



# musawah

For Equality in the Muslim Family

## Musawah Thematic Report on Article 16 & Muslim Family Law: Turkey

**64<sup>th</sup> CEDAW Session  
Geneva, Switzerland  
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# Musawah Thematic Report on Article 16 & Muslim Family Law: Turkey 64<sup>th</sup> CEDAW Session July 2016

## I. INTRODUCTION

Musawah,<sup>1</sup> the global movement for equality and justice in the Muslim family, submits its 15<sup>th</sup> Thematic Report on Article 16<sup>2</sup> and related concerns for consideration by the CEDAW Committee in its review of the Republic of Turkey, reporting before the 64<sup>th</sup> Session of the CEDAW Committee.

This is the CEDAW Committee's fifth engagement with Turkey, which acceded to the CEDAW Convention on 20 December 1985. Since its accession, the Government has illustrated a history of gradual withdrawal of reservations: Reservations to Article 15 (paras. 2 + 4), and Article 16 [paras. 1(c), 1(d), 1(f), and 1(g)] were lifted on 20 September 1999; reservations to Article 9 (para. 1) were lifted on 29 January 2008; **currently only reservation to Article 29 (para. 1) remains.**<sup>3</sup>

Despite the State party's noteworthy history of reservation-withdrawal, Musawah is concerned by its **continued non-implementation of the Convention in areas concerning marriage and family relations**, and the ways that this is often contextualised within pervasive gender stereotypes, and increasingly expressed by political leadership utilising religious sanction.<sup>4</sup> The increasing Syrian refugee population (close to 2 million) further marks the contemporary period in crisis;<sup>5</sup> this report endeavors to examine the real direct and indirect effects of the growing number of refugees on laws and practices that relate to marriage and the family.

Musawah's issues of concern and supplementary research take a critical look at the status of marriage and family relations, with regards to the use of religion, culture, and tradition (RCT) to justify discriminatory law and practice.

In particular, this report examines Turkish laws and practices that enforce *de jure* and *de facto* discrimination against women in the following areas: *equal rights & responsibilities in marriage (gender stereotypes); early marriage & polygamy; access to divorce; and violence against women.*<sup>6</sup>

Musawah hopes that the research, analysis, and recommendations in this report will provide critical information in (1) highlighting key concerns and identifying gaps in the State party report and the State party's reply to the list of issues; (2) providing alternative arguments *within* Muslim legal theory that challenge the ways the State party uses religion to justify discrimination, including reservations and non-implementation of its international human rights treaty obligations; and (3)

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<sup>1</sup> Musawah: <http://www.musawah.org/>.

<sup>2</sup> Since the concerns of equality and justice in the family are crosscutting, issues in Article 2 (*implementation of non-discrimination; penal provisions that constitute discrimination against women*), Article 5 (*gender stereotypes; harmful practices*), and Article 15 (*equality before the law; freedom of movement and residence*) are also covered.

<sup>3</sup> Turkey's reservations on CEDAW, timeline: <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>.

<sup>4</sup> See *Section III (Equal Rights & Responsibilities)* of this report.

<sup>5</sup> NGO Report: <http://panel.stgm.org.tr/vera/app/var/files/m/a/mazlumder-kamp-disinda-yasayan-suriyeli-kadin-siginmacilar-raporu.pdf>.

<sup>6</sup> We note that the order of the sections below emphasise the logic and patterns of discrimination in many Muslim Family Laws (MFLs), rather than the order of CEDAW Articles. Musawah hopes that this will support the Committee in identifying the necessary patterns, so as to formulate stronger questions towards productive engagement with the State party.

suggesting recommendations for reform based on good practices in Muslim contexts.<sup>7</sup>

Musawah hopes that the CEDAW Committee will utilise the content of this report as a key resource during its Constructive engagement with the State party, and in follow-up activities on the Concluding observations.

## II. LEGAL BACKGROUND

- ❖ **The Constitution (Article 10) declares equality between sexes.** Although ‘discrimination against women’ is not defined, the Constitution mandates equality between men and women as among its main principles.<sup>8 9</sup> In 2004, an amendment to the provision was added (‘women and men have equal rights, the State is liable for ensuring this equality in practice’); further amended in 2010 to facilitate temporary special measures (‘any measures to be taken to this aim shall not be contrary to the principle of equality’).<sup>10</sup> Turkey’s national women’s movement and civil society at large claim that the processes leading to the Constitutional Amendments were *‘non-inclusive and non-transparent in nature,’* offering civil society limited opportunity for intervention and productive dialogue on the proposed amendments.<sup>1112</sup>
- ❖ **The Constitution (Article 90) mandate international conventions on human rights prevail over national legislation in case of contradiction.** In 2012, the State party also ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), which adopts the principle of non-discrimination on the basis of sex.<sup>13</sup>
- ❖ **Law on the Protection of Family + Prevention of Violence against Women (Law No. 6284, 2012).** Built on the Istanbul Convention, and hailed by many women’s rights activists as a victory, the law broadens the concept of gender-based violence to include physical, verbal, sexual, economic, and psychological violence.<sup>14</sup> The law further mandates that all women, children, and other family members, as well as victims of unilateral persistent stalking are including within its scope.<sup>15</sup>

<sup>7</sup> Musawah uses the term ‘good’ or ‘promising’ rather than ‘best’ practices to take into account the complex contextual framework of practices located in the wide spectrum of ‘bad’ to ‘good.’ Musawah also seeks to look at good practices that have been transformative in relation to eliminating discrimination against women in law and in practice in different contexts, and in the light of the different realities that women face. This use of terminology and definition builds on existing work on this issue by special procedure mandate holders, including the UN Working Group on the issue of discrimination against women in law and in practice. See: Human Right Council 20<sup>th</sup> Session, Annual Report of the Working Group on the issue of discrimination against women in law and in practice (April 2012), U.N. Doc. A/HRC/20/28, p. 5, available at: [http://www.ohchr.org/Documents/Issues/Women/A-HRC-20-28\\_en.pdf](http://www.ohchr.org/Documents/Issues/Women/A-HRC-20-28_en.pdf).

<sup>8</sup> In Turkish: <https://www.tbmm.gov.tr/develop/owa/anayasa.uc?p1=10>; and in English:

[https://global.tbmm.gov.tr/docs/constitution\\_en.pdf](https://global.tbmm.gov.tr/docs/constitution_en.pdf).

<sup>9</sup> Turkey State party report (SPR) 2014, paras. 7, 10.

<sup>10</sup> Turkey SPR 2014, para. 10, 19.

<sup>11</sup> Turkey NGO Shadow Report, Cedaw 64th Session:

[http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/WPTPC\\_Turkey46.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/WPTPC_Turkey46.pdf)

<sup>12</sup> National-level NGOs and activists also argue that ‘amendments made to certain laws with the intent of achieving gender equality lose all function when necessary changes are not made to any parallel laws and regulations.’ Turkey NGO Shadow Report, Cedaw 64th Session:

[http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/WPTPC\\_Turkey46.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/WPTPC_Turkey46.pdf)

<sup>13</sup> Turkey SPR 2014, para. 7.

<sup>14</sup> Turkey SPR 2014, para. 30.

<sup>15</sup> Turkey SPR 2014, para. 9.

❖ **Constitutional Court Ruling (2015): Penalization lifted for stand-alone religious marriage**

- **Content:** On 29 May 2015, Turkey’s Constitutional Court announced that parties to a religious marriage, and officiants (*imams*) of the marriage, **will no longer be penalized if the couple is not already married under civil law.**<sup>16 17</sup>

The State party argues that the ruling addresses a certain ‘disproportionality,’ wherein individuals who choose to live together without a religious marriage are not penalized.<sup>18</sup>

- **Common Misinterpretations:** The ruling does not remove civil marriage as a legal requirement to religious marriage—it **simply lifts penalization of marrying parties and imams** if a religious marriage occurs independently. In other words, the ruling does not grant imams the power to conduct religious marriage without previous civil marriage, and it does not make religious marriage a stand-alone institution.

**However, this distinction is often lost, leading to dangerous misinterpretations of the ruling among outside observers and the Turkish public at large.**<sup>19</sup> Indeed, the CEDAW Committee<sup>20</sup> and reputable international news outlets alike have both misinterpreted the content of the ruling.<sup>21</sup>

- **Implications:** The ruling—and how it will continue to be misinterpreted—sets a dangerous precedent, as religious marriages on their own deny women and children the rights and protections afforded to them under the Civil Code, which recognises equality between spouses.<sup>22</sup>

The judgement heavily contested in civil society and government alike, with support for<sup>23</sup> and against.<sup>24</sup>

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<sup>16</sup> Musawah discussions with members of ‘The Executive Committee for NGO Forum on CEDAW: Turkey,’ 9-10 July, 2016, Geneva.

<sup>17</sup> Before the ruling, penalization for individuals living together through religious marriage, and without civil marriage, was two to six months in prison (Turkish Criminal Code, Article 230). See: Al Jazeera, ‘Turkey court ruling on religious marriages spurs uproar’ (30 May 2015), available at: <http://www.aljazeera.com/news/2015/05/turkey-court-ruling-religious-marriages-spurs-uproar-150530151909516.html>.

<sup>18</sup> The State party notes, ‘Criminalization of the choice of individuals to carry out religious ceremonies to marry due to their preferences and beliefs is disproportionate.’ See: Turkey (CEDAW 64), List of Issues & Questions: Responses, para. 115, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fTUR%2fQ%2f7%2fAdd.1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fTUR%2fQ%2f7%2fAdd.1&Lang=en).

<sup>19</sup> Musawah discussions with members of ‘The Executive Committee for NGO Forum on CEDAW: Turkey,’ *supra* note 1.

<sup>20</sup> Turkey (CEDAW 64), List of Issues & Questions, para. 20, available at:

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fTUR%2fQ%2f7&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fTUR%2fQ%2f7&Lang=en).

<sup>21</sup> For instance, see: Al Jazeera, *supra* note 2; and Al-Monitor, ‘Turkish court stirs marriage debate’ (1 June 2015), available at: <http://www.al-monitor.com/pulse/originals/2015/06/turkey-top-court-stirs-debate-on-religious-marriage.html>.

<sup>22</sup> Musawah. *Home Truths: A Global Report on Equality in the Muslim Family* (2009), pp. 56-57, available at: [http://www.musawah.org/sites/default/files/Home%20Truths-EN\\_0.pdf](http://www.musawah.org/sites/default/files/Home%20Truths-EN_0.pdf).

<sup>23</sup> The Deputy Chairman of the AKP, Mustafa Sentop, stated his approval: ‘There is no punishment for those who are not married and living together and there is punishment for those who have a religious marriage. Such logic is unacceptable. This decision is for one’s own conscience. The topic of child brides and second wives are separate issues.’ In a similar vein, Naci Bostanci, the head of the AKP’s parliamentary bloc, stated that no law should contradict social realities. He sees no danger of women losing their rights because of this decision. See: <http://www.al-monitor.com/pulse/originals/2015/06/turkey-top-court-stirs-debate-on-religious-marriage.html>.

Critics claim that the ruling will have serious social implications, leading to violations of women's and children's rights, including:

- Increased risk of polygamy (\*intensified by the Syrian refugee crisis)
- Increased risk of child marriage (\*intensified by the Syrian refugee crisis)
- Unequal inheritance + alimony distributions (women and children denied legal and economic protection in event of divorce or spouse's death).

#### **IV. KEY ISSUES: LIVED REALITIES, ISLAMIC JURISPRUDENCE, & REFORM**

This section identifies critical issues of discrimination against women within the Muslim family law and under Articles 2, 5, and 16. The section also presents research from secondary sources, to assist the CEDAW Committee's Constructive Engagement process with the State party. In addition, each section provides justification for reform based on arguments that affirm the possibility and necessity of change within Muslim contexts. The section further provides recommendations and a listing of good practices in member countries of the OIC to illustrate that reform is possible in Muslim contexts.

##### **(A) EQUAL RIGHTS & RESPONSIBILITIES**

In its 2010 Concluding Observations, the CEDAW Committee expressed its concern over "the persistence of patriarchal attitudes and deep-rooted stereotypes concerning women's roles and responsibilities that discriminate against women and perpetuate their subordination within the family and society"<sup>25</sup>

In spite of the Civil Code reform in 2001 which defines marriage as a union based on equal partnership, many women's lives continue to be shaped by customary practices and patriarchal traditions. This disconnect between an equitable law and a discriminatory reality is increasingly a cause for concern as rising conservatism, not least displayed by the political leadership, further entrenches patriarchal norms within society

Musawah recommends that the State party develop further measures to combat the reinforcement of traditional role segregation and patriarchal norms and values at societal, policy-making and discursive levels.

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<sup>24</sup> Deputy Parliament Speaker, Aysenur Bahcekapili, of the ruling Justice and Development Party (AKP) stated her concerns for increased risks of polygamy and inheritance or alimony problems for children. Likewise, the Republican People's Party Deputy, Candan Yuceer, noted that the court's decision in effect legalized child marriage, leaving women and children with no rights in the event of divorce or a spouse's death. The Nationalist People's Party Deputy, Ruhsar Demirel, conveyed similar concerns. The Federation of Turkish Women's Associations announced that it would take the case to the European Court of Human Rights, through which any ruling offered would be binding for Turkey. The Federation pointed out an ECHR ruling on a case from 2010, when a woman, Serife Yigit, received no inheritance rights to her deceased husband's pension and insurance because they had only been religiously married; the Federation warned that the number of similar cases will only increase. See: <http://www.al-monitor.com/pulse/originals/2015/06/turkey-top-court-stirs-debate-on-religious-marriage.html>.

<sup>25</sup> 4 CEDAW/C/TUR/CO/6, para 20.

## (1) CRITICAL INFORMATION:

- ❖ **Government programmes emphasise equal distribution of household and childcare responsibilities.** For instance, the 'Family Training Programme (AEP)' introduced in five fields (intra-familial communication, health, economics, justice and media), emphasises equal responsibilities and the 'democratic and equal approach in distribution of household responsibilities.'<sup>26</sup>
- ❖ **However, political representatives explicitly support discriminatory arguments that depend on and entrench harmful gender stereotypes.** An increasingly 'conservative/fundamentalist vision of women' colours the policies and responses of the State party.<sup>27</sup> Politicians representing both the Justice and Development Party (AKP) as well as the Nationality Movement Party (MHP) increasingly voice sexist rhetoric.<sup>28 29 30</sup>

Such rhetoric, voiced by a country's leadership, and circulated at a mass level, has an undeniably powerful impact on deepening and perpetuating popular discourse and belief on traditional male and female roles, and partly accounts for the gap between many of Turkey's gender-just laws, and their discriminatory interpretation and implementation.

- **President Erdogan noted that gender equality is 'contrary to nature' during a women's rights meeting.** Some quotes include: (1) "Women should be treated equally in the eyes of the law, but their different role in society has to be recognized;" (2) "Our religion gave woman a station. What station is this? The station of motherhood [...] Motherhood is something different and is the most unobtainable, the highest station;" (3) "There are those who understand this, those who don't. You can't tell this to feminists, because they do not accept motherhood. They have no such concerns."<sup>31 32</sup>
- **Deputy Prime Minister Bulent Arinc declared that women should not laugh out loud to protect their moral dignity.**<sup>33 34</sup>

## (2) MUSAWAH JUSTIFICATION FOR REFORM:

- ❖ **Challenging the husband's right to authority.**<sup>35</sup> The concept of male authority (*qiwamah*) over women plays a central role in institutionalising, justifying, and sustaining a patriarchal

<sup>26</sup> Turkey SPR 2014, paras. 85-86.

<sup>27</sup> Turkey NGO Coalition Shadow Report 2016, p. 1.

<sup>28</sup> Turkey NGO Coalition Shadow Report 2016, pp. 4-6.

<sup>29</sup> Turkey NGO Coalition Submission to List of Issues, CEDAW 64, pp. 1-3.

<sup>30</sup> Even though, in the last election they did not gain enough vote to be only authority in the parliament, they still have the majority of chairs in the parliament.

<sup>31</sup> Turkey NGO Coalition Submission to List of Issues, CEDAW 64, p. 2

<sup>32</sup> English: <http://www.abc.net.au/news/2014-11-25/turkish-president-says-men-and-women-not-equal/5914966>; <http://www.bbc.com/news/world-europe-30183711>. Turkish: [http://www.radikal.com.tr/turkiye/erdogan\\_batsin\\_bu\\_dunya-1237900](http://www.radikal.com.tr/turkiye/erdogan_batsin_bu_dunya-1237900)

<sup>33</sup> <http://www.theguardian.com/world/2014/jul/29/turkish-minister-women-laugh-loud-bulent-arinc>

<sup>34</sup> <http://www.cnnturk.com/haber/turkiye/bulent-arinc-kadin-herkesin-icinde-kahkaha-atmayacak>

<sup>35</sup> Musawah, *CEDAW and Muslim Family Laws*, *supra* note 10, pp. 26-28.

model of families in Muslim contexts. In the context of Turkey, it justifies and perpetuates numerous discriminatory practices, including key critical issues examined in this report.

Musawah believes that several verses in the Qur'an that dwell on the values of love, compassion, closeness, and protection between men and women and the general principles of equality and justice should form the basis of marriage and family in Islam.

These values are compatible with the equitable provisions in the Civil Code which recognise equality and non-discrimination. Thus the use of religion and tradition to justify women's subordinate role in the family must be challenged.

- ❖ **Addressing the disconnect between law and reality:** The State party is proud of and has actively encouraged women's active participation in the workforce. Indeed, the State notes that it has worked to create employment environments that enable women to reconcile their family and employment responsibilities. The country's rate of female participation in the labor force is admirable in the region.<sup>36</sup> ***There is a deep disconnect between the logic of the rhetoric of political leadership and the reality of women's changing role and status, as well as the Government's own initiatives regarding women's participation in the work-force.***

### (3) RECOMMENDATIONS:

- ❖ Adopt a national strategic plan to raise women's awareness of their rights under the Civil Code and empower them to access those rights.
- ❖ Build the capacity, including raising gender awareness of officials in the legal and judicial system to bridge the gap between the gender-just Civil Code and its implementation on the ground.
- ❖ Initiate awareness-raising campaigns through the media to eliminate gender-role stereotypes, and encourage partnerships based on equal—not complementary—rights and responsibilities. Unlike many other States parties, Turkey's personal status code already recognises marriage as a partnership of equal.

## (B) EARLY MARRIAGE & POLYGAMY

### (1) CRITICAL INFORMATION:

- ❖ **Child marriage is notoriously high: Nearly 1 in 3 women marry under 18.**<sup>37</sup> The recent Constitutional Court Ruling (2015) will only exacerbate the already high incidence of child marriage in Turkey, especially in the rural areas,<sup>38</sup> and the practice of polygamy, especially in the Kurdish south-east, where second wives are married in religious or cultural ceremonies and thus have little legal protection.<sup>39</sup>
- ❖ **Child marriage and polygamy intensified by Syrian refugee crisis.** Rates of polygamy and child marriage are increasing, not only among Turkey's 2 million Syrian refugee population, but between Syrian girls and women and Turkish men: The highest number of

<sup>36</sup> Turkey SPR 2015, paras 69, 72.

<sup>37</sup> See: <http://www.al-monitor.com/pulse/originals/2015/06/turkey-top-court-stirs-debate-on-religious-marriage.html>

<sup>38</sup> <http://www.al-monitor.com/pulse/originals/2014/01/turkey-marriage-child-brides-poverty-education-religion.html>

<sup>39</sup> <http://www.euractiv.com/section/social-europe-jobs/news/polygamy-widespread-in-turkey-study-shows/>

foreign brides in Turkey are Syrian women and girls: There are 5,493 Syrian refugee women brides [figure does not include 2015-2016]<sup>40</sup>

- **Turkish men's interest in matrimony with Syrian women and girls increasing:**
  - *Turkish blogs searching for Syrian wives are rapidly increasing, and reflect the public's engagement with the new Syrian population. The blogger behind 'I am searching for a co-wife' is a Turkish man seeking a Syrian second wife through religious marriage; he shares the dramatic stories of Syrian women and girl refugees, and declares that polygamy is a natural act, as it occurs in nature.*<sup>41</sup>
  - *Online legal consultation platforms run by both for-profit and volunteer lawyers are receiving increasing questions on legal procedures to marry Syrian refugees. A consultation service run by pro-bono lawyers received questions from a man who asked about the legal possibilities of marrying a 14-year-old Syrian girl.*<sup>42</sup> *Men also ask for legal advice on how to get divorced from their current wives in order to marry Syrian women in the easiest way possible.*<sup>43</sup>
  - *An industry of middlemen and women who provide contacts and organization and translation services for arranging marriages between Turkish men and Syrian women and girls is burgeoning.*<sup>44</sup>
- **Turkish men justify polygamy and child marriage with Syrian women and girls using religion.** Men justify both polygamy and child marriage with Syrian refugees as just acts necessary in crisis times, citing Muslim religious and culture stories and norms.<sup>45</sup>
- **Popular media coverage normalizes the legitimacy of religious marriage, while often entrenching xenophobia by victimizing Turkish men, rather than Syrian women.** Reportage of the increasing rise of marriage between Turkish men and Syrian girls and women rarely notes that many of the marriages are only religious and thus provide no legal protection or rights. Stories often entrench greater xenophobia. In one story, the media portrayed a 56-year-old Turkish man as a victim, because his bride, a younger Syrian woman, ran away with her marriage gifts (considered her property at the moment of transfer, in both civil law and popular Muslim teachings) before consummating the marriage.<sup>46</sup>
- **Syrian women and girls' entrance into polygamous and child marriages linked to economic insecurity.** Families of Syrian women and girls usually receive between 3,000 and 10,000 liras as bride price (dowry).<sup>47</sup>

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<sup>40</sup> <http://yasam.bugun.com.tr/2013te-patlama-yapti-haberi/1116890>

<sup>41</sup> See: <http://kumaariyorum.blogspot.com/>

<sup>42</sup> See: <http://www.hukuki.net/showthread.php?112108-Suriyeli-bayan-ile-evlenmek#axzz3hpFgFkM8>

<sup>43</sup> See: <http://www.bugun.com.tr/gundem/avukatlara-suriyeli-es-ricasi-haberi/1595450>

<sup>44</sup> See: <http://www.aljazeera.com.tr/haber/suriyeli-kizlar-yasamak-icin-evlendiriliyor>

<sup>45</sup> NGO Report: <http://panel.stgm.org.tr/vera/app/var/files/m/a/mazlumder-kamp-disinda-yasayan-suriyeli-kadin-siginmacilar-raporu.pdf>

<sup>47</sup> See: <http://yasam.bugun.com.tr/2013te-patlama-yapti-haberi/1116890>

## **On secondary effects of early marriage and polygamy:**

- ❖ **Early marriage infringes on women and girls' physical and mental integrity.** Research indicates that early and forced marriage often leads to physical, sexual, and mental violence; and increased reproductive health risks, including maternal and other pregnancy-related complications.<sup>48 49</sup> Younger women often have less knowledge of their bodies and rights, and are in a weaker position to stand up to their husbands if they are sick, hurt, or face domestic violence.<sup>50</sup>
- ❖ **Early marriage limits women and girls' right to education, employment, and financial independence.**<sup>51</sup> This contradicts the State party's own emphasis on women's fundamental rights to education and employment. A woman's financial independence affects both her decision-making powers within the family,<sup>52 53 54</sup> her decision and ability to divorce, and her financial and physical vulnerability in the case of divorce. Furthermore, women's access to education and employment affects the well-being of communities and society.<sup>55 56</sup>
- ❖ **Early marriage challenges family peace and well-being.** Research indicates that early and forced marriage often leads to difficulties in marriage—including divorce and health risks, such as HIV/AIDS—and has greater impact on the general level of violence in families.<sup>57</sup>
- ❖ **Polygamy poses significant emotional, financial, and physical harm to women and families.** Polygamy often results in inequality between wives; harmful emotional consequences for first and successive wives, as well as their children; economic difficulties; and greater levels of conflict and violence within families.<sup>58 59</sup> Furthermore, the threat of polygamy can be used as a powerful means of control of the wife by the husband.<sup>60</sup>

## **(2) MUSAWAH JUSTIFICATION FOR REFORM:**

- ❖ **Challenging arguments for early marriage.**<sup>61</sup> Attempts to set and strictly enforce the minimum age of marriage at 18 for both men and women are often met with resistance

<sup>48</sup> Musawah, *CEDAW and Muslim Family Laws*, *supra* note 55, p. 31.

<sup>49</sup> The Beijing Platform for Action (BPFA), available at: <http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm>; and CEDAW Committee General Recommendation No. 21: Equality in marriage and family relations (1994), available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21>.

<sup>50</sup> Musawah, *CEDAW and Muslim Family Laws*, *supra* note 55, p. 31.

<sup>51</sup> The Beijing Platform for Action (BPFA), *supra* note 17; and CEDAW Committee General Recommendation No. 21, *supra* note 42.

<sup>52</sup> Ziba Mir-Hosseini and Zainah Anwar, "Decoding the 'DNA of Patriarchy' in Muslim family laws" (21 May 2012), available at: <http://opendemocracy.net/print/65974>.

<sup>53</sup> CEDAW Committee General Recommendation No. 21, *supra* note 17.

<sup>54</sup> Musawah, *CEDAW and Muslim Family Laws*, *supra* note 55, p. 31.

<sup>55</sup> *Ibid.*

<sup>56</sup> CEDAW Committee General Recommendation No. 21, *supra* note 17.

<sup>57</sup> Musawah, *CEDAW and Muslim Family Laws*, *supra* note 55, pp. 32-33.

<sup>58</sup> CEDAW Committee General Recommendation No. 21, *supra* note 17.

<sup>59</sup> The serious emotional and financial consequences of polygamy have been documented in ground-breaking 5-year research project conducted by the NGO Sisters in Islam (Malaysia) and partner universities, between 2008 and 2010 (Musawah, *CEDAW and Muslim Family Laws*, *supra* note 6, p. 35). For one of the outputs of the project documenting the myths and realities of polygamy for women and children, see this 6-minute short video produced by Sisters in Islam: <https://www.youtube.com/watch?v=kTbg3d9OSYo> (Malay with English subtitles).

<sup>60</sup> Musawah, *CEDAW and Muslim Family Laws*, *supra* note 6, p. 35.

<sup>61</sup> *Ibid.*, pp. 30-31. Also see *Musawah Statement to OHCHR on Child, Early and Forced Marriage*, available at: <http://www.musawah.org/musawah-to-OHCHR-child-marriage>.

from conservative religious authorities, who claim that this is ‘un-Islamic.’ Commonly, the example of the Prophet Muhammad’s marriage to Aishah is used to justify child marriage. Reportedly, Aishah was six years old when she was betrothed, and nine when the marriage was consummated. However, there are new studies asserting that Aishah was likely to have been 19 at the time of her marriage.<sup>62</sup> More importantly, the question arises as to why the Prophet’s marriage to Aishah is used as a model, while his marriage to Khadijah, a widow 15 years older than him, or his marriage to other widows and divorcees, are ignored as exemplary practices. The justification for child marriage quoting the precedent of Aishah’s marriage to the Prophet must be challenged.

While the Qur’an does not provide any specification for the age of marriage, *Surah an-Nisa’* 4:6 requires that orphans should be of sound judgment before they marry. This indicates that a person must have sufficient judgment and maturity to marry. Equating the age of majority with the age of puberty and/or rationality (*baligh*), as is traditionally done, fixes adulthood on children under 18, even onto those who start menstruating at the age of nine or ten. The onset of puberty is no indication of sufficient maturity for marriage.

- ❖ **Challenging polygamy.**<sup>63</sup> Musawah maintains that Islam promotes monogamy, as can be seen in *Surah an-Nisa’* 4:3: ‘If you fear that you shall not be able to deal justly with the orphans, marry women of your choice, two, three or four; but if you fear that you shall not be able to deal justly [with your wives], then marry only one [...] That will be more suitable, to prevent you from doing injustice.’ Some Muslim countries have also prohibited polygamy. In other countries, women are entitled to add a stipulation in their marriage contracts that their husbands cannot take other wives without their permission, and that polygamy could constitute grounds for divorce. We recommend that this clause becomes a standard stipulation in marriage contracts. In this manner, States may discourage or prohibit polygamy, as recommended by the CEDAW Committee under General Recommendation number 21.

Although the Prophet had multiple wives, he was monogamous for more than 25 years—i.e. throughout the lifetime of his first wife, Khadijah. This practice could be used as a source to emulate. There is also an authentic Tradition that the Prophet forbade his son-in-law, Ali ibn Abi Talib, from marrying another woman, unless Ali first divorced the Prophet’s daughter, Fatimah, his existing wife. A great-granddaughter of the Prophet, Sakinah binti Hussayn, the granddaughter of Ali and Fatimah, included the condition in her marriage contract that her husband would have no right to take another wife during their marriage.

Polygamy is not intrinsically ‘Islamic.’ It was an institution that was practiced in most parts of the world at one time, and continues to exist in many African, Asian, and Middle Eastern countries and among Mormon Christians in the USA.

### (3) RECOMMENDATIONS:

#### ***Early Marriage and Polygamy:***

- ❖ Ensure that the law of minimum age of marriage is strictly enforced.
- ❖ Amend the law to disallow all legal exceptions to the minimum age of marriage.
- ❖ Exercise due diligence to prevent, investigate, and punish acts that are aimed at coercing children into early marriage.
- ❖ Provide reparation to victims and survivors of early marriage, including allowing girls and

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<sup>62</sup> Muhammad Khalid Masud (trans), ‘Prophet Muhammad’s wife A’isha: How Old was she at the Time of her Marriage?’ available at: <http://www.sistersinislam.org.my/news.php?item.997.41>.

<sup>63</sup> *Ibid*, pp. 33-36.

women forced into marriage the retroactive right to invalidate the marriage, or the right to divorce.

- ❖ Ensure that the legal provision banning polygamy are strictly enforced.
- ❖ Raise awareness on the harm caused by polygamy and where religion is used to justify the practice of polygamy, raise awareness on the Qur'anic argument recommending monogamy to ensure that justice is done.
- ❖ Appeal against the Constitutional Court ruling at the European Court of Human Rights.

#### (4) GOOD PRACTICES:

##### *Early Marriage*

Available information shows while many OIC countries have established minimum age of marriage, none has made it illegal for children to be married under the age of 18. Some countries that allow exceptions have also set an absolute minimum age. Examples:

- ❖ **Uzbekistan & Kyrgyz Republic:** The minimum age of marriage is 18, but the court may authorise marriage at 17 for exceptional reasons, with parental permission.

## (C) DIVORCE

#### (1) CRITICAL INFORMATION:

- ❖ **In situations where divorce is a result of dispute and violence, the need for a safe and speedy exit from the marital home, as well as fear of further dispute and violence, can prevent women from claiming their legal right to a fair share of their marital property.** The law protects a woman's right to her portion of shared marital assets at the time of divorce, even if they are in the husband's name.<sup>64</sup>
  - *CASE STUDY (Appendix): Leila's Story.*
- ❖ **Many cultural norms protect the 'sanctity' of the family; they thus stigmatise divorce, while justifying and normalizing domestic violence.** Indeed, one example is the popular Turkish proverb, 'a husband both beats and loves,' which can be used to dissuade women from leaving their marital homes, including in cases of abuse.
  - *CASE STUDY (Appendix): Leila's Story.*

#### (2) MUSAWAH JUSTIFICATION FOR REFORM:

- ❖ **On challenging 'sanctity' of family argument as grounds for perpetuating abuse and unhappiness.** If a culture recognizes the family as a safe space that protects and grows the full human potential of its members, then it should also recognize the necessity of ending abuse and relationships that cause unhappiness to ensure that this occurs. Indeed, the sanctity of the family as a unit depends on the sanctity of the bodies and minds of all its members. The heavy involvement of both government and civil society in social efforts to end violence against women illustrate the potential for meaningful cultural change through widespread mobilization.

<sup>64</sup> <http://www.yasingirgin.av.tr/bosamada-mal-paylasimi/>

### (3) RECOMMENDATIONS:

- ❖ Introduce a system to expediate divorce if the wife's health and well-being is at risk.
- ❖ Introduce a system that mandates further investigation if the judge suspects that the wife is giving up on her financial rights due to fear of abuse.

### (D) VIOLENCE AGAINST WOMEN (VAW)

*In 2002, Turkey was the first nation to sign the Istanbul Convention on preventing and combatting violence against women;<sup>65</sup> a decade later in 2012, Turkey implemented the Law to Protect Family and Prevent Violence Against Women (Law 6284).<sup>66</sup> These laws and commitments not only attempt to prevent violent acts against women, but hold the State party accountable for doing so. Despite government commitments, rates of violence against women have been increasing since 2012,<sup>67</sup> buttressed by legal and cultural structures, and government inaction.*

- ❖ **Urgency of issue: Significant and increasing rate of violence against women (VAW).** NGOs and scholars alike identify VAW as the most urgent problem related to women's rights in Turkey today. Despite fame as the first signatory to the Istanbul Convention on ending and preventing violence against women (2002), and implementation of Law 6284 to Protect Family and Prevent Violence Against Women (2012), rates of VAW have increased (female homicide alone has increased from 125 occurrences in 2011, 141 in 2012, 226 in 2013, 286 in 2014, and 166 till August 2015).<sup>68</sup> <sup>69</sup> Most VAW occurs at home and at the hands of family members; the majority of VAW is committed by intimate romantic partners, and the recorded rates for crimes committed by partners and family members are almost always significantly lower than actual rates of violence (53% of recorded perpetrators are husbands or boyfriends, 19% are unfamiliar men; 11% are brothers; 8% are fathers; 3% are other male relatives).<sup>70</sup><sup>71</sup>
- ❖ **Limited criminalization in both law and its implementation:** Many Turkish activist lawyers believe that just punishments for the crime of femicide do not exist in the law.<sup>72</sup> Furthermore, even when the law prescribes criminalization, court decisions often offer perpetrators of female homicide and rape with significant leniency, based on sexist arguments that blame the victim and/or appeal unconvincingly to the 'good character' of the man.

<sup>65</sup> [http://www.coe.int/t/dghl/standardsetting/convention-violence/background\\_en.asp](http://www.coe.int/t/dghl/standardsetting/convention-violence/background_en.asp)

<sup>66</sup> [http://www.aile.gov.tr/data/5404eb05369dc3119090f853/6284\\_sayili\\_yonetmelik.pdf](http://www.aile.gov.tr/data/5404eb05369dc3119090f853/6284_sayili_yonetmelik.pdf)

<sup>67</sup> [http://www.todayszaman.com/national\\_laws-dont-prevent-out-of-control-violence-against-women-in-turkey\\_338856.html](http://www.todayszaman.com/national_laws-dont-prevent-out-of-control-violence-against-women-in-turkey_338856.html)

<sup>68</sup> [http://www.todayszaman.com/national\\_laws-dont-prevent-out-of-control-violence-against-women-in-turkey\\_338856.html](http://www.todayszaman.com/national_laws-dont-prevent-out-of-control-violence-against-women-in-turkey_338856.html)

<sup>69</sup> <http://www.wave-network.org/sites/default/files/05%20TURKEY%20END%20VERSION.pdf> statistics in ENG

<sup>70</sup> Turkey NGO Coalition Shadow Report 2016, pp. 13-17.

<sup>71</sup> <http://www.fortuneturkey.com/kadina-siddeti-yakinlari-uyguluyor-4099>

<http://www.aa.com.tr/tr/tag/463850--kadina-siddet-en-yakinindan-geldi>

<sup>72</sup> Turkey NGO Coalition Shadow Report 2016, pp. 13-17.

- *In April 2015, a judge offered abatement to a man who raped an elderly and disabled woman; the decision cited his hesitation while acting, and that he did not ‘complete’ the act of rape (prison sentence lessened from 21 years to 8 years)(Diyarbakır Province).<sup>73</sup>*
  - *In July 2014, a judge offered abatement to a man who killed his wife due to her affair with another man; the decision cited the tights the victim wore as provocation (Erzurum Province).<sup>74 75</sup>*
  - *In March 2013, a judge offered abatement to a man who raped a 14-year-old girl; the decision cited the perpetrator’s good conduct, measured by his change in physical appearance (from ‘stylish hair’ and tattoo to a religious outfit comprised of an imamah (headdress), long white dress, and long beard (prison sentence lessened from 21 years to 17 years).<sup>76</sup>*
  - *In October 2011, a judge offered abatement to a group of men who gang-raped a 13-year-old girl; the decision cited the victim’s willingness to the act via her lack of resistance (Mardin Province).<sup>77</sup>*
- ❖ **Judges and families alike encourage rape survivors to marry their assailants.** In a recent report, judges claim that encouraging such marriage makes their work responsibilities ‘lesser and easier.’<sup>78</sup> Many of these marriage are forced marriages or child marriages. They are often framed as ‘peaceful’ solutions, justified in defense of the survivor’s honour, especially in the case of pregnancy. **It is important to note that such ‘cultural’ justifications are often structurally linked to economics and access to reproductive rights.** While the idea of preserving ‘family honour’ is closely linked to preventing premarital sex and pregnancy outside of marriage; these ideas are not religious, but part of evolving socio-cultural constructs.
- *In 2015, a woman was forced to marry her rapist. One month after her marriage, she was shot and killed by her rapist’s father, who believed that she was unfaithful to the rapist (Nigde Province).<sup>79</sup>*
  - *In 2014, a 17-year-old girl was raped multiple times across various different cities by her four cousins. When she became pregnant, her family forced her marriage to one of her cousins.<sup>80</sup>*
  - *In 2011, a woman was raped by four men and after pregnancy, forced to get married with one of them by her family, by the way of religious marriage because she was only 15 (Izmir Province).<sup>81</sup>*
- ❖ **The criminalization of domestic violence can penalize women.** In families where men do not work or where women also work, women often pay or contribute to the fines their husbands owe the state for their violence.
- **CASE STUDY (ANNEX): Leila’s Story.**

<sup>73</sup> <http://www.hurriyet.com.tr/gundem/28822991.asp>

<sup>74</sup> <http://www.diken.com.tr/mahkeme-bicaklanan-kadinin-tayt-giymesini-tahrik-nedeni-saydi/>

<sup>75</sup> <http://www.diken.com.tr/tahrik-indirimi-yeni-kadin-cinayetlerine-davetiye-cikariyor/>

<sup>76</sup> <http://www.radikal.com.tr/turkiye/dovmeden-sariga-gecen-tecavuz-hukumlusune-iyi-hal-indirimi-1124983>

<sup>77</sup> <http://bianet.org/bianet/insan-haklari/133233-bassavcilik-toplu-tecavuze-ceza-indirimini-yerinde-buldu>

<sup>78</sup> See: <http://bianet.org/bianet/bianet/132779-tecavuzcusuyle-evlenirse-is-yukumuz-azalir>

<sup>79</sup> See:

[http://www.cumhuriyet.com.tr/haber/turkiye/231373/13\\_unde\\_tecavuzcusuyle\\_evlendirildi...\\_1\\_ay\\_sonra\\_aldattigi\\_iddiasi\\_yla\\_olderuldu.html](http://www.cumhuriyet.com.tr/haber/turkiye/231373/13_unde_tecavuzcusuyle_evlendirildi..._1_ay_sonra_aldattigi_iddiasi_yla_olderuldu.html)

<sup>80</sup> See: <http://www.haberhabere.com/kadin/utanc-tecavuzcusuyle-evlendirildi-h647.html>

<sup>81</sup> See: <http://www.gazetevatan.com/tecavuzcusuyle-evlendirildi-420425-yasam/>

- ❖ **Although there is a law that asks municipalities to open shelter home for women victims of violence, it is not compulsory, and thus the number of municipalities that comply are in minority.**<sup>82</sup>

## (2) MUSAWAH JUSTIFICATION FOR REFORM:

- ❖ **The idea that the family unit is inherently pure, and thus cannot and should not change, is flawed.** However, if a culture recognizes the family as a safe space that protects and grows the full human potential of its members, then it should also recognize the necessity of ending abuse and relationships that cause unhappiness to ensure that this occurs. Indeed, the sanctity of the family as a unit depends on the sanctity of the bodies and minds of all its members.
- ❖ **Cultural attitudes can and do change: The heavy involvement of both government and civil society in social efforts to end violence against women illustrate the potential for meaningful cultural change through widespread mobilization.** There are large-scale civil society mobilization efforts to end violence against women, including the ‘WE WILL STOP FEMICIDE PLATFORM’ and *Anıt Sayaç* (‘Monument Counter’), which provide both data on rates of violence, as well as the stories of the victims.<sup>83 84</sup> Widespread mobilization led by NGOs and portions of the media on VAW are leading to a marked change in perception and attitude towards violence, demonstrate both the fluidity of culture, and the potential of actors to consciously effect change. In recent years, VAW survivors have spoken out more publically about their experiences and media has simultaneously covered women’s VAW experiences more boldly leading to an increase in public consciousness on discrimination against women, and ultimately, public organizing against VAW. Indeed, after the notorious Özgecan Aslan case in February 2015,<sup>85</sup> Turkey has seen wide-scale protests against VAW in both larger urban regions, as well as smaller rural areas, comprised of both women’s rights NGOs as well as ordinary citizens.<sup>86 87 88 89 90 91 92</sup>

The government’s own participation in these efforts, including through implementation of its National Action Plan on Combating Domestic Violence against Women (2012, 2015), and a host of other initiatives demonstrates its role and potential in forging cultural change.

<sup>82</sup> The Municipality Law (No. 5393), enacted in July 2005, requires each metropolitan municipality and any municipality with a population over 50,000 to open a women’s shelter. Furthermore, the Prime Ministerial Circular issued in July 2006 on —Measures to Prevent Custom and Honor Killings and Violence against Women and Childrenll also encourages municipalities to open shelters. However, since there are no tangible penalties for municipalities that do not, there were 52 shelters across Turkey as of August 2008, with a total capacity of 1,115 women and children.

[http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/WPTPC\\_Turkey46.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/WPTPC_Turkey46.pdf)

<sup>83</sup> See: <http://www.kadincinayetlerinidurduracagiz.net/for-english>

<sup>84</sup> See: <http://anitsayac.com/>

<sup>85</sup> 20-year-old student Özgecan Aslan was travelling home on a minibus in the South-East province of Mersin on when a man tried to rape her. When she retaliated with pepper spray, the suspect stabbed her and beat her to death with an iron bar before enlisting his father and a friend to help dispose of her body by burning it and dumping it into a river. See: <http://www.abc.net.au/news/2015-02-17/rape-and-murder-of-young-turkish-woman-sparks-mass-protests/6131368>

<sup>86</sup> See: <http://www.hurriyet.com.tr/gundem/28264109.asp>

<sup>87</sup> See: [http://www.bbc.com/turkce/haberler/2015/02/150214\\_ozgecan\\_eylem\\_cenaze](http://www.bbc.com/turkce/haberler/2015/02/150214_ozgecan_eylem_cenaze)

<sup>88</sup> See: [http://www.radikal.com.tr/turkiye/ozgecan\\_aslan\\_icin\\_taksimde\\_protesto\\_yuruyusu-1293495](http://www.radikal.com.tr/turkiye/ozgecan_aslan_icin_taksimde_protesto_yuruyusu-1293495)

<sup>89</sup> See: <http://www.milliyet.com.tr/besiktas-ta-ozgecan-aslan-icin-dev-yuruyus-istanbul-yerelhaber-633519/>

<sup>90</sup> See: <http://www.milliyet.com.tr/batman-da-ozgecan-aslan-icin-mesaleli-batman-yerelhaber-621632/>

<sup>91</sup> See: <http://www.gaziantephaberler.com/gaziantep-ozgecan-icin-eylemde-haber-33513.html>

<sup>92</sup> See: <https://istanbulhrnetwork.wordpress.com/2013/03/11/bilateral-expert-meeting-on-violence-against-women-istanbul-7-10-february-2013/>

### III. CONCLUSION

Although parts of the State party's legal codes mandate equality between men and women in marriage and family relations—including minimum age of marriage and consent, rights and responsibilities within marriage, and divorce, and inheritance—in reality, implementation and practice reveal a markedly different story.

Towards this end, Musawah also recommends that the State party works rigorously to establish more meaningful and sustainable relations with civil society, to fulfill the promise of equality and justice in law and practice. Despite the State party's claim otherwise in its recent State party report,<sup>93</sup> it is of concern that NGOs and activists report that the Government has worked to actively limit the national women's movement's intervention on discussion regarding women's rights and gender discrimination.<sup>94 95</sup>

Musawah asserts that in the twenty-first century, there cannot be justice without equality. The government's past efforts at law reform in response to campaigns led by women's groups are indeed commendable. But law reform alone has not been enough to bring about change on the ground. The pull of religion, culture and tradition that justifies male authority and superiority over women and practices that are harmful to women and girls, remain strong, especially in the rural areas and certain regions of Turkey. The challenge for the State party is to consult with women's rights activists and service providers to urgently develop a longer term plan to translate rights in the law into practice. Religious understandings and harmful traditional values need to change to enable women to access their rights under the law.

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<sup>93</sup> Turkey State party report 2014, paras. 3-4.

<sup>94</sup> This includes the Turkish Government's attempt to limit civil society's input in the drafting of State party reports for CEDAW; women's NGOs are often notified by State officials of deadlines for contributions days before. See: <http://www.keig.org/basinAciklamalari.aspx?id=14>

<sup>95</sup> The Executive Committee for NGO Forum on CEDAW – Submission to List of Issues, CEDAW 64, p. 1.

### CASE STUDY: LEILA'S STORY (2013)

#### VAW + DIVORCE + GENDER STEREOTYPES

*This case occurred one year after the amendment of the Civil Code and application of the new Law 6284, hailed by many women's rights activists as a victory. This case highlights the gap between the law and its fair interpretation and implementation.*

Leila, a caretaker, was married to a man who was unemployed, and emotionally, psychologically, and physically abusive. Leila often took time off from work for medical care due to the severity of the abuse.

When Leila finally filed for divorce she had enough proof of violence (medical reports and testimonies from neighbors) to divorce easily. According to the law, Leila also had the right to ask for a portion of her and her husband's shared property, even though it was formally in her husband's name.<sup>96</sup> **However, Leila prioritized an expedited divorce to ensure a safe and speedy exit from her marital home, as well as mitigation of further potential violence over both (1) lodging a complaint against her husband's violence and receiving fair victim's compensation, and (2) claiming her legal right to a fair share of their marital property.**

Leila returned to her father's home. **However, Leila's family and community insisted that she return to her husband and marital home to protect the 'sanctity' of her family, including with use of a popular Turkish proverb: 'a husband both beats and loves.'** Financial difficulties within her family added to the pressure Leila faced to return home, despite the fact that she was the earning partner within her marriage.

**Finally, Leila withdrew her request for divorce.** However, the judge had already directed the court case towards prosecution, and a civil law suit regarding the violence was already in process. Both Leila and her husband were called to the court, although Leila's husband did not show up. **The judge decided to impose a fine on the husband towards the state, criminalising the violence; however, since the husband was unemployed, ultimately Leila was forced to pay the fine herself.**

Because of Leila's original application for divorce, the violence she faced at home became both more frequent and serious.

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#### About Musawah

*Musawah is a global movement of women and men who believe that equality and justice in the Muslim family are necessary and possible. Musawah, which means 'Equality' in Arabic, builds on centuries of effort to promote and protect equality and justice in the family and in society. For details, visit the Musawah website at <http://www.musawah.org>.*

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<sup>96</sup> <http://www.yasingirgin.av.tr/bosanmada-mal-paylasimi/>