

The 35th Session of UPR – January-February 2020

**Turkey's Non-Compliance with Its International Human Rights Obligations
Relating to Children's Rights**

SUBJECT

1. This submission highlights a number of key areas of concern regarding Turkey's non-compliance with its international human rights obligations relating to children's rights.

TURKEY'S OBLIGATION UNDER NATIONAL AND INTERNATIONAL LAW

2. Turkey is a signatory to the UN Convention on the Rights of the Child (CRC). CRC introduced the concept of "the best interests of the child" (Art. 3) into the children's rights literature. The CRC requires that CHILD
 - shall not be separated from his/her parents (Art. 9);
 - has a standard of life that would suffice to his/her corporal, mental, spiritual, ethic and social development (Art. 27);
 - has the right to education in line with equality of opportunity (Art. 28);
 - has access to relaxation, free time activities, play and activities suitable for his/her age and cultural and artistic life (Art. 31).
3. The CRC further requires that Children offenders are specially treated and rehabilitated (Art. 37); and do not face judicial inquiry (Art. 40).
4. Turkey notified reservations to Articles 17, 29 and 30 of CRC to interpret these articles in line with the Turkish Constitution and the Turkish interpretation of the Lausanne Treaty.
5. Turkey is also a signatory
 - to the European Convention on the Exercise of Children's Rights (ECECR),
 - the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse,
 - the Convention on the Rights of Persons with Disabilities (CRPD) which has implications for the rights of the children with disabilities,
 - the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). CEDAW is relevant for the children of incarcerated mothers since it ordains the state parties to "ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation."
6. Turkey signed the Optional Protocol to the UN Convention on the Rights of the Child on a Communications Procedure in 2012 and ratified it in 2017.
7. Under the Turkish Constitution, child has a right to have and maintain personal and direct relationship with his parents. (Art. 41)
8. The Law on the Execution of Penalty and Security Measures (Law No. 5275) includes various articles on children, and prohibits imprisonment of pregnant women, and of

JOINT SUBMISSION BY THE LONDON ADVOCACY & HUMAN RIGHTS DEFENDERS e.V. FOR TURKEY'S UPR

women who has delivered a birth, until the seventh month of the birth (Article 16.) The law provides that children up to the age of six who have no one besides their mothers to protect them may stay with their incarcerated mothers in prison. The Law suggests that during the day children between 3 to 6 ages will be in kindergartens or nursery schools run by either the Social Services and Child Protection Agency or other organizations and institutions. An amendment to the Law (Law No. 6291) made in 2012 provides that women prisoners with children up to age six and with two years or less remaining on their sentence can be released conditionally on probation.

FOLLOW UP TO THE PREVIOUS REVIEW

9. In the Second Cycle of UPR Turkey received 34 recommendations from participant countries, 33 of which, the Turkish delegation supported. The only exception was the recommendation to “allow children of Greek citizens working in Istanbul to attend the Greek minority schools as fully-fledged students,” which was noted by the delegation. The 33 recommendations were largely about:
 - 9.1. Ratification of the Optional Protocol to the Convention on the Rights of the Child
 - 9.2. Adoption of the National Strategy on Children's Rights and its Action Plan
 - 9.3. Undertaking measures against child labour, trafficking, early and forced marriages, and corporal punishment against children;
 - 9.4. Improving the education rights of the children with disabilities and refugee children;
 - 9.5. Withdrawing Turkey's reservations to articles 17, 29 and 30 of the Convention on the Rights of the Child.
10. It has to be underlined that the Second Cycle of the UPR took place at a time Turkey performed rather well on all human rights issues. The 2010 amendments in the Constitution recognized the right for individual petition to the Constitutional Court. In 2011 Turkey ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). In June 2012 a national Human Rights Institute (HRI) and an Ombudsman Office were established and in 2013 the National Human Rights Action Plan 2013-2017 was accepted.
11. There had been commendable developments even after 2015, but the State of Emergency that was declared after the thwarted coup attempt of July 2016 and the overall deterioration in Turkey's human rights record had their destructive mark on the rights of the child.
12. Turkey underwent one periodic review of its implementation of the Convention on the Rights of the Child (CRC) in 2012, when Turkey's second and third improvement reports were presented. The next united 4th and 5th reports were invited to be submitted by 3 May 2017. The report was never submitted, and no one knows, whether it was ever prepared or not.

LEGAL FRAMEWORK RESTRICTIONS

13. Turkey is yet to sign and ratify the Rome Statute of the International Criminal Court and the Optional Protocol to the Convention on the Rights of Persons with Disabilities, both of which have implications for the rights of the child.

JOINT SUBMISSION BY THE LONDON ADVOCACY & HUMAN RIGHTS DEFENDERS e.V. FOR TURKEY'S UPR

14. Turkey's geographical restriction on the 1951 Refugee Convention is still in force. As of date, Turkey remains the only country that imposes a geographical restriction on refugees. This restriction has grave implications for the immigrant children that came to Turkey from a non-Western country.
15. The CRC has not been fully transposed into the national law and national law has not been harmonised with the CRC and other international child rights laws. Several articles of the Constitution need to be amended and almost 100 laws require improvement to come in line with the CRC.
16. One example is the accountability age of children. As a matter of fact, the CRC acknowledges that some of the younger than 18-year-olds do not possess this ability at all, however it empowers the states to determine the age limit to this end. This age limit, which is regarded as the unaccountability age limit vis-a-vis criminal law, is determined variously in different countries: in France 13, Germany 14, Netherlands 16, Belgium and Spain 18.¹ In Turkey this limit has been set as 12 years old (Turkish Criminal Code, Art. 31). Accordingly, Turkish law acknowledges that, a 12-year-old child could found, command or join an organization aiming "to alter the qualifications of the Republic, political, legal, social, secular, economic system specified in the Constitution, to damage the indivisible unity of the state with its territory and nation, to endanger the existence of the Turkish State and Republic, to weaken, destroy or seize the state authority, to abolish fundamental rights and freedoms, to violate internal and external security of the state, public order and public health". However, these are abstract concepts and cannot be comprehended without reaching a specific age limit and receiving a corresponding education.² This restriction in law is not only a theoretical one: In 2017 court cases have been filed against 713 children, who are 12 to 14 years old, with the allegation of founding, commanding or joining an armed terrorist group.³
17. Another area legal framework calls for improvement is the total banning of corporal punishment of children. Turkey supported recommendations to this effect in both the UPR cycles, but no progress has been made on this issue. Corporal punishment is still not explicitly banned in the home, alternative care settings, day care, schools, and penal institutions.⁴
18. Amended Article 10 of the Turkish Constitution introduced the concept of affirmative action & positive discrimination into the Turkish legal system. The Article dealt with children along with the elderly, disabled people, widows and orphans of martyrs, invalids and veterans to provide them with social assistance. Unfortunately, this constitutional article is not translated into laws and positive discrimination is yet to be defined by law.
19. Turkey is a signatory to the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence since 2014. There had been recent attempts by AKP politicians, including the daughter of the President,

¹ Yenisey, Feridun, Mukayeseli Hukuk Açısından Ceza Sorumluluğu Yaşı ve Ceza Sorumluluğu Olmayan Çocuklar ve Gençler İçin Ceza Hukukunda Uygulanan Alternatif Yaptırımlar, http://cocukhaklari.barobirlik.org.tr/dokuman/egitimbasvuru_basvuru/mukayeseli hukukta.pdf

² Balo, Yusuf Solmaz, "Terör Suçları Bağlamında 13-18 Yaş Grubu Çocukların Kusur Yeteneğinin Belirlenmesi," <http://tbbdergisi.barobirlik.org.tr/m2013-105-1263>

³ http://www.adlisicil.adalet.gov.tr/AdaletIstatistikleriPdf/Adalet_ist_2017.pdf

⁴ <https://endcorporalpunishment.org/reports-on-every-state-and-territory/turkey/>

calling for Turkey to withdraw its signature from the Convention, known as the Istanbul Declaration in Turkey, on allegations that the Declaration was destroying the basis of family by way of endorsing LGBT+ rights.⁵

SITUATION OF CHILDREN DEPRIVED OF LIBERTY WITH THEIR INCARCERATED MOTHERS

20. Under the State of Emergency that was declared after the coup attempt of 2016, more than a thousand schools and education institutions, including dorms and education charities were dissolved.⁶ This caused direct and indirect suffering to children, from the kindergartens to universities.
21. A more direct violation of the rights of the child was incarceration of pregnant mothers, or mothers who have given birth before the end of the six months period given by the law:
 - 21.1. Yasemin Yılmaz, a teacher, was detained on 5 July 2017 just after giving birth in İstanbul Esenyurt Eslife Hospital. Because of the trauma she suffered, she went dry. Although she had caesarean delivery and deep suture at her abdominal region, she was taken into custody following the delivery.⁷
 - 21.2. Nurcan Çelik Alagöz, who gave birth at Şanlıurfa Özel Metrolife Hospital, was detained just hours after the birth.⁸
 - 21.3. Havva Hamamcioğlu, volunteer of Gülen Movement, gave birth to a child in Yalova. Police detained first her husband Nazmi and then Ms. Havva in the hospital.⁹
 - 21.4. Sevim Çilek, a teacher, has a caesarean delivery in Ankara. Police attempted to detain her as an arrest warrant was issued against her for being a teacher in schools linked to Gülen Movement. As her medical conditions got serious, police started to keep watch in front of the door of the hospital room to be able to detain her.¹⁰
 - 21.5. Teacher Nazlı Mert, whose husband was arrested in Çorum, had to go to hospital when her birth pains began. Then her medical conditions got worse under the pressure of police who came to the hospital to arrest her. Subsequently, she was urgently taken into delivery room.¹¹

⁵ <http://kadem.org.tr/kadem-hakkindaki-iddialara-basin-aciklamasiyla-cevap-verdi/>

⁶ https://stockholmcf.org/wp-content/uploads/2018/07/The-Crackdown-On-Education-in-Turkey_june_2018.pdf

⁷ <https://kronos7.news/tr/yasemin-ogretmen-3-gunluk-bebegi-ile-dogumhane-kapisinda-gozaltina-alindi/>

⁸ <http://aktifhaber.com/15-temmuz/polis-dogumhane-kapisinda-anneleri-gozaltina-almaya-devam-ediyor-bu-sefer-adres-sanliurfa-h112334.html>

⁹ <http://www.tr724.com/polisin-dogumhane-kapisinda-anneleri-gozaltina-almaya-devam-ediyor-sefer-adres-yalova/>

¹⁰ <http://www.shaber3.com/dogumhane-kapisinda-yine-yeni-anneye-gozalti-icin-polis-bekliyor-haberi/1296196/>

¹¹ <https://kronos19.news/tr/dogumhane-onunde-gozalti-nobeti/>

- 21.6. Fatma Öztürk, a teacher, was detained on 11 July 2017 and then handcuffed to bed just a couple of hours after giving birth at Manisa Turgutlu Private Ege Umut Hospital.¹²
- 21.7. Feyza Yaylacı gave an early birth on 19 August 2017 at Ankara Memorial Hospital. Ms. Yaylacı who had a 33-week-premature baby was detained at the hospital.¹³
- 21.8. Hatice Avam gave a birth on 22 June 2017 at a private hospital in Denizli. Following the delivery, the police kept her with her baby behind the locked door of the hospital room and then detained.¹⁴
- 21.9. Aysun Özdemir, a teacher, had a caesarean delivery at Zonguldak Ereğli Private Ekomar Hospital. Following the birth, she was taken to the Directorate of Security and then she was transferred to a prison together with her 3-day-old baby.¹⁵
22. Although the relevant law clearly enshrines that a woman who undergoes puerperium or recently delivered cannot be detained, the above-mentioned unlawful practice is insistently maintained. The article 16(4) of the Law No 5275 on the Execution of the Penal and Security Measures reads as follows: "Execution of the imprisonment is postponed with regard to women who are pregnant or has given birth before less than six months. In case the baby dies or is given to the custody of someone else, the sentence is executed two months after the delivery." Article 116 of Law No 5275 prescribes that the mentioned rule applies to 'arrestees' as well.¹⁶ Considering expression in the article 16(4) of the law, the principle 'arrested suspects are innocent until being convicted' and article 116 of the law together with the article 19 of the Constitution and the article 5 of ECHR, it is proscribed to arrest women who are pregnant or have a baby under six months. A prohibition that was envisaged for persons convicted of a crime is definitely applicable with regard to the measures like pre-trial detentions. At this stage, the arrested person has not yet been found guilty of the alleged crime by a court and this person is still assumed innocent.
23. Unborn babies of women, who are arrested or convicted on the account of being a terrorist, have faced violations of rights also. Some mothers lost their babies due to poor health conditions of prisons and psychological exhaustion inflicted by arbitrary detentions. Justice Ministry always gives the response of "There is no official record on this issue" with regard to the questions about convicted or arrested women who lost their children in the prisons.¹⁷ However based on the news published on online newspapers and social media shares, those incidents have happened. Nurhayat Yıldız, an arrestee in Sinop prison, lost her twin babies in the 19th week of the pregnancy and on the 40th day of the detention.¹⁸ Another incident was conveyed by human rights activists, Ömer Faruk Gergerlioğlu. A pregnant woman, an arrestee in Konya Ereğli T Type Prison, lost her baby because of the negligence of the prison

¹² <http://romhaber.com/2017/07/09/manisada-insanlik-disi-olay-hastaneyeye-baskin-yapan-polis-yeni-dogum-yapan-anneyi-yataga-kelepceledi/>

¹³ <http://www.tr724.com/kuvezdeki-bebeginin-basindaki-anneyi-gozaltina-almak-icin-polis-kapida-bekliyor/>

¹⁴ <http://magduriyetler.com/2017/11/02/34-kadin-dogumhane-kapisinda-gozaltina-alindi/>

¹⁵ <https://kronos11.news/tr/ay-sun-ogretmeni-3-gunluk-bebegi-ile-tutukladilar/>

¹⁶ <https://www.tbmm.gov.tr/kanunlar/k5275.html>

¹⁷ <https://tr.sputniknews.com/columnists/201708151029702531-her-gun-en-az-1-cocuk-annesiyile-cezaevine-girdi/>

¹⁸ http://www.yeniasya.com.tr/gundem/ikiz-bebeklerini-cezaevinde-kaybetti_412876

administration. Although she said the prison administration that she did not feel her baby she was not taken to the hospital. When the situation was deteriorated, she lost her life in the ambulance while being hospitalized.¹⁹ The baby had died in womb and then it poisoned the mother. Yet there is no information about any investigation against the persons having neglect.

24. By the end of May 2019, seven hundred forty-three (743) children under the age of six were staying full-time or by turns in jails across Turkey with their incarcerated mothers. Though there are inconsistencies in numbers released by the Ministry of Justice, it seems that at least one hundred forty-nine (149) of these children were infants under a year old. The imprisonment of dependent children with their mothers has negative consequences for the child's development, especially impacting their right to flourish.
25. Serious problems affect these children significantly in terms of their physiological, psychological, and cognitive development. Many of them are in prisons with their mothers in precarious conditions where they are routinely denied the right to education and access to healthcare. The detention and arrest of their mothers causes psychological disorders in children.
26. Especially, those children who are detained or arrested as part of the government's crackdown on the Gulen Movement, are confronted with unlawful constraints. Their lives are shattered simply because of the families and the circumstances they were born into, suffering the cruel effects of the witch-hunt even as new-borns.
27. We particularly alarmed about the pattern of detaining women just before or immediately after giving birth. At least 50 cases of women who had given birth just prior to or just after being detained and arrested have been documented. The new-borns were either detained together with their mother or violently separated from them.
28. Additionally, a significant number of infant deaths have occurred in the aftermath of the attempted coup due to the harsh conditions imposed on the mothers before and during the pregnancy and in the immediate postpartum period.
29. In almost all cases, the mothers of the new-borns were arrested as associates of their husbands —who were the Turkish government's primary suspects for connection to the Gulen Movement, without any specific evidence supporting charges against themselves.
30. By targeting the family members of the primary suspects, particularly wives and children, the Turkish Government executes the illegal standard of guilt by association and collective guilt.
31. There is strong evidence that babies are held in inadequate conditions with their mothers, a situation which constitutes ill-treatment. Many women report being mentally unwell and unable to breastfeed or to look after their children who are imprisoned with them.
32. These children deprived of liberty are exposed to torture, cruel, inhuman or degrading treatment. They face serious risks of health complications, stunting and even death.

¹⁹ <http://www.tr724.com/ohalde-cezaevinde-cinayet-gibi-ihmal-hamile-kadin-karnindaki-bebegi-hayatini-kaybettiler/>

JOINT SUBMISSION BY THE LONDON ADVOCACY & HUMAN RIGHTS DEFENDERS e.V. FOR TURKEY'S UPR

33. Republican People's Party's report on a particular prison (Bakirkoy) contains the following findings with regard to the violations and restrictions in prisons:²⁰

"It was witnessed that physical conditions of prisons are not adequate for children who stay there with their mothers, children are deprived of a separate bed and blanket, their parents cannot go to kindergartens and a decent parent-teacher relationship does not exist. It was also conveyed that political prisoners are pressured, women political prisoners are not allowed to celebrate Mother's Day or Women's Day like the other women prisoners, women prisoners with children are not aware of their rights, political prisoners' visit to infirmary is restricted to urgent situations. Beds are for single persons and a separate bed are not given to children. There is no table and chair for children. In prison there is no live flower. They are trying to make flowers from tea plants, egg shells, rinds of fruits and cotton."

DE FACTO STATELESS: DENIAL OF PASSPORTS/ NATIONAL IDs TO NEWBORNS

34. The severe effects of being born stateless include facing a lifetime of discrimination, strong challenges in development and fulfilling ambitions and dreams for the future.
35. There are more than 124 documented cases of denial of passports and nationality IDs for new-borns born to Turkish citizens living abroad in 16 countries as of April 2019.²¹
36. Parents are not able to transfer national citizenship to their children because of the denial of consular services and related deprivations for Turkish citizens living abroad and are somehow associated with the Gulen inspired Hizmet movement.
37. This pattern is a clear denial of the child's right to acquire nationality under Article 7 of the Convention on the Rights of the Child.

RECOMMENDATIONS

The co-authors call upon the Government of Turkey to significantly improve the overall conditions for the rights of the child in the country. In particular, the government of Turkey must:

1. Have the best interest of the child always a primary consideration, in particular those dependent children in places of deprivation of liberty;
2. Immediately end its pattern of detaining or arresting women just before or immediately after giving birth;

²⁰ <http://sendika63.org/2016/04/chpden-bakirkoy-cezaevi-raporu-cezaevi-kosullari-cocuklar-icin-uygun-degil-342031/>

²¹ Among others see: <https://www.turkishminute.com/2017/07/17/report-76-newborns-stateless-as-turkey-denies-passports-over-parents-gulen-links/> and http://www.institutesi.org/policy-brief-Turkey-arbitrary-deprivation-of-nationality_2017.pdf and

JOINT SUBMISSION BY THE LONDON ADVOCACY & HUMAN RIGHTS DEFENDERS e.V. FOR TURKEY'S UPR

3. Ensure that children held with their imprisoned mothers are never treated as prisoners;
4. Make the environment in which children are detained should be as close as possible to conditions outside prisons;
5. Prefer non-custodial measures for pregnant women and those with dependent children;
6. Ensure that no child, regardless of who his/her parents are, is deprived of his or her right of access to health care services. Health and other services for children of individuals dismissed or deprived of their liberty must be available and accessible.
7. Provide citizenship to all babies born to Turkish citizens;
8. Ensure that all legal, administrative, and practical measures are taken to end discrimination of children whose parents have been targeted due to alleged links to the Gulen Movement;
9. Define children in Constitution as anyone under 18 with evolving capacities to exercise their own rights as enshrined in the CRC;
10. Harmonise other laws to be compatible with the CRC, its protocols and other international child rights law, especially the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse and Cybercrime Conventions;
11. Ban corporal punishment in all settings. Introduce a clear article banning all forms of violence against children in all settings including home, school, alternative care settings, early childhood care and education settings, penal institutions;
12. Increase the age of criminal responsibility from 12 years of age to at least 15.