



NGO Submission to the United Nations Universal Periodic Review

for the Fourth Cycle of Turkey

Prepared and submitted by

Diyarbakır Bar Association

About Diyarbakır Centre for Children's Rights;

Established on 12.11.2012 within the Diyarbakır Bar Association, the Centre for Children's Rights implements theoretical and practical work to recognize, protect, implement, and develop children's rights. The Centre provides counseling to children and their families within the judicial system, initiates strategic lawsuits, and conducts regular training and awareness activities. The Penitentiary and Correctional Facilities Working Group within the Centre conducts rights monitoring activities for detained and convicted juveniles. As part of this effort, advocacy work is carried out based on reports prepared from regular meetings with juveniles held in closed penitentiary institutions in Diyarbakır.

I. About the report

1. This report has been prepared by the Diyarbakır Bar Association Child Rights Centre (the Centre) with a thematic approach to present the current situation of girls held in detention and imprisonment in Turkey ahead of the 4th cycle Universal Periodic Review (UPR). As will be explained below, Turkey has accepted the recommendations on children's rights, women's rights and detention institutions in the 3rd cycle and on improving children's and women's access to justice, but has not yet taken concrete steps to implement these recommendations¹. The report assesses the level of implementation of the recommendations and provides information and recommendations on the current situation of girls in detention and imprisonment.

2. The report covers the findings of 15 interviews with 9 girls detained in Diyarbakır Women's Closed Penitentiary between September 2023 and January 2024 and the results of desk research². The interviews were conducted by 2 lawyers, at least 1 of whom was a female lawyer. The outputs of the interviews were anonymised and their contents were analysed and turned into a report.

3. The report includes findings and recommendations under the following headings:

- General framework for detained and convicted girls
- Conditions of Detention
- Torture and Ill-Treatment Practices

II. General Framework

4. Detained and convicted girls in Turkey experience a state of multiple vulnerability stemming from being a child, a woman and being in prison. In the case of Diyarbakır, where this report was prepared, being Kurdish is added to this intersectionality; this situation causes children to be exposed to multiple forms of discrimination and to experience problems in accessing justice.³

5. In Turkey, the age of criminal responsibility is 12 years. In cycle 3, recommendation from Spain to raise the age of criminal responsibility was noted (45.255). This issue was criticised by the United Nations Committee on the Rights of the Child (UNCRC) in 2023 and by the United Nations Committee against Torture (CAT) in its concluding observations on Turkey in 2024, emphasising the low minimum age of criminal responsibility.⁴

6. The prohibition of arrest for children in Turkey has a very limited structure. Although the starting age of criminal responsibility is 12 years old, it is regulated that no arrest warrant can be issued for children under the age of 15 for acts that require imprisonment with an upper limit of imprisonment not exceeding five years.⁵ This article may lead to arbitrary practices since the type of offence and the amount of punishment have not yet been determined precisely during the trials and the upper limit of 5 years of imprisonment is very limited, and children from the age of 12 can be arrested. In the Human Rights Action Plan announced in 2021, it was announced that child-specific protection mechanisms would be put into practice within 2 years in order to prevent the first-time offences committed by children under the age

of 15 from being subject to investigation, except for some serious offences.⁶ However, these changes have not been made and the risk of arrest of children under the age of 15 has been maintained.

7. Although detained and convicted girls in Turkey are deeply affected by the problems related to the justice system, the work carried out on these children is extremely limited. According to the statements of the Ministry of Justice, as of 2 September 2024, there are 158 girls in penitentiary institutions, 103 of whom are detained and 55 of whom are convicted. For juvenile males, the number of detainees is 2,258 and the number of convicts is 1,071⁷. In cycle 3, Australia's recommendation (45.139) to end the excessive use of pre-trial detention was accepted by Turkey, but the data shows that pre-trial detention is frequently used and the number of pre-trial detainees is 3 times the number of convicted children.

8. The data only shows the number of girls in prison as of a certain date. It does not show how many girls have been arrested in the last year. It also does not show data on things like socio-economic status, disability, ethnic origin, or whether a girl has been in prison before.

9. Criminal judges of peace with general jurisdiction make decisions on the detention of children at the investigation stage. In the prosecution phase, juvenile courts are legally responsible, but there are not enough of them, so almost half of the children (80,770 children) are tried in adult criminal courts.⁸

10. Recommendations regarding the above findings are as follows:

- a. Article 31 of the Turkish Penal Code should be amended within 1 year to raise the age of criminal responsibility from 12 to 15.
- b. Article 21 of the Child Protection Law should be amended within 1 year to extend the prohibition of arrest to all children under the age of 15.
- c. A training programme on children's rights and gender equality should be developed and implemented for criminal judges of peace who are authorised to issue arrest warrants at the investigation stage.
- d. The Ministry of Justice should announce the number of children arrested and the number of children in institutions on a monthly basis, including information on gender, age, ethnicity, race, immigration status, socioeconomic status, disability, geographical location, type of offence and its repetition, etc.⁹
- e. The number of juvenile courts should be increased, at least 1 juvenile court should be opened in each judicial district.¹⁰

III. Conditions of detention

11. In Turkey, there are big differences between the places where children who have been arrested or convicted are sent. The law says that children in jail should be put in places that are just for them. If there are no such places, they should be put in places for children. If there are no separate sections, girls are put in a section of women's closed penitentiary institutions or in sections for them in other closed penitentiary institutions.¹¹ Children who have been convicted can go to education houses to get an education. This is not fair to children who have

not yet been convicted. The trial periods are long¹², so many children cannot get an education until their sentences are finalised.

12. Turkey has nine closed and four open institutions for detained and convicted children.¹³ There is only one institution for convicted girls across the country. There are no specialised institutions for girls, so they are kept in sections of men's or women's penitentiaries. This means that girls in correctional institutions are not getting the care they need and are being treated unfairly because of their gender. The Special Rapporteur's report also shows that women and girls in closed institutions in Turkey are not treated fairly.¹⁴ UNCAT says that children in Turkey are not treated well and that girls are affected the most.¹⁵ UNCAT also says that children in Turkey should not be locked up with adults and that their conditions should meet international standards.¹⁶

13. The Centre interviewed children at the Diyarbakır Women's Closed Penal Institution between September 2023 and January 2024. They found that there are two wards for children, with between two and six children in each. Girls are kept alone for long periods until another child joins them. The administration changes the wards of children when there is violence between peers. This creates a risk of isolation.

14. This study in Diyarbakır found that many children in prison return after release. Arrest is not used as a last resort, and children cannot get the support they need to reintegrate. The lack of alternatives leads to more juvenile crime.

15. Turkey accepted the recommendations of the 3rd cycle of the UPR on improving education and in particular girls' access to equal opportunities.¹⁷ Due to the legal situation in Turkey, it is not possible for girls in detention to benefit from formal education¹⁸. A study by the Centre in Diyarbakır found that young women in adult prisons could not take part in enough activities. These activities were not child-specific and the staff did not have the right training. Also, girls have more limited access to their rights than juvenile males in the Diyarbakır Children and Youth Closed Penal Institution. Children could not access any activities or books in Kurdish.

16. The girls also talked about how they could not always contact their families by phone, or send them photos or letters. They also said that they could not always watch TV or listen to the radio.

17. The girls also said they had problems with hygiene and food. The institution is not heated enough, has dirty ventilation and doesn't give children enough dishwashing detergent, liquid soap, shampoo, detergent and hygienic pads. Meals are not prepared hygienically. Seasonal fruit and other extra foods are not provided. Special diets are not catered for. Meals are not suitable for children. The food is not prepared to suit their tastes, breakfast is not included, prices are high, desired products are not available, and families with low incomes cannot afford to feed their children from the canteen.

18. The Centre found that the girls were unable to access treatment, could only go to the infirmary once a month, and were always accompanied by correction officers. The doctor did not examine the children and gave them medication. The medication was delivered late. One child who needed glasses could not get them because they were expensive.

19. Recommendations regarding the findings on conditions of detention are presented below:

- a. The Articles 10 and 11 of the Law on the Execution of Sentences and Security Measures should be changed to make sure that children in prison are kept in places that are just for them and run by people who know about looking after children. These places should open within a year.
- b. In the same direction, a gender-sensitive post-release support unit should be established to ensure the safe return of children to society after release.
- c. Girls in detention should be able to access education, activities and the library. Trainers and administrators should share content that is suitable for children. Training and activities for girls should not reinforce gender roles. They should also include things like computer use, accounting, financial literacy and agriculture.
- d. Children's access to the aforementioned services in their mother tongue should be ensured and the reservations to Articles 17, 29 and 30 of the UNCRC should be lifted immediately.
- e. The time limits on calls for detained children should be extended, technical problems solved, letters sent privately, and children given access to age-appropriate TV and radio.
- f. The distribution of food, heating, ventilation and clothing should be structured according to the needs of children and women. Hygiene kits containing quality products should be provided regularly and free of charge to every detainee. Wards should be regularly cleaned. To address menstrual hygiene problems in women's institutions, toilets, hygienic products, waste systems, clean and hot water and trained staff should be provided.
- g. Prison conditions for women and children should be improved. They should have access to healthcare¹⁹, including routine health checks for children. Medicines should be delivered to children quickly and the treatment of children with chronic diseases should be monitored.

IV. Torture and Ill-Treatment Practices

20. Turkey accepted the recommendations of the 3rd cycle of the UPR on the prevention, investigation and punishment of torture and ill-treatment and monitoring of detention institutions²⁰. Recommendations on ensuring the well-being of adolescents and their protection from violence were also accepted.²¹ The Centre found that girls in detention were subjected to torture and ill-treatment.

21. The Centre learned from interviews with detained girls that four out of nine girls were strip searched. The girls said the search was done at the entrance to the prison. They were not told why, had to take off all their clothes, were not given a gown, were asked to sit and stand, and the same was done to other inmates. The children's testimonies show that strip searches in

Diyarbakır Women's Closed Penitentiary are unjustified and routine.²² All convicts and detainees are subject to the same strip search regulation.

22. The Diyarbakır Bar Association filed a criminal complaint about the strip searches.²³ They asked that the suspects be suspended from duty during the investigation and that the investigation be conducted safely. The Diyarbakır Chief Public Prosecutor's Office asked the Institution for an explanation. The Penitentiary Institution said that searches are done according to the law. They are done when people enter and leave the institution. The searches do not violate human dignity or the law. The Diyarbakır Chief Public Prosecutor's Office accepted the institution's report and decided not to investigate. This type of decision is made when it is clear that the act does not break the law. This situation allows people to get away with breaking the law and could become a normal way of doing things that violates people's rights.²⁴ The state of vulnerability created by the girls' imprisonment is made worse by unlawful strip searches. The Bar Association's allegations were not investigated. The suspects were not prosecuted or punished. They were not suspended from their duties despite working with the girls. The children were exposed to the risk of reprisals.

23. Interviews showed that correction officers treat children as adults and do not consider their gender. 5 out of 9 children said officers did not help when they fought, insulted them, hurt them with their hands or used handcuffs. The officers lack training on the prohibition of torture and ill-treatment, children's rights, communication with children and gender equality.

24. Turkey has problems monitoring closed institutions. In the 3rd cycle of the UPR, Turkey accepted recommendations to make its human rights and equality institution (TİHEK) and ombudsman's office (KDK) more effective.²⁵ The UNCRC and UNCAT also said that monitoring of closed institutions should be improved and that visits should happen regularly.²⁶ The Centre sent a report to TİHEK and KDK on 10 September 2021. It was about the rights of children at the Diyarbakır Juvenile and Youth Closed Penal Institution. The application said that children were beaten, treated badly, and threatened. They were also denied basic rights like food, healthcare, and education. TIHEK did not tell the Diyarbakır Bar Association about the application or what happened as a result. The KDK asked the Ministry of Justice questions after the application. It then made a 'friendly settlement decision' based on the Ministry's answers. The KDK also visited the Diyarbakır Juvenile and Youth Closed Penal Institution after the application.²⁷ No contact was made with the Bar Association. The applications were not effective and no action was taken to prevent rights violations. The KDK is an institution to which children can apply, but few do. Many applications come from penitentiary institutions, but the number of recommendations and friendly settlement decisions is quite low.²⁸ The KDK has not published a special report on human rights violations in Turkey.²⁹ Neither institution provides services in Kurdish, the language of most children in Diyarbakır.

25. Recommendations on torture and ill-treatment are presented below:

- a. Child-friendly application mechanisms should be established to prevent, effectively investigate and punish torture and ill-treatment in institutions where detained and convicted children are held.

- b. Torture investigations must be done right. All public officials should get training on the new Istanbul Protocol. The Law on the Prosecution of Civil Servants and Other Public Officials should be changed. Correction officers and penitentiary administrators should not need permission to be investigated.
- c. During investigations, mechanisms should be put in place to ensure that suspects are temporarily suspended from duty and to protect and empower children from reprisals.
- d. Strip searches of children should be banned and prevented in the Regulation on the Administration of Penal Institutions and the Execution of Sentences and Security Measures.
- e. All staff working in institutions where children are held should take training on children's rights, gender equality and human rights. Staff who have not completed this training should not work in these institutions. Training should be ongoing and staff should be supervised.
- f. Legal arrangements should be made to enable bar associations and non-governmental organisations to make regular and unannounced visits to institutions where detained and convicted children are held.
- g. Information should be provided about the KDK and TIHEK through meetings to be held in penitentiary institutions and materials such as posters to be distributed, and the institutions should be introduced to children.
- h. Application forms and decision texts of the KDK and TIHEK should be prepared in languages other than the official language.
- i. The KDK and TIHEK should exercise their powers to conduct examinations and prepare reports at least once a year in institutions where detained and convicted girls are held.

¹ A/HRC/44/14 and A/HRC/44/14/Add.1, recommendations 45.136 (Azerbaijan), 45.137 (Pakistan).

² Diyarbakır Bar Association Child Rights Centre, Report on Rights Violations and Conditions of Detention of Girls Detained in Diyarbakır Women's Closed Penitentiary, 24.01.2024 Online: <https://www.diyarbakirbarosu.org.tr/public/uploads/document/cocukraporson-1707240705.pdf>

³ For further information, see Report of the United Nations Special Rapporteur on violence against women and Girls, its causes and consequences, on her visit to Turkey: A/HRC/53/36/Add.1

⁴ CAT/C/TUR/CO/5 Paragraph 14/f

⁵ Child Protection Law No. 5395 Article 21

⁶ <https://insanhaklarieylemplani.adalet.gov.tr/resimler/insanhaklarieylemplani-ENG.pdf>, Activities 8.1.h.

⁷ Related statistics: <https://cte.adalet.gov.tr/Resimler/Dokuman/4092024101207istatistik-5.pdf>

⁸ Related statistics:

https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/22042024115644ADAlet_ist-2023CALISMALARI59.pdf Table 2.1

⁹ CRC/C/TUR/CO/4-5, Paragraph 12

¹⁰ CRC/C/TUR/CO/4-5, Paragraph 50/c

¹¹ Articles 10 and 11 of the Law No. 5275 on the Execution of Criminal and Security Measures.

¹² Related statistics:

https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/22042024115644ADAlet_ist-2023CALISMALARI59.pdf Table 10 and Table 19

¹³ <https://cte.adalet.gov.tr/Home/SayfaDetay/cik-genel-bilgi>

¹⁴ A/HRC/53/36/Add.1

¹⁵ CAT/C/TUR/CO/5 Paragraph 14/f

¹⁶ CRC/C/TUR/CO/4-5 Paragraph 50/g

¹⁷ A/HRC/44/14 and A/HRC/44/14/Add.1, recommendations 45.203 (State of Palestine), 45.211 (Malaysia), 45.213 (Montenegro), 45.214 (Nicaragua), 45.73 (Portugal), 45.59 (Bangladesh)

¹⁸ Law No. 5275 on the Execution of Criminal and Security Measures Article 76

¹⁹ A/HRC/53/36/Add.1

²⁰ A/HRC/44/14 and A/HRC/44/14/Add.1, recommendations 45.140 (Switzerland), 45.130 (Italy), 45.109 (Nicaragua), 45.107 (Ghana), 45.106 (Fiji), 45.122 (Egypt), 45.38 (Estonia).

²¹ A/HRC/44/14 and A/HRC/44/14/Add.1, recommendations 45.258 (Dominican Republic), 45.257 (Cuba).

²² Article 34 of the Regulation on the Administration of Penal Institutions and Execution of Criminal and Security Measures was amended by Article 14 of the Presidential Decree No. 4773 published in the Official Gazette dated 12/11/2021 and numbered 31657. Thus, the phrase "*in the presence of serious indications and in the event that it is impossible to determine this in any other way,*" was added to Article 34 on strip search, and the phrase "*strip*" was changed to "*detailed*". However, as can be seen from the interviews conducted by the Centre, this amendment was not sufficient to prevent violations of rights in practice.

²³ Notice No: 2024/267, Decision on Non-Investigation No: 2024/444

²⁴ Article 158 of the Code of Criminal Procedure No. 5271

²⁵ A/HRC/44/14 and A/HRC/44/14/Add.1, recommendations 45.23 (Sri Lanka), 45.24 (Togo), 45.26 (Turkmenistan), 45.27 (Ukraine), 45.28 (Uzbekistan), 45.29 (Bangladesh), 45.31 (Chile), 45.32 (Comoros), 45.33 (Zambia), 45.41 ((Mauritania), 45.42 (Kenya), 45.43 (India), 45.44 (France), 45.45 (Afghanistan), 45.46 (Luxembourg), 45.47 (Nepal), 45. 48 (Niger), 45.49 (Senegal), 45.72 (Morocco)

²⁶ CRC/C/TUR/CO/4-5 Paragraph 50/h and CAT/C/TUR/CO/5 Paragraph 41

²⁷ <https://www.kdkocuk.gov.tr/karar-cocuk-adalet-sisteminde-infaz-kosullarinin-incelenmesi>

²⁸ When the Annual Report of the Ombudsman Institution for the year 2023 is analysed; 19.317 applications were made, 6.570 Referral Decisions were made, 5.407 Decisions of Inexaminability were made, 1.386 Friendly Settlement Decisions were made, 1.384 Recommendation Decisions were made, 1.066 Rejection Decisions were made, 588 Partially Recommendation Partially Rejection Decisions were made, 152 people from the 0-18 age group (children) made applications, 223 applications were made on children's rights, 1.629 applications were made on the activities of penitentiary institutions. Online: <https://www.ombudsman.gov.tr/Yayinlarimiz/YillikRapor>

²⁹ For special reports of the Ombudsman's Office, see: <https://www.kdk.gov.tr/Yayinlarimiz/OzelRaporlar>