

Shadow NGO Report on Turkey's Fourth and Fifth combined Periodic Report to the Committee on the Elimination of Discrimination against Women

*for submission to the CEDAW Pre-session
July 2004*

prepared by Women for Women's Human Rights (WWHR) – New Ways

endorsed by the Women's Platform on the Turkish Penal Code:

- AMARGI
- Amnesty International Turkey Branch
- Ankara Women's Solidarity Foundation
- Association for the Support and Training of Women Candidates
- Association for the Support of Sincan Community Center
- Çanakkale Association to Promote Women's Labor
- CEDAW NGO Forum Preparation Committee
- Edirne Women's Human Rights and Handicrafts Group
- Filmmor: Women's Cinema Group
- IRIS Equality Watch
- Istanbul Bar-Women's Rights Enforcement Center
- Istanbul Governorate Human Rights Desk
- Istanbul Governorate Women's Status Unit
- Izmir Bar Women's Rights Enforcement Center
- Izmir Bar Women's Commission
- KATAGİ
- Kibele Women's Cooperative
- KAOS GL
- LAMBDA
- Okmeydani Women's Atelier for Paper Art
- Purple Roof Women's Shelter Foundation
- Republican Women's Association
- Turkish Women's Union
- Women's Solidarity Foundation
- Women for Women's Human Rights – New Ways
- Van Women's Association

Summary List of Critical Issues pertaining to the Fourth and Fifth Combined Periodic Report of Turkey to CEDAW

The Turkish Penal Code (TPC) Draft Law is in violation of CEDAW Article 2, most specifically Article 2, paragraph g; Article 1; Article 3; Article 5 paragraph 1, Article 15, most specifically paragraph 1. Hence the recommended action is as follows:

- Article 85 of the TPC Draft Law (Aggravated Homicides) should be amended to explicitly state “honor killings” as an aggravated circumstance, instead of the currently employed term “custom killing”;
- Article 289 of the TPC Draft Law (Genital Examination) should be amended to include the provision “virginity testing is banned,” and explicitly state that women’s consent is a precondition for genital examination and anyone sending a woman for genital examination or any health personnel performing the examination without authorization from judges or public prosecutors will be penalized;
- Article 107 of the TPC Draft Law (Sexual Relations with a Minor) criminalizing consensual sexual relations between young adults should be removed.

In order to meet the required implementation of CEDAW Article 2 paragraphs c, d, e, f; and CEDAW Articles 3, 5, 7, 10, 11, it is urgent that **the Public Administration Reform Process** entails the following:

- a mandatory provision for local authorities overtaking the existing Women’s Shelters and Community Centers, to keep them open and functioning;
- a mandatory provision for local authorities to open new Women’s Shelters and Community Centers in the areas where they do not exist;
- a provision imposing the following of clear guidelines for the operation of Women’s Shelters and Community Centers according to international standards, most significantly staffed by appropriately trained and experienced social workers, psychologists or health workers;
- a provision that local authorities in charge of Women’s Shelter or Community Center operation cooperate closely with appropriately qualified and experienced women’s groups and non-governmental organizations in their management.

The Constitutional Amendment on Gender Equality falls short of providing a strong enough basis to promote de facto gender equality and equal opportunities for women and meeting the required implementation of CEDAW Articles 3, 4 paragraph 1, 15 paragraph 1. Hence the recommended action is as follows:

- Article 10 of the Constitution needs to be amended by adding the insertion: “*The state takes all necessary measures to provide gender equality, including special temporary measures.*”
- an Equality Framework Law needs to be adopted and an Equality Monitoring Commission or a Gender Equality Ombud has to be established in order to monitor the implementation of legislation, policies and programs to eliminate discrimination against women.

The new reformed Turkish Civil Code Article on Property Regimes in Marriage is in violation of Articles 2 and 16 of the Convention. Hence the recommended action is as follows:

- Article 10 of the Enactment Law of the Civil Code needs to be amended so as to enable “Regime Regarding the Ownership of Acquired Property” applicable to all marriages including prior to the ones that have taken effect prior to the adoption of the new Civil Code in January 2002.

Shadow NGO Report
on Turkey's Fourth and Fifth combined Periodic Report
to the Committee on the Elimination of Discrimination against Women
for submission to the CEDAW Pre-session, July 2004

1. INTRODUCTION

This shadow report aims at raising a number of critical issues of concern taken up in the fourth and fifth combined official periodic report of Turkey submitted to the Committee on the Elimination of Discrimination against Women (CEDAW). The report has been prepared by Women for Women's Human Rights (WWHR) - New Ways and endorsed by 26 non-governmental organizations who are members of the Women's Platform on the Turkish Penal Code.

This report makes no claim to provide a comprehensive or exhaustive list of issues with regards to the shortcomings of the implementation of CEDAW in Turkey. Rather it purposefully focuses on a number of critical issues pertaining to on-going advocacy and lobbying efforts of women's organizations with the Government regarding a number of legal and public administrative reform processes currently on the agenda of the Turkish Parliament. The timing of the CEDAW pre-session is of critical importance as it falls amidst some on-going campaigns regarding these reform processes. We hope that the information and alternative perspectives provided in this report will be helpful to the Committee in formulating its list of critical questions during its July 2004 pre-session; and that the CEDAW process will provide a supportive pressure point in the advocacy and lobbying efforts of the women's movement towards gender equality in Turkey.

As stated in the introduction of the fourth and fifth combined report of Turkey to CEDAW, the period between Turkey's last periodic report to the present (1997-2004) has witnessed major legislative changes towards the elimination of discrimination against women in Turkey. However, despite the progress made, mostly attained through the persistent successful advocacy and lobbying efforts of the women's movement in Turkey, much remains to be done in order to abolish discrimination against women in Turkey.

The critical issues raised in this report fall under four areas of reform, namely:

- Reform of the Turkish Penal Code and the remaining gender discriminatory provisions;
- Reform of the Local Public Administration Law and the threat therein to the status of women's shelters and community centers;
- Recent amendment to the Constitutional Clause overseeing equality between the sexes and the lack of an affirmative action perspective therein;
- Recent reform of the Turkish Civil Code and the discriminatory clause on property regimes in marriage.

2. THE REFORM OF THE TURKISH PENAL CODE

The reform of the Turkish Penal Code (TPC), one of the most important legislative changes on the agenda of the Turkish Parliament for the 2004-2005 legislative term, is a major opportunity for Turkey to take a significant step forward in eliminating discrimination against women. Article 2, paragraphs a, b, c, f and g of CEDAW calls on States Parties to employ the principle of equality in their legislations and establish equal legal protection for men and women and to adopt appropriate legislative and other measures to prohibit and abolish discrimination against women. Article 2 paragraph g refers specifically to penal provisions, calling States Parties to repeal “all national penal provisions which constitute discrimination against women.” Indeed in Turkey’s fourth and fifth combined periodic report,¹ the section under Article 2, acknowledges that the penal code currently in effect in Turkey entails an overtly discriminatory approach to women and contains numerous provisions legitimizing women’s human rights violations such as honor killings, virginity tests, rape, etc. The report quotes a long list of necessary amendments to the TPC Draft Law towards the elimination of discrimination against women representing “a significant break from the patriarchal understanding of sexuality” of the TPC in effect.

Since the writing of the official report of Turkey, the review of the TPC Draft Law in the Parliament has been finalized and the Draft Law is now to be voted and approved in Fall 2004. While a number of the amendments mentioned in the official report have been made, some very important ones, such as the one pertaining to honor killings, have been rejected by the Parliamentary Justice Commission. Hence a substantial number of discriminatory provisions continue to remain in the draft law, which undermine this “break” and continue to sanction women’s human rights violations. The timing of the CEDAW pre-session for Turkey’s fourth and fifth combined review is critical, as it falls before the voting of the Penal Code Draft Law in the General Assembly.

Since the beginning of the TPC reform process in the Parliament in 2002, the women’s movement has been leading an intensive campaign for the “*Reform of the Turkish Penal Code from a Gender Perspective*.” Representatives of twenty-six non-governmental organizations, including activists, jurists and academicians nationwide have joined together under the “*Women’s Platform on the Turkish Penal Code*.” The Platform, spearheaded and coordinated by Women for Women’s Human Rights – New Ways, lobbied the Parliament throughout the entire period of October 2003-July 2004, for a total of 30 proposed amendments aimed at abolishing discriminatory provisions of the code in effect (see attached booklet entitled “*Gender Discrimination in the Turkish Penal Code Draft Law*” for details). The campaign has achieved a great success in getting 24 of its 30 proposed amendments worked into the draft law. However, a few crucial discriminatory provisions continue to remain in the draft law, seriously threatening the achievement of a fully egalitarian penal code. The remaining discriminatory provisions in and the necessary amendments to the draft law are as follows:

2.a. Inadequate Measures for the Eradication of Honor Killings

The Turkish Penal Code in effect offers major sentence reductions to perpetrators of “honor killings”, thereby legitimizing this harmful traditional practice and giving way to the prevalence of customs over law. Honor killings remain a major women’s human rights violation in Turkey. Since the beginning of 2004, at least 7 cases of honor killings have been covered by the media and the actual number of instances is estimated to be much higher.

¹ Reference is made to the fourth and fifth combined report of Turkey based on a copy that was provided to us in May 2004 by the Directorate General on the Status and Problems of Women upon our request.

Article 29 of the TPC Draft Law, pertaining to “Unjust Provocation” has been amended to include in its justification that the article shall not apply to honor killings. However, the amendment by itself shall not suffice for the effective persecution of these premeditated violent murders.

The Women’s Platform on the Turkish Penal Code has proposed that Article 85 of the draft law (“Aggravated Homicide”), defining aggravated circumstances for homicides, should be revised to include killings in the name of “honor” as an aggravating circumstance. As such, commitment of an honor killing would be made subject to punishment by life-time imprisonment. Article 85 explicitly states that murders committed as blood feud (vendetta killings) constitute aggravated crimes and foresees more severe sentences for vendetta killings. Honor killings are another similar violent traditional practice against which the state is bound to take the necessary precautions.

Despite the concerted calls of the Platform upon the Parliamentary Justice Commission for inclusion of honor killings in Article 85 of the TPC Draft Law, the final version of the draft law contains only a newly coined expression; “custom killings.” This expression does not appropriately define murders committed in the name of honor. The term “custom killings” is associated with primarily local practices in the Eastern Regions of Turkey; generally, it entails the so-called extended “family assembly” issuing a death warrant for the female member of the family alleged to “dishonor” the family through some “inappropriate” conduct. “Honor killings”, however, is a more inclusive term that entails not only “custom killings” but also any individual acts of murder by men of women which are motivated through the perception that a man’s personal understanding of “honor” has been blemished. Hence, the use of the term “custom killings” in the draft law excludes and leaves open room for any acts of murder committed in the name a personal understanding of honor and not necessarily motivated by a customary practice. Indeed, in the international law terminology and in all related U.N. decisions, honor killings are defined as “*acts of murder in the name of honor*”.

As of the writing of this report, the Platform and all other supporting NGOs are calling upon the Parliament to appropriately and openly add “honor killings” under Article 85. It is important to recall that the Turkish Delegation at Beijing +5 played a leading role in including honor crimes in the Outcome Document as a harmful traditional practice against which governments should take all necessary measures.

In order to take a step forward to eradicate honor killings and in compliance with CEDAW Article 2 paragraphs f and g, and Article 15 paragraph 1, honor killings must be classified as aggravated homicide in the new Turkish Penal Code.

2.b. Failure to effectively criminalize Virginitly Testing

Unfortunately the practice of virginitly testing still exists in Turkey, performed in various public institutions and penitentiaries and even employed by families when women are suspected of having premarital sexual relations. The practice not only discriminates against women based on virginitly, but also violates women’s human rights and bodily integrity, sometimes to the extent that it causes women to commit suicide or to be killed by their families in the name of “honor”.

The section “Women’s Chastity” in the fourth and fifth combined periodic report of Turkey, states that the removal of the reference of “unchastity” from the Ministry of Education Statute in 2002 and the 1999 Statute issued by the Ministry of Justice banning “the bodily examination of women for reasons of disciplinary punishment against their consent or in a manner which will hurt or torment them” has eliminated a gross gender based discrimination. However, these changes by themselves do not suffice to effectively ban virginity testing under all circumstances. Unless the practice is explicitly banned and effectively criminalized in the penal code, virginity testing may still go unpunished and continue to be practiced under various pretexts.

The Turkish Penal Code Draft Law refers to virginity testing under the Article 289 entitled “Genital Examination”. The article, however does not name the practice “virginity testing”, thereby failing to explicitly criminalize it. Furthermore, even though the draft law article limits the authority to issue a “genital examination” to judges and public prosecutors, it does not seek the consent of the woman herself as a necessary precondition. Finally, it does not penalize the doctors or the medical personnel who actually perform the inspection. It is only the public servant or the private persons that force the woman to such a procedure who are subject to punishment. Hence, as it stands, this provision continues to allow families, parents and guardians to take women for virginity testing to private offices, still providing space for this human rights violation.²

In accordance with CEDAW Article 2 paragraphs d, e, f, and g, the TPC Draft Law should be amended to explicitly define, ban and penalize the practice of virginity testing. To this end, Article 289 needs to be amended so as to explicitly state that “virginity testing is banned”; that woman’s consent is a necessary precondition for any tests authorized by judges or public prosecutors; and that any health workers performing the test without authorization are subject to punishment.

2.c. Violations of Young Women’s Human Rights by Penalizing Consensual Sexual Relations of Young People

The Turkish Penal Code Draft Law, Article 107 penalizes sexual relations between young people of 15-18 years of age upon complaint. As the draft law fails to define the complaint, it leaves room for complaints from third parties such as parents, families and school administrators and teachers, and leaves space for penalizing consensual sexual relations between young people. The article thereby allows for the restriction of young women’s freedoms and rights and discrimination against them.

The article should be removed and instead a provision should be added to Article 106 overseeing “Sexual Abuse of Children”, such that sexual relations of minors of 15-18 years of age is penalized only in the case that the sexual relation involves the use of force and violence or threats, or lacks the involved parties’ consent for any other reason.

² The Justice Commission of the Parliament has argued that “genital examination” is necessary to collect evidence in rape cases. However, in reality, a full body examination has to be performed to collect evidence for sexual assault cases. Furthermore, the provision discriminating between virgin and non-virgin women in cases of rape (foreseeing more severe punishment if the raped woman is a virgin) has already been removed from the draft law.

To summarize our call for action on the reform of the Turkish Penal Code:

As it stands now, the Turkish Penal Code Draft Law is in violation of CEDAW Article 2, most specifically Article 2, paragraph g; Article 1; Article 3; Article 5 paragraph 1, Article 15, most specifically paragraph 1. Hence the recommended action is as follows:

- Article 85 of the TPC Draft Law (Aggravated Homicides) should be amended to explicitly state “honor killings” as an aggravated circumstance, instead of the currently employed term “custom killing”;
- Article 289 of the TPC Draft Law (Genital Examination) should be amended to include the provision “virginity testing is banned,” and explicitly state that women’s consent is a precondition for genital examination and anyone sending a woman for genital examination or any health personnel performing the examination without authorization from judges or public prosecutors will be penalized;
- Article 107 of the TPC Draft Law (Sexual Relations with a Minor) criminalizing consensual sexual relations between young adults should be removed.

3. THE PUBLIC ADMINISTRATION REFORM PROCESS AND THE THREAT OF CLOSURE TO WOMEN’S SHELTERS AND COMMUNITY CENTERS

The official fourth and fifth combined report of Turkey, in its discussion of progress made in relation to Article 5 of the Convention, makes reference to Women’s Shelters and Community Centers established under the Social Services and Child Protection Agency.³ The report rightfully asserts that these are two crucial public institutions which have been effective in the struggle against violence against women as well as the elimination of social and cultural discrimination against women.

Both sets of institutions, however, are under threat of closure or a serious reduction in service quality under the new Public Administration Reform Process, which is one of the legislative changes currently on the agenda of the Parliament. The Public Administration Reform process hinges on the transformation of the role of the State from a social State into a merely coordinating and administrative body. Most public services such as education, health and social services are foreseen to be transferred from the central State institutions to local governments such as municipalities or mayor’s offices, and their provision reorganized according to market dynamics.

The transformation of social service responsibility from the central to the local authorities concerns the livelihood of Women’s Shelters and Community Centers because as it stands now the Public Administration Draft Law does not entail any provisions making it mandatory for local governments to keep the existing ones open or to allocate funding for the opening of new ones. In addition, there are no clear guidelines in the Draft Law as to how the management of these institutions is to be handled by the local authorities; the qualifications of the personnel to be employed or the monitoring mechanisms.

³ There is one women’s shelter which is not administered by the Directorate for Social Services; it is an İstanbul-based shelter managed by a local municipality.

As both Community Centers and Women's Shelters are crucial public institutions in the fulfillment of the requirements of CEDAW, we call for the Committee's attention to this matter.

3.a. Women's Shelters

It had already been noted in CEDAW discussions of the second and third periodic report of Turkey that the number of women's shelters in Turkey, which has a population of approximately 70 million people, is far too little to cater to the needs of women under threat of domestic violence. At the time of the second and third periodic review of Turkey in 1997, there were only nine shelters; and the number continues to remain the same as of today.

Various national networks such as the Women's Assembly of Shelters and Counseling Centers, a national network of women's organizations working in the area of domestic violence and The Platform on Violence against Women, an Istanbul-based network, have actively lobbied the government for the opening of new shelters to meet the intense need in big metropolises, but there has been no response from public authorities. While the women's NGOs have been requesting the opening of new shelters, even the existing ones seem to be under threat due to the transfer of their administration to local governments, as explained above.

One international recommendation by the European Parliament states the need for at least one shelter/refuge space for women and children survivors of domestic violence per female population of 10,000 people. A simple calculation shows that Turkey is in need of a minimum of 100 shelters, and the existing number of nine shelters is far too few to address the dire need in the field.⁴

As important as the number of shelters is their effective and secure operation, management and service provision. This necessitates clear guiding principles such as the principle of secrecy of location, and provision of counseling services to resident women and children by appropriately qualified and trained staff people, all of which are already established international standards in the operation of Women's Shelters. There are some problems encountered in this respect even with the existing government-run shelters; there have been instances, for example, where the principle of secrecy of location has not been respected due to lack of awareness of responsible authorities about the function of this principle. As the government report itself also notes, the counseling and psychological services have not been of sufficient quality due to limited resources allocated to these shelters. Therefore, the current transfer of the administration of Women's Shelters to local authorities, which are completely inexperienced in this area, is of great concern as it entails the possibility that the international standards in shelter operation will not be met as there is again no provision in the Draft Law to this extent.

3.b. Community Centers

The Community Centers are founded in the economically disadvantaged neighborhoods of urban metropolises which are heavily populated by rural-to-urban migrants. The Centers cater for most part to women and children in the provision of informal education programs, legal and psychological consultation services, as well as consultation for benefiting from the social welfare system. Of the 59 existing Community Centers in Turkey today, 55 have been

⁴ On the basis of approximately 35 spaces/beds per shelter.

established since the final periodic review of Turkey by CEDAW, and the Centers have fulfilled a crucial role towards the progress made in this respect.

The Centers are staffed by qualified social workers or psychologists who also receive intensive on-the-job training by qualified non-governmental organizations; and they also engage in collaborative social service projects with non-governmental organizations as noted in the official fourth and fifth combined report of Turkey. As such the Community Centers have become locale for effective examples of state-NGO cooperation. To give one example, Women for Women's Human Rights signed a protocol with the Social Services and Child Protection Agency in 1998 to start a Human Rights Education Program for Women (HREPW) at the Community Centers. Under the agreement, WWHR has provided four trainer trainings to social workers of these centers, who then implement the training with local groups of women as WWHR continues to monitor and support program development in the field. As also mentioned in the official report, this program consists of 16 half-day-modules entailing a wide range of topics such as civil rights, domestic violence and strategies against violence, women and sexuality, reproductive rights, economic rights, women's movement and local organizing. The CEDAW is an instrumental part of the education as it is used throughout the program to emphasize the international nature of the consensus on a formulation of women's basic human rights. An important focus of the education is to encourage local training groups to establish their own grassroots women's organizations around locally identified needs and to continue their struggle in solidarity with other women.

As of today, over 3000 women have participated in HREPW, and close to a dozen women's local organizations have emerged out of the training process. An independent evaluation of the HREPW at the Community Centers has found that 95% of the participants have become resource people for the women in their communities, 63% have effectively stopped violence while 22% have reduced it; 29% have started working outside the home for some form of own income; 54% have returned to schooling; 74% increased their decision making power in the family.⁵ Furthermore, there has been numerous participants who have become involved in local governance. In this sense, it can be said that the implementation of HREPW at the Community Centers has established a good example of progress made in conjunction with Articles 3 (state measures in all fields), 5 (social and cultural patterns of conduct), 7 (political and public life), 10 (education) and 11 (employment) of CEDAW all at once.

The success of the program hinges upon the close collaboration between the Community Center workers and WWHR such that the allocation of government resources to the field implementation of the program has enabled its sustainability over the years. The Centers also provide a number of other training programs catering to women and they are also instrumental in providing individual counseling and consultation services to women. Hence it can be said that the Community Centers play a preventive role in eliminating violence against women; and as such they are complementary to Women's Shelters. As with the Women's Shelters, however, the Public Administration Reform Process foresees that Community Centers will also be transferred to local governments without any mandatory provisions for keeping them open, establishing new ones, nor is there any provision regarding appropriate guidelines for their operation and monitoring.

⁵ Nuket Kardam (2003). *WWHR-New Ways Women's Human Rights Training Program 1995-2003:Evaluation Report*. Istanbul: Women for Women's Human Rights - New Ways.

To summarize our call for action on Women’s Shelters and Community Centers:

In order to meet the required implementation of CEDAW Article 2 paragraphs c, d, e, f; and CEDAW Articles 3, 5, 7, 10, 11, it is urgent that the Public Administration Reform Process entails the following:

- a mandatory provision for local authorities overtaking the existing Women’s Shelters and Community Centers, to keep them open and functioning;
- a mandatory provision for local authorities to open new Women’s Shelters and Community Centers in the areas where they do not exist;
- a provision imposing the following of clear guidelines for the operation of Women’s Shelters and Community Centers according to international standards, most significantly staffed by appropriately trained and experienced social workers, psychologists or health workers;
- a provision that local authorities in charge of Women’s Shelter or Community Center operation cooperate closely with appropriately qualified and experienced women’s groups and non-governmental organizations in their management.

4. The Constitutional Amendment towards Gender Equality and the call for an Equality Framework Law ⁶

Despite the fact that “equality between the sexes before the law” has been one of the founding principles of the Turkish Constitution, as the fourth and fifth combined report of Turkey to CEDAW states “the actual legislative norms do not always allow for real equality.” The women’s movement has been extensively lobbying the State for the adoption of the necessary legislative measures to ensure equality for decades, including a constitutional amendment including a provision for “special temporary measures to guarantee de facto equality” and an Equality Framework Law and the establishment of an Gender Equality Monitoring Commission in the Turkish Parliament.

Article 4 paragraph 1 of CEDAW calls State parties to adopt “temporary special measures aimed at accelerating de facto equality between men and women” which the State is failing to comply with.

4.a. Rejection of the Proposed Amendment to the Constitution for Affirmative Action

The fourth and fifth combined report of Turkey to CEDAW, under its discussion of progress made relating to Article 15.1 of the Convention, mentions a proposed amendment to Article 10 of the Constitution which calls for the insertion of the following clause:

“Women and men have equal rights. The state takes all necessary measures to provide gender equality, including special temporary measures.”

The Constitutional amendment in question was voted to be rejected in the Parliament’s General Assembly in April 2004, despite much lobbying of women’s groups. The Constitutional amendment which came into effect in April 2004, has been formulated as follows:

⁶ This section has been prepared by documentation provided by Dr. Selma Acuner of the Association for the Support and Training of Women Candidates (KADER).

Women and men have equal rights. The State is responsible for overseeing that this equality goes into practice.

This amendment does not provide the necessary constitutional basis for the adoption of special measures to promote gender equality and falls short of meeting the obligations foreseen in CEDAW Article 4 paragraph 1. The legislative measure in question fails to go beyond the concept of “equality before the law”, which already existed in the Constitutions of 1876, 1924, 1961 and 1982. It is also in conflict with the Copenhagen political criteria, which we are committed to fulfil in the framework of transposing our national legislation with the European Union Acquis, and with *Article 141/4* of the Founding Treaty of Amsterdam. The concept has simply been redefined, but not as far as to establish that the necessary measures to promote equality will not constitute discrimination and include the notion of “*de facto equality*” which could provide a basis for policies of ‘equal opportunities’ demanded by women.

The words “No privilege shall be granted to any individual, family, group or class” in Article 10 of the 1982 Constitution, which are maintained by the recent legislative measure, could easily invalidate the amendment to Article 10, which is purportedly designed to ensure gender equality. The article as is could easily serve as a basis for the rejection of any necessary measures for affirmative action to grant women with equal opportunities in the fields of education, employment and political participation. For example, as it exists, the Article cannot provide a basis for women’s demands for the introduction of a much needed quota system in the Political Parties Law and the Elections Law. The level of representation of women in the political arena and in governance in Turkey is known to be one of the lowest in the world. A proposal for a 30% gender quota in the Political Parties Law and the Elections Law has been amongst the requests of the women’s movement, supported by more than 30 women’s organizations nation-wide. In the light of these facts, the new Article 10 would not allow any breakthrough in the development of policies to empower women. Moreover, within a concept of ‘*abstract equality*’, it would provide a basis for continued discrimination against women.

4.b. Equality Framework Law and the establishment of a Equality Monitoring Commission in the Turkish Parliament

In accordance with CEDAW Article 3 and Article 15 paragraph 1, and in order to ensure that gender equality is ensured in all legislation, the adoption of an Equality Framework Law is crucial. An Equality Framework Law would entail the gender equality principles of non-discrimination, equal opportunities and affirmative action for *de facto* equality applicable to all national legislation, thereby providing the necessary basis for the adoption of all appropriate measures to overcome discrimination and for women to exercise their fundamental human rights and freedoms in full equality with men as foreseen in CEDAW. Such a framework law would facilitate the formation of comprehensive policies and strategies for the attainment of gender equality as foreseen in the Constitution.

In conjunction with an Equality Framework Law, the establishment of a permanent Equality Monitoring Commission or a Gender Equality Ombud in the Turkish Parliament is essential in order to monitor the implementation of the equality framework law. Such a permanent governing body would oversee the establishment and implementation of legislation, policies and programs to eliminate discrimination against women in concurrence with the equality framework law; monitor gender mainstreaming in all sectors; and develop strategies and

action plans for the adoption of equal opportunities by the State and other formal and non formal institutions.

The women's movement in Turkey has been advocating for an equality framework law since the 1990s. The efforts have regained momentum in 2004 with the rejection of the proposed amendment to the constitution mentioned above. Women's groups in Turkey have initiated a "Working Group on the Equality Framework Law" in 2004. The group has collected equality framework laws from throughout the world and established the basic principles for the framework law and how it would be suitable for the Turkish context. Despite the discussion in the parliament for introducing the system of a Gender Equality Ombud, the government has failed to collaborate and consult with women's groups working on the issue.

To summarize our call for action on the Constitutional Amendment towards gender equality and the call for an Equality Framework Law:

As it stands now, the Constitution falls short of providing a strong enough basis to promote de facto gender equality and equal opportunities for women and meeting the required implementation of CEDAW Articles 3, 4 paragraph 1, 15 paragraph 1. Hence the recommended action is as follows:

- Article 10 of the Constitution needs to be amended by adding the insertion: "*The state takes all necessary measures to provide gender equality, including special temporary measures.*"
- an Equality Framework Law needs to be adopted and an Equality Monitoring Commission or a Gender Equality Ombud has to be established in order to monitor the implementation of legislation, policies and programs to eliminate discrimination against women.

5. Amendment of the Turkish Civil Code on Regime Regarding the Ownership of Acquired Property in Marriage

The reform of the Turkish Civil Code was one of the primary issues discussed during the second and third periodic review of Turkey as the gender discriminatory clauses of the Civil Code was the main reason for the reservations that the Turkish Government placed on a number of articles of CEDAW at the time of ratification. A very pleasing development since the last periodic review has been the adoption of the new Civil Code by the Parliament in November 2001, integrating many of the amendments that the women's movement had been lobbying for since the early 1980s.

As stated in the fourth and fifth combined report of Turkey to CEDAW under discussion of Article 1 of the Convention, one of the most significant amendments under the new Civil Code has been the adoption of the "Regime Regarding the Ownership of Acquired Property" as the de facto property regime governing married couples. The report, under its discussion of progress made relating to Article 16.2 of the Convention, explains that this new regime enables the equal sharing of all acquired property during marriage, and as such recognizes the value of the unpaid work of women that goes into the reproduction of daily life of the family. Under the old Civil Code, by contrast, the Separation of Property Regime was the de facto regime governing marriages and as such put full-time homemakers at a great disadvantage in the event of divorce. The importance of this amendment of the Civil Code becomes clearly

visible in view of the fact that women's labor force participation in Turkey remains at a miserably low rate of 26%.

While this amendment of the Civil Code was a most welcome development, a last minute revision by the Parliament in the Enactment Law Article 10 pertaining to Property Regimes in Marriage lead to the situation where the new property regime applies only to marriages that take place after 1 January 2002, following the announcement of the new Civil Code in the official gazette. This revision has caused great protests from the women, women's organizations and other non-governmental organizations around the country for the mere fact that the change of the property regime has been most crucial for women of older age, a majority of whom have been imposed upon the role of full-time homemakers, and therefore lack an independent source of income. The younger generation of women are at a relative advantage for enjoying improved access to education and work life. As such the amendment of the property regime in the new Civil Code, as it stands now, fails to address the very target female population who suffer from economic discrimination.

The official report, however, remarks only in passing that "*the new legal property regime does not apply retrospectively*", a gross understatement of the shortcomings of the new amendment. This is particularly noteworthy in view of the fact that women's groups have been engaged in on-going campaigns calling upon the government to amend Article 10 of the Enactment Law of the Civil Code so as to make it applicable retrospectively.

To summarize our call for action on Property Regimes in Marriage is as follows:

As it stands now, Article 10 of the Enactment Law of the Turkish Civil Code is in violation of Articles 2 and 16 of the Convention. Hence the recommended action is as follows:

Article 10 of the Enactment Law of the Turkish Civil Code needs to be amended so as to enable "Regime Regarding the Ownership of Acquired Property" applicable to all marriages including prior to the ones that have taken effect prior to the adoption of the new Civil Code in January 2002.