



TURKEY, EUROPE AND CENTRAL ASIA

“He Loves You, He Beats You”

Family Violence in Turkey and Access to Protection

HUMAN
RIGHTS
WATCH



“He Loves You, He Beats You”
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“He Loves You, He Beats You” Family Violence in Turkey and Access to Protection

Selvi T. 1

Summary 3

- Law on the Protection of the Family 4
- Excluded from Protection.....5
- Lack of Implementation5
- Shelters..... 6

Methodology.....8

I. Background..... 10

- Prevalence of Domestic Violence in Turkey10
- Unequal Status..... 11
- Reforms and Civil Society Efforts 11
- Government Agencies Involved in Responding to Domestic Violence.....12
- Evolution of Civil Protection Orders in Legal Systems around the World12

II. Legal Reforms and Gaps15

- Law 4320 on the Protection of the Family: Uncertainties and Gaps 15
- Penal and Civil Code Reforms 20
 - Gaps in Law..... 21
- Anti-Violence Programming 22
- Proposed Revisions to the Family Law 4320..... 22

III. Failings in Implementing the Protection Law..... 25

- Barriers to Reporting Violence25
 - Physical, Psychological, and Financial Control by Family over Women 26
 - Mistrust of State Authorities and Skepticism about Response 28
 - Language Barriers..... 29
 - Limited Availability of Family Courts 30
 - Police and Gendarmerie Response to Reports of Abuse31

Role of Judges and Prosecutors	34
Reluctance and Slow Decisions by Family Courts	34
Improperly Requiring Evidence	35
Monitoring Compliance with Protection Orders	37
Structural Problems	40
Inadequate Staffing and Lack of Specialized Units	40
Limited Training of Law enforcement Officials	40
Problems with Facilities	42
IV. Inadequate Shelters	43
Number of Shelters	43
Shelter Conditions	44
Exclusion of Certain Women	45
Transitioning out of Shelters	46
V. Turkey’s International and Regional Legal Obligations	48
International Standards	48
Regional Standards	51
New Council of Europe Convention on Domestic Violence	54
Recommendations	55
To the Grand National Assembly of Turkey	55
To the Ministry of the Interior	55
To the Ministry of Justice	56
To the Prime Ministry Social Services and Child Protection Agency	57
To the Greater City Municipalities and Municipalities with 50,000 or More Residents	57
To the Directorate General on the Status of Women:	57
To the European Commission	57
Acknowledgments	58

Selvi T.

Selvi T., a petite 22-year-old pregnant with her fifth child, represents everything that can go horribly wrong when domestic violence is not taken seriously.

Born in southeastern Turkey [exact location withheld], Selvi moved to a government “dormitory” for children in the west of Turkey when her father died. In 2000, when she was 12, Selvi’s family arranged for her to be married. Her husband took her back to the southeast against her will.

Her husband started his attacks when she was pregnant with their first child. “That first time, he hit me, he kicked the baby in my belly, and he threw me off the roof,” she said. “The baby survived but I think [the child] has a mental illness.” Since then, the violence has increased in frequency and severity, and now even includes their children. Selvi’s husband controls every aspect of her life and is extremely jealous. She told us: “He rapes me all the time, and he checks my fluids ‘down there’ to check I didn’t have sex [with another man].”

In 2008 Selvi finally went to the police, after her husband had “broken her skull and arm.” The police brought her husband to the station, gave the couple some food, and sent them home, telling her, “There’s no problem, we spoke to him, you’re back together.” The second time Selvi went to police, they brought her to the hospital as she was bleeding from her head where he had hit her with a rock. Nevertheless, they told her she should reconcile with her spouse.

At this point in 2009 Selvi’s husband locked her in a room and beat her every day. When she escaped and went to the police a third time, they called the husband and he apologized. The police sent her home again. In 2010 Selvi went to the police a fourth time when her husband brought friends home late at night, and he “offered” Selvi to them. To escape, she jumped off the roof and ran to the police station. Her husband told the police she was lying. They believed him. “Just go back with your husband and stay there,” she was told.

Selvi secretly went to the family court but told the prosecutor she was too afraid to make a formal complaint. As the case was so serious, the prosecutor started a procedure independently to secure a protection order for Selvi. The court ordered Selvi’s husband to stay away from her and pay her maintenance. But the order was not enforced. He made no maintenance payments, never moved out, and still beats her. The police never checked up on her after the order was issued. Selvi told us: “I just cannot go to the police anymore, since he threatens to break my legs... [if I do that].”

At one stage, Selvi spent two months at a shelter, a step that proved to be an unsatisfactory solution. “It was very bad; I could only take my oldest daughter. The others had to stay with my mother,” she said. What’s more, the shelter did not keep Selvi safe from her husband, who turned up one day; the police had revealed the shelter’s location. A woman working at the shelter told Selvi: “Just talk to your husband, he is here, crying.” When she did, he stabbed a fork into her forearm, resulting in a scar that Selvi displayed in the interview. He took her home.

The abuse was continuing when we spoke to Selvi in June 2010. Her husband lives with her, rarely works, gambles, does not pay the bills, and frequently beats her and the children. She is too afraid to send the children to a government dormitory, and too terrified to escape. She cannot get prenatal care—assistance that is urgent since the abuse involves kicks to her abdomen—because her state health insurance “green” card was among the civil documents her husband burned on one occasion.

A municipal women’s group is aware of Selvi’s situation and is providing assistance, but she sees no way out for herself or her children.

Summary

“It always happened at night,” Hamiyet M. told Human Rights Watch. For 24 long years, Hamiyet’s husband had abused her by severely beating her and raping her almost daily. When she finally summoned the courage to go to police in her town in eastern Turkey, they sent her home, twice. The beatings continued, in one instance proving so severe she wound up in hospital where she spoke with a police officer for a third time. Yet again, she received neither sympathy nor help. “Are we supposed to deal with you all the time?” the officer scolded.

Some 42 percent of all women older than 15 in Turkey and 47 percent of women living in the country’s rural areas—approximately eleven million women in total—have experienced physical or sexual violence at the hands of a husband or partner at some point in their lives, according to a 2009 survey conducted by a leading Turkish university.

Female domestic violence survivors, lawyers, and local experts on family violence interviewed for this report described husbands and family members inflicting brutal and long-lasting violence on women and girls that in some cases lasted for decades, affecting several generations of women. Researchers documented women and girls as young as 14 being raped; stabbed; kicked in the abdomen when pregnant; beaten with hammers, sticks, branches, and hoses to the point of broken bones and fractured skulls; locked up with dogs or other animals; starved; shot with a stun gun; injected with poison; pushed off a roof; and subjected to severe psychological violence. The violence occurred in all areas where researchers conducted interviews, and across income and education levels.

In recent years Turkey has taken important legislative steps towards addressing violence against women. But despite these impressive advances, most notably Law 4320 on the Protection of the Family (“Law 4320” or “protection law”), remaining gaps in the law and failures of implementation make the protection system unpredictable at best, and at times downright dangerous. Furthermore, this legislative process is undermined by the government’s failure to better prevent abuse in the first place, change discriminatory attitudes, and effectively address the barriers that deter women and girls from reporting abuse and accessing protection.

This report focuses on the civil remedies available in Turkey to survivors of domestic violence. These options—which aim to provide immediate protection from harm, create space for a victim to decide her course of action, and prevent an abuser hampering criminal or divorce

proceedings with intimidation or threats—take two main forms. The first is physical protection in shelters, the second is civil protection orders—emergency measures intended to stop further abuse, which is common in domestic violence cases, including instructions to an abuser to stay away from the house and refrain from violence against the victim.

The research found that implementation of Law 4320 regularly falls short because enforcement officers, judges, and prosecutors neglect their duties, often due to lack of expertise or will to deal with cases of violence against women and girls in a manner that is effective and sensitive to the needs and human rights of victims. Women who do report family violence to police risk being turned away, and face poor enforcement of protection orders: indeed, some women have been murdered after obtaining a protection order against their killer. Shelters are lacking, and those that do exist often exclude certain groups of women, restrict movement and communications, and are vulnerable to security breaches. Environments in which women are supposed to report violence—particularly police stations and family courts—often lack the private space necessary to do so. In addition, differing understandings of the law—specifically, the scope of eligibility for protection orders—undermine its effectiveness and can exclude the most vulnerable victims of domestic violence.

The following four sections provide a basic explanation of the family protection law in Turkey, and summarize the main findings of the report in three areas: the exclusion of certain groups of women because of gaps in law, the problematic implementation of the law, and issues around shelters.

Law on the Protection of the Family

Turkey entered the vanguard of countries offering civil mechanisms to protect against domestic violence with its 1998 adoption of Law 4320 on the Protection of the Family. The law, amended in 2007, established a protection order system whereby a person subjected to abuse by a family member living under the same roof, male or female, can apply directly or through a prosecutor for an order from a family court. It is intended that these orders be issued quickly, within days at most, since the individuals who apply for them are often in extremely dangerous situations.

A family court judge can issue a protection order for a maximum of six months, which can require that an offender vacate the home; stay away from the home or school of the victim and their children; surrender weapons; and refrain from violence, threats, damaging property, contacting the victim, or using intoxicating substances in the house. The order can

be renewed for another six months if a new case or situation arises involving violence. The judge can require the abuser to make maintenance payments to the victim.

Excluded from Protection

For unmarried and divorced women, and women in religious (unregistered) marriages, access to protection is essentially a lottery. According to Law 4320, protection orders are available to a spouse, child, or other family members if they live under the same roof.¹

Yet prosecutors, judges, and law enforcement officers in the same cities and even the same court houses hold conflicting views on the scope of eligibility of protection orders. Judges told Human Rights Watch they do sometimes interpret the law flexibly to grant protection orders to divorced and unmarried women, or women who are married according to a religious but not civil marriage. Prosecutors said there is no such discretion, and that only spouses married under the Civil Code are eligible. Some police told Human Rights Watch they would pursue protection orders for unmarried partners, but this is inconsistent at best.

Lack of Implementation

Domestic violence survivors who reach out for help face significant barriers. In situations of domestic violence, family members or husbands often control a woman to such an extent that she is physically, psychologically, or economically incapable of seeking help.

Many women also lack confidence in the police and other authorities because of their own past bad experiences, or those of family members and friends. In predominantly Kurdish southeast Turkey, years of regional conflict have contributed to fundamental mistrust of the state and police, which further deters women from reporting violence. Practical barriers, such as lack of interpreters and limited opening hours of family courts, also stop women from asking for a protection order.

When women do report family violence to police, they risk being turned away. Law enforcement officers often prioritize preserving family unity, and push battered women to reconcile with abusers rather than pursuing criminal investigations or assisting women in getting protection orders. Law enforcement trainings and public pressure have led to some

¹ Law 4320 on the Protection of the Family, and the 2007 amendment Law No. 5636, says: “If a spouse or child or another member of the family living under the same roof, or one of the family members that have the legal right to live separately or a court ruling for separation or live separately de facto despite still being married.”

progress, but much still needs to be done before abused women can count on their complaints and safety being taken seriously.

Survivors of abuse who are referred to family courts for protection orders face yet more barriers. Prosecutors are sometimes reluctant to forward a request to a judge or to start the process of their own accord; judges may take too long to decide whether to grant an order, or may require medical or other forms of evidence that is not required for an emergency protection order by national law. This causes delays and may even end the process if a woman is unable to obtain a medical record or witness statements.

Once issued, a protection order only has value if it is enforced, which requires law enforcement diligence and action. In no case that researchers documented did police check on the woman weekly, as required by law. Even worse, officers often did not respond to calls from women whose husband or family members returned to the house and threatened them.

Shelters

A practical—if temporary—way to offer a woman protection from abuse is to provide a safe place to stay in a shelter. The government has set itself a target: every municipality with 50,000 or more residents should have a shelter for women, as stipulated in the Law on Municipalities. Currently, the government is more than 100 shelters short of achieving this goal.

Besides the shelter shortage, Human Rights Watch documented problems with existing shelters. Some exclude certain women, including pregnant and undocumented women, and women with psychological or physical disabilities. Security breaches also occur when police or school records disclose shelter locations. Women also complained about shelter conditions, especially regarding restrictions on movement and communications.

The report focuses on civil remedies and the emergency protection system. They are crucial given their direct protection function, and Human Rights Watch chose to focus on this element of the response to domestic violence because of the inherent dangers of bad implementation, as well as opportunities for a draft law amending the Family Protection Law to be adopted by parliament before or after the 2011 election. This report does not focus on Turkey's criminal justice system, but this should not be taken as any comment on the importance that Human Rights Watch places on the central role of criminal prosecutions in

combating the serious crime of domestic violence. Indeed, prosecutions for such violence are a part of mounting a comprehensive response to the country's epidemic of domestic violence, which not only violates Turkish, but also international and regional law.

Human Rights Watch recommends that Turkey close the gaps in its family protection law by explicitly providing that protection orders may be issued to unmarried and divorced women, including women in unregistered religious marriages. The Ministry of Justice and the Ministry of Interior should create dedicated units at police stations and family courts that have specialized staff who can refer women to social services and deal with their protection claims. The Ministry of Interior should develop a complaint mechanism to identify police officers, prosecutors, and judges who do not uphold the law or who mistreat domestic violence survivors. Overall monitoring of the protection order system is also needed, with more specific, publicly available data on the use of the protection system. More shelters are needed, and both the Interior and Justice Ministries should continue to train police officers, and focus on training prosecutors and judges regarding the practical requirements of Law 4320 and each actor's role in the process.

Finally, at a time when the Council of Europe is about to adopt a new region-wide draft convention on preventing and combating violence against women and domestic violence, Turkey's government should seek to ensure that Family Protection Law 4320 not only accords with the draft text in design but also in implementation, something it currently fails to do.

Methodology

This report is based on research conducted by three Human Rights Watch researchers in Ankara, Istanbul, Trabzon, Izmir, Van, and Diyarbakır in June, July, and November 2010, as well as telephone interviews throughout 2010. We interviewed 21 women who had experienced violence and had sought protection from the state, and analyzed 19 domestic violence case files that lawyers and a family court judge had given Human Rights Watch.

We also interviewed a representative of the Directorate General on the Status of Women in Ankara, local social service officials in several municipalities, family judges, chief prosecutors, police officers, mayors, and municipality staff. Human Rights Watch requested interviews with the Ministry of the Interior, the Ministry of Justice, and the Prime Ministry Social Services and Child Protection Agency (SHCEK), both directly and through contacts with the Ministry of Foreign Affairs and Turkish Embassy officials in the countries where the researchers are based. However, we received no response and were unable to conduct interviews with these offices in Ankara during the research phase. New requests for meetings are outstanding.

In addition, we interviewed 28 lawyers and representatives of nongovernmental organizations (NGOs) working on domestic violence cases, academic experts on violence against women in Turkey, United Nations officials supporting anti-violence programs in Turkey, representatives of bi-lateral donors, and European Commission representatives.

The survivors of domestic violence who we interviewed were identified by lawyers, social service providers, shelter staff, and other women's rights advocates.

Interviews were conducted in Turkish with the assistance of an interpreter, one interview was partly conducted in Kurdish with an interpreter, and others in English. Female interviewers and interpreters conducted all interviews. Researchers interviewed women in private rooms. Most interviews were done individually, except in a few instances where interviewees preferred to speak in small groups.

No interviewee received compensation for providing information. Three women received a small amount for the travel fare they spent to reach the interview location. Where appropriate, Human Rights Watch provided contact information for organizations offering legal, counseling, or social services. In several cases, we connected women with other needed services.

Pseudonyms have been used to protect the anonymity of interviewees, who all requested their real names not be used for reasons of security. Pseudonyms were selected randomly, and may not reflect their background or region. The exact dates of interviews, the location of interviews, as well as additional identifying details have sometimes been withheld.

Domestic violence takes place against both genders. However, women make up the overwhelming majority of victims of domestic violence. This report focuses on domestic violence as a form of violence against women.

I. Background

*I was 10 when my father gave me to a family. I was abused and beaten up.
Now I have to see my daughter go through the same. What about her baby?*
—Emel S., Van city, June 15, 2010

Domestic violence exists in all sections of society, in all countries, including all Council of Europe member states. While factors such as ethnicity, religion, economic status, class, sexual orientation, and disability may shape the violence, it is not confined to any particular culture, country, or religion. In the Council of Europe region, roughly one in four women experiences violence at some point in her life.²

Prevalence of Domestic Violence in Turkey

Turkey is no exception to this disturbing picture. In January 2009, the Turkish Hacettepe University published the first-ever comprehensive nationwide survey on the prevalence of domestic violence against women in Turkey. Comprising interviews with over 12,000 women in all regions of Turkey, it found that 42 percent of women in Turkey aged 15-60, and 47 percent of women in rural areas, had experienced physical and/or sexual violence by their husbands or partners at some point in their lives.³ This means at least eleven million women have faced or are facing physical or sexual violence in Turkey.⁴ This did not include other forms of violence, or violence by other family members.

The study also found that only 8 percent of women who have experienced sexual or physical violence seek help from any institution, NGO, or other source of support.⁵ A different academic study conducted in 2009 concludes that only around 3 percent of women told the

² Council of Europe, “Stocktaking study on the measures and actions taken in Council of Europe member States to combat violence against women,” 2006, p.8.

³ Turkish Republic Prime Ministry Directorate General on the Status of Women, Hacettepe University Institute of Population Studies, ICON-Institute Public Sector GmbH, and BNB Consulting, “National Research on Domestic Violence against Women in Turkey 2008,” January 2009, Figure 4 in the summary report, http://www.ksgm.gov.tr//tdvaw/doc/Main_report.pdf (accessed February 26, 2011).

⁴ According to recent estimates there are a total of 26,162,757 women in the age group 15-60 in Turkey. This age group is smaller than the Hacettepe study, which interviewed women between 15 and 65, so the mentioned estimates are conservative. 42 percent of this group means 10, 988,357 women. <https://www.cia.gov/library/publications/the-world-factbook/geos/tu.html#> (accessed April 18, 2011).

⁵ Ibid, p. 89.

muhtar (elected village or neighborhood official), police, gendarme, a lawyer, or public prosecutor about their experience of domestic violence.⁶

Unequal Status

The scale of violence that women experience, and their reluctance to seek help, is intrinsically linked to their unequal status in Turkish society.

Since 2007, women have held just 9 percent of seats in the national parliament,⁷ and only 27 of the nearly 3,000 mayors in the country are female.⁸ Women represent 27 percent of the paid work force.⁹ 19 percent of women are engaged in income-generating work in Turkey, and in the east this is roughly 10 percent.¹⁰ New illiteracy figures released by the government show great disparities between men and women: 3.8 million of the 4.7 million people who are illiterate in Turkey are women.¹¹ In 2010, Turkey ranked 83 on the United Nations Development Programme's 2010 global Gender Inequality Index—third to last in the group of countries with “high human development,” and down six places compared to the 2008 Index.¹²

Reforms and Civil Society Efforts

Turkey has in recent years passed major legislative reforms in the area of women's human rights including: adopting the Law on the Protection of the Family 1998; the Turkish Civil Code, reformed in 2001; and the reform of the Turkish Penal Code in 2004-05 (discussed in detail in the next chapter).

⁶ Ayşe Gül Altınay and Yeşim Arat, “Violence Against Women in Turkey, A Nationwide Study,” 2009, p. 40, http://www.kadinayoneliksiddet.org/KYS_ENG.pdf (accessed February 27, 2011).

⁷ United Nations Economic Commission for Europe (UNECE), gender statistics database, <http://w3.unece.org/pxweb/dialog/Saveshow.asp?lang=1> (accessed December 19, 2010).

⁸ Directorate General on the Status of Women, Status of Women in Turkey, 2010, p.29, in Turkish http://www.ksgm.gov.tr/Pdf/trde_kadinin_durumu_2011_subat.pdf (accessed March 4, 2011) and reported on in English <http://www.hurriyetdailynews.com/n.php?n=nearly-4-million-turkish-women-illiterate-2011-02-01> (accessed March 4, 2011).

⁹ United Nations Development Programme, the Gender Inequality Index 2010, <http://hdr.undp.org/en/statistics/gii/> (accessed December 19, 2010).

¹⁰ Ayşe Gül Altınay and Yeşim Arat, “Violence Against Women in Turkey, A Nationwide Study,” 2009, Table 8, http://www.kadinayoneliksiddet.org/KYS_ENG.pdf (accessed February 27, 2011).

¹¹ Directorate General on the Status of Women, Status of Women in Turkey, 2010, p. 10, in Turkish http://www.ksgm.gov.tr/Pdf/trde_kadinin_durumu_2011_subat.pdf (accessed March 4, 2011) and reported on in English <http://www.hurriyetdailynews.com/n.php?n=nearly-4-million-turkish-women-illiterate-2011-02-01> (accessed March 4, 2011).

¹² *Ibid.* The index is based on a range of factors that influence or indicate the status of women in a society. The factors are: maternal mortality rates, adolescent fertility rates, percentage of seats in parliament, population with at least secondary education, labor force participation rate, contraceptive prevalence rate, antenatal coverage of at least one visit, and births attended by skilled health personnel.

The Turkish government, which moved to introduce legal reform in the course of Turkey's bid to become an EU accession candidate starting with its application for membership in 1987, deserves due credit for such changes. However, reforms relating to strengthening the protection of women's rights resulted from campaigns to effect structural, national advancements in women's rights run by women's rights NGOs, including Women for Women's Human Rights—New Ways; KA-DER; Mor Çati; KAMER; the Van Women's Association; the Women's Coordination Group; and others making up the Turkish Penal Code Women's Platform (TCK Kadın Platformu). In addition to these coordinated efforts, numerous strong groups of lawyers and activists are also working at a local level to lend women practical support. It is they who take women to the police and hospitals, who represent women in court, and who continue to fight to translate legal advances into practical benefits for women throughout the country.

Government Agencies Involved in Responding to Domestic Violence

Several government departments, officially coordinated by the Directorate General on the Status of Women, play a role in the fight against domestic violence.¹³ The Ministry of Justice is responsible for the judiciary, the Ministry of Interior for the police and partly the gendarmerie, and the Prime Ministry Social Services and Child Protection Agency for most of the shelters and other support services where they are available.

Cities in Turkey are organized along two lines of public administration: governorships (appointed by the central state), and local governments or municipalities (elected by the local population). Every city has one governor's office. The governor is the highest state officer in a city and in charge of all other state offices in a province (81 in total), such as the education directorate, health directorate, social services directorate, and police department. Municipalities also provide services to citizens, and can run their own shelters and social services agencies.

Evolution of Civil Protection Orders in Legal Systems around the World

Many countries have adopted systems for authorities – law enforcement or courts – to issue protection or restraining orders, including for example the United States, the United Kingdom, The Netherlands, Austria, and Poland. Internationally, protection orders are consistently seen as a key ingredient in the fight against domestic violence. Separate from criminal prosecutions and divorce proceedings, these orders instruct an abuser to stay away from the

¹³ Prime Ministry Circular 2006/17, "Measures to be Taken to Prevent Custom and Honor Killings and Violence against Women and Children," July 2006.

house, and refrain from violence against the victim or children. Depending on the system, such orders may be issued on the application of one party alone for a limited period on an emergency basis either by a law enforcement or judicial authority, or may be a permanent order issued following a hearing with due process. The fundamental purpose of a civil protection (restraining) order is not to punish past conduct, but to prevent potential future harm.¹⁴ These measures also create space for a victim to decide her course of action, and prevent the abuser hampering criminal or divorce proceedings through intimidation or threats.

In 1997, the UN General Assembly adopted a resolution that promotes the model of protection orders: “Courts, subject to the constitution of their State, have the authority to issue protection and restraining orders in cases of violence against women, including removal of the perpetrator from the domicile, prohibiting further contact with the victim and other affected parties, inside and outside the domicile, and to impose penalties for breaches of these orders.”¹⁵

Protection orders require a judge to balance evidence of the danger to the life and health of the woman with the rights of the respondent – the person accused of carrying out abuse, but who has not faced a process in court to establish that fact. Countries have battled with this balance, and the newly negotiated Draft Council of Europe Convention on Prevention and Combating Violence Against Women and Domestic Violence, gives some guidance on the issue:

In situations of immediate danger, the most effective way of guaranteeing the safety of a domestic violence victim is by achieving physical distance between the victim and the perpetrator. In many cases, this requires one of the two to leave, for a certain period of time, the joint residence or the perpetrator to leave the victim’s residence. Rather than placing the burden of hurriedly seeking safety in a shelter or elsewhere on the victim, who is often accompanied by dependent children, often with very few personal affairs and for an indefinite period of time, the drafters considered it important to ensure the removal of the perpetrator to allow the victim to remain in the home.¹⁶

¹⁴ J. Reid Meloy et.al, “Domestic protection orders and the prediction of subsequent criminality and violence toward protectees,” *Psychotherapy*, vol. 34, Winter 1997, p. 447.

¹⁵ Crime prevention and criminal justice measures to eliminate violence against women: Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, recommended by UN General Assembly Resolution 52/86 of December 12, 1997.

¹⁶ Draft Council of Europe Convention on Prevention and Combating Violence Against Women and Domestic Violence, Explanatory Memorandum, article 52, http://www.coe.int/t/dghl/standardsetting/violence/documents_en.asp (accessed April 5, 2011).

As Turkey continues its ongoing review of the protection order system, it can look to examples from other countries to ensure that the rights of both victims and respondents are protected. If it moves toward instituting permanent or longer-term protection orders beyond those currently intended to address emergencies, it should consider instituting clearer rules around holding a hearing for the respondent in court. In some other jurisdictions, this due process protection is part of the overall civil protection order system.

II. Legal Reforms and Gaps

Projects are great, but we need a more permanent setting. We need a steadfast and consistent attitude of the government.

—Filiz Kerestecioğlu, lawyer, Istanbul, November 12, 2010

The Turkish government's response to domestic violence is full of contradictions, and gains and gaps explored below.

On the one hand, parliament has adopted crucial changes to the Penal and Civil Codes that remove discriminatory provisions and banish the possibility that someone who kills a woman allegedly to preserve family “honor” could get a reduced sentence. On the other hand, gaps remain in the laws, and many law enforcement officials emphasize preserving the family as a unit, rather than protecting domestic violence survivors.

Another contradiction is that the government has established a Directorate General on the Status of Women to coordinate work on women's rights in Turkey that has a small budget, no offices outside Ankara, and no power to monitor implementation of domestic violence laws.

The government's inconsistent response to domestic violence and women's rights reflects a wider societal ambivalence about women's changing roles. As one advocate put it, many people in Turkey believe “the rise of women is the fall of family.”¹⁷

Law 4320 on the Protection of the Family: Uncertainties and Gaps

Turkey entered the vanguard of countries offering civil mechanisms to protect against domestic violence with its 1998 adoption of Law 4320 on the Protection of the Family (“Law 4320” or “protection law”).¹⁸

This law (as amended in 2007) established a protection order system whereby a person subjected to abuse by a family member living under the same roof can apply directly or through a prosecutor for an order from a family court. A family court judge can issue a protection order for a maximum of six months and the order can require that the offender

¹⁷ Human Rights Watch interview with director and staff of the Capital City Women's Organization in Ankara, June 7, 2010.

¹⁸ Law 4320 on the Protection of the Family (“Law 4320”), adopted January 1998, http://www.ksgm.gov.tr/kanun_4320.php (accessed December 30, 2010).

refrain from violence and threats; vacate the home; stay away from the home or school of the victim and their children; refrain from damaging property or contacting the victim; surrender weapons; or refrain from using intoxicating substances in the house. The order can be renewed for six months if there is a new violation.¹⁹ The judge can order other measures “deemed appropriate,” and can require the abuser to make maintenance payments to the victim. The intent is that these orders be issued quickly, within days at most, since the women are often in extremely dangerous situations.

In practice, a woman might go to police, who should fill out a risk assessment form and explain to her how the protection procedure works. In March 2008 a detailed regulation on the implementation of Law 4320 further stipulated details of this mechanism, stating that law enforcement agents must monitor compliance with the order, including visiting the house weekly, and that no fee should be charged for a protection order.²⁰

According to the law and its amendments, protection orders are available to a spouse, child, or other family member living under the same roof as an abuser, even if a married couple is separated.²¹

However, views vary among officials charged with implementing the law as to what constitutes a spouse or other “family” members for purposes of protection orders. This variation in turn undermines the law’s effectiveness by making access to protection against violence essentially a lottery for many women.

The strictest reading of this provision would result in protection orders being available only to spouses married under the Civil Code, as opposed to fairly common religious marriages,²² which are not recognized in law.²³ A more liberal reading would enable divorced women, and those married in religious ceremonies only to access protection orders as well.

¹⁹ Regulation on the Implementation of the Law 4320 on the protection of the family, Official Gazette 26803, March 2008, art. 14(1).

²⁰ Ibid, art. 15(3) (a).

²¹ Law 4320 and the 2007 amendment Law No. 5636. The 2007 amendment stated that the law applies to “a spouse or child or another member of the family living under the same roof, or one of the family members that have the legal right to live separately or a court ruling for separation or live separately de facto despite still being married.”

²² There are no clear statistics available on the prevalence of religious marriages. A chief prosecutor in Diyarbakır informally estimated the percentage of legal marriages in Turkey around 95 percent, but in the southeast as around 65 percent, Human Rights Watch interview with Durdu Kavak, chief prosecutor, Diyarbakır, June 16, 2010.

²³ Human Rights Watch interview with Fatma Karakoç, deputy director, Directorate General on the Status of Women, Ankara, November 10, 2010.

Prosecutors, judges, and law enforcement officers in the same cities and even the same court houses sometimes hold conflicting views on the scope of eligibility for protection orders. Several judges told Human Rights Watch they feel they have a great deal of discretion in terms of eligibility, enabling them to grant orders to divorced, unmarried, or religiously married women. However, the prosecutors whom Human Rights Watch spoke to argued that there is no such discretion, and that only spouses married under the Civil Code are eligible. For example, the chief prosecutor in Van told Human Rights Watch:

It's the family protection law, so without family there is no protection. It only applies to people who are married. Living together without marriage is not considered to be good, so they cannot apply. Couples who live together can go to social services.²⁴

In three interviews in Diyarbakır, southeast Turkey, the three main authorities involved in handling protection orders gave different answers about eligibility. A family judge in Diyarbakır told Human Rights Watch “we apply Law 4320 to religious marriages as well, as long as people are living together.”²⁵ The chief prosecutor in Diyarbakır told Human Rights Watch: “When couples are not married [officially], maybe in Ankara some get a case, but not here since it is not written in the law [4320].... Personally I believe it probably should be in the law, but since it is not, we don't do it.”²⁶ At a police station in the same city, the station chief said, “[T]he Law [4320] does not say ‘married’ so it can also be applied to others. Even if they just have a religious marriage, the process is the same.”²⁷

Human Rights Watch documented several cases in which women needed protection, but did not get a protection order because officials handling their cases took a narrow view of the law. For example, according to her lawyer, Pinar A., 22, from İzmir, western Turkey, was “dragged across the floor, offered for sexual services against her will, beaten up in front of her child by this man [her boyfriend] as well as his mother. Pinar's boyfriend also abducted their four-year-old daughter and continued to send her death threats.”²⁸ She petitioned for a protection order for both her and her daughter twice. In May 2010, the İzmir family court

²⁴ Human Rights Watch interview with Mustafa Alper, chief prosecutor, Van, June 14, 2010.

²⁵ Human Rights Watch interview with Cemile Çalışgan, family court judge, Diyarbakır, June 16, 2010.

²⁶ Human Rights Watch interview with Durdu Kavak, chief prosecutor, Diyarbakır, June 16, 2010.

²⁷ Human Rights Watch interview with the director of security, the station chiefs, and police officers of Yenişehir and Bağlar, Diyarbakır, June 16, 2010.

²⁸ Human Rights Watch interview with Pinar A.'s lawyer, Nazan Sakallı, İzmir, June 10, 2010.

rejected both applications on the grounds that she was not married. They were in a relationship and had a child together, but were not married.²⁹

Gülşah S., 22, from Van also sought a protection order, which she was denied because she was in a religious marriage.³⁰ She moved into her husband's family's house and several family members beat, raped, and starved her, and tried to kill her infant. She said:

[My father-in-law] forced himself on me several times. The family did not give me food. Once I went to the hospital because I had bad pain in my stomach and the doctor told me, 'You are starving, that's why'... When I got pregnant, they tried to force an abortion on me, and then they tried to kill the baby when they saw it was a girl. Now they try to take the baby away, but what will they do with her?³¹

Gülşah escaped in early 2010 and now lives with her mother in Van. However, her in-laws were still seeking custody of the child when we spoke to her in June 2010, and the family court in Van had rejected her petition for a protection order two months earlier because her marriage is not considered official.³²

Zelal K., who is in her forties, was also denied a protection order, in her case because she was divorced. Zelal lives in Istanbul with her three children, and divorced eight years ago.³³ Her ex-husband lives across the street, and one day in January 2008, he grabbed her when she walked out of her house. She told Human Rights Watch:

He held me, I screamed, "Let me go," and he started beating me. There were a lot of people around us, but nobody did anything. He pulled my hair and covered my mouth, and he dragged me to my house. There he kicked me and I fell to the ground.... He broke every possession I have in the house, every chair, every picture, everything. Then he took off my clothes and he raped me.³⁴

²⁹ Ibid.

³⁰ Human Rights Watch interview with Gülşah S., Van, June 15, 2010.

³¹ Ibid.

³² Ibid.

³³ Human Rights Watch interview with Zelal K., Istanbul, June 12, 2010.

³⁴ Ibid.

Zelal managed to escape, almost naked, and went to two different police stations, where she was turned away for different reasons ranging from “wrong police office” to “Why are you bothering us with this?”³⁵ She eventually managed to speak with a prosecutor. He refused to accept her application for a protection order because she was divorced.³⁶

The deputy director of the Directorate General on the Status of Women told Human Rights Watch:

We have come a long way with this law [4320] but now we need to focus on the implementation and what is needed in practice.... It should be possible for the law to change to include other women, because laws need to be created by society.³⁷

Some lawyers use international conventions, such as Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), to argue there should be no discrimination against women in terms of their eligibility for protection orders. However, some judges have dismissed this argument, in one case saying, “National law is our law, don’t come to us with this,” and in another, “International law does not apply to our traditions.”³⁸ This is despite article 90 of the Turkish Constitution, which states that national law cannot override international agreements that pass into law.³⁹

Other judges have cited regional or international law as a basis for granting protection orders to unmarried applicants. A judge in a highly publicized case from Istanbul ruled that, “Even though the parties are not officially married, they live together with the same intention.”⁴⁰ He referred to European and international human rights standards, explaining, “Turkey has an obligation in international law to protect women from violence.”⁴¹

³⁵ Ibid.

³⁶ Ibid.

³⁷ Human Rights Watch interview with Fatma Karakoç, deputy director, Directorate General on the Status of Women, Ankara, November 10, 2010.

³⁸ Comment of a judge to lawyer Habibe Yılmaz Kayar, related to Human Rights Watch in an interview, Istanbul, November 12, 2010.

³⁹ Article 90 of the Turkish constitution reads: “International agreements duly put into effect carry the force of law. No appeal to the Constitutional Court can be made with regard to these agreements, on the ground that they are unconstitutional.”

⁴⁰ Protection order, Kadıköy Istanbul, March 1, 2005, on file with author.

⁴¹ Ibid.

Penal and Civil Code Reforms

Turkey has undertaken major Civil and Penal Code reforms in the past fifteen years, many of which constitute impressive gains for women's rights.

Before the reforms, Turkish law explicitly granted men supremacy in marriage, allowed reduced criminal sentencing for honor killings, and deprived women of many of their property rights. As a result of the reforms, Turkey's Civil and Penal Codes now include:

- A general principle of gender equality under the Penal Code;⁴²
- Increased sentences for murders in the name of "custom," (replacing the prior provision that reduced sentences for "honor" murders);⁴³
- Even though there is no specific article regulating the crime of domestic violence, article 96 of the new Penal Code stipulates that anyone causing torment to their spouse or family members will be sentenced to three to eight years in prison. Article 232 of the Penal Code provides for imprisonment of up to one year for the maltreatment of anyone living under the same roof;⁴⁴
- A prohibition on unauthorized genital examinations;⁴⁵
- Criminal penalties for inciting suicide;⁴⁶
- Criminal penalties for marital rape;⁴⁷
- Equal rights to marital property for both spouses;⁴⁸
- Equal rights to custody of children for married spouses, and automatic custody for mothers if the parents are not married;⁴⁹

⁴² Arts. 2(1) and 3 (2) of the Turkish Penal Code.

⁴³ Art. 82 of the Turkish Penal Code.

⁴⁴ Arts. 96 and 232 of the Turkish Penal Code.

⁴⁵ Art. 287 of the Turkish Penal Code. Genital examinations ordered by a judge are however still legal.

⁴⁶ Art. 84 of the Turkish Penal Code.

⁴⁷ Art. 102 of the Turkish Penal Code.

⁴⁸ Art. 202 of the Turkish Civil Code.

⁴⁹ Arts. 336 and 337 of the Turkish Civil Code.

Naile Erdaş

Prosecutors have been able to use the changed Penal Code to prosecute people who commit honor crimes. In 2009 a judge in Van city convicted five members of the same family to life in prison for killing Naile Erdaş, who was 16. Erdaş fell pregnant as a result of rape but concealed her condition until doctors discovered she was pregnant when she was hospitalized for a severe headache. When the family made threats and offered bribes to get the girl back, doctors decided to keep her in the hospital and informed police and the prosecutor's office. One week after Erdaş gave birth, the prosecutor agreed to send her home after the girl's father promised she would not be harmed. But she was shot dead by her brother a few hours after returning home.

The entire family was prosecuted as the honor killing was the result of a decision by the "family council."

Gaps in Law

Significant as they are, these reforms are not without problems. For example, the Penal Code reform has generated some uncertainty concerning "honor" and "custom" crimes. Instead of using the word for "honor" (*namus*), the revised Penal Code uses the term for "custom" (*töre*), creating confusion as to what constitutes custom, and whether the provision includes honor crimes in sentencing for murders in the name of "custom."⁵⁰ The United Nations Committee on the Elimination of Discrimination against Women (CEDAW) has expressed concern about this ambiguity:

The use of the term "custom killing" instead of "honor killing" in the Penal Code may result in less vigorous prosecution of, and less severe sentences for, the perpetrators of such crimes against women.⁵¹

Furthermore, a remaining provision in the Penal Code may be used to lower prison sentences in cases where upholding notions of family honor provided a motivation to kill: article 29 contains reference to "provocation" or "incitement" as possible grounds for a lower punishment for murder.⁵² Advocates told Human Rights Watch that this provision had at

⁵⁰ Article 82 of the Turkish Penal Code.

⁵¹ Concluding comments of the Committee on the Elimination of Discrimination against Women: Turkey, para. 363, February 15, 2005, http://www.un.org/womenwatch/daw/cedaw/cdrom_cedaw/EN/files/cedaw25years/content/english/CONCLUDING_COMMENTS_ENGLISH/Turkey/Turkey%20-%20CO-5.pdf (accessed December 30, 2010).

⁵² Article 29 of the Turkish Penal Code reads: (1) A person who commits a crime under the influence of anger or severe pain caused by an unjustifiable incitement, shall be convicted to a sentence of 18 to 24 years instead of an aggravated life

times been invoked to lower sentences for murders of lesbian, gay, bisexual, and transgender people.⁵³ This misuse of the law should be addressed.

Anti-Violence Programming

The legal realm is not the only sphere of progress on violence against women in Turkey: in recent years, a number of government agencies, NGOs, and media outlets have launched programs and campaigns to address the topic. For example, an outreach campaign initiated by the Directorate General on the Status of Women with the United Nations Population Fund (UNFPA) focused public attention on violence against women by having football players urge the public to "stop violence against women."⁵⁴ The Turkish newspaper *Hurriyet* has also played an active role, leveraging its influence to spotlight the issue and establish a hotline offering women who face domestic violence 24-hour legal and psychological support.

The Directorate General also trains police officers, members of the judiciary, and health workers, and works with religious officials to garner support in combating domestic violence.⁵⁵ Their efforts appear to be paying off. The deputy director of the Directorate General told Human Rights Watch: "In the 17 years I have been working here, I have seen huge changes. The police ask us for advice; we don't need to force it on them anymore."⁵⁶ But she also conceded that important problems remain: "The stereotypes that lead to violence are still there. We need a transformation and a zero-tolerance policy."⁵⁷

Proposed Revisions to the Family Law 4320

On March 7, 2011, Fatma Şahin, a Justice and Development Party lawmaker announced a proposal to revise the Law on the Protection of the Family. The proposal, which followed a

sentence and 12 to 18 years instead of a life sentence. In other cases there will be a reduction of the penalty by one-fourth to three-fourths. [In Turkish: Madde 29 "(1) Ceza Sorumluluğunu Kaldıran veya Azaltan Nedenler, Haksız tahrik": "(1) Haksız bir fiilin meydana getirdiği hiddet veya şiddetli elemin etkisi altında suç işleyen kimseye, ağırlaştırılmış müebbet hapis cezası yerine onsekiz yıldan yirmidört yıla ve müebbet hapis cezası yerine oniki yıldan onsekiz yıla kadar hapis cezası verilir. Diğer hâllerde verilecek cezanın dörtte birinden dörtte üçüne kadarı indirilir."

⁵³ Human Rights Watch interview with the Women's Solidarity Foundation (Kadin Dayanisma Vakfi), June 8, 2010. For more on the violations of the rights of LGBT people in Turkey, including their problems in getting protection from violence, see the 2008 Human Rights Watch report "'We Need a Law for Liberation': Gender, Sexuality and Human Rights in a Changing Turkey," <http://www.hrw.org/en/reports/2008/05/21/we-need-law-liberation-o>.

⁵⁴ Directorate General on the Status of Women, "Combating Violence Against Women, National Action Plan 2007-2010," http://www.ksgm.gov.tr/en/nap_dvaw.php (accessed February 7, 2011).

⁵⁵ Human Rights Watch interview with Fatma Karakoç, deputy director, Directorate General on the Status of Women, Ankara, November 10, 2010.

⁵⁶ Ibid.

⁵⁷ Ibid.

wide consultation process with women's organizations in Turkey, aims to protect against violence individuals who are:

... [s]ubjected to violence or at risk of being subjected to violence: including women, children, spouses, those engaged to be married, those living in close relationships, and includes provisions to protect individuals whose engagement, marriage or relationship has for any reason ended, and also other family members.⁵⁸

The draft law states that a family court judge can render the court decision for a protection order. In cases that fall outside regular court hours, or where it would be problematic to delay the protection order, a prosecutor could make such a decision and communicate it verbally to police, and later in writing. A court would then approve it as soon as possible. The draft law also provides that decisions to grant protection orders include specific information about the alleged case; changing or ending the protection order; alimony arrangements; and provisions that ensure that men who violate protection orders face court-ordered detention and possible imprisonment up to six months.

Protection orders would also include provisions, where possible, for alimony, or else possible material support and shelter funded by the Ministry of Interior. The draft law also specifies the need for measures to keep secret the place where a woman is sheltered. It provides for establishing a department located in the prosecutor's office to protect against violence and staffed by sufficient prosecutors, and for law enforcement authorities (police and gendarmerie) to have such a dedicated department.

Existing (though recently introduced) probation and support departments based in the prosecutor's office would be responsible for monitoring implementation of protection orders and offering various forms of material and psychological support to those granted protection orders. Overall coordination and responsibility for effective implementation would rest with the Directorate for the Status of Women, which would coordinate a commission of representatives from the ministries of Interior, Justice, and the Social Services and Child Protection Agency (SHÇEK).⁵⁹

⁵⁸ Draft law available in Turkish on the website of the Turkish Grand National Assembly, <http://www.tbmm.gov.tr/d23/2/2-0886.pdf> (accessed March 21, 2011).

⁵⁹ Ibid.

At time of writing, the draft had been submitted to the various relevant parliamentary commissions (including the parliamentary Justice Commission), and MP Fatma Sahin's office informed Human Rights Watch that the goal was to press for the law to pass before the June 12, 2011 general election.

There have been previous attempts to press for revision of the Law on the Protection of the Family, including a proposal forwarded by Sebahat Tüncel, the Peace and Democracy Party Member of Parliament for Istanbul, shortly before Şahin submitted hers. Tüncel's proposal contains similar provisions to those of Şahin and is also being considered by various parliamentary commissions.⁶⁰

As Turkey continues to reform its legislation, both the victim and respondent's rights need to be taken into account. This could include reforms that establish the possibility of issuing permanent or longer term protection orders, in which case requiring a court hearing would provide the respondent with due process rights and be in line with practices in other countries.

⁶⁰ Draft law available in Turkish on website of the Turkish Grand National Assembly, <http://www2.tbmm.gov.tr/d23/2/2-o881.pdf> (accessed March 15, 2011).

III. Failings in Implementing the Protection Law

When I got to the prosecutor's office, and I started to tell my story to a secretary, there was a man sitting there who was having tea with the prosecutor. He started shouting at me: "Why are you here, talking about your husband! Go back to him. Go back to your house!"

—Hamiyet M., Van, June 15, 2010.

There is no doubt that the legal framework for protection from violence has improved. However, as this chapter shows, there are serious shortcomings in the way it is implemented.

In 2009, a large study by academics concluded that 57 percent of women in Turkey as whole, but only 35 percent in the east, are aware of the Family Protection Law.⁶¹ Of those women who had heard of the law, only 7.5 percent knew someone who had actually benefited from it.⁶²

Human Rights Watch research indicates that even those women who do know about protection orders face barriers that prevent them seeking help and protection. Human Rights Watch research suggests that all too often police, prosecutors, or judges to whom women might turn for help send them back to the abusive situation, push for reconciliation, ask for medical records, or delay the process significantly. If a judge does eventually issue a protection order, police monitoring often falls short.

Barriers to Reporting Violence

In situations of domestic violence, family members or husbands often control a woman to such an extent that she is physically, psychologically, or economically incapable of leaving the situation she is in to find help. Women also told Human Rights Watch they hesitate to seek help because their experience, or that of acquaintances, has led them to believe that police will turn them away.

In the predominantly Kurdish southeast, years of conflict have contributed to a fundamental mistrust of the state and police, which further prevents women reporting violence. Kurdish women who in some areas quite commonly do not speak or write Turkish find it difficult to

⁶¹ Ayşe Gül Altınay and Yeşim Arat, "Violence Against Women in Turkey, A Nationwide Study," 2009, Table 36, http://www.kadinayoneliksidet.org/KYS_ENG.pdf (accessed February 27, 2011).

⁶² *Ibid*, Table 37.

petition for a protection order. Finally, family courts that issue these orders have limited opening hours and lack trained and specialized staff.

Physical, Psychological, and Financial Control by Family over Women

Aslı I. is a 21-year-old Kurdish woman from a village close to Van. Aslı confronted violence from the moment she married and moved in with her in-laws in 2009. All 10 people in the household abused her in some way.⁶³ When she had severe stomach pains, the family kept her captive and her father-in-law injected something she could not identify into her arm that made her weak and ill. The family also forced her to carry stones and wood all day for a house it was building.

Aslı's father-in-law hit her "all the time" with a water pipe, a hose, and a hammer.⁶⁴ He broke Aslı's nose and arm, and barred her from going to a nearby hospital. He regularly locked her up in barn where animals were kept and finally told her, "I didn't just get you here for my son, but also for my pleasure." He then raped her. Aslı told us, "He was so dirty, so fat, and so violent. I thought that either he would kill me or that I would kill myself."⁶⁵ Her family found out, went to the house several times, and eventually managed to rescue her. She now lives with her mother and seven siblings. Her in-laws still threaten Aslı and her family.

While enslaved and held captive by her in-laws, Aslı had no way to seek help from police or prosecutors. Once she was free, her father pressured her to stay silent for fear of her family's lives. Only when her father-in-law came to their house and burnt her arm did she go to the police to report him. She cannot read or write and speaks little Turkish, but she got help from a women's group. The police told the father-in-law to stay away from her, but did not arrest him. They advised Aslı to seek a protection order from the prosecutor, which she did in May 2010. However, as Aslı told us:

I went to the prosecutor, but never heard back from them, and he [the father-in-law] keeps coming to our house. Will he kill me or one of my brothers before I can get help?⁶⁶

⁶³ Human Rights Watch interview with Aslı I. and her mother, Van, June 16, 2010.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

Economic dependence on abusers also stops many women and girls from seeking help. Many women have no means of supporting themselves or their children without relying on their abusers, and families do not always support their daughters financially. For example, Deniz F. knew when she was pregnant, that she would not be able to leave her abuser.⁶⁷ She told Human Rights Watch:

There was no way I could support myself and the baby. When I told my family that [my husband] was crazy, that he beat me and had even used a stun gun on me, they refused to support me and said, “You have a baby, just bury it, he’s your husband.” I had no place to go and no way to get work. I was trapped.⁶⁸

To address victims’ economic dependence, Law 4320 allows courts to order abusers to pay maintenance to victims. In several cases we reviewed, maintenance was indeed ordered, but not monitored. In none of these cases was any money actually paid.⁶⁹ Judges may also refuse a request for maintenance based on the abuser’s financial situation.⁷⁰ When a woman applies for protection, she simply cannot rely on financial support being ordered or enforced. This constitutes a barrier to applying for protection in the first place. A lawyer working with domestic violence survivors explained, “The main reason for not filing a complaint is not fear, but a lack of financial means, and no hope to sustain themselves.”⁷¹

Even if a judge grants maintenance, garnishing an abuser’s wages is only possible if he works for a public institution.⁷² A chief of a police station in Diyarbakır told Human Rights Watch that officers do ask husbands to pay the woman money while the protection order is in force, but in no case that Human Rights Watch documented were abusers forced to pay maintenance.⁷³

⁶⁷ Human Rights Watch interview with Deniz F., Istanbul, June 12.

⁶⁸ Ibid.

⁶⁹ For example Protection Order in Istanbul asking for 300TL (US\$190) per month from the husband to the wife, and three Protection Orders from the family court in Diyarbakır, requesting 250TL (US\$150) and 300TL (US\$190), on file with author.

⁷⁰ Human Rights Watch interview with Habibe Yılmaz Kayar, lawyer, Istanbul, November 12, 2010.

⁷¹ Human Rights Watch interview with Local Agenda 21, Diyarbakır, June 17, 2010.

⁷² Ibid.

⁷³ Human Rights Watch interview with the director of security, the station chiefs, and police officers of Yenişehir and Bağlar, Diyarbakır, June 16, 2010.

Mistrust of State Authorities and Skepticism about Response

Mistrust of police is widespread in Turkey and constitutes a major obstacle for women wishing to report abuse. Hamiyet M., a 40-year-old woman from a small town in Van province whose husband beat her brutally for more than two decades, told Human Rights Watch:

I went to the police several times. First two times I was sent back. Then when I went to the hospital, the police in the hospital got angry with me and said, “Are we supposed to deal with you all the time?” I never trusted any policeman after that, because I told him what would happen and he did nothing.⁷⁴

When other women hear stories such as Hamiyet’s in which police turn away women experiencing domestic violence they may understandably decide not to go to the police at all. Gülşen F., from Diyarbakır and also 40 years old with four children, told Human Rights Watch: “[My husband] is not so violent; he just hits me when we fight.”⁷⁵ Later in the interview she said he rapes and beats her regularly. She continued, “I never went to the police because I knew they would just try to reconcile us. I know enough women who tried without any result.”⁷⁶

In predominantly Kurdish areas, some of the mistrust toward state authorities felt by women who experience domestic violence stems from the decades-long conflict in the southeast and eastern provinces between the Turkish military and the Kurdistan Workers’ Party (PKK). The fighting has killed tens of thousands of soldiers, PKK members, and civilians. In the 1990s human rights groups documented thousands of enforced disappearances and unresolved killings, which state perpetrators are suspected of carrying out.⁷⁷

Osman Baydemir, mayor of the Diyarbakır Greater Municipality, told Human Rights Watch:

⁷⁴ Human Rights Watch interview with Hamiyet M., Van, June 15, 2010.

⁷⁵ Human Rights Watch interview with Gülşen F., Diyarbakır, June 17, 2010.

⁷⁶ Ibid.

⁷⁷ See, for example, annual reports of the Human Rights Foundation of Turkey, <http://www.tihv.org.tr/index.php?turkiyeinsan-haklari-raporu>; “The Kurds of Turkey: Killings, Disappearances and Torture” (Human Rights Watch, March 1993); “Turkey: Extrajudicial Executions,” and reports on internal displacement of Kurds including “Turkey: Displaced and Disregarded: Turkey’s Failing Village Return Program,” Human Rights Watch, October 2002, <http://www.hrw.org/en/node/78636> (all accessed February 7, 2011).

Only 10 percent of women go to the police at all, and 90 percent of women who do go to the police are further violated in some way ... there are so many women who went to the police and didn't get protection.⁷⁸

Similarly, the mayor of Bağlar Municipality in Diyarbakır, who is setting up a shelter and has started a women's center, said: "For Kurdish women, the police is not seen as a secure place.... The political problems reflect on social problems."⁷⁹

Language Barriers

Women from certain minorities, in particular Kurdish women who do not always speak Turkish, experience language barriers when trying to access government domestic violence services. Even in areas with large Kurdish populations, family courts and law enforcement stations (police and gendarmerie) do not always have qualified interpreters. The chief prosecutor in Van showed Human Rights Watch important improvements in the way the family court deals with family violence cases.⁸⁰ When Human Rights Watch asked the chief prosecutor about services for Kurdish women in particular, he was concerned about those cases and their safety, and said secretaries sometimes informally interpret. However, he refused to provide Kurdish language translation systematically and added: "Well, Kurdish is not a language in any case."⁸¹

Police officers in Diyarbakır told Human Rights Watch that language differences posed no real problem. "There are officers from the region here who speak the language, and there aren't many women who speak no Turkish," one said.⁸² However, organizations and lawyers in the region directly contradicted this. The head of Van's Women's Association told us that battered women who do not speak, read, or write Turkish do indeed face problems communicating with authorities.⁸³

While women who grew up in Diyarbakır or Van may speak Turkish, thousands of others who migrated to the cities from outlying districts when villages were forcibly evacuated in the early 1990s do not. In provinces such as Şırnak, Siirt, Hakkari, Mardin, Batman, and Urfa,

⁷⁸ Human Rights Watch interview with Osman Baydemir, mayor of Diyarbakır, June 16, 2010.

⁷⁹ Human Rights Watch interview with Yüksel Baran, mayor of Bağlar Municipality, June 17, 2010.

⁸⁰ Human Rights Watch interview with Mustafa Alper, chief prosecutor, Van, June 14, 2010.

⁸¹ Ibid.

⁸² Human Rights Watch interview with the director of security, the station chiefs, and police officers of Yenişehir and Bağlar, Diyarbakır, June 16, 2010.

⁸³ Human Rights Watch interview with Zozan Özgökçe, founding member of Van Women's Association, Van, June 15, 2010.

many adult women only speak Kurdish. In provinces such as Siirt, Mardin, and Urfa, Arabic is also a mother-tongue for women from the significant Arab minorities living there.

Human Rights Watch interviewed women who significantly delayed seeking protection because they were unable to speak Turkish. Aslı L., for example, the Kurdish woman held prisoner in her in-laws' house, was deterred from seeking help because of her lack of Turkish.⁸⁴ Her mother told us in Kurdish that she too finds it impossible to get help from authorities because of her lack of Turkish and fear of police.⁸⁵

Limited Availability of Family Courts

Family court staff shortages, and limited working hours of the family judges from 9 a.m. to 5 p.m., constitute barriers to reporting violence in some areas. This can result in women waiting days for their application to even be recorded for processing.⁸⁶ The system varies in different family courts. In Van, a chief prosecutor said there is a prosecutor on duty 24 hours a day.⁸⁷ However, there is no judge on call to approve the issuing of a protection order 24 hours a day.

Zelal K. faced a delay in getting a protection order due to family court hours. She had already been turned away from two police stations in Istanbul after her ex-husband raped and beat her. She then went to a family court prosecutor in 2008 at an NGO's prompting.⁸⁸ She said:

It took me my very last breath that day to drag myself to another office. But I did go to the family court to see the prosecutor. It was Friday when I got there, and the prosecutor told me, "Please come back on Monday."⁸⁹

⁸⁴ Human Rights Watch interview with Aslı I. and her mother, Van, June 16, 2010.

⁸⁵ Ibid.

⁸⁶ Human Rights Watch interview with Meltem Ağduk, gender program coordinator, UNFPA Ankara, November 11, 2010.

⁸⁷ Human Rights Watch interview with Mustafa Alper, chief prosecutor, Van, June 14, 2010.

⁸⁸ Human Rights Watch interview with Zelal K., Istanbul, June 12, 2010.

⁸⁹ Ibid.

Police and Gendarmerie Response to Reports of Abuse

The police said, 'Aren't you ashamed to tell me you were raped by your ex-husband? Why would I believe you?'

—Zelal K., Istanbul, June 12, 2010

Law enforcement officers often prioritize preserving family unity, and push battered women to reconcile with abusers rather than pursuing criminal investigations or assisting women in getting protection orders. Human Rights Watch documented this tendency in every city visited for research.

In most cases documented, police officers or gendarmerie sent women back to violent husbands or family, or summoned the husband to pressure the couple to reconcile. In some cases, police sent women back to batterers multiple times, even when they returned to report more attacks on themselves or their children.

While important progress has been achieved in some areas, such as improved awareness of the law among law enforcement personnel through law enforcement trainings and public pressure, much remains to be done before abused women can count on their complaints and safety being taken seriously.

Songül S., a 32-year-old woman with three children from the Mediterranean region in Turkey told Human Rights Watch:

I tried and tried many times to make [the marriage] work, but he just kept beating me and controlling me. He broke my cell phone, he cut off all my relationships, and he kicked me in my stomach. The worst thing is that he beat my oldest son. I managed to protect my other children.⁹⁰

The abuse started in 1999, and continued until she managed to get to a shelter in Adana in the south Mediterranean region, and then Ankara in 2010. On three different occasions, most recently at the start of 2010, when Songül went to police to complain of abuse and seek protection, she was told to return to her husband.⁹¹

⁹⁰ Human Rights Watch interview with Songül S., Ankara, November 10, 2010.

⁹¹ Ibid.

Fatma S., a divorced mother of three in her thirties from Antalya, fled to Ankara at the beginning of 2010 and was staying in a municipality shelter when Human Rights Watch met her.⁹² Her ex-husband beat her and their young children every day for eight years. She showed Human Rights Watch a scar on her forehead from when he had hit her with a sharp stick.⁹³ She said:

I went to the police in Antalya begging for help and showed them a hospital report from this incident, but they called my husband and believed his story. He told them I “fell down the stairs” and they told me to go back to my husband.⁹⁴

Masha M., originally from Ukraine, was dismissed altogether because of her nationality and residence status. She described how her Turkish husband sexually and physically abused her, and showed us scars on her face, a cast on her foot, and broken ribs.⁹⁵ She explained how when she was looking for protection at the beginning of 2010, the police, a prosecutor, as well as a judge all told her, “Go back to your country; why should we deal with you?”⁹⁶ She had no papers (they were taken by the husband) and was under constant and proven threat from her husband.

Municipal social services officers in Diyarbakır, who work with women to help them get protection orders, said that police often discourage women from getting orders and push for “family unity.” One told Human Rights Watch, “We have been told by the police: ‘He’s her husband, he can beat her,’ and ‘This should be resolved within the family.’”⁹⁷

Members of the gendarmerie, the army unit that polices rural areas, have also pushed battered women to reconcile with abusers rather than helping them to obtain protection orders, or have simply ignored complaints. In Trabzon, on the Black Sea coast, a bar association member who works on domestic violence cases said, “[The gendarmerie officers] are young, untrained in issues like this, and inexperienced. We hear things like ‘It’s your husband, what do you expect?’”⁹⁸

⁹² Human Rights Watch interview with Fatma S., Ankara, November 10, 2010.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Human Rights Watch interview with Masha M., Istanbul, June 12, 2010.

⁹⁶ Ibid.

⁹⁷ Human Rights Watch interview with director and staff of the Diyarbakır municipal social services (DİKASUM), June 16, 2010.

⁹⁸ Human Rights Watch interview with a lawyer (name withheld), Trabzon, June 9, 2010.

Selma E. has two boys and comes from a village in Aksaray in Central Anatolia. She wed 17 years ago, and was pummeled by her husband from the first week of marriage through nearly two decades of marriage.⁹⁹ She is now blind in one eye, her skull is fractured in two places, and her back is badly injured. She told Human Rights Watch about her efforts to get help, most recently in 2009:

I went to the gendarmerie several times, but they didn't do anything, they just sat there, listened, and sent me away again.... Last year my neighbors told the mayor's wife about my situation, and she got the gendarmerie to take me to Ankara.¹⁰⁰

NGOs who accompany women to the police and gendarmerie also told us about the responses they heard. In Diyarbakır, two groups told Human Rights Watch that officers treat women rudely, especially if they report abuse more than once, and often ask why they have returned.¹⁰¹

With sufficient monitoring and training, police and gendarmerie responses to family violence have improved. For example, in a meeting with seven police officers, including two female officers, and the director of security at a police station in Diyarbakır, Human Rights Watch observed the difference that training and a high-level focus on family violence can make, at least on the surface. They showed us brochures they hand out to domestic violence survivors explaining their rights. The officers clearly understood protection order procedures.¹⁰² They also had a private room at the station for interviewing family violence victims, and explained how they fill out risk assessment forms to help victims understand the level of threat they face. In theory these measures are important and laudable.

However, caution is needed as Human Rights Watch documented conflicting messages from women suffering domestic violence in Diyarbakır recently who did not receive the police response to which they are entitled.

⁹⁹ Human Rights Watch interview with Selma E., Ankara, November 10, 2010.

¹⁰⁰ Ibid.

¹⁰¹ Human Rights Watch interview with representatives of Selis and EPIDEM, Diyarbakır, June 17, 2010.

¹⁰² Human Rights Watch interview with the Director of Security, the station chiefs and police officers of Yenişehir and Bağlar, Diyarbakır, June 16, 2010.

Role of Judges and Prosecutors

Usually, a woman who is experiencing violence will go first to the police, who should then refer her to the family court to apply for a protection order. She can also apply to the prosecutor's office for a family court to issue a protection order. The 2007 amendment to Law 4320 made it possible for a prosecutor to start a protection order process on his or her own initiative as well.¹⁰³ The prosecutor forwards the request to a family judge, who issues or refuses the order. The decision is passed back to the prosecutor, who is responsible for monitoring its implementation through the police.¹⁰⁴

This section shows the problems that women face at this stage of the procedure. For example, the decision-making process can be too slow for an emergency measure; prosecutors are sometimes reluctant to forward a request to a judge or start the process on their own accord; and judges may take too long to decide whether to grant an order. Another common problem is that family judges may demand medical or other forms of evidence, which are not required for a protection order.

Reluctance and Slow Decisions by Family Courts

Protection orders are meant to be emergency measures adopted when there is imminent risk of family violence. Speed is essential, and delays by prosecutors and judges can defeat their purpose. Human Rights Watch documented cases where the process took anywhere from two days up to six months due to inaction and even reluctance on the part of prosecutors and judges to interfere with "family matters."

One prosecutor told us that he is sometimes reluctant to get involved in domestic violence cases because, "...[o]kay, she might have been beaten before, but now they are together again, and if we get involved the family might be broken up and he might get more violent. If we know the man is an addict we might do something."¹⁰⁵

A representative of the Women's Rights Commission at the Diyarbakır Bar Association told Human Rights Watch that while the body sees great progress in how police and prosecutors are treating women, it still sees prosecutors delaying orders by telling women to go back to

¹⁰³ Amendment 5636, art. 1.

¹⁰⁴ Law 4320, art. 2.

¹⁰⁵ Human Rights Watch interview with Durdu Kavak, chief prosecutor, Diyarbakır, June 16, 2010.

police to make another statement, or to reconcile with abusers. “The problem is with the prosecutors,” she said. “All this can take far too long.”¹⁰⁶

Human Rights Watch also obtained several case files revealing significant delays. One woman originally applied for a protection order on February 10, 2005, which she received on March 31, 2005.¹⁰⁷ Another woman applied for a protection order on July 7, 2008, and received it on July 28, 2008.¹⁰⁸ Other case files showed that some applications were transferred to other family courts on grounds of jurisdiction, which delayed the process.¹⁰⁹

Aslı I., the 21-year-old Kurdish woman from Van who was kept as a slave and abused by her family-in-law sought a protection order from a prosecutor in Van 40 days before we interviewed her, and had not yet received an answer. Meanwhile, her family-in-law continued to threaten her.¹¹⁰

Improperly Requiring Evidence

Decisions to grant a protection order need to be able to be reached quickly if they are to be effective and achieve the outcome for which they are designed: providing urgent protection to individuals at imminent risk. Access to the remedy is delayed when only documentary or physical evidence will suffice to substantiate the necessity of a protection order.

The emergency step of issuing a temporary protection order does not involve reaching the determinations that are required in a criminal trial nor even a proceeding on a permanent civil order or injunction. The consequences for individuals subject to protection orders—such as refraining from violence, temporary removal from the home, and in some cases temporary maintenance payments— is less onerous than the deprivation of liberty that can result from a criminal proceeding. Therefore the applicable due process protections may differ from those in a criminal trial.

The UN has gathered best practices throughout the world and issued a handbook for legislation on violence against women. On the issue of evidence for protection orders, it says:

¹⁰⁶ Human Rights Watch interview with two members of the Women’s Rights Commission of the Diyarbakır Bar Association, June 17, 2010.

¹⁰⁷ Protection order, Eyüp family court, 2005/71, on file with author.

¹⁰⁸ Protection order, Diyarbakır family court, 2008/522, on file with author.

¹⁰⁹ Protection order, Kadıköy family court, 2009/217, on file with author.

¹¹⁰ Human Rights Watch interview with Aslı I. and her mother, Van, June 16, 2010.

Legislation should state:

- That live testimony or a sworn statement or affidavit of the complainant/survivor is sufficient evidence for the issuance of a protection order;
- No independent evidence—medical, police or otherwise—should be required for the issuance of a protection order following live testimony or a sworn statement or affidavit of the complainant/survivor.¹¹¹

In line with this standard, Turkey’s Family protection law does not require evidence besides the petition of the claimant. A judge may grant an order when a person is subject to abuse, and notification is made by either the victim or the public prosecutor, after taking into consideration the specific circumstances of the case.¹¹² The explanatory statement with Law 4320 states:

If the Magistrate's Court considers that there is a possibility of the victim again being subject to abuse then it can pass an order immediately after the application without need for witnesses or hearing from the other side. Those who have suffered abuse are not responsible for proving to the court the possibility of being subjected to abuse.¹¹³

However, Human Rights Watch documented several cases where judges or prosecutors handled protection order processes more as if they were criminal proceedings, most often by demanding medical evidence or notifying an allegedly abusive husband that he could testify before they issued an emergency protection order.

For example, Human Rights Watch obtained a petition from a woman to a family court judge in Istanbul in which she asked for protection on December 15, 2008. She wrote:

My daughter has told me that her father has sexually harassed her since she was four. This is why we don’t want the father in our house.... When she was five or six, her father used to lie next to her naked, would take off her underwear and satisfy himself. This continued. Now the father demands to be let back into the home, and that’s why I need a protection decision.... He

¹¹¹ Department of Economic and Social Affairs; Division for the Advancement of Women, “Handbook for legislation on violence against women,” New York, 2009, <http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf> (accessed April 5, 2011), p. 48.

¹¹² Family Protection Law No. 4320, January 1998, clause 1.

¹¹³ Family Protection Law No. 4320, January 1998, Corollary to the clauses of the law.

hurt me and my children, he cut my lip by beating me and I have a medical report at the police station.¹¹⁴

On December 19, the judge scribbled on the top of this petition: “Need further documents and evidence, hearing will be scheduled.”¹¹⁵ A hearing took place on February 3, 2009, in which the mother and daughter testified in front of the accused and the daughter had to elaborately describe the abuse.¹¹⁶ The mother’s lawyer told Human Rights Watch:

I am convinced the judge did not even read the petition, and dismissed it out of hand. During the hearing he seemed shocked and eventually he granted her a protection order. But this is after a delay of nearly two months, and unnecessary trauma for the family.¹¹⁷

Several other women, lawyers, and other practitioners, including lawyers in the Diyarbakır Bar Association’s Women’s Rights Commission, told Human Rights Watch that prosecutors and judges sometimes ask for evidence and witnesses before granting a protection order.¹¹⁸ UNFPA similarly told Human Rights Watch:

The key problem seems to be the misunderstanding by judges of the concept of a protection order as an emergency measure. They treat it like a criminal case, which is why they regularly ask for medical evidence. This is an issue that should be dealt with in law school.¹¹⁹

Monitoring Compliance with Protection Orders

Protection orders are only helpful if they are enforced, which requires diligence and action on the part of law enforcement officials. Once issued, police or the gendarmerie are responsible for informing the respondent of the issued order, and obligated to conduct

¹¹⁴ Petition to a family court judge, Bakırköy Istanbul, December 15, 2008, on file with the author.

¹¹⁵ Ibid.

¹¹⁶ Hearing report, Bakırköy, Istanbul, February 3, 2009, on file with the author.

¹¹⁷ Human Rights Watch interview with Habibe Yılmaz Kayar, lawyer, Istanbul, November 12, 2010.

¹¹⁸ For example Human Rights Watch interview with lawyers of the Izmir women’s solidarity organization, June 10, 2010, Human Rights Watch interview with director and staff of the Diyarbakır municipal social services (DİKASUM), June 16, 2010, Human Rights Watch interview with Habibe Yılmaz Kayar, lawyer, Istanbul, November 12, 2010.

¹¹⁹ Human Rights Watch interview with Meltem Aöduk, gender program coordinator, UNFPA Ankara, November 11, 2010.

regular checks of the home.¹²⁰ If it appears the abuser is violating the order, law enforcement officers must investigate and refer the matter to prosecutors to initiate criminal proceedings.¹²¹ The spouse or family member who has not abided by the protection order can be sent to prison for three to six months.¹²²

The government issued a regulation in March 2008 on implementation of Law 4320, stipulating that law enforcement officers should check up on recipients of protection orders once a week.¹²³ These proactive checks are vital for victim safety. Violence can escalate after abusers learn of protection orders and may be determined to defy the orders, making this a particularly risky time. When Hamiyet M.'s husband received a protection order, he tore it up, and the violence increased in intensity and frequency.¹²⁴ She said, "After the police, he started to threaten my daughter and he beat me up more intensely, with more passion and anger. It was extremely dangerous."¹²⁵

The Diyarbakır director of security told Human Rights Watch that in his region, police officers do visit homes of protection order recipients.¹²⁶ However, we documented cases in Diyarbakır and throughout the country in which women successfully petitioned for protection orders only to have their effectiveness undermined when police did not monitor enforcement. Alev A., a 45-year-old woman from Diyarbakır who suffered more than 26 years of abuse, eventually got a protection order against her husband in 2008. When her husband saw the paper, he burned it, and told her, "Only by dying can you leave me."¹²⁷ The police never checked on her, she could not get out, and the violence intensified and was continuing at the time she was interviewed.

¹²⁰ Regulation on the Implementation of the Law 4320 on the protection of the family, Official Gazette 26803, March 2008, article 15.

¹²¹ Family Protection Law No. 4320, January 1998, clause 2.

¹²² Ibid.

¹²³ Regulation on the Implementation of the Law 4320 on the protection of the family, Official Gazette 26803, art. 15(3) (a).

¹²⁴ Human Rights Watch interview with Hamiyet M., Van, June 15, 2010.

¹²⁵ Ibid.

¹²⁶ Human Rights Watch interview with the director of security, the station chiefs, and police officers of Yenişehir and Bağlar, Diyarbakır, June 16, 2010.

¹²⁷ Human Rights Watch interview with Alev A., Diyarbakır, June 17, 2010.

Fatma Babatli

In a much-publicized case of violence continuing after a protection order was issued, Fatma Babatli, a mother of seven in Diyarbakır, was murdered in November 2008. Two months before her death Fatma Babatli had made a complaint to the Public Prosecution office in Diyarbakır because her husband was beating her. The Diyarbakır Family Court ordered her husband to not approach their house for 6 months. However he continued to contact Fatma Babatli, he attacked her several times, and destroyed the house. The police never checked on her at any stage after the order had been issued. After she complained, police arrested him for violating the protection order, but he was released the next day. He killed her a short period later.

In Babatli's case, the police neglected to check on whether an order was being followed. But Human Rights Watch also documented some cases in which police refused to respond even when women reported violations of the protection orders. For example in Izmir, Zeynep B. had a protection order against her husband, who regularly beat and psychologically abused her. At the end of 2009, while the order was in force, her husband barged into her house, cut off her electricity, and threatened her with a knife. She fled and he chased her, but she managed to get to the police. They told her, "Go home, we will deal with it." On her way home she was stabbed six times by the husband. She barely survived.¹²⁸

If, through proactive checks or reports from the abuser, the police or gendarmerie learn that an abuser is violating a protection order, they are required to investigate and refer the matter to a prosecutor quickly. The law authorizes the prosecutor to then file suit against the accused in a magistrate's court. The spouse who has violated the order can be sentenced to prison for three to six months.¹²⁹ In practice, it is rare that police initiate, and a prosecutor takes forward, such a procedure against the violator of a protection order. As one chief prosecutor told Human Rights Watch:

To my knowledge there have been 17 cases of such proceedings. It is difficult, because after an order is issued, couples often come back together or there are mediators who bring them back together. Usually we just give the husband a warning.¹³⁰

¹²⁸ Case file of Zeynep B., Izmir, June 11, 2010.

¹²⁹ Family Protection Law No. 4320, January 1998, clause 2.

¹³⁰ Human Rights Watch interview with Durdu Kavak, chief prosecutor, Diyarbakır, June 16, 2010.

Structural Problems

Many problems described in previous sections result from three structural problems: first, lack of specialized staff and units at police stations, even in larger cities and major regional centers; second, lack of adequate, ongoing, and thorough training of law enforcement officers, prosecutors, and judges who deal with domestic violence cases; and third, lack of privacy in police stations or family courts when reporting family violence.

Inadequate Staffing and Lack of Specialized Units

Complex family violence cases are best handled by officials with expertise in this area. United Nations Population Fund (UNFPA) recommends that separate family violence units be established within police stations and family courts, which employ specialized social workers and prosecutors, following the model of Turkey's child units.¹³¹ This might not be feasible in every police station in the country, but could be introduced initially in larger cities or regional centers. Dedicated units would make training more efficient, as fewer people need to be trained and continuity is more likely. It would also facilitate data collection and monitoring of Law 4320's implementation.

Unfortunately, even though family violence is one of the most pervasive crimes in Turkey, there is a shortage of expert staff. In many police stations, there is no dedicated officer or unit to deal with family violence. Nor is there a specialized prosecutor in every region. The ranks of officials with this kind of expertise are growing as the government and UNFPA continue their trainings, but there is a great need for more specialized staff.

Advocates and officials throughout the country emphasized that having dedicated police units and specialists in other sectors deal with domestic violence and protection orders would be a tremendous help.

Limited Training of Law enforcement Officials

In addition to having highly specialized officials handle domestic violence cases, all law enforcement officials need some basic training to equip them to handle these cases. Family violence is so complex and dangerous to both victims and the law enforcement officers who intervene, that training is essential. There is currently only one lesson on violence against

¹³¹ Human Rights Watch interview with Meltem Ağduk, UNFPA Ankara, November 11, 2010.

women in the regular curriculum of police schools and academies—in the human rights section.¹³²

The United Nations Population Fund, in cooperation with the Directorate General on the Status of Women, has trained 270 high ranking officials, who in turn trained 40,000 police officers, on how to handle domestic violence cases. The trainings conducted in 2009 and 2010 focused on not sending the woman back to her abuser; how to communicate with a domestic violence survivor; how to use a registry (an intranet system in most areas of the country); and how to complete a risk analysis form. Trainers selected 20 officers to undertake more extensive eight-month training.

But even those who have organized the trainings told Human Rights Watch that much more is needed. A UNFPA representative said, “[Trainings] need to continue and be institutionalized. It should be part of the police college, both in the two year college (high school) and in the course for high ranking police (four years).”¹³³

An NGO in Diyarbakır told us, “They say they trained 40,000 police officers, which is a great number, but we don’t see [the trainings] applied here. There is a clear need for further training.”¹³⁴

Particular training needed is to ensure that law enforcement officials understand the various manifestation of family violence. The 2008 regulation on the family protection law refers to physical, sexual, psychological, verbal, and economic violence.¹³⁵ However, lawyers told Human Rights Watch that in some areas it is futile to pursue protection from anything other than physical violence since authorities have not responded to charges of other forms of abuse, such as psychological and economic violence, or even marital rape. For example, in Trabzon, a lawyer told Human Rights Watch that even though marital rape is criminalized,¹³⁶ “basic violence is really all you can talk about here—marital rape doesn't exist as far as the courts are concerned. One woman asked us ‘I don't want to have sex with my husband, what can I do?’ I couldn't give her an answer.”¹³⁷

¹³² Human Rights Watch interview with Meltem Ağduk, UNFPA, Ankara, November 11, 2010.

¹³³ Ibid.

¹³⁴ Human Rights Watch interview with Selis and EPIDEM, Diyarbakır, June 17, 2010.

¹³⁵ Regulation on the Implementation of the Law 4320 on the protection of the family, Official Gazette 26803, March 2008, art. 5.

¹³⁶ Art. 102 of the Turkish Penal Code.

¹³⁷ Human Rights Watch interview with a lawyer [name withheld], Trabzon, June 9, 2010.

The importance of the institutionalization of ongoing family violence training was illustrated by a social worker, exasperated by the ignorance of her colleagues in the police, judicial system, and social services of the family protection system:

I always have to tell people how to do their jobs, how the procedures work. I do a lot of struggling, so I cannot put my skills as a social worker to good use because I spend so much time telling others how the system should work.¹³⁸

Training the gendarmerie to adequately handle domestic violence cases poses particular problems, but is equally important. The gendarmerie generally consists of young men doing short-term military service.¹³⁹ There is high turnover, and less motivation to invest in their training. It is crucial that they, like police, are trained to help women threatened by violence in the home, or that only professional gendarmerie with appropriate training handle cases.

Problems with Facilities

Abuse survivors who summon the courage to report cases need private spaces within police stations or family courts to describe what they have endured. Family violence is so stigmatized and traumatic that failing to provide a private space can deter reporting.

Unfortunately, women and advocates described just the opposite in some locations. In one station, the desk where domestic violence statements are taken is in a hallway; in another, statements are taken in a busy, open office also used for other purposes.

For example, when Hamiyet M. went to family court in Van in 2009 to report 24 years of abuse she was sent to a secretary in a hallway. She explained: “I was ashamed to talk, but I did it anyway. I have so many children, I need to take care of them.”¹⁴⁰

¹³⁸ Human Rights Watch interview with a social worker, name and location withheld, June 9, 2010.

¹³⁹ The length of military service is 15, 12, or eight months, depending on education level. Certain professional groups (doctors, teachers, civil servants) may be allowed to perform special service. All men between the ages of 19 and 40 are required under the constitution and other laws to perform military service.

¹⁴⁰ Human Rights Watch interview with Hamiyet M., Van, June 15, 2010.

IV. Inadequate Shelters

I am scared to death [to leave the shelter]. My husband just didn't accept the protection order, instead he tried to get me again. When will this end? When he kills me or my children?

—Fatma S., Ankara, November 10, 2010

Shelters for family violence survivors, sometimes called guest houses, differ in size, set-up, and quality, and are run by different groups, including central government social services agency (SHÇEK guest houses), municipalities, governorships, and NGOs. All forms of shelters are covered by a 2001 regulation specifying who can open a shelter, services that should be provided, basic building requirements, and shelter rules.¹⁴¹ This report shows the need for more shelters, broader eligibility rules, and adequate regulation of shelter quality.

Number of Shelters

The number of shelters that must be available in Turkey is governed by Municipality Law No. 5393, which states, “The Greater City Municipalities and the municipalities having population more than 50,000 shall open houses for women and children welfare.”¹⁴²

Estimates vary as to the actual numbers of shelters, but by all accounts there are far less than the number required under this law. According to NGOs, there are 52 shelters;¹⁴³ according to the Directorate General on the Status of Women, there are 37 SHÇEK shelters, and 25 shelters run by NGOs, governorships, and local authorities, totaling 62 shelters. However, there are at least 166 cities with over 50,000 inhabitants, so more than 100 cities certainly do not comply with the law. Besides that, there are many more municipalities within those cities with over 50,000 inhabitants, which do not run shelters.¹⁴⁴ The shelters needed to fulfill the requirement runs into the hundreds.

¹⁴¹ Regulation of May 8, 2001, Gazette no. 24396, <http://www.mevzuat.adalet.gov.tr/html/20702.html> (accessed February 7, 2011).

¹⁴² Municipal Law no: 5393, 2005 (Official Gazette Nr. 25874), art. 14, <http://www.ibb.gov.tr/en-US/Organization/Birimler/FinansmanMd/Documents/MUNICIPAL%20Law%20Nr.5393.doc>.

¹⁴³ Shadow Report for the CEDAW committee review of Turkey, The Executive Committee for NGO Forum on CEDAW – Turkey Women’s Platform on the Turkish Penal Code, p. 22, http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/WPTPC_Turkey46.pdf (accessed April 18, 2011).

¹⁴⁴ There are over 167 cities with over 50,000 inhabitants, according to this list http://en.wikipedia.org/wiki/List_of_cities_in_Turkey (accessed March 10, 2011).

More shelters are sorely needed to meet the demand. As one shelter director in Ankara said, “Picking which woman we allow in is the hardest. There are many more cases than we can take, so we have to say ‘no’ to many women. We only pick the very worst cases.”¹⁴⁵

Mor Çati, a leading women’s rights NGO, faces the same dilemma for its shelter in Istanbul, especially after it had to close a second shelter because it lost government funding. It says needs are far greater than it can serve.¹⁴⁶

Shelter Conditions

Even when shelters are available, women report that their terms of conditions, security, and quality of services are sometimes inadequate.

Poor security at shelters is sometimes due to staff mismanagement, and sometimes police or school registries revealing shelter locations. For example, police in a city in the southeast [exact location withheld] told Selvi T.’s husband the location of the shelter where she had sought safety with her children following years of abuse.¹⁴⁷ He came after her. Shelter staff let him in, and pleaded with Selvi to speak to him. In other instances, such as a case we learned of in Ankara in 2010, abusers were able to locate children and mothers in shelters because school records usually show the shelter address.¹⁴⁸

Shelter staff members describe the rules, including curfews, restrictions on movement, and limits on cell phone use as necessary considering the grave threats these women face. A shelter worker in Diyarbakır said, “This is not a hotel. We need to ensure the women’s security. It’s not about tracing the women; it’s to ensure they do not give away the address somehow.”¹⁴⁹

These are valid concerns, but Human Rights Watch has heard anecdotal evidence of these rules being taken too far in shelters in Diyarbakır, Adana, and Nevşehir.¹⁵⁰ Some shelter rules are quite stringent, causing one woman to describe her shelter as “a prison.”¹⁵¹

¹⁴⁵ Human Rights Watch interview with head of municipality shelter, Ankara, June 7, 2010.

¹⁴⁶ Human Rights Watch interview with staff at Mor Çati, Istanbul, June 12, 2010.

¹⁴⁷ Human Rights Watch interview with Selvi T., [location withheld], June 17, 2010.

¹⁴⁸ Human Rights Watch interview with Emel Anar, head of shelter Capital City Women’s Organisation, Ankara, June 7, 2010.

¹⁴⁹ Human Rights Watch interview with personnel from Diyarbakır shelter, Diyarbakır, June 16, 2010.

¹⁵⁰ Human Rights Watch interview with Ece E., Istanbul June 12, 2010.

¹⁵¹ Ibid.

Representatives of another woman who sought shelter in Diyarbakır said she reported, “They treated us like soldiers, with a lot of discipline, lack of food, lack of freedom.”¹⁵² Songül S., a 32-year-old woman with three children, told Human Rights Watch about one shelter:

[T]he first shelter I stayed in was in Adana, and it was an awful place. Just the manager was fine, everyone else was terrible. You couldn’t move freely, you couldn’t touch anything, it was difficult to live there.¹⁵³

Children up to 12 can usually stay with their mother in shelters. The child can be taken away from the mother if she has to stay in the shelter for a long time, and placed into a designated ‘hostel.’¹⁵⁴ Lawyers also told Human Rights Watch that there are frequent fights among residents in a Diyarbakır shelter after staff leave at night.¹⁵⁵

Exclusion of Certain Women

Certain categories of women may be excluded from shelters altogether, some pursuant to the government’s shelter regulation, and others according to common practice. The regulation stipulates that women with an infectious disease, psychological problems, and women with drug or alcohol addictions are not allowed in the shelters.¹⁵⁶ Also typically excluded are women who are trafficked (there are designated shelters for this group) and sex workers.¹⁵⁷ An official at the Directorate General on the Status of Women told Human Rights Watch that both trafficked women and sex workers should by law be eligible for social services shelters, but advocates said in practice they could not access shelters.¹⁵⁸

In addition, undocumented women, including asylum seekers, are barred from state-run shelters. Local authorities said they are not allowed to use government funding to assist women who do not have legal status in Turkey.¹⁵⁹ The head of a shelter in Ankara told Human Rights Watch:

¹⁵² Human Rights Watch interview with representatives of Selis and EPIDEM, Diyarbakır, June 17, 2010.

¹⁵³ Human Rights Watch interview with Songül S., Ankara, November 10, 2010.

¹⁵⁴ Ibid.

¹⁵⁵ Human Rights Watch interview with Local Agenda 21, Diyarbakır, June 17, 2010.

¹⁵⁶ Regulation of May 8, 2001, Gazette no. 24396, article 13, <http://www.mevzuat.adalet.gov.tr/html/20702.html> (accessed February 7, 2011).

¹⁵⁷ Human Rights Watch interview with director of social services, Diyarbakır governorship, June 16, 2010.

¹⁵⁸ Human Rights Watch interview with Fatma Karakoç, deputy director, Directorate General on the Status of Women, Ankara, November 10, 2010.

¹⁵⁹ Human Rights Watch interview with Pelin Arda, director, Women’s Center of the Municipality of İzmir, June 11, 2010.

[Migrant women's] cases are different. These are usually prostitutes, so they would not go to shelters.¹⁶⁰

Women with disabilities may face increased risk of violence, and face additional barriers to receiving protection and shelter.¹⁶¹ The Convention on the Rights of Persons with Disabilities requires states to take persons with disabilities into account in their policies and measures to protect women.¹⁶² None of the municipalities where we conducted research had shelters (state or non-state) that could accommodate women with physical disabilities, and state-run shelters did not accept women with mental disabilities. In Izmir, the head of the municipal women's center said they have no services for women with physical disabilities,¹⁶³ as did representatives of social services shelters in Trabzon,¹⁶⁴ Diyarbakır,¹⁶⁵ and Van.¹⁶⁶ In Istanbul, even the NGO Mor Çati said it could not accommodate disabled women.¹⁶⁷

Transitioning out of Shelters

As abuse survivors leave shelters, many need transitional assistance to find long-term housing and support their families. Public assistance is not always available, and the level of assistance for survivors leaving shelters varies widely.

In Ankara, Fatma S. told Human Rights Watch why support after leaving a shelter is so important. In June 2010, she was still under severe threat from her ex-husband, who viciously abused her and abducted her children, even though she now has a protection order.¹⁶⁸ Fatma told us: "He was very sick in his head. He said 'I want to kill you, but the children cannot live without you, so I will have to kill the children as well.'"¹⁶⁹ He has never been arrested, so she moved to a shelter in Ankara with her children. The shelter allows only

¹⁶⁰ Human Rights Watch interview with head of municipality shelter, Ankara, June 7, 2010.

¹⁶¹ Human Rights Watch, *"As If I Weren't Human"- Discrimination and Violence Against Women with Disabilities in Northern Uganda*, August 2010, <http://www.hrw.org/en/reports/2010/08/24/if-we-weren-t-human>.

¹⁶² Convention on the Rights of Persons with Disabilities (CRPD), adopted December 13, 2006, G.A. Res. 61/106, Annex I, U.N. GAOR Supp. (No. 49) at 65, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008, ratified by Turkey December 3, 2008, articles 4 and 6.

¹⁶³ Human Rights Watch interview with Pelin Arda, director, Women's Center of the Municipality of Izmir, June 11, 2010.

¹⁶⁴ Human Rights Watch interview with lawyer in Trabzon, June 9, 2010.

¹⁶⁵ Human Rights Watch interview with director of social services, Diyarbakır governorship, June 16, 2010.

¹⁶⁶ Human Rights Watch interview with members of Van Women's Association (VAKAD), June 15, 2010.

¹⁶⁷ Human Rights Watch interview with staff at Mor Çati, Istanbul, June 12, 2010.

¹⁶⁸ Human Rights Watch interview with Fatma S., Ankara, November 10, 2010.

¹⁶⁹ *Ibid.*

short-term stays, and when we interviewed her she was terrified to leave.¹⁷⁰ Shelter staff acknowledged the problem:

Shelters are only for six months, so what happens after that? Women need help with finding work, such as cleaning, cooking, in hospitals, or in daycare.¹⁷¹

Some government-run shelters do give women cash as they leave shelters to help with the transition. For example, in Diyarbakır, women with children who leave the governorship shelter can receive 260 TL (approximately US\$160) per child for up to two children.¹⁷² However, not all women who leave shelters have that help, as Selvi T.'s case shows. She had no state support, and even though an NGO is giving her some help, she is barely surviving.¹⁷³

NGO shelters try to connect women with public assistance, but are generally not in a position to offer on-going support as women transition out of shelters. For example, Mor Çati, which runs a shelter in Istanbul, has no capacity to systematically support the women it has hosted in its shelter as they transition out.

¹⁷⁰ Ibid.

¹⁷¹ Human Rights Watch interview with director and staff of the Capital City Women's Organisation in Ankara, June 7, 2010.

¹⁷² Human Rights Watch interview with personnel from Diyarbakır SHÇEK shelter, June 16, 2010.

¹⁷³ Human Rights Watch interview with Selvi T., [location withheld], June 17, 2010.

V. Turkey's International and Regional Legal Obligations

The beatings, rapes, and other abuse suffered by women and girls in Turkey that this report documents not only violate Turkish, but also international and regional law. Turkey has ratified many core human rights treaties that require it to take action to eliminate these abuses. In fact, the Turkish constitution gives international human rights commitments preeminence in its legal system by stating: “In case of contradictions between the provisions of duly ratified international agreements on fundamental rights and freedoms and the provisions of domestic law, the former shall prevail.”¹⁷⁴

International Standards

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to which Turkey became a party in 1985, sets out a range of state obligations for eliminating discrimination, including by private actors, and authoritative interpretations of this treaty define violence against women as a form of discrimination.¹⁷⁵

CEDAW requires states to take “all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”¹⁷⁶ It also acknowledges social and cultural norms as sources of many women’s rights abuses. Article 5(a) of CEDAW obliges states to: “[M]odify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of 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.”¹⁷⁷

CEDAW and other human rights treaties require state accountability for abuses by private actors, and require states to show due diligence in preventing and responding to human rights violations. In General Recommendation 19, the CEDAW Committee emphasized: “States may also be responsible for private acts if they fail to act with due diligence to

¹⁷⁴ Art. 90, Turkish Constitution, as translated by the Directorate General on the Status of Women.

¹⁷⁵ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981, and acceded to by Turkey on December 20, 1985. Turkey has reservations to CEDAW articles 29(1) (on arbitration for disputes), and article 9(1) (on equal nationality rights).

¹⁷⁶ CEDAW, art. 2(f).

¹⁷⁷ CEDAW, art. 5(a).

prevent violations of rights or to investigate and punish acts of violence.”¹⁷⁸ A state’s consistent failure to do so when women are impacted in far greater proportions by the type of violence amounts to unequal and discriminatory treatment, and constitutes a violation of the state’s obligation to guarantee women equal protection of the law.

The CEDAW Committee, the UN expert body that monitors implementation of CEDAW, has identified key steps necessary to combat violence against women, among them: effective legal measures, including penal sanctions, civil remedies, and compensatory provisions; preventive measures, including public information and education programs to change attitudes about the roles and status of men and women; and protective measures, including shelters, counseling, rehabilitation, and support services.¹⁷⁹

Similarly, the UN General Assembly has urged governments to take specific law enforcement measures to combat domestic violence through its Resolution on Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women. The resolution, among other things, urges governments to: “ensure that the applicable provisions of law, codes, and procedures related to violence against women are consistently enforced...;” “develop investigative techniques that do not degrade women subjected to violence and minimize intrusion...;” “ensure that police procedures, including decisions on the arrest, detention and terms of any form of release of the perpetrator, take into account the need for the safety of the victim ... and that these procedures also prevent further acts of violence;” and “empower the police to respond promptly to incidents of violence against women.”¹⁸⁰

The UN special rapporteur on violence against women has clarified that governments are obligated to combat domestic violence far beyond that perpetrated by formally married spouses. She explained that women in intimate partnerships of various kinds and women working within households should be entitled to protections against, and have remedies for, domestic violence, including:

¹⁷⁸ UN Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence against Women, (Eleventh session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI\GEN\1\Rev.1 (1994), p. 84, para. 9.

¹⁷⁹ *Ibid.*, para. 24 (t).

¹⁸⁰ United Nations General Assembly Resolution on Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women, U.N. Doc. A/RES/52/86, February 2, 1998.

[W]ives, live-in partners, former wives or partners, girl-friends (including girl-friends not living in the same house), female relatives (including but not restricted to sisters, daughters, mothers) and female household workers.¹⁸¹

Violence prevents women from enjoying a host of other rights. These rights include the right not to be subject to cruel, inhuman, or degrading treatment or punishment;¹⁸² security of person;¹⁸³ and in extreme cases, the right to life.¹⁸⁴ The CEDAW Committee has also noted that “gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on the basis of equality with men,” including the right to the highest attainable standard of physical and mental health.¹⁸⁵

Human rights protections against violence also apply to persons under 18 years old. The Convention on the Rights of the Child (CRC) states that children must be protected from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse,” and ensure that victims of such acts receive legal and psycho-social redress.¹⁸⁶ The Committee on the Rights of the Child clarified that exposure to domestic violence is a form of psychological violence for the child.¹⁸⁷

As the findings of this report demonstrate, Turkey has taken critical legislative steps, but is failing to take all necessary measures to safeguard the rights of women and girls from violations by third parties. This legislative progress is undermined, and women’s and girls’ lives endangered, by the failure to effectively address the barriers that deter women and girls from reporting abuse and accessing protection; to better prevent abuse in the first place; and to change discriminatory attitudes. Many Turkish law enforcement and judicial officials also lack the expertise, and often the will, to deal with cases of violence against women and girls in a manner that is effective and sensitive to the needs and human rights of victims.

¹⁸¹ UN Commission on Human Rights, Report of the Special Rapporteur on Violence against women, Radhika Coomaraswamy, A framework for model legislation on domestic violence E/CN.4/1996/53/Add.2 II/B2 February 1996, para 7.

¹⁸² International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, and ratified by Turkey on August 2, 1988, art. 7.

¹⁸³ *Ibid.*, art.6.

¹⁸⁴ *Ibid.*

¹⁸⁵ CEDAW Committee, General Recommendation 19, paras. 1 and 7.

¹⁸⁶ Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, and ratified by Turkey on December 9, 1994, art. 19.

¹⁸⁷ UN Committee on the Rights of the Child, General Comment No. 13, Article 19: The right of the child to freedom from all forms of violence, U.N. Doc. C/GC/13/2011 (2011), p. 9.

In its last two reports on Turkey, the CEDAW committee made specific requests for Turkey to focus on implementing the Law on the Protection of the Family. In 2010, the committee concluded:

The Committee calls on the State party to evaluate and strengthen Law No. 4320 in order to enact comprehensive legislation on all forms of violence against women, including domestic violence, and to ensure that in such legislation all forms of violence against women are prohibited, that women and girls who are victims of violence have access to immediate means of redress and protection, including protection orders, and that perpetrators are prosecuted and punished.¹⁸⁸

The former UN special rapporteur on violence against women wrote after her country visit to Turkey in 2006:

Lawyers and prosecutors should use the Law on the Protection of the Family in all appropriate circumstances and seek protective orders for women at risk. Courts should diligently enforce protective orders granted and not hesitate to apply sanctions in cases of infractions.¹⁸⁹

Regional Standards

Since 1949, Turkey has been a member state of the Council of Europe. It ratified the European Convention on Human Rights (ECHR) in 1954, and since 1987 individuals have been able to apply to the European Court of Human Rights for a remedy if they allege that their rights under the ECHR have been violated.¹⁹⁰

In 2009, the European Court of Human Rights gave its judgment in one such case, *Opuz v. Turkey*, which directly addressed the failure of the Turkish state to take reasonable

¹⁸⁸ Concluding comments of the Committee on the Elimination of Discrimination against Women: Turkey, para. 23, August 16, 2010, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/485/60/PDF/N1048560.pdf?OpenElement> (accessed December 30, 2010).

¹⁸⁹ Report of the special rapporteur on violence against women, its causes and consequences, Yakın Ertürk, to the Human Rights Council, January 5, 2007, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/Go7/100/90/PDF/Go710090.pdf?OpenElement> (accessed December 30, 2010).

¹⁹⁰ European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), 213 U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively.

measures to prevent domestic violence perpetrated against the applicant, Nahide Opuz, and the murder of her mother.¹⁹¹

Nahide Opuz had suffered years of brutal domestic violence at the hands of her husband, including stabbings, beatings, and death threats. For four years from 1995 onwards, the applicant and her mother requested that the police and prosecutor extend them protection, claiming they faced immediate threat of death. After one complaint, authorities questioned and then released the husband. Despite numerous complaints, the police and prosecuting authorities did not adequately protect the women: Opuz's husband eventually murdered her mother in 2002.

The European Court of Human Rights held that Turkey had failed to fulfill its obligations to protect the right to life of Nahide's mother (under article 2 of the ECHR) and that it was in breach of the right not to be subject to torture or cruel, inhuman, or degrading treatment (article 3 of the ECHR) for its failure to protect the applicant against ill-treatment perpetrated by her former husband. It also held that Turkey was in violation of the right to non-discrimination (article 14 of the ECHR), confirming that domestic violence is a form of discrimination against women.

This judgment constitutes the first time the court has elaborated the exact nature of state obligations under the ECHR with respect to violence in the family and the first time it has explicitly confirmed that gender-based violence is a form of discrimination under the ECHR. Relying heavily on international and comparative law, the court emphasized that domestic violence is not a private or family matter, but an issue of public interest that demands effective state action.

Article 2 of the ECHR, which Turkey was found to have violated, provides: "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law." The court re-emphasized that this requires that the state not only refrain from intentional and unlawful taking of life, but also take appropriate steps to safeguard the lives of those within its jurisdiction.¹⁹² It also implies that authorities are positively obligated

¹⁹¹ European Court of Human Rights, *Opuz v. Turkey*, (33401/02), judgment of June 9, 2009.

¹⁹² *Ibid.*, para. 128; This reflects long standing jurisprudence from the European Court. For example, see also European Court of Human Rights, *L.C.B. v. the United Kingdom*, (23413/94), judgment of June 9, 1998, para. 36.

to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.¹⁹³

The court also elaborated on what the test should be to assess whether there will be a violation of article 2 in the case of a private perpetrator:

For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.¹⁹⁴

Article 3 of the ECHR reads: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” States are obliged to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including ill treatment administered by private individuals.¹⁹⁵

Article 14 of the convention provides:

The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.¹⁹⁶

Similarly to the CEDAW committee, the European Court of Human Rights said in *Opuz* that a state's failure to protect women against domestic violence breaches their right to non-discrimination under article 14 of the convention, and that this failure does not need to be intentional.¹⁹⁷

¹⁹³ *Opuz*, para. 128, and *Osman v. the United Kingdom*, (23452/94), judgment of October 28, 1998, para.115.

¹⁹⁴ *Opuz* para. 129 and *Osman* para. 116.

¹⁹⁵ See e.g. European Court of Human Rights, *H.L.R. v. France*, (11/1996/630/813), judgment of 29 April 1997, para. 40.

¹⁹⁶ ECHR, art. 14.

¹⁹⁷ *Opuz* para. 191.

New Council of Europe Convention on Domestic Violence

At the time of finalizing this report (April 2011), the Council of Europe is in the process of adopting a new region-wide draft convention on preventing and combating violence against women and domestic violence.¹⁹⁸ Upon entry into force, this will be a binding legal instrument for any of the 47 Council of Europe member states that ratify it. The convention will apply to all forms of violence against women in and outside conflict, and contains detailed provisions on the prevention, protection, and prosecution of domestic violence.

The convention lists a set of requirements regarding protection orders. Such orders must be: “Available for immediate protection and without undue financial or administrative burdens placed on the victim; Issued for a specified period or until modified or discharged; Where necessary, issued on an *ex parte* basis which has immediate effect; Available irrespective of, or in addition to, other legal proceedings; Allowed to be introduced in subsequent legal proceedings.”¹⁹⁹ The orders must be available to victims without lengthy proceedings, and “effective, proportionate and dissuasive” sanctions for any breach of such orders should be set.²⁰⁰ Family Protection Law 4320 is in accordance with this draft text, but the practical implementation that Human Rights Watch has documented is not.

On shelters, the convention currently states that “parties shall take the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible shelters in sufficient numbers to provide safe accommodation for and to reach out pro-actively to victims, especially women and their children.”²⁰¹ The explanatory memorandum recommends accommodation in specialized women’s shelters, available in every region, with one family place per 10,000 head of population, but based on the needs of the population.²⁰² Turkey’s domestic requirement of one shelter per municipality with 50,000 or more residents would be in line with this recommendation. Unfortunately, Turkey is currently many shelters short of this requirement.

¹⁹⁸ Draft Council of Europe Convention on Prevention and Combating Violence Against Women and Domestic Violence, article 52, http://www.coe.int/t/dghl/standardsetting/violence/CAHVIO%20_2011_%205_en.pdf (accessed April 5, 2011).

¹⁹⁹ *Ibid.*, art. 53.

²⁰⁰ Draft Council of Europe Convention on Prevention and Combating Violence Against Women and Domestic Violence, Explanatory Memorandum, http://www.coe.int/t/dghl/standardsetting/violence/documents_en.asp (accessed April 5, 2011), paras. 267 and 272.

²⁰¹ *Ibid.*, art. 23.

²⁰² Draft Council of Europe Convention on Prevention and Combating Violence Against Women and Domestic Violence, Explanatory Memorandum, http://www.coe.int/t/dghl/standardsetting/violence/documents_en.asp (accessed April 5, 2011), para. 133.

Recommendations

To the Grand National Assembly of Turkey

- Adopt draft law 439, currently in parliament, which calls for reforms to Turkey's response to family violence, including a widening of the scope of the law and better coordination of efforts to combat domestic violence.
- Explicitly broaden the scope of Law 4320 to include unmarried women, divorced women, and women in religious marriages.
- Ensure that meaningful and appropriate funding is allocated to combat all forms of family violence in the annual national budget.

To the Ministry of the Interior

- Provide regular and up-to-date trainings to law enforcement officers on the requirements of Law 4320 and its implementing regulation and protocols to ensure that these authorities:
 - always fill in a risk assessment form for family violence cases;
 - refer domestic violence survivors to social services;
 - explain the protection order process and provide assistance to abuse survivors seeking protection orders;
 - act swiftly to notify the accused spouse or family member when a protection order has been issued;
 - monitor protection orders by checking the recipient's house on a weekly basis; and
 - in the event of protection orders not being observed, conduct investigations and transfer information to the prosecutor within the shortest possible time, without the need for the victim to submit a written application.
- Include training on domestic violence and Law 4320 in the curriculum of both the two-year police college and four-year police academy.
- In larger cities or regional centers, and wherever else feasible, establish dedicated units in police stations that are specialized in family violence claims to receive and handle complaints and to monitor compliance with protection orders.
- Enable individuals to open a complaint procedure against individual officers who violate their rights to increase accountability of officers who fail to uphold the law.
- Collect and make publicly available detailed information on the overall implementation of Law 4320. This should at least consist of:
 - the number of domestic violence survivors reporting to the police or the prosecutor or that go directly to family courts;

- the number of risk assessment forms filled in;
- the number of referrals to the family court for a protection order;
- the number of referrals to social services;
- the number of protection orders sent by the prosecutor to the police for monitoring; and
- whether there were weekly checks on women with protection orders.

To the Ministry of Justice

- Ensure that family courts can be open in evenings and on weekends.
- Ensure the privacy of the complainant when a clerk or prosecutor takes a petition for a protection order.
- Ensure there are interpretation services at, or available to, family courts for the most frequently used languages besides Turkish, including Kurdish and Arabic.
- Provide regular training for prosecutors and judges regarding their responsibilities under Law 4320 and its implementing regulation, including trainings that clarify that:
 - protection orders should be granted based on risk of physical, sexual, psychological, verbal, and economic violence, not just physical abuse;
 - protection orders are emergency measures and speed of the decision is crucial;
 - no medical evidence is required for a protection order to be issued;
 - prosecutors are able to initiate a protection order process at their own initiative;
 - prosecutors are ultimately responsible for monitoring enforcement of the order through the police; and
 - prosecutors are responsible for initiating criminal cases with the magistrates court against violators of protection orders, including those who fail to pay maintenance.
- Include Law 4320 in the standard curriculum of the advanced education program for judges and prosecutors, and encourage law schools to include this topic in their curriculums.
- Gather and make publicly available detailed information on the overall implementation of Law 4320, including but not limited to:
 - the number of requests for protection orders;
 - refusal and issuance rates of protection orders; and
 - the number of criminal cases initiated based on noncompliance with protection orders and results of such cases;
- Separate from protection orders, ensure that prosecutors and judicial officials carry out their duty to pursue criminal prosecution of domestic violence cases.

To the Prime Ministry Social Services and Child Protection Agency

- Make available and accessible assistance for women transitioning from shelters to housing. Such assistance should address housing and welfare needs and include basic allowances.
- Allow access to shelters regardless of nationality and residence status.
- Ensure sufficient access to safe housing for domestic violence survivors with physical and psychological disabilities, for pregnant women, and other groups of women who currently face barriers entering shelters.
- Improve coordination with police and family courts by providing focal points in each municipality who will be notified as soon as a domestic violence survivor asks for protection.
- Provide training for staff on the physical and psychological consequences of domestic violence and the needs of survivors beyond immediate physical protection.

To the Greater City Municipalities and Municipalities with 50,000 or More Residents

- At a minimum, comply with the requirements in Municipality Law 5393 by opening the required number of shelters for women and children.

To the Directorate General on the Status of Women:

- Compile the relevant statistics from the institutions listed above on a regular basis in line with Law 5251 on the functions of the Directorate General on the Status of women.
- Continue and increase public awareness raising campaigns on Law 4320 and how women can get protection orders.

To the European Commission

- Include a detailed analysis of domestic violence and the Turkish government's progress and failings to address it in the 2011 and subsequent progress reports on Turkey.
- Continue regular funding streams for women's organizations in Turkey that work on domestic violence.

Acknowledgments

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“He Loves You, He Beats You”

Family Violence in Turkey and Access to Protection

“He rapes me all the time....He broke my head and arm,” Selvi T. told Human Rights Watch. Selvi, 22 years old, pregnant with her fifth child, and married to a brutally abusive man, has been turned away by the police three times when seeking protection from domestic violence. One policeman told her, “Just go back with your husband and stay there.”

In Turkey, approximately 42 percent of all women, and 47 percent of women in rural areas, have experienced physical or sexual violence by a husband or partner at some stage in their lives. *“He Loves You, He Beats You”* documents the experiences of women in Istanbul, Ankara, Izmir, Van, Trabzon, and Diyarbakir who endured violence and sought help from the state. Women we interviewed described brutal and long-lasting violence by husbands, in-laws, and other family members. Human Rights Watch documented women and girls as young as fourteen being raped, stabbed, kicked in the abdomen when pregnant, beaten with hammers, sticks, branches, and hoses to the point of broken bones and fractured skulls, locked up with dogs or other animals, starved, shot with a stun gun, injected with poison, pushed off a rooftop, and subjected to severe psychological violence.

Despite some impressive law reforms to address violence against women in Turkey, including the availability of civil protection orders, there are gaps in law and even greater failings in implementation, making the protection system unpredictable at best. Domestic violence shelters in Turkey, far too few to meet the demand, exclude certain categories of women, and in some cases have poor conditions and inadequate security.

The Turkish government should amend the family protection law to fill the gaps and should systematically and proactively improve its implementation. Failing to do so constitutes not just a violation of Turkish law, but also violations of international and regional human rights law.

A Turkish woman shouts slogans on March 8, 2009 in Istanbul where more than 5,000 women gathered to mark International Women’s Day. Purple symbolizes feminism in Turkey.

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