, including comprehensive cultural training for all law enforcement, prosecution and judicial officers in order to encourage recognition of this serious crime.

Although OMCT welcomes the reform legislation of August, which added criminal code provisions that imposes heavy prison sentences for the smuggling or trafficking of persons, OMCT is extremely concerned by the fact that Turkey does not provide adequate protection, assistance, education or rehabilitation to victims of trafficking. Victims of trafficking are treated as criminals by the Turkish authorities and are often summarily deported to their country of origin. OMCT is concerned that such a working method violates the principle of *refoulement* as no inquiry is made into the situation facing women on their return to their country of origin. OMCT recommends that Turkey urgently pass a law to specifically address trafficking in women and provide services to protect and rehabilitate women victims of trafficking.

OMCT welcomes the many legal reforms that Turkey has instituted with regard to state sponsored torture. Nevertheless, reports indicating that torture persists, that detainees do not have effective access to counsel, that family members of detainees are only notified at the discretion of the prosecution, that detainees are not always registered immediately upon arrival at the detention center, and that perpetrators of torture enjoy impunity, remain causes of concern for OMCT. The reformed laws must be followed by the political will to enforce them in a strict manner in

order to combat these problems. Additionally, loopholes in the reformed laws that allow these practices, which make detainees vulnerable to torture, to continue must be immediately addressed and amended.

OMCT is concerned about the high level of intimidation of human rights defenders and OMCT calls upon the Turkish government to prevent and punish such harassment in all instances.

OMCT is very concerned about the high incidence of torture and ill-treatment of women at the hands of law enforcement officials in Turkey. In particular Kurdish women and women who voice political beliefs unacceptable for the government and military are at risk of violence at the hands of agents of the State. State violence often has a sexual nature. Reports demonstrate that women who are victims of torture and ill treatment are often threatened with rape, raped, virginity tested, or otherwise sexually abused. OMCT would insist that the Government demonstrate its opposition to sexual violence and recognize publicly that sexual violence in custody is a form of torture or other inhuman or degrading treatment or punishment. Stripping of detainees during questioning should also be ended.

Of further great concern is the fact that the perpetrators of these acts of violence against women reportedly enjoy impunity. OMCT would call upon the Government to ensure that all acts of torture and ill treatment of women in detention are appropriately investigated, prosecuted and punished and the victims provided with adequate reparations.

OMCT would recommend that the Government adopt measures to ensure that all law enforcement personnel are aware of the provisions of human rights law in relation to the protection of women against violence. In addition, OMCT would like to suggest that greater efforts are made to ensure that at least one female law enforcement official is present during the interrogation of women suspects and that women are always housed in separate detention facilities and supervised by female wardens. It should be forbidden to male officers to strip-search female detainees.

Finally, OMCT would insist upon the need for the Government to fully implement all of the provisions of the standards and recommendations of the Committee against Torture, the Special Rapporteur on Torture, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions,

the European Committee on the Prevention of Torture, the Convention for the Elimination of All Forms of Discrimination Against Women, the Beijing Rules and Platform for Action and the Declaration on the Elimination of Violence Against Women as these instruments provide detailed protection for women against violence in the family, in the community and at the hands of State officials.

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Committee against Torture

THIRTIETH SESSION – 28 APRIL- 17 MAY 2003

**CONSIDERATION OF REPORTS SUBMITTED
BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**CONCLUDING OBSERVATIONS BY THE COMMITTEE AGAINST TORTURE:
TURKEY**

1. The Committee considered the second periodic report of Turkey (CAT/C/20/Add.8) at its 545th and 548th meetings, held on 2 and 5 May 2003 (CAT/C/SR. 545 and 548) and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the second periodic report of the Government of Turkey, which outlines the new measures and developments relating to the implementation of the Convention that have taken place in the State party since its submission of the initial report in 1990. It also welcomes the updated and detailed information as well as the extensive responses provided by the representatives of the State party.
3. The Committee nevertheless regrets the long delay in the presentation of the report, which was overdue by eight years.

B. Positive aspects

4. The Committee welcomes the following positive aspects:
 - (a) The abolition of the death penalty for peacetime offences;

- (b) The lifting of the long standing state of emergency;
- (c) The Constitutional and legal reforms intended to strengthen the rule of law and align the legislation with the Convention. Such reforms include the reduction of periods of detention in police custody; the elimination of the requirement of administrative permission to prosecute a civil servant or public official; and the diminution of the number of crimes under the jurisdiction of State Security Courts.
- (d) The inclusion in domestic legislation of the principle that evidence obtained through torture shall not be invoked as evidence in any proceedings;
- (e) The establishment of Prison Monitoring Boards, which include the participation of members of non-governmental organizations in their individual capacity, with the mandate to carry out inspections in penal institutions;
- (f) The bill submitted to Parliament concerning the establishment of the Ombudsman institution;
- (g) That visits of monitoring bodies such as the Rapporteurs of the UN Commission on Human Rights have been accepted by the State party in a spirit of cooperation, and that the reports adopted by the European Committee for the Prevention of Torture have been made public by the State party.

C. Subjects of concern

- 5. The Committee expresses concern about the following:
 - (a) Numerous and consistent allegations that torture and other cruel, inhuman or degrading treatment of detainees held in police custody is apparently still widespread in Turkey;
 - (b) Safeguards concerning the registration of detainees by the police are allegedly not always complied with;
 - (c) Allegations of lack of prompt and adequate access of persons in police custody to legal and medical assistance, as well as notification to family members;

- (d) Allegations that despite the number of complaints, prosecution and punishment of members of security forces for torture and ill-treatment are rare, proceedings are exceedingly long, sentences are not commensurate with the gravity of the crime, and officers accused of torture are rarely suspended from duty during the investigation;
 - (e) The importance given to confessions in criminal proceedings and the reliance of the police and the judiciary on confessions to secure convictions;
 - (f) The alarming problems in prisons as a result of the introduction of the so-called “F-type prisons” which have led to hunger strikes causing the death of more than sixty inmates;
 - (g) The State party’s failure to execute judgments of the European Court of Human Rights, where the payments of just compensation ordered by the Court have not been fully complied with.
6. The Committee is also concerned about:
- (a) Lack of training of medical personnel dealing with detainees on matters related to the prohibition of torture;
 - (b) Allegations according to which the expulsion of illegal aliens to their country of origin or neighboring countries is often accompanied by ill-treatment, without taking into consideration the safeguards contained in article 3 of the Convention;
 - (c) The continuing reports of harassment and persecution of human rights advocates and non-governmental organizations.

D. Recommendations

7. The Committee recommends that the State party should:
- (a) Ensure that the full benefits of the safeguards against ill-treatment and torture of detainees, including those held for offences under the jurisdiction of State Security Courts, be available in practice, particularly by guaranteeing their right to medical and legal assistance and to contact with their family;

- (b) Establish measures to guarantee that prompt, impartial and full investigations into the numerous allegations of torture and ill-treatment are carried out, and ensure an efficient and transparent complaint system in this connection;
- (c) Repeal the statute of limitations for crimes involving torture; expedite the trials and appeals of public officials indicted for torture or ill-treatment; and ensure that members of the security forces under investigation or trial for torture or ill-treatment be suspended from duty during the investigation and dismissed if convicted;
- (d) Ensure that ongoing inspections of prisons and places of detention by judges, prosecutors or other independent bodies (such as Prison Monitoring Boards), continue to take place at regular intervals, and that appropriate action is taken upon their inspection reports and recommendations by the responsible authorities;
- (e) Guarantee that detention records of detainees in police custody are properly kept from the outset of the custody period, including the period when they are removed from their cells, and that such records are made accessible to their families and lawyers;
- (f) Solve the current problem in prisons generated as a result of the introduction of “F-type prisons” by implementing the recommendations of the European Committee for the Prevention of Torture and by entering into serious dialogue with those inmates continuing hunger strikes.
- (g) Review the current legislation and practice in order to ensure that the expulsion of irregular aliens is performed within the legal guarantees required by international human rights standards, including the Convention;
- (h) Ensure that fair and adequate compensation, that includes financial indemnification, rehabilitation, and medical and psychological treatment, is provided to the victims of torture and ill-treatment;
- (i) Ensure that human rights defenders and non-governmental organizations, together with their premises and archives, are respected;
- (j) Include the prevention of torture in the Human Rights Education

Programme of Turkey (1998-2007) and ensure that all the new developments in legislation are made widely known to all public authorities.

(k) Intensify training of medical personnel with regards to the obligations set out in the Convention, in particular on the detection of signs of torture or ill-treatment and the preparation of forensic reports in accordance with the Istanbul Protocol;

(l) Provide in the next periodic report detailed statistical data, disaggregated by crimes, regions, ethnicity and gender, of complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, as well as related investigations, prosecutions, and penal and disciplinary sentences;

(m) Provide in the next periodic report information on the implementation of the "Return to Village Programme" regarding internally displaced persons;

(n) Widely disseminate the Committee's conclusions and recommendations in the State party in all appropriate languages.

8. The State party is invited to submit its next periodic report, which will be considered as the third, by 31 August 2005.

