

**WOMEN'S HUMAN RIGHTS IN THE NEW TURKISH PENAL CODE:  
THE SUCCESS OF THE CAMPAIGN FOR THE REFORM OF THE TURKISH  
PENAL CODE FROM A GENDER PERSPECTIVE**

**Summary Outcome Report by  
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On September 26th, 2004, the Turkish Penal Code Draft Law was accepted in the Turkish Parliament Grand National Assembly. Due to the success of the three-year campaign of the women's movement (2002-2004), the new Turkish Penal Code includes more than thirty amendments that constitute a major step towards gender equality and protection of sexual and bodily rights of women and girls in Turkey. Since the beginning of the campaign, women's groups demanded a holistic reform to change the philosophy and principles of the penal code in order to safeguard women's rights, and bodily and sexual autonomy.

The new Turkish Penal Code, which states in the first article that the aim of the law is to "protect the rights and freedoms of individuals," brings progressive definitions and higher sentences for sexual crimes; criminalizes marital rape; brings measures to prevent sentence reductions granted to perpetrators of honor killings; eliminates all references to patriarchal concepts like chastity, honor, morality, shame or indecent behavior; abolishes previously existing discriminations against non-virgin and unmarried women; abolishes provisions granting sentence reductions in rape and abduction cases; criminalizes sexual harassment at the workplace and considers sexual assaults by security forces as aggravated offences.

Immediately after the reform of the Turkish Civil Code in 2001, Women for Women's Human Rights (WWHR) – New Ways initiated and coordinated a Working Group on the Reform of the Penal Code from a Gender Perspective. The working group included NGO representatives, jurists from bar associations and academicians from all regions of Turkey. The group worked for one year to analyze both the Turkish Penal Code in effect and the Penal Code Draft Law. The analysis and recommendations of the group, including more than 30 amendments as word-by-word formulated new articles, were published as a report and disseminated to all MPs, NGOs and media representatives. Subsequently, a public campaign was launched at the beginning of 2003 for the establishment of gender equality with the Turkish Penal Code reform.

The extensive campaign coordinated by WWHR-New Ways for three years has completely transformed the viewpoint of the penal code to recognize women's ownership of their bodies and sexuality as individuals. Most of women's demands have been accepted as a result of the Campaign for the Reform of the Turkish Penal Code from a Gender Perspective.

*The amendments in the new Penal Code pertaining to women's human rights are as follows:*

**Sexual offences are classified under the section "crimes against individuals / crimes against inviolability of sexual integrity" instead of "crimes against society / crimes against public morality and family"**

In the old penal code, sexual offences were regulated under the section "Crimes against Society" in the sub-section "Crimes against Public Morality and Family." This classification

reflected a patriarchal notion that women's bodies and sexuality did not belong to themselves, but rather to their families or society.

In the new penal code, sexual offences are now regulated as "Crimes against Persons," in the sub-section "Crimes against Inviolability of Sexual Integrity." This constitutes a groundbreaking shift in the overall perspective of Turkish Penal Law, legally acknowledging women's ownership of their bodies and sexuality.

**Patriarchal concepts such as chastity, honor, public morality, public customs, shame or decency are eliminated from the penal code**

In the old penal code, there were several references to vague patriarchal constructs such as chastity, morality, shame or decency. For example, crimes of rape and sexual abuse were defined as "forced seizure of chastity and attack on honor." Killing of a newborn child out of wedlock by the mother received a reduced sentence, as this crime was considered to be committed to cleanse the woman's honor.

In the new penal code, all such references are eliminated and definitions of such crimes are brought in line with global human rights norms.

**Progressive definitions of sexual offences are adopted, sexual harassment at the workplace is criminalized, and sentences for sexual crimes are increased**

The new penal code contains progressive definitions of rape, sexual assault, sexual abuse and sexual harassment. Rape and sexual assault used to be defined as "forced or consensual seizure/attack of chastity", rather than attacks on individual sexual integrity, in the old penal code. In the reformed penal code, sexual assault is defined as "any sexual behavior violating a person's bodily integrity."

The definition of rape has been expanded to include anal and oral penetration, as well as the insertion of an object or any organ to the body. Psychological coercion is recognized as a means of coercion by the perpetrator and damage to the victim's psychological health is acknowledged as an aggravating circumstance. Sexual assaults under custody or by security forces, public officials or employers, by relatives or in laws are also regulated as aggravated offences.

Sexual harassment is defined to include "all harassment with sexual intent" and sexual harassment in the workplace, perpetrated both by superiors and co-workers, is explicitly recognized as an aggravated offence.

**Provisions assuming rape, sexual assault or sexual abuse of children can occur with the consent of the victim are removed**

In the old penal code, there were provisions assuming that sexual abuse of children could occur with their "consent," and foreseeing reduced sentences in such cases.

In the reformed penal code, the notion which assumed that rape, sexual assault or sexual abuse of children could occur with the victim's consent has been eliminated and all references to consensual rape, sexual assault and sexual abuse of children have been removed.

**Marital rape is criminalized**

Marital rape was not acknowledged as a crime in the old penal code. The justification of the article regulating rape stated that marital rape did not constitute a sexual offence.

Marital rape has explicitly been acknowledged as a crime in the reformed penal code. It can be prosecuted upon the victim's complaint.

**There are new measures to prevent sentence reductions granted to perpetrators of honor killings and "killings in the name of customary law" are regulated as aggravated homicide**

The new penal code takes an important step forward towards eradicating the customary practice of honor killings. In the old penal code, a general article regulating cases of "Unjust Provocation" was often misinterpreted by judges to cover murders committed in the name of honor and was used to grant sentence reductions to perpetrators.

In the reformed penal code, the article has been amended to only include "unjust acts" and in the justification of the article, it has been explicitly stated this amendment was made to prevent its application to honor killing cases.

Furthermore, "killings in the name of customary law" have been defined as aggravated homicide in the new penal code, which does not encompass all honor killings, however still constitutes a significant advancement.

**Provisions regulating the sexual abuse of children have been amended to explicitly define sexual abuse and remove the notion of "consent of the child" in sexual abuse**

The old penal code did not acknowledge sexual abuse of children as a distinct crime, but rather regulated the crime under articles pertaining to rape and sexual assault. In the reformed penal code, sexual offences against children under fifteen have been aptly defined in a separate article entitled "Sexual abuse of Children." If the offence is perpetrated by parents, relatives, stepfathers, legal guardians, caretakers, teachers, and healthcare providers, it is considered an aggravated offence. Damage to the psychological health of the child is also acknowledged as an aggravating circumstance. As mentioned above, references to the child's consent in sexual abuse have been removed.

**Non-discrimination between virgin, non-virgin, married and unmarried women has been ascertained**

The old penal code discriminated between virgin and non-virgin; or married and unmarried women, by regulating rape and abduction as aggravated crimes in case the woman was a virgin or married respectively. The provisions foreseeing more severe sentences if the rape victim is a virgin and if an abductee is married have been removed in the new penal code.

The provision in the article on definitions, which made a distinction between "women" and "girls" is removed.

**The article granting sentence reduction to the killing of the newborn child born out of wedlock by the mother is removed**

The article in the old penal code offering a reduced sentence for the murder of a newborn out of wedlock by the mother has been removed. This provision was based upon the notion that a child out of wedlock would compromise a woman's and family's "honor" and thus such a murder could be legitimized.

**Provisions legitimizing rape and abduction in case the perpetrator marries the victim have been abolished**

The old Turkish Penal Code entailed articles foreseeing reduction or suspension of the sentence in case rape or abduction perpetrators married their victims. This was based on a notion it would be better for a woman to marry her rapist, as this could save her “honor,” and marrying the victim would thereby undo the offence.

These provisions, which also served to legitimize forced marriages, have been removed in the new penal code.

**The article regulating “indecent behaviours” has been amended only to include sexual intercourse in public and exhibitionism**

This article foresaw criminalization of the so-called “indecent behaviors,” or “acts that severe others’ feelings of “chastity,” vague and subjective notions open to misuse by security forces and courts. The article was often used to prosecute sexual minorities on unfounded grounds. It could also be used to restrict women’s sexual freedoms and rights.

In the reformed penal code, the article has been amended only to penalize sexual intercourse in public and exhibitionism.

**REMAINING DEMANDS AND FURTHER NECESSARY AMENDMENTS TO THE NEW TURKISH PENAL CODE**

Despite the overall success of our campaign, some of our demands have not been accepted in the new Turkish Penal Code. In order to eradicate all provisions legitimizing human rights violations and discrimination, the following amendments have to be made to the new penal code:

- “Honor killings” have to be explicitly defined as aggravated homicide to include all murders in the name of honor, not just those in the name of customary law,
- Discrimination based on sexual orientation has to be explicitly banned and criminalized,
- The article penalizing consensual sexual relations of youth aged 15 – 18 upon complaint should be removed,
- The practice of virginity testing has to be explicitly banned and criminalized under all circumstances,
- The “Obscenity” article should be amended to clearly defining acts of “obscenity” in order to prevent threat to freedom of expression, invasion of privacy and discrimination based on sexual orientation,
- The legal abortion period has to be extended to 12 weeks.

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