

**Report Submitted to the UN Human Rights
Council Advisory Committee on the Role of
Local Government in the Promotion and
Protection of Human Rights**

**İstanbul Bilgi University
Human Rights Law Research Center**

April 2014

Local government and human rights

QUESTIONNAIRE

As part of the consultations undertaken by the Human Rights Council Advisory Committee with governments, national human rights institutions and non-governmental organizations with a view to preparing a report on the role of local government in the promotion and protection of human rights, pursuant to Council resolution 24/2.

Background:

Human Rights Council resolution 24/2, adopted in September 2013, took note of the research proposals made by the Advisory Committee in August 2012¹, which included a research proposal on local government and human rights, and mandated the Committee to prepare a research-based report on the role of local government in the promotion and protection of human rights, including human rights mainstreaming in local administration and public services, with a view to compiling best practices and main challenges, and to present a progress report thereon to the twenty-seventh session of the Council (September 2014).

The Committee is also requested to seek the views and inputs of Member States, relevant international and regional organizations, the OHCHR and relevant special procedures, as well as national human rights institutions and non-governmental organizations, in order to prepare the above-mentioned report.

It is therefore in this context that the Advisory Committee decided, at its twelfth session held in February 2014, to appoint a drafting group² in charge of the preparation of this report and elaborated the hereunder questionnaire for governments, national human rights institutions and non-governmental organizations.

QUESTIONNAIRE

1. How is local government organised in your country? Please describe the existing legal framework for the organisation, functioning, competences and financial resources of local government in your country.

¹ A/HRC/AC/9/6

² A/HRC/AC/12/L.5, 28 February 2014

2. Is local government in your country required by legislation to promote and protect human rights? Please describe how local government in your country is involved in the implementation of human rights obligations.
3. Is there any cooperation between local government and the central government in your country regarding the implementation of human rights at local level? If yes, please describe the existing cooperation framework.
4. Do you have human rights protection mechanisms at the local level in your country (e.g. ombudspersons, human rights commissions, mediators, etc.)?
5. What initiatives have been taken to include human rights mainstreaming in local administration and public services?
6. What is the role of civil society in the planning and implementation of activities for the protection and promotion of human rights at local level in your country?
7. What is the role and programme of your organization for promotion and protection of human rights at local level or in enhancing local governance for human rights?
8. What are the main challenges faced by local government in your country in the promotion and protection of human rights?
9. Please provide any best practices with regard to the above-mentioned issues.

Deadline for submission of responses to the questionnaire:

In order to give the Drafting Group the opportunity to take into account the different contributions, all parties are encouraged to submit their responses as soon as possible and at the latest by **11 April 2014**.

Answers can be submitted via email to the following address:

hrcadvisorycommittee@ohchr.org

OR

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Thank you for your contribution.

For more information on the Advisory's mandate:

<http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/HRCACIndex.aspx>

“Local Government and Human Rights in Turkey”

1. How is local government organised in your country? Please describe the existing legal framework for the organisation, functioning, competences and financial resources of local government in your country.

The organizational framework of local government is described by the 1982 Constitution in the articles 123 and 127. According to general provisions, the organization, functions and competences of local government shall be regulated by the law. Deconcentration (*yetki genişliği*) and decentralization (*yerinden yönetim*) are the main principles of the administrative system. Local administrative structures are public corporate entities established to provide the common local needs of the inhabitants of provinces, municipalities and villages whose decision-making organs are elected every five years by the direct universal suffrage according to the rules prescribed by the Art. 67 of the Constitution related to right to vote. Art. 127 declares that central government of Turkey has administrative tutelage on local government if only this mandate and its extent are set forth by law with the objective of ensuring the functioning of local services in conformity with the principle of the integral unity of the administration, securing uniform public service, safeguarding the public interest and meeting local needs in an appropriate manner.

However, Ministry of Internal Affairs has power to remove an elected local government organ or its members against whom a judicial investigation or prosecution has been initiated on grounds of offences related to their duties, only for the period of pending case.

Special provincial administration³, municipalities⁴, metropolitan municipalities⁵ and villages⁶ represent the types of local government structures. The head of the special provincial administration is the governor who is appointed by the central government while municipalities are represented by the elected mayors and the villages by the elected headmen (chiefs- *muhtar*).⁷ The neighbourhoods which are the sub-structures of municipalities without public corporate entity and the smallest administrative unit of society in the city are also represented by the chiefs (*muhtar*).

³ Law No. 5302 on Special Provincial Administration, 2005.

⁴ Law No. 5393 on Municipality, 2005.

⁵ Law No. 5216 on Metropolitan Municipality, 2004.

⁶ Law No. 442 on Villages, 1924.

⁷ “Laws Concerning Local Government”, <http://www.migm.gov.tr/en/Laws.aspx>, [Accessed: 08.04.2014].

Besides this, Law No. 6360 on the Establishment of Thirteen New Metropolitan Municipalities and Twenty-Six Districts (2012) changes the administrative structure of local government. With the establishment of 13 new ones, the number of metropolitan municipalities was raised to 29. Abolition of village status and the public corporate personality of small municipalities which are located in the borders of metropolitan municipality by the Law No. 6360 were criticized being unconstitutional. Public corporate personality of local government bodies is recognized by the Constitution and it was claimed that only a constitutional amendment related to this topic would be lawful. However, Constitutional Court rejected those claims of political parties making reference to the discretionary power of legislative organ.⁸

The main problem with this new regulation is that legislative power passed that law in one month without even applying to the opinions of Commissions on Constitutional Law and Budget in the Parliament. Law No.6360 introduces many new provisions referring to the principles like empowerment of local self-government authorities and local democracy. Emphasis on globalization and citizen-oriented policies are supposed to be at the Center of those principles. However, metropolitan municipality-based new administrative local organization is possible to serve for the increase of administrative tutelage/tutelle administrative of central government over local authorities and transformation of citizen-focused public services to profit-generating ones more than realisation of local democracy.

The public participation was also a lacking part of this new structure. New law also changed the borders of some districts by including some neighbourhoods (*mahalle*) to different districts. According to Law No.5393 on Municipality, public opinion has to be taken in an appropriate and democratic manner or a referendum has to be organised in order to guarantee the public participation when it is about merging a unit into another (Art.15-Art.8). Some neighbourhoods made an attempt to organize referendum by taking initiatives. Central government did not let these initiatives on the basis that there is no legal framework for such referendum.⁹ The most important claim about this application was that central government was attempting to change the electoral regions unlawfully. This kind of policies is described as “gerrymandering” in comparative law which is not acceptable in a democratic society.

⁸ Constitutional Court rejected the claims on September 12, 2013. The grounded decision has not been written and published since that date.

⁹ “Şişli Referandumu İptal Edildi”, <http://www.sabah.com.tr/Gundem/2012/11/18/sisli-referandumu-iptal-edildi>, [Accessed: 05.04.2014].

The general rules regarding financial resources of local government are fixed by the Art. 127 of the Constitution which says that local government bodies shall be allocated financial resources proportional to their duties. Art. 59 of Law No. 5393 on Municipality clarifies the different categories of municipal revenues. According to this article, municipal revenues shall be as follows:

- a) Statutory municipal taxes, fees, charges and contributions fixed by the Law No. 2464 on Municipal Revenues;
- b) Tax revenues coming from general budget of central government;
- c) Payments made by authorities funded under the general and special budgets;
- d) Revenues obtained from lease, sale and other uses of movable and immovable property;
- e) Fees to be collected for services provided and determined by the municipal council;
- f) Revenues from interest and fines;
- g) Donations;
- h) Revenues obtained through enterprises, shareholdings and activities of all sorts;
- i) Other revenues.

With the new provisions of Law No. 6360, the financial resources of metropolitan municipalities will see an incredible raise. Especially the resources provided from general tax revenues will increase for metropolitan municipality structures. According to new sharing system, metropolitan municipalities will get 81% of general tax revenues allocated to local government.¹⁰ There are 81 provinces, but 29 metropolitan municipalities in Turkey. Different resource allocation between local government structures may lead serious violation of right to equal access to public services for the inhabitants of the municipalities which do not have metropolitan status.

2. Is local government in your country required by legislation to promote and protect human rights? Please describe how local government in your country is involved in the human rights obligations?

¹⁰Emre Koyuncu, “Yenilenen Yerel Yönetim Sisteminde Belediye ve İl Özel İdarelerinin Genel Bütçe Vergi Gelirlerinden Alacakları Payların Karşılaştırmalı Analizi”,TEPAV Yayınları, Kasım 2012, [Accessed: 09.04.2014].

There are no direct legally binding provisions regarding the role and the responsibility of the local government structures in the implementation of human rights at local level. However, constitutional framework related to general administrative principles, special laws on the mandate of local government and finally human rights obligations of Turkey arising from international or regional human rights conventions offer a broad range of opportunity to determine the scope of responsibilities of local government.

1982 Constitution of Turkey describes the Turkish Republic as a democratic and welfare state based on the rule of law. These are general provisions of the Constitution which have to be applied and taken into account by the legislative, executive and judicial powers. According to Art. 123 of the Constitution, Turkish administrative system is based on the principles of deconcentration (*yetki genişliği*) and decentralization (*yerinden yönetim*) and the administrative bodies shall be regulated by law. As a result of those provisions, we may conclude that legislative power which is authorized to make special laws regarding the duties, functioning and responsibilities of local government is under the obligation of introducing and promoting democratic means in the local government sphere.

Local government, as an integral and autonomous part of executive power shall respect the same principles while accomplishing their duties and responsibilities prescribed by the law.

According to Art. 5 related to duties and responsibilities of the state, Turkish Republic has to recognize, promote and protect human rights and fulfil its positive obligations in order to realize the rights mentioned in the Constitution.

Art. 13 introduces the main principles regarding the protection and limitation regime of the fundamental rights and freedoms. The freedoms and rights may only be restricted by law. General and specific grounds for restrictions of fundamental rights and freedoms shall not be in conflict with the requirements of the democratic order of society and the principle of proportionality.

According to Article 127 of the Constitution, local government bodies have public corporate personality and their decision-making organs are elected during direct universal suffrage.

European Charter of Self-Local Government obliges the contracting states to respect the autonomy of local government and the rights of local people to participate in local services and decision-making processes at local level (Art.3). International Covenant on Civil and

Political Rights recognizes the right for every citizen to have the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives (Art. 25)

Once the local government representatives are determined as the result of the elections, their human rights obligations start. Equality and proportionality are the main principles of a lawful administration in Turkey. There are not direct references to protect human rights in the special laws regarding the duties and responsibilities of local government. We only have the opportunity to link some duties of local government like urban planning, social aids, environmental policies, substructures, construction of religion places and schools, preserving natural resources and cultural heritage to human rights recognized in the constitution and international conventions signed and ratified by Turkey.

For example, Law No.5393 (2005) on Municipality regulates the extent of duties and responsibilities of the municipalities. According to Art. 13, social aids made by the municipality shall be provided in such a way as not to injure human dignity.

According to the Art. 14 of the same law, local services which fall under the mandate of local government structures like infrastructure facilities such as land development planning and control, water supply, sewer and transport; geographic and urban information systems; environment and environmental health, sanitation and solid waste; municipal police, fire fighting, emergency aid, rescue and ambulance services; urban traffic; burial services and cemeteries; tree planting, parks and green areas; housing; culture and art, tourism and promotion, youth and sports; social services and social aid; weddings; vocational and skills training; economic and commercial development shall be provided in the light of “proximity principle” and with the most appropriate methods. Those methods used in service provision shall be appropriate to the situation of the persons with disabilities, elderly people, the poor and those on low income.

Metropolitan municipalities and municipalities with a population of more than 100.000 shall open shelters for women and children.

Municipalities may build state schools at all levels, carry out the maintenance of and repairs to such school buildings and provide them with all the equipment and supplies they need; open and operate health care facilities of all sorts; ensure the conservation of cultural and natural assets, of the historical urban fabric and of areas and functions of historical significance to the town, carry out maintenance and repairs for such purpose and, where

conservation is impossible, reconstruct them in their original form. When necessary, municipalities shall give materials to students, amateur sports clubs and provide the necessary support, organize any type of amateur sports games, may award, with a resolution of the municipal council, sportsmen/sportswomen who have demonstrated excellence or received ranking in national or international competitions. Municipalities may operate food banking.

Almost all of those duties are linked to at least one human right recognized in various documents. Despite the absence of direct legal framework for promotion and protection of human rights, local government structures are under the obligation of respecting the principles set forth by the Constitution, international documents and laws regarding the human rights.

3. Is there any cooperation between local government and central government in your country regarding the implementation of the human rights at local level? If yes, please describe the cooperation framework?

There is no specific regulation related to cooperation between local government and central government regarding the implementation of the human rights at local level. However, city councils and regional development agencies which include central and local government representatives in their executive boards can be accepted as collaboration examples when we take into account their duties.

Chapter 28 of “Agenda 21” produced by the United Nations Conference on Environment and Development (the “Earth Summit”), held in Rio de Janeiro in 1992, called upon local authorities in every country “to undertake a consultative process with their populations and achieve a consensus on Local Agenda 21 for their communities”. The history of city councils dates back to 1996 in Turkey when the Habitat II Conference was held in Istanbul. Following the conference, in some pilot cities like İzmir (Urla and Aliğa City Parliaments, Karşıyaka City Councils), Muğla (Milas City Council), Bursa, Antalya, Çanakkale, there had been established the city councils or similar structures.¹¹

With the introduction of Law on Municipality (2005), every municipality, in three months following the local elections, must establish a city council including the representatives of central government, local government, political parties organized in the municipality,

¹¹ Bayram Coşkun, “Kent Yönetimine Katılım Ve Kent Konseyleri”, Küresel Esintiler Ve Yerel Etkiler Sarmalında Türk Kamu Yönetimi, Ed. Abdullah Yılmaz, Yavuz Bozkurt, Ankara: Gazi Kitabevi, 2007, P.102. [Accessed: 05.04.2014].

universities, syndicates and local communities.¹² City Councils have the mission to promote local democracy, local participation, and right to city; to protect the environment, natural and historical assets in the municipality in the light of Art. 13 of the same code which mentions townspeople's rights. These rights include being informed of the decisions and projects of the relevant municipality, participating in local affairs and finally applying to judicial authorities against the decisions of local government related to local public services as put by the jurisprudence of Council of State of Turkey.¹³

In practice, those direct democracy tools are criticized a lot because of their transformations into the mechanisms which work in the direction of municipality and central government policies. Municipalities manage their policies and moreover, their members are chosen by the mayors. Except some rare good examples like Nilüfer City Council¹⁴ in Bursa and Çanakkale City Council¹⁵ which have an important influence of local government policies due to the power of local committees and implement the real goals prescribed in the relevant law; the other councils still need to become independent and autonomous from local and central government authorities. The legal framework does not permit to create a direct democracy mechanism, because the city councils rely on the discretion of municipalities for their financial resources.

Regarding the regional development agencies, the situation is much more complicated. Considering the opening of the 22nd chapter of European Union negotiation process in 2013 on regional policies and coordination of structural instruments, regional development agencies gained more importance and are expected to promote sustainable development policies within regional base.

These private corporate personalities originate from the Law No. 5449 on the Establishment, Coordination and Duties of Regional Development Agencies which dates back to 2006. The main duties of these agencies, as prescribed by the law, are to prepare special development plans for each of the regions, promote public-private and civil society dialogue and good governance, guide the central and local authorities in order to support sustainable development and reduce the regional disparities between less-developed and developed regions. According to Art.5 of the related code, technical assistance to the strategic local

¹² Art. 76.

¹³ Council of State, Section 13, Decision No.2009/2685.

¹⁴ <http://www.niluferkentkonseyi.org/>, [Accessed: 06.04.2014].

¹⁵ <http://www.canakkalekentkonseyi.org/>, [Accessed:06.04.2014].

government planning is counted as one of the main duties of the development agencies. There are currently 26 agencies operating countrywide. Some agencies focus on only one province (in the big provinces like İstanbul, Ankara and İzmir) while the others work on more than one province which shows similar development characteristics and priorities.

As the main challenges, the decisive role of the central government in the establishment and functioning of these agencies, the limited participation from local government and civil society in practice, the lack of human rights approach to development which is guaranteed by the United Nations Declaration of Right to Development describing the development as a multidimensional process of promoting the rights of all people and empowering the citizens to participate in sustainable development policies make these organizations evolve in the direction of transforming into marketing agencies of the provinces. As an important example, İstanbul Development Agency¹⁶ makes reference to create a “brand city”, the famous and the mostly criticized connotation by the different segments of the society reminding us the political discourse of the central government which mentions this repeatedly while commercializing its development policies regarding the goals of the year 2023. There are many mega construction projects of the central government in İstanbul like 3rd Airport, 3rd Bridge and Canal İstanbul neglecting the environmental and social consequences and which are subjected to deep criticism by the society are presented as the main targets of the development plan of İstanbul on the way to create a brand city. İstanbul Development Agency does not mention its position regarding those mega projects but underlines the importance of the competitiveness and marketable values of the city.

4. Do you have human rights protection mechanism at the local level in your country (e.g. ombudspersons, human rights commissions, mediators, etc.)?

Turkey does not have specialized human rights protection mechanisms at the local government level. Since Alexis de Tocqueville, local government structures are accepted as the democracy school of the representative democracy and the primary level for the protection and promotion of the human rights. State practice in Turkey shows us that centrality politics always dominated local level and its social and economic policies. Since the Ottoman Empire, local governments have been seen as the representatives of the central government policies at local level. In 2003, when the present government launched a local government reform campaign, autonomy of the local government bodies regarding their budgetary mandates and

¹⁶ [Http://Www.İstka.Org.Tr/](http://www.istka.org.tr/),

decision-making processes became the primordial questions of the reform. However, special new laws (like Law on Municipality , Law on Metropolitan Municipality, etc.) on the duties, functions and responsibilities of the local government structures proved one more time that the historical policy practice continues to dominate the administrative system. These laws introduced some new provisions empowering the local governments in the field of decision-making process by limiting the administrative tutelage of the central government; but human rights perspectives are neglected during the reform procedure.

As a symbolic example, human rights committees established at provincial and district levels fulfil their duties not under the authority of local government structures but the central government representatives. Even the participation from civil society is determined by the governor.

According to the Regulation on the Establishment, Duties and Working Principles of Provincial and District Human Rights Committees (2003), in case that provincial borders match with metropolitan municipality borders, mayor of the metropolitan municipality; if they don't, the mayor of the related province is obliged to attend in the committees as a member. Consequently, a limited representation of the local government in these human rights protection mechanisms is guaranteed by the relevant regulation. Those committees have the duties like investigating the claims regarding the human rights violations, making suggestions to the office of the governor and district governorship in order to protect and remove the obstacles on the way to realize human rights at local level.

As an another example, we can mention the *Beyaz Masa* (Table Desk) which is a public service provided by local government. Nearly all of the local government bodies have this complaint and wish mechanism. Citizens have possibility to reach those Table Desks by dialling a number or by showing themselves in person in order to present their demands concerning the quality of the local public services and their complaints in any matter which fall under the authority of the related local government.

But the crucial point is that neither the human rights committees nor the Table Desk complaint mechanism can be accepted as a human rights protection mechanism at local level. The work performance of human rights committees depends on the ambition of the central government representatives and the Table Desks work with the spirit of “call Center” instead of promoting and protecting human rights.

5. What initiatives have been taken to include human rights mainstreaming in local administration and public services?

According to UN Development Group's Human Rights Mainstreaming Mechanism (UNDG-HRM), the four priorities which have to be taken into account at national, regional and local levels are described as follows:

- promoting policy and operational coherence;
- providing direct support to Resident Coordinators and UN country teams in driving mainstreaming efforts at the country level and in supporting Member States fulfill human rights commitments;
- supporting the strengthening of national human rights protection systems at the request of governments;
- contributing to the integration of human rights issues in the overall UNDG advocacy on the development agenda and global issues.

When it comes to human rights mainstreaming policies, the reference is always made to the legislative measures taken to promote and protect human rights at national and local level in Turkey. General principles like equality and positive measures regarding women, children, elderly or disabled people (Art. 10 of the Constitution) are usually the first provisions to be mentioned. Establishment of Directorate General on Status of Women (as a branch of Ministry of Family and Social Policies) and the Committee on Equality of Opportunities for Women and Men of the Parliament, the ratification of Optional Protocol to "Convention on Elimination of All Forms of Discrimination Against Women" (CEDAW), Law on Municipality which enforces the establishment of shelters for women and children for metropolitan municipalities and municipalities with larger than 100.000 population are shown as the milestones of the success story of Turkey on the way to realize gender equality in public and private sphere.

However, the practice is evolving in a different direction. Law on Municipality introduces an obligation on the establishment of shelters for women and children for metropolitan municipalities and municipalities with larger than 100.000 population. During the recent local elections, the campaigns for accessible shelter for women and children were one of the important challenges for human rights organizations and candidates as well. According to recent data, only 32 of 167 municipalities have shelters in Turkey. In the provinces like

Bartın, Bitlis, Muş, Niğde, Rize ve Sinop, there are no shelters for women or children.¹⁷ Art. 14 of Law on Municipality requires that all the local services as duties of municipalities have to be planned and realized considering the urgency of relevant service. When the human rights organizations reveal the misconduct of local government and bring into question the obligations of local government bodies, they usually choose the way of pointing the financial resources problem. It is crucial for Turkish local and national authorities to bear in mind the A.T. v. Hungary (2005) decision of CEDAW. In that decision, the Committee concluded that state party failed to provide a suitable shelter with sufficient equipment for the applicant and her children who were the subjects of domestic violence. Consequently, it is not only the question of establishing shelters, but the ones which provide the conditions respecting human dignity of women and children.

Local representation of women is another democratic deficit for Turkish administrative system. The political parties do not follow the policies promoting human rights at local level. Following the recent local elections, the mayor of Bingöl (a province in the East of Turkey) who is member of the ruling party (Justice and Development Party- *AKP*) announced that it is not religiously acceptable to have women member in the municipal council. After his statement, a woman council member who is also member of the same party, resigned from her position.¹⁸ This is highly criticized by the society as the indication of discriminating and misogynist policies of political parties. Civil society organizations made an official complaint about that mayor and protested his misconduct.

One of the first woman mayors who is wearing a scarf and elected in the recent local elections (She was candidate of Justice and Development Party-*AKP*) made a decision to separate bus services for women and men. She declared that this application aims to solve the problems that women face with while using transportation systems in Keban (Elazığ). However, this measure is possible to lead to serious segregation and isolation of women from public sphere. It is not an empowerment policy; but the one which supports conservative populism.¹⁹

¹⁷ “Şiddetsiz Hayata İlk Adım”, <http://www.aljazeera.com.tr/al-jazeera-ozel/siddetsiz-hayata-ilk-adim>, [Accessed:03.04.2014]

¹⁸ “Bingöl Belediyesinde Kadın Düşmanlığı İstifası”, <http://bianet.org/bianet/siyaset/154780-bingol-belediyesinde-kadin-dusmanligi-istifasi>, [Accessed:05.04.2014].

¹⁹ “Kadın Belediye Başkanının İlk İcraatı 'Kadın Otobüsü’”, http://www.radikal.com.tr/politika/kadin_belediye_baskaninin_ilk_icraati_kadin_otobusu-1185907, [Accessed: 11.04.2014].

6. What is the role of civil society in the planning and the implementation of activities for the protection and promotion of human rights at local level in your country?

Following the Gezi Park Protests and the corruption claims including more than one central government ministers, the local elections which were held on March 30, 2014 gained a symbolic importance. Environmentally destructive projects, lack of transparency in the administration of the state, reference to parliamentary majorities and neglecting the opinion of the rest of the society created a polarized society and manifests began in Gezi Park of Taksim Square in İstanbul. Both the central and local government bodies were responsible of the decisions related to the projects in Gezi Park.

After Gezi Park protests, the local neighbourhood communities organized forums in the parks and discussed a broad range of issues regarding their cities and the state politics as well. Bearing in mind this strong opposition, the local government candidates underlined their willingness to rule the local government together in the light of participatory democracy and made promises regarding the main discussion topics in the society like gentrification, social policy based local services.

Civil society played an important role during the election period by organizing meetings and preparing reports on the expectations of the specific groups from local government authorities. They collaborated in the campaigns and shared policy documents.

SPoD (a national non-governmental LGBTI organization founded in 2011 in Turkey) launched a campaign during the local elections and made interviews with the candidates. The main goal of the campaign was to convince the candidates to sign a protocol declaring that they will respect LGBTI rights during their campaigns before the elections and their mandate if they are elected. The candidates from 5 different political parties signed the protocol²⁰ and 4 candidates who signed the protocol won the elections. Two political parties (Republican People's Party-CHP and Peoples Democratic Party- *HDP*) had LGBTI candidates for municipal councils.²¹ It is the first time in the history of local government elections that one LGBTI person who ran for the municipality council membership won a seat in Municipality

²⁰ "LGBTİ Dostu Belediyecilik Protokolü İmzacıları", <http://www.spod.org.tr/siyasi-temsil-calismalari/?p=84>, [Accessed: 05.04.2014].

²¹ "İstanbul'un LGBTİ Adayları Belli Oldu", <http://www.bianet.org/bianet/siyaset/153653-istanbul-un-lgbti-adaylari-belli-oldu>, [Accessed: 08.04.2014].

Council of Beşiktaş (İstanbul). This is maybe one of the most important outcomes of the LGBTI rights struggle in Turkey.

Besides this, two internet-based social movements which are “Sandık Başındayız”²² and “Oy ve Ötesi”²³ made a call to organize the people countrywide²⁴ in order to monitor the local elections. Following the basic training regarding the rules of voting process and counting the ballots, more than 25.000 people became independent observers in the elections.²⁵ Since the elections, there has been an on-going dispute about the fraud while counting the ballots; moreover some elections have been cancelled because of those claims. The candidates, who believe that they got more votes than announced, seek ways to apply to administrative and jurisdictional authorities to obtain decisions in favour of them. These two independent organizations provided the copies of the official records for recounting of the ballots or shared the copies of missing records. They had an important role in promoting and defending the constitutional right to vote and free elections as part of the democratic state.

The Association for the Support and Training of Women Candidates (KA.DER)²⁶ which defends equal representation of women and men in all fields of life and sees equal representation as a precondition of democracy addressed the chairpersons of Justice and Development Party (AKP) Recep Tayyip Erdoğan, Republican People’s Party (CHP) Kemal Kılıçdaroğlu and Nationalist Movement Party (MHP) Devlet Bahçeli with a post-it note saying “Do Not Forget Women Candidates!” and prepared and local government convention²⁷ on the specific needs of women and children and policies regarding the violence against woman.

KADAV (Woman’s Solidarity Foundation)²⁸ also run a campaign including interviews with the candidates. Those interviews aimed at improving the dialogue between candidates and civil society organizations and promoting awareness regarding gender politics at local level. KADAV also organized a press release in Istanbul and launched an on-line campaign from Facebook and Twitter declaring their demands. The title of the policy document regarding this

²² <https://www.sandikbasindayiz.org/>, [Accessed: 09.04.2014].

²³ <http://www.oyveotesi.org/>, [Accessed: 07.04.2014]

²⁴ “Oy ve Ötesi” monitored the local elections held only in İstanbul.

²⁵ “Siyasi Partiye Hayır, Sivil Topluma Evet”, http://www.radikal.com.tr/turkiye/siyasi_partiye_hayir_sivil_topluma_evet-1185111, [Accessed: 07.04.2014].

²⁶ <http://www.ka-der.org.tr/>, [Accessed: 06.04.2014].

²⁷ “Kadın Dostu Belediyeler Parmak Kaldırsın”, <http://www.bianet.org/bianet/siyaset/153789-kadin-dostu-belediyeler-parmak-kaldirsın>, [Accessed: 07.04.2014].

²⁸ <http://kadav-ist.org/default.aspx>, [Accessed: 03.04.2014].

campaign was “Gender Equality Must Be Guaranteed in “EVERYWHERE”.²⁹ The respect to human rights of women and LGBTI people at local level, gender-sensitive policies of local governments, shelters suitable and accessible for women and children without any preconditions, pre-school education establishments for the children, and social policies like vocational training for women who stays in the shelters which can be an effective tool to empower the women in the society were at the core of this policy document.

Women’s Coalition made a call to all political parties to ensure women’s participation as equal partners in all decisions and policies of local government. This organisation declared that they will be monitoring carefully if and to what degree the political party programmes take women’s criticisms and demands into account along with effective and sustainable approaches, in place. ‘Political Party Scorecard’ is a mechanism used by this coalition to reveal the good and bad practices of political parties.³⁰ Before the local elections, Women’s Coalition made a list of woman candidates of political parties. Low level of participation of women candidates in local elections is an important democratic deficit of Turkish political system. Here is the table that Coalition prepared before the elections:

(Name of political parties)	Local Elections of 2014 (Total number of candidates)	Local Elections of 2014 (Number of woman candidates)	(The rate of woman candidates)
AKP	1394	16	1,15
CHP	1180	51	4,32
MHP	1394	35	2,51
BDP	224	31 mayor+	13,84
		93 co-mayor= total 124	55,36
HDP	232	50 mayor+	21,55

²⁹ KADAV, “Gender Equality Must Be Guaranteed in “Everywhere”, March 2014, <http://kadav-ist.org/content/kadav%20yerel%20y%C3%B6netimler%20b%C3%Bclteni.pdf>, [Accessed: 08.04.2014].

³⁰ <http://www.kadinkoalisyonu.org/en/node/183>, [Accessed: 04.04.2014].

		119 co-mayor = total 169	72,84
BBP	73	3	4,11
İP	74	5	6,76
LDP	36	9	25,00
ÖDP	5	1	20,00
TKP	8	1	12,50
DYP	12	0	0,00
HEPAR	12	0	0,00
HÜDAPAR	15	0	0,00
SP	1394	0	0,0

İMECE-Toplumun Şehircilik Hareketi (The Urbanism Movement of People)³¹ organized meetings during four weeks before the local elections. Each meeting had a different topic like “local government and right to affordable housing”, local government and participatory budget and the examples from the world”, “local government and gender politics”, “local government and preservation of natural resources and historical monuments”. They are preparing a policy document including the results of those meetings.

Local neighbourhood communities which were established after Gezi Park protests in order to promote local democracy, defend right to city and discuss local problems also organized meetings regarding the recent local elections. Their potential is becoming much more important following the local elections because these communities are preparing an action plan to participate in the local government decision-making processes.

IULA-EMME (International Union of Local Authorities, Section for the Eastern Mediterranean and Middle East Region (currently UCLG-MEWA) launched in 1997 a project entitled “Promotion and Development of Local Agenda(LA) 21 in Turkey”. LA-21 City Councils, which are unique to the Turkish context, constitute an example of “governance” that

³¹ <http://www.toplumunsehicilikhareketi.org/>, [Accessed:05.04.2014].

manages to bring together central government, local government and civil society within a collaborative framework of partnerships.³² We gave detailed information about the actual situation of city councils in Turkey in the 3rd question.

International Union of Local Authorities, Section for the Eastern Mediterranean and Middle East Region (IULA-EMME), as the predecessor of UCLG-MEWA, was established in Turkey in 1987 as one of the regional sections of International Union of Local Authorities (IULA). IULA-EMME has been transformed into UCLG-MEWA in 2004, in parallel with the creation and restructuring of the UCLG World Organization. Since its establishment, UCLG-MEWA continues its activities for cities and local governments in the region, from its headquarters in Istanbul, Turkey, serving the main principles of democracy, human rights, local self-government, international solidarity, accountability and transparency, and sustainable development. Many municipalities are the members of UCLG-MEWA.³³

7. What is the role and programme of your organisation for promotion and protection of human rights at local level or in enhancing local governance for human rights?

The Human Rights Law Research Center at Istanbul Bilgi University³⁴ was established in December 2000. Since that time the Center has been active in the pursuit of raising the awareness of, protecting and developing human rights law and humanitarian law both domestically and internationally. In addition to organising conferences, symposiums, seminars and round table discussions, both at home and abroad, the Center is also working with a number of national and international organisations, both public and private, on various projects in the subject of human rights. The research projects launched by the Center made important contributions to promote and protect human rights in Turkey. Here is a list of example projects of the Human Rights Center:

1. *Strengthening the Human Rights Capacity in Turkey* (1 May 2004 - 31 September 2005). Project activities were as follows: Seminars for Judges and Prosecutors on the European Convention on Human Rights, Training for Government Officials on State Party Reporting to the United Nations Committee on Economic, Social and Cultural

³² “Turkey Local Agenda 21 Programme”, <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan031655.pdf>, [Accessed: 04.04.2014].

³³ “List of Member Municipalities in Turkey”, <http://www.uclg-mewa.org/turkey>, [Accessed:04.04.2014].

³⁴ <http://insanhaklarimerkezi.bilgi.edu.tr/default.asp>, [Accessed: 04.04.2014].

Rights, Training for Government Officials on State Party Reporting to the United Nations Human Rights Committee, Training for NGO Representatives on Parallel Reporting to the United Nations Human Rights Committee, Training for NGO Representatives on Parallel Reporting to the United Nations Committee on Economic, Social and Cultural Rights.

2. *Research project on Legal Needs of the Urban Poor* (June- October 2005)
3. *Research Project on Government responses to Human trafficking in Turkey: Evaluation and Mapping of National Referral Mechanism for Victims of Trafficking* (December 2005 - October 2007)
4. *Research Project on International Crime Victim Survey 2005: Study of criminal victimization among Istanbul households* (June 2005 – July 2007)
5. *RAXEN_CT: Information Network on Racism and Xenophobia in the Candidate Countries Croatia and Turkey*(July 2006 – July 2007)

Since 2000, European Monitoring Center for Racism and Xenophobia (EUMC) developed a European Racism and Xenophobia Information Network (RAXEN) composed of National Focal Points (NFP) in each Member State. As of June 2006, the Human Rights Law Research Center has been selected as the NFP for EUMC which has become the European Union Fundamental Rights Agency (FRA) on 1 March 2007. As the NFP for Turkey, the Human Rights Law Research Center has provided EUMC with data on instances of racism, xenophobia and anti-Semitism in the fields of legislation, education, employment, housing and racist violence.

6. *Project of Strengthening Respect for Human Rights of Women in Turkey* (2005-2008) which aims to contribute to the elimination of discrimination and violence against women and to strengthen the application of the international human rights standards regarding women's human rights in Turkey by means of awareness raising activities. For this purpose, seminars are organized targeting at members of the judiciary (judges, prosecutors and lawyers) as well as the representatives of the NGOs.
7. *Strengthening the Respect for Human Rights of Persons with Disabilities in Turkey November* (2005 - November 2008) which aims to raise awareness on international human rights standards among disability NGOs and lawyers working with them.
8. *Promoting the Practice of Victim-Offender Mediation* (In this project the European Forum for Restorative Justice acts as the official partner. The project is funded by the European Initiative for Democracy and Human Rights of the European Commission.) (September 2006 - March 2008)

9. *Restorative Justice: An Agenda for Europe* (June 2006 - May 2008). In this project the European Forum for Restorative Justice is the project leader and the Human Rights Law Research Center of Istanbul Bilgi University acts as the project partner. The project is co-funded by the AGIS Programme of the European Commission.)
10. *Strengthening Access to Justice in Turkey* (October 2007-March 2009) This project aimed to arise awareness and increase the service quality of legal aid services for lawyers, judiciary and beneficiaries.

The Center monitors all national and international judicial decisions regarding human rights and humanitarian law. Within its capacity as an educator, the Center has been planning and coordinating the Masters of Law (LL.M) program in Human Rights Law since 2001. The program is the first such masters program ever offered in Turkey. The program makes it possible to examine human rights law from an interdisciplinary perspective by considering the needs of its applicants and the different sectors of professional life from which they come. The Center is also preparing and conducting other educational programs that emphasise the importance of and the implementation of human rights for various professions. The Human Rights Activism, International Human Rights Law: Monitoring Mechanisms, Anti-Discrimination Law, The Question of Poverty in Terms of Social Rights, Rights and Principles Regarding Procedure Law in the Jurisprudence of ECtHR, Right to City classes given within Human Rights Programme are following a syllabus taking into account all practices international, national, regional and local.

8. What are the main challenges faced by local government in your country in the promotion and protection of human rights?

There is more than one challenge faced by the local government in Turkey. First of all, laws regarding the competence sharing between central government and local government are not simple, accessible and do not permit to clarify the real owner of the mandates and duties prescribed by the law. Some of the duties mentioned in the Law on Municipality also are mentioned in the Law on Metropolitan Municipality and moreover in special laws and decree-laws of ministries of the central government. For example, the rules on urban planning, construction, environmental policies can be tracked in countless legal documents pointing different authorities from central government and local government. Latest decree-laws regarding the organizational structure of Ministry of Environment (examples: Decree-Law

644, 648, 653) made local government powerless in decision-making process related to environmental questions and gentrification policies.

Besides, absence of the effective mechanisms to protect mandates of the local government against the infringements of the central government makes the situation worse and more complicated. Judicial authorities, when it comes to competence sharing problem, declare that it is within the discretionary power of legislative power to organize the administrative system. Turkey ratified European Charter of Local Government and this document recognizes the right of local government structures to apply to judicial authorities in case of any infringement by the central government. However, Turkey introduced derogation to the relevant article of the Charter (Art 11).

Constitutional complaint (individual complaint) mechanism which is introduced in 2010 does not permit local government bodies to bring the relevant complaints in front of the Constitutional Court for the reason that they have public corporate personality. One municipality whose public corporate personality abolished by the Law No. 6360 applied to the Constitutional Court. The Court rejected this claim on the basis that municipalities do not have right to individual complaint.³⁵

Specific provisions like prohibition of any decisions in political matters (Art. 30 of Law on Municipality) strengthen the administrative tutelage and domination of central government on local bodies. The case of Sur Municipality in Diyarbakır can be the most relevant example of this problem. In 2006, Sur Municipality Council made a decision on preparing brochures in different languages like Turkish, Kurdish, Arabic, Assyrian, Armenian, and Russian in order to provide local services in a better manner and make people have information about the facilities of Municipality. With the request of Ministry of Internal Affairs, State Council dismissed the mayor and Municipal Council members from their posts relying on the relevant article on prohibition of political decisions. However, it is the obligation of local government originating from Law on Municipality and European Charter on Local Self-Government to provide the local services according to special needs of the communities. However, Congress of Regional and Local Authorities of European Council highly criticized the relevant decision

³⁵ Ballidere Municipality v. Turkey, Application No: 2012/1327, Date: 12.02.2013.

of Council of State underlying the maintenance of democracy at local level and importance of local autonomy.³⁶

9. Please provide any best practices with regard to the above – mentioned issues.

Although, the local elections held on March 30, 2014 showed the democratic deficits in the country, 98 women candidates (as mayor or co-mayor)³⁷ from Peace and Democracy Party (BDP) won the elections in the East of Turkey. In three metropolitan municipalities like Diyarbakır (candidate of BDP), Aydın (Candidate of CHP) and Gaziantep (Candidate of AKP), the women mayors will govern.³⁸

Considering gender politics of local government, some municipalities put the clauses in collective bargaining agreements punishing the violence against women and children. Batman, Hilvan and Viranşehir (Şanlıurfa), Nusaybin (Mardin), Bostaniçi (Van), Yüksekova and Esendere (Hakkari), Diyarbakır Metropolitan Municipality and Sur, Bağlar, Kayapınar and Yenişehir (Diyarbakır), Çanakkale Municipality, Çankaya (Ankara), Karabağlar (İzmir) represent the good practices. According to the agreements signed with the syndicates, there were different practices punished like domestic violence, bride exchange (*berdel*), second wife (*kuma*), preventing girls to go to school. In case of these violations, the relevant agent will not get his social aids or half of his salary will be paid to his wife and children.³⁹

Local committees participating in Nilüfer City Council has a credible power regarding local government decisions. Mayor of Nilüfer Municipality presented strategic plan and budget of the municipality for the approval of the committees. It is a success story on participatory budget.⁴⁰ The local people also actively use their right to decide on every project of the Municipality.

³⁶Local Democracy in Turkey Situation in Sur/Diyarbakir (South-East Anatolia, Turkey) Report of the Congress Fact-Finding Mission to Turkey (8 -10 August 2007), <https://wcd.coe.int/ViewDoc.jsp?id=1183385&Site=COE>, [Accessed: 04.04.2014].

³⁷ It is the first time in Turkey that Peace and Democracy Party (BDP) and Peoples Democratic Party (HDP) ran the local elections with two candidates for each municipality one of whom had to be woman. This system aimed at empowering women in decision-making processes. It is not legally recognized in Turkish law to enter elections with co-presidency system; but it is also not prohibited.

³⁸ “Female Winners of Municipal Elections”, <http://www.bianet.org/english/women/154665-female-winners-of-municipal-elections>, [Accessed: 03.04.2014].

³⁹ “Belediye Toplu İş Görüşmelerinde Kadına Pozitif Ayrımcılık”, <http://www.memurlar.net/haber/348301/>, [Accessed: 07.04.2014]; “Eşini Döven Memura Para Yok”, <http://www.kamudanhaber.com/kamu/esini-doven-memura-para-yok-h73897.html>, [Accessed: 07.04.2014].

⁴⁰ “Nilüfer Stratejik Planı Mahalle Komiteleriyle Paylaşıldı”, <http://www.nilufer.bel.tr/anahaber.php?id=904>, [e.t.10.04.2014].