

# **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 32<sup>nd</sup> Session  
January 2005*

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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
- Diyarbakir Bar-Women's Rights Enforcement Center
- Edirne Women's Human Rights and Handicrafts Group
- Filmmor: Filmmor Women's Cooperative
- 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 Commission
- KATAGI
- Kibele Women's Cooperative
- KAOS GL
- LAMBDA
- Okmeydani Women's Atelier for Paper Art
- Purple Roof Women's Shelter Foundation
- Republican Women's Association
- The Flying Broom
- Turkish Women's Union
- Women's Solidarity Foundation
- Women for Women's Human Rights – New Ways
- Van Women's Association

**Shadow NGO Report**  
**on Turkey's Fourth and Fifth combined Periodic Report**  
*for submission to the CEDAW 32<sup>nd</sup> Session, January 2005*

## 1. INTRODUCTION

This shadow report aims at raising a number of critical issues of concern taken up in the 4<sup>th</sup> and 5<sup>th</sup> 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 27 NGOs 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 in regard to the shortcomings of the implementation of CEDAW in Turkey. Rather it purposefully focuses on a number of critical issues pertaining to the *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.

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, mostly attained through the persistent successful advocacy and lobbying efforts of the women's movement in Turkey. However, even though in response to question 27 posed by the Committee, the government has stated that "Turkey has gone over almost all legal arrangements and made necessary amendments" to eliminate discrimination against women,<sup>1</sup> critical issues in national legislation yet remain forestalling the implementation of CEDAW.

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

- Gender discriminatory provisions in the recently reformed Turkish Penal Code;
- The threat posed by the Public Administration Reform Law against the livelihood of Women's Shelters and Community Centers;
- The lack of an affirmative action perspective in the recent amendment to the Constitutional Clause overseeing equality between the sexes;
- The pressing need for the amendment of the Political Parties and Election Acts in order to introduce a minimum of 30% gender quota to increase women's political participation;
- Recent reform of the Turkish Civil Code and the discriminatory clause on property regimes in marriage;
- The extremely low levels of women's employment and lack of any measures by the government to support women's entry into the labor market.

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<sup>1</sup> Reference is made to page 31 of "Questions and Answers Concerning the Periodic Report of Turkey" (Q&A Turkey), provided to us by DAW upon our request.

## 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 legislative term, has been a major opportunity for Turkey to take a significant step forward in eliminating discrimination against women. Turkey's fourth and fifth combined periodic report,<sup>2</sup> the section under Article 2, acknowledges that the penal code which was in effect in Turkey at the time of the writing of the report entailed an overtly discriminatory approach to women and contained 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.

Most of these amendments quoted in the official report have been on the agenda of an intensive campaign of the women's NGOs, which has been on-going since the beginning of the TPC Reform process in the Turkish Parliament in 2002. The campaign, entitled "*Reform of the Turkish Penal Code from a Gender Perspective*," was led by the "*Women's Platform on the Turkish Penal Code*," which consisted of representatives of twenty-six non-governmental organizations, including activists, jurists and academicians nationwide. The Platform, spearheaded and coordinated by *Women for Women's Human Rights – New Ways*, lobbied the Parliament for two years to for amendments of the discriminatory provisions of the code in effect (please see attached a summary outcome document on "*Reform of the Turkish Penal Code*" for details).

After the writing of the official report of Turkey, the new TPC has been voted and accepted in the Parliament on September 26<sup>th</sup>, 2004. The campaign has achieved a great success in realizing more than 30 amendments in the new penal code as proposed by women's groups. Despite these improvements, however, some very important discriminatory provisions continue to remain in the new TPC, such as the one pertaining to honor killings and virginity testing, undermining the achievement of a fully egalitarian penal code.

The remaining discriminatory provisions and the necessary amendments to the new TPC are as follows:

### 2.a. Honor Killings

Honor killings remain a major women's human rights violation in Turkey. The old Turkish Penal Code allowed the extension of major sentence reductions to perpetrators of "honor killings", thereby legitimizing this harmful customary practice and giving way to the prevalence of customs over law. Article 29 of the new TPC, pertaining to "Unjust Provocation" has now been amended to include in its justification that the article shall not apply to honor killings. However, the amendment by itself is not sufficient for the effective persecution of these premeditated violent murders.

In order to enable a more effective legal persecution of honor crimes, the Women's Platform on the Turkish Penal Code has proposed that Article 82 of the new 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

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<sup>2</sup> 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.

honor killing would be made subject to punishment by life-time imprisonment. Article 82 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.

The Government of Turkey has stated in response to questions 3 and 11 of the Committee,<sup>3</sup> that “*honor killings*” have been classified as aggravated circumstances. However, despite the concerted calls of the Women’s Platform upon the Parliament, Article 82 of the new TPC contains only a newly coined expression; “*customary killings*” as an aggravating circumstance, rather than “*honor killings*.” This expression does not appropriately define murders committed in the name of honor. The term “*customary 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 “customary killings” but also any individual acts of murder of women by men which are motivated through the perception that a man’s personal understanding of “honor” has been blemished. 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*”.

Moreover, the justification of the same article requires that, in order to adjudicate a “customary killing” as aggravated homicide, there should be no conditions leading to “unjust provocation”. This implies that a sentence reduction on the grounds of “unjust provocation” is still applicable. However “unjust provocation” provisions are, by definition, not applicable to “aggravated homicide”. There is a Supreme Court of Appeal decision stating that unjust provocation provisions are not applicable to vendetta killings for the same reason. Therefore, any referrals to (“Unjust Provocation”) should be removed from the justification of Article 82.

It is important to recall that the Turkish Government 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. As such the resistance of the current Turkish Parliament against use of the term “honor killings” in the Turkish Penal Code, stands in direct contradiction to its advocacy efforts on the international platform of the Beijing+5 process in the year 2000.

### **2.b. Virginty Testing**

Unfortunately the practice of virginty 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 virginty, 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 4<sup>th</sup> and 5<sup>th</sup> 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

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<sup>3</sup> P. 6 and 11 respectively of Q&A Turkey (see footnote 2.)

will hurt or torment them” has eliminated a gross gender based discrimination. However, 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 new Turkish Penal Code refers to virginity testing under the Article 287 entitled “Genital Examination”. The article, however does not name the practice “virginity testing”, thereby failing to explicitly criminalize it. Furthermore, even though the article limits the authority to issue a “genital examination” exclusively to judges and public prosecutors, it does not seek the consent of the woman herself as a necessary precondition. Hence, as it stands, this provision continues to provide space for this human rights violation.<sup>4</sup>

### **2.c. Penalizing Consensual Sexual Relations of Young People**

The new Turkish Penal Code, Article 104 penalizes sexual relations between young people of 15-18 years of age upon complaint. As the article fails to define the compliant, 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.

### **2.d. Discrimination against women based on Sexual Orientation**

Despite the concerted demand of the women’s movement, the new TPC fails to penalize discrimination based on sexual orientation.<sup>5</sup> The omission of discrimination based on sexual orientation from the Discrimination Article (Article 122) criminalizing any discrimination based on language, race, color, sex, political opinion etc. in public services and economic activity, leaves room to legitimize discrimination against lesbian women and transgender people, who are already marginalized and face severe discrimination. As the new TPC has taken a major step in eliminating provision discriminating against unmarried and non virgin women and strives to uphold full gender equality, it is essential that discrimination based on sexual orientation be explicitly included in the article as a discriminatory practice, which is subject to punishment.

## **CALL for ACTION ON THE NEW PENAL CODE**

In order to meet the required implementation of CEDAW Articles 2 and 15, the following articles of the new Turkish Penal Code need to be amended:

- **Honor killings must be classified as aggravated homicide in Article 82 and any referrals to “Unjust Provocation” should be removed from the justification.**
- **Article 287 needs to explicitly state that “virginity testing is banned”; and that woman’s consent is a necessary precondition for any tests authorized by judges or public prosecutors.**

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<sup>4</sup> 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 been removed from the new law.

<sup>5</sup> The TPC Draft Law Justice Sub-Commission had originally accepted the Platform’s demand to penalize discrimination based on sexual orientation. However, this positive amendment was later retracted in the Justice Commission due to the intervention of the Minister of Justice claiming that, such an addition was unnecessary as sex already included sexual orientation.

- **Article 104 should be removed and instead a provision should be added to Article 103 overseeing “Sexual Abuse of Children”, penalizing sexual relations of minors of 15-18 years of age only in the case of use of coercion and violence or threats, or lacks the involved parties’ consent for any other reason.**
- **“Discrimination based on sexual orientation” should be explicitly added to Article 122 as a form of discrimination.**

### **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. The report rightfully asserts that Women’s Shelters and Community Centers have been two crucial public institutions which have served towards effective implementation of CEDAW articles pertaining to elimination of violence against women as well as of social and cultural discrimination against women. Both sets of institutions, however, are under threat of closure, or at best, of a serious reduction in service quality under the new Public Administration Reform Process.

The Public Administration Reform, one of the legislative changes currently on the agenda of the Parliament, 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, and their provision reorganized according to market dynamics. As such the Public Administration Reform process has been subject to heavy criticisms by all kinds of civil society organizations, lead by labor unions and professional associations. The critiques argue that the reform process establishes the grounds on which the State, as the Central Authority, will be able to undermine its responsibilities in the provision of basic public services such as education, health and social services.

From a gender perspective, the Public Administration Draft Law has the additional implication that, through transfer of the Women’s Shelters and Community Centers onto local governments, the State also undermines its responsibility for provision of crucial social services to women for eradication of violence against women and of gender discriminatory practices. It is extremely alarming that under this reform process, the allocation of funds from the Central Government budget for the Women’s Shelters and Community Centers will be entirely discontinued. Yet it is not clear as to how local governments will be able to come up with the necessary stable flow of funds for sustenance of the existing institutions and opening of new ones. Rather it can be foreseen that provision of sustained funding on a local basis will in most cases become more difficult.

Furthermore, as it stands now, the Public Administration Draft Law does not entail any clear guidelines 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. Hence the local governments, which are subject to frequent changes in administration with every election period, are most likely to apply different priorities with respect to whether Women’s Shelters and Community Centers in their locality should be kept open; and if they

are kept open, staff people are likely to be reappointed by the new administration, and operational guidelines changed according to their subjective political objectives.

As such the primary responsibility for establishment and operation of Women's Shelters and Community Centers should continue to stay with the Central Government. The local governments, by all means should also be granted the right and the responsibility to open and operate new Women's Shelters and Community Centers subject to basic operational principles and monitoring mechanisms. As such any efforts by local governments to this end would be complimentary to that of the Central Government.

### **3.a. Women's Shelters**

It had already been noted in CEDAW discussions of the 2<sup>nd</sup> and 3<sup>rd</sup> 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 Turkey's previous review in 1997, there were only nine shelters; and the number continues to remain the same as of today.<sup>6</sup> 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.

In response to question 9 of the Committee regarding efforts to increase the number of women's shelters,<sup>7</sup> the Government states that the Public Administration Reform will oblige municipalities to open "*women's shelters*". As it stands now, the Public Administration Draft Law entails a provision obliging local municipalities to open "*protection houses for women*"<sup>8</sup>. The answer is not sufficient on its own for two important reasons: First, given the highly unstable and widely varying financial situations of local municipalities, it is not clear how most will be able to come with the necessary funding to open shelters without any provision of financial resources by the Central Government. Second, there are no provisions in the 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.

Furthermore, as important as the number of shelters, is their effective and secure operation, management and service provision in accordance with established international standards, including the principle of secrecy of location, and provision of counseling services to resident women and children by appropriately qualified and trained staff people. As the government report itself notes, up-to-date the meeting of such standards at the existing shelters have not been of sufficient quality. Therefore, the current transfer of the administration of Women's Shelters to local authorities, who are completely inexperienced in this area, is of great concern as the Draft Law makes no reference to any operational guidelines for the management of shelters.

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<sup>6</sup> 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 (on the basis of approximately 35 spaces/beds per shelter), and the existing number of nine shelters is far too few to address the dire need in the field.

<sup>7</sup> P.10 of Q&A Turkey.

<sup>8</sup> The coining of this new term "protection houses" rather than the established term "shelters" can be interpreted as an alarming and most probably a purposeful change in terminology, as the implicit patriarchal perspective therein is on the position of women "in need of protection".

### 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 are staffed by qualified social workers and psychologists who 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 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.

As noted in the official fourth and fifth combined report of Turkey under progress made towards implementation of CEDAW Article 5, one of the important functions of Community Centers has been the implementation of a wide-spread Human Rights Education Program for Women (HREPW) through an NGO-State collaboration under a protocol signed in 1998 between Women for Women's Human Rights (WWHR) – New Ways and the Social Services and Child Protection Agency (SHCEK), the state agency in charge of the Community Centers. The program serves as a tool for increasing women's legal literacy and awareness of rights; for developing their skills and building their capacity in implementation of their basic rights in the private and public spheres.<sup>9</sup> An important focus of the program is to encourage local training groups to establish their own grassroots women's organizations around locally identified needs.

As of today, over 3500 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 other women in their communities, 63% have effectively stopped violence while 22% have reduced it; 30% 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.<sup>10</sup> Furthermore, there have 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 allocation of government resources to the field implementation of the program has enabled its sustainability over the years and as such widespread dissemination.

In the areas where Community Centers exist, it has become common practice for women survivors of domestic violence (including cases of women under threat of honor killings) to consult with the social workers of the Centers for legal and/or psychological counseling. In those cases where it is deemed necessary, the social workers refer the applicant women to the closest Women's Shelter. The Centers have also been an important mechanism for dissemination of information on the Domestic Violence Law. 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,

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<sup>9</sup> This field education program which was developed by WWHR in 1995-96, uses the CEDAW Convention as an instrumental part of the training to emphasize the international nature of the consensus on a formulation of women's basic human rights.

<sup>10</sup> 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.

the Public Administration Reform Process foresees that Community Centers will also be transferred to local authorities without any mandatory provisions for keeping them open, establishing new ones, or any provisions regarding appropriate guidelines for their operation and monitoring.

### **CALL for ACTION on WOMEN'S SHELTERS and COMMUNITY CENTERS**

Under the existing network of Women's Shelters and Community Centers, Turkey has a functioning national mechanism supported by Central Government funds for provision of crucial social services to women for eradication of violence and gender discriminatory practices. While the women's NGOs have been calling on the Government for further expansion and up-scaling of these public services in order to meet the existing need, the current Public Administration Reform Law, is proceeding to make matters worse by dismantling an already functioning system in the field without any plausible, tangible, alternative system to take its place.

In order to meet the required implementation of CEDAW Articles 3 and 5, it is urgent that the following measures are undertaken to ensure the livelihood for Women's Shelters and Community Centers:

- **The Central Government should continue to assume its responsibility for establishment and operation of Women's Shelters and Community Centers;**
- **Local governments should be granted the right and the responsibility to open and operate new Women's Shelters and Community Centers in their locality under the Public Administration Reform Law;| yet the granting of this right should be subject to the following provisions to be integrated into the Reform Law:**
  1. **A provision imposing clear guidelines for the operation of Women's Shelters and Community Centers according to international standards, most significantly requiring these institutions to be staffed by appropriately trained and experienced social workers, psychologists or health workers;**
  2. **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. AFFIRMATIVE ACTION LEGISLATION AND A GENDER QUOTA IN POLITICAL PARTIES AND ELECTIONS ACT<sup>11</sup>**

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 a number of legislative measures for more effective translation of equality before the law into equality in practice. These include a constitutional amendment on affirmative action; an Equality Framework Law and a Gender Equality Monitoring Commission in the Turkish Parliament;

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<sup>11</sup> This section has been prepared based on documentation provided by Dr. Selma Acuner and Gonul Dincer of the Association for the Support and Training of Women Candidates (KADER).

and the introduction of a minimum of 30% gender quota system to the Political Parties and Elections Acts.

#### **4.a. Constitutional Amendment on 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:

*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 previous Constitution of 1982.

Moreover, the phrase “No privilege shall be granted to any individual, family, group or class” in Article 10 of the 1982 Constitution, is maintained in the recent amendment. As such, 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 gender quota system in the Political Parties Law and the Elections Law (please see below under 4.c).

Hence, in contradiction with the Government’s response to question 1 posed by the Committee,<sup>12</sup> the newly adopted version of Article 10 of the Constitution would not allow for a breakthrough in the development of policies to empower women. Moreover, within a concept of ‘*abstract equality*’, it has the potential to 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.

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<sup>12</sup> P. 1 of Q&A Turkey.

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 that 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 engage in dialogue with women's groups working on the issue.

#### **4.c. The introduction of a minimum of 30% Gender Quota System to the Political Parties and Election Act and the necessary constitutional amendment to facilitate the implementation of the system**

The official report of Turkey to CEDAW states in the introduction that "women are still grossly underrepresented in the parliament," and in the section on "Political and Public Life", the report elaborates in detail on the lack of women's representation in political life. Similarly, in response to question 18 posed by the Committee,<sup>13</sup> the Government acknowledges the low level of women's representation in politics. However, both the report and the Government's answers fail to include any commitment and political will on the government's part to improve the current situation and do not refer to any proposal for reform, policy and programs to enhance women's political participation. As of the 2002 elections, only 4.4% of the MP's in the parliament are women. The fact that this is less than the rate in 1935 which was 4.5%<sup>14</sup> reveals the pressing need for action.

The women's movement in Turkey, has been advocating for the introduction of a 30% gender quota system to the Political Parties and Elections Act since the 1990s. In 2002, KADER (the Association for the Support and Training of Women Candidates), along with 10 other women's NGOs submitted and lobbied for a detailed draft proposal for the "Amendment of the Political Parties and Election Acts", as well as a Constitutional Amendment Package for Equal Representation. However, up to date, no initiative has been undertaken by the Government towards realization of these amendments and the introduction of a quota system. As detailed in the draft proposal, it is crucial to provide a constitutional basis for the quota system, in order to ensure the implementation of the system both by political parties and in the electoral system.

#### **CALL for ACTION on AFFIRMATIVE ACTION**

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<sup>13</sup> P.18 of Q&A Turkey.

<sup>14</sup> Republic of Turkey Prime Ministry State Institute of Statistics (SIS).

As it stands now, the Constitution falls short of providing a strong enough basis to promote de facto gender equality, equal opportunities for women and meeting the required implementation of CEDAW Articles 3, 4 paragraph 1, 15 paragraph 1. Furthermore, the lack of a gender quota system hinders women's opportunity for political participation and the State falls short of complying with CEDAW Articles 3 and 7. 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;**
- **a minimum 30% gender quota system for political participation must be introduced through the amendment of the Political Parties and Elections Acts and the complementary constitutional amendment must be made to ensure the constitutional basis.**

## **5. AMENDMENT OF THE TURKISH CIVIL CODE ENACTMENT LAW ON PROPERTY REGIMES 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 positive 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%.

However, 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 after 1 January 2002, following the announcement of the new Civil Code in the official

gazette.<sup>15</sup> 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. Furthermore, in response to questions 2 and 27 posed by the Committee,<sup>16</sup> the Government misleadingly makes reference to the amendment, as if it applies to all marriages. 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.

### **CALL for ACTION on PROPERTY REGIMES in MARRIAGE**

In order to meet the required implementation of CEDAW Articles 2 and 16, the Enactment Law of the Turkish Civil Code needs to be amended 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.**

### **6. LOW LEVELS OF FEMALE EMPLOYMENT**

The potential of the female workforce in Turkey is largely untapped. Currently, women's labor force participation rate is approximately 26%, which is the lowest rate amongst the OECD countries; and it has been on a secular declining trend for the past few decades. This average rate is actually an optimistic representation of the true picture in that 49% of employed women are actually *unpaid* family workers.<sup>17</sup> In other words, of those few women who are registered as employed only half are in *paid* employment. The urban female labor force participation rate, which is a more accurate indicator of female employment, is only 17%.<sup>18</sup>

Research studies and field work point out to two primary reasons for such low levels of female participation in urban labor markets. Of primary significance is women's traditional responsibility for unpaid domestic work, which prevents in particular married women with children from seeking paid employment outside the home. Hence the lack of widespread

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<sup>15</sup> In other words, if a couple who has been married for 20 years, is to get a divorce in the year 2005, the property subject to equal division will be only that property acquired post- January 2002; any property acquired prior to this date will not be subject to sharing. As such the law fails to benefit most women who have been married prior to January 2002.

<sup>16</sup> P. 3 and 31 respectively of Q&A Turkey.

<sup>17</sup> Majority of the female unpaid family workers are agricultural workers.

<sup>18</sup> State Statistics Institute, Household Labor Force Survey 2003.

affordable and quality childcare facilities acts as a major obstacle disabling women's entry and reentry into paid employment.<sup>19</sup> Furthermore, the inflexibility of working arrangements with regard to part-time work and career breaks, makes combination of domestic work with paid work highly infeasible.

In addition, cultural and customary restrictions on women's freedom of movement outside the home are a major obstacle against women's employment. One study conducted in Istanbul found that 36% of the women cited prevention by a male family member as the main reason for why they could not seek employment; while 25% cited their domestic responsibilities.<sup>20</sup> Other reasons for women's low levels of employment entail the segregation and stereotyping of female jobs in low-paid, no social security sectors which constitute financial disincentives for women's employment; women's low levels of skills, education and work experience, and finally the not uncommon phenomenon of sexual harassment in the workplace.

In response to question 19 posed by the Committee,<sup>21</sup> the Government lists a series of uncoordinated Government efforts all of which are exclusively geared towards skills training programs for women. Yet, as explained above, women's low level of employment is a long-lasting problem with multi-dimensional causes that cannot be reduced to the single issue of women's labor market skills and productivity. Rather Turkey requires a multi-pronged long-term plan of action with clear targets based on both a gender mainstreaming approach and specific policy actions to create the conditions for women to enter, reenter, and remain in the labor market.

#### **CALL for ACTION on FEMALE EMPLOYMENT**

In order to meet the required implementation of CEDAW Article 11, the Government needs to take the following measures in close collaboration with relevant women's NGOs:

- **Set clear national targets for increasing female employment to 60% by 2010 (the EU 2010 Lisbon Female Employment Rate Target) establishing a clear link between targets and policy programmes;**
- **Increase the availability, affordability and quality of childcare and eldercare;**
- **Promote awareness raising campaigns and education programs targeting the public in general, but women in particular, for eradication of cultural restrictions on women's freedom of movement and as such employment;**
- **Remove financial disincentives to the participation of women, notably in relation to wages and social security, including gender pay gaps;**
- **Improve working arrangements, with measures to boost attractiveness of part-time work and facilitate career breaks and flexible working;**
- **Improve women's access to formal and informal education and training programs geared towards development of labor market skills;**
- **Make the necessary amendments to the Labor Code provisions pertaining to parental leave; equal opportunities in hiring, on-the-job-training and promotion**

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<sup>19</sup> Hence it can be said that the transfer of the responsibility for opening and operation of public childcare centers to local governments under the Public Administration Reform Law poses yet another example of threat to important public services that women depend upon.

<sup>20</sup> Ipek Ilkcaracan (1998). "Urban Women and Work Life", in Bilanco 98: 75 Yilda kadinlar ve erkekler women and men in 75 Years of Turkish Republic). Istanbul: Tarih Vakfi.

<sup>21</sup> P. 19-22 of Q&A Turkey.

**at the workplace; employer responsibilities for provision of childcare services;  
and effective criminalization of sexual harassment at the workplace.**