

Trial Observation Report

The State and Sexual Violence

Turkish Court Silences Female Advocate



**Kurdish Human Rights Project
Bar Human Rights Committee**

January 2003



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COMMITTEE OF
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This report was written by Hugo Norton-Taylor. The report was edited by Kerim Yildiz.

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The Kurdish Human Rights Project (KHRP) is an independent, non-political, non-governmental human rights organisation founded and based in London, England. KHRP is a registered charity and is committed to the promotion and protection of the human rights of all persons living with the Kurdish regions, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people.

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The Bar Human Rights Committee (BHRC) is the international human rights arm of the Bar of England and Wales. It is an independent body primarily concerned with the protection of the rights of advocates and judges around the world. It is also concerned with defending the rule of law and internationally recognised legal standards relating to the right to a fair trial. The remit of the Bar Human Rights Committee extends to all countries of the world, apart from its own jurisdiction of England & Wales.

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FOREWORD

The Delegation's visit to Turkey was prescient in a number of ways, some of which were coincidental in nature while others are derived from the important work conducted by human rights lawyers and organisations and previous KHRP delegations.

The basis of this trial observation mission results from a December 1999 report published by the Legal Aid Project for Women Raped or Sexually Assaulted by State Security Forces.¹ The issue of sexual violence against women by the State in Turkey has since received some the publicity it rightly deserves and requires.

The Delegation sought in part to continue the essential monitoring of this issue undertaken previously by the KHRP delegation visit in December 2001.² The 2001 report highlights matters that were again evident during the Delegation's discussions with human rights groups and attendance at the preliminary hearing in the Istanbul State Security Court. This emphasised the importance of the need to continually monitor the issue of woman's rights and sexual violence in Turkey. KHRP intends to build on the existing foundation not seek to replicate what has gone before but to build on it and highlight what has, or perhaps more importantly, has not changed in the intervening period.

This report seeks to update and expand on the specific issue of women's rights within the broader context of the prevailing situation in the country. In this regard the proceedings observed by the Delegation brought together the previous reports and investigations, providing a microcosm of the wider picture: women's rights; Kurdish rights; sexual violence; the independence of human rights lawyers.

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¹ 'Sexual Violence: Perpetrated by the State'.

² 'State Violence Against Women in Turkey and Attacks on Human Rights Defenders of Victims of Sexual Violence in Custody', KHRP December 2001.

I. BACKGROUND TO THE VISIT

To a significant extent, the legal, political and social background to the Delegation's visit was set out in the KHRP December 2001 report. Yet, there are a number of issues that have arisen during the course of 2002 that provide a contextual framework which should inform the reading of this report.

Three issues in particular are worthy of note here: the recent views of the European Union in respect of Turkey's accession to the Union, the position taken by international human rights organisations on the state of human rights in Turkey and the recent general election.

Firstly, the European Union has recently declined to offer Turkey an indication as to when it may accede.³ This was based, at least in part, on real and ongoing concerns over its human rights record. The second matter was the September 2002 Amnesty International publication, a damning report in which torture in Turkey was categorised as "systematic."⁴ Thirdly, during the preparation of this report there has been a general election in Turkey. The victorious party has declared its commitment to Turkey joining the EU and its acknowledgement of the importance of human rights.

³ The discussions culminated in the meeting held in Copenhagen, Denmark in December 2002.

⁴ AI Index EUR 44/040/2002, published on 01/09/2002.

II. THE HEARING

Friday, 20th September 2002

State Security Court No. 3, Istanbul

Stage in the Proceedings: First hearing

Central Figures in the Proceedings:

Three presiding judges

The Prosecutor

The Defendant, Eren Keskin, Advocate, Chair of the Istanbul branch of the Human Rights Association (IHD) and founder of the Legal Aid Project Against Sexual Harassment and Rape in Custody

The Defence Advocate

The Initial Indictment

The indictment was initially confined to a charge under Article 312, paragraph 2 of the Turkish Penal Code. Article 312(2) reads:

"A person who incites the people to hatred or hostility on the basis of a distinction between social classes, races, religions, denominations or regions, shall, on conviction, be liable to between one and three years' imprisonment and a fine of... If this incitement endangers public safety, the sentence shall be increased by one third to one half."

The charge under this provision related to a speech given by Ms Keskin at a meeting organised by the Federation of Alevi Associations in Cologne, Germany, on 16 March 2002. The title of the meeting was 'Are Women's Rights Human Rights?' Ms Keskin spoke on the subject of sexual violence directed at women by the State. The indictment alleges that she accused the army of waging a dirty war in Kurdistan and raping women in every house searched, of subjecting women to all manner of sexual harassment, that even married women were forced to undergo virginity testing in order to humiliate them and that the situation in Kurdistan was as grave as that in the rape camps of Bosnia.

It was these comments, according to the indictment, that constituted the offence under Article 312(2).⁵ The Delegation later discovered that a separate charge had already

⁵See indictment at Annex A

been laid against Ms Keskin under Article 312(1) of the Penal Code for allegedly insulting the military. This case is due to proceed at a normal criminal court in Bayoglu, where the initial formal complaint was lodged.

There was no issue of jurisdiction in this matter as an account of the speech had subsequently been published in the Turkish daily newspaper *Hurriyet*, based in Bagcilar. Other speakers at the meeting in Cologne included Professor Necla Arat. Professor Arat took issue with what Ms Keskin had said. She made a formal complaint to the Public Prosecutor in Turkey and a case was opened against Ms Keskin.

The Courtroom

Although the hearing was only a preliminary one, there was clearly a larger amount of interest in it. The public benches were full, with some having to stand along the back wall. The press were in evidence before, during and after the hearing. The Delegation also noted the presence of representatives from the Human Rights Association (IHD), TOHAV and the Dicli Women's Centre.

Eren Keskin was alone in the dock facing the Bench. The three judges presided over the courtroom with an air of gravity that was almost tangible. The leading judge was particularly fierce and it was he who shouted at the press photographers for appearing to display disrespect in his court. Particularly striking was the positioning of the Prosecutor and the Defence advocates. While the single Prosecutor was seated a few feet from the judges and on the same level, the Defence lawyers were situated behind a small table on the floor of the courtroom, some distance to the side of the Bench. The perception this generates is of a real imbalance between the two parties to the case, with the Prosecutor appearing to have the ear of the court while the Defence are relegated to a position next to the press and court usher. All in all, the physical set up of the courtroom was not conducive to the appearance of an equality of arms.

The proceedings were began with the reading of the indictment by the lead judge to Ms Keskin. She then gave a defence statement from the dock. This was striking in its clear, unhesitant delivery and its assertiveness in the face of what appeared to be rather unimpressed judiciary.

The term 'Kurdistan' was used on a number of occasions. The Delegation learnt later, through its interpreter and in an interview with Eren Keskin herself, that she had accepted attending the meeting in Cologne and using the term 'Kurdistan' in her speech. The basis of her defence was the meaning and intent to be attributed to the words used. Ms Keskin asserted that she had not promoted separatism, but merely the right to self-determination for Kurdish people. She argued that this was not inconsistent with the unity of the Turkish State.

It was clear from what the delegation learnt after the hearing that Ms Keskin had not desisted from her allegations of sexual violence perpetrated by the Turkish authorities. In support of this she produced for the Court statistics collated by the Legal Aid Project Against Sexual Assault and Rape in Custody. These illustrated that some 157 applications against state actors have been made and 119 of the victims were Kurdish women.⁶

Throughout Ms Keskin's defence statement the lead judge had been taking notes. After Ms Keskin had finished he then proceeded to dictate her evidence to the court clerk who, in turn, typed it onto the computer. This was another striking element of the proceedings. The court record was to contain the actual words not of the defendant but of the presiding judge. The Delegation was informed that the defendant had the opportunity to correct any errors the judge may have made, but, nevertheless, it seemed unnecessarily intrusive for the judge to hold sway over what was transcribed in the official record. This only added to the overall perception of a system stacked against the defendant.

Three further brief exchanges occurred towards the end of the hearing. One of the wing judges consulted with the lead judge. He then made a short announcement to Ms Keskin who briefly responded. Ms Keskin's advocate then addressed the judges. The Prosecutor did likewise.

⁶ The full breakdown of the statistics is at Annex B.

Amendment of the Indictment

It transpired that the interchange between the two judges resulted in a significant addition to the proceedings against Ms Keskin. Of its own motion, and without any input from the Prosecutor, the Court had amended the indictment during the course of the hearing to include a charge under Article 8(1) of the Prevention of Terror Law.⁷

This reads as far as is relevant:

“Written and spoken propaganda, meetings, assemblies and demonstrations aimed at undermining the territorial integrity of the Republic of Turkey or the indivisible unity of the nation are prohibited. Any person who engages in such an activity shall be sentenced to not less than one and not more than three years’ imprisonment and a fine of from one hundred million to three hundred million Turkish liras. The penalty imposed on a re-offender may not be commuted to a fine.”

The Delegation learnt that the judges had been surprised that a charge under Article 8 had not been laid against the defendant before. The facts as disclosed by the indictment gave rise to the committal of an offence of disseminating separatist propaganda.

Although Ms Keskin was allowed to briefly respond to the new charge, the manner in which a substantially more serious matter was introduced to the proceedings once again highlighted the difficulties faced by defendants in cases before the State Security Courts. Furthermore, it underlined the appearance of collusion between the Court and the Prosecution, whose role ought to be laying the charges deemed appropriate. This particular occurrence raised serious concerns over the compatibility of the proceedings with fair trial rights protected under Article 6 of the European Convention on Human Rights.

The remaining matters in this preliminary hearing were evidential in nature. It transpired that following the meeting in Cologne, the Alevi organisation held a press conference back in Turkey. A tape recording had apparently been made of this and the Prosecution claimed that the tape included an account of what Ms Keskin had said at the meeting in Cologne. This would, in their view, be evidence against her at trial. It appeared that the Prosecution did not have the tape.

⁷ Law no. 3713 of 12/04/1991, as amended by Law no. 4126 of 27/10/1995.

Ms Keskin had not attended the press conference and had no knowledge of the tape's contents. Steps were to be taken by the Prosecution to retrieve the tape. Ms Keskin later told the Delegation that the Alevi organisation would be reluctant to give up the tape, as it would potentially implicate them in 'separatist' activities.

The second matter was the need for Professor Arat to attend court on the next occasion. Clearly she is an important witness in the case. Finally, Ms Keskin will serve on the Court the files of those 157 complainants cited earlier in the proceedings.⁸

The case was then adjourned until 27th November 2002. The Delegation is anxious that the progress of this case is monitored from the United Kingdom.

III. THE CONTEXT OF THE CASE

The context in which the proceedings observed by the Delegation need to be seen involves two main elements: the objective position as held by international supervisory bodies and external non-governmental organisations and the views expressed by human rights defenders operating within in Turkey itself. It is important to view the experiences of the latter in light of the former.

EU report on Turkey's progress towards accession

As mentioned already, Turkey suffered a blow in October 2002 to its hopes of accession to the EU in the near future. To a large extent this was due to real and ongoing concerns over the human rights situation prevailing in the country. These concerns are elucidated in the EU Regular Report of 2002 on Turkey's progress Towards Accession.⁹ The report acknowledges that some progress has been made in the field of human rights. Three rafts of reforms have were adopted in February,

⁸ See Annex A.

⁹ Regular Report of the European Communities on Turkey's Progress Towards Accession, Brussels 09/10/2002, SEC (2002) 1412 ('The Regular Report').

March and August 2002.¹⁰ These went to the issues of linguistic rights, pre-trial detention and the effectiveness of legal redress against human rights abuses. According to the Turkish authorities the necessary regulatory and administrative measures were to be approved in November 2002. The Chairman of TOHAV, one of the human rights organisations the Delegation spoke with, urged for caution when assessing the impact of formal measures of this type.¹¹ On the question of the need to eliminate discrimination prior to accession, the response was that while the State may accept formal legal requirements to prevent discrimination, it is the practice of the State that is important. For example, regulations have been made on linguistic rights in educational institutions but students are still being prosecuted and action is still taken against families who give their children Kurdish names.

The report highlights several areas in which problems remain. On the international stage, Turkey has still failed to ratify the UN International Covenant on Civil and Political Rights or the UN International Covenant on Economic, Social and Cultural Rights. There has been a continuing failure to execute judgments of the European Court of Human Rights. The European Committee for the Prevention of Torture has confirmed that allegations of torture and ill treatment by the police in Istanbul remained frequent and the situation in the Southeast was worse still.¹² In its Evaluation, the EU report states that “there have been continued allegations of torture and ill treatment and little progress in the prosecution of those accused of such abuses.”¹³ This point was reiterated by one of the human rights organisations the Delegation met with.¹⁴ The report concludes that, despite the measure recently taken by the government, “Turkey does not fully meet the political criteria” required for accession.¹⁵

Amnesty International's Report of September 2002

¹⁰ Under Acts No. 4744, 4748 and 4771.

¹¹ Niyazi Bulgan, Chairman of Toplum Ve Hukuk Arastirmalari Vakri ('TOHAV'), The Foundation for Social and Legal Studies, interviewed on 19/09/2002

¹² Preliminary observations of the CPT delegation in respect of its visit to Turkey 21-27/03/2002 (CPT/Inf (2002) 13.

¹³ Regular Report page 45

¹⁴ Interview with Niyazi Bulgan, Chairman of 'TOHAV', on 19/09/2002 in Istanbul.

¹⁵ The Regular Report on Page 47.

This report cites numerous examples of torture and ill treatment, the victims coming from “different societal and political groups and from various parts of the country and include men, women and children.”¹⁶ It states that, “women and girls taken into custody are reportedly regularly sexually abused and threatened with rape.”¹⁷ Amnesty’s conclusion is that “in spite of the legal change [to the length of detention permitted prior to a suspected being produced before a court] torture is still widespread and practised systematically in Turkey.”

One purpose of the Delegation’s visit was to attempt to determine what the current situation was *on the ground* in respect of human rights abuses against women and their defenders. In furtherance of this, the Delegation met with several organisations and individuals concerned with the issue of women’s rights and sexual violence perpetrated by the State.

The Increase in Complaints by the Victims of Sexual Violence

One of the central factors behind the heightened attention towards sexual violence against women is the increased willingness to report abuses by the women themselves. Members of the Dicle Women’s Cultural Centre informed the Delegation that although women became more politicised during the 1970s, it was only since the ‘dirty war’ against the PKK had finished that they could focus more on the subject of women’s rights.¹⁸ In the past, and to a lesser extent today, the attitudes of Kurdish men have hindered the ability of women to report sexual crimes perpetrated by the State. The Delegation was told that Kurdish society is gradually changing and a new consciousness is emerging in which sexual violence reflects shame not so much on the victim but on the State itself.

An important factor that compliments the bravery of the victims of sexual violence in coming forward is the existence of individuals and organisations willing to assist them in making complaints and offering the provision of emotional support. The Dicle

¹⁶ ‘Turkey: Systematic torture continues in early 2002’ page 1.

¹⁷ As above, page 1.

¹⁸ Interview on 19/09/2002.

Centre has recently opened an office in Diyarbakir, although a different name has had to be used. It aims to give the kind of support available in Istanbul and also to deal with the increasing problem of prostitution in the economically deprived Southeastern region. The centre is also intent on establishing a rehabilitation centre for victims of sexual violence and aims to carry out home visits in which the trust of families can be obtained and the victims can relay their accounts in a familiar atmosphere.

Methodical / Systematic Use of Sexual Violence by State Actors

This was perhaps the single most important aspect of the meetings the Delegation participated in. It produced a consistent line of responses from different sources that underpinned what has been said in previous reports and illustrated the scale of the problem to be faced up to by the State. The Delegation was interested to obtain information and opinions from those it spoke to on the issue of whether and to what extent the use of sexual violence against women by State actors can be classed as 'systematic' or 'methodical.'

What the Delegation was told painted a clear picture. The Dicle Women's Centre, Eren Keskin and the Human Rights Association all stated in terms that the use of sexual violence by State agents in Turkey is systematic.¹⁹ Their comments seemed to divide the issue up into three interrelated points: sexual violence against women as a social and political group, sexual violence against the individual, and attempted division of the Kurdish community.

The use of rape and sexual assault, while not necessarily restricted to use against women, is primarily directed against them. In practice then it is gender-specific. As one member of the Women's Centre put it, "they use it [sexual violence] as a method of damaging women psychologically... there is physical and mental pressure and as a woman, there is a separate pressure." They went on to say that it was not just Kurdish women who were subjected to this but all political opponents of the State. Further, the other women's groups with which the Centre has contact report the same pattern of abuses. A representative of the Human Rights Association stated that the systematic

¹⁹ Interviews at the Dicle Women's Centre and Human Rights Association (IHD) on 19/09/2002; interview with Eren Keskin on 20/09/2002. All took place in Istanbul.

use of rape was employed against women known to be politically active in order to force them to stop. The Association said it was currently dealing with 30 complaints a month from rural areas involving matters of sexual violence and state agents.

Virginity testing was said to be widespread in the report of the 2001 Delegation.²⁰ On the basis of what was said to the 2002 Delegation, the practice remains common and widespread. Although unlawful, it was apparent that on this issue, as with many others, the practice is often far removed from the formal legal position. One of the changes vital to the development of human rights compliance in Turkey, according to Eren Keskin, is the requirement that women would only be tested if they consented or actually requested it themselves.

A particularly disturbing aspect of what the Delegation was told concerned the apparent use of sexual violence as a means of dividing families and communities, especially those of Kurds. Within Kurdish society, as in many others, rape and sexual violation are often seen as matters of shame and dishonour. While some victims may be offered support, others will be ostracised and even killed on occasion.

Those that the Delegation spoke to made essentially the same point in different ways, but two expressions stood out: the State was using sexual violence to 'divide the family' and therefore the community. A member of the Women's Centre gave a graphic example of how this cultural tactic operated in practice. The Centre had come across a girl whilst carrying out their work in Istanbul. She told them that when she was 15 years old she had been kidnapped by members of a Special Team and taken to the mountains for two weeks. She was raped. Eventually she was released in front of her house, the intention being to alert her family to what happened. Her family subsequently forced her to marry an older man, who had been married previously. Her family life had, in effect, been ruined.

Another observation made was that the State actors abuse women to apply pressure on husbands in order that they (the men) stop political activities. This point is also relevant to the issue of asylum. The organisation Goc – Der, which specialises in

²⁰ December 2001, page 7.

campaigning for the rights of internally displaced people, observed that many more men seek refuge outside of Turkey than do women.²¹ Therefore the situation may arise where a politically active husband, father or brother has left the country while the female relatives/spouses remain vulnerable to abuses by the security forces.

It was Eren Keskin who summed up the change of perception that is needed from the Kurdish community, especially amongst men, stating that, "it is the State who is guilty, not the daughters or wives."²²

The Difficulties in Obtaining Redress

The difficulties of obtaining medical evidence and its assessment by the courts in Turkey were discussed in some detail in the Trial Observation report of 2001.²³

From what the 2002 Delegation was told, the problems persist, notably in the weight given to reports by the judges.

The narrow definition of 'rape' also remains an obstacle to women seeking redress for abuses committed against them.²⁴ Eren Keskin informed the Delegation that the Parliamentary Law Commission had prepared a new definition but that there had not as yet been a political impetus to legislate.

A final issue was the increased use by the State of 'friendly settlements' in respect of applications to the European Court of Human Rights. TOHAV was concerned that the State is using the mechanism to avoid potentially damaging judgments against it by offering financial compensation. TOHAV believes that where friendly settlements are not accepted, the Court is increasingly inclined to strike the application out. TOHAV agreed that there is a real perception that the State is using friendly settlements as a tactic to be seen to be doing all it can to assist complainants while at the same time continuing with its human rights abuses with impunity by avoiding adverse decisions from the Court.

²¹ Interview on 19/09/2002, Istanbul.

²² Interview on 20/09/2002, Istanbul.

²³ State Violence Against Women in Turkey and Attacks on Human Rights Defenders of Victims of Sexual Violence in Custody, pages 22-24.

²⁴ Above, page 22.

The Problems Faced by Lawyers

This issue was highlighted by the central purpose of the Delegation's visit to Istanbul: the proceedings against Eren Keskin. The situation that Ms Keskin finds herself in now encapsulates the very real problems faced by human rights lawyers and defenders in Turkey. She represents women who are alleging sexual violence by State actors and she is prominent human rights activist in her own right. She therefore has a foot in each camp. She told the Delegation that she has had 100 charges laid against her on account of her work. Ms Keskin appeared philosophical about this, saying that the State was simply attempting to make her tired.

These charges, and indeed the current charges, certainly did not appear to have dimmed Ms Keskin's enthusiasm. However, in terms of her ability to practise the current proceedings have potentially serious consequences. She was of the view that the State (in the form of the Minister of Justice) wants the National Bar Association to expel her. There has not been any formal announcement to this effect, but Ms Keskin was adamant that she would challenge such a move in the courts. A conviction under Article 8 could result in her being expelled from the Bar permanently, preventing her from practising as an advocate.

Ms Keskin acknowledged the support of the Istanbul Bar Association. This linked in with the meeting the Delegation had with the Association in which the issue of the independence of lawyers was discussed.²⁵ The Delegation was informed that real problems persist in respect of the pressure being brought to bear on local Bar associations and human rights advocates by the State.

The core of the problems relates to the relationship between the local Bar associations, the national Bar Union and the Minister of Justice. The Minister can tell a local association to open an investigation against a particular advocate. If the association declined to do so the Minister has the legal power to require that an investigation be opened. The decision of the local association on the investigation

²⁵ Interview with Osman Ergil, Vice-President of the Istanbul Bar Association, Istanbul 20/09/2002.

then needs the approval of the national Bar Union and the Minister. The Delegation was informed that most of the individual lawyers investigated pursuant to an instruction from the Minister worked in the field of human rights.

In 90% of cases where the local association investigated and found there to be no case to answer, the Bar Union and the Minister rejected the conclusions. If the Bar Union or Minister insists on disciplinary action but the disciplinary court of the local association takes no action, the Bar Union can refer the case to its own disciplinary court. The lawyer can then potentially be punished. If a punishment of two years or more 'normal' imprisonment or one year 'heavy' imprisonment were imposed the lawyer must be expelled.

The Delegation was informed that when on occasions when the Istanbul Bar has decided not to expel a member, the Minister of Justice or the national Bar association has stepped in and demanded the expulsion.

IV. RELEVANT HUMAN RIGHTS STANDARDS

Of obvious importance to the issues covered in this report are the European Convention on Human Rights and the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).²⁶

In respect of the ECHR, there are still a significant number of cases being taken to the Strasbourg Court invoking Article 3.²⁷ It is clear that violations of this provision continue to occur throughout the country. Both Amnesty International and CPT have commented adversely in recent times on the prevalence of breaches of this fundamental and absolute human right.

²⁶ Adopted by the UN on 18/12/1979. Entered into force on 03/09/1981. See Annex C.

²⁷ Between 01/10/2001 and 30/06/2002 there were 246 such applications (source: EU report on Turkey's progress towards accession, 09/10/2002).

Another provision of the ECHR relevant to the Delegation's visit is Article 6. The large majority of applications made to the Strasbourg Court concern fair trial rights.²⁸ The Delegation itself witnessed what was arguably a serious infringement of Eren Keskin's procedural rights during the hearing observed in the Istanbul State Security Court. The case of Eren Keskin illustrates extremely well the continued importance of, and concerns surrounding, compliance with Article 10 of the ECHR, the UN Declaration on the Protection of Human Rights Defenders and the UN Basic Principles on the Role of Lawyers.²⁹



CEDAW is clearly of particular relevance to the issues covered in this report. The Convention includes positive obligations on the States Party that entail action to remove discriminatory legalisation and practices.³⁰ There are several issues that arguably engage such obligations: the practice of virginity testing; the assessment of medical evidence in cases concerning allegations of sexual violence; the attitudes of men towards the victims of sexual violence, in particular 'honour killings'; the narrow definition of 'rape' in Turkish law.

It is of note that Turkey ratified the Optional Protocol to CEDAW in August 2002, thereby allowing complaints from individuals to be made to the Committee. This will provide an avenue of complaint specific to women. It will allow the positive obligations contained in CEDAW to be argued before an international body and the actions of the Turkish State to be tested. The use of this new avenue by victims requires monitoring. So too does the attitude of the State to human rights defenders and lawyers who undertake to act on behalf of women pursuing complaints to the UN Committee that supervises CEDAW.

All States Party to the Convention are required to provide reports to the Committee indicating the measures taken to implement the Convention's provisions and progress thereof.³¹ The last report submitted by Turkey was in 1997. The next report is now

²⁸ 1125 out of a total of 1874 lodged between 01/10/2001 and 30/06/2002 (Source: EU report of 09/10/2002).

²⁹ The relevant issues are set out in the Delegation report of December 2001 pages 26-27.

³⁰ See in particular Articles 2 and 5.

³¹ Article 18.

overdue. The preparation and delivery of the next report is a matter requiring scrutiny by outside observers.

V. CONCLUSIONS AND RECOMMENDATIONS

This is an important time for Turkey. As the country strives to accede to the European Union the international spotlight is directed towards a number of issues. It is Turkey's human rights record that has attracted, and is continuing to attract, the full glare of that spotlight and, on the basis of what the Delegation heard during its visit, with good reason.

What is revealed paints a worrying picture. Amnesty International has deemed torture in Turkey in 2002 to be "systematic". The Delegation concluded that the use of sexual torture against women can be placed in the same category. Such abuses have been, and are, used as a 'tactic' for repressing and oppressing women seen to be opposed to the State not just politically but also culturally. The perpetrators of these acts appear to commit the rapes and sexual assaults in the knowledge that they strike not simply at the individual's personal integrity but at the fabric of the community as well.

The problems of virginity testing and obtaining legal redress for victims as discussed in the December 2001 Delegation report remain. Forced virginity testing is a form of sexual degradation and should be acknowledged as such by the State. It is also clear that women still face significant difficulties in establishing their cases in the courts. This is in part due to the attitude of the judiciary but also on account of the practices of the authorities in respect of medical evidence. These are areas where the State's *practices* require urgent change. Formal legal enactments are important, but are not enough. Unless and until these issues are resolved, Turkey will continue to be faced with more and more applications before the Strasbourg Court.

The position of human rights defenders and especially lawyers acting on behalf of the victims of sexual violence does not appear to have improved since the 2001 report was completed. Indeed, for Eren Keskin matters have got decidedly worse. The combination of her work and reputation, draconian laws and arguably unfair court

procedures has produced a case that embodies the concerns of the 2002 Delegation, international human rights organisations and the EU alike.

Inextricably linked to Eren Keskin's case is the issue of the independence of lawyers in Turkey. The present system allows for far too much influence to be exerted by the executive and is basically structurally unsound. The danger of political interference in matters concerning 'difficult' lawyers is real. The *perception* of such interference is in itself sufficient to require changes to the system.

For Turkey to ensure greater compliance with CEDAW prior to its next report there are a number of issues arising from the Delegation's visit that require positive steps being taken. Such is the situation in the field of formal legislative provisions, administrative practice and, no less importantly, relationships between and within communities.

The Delegation hopes that in light of the recent adverse attention focused on Turkey's human rights record, continued monitoring will prompt foreign governments and organisations to exert more pressure and the Turkish State to undertake these positive steps and begin to ensure compliance with the human rights standards discussed in this report.

Further to the conclusions reached by the Delegation, we make the following recommendations:

On the part of the Turkish State

- To enact laws widening the definition of rape and making forced virginity testing a serious offence.
- To radically alter its practices in respect of the obtaining of and attitude towards medical evidence by women alleging sexual violence by State actors.
- To increase the resources and resolve directed towards the investigation and prosecution of those responsible for sexual violence against women.

- To comply with its international obligations by taking steps to protect the position of human rights defenders and, in particular, lawyers.
- To review and amend the law and practice relating to disciplinary action against lawyers.
- To prepare and submit the necessary report to the supervisory committee of CEDAW.

On the part of non-governmental organisations

- To closely monitor the proceedings against Eren Keskin.
- To apply pressure on the Turkish State to produce its next report to the supervisory Committee of CEDAW.
- To produce observations and recommendations in respect of the issues raised in any such report.
- To initiate and maintain contacts with human rights organisations in Turkey.
- To maintain dialogue with the European Union on the issues raised in this report throughout future discussions on accession.

Appendix A
The Indictment

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No. 3 DGM 2002.312
T.R.
Istanbul
State Security Court
Prosecutor's Office

Preliminary No. 2002/1125
Principal No. 2002/779
Indictment No. 2002/779

Indictment
To Istanbul No. () State Security Court

Plaintiff: Public Law

Accused; Emire Eren Keskin, daughter of Orhan and Fatma, born in 1959, registered in Fatih, M. Iskender Mah. Istanbul, domiciled at Turnacıbaşı sokak, Fikret Tüner İşhanı Kat 3 no. 55 Galatasaray-Beyoğlu-Istanbul.

Offence: Open incitement of the people to enmity by raising differences of class, race, religion, sect or region.

Date of offence: 16:03.2002

Place of offence: Cologne — Germany

Article of Law: 312/2 of Turkish Penal Code

The preliminary documents regarding the above accused are annexed.

On examination of the preliminary documents preliminary no. 2002/7459 of 10.05.2002 and no. 2002/52 Decision of Non-Jurisdiction sent by the Bağcılar Public Prosecutor's Office it has been ascertained that at a forum entitled 'Are Women's Rights Human Rights?' jointly organised by TÜDAV and the German-European Alevi Union in the city of Cologne in Germany on 16.03.2002 the accused spoke as the Chair of the Istanbul Branch of the Human Rights Association, saying: 'that the army waged a dirty war in Kurdistan, that women were raped in every house that was searched, that all manner of sexual harassment was carried out, that even married women and mothers of four children were subjected to virginity tests for the sole purpose of torturing and humiliating them and that the situation in Kurdistan was as grave as that in the rape camps of Bosnia', thereby openly

Inciting the people to enmity by raising differences of class, race, religion, sect or region, using the term Kurdistan for a part of the Republic of Turkey, which is a unitary state, committing the attributed offence by describing the people living there as innocent and oppressed and making provocative statements against people of other regions.

The trial and conviction of the accused is requested in accordance with article 312/2 of the Turkish Penal Code as required by article 20 of the Law no. 2845.

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Appendix B

**Statistics from the Legal Aid Project Against
Sexual Assault and Rape in Custody**

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Legal Aid Project Against Sexual Assault and Rape in Custody
Kuloğlu mah. Turnacışı sok. Fikret Tüner İşhanı No: 55-57 Beyoğlu/Istanbul
Tel/Fax: (0212) 245 4593

Report on Status of the Proceedings (September 2002)

Total Number of Applications	157
Number of Applications in Turkey	154
(2 applications made in Germany before opening of Berlin office)	
Applications received by Berlin office for formal complaint	3
Total number of women abroad	13
Number of these applications being processed by Berlin office	7
Number of applicants in Turkish prisons	20
Range of offences:	
Rape	54
(of these, two women committed suicide after being raped, one died as a result of torture, one 14-year-old girl was murdered by her relatives to 'cleanse her honour', one woman died in 1999 from the long term effects of torture.)	
Forced prostitution	1
Assault after abduction	2
Sexual Assault	100
As a result of the above incidents:	
Miscarriages as a result of torture:	5
Women suffering torture together with children aged 3-10)	5
Women becoming pregnant following rape	3
(1 child is alive, one was aborted and one was stillborn)	
Age:	
Youngest	11
Oldest	67
Number of those under 18	22
Perpetrators*:	
Police	115
Gendarme/Soldier	34
Special Forces	4
Village Guard	6

Prison Officer	9
Supergrass	2

* The reason the figures are high is that in some cases there were more than one perpetrator

Ethnic origin of women:

Kurdish	119
Turkish	31
German	1
Roma (Gypsy)	4
Bulgarian	1
Romanian	1

Reasons for arrest of women:

For political reasons or stemming from conflict [war]	136
Stemming from conflict	14
Woman herself political	106
In order to get male members of the family to talk or To obtain information regarding men in the family	13
To punish political members of the family (to get revenge)	7
For non-political reasons	16
Suffered rape for non-political reasons	1

A- Legal Status of the Proceedings:

Total Number of Cases	89
At the European Court of Human Rights, Strasbourg (1 case is continuing after the suicide of the applicant)	28
In Turkish Criminal Courts	12
At Turkish Court of Cassation (High Court of Appeals) (In one of these cases previous judgment against Turkey in Strasbourg)	4
At Public Prosecutor's Office (In two cases successful objections have been made against decisions of non-jurisdiction, one of these is back with the prosecutor)	37
Awaiting decision on objections to decisions of non-jurisdiction	9

B- Files closed and removed to archive for purpose of documentation:	69
1- Did not want legal action due to fear (Despite this in one case a perpetrator/soldier was removed from his post)	38
2- Withdrawing from case after commencement (In one incident a victim withdrew on account of severe oppression)	9

following lodging of application, in another, after an acquittal the victim withdrew when it was possible a re-trial could have been ordered by Court of Cassation)

3- Withdrawing after exhaustion of domestic remedies	5
4- Unable to contact victim after initial application	3
5- Cases pursued by victim's own lawyers (Two of these are at Strasbourg)	6
6- Cases where there has been no recourse to legal action due to mistakes by victim's lawyers	2
7- Cases in which victim is dealing with case herself	2
8- Cases in which there is insufficient evidence to take action (One case in Germany)	4
9- Cases in which domestic remedies were exhausted prior to application	2
10- Cases which concluded with Turkish legal judgements (10 month suspended sentence)	1
11- Cases dropped as a result of the forced marriage of the victim to the perpetrator	1
12- Perpetrator (Police superintendent) murdered by drugs mafia	1
(C) Incidents of death	7
Cases dropped as a result of death of victim	3
Case continuing in Strasbourg after suicide of victim	1
One-year prison sentence for causing death by neglect	1
No action desired by family of 14-year-old girl, due to her being raped	1
Victim died on death fast in prison	1
Victims suffering persecution as a result of reporting a crime	36
Those who had to leave their homes in Turkey as a result of oppression	13
Intimidation, threat, taken into custody again and/or torture	16
Case lodged against victim	7

3Gözaltında Cinsel Taciz ve Tecavüze karşı Hukuki Yardım Projesi
Kuloğlu mah. Turnacıbaşı sok. Fikret Tüner İşhanı No:55-57 Beyoğlu / İstanbul
Tel./Faks: (0212) 245 45 93

Dosyaların Durumu Hakkında Rapor (Eylül 2002)

Toplam Başvuru Sayısı 157

- Türkiye'deki başvuru sayısı 154
(2 Başvuru Berlin Büro'su açılmadan önce Almanya'dan)
- Berlin Bürosundan alınan başvuru sayısı 3
 - Yurtdışında bulunan kadınların toplam sayısı 13
 - Bunlardan Berlin Bürosu tarafından yürütülenler 7
 - Türkiye'de cezaevinde bulunan kadınların sayısı 20

Suç Dağılımı:

- Tecavüz 54
(Bunlardan, tecavüze uğradıktan sonra iki kadın intihar etti, bir kadın işkence sonucu öldürüldü, 14 yaşındaki bir kız tecavüze uğradıktan sonra akrabaları tarafından "namus temizleme" gerekçesi ile öldürüldü, bir kadın işkencenin uzun vadeli etkisi sonucu aralık 1999 tarihinde öldü)
- Zorla fuhuş 1
- Kız kaçırdıktan sonra taciz 2
- Cinsel Taciz 100

Yukarıdaki vakalardan;

- İşkence sonucu bebeğini düşürenler 5
- 3 ½ - 10 yaşları arasında çocukları ile birlikte işkenceye maruz kalanlar 5
- Tecavüze uğradıktan sonra hamile kalanlar 3
(1 çocuk yaşıyor, 1 çocuk aldırıldı, 1 çocuk ise ölü doğdu)

Yaş Bilgileri:

- En genci 11
- En yaşlısı 67
- Reşit olmayanların sayısı 22

Suç İşleyen Failer Dağılımı*:

- Polis 115
- Jandarma/ Asker 34
- Özel Tim 4
- Korucu 6
- İnfaz Koruma Memuru 9

- İtirafçı 2

Kadınların Statüsü:

- Kürt 119
- Türk 31
- Alman 1
- Roman 4
- Bulgar 1
- Romen 1

Kadınların gözaltına alınma nedenleri:

- **Siyasi nedenlerden yada savaş kaynaklı** 136
 - Savaş kaynaklı 14
 - Kendisi siyasi 106
 - Ailenin erkek üyelerini konuşurmak ya da (genellikle) ailenin erkek üyeleri hakkında bilgi almak için 13
 - Ailenin siyasi üyelerinden dolayı cezalandırmak için 7
- **Adli nedenlerden** 16
- Adli nedenlerden dolayı tecavüze uğrayan 1

A) Davaların Hukuki Durumu:

- AİHM'sinde görülen 28
 - (1 Dava intihardan sonra da devam ediyor)
- Ceza Mahkemelerinde devam eden 12
- Yargıtayda bulunan 4
 - (1 Dava dah önce AİHM'de Türkiye aleyhine sonuçlandı)
- Savcılıkta bulunan 37
 - (2 Davada takipsizlik kararına itiraz olumlu sonuçlandı, yeniden savcılıkta)
- Takipsizlik kararından sonra itiraz edilen, henüz kararı verilmemiş olanlar 9

B) Projede kapanan, dokümantasyon nedeniyle arşive kaldırılan dosyaların sayısı

- 1. Korktuğu için hukuki işlem istemeyenler 38
 - (Buna rağmen 1 olayda Fail / Asker görevden alındı)
- 2. Dava devam ederken vazgeçenler 9
 - (1 olayda mağdur dava açıldıktan sonra gördüğü ağır baskı sonucu vazgeçiyor, bir başka olayda ise açılan davanın beraat ile sonuçlanmasından sonra mağdur, Yargıtay kararı ile davanın

yeniden görülmesi söz konusu iken vazgeçiyor)	
3. İç hukuk tolları tükendikten sonra vazgeçenler	5
4. Başvurudan sonra mağdura tekrar ulaşılamadı	3
5. Mağdurun kendi avukatları tarafından takip edilen davalar (Bunlardan 2 tanesi AIHM'de)	6
6. Mağdurun kendi avukatlarının hatası sonucu hukuk yoluna başvurulmayanlar	2
7. Mağdur davası ile kendi ilgileniyor	2
8. Delil yetersiz olduğu için hukuk yoluna başvurulamayanlar (1 Dosya Almanya'dan)	4
9. Projeye başvurmadan önce İç hukuk yolları tükenen	2
10. Türkiye'de mahkeme kararı ile sonuçlananlar (10 ay, cezanın tecili)	1
11. Mağdurun fail ile zorla evlendirilmesi sonucu davanın düşmesi	1
12. Fail (Komiser) uyuşturucu mafyası tarafından öldürüldü	1

C) Ölüm Vakaları

	7
• Mağdurun ölümü nedeniyle düşen davalar	3
• Dava mağdur intihar ettikten sonra da AIHM'de devam ediyor	1
• İhmal sonucu ölüme sebebiyet vermekten dolayı bir yıl hapis cezası	1
• 14 yaşındaki kız ile ilgili olayda tecavüz gerekçesiyle ceza takibi yakınları tarafından istenmedi.	1
• Mağdur cezaevindeyken ölüm orucunda yaşamını yitirdi	1

Suç duyurusu nedeniyle ağır baskıya maruz kalanlar

	36
• Baskı sonucu Türkiye içerisinde yaşadığı yeri terk etmek zorunda kalanlar	13
• Korkutma, Tehdit, tekrar gözaltına alma ve/veya işkence	16
• Mağdura karşı dava açılması	7

* Toplam sayının yüksek olmasının nedeni bazı olaylarda birden fazla fail kategorisinin uygulamada bulunmuş olmasıdır.

Appendix C

Convention on the Elimination of all Forms of Discrimination Against Women

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CONVENTION

ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST **WOMEN**

Institut kurde de Paris



“ . . . the full and complete development of a country, the welfare of the world and the cause of peace require the maxium participation of women on equal terms with men in all fields.”

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INTRODUCTION

On 18 December 1979, the **Convention on the Elimination of All Forms of Discrimination against Women** was adopted by the United Nations General Assembly. It entered into force as an international treaty on 3 September 1981 after the twentieth country had ratified it. By the tenth anniversary of the Convention in 1989, almost one hundred nations have agreed to be bound by its provisions.

The Convention was the culmination of more than thirty years of work by the United Nations Commission on the Status of Women, a body established in 1946 to monitor the situation of women and to promote women's rights. The Commission's work has been instrumental in bringing to light all the areas in which women are denied equality with men. These efforts for the advancement of women have resulted in several declarations and conventions, of which the Convention on the Elimination of All Forms of Discrimination against Women is the central and most comprehensive document.

Among the international human rights treaties, the Convention takes an important place in bringing the female half of humanity into the focus of human rights concerns. The spirit of the Convention is rooted in the goals of the United Nations: *to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women*. The present document spells out the meaning of equality and how it can be achieved. In so doing, the Convention establishes not only an international bill of rights for women, but also an agenda for

action by countries to guarantee the enjoyment of those rights.

In its preamble, the Convention explicitly acknowledges that "extensive discrimination against women continues to exist", and emphasizes that such discrimination "violates the principles of equality of rights and respect for human dignity". As defined in article 1, discrimination is understood as "any distinction, exclusion or restriction made on the basis of sex . . . in the political, economic, social, cultural, civil or any other field". The Convention gives positive affirmation to the principle of equality by requiring States parties to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men" (article 3).

The agenda for equality is specified in fourteen subsequent articles. In its approach, the Convention covers three dimensions of the situation of women. Civil rights and the legal status of women are dealt with in great detail. In addition, and unlike other human rights treaties, the Convention is also concerned with the dimension of human reproduction as well as with the impact of cultural factors on gender relations.

The legal status of women receives the broadest attention. Concern over the basic rights of political participation has not diminished since the adoption of the Convention on the Political Rights of Women in 1952. Its provisions, therefore, are restated in article 7 of the present document, whereby

women are guaranteed the rights to vote, to hold public office and to exercise public functions. This includes equal rights for women to represent their countries at the international level (article 8). The Convention on the Nationality of Married Women—adopted in 1957—is integrated under article 9 providing for the statehood of women, irrespective of their marital status. The Convention, thereby, draws attention to the fact that often women's legal status has been linked to marriage, making them dependent on their husband's nationality rather than individuals in their own right. Articles 10, 11 and 13, respectively, affirm women's rights to non-discrimination in education, employment and economic and social activities. These demands are given special emphasis with regard to the situation of rural women, whose particular struggles and vital economic contributions, as noted in article 14, warrant more attention in policy planning. Article 15 asserts the full equality of women in civil and business matters, demanding that all instruments directed at restricting women's legal capacity "shall be deemed null and void". Finally, in article 16, the Convention returns to the issue of marriage and family relations, asserting the equal rights and obligations of women and men with regard to choice of spouse, parenthood, personal rights and command over property.

Aside from civil rights issues, the Convention also devotes major attention to a most vital concern of women, namely their reproductive rights. The preamble sets the tone by stating that "the role of women in procreation should not be a basis for discrimination". The link between discrimination and women's reproductive role is a matter of recurrent concern in the Convention. For example, it advocates, in article 5, "a proper understanding of maternity as a social

function", demanding fully shared responsibility for child-rearing by both sexes. Accordingly, provisions for maternity protection and child-care are proclaimed as essential rights and are incorporated into all areas of the Convention, whether dealing with employment, family law, health care or education. Society's obligation extends to offering social services, especially child-care facilities, that allow individuals to combine family responsibilities with work and participation in public life. Special measures for maternity protection are recommended and "shall not be considered discriminatory". (article 4). The Convention also affirms women's right to reproductive choice. Notably, it is the only human rights treaty to mention family planning. States parties are obliged to include advice on family planning in the education process (article 10.h) and to develop family codes that guarantee women's rights "to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights" (article 16.e).

The third general thrust of the Convention aims at enlarging our understanding of the concept of human rights, as it gives formal recognition to the influence of culture and tradition on restricting women's enjoyment of their fundamental rights. These forces take shape in stereotypes, customs and norms which give rise to the multitude of legal, political and economic constraints on the advancement of women. Noting this interrelationship, the preamble of the Convention stresses "that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women". States parties are therefore obliged to work towards the

modification of social and cultural patterns of individual conduct in order to eliminate "prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women" (article 5). And Article 10.c. mandates the revision of textbooks, school programmes and teaching methods with a view to eliminating stereotyped concepts in the field of education. Finally, cultural patterns which define the public realm as a man's world and the domestic sphere as women's domain are strongly targeted in all of the Convention's provisions that affirm the equal responsibilities of both sexes in family life and their equal rights with regard to education and employment. Altogether, the Convention provides a comprehensive framework for challenging the various forces that have created and sustained discrimination based upon sex.

The implementation of the Convention is monitored by the Committee on the Elimination of Discrimination against Women

(CEDAW). The Committee's mandate and the administration of the treaty are defined in the Articles 17 to 30 of the Convention. The Committee is composed of 23 experts nominated by their Governments and elected by the States parties as individuals "of high moral standing and competence in the field covered by the Convention".

At least every four years, the States parties are expected to submit a national report to the Committee, indicating the measures they have adopted to give effect to the provisions of the Convention. During its annual session, the Committee members discuss these reports with the Government representatives and explore with them areas for further action by the specific country. The Committee also makes general recommendations to the States parties on matters concerning the elimination of discrimination against women.

The full text of the Convention is set out in the pages that follow.

Convention on the Elimination of All Forms of Discrimination Against Women

UNITED NATIONS GENERAL ASSEMBLY, 18 DECEMBER 1979

3 September 1981

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect of human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, and in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and

colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or propose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil and any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any

person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudice and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

State Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for selection to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of her husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of same quality; ⁴

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education.

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right of free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right of equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, State Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the ground of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connexion with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;

- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.
2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
 - (a) To participate in the elaboration and implementation of development planning at all levels;
 - (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
 - (c) To benefit directly from social security programmes;
 - (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
 - (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;
 - (f) To participate in all community activities;
 - (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
 - (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in

all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention.

The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which

two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. State Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

- (a) Within one year after the entry into force for the State concerned; and
- (b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General shall transmit the reports of the Committee on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in this Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained: (a) In the legislation of a State Party; or (b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The Present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. the General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

Institut kurde de Paris

Institut kurde de Paris



The Kurdish Human Rights Project

The Kurdish Human Rights Project (KHRP) is an independent, non-political, non-governmental human rights organisation founded and based in London, England. KHRP is a registered charity and is committed to the promotion and protection of the human rights of all persons living within the Kurdish regions, irrespective of race, religion, sex, political persuasion or other belief or opinion. Its supporters include both Kurdish and non-Kurdish people.

AIMS

- To promote awareness of the situation of the Kurds in Iran, Iraq, Syria, Turkey and the countries of the former Soviet Union
- To bring an end to the violation of the rights of the Kurds in these countries
- To promote the protection of human rights of Kurdish people everywhere

METHODS

- Monitoring legislation and its application
- Conducting investigations and producing reports on the human rights situation of Kurds in Iran, Iraq, Syria, Turkey, and in the countries of the former Soviet Union by, amongst other methods, sending trial observers and engaging in fact-finding missions
- Using such reports to promote awareness of the plight of the Kurds on the part of committees established under human rights treaties to monitor compliance of states
- Using such reports to promote awareness of the plight of the Kurds on the part of the European Parliament, the Parliamentary Assembly of the Council of Europe, the national parliamentary bodies and inter-governmental organisations including the United Nations
- Liaison with other independent human rights organisations working in the same field and co-operating with lawyers, journalists and others concerned with human rights
- Assisting individuals with their applications before the European Court of Human Rights
- Offering assistance to indigenous human rights groups and lawyers in the form of advice and training seminars on international human rights mechanisms

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