



LITIGATING DOMESTIC VIOLENCE ISSUES IN TURKEY

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The Kurdish Human Rights Project (KHRP) is a UK registered charity committed to the promotion and protection of the human rights of all persons living within the Kurdish regions. Its innovative and strategic approach to international human rights practice, combined with a long-term and consistent presence in the region, enables it to secure redress for survivors of human rights violations and prevent abuse in the future.

Introduction

KHRP was established in 1992 and works in the Kurdish regions of Turkey, Iraq, Iran and Syria, as well as Armenia & Azerbaijan. It has taken several strategic cases before the ECtHR which impact on women's rights including challenging the law in Turkey which did not allow women to keep their given family names in marriage. The KHRP assisted case, *Aydin v Turkey* helped to establish rape by state agents as a form of torture in international law. KHRP is currently working to challenge bars to education for religious women and rural girls. In 2007, the European Parliament published a report it commissioned to KHRP on the reported increasing rate of suicide amongst women in the Kurdish regions. KHRP was the first and only international NGO to monitor a trial in Turkey on domestic violence

LITIGATING DOMESTIC VIOLENCE ISSUES IN TURKEY

1. The subject matter of this presentation is violence against women in Turkey, with a focus on the domestic legal framework and its effectiveness in practice. After a short introduction to the nature of violence against women in Turkey, this presentation will provide a brief overview of the domestic laws relating to the topic, discuss the broader social context within which they lie, and evaluate the implementation of these laws. It will conclude with a brief look at suggestions for reform in Turkey.
2. Gender equality is a significant component of Turkey's modernisation project. After emerging as a secular State out of the Ottoman Empire, certain legal and institutional reforms were implemented towards the end of the establishment of the Republic of Turkey with the aim of furthering equality between the sexes. More recently, Turkey's EU accession negotiations have encouraged further development of the State's human rights standards, in line with requirements under the Copenhagen Criteria.
3. Nevertheless, women continue to suffer limited access to education, employment, social services (including health and education) and justice. Violence against women is prevalent. The following statistics give some indication of the severity of the problem:
 - a. 4 out of 10 women are beaten by their husbands, as found in February 2009 by the Turkish Republic Prime Ministry Directorate General on the Status and Problems of Women (DGSPW) Global Post.
 - b. According to the justice minister in response to a parliamentary question, in seven years the rate of women murdered has jumped 1,400 per cent. In 2002, 66 women were murdered, in the first seven months of 2009 the number stood at 953.¹ 1,100 women were killed in the name of 'honour' in the last five years, based on a report from the Province and District Human Rights Boards in 2009, which encompass Turkey's 81 provinces. The report also noted that 61 per cent of women who were placed in shelters stated that they had been subjected to violence.

¹ VoA News 'Turkey's Murder Rate of Women Skyrockets' 28 February 2011

- c. Data released by the Human Rights Association in Turkey shows that from 2007 to 2010, nine women were killed by the Turkish gendarmerie, 91 women were murdered in the name of 'honour', 169 women were victims of domestic violence, 226 women committed suicide because of domestic abuse and 92 women were raped and killed (including by security forces).
4. The concept of 'honour' should be explained in this introduction, as honour killings are the most extreme manifestation of violence against women in Turkey. Honour, or *namus*, is an important value in much of Turkish society. Honour is codified in customary law (*töre*) and the code of honour must be adhered to by families according to societal pressure. Deviation from this code, or perceived deviation, from any one member is seen as a 'stain' on the family, which must be removed by murder if necessary. Honour killings themselves are often decided upon by a family council, with a young man or boy then assigned to commit the task in the hope of receiving a more lenient sentence.

Turkish Legal Framework on Domestic Violence / VAW

5. In Sept 2004, the National Assembly passed through a raft of changes to the Turkish Penal Code. Coming into force in mid-2005, the reforms instituted the following changes;
 - a. Rape and sexual assault – the previous “crimes against public decency and family order” are now defined as “crimes against sexual inviolability”. Those who are responsible for rape can no longer avoid criminal liability by marrying the victim.
 - b. Marital rape criminalised (subject to the victim’s complaint).
 - c. Penalties for using violence against the spouse or family members strengthened.
 - d. Virginity testing partially criminalised. Though may be authorised by a judge or prosecutor even if the woman refuses to consent.
 - e. Honour killings - courts previously reduced sentences for honour murders on the basis that perpetrators had been provoked by the victims’ “inappropriate behaviour”. Article 82 of the Penal Code now

stipulates that killings in the name of *töre* constitute aggravated homicide and the sentence is life imprisonment. Women's groups criticised the reform – the provision only makes reference to murders in accordance with *töre*, whereas *namus* killings can occur outside of a customary context.

6. The Law on the Protection of the Family, Law No. 4320, was passed in 1998. It allows a court to issue a protective order against a spouse accused of domestic violence, which may require the perpetrator to leave the family home for up to six months, to surrender any weapons, to desist from arriving at home under the influence of alcohol or other intoxicants, or to impose other measures. If the court order is violated, the spouse may be arrested and imprisoned for up to six months.
7. As for the Constitution, Turkey amended Article 10 in 2004 to include a provision concerning equality between men and women, thereby creating a duty for the government to create equality between the genders.
8. Turkey *has signed and ratified* the main European and international conventions including *European Convention on Human Rights (ECHR)*, *The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* and *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)* and has obligation to take all necessary measures to prevent violence against women

The Societal Context Relating to Domestic Violence / VAW

9. The societal context in which these laws exist make the task of eliminating violence against women all the more difficult.
10. Attitudes towards violence against women, even amongst women, are not conducive to positive reform. Many women choose not to report domestic violence, at least partly because of their internalisation of values of patriarchy and female servility. A 2003 Turkish Demographic and Health Survey asked a sample of women whether a husband would be justified in beating his wife if she burned the food, if she argued with him, if she spent too much money, if she neglected the children or if she refused to have sex with him. Overall, 39.2

per cent of women accepted at least one of these reasons as a justification for wife beating. Furthermore, a 2005 survey conducted among 336 men and 94 women from South-Eastern Anatolia by Prof. Aytekin Sir of Dicle University showed that 37.4 per cent of all respondents believed that murder was justified if a wife had committed adultery.

11. As indicated by these statistics, there are marked regional discrepancies in attitudes towards violence against women.
 - a. According to a nationwide survey published in 2009, only 2.1 per cent of women in Turkey and 0.8 per cent of women in Eastern Turkey said that they would call the police, go to court or go to the Association for the Protection of Women if their spouse beat them. 2008 data from Van Women's Association (Van being a city located in Eastern Turkey) indicates that 70 per cent of women who applied to their centre did not apply anywhere to seek a remedy for their problems, 22 per cent applied to health institutions and local authorities and only 2.5 per cent of women applied to the police station. Lastly, KAMER, a woman's organisation in the South-East, reported that from 2003-2007 a total of 198 women from Eastern and South-Eastern Anatolia contacted their organisation to report that a family member had threatened them with 'honour killings.' Of these cases, three of the women died from injuries sustained in attacks, one committed suicide, and 27 were pressured to commit suicide.
 - b. The severity of the situation in the Eastern and South-Eastern provinces of Turkey is exacerbated by the fact that the majority of women are Kurdish and do not speak Turkish, which limits their ability to seek help. Moreover, this language barrier means Kurdish women are more likely to lack awareness of their rights, with awareness-raising campaigns being conducted in Turkish (e.g. 'Stop Violence Against Women Campaign').
 - c. Lastly, the Kurdish women of Turkey suffer violence at the hands of not only family members, but also state actors such as security forces, police and village guards. In a paper submitted at the European Union Turkey Civic Commission Conference in 2005, it was noted that legal reforms increasing punitive measures for torture have had the negative

effect of incentivising state agents to use violence against women instead of torturing Kurdish men in formal detention. State agents are aware of the dishonour of, especially, sexual assault and the very low chance of Kurdish women reporting these acts. As evidence of the lack of support for women in such circumstances, a criminal court in Diyarbakir confiscated a Kurdish paper (*Azadiya Welat*) after it reported a woman's claim that she had been raped by four plainclothes Diyarbakir police officers, allegedly for her activities with the Democratic Free Women's Movement.

12. A lack of education and a gendered education are key underlying causes of social attitudes towards violence against women. According to national research on domestic violence conducted by the General Directorate on Status of Women 55.8 per cent of women who had never been to school or who had left school without completing their primary education were subjected to violence, whereas this figure dropped to 27.2 per cent of women who had completed high school or higher education. Women are brought up not to tell anyone about threats and violence and this is reinforced by an education system which teaches women to be obedient to parents' will and not stray from the values of Turkish society. VAKAD, a women's association in Eastern Turkey, states that "education is thoroughly gendered. Education, textbooks all contribute to gendered roles." Furthermore, women's right to education and the mandatory eight years of schooling are not enforced. Even women who do go to school, especially those in the South-East, experience a low quality of education with many schools destroyed through military operations in the Kurdish regions and a lack of qualified teachers.

Implementation Effectiveness in Practice

(1) Access to justice before the court stage

13. While there exists a legal framework for eliminating violence against women in Turkey, the implementation of legal reforms has been defective for the following reasons.

14. While social pressures and norms may prevent women from seeking help from law enforcement, women who overcome this barrier are often met with further obstacles through the attitudes and inefficiencies of the justice system.

- a. Approximately 30 women have been killed since January 2011 despite the fact that most of them had filed complaints about violence and asked for protection. For instance, Ayse Pasali was shot to death by her ex-husband in February 2011 after unsuccessfully seeking official protection due to his alleged physical abuse and threats to kill her. The threats and insults continued even after she divorced him and she applied to the court and sought protection, saying she was being threatened by her husband with death. The Ankara court, ruled that her ex-husband did not issue a threat when he allegedly told the couple's children, "I will kill your mother". The court also ruled that only a married woman can be provided with a bodyguard if she is threatened by her husband. After her criminal complaint the police discovered a 7.65 mm unlicensed gun without a serial number, as well as several bullets and clips. He was acquitted on the gun threat due to a lack of evidence, but sentenced to one year but suspended the sentence. In another incident, a man from Bingöl in South-Eastern Anatolia cut off the nose and the ears of his pregnant wife because of a three-month prison fine imposed on him due to a complaint she had made.
- b. The attitudes of the police and gendarmie are not favourable to the prevention of violence against women. For example, Yosma Altunbey was subjected to a brutal physical assault by her husband and his brother. She managed to escape to her parents' house and then filed an official complaint against the perpetrators at the gendarmerie station. According to reports, Gendarme Specialist Sergeant tried to make her withdraw her complaint, threatened her and eventually assaulted her himself when she refused. This is an extreme example, but in many cases police simply misinterpret their role to be one of a mediator between the parties when a woman is threatened rather than a state agent with a duty to actively protect the victim. They fail to take allegations seriously and view domestic violence as a private matter rather than a crime. Thus, they encourage women to return home and resolve issues, decline to

investigate and to enforce protective measures issued under the Law on the Protection of the Family. The police also often fail to maintain secrecy in relation to the cases of women who are under protection. When contacted by the woman's family, they often confirm her presence in a shelter and provide the name of the organisation responsible for sheltering her.

- c. Much of the same can be said for public prosecutors, who often do not investigate allegations for insubstantial reasons. In addition, prosecutors fail to investigate cases of suicide which may have been honour suicides, where families force women to kill themselves to avoid personal criminal liability. This is not a negligible phenomenon - contrary to the international norm of men having a high probability of committing suicide, in Batman, three quarters of all suicides are committed by women. Furthermore, prosecutors and courts often focus on the individual who committed the murder, rather than the family.
- d. In order to secure protective measures, victims of domestic abuse are required to meet arbitrarily high standards of proof. For example, the judges often require physical evidence of violence, such as can be provided through a medical examination. This effectively ignores suffering caused by forms of abuse which do not leave physical traces, such as psychological violence and the threat of physical violence.
- e. Where judges do put in place protective measures under the Family Protection Law, these are not monitored effectively. According to the terms of the Family Protection Law, responsibility for monitoring court orders lies with the police and any spouse who fails to comply can face criminal proceedings before a magistrate's court. However, the case of Fatma Babatlı, a mother of seven in Diyarbakır who was killed by her husband in November 2008 in spite of a court order forbidding him from approaching their house, shows the reality. She had reportedly filed seven complaints to the police on different occasions, reporting previous threats and attacks from her husband, including an attack with a cleaver on the very day before he finally killed her.
- f. Another major shortcoming in the implementation of the Family Protection Law is the failure to take advantage of provisions allowing a

judge to order the abusive spouse to pay an allowance to the abused partner, whether or not a claim is filed for such financial support. The courts frequently fail to establish an allowance sufficient to provide for the needs of the woman and her family, and court rulings with regard to maintenance payments are also not enforced. This is a serious barrier to women filing complaints against their husbands, since households are often dependent on the husband's income and women fear that if the husband is issued with a restraining order without sufficient maintenance payments having been put in place, they will be left without any means to support their family.

- g. In an interview with a public prosecutor in the Kurdish region, he seemed supportive of recent changes to the law but also stressed that impoverishment of society in Kurdish region of Turkey means that scope for positive change by legal system was limited, especially due to the inadequacy of education in region.
- h. This amounts to a failure by Turkey to reach its human rights due diligence standards in relation to domestic violence, as incorporated into General Recommendation 19 of CEDAW and discussed in detail by the Special Rapporteur on VAW. These standards – encompassing duties to prevent, investigate, prosecute and punish – impose on Turkey responsibility for illegal acts which are not committed by the State but by private actors due to State failure to prevent the illegal acts from occurring.

15. Insufficient women's counseling centres and the lack of shelters in Turkey is also an impediment to women reporting domestic violence. After filing complaints, women may have few options but to return to their husbands. An example from VAKAD notes that one woman applied to the Gendarmes station twice because of violence from her husband (who beat her brutally, cut her ear and injured her) She was provided protection by the Social Services and Child Protection Directorate and stayed in their guest house for two months. She was then returned to her abusive husband and subjected to violence again in July 2007.

- a. In its sixth periodic report to CEDAW, Turkey acknowledged a lack of shelters. It passed the Law of Municipalities No. 5393 which gives local

municipalities the authority to render women's services and requires municipalities with over 50,000 inhabitants to create a shelter. However, the only penalty for non-compliance a qualifying municipality would suffer is a warning, the State does not provide guidance in relation to building shelters, and municipalities lack funding.

- b. Current situation – women are only allowed to stay for three months and there are no post-shelter social services, so a reported 70 per cent of women simply return home. Furthermore, there is only one shelter in Turkey which is open 24 hrs (in Ankara). In general, there are only 28 institutions that provide services for women subjected to violence according to information provided by the Government. Furthermore, there are regions in the East and South-East which contain no women's shelters, with local officials fearing that tribal and extended family ties in the region would make it impossible to keep the shelters' locations and the identity of inhabitants confidential
- c. Further, there is a lack of qualified staff employed in shelters with a background in social work/ psychology/ law sufficient to respond effectively to the legal, social, educational and health needs of women and children. Shelters are often operated by staff without a gender perspective, and there is no monitoring mechanism established to ensure they are run efficiently.²

(2) Access to justice at the court stage

16. Even if a matter is able to proceed to court, there remains ineffective implementation of the existing legislation by the judiciary.

- a. A perpetrator of a so-called honour crime may still invoke Article 51 of the Penal Code, which allows for unjust provocation to be mitigating factor in sentencing. This issue was discussed in the seminal European Court of Human Rights case of *Opuz v Turkey*, in which the court confirmed for the first time that violence against women can constitute gender discrimination. It was also discussed in the trial of

² See CEDAW Shadow report for submission to the 46th Session of CEDAW by The Executive Committee for NGO Forum on CEDAW – Turkey Women's Platform on the Turkish Penal Code, July 2010

Kerem Cakan, in which the court considered but ruled out the possibility of defendant relying on the defence of provocation as there was no evidence of the relationship which Cakan had alleged existed between his victim, his 17 year old wife, and his brother. The implication is that had this evidence existed, Cakan would be able to rely on unjust provocation.

- b. Furthermore, the judiciary does not always take into account the fact that a death has been the result of an honour crime and therefore falls under Article 82 which allows for more severe punishment. Referring again to the case regarding Kerem Cakan, the indictment did not charge Cakan with honour killing, but rather aggravated homicide, despite the fact that the evidence and Cakan's statement to the court clearly demonstrated that the murder was premeditated and committed because his wife had been raped by his brother. Again, the ECtHR found this to be an issue with the implementation of Article 82 in *Opuz v Turkey*, maintaining that the unresponsiveness of the judicial system in Turkey lead aggressors to act with impunity in cases of domestic violence and honour killings.
- c. Courts usually give the minimum possible punishment to the accused males in cases of rape and other types of violence against women. For example on 20 February 2011, a court in Mardin reduced the sentences of 26 men charged with rape to unlawful sex with a 13 year old victim. The court said the victim was aware of the immorality of the acts, later solicited some of the men involved in the incidents for sex as a way to earn money and concluded she was willing to have sex. The court also reduced the sentences on account of "good conduct" on the part of the accused. On the other hand, two women who sold the young victim were given sentences of nine years. The heavier punishments to the two women were justified by the Court as being due to "the virtueless life" of the two women

Conclusion

17. This talk has aimed to show the severity of the problem of domestic violence, within a wider context of VAW, in Turkey. It is clear that legal reform is not enough - Turkey must also take concrete steps to change the societal context and the attitudes of state agents. Potential ways of achieving such change and increasing the effectiveness of the legal framework on DV in practice include:

- Social awareness campaigns on women's rights to education, health, and marriage (offered in Kurdish as well as Turkish in order to target the relevant constituencies)
- Education reform to move toward a system with less emphasis on gendered social roles
- Training for law enforcement officers and judges on identifying and prosecuting for such crimes, and support programmes for vulnerable women. In Turkey's latest submission to CEDAW, it states that training programs are in place in the Ministries of Justice, Health and Security and for students enrolled in media studies relating to discrimination and violence against women. It further stated that a circular issued by the Prime Minister in 2006 had established an agreement between the General Directorate on the Status of Women and the Turkish national police to train over 40,000 law enforcement officials on procedures for dealing with victims of violence, had established a Monitoring Committee for Violence against Women, and adopted the National Action Plan for Combating Domestic Violence against Women.
- Law reform to ensure an effective and comprehensive legal framework regarding DV is in place in Turkey.
- Test/strategic litigation cases for the purpose of achieving one or more of the following: to identify gaps in the law; to achieve interpretation of key legal terms; to highlight and address problems in existing law and practice.
- The effectiveness of Turkey's efforts must be evaluated using quantitative and qualitative research into their results.