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Advocating Sexual Rights

The Campaign for the Reform of the Turkish Penal Code

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Over the last decade, the women's movement has campaigned successfully for significant legislative reforms to enhance women's human rights in Turkey. The adoption of a protection order law against domestic violence in 1998, the reform of the civil code to grant women full equality within the family in 2001, and, most recently, the reform of the penal code in 2004 to safeguard women's sexual, reproductive and bodily rights have all been the result of vigorous campaigns by the Turkish women's movement, often against a backdrop of resistance from conservative right-wing governments. The common characteristic of all these campaigns has been that the women's movement has united its forces, and different groups from different regions of Turkey, sometimes with differing visions, have acted in unison to carry out these campaigns. This case study focuses on our experience with the most recent of the above-mentioned campaigns, the three-year Campaign for the Reform of the Turkish Penal Code from a Gender Perspective (2002-4), initiated and coordinated by Women for Women's Human Rights (WWHR)-New Ways (NW). This resulted in a holistic reform of the Turkish penal code, with over thirty amendments protecting the sexual and bodily rights of women and girls.

In 2002, immediately following the reform of the Turkish civil code, WWHR-NW initiated the new campaign. Drawing momentum from the successful civil code campaign, we felt that the women's movement could seize this opportunity to ensure that the penal code reform

resulted in the advancement of women's rights and gender equality. The late 1990s and early 2000s have been a period during which a number of legislative reforms were pursued by the government as part of the European Union (EU) accession process. Yet we were well aware that it would take strong and sustained pressure from the women's groups to make women's human rights a priority for Parliament.

Even though civil codes and constitutions are generally considered the primary domains in which women's rights are regulated in national contexts, penal law is in fact also of crucial significance to women's human rights and gender equality. It governs such important issues as violence against women, sexual violence and the regulation of the rights and freedoms of women in the domain of sexual, bodily and reproductive rights. We knew that it was in the penal code that women's human rights violations and discrimination were recognized as actual breaches of law, despite the egalitarian principles upheld in the Turkish Constitution and the newly reformed Civil Code.

The Working Group on the Turkish Penal Code

In 2002, WWHR–NW set up a Working Group on the Turkish Penal Code. This brought together NGO representatives, lawyers, jurists and academics to analyse the current penal code and the draft of the new penal code. Considering the code from a gender perspective, they aimed to determine which provisions were discriminatory and how they should be amended. Three attributes of the working group were later recognized as central to the success of the campaign: its geographical representation; its combination of women's demands with legal perspectives and know-how; and the holistic focus of its methodology.

Members of the working group came not only from Ankara and Istanbul, the two major cities in Turkey, which usually dominate national campaigns, but also from eastern, western and southern Turkey. The members of the working group, mostly bar association and NGO representatives, were active in their regions and knew the legal difficulties faced by women in Turkey's different cities. This provided us with the opportunity not only to compare cases and determine the shortcomings of the current law, but also to debunk claims often made by conservative forces that the women's movement was biased in favour of women in cosmopolitan urban settings and did not reflect the standpoint of women in Turkey as a whole.

The composition of the working group was another major advantage. It included criminal lawyers and academics who were familiar with the intricacies of a legislative system riddled with loopholes for discrimination against women; there were women's groups' representatives with strong feminist perspectives and backgrounds and extensive experience in the field; and there were also lawyers who worked in the women's rights centres of bar associations, dealt with cases on a one-to-one basis, and thus were well aware of the issues of implementation.

During 2002, WWHR-NW organized the working group sessions on a monthly basis. Initially the group analysed the law and the proposed draft, concluding that a holistic approach was necessary to overcome gender inequalities. It was realized that the same patriarchal discriminatory approach that denied women ownership of their bodies, and sexuality, was inherent in the draft law, and that its transformation could only be effected by reforming the penal code's entire philosophy. This entailed shifting the focus of the draft law from one that strives to regulate and control women's sexuality, to one that safeguards sexual rights. Sexual crimes were inadequately named and punished, and were based on the constructs of honour, chastity and so on, while crimes such as honour killing, rape and abduction were legitimized through the sentence reductions allowed for by some provisions. After identifying the articles that legitimized human rights violations and discrimination, the working group proceeded to discuss how these articles should be amended. During this period we analysed international documents and the criminal codes of different countries to help us in the formulation of our amendments. Following research on each article pertaining to us, we formulated a word-by-word amendment, including justifications to explain our own points of view.

The year-long initiative, which represented the first phase of our campaign, was a challenging one. Neither the current penal code nor the draft law recognized sexual crimes as crimes against individuals: they were classified as 'crimes against society', under the sub-section 'crimes against family order and traditions of decency'. In order to overcome the inherent discrimination and understanding that women's bodies and sexuality were commodities belonging to men, family and society, we realized that it was necessary to transform the entire philosophy of the draft law, necessitating an extremely thorough analysis of the complete text.

It was during this process that disagreements surfaced within the working group itself regarding how to formulate amendments. The issues with which we dealt – whether the age of consent, definitions of sexual assault, the rights of sex workers, or discrimination based on sexual orientation – were raised by the different priorities within the women's movement itself and had not previously been of concern or relevance to all members of the group. Consensus thus had to be reached among the working group's own members prior to proceeding with the campaign. This important process was carried out through a series of discussions that considered the perspectives and sensitivities of different group members and sought ways and compromises to resolve them. It provided us with the opportunity to internalize our own demands and stood us in excellent stead when we needed to reaffirm our position as a diverse working group. We thus found ourselves in a stronger position as we had already settled internal differences, and negotiated and answered some of the arguments with which we would subsequently be faced. In particular we were ready to answer the charge that our demands were 'marginal', 'not of concern to women in general', or 'too progressive for society'. We compiled these demands and our word-by-word formulated amendments in a report entitled *The Turkish Penal Code Reform from a Gender Perspective: Women's Demands and Proposed Amendments*. The report, printed by WWHR–NW,¹ was widely disseminated to parliamentarians, NGO representatives and the media by the end of 2002.

Backlash and the launch of a national campaign

We felt we had everything under control and were prepared for the reform process, as the parliamentary commission was only just beginning its review process. We had all our demands ready and formulated. But we were faced with a backlash. Following a political crisis, the three-party coalition led by social democrats resigned and early elections were held in November 2002. A religious, right-wing government assumed power with an overwhelming majority. We presented our report to the new members of Parliament, but our repeated attempts to get an appointment with the Minister of Justice were systematically declined. The new government not only completely disregarded our demands and proposed amendments – the provisions of the new draft law pertaining to women being lifted almost verbatim from the old

Turkish penal code – but also resisted consultation with *any* experts or groups, ignoring our demand for a review of the draft law prior to its submission to Parliament for approval.

In the face of this backlash and resistance, we had to decide how to proceed with our campaign and develop new strategies. The working group initially considered postponing the campaign, or at least withdrawing some of those demands considered more controversial from the government perspective. However, we finally decided against both these compromises and resolved to persist with all our demands and proposals. We realized that unless we took a firm stand and demanded our rights, we would be providing leeway for even more discrimination and rights violations.

We decided to launch a public campaign and broaden the working group into a national platform, so as to place immediate pressure on the new government. The working group became the Platform for the Reform of the Turkish Penal Code, a vehicle for over 30 NGOs countrywide: women's NGOs, human rights associations and lesbian, gay, bisexual and transgender (LGBT) groups. The public campaign was launched in May 2003 with a press conference at which we announced our demands for inclusion in the draft penal code law and drew attention to the continued legitimization of human rights violations and the government's reluctance to respond. The Platform was also publicized, emphasizing that diverse groups throughout Turkey were coming together to advocate for their rights.

It was through the Platform's lobbying efforts that the resistance of the government was gradually broken down. During 2003–4 it closely monitored the work of the Parliamentary Justice Sub-Commission while it was reviewing the draft law, and a number of conferences, meetings and press conferences were held. The Platform received government recognition, and the Minister of Justice, the Head of the Justice Commission and the Minister of Women's Affairs attended the high-level conference organized by WWHR–NW in December 2003.

The efforts of the Platform continued at both the national and local levels. While some members were in touch with Parliament on a daily basis and continuously lobbied the government, the opposition party, EU officials and the Justice Sub-Commission, other Platform representatives organized seminars and press conferences in their own towns and cities.

A variety of strategies were employed. These included finding allies

in the Sub-Commission and the opposition party, the use of a press mailing list to keep the media informed of developments, and the issuing of press releases as and when different pertinent articles in the law were discussed. We also took advantage of statements made by conservative jurists and government officials to further our cause. For example, 'Marrying the rapist was a reality of Turkish society', in reference to the provision granting rapists sentence reductions based on the notion that through marriage the woman's 'honour' was saved; and how 'Killing in the name of honour could be justified', in reference to sentence reductions for honour killings. These statements, as well as the accusations by the far-right media painting us as 'immoral', 'indecent' and 'aiming to destroy the moral fibre of society', actually benefited our cause, as they provided us with potent campaign slogans around which we could build resistance and gain public support.

Our intense efforts bore fruit and most of our demands were accepted by the Justice Sub-Commission and included in the draft law. Even our landmark proposal to criminalize discrimination based on sexual orientation was included. One of the unique aspects of the Platform, and a first in Turkey, was that it brought together the women's and the LGBT movements. This was largely due to WWHR-NW's efforts to integrate LGBT groups in the Platform, and the fact that the working group had previously agreed to include and advocate for the proposed amendment on sexual orientation. Even though this provision was later removed from the draft law due to an intervention by the Minister of Justice, the fact that representatives of the LGBT movement were actually able to voice their demands for legislative change before Parliament was an important milestone. As the review of the Justice Sub-Commission was concluded in May 2004, most of our demands were accepted. This was a major achievement considering where we had started back in 2002.

However, the struggle was hardly over. We had to keep advocating right through the final review of the Justice Sub-Commission, to hold the ground we had gained and press for the inclusion of our remaining demands. Even though we succeeded in sustaining the revised draft law, two important reforms were not accepted: the decriminalization of consensual relations of minors between ages 15–18; and the removal of the provision that criminalized sexual orientation.

When voting on the draft law was to take place in Parliament in September 2004, women throughout Turkey mobilized to push for our

remaining demands. Platform members were joined by other platforms and women's groups from throughout Turkey to push for the remaining demands in a national demonstration on the eve of the vote. The last-minute proposal by the government to recriminalize adultery – which had not been a criminal offence in Turkey since 1998 and only served as grounds for divorce – completely diverted public attention and overshadowed our principal demands. We thus found ourselves not only advocating for our remaining demands, but also lobbying for the withdrawal of the adultery proposal. The fierceness of the struggle led to a postponement of the vote in the General Assembly before the government's proposal was eventually withdrawn under pressure from the women's movement and an adverse reaction from the European Union.

Campaign results: sexual and bodily rights safeguarded

The draft law, containing over 30 amendments safeguarding sexual and bodily rights of women in Turkey, was finally passed on 26 September 2004. The new Turkish Penal Code, which states in its first article that it aims 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 honour killings; eliminates all references to patriarchal concepts such as chastity, honour, morality, shame or indecent behaviour; abolishes previously existing discriminations against non-virgin and unmarried women; abolishes provisions granting sentence reductions in cases of rape and abduction; criminalizes sexual harassment in the workplace; adequately defines and penalizes the sexual abuse of children; and considers sexual assaults by security forces as aggravated offences.

The Campaign for the Reform of the Turkish Penal Code from a Gender Perspective was very successful. Even though a few of our demands were not included in the new penal code, we succeeded in transforming its language and philosophy so as to safeguard sexual and bodily rights. Given the prevalent conservative climate in Turkey, this represented a major achievement for the women's movement. However, the process has been challenging, at times draining. Monitoring the implementation of the law, and raising awareness of the new rights it safeguards, remains a further challenge.

Obstacles and strategies

In the course of an extensive three-year campaign, internal and external challenges are inevitable. While persistently remaining steadfast and united against resistance from external forces, the Platform had simultaneously to sustain both its unity and the campaign's momentum. As the coordinating organization and campaign secretariat, WWHR–NW played a crucial role in linking and coordinating the actions of the Platform organizations. The length of the campaign sometimes made it difficult to sustain both public attention and the Platform's strength. Nonetheless, efforts were facilitated considerably by the campaign's solid foundation, and the fact that its demands were formulated on the basis of consensual principles that enabled each group within the Platform to pursue advocacy efforts independently around their own lines of work.

The diversity of the groups in the Platform for the Reform of the Turkish Penal Code was highly advantageous and contributed significantly to the campaign. The involvement of organizations from different regions of Turkey, with different visions, provided us with a much stronger case when claiming representation of women's demands throughout Turkey. Furthermore, when approaching parliamentarians or addressing the press, having a platform to support our demands proved to be a major driving point, as no one could rightfully dismiss our demands as 'marginal'. Indeed, when the Prime Minister referred to the demonstration on the issue of adultery prior to the voting on the penal code as 'just the reaction of some marginal women', his comment met with a hostile reception in many quarters. The group demanding further amendments and rejecting the proposal to recriminalize adultery was made up of over 80 organizations and seven platforms from all over the country.

The fact that we started planning early and had clearly defined our objectives was also a major advantage for the campaign. It provided us with a head start, and enabled us to deal more effectively with the last-minute backlash. The planning also meant that we were able to be proactive – formulating our demands before the draft law was finalized – rather than reactive. When the penal code was on the agenda of Parliament's General Assembly and the vote was imminent, we came across many other protesters who discovered to their cost that it was already too late to make any changes.

Having a consensus from the outset meant that we were able to proceed resolutely and approach other groups with concrete propositions. The early resolution of differences within the movement was also vital to the success of the campaign, in which leadership and preparatory work were essential in bringing together heterogeneous groups. Without wide and diverse support it would have been much more difficult to confront the enormous task we faced, increasing the likelihood of failure. As mentioned above, the campaign was also significant in that it brought the women's and LGBT movements together in advocacy for the first time. While the LGBT movement gained visibility and took a major step towards advocating for its own rights, the women's movement became aware of issues of discrimination based on sexual orientation and was thus able to broaden its own agenda. The campaign not only resulted in major advancements for women's rights, but also created a useful model for future campaigns in Turkey. Our determination to promote women's human rights and gender equality was reaffirmed by bringing together so many groups. Even though it was challenging for WWHR-NW to assume responsibility for coordination activities over such a long period, we fully experienced the multiple benefits of acting in unison and coming forward with concrete demands, and we came to understand the importance of standing firm on these. In learning to resolve conflicts among ourselves during the process, we also came to understand the need to seek consensus in pursuing our demands in other forums. Finally, we are aware that implementation of the new penal code to safeguard women's rights as equal to men's is not the end of the road. We will continue to press our demands in other spheres of civil society for holistic reforms to eliminate women's human rights violations and ensure gender equality in Turkey.

NOTE

- 1 Document available only in Turkish.